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Senate

The Senate met at 9:30 a.m. and was called to order by the President pro tempore [Mr. THURMOND].

PRAYER

The Chaplain, Dr. Lloyd John Ogilvie, offered the following prayer:

Almighty God, You have created us in Your own image; forgive us when we return the compliment by trying to create You in our image, projecting onto You human judgmentalism. We evade Your judgment of our judgments. Our judgments divide us from one another. We condemn those who differ with us; we miss Your lordship by lording it over others. We need to be reconciled to You, Lord. Forgive any pride, prejudice, or presumption. Our Nation is deeply wounded by cutting words and hurting attitudes toward other religions, races, and political parties. We are divided into camps of liberal and conservative, Republican and Democrat, and from each camp we shout demeaning criticisms of each other. Forgive our arrogance, but also forgive our reluctance to work together with those with whom we differ. We confess that Your work in our Nation is held back because of intolerance.

We know that You are the instigator of our longing to be one and the inspiration of our oneness. Bind us together with the triple-braided cord of Your acceptance, atonement, and affirmation. In Your holy name. Amen.

PLEDGE OF ALLEGIANCE

The Honorable GEORGE VOINOVICH, a Senator from the State of Ohio, led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDING OFFICER (Mr. VOINOVICH). The Senator from Utah is recognized.

SCHEDULE

Mr. HATCH. Mr. President, today the Senate will immediately resume consideration of the bankruptcy bill under the previous order. Senator WELLSTONE will be in control of the first hour to debate his amendments regarding lifeline accounts and debt collection. There are other remaining amendments that will be debated and voted on throughout today's session with a vote on final passage expected to occur no later than tomorrow.

As a reminder, a cloture motion was filed on the motion to proceed to the nuclear waste disposal legislation during Monday's session, and by previous consent that vote will occur following completion of the bankruptcy bill during Wednesday's session of the Senate.

I thank my colleagues for their attention.

BANKRUPTCY REFORM ACT OF 1999

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 625, which the clerk will report.

The bill clerk read as follows:

A bill (S. 625) to amend title II, United States Code, and for other purposes.

Pending:

Wellstone amendment No. 2537, to disallow claims of certain insured depository institutions.

Wellstone amendment No. 2538, with respect to the disallowance of certain claims and to prohibit certain coercive debt collection practices.

Schumer/Durbin amendment No. 2762, to modify the means test relating to safe harbor provisions.

Schumer amendment No. 2763, to ensure that debts incurred as a result of clinic violence are nondischargeable.

Feingold modified amendment No. 2748, to provide for an exception to a limitation on an automatic stay under section 362(b) of title 11, United States Code, relating to evictions and similar proceedings to provide for the payment of rent that becomes due after the petition of a debtor is filed.

The PRESIDING OFFICER. Under the previous order, the time until 10:30 a.m. shall be under the control of the Senator from Minnesota, Mr. WELLSTONE, to speak on amendments Nos. 2537 and 2538.

The Senator from Nevada.

Mr. REID. Mr. President, a couple things before we get to Senator WELLSTONE.

It is my understanding, I say to the acting majority leader, Mr. HATCH, there will be no votes this morning and the first vote may occur after the caucuses.

I also ask unanimous consent that the Senator from Minnesota be allowed 1 hour rather than terminating his remarks at 10:30, that he should be entitled to 1 hour.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. If I may infringe on my colleague's time just for a minute——

Mr. REID. Does the Senator accept that unanimous consent request?

The PRESIDING OFFICER. Is the Senator objecting to the unanimous consent request?

Mr. HATCH. As I understand it, the unanimous consent request is that there will be no votes until 2:15, Senator WELLSTONE having the first hour.

Mr. REID. Yes, he gets an hour rather than being cut off at 10:30.

Mr. HATCH. Yes. I have no objection.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. HATCH addressed the Chair.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. The two WELLSTONE amendments, they have been filed, haven't they?

The PRESIDING OFFICER. They are pending.

● This "bullet" symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

Mr. HATCH. Then I ask unanimous consent that the votes occur with respect to the pending amendments in stacked sequence beginning at 2:15 p.m. today and that there be 5 minutes for debate to be equally divided for closing remarks prior to the votes.

The PRESIDING OFFICER. Is there objection?

Mr. HATCH. I move to table both amendments.

I ask unanimous consent that it be in order for me to move to table each amendment.

The PRESIDING OFFICER. Is there objection to the unanimous consent request?

Mr. WELLSTONE. Mr. President, we are talking about tabling the amendments this afternoon; is that right—not now?

Mr. HATCH. No. When they occur, they will be tabled.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from Minnesota.

AMENDMENTS NOS. 2537 AND 2538

Mr. WELLSTONE. Mr. President, first of all, I remind my colleagues of what I said last week about this legislation which I think, with all due respect to my colleague—I do have a lot of admiration for Senator HATCH—is still fundamentally flawed legislation. It contains numerous provisions which are unbelievably harsh toward those citizens who are most vulnerable in our society, and that troubles this Senator.

I think the entire concept of the bill is wrong. It addresses a crisis that appears to be self-directed. It rewards predatory and reckless lending by banks and credit card companies which fed the crisis in the first place, and it does nothing to actually prevent bankruptcy by closing economic security to working families. I reject the notion the Senate should assume that there are problems with the bankruptcy code because more people are going bankrupt.

Real bankruptcy reform would address the root causes of bankruptcy. It would address the concentration of financial markets which are increasing the clout and power of big banks and credit card companies to unprecedented levels. It would make working families more financially secure. It would address skyrocketing medical expenses. It would confront the economic balkanization in this country, the increasing schism between the wealthy and the rest of America.

This bill does none of these things. It imposes harsh penalties on families who, by and large, file for bankruptcy in good faith because it is the only option they have.

The two amendments I have offered to this bill—the payday loan amendment, which would curb a form of predatory lending which targets low- and moderate-income working families, and also the low-cost basic banking amendment, which would require big banks with more than $200 million in assets to offer low-cost banking services to their customers if they wish to be able to make claims against debtors in bankruptcy proceedings—would go a long way toward making this bill more fair and more balanced.

When I spoke last week, I said the bankruptcy crisis is over and it ended without Congress passing legislation. I cited the fact that bankruptcy proceedings actually fell last year—fell last year, I repeat—by 112,000 cases.

My good friend from Alabama came to the floor and said something that, actually, I think is true: This bill doesn't have anything to do with the number of bankruptcies. I think he was more right than probably any of us want to seem to admit. But the decrease in bankruptcy filings is significant, and let me explain why.

Ironically, the bankruptcy crisis probably ended because Congress has not passed a bill. The bean counters in the consumer credit industry realized that all of these bankruptcies were not good for profits, so they started lending less money. They were more careful about to whom they lent the money. In fact, overall consumer debt actually declined in 1998. And guess what. There were fewer bankruptcies. But if S. 625 becomes law, bankruptcy protection will be harshly rolled back. It will even be more profitable to overburden folks with debt, and the banks and credit card companies will fall over themselves trying to do it. But this time, America's working families are going to pay even more of a price.

This argument isn't purely historical or theoretical. Empirical data backs it up. I want to take my colleagues through a little bit of history. I want to read from an article published in the August 13, 1984, issue of Business Week. The article was entitled: ''Consumer Lenders Love the New Bankruptcy Laws.'' It was written in the aftermath of Congress' last tightening of the bankruptcy code in 1984. Here is how the article goes:

> It doesn't take much to get a laugh out of Finn Casperson these days. Just ask him the outlook for Beneficial Corp. now that the U.S. has a tough new bankruptcy law. ''It looks a lot rosier,'' says the chairman of the consumer finance company, punctuating the assessment with a hearty chuckle.

The article then explains what the banks and credit card industries got back in 1984:

> But when someone seems to be abusing the revised law, a judge can, on his or her own, throw a case out of Chapter 7, leaving the debtor to file under Chapter 13. And in Chapter 13, where an individual works out a repayment plan under court supervision, lenders now can get a court order assigning all of a borrower's income for three years to repaying debts . . .

Anyway, it goes on to say that the lender does not have to worry any longer and they can have these predatory practices and they can target people and they do not have to worry if there is no protection for people. But there is protection for them.

Does this sound familiar to my colleagues? These ''reforms'' —and I put ''reforms'' in quotes—are substantially similar to what the industry says are desperately needed now—that means to curb abusive filings. That is exactly what the Congress gave the credit card industry in 1984. But the question is, After we passed that bill in 1984, how did lenders behave after the ''strengthening'' of the bankruptcy code? That story will help us answer the question: If we give them this new, stricter, lopsided law in 2000, what will they do with it?

From the same 1984 Business Week article:

> Lenders say they will make more unsecured loans from now on, trying to lure back the generally younger and lower-income borrowers recently turned away.

Why not? We are giving them all the protection in the world. They can go about with all kinds of unscrupulous practices that I am going to talk about: Target poor people, target single parents, target young people, and not have to worry.

But that is exactly the problem. The consumer finance industry went after these folks with a vengeance post 1984. Lenders felt so protected by the new bankruptcy law that they eventually threw caution to the wind and began using the same aggressive, borderline deceptive and abusive tactics that are now common in the industry. That is exactly what we are going to do with this law—give them a blank check to continue with this deception.

In a 1999 Harvard Business School study entitled, ''The Rise of Consumer Bankruptcy: Evolution, Revolution, or Both?'' David Moss of the Harvard Business School and Gibbs Johnson, an attorney, lay out the case. They say—colleagues and staff listening to this debate, I think this is an important piece:

> It is conceivable, therefore, that the pro-creditor reforms of 1984 actually contributed to the growth of consumer (bankruptcy) filings. This could have occurred if the reforms exerted a larger impact in encouraging lenders to lend—and to lend more deeply into the income distribution—than they did in deterring borrowers from borrowing and filing.

Mark Zandi, in the January 1997 edition of the Regional Financial Review, writes:

> While forcing more households into a Chapter 13 filing, though an income test would raise the amount that lenders would ultimately recover from bankrupt borrowers, it would not significantly lower the net cost of bankruptcies.

I emphasize:

> Tougher bankruptcy laws will simply induce lenders to ease their standards further.

That is exactly what we are doing with this bill.

Again, we know this is exactly what happened. Credit card companies sent out over 3.5 billion solicitations last year. They use aggressive tactics to sign up borrowers. Is there anything in this ''reform'' legislation that holds them accountable? No. Once again, the big givers and heavy hitters and well-connected dominate. But when it

comes to the poor, when it comes to single-parent families, when it comes to senior citizens, when it comes to the people who are most vulnerable, we have unbelievable harshness in this legislation.

These credit card companies use aggressive tactics to sign up borrowers—and to keep you in debt once they get you. They also go after low-income individuals, even though they might not be good credit risks. Why? Because they are desperate for credit. They have a captive audience. Poor people can be charged exorbitant interest rates and fees. Despite the fact that there are hundreds of credit card firms targeting low-income borrowers, interest rates and terms on these cards have not been driven down by the supposed ''competition.''

For these borrowers, for low-income people, the market is failing.

In a June 3, 1999, interview in USA Today, Joe Lee, a respected bankruptcy judge for over 37 years in the Eastern District of Kentucky, placed the blame for the current high number of bankruptcies squarely on the backs of the banks and the credit card companies. There is not a word in this legislation holding them at all accountable for their unscrupulous practices; they all target people who are desperate for credit and have no other choice but to receive loans on horrible terms, the poor and the vulnerable.

When asked if he had seen many people file for bankruptcy who could afford to pay most of their debts, he said—because that is the premise of this legislation, that you have all this abuse—

> No. It's simply not true. Most of them are very poor, drowning in debt. The target (of bankruptcy reform) should be the consumer credit [card] industry and the laws governing extension of consumer credit. Instead they're robbing the poor to enrich the rich.

That is exactly what this legislation does. But these poor people are invisible. They have no clout. They have no power. They have no lobbyists. They are not the heavy hitters. They are not the big givers. They are left out.

USA Today also asked Judge Lee if he thought there was less stigma attached to bankruptcy than there used to be. He said:

> I've been on the bench now for 37 years, working on 38. I never have seen this business about debtors being cavalier about bankruptcy.
>
> Look at it from the point of view of the debtor. They have mothers and fathers. They go to church. They have neighbors. They have to walk into the office after filing for bankruptcy and explain it to other employees, and this is not easy to do. There's the additional stigma that bankruptcy remains on your credit report for 10 years. You have trouble getting credit other than at high interest rates. You have difficulty buying a home. You have lots of problems.

What Judge Lee is saying is borne out by the facts. Remember, as I stated last year, the vast majority of families who file for bankruptcy are not trying to beat the system. They file for a fresh start. That is what bankruptcy provides for them. It is the only way they can get out from crushing medical bills or other debts brought on by unforeseen circumstances. Only a very small percentage—perhaps 3 percent—of those who file for bankruptcy file abusively, according to the American Bankruptcy Institute. The American Bankruptcy Institute says about 3 percent of the people abuse this system. The Justice Department goes higher. For that, we have this wide, broad net that punishes the poor and the most vulnerable.

A constituent from Crystal, MN, wrote to my office in July to tell me about her experience with bankruptcy:

> What I want you to know specifically is that this one credit card company would not offer any reductions in the interest rate, demanded over one quarter of my entire monthly income, did not care if I could not meet my payments for the most basic requirements of human existence, suggested that I use a food shelf, and they refused to acknowledge that my child was suicidal and that their harassing phone calls to my house nearly caused her to overdose on the only nonprescription pain relievers that I could have for myself.

What was the reason for that? Her life was like ours. Actually, we make a lot more money than she made. She was a worker. She had a factory job. An injury forced her to leave the job. For all I know, it could have been a ruptured disk. I know what a ruptured disk is like. She worked multiple minimum-wage jobs for several years. Her marriage fell apart, and her daughter fell into deep clinical depression. No fault of hers; no fault of her daughter's. In the meantime, she enrolled in computer school so she could pursue a career that would give her some income and would also help her help her daughter. She purchased a computer on credit so she could spend more time working at home. In time the payments on the computer, her mortgage, and her daughter's medical bills became too much, and she fell behind on debt payments. When the creditors approached her, she tried to work out a repayment schedule she could meet, and then the quote I read is what happened to her. So she filed for bankruptcy.

She has begun to rebuild her life. She ended her letter by saying this:

> Please do not vote for Senate Bill 625 or any other bill that makes bankruptcy harder for people who find themselves caught in the unforeseen predicaments of life for which they have no control. It is not fair to pass a bill that helps the credit card companies by hurting people like me without forcing them to look at what they are doing and how they respond. They have many options that could be used without creating the emotional trauma that forces hard working people to choose the relief of bankruptcy.

I ask my colleagues, is there one thing in this piece of legislation that could have helped this woman head off bankruptcy, a Minnesotan? Absolutely not. This bill would simply have made it harder for her to get the relief necessary for her to take care of herself and her daughter. Why aren't we talking about what could have kept this woman out of bankruptcy? What does this bill have to do with helping a woman or a man educate themselves so they can do better for their family? The answer: Nothing. What does this bill do to help ordinary people who are overwhelmed by medical expenses? The answer is: Absolutely nothing. What does this bill do to promote economic stability for working families? Absolutely nothing.

I believe if my colleagues wanted to reduce the number of bankruptcies, they would focus more on providing a helping hand rather than removing a safety net. If my colleagues wanted to tackle bankruptcy, they would take on the credit card companies and their abusive tactics. No, we don't want to take on those interests. Unfortunately, my constituent's story, a woman from Minnesota, single parent, is becoming increasingly typical. All too often overburdened families, the vast majority of them single-wage-earner families headed by a woman, have to deal with these circumstances all the time.

This year more than a half million women-headed households filed for bankruptcy. Women-headed households are the poorest group of families in America. They are the largest group who have to file for bankruptcy. Ironically, the credit card industry has run advertisements—I cannot believe this—during debate on this bill talking about how friendly this piece of legislation is toward women and children. They have no shame. This is ridiculous.

I will read from a letter signed by approximately 70 scholars at our Nation's law schools who are opposed to this legislation.

I ask unanimous consent that this letter, along with a list of a variety of consumer, women, and union organizations be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

NOVEMBER 2, 1999.

Re: The Bankruptcy Reform Act of 1999 (S. 625)

Hon. ORRIN HATCH,
Chairman, Committee on the Judiciary, U.S. Senate, Washington, DC.
Hon. PATRICK LEAHY,
Ranking Member, Committee on the Judiciary, U.S. Senate, Washington, DC.

DEAR SENATORS: In a letter to you dated September 7, 82 professors of bankruptcy law from across the country expressed their grave concerns about some of the provisions of S. 625. In a public letter dated September 16, two professors took the opposing view. One of the principal concerns of the 82 professors was that S. 625 ''may adversely affect women and children.''

Proponents of the bill—namely, the consumer credit industry—have responded to the concerns raised about the effects of the bill on women and children with a media blitz trumpeting the view that ''Bankruptcy reform helps women and children.'' A September 14 letter from consumer credit issuers proclaims that ''S. 625 vastly improves the position of women and children who depend on family support payments from an absent parent who has filed for bankruptcy.'' A full-page advertisement also

dated September 14 asserts, ''The truth is that bankruptcy reform gives much-needed help to single parents and their children who are dependent on family support payments.'' The advertisement cautions in large type: ''Distorting the facts about reform helps no one.''

The undersigned professors agree that ''distorting the facts about reform helps no one.'' The real distortion is the assertion that S. 625 would benefit women and children. The truth is that, notwithstanding the pleas of the bill's proponents, S. 625 does not help women and children. Thirty-one organizations devoted exclusively to promoting the best interests of women and children continue to oppose the pending bankruptcy bill. The concerns expressed in the professors' letter of September 7 regarding how S. 625 would hurt women and children have not been resolved—they have not even been addressed.

First, one of the biggest problems the bill presents for women and children was stated in the September 7 letter:

''Women and children as creditors will have to compete with powerful creditors to collect their claims after bankruptcy.''

This increased competition for women and children will come from many quarters: from powerful credit card issuers, whose credit card claims increasingly will be excepted from discharge and remain legal obligations of the debtor after bankruptcy; from large retailers, who will have an easier time obtaining reaffirmations of debt that legally could be discharged; and from creditors claiming they hold security, even when the alleged collateral is virtually worthless. None of the changes made to S. 625 and none being proposed addresses these problems. The truth remains: if S. 625 is enacted in its current form, women and children will face increased competition in collecting their alimony and support claims after the bankruptcy case is over.

Second, it is a red herring to argue, as do advocates of the bill in touting how the bill will ''help'' women and children, that it will ''Make child support and alimony payments the top priority—no exceptions.'' True enough—but, as the law professors pointed out in the September 7 letter: ''Giving 'first priority' to domestic support obligations does not address the problem.''

Granting ''first priority'' to alimony and support claims is not the magic solution the consumer credit industry claims because ''priority'' is relevant only for distributions made to creditors in the bankruptcy case itself. Such distributions are made in only a negligible percentage of cases. More than 95% of bankruptcy cases make NO distributions to any creditors because there are no assets to distribute. Granting women and children a first priority for bankruptcy distributions permits them to stand first in line to collect nothing.

The hard-fought battle is over reaching the ex-husband's income after bankruptcy. Under current law, child support and alimony share a protected post-bankruptcy position with only two other collectors of debt—taxes and student loans. The credit industry asks that credit card debt and other consumer credit share that position, thereby elbowing aside the women trying to collect on their own behalf. The credit industry carefully avoids discussing the increased post-bankruptcy competition facing women if S. 625 becomes law. As a matter of public policy, does this country want to elevate credit card debt to the preferred position of taxes and child support?

In addition to the concerns raised on behalf of the thousands of women who are struggling now to collect alimony and child support after their ex-husband's bankruptcies, we also express our concerns on behalf of the more than half a million women heads of household who will file for bankruptcy this year alone. As the heads of the economically most vulnerable families, they have a special stake in the pending legislation. Women heads of households are now the largest demographic group in bankruptcy, and according to the credit industry's own data, they are the poorest. The provisions in this bill, particularly the provisions that apply without regard to income, will fall hardest on them. A single mother with dependent children who is hopelessly insolvent and whose income is far below the national median income still would have her bankruptcy case dismissed if she does not present copies of income tax returns for the past three years—even if those returns are in the possession of her ex-husband. A single mother who hoped to work through a chapter 13 payment plan would be forced to pay every penny of the entire debt owed on almost worthless items of collateral, such as used furniture or children's clothes, even if it meant that successful completion of a repayment plan was impossible.

These two facts are unassailable: S. 625 forces women to compete with sophisticated creditors to collect alimony and child support after bankruptcy. S. 625 makes it harder for women to declare bankruptcy when they are in financial trouble. We implore you to look beyond the distorted ''facts'' peddled by the credit industry. Do not pass a bill to hurt women and children.

Thank you for your consideration.

Respectfully yours,

Sixty-nine (69) Professors

Charles J. Tabb, Professor of Law, University of Illinois College of Law; Peter A. Alces, Professor of Law, College of William and Mary School of Law; Peter Alexander, Professor of Law, The Dickinson School of Law, Pennsylvania State University; Thomas B. Allington, Professor of Law, Indiana University School of Law (Indianapolis); John D. Ayer, Professor of Law, University of California at Davis School of Law; Laura B. Bartell, Associate Professor of Law, Wayne State University Law School; Patrick B. Bauer, Professor of Law, University of Iowa College of Law; Susan Block-Lieb, Professor of Law, Seton Hall University School of Law; Douglass G. Boshkoff, Robert H. McKinney Emeritus Professor of Law, Indiana University School of Law (Bloomington); Amelia Boss, Professor of Law, Temple University School of Law.

Jean Braucher, Roger Henderson Professor of Law, University of Arizona, James E. Rogers College of Law; Ralph Brubaker, Associate Professor of Law, Emory University School of Law; Mark E. Budnitz, Professor of Law, Georgia State University College of Law; Daniel J. Bussel, Professor of Law, UCLA School of Law; Marianne B. Culhane, Professor of Law, Creighton University School of Law; Susan DeJarnatt, Assistant Professor, Beasley School of Law of Temple University; Paulette J. Delk, Associate Professor of Law, Cecil C. Humphreys School of Law, The University of Memphis; A. Mechele Dickerson, Associate Professor of Law, College of William and Mary School of Law; Samuel J.M. Donnelly, Professor of Law, Syracuse University College of Law; Scott B. Ehrlich, Associate Dean and Professor of Law, California Western School of Law; Thomas L. Eovaldi, Professor of Law, Northwestern University School of Law.

Jeffrey T. Ferriell, Professor of Law, Capital University School of Law; Wilson Freyermuth, Associate Professor of Law, University of Missouri-Columbia School of Law; Christopher W. Frost, Professor of Law, University of Kentucky College of Law; Nicholas Georgakopoulos, Professor of Law, University of Connecticut School of Law; S. Elizabeth Gibson, Burton Craige Professor of Law, University of North Carolina School of Law; Marjorie L. Girth, Professor of Law, Georgia State University College of Law; Karen Gross, Professor of Law, New York Law School; Matthew P. Harrington, Associate Dean for Academic Affairs and Director, Marine Affairs Institute, Roger Williams University School of Law; Joann Henderson, Professor of Law, University of Idaho College of Law; Richard A. Hesse, Professor of Law, Franklin Pierce Law Center; Ingrid Michelson Hillinger, Associate Professor of Law, Boston College Law School; Margaret Howard, Professor of Law, Vanderbilt University Law School; Ted Janger, Associate Professor, Brooklyn Law School; Lawrence Kalevitch, Professor of Law, Nova Southeastern University Law Center; Allen R. Kamp, Professor of Law, John Marshall Law School; Lawrence P. King, Charles Seligson Professor of Law, New York University School of Law; Kenneth N. Klee, Acting Professor of Law, UCLA School of Law; John W. Larson, Associate Professor of Law, Florida State University College of Law; Robert M. Lawless, Associate Professor of Law, University of Missouri-Columbia School of Law; Lynn M. LoPucki, Security Pacific Bank Professor of Law, UCLA School of Law; Lois R. Lupica, Associate Professor of Law, University of Maine School of Law; William H. Lyons, Professor of Law, University of Nebraska College of Law.

Bruce A. Markell, Professor of Law, William S. Boyd School of Law, University of Nevada, Las Vegas; Nathalie Martin, Assistant Professor of Law, University of New Mexico School of Law; Judith L. Maute, Professor of Law, University of Oklahoma Law Center; Jeffrey W. Morris, Professor of Law, University of Dayton School of Law; Spencer Neth, Professor of Law, Case Western Reserve University Law School; Gary Neustadter, Professor of Law, Santa Clara University School of Law; Dean Pawlowic, Professor of Law, Texas Tech University School of Law; Lawrence Ponoroff, Vice Dean and Professor of Law, Tulane Law School; Nancy B. Rapoport, Dean and Professor of Law, University of Nebraska College of Law; Doug Rendleman, Huntley Professor, Washington and Lee University School of Law; Alan N. Resnick, Benjamin Weintraub Professor of Law, Hofstra University School of Law.

Linda J. Rusch, Professor of Law, Hamline University School of Law; Charles J. Senger, Professor of Law, Thomas M. Cooley Law School; Charles Shafer, Professor of Law, University of Baltimore School of Law; Melvin G. Shimm, Professor of Law Emeritus, Duke University; Philip Shuchman, Weintraub Professor of Law, The State University of New Jersey, Rutgers School of Law (Newark); Marshal Tracht, Associate Professor of Law, Hofstra University School of Law; Bernard R. Trujillo, Assistant Professor, University of Wisconsin Law School; Valorie K. Vojdik, Assistant Professor of Law, Western New England College, School of Law; William T. Vukowich, Professor of Law, Georgetown University Law Center; Thomas Ward, Professor of Law, University of Maine School of Law; Elizabeth Warren, Leo Gottlieb Professor of Law, Harvard Law School; Jay L. Westbrook, Benno C. Schmidt Chair of Business Law, University of Texas School of Law; Michaela M. White, Professor of Law, Creighton University School of Law; Mary Jo Wiggins, Professor of Law, University of San Diego School of Law; Peter Winship, James Cleo Thompson Sr. Trustee Professor of Law, Southern Methodist University School of Law.

ORGANIZATIONS OPPOSED TO S. 625, THE ''BANKRUPTCY REFORM ACT''

Among the organizations that have voiced their opposition to S. 625 are:

AFL–CIO, Alliance for Justice, American Association of University Women, American Federation of Government Employees (AFGE), American Federation of State, County and Municipal Employees (AFSCME), American Medical Women's Association, Association for Children for Enforcement of Support, Inc. (ACES), Business and Professional Women/USA, Center for Law and Social Policy, Center for the Advancement of Public Policy, Center for the Child Care Workforce, Church Women United, Coalition of Labor Union Women, Communications Workers of America, Consumer Federation of America, Consumers Union, Equal Rights Advocates.

Feminist Majority, Hadassh, International Association of Machinists & Aerospace Workers (IAM), International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, International Brotherhood of Teamsters, International Women's Insolvency & Restructuring Confederation, Ralph Nader, National Association of Commissions for Women, National Black Women's Health Project, National Center for Youth Law, National Consumer Law Center, National Council of Jewish Women, National Council of Negro Women, National Council of Senior Citizens, National Organization for Women, National Partnership for Women and Families, National Women's Conference.

National Women's Law Center, Northwest Women's Law Center, NOW Legal Defense and Education Fund, Public Citizen, Union of Needletrades, Industrial & Textile Employees (UNITE), United Automobile, Aerospace and Agricultural Implement Workers of America/UAW, United Food & Commercial Workers International Union, United Steelworkers of America, U.S. Public Interest Research Group, Wider Opportunities for Women, The Woman Activist Fund, Women Employed, Women Work!, Women's Institute for Freedom of the Press, Women's Law Center of Maryland, Inc., YWCA of the U.S.A.

Mr. WELLSTONE. The letter begins:

In a letter to you, dated September 7, 82 professors of bankruptcy law from across this country expressed their grave concerns about some of the provisions of S. 625. In a public letter dated September 16, two professors took the opposing view. One of the principal concerns of the 82 law professors was that S. 625 may adversely affect women and children.

Proponents of the bill—namely, the consumer credit industry—have responded to the concerns raised about the effects of the bill on women and children with a media blitz. . . .

They have the money for a media blitz. These women and children don't have the money for that.

. . . trumpeting the view that ''Bankruptcy reform helps women and children.'' A September 14 letter from the consumer credit issuers proclaims that ''S. 625 vastly improves the position of women and children who depend on family support payments from an absent parent who has filed for bankruptcy.'' A full-page advertisement also dated September 14 asserts, ''The truth is that bankruptcy reform gives much-needed help to single parents and their children who are dependent on family support payments.'' The advertisement cautions in large type: ''Distorting the facts about reform helps no one.'' The undersigned professors agree that ''distorting the facts about reform helps no one.'' The real distortion is the assertion that S. 625 would benefit women and children.

You can pass this legislation but I am not going to let you get by with that claim.

The truth is that notwithstanding the pleas of the bill's proponents, this legislation does not help women and children. Thirty-one organizations devoted exclusively to promoting the best interests of women and children continue to oppose this pending bankruptcy bill. The concerns expressed in the professors' letter of September 7 regarding how S. 625 would hurt women and children have not been resolved—they have not even been addressed.

Reading from one other section of the letter:

We also express our concerns on behalf of the more than half a million women heads of household who will file for bankruptcy this year alone. As the heads of the economically most vulnerable families, they have a special stake in the pending legislation. Women heads of households are now the largest demographic group in bankruptcy and according to the credit industry's own data, they are the poorest. The provisions in this bill, particularly the provisions that apply without regard to income, will fall hardest on them. A single mother with dependent children who is hopelessly insolvent and whose income is far below the national median income still would have her bankruptcy case dismissed if she does not present copies of income tax returns for the past three years—even if those returns are in the possession of her ex-husband. A single mother who hoped to work through a chapter 13 payment plan would be forced to pay every penny of the entire debt owed on almost worthless items of collateral, such as used furniture or children's clothes, even if it meant that successful completion of the repayment plan was impossible.

I don't think the choice could be framed any more starkly. Here is the core question:

Will Senators be on the side of these women who are struggling to raise their families or do they see these women as the banks and the credit card companies do—as an economic opportunity, ripe for exploitation?

Mr. President, I hope my colleagues will recognize as they take a second look at this legislation that a vote for this bill is a vote against consumers; it is against women, it is against children, and it is against working families.

I believe our country and our society and this Senate should be judged by how we treat our society's most vulnerable members. By this standard, this is an exceptionally harsh piece of legislation. All the consumer groups oppose this bill; 31 organizations that are devoted to women and children's issues oppose this bill.

The two amendments I will speak to after I have given them context are my payday loan amendment, which would curb a form of predatory lending that targets low- and moderate-income and working families, and the low-cost, basic banking amendment, which would require big banks with more than $200 million in assets to offer low-cost, basic banking services to customers if they wish to be able to make claims against the debtors in bankruptcy proceedings. I think that would make the legislation at least a little bit more fair and balanced.

First, let me speak to my payday loan amendment. This is one that should have the vote of 100 Senators. This amendment would prevent claims in bankruptcy on high-cost transactions in which the annual rate exceeds 100 percent. That is what I am going to ask Senators to vote on. We would prevent claims in bankruptcy on transactions in which the annual rate exceeds 100 percent—such as payday loans and car title pawns. Now, these loans are marketed as giving the borrower a ''little extra until payday.''

Do you know what happens with these loans? It is incredible. You have hard-pressed people, poor people, senior citizens, women, people of color, people who live in our rural and urban areas, and they can't get the credit any other way, so they get a loan for $100, which will hold them over until they get their paycheck. They get charged these huge fees—15 percent or more. These credit companies, unscrupulous companies, can put a lien on their car and even require that they give them the key to the car, and then when they can't pay it back—which is often the case—they just keep rolling the loan over and over and over again. For example, a $15 fee on a 2-week loan of $100 ends up being an annual rate of about 391 percent because people ask for the loans over and over again. Rates can be actually as high as 2,000 percent per year, or they take title to the car.

This is absolutely incredible. Someone can take out a $100 loan, and the car might be worth $2,000, and these companies that we don't do a darn thing about—I know some of the national media has had some exposure, thank God. I just hope the Senate is sensitive to this question. They are hard-pressed people with nowhere to go for a $100 loan. Maybe there has been an illness in the family or the car broke down, or whatever the case is. They end up getting charged 300, 400, 500, 600 percent. Then they get harassed and they say: We have the check you made out to us. We are going to cash the check and you will be charged with writing a bad check and you can go to prison. These are unscrupulous practices. If the car is worth $2,000, they can basically repossess the car, sell the car, and in a lot of States they don't even have to give back to the owner anything that they make over what the owner owed them. Can you imagine that that goes on in this country? Why in this ''bankruptcy reform'' legislation have we not at least paid a little bit more attention to how we can protect some of our consumers?

Now, nobody needs to charge this type of interest rate for a loan. Indeed, this industry is grossly profitable as a result. Stephens Incorporated, one of our investors, says they can expect a return of 48 percent in 9 months to a year and can expect profit margins in excess of 30 percent. Stevens Incorporated reported that there were 6,000

storefronts making payday loans in 1999 across the country but estimates the potential ''mature'' market as being 24,000 stores nationwide generating $6 billion in fees. With these kinds of profits, only your conscience will keep you out of this business.

With these kinds of profits, only your conscience will keep you out of this business. It is amazing. You make these loans, you say you are going to help people, you charge them high fees, and you roll it over and over again. You end up charging way above 100 percent per year. You repossess their car. You sell the car. You don't even give them back the additional money you make beyond what they owed you. You do all this with impunity, and these are the poorest people, most vulnerable people who are targeted, and we don't have anything in this legislation to protect them. Let me tell you, Senators, if you want to protect them, you will and you should vote for this amendment.

I say to my colleagues that these sleazy debt merchants, expanding their tentacles into our cities and towns, are the mirror image of the retreat of our Main Street and mainstream financial institutions from the same communities. Some of my colleagues on the floor know this. When we had our community banks and smaller banks, they cared. They helped small businesses out and helped out hard-pressed people. They were willing to help out. But now that we have moved to these branch banks and all of this consolidation, they don't. So people have to rely on these kinds of loans.

According to an analysis by the brokerage firm Piper Jaffrey, as reported in the Washington Post, ''established customers'' of one payday lender engaged in 11 transactions a year and could end up paying $165 to $330 for a $100 loan.

This vote is going to be watched. This is one I think national media will pay attention to because we have had some horror stories. We know about what has happened to people. The question is, Whose side are we on? Are we on the side of vulnerable people or on the side of single-parent households headed by women, on the side of children, or are we on the side of these unscrupulous credit card companies?

The following June 18 New York Times piece is typical of the horror stories associated with payday lending:

> Shari Harris, who earns around $25,000 a year as an information security analyst, was managing money well enough until the father of her two children, 10 and 4, stopped paying $1,200 in child support. ''And then,'' Ms. Harris said, ''I learned about the payday loan places.'' She qualified immediately for a two-week $150 loan at Check Into Cash, handing it a check for $183 to include the $33 fee. ''I started maneuvering my way around until I was with seven of them,'' she said. In six months, she owed $1,900 and was paying fees at a rate of $6,000 a year. ''That's the sickness of it,'' Ms. Harris said. ''I was in a hole worse than when I started. I had to figure out a way to get out of it.''

Mr. President, here is where we are. If you have desperate customers—the most vulnerable—and these are the kinds of loans they are dependent upon, where the terms are outrageous—only somebody with no alternative would seek to borrow money at such scandalous rates.

The Consumer Federation of America noted in a September 1999 report entitled ''Safe harbor for Usury'' that, quote:

> Consumers who are desperate enough for credit to pay triple digit interest rates for two week loans have very little market power to bring rates down. The real costs of payday loans made in small sums for very short periods of time may not be clear to unsophisticated consumers. When lenders deny that their cash advances are 'loans' and fail to comply with Truth and Lending Act disclosures of Annual Percentage Rates, consumers do not have the key price tag needed to comparison shop for credit. If, as the industry claims, payday loan customers have nowhere else to go for small loans, rate regulation is necessary to prevent abuse of a captive market.

That is what is going on. The industry is saying to Senators: Oh, no, you can't do anything about this because these people are desperate and they come to us for loans and we perform a vital service. But does that justify scandalous fees? On the contrary, it justifies stringent regulation to protect the most vulnerable citizens. What are we about if we cannot at least extend this kind of protection?

If it is poor credit which drives a borrower to a payday lender, the borrower is likely to find himself in still deeper water after taking one of these high interest loans. For example, in Tennessee—the state with the highest bankruptcy rate in the country—payday lending is becoming an increasing problem for the bankruptcy system. As one Chapter 13 bankruptcy trustee, as quoted in the March 18th edition of The Tennessean put it, quote:

> I see them (payday lenders) as the last straw. I would certainly say they are compounding the problem. We are dealing with a bankruptcy filing rate that's through the roof. You are looking at one of the basic causes: lending to people who are not credit worthy and extracting exorbitant interest rates from them.

Why aren't we doing something about this? This amendment says if you have a 100-percent interest charge over a year, you are not at the table when it comes to bankruptcy, and the collections of these payday loans can be coercive.

For example, in September, the Cook County, Illinois State's Attorney filed suit against Nationwide Budget Finance, a St. Louis based payday lender, alleging multiple violations of Illinois Consumer Installment Loan Act and Consumer Fraud Act, charging that Nationwide threatened consumers with criminal charges and lawsuits when it had no intention of taking such action. The State's attorney stated, quote: ''Apparently, pay day loan businesses are so lucrative that it is more cost-effective to write off bad debts rather than to try and collect them, even though they harass and intimidate their customers.'' Additionally, the company required borrowers to list four references on the loan application. But the references weren't used for the loan approval, instead Nationwide would place harassing to the people listed if the borrower defaulted.

That is why this amendment amends the Fair Debt Collection Practices Act to prohibit coercive collecting tactics in lending transactions where deferred cashing of a check is involved.

I should also point out that, at the very minimum, if we are going to be talking about accountability and responsibility, why don't we make it a little more lenient with this piece of legislation? It takes two to tango. These unscrupulous credit card companies have something to do with bankruptcy.

Such loans are patently abusive. They should not be protected by the bankruptcy system. And because they are so expensive, they should be completely dischargeable in bankruptcy so that debtors can get a true fresh start, and so that more responsible lenders' claims are not ''crowded out'' by these shifty operators.

Consider that. Why should we penalize some of our good companies that are responsible lenders by letting these unscrupulous loan sharks be at the table? Why should unscrupulous lenders have equal standing in bankruptcy court with a community banker or a credit union that tries to do right by their customers? And lenders should not be able to take advantage of their customers' vulnerability through harassment and coercion.

That is what this amendment is about.

Mr. President, my amendment simply says: if you charge over 100% annual interest on a loan, and the borrower goes bankrupt, you cannot make a claim on that loan or the fees from the loan.

Colleagues, you have such a clear choice. There is no reason in the world that you should not vote for this amendment.

I grant you that I come to the floor today to speak for some people who haven't been included in the system. They are just poor and they are vulnerable, and therefore they are fair game for these companies.

I have just said to you that my amendment says if you charge over 100 percent as an interest rate and the borrower goes bankrupt, you cannot make a claim on that loan or on the fees on the loan.

Why don't we make the legislation just a teeny bit fairer? Why don't we have just a little bit more balance? Why don't we go after these unscrupulous operators?

The second amendment I've offered on this bill is my low cost, basic banking amendment. This important consumer amendment would require big banks with more that $200 million in assets to offer low-cost basic banking services to their customers if they wish

to be able to make claims against debtors in bankruptcy proceedings.

We have been talking about responsibility. What about the responsibility of the banks and the lending institutions to offer inexpensive means to conduct financial transactions and to save money for low-income people?

Right now, the minimum balance that people are supposed to have in their accounts and the high fees mean that for about 12 million Americans, they can't afford to open up an account; they can't afford to have a checking account. What happens when people can't afford to open up a checking account? They are forced to complete their financial transactions either through costly check-cashing operations or they carry around whatever sums of money they have when they go out to purchase groceries or to pay their rent. These are risks that people should not have to take.

For example, ACE Cash Express, a national check-cashing company, charges between 3 and 6 percent of a check's value to convert the check into cash. That is what poor people are forced to do. There would be a charge of between $15 and $30 on a paycheck of $500. While that may not seem to be much money to many of my colleagues, to many low- and moderate-income families who live paycheck to paycheck, that $30 could be a meal; that $30 could be a piece of clothing they could buy for their child; that $30 could mean they could go visit a doctor.

We have been passing legislation that has driven these small banks out, that has led to all of these mergers and acquisitions, with these huge branch banks making billions and billions of dollars. All I am saying is, why can't we at least say to them: You have some community responsibility; you ought to at least give people low-cost basic bank services. If you do not, then you are not at the table in bankruptcy proceedings against such a bank.

This amendment focuses on banks with more than $200 million. I want to be crystal clear that I am not talking about the smaller banks because the smaller banks have done a good job. Much of my work is in rural America. The smaller banks and the community banks have done a good job. They go out of their way to help. But the problem is that these small community banks that have been connected to Main Street have been connected by these huge financial conglomerates that are much more connected to Wall Street. They don't really know the people. They don't know them at all. They sure as heck don't go out of their way to help them.

Would this amendment present an unfair burden to these larger banks, as some of my colleagues may argue? Not according to a survey of the Consumer Bankers Association. According to the CBA, 70 percent of the institutions found that offering a basic bank account did not result in a financial loss for their bank or impose a burden on their operation.

What in the world is going to happen to seniors? What is going to happen to low-income elderly people? As the U.S. Government begins to make the shift to electronic distribution of benefits, pensions, and wages, consumers must have access to banking services. Now more than ever, the 6.5 million recipients of Social Security and SSI, the Supplemental Security Income program, who do not have a checking account, will face even a steeper uphill battle in their attempts to access these funds. They currently cannot afford the monthly fees, nor do they have the money to keep the minimum balance in their checking accounts necessary to complete these financial transactions.

What are we saying to senior citizens who in the future will need a bank simply to get their electronically transferred Social Security check? Let's not forget that it is not just the financial giants that are affected by this process of modernization. It is everyone. We should not try to close the door to low-income consumers who desperately need access to basic banking services. If we provide wider access to bank accounts, we will reduce bankruptcy, we will promote financial literacy, and we will reduce low- and moderate-income families' reliance on high-cost check cashers and payday lenders.

Why should bankers who are unwilling to promote the general good be given the same standing in bankruptcy court as those who do? I am tired of seeing the folks in the private sector who do the right thing being put at a competitive disadvantage because their competitors will not.

I will conclude by characterizing the debate this way: Over the past several decades, our economy has become more and more balkanized. We have, indeed, seen an economy that is booming. But I come from a State where we have had an economic convulsion in agriculture and our family farmers and our rural citizens are falling behind. The U.S. economy is becoming more and more balkanized. More wealth and more economic power is concentrated among a few. What we have been doing in the Senate over the past several years is passing legislation which provides the lion's share of benefits for those at the top of the heap, those with the big bucks. The two amendments I have introduced give us an opportunity, in a small way, to reverse this trend.

This bill is already an enormous giveaway to the financial services industry. It basically rewards lenders for their aggressive, irresponsible lending habits. I went over that already. So I say to colleagues, since we seem to be on our way to changing the rules for America's working families with this legislation, since we seem to be about to ratify the scandalous lending practices of the banking industry, let the Senate adopt several amendments that balances this legislation. Both of these amendments test whether we are serious about curbing bankruptcy. These two amendments, the payday loan amendment and the lifeline banking amendment, are antibankruptcy amendments. A vote for either of these amendments is a vote to promote responsible financial habits among consumers and responsible lending from the credit card companies—responsible lending from the credit card companies. A vote against these amendments sanctions the abandonment by big banks of poor people and, increasingly, the middle class, and ratifies the stranglehold that unscrupulous lenders have on low-income and moderate-income and working families. There is no doubt in my mind this is a flawed piece of legislation. It punishes the vulnerable and rewards the big banks and credit card companies for their own poor practices.

Earlier I used the word ''injustice'' to describe this legislation. That is exactly right. It will be a bitter irony if the creditors are able to use a crisis, largely of their own making, to convince Congress to reduce borrowers' access to bankruptcy relief. That is exactly what is going on.

I said at the beginning of my statement that real bankruptcy reform would address the concentration of financial markets, which are increasing the power and clout of the big banks and credit card companies to unprecedented levels. It would make working families more secure. It would deal with the crisis in agriculture and what is happening in rural America. It would address skyrocketing medical expenses. It would confront the economic balkanization of the country. It would confront the increasing chasm between the wealthy and the rest of America.

But instead of lifting up low-income and moderate-income and working-income families, this bill punishes them. I hope my colleagues reject this legislation. I strongly urge the Senate to at least provide some balance to this legislation and to accept my amendments.

I have also a document from the Department of Labor, written by an officer, Capt. Robert W. ''Andy'' Andersen, and I believe this was written to Senator LIEBERMAN. In this letter, he is talking about these payday loans. What he is saying is we have this problem in the military. We have our military people who are underpaid—we know all about this—so they end up having to rely on these payday loans, and the same thing happens to them, to men and women in the Armed Forces. We do not pay them enough, we don't reward their work, we don't provide them the salaries they and their families deserve—just like other low- and moderate-income people—and then they rely on these payday loans. They are desperate. They take out a loan for $100 which then gets rolled over and over and over again or have liens put on their car, they lose that car, they get charged interest rates of 300, 400, 500 or 600 percent a year, and it is a living hell for their families, because of the same practices by unscrupulous

lenders who are making billions of dollars. I think we ought to be on the side of these men and women in our military who are confronted with this.

But you know what, I am not going to use this as the big emotional argument in this debate. It is not just the military. It is low- and moderate-income people. It is men and women in the Armed Forces. It is a lot of single-parent families, I am sorry to say most of them headed by women. It is some of our senior citizens. Contrary to the stereotype, the income profile of elderly Minnesotans and elderly people in Utah and around the country is not very high. It is basically the most vulnerable citizens in our country.

I will speak to this payday loan. I would like to know why in the world there would be opposition to this amendment. We are saying if you are charging over 100 percent interest a year, you are not going to be at the table. I thought we were on the side of consumers when it comes to people being charged exorbitant fees and interest rates. It says you cannot use these coercive practices that the State of Illinois is going after these consumers on wherein they threaten people and tell them they are going to cash their checks and then they are going to end up going to prison.

I believe the vote on these amendments—and I am going to focus on the payday amendment—is a test case. This is a test case vote. Whatever you think about the overall bill—I have laid out my case against it—on this amendment this is a test case as to whether or not we can at least provide some protection to the most vulnerable citizens, whether or not we are on the side of the most vulnerable people, women and children, whether we are on the side of low- and moderate-income, working-income families, whether we are on the side of hard-pressed people, whether we are on the side of regular people, whether we are on the side of ordinary citizens, or whether we are on the side of unscrupulous loan shark companies that have no conscience and no soul and exploit people.

I urge my colleagues to support this amendment, and I yield the floor.

The PRESIDING OFFICER (Mr. HATCH). Who seeks recognition? The Senator from Iowa.

Mr. GRASSLEY. Mr. President, it is always a pleasure to listen to the Senator from Minnesota because whether he is right or wrong, he always speaks with a great deal of passion. I want people who have ideas to have passion for those ideas. Senator WELLSTONE is a person who speaks with a great deal of passion and conviction.

I disagree with a lot of the points he has made; otherwise, we would not have this legislation before us. On the other hand, on the subject of concentration, which he brought up, I have some sympathy for what he has said. The solution to the concentration problem is we should get this administration to vigorously enforce the antitrust laws both within the Justice Department and the Federal Trade Commission. There is a general feeling among people about whether the marketplace is working adequately and, consequently, support the antitrust laws. The antitrust laws are well written and have withstood a period of time, but enforcement is very much an issue.

We are not talking about concentration, and we are not talking about enforcement of the antitrust laws when we deal with bankruptcy. We have a very real problem. We have seen a dramatic increase in bankruptcies over the last 6 or 7 years. In 1993, we had 875,202 bankruptcies, and in 1998, it shot up to 1,442,549.

We have seen this dramatic increase in the number of bankruptcies during one of the most prosperous times in the history of our country. It has been the most prosperous for several reasons: One, information technology is helping to expand our economy and make it more efficient than ever before.

The globalization of our economy has also reduced consumer costs, giving consumers more money to expend on other things. We have seen Congress balance the budget in the last 3 years, and it worked toward that for the last 6 years and made considerable progress. Now we are paying down the national debt for the third year in a row. All that has contributed to it.

We are in the 18th year of economic expansion, which started in the second year of Ronald Reagan's administration. We had a turnaround in the economy after the stagflation of the seventies, and except for a 6-month period of time in 1992, we have had 18 years of economic expansion. During that period of economic expansion, we have had this very dramatic increase in bankruptcies.

Why? I wish I could say there is just one reason, as the Senator from Minnesota seems to imply; that it is credit being extended too easily, too many credit cards. I agree that is a reason, but that is only one of the reasons.

Another reason is we have a bankruptcy bar that has, quite frankly, encouraged bankruptcies. We have shown during previous debates on this bill where bankruptcy lawyers in California advertise in the media how to get out of paying alimony and child support by going into bankruptcy. These types of practices, obviously, are not ethical but are still being used.

We also have the bad example set by the Federal Government of 30 years of deficit spending. If Uncle Sam can borrow money into the trillions of dollars over a period of 30 years, isn't it all right for Mary Smith and Tom Jones or the people who are working in Anywhere USA to go into debt as well? Uncle Sam did not set a very good example. Congress, doing the fiscal policy for Uncle Sam, did not set a very good example. It says to others: Yes, it's OK for you to go in debt.

The Federal Government has turned that around in 3 years by balancing the budget and paying down some of the national debt and is on the road to paying down the national debt very dramatically over the next 10 to 15 years.

We also have a situation where somehow financial responsibility is not considered a personal responsibility anymore. In other words, it is OK to go into debt and not pay your bills. There used to be a certain amount of shame connected with bankruptcy that does not seem to be there now.

I gave four reasons—and there may be a lot more—of why we are probably in this situation where we have had 18 years of economic expansion since the second year of the Reagan administration and yet have a historically high number of bankruptcies, and during the best years of our economy, we have seen bankruptcies almost double in a period of 6 or 7 years.

Consequently, we have this legislation before us. I do not disregard the words of the Senator from Minnesota that there are some people who are vulnerable and for whom we need to be concerned, but I say to the Senator from Minnesota, we are not extinguishing the principle that has been a part of the bankruptcy law for the last 102 years, permanent bankruptcy legislation. There are segments of our population in bad financial trouble, through no fault of their own, who need the help of bankruptcy. That could be death, divorce, a lot of medical expenses, a natural disaster, for instance, if you are a farmer or some other small businessperson, or maybe even a homeowner who had a natural disaster that was not properly insured.

Our code says there are select groups of people who are in a bad financial situation, through no fault of their own, who should have a fresh start. I say to the Senator from Minnesota and all the other Senators who question this legislation, we keep that principle, but we also say this Congress has to send a clear signal to the 270 million people in this country that if you have the ability to repay some or all of your debt, you are not going to get off scot-free. There are large numbers of people who are getting off scot-free, albeit they may be a minority, but they are a significant minority, and it does not set a very good example for some people to be able to use the bankruptcy code as part of financial planning.

We are saying to those who can repay that they have to repay, but we are also sending a signal through this legislation to credit card companies that are willy-nilly sending out credit cards that encourage bankruptcy or even a lack of personal responsibility.

We are saying it has to be a new day. We want to discourage those people who maybe are low income, who should not have gotten, through their own fault, into debt, and are not in the classification of people who I say are entitled to a fresh start—that somehow they should think again about going into bankruptcy and only use bankruptcy as a last resort.

We find that the 1978 law, obviously, has contributed some to the big increase in bankruptcies. This legislation passed by a very wide margin. So I do not think it was intended that the 1978 law ought to make it easier to go into bankruptcy. But, obviously, it sent that signal to a lot of people in America, as we have seen that the number of bankruptcies in 1980 was only 331,000 and now 18 years later, in 1998, the figures are 1,442,000.

Something has happened recently. Again, I do not pretend to stand before the American people, or my colleagues in the Senate, and say passing a law is going to solve all these problems. I wish it would. It is going to be a combination of several things: the credit card companies or credit-granting companies to be more careful in who they grant credit to; a Congress to be financially responsible and, hence, set a good example for every taxpayer and citizen in this country that debt isn't OK; the bankruptcy bar to be a little more careful about encouraging people to go into bankruptcy and not to advertise that bankruptcy is OK as a way out; and then the law itself, by discouraging people who can repay to use the bankruptcy code for financial planning.

In this whole process, I hope we then enhance personal responsibility. By enhancing personal responsibility, then we can reduce these numbers of bankruptcies and then reduce the economic problem we have—because we are not talking about something that does not make an impact upon everybody.

Some people have put this at a $40 billion problem—$40 billion owed by those who go into bankruptcy and do not pay. Then every other consumer in America picks up part of that tab. We have no doubt about it, if you are shoplifting, the honest consumer, who does not shoplift, is going to pay the cost of shoplifting. This is somewhat the same. If you are a businessperson, and somebody does not pay their bills by declaring bankruptcy, the honest person buying goods from that same business is going to pick up the tab. And $400, on average, for a family of four, is what we pay for other people who do not pay.

We hope to enhance personal responsibility. We hope to help the economy in the process. But most importantly, this is something that must be dealt with, and I think this legislation deals with it.

That is the background for this legislation. I think it is necessary to give some of that background, as I respond to some of the specific issues that the Senator from Minnesota brought up.

First of all, he mentioned the point that there has been some decline in the rate of growth of bankruptcies in recent years. We think that is true. It is a little bit too early to make that judgment. I hope it is true. I think it is a direct result of Congress talking about this horrible economic problem we have of $40 billion and the lack of personal responsibility which goes with that economic problem. Perhaps it is sending signals to some of the consumers to think twice about whether bankruptcy is the right direction to go in. Maybe it sent a signal to some of the bankruptcy lawyers in America to counsel people not to go into bankruptcy.

I hope the leadership of this Congress over the last 3 years, in discussing this legislation—actually having passed it in the last Congress in both Houses, but not getting the final product to the President in time before adjournment—has done some good.

So we have had a very modest decline in bankruptcies in 1999 as compared to 1998. But if you take the historical look—and I have referred to some of those figures since 1980—Senator WELLSTONE's point that the bankruptcy crisis is going away turns out to be false. I have referred to the 330,000 bankruptcies we had in 1980, the year the new code went into effect. But that has gone up to just under 1.4 million in 1999. Unlike the Senator from Minnesota, I think 1.4 million bankruptcies per year is a real crisis.

In the past, in the middle 1980s, and even once during the 1990s, we have had some minor dips in the bankruptcy filings; but since then, as I have referred to, we have had this dramatic increase, almost doubling, in the last 6 or 7 years.

I ask unanimous consent to have printed in the RECORD a table of the total filings, business filings, nonbusiness filings, and the percentage of consumer filings of total filings.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

U.S. BANKRUPTCY FILINGS 1980–1998

[Business, Non-Business, Total]

Year	Totals filings	Business filings	Non-business filings	Consumer filings as a percentage of total filings
1980	331,264	43,694	287,570	86.81
1981	363,943	48,125	315,818	86.78
1982	380,251	69,300	310,951	81.78
1983	348,880	62,436	286,444	82.10
1984	348,521	64,004	284,517	81.64
1985	412,510	71,277	341,233	82.72
1986	530,438	81,235	449,203	84.69
1987	577,999	82,446	495,553	85.74
1988	613,465	63,853	549,612	89.59
1989	679,461	63,235	616,226	90.69
1990	782,960	64,853	718,107	91.72
1991	943,987	71,549	872,438	92.42
1992	971,517	70,643	900,874	92.73
1993	875,202	62,304	812,898	92.88
1994	832,829	52,374	780,455	93.71
1995	926,601	51,959	874,642	94.39
1996	1,178,555	53,549	1,125,006	95.46
1997	1,404,145	54,027	1,350,118	96.15
1998	1,442,549	44,367	1,398,182	96.92

Mr. GRASSLEY. The Senator from Minnesota also made reference to some changes in the bankruptcy code that were made by Senator Dole in 1984 which allowed judges to dismiss chapter 7 cases in cases of—these are the words from the statute—''substantial abuse'' of the bankruptcy code.

I spoke to this point a week ago. Obviously, the Senator from Minnesota did not have an opportunity to hear my remarks. But he would have heard me state, in detail, how the 1984 legislation has not worked at all, regardless of its good intentions. Because under the 1984 legislation, creditors are banned by law from bringing evidence of abuse to the attention of the judge.

Here we have a law that says if there is substantial abuse of the bankruptcy code, then the judge can determine that that certain bankrupt does not have a right to be in bankruptcy court. But then we have another section that says creditors who might know about this abuse cannot bring evidence of that abuse to bankruptcy court.

So it seems that the 1984 legislation was designed not to work. We correct that in this legislation by making it possible for people to bring evidence of such substantial abuse to the bankruptcy judge, for it to be considered, and if the judge agrees, then that person cannot continue to abuse the public at large by making misuse of the bankruptcy courts to get out of paying debt.

I also remember the Senator saying that tightening bankruptcy law will not reduce the costs of bankruptcy. All I can say is, the Clinton administration's own Treasury Secretary, Larry Summers, said in one of our hearings that reducing bankruptcies could help reduce interest rates. And what helps lower-income people more in America than reducing interest rates?

It really helps the very people the Senator from Minnesota speaks of as being vulnerable and as a class of citizens about whom we should all have concern, and I believe all do have concern.

I have an example of a vulnerable person at the other end, a person who has been substantially harmed by somebody who went into bankruptcy. It isn't just people who go into debt who are vulnerable and can be hurt by bankruptcy; there are a lot of other hard-working people who are hurt by other people who go into bankruptcy. I hope this body will remember that every abusive bankruptcy hurts scores of Americans.

I will read, without using names, from a constituent in Keokuk, IA, writing to me about the need for the passage of this legislation. She had read a headline in the local paper that said: The Senate may toughen bankruptcy laws.

''My son''—I will not use the name—''works for a local electric company as a meter reader full time during the day and then goes right to work nearly every evening and on Saturdays with his own growing washing, vacuuming business. He works so hard to do a good job for his customers. He takes his responsibilities as a father of five very seriously. During the last 3 to 4 months, he has been doing a job for an out-of-town gentleman.'' Then the last name is given. ''I believe he is in the Des Moines area. I have learned that he has several businesses and is known to be a crook.'' That is why I don't want to use the names; I don't know whether

he is a crook or not, but that is the writer's judgment.

''Of course—then she uses the name of her son—'' had no idea about this person's background, but he eagerly wanted the work and took the work. He felt especially good about it because one of his men is very poor, one of the workers he hires for his moonlighting business, and so he turned the job over to him so he could make extra money.

''The sorry ending of this story is, as you might have guessed, just last week Kenny called the original hiring company where Kenny works directly doing cleanup jobs. And before he could talk to the manager about not being paid by this gentleman from Des Moines, Mike told Kenny that he had just called to inform him that he had declared bankruptcy. He owed Kenny over $3,600. To him, this might as well have been $36,000 because of some new, very expensive equipment purchased to be able to handle the additional work.

''Something must be done to keep crooks from sticking hard-working people like my son, who associate with him in good faith, from dropping the hatchet—you know the numbers when it comes to poor management—and then take the easy way out at everyone else's expense.'' Then in capital letters: ''It is wrong and it should not be allowed.''

So there are hard-working mothers and fathers in America, I say to the Senator from Minnesota, who are vulnerable and hurt by other people who take advantage of them and go into bankruptcy.

On another point the Senator from Minnesota made, perhaps he isn't aware that the organization of prosecutors who enforce child support says this bill, S. 625, will help women and children who are owed child support. On this point, in fact, there is no point. Both parties have worked hard on this legislation in the compromises that have taken place over the last 2 or 3 years. We are not going to let people use the bankruptcy code to get out of paying child support. Yet we are still hearing, this very day, that old argument that may have had some credibility 2 or 3 years ago but that we had taken care of almost that long ago because it was a very important point raised. But those points are still being made.

So I ask my colleagues, as they consider that point made by the Senator from Minnesota, to whom are you going to listen: The people who actually collect child support—that is, the organization of prosecutors who enforce child support who say this is a good bill and will help women and children—or are you going to listen to Washington special interest think tanks that are using smoke and mirrors to say this bill will make it more difficult to collect child support? I think those who prosecute know the difficulty of collecting that. I hope my colleagues will listen to the prosecutors who get child support who say this bill will help women and children.

Finally, I wish the Senator from Minnesota had at least mentioned title II, subtitle A, which is entitled: Abusive Creditor Practices. We know creditors can be abusive, and we address that problem to make sure there is a level playing field between creditors and debtors when it comes to the bankruptcy courts. We have numerous new consumer protections. Understand, there are some customers who don't want to go into bankruptcy, and they try to negotiate with their creditor to avoid going to court. That is a good step we want to preserve and encourage. But if that customer then has to declare bankruptcy because of not being able to negotiate, then the creditor is severely limited in his ability to collect that debt. To me, this is real consumer protection that should not be forgotten as we vote on this legislation.

I will now turn to a specific amendment the Senator from Minnesota is offering as well and to oppose his amendment that is referred to as the payday loan. For those who don't know, this type of loan happens when a borrower gives a personal check to someone else and that person gives the borrower cash in an amount less than the amount of the personal check. The check isn't cashed if the borrower redeems the check for its full value within 2 weeks. The fact is that payday loans are completely legal transactions in many States. If a financial transaction is explicitly legal under State law, to me, it isn't wise that we use the bankruptcy code to try to undo that transaction.

First of all, using the bankruptcy code for this purpose leads to perverse results because the only people who will receive any benefit or relief will be those who file for bankruptcy. Then you have all those other people who are using payday loans who never file for bankruptcy. These people who have taken out loans but don't take the easy way out in bankruptcy court will still have to pay back their loan. So if this is a problem, it seems to me the Senator from Minnesota ought to work to help everybody, not only those who go into bankruptcy court. Then you also have the perverse result of people who don't have the money to file for bankruptcy who will have to pay the loan as agreed. Even if you share Senator WELLSTONE's distaste for payday loans, this amendment won't benefit the poorest of the poor because most of the poorest of the poor don't seek bankruptcy relief.

Earlier during the course of the debate, my colleague from Utah, Senator HATCH, sought to include language in an amendment that would have changed the Fair Debt Collection Practices Act. This act is in the jurisdiction of the Banking Committee. At that very time, the ranking Democrat on the Banking Committee, the Senator from Maryland, indicated that he would not consent to allowing changes to the Fair Debt Collection Practices Act on a bankruptcy bill. So to be fair, then, the portion of Senator WELLSTONE's amendment changing the Fair Debt Collection Practices Act should be stricken out in deference to the jurisdictional objections that have been lodged by the ranking Democrat on the Banking Committee. So I am asking Senator WELLSTONE to listen to the arguments of his fellow Democrat about jurisdiction and respect the jurisdiction of the particular committees.

If the Senator from Minnesota doesn't want to honor this objection, I think his proposed changes to the Fair Debt Collection Practices Act represent poor policy at least. His amendment would not say that lenders can't offer payday loans. His amendment would say that you aren't allowed to use State courts to collect the debt, even if the debt is completely legal under that same State law. In fact, the State of Minnesota specifically allows payday loans, as does my home State of Iowa. I don't think the Federal Government has any business telling State judges they can't enforce debts that are fully legal under the laws of that particular State. I would have confidence in my State legislature correcting this economic and social problem, if it is one in our State. I haven't studied it enough to know whether it is, but I have confidence that my State legislators would correct that. I hope the Senator from Minnesota has the same confidence that his State legislators know what is best for Minnesota, not those of us in the Congress of the United States.

I also think this amendment would have the effect of making it harder for the poor and those with bad credit histories to gain access to cash—the very people the Senator from Minnesota is so concerned about because, in his words, ''they are so vulnerable.'' People who use payday loans simply can't get loans through traditional sources because they are too risky, so a payday loan may be the only way they can get quick cash to pay for family emergencies or essential home and auto repairs.

I know the intentions of my good friend from Minnesota are honorable, but the effect of this amendment would be to make it harder for poor people to get help when they need that help the most. I hope this amendment by the Senator from Minnesota will be defeated.

I yield the floor.

The PRESIDING OFFICER (Mr. BURNS). The Chair recognizes the Senator from Utah.

Mr. HATCH. Mr. President, I rise to speak in opposition to the amendments offered by the distinguished Senator from Minnesota. His amendment is, in fact, two amendments—one to the bankruptcy laws and one to the Fair Debt Collection Practices Act.

The debt collection amendment would prohibit anyone, such as a grocery store or a hotel, who cashes

checks for a fee and defers depositing the check from notifying the writer of a check which is later bounced that they will seek civil or criminal penalties for that bounced check. It is important to keep in mind that under most State laws writing bad checks is a crime and many States allow for civil and/or criminal penalties against those who write fraudulent checks.

The other part of this amendment would disallow in bankruptcy claims arising from a deferred deposit loan—a so-called payday loan—if the annual percentage rate of the loan exceeds 100 percent.

Although well intentioned, this amendment is misplaced. So-called payday loans are made when a borrower writes a check for the loan amount plus a fee. The lender typically gives the borrower the loan amount and holds the check until a future date. In making payday loans, these lenders provide a vital service to the poorest borrowers. Because sometimes it is more convenient to go to a hotel, grocery store, gas station, or other similar businesses that may keep longer hours than banks, many consumers choose to cash a check at these types of places when they need small amounts of money to overcome an emergency.

With this check cashing service, borrowers can get the emergency cash they need without telling the boss they need a cash advance or giving up their televisions and furniture. This is a legitimate service that many honest consumers use and in which established businesses engage.

If adopted, this amendment may operate to the detriment of the very people it is intended to help. So I urge colleagues to vote against that amendment.

The lifeline account amendment would disallow the bankruptcy claims of certain banks and credit unions. In particular, it would disallow claims by larger institutions, such as banks with more than $200 million in aggregate assets that offer retail depository services to the public, unless they offer the specific services required by this amendment. First, these institutions would be required to offer both checking and savings accounts with ''low fees'' or no fees at all. Second, they would have to offer ''low'' or no minimum balance requirements for checking and savings accounts—and to any consumer, regardless of income level. Further, the ''penalty'' for not providing these particular services is the disallowance of the bank's claim in bankruptcy. That is a harsh penalty, indeed, and a windfall for bankrupts.

Let me explain what this means. It means someone with the resources of, let's say, Steve Forbes can walk into one of these banks, and if he is denied a ''low fee'' or no fee account, then any claim that bank has in any bankruptcy proceeding—not just Steve's bankruptcy—then the bank's claims are disallowed. I emphasize that any claim in any bankruptcy will be disallowed because the bank did not offer Steve Forbes a ''low'' or no fee checking account. Let me substitute Bill Gates' name for Steve Forbes here.

I should also note that this amendment does not describe what a ''low fee'' account is. Whose standard of low are we to base this dictated fee on? This is bad policy that would effectively dictate to banks the specific services they must offer, whether or not consumers need or want them. This is Government interference with free markets at its worse. Whenever such rules are forced on businesses, the offsetting costs inevitably occur. In other words, consumers will end up paying for mandated low fee or free checking in the form of higher prices for other services. Alternatively, other services by banks may be discontinued to offset the costs of these new requirements, not to mention the costs of the penalties. I don't believe this kind of regulatory interference with the markets is either warranted or wise. I urge colleagues to oppose this amendment.

Mr. LIEBERMAN. Mr. President, I thank the Senator from Minnesota for raising this important consumer issue. Seven weeks ago, I held a forum on payday lending to help educate myself and the public on this troubling consumer credit practice. At the forum, we heard from representatives of the payday industry, consumer advocates, state regulators, and a credit union representative. We also were fortunate to hear from two Navy servicemen, one a payday borrower and one a commander who provides financial counseling to his sailors. Their stories of military personnel caught in cycles of debt to payday lenders helped me realize the impact this issue can have on individuals' lives. For example, Captain Robert W. Andersen, commanding officer of Patrol Squadron 30 in Jacksonville, FL, testified that sailors who take payday loans are often victims of a ''snowball effect or financial death spiral they cannot recover from.''

For those who aren't familiar with payday lending, let me explain how it works. Someone who is short of cash can borrow money using his or her future paycheck as security. The borrower usually writes a check for the loan amount plus a fee, and then the lender agrees not to cash the check until after the borrower's next paycheck comes in.

Payday lenders commonly promote their product as quick and easy cash. But what they don't usually advertise is that this is one of the most expensive consumer credit products in existence. Interest rates on payday loans average about 500 percent annually, with some loans going well over 1000 percent APR. Among the frequent borrowers who pay these high fees are those with particularly limited ability to repay the loan, including enlisted military personnel, college students, and senior citizens on fixed incomes.

Despite the fact that payday loans are marketed as short-term credit, intended to help people get through one rough pay period, a disturbingly high number of payday borrowers apparently soon discover that they can't pay their loan off immediately, and so they end up rolling their loan over for another—and another, and another—term. According to a study by the Indiana Department of Financial Institutions, 77 percent of all payday loan transactions are rollover transactions, and the average annual number of renewals per borrower is over ten. As a result, consumers can end up paying amounts in interest and fees that dwarf their initial loans—and make it very difficult for them to repay the principal. One borrower in Kentucky, for example, ended up paying $1,000 in fees for a loan of only $150 over a period of six months—and the borrower still owed the $150. It is cases like these that has led the Consumer Federation of America to call payday lending ''legal loan sharking.'' As the American Association of Retired Persons (AARP) stated in written testimony provided for the forum:

> It is not difficult to see how a borrower could become mired in debt. A person so desperate for money that he or she is willing to pay a three-digit APR is not likely to have the cash—plus the fee—two weeks after taking out a loan. . . . Taking out a loan at 391% APR, with the obligation to repay the principal and interest charge in *two weeks*, is not going to help consumers who do not have the cash to cover the checks they write. (emphasis in original)

And that's not the worst of it: state efforts to control rollovers appear to be failing; lenders and customers find any number of ways to roll over a loan, even if rollovers are limited or prohibited. The Illinois Department of Financial Institutions has concluded that rollover rules have ''been ineffective in stopping people from converting a short term loan into a long term headache.'' At the forum, Mark Tarpey, Consumer Credit Division Supervisor with the Indiana Department of Financial Institutions, testified:

> The problem with renewals is that you have an incentive for the lender to continue to collect fees as long as the customer pays them. There is no incentive to limit renewals/rollovers. Even if you statutorily prohibit or limit renewals/rollovers, you have the problem of a customer coming in and paying cash and the lender then giving them the same funds back and calling it a new loan. There are other practices to conceal transactions from being deemed a renewal/rollover.

The industry acknowledges that loan renewal is a problem, although there is dispute over just how big a problem it is. Both of the trade associations represented at the forum I held in December have adopted ''best practices'' guidelines that attempt to address this issue, but because the borrower drives the decision to renew a loan, it would be difficult for the industry guidelines to succeed.

Equally disturbing are the practices that some in the payday industry have used to collect on delinquent loans—and I recognize and appreciate that the

amendment offered by the Senator from Minnesota addresses this problem. At the forum in December, Leslie Pettijohn, the Consumer Credit Commissioner in Texas, testified:

From a regulator's perspective, one of the most objectionable practices of these transactions is the threat of criminal prosecution against the consumer. When a check bounces, lenders frequently file charges against consumers with law enforcement officials and attempt to collect this debt by means of criminal prosecution. In a single precinct in Dallas County, more than 13,000 of these charges were filed by these kind of companies in one year.

As I mentioned, payday lending uses as security a live check that both the borrower and the lender know is no good at the time it is written. Just as we don't imprison people for failure to pay their credit card bills or meet their mortgage payments, I do not believe that a borrower—unless he committed fraud—should be subject to threat of such severe measures for failure to make good on a payday loan, particularly because the very premise of the loan was the borrower's willingness to write a bad check. The amendment offered by the Senator from Minnesota would prevent the misuse of these ''bad check'' laws, but it would still permit a fraud prosecution where appropriate. That is an important step.

Again, I thank the Senator from Minnesota for raising this important issue, and I look forward to working with him to address it further in the future.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. LEVIN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ENZI). Without objection, it is so ordered.

The PRESIDING OFFICER. Under the previous order, the next amendment has 2 hours equally divided.

The Chair recognizes the Senator from Michigan.

Mr. LEVIN. I thank the Chair.

AMENDMENT NO. 2658

(Purpose: To provide for the nondischargeability of debts arising from firearm-related debts, and for other purposes.)

Mr. LEVIN. Mr. President, I call up amendment No. 2658.

The PRESIDING OFFICER. The clerk will report.

The bill clerk read as follows:

The Senator from Michigan (Mr. LEVIN) for himself, Mr. DURBIN, Mr. WYDEN, Mr. KENNEDY, Mrs. FEINSTEIN, Mr. LAUTENBERG, and Mr. SCHUMER proposes an amendment numbered 2658.

Mr. LEVIN. Mr President, I ask unanimous consent that reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

On page 124, between lines 14 and 15, insert the following:

SEC. ___. CHAPTER 11 NONDISCHARGEABILITY OF DEBTS ARISING FROM FIREARM-RELATED DEBTS.

(a) IN GENERAL.—Section 1141(d) of title 11, United States Code, as amended by section 708 of this Act, is amended by adding at the end the following:

''(6) Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt that is—

''(A) related to the use or transfer of a firearm (as defined in section 921(3) of title 18 or section 5845(a) of the Internal Revenue Code of 1986); and

''(B) based in whole or in part on fraud, recklessness, misrepresentation, nuisance, negligence, or product liability.''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by section 901(d) of this Act, is amended—

(1) in paragraph (27), by striking ''or'' at the end;

(2) in paragraph (28), by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (28) the following:

''(29) under subsection (a) of this section, of—

''(A) the commencement or continuation, and conclusion to the entry of final judgment or order, of a judicial, administrative, or other action or proceeding for debts that are nondischargeable under section 1141(d)(6); or

''(B) the perfection or enforcement of a judgment or order referred to in subparagraph (A) against property of the estate or property of the debtor.''.

Mr. LEVIN. Mr. President, I yield myself 10 minutes.

Our amendment would change the bankruptcy code so that a firearm manufacturer or distributor who is found liable or may be found liable for negligence or reckless action cannot escape accountability by filing for reorganization in bankruptcy.

Our amendment has the endorsement of the National League of Cities, the U.S. Conference of Mayors, Handgun Control, Inc., which is Sarah Brady's organization, and the Violence Policy Center. The amendment is cosponsored by Senators DURBIN, WYDEN, KENNEDY, FEINSTEIN, LAUTENBERG, and SCHUMER, and I thank them for their persistence and their hard work on this important issue.

Under the current bankruptcy code, firearm manufacturers are able to ''take advantage of the system.'' Those are not my words. Those are the words of Lorcin Engineering Company, a manufacturer of cheap, semiautomatic handguns. Lorcin told Firearms Business, an industry publication, that it was ''taking advantage of the system'' by filing for chapter 11 bankruptcy protection in 1996. At the time, Lorcin was one of the chief producers of Saturday night specials or junk guns. Their semiautomatic pistol was number two on the Alcohol, Tobacco, and Firearms list of guns traced to crimes. Some of their cheaply constructed guns were made so poorly they did not meet basic safety requirements to be eligible even for importation.

Lorcin sought to evade responsibility for the damages caused by their negligence by filing for chapter 11. Other manufacturers are following their lead, seeking to evade accountability for their wrongdoing by filing in bankruptcy court. For instance, Davis Industries, another producer of poorly constructed semiautomatic firearms, has also sought refuge in bankruptcy court. The New York Times reported on June 24, 1999, that a spokesman for Davis Industries said, ''I'm sure other companies will do the same thing.''

On July 19, 1999, at a creditors meeting for Davis Industries, the owner was asked a few questions by the bankruptcy trustee about his chapter 11 bankruptcy petition.

Question: Now, the reasons for filing sounded to me like you're getting sued by all the municipalities in the United States. Is that pretty close to correct?

Answer: I think you hit the button on the nose.

Lorcin Engineering and Davis Industries found a loophole in our Federal bankruptcy law and the list of these companies grew and is still growing.

When the bankruptcy code was enacted, its primary goal was debtor rehabilitation, to provide a fresh start to ''honest but unfortunate debtors'' through the discharge of debts. The code gives debtors the opportunity to shed indebtedness, but there are exceptions. These exceptions to the discharge of a debtor's liability were based on public policy or wrongful conduct of the debtor. Currently, the bankruptcy code defines 18 specific categories of debt that are nondischargeable. These exceptions have been created because of an overriding public purpose.

A report issued by the National Bankruptcy Review Commission, an independent commission established by Congress to investigate and study issues relating to the bankruptcy code, says this about nondischargeability:

Debts excepted from the discharge obtain distinctive treatment for public policy reasons. Many nondischargeable debts involve ''moral turpitude'' or intentional wrongdoing. Other debts are excepted from discharge because of the inherent nature of the obligation, without regard to any culpability of the debtor. Regardless of the debtor's good faith, for example, support obligations and many tax claims remain nondischargeable. Society's interest in excepting those debts from discharge outweighs the debtor's need for a fresh economic start.

Among the debts that we exempt from discharge for public policy reasons are debts which arise from death or personal injury caused by the debtor's operation of a motor vehicle while intoxicated, debts incurred by fraud or falsehood, debts incurred by willful and malicious injury, family support obligations, taxes, educational loans, fines, and penalties payable to a governmental entity, et cetera. These exceptions reflect Congress' intent to carve out exceptions to dischargeability for important public interest policy considerations.

One category of debt that was added not too long ago to the code ensures that debtors cannot escape debts incurred by a debtor's operation of a

motor vehicle while intoxicated. This change, which was first introduced by Senators Danforth and Pell in the early 1980s, was considered part of an ''all-out attack on drunk driving.'' Congress was persuaded to amend the Federal bankruptcy code with respect to this important policy initiative. At the time, drunk driving accidents killed tens of thousands of Americans and disabled hundreds of thousands of people annually. Senator Danforth argued that drunk driving has caused insurmountable human suffering and economic loss, and in his words:

We must assure victims and their families that if they win a civil damage award against the drunk driver, they need not fear that the offender will use Federal law to escape his debt.

We should do no less for victims of negligence and recklessness and wrongdoing of gun manufacturers and distributors.

Senator Danforth told us:

It is a national scandal that 50,000 Americans are smashed and slashed to death on our highways and that 2 million people suffer disabling injuries in car accidents every year.

He went on to say:

The greatest tragedy is that we have become desensitized to the meaning of these statistics. We have almost come to accept this carnage as the unfortunate price we must pay for the mobility we enjoy. However, if we look behind the mind-numbing statistics—if we ask why so many people are suffering—we will see over half of this bloodshed results from our unwillingness to put a halt to the most frequently committed violent crime in America: drunk driving.

The reduction of alcohol-related driving fatalities was an important public policy issue, and by making those debts nondischargeable, Congress acted wisely to protect victims of drunk driving and to deter drunk driving.

Congress acted against those endless tragedies and senseless deaths and human suffering by amending the bankruptcy code so a drunk driver could not escape his debt by going bankrupt. Like debts incurred by drunk driving, debts for death or personal injury and costs to communities resulting from the unsafe manufacture or distribution of unsafe firearms and their negligent distribution should also not be dismissed in bankruptcy. The public policy involved here is an overriding one, given the damage caused by the unsafe manufacture and distribution of guns.

Senator Danforth's plea to curb drunk driving is very similar to our people's plea to reduce gun violence. Week after week, Americans are lost to the senselessness of gun violence. Year after year, some 30,000 of us are lost to murder or suicide or unintentional shootings and tens of thousands of Americans are treated for firearm injuries. Many of these deaths and injuries are to children. When the carnage results from the unsafe manufacture or distribution of a firearm, we should not allow the manufacturer or distributor to evade the responsibility for its wrongdoing by reorganizing in bankruptcy.

Cities around the country and their residents are taking on this problem on their own. Thirty cities and counties have filed lawsuits alleging negligence, wrongdoing, unsafe practices on the part of gun manufacturers or distributors. New Orleans started in October of 1998, followed by Chicago; Miami; Dade County; Bridgeport, CT; Atlanta, GA; Cleveland, OH; Cincinnati, OH; Wayne County, MI; and Detroit, MI; St. Louis, MO; San Francisco, and others.

Citizens want the firearm industry to be accountable for unsafe actions on their part. They want firearm manufacturers to be held responsible for poorly constructed and unsafe products. Citizens want firearm manufacturers and distributors to be accountable for wrongful injuries resulting in public outlays for medical care, emergency rescue, and police investigative costs.

The PRESIDING OFFICER. The Senator's 10 minutes have expired.

Mr. LEVIN. I thank the Chair and yield myself an additional 3 minutes.

One way to deter such misconduct is to say that you cannot avoid that accountability by filing for reorganization in bankruptcy any more than you can evade a judgment for damages resulting from drunk driving.

Sound public policy also dictates that the debt incurred by a company's action should not be ducked by a company reorganizing under chapter 11 while the company goes on its merry way and the victims are victimized twice.

This amendment does not judge the merits of any lawsuit or the liability of any parties involved in these lawsuits. The amendment simply gives our citizens the assurance that if they win a civil damage award against a firearm manufacturer or distributor, the damages caused by the perpetrator cannot be evaded by being dismissed in bankruptcy court.

Mr. President, I ask unanimous consent that letters from the U.S. Conference of Mayors, the National League of Cities, the Violence Policy Center, and Handgun Control, which is chaired by Sarah Brady, be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

THE U.S. CONFERENCE OF MAYORS,
Washington, DC, November 17, 1999.

Hon. CARL LEVIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEVIN: On behalf of the United States Conference of Mayors, I am writing to express our strong support for your amendment, No. 2658, to the Bankruptcy Reform Act of 1999 (S. 625).

For over 30 years, The U.S. Conference of Mayors has supported comprehensive efforts to promote gun safety and help keep guns away from kids and criminals. At our Annual Conference of Mayor in New Orleans this past June, we adopted a strong policy in support of broad gun safety legislation, and on September 9, over 50 mayors, 30 police chiefs and leaders from the interfaith community took our call for action to Washington on ''Gun Safety Day.''

During our New Orleans Annual Meeting we adopted an equally strong policy opposing any state or federal promotion of local government access to the court system on behalf of local citizens. To that end, gun manufacturers, distributors and dealers should not be allowed to use federal statute to evade legal claims for damages by filing for bankruptcy—which would amount to a de factor preemption of local rights to protect public safety and to recoup public revenues. The threat of this action is real with Lorcin Engineering Co., one of the chief manufacturers of ''Saturday Night Specials'' or ''junk guns,'' having filed for Chapter 11 bankruptcy in 1996, and several other gun manufacturers recently following the same course of action.

Currently, 18 categories of debt are nondischargeable under the Bankruptcy Code. The Code makes certain debts nondischargeable when there is an overriding public purpose. We believe that there is no higher public purpose than protecting public safety, and that your amendment will allow these judicial proceedings to continue without the improper use of federal law to preempt this important process.

Therefore, The U.S. Conference of Mayors strongly supports adoption of amendment No. 2658.

Yours truly,

WELLINGTON E. WEBB,
President,
Mayor of Denver.

NATIONAL LEAGUE OF CITIES,
Washington, DC, November 16, 1999.

Hon. CARL LEVIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEVIN: On behalf of our 135,000 municipal elected officials, the National League of Cities strongly supports your amendment, S. AMT. No. 2658, to the Bankruptcy Reform Act of 1999 (S. 625). In prohibiting manufacturers, distributors and dealers of firearms from discharging debts which are firearm-related, incurred as a result of judgments against them based on fraud, recklessness, misrepresentation, nuisance, negligence, or product liability, this amendment effectively stops an abuse of the bankruptcy system. More importantly, the measure helps insure that municipal lawsuits against the gun industry, are not undermined by firearms companies seeking to potentially avoid their culpability through the use of the bankruptcy code.

While NLC does not support some amendments to the Bankruptcy Reform Act (particularly the Ross-Moynihan Amendment, S. AMT. No. 2758) that would preempt state and local government interest rates that apply to Chapter 11 corporate repayments, we believe that this particular amendment helps cities and towns recover monies expended for numerous criminal investigations, litigation fees, health costs, and other resources needed to address incidents of gun violence. The National League of Cities has a long history of supporting legislation to reduce gun violence and gun-related criminal activity. Like debts incurred by drunk driving, Congress must send a clear and convincing message that it will not permit debtors to escape debts incurred by improper conduct. It is crucial that the federal government do all that it can to help local law enforcement effectively address gun violence with common sense legislation that curtails access to firearms including altering the bankruptcy code.

An unfortunate example of such abuse occurred in 1996 when Lorcin Engineering Co.,

a manufacturer of cheap handguns, filed for Chapter 11 bankruptcy protection. Lorcin was one of the nation's chief manufacturers of ''Saturday Night Specials'' or ''junk guns,'' and in 1998, their inexpensive semi-automatic pistol was number two on the list of guns traced to crime scenes by the Bureau of Alcohol, Tobacco and Firearms. Lorcin's low quality and unsafe firearms caused innumerable deaths in our nation's cities and towns because of their cheap construction and easy availability in urban areas.

Moreover, Lorcin's weapons were the basis of more than two dozen product liability lawsuits. Once Lorcin decided they could not defend their practices against the multiple liability claims filed against them, they decided to protect themselves by using the bankruptcy system to settle these lawsuits for pennies on the dollar and be exempted from an additional lawsuit filed by the city of New Orleans.

Senator Levin, we support this amendment, and strongly advocate its inclusion in any final bankruptcy reform measure enacted that does not undermine municipal finances. Additionally, you will find an enclosed resolution passed by the National League of Cities' Public Safety and Crime Prevention Steering Committee that supports your proposed amendment.

Sincerely,

CLARENCE E. ANTHONY,
President, Mayor, South Bay, Florida.

Enclosure.

PROPOSED RESOLUTION—PSCP #9—CITIES LAWSUITS AGAINST THE FIREARM INDUSTRY

Whereas, gun violence results in great costs to cities and towns, including the costs of law enforcement, medical care, lost productivity, and loss of life; and

Whereas, it is an essential and appropriate role of the federal government, under the Constitution of the United States, to remove burdens and barriers to interstate commerce and protect local governments from the adverse effects of interstate commerce in firearms; and

Whereas, firearm manufacturers, distributors, and retailers, and importers have a special responsibility to take into account the health and safety of the public in marketing firearms; and

Whereas, to the extent possible, the costs of gun violence should be borne by those liable for them, including negligent firearm manufacturers, distributors, and retailers, and importers; and

Whereas, the firearm industry has generally not included numerous safety devices with their products, including devices to prevent the unauthorized use of a firearm, indicators that a firearm is loaded, and child safety locks, and the absence of such safety devices has rendered these products unreasonably dangerous; and

Whereas, the firearm industry has potentially engaged in questionable distribution practices in which the industry oversupplies certain legal markets with firearms with the knowledge that the excess firearms will be potentially distributed not nearby illegal markets; and

Whereas, it is fundamentally the right of local elected officials to determine whether to bring suits against firearm manufacturers on behalf of their constituents to best serve the needs of their city or town; and

Whereas, across the nation, cities are bringing rightful legal claims against the gun industry to seek changes in the manner in which the industry conducts business in the civilian market in their communities: Now, therefore, be it

Resolved, That cities and towns be able to bring suits against manufacturers, dealers, and importers to determine their possible culpability for firearm violence; and be it further

Resolved, That the National League of Cities opposes any federal preemption that would undermine the authority of state and local officials to bring suits against firearm manufacturers on behalf of their citizens; and be it further

Resolved, That the National League of Cities urges better cooperation between firearm manufacturers and local elected officials to prevent firearm violence and ensure less firearm injuries and costs to cities and towns.

VIOLENCE POLICY CENTER,
Washington, DC.

DON'T LET GUN MANUFACTURERS ''TAKE ADVANTAGE OF THE SYSTEM''

SUPPORT THE LEVIN AMENDMENT TO THE BANKRUPTCY BILL TO HOLD GUNMAKERS RESPONSIBLE FOR DEFECTIVE GUNS

The Levin amendment to S. 625 will ensure that gun manufacturers cannot discharge debts incurred as a result of consumer lawsuits for defectively designed and manufactured firearms.

The Levin amendment is necessary to ensure that firearm manufacturers—which are exempt from federal health and safety regulation—remain accountable for civil liability to consumers injured by negligent or reckless industry behavior. Lack of health and safety regulation means that the civil justice system is the only mechanism available to regulate the conduct of gun manufacturers.

At least three major gun manufacturers have sought bankruptcy protection specifically to protect themselves from product liability claims.

Lorcin Engineering arrogantly stated in 1996 that it was filing for bankruptcy to protect the company from at least 18 pending liability suits. Lorcin officials stated to Firearms Business—a gun industry trade publication—that the company chose to ''take advantage of the system'' when it decided that it could not defend against liability claims. Furthermore, at a 1996 meeting of creditors, the U.S. Bankruptcy Trustee posed the following question to Lorcin's attorney, ''The triggering factor [of the bankruptcy] was the Texas lawsuit, but there were three or four others that could also be a problem?'' Lorcin's lawyer responded, ''Yep.''

In 1993, Lorcin was the number one pistol manufacturer in America, churning out 341,243 guns. Many of Lorcin's handguns are of such poor quality they are ineligible for importation under the Bureau of Alcohol, Tobacco and Firearms (ATF) ''sporting purpose'' test. Lorcin's .380 pistol regularly tops the list of all guns traced to crime by ATF.

Davis Industries, also motivated by pending product liability claims as well as lawsuits filed by U.S. cities including Chicago, New Orleans, Miami, Atlanta, Cleveland, Los Angeles, and Detroit filed for bankruptcy protection in May 1999. Davis manufactured nearly 40,000 guns in 1997, the last year for which figures are available.

Sundance Industries also sought bankruptcy protection in August 1999. As a result, the Superior Court of California enjoined the City of Los Angeles from pursuing Sundance in the city's lawsuit to recover costs inflicted on the city as a result of gun violence.

Many more gun manufacturers may soon choose to follow in the footsteps of Lorcin, Davis, and Sundance to escape responsibility for suits filed recently by U.S. cities.

More than 25 cities and counties have filed lawsuits against the gun industry. These lawsuits allege that firearm manufacturers have produced and sold defectively designed firearms, and engaged in negligent marketing and distribution practices resulting in countless deaths and injuries in America's cities. The NAACP has filed a similar lawsuit. Lawyers for the cities are very concerned that bankruptcy will become a common gun industry defense tool.

Many other consumer lawsuits are pending against gun manufacturers.

For example, Glock is the defendant in a case recently certified as a nation-wide class action. The class includes individuals and police officers injured by unintentional discharges of Glock handguns. The suit alleges that Glock handguns, including those used by many police departments, contain design defects long known to the manufacturer.

Gun manufacturers must not be allowed to use bankruptcy to escape accountability when their reckless or negligent conduct causes death and injury. Vote to protect victims of gun violence. Support the Levin amendment to S. 625.

HANDGUN CONTROL,
Washington, DC, November 9, 1999.

Hon. CARL LEVIN,
U.S. Senate,
Washington, DC.

DEAR SENATOR LEVIN: I am writing in support of the amendment to S. 625, the Bankruptcy Reform Act of 1999 sponsored by Senators Levin, Durbin, Wyden, Kennedy, Feinstein, Lautenberg, and Schumer. This amendment would prevent firearm manufacturers, distributors and dealers from filing for Chapter 11 bankruptcy protection to evade wrongful death and personal injury lawsuits caused by their dangerous products.

As you know, several cities and their residents have filed suits against the gun industry to recover some of the costs of gun violence and to attempt to encourage more responsible conduct by the industry in the future. These suits attack two basic problems caused by irresponsible practices of the gun industry. One is the failure to make guns as safe as possible and failing to include many simple, live-saving safety devices in their guns. The other is the irresponsible distribution of guns which enables and fosters the criminal use of guns.

Gun manufacturers, distributors, and dealers should not be able to evade these legitimate claims for damages by filing for bankruptcy. In 1996, Lorcin Engineering Company, one of the chief manufacturers of ''Saturday Night Specials'' or ''junk guns'' filed for Chapter 11 bankruptcy to protect itself from multiple product liability lawsuits. Other gun manufacturers, like Davis industries and Sundance Industries, have followed Lorcin's lead and have filed for bankruptcy to avoid liability. We must not allow other firearms companies to take advantage of the bankruptcy system.

I urge you to support this important amendment.

Sincerely,

SARAH BRADY,
Chair.

Mr. LEVIN. My friend from Illinois is not here, so I simply yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Utah.

Mr. HATCH. Mr. President, I rise to speak in opposition to the amendment offered by the Senator from Michigan. This amendment makes debts owed by a corporation on account of firearms non-dischargeable in a chapter 11 reorganization bankruptcy proceeding if the debt arose out of an action for fraud, misrepresentation, negligence, nuisance, or product liability. In addition, this amendment excepts such

debts from the automatic stay protection provided in a bankruptcy proceeding.

This amendment effectively singles out both gun manufacturers and those who legally transfer guns, including major retailers who sells guns in compliance with all laws, and prevents them from successfully reorganizing under the bankruptcy laws, if they should need such reorganization. If a large product liability suit succeeds against a gun manufacturer, this amendment virtually ensures that the companies affected will be driven out of business and its workers will lose their jobs.

In addition to being just bad policy, the amendment is also self-defeating. Here is why: it effectively assures that only a fraction of the judgment against the affected company will be paid, if at all. That is because those manufacturers that could pay off the judgment over time will not be able to do so, and will be forced into liquidation. This is neither good for the lawful business, nor for those other investors or creditors with legitimate claims against the company.

I also want to point out to my colleagues that as a matter of longstanding bankruptcy policy in the United States, it has been universally recognized that if a company with manufacturing expertise suffers an unexpected financial setback—whether from a huge products liability judgment or business reverses—everyone is better off if it can at least try and restructure the business to preserve its legitimate business lines. Workers can save their jobs and creditors can be paid off over time from the operating revenues of the restructured company, receiving much more than they would from liquidation. It is not as if this amendment, much to the dismay of its supporters, will wipe out the second amendment's protection to bear arms. What this amendment will do is ensure that the manufacture of legal arms, and the corresponding jobs it creates, will move overseas.

Longstanding bankruptcy policy in this country has been that bankruptcy laws should apply to all lawful products and industries in a similar fashion; not pick and choose between unpopular, but legal, industries. This amendment unfairly singles out one industry for unfavorable treatment, and does so in an unprecedented fashion. In my view, Congress should be loathe to single out companies that legally manufacture or sell lawful products for unfavorable treatment, simply because they are unpopular. Which industry will be targeted next?

We should not be setting the precedent that lines of business that are unpopular with some in the Congress, but legal, will be denied the ability to reorganize in bankruptcy. If we do this to firearms manufacturers, what about companies involved in other industries, such as medical devices, drug manufacturing, or automobile makers? The basic social policy that it is better to keep the company operating and paying off the judgment than liquidating it should not be narrowed company by company, industry by industry.

Plain and simple, this amendment is designed to encourage lawsuits by trial lawyers against gun manufacturers and retailers who sell guns. And I think this amendment is part of an effort to put the firearms industry out of business.

Let me emphasize that I am very concerned about the gun violence our country has experienced in recent years. However, I am a firm believer in second amendment rights. The amendment encourages the new wave of lawsuits we have all been hearing about, in which gun *manufacturers* are being sued for the conduct of third-party criminals. Liberals have been unable to eliminate the second amendment or the gun industry through direct legislation, so they are attempting to eliminate it through this kind of backdoor ''policy through litigation'' approach.

This amendment promotes an issue that has nothing to do with real bankruptcy reform and sets an undesirable precedent. Accordingly, I urge my colleagues to vote against this amendment.

It is time for us in the Congress to grow up with regard to firearms matters in our country. There is no use kidding ourselves. We have passed some 20,000 rules, regulations, and laws in this country against the use of firearms that have limited our second amendment rights and privileges. There are some legitimate arguments against this type of legislation. I believe it is far preferable for us to uphold second amendment rights and privileges and get tougher on criminals.

Our problem in this country, and especially over the last 7 years, is that this administration has not been serious about getting tough on criminals. Under Project Triggerlock, the number of gun prosecutions under that approach, which was working very well under President Bush, has now dropped by 50 percent. No wonder the President in his State of the Union Address said: We are going to start doing something about gun crimes.

They caught 12,000 people illegally taking guns to school in the last few years, and there have been only 13 prosecutions. Last year, up to January 1, they caught 100,000 people under the instant check system. They call that Brady, as if that were a victory by the administration. Brady was first a 7-day waiting period which devolved into 5 days. In order to not prevent decent, law-abiding citizens from purchasing their guns, we instituted the instant check system, and it has worked magnificently.

Of the 100,000 people they caught last year trying to illegally purchase weapons, I do not recall one single prosecution. I understand that 200 have been recommended for prosecution, one-fifth of 1 percent. I could go on and on.

This administration has not been serious about gun crimes, and we have not had a lot of help from people who are opposed to the second amendment in helping to resolve these problems. The juvenile justice bill is caught up in a conference that is impossible to resolve unless we get rid of this issue and do what has to be done in the interest of juvenile justice.

The fact of the matter is, there is always going to be somebody trying to—and sincerely so—make political points on the issue of guns and weapons. This is not the bill on which they should be making those political points. This would be a very disastrous approach towards bankruptcy law. It means that anytime you find enough popular business a majority of Members of Congress can stick it to, they are going to be able to do it under the bankruptcy laws. That is ridiculous. When we start showing preferences for certain political points of view in bankruptcies to the exclusion of common sense, then it seems to me we are all going to suffer. Sooner or later, it is going to affect something that each one of us treasures or thinks is particularly important.

I speak in opposition to this amendment. This amendment would do an injustice to the bankruptcy laws. In the process, I think we will not accomplish what my friends on the other side, who are sincere about it—at least I believe most of them are sincere about it—really want to do. It is better for us to battle out these issues in Congress. I, for one, will be opposed to any diminution in our second amendment rights and privileges. If you want to diminish the second amendment, then you ought to do it by constitutional amendment. You shouldn't be doing it by bits and tatters. It ought to be done straight up, and it ought to be done in a way that is constitutionally justifiable, and not in these bits and pieces that literally make political points but do not belong in something as important as this bankruptcy bill.

I yield the floor.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN. Mr. President, I yield 10 minutes to the Senator from Illinois.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. I am more than happy to rise in support of what I consider to be a very important and valuable amendment in this debate on the bankruptcy bill.

I am not one who is in favor of abolishing the second amendment, nor, I am sure, is the Senator from Michigan. What we are attempting to do in this bill is address a very serious problem. For those who believe the second amendment is somehow an absolute right to bear arms, I will just tell them, there are no absolute rights under the Constitution of the United States. Each and every right that is guaranteed to us as individual citizens can be limited. Whether it is the right

of free expression limited by the libel laws or even the right to life limited by death penalties that are imposed in many States, all of these things suggest that no right is absolute, and certainly the right to bear arms is not either.

We have had regulations throughout our modern history that have limited the rights of those who care to bear arms in the interest of the public good. That is what this amendment is all about.

Why are we debating guns on a bankruptcy bill? It gets down to the very basics. The bankruptcy law is designed so a person who has reached an economic position in life where they can't see a good future can go to the court and ask for relief from their debts, whether that is an individual or a family or a business. We say, for almost two centuries in this country, that bankruptcy is a right of individuals under our Federal court system. Again, we make exceptions and say that some people who come to court will be limited in the types of debts they can discharge.

We make a list, a pretty lengthy list, of some 17 or 18 exceptions. They include such things as debts incurred by fraud that can't be discharged in bankruptcy court, alimony and child support, student loans, debts from death or personal injury resulting from driving while intoxicated, court fees. There are several others. It suggests that when the Congress wrote the bankruptcy laws and continued to amend them, we said there are certain things in a bankruptcy court from which you cannot escape. If you have been guilty of certain conduct, if you have not met certain obligations, the bankruptcy court will not be your shield or your shelter.

What the Senator from Michigan is doing with his amendment is saying that the gun industry, the gun manufacturers, if they have engaged—and I will quote directly from the amendment—if they have engaged in fraud, recklessness, misrepresentation, nuisance, or product liability, they cannot race to the bankruptcy court and escape their responsibility to the American people. It is just that straightforward.

Those who are arguing that we should carve out some special exception for these gun manufacturers are the same people who are loath to regulate these businesses in the first place.

Several firearm manufacturers have recently been sued in cases that have been brought by cities and municipalities and counties and other local governments that have, frankly, been victimized by gun crimes. These people, in their lawsuits, are alleging that the gun manufacturers have been guilty of misconduct beyond selling the gun, that they have been involved in marketing practices, for example, that end up putting guns in the hands of those who commit crimes. Those lawsuits are still pending, but the interesting response from the gun manufacturers is: So what, sue us if you want to. Ultimately, if you win your verdict, we will go to bankruptcy court, and we are going to escape any liability to the citizens of these cities and counties and States which are bringing these lawsuits.

Two companies have already sought bankruptcy protection: Lorcin Engineering and Davis Industries. The Lorcin .380 pistol tops the list of all guns traced by the Bureau of Alcohol, Tobacco and Firearms for its involvement in crime. By virtue of the bankruptcy law, these manufacturers are able to make millions of dollars flooding the market with low-quality firearms of little appeal to legitimate sportsmen and hunters but of great appeal to criminals and gang bangers.

Once these companies are sued, because they are flooding the market with these cheap Saturday night specials, they simply declare bankruptcy and walk away free from any financial responsibility for their misconduct. The owners of these companies remain free to start up a new company under a new name making the same weapons, wreaking havoc across America because they are flooding us with these guns.

Lorcin officials stated to Firearms Business, a magazine that is published by the gun industry, that the company chose to ''take advantage of the system'' when it decided it couldn't defend against liability claims. What Senator LEVIN is doing—and I am happy to join him—is to say to Lorcin and other companies: Not so fast. If you are going to flood the markets of America with these cheap Saturday night specials, if you are going to be liable for increasing crime and increasing violence in America, you cannot use the Federal law as your shield or shelter when it comes to our bankruptcy court. I think Senator LEVIN is on the right track.

For those who would argue, as I have already heard on the floor, we already have too many laws when it comes to guns, they are just not enforced, let me be quick to add that when it comes to standards for the manufacture of firearms in this country, we virtually have no laws whatsoever. The Consumer Product Safety Commission has the responsibility of regulating virtually every product for household or recreational use. In fact, the toy guns sold for Christmas and birthday gifts are subject to regulation by the Consumer Product Safety Commission. But the real guns, the Saturday night specials and the firearms that could be the subject of these lawsuits, are not subject to any Federal safety regulations at all. The gun industry, by its power in Washington, has successfully lobbied to keep a law in place that protects them from any regulation on the safety of their product.

So for those who are supporting the gun industry, they want it both ways. They don't want the Government to impose any standard on the product that is sold, and they don't want the companies held liable if that product turns out to be dangerous, if that firearm leads to crime and violence and death across America.

Senator LEVIN has said if these manufacturers come to court and they are found guilty of recklessness, fraud, misrepresentation, nuisance, or product liability, they cannot escape that liability because of the bankruptcy law.

How important is it to America? It is important because the costs of gun violence in both human lives and health care continue to escalate. All those who argue that the laws Congress has contemplated in the past are somehow restricting gun ownership in this country cannot answer the most basic question: If gun ownership is so restrictive in this country, how do we happen to have over 200 million firearms already in a nation of 275 million people?

The fact is, these guns are readily available, and on the average almost 90 people are killed, including 12 children, every day because of the proliferation of firearms and the fact that they get into the wrong hands. Gun manufacturers understand that they are finally going to be held accountable. These lawsuits are going to accomplish what legislatures across the Nation and this Congress have failed to face; that is, the fact that American families are fed up with this gun violence. They expect Members of the Senate and the House to come forward with reasonable suggestions to make their neighborhoods safe and take guns out of the hands of those who would misuse them and out of the hands of children.

Senator LEVIN has a valuable amendment here. He is saying to these companies: You will be held responsible. Even if this Congress cannot muster the courage to regulate the safety of a firearm that is sold in the United States, we will not let these manufacturers escape their liability in a court of law. Cities around the country—Chicago, New York, New Orleans, Atlanta, Bridgeport—have initiated suits against the industry to try to force changes to make guns safer and less likely to end up in the hands of criminals. Certainly, automobile manufacturers have faced a spate of lawsuits that really challenge them to use the most modern technology to make our cars safe.

Why are we not holding this industry to the same standard of responsibility? And why, if they are found guilty of fraud or recklessness in the products they sell, should they be able to get off the hook in a bankruptcy court? That is the gist of the Levin amendment—to hold these companies accountable. To say there are no privileged classes—if you engage in this conduct, you will be held as responsible as any other company or person for their wrongdoing.

The gun industry has long placed profits above the safety of America. I think it is interesting that an industry that can cause politicians to cower before them are scared to death to face a

jury in a courtroom in our country. I strongly support Senator LEVIN's amendment. By adopting it, we will further the goal of reducing abuses of the bankruptcy system. Remember, that is why this debate is underway. We are considering bankruptcy reform because many came to us and said that folks are abusing the bankruptcy system. Don't let the gun manufacturers abuse the bankruptcy system. Make certain that they are held accountable for the wrongdoing and the violence and death that results from their recklessness and fraud and the negligent use of their products. We should be on record as opposing bankruptcy abuse, whether it is the result of individual misconduct or the misconduct of gun manufacturers.

I yield the balance of my time.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN. Mr. President, I would be happy to alternate back and forth. If nobody is seeking recognition on that side, I will yield 6 minutes to the Senator from Massachusetts.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I commend Senator LEVIN for taking the initiative to close a gaping loophole that allows gun manufacturers, distributors, and dealers to use the Bankruptcy Code to avoid judgments against them based on fraud, recklessness, negligence or product liability. Firearms manufacturers and dealers should not be able to use bankruptcy to escape liability.

Under current law, many types of debt are dischargeable under the Bankruptcy Code. However, the Code makes certain debts nondischargeable, due to public policy concerns, such as debts incurred by the operation of a motor vehicle while legally intoxicated.

Recently, private citizens and local governments have sued the gun industry to hold it accountable for deaths and injuries caused by firearms. The current litigation can be an effective way of assessing responsibility and providing remedies for obvious harm, in accord with the long-standing traditions of the law.

Many of these lawsuits have been brought by federal and state governments against firearms manufacturers. Opponents of these lawsuits argue that the industry cannot afford them, and that the suits may well force some firms into bankruptcy.

The entire focus of the current lawsuits is the wrongdoing of the defendant corporations. The authority of the court to award damages against these defendants requires a judicial finding that the company engaged in misconduct in the manufacturing or marketing of its product. In the absence of such a finding, there is no liability.

At long last, the American people are getting their day in court against the gun industry, and the gun manufacturers and the NRA fear that justice will be done.

Everyday, 13 more children across the country die from gunshot wounds. Yet, the national response to this death toll continues to be grossly inadequate. The gun industry has fought against reasonable gun control legislation. It has failed to use technology to make guns safer. It has attempted to insulate itself from its distributors and dealers, once the guns leave the factory door.

Studies estimating the total public cost of firearm-related injuries put the cost at over one million dollars for each shooting victim. According to the Centers for Disease Control, cities, counties and states incur billions of dollars in costs each year as a result of gun violence—including the costs of medical care, law enforcement, and other public services.

Communities across the country are attempting to deal with the epidemic of gun violence that claims the lives of so many people each year. Law enforcement officials, community leaders, parents and youth are struggling to deal with this continuing epidemic of gun violence. But the gun industry, and Congress, and most state legislatures have persistently ignored these concerns.

Now, when the courts are likely to hold them accountable, some gun manufacturers are attempting to avoid their responsibility by filing for bankruptcy. One example is Lorcin Industries. During its heyday, Lorcin was one of the largest manufacturers of ''affordable'' guns. Law enforcement and gun-control advocates call them ''Saturday night specials''—the inexpensive, easily concealed handguns often used in crimes.

Lorcin is one of several companies that sprang up after a 1968 law banned imports of ''Saturday night specials'' but permitted domestic manufacturing. Studies have found that these products are characterized by short ''time to crime''—the brief period between sale and the time when the guns are used in criminal acts.

Lorcin Engineering Co. has been named as a defendant in 27 lawsuits. The suits charge that Lorcin and other firearm manufacturers do not provide adequate safety devices, and that they negligently market their products, so that their weapons are too easily accessible to criminals and juveniles. Lorcin was also the subject of at least 35 wrongful-death or injury claims involving people killed or wounded when their Lorcin pistols accidentally discharged. Lorcin settled at least two dozen of the 35 claims, ranging from a few thousand dollars to $495,000.

Lorcin sought refuge from these product liability lawsuits by filing for Chapter 11 bankruptcy in October 1996. In bankruptcy, Lorcin was able to settle its lawsuits for pennies on the dollar, when tens of millions of dollars in damages were at stake. One of the major issues raised by creditors in the Lorcin bankruptcy case was whether the company was using the ability to reorganize its operations under the bankruptcy code as a way to avoid paying large sums to plaintiffs if it lost the suits.

Last January, Lorcin was released from a lawsuit filed by the City of New Orleans. It petitioned the court to be removed from another lawsuit filed by the City of Chicago, because the company was reorganizing itself under Chapter 11 of the Bankruptcy Code when the cities filed their lawsuits.

The litigation has prompted two other gun manufacturers to seek refuge in bankruptcy. Sundance Industries of Valencia, California filed for Chapter 7 bankruptcy. The owner said he has been worn down by the legal assault on the gun industry. In addition, Davis Industries of Mira Loma, California sought Chapter 11 protection in the U.S. Bankruptcy Court on May 27, 1999.

According to a lawyer who represented creditors in the 1996 bankruptcy of Lorcin, ''Bankruptcy is a very useful negotiating tool and predictably the more suits that are filed, the more these gun companies are going to file for bankruptcy.''

A lawyer for one of the cities suing the gun-makers said that bankruptcy ''is going to be a huge pain,'' because it will require much more time and expense for the cities, limit the amount of damages they can collect, and, perhaps most important, put the litigation in federal bankruptcy court.

Litigation may well be the only means to hold gun manufacturers accountable for the harm caused by their products. As we have seen with litigation against the tobacco industry, manufacturing secrets and marketing secrets often come to light in a courtroom. Public interest lawsuits have changed the balance of power between the public and the mammoth industries long thought to be invincible. The Levin amendment supports the citizens harmed by these powerful industries. It deserves to be supported by the Senate, and I urge the Senate to approve it.

Mr. President, in summation, I congratulate my friend, the Senator from Michigan, Mr. LEVIN, for the development of this particular amendment, and I join with others to recommend it strongly to the Senate. I am hopeful that it will be successful.

The Levin amendment, as has been pointed out, takes the initiative to close a gaping loophole that allows the gun manufacturers and distributors and dealers to use the bankruptcy code to avoid judgments against them based on fraud, recklessness, and negligence, or product liability. Firearm manufacturers and dealers should not be able to abuse the bankruptcy laws to escape liability.

We can ask ourselves, is this a problem? The answer is yes. Do the gun manufacturers intend to utilize bankruptcy to basically avoid responsibility to families across the country and because of the basis of negligence, recklessness, or fraud? The answer is yes to that, too, which undermines the importance of this particular amendment.

America has a gun problem and it is massive. The crisis is especially serious for children. Every day, 13 more children across the country die from gunshot wounds. For every child killed with a gun, four are wounded. Yet the national response to this death toll continues to be grossly inadequate.

The gun industry has fought against reasonable gun control legislation. It has failed to use the technology to make guns safer. All we have to do is remember the debates we had on the violence against youth legislation at the end of last year. We saw the efforts to try to provide common sense solutions to those who make these weapons available to individuals in our society who should not have these weapons, and how that was frustrated in important ways by the gun manufacturers. They were able to keep that piece of legislation that was passed with regard to gun show loopholes tied up in conference. How many weeks and how many months have passed when we have been unable to address this issue either in conference or back on the floor of the U.S. Senate? Those efforts continue to go on even today.

Here we find in the bankruptcy legislation another attempt by the gun manufacturers to exercise their muscle by giving them a special consideration at a time when the problems they foist on the American families are so significant.

The gun industry has attempted to insulate itself from its distributors and dealers once the guns leave the factory door. Guns are the only consumer product exempt from safety regulations.

Cities, counties, and States incur billions of dollars in costs each year as a result of gun violence, including the costs of medical care, law enforcement, and other public services. Studies estimating the total public cost of firearm-related injuries put the cost at over $1 million for each shooting victim.

Communities across the country are attempting to deal with the epidemic of gun violence that claims the lives of so many people each year. Law enforcement officials, community leaders, parents, and youth are struggling to deal with this continuing epidemic of gun violence. But the gun industry, Congress, and most State legislatures have persistently ignored these concerns.

At long last, the American people are getting their day in court against the gun industry. Individuals, organizations, and municipalities are making progress in their effort to hold the industry liable for its failure to incorporate reasonable safety designs in the guns they sell, including features that would prevent gun use by children and other unauthorized users. Personalizing or childproofing guns would dramatically reduce the number of unintentional shootings, teenage suicides, and criminal offenses using stolen weapons.

One such lawsuit was filed in Massachusetts on behalf of the parents of Ross Mathieu, a 12-year-old boy who was killed in 1996 when a friend the same age unintentionally shot him with a Beretta pistol, believing that the gun was unloaded. In 1997, a suit was filed against Beretta in Federal court in Boston alleging that Beretta caused the death by failing to include with the pistol either a magazine disconnect safety device, a chamber-loaded indicator, or a locking device that would have ''personalized'' the gun.

Last summer, the city of Boston filed a suit against gun manufacturers, distributors, and trade associations whose manufacturing decisions, marketing schemes, and distribution patterns have injured the city and its citizens. Boston is one of 30 cities and counties to have filed groundbreaking lawsuits to reform the gun industry.

When the courts seem likely to hold the industry accountable, some gun manufacturers are attempting to avoid their responsibility by filing for bankruptcy. We have heard the example that the Senator from Illinois pointed out, Lorcin Industries, one of the largest manufacturers of the Saturday night specials. We heard how they have attempted to use the bankruptcy laws to their financial advantage and to the disadvantage of the families who have legitimate interests in pursuing their rights in a court of law.

As a result, Lorcin was able to settle its lawsuit for pennies on the dollar when tens of millions of dollars in damages were at stake. One of the major issues raised by creditors in the bankruptcy case was whether the company was using the ability to reorganize its operations under the bankruptcy code as a way of avoiding paying large sums to plaintiffs if it lost the suits.

That has been replicated by Sundance Industries of Valencia, CA, who filed for chapter 7 bankruptcy. The owner said he had been worn down by the legal assault on the gun industry. In addition, last May, Davis Industries of Mira Loma, CA, sought protection in the U.S. bankruptcy court.

According to a lawyer who represented creditors in the 1996 bankruptcy of Lorcin, ''Bankruptcy is a very useful negotiating tool, and predictably the more suits that are filed, the more these gun companies are going to file for bankruptcy.''

A lawyer for one of the cities suing the gun manufacturers said that bankruptcy ''is going to be a huge pain'' because it will require much more time and expense for the cities.

Litigation may well be the only means to hold the gun manufacturers accountable for the harm caused by their products. Public interest lawsuits have changed the balance of power between the public and the mammoth industries long thought to be invincible.

At long last, the American people are getting their day in court against the gun industry. The gun manufacturers and the NRA should not be allowed to hide behind the bankruptcy laws to prevent liability. The Levin amendment supports the citizens and cities harmed by this powerful industry. It deserves to be supported by the Senate, and I urge the Senate to approve it.

The PRESIDING OFFICER. Who yields time?

Mr. LEVIN. Mr. President, I yield 4 minutes to the Senator from Oregon.

Mr. WYDEN. Mr. President, I commend our colleague from Michigan for a very important amendment which I think has one central point. Pass the Levin amendment and we will end the legal gymnastics that gun manufacturers have used to dodge their responsibilities. Pass the Levin amendment and the U.S. Senate sends a clear and simple message to these gun manufacturers that have played games with bankruptcy. Our message is the game is over. There is absolutely no reason to allow fraudulent activity by gun manufacturers to go without sanction. I am very troubled as I read through the history of what my colleagues have talked about—the Senator from Illinois and the Senator from Massachusetts—what it says about the nature of this debate. There are gun manufacturers who are actually bragging that they are taking advantage of the system when they know they cannot win on the merits.

We have a situation where as we debate the bankruptcy law and talk about making sure it is fair to all sides—good people may have fallen on hard times—and at the same time sensitive to the needs of business and others who otherwise wouldn't be able to get the funds they need that are so central in a marketplace kind of system, all of those people, it seems to me, end up without the treatment they deserve. They are, in effect, put in an unfavorable light when, in fact, the gun manufacturers are given a free ride.

Let us make sure that everybody is treated fairly—small businesses that have these claims, and many people we are seeing who have fallen on hard times and need a fresh start. But let us not send the worst possible message, which is that if you engage in the kind of reprehensible conduct my colleagues have documented, in effect, you will get a free ride if you are a gun manufacturer.

It is important to vote for this bankruptcy legislation. I voted for it last year, as did 96 of my colleagues. It is important to ensure that we have fairness for all parties.

Unless the Levin amendment is adopted, it seems to me that we allow a continuation of these legal gymnastics that are being practiced by gun manufacturers. That is wrong.

I urge my colleagues to support the Levin amendment.

The PRESIDING OFFICER. Who yields time? The Senator from Iowa.

Mr. GRASSLEY. Mr. President, I yield myself such time as I may consume.

The PRESIDING OFFICER. The Chair recognizes the Senator from Iowa.

Mr. GRASSLEY. Mr. President, I had a chance to listen very closely to what

the Senator from Michigan said. As the sponsor of the amendment, he ought to have the attention of those of us who oppose his amendment.

I say that this amendment detracts some from the purpose of the legislation. Maybe it is meant to. To the extent it is, I hope people will vote against it. To the extent that people see this as a legitimate part of what we are debating, then I would offer this point. I am going to offer more than one point very central to the amendment, and then I will stick to my remarks. But the fact is there is a way to handle this problem to make sure that these companies don't get off scot-free.

I am going to refer to a product that Senator Heflin from Alabama—before he retired from the Senate—and I worked very closely on, which was bankruptcy legislation. During the years he and I served together—I think 14 or 16 years—during that period of time when we were in the majority on this side, I chaired the committee and he was the ranking minority member. When his party was in control, he was chairman and I was the ranking minority member. I am going to refer to some legislation we were able to get passed in 1994 when he was chairman of the committee. I think it is a thoughtful and bipartisan way to deal with this.

First of all, I believe this amendment proposed by the Senator from Michigan is unsound as a matter of policy. Congress has previously dealt with difficult questions of what to do about companies facing massive tort liability and then filing for bankruptcy. We dealt with this, as I indicated, in a bipartisan way, and I think in a way that had a great deal of thought behind it.

In 1994, I worked with Chairman Heflin to create a very specific process for asbestos companies that were filing for bankruptcy as a result of a massive number of lawsuits against asbestos manufacturers by those people who had asbestosis. Senator Heflin and I wanted to help these companies continue as an ongoing business concern, but we also wanted to ensure that the victims of asbestos-related illnesses wouldn't be left out in the cold.

In the 1994 bankruptcy bill, we created a process where asbestos companies could be discharged of their tort liabilities but only if they created a trust fund, under the control of a bankruptcy judge, to pay victims. This process has worked well and has received favorable comment by the National Bankruptcy Review Commission.

This amendment from Senator LEVIN, however, doesn't use a similar approach. This amendment merely provides that gunmakers and sellers can't discharge their tort liabilities. As a result, the amendment has no concern for the employees of the makers or retailers of guns. Under this amendment, retailers from giants such as Wal-Mart and Kmart all the way down to the small family-owned stores could face massive liabilities and be forced to lay off workers.

In the case of the Heflin-Grassley legislation of 1994, as I indicated, we allowed the companies to continue to operate and to continue to have their employment, and in the process victims were not harmed in any way because of the trust fund. It seems to me, unless there is some ulterior motive other than helping victims with this legislation, that we should think about that approach—an approach that protects victims, an approach that makes the person who is guilty of wrongdoing have tort apply to pay that tort. Consequently, if that is not the approach, I think it reveals the real purpose of the amendment. I question that the amendment might be about making sure that tort plaintiffs receive compensation if any of the questionable antigun lawsuits were to succeed because that is not what is going to happen. This amendment is merely an effort to drive all segments of American industry involved with guns out of business, even if thousands of innocent, hard-working American employees have to pay the price.

Consequently, I urge my colleagues to vote against this amendment.

One other thing about the amendment is the presumption is so stated by the Senator from Michigan that this is just one addition—I think he would say that this is the 19th addition —to a long list of exceptions that are nondischargeable through the bankruptcy court.

I think he is mistaken about how bankruptcy works for corporations and chapter 11 because his amendment applies just to corporations.

Section 1141 of chapter 11 has two separate discharge provisions. It has one section for corporations and it has one for individuals. The discharge provision for corporate debtors discharges all debts. The discharge provision for individuals lists nondischargeable debts.

So the idea this exception to discharge is just one more of a long list of 18 is flatout wrong.

From this standpoint, then, the amendment by the Senator from Michigan is unprecedented, and I will be glad to share the code sections with my colleagues, if they desire. But subsection (a) discharges a debtor from any debt that arose and that applies to the corporations. But subsection (2) says the confirmation of a plan does not discharge an individual debtor. From that standpoint, this is not one of a long list of things that are nondischargeable.

The PRESIDING OFFICER. Who yields time?

Mr. CRAIG. Mr. President, will the Senator from Utah yield time to the Senator from Idaho?

Mr. HATCH. I am happy to yield time to the distinguished Senator.

Mr. CRAIG. Mr. President, I thank the Senator from Utah, and let me also thank the Senator from Iowa for bringing what I think is necessary to bring to this debate as it applies to the Levin amendment, and that is common sense. Is, in fact, this amendment the kind of legislation we want to see? If you support the bedrock policy of bankruptcy law, I do not know how you can support the Levin amendment because it undermines basically all of those policies.

The bankruptcy code establishes a structure that ensures everyone who is owed money by the debtor will be treated fairly when the debtor is given, in essence, a fresh start under the law. The main purpose of the bankruptcy reform measures we are working on is to get more debtors to pay back more of the debts they owe to more of their creditors. That is a rather simple principle before this Senate. This issue has been with us. The Senator from Iowa and the Senator from Utah and others have struggled with it mightily for the last good number of years, to bring fairness and equity in it, but also to say to debtors there is a credibility here and a responsibility you owe to your creditors. There needs to be a greater sense of fairness and balance brought. I think the fundamental underlying bill offers that.

The Levin amendment is a carve-out, and I think it flies in the face of those general policies. The supporters of the Levin amendment say they are trying to prevent firearm manufacturers from escaping accountability for bad acts that result in a civil judgment against them. That is rather straightforward.

It is not only manufacturers; it is retailers and it is corporations. So it is a broad brush. While they would like, I am sure, to create the image that there is a manufacturer out there who produces a firearm and somehow it is evil, are Wal-Mart and Kmart and hardware stores that sell legitimately as federally licensed firearms dealers evil? In the eyes of some, they probably are. That is not the debate, nor is that the issue. Let's look at what the amendment does. It is unfair because it picks out a specific industry and it restricts the bankruptcy relief available to that industry.

In other words, if we in the Senate have now decided we are going to pick winners and losers who are politically correct or politically incorrect based on your particular philosophy or point of view, that is what the Levin amendment, the Levin carve-out does. Is this Senate going to start picking winners and losers amongst businesses in our country? We never have. We created certain conditions or certain things that are special within the law but never politically have we said: You are a winner, you are safe under the law; you are a loser, you lose. That is not what we do. We let the marketplace generally do that, and we let consumers generally do that.

Today it is the firearm manufacturers and tomorrow is it an industry that produces alcohol; or a fatty product, and we have decided in our society that

fat consumption is no longer good for the American consumer, even though as free citizens they ought to have a right to choose.

''That sounds silly, Senator CRAIG. You ought not be saying things like that.''

When I watched the trial lawyers organize and convince the attorneys general that going after the tobacco companies was good because the tobacco companies had fallen out of favor and it was a politically correct thing to do, I said, ''And next will be firearms.'' There were some who chuckled. Of course, guess what. Next were the firearm manufacturers. That is what is going on out there today. Municipalities that do not enforce the law but, most important, municipalities that arrest people who illegally use firearms do not have a Justice Department that backs them up.

The Clinton administration ran from enforcement for 7 years. Of course, just this year they got a new religion out there because they have seen the polls and they have seen what the American people have said: Enforce the laws, Mr. President.

I wonder how my friends across the aisle would react if I proposed a similar amendment making bankruptcy relief unavailable to former Presidents of the United States? ''That would be foolish, LARRY. You should not do something such as that.''

That spells the intent of this amendment. I think the Senator from Iowa was a little kinder than I am, suggesting maybe there was an ulterior motive and it was probably more political than it was legally substantive. I think he is right.

It is also unfair because it would have the effect of putting the interests of some creditors ahead of others. The lawsuits we are talking about are not claims for real injuries resulting from somebody's bad acts. Instead, they are treasure hunts. We saw the hundreds of millions of dollars the trial attorneys made, and now States are getting, from the settlements from the tobacco industry. The treasure hunt resulted; the treasures were found. They are looking for multimillion-dollar verdicts or settlements to go to the trial lawyers and municipal governments they represent.

If there are legitimate creditors out there in a bankruptcy settlement, they are no longer protected because we have taken those companies out and they simply fall away. The effect of the Levin amendment would be that lawyers and government bureaucrats get paid first. Remember that: Lawyers and government bureaucrats get paid first. If there is anything left in this kind of bankruptcy of these multimillion-dollar verdicts, then and only then will a creditor get a dime.

The Levin amendment would also hurt the very people it claims to help because it would make it unlikely that more than a fraction of the judgments, if that much, would ever get paid off. This is because it would prevent more companies from taking a reorganization bankruptcy. Instead, it would simply, in all reality, force them into liquidation, where the creditors get nothing. Is that the intent of the Levin amendment? My guess is, if it is not the intent, it clearly is the result.

What is the practical effect of all of this? It means instead of a company continuing to exist, a company being allowed to stay in business, to reorganize, to keep its employees intact, they close their doors, they lay off their employees, and their creditors go wanting. Not only are the creditors not going to be there to get the benefit of it, the jobs are lost.

It means there will be no business-generating income to continue to pay the debts it created. Whatever you can squeeze out of a business today is all you are going to get. That is the result of this amendment. Maybe that is the intent of the amendment. If it is, why don't we be honest with ourselves? This amendment is not substantively charged, it is politically charged. I think all of us understand that. My guess is that is how the vote breaks out on an issue such as this. In short, the amendment turns bankruptcy policy on its head.

It is designed to destroy legitimate and law-abiding businesses. It injures consumers, and it destroys jobs. The Levin amendment is clear and simply bad policy for this country, and I hope the Senate will choose to defeat it. We should not mix that kind of politics with this kind of constructive policy change that these Senators have worked to bring to the floor. I yield the floor.

The PRESIDING OFFICER. Who yields time? The Senator from Michigan.

Mr. LEVIN. I yield 5 minutes to the Senator from New York.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. I thank the Chair, and I thank my colleague from Michigan for yielding time and for his leadership on this outstanding amendment.

Before I speak to the substance of the amendment, whenever we talk about gun issues, it seems some who are opposed say that is making it political. I do not quite get that. People on this side have as firmly held beliefs as the people on the other side. Most Americans seem to support what we are for, and if that is political, so be it. That is democracy.

Mr. HATCH. Will the Senator yield?

Mr. SCHUMER. I will be happy to yield.

Mr. HATCH. I ask the Senator, since he is just starting his remarks, if he will yield to the distinguished Senator from Alaska who has a very short statement.

Mr. SCHUMER. I will be happy to yield as long as the rest of my time is reserved.

Mr. HATCH. We will go right back to the Senator from New York. I thank my colleague for his courtesy.

The PRESIDING OFFICER. The Senator from Alaska.

ALASKA AIRLINES FLIGHT 261

Mr. STEVENS. Mr. President, I am here because I am deeply saddened to report to the Senate a very serious loss, as far as the country is concerned and a real sad loss for myself personally. I was saddened last night when my wife and I received a call about the loss of Alaska Airlines Flight 261 on a flight from Puerto Vallarta, Mexico, to San Francisco.

Eighty-eight people were on board that plane, many of them apparently employees or relatives or friends of employees of that airline. While the search continues, we have been told now that no survivors have been found. My thoughts and prayers and I hope all of our thoughts and prayers are with the families of these people who have perished.

Among those on the plane were at least five Alaskans. We think there were more. One was one of my very close and dear friends, Morris Thompson—we called him Morrie—his wife Thelma and their daughter Cheryl.

Morrie Thompson has been a respected leader of the Native community of our State and a businessman. Just last fall, he retired as the chief executive officer of Doyon Limited, which is one of 12 regional corporations for our Alaska Native people. Because of Senate business, I was unable to attend that retirement dinner in Fairbanks, but my granddaughter Sara went as my representative.

Morrie had a tremendous background. He was not only a great leader for the Native people of Alaska, but he was a leader in his own right nationally. He was a member of the University of Alaska's Board of Regents. He served as president of the Alaska Federation of Natives. During the Nixon administration, he was the Commissioner of the Bureau of Indian Affairs for our Nation in Washington, DC, and a special assistant to the Secretary of the Interior for Indian Affairs in the Department of the Interior. He was president of the Fairbanks Chamber of Commerce and in 1997 was named Business Leader of the Year by the University of Alaska.

He is going to be remembered for his work on the Alaska Native Claims Settlement Act, landmark legislation in 1971, which was a tremendous economic boost for our Native people. His greatest legacy will be among the young people of our State who have benefited from Morris Thompson's fellowship program and the Doyon Foundation, which he created to subsidize tuition for Native students in Alaska.

My heart goes out to the Thompsons' surviving daughters, Nicole and Allison, and to all the members of their family. Morrie has not just been a political friend or a business friend. We have joined one another in each other's homes for dinner and raised our children together in a way.