

Mr. DORGAN. We will know in 5 minutes that it was a mistake. If these folks at a time when there is no additional inflation raise interest rates once again to try to slow down this economy and penalize the American workforce for being more productive, we will know in 5 minutes that is a mistake.

I hope with this announcement that will apparently be made at about 2 o'clock this afternoon this group of folks perhaps might exhibit some good sense for a change.

Mr. HARKIN. I thank the Senator.

Mr. DORGAN. I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, as I understand it, we are in morning business, and we have some 22 minutes remaining.

The PRESIDING OFFICER. The Senator is correct.

The Senate is in morning business.

The Senator from Massachusetts is recognized.

THE SENATE AGENDA

Mr. KENNEDY. Mr. President, I yield myself 7 minutes, the Senator from Minnesota, 7 minutes, and the Senator from Iowa, the remaining time.

First of all, I join with our colleagues who spoke earlier about the extraordinary events we saw on The Mall this past weekend.

I was here a few moments ago when we listened to the majority leader talk about the urgency of passing a comprehensive energy program. Energy programs are important, and we have a great interest in it in our part of the country, particularly as we are looking forward to another fall and another winter, and the importance of developing some protections in the form of reserves and other factors. That is a very important policy issue. I am glad our Republican leader thinks that is of such urgency.

But the fact is, the issues which the Senator from California and others have spoken about, and taking sensible and responsible and commonsense actions on guns, particularly to ensure greater safety and security in the schools of this country, are also a matter of enormous importance.

I am reminded of the debate we had on elementary and secondary education. We had 6 days of debate, although some of that was limited in terms of being able to debate only a handful of amendments. We took 16 days on the bankruptcy bill and had 67 amendments.

Many of us on our side believe we ought to put our priorities straight. One of them is to take action in terms of sensible and commonsense issues on the proliferation of guns.

Second, we ought to be addressing the education issue, which is of such importance to families across this country.

We reject the position of the majority in giving short shrift on the issue of

education. We want to debate that, and we want action on it.

BANKRUPTCY REFORM

Mr. KENNEDY. Mr. President, I want to bring to the attention of the Senate the continued deterioration of the position which had been accepted previously by the Senate on the issue of bankruptcy.

That may seem an issue that is distant and remote to many of our colleagues or many around this country, but it is an issue that will affect basically working women who are disproportionately hit by the pressures of bankruptcy because of the allocations of credit at the time of separation or their shortage of alimony or the shortage of child payments. It hits them disproportionately.

It hits older workers disproportionately in terms of their medical bills. About half of those bankruptcies are a result of the escalation and the costs of medical bills, coupled with the fact of prescription drug costs and the shortage of prescription drugs. That is another matter of priority. That is another matter we believe ought to be addressed. The failure of this body to address providing decent quality prescription drugs on the basis of need and on the ability to pay is also a major gap in our Medicare system. We should be taking action on that. When we don't, we find increasing numbers of individuals are falling into bankruptcy because they can't afford the prescription drugs. The credit cards last for only so long, and the payments they receive in terms of working families last only so long, and then they get overwhelmed with their payments and they go into bankruptcy.

There is a third group of individuals who go into bankruptcy as a result of being downsized. They worked hard all of their lives. The people who go into bankruptcy have the same work habits as those who do not. The overwhelming majority are hard-working Americans who fall into hard times.

As has been stated time and time on the floor of this body, it is always useful to ask who is going to benefit from a piece of legislation and who is going to pay a price with the passage of a piece of legislation. I have not seen in this Congress or any recent times the scales so unbalanced. Those that are going to benefit are going to be the credit card companies, banking interests; those harshly treated will be average working Americans who have fallen into difficult times, either economically or because of health care needs or because of age and the job challenges they are facing.

Only recently there was an excellent article in Time magazine. The total number of individuals going into bankruptcy is declining. Still, we have this economic power that is trying to jam this legislation through the House of Representatives and the Senate of the United States behind closed doors. I

was listening to my colleagues talk about actions taken behind closed doors. They find out on the bankruptcy legislation these are matters that are taking place behind closed doors as well.

The Time magazine article pointed out what is happening to an average family. Charles and Lisa Trapp are mail carriers in Plantation, FL, where Annelise, 8 years old, developed a muscular disorder and needed around-the-clock nursing care. Lisa had to quit her job, and with \$124,000 in doctor bills, insurance will not cover paying off credit cards, which is the least of their worries. They have filed for chapter 7 bankruptcy. The medical costs are what the Trapp family insurance did not cover. They had to use credit cards to buy groceries and they have an accumulation of \$59,000 in credit card bills. The point is, they used the funds available on the credit cards for their groceries so they could use what income they had to pay for the needed prescription drugs.

This family, under this Republican bill, is treated harshly and poorly. The Trapp family are a brave and courageous family. And this situation is being replicated. It is fundamentally wrong.

Mr. President, for over two years, Congress has been struggling to reform the bankruptcy laws. From the beginning, the debate has been unfairly slanted toward the credit card companies and banks at the expense of vulnerable Americans. It is especially disturbing that the final bill may well be drafted without the appointment of conferees or even public meetings. The American people deserve a better process and a fairer bill.

A fair bankruptcy reform bill will balance the needs of debtors and creditors. It will not allow credit card companies and other special interests to take unfair advantage of thousands of citizens who find themselves in economic crisis—citizens like the Trapp family recently featured in Time magazine.

The Trapps are not wealthy cheats trying to escape their financial responsibilities. They are a middle class family engulfed in debt because of circumstances beyond their control. Like half of all Americans who file for bankruptcy, the Trapp family had massive medical expenses.

Charles and Lisa Trapp met while working as mail carriers in Plantation, Florida. They married and have three children—the youngest, Annelise, has a degenerative muscular condition. She requires round-the-clock medical care. In her wheel chair or in bed, she uses a respirator at least eight hours a day. As a result, the Trapps have \$124,000 in doctors' bills that insurance won't cover, and \$40,000 of credit card debt for groceries and other necessities.

The plight of the Trapp family is similar to that of many other American families confronted with serious illness and injury. Over 43 million

Americans have no health insurance, and many millions more are under-insured. Each year, millions of families spend more than 20 percent of their income on medical care. Older Americans are hit particularly hard. Too often, each of these families and senior citizens is one serious illness away from bankruptcy.

A report recently published in Norton's Bankruptcy Adviser says,

The data reported here serve as a reminder that self-funding medical treatment and loss of income during a bout of illness or recovery from an accident make a substantial number of middle class families vulnerable to financial collapse . . . For middle class people, there is little government help, so that when private insurance is inadequate, bankruptcy serves by default as a means for dealing with the financial consequences of a serious medical problem.

The data collected in the report make clear that this problem affects both the poor and the middle class. In many cases, health insurance is insufficient to protect a family with medical problems. "The bankruptcy courts are populated not only with the uninsured, but also with those whose insurance does not cover all the financial consequences of their medical problems"—families facing medical debts that have outrun their policy limits—facing co-payments beyond their means—facing lost income not covered by their insurance.

When the health care system fails these men and women and children, the bankruptcy system catches them before they hit rock bottom. What will happen to these families if we fundamentally destroy the bankruptcy system?

What will happen to those who can't pay their bills because they were laid off in a merger or downsizing that left them without adequate income or basic benefits? Over half of all Americans say that the reason they file for bankruptcy is because of job loss. That fact is not surprising. Despite low unemployment, a record-setting stock market, and large budget surpluses, Wall Street cheers when companies—eager to improve profits by down-sizing—lay-off workers in large numbers.

Often, when workers lose a good job, they are unable to recover. In a study of displaced workers in the early 1990s, the Bureau of Labor Statistics reported that only about one-quarter of these workers were later employed in full-time jobs paying as much as or more than they had earned at the job they lost. Too often, laid-off workers are forced to accept part-time jobs, temporary jobs, and jobs with fewer benefits or no benefits at all.

For many hard-working men and women, these job benefits—particularly a pension—can be the difference between a secure retirement and poverty. But instead of action by Congress to expand pension benefits, an offensive anti-pension provision was quietly slipped into the bankruptcy reform bill at the last minute.

It is wrong for Congress to let credit card companies and other lenders pres-

sure workers to give up the protection they now have for their pensions in bankruptcy. Clearly this so-called "pension waiver" provision should be struck from the final bill.

It would also be a mistake to "cap" the amount of pension assets that a worker can protect in bankruptcy. Federal law already imposes strict limits on pension contributions. Unlike homestead abuses, retirement plans can't be used as part of a scheme to divert assets before bankruptcy.

It was the combination of a medical problem and a job loss that pushed Maxean Bowen—a single mother—into bankruptcy. Maxean told Time magazine that she was a social worker in the foster-care system in New York City when she developed a painful condition in both feet that made her job, which required house calls, impossible. As a result, she had to give up her work and go on the unemployment rolls. Her income fell by 50 percent. She had to borrow from relatives, and she used her credit cards to make ends meet. Like so many others in similar situations, she believed that she would soon be back on her feet and able to pay her debts. But, like thousands who file for bankruptcy, even when Maxean was able to work again, she owed far more than she could repay.

She was at the mercy of her creditors. "They would call me on the job . . . that was very embarrassing. They call you early in the morning. They call you late at night. Sometimes I get calls at 10 o'clock at night. And they are very nasty." Maxean tried paying her creditors a few hundred dollars when possible, but it wasn't enough to keep her bills from piling up because of interest changes and late-payment fees. Maxean said she was "going crazy."

If she was going crazy, so are many others. Reports show that by the time individuals and families file for bankruptcy protection, more than 20 percent of income before taxes is going toward paying interest and fees on their debts. Time magazine reports that study after study proves that Chapter 7 debtors have little if any ability to repay more of their debts. "The notion that debtors in bankruptcy court are sitting on many billions of dollars that they could turn over to their creditors is a figment of the imagination of lenders and lawmakers."

Maxean's plight was made worse by the fact that she is a single mother. In 1999, over 500,000 women who head their own households filed for bankruptcy to try to stabilize their economic lives. 200,000 of them are also creditors—trying to collect child support or alimony. The rest are debtors struggling to make ends meet. Divorced women are four times more likely to file for bankruptcy than married women or single men.

The House and Senate bankruptcy bills are especially harsh on divorced women and their children. Under current law, an ex-wife trying to collect

support enjoys special protection. Her claims—like very few others—survive her husband's bankruptcy and provide a realistic opportunity to collect support payments from her former husband. Under the pending bill, however, credit card companies are given a new right to compete with women and children for the husband's limited income after bankruptcy.

It is true that the bill moves support payments to the first priority position in the bankruptcy code. But that only matters in the limited number of cases in which the debtor has assets to distribute to a creditor. In most cases—close to 99 percent—there are no assets, and the list of priorities has no effect.

The claim of "first priority" in bankruptcy is a sham to conceal the real problem—the competition for resources after bankruptcy. This legislation creates a new category of debt that cannot be discharged after bankruptcy—credit card debt. And, when women and children are forced to compete after bankruptcy with these sophisticated lenders, the women and children lose.

In ways like these, the bankruptcy reform bills currently being negotiated by the House and the Senate are a travesty. They remove the bankruptcy safety net that has been a life-line for the poor and middle class. The credit card companies will receive a huge windfall, and they will walk away with few incentives to act more responsibly. And in a further insult, the House Republican negotiators want to preserve one of the most flagrant fat-cat loopholes—the ability of wealthy debtors to escape their responsibilities by using the homestead loophole in the current bankruptcy code.

The Time magazine article makes these points effectively by comparing the plight of two debtors—James Villa and Allen Smith. James Villa is a 42 year-old stockbroker living in a \$1.4 million home in Boca Raton, Florida. He was President, CEO and indirect owner of 99.5 percent of the stock of H.J. Meyers & Co., Inc—a brokerage firm with offices around the country. During the firm's heyday, Mr. Villa bought expensive cars, boats, and jewelry. But he fell on hard times when Massachusetts securities authorities found that his firm had engaged in fraudulent and unethical practices. Before further action could be taken, the firm closed its doors and Mr. Villa moved to Florida. That state has a broad homestead exemption, which allowed him to protect \$1.4 million of assets—his Boca Raton home—from creditors, including clients of the brokerage firm who had lost their savings.

How can that be fair, when Allen Smith, a retired security worker, has lost everything? Mr. Smith served in the Coast Guard during World War II and later went to work at Chrysler. He was eventually laid-off during a downsizing. Too young to collect Social Security, he started working as a security guard. He and his wife Carolyn

bought a home and lived a solid middle-class lifestyle until their lives started to crumble.

Beginning in 1984, Mr. Smith's wife lost her toe, then one leg, then the other leg to diabetes. To accommodate her disability, Mr. Smith renovated their home using money borrowed against the equity. He developed throat cancer, high blood pressure, and a heart murmur and had to leave his job. The family was \$115,000 in debt—double their annual income—so the Smiths filed for bankruptcy. They agreed to pay \$100 a month under the requirements of Chapter 13.

Carolyn Smith died later that year, and Mr. Smith was left—without her companionship or Social Security checks—to struggle alone. Eventually—after being hospitalized with a stroke, after cataract surgery, and after an irresponsible friend didn't pay his mortgage—Mr. Smith's Chapter 13 bankruptcy failed. His situation isn't unusual—two-thirds of all Chapter 13 plans fail—but the consequences were devastating. Mr. Smith will be moved to Chapter 7, and he will lose his home.

Any bill sent to the President for his signature must not make Allen Smith's life more difficult while protecting James Villa's ability to live in luxury. Congress must pass a better and fairer bill worthy of the name reform. The President should not hesitate to veto a bad bankruptcy bill that flunks the fairness test.

For over a century, the bankruptcy laws have provided needed relief for those who fall on hard times. This Congress should not be a party to unfair reforms designed to benefit the powerful credit card industry and wealthy debtors, at the expense of the large numbers of needy citizens whom the bankruptcy laws are supposed to help, not hurt.

The PRESIDING OFFICER. The Senator from Minnesota.

Mr. WELLSTONE. How much time remains?

The PRESIDING OFFICER. Under Senator KENNEDY's control, Senator WELLSTONE has 7 minutes and Senator HARKIN has 7 minutes, and, following that, Senator KENNEDY retains 2 minutes.

Mr. WELLSTONE. Mr. President, I am pleased to join Senator KENNEDY and some of my other colleagues on the floor here today to talk about the so-called bankruptcy reform bill. I spoke for about twenty minutes yesterday on the same topic and my intent then is the same as that of my colleagues today: which is to shine a line on this bankruptcy bill, and focus the attention of the Senate on what Congress is poised to do to harshly punish working families overwhelmed by debt.

Yesterday I mentioned the Bartlett and Steel article from Time magazine of last week entitled "Soaked by Congress." I commend it to my colleagues' attention. And yesterday I also read

some excerpts from that article to give colleagues an idea of what a typical family actually looks like who files for bankruptcy. In all honesty, I think many in the House and Senate were hoodwinked last year by a very clever media campaign on the part of the big banks and the credit card industry. I mean, it shouldn't be too surprising that the bill passed with the overwhelming margin that it did if you assumed that colleagues focused on the media campaign, the ad campaign, the legions of Gucci loafer wearing lobbyist that descended on the Hill. Because, frankly, I don't believe that many of my colleagues who did vote for the bill would have done so had they known then what they should know now, now that there has been some balance to the debate.

Now the House and Senate leadership have staff burning the midnight oil trying to finish this bill so that they can stick it in an unrelated conference report. But while they do that, we have 40 million Americans without health insurance who we aren't rushing emergency legislation to safeguard. The Patients' Bill of Rights is MIA in conference for almost a year. We are crawling along—actually not even crawling anymore it appears—on Education—though schools are crumbling and kids can't learn because we aren't investing what we should into their education. I mean these are real emergencies facing millions of Americans. And yet it is so-called bankruptcy reform that the House and Senate are falling all over themselves to pass. This morning I want to focus on the reasons why this bill is being moved at light speed—the false reasons as well as the real reasons.

Bankruptcy does not occur in vacuum. We know that in the vast majority of cases it is a drastic step taken by families in desperate financial circumstances and overburdened by debt. The main income earner may have lost his or her job. There may be sudden illness or a terrible accident requiring medical care. Certainly most Americans have faced a time in their lives where they weren't sure where the next mortgage payment or credit card payment was going to come from, but somehow they scrape by month to month. Still, such families are on the edge of a precipice and any new expense—a severely sick child, a car repair bill—could send a family into financial ruin. Despite the current economic expansion there are far too many working families in this situation. That is the true story behind the high number of bankruptcy filings in recent years and I want to make clear to my colleagues that the evidence shows that the very banks and credit card companies who are pushing this bill have a lot to do with why working families are in this predicament today.

The bankruptcy system is supposed to allow a person to climb back up

after they've hit bottom, to have a "fresh start." There is no point to continue to punish a person and a family once their resources are over matched by debt. The bankruptcy system allows families to regroup, to focus resources on essentials like their home, transportation and meeting the needs of dependents. Sometimes the only way this can occur is to allow the debtor to be forgiven of some debt, and in most cases this is debt that would never be repaid because of the debtor's financial circumstances. In fact, in over 95% of bankruptcy cases creditors receive no distributions from the filer's assets—not because folks are able to beat the system—but because in the vast majority of cases the debtor simply has no assets left.

The sponsors of this measure and the megabanks and credit card companies behind this bill don't like to focus on those situations. They paint a picture of profligate abuse of the bankruptcy system by irresponsible debtors who could pay their debt but simply choose not to. Such people do take advantage of the system, there is no question. But this bill casts a wider net and catches more than just the bankruptcy "abusers."

"Soaked by Congress" does an excellent job of setting the record straight. It notes that a study last year by the American Bankruptcy Institute found that only 3 percent of debtors who file under Chapter 7—where debtors liquidate assets to repay some debt while the rest of the debtor's unsecured debt is forgiven—would actually have been able to pay more of their debt than they are required to under Chapter 7. Even the U.S. Justice Department found that the number of abusive claims was somewhere between 3 percent and 13 percent. This means that the number of people filing abusive bankruptcy claims is astonishingly low. But this legislation seeks to channel many more debtors into chapter 13 bankruptcy—where the debtor enters a 3-5 year repayment plan and very little debt is forgiven. Yet in the pursuit of the few, this bill imposes onerous conditions, and ridiculous standards on all bankrupts alike. Additionally, under current law, 67 percent of the debtors in chapter 13 fail to complete their repayment plan often because they did not get enough relief from loans, and because economic difficulties continued. So this legislation would take individuals, the majority of whom desperately need a true "fresh start", and force them into a bankruptcy process which ⅔ of debtors already fail to complete successfully. And my colleagues call this reform?

Furthermore, the consumer credit industry would like this to be a debate about financial responsibility. But

what is apparently not obvious to many of my colleagues is that debt involves both a borrower and a lender. Yes, a person should be responsible for repaying money lent to them on fair terms. But is it not in the lender's interest to not over lend? Should not the banks, and the credit card companies, and the retailers bear some responsibility for the so-called bankruptcy crisis?

As high cost debt, credit cards, retail charge cards, and financing plans for consumer goods have skyrocketed in recent years, so have the number of bankruptcy filings. As the consumer credit industry has begun to aggressively court the poor and the vulnerable, bankruptcies have risen. Credit card companies brazenly dangle literally billions of card offers to high debt families every year. They encourage card holders to make low payments toward their card balances, guaranteeing that a few hundred dollars in clothing or food will take years to pay off. The lengths that companies go to keep their customers in debt is ridiculous.

So any thinking person would ask at this point. Why is the House and Senate calling out the stops to pass this bill? What's driving this bill? Well as "Soaked by Congress" notes, the big banks spent \$5 million last year specifically on bankruptcy lobbyists and another \$50 million on firms that lobbied on bankruptcy as well as other matters. I wonder how much money working families overburdened with medical bills paid to influence Congress last year? Is that why we weren't listening?

That makes this a reform issue, a basic question of good government. Regardless of how you feel about the bill, this is terrible legislating. I don't think that the 100 members of the Senate or the 435 members of the House came to Congress to be dictated to by secret committees formed by the leadership. This week we are debating education in the Senate. Can you imagine trying to explain to a 9th grade civics class what the House and Senate leadership are trying to do? They would learn how minority rights are protected in the Senate, about how there are regular procedures—high bars—for the majority to overcome to force something to passage over the objections of a determined minority. All of that goes out the window for the 4th branch of government—the conference committee.

We don't have time for debate, we don't have time for legislative battles in this Congress. We don't have time for the hallowed traditions of the Senate. Just form a secret committee and stick in an unrelated conference report in the dead of night. What is so essential about this bill that the leadership must make such a mockery of the legislative process?

The most expedient means is the best means according to this logic. But at what cost? Only a handful of power

brokers are at the table. Working families aren't represented. Seniors aren't at that table. Minorities aren't in the loop. Women and children, and single parent families weren't invited.

So I would say to my colleagues in closing, folks can make the claim that big money doesn't buy results in Congress but they won't use this bill as the poster boy for that argument. I urge my colleagues on both sides of the aisle to go to their leadership. It isn't too late to ask them to reconsider this course.

We come to the floor today as Senators to shine a light on the bankruptcy bill. I spoke about this bill for some 20 or 30 minutes yesterday. I thank two fine journalists, Bartlett and Steele, for their fine work, "Soaked by Congress." I sent this article out to every Senator. I hope my colleagues will read this article. It is about how the House and Senate were hoodwinked last year by a clever media campaign on the part of big banks and the credit card industry.

I point out not to my colleagues but, frankly, to people in the country that some of the House and Senate leadership, with the majority party taking the lead, have been burning the midnight oil trying to finish this bankruptcy bill so they can stick it into an unrelated conference report. While they do that, we have 40 million people who don't have any health insurance at all. That is not an emergency? While they do that, the patient protection bill of rights is barely moving at all. It may be crawling; it may not even be crawling. While they do that, we don't pass any kind of education measure. While they do that, there is no response to 700,000-plus mothers—Sheila and I were proud to join them this past Sunday—who came to Washington, DC. They said: We are a citizens' lobby. We will take on special interests. We will be here for our children. We will be here to reduce violence. We will be here for sensible gun control. But there has been no response to that. That is not considered to be an emergency?

But boy, oh boy, when it comes to this bankruptcy bill, some of my colleagues, some of the leadership on the other side, can't wait to stick this into an unrelated conference report. I think there is a reason for that. In the piece that Bartlett and Steele wrote called "Soaked by Congress," they do an excellent job of getting the record straight. As opposed to the media campaign by these banks and credit card companies about all of this abuse, it turns out that the American Bankruptcy Institute found only 3 percent of debtors under chapter 7 could have done any better.

Now, all in the name of a few people who abuse this system, we have families my colleague, Senator KENNEDY, talked about, with 40 percent of them in bankruptcy because of medical bills, and the vast majority of the remaining are because someone lost their job or because there has been a divorce and now they are a single parent.

What in the world is going on here? In this piece, "Soaked by Congress," Bartlett and Steele point out that big banks spent \$5 million last year specifically on bankruptcy lobbyists and another \$50 million on firms that lobbied on bankruptcy as well as other matters.

I say to my colleague Senator FEINGOLD, and my colleague Senator HARKIN, and I would say it to my colleague Senator KENNEDY if he were on the floor, this is the ultimate reform issue. We are talking about people, mainly women, mainly senior citizens, mainly working-income, maybe low-income people, people without much clout who are completely rolled by this bill.

Now we find out all about the pension grab. Now we find out about all sorts of other provisions that are egregious, that I do not have time to summarize, that I summarized yesterday. Now we find out that, given where this bill is going in conference, it is going to be even more harsh toward the most vulnerable citizens in this country. But that will not see the light of day; it will get tucked into an unrelated conference report.

I say to my colleagues, we do intend to speak out on this issue. I hope the President will make it clear he will veto this bill. It is too harsh, there are too many egregious provisions, and right now we are not conducting our business the way we ought to as the Senate.

I yield the floor.

The PRESIDING OFFICER. The Senator from Iowa is recognized for 7 minutes.

Mr. HARKIN. Mr. President, I thank Senator KENNEDY and others for getting this time to talk about the bankruptcy bill.

I must at the outset admit that due to the press of business around here, and I am not on that committee that formulated this bill, I had not really looked at the bankruptcy portions of it in depth. A lot of people I admire and have respect for have supported the bill. I supported a number of amendments. When the bill finally passed, I had some qualms about it. I voted against it. But I had not really delved into it in very much depth until a week ago, last week, when Time magazine came out with one of the longest stories I have ever seen Time magazine do. It has been mentioned by the previous two speakers, a story called "Soaked By Congress." It is 12 pages or more long.

I read it. When I read it, some memories started coming back to me of my days when I was a legal aid lawyer before coming to Congress. I was thinking about the people we represented at the low end of the economic spectrum who could not afford to get another attorney from a private law firm, and the people we took through bankruptcy. These were people at wit's end. I remember them. Often it was a woman with a couple of children, her husband

took off, there was illness in the family, she racked up a lot of bills, and she had nowhere to go.

At that time in Iowa, we were also debating a bill in the Iowa Legislature to limit the amount of interest that could be charged on a credit card. The Iowa Legislature in fact at that time passed a limit of 15 percent. It did not hurt the State at all. I remembered that, reading this article.

When you heard the debate out here on the bankruptcy bill, you would think these were people out living high on the hog, going to the best restaurants, taking foreign vacations, driving Mercedes Benz cars and BMWs, they have beautiful homes and stuff, and all of a sudden they decide they have been living the life of Riley and they do not want to pay their dues, so they go into bankruptcy court. That is the image of the average person filing bankruptcy that came out here on the Senate floor during that debate. That is a very bad misrepresentation.

As the Time magazine article pointed out, the median characteristics of a person discharging chapter 7 bankruptcy: Gross income, \$22,800—gross; reported expenses, \$20,592; total debt, \$42,000, of which miscellaneous debt—medical bills is about \$10,000; unsecured debt, credit card, about \$23,000; and secured debt, a car, about \$9,000.

Another thing I remembered from my days as a legal aid lawyer: Most of the people going into bankruptcy were women. It has not changed. As the Time magazine article points out, 497,000 single women filed for bankruptcy last year compared to only single 367,000 men.

What are the reasons? Because of a job loss, 51 percent; 46 percent because of medical reasons; 19 percent because of a family breakup. The reason that adds up to more than 100 percent is that people said: I lost my job and my family broke up. That is why most people are going into bankruptcy court today, not because they have been living high on the hog and they are out there trying to get away.

We heard statements made on the floor that bankruptcy is not as shameful as it used to be. I beg to differ. Most of the people who go into bankruptcy court are embarrassed, they are ashamed. I remember them from my days as a legal aid lawyer. They fell on hard times, the interest charges keep piling up and piling up, and they could never get ahead of it. They have kids to care for, and they have expenses they have to keep up just to take care of their families. That is who is going into bankruptcy court. It is not because of living high on the hog.

The real deviousness of the expected final version of the bill, what is really bad, is, for example, as Time magazine pointed out, an individual who had made millions of dollars sort of scamming the system on investments—Villa, his name is. James Villa is a 42-year-old one-time stockholder who lives in a \$1.4 million home in Boca

Raton. They contrasted him to 73-year-old Allen Smith, a retired autoworker with throat cancer who lives in an \$80,000 home in Wilmington, DE.

They go through the whole story. I do not have the time. You can read it. But Villa profited handsomely, he bought Ferraris, he bought a \$22,000 Rolex watch for his wife, a 3-carat \$44,000 wedding ring, \$9,000 diamond earrings. In October 1988, Massachusetts securities authorities ruled he had been engaging in fraudulent and unethical practices. They revoked their broker-dealer registration. He packs up, moves to Florida, takes his money, and buys this huge \$1.4 million house. Guess what. It is beyond the reach of his creditors thanks to the homestead exemption in Florida.

How about 73-year-old Allen Smith of Wilmington, DE? He served in World War II, worked hard all his life as an auto mechanic, and, guess what. He lost his job, then his world started falling apart, and now he has cancer. He has filed chapter 13, and now they can take his house away from him.

We stopped that abuse in the Senate version of the bill. But, unfortunately, I am told that the loophole filled provision in the House that will allow this practice to continue is likely to be in the final measure. This bill is bad, it is getting worse.

The PRESIDING OFFICER (Mr. ENZI). The time of the Senator has expired.

Mr. FEINGOLD. How much time do Senators KENNEDY and WELLSTONE have remaining?

The PRESIDING OFFICER. Senator KENNEDY has 5 minutes remaining.

Mr. FEINGOLD. I ask unanimous consent I be yielded Senator KENNEDY's time.

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

Mr. FEINGOLD. Mr. President, I am pleased to join my colleagues on the floor this morning to talk about the bankruptcy bill. We need to talk about this bill because what is now going on is that those who desperately want to pass the bill are acting in secret to try to avoid the public scrutiny that might lead to some changes in the bill that will benefit average people.

The latest rumor is that the bankruptcy bill's sponsors want to combine it with the "e-signature" bill and a bill that has never even been considered on the Senate floor—the bill to increase the number of H-1b visas—and bring it to us as a package. Supposedly this will make it more appealing to some people who oppose one or another of those bills. But I think combining major pieces of legislation in a package like this just makes things worse. We are talking here about doing an end run around the legislative process simply to get things done for a narrow set of special interests. I think that's a disgrace and I hope my colleagues will resist it.

This is a bill that gets worse the more you look at it. I am disturbed by

reports that the final bill will look more like the House-passed bill than the bill that passed the Senate. But it does not surprise me that this is happening, since a bill that is worked out behind closed doors is much more likely to favor powerful financial interests. A public process generally serves the public interest. So no one should be shocked that the private process that the bill's proponents have been following is going to yield a bill that leaves the public behind.

I commend to all my colleagues a major investigative story in the May 15th issue of Time Magazine by reporters Donald Bartlett and James Steele. Bartlett and Steele have done a masterful job in explaining how bankruptcy reform legislation ended up being a wish list for the credit card industry. Even more important, they show us the kinds of people who will be hurt by this bill—honest debtors who are down on their luck, forced into bankruptcy by the loss of a job or divorce or catastrophic medical bills. The bill is particularly detrimental to the interests of women. They constitute the largest segment of bankruptcy filers in 1999. These are the people that this bill turns its back on, at the same time that it gives the credit card industry virtually everything that it asked for.

Now I don't deny that there is need for some reform in our nation's bankruptcy laws. But what happened with this bill is that when monied interests were given an inch to correct some abuses they took a mile. One area that I devoted a lot of time to on the Senate floor was the treatment of tenants under this bill. The landlord-tenant provision of this bill is typical of the sledgehammer approach that the bill takes to alleged abuses by people declaring bankruptcy.

It started with stories of people repeatedly filing for bankruptcy in order to avoid paying rent. But to address that situation a provision was inserted in the bill that completely eliminates the protection of the automatic stay for tenants in bankruptcy. And when I suggested in an amendment that tenants who had never before filed for bankruptcy and were willing to pay their rent during the bankruptcy proceedings should be protected from being thrown out on the street, the proponents of this bill said no. The National Association of Realtors and other groups representing landlords adamantly opposed any weakening of the extreme provision in the bill. And they got their way.

That is the kind of excess that you get in legislation when one side is dumping money into the process and the other side is not or cannot. Common Cause just put out a stunning report recently on the amount of money that the credit industry has contributed to members of Congress and the political parties in recent years. \$7.5 million in 1999 alone, and \$23.4 million

in just the last three years. One company that has been particularly generous is MBNA Corporation, one of the largest issuers of credit cards in the country. In 1998, MBNA gave a \$200,000 soft money contribution to the Republican Senatorial Committee on the very day that the House passed the conference report and sent it to the Senate.

This year, MBNA gave its first large soft money contribution ever to the Democratic party—it gave \$150,000 to the Democratic Senatorial Campaign Committee on December 22, 1999, right in the middle of Senate floor consideration of the bill.

So it is no mystery to me why this bill is so anti-consumer, and I don't think it's a mystery to the public either. The bill contains precious little to address abuses by creditors in debt collection and reaffirmation practices, and it contains very weak credit card disclosure provisions. The credit card industry has ridden the rise in personal bankruptcies to get the changes in the law that it wants, but has resisted efforts to inform consumers of the risks of overuse of credit cards. Better disclosure might reduce the number of bankruptcy filings in this country, but the credit industry has successfully prevented the Congress from requiring such disclosure.

There is still time to step back from the brink. Nonpartisan experts have many recommendations to reform the bankruptcy laws in a balanced and fair way to get at the abuses, without causing undeserved misery to thousands of powerless and defenseless Americans. Let's listen to them rather than the credit card issuers who are lining our campaign treasuries.

I again thank the Senators from Massachusetts, Minnesota and Iowa and my other colleagues who are here this morning to call attention to this crucial issue, and I yield the floor.

The PRESIDING OFFICER. The Chair recognizes the Senator from Delaware for up to 10 minutes.

SUPREME COURT DECISION IN U.S. v. MORRISON

Mr. BIDEN. Mr. President, I attended the Million Mom March with my wife. I do not think anyone should misunderstand the significance and consequence of so many mothers and a number of fathers giving up Mother's Day to make an important point. These were not a bunch of wild radicals. These were a bunch of moms from rural areas, inner cities, and suburban areas. They were black, they were white, Hispanic, Asian American. They were basically making a plea. As I stood there and listened, I was reminded of a quote attributed to John Locke speaking about someone he heard. He said:

He spoke words that wept and shed tears that spoke.

I do not know how anyone could have attended any significant portion of that march and not felt, as John Locke

felt, listening to the words these women spoke that wept and the tears they shed that spoke volumes about the insanity of our policy.

Irony of all ironies; the next day, on Monday, the Supreme Court hands down a decision, not about guns but about the protection and empowerment of women in society. Yesterday, in *United States v. Morrison*, the Supreme Court struck down a provision of an act that I spent 8 years writing and attempting to pass—six of which were in earnest—the so-called Violence Against Women Act. There is one provision of that act they struck down and only one provision. That is the provision that empowered women to take up their cause in Federal court to make the case they were a victim of sexual abuse because, and only because, of their gender and to sue their attacker for civil damages in Federal court; empowering women to not have to rely on the prosecutorial system or anyone else to vindicate the wrong that had been done to them if they can supply the proof.

As the author of that act, I must tell my colleagues that I was disappointed by the Court's decision but, quite frankly, not surprised by it.

I emphasize, though, the *Morrison* case struck down the civil rights cause of action women have in Federal court, no other part of the act. Nothing in the Court's decision yesterday affects the validity of any other provision, any other program, or the need to reauthorize these programs through my bill, the Violence Against Women Act II, which now has 47 cosponsors.

Unfortunately, I believe the Court's ruling yesterday will have a significant impact on Congress' ability to respond to public needs in a way that has not been constrained since the 1930s. The Court has been inching toward this decision and this line of reasoning in case after case over the last several years. The Court has grown bolder and bolder in stripping the Federal Government of the ability to make decisions on behalf of the American people, part of the objectives of the Honorable Chief Justice, who believes in the notion of devolution of power and thinks that the Federal Government should have significantly less power.

The Court's decision—and these have all been basically 5-4 decisions—in *United States v. Lopez* in 1995 struck down the Gun-Free School Zones Act, a decision upon which the Court heavily relied in the *Morrison* case in striking down the civil rights remedy.

In the case of *Boerne v. Flores*, a 1997 case, the Court struck down the Religious Freedom Restoration Act. Again, this is not mostly about what act they like and do not like; it is about Congress' power. Those who thought we should not be dealing with guns were happy with the *Lopez* case substantively. Those who thought we should have more religious freedom in public places, our conservative friends—and I happen to agree with

them on that point—were disappointed when the Supreme Court reached in and said as to section 5 of the 14th amendment, which is the provision which says the Congress shall determine how to enforce the 14th amendment, no, no, no, Congress is not the one; we—the Court—are going to decide.

There, then, was another decision, the Supreme Court's watershed decision in the *Seminole Tribe of Florida v. Florida*, a 1996 decision, and the cases that followed, in which the Court limited Congress' ability to authorize private citizens to vindicate Federal rights in lawsuits against their States, and that included the Fair Labor Standards Act and the Age Discrimination Act.

Putting it in simple terms, if the State of Florida discriminated against somebody in State employment because of age in violation of the Federal act, the Court said: Sorry, Florida has immunity. A Federal Government cannot protect all Americans against age discrimination because of a new and novel reading of the 11th amendment.

The Court's decision today is at peace with those rulings. Fundamentally, this decision is about power. Who has the power, the Court or the Congress, to determine whether or not a local activity, such as gender-motivated violence, has a substantial impact on interstate commerce? Yesterday the Court said it: The Court has this power—echoes of 1920 and 1925 and 1928 and 1930, the so-called *Lockner* era.

I find it particularly striking the Court acknowledged in *Morrison* that in contrast to the lack of congressional findings supporting the law struck down in *Lopez*, the civil rights remedy is supported by numerous findings regarding the serious impact of gender-motivated violence on interstate commerce. I conducted 4 years of hearings to make that record.

We showed overwhelmingly that the loss of dollars to the economy of women being battered and abused and losing work is billions of dollars. We showed overwhelmingly that women make decisions about whether to engage in a business that requires them to cross State lines based in significant part upon the degree to which they think they can be safe, based upon a survey of 50 State laws, and whether or not they adequately protect women as they do men against violence.

The record is overwhelming. Nonetheless, instead of applying the rule they had traditionally applied in determining whether Congress has the right to be involved in what is a local matter, they came up with a new standard.

Instead of applying the old standard of: Is there a rational basis for Congress to find, as they did, the traditional "rational basis review" to decide whether Congress' findings in this case were rational—and I cannot conceive of how they concluded they could not be—the Court simply disagreed with the