

now, and we are not going to make the kind of commitment to the IDEA program, children with special needs, funded at only 14 percent when it should be funded at the 40-percent level, or we are not going to make the commitment to decent, affordable child care so children can come to school, kindergarten ready, or we are not going to make a commitment to expanding health care coverage for citizens in our country when so many people go without health security, either because they have no coverage or they can't afford their coverage—it seems to me this is the place where Democrats can draw the line. We don't need to have acrimonious debate, but we do need to have substantive debate, I argue passionate debate.

Frankly, I put all of my faith in people in Minnesota and around the country, when it comes to the question of priorities. To me, what we have is distorted priorities. We have a tax cut program, Robin Hood in reverse. Over 40 percent of the benefits are going to the top 1 percent. There is no standard of fairness when it comes to tax relief for people, tax relief for families. Moreover, nobody should kid anybody; this will erode the revenue base and make it practically impossible to make any of the investments that we say we are going to make when it comes to children, when it comes to education, when it comes to health care, when it comes to affordable prescription drug costs.

The vast majority of the people in the country, if they understand this is the choice, want to see us do more by way of investing in education, investing in children, investing in health care, investing in their families, investing in our communities.

This will become the axis of the debate of the Senate and I think American politics. I believe it is very important the Democrats draw the line in a very firm way.

I say to my colleague, Senator GRASSLEY, I have some amendments I am ready to introduce to the bankruptcy bill. I asked unanimous consent I be able to proceed. I assume that is all right with the manager.

Mr. GRASSLEY. I wonder if the Senator will provide copies of the amendments. We want to know with what we are working.

Mr. WELLSTONE. I am more than pleased to provide copies. Many requests are unreasonable, but this is not.

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#### CONCLUSION OF MORNING BUSINESS

The PRESIDING OFFICER (Mrs. CLINTON). Morning business is closed.

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#### BANKRUPTCY REFORM ACT OF 2001

The PRESIDING OFFICER. Under the previous order, the Senate will now resume consideration of S. 420, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 420) to amend title 11, United States Code, and for other purposes.

#### Pending:

Schumer amendment No. 25, to ensure that the bankruptcy code is not used to exacerbate the effects of certain illegal predatory lending practices.

Feinstein amendment No. 27, to place a \$2,500 cap on any credit card issued to a minor, unless the minor submits an application with the signature of his parents or guardian indicating joint liability for debt or the minor submits financial information indicating an independent means or an ability to repay the debt that the card accrues.

Leahy amendment No. 20, to resolve an ambiguity relating to the definition of current monthly income.

Conrad modified amendment No. 29, to establish an off-budget lockbox to strengthen Social Security and Medicare.

Sessions amendment No. 32, to establish a procedure to safeguard the surpluses of the Social Security and Medicare hospital insurance trust funds.

Mr. WELLSTONE. Madam President, I will summarize these amendments before we get into whatever debate might take place. I say to the Senator from Iowa, as he looks over the amendments, one of the amendments I am hoping will meet with his approval. Let me explain them very quickly and then go into the payday loan amendment.

The first amendment is protecting the legal rights of retirees of bankrupt companies. This amendment simply clarifies companies in bankruptcy must fulfill their legal obligations as plan administrators and plan sponsors of employee and retirement benefit plans. I think Senator SESSIONS has some interest in this amendment, as well.

Companies occasionally stop administering benefit programs during bankruptcy. This means retiree benefit plans are left without anybody in charge, which results in the failure to pay out benefits to workers such as reimbursements for covered health care costs. This often occurs toward the end of bankruptcy, either a 7 or 11, when there is not much left of the business. The company's management and bankruptcy trustees are trying to wind up the business, and the benefit programs quite often end up falling between the cracks.

I have a specific situation in Minnesota but I know Senator SESSIONS and others can talk about this in their own States. In Minnesota, LTV Corporation shut down and 1,300 people are out of work. People have no jobs. They are out of work. Those out of work, the younger workers, are terrified they will lose their health care coverage in 6 months. Those who worked longer will lose coverage within a year. But the retirees are terrified they will not have their health care benefits any longer after the bankruptcy proceeding. The persons ordinarily responsible for the management of the benefits programs may have been laid off and those who remained refuse to administer the plan. This can happen.

Or it may be a "lights out bankruptcy" where the power is shut off,

the doors are locked, and all functions of the company cease. However, even in these cases, the firm is required to either terminate any benefit plans or to continue to administer them.

This is what our amendment does. We don't impose any new burdens on the companies. The companies are already required by law to continue to administer the plans that have not been terminated or to administer plans that are part of the trust. This amendment simply results in companies fulfilling their current legal obligations without any expensive litigation on the part of the workers. We are just trying to codify this into law.

Let me talk about how this helps LTV workers and retirees. Health care and other benefits for retirees at LTV are guaranteed by a trust fund known as the Voluntary Employee Benefit Association Trust Fund, also referred to as the VEBA trust funds. The trust cannot be wiped out even if LTV is liquidated in bankruptcy, but LTV must administer the VEBA for workers to get any of the benefits and guarantees. We have no reason to believe as of now that LTV will not fulfill its obligation to administer the VEBA. This amendment simply provides added assurance in case the worst happens. So it is an important amendment for a lot of retirees who are worried that somehow through the bankruptcy processes companies are not going to provide them with their retiree benefits.

I will give a real-world example of the worst case scenario. In August of 2000, Gulf States Steel in Alabama locked its doors after failing to conclude a chapter 11 reorganization. Over 1,000 steelworkers immediately, and with little warning, lost their jobs. The union had ordered a VEBA trust as part of the workers' contract. That trust, made up of employee contributions, is intended to cover the costs of retiree health plans under just this scenario.

Gulf States still refuse to administer the trust so the assets and income are not being used to cover the workers' health care costs.

Since September of last year, Gulf States retirees have effectively had no health care coverage because they cannot access the resources of their own VEBA.

Absent the changes made in the bankruptcy law by this amendment, the union will be forced to file an expensive and lengthy lawsuit to force the company to comply with the law. The lawsuit could take months—for all I know, it could take years—to resolve and will do little to address the immediate needs of the retirees. Again, as the several examples I have given indicate, I think this is almost a fix.

I am hopeful there will be support for this amendment. It is certainly the right thing to do. It is one of several amendments I want to lay down.

The second amendment is the payday loan amendment. I assume since we are talking about this today that there

may be some time to talk about it. This is an amendment to protect the legal rights of retirees of bankrupt companies which I hope fits in with my colleague's definition of reform.

The second amendment I propose is an amendment that almost passed last Congress. I hope it will pass this time. It will curb a form of predatory lending which targets low- and moderate-income families.

I apologize for having to read. Usually I don't do that. But I am not a lawyer. I find some of these proposals and some of the language of bankruptcy to be technical and not all that easy.

This amendment would prevent claims in bankruptcy on high-cost credit transactions in which the annual interest rate exceeds 100 percent.

I know my colleague from Iowa doesn't much like the payday loan amendment. I know that. I have heard him speak about it. That is what I am talking about, these payday loans and car title pawns.

Payday loans are intended to extend small amounts of credit—typically \$100–500—for an extremely short period of time—usually a week to two weeks. The loans are marketed as giving the borrower “a little extra till payday,” hence the term payday loan. The loans work like this: the borrower writes a check for the loan amount plus a fee. The lender agrees to hold the check until an agreed upon date and give the borrower the cash. On the due date, the lender either cashes the check or allows the borrower to extend the loan by writing a new check for the loan amount plus an additional fee. But calculated on an annual basis, these fees are exorbitant. For example, a \$15 fee on a two week loan of \$100 is an annual interest rate of 391 percent. Rates as high as 2000 percent per year have been reported on these loans.

I am just saying I don't think that crowd ought to have claims under bankruptcy that are resolved for these high-cost transactions with the kind of exorbitant and outrageous interest they can charge.

Car title pawns are one month loans secured by the title to vehicles owned by the borrower. Typical title pawns cost 300 percent interest. Consumers who miss payments have their cars repossessed. In some States, consumers do not receive the proceeds from the sale of repossessed vehicles—even if the value of the car far exceeds the amount of the loan! For example, a borrower might put up their \$2000 car as collateral for a \$100 car title loan—at an outrageous interest rate—and if the borrower defaults, the lender can take the car, sell it, and keep the full \$2,000 without returning the excess value back to the borrower. Such schemes are almost more lucrative if the borrower does default! Often, the borrower is required to leave a set of keys to the car with the lender, and if the borrower is even one day late with a payment he might look out the window and find the car gone.

I don't think these kind of lenders ought to be given special treatment. Nobody needs to charge this type of interest rate for a loan. Indeed, this industry is grossly profitable as a result. An investors report by Stephens Incorporated on the industry stated that an operator of a payday lending establishment could expect a return on investment of 48 percent in nine months to a year and could expect profit margins to be in excess of 30 percent! As a result, the payday loan industry has exploded in growth in states with favorable regulatory systems and many more states have changed their laws to allow this type of lending. California has seen 1,600 payday loan store fronts spring up since the legislature made the business legal in 1997. Wisconsin went from 17 store fronts in 1995 to 183 in early 1999. Stephens Inc. 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.

I say to my colleague, these sleazy debt merchants expanding their tentacles into our cities and towns is the mirror image of the retreat of mainstream financial institutions from these same communities.

Poor people are forced to get their loans from these loan sharks. As banks merge and close branches, their former customers—often unable to access the new, consolidated locations—have little choice but to deal with the seamy underbelly of the financial services industry.

That is what I am talking about. And the Stephens report notes, that even with the market saturated, lenders need not expect losses in profits which is further evidence that the payday lender truly has a captive customer base who has little market power to drive prices down.

We are talking about the exploitation of vulnerable citizens and poor people who are charged outrageous interest rates, and we should do something about it.

This was a close vote last time. I expect to win the vote on this amendment this time.

The worst part is that many borrowers are unable to pay the loan when it comes due. They then extend the loan, for another fee and then extend it again. Often such borrowers may end up carrying several payday loans and rolling them over from week to week as the fees skyrocket. Additionally, there is a perverse incentive for the lender to encourage the borrower to defer payment on the loan, because of the additional fee that the lender can charge for deferring the loan for another week or two weeks. It is fine for these unscrupulous loan sharks to extend the loan. According to an analysis by brokerage firm Piper Jaffrey as reported in the Washington Post, “established customers” of one payday lender

engage in 11 transactions per year and could end up paying \$165 to \$330 for a \$100 loan.

The following from the June 18, 1999 New York Times is typical of the horror stories associated with payday lending, quote:

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 a way to get out of it.”

Madam President, I could go on and on. I think my colleagues know what this is about. Let me just simply say, there is no question that these high-interest-rate loans take advantage of low- and moderate-income working people. On the face of it, paying 300 percent or 500 percent or 800 percent for a \$100 loan or \$200 loan is unconscionable, but that is exactly the issue. These folks may not always have a choice.

Often borrowers turn to payday lenders and car title pawns because they cannot get credit any other place. So these borrowers are a captive audience, unable to shop around to seek the best rates, are uninformed about their choices, and unprotected from coercive collection practices. There is no way the borrower can win. At best they are robbed by high interest rates, and at worst their lives are ruined by a \$100 loan which spirals out of control.

These loans, I say to my colleague from Iowa, and others, 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 debtors can get a true fresh start and so more responsible lenders' claims are not “crowded out” by these shifty operators.

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? Lenders should not be able to take advantage of their customers' vulnerability through harassment and coercion.

My amendment simply says, if you charge over 100 percent annual interest on a loan, and the borrower goes bankrupt, you cannot make a claim on that loan or the fees from that loan. In other words, the borrower's slate is wiped clean of your usurious loan, and he or she gets a fresh start. Additionally, such lenders will be penalized if they try to collect on their loan using coercive tactics.

I say to Senators, I am going to repeat this one more time today. And I assume tomorrow, before the vote, I will have a chance to summarize.

The amendment says, if you charge over 100 percent annual interest on a loan, and the borrower goes bankrupt, you cannot make a claim on that loan or the fees from that loan. These borrowers are going to be wiped clean of the lender's usurious loan, and they get a fresh start. Additionally, what this amendment says is that these lenders are going to be penalized if they try to collect by using coercive practices.

I do not know how anybody can vote against this amendment. But that has happened to me before on the floor of the Senate. I have said that. Amendments do not always get adopted. This amendment should be adopted.

This amendment is a commonsense solution to the problem I have described. It allows the Senate to send a message to loan sharks. We say this to these loan sharks: If you charge an outrageous interest rate, if you profit from the misery and misfortune of others, if you stack the deck against the customers so they become virtual slaves to their indebtedness, you can get no protection in bankruptcy court for your claims.

I say to my colleagues on the other side of the aisle, and, as I have found out, Democrats, you should support this amendment. If a lender wants to make these kinds of loans, under my amendment, the lender can do it. But if he wants to be able to file claims in bankruptcy, he or she could charge no more than 100 percent interest. I do not believe any of my colleagues would come to the floor to claim that 100 percent interest is an unreasonable ceiling. This amendment is in the spirit of reducing bankruptcies. I believe it will significantly improve the bill, and I urge its adoption.

I have just one other amendment to discuss.

AMENDMENT NO. 35

Mr. WELLSTONE. Madam President, I have three amendments at the desk. I ask unanimous consent, they be reported separately.

The PRESIDING OFFICER. Without objection, it is so ordered. The pending amendment is set aside, and the clerk will report the amendments.

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE] proposes an amendment numbered 35.

Mr. WELLSTONE. I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To clarify the duties of a debtor who is the plan administrator of an employee benefit plan)

At the appropriate place, insert the following:

**SEC. \_\_\_\_ . DUTIES WITH RESPECT TO A DEBTOR WHO IS A PLAN ADMINISTRATOR OF AN EMPLOYEE BENEFIT PLAN.**

(a) IN GENERAL.—Section 521(a) of title 11, United States Code, as so designated by section 106(d) of this Act, is amended—

(1) in paragraph (4), by striking “and” at the end;

(2) in paragraph (5), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(6) unless a trustee is serving in the case, if at the time of filing, the debtor, served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002)) of an employee benefit plan, continue to perform the obligations required of the administrator.”

(b) DUTIES OF TRUSTEES.—Section 704(a) of title 11, United States Code, as so designated and otherwise amended by this Act, is amended—

(1) in paragraph (10), by striking “and” at the end;

(2) in paragraph (11), by striking the period at the end and inserting “; and”; and

(3) by adding at the end the following:

“(12) where, at the time of the time of the commencement of the case, the debtor served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002)) of an employee benefit plan, continue to perform the obligations required of the administrator.”

(c) CONFORMING AMENDMENT.—Section 1106(a) of title 11, United States Code, is amended by striking paragraph (1) and inserting the following:

“(1) perform the duties of the trustee, as specified in paragraphs (2), (5), (7), (8), (9), (10), (11), and (12) of section 704.”

Amend the table of contents accordingly.

AMENDMENT NO. 36

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE] proposes an amendment numbered 36.

Mr. WELLSTONE. I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To disallow certain claims and prohibit coercive debt collection practices)

At the end of subtitle A of title II, add the following:

**SEC. 204. DISALLOWANCE OF CERTAIN CLAIMS; PROHIBITION OF COERCIVE DEBT COLLECTION PRACTICES.**

(a) IN GENERAL.—Section 502(b) of title 11, United States Code, is amended—

(1) in paragraph (8), by striking “or” at the end;

(2) in paragraph (9), by striking the period at the end and inserting “; or”; and

(3) by adding at the end of the following:

“(10) such claim arises from a transaction—

“(A) that is—

“(i) a consumer credit transaction;

“(ii) a transaction, for a fee—

“(I) in which the deposit of a personal check is deferred; or

“(II) that consists of a credit and a right to a future debit to a personal deposit account; or

“(iii) a transaction secured by a motor vehicle or the title to a motor vehicle; and

“(B) in which the annual percentage rate (as determined in accordance with section 107 of the Truth in Lending Act) exceeds 100 percent.”

(b) UNFAIR DEBT COLLECTION PRACTICES.—

(1) IN GENERAL.—Section 808 of the Fair Debt Collection Practices Act (15 U.S.C. 1692f) is amended—

(A) in the first sentence, by striking “A debt collector” and inserting the following:

“(a) IN GENERAL.—A debt collector”; and

(B) by adding at the end the following:

“(b) COERCIVE DEBT COLLECTION PRACTICES.—

“(1) IN GENERAL.—It shall be unlawful for any person (including a debt collector or a creditor) who, for a fee, defers deposit of a personal check or who makes a loan in exchange for a personal check or electronic access to a personal deposit account—

“(A) to threaten to use or use the criminal justice process to collect on the personal check or on the loan;

“(B) to threaten to use or use any process to seek a civil penalty if the personal check is returned for insufficient funds; or

“(C) to threaten to use or use any civil process to collect on the personal check or the loan that is not generally available to creditors to collect on loans in default.

“(2) CIVIL LIABILITY.—Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 813 for failure to comply with a provision of this title.”

(2) CONFORMING AMENDMENT.—Section 803(6) of the Fair Debt Collection Practices Act (15 U.S.C. 1692a(6)) is amended by striking “808(6)” and inserting “808(a)(6)”.

On page 253, line 15, insert “as amended by this Act,” after “Code,”.

On page 253, line 16, strike “period” and insert “semicolon”.

Amend the table of contents accordingly.

AMENDMENT NO. 37

The assistant legislative clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE] proposes an amendment numbered 37.

Mr. WELLSTONE. I ask unanimous consent reading of the amendment be dispensed with.

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

The amendment is as follows:

(Purpose: To provide that imports of semi-finished steel slabs shall be considered to be articles like or directly competitive with taconite pellets for purposes of determining the eligibility of certain workers for trade adjustment assistance under the Trade Act of 1974)

At the appropriate place, insert the following:

**SEC. \_\_\_\_ . DETERMINATION OF ELIGIBILITY FOR TRADE ADJUSTMENT ASSISTANCE IN CASES INVOLVING TACONITE PELLETS.**

For purposes of determining, under section 222 or 250 of the Trade Act of 1974 (19 U.S.C. 2272 and 2331), the eligibility of a group of workers for adjustment assistance under chapter 2 of title II of the Trade Act of 1974, increased imports of semifinished steel slabs shall be considered to be articles like or directly competitive with taconite pellets.

Mr. WELLSTONE. Madam President, again, I say to my friend from Iowa, there are three amendments I have on the floor. I assume we will have debate about payday loans. I say to my colleague from Iowa—I know what he believes—I do not believe these loan sharks should get the same protection under this bankruptcy bill, and I am hoping to get his support.

The first amendment that I talked about earlier, which clarifies that the companies in bankruptcy must fulfill their legal obligations as plan administrators and plan sponsors, is an amendment that we may or may not have to

debate. I am hoping to get full support for it.

The third amendment I have offered is an amendment—and I say to my colleagues, I think Senator DAYTON will either be down here later today or tomorrow to speak about these amendments, both on the protection of retirees and also this trade adjustment assistance amendment to the bankruptcy bill.

Madam President, this is a hugely important amendment. Both Senators from Michigan are cosponsors of the bill, and they may want to speak on this amendment. Again, I say to my colleague from Iowa, it may very well be that Senator BAUCUS may come down, and we may have a colloquy on this and talk about other ways of trying to accomplish the same goal, but I offer the amendment today as a basis for the discussion that we are going to have.

This amendment goes to why all too many people find themselves in bankruptcy. We have a situation where many taconite workers in Michigan, and certainly in northeast Minnesota, have now lost their jobs, and some are losing their jobs. The problem is, when it comes to trade adjustment assistance, which is a lifeline program, where these workers, whether they are in their 30s or 40s or 50s, are provided with some financial help, be it income, be it being able to go back to school, be it money for relocation—we do not know yet, we are going to be talking to the Secretary of Labor on Wednesday about this—but we are very concerned that the taconite workers are not included.

In other words, the flaw to trade policy right now, which affects trade adjustment assistance, is that these taconite workers are not viewed as being in competition with slab steel or semi-finished steel that comes to the market. We have had an import surge of slab steel and semifinished steel. And when it comes into this country, with this import surge, all of the trade legislation will say to steel workers: You will be eligible for trade adjustment assistance when you are competing with foreign steel and, for whatever reason, there is an import surge. But in this highly integrated industry, the shame of it and the flaw to this is that taconite workers are not covered.

The reason I talk about this as an amendment to the bankruptcy bill is, look, if you lose your job—next to medical bills, the other two reasons most people file for bankruptcy is loss of job or divorce. In the iron range in Minnesota there is a tremendous amount of economic pain. Senator DAYTON and I are in a rush to try to get as much help to these workers as possible, just as any Senator, Democrat or Republican, would be doing the same for people in their State.

I have introduced this amendment. There may come a time when I will have a discussion with Senator BAUCUS as to other ways we can approach this.

There is a meeting with Secretary Chao on Wednesday. Senator DAYTON is very engaged in this as well. We are doing it together. This may be an amendment on which we may not have an up-or-down vote because we might be able to move it forward with some other way of getting at it.

It is a huge problem. These workers are out of work, and they are not eligible for the trade adjustment assistance. The same import surge that is affecting them affects other workers. We are just desperately trying to work out a fix to get them some help. It may be that I could do that with Senator BAUCUS and Senator GRASSLEY and others in another way.

This is not some trump political thing I am doing. It is very painful to see people who are so desperate and who fall between the cracks and are not getting the help they need.

Those are the three amendments I have. I know there are other colleagues who are coming to the floor. I will wait to see what kind of response there is from the other side. I am hopeful we can at least have this one amendment incorporated into this bill that will provide retirees with some protection. I am hoping the amendment will be accepted. I believe Senator SESSIONS may also be engaged on this question. I am hopeful.

On the payday loan, I wait to hear from my colleagues from the other side.

I yield the floor.

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

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

Mr. LOTT. Madam President, it is my understanding that three amendments have been offered today by Senator WELLSTONE. Would the Senator clarify? Has he offered three amendments that are now pending for discussion, or does he intend to do so? What is the status on his amendments?

Mr. WELLSTONE. The majority leader is correct. I was here in the beginning of the debate last week and I offered one. I have offered three now. I have a number of other amendments to offer, but I have offered three; correct.

Mr. LOTT. I understand there are still some 80-plus amendments to be disposed of just from the other side of the aisle. I guess there are probably a dozen or more on this side of the aisle, not counting the relevant amendments that were identified from the list that might be offered. So we still have a lot of work to do.

I do know that on Friday, and today, some work was accomplished. Senator WELLSTONE is certainly carrying through with his commitment to offer amendments dealing with bankruptcy.

I know the staffs have been working on both sides to see if we can find a way to complete this without the necessity of a cloture vote this week. However, we have to dispose of this bill this week.

As Senator DASCHLE and I discussed on the floor last Thursday, it is our intent to offer a cloture today or tomorrow, to make sure we have enough time to complete this very important legislation. It is my intent—and I see Senator DASCHLE here now—to file cloture in order to assure passage of the bill this week. If we can make substantial progress by Wednesday, or if some agreement can be reached that would limit the number of amendments, certainly I would be open to that.

I think the record is clear. I have repeatedly tried to move this legislation and I have tried to be respectful of the committee process, which we have followed, and also to be respectful of the Senator from Minnesota, who feels strongly about this legislation, as others do. It is time that we make sure we get it completed this week.

I am prepared to send a cloture motion to the desk to the pending legislation. Before I do that, I say to Senator DASCHLE I will be glad to yield for any comment he might have.

Mr. DASCHLE. Madam President, I appreciate Senator LOTT's expression of intent here. As we said last week, there is a real hope that we can resolve whatever procedural difficulties we face in accommodating the desire the majority leader has noted: that we schedule a vote for final passage sometime before the end of this week.

It is clear now we really do have a number of pieces of legislation that have to be addressed, including campaign finance reform as early as next Monday or Tuesday. In order to accommodate that schedule, it would be best if we could complete our work on this bill before Friday.

I will be supportive of whatever procedural arrangements we can make that respect the rights of Senators on both sides to be heard. I want to accommodate those Senators who may have amendments that will fall if cloture is invoked, if we can address those amendments first early in the week so we can make sure those who have other ideas and other proposals can be accommodated.

I will work with the majority leader to try to find a way to schedule a vote on cloture, if it comes to that, perhaps later in the day on Wednesday. Our preference is later in the day to accommodate those Senators, with an expectation that we can certainly finish the bill by Friday. I will work with our colleagues to see what arrangements best suit their needs.

Mr. WELLSTONE. May I ask a question of my colleagues?

Mr. LOTT. I am not clear, I may have yielded the floor.

Mr. DASCHLE. I yield to the Senator from Minnesota.

Mr. WELLSTONE. I appreciate that. That is very gracious of Senator DASCHLE.

Just to clarify a couple of things, this is the third time we have really had debate. On Monday and Friday, we know a lot of Senators are not around. I came back. It seems to me, if I may express my dissent, that the majority leader asked for a list of amendments prematurely. We all know that Senators, to protect themselves, list a number of amendments they may not use, and now that is being used as an argument for filing a cloture motion.

I work with the majority leader. We all disagree at times. I think it violates the spirit of what we talked about. I remember coming to the Senate floor and having a discussion that we would have substantive debate on the bankruptcy bill and Senators could offer those amendments.

We are just now starting that process, and now we are talking about filing for cloture. We have had 2 days on this bill. We all know on Monday and Friday people do not come. I am here, but a lot of people do not come. The majority leader asked for a list, and people listed a lot of amendments to protect themselves. In my humble opinion, the majority leader is using that as a pretext for premature filing of cloture, which goes against what I thought we were going to do with this bill.

I will finish. I know both leaders look as if they are more than ready to respond. We have a lot of amendments. People come out with amendments, and we go at it. If it takes 2 weeks to do a bill, we have done that on many bills. I do not understand why we are not doing that on this bill.

Mr. DASCHLE. The Senator perceives my stance correctly. I was prepared to respond. I must say I am not sympathetic to that argument, and I am very sympathetic oftentimes of the admonitions and suggestions of the Senator from Minnesota. Friday and Mondays are legitimate legislative days.

Mr. WELLSTONE. To be clear, I am not arguing they are not. I am just saying—

Mr. DASCHLE. I will be happy to yield again in a moment. I have done everything to encourage Senators to come to the floor to offer their amendments. For some reason, we have gotten into this habit of thinking any amendment offered after 6 in the evening is not really considered prime time, or it is not considered to be a legitimate time to offer an amendment. Fridays and Mondays are considered, for some reason, not equal in quality to Tuesday, Wednesday, or Thursday as times to offer amendments.

We have to break out of that mind set. We have done everything to petition Senators to come to the floor today to offer amendments. We did it on Friday.

Those Senators who now express some concern they are going to be precluded from offering amendments—when they passed up the opportunity on Friday, they passed up the oppor-

tunity to offer amendments later in the evening, they passed up the opportunity to come here on Monday—are not going to get much sympathy.

I am very sympathetic to many of the substantive questions raised by Senators with their amendments, but procedurally, if they are concerned about it, they ought to be here. They ought to come to the floor to offer these amendments.

I am hopeful we will get more reaction than we have so far, at least for the remainder of the day and tonight.

Mr. WELLSTONE. I will finish up. I say to our Democratic leader two things: No. 1, it still does not speak to my point—we talk about substantive debate, which is the commitment we made on this bill. Quite often, we are talking about 2 weeks of amendments and debate going through those amendments. All of a sudden, with the bankruptcy bill, we are talking about Friday and Monday as litmus test days and people need to be here. I am all for that. I am here.

I find it interesting that in the haste to get through this bill—I understand a whole lot of folks and a whole lot of powerful folks are for it—I think this violates what I heard stated last week. There are a lot of important amendments that are going to be clotured out now, and I think that goes against the agreement. I am expressing my dissent on it.

Mr. DASCHLE. I appreciate that. If I may, before yielding the floor—and I will certainly yield so the majority leader can respond as well—I am told that we asked virtually every author on Friday if they could be prepared to come to the floor on Friday to offer at least one amendment, and not one of our colleagues responded to that.

Again, I want to use these days productively. We are not using them very productively if we cannot even offer one amendment for consideration and a vote at some point Friday or Monday.

I yield the floor.

The PRESIDING OFFICER. The Senator from Mississippi.

Mr. LOTT. Madam President, I appreciate Senator DASCHLE's efforts. He and I have worked very hard to be fair on this legislation. I have the same problems he has. I do not want the burden to appear just to be on his side of the aisle. We have difficulty getting our Senators to offer amendments on Fridays and Mondays and even Thursday afternoons. Even though there are often very legitimate reasons that we cannot proceed late into the evening on Thursday, we are not able to do so.

I say to Senator WELLSTONE, yes, he was here I think on Friday and again this morning. Back on January 22, Senator DASCHLE and I started talking about trying to move this legislation. We have been trying to move it ever since. Even though I filed cloture, that does not end it. Amendments can be debated, amendments can be voted on, and we still have some opportunity to work through this, perhaps without

cloture. I am not sure that is possible. It may not be.

The point Senator DASCHLE made was we have to go to campaign finance reform, and at some point we have to go to the budget resolution. The law requires we do it before April 15, so we are getting to the point where other things will overtake this bill.

#### CLOTURE MOTION

Mr. LOTT. Madam President, I send a cloture motion to the desk to the pending legislation.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

#### CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to S. 420, an original bill to amend title II, United States Code, and for other purposes:

Trent Lott, Robert F. Bennett, Chuck Grassley, Orrin G. Hatch, Susan Collins, Pat Roberts, Lincoln Chafee, Strom Thurmond, Frank H. Murkowski, Mitch McConnell, Rick Santorum, Jeff Sessions, Richard G. Lugar, Gordon Smith of Oregon, George V. Voinovich, and Bill Frist.

The PRESIDING OFFICER. The cloture motion is addressed to the motion to proceed, and I am advised we are on the bill.

Mr. LOTT. Madam President, if I may make a parliamentary inquiry, in view of the revision, I believe the clerk will need to read the whole cloture motion again.

#### CLOTURE MOTION

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

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Mr. LOTT. Madam President, as just stated, this cloture vote will occur on Wednesday unless it is changed by consent. The Democratic leader and I will discuss the bill and make a determination as to the timing. I am sure it will be in the afternoon, and we will see how late that will need to be. It would be affected by what has been achieved.

I ask that the mandatory quorum under rule XXII be waived.

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

Mr. LOTT. I yield the floor.

Mr. DASCHLE. If I might say to the majority leader, as I understand it, a number of amendments, in fact, over 20 amendments, have been cleared on our side. I guess we are awaiting some indication as to whether or not those amendments might be cleared on the majority side. That would move things along as well in terms of scheduling amendments. If Senators know those amendments have been adopted, we would be in a better position to whittle down the list and determine which of those amendments still need floor consideration.

Mr. LOTT. Keeping with full disclosure on this, I think our staffs have been working on that, and I think we did clear a number of amendments like this last time this bill was up. We were in hopes at some point perhaps that this could be done in such a way that we would not have to go to conference and the bill could be accepted by the House. It does not appear that will be possible.

We will try to clear as many of the amendments as possible. I will take it up with the chairman when we complete our action.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Madam President, is it appropriate to ask consent to set aside the pending amendment and proceed to other amendments to the bankruptcy bill?

Mr. GRASSLEY. Will the Senator yield for a question?

Mr. KENNEDY. I am happy to yield.

Mr. GRASSLEY. Madam President, would the Senator tell us the content of the amendment, or is there a copy we can have?

Mr. KENNEDY. It is an amendment dealing with health insurance benefits for the debtor's monthly expenses permitted in the consideration of the means test, the opportunity for those going through the process to be able to have included consideration for paying their health insurance and premiums.

Mr. GRASSLEY. I apologize. We have a copy.

The PRESIDING OFFICER. Is there objection to the request of the Senator from Massachusetts? Without objection, it is so ordered.

AMENDMENT NO. 38

The PRESIDING OFFICER. The clerk will report the amendment.

Mr. KENNEDY. This is an amendment that if we had a cloture motion we would not have qualified, yet it is absolutely relevant.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY], for himself, Mr. ROCKEFELLER, and Mrs. CLINTON, proposes an amendment numbered 38.

Mr. KENNEDY. Madam 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:

(Purpose: To allow for reasonable medical expenses, and for other purposes)

On page 10 between lines 17 and 18, insert the following:

“(V) In addition, if the debtor does not have health insurance benefits, the debtor's monthly expenses shall include an allowance to purchase a health insurance policy for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case if the spouse is not otherwise a dependent.

Mr. KENNEDY. Madam President, the Bankruptcy Reform Act of 2001 includes a means test that determines whether debtors will be granted relief under Chapter 7 of the bankruptcy code or whether they must enter into a Chapter 13 repayment plan. Supporters of the bill believe it will prevent abuse in the bankruptcy system. I believe, as do the experts, that it is problematic.

For better or worse, however, the means test is in the bill and it requires a calculation of the debtor's monthly expenses based on the Internal Revenue Service collection standards. The IRS standards provide for food, clothing, transportation, and some health care-related expenses. What the IRS standards don't provide for is the cost of health care insurance for many debtors, particularly those who recently lost their insurance or may not have been able to afford it.

The amendment I'm offering today says that if a debtor doesn't have health care insurance, the bankruptcy court must include a reasonable allowance for health care insurance for the debtor, his or her dependents, and his or her spouse, when calculating the debtor's monthly expenses.

This amendment is necessary because many Americans declare bankruptcy because of health care-related problems. A recent report tells us that nearly half of the 1.2 million Americans who file for bankruptcy do so because of medical problems. According to the report, in 1999, an estimated 326,000 families filed for bankruptcy because of an illness or injury to themselves or a family member and an additional 267,000 families had substantial medical bills. That is extraordinary. Again, in 1999, an estimated 326,000 families filed for bankruptcy because of an illness or an injury to themselves or a family member and an additional 267,000 families had substantial medical bills. Almost 600,000—nearly half of all those who filed for bankruptcy—filed for medical reasons.

During discussion of this legislation, we've found that there are three major reasons why people are filing for bankruptcy. One is job related and that is triggered for the most part, not completely but for the most part, because of the various mergers, downsizing and pink slipping effecting great numbers of Americans. Second, many women are filing for bankruptcy after falling on hard times as a result of divorce, lack of alimony, or lack of child support payments. And the third reason is health related. The explosion of health care costs, particularly in the area of

prescription drugs, and the general cost of health insurance has led many to file for bankruptcy.

Close to 600,000 bankruptcies involve families or individuals—half of all of those who are going into bankruptcy—have health-related bankruptcies.

Two hundred and sixty-seven thousand of those who filed for bankruptcy in 1999 had no health insurance. A report 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.

Some families once had health insurance but, in an attempt to avoid bankruptcy, let their policy payments lapse so every penny could be used to buy food and pay the rent. Those families later find themselves in bankruptcy without an appropriate health insurance safety net.

Others never had health insurance because they simply could not afford it. And, others lost their insurance when they lost their job.

For example, one debtor tells us that he had a heart attack which led to quadruple bypass surgery. He amassed outrageous medical bills that he could not pay because he didn't have medical insurance. He then had to declare bankruptcy. Another debtor told us that the loss of a job, which led to loss of health care, precipitated bankruptcy. She used credit cards, credit cards, to pay for COBRA insurance and prescription drugs. The COBRA insurance won't last for very long, and soon she will be without any health insurance at all.

These families are now among the 43 million Americans who have no health insurance, and we must ask, what happens to them? The children fail to get a healthy start in life because their parents cannot afford the eye glasses or hearing aids or doctors visits they need. Family income and energy are sucked away by the high financial and emotional cost of uninsured illness. An older couple sees hope for a dignified retirement dashed when the savings of a lifetime are washed away by a tidal wave of medical debt.

Without health insurance, many families forgo health care. One-third of the uninsured go without needed medical care in any given year. Eight million uninsured Americans fail to take the medication that their doctor prescribes, because they cannot afford to fill the prescription. 400,000 children suffer from asthma but never see a doctor. 500,000 children with recurrent earaches never see a doctor. Another 500,000 children with severe sore throats never see a doctor. 32,000 Americans with heart disease go without life-saving and life-enhancing bypass surgery or angioplasty.

Overall, 83,000 Americans die each year because they have no insurance. It is the seventh leading cause of death in America today.

Given these facts, the Federal Government shouldn't be in the business of telling people to repay their credit card debts rather than pay for health care insurance. And, debtors shouldn't be forced to choose between eating and purchasing health care insurance while being forced to repay creditors. To avoid this Hobson's choice, when determining whether a debtor can repay his creditors, the bankruptcy court must consider health insurance premiums part of the debtors' monthly expenses.

I hope my colleagues will support this amendment. It adds some fairness and balance to an unnecessarily harsh bill.

This is something that can be dealt with by the bankruptcy judges. Obviously, the amount of repayment is going to depend to some extent on the size of the family's health insurance premium, and perhaps to some extent on where they live and the cost of health insurance in that area. But all of those kinds of calculations are readily made by the bankruptcy court and by bankruptcy judges.

This does not mean an unreasonable additional kind of responsibility. And, beyond that, for those who are strong in terms of the bankruptcy reform, this makes sense from their point of view because what happens is the individual who is in bankruptcy will be kept healthier and their families will be healthier and able to at least move towards meeting their responsibilities under the bankruptcy court, if they are able to go ahead and afford those health insurance premiums.

It is a win-win situation. It is a win in terms of those who are going to have responsibility for meeting their debts because they won't find additional kinds of drain on scarce resources, and it means they will be healthier and be able to afford to repay. It also works to the advantage of the individual and their families.

I believe this makes a good deal of sense. I look forward to my good friend from Iowa enthusiastically embracing this amendment so that I might get onto my second amendment which is equally commendable.

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

Mr. GRASSLEY. First of all, Mr. President, whether I enthusiastically endorse this or not, the Senator from Massachusetts knows that he can lay his amendment aside and move on to another amendment that he wants adopted since we will not be voting on these amendments until tomorrow.

The first thing I want everyone who has questions to know about this legislation is that we want people who have health insurance to maintain their health insurance when they go into bankruptcy because our legislation provides that health expenses, including health insurance, under the IRS guidelines—which are used by the bankruptcy court in deciding the ability to repay debt under our means test—are fully accounted for.

Not only are health insurance premiums subtracted, but all health care costs are subtracted out of a person's ability to pay in making a determination whether they go into chapter 7 where they get a completely fresh start, or whether they go into chapter 13 to make a determination of whether or not they have the ability to repay. If they are in chapter 13, then the extent to which they repay the final judgment is that those people in chapter 13 will not get off scot-free.

But in making that determination, all health costs are taken into consideration.

The reason I take some time to emphasize that point is because we have had several speeches on the floor of the Senate that say and imply we do not want to take into consideration all those health care costs in making that determination. We even had the Time magazine article of last spring in which there were several case studies done by Time magazine with the implication that if this legislation passed, those people would not be able to get into bankruptcy court for fair consideration of whether or not they could repay their bills, and whether or not they get a fresh start.

In a lot of those case studies, there was the implication that they were going into bankruptcy court because of high health costs.

In every one of those instances, as I have said before on the floor of this Senate, those folks used in that magazine article would have been able to get a fresh start under our legislation.

Consequently, we still have this brought up as somehow a problem of our bill because we are not going to take into consideration people who are in bankruptcy being able to maintain their health costs and health insurance.

I asked the question last week for those Senators who think we do not give adequate consideration through the IRS guidelines of whether or not somebody should be in chapter 7 or chapter 13: If we don't, do we give credit for 100 percent of health cost? If 100 percent isn't enough, would 101, 102, or 110 percent be enough?

Now we get to this situation that Senator KENNEDY has brought to our attention.

I give the prelude to this by saying our legislation takes into consideration 100 percent of health care costs, including paying health insurance.

If the person does not have health insurance before going into bankruptcy court, obviously the person does not have an expense out there to claim in bankruptcy court.

It seems to me what Senator KENNEDY is trying to do here—because we already allow people who have health insurance to maintain that health insurance as one of those legitimate costs—is raise the possibility that a debtor who did not have health insurance before he went into bankruptcy court ought to be able to carve out a

portion of the creditor's claims, and would be able to get a fringe benefit, or a benefit they did not have before they went into court.

I think we have a couple of questions to ask. Is there any provision in this amendment that requires the debtor to use this allowance for health insurance? And is there any provision to verify that the money is being used for health insurance if it is allowed?

Since the debtor wasn't using the allowance for health insurance before bankruptcy, it seems to me we need some guarantees on how the money will be spent.

I have those questions. If the Senator wants to respond to those, he can. If he doesn't, there are questions out there that have to be answered.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I would be glad to work out the question as to how the debtors are going to make sure they are going to get an allocation in terms of health insurance—to make sure it would be used for that particular purpose. I would be glad to work out over the nighttime those kinds of protections. But I say the answer would be the same way that particular provision applies to food and rent. You do not have the additional written in stone with regard to food and rent in this particular proposal. But if you want additional kinds of protections to ensure that it goes to insurance, I do not think that is going to be really a stumbling block.

Now let me just respond to the general theme my good friend from Iowa discussed.

This amendment simply ensures that while a debtor is repaying his creditors, he has enough money to purchase health insurance for himself and his family. The supporters of the legislation assert that the other necessary expense provisions in the IRS collection standards include health care insurance for all debtors. That simply is not true. The other necessary expense provision does say that other expenses, which may meet the necessary expense test, includes health care. But if a debtor has recently lost his health insurance or lost his job—and therefore his health insurance—health care insurance premium expenses will not be included in his monthly expense allowance. And the IRS staff confirms that.

So a Senator says: Look, if they paid their health care insurance premium at the time, we will make sure they will be able, within the IRS means test, to pay their premium as well.

The point is, as we have seen with great numbers of people, almost half of those who have gone into bankruptcy have done so because of health-related expenses. The great majority of those are losing their health insurance, or they have health insurance and it does not cover these catastrophic additional kinds of costs, or they have lost their job and lost their health insurance. They are not provided for.

Here is somebody who has worked hard all their life, paid into their health insurance, then they lose their job, lose their health, and they run into one of these catastrophic illnesses, and they had been paying the premiums all of this time. But there is no provision for them, even though they have conscientiously provided health insurance for themselves and their families throughout their employment. They cannot even work that out with the restrictive language here.

There ought to be a reasonable way of ensuring that those people are going to get health insurance within the means test standard, which supposedly looks at essential needs. I think getting health insurance is an essential need. It is as important for many people as food and a roof over their heads.

As we've seen, many people are unable to take the prescription drugs they need. We find, from all the medical indicators, the number of people who do not have health insurance and who end up actually dying.

So that is what the bill that is before the Senate fails to respond to; and those are the real facts out there in terms of these individuals losing their jobs and losing their health insurance. They find out that even though they paid into their health insurance over a lifetime, they run into these catastrophic kinds of additional illnesses—here they were, paying in, working hard—and, under the language in the bill, there is virtually no kind of inclusion for them.

I think health insurance protection for their families makes an enormous amount of sense with regard to individuals, and it makes an enormous amount of sense in terms of the individual's ability to meet their responsibilities of payment under the Bankruptcy Act.

It just seems to me that those are the additional kinds of protections we are talking about. It isn't that this individual is going to be able to set the sky as the limit, and try to walk out of there with a good deal of free cash in their pockets.

We would be glad to include in the RECORD very extensive analyses of what the costs are for individual workers and for families, using GAO figures. We could make that part of the RECORD. That could be a pretty clear indication of a reasonable standard that might be used or might be followed. But that is why I believe this is so important.

In many ways, this amendment, as I mentioned, will improve the debtor's chance of being able to repay his creditors while also ensuring that he and his family have a decent—not luxurious but decent—standard of living.

If the debtors are able to purchase health insurance, they will be able to withstand the predictable and unpredictable circumstances that are part of everyday living—the birth of a child, a previous undiagnosed illness, necessary trips to the doctor's office. Instead of

scrapping for pennies to pay those bills, the debtor and his family will have the health insurance that every American needs. Instead of failing to meet the obligations of a chapter 13 repayment plan, all available resources must go to unexpected health care expenses. The debtor can meet both obligations.

So I hope we can continue to visit this issue and see what we might be able to work out.

AMENDMENT NO. 39

Mr. KENNEDY. If it is the desire of the floor manager, I ask unanimous consent that the existing amendment be temporarily laid aside and we go to the amendment which is what they call the cap on IRA assets.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. I believe the Senator has that amendment.

Mr. GRASSLEY. Reserving the right to object, and I will not object, before we go on to his next amendment and lay this one aside, I hope I can continue a dialog between the staff of the Senator from Massachusetts and my staff to see if we can make arrangements, so that we know the money that is set aside is used for health insurance, that it is verifiable, that it would not be used for some sort of Cadillac insurance policy that maybe the person would not otherwise have had in their place of employment, and things of that nature. If we could talk about that, we might be able to work something out.

Mr. KENNEDY. Sure. I appreciate the attitude of the Senator. We would be glad to try to follow through with that. I am grateful for the Senator's interest and sensitivity. I appreciate that.

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

The clerk will report the amendment.

The legislative clerk read as follows:

The Senator from Massachusetts [Mr. KENNEDY] proposes an amendment numbered 39. (Purpose: To remove the dollar limitation on retirement savings protected in bankruptcy)

Beginning on page 101, line 10, strike all through page 102, line 2.

Mr. KENNEDY. Mr. President, this bankruptcy bill includes a provision that would undermine existing pension law by allowing creditors to claim workers' retirement savings in bankruptcy. One of the greatest domestic policy challenges facing Congress is the challenge of ensuring that elderly Americans do not live in poverty. After a lifetime of hard work, senior citizens deserve a secure and comfortable retirement.

Clearly, we need to do more to improve the private pension system. Nearly half of all working Americans—some 73 million men and women—do not have pension coverage. The lack of pension security is a critical issue. It is a women's issue, because only 39 percent of working women are covered by a pension plan. It is a civil rights issue, because only 26 percent of Hispanic workers and 38 percent of African-

American workers have pension coverage.

So it is imperative that Congress do all it can to expand pension coverage and encourage retirement savings. We must work to improve our retirement savings system—not move backward. The provision in the bankruptcy bill that would cap the amount of retirement savings held in individual retirement accounts that can be exempted from a debtor's bankruptcy estate is a step backward.

Federal pension laws are intended to protect workers by guaranteeing that their retirement savings will be there when they retire. The entire pension community—worker groups, employers, mutual fund companies, and other pension service providers—are united in opposition to a cap on retirement savings for three reasons: one, it is unnecessary, two, it is unworkable, and three, it would discourage savings and portability.

First, a cap on IRA savings is unnecessary because Federal tax law already imposes strict limits on IRA contributions. The cap is aimed at preventing wealthy individuals from trying to stuff assets into their IRAs before declaring bankruptcy. But because IRA contributions are limited to only \$2,000 per year, wealthy individuals cannot stuff assets into an IRA before filing bankruptcy as a way to avoid paying debts. At the rate of \$2,000 per year, it would take about 40 years to accumulate retirement savings of \$1 million.

Second, the cap is unworkable. It will be extremely difficult—if not impossible in many cases—to administer. There are thousands of IRA accounts with balances in excess of \$1 million due to rollovers from 401(k) plans and other retirement vehicles. Under the current bill, those rollover amounts (and the earnings on them) would not be available to creditors. However, a bankruptcy court will need to sort through those accounts to determine how much of the account came from direct IRA contributions and how much came from rollovers.

The court will also be forced to calculate how much of the earnings in the account should be attributed to the IRA contributions and how much should be attributed to the rollovers amounts. That will be a time consuming administrative burden with no benefit to creditors.

Third, the cap will discourage retirement savings and portability. Using retirement savings in IRAs to satisfy personal debts is unprecedented, and collides head-on with efforts by Congress to encourage individuals to save for retirement. Already, more than 60 percent of workers who change jobs take their retirement savings and spend the money rather than rolling the money into another retirement vehicle.

The cap will undermine the trust that over 35 million American households have placed in the IRA as a safe and secure retirement savings vehicle,

and will discourage workers from rolling money into their IRAs when they change jobs.

I believe this provision would jeopardize the retirement security of American workers. This is simply the wrong message for Congress to send, particularly at a time when we are trying to encourage additional private-sector retirement savings to ensure retirement income security for the aging baby boom generation.

Mr. President, I hope this amendment will be accepted. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mr. GRASSLEY. Mr. President, I take this opportunity to tell my colleagues why the amendment offered by the Senator from Massachusetts is a very bad amendment.

First, I want to make clear that this amendment applies just to IRAs; it does not apply to pensions. In addition, I would like to have people reflect on the position of the Senator from Massachusetts on this amendment and the position on the previous amendment. It seems to me the Senator from Massachusetts is very much in character with his amendment on making sure there is a preservation for the ability of people in bankruptcy to keep health insurance. That, for a long time, has been a concern of his for people who have needed health insurance, maybe couldn't afford it—how to be able to get it to the people. Of course, when bankruptcy steps in, it is very appropriate for him to offer an amendment that would preserve health insurance for people. That would most often fall into the category of his protecting those people who have lesser incomes.

So it is quite out of character for me to respond to the Senator from Massachusetts about an amendment about a provision in this bill where we have a \$1 million cap that protects retirement accounts and that you would have to have resources over that \$1 million in determining the ability to repay.

As the author of this legislation, I am very embarrassed that I would have in my own legislation a \$1 million cap that would say people could protect \$1 million from their creditors as they went into bankruptcy. That \$1 million cap is in here because I didn't want any cap whatsoever. I had to make an arrangement with Senator KENNEDY last year to reach compromise on this matter, and we compromised on \$1 million.

In addition, for the Senator from Massachusetts, who never is very often found defending the economic needs of those over \$1 million a year in savings and wanting to protect that \$1 million from bankruptcy, it seems to me somewhat out of character for him. It

makes it a lot easier for me to oppose his amendment that would eliminate the cap on IRA savings.

He argues that the \$1 million cap would be difficult to administer because 401(k)s and other retirement rollovers are excepted from this cap. He argues that the cap will be an administrative hassle with no benefit to creditors. I argue that the bankruptcy bill is all about having people who can repay their debts do just that—in other words, pay their debts.

How many times have you heard me say the purpose of this bankruptcy legislation is, for those who are gaming the system, those who are using the bankruptcy laws for financial planning, that if you have the ability to repay, you are no longer going to get off scot-free.

People who have the ability to repay their debts should not be protected just because they have stashed away an IRA account. That is why we have this \$1 million cap. I don't even think the cap should be there, but it was part of the compromise last year. We need to have a cap on these savings so that people who can pay will be required to pay a portion of their debts.

I don't think the super-rich should have additional protections just because they can squirrel away their money in a retirement account. The \$1 million cap is consistent with our policy of encouraging people to put away money for retirement, but we also need to balance this with a policy that people who buy goods and other merchandise should pay for them if they can. We can't allow deadbeats to get away with stiffing creditors. That is why our bankruptcy bill is here. That is what it is all about: Imposing some responsibility on people who can pay their debts.

I would like to give you an example about abuse of the system. This is from a press report. Dr. Neil Solomon declared bankruptcy after three female patients sued him for sexual misconduct and sought \$160 million in damages. Dr. Solomon paid these women less than \$100,000, while keeping a home in Baltimore, MD, valued at \$323,000, a Mercedes Benz, valued at \$42,000, and \$2.2 million in a retirement savings account.

Congress should place reasonable limits on the ability of highly compensated persons, such as Dr. Solomon, to shield millions of dollars from creditors simply because the assets are deposited in retirement accounts.

Clearly, Congress never intended for savings in retirement accounts to become safe havens for the wealthy who seek to avoid paying their bills by declaring bankruptcy.

I also point out to my friend from Massachusetts his position is much contrary to his position in regard to the homestead exemption. He says people who can pay their debts should not be able to shelter their assets in a million-dollar homestead. But at the same time, he seems to be saying that people

should be able to shelter their assets in \$1 million IRA accounts. That is what he is doing right now by lifting that \$1 million cap.

Moreover, I don't think the provision in our bill will impose an administrative burden, particularly because the amount of the cap is so high. I don't think it is unworkable, and I doubt that the administrative burden charge will ever materialize.

In addition, I remind my colleagues this is an agreement that was agreed to in the compromise pension bill last year. I didn't want this cap in here, but I took it in the process of doing what I could to alleviate some fears so this legislation could get passed. In other words, we cut a deal, and I hope we stick by this deal. We need to retain the hard limit of \$1 million on the amount of IRA money that any person who declares bankruptcy can shield from his or her creditors. Just because it is a retirement account does not mean you can get away from paying your debts with it. This is just plain wrong because this is anti fraud and abuse reform, and it is badly needed. I strongly urge my colleagues to reject the amendment.

I wish to point out that we put the exclusion of rollovers in the bill at the request of the Senator from Massachusetts. So if the Senator is concerned about administrative burdens, we would be happy to take out the exclusion of rollovers. But my point to the Senator from Massachusetts is that we cannot have this both ways.

I also suggest that I was lobbied against any restriction. I was lobbied on the protection of pensions and IRAs from being a source of repayment to creditors—not by individuals going into bankruptcy or people who had strongly felt views as individuals that this money should be protected from the creditors.

The source of interest in this legislation came from the pension and insurance industries of my State who felt they did not want to be bothered by the bankruptcy courts, so they wanted to retain protection for pensions and for IRAs. They tried to make this historical claim that it had always been this way. It is one thing to work on the floor of the Senate to protect the interests of the little guy who is going into bankruptcy; it is also OK to work on the Senate floor to make sure we do preserve the ability of people to retire with dignity. It is quite another thing to protect the interests of those who want to retain a high lifestyle after they have gone into bankruptcy and, at the same time, be in retirement. But it is quite another thing to protect the interests of all the big business companies of America that are writing this business and don't somehow want to deal with the bankruptcy courts.

I ask my colleagues to oppose the amendment by the Senator from Massachusetts. I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I hope my friend from Iowa will continue to reason with us a little bit about this particular provision. I point out to him that for a long time in the Senate I have been interested in championing the interests of working families and the interests that deal not only with the basic issues of education, health, and housing, but also retirement programs. That is a key element. The Senator knows, as a member of the Finance Committee, how much of the tax expenditures go to individuals making over \$100,000, what the general taxpayers are paying under tax expenditures at the present time that are being deducted. Those are the higher income groups. There is very little for working families, and he understands that very well as a member of the Finance Committee.

I don't retreat a single step in terms of my desire to make sure we are going to have sound retirement programs for working families, schoolteachers, and other workers. The illustration that the Senator from Iowa gave us about some doctor who had all of these savings is not applicable. It doesn't even relate to what we are talking about because there is only a \$2,000 contribution that one can make to an IRA. Who uses the IRAs? Basically, it is the working families. The Senator understands that. Who uses the 401(k)? They are basically the more affluent individuals in our society. Those are the facts.

But it is interesting that the bill the Senator has introduced protects the 401(k), but not the IRA. So I don't want to have any misunderstanding. The Senator's position is protecting the 401(k)—\$10,500 a year can be put in an 401(k), but only \$2,000 in IRAs. This is a millionaire's loophole? The Senator knows as well as I that you haven't even got anybody who qualifies for the cap on IRAs at \$2,000 a year because the IRAs haven't been around long enough. You have tens of thousands, hundreds of thousands of people in 401(k)s. But 401(k)s are not going to be touched by the bankruptcy court. Oh, no, just the IRAs, which serve whom? Working families—with limits of \$2,000.

The more we get into this, the more difficulty we have in understanding what the logic is in terms of defending 401(k)s. The fact has been, historically, that it has been the opinion of the Congress—with the exception of this Congress and this bill—that retirement moneys would not be included in terms of the bankruptcy provisions. They earned it and set it aside as retirement funds, and it would not be included. In the course of our hearings on bankruptcy, there were very few that would allege this kind of circumvention in terms of IRAs.

If the Senator is able to give me examples, or hearings, or testimony on where we had all of these abuses in the IRAs—we are talking about a schoolteacher making \$40,000 a year who puts aside \$2,000 in order that they can retire and have substantially similar

kinds of income when they retire. They would have to do it probably for 35 years in order to be able to get the kinds of resources allocated so that they are going to be able to do it. Those are not the people we are talking about in terms of gypping the credit card companies and the banks. The Senator knows that.

The Senator knows that. I do not understand why we treat these retirement funds differently: One way for 401(k)s and another for the IRAs, which is the appropriate device working families have used and with which they are increasingly developing some confidence.

We are going to be debating, we hope, Social Security. The average Social Security is \$13,000. That is the average Social Security check. Eighty percent of those on Social Security live below \$25,000. We have to ask: What are we going to do to encourage individuals to save, particularly working families? We have not done a very good job of it as a matter of public policy. We have done a very poor job.

We do a very good job with respect to the most affluent members of our society. We have all kinds of tax support in the Internal Revenue Code, but for working families, we do a very poor job.

This is one of those small areas, the IRAs, that is open to working families and on which we do not mind putting on the additional cap. On the other side, we have serious reservations putting a cap on the 401(k). I do not think that is fair.

Also, undermining retirement money that has been paid in over a lifetime, which may very well be a lifeline for that family, can be eliminated, wiped out, in 4 days of catastrophic illness in a hospital. That is what we are talking about. Four days of a catastrophic illness for themselves, a wife or child, and it is wiped out. That is what the current bill will do.

We encourage people to work hard, play by the rules all their lives, and put something aside with which to retire in peace and dignity. I caught myself getting choked up when the Senator talked about a millionaire's tax loophole because it is not; it is \$2,000 a year. One has to contribute for an awful long time to use this as a gimmick. There are a whole lot of other gimmicks in this bill, such as the homestead provision and other provisions that can be used a lot easier than this one.

For these reasons, I hope we prevail.

The PRESIDING OFFICER (Ms. COLLINS). The Senator from Iowa.

Mr. GRASSLEY. Madam President, the Senator from Massachusetts is digging a hole for himself. No. 1, he talks about the difference between 401(k)s and IRAs. He can mention \$2,000, he can mention \$10,000, but there is a cap of \$1 million. That means up to \$1 million is not subject to bankruptcy.

Then he mentioned IRAs and 401(k)s. I remind the Senator from Massachu-

setts that 401(k)s are not covered because he objected to their being covered, and we took them out. They are not part of it, not because that is the way I want it. I think 401(k)s ought to be capped at \$1 million as well, if there is a cap at all. Madam President, 401(k)s are different than the individual retirement accounts capped at \$1 million, because that is what Senator KENNEDY requested we do.

The other thing mentioned was about my being chairman of the Senate Finance Committee and tax expenditures. First of all, I do not buy the philosophy of tax expenditures because that implies every penny working men and women in America earn belongs to the Federal Government and we are going to let them keep some of their own money. I start from the premise that the hard-working men and women of America, every penny they earn is their money, and we tax them for part of it.

Just in case there is some injustice under present pension laws—I admit there are injustices in present pension laws. The Senator from Florida, Mr. GRAHAM, and I have introduced legislation to correct some of those inequities and particularly to correct some of those inequities to benefit the very low-income wage earners to whom Senator KENNEDY is saying we do not give enough credit.

Before this Congress is done, hopefully even before the first bill gets to the President of the United States, we will have passed some tax legislation to take care of some of those inequities in the pension laws of the United States, plus the fact that we had legislation out of our committee last year that increased the \$2,000 IRA limit to a \$5,000 IRA limit.

I want to get back to the reason for having this \$1 million cap on individual retirement accounts, that anything over that is not protected from the creditors.

Let's get it clear: Below \$1 million is protected from the creditors in bankruptcy court. I quote from President Clinton's administration in their support of the concept of the cap. This is last year's legislation as we were discussing this issue then. The Department of Justice said:

A debtor should not be able to shield abundant resources from creditors, including Federal, State, and local governments, in the form of retirement savings.

I quote from the Securities and Exchange Commission:

We have seen insider traders do their trading through IRAs and fraud participants stash their profits in their IRAs. The State law exemptions have not defeated our Federal statutory claims to date, but a new Federal exemption could do so. I am concerned about the grave potential abuse that the exemption for all retirement assets from bankruptcy estates poses.

That is a letter from Judith R. Starr, assistant chief litigation counsel, Securities and Exchange Commission, to members of my staff.

The Department of Labor:

A fresh start is not meaningful if it requires a debtor to accept an impoverished retirement. However, a debtor should not be able to inappropriately shield resources from creditors, including Federal, State, and local governments in the forms of retirement savings.

That is a letter from the Secretary of Labor to Senator HATCH, April 14, 1999.

On the other hand, there are those among my colleagues across the aisle who oppose the \$1 million IRA cap that would prevent, to some degree, the rich from shielding wealth from creditors in an IRA. In my view, a wealthy debtor should not be able to shield large amounts of wealth from creditors in an IRA or in a home.

The compromise provisions in the bill that we worked out with members of the other party last year make important improvements over current law and should be retained.

Accordingly, I urge my colleagues to oppose the effort to strip out the individual retirement account cap. I yield the floor.

**THE PRESIDING OFFICER.** The Senator from Massachusetts.

**Mr. KENNEDY.** Madam President, there may be others who want to speak on other matters. As I mentioned earlier, the IRA was developed as a retirement account basically for working families. The majority of those who contribute are individuals who earn less than \$30,000 a year. These are the people who are putting in only a couple thousand dollars. They are limited over a lifetime. You put the cap there. The retirement program has historically been out of the reach of the credit card companies and the bankruptcy courts, the retirement savings.

Now for the first time we are seeing an intrusion on that. There is a cap. It is not being put in for the 401(k), basically the high rollers. If you are not going to put it in for the 401(k)'s, you should not put it in for the retirements for the working families. We will have a commingling of the funding and there is a good chance there will be an additional burden and cost in terms of the IRA. It doesn't make a great deal of sense.

I thank my friend from Iowa. As always, he is a friend and I enjoy working with him on many different matters. I will study more closely his pension legislation this evening and give it a good deal of additional thought.

**THE PRESIDING OFFICER.** The Senator from Iowa.

**Mr. GRASSLEY.** Madam President, I make crystal clear when we talk about \$2,000 and \$10,000 and \$30,000, as the Senator from Massachusetts has, it sounds as if we are just clamping down on people who should be getting a fresh start in chapter 7 instead of being chapter 13 with ability to repay.

I make very clear the first \$1 million is exempted. That causes a problem for the Senator from Massachusetts. I am embarrassed to present a bill to the Senate of the United States that says a millionaire is going to be protected from bankruptcy court if he can pay his bills.

Now the Senator from Massachusetts raises a very legitimate point. There could be a catastrophic illness that could eat up a lot of the money, even \$1 million, presumably. We have even taken that into consideration; that is, we have an interest of justice exception that would be applicable in this case. So something over \$1 million could be exempted. I hope the Senator from Massachusetts realizes we have gone through this last year. We tried to accommodate the Senator from Massachusetts. We had a compromise I was embarrassed to accept in the sense that a \$1 million exemption is way too high for my background. But I did it because I thought it was important we move this legislation along. We are talking about just preserving in the bill before the Senate a compromise worked out last year that would be law today except for a pocket veto by President Clinton. Otherwise, this Senator from Massachusetts wants to strike that compromise, and he was part of that compromise. I guess I beg him to stick by his compromise.

I yield the floor.

**Mr. DOMENICI.** I ask consent to speak as in morning business.

**THE PRESIDING OFFICER.** Without objection, it is so ordered.

**THE PRESIDING OFFICER.** The Senator from New Mexico is recognized.

**Mr. DOMENICI.** I thank the Chair.

(The remarks of Mr. DOMENICI pertaining to the introduction of S. 515 are located in today's RECORD under "Statements on Introduced Bills and Joint Resolutions.")

#### THE TAX CUT

**Mr. DOMENICI.** Madam President, I speak of the size of the tax cut the President of the United States has asked us to adopt. The occupant of the chair knows the Senator from New Mexico is lucky in that I have a wonderful person at home who asks me a lot of questions about what I am doing. It is a great sounding board. I think the occupant knows that is my wife.

My wife spoke to me about 10 days ago as an average citizen because she and four friends, all of whom were women, stopped by after getting together to have a cup of coffee. There were questions raised by these non-political women—not necessarily Republicans—as to why such a big tax cut? Why can't we wait? She addressed the question to me.

I said I think it is time the American people deserve to be told the size of this tax cut. I have a chart. I don't know if it has been seen on the Senate floor, but it is interesting. The red area indicates \$1.6 trillion as the entire tax cut alongside what we select in taxes during the same period of time. It is most interesting. During the same time we are asking the American people be given back \$1.6 trillion, we will collect \$28 trillion in taxes. Maybe that puts it a little bit more in perspective,

that it is not such a giant tax cut in proportion to the taxes America collects.

The green portion of the chart is broken into two. The bottom is individual income taxes, and we have corporate income taxes, and other taxes.

This is what we collect. This from individuals—14, and 28 total. Over 10 years, it isn't such a very large tax reduction.

We might also suggest by way of words that both President Kennedy and President Reagan cut taxes.

Incidentally, both of them—one Democrat and one Republican—cut marginal rates. They reduced the top rates. They reduced both the middle rates and the low rates for the same reason.

President Kennedy was advised that he ought to do it because of the fact the American economy had to be built up and grow and prosper, and one of the things he ought to do as a Federal official was lower the marginal tax rates. Lo and behold, that is what a Democrat President did. He did that without the surplus we have.

Isn't it amazing? We are talking about being sure of everything that is going to happen; that we are going to have enough money to pay down the debt. There were deficits in each year of the tax cut of President Kennedy.

We have a predicted surplus of \$5.6 trillion.

Second, the size of the Kennedy tax cut was twice the size in proportion to the American economy.

Then Ronald Reagan did marginal rate cuts also along with some other things. Congress loaded it up, so to speak. But marginal rates were reduced substantially. That was three times the size of this tax cut.

Our President, with reference to asking for a tax reduction for the American people, has been certainly modest in what he is asking for in comparison to the total taxes.

Second, some people wonder why we do this over 10 years. We want to suggest to the American people that it is permanent, and at the same time, we want to suggest to ourselves the money is not even going to be collected in the second, third, fourth, fifth, and sixth years. It is just staying with the American people. So it won't be around here. It won't be in the budget of the United States. It would have already disappeared from our grasp. We will not have it to spend. The American people will have it in their paychecks, in their profits of small business, which they distribute as individuals. It will go to them.

There is nothing better than doing this, and I say do it as quickly as we can to send a signal to at least the part of the American economy that is not doing well, and a few States aren't doing well. My friend from Ohio, Senator VOINOVICH, was telling me today about Ohio having some real economic problems. It is far different than New Mexico's problems. They need a signal from the Congress and the President