Mr. LOTT. That is correct. I hope that maybe it will not even be that late. It is possible we could get completed with our work a little earlier—6 or 6:30. That would be ideal. I believe, counting the votes and all of the time, it would not go beyond 7:30, so Senators should be aware of that. I might note, in terms of any other legislative action, certainly we wouldn't consider anything further without close consultation with the Democratic leader. We have the possibility of considering the SEC fees bill, but we want to do that in such a way it can be done either by voice vote or in wrap-up, or if there had to be votes, it would not occur until late on Monday afternoon. We will work through that. I put Senators on notice that we will at least consider how we will bring that bill up at some point.

I yield the floor.

RESERVATION OF LEADER TIME

The ACTING PRESIDENT pro tempore. Under the previous order, the leadership time is reserved.

BANKRUPTCY REFORM ACT OF 2001

The ACTING PRESIDENT pro tempore. Under the previous order, the Senate will now resume consideration of S. 420, which the clerk will report.

The bill clerk read as follows:

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

Pending:

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

Wellstone amendment No. 35, to clarify the duties of a debtor who is the plan administrator of an employee benefit plan.

Kennedy amendment No. 38, to allow for reasonable medical expenses.

Collins amendment No. 16, to provide family fishermen with the same kind of protections and terms as granted to family farmers under chapter 12 of the bankruptcy laws.

Leahy modified amendment No. 41, to protect the identity of minor children in bankruptcy proceedings.

Reid (for Breaux) amendment No. 94, to provide for the reissuance of a rule relating to ergonomics.

Reid (for Leahy) amendment No. 19, to correct the treatment of certain spousal income for purposes of means testing.

The ACTING PRESIDENT pro tempore. Under the previous order, the Senator from Minnesota, Mr. WELLSTONE, is recognized to offer any of his germane amendments.

Mr. WELLSTONE. Mr. President, am I correct that my time starts now at 20 minutes of?

The ACTING PRESIDENT pro tempore. The Senator is correct.

Mr. WELLSTONE. Mr. President, I will probably take about 40 minutes of my hour right now and probably later on speak again on the bill.

AMENDMENTS NOS. 70, 71, AND 73, EN BLOC

Mr. WELLSTONE. Let me start by calling up some amendments. I send to the desk amendments Nos. 70, 71, and 73.

The ACTING PRESIDENT pro tempore. The clerk will report.

The bill clerk read as follows:

The Senator from Minnesota [Mr. WELLSTONE] proposes amendments Nos. 70, 71, and 73, en bloc.

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

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT NO. 70

(Purpose: To change the relevant time period in determining current monthly income)

On page 18, line 9, strike ''6'' and insert ''2''.

AMENDMENT NO. 71

(Purpose: To address the acceptable period of time between the filing of petitions for relief under chapter 13 of title 11, United States Code)

On page 151, strike line 18 and all that follows through page 152, line 3, and insert the following:

Section 727(a)(8) of title 11, United States Code, is amended by striking ''six'' and inserting ''8''.

AMENDMENT NO. 73

(Purpose: To create an exemption for certain debtors)

On page 441, after line 2, add the following:

(c) EXEMPTIONS.—

(1) CERTAIN UNEMPLOYED WORKERS.—This Act and the amendments made by this Act do not apply to any debtor that can demonstrate to the satisfaction of the court that the reason for filing is due to the debtor having become unemployed and the debtor is part of a group of workers certified by the Secretary of Labor as being eligible for trade adjustment assistance under title II of the Trade Act of 1974 (19 U.S.C. 2251 et seq.), unless the debtor elects to make a provision of this Act or an amendment made by this Act applicable to that debtor.

(2) APPLICABILITY.—Title 11, United States Code, as in effect on the day before the effective date of this Act and the amendments made by this Act, shall apply to persons referred to in paragraph (1) on and after the date of enactment of this Act, unless the debtor elects otherwise in accordance with paragraph (1).

AMENDMENT NO. 70

Mr. WELLSTONE. Mr. President, amendment No. 70 would fix the means test so it only looks at present and future income, not an average of the past 6 months. This is a really important amendment and I am interested in a vote. The means test in the bill determines a debtor's ability to pay a certain threshold amount of debt by averaging the debtor's last 6 months of income. This may be a very poor snapshot of a debtor's circumstances, especially if the debtor's income has gone down shortly before the filing due to a job loss or disability. This will have the effect of inappropriately forcing some debtors into chapter 13 repayment plans which they will never be able to complete.

This means test is unfair. It does not really look at the debtor's current income in determining ability to repay debt. It is abusive to workers who file shortly after losing well-paying jobs, particularly given the current weakness in the manufacturing sector of our economy.

This amendment changes the means test so it looks at an average of the debtor's last 2 months of income instead of the last 6. This is a more accurate picture of the debtor's circumstances and will ensure that only individuals with actual ability to repay will be captured by the means test.

Think about this for a moment. You better be thinking about it if there is a downturn in this economy. I am saying if somebody loses his or her job, and you are looking at the average income over the past 6 months, that doesn't do that person or their family a whole lot of good in terms of making an accurate assessment. If you look at it just over the last 2 months before they file for bankruptcy, then you are providing some protection to the people who have lost their jobs.

I will give a perfect example from the Iron Range. We now have about 1,300 taconite workers who have lost their jobs just with the LTV mine that is shutting down. For Minnesota, these were well-paying jobs with wages and health care. These were $65,000 jobs. For people who lose those kinds of jobs because the manufacturing sector is struggling, it does not do them a whole lot of good to look at the average income over the prior months—not when you have just lost your job or not when you have been in an accident and all of a sudden find yourself disabled. So I say again, this amendment is an amendment that tries to address the harshness of this legislation.

I cannot understand why Senators would not vote for this amendment and therefore this is the first amendment that I bring before the Senate today.

AMENDMENT NO. 71

Amendment No. 71 strikes the 5-year waiting period for a new chapter 13 filing. When people file a chapter 13 case, by definition they are paying all they can afford. There is no disagreement about that on the floor. That is supposed to be the reason this bill puts more people into chapter 13. So why does this bill prevent debtors from filing another chapter 13 case for 5 years, even if those debtors have fulfilled all their obligations in bankruptcy? This change simply adds insult to injury. It is particularly harmful, I maintain, to elderly individuals who might file a chapter 13 case to save their homes. Under this bill, an elderly person might file a chapter 13 case because of medical bills or because a spouse dies, successfully complete chapter 13 and save the home.

But if they have another illness in the next 5 years or they become disabled or lose their income, they will not be able to file for chapter 13. That is ridiculous. That is ridiculous. Again, I point to the harshness of this legislation. Under this bill, chapter 13 filers are not supposed to be abusers. They are supposed to be the good guys.

Adopting this amendment would restore current law and allow the filing of new chapter 13 cases. It is very simple.

AMENDMENT NO. 73

Finally, I go to amendment No. 73. This is a safe harbor for folks who file because of job losses that are a result of foreign trade. Mr. President, 1,400 steelworkers have lost their jobs on the Iron Range of Minnesota due to unfair foreign competition.

By the way—and this will be the broader context I want to give about this legislation in a moment—does this Senate, does this Congress, does this administration offer proposals that assure a fair trade policy so many of our industrial workers, such as steelworkers and auto workers, do not get thrown out of work through no fault of their own? Do we do anything about the import surge of steel, quite often produced well below the cost of production, sometimes because of unfair dumping of steel on our market, sometimes because our workers lose their jobs in relation to other developing countries, workers who do not have the right to organize and bargain collectively, where there is no environmental protection, where there is no support for human rights, where people get paid 13 cents an hour? Do we do anything about that? No.

But, by golly, if you lose your job, you are not going to be able to file for chapter 7. You are going to have a very difficult time making it in chapter 13, rebuilding your life, or be in debt for the rest of your life. This amendment speaks for the 1,400 steelworkers who lost their jobs on the Iron Range due to unfair competition.

By the way, these steelworkers are not really interested in even getting to the point where they have to declare bankruptcy. They would like us to do something about an unfair trade policy. That is really what should be part of our agenda. Many more jobs in the timber industry are threatened by Canadian imports.

It is crystal clear that too many of these families are going to need to file for bankruptcy. If they do, I do not think a bill aimed at scofflaws and deadbeats should hold these workers back from a fresh start. This amendment would simply exempt from this entire bill any debtor who files because of a trade-related job loss. The people are not gaming the system. They have been devastated by the uncertainties of the global economy, by forces beyond their control. They have been devastated by the failure of the Senate to be on their side and pass legislation that will assure fair trade. They should not be subjected to this harsh bill.

Let me try to put the last 3 years in context. I think it has been about 2½ or 3 years that we have been going through this debate. It has been 2½ or 3 years that I have tried to prevent this bill from passing. The majority leader says he is very pleased by the vote on cloture. I will let history judge us. The majority leader can be very pleased by the vote. The majority leader can be very pleased the Senate is about to pass this very harsh bankruptcy bill. But later on today, the big guys are going to win. The big guys are going to win, and the little people are going to get smashed. There is no question about it. It is embarrassing—or it should be embarrassing to the Senate—the number of articles and now media coverage that have come out over the last several weeks about all of the ways in which this financial services industry, broadly defined, has hijacked this political process.

It should be embarrassing. There is no one-to-one correlation. I have said that many times over.

I accept the fact that my good friend, Senator GRASSLEY, can have an honestly held but different view. I am telling you that when it comes to elderly people who are put under because of medical bills and now cannot file chapter 13 for another 13 years, or when it comes to families, 50 percent of whom file for bankruptcy because of medical expenses, who are going to be put through one provision and one hurdle and another hurdle and another test, which is going to make it so difficult for them to file for chapter 7 or, for that matter, to be able to rebuild their economic lives, or when it comes to workers who have lost their jobs and don't figure in really well with the 6 months of average income and are going to find it so difficult to rebuild their lives, or when it comes to women where there has been a divorce in the family—and all too often it is the woman who is the one who really has to take care of the children—when it comes to a lot of low- and moderate-income people, there is an awful lot of harshness in this piece of legislation.

They never were able to mount the same lobbying effort. They were never able to get special provisions in the bill. The auto makers or the auto dealers get a special provision for them. There was an article about that. It is embarrassing.

Investors in Lloyd's of London get a special provision for themselves. It is embarrassing.

The homestead exemption for millionaires or multimillionaires—it is embarrassing.

I have to say it. I don't see any balance to this legislation.

Senator DURBIN and others tried to go after the predatory lending practices. They were not successful.

Is there any significant focus in this legislation on the ways in which the credit card industry pumps these credit cards out to people so they are held accountable? No.

Was the Senate willing to vote for low-income and vulnerable people who are picked on by loan sharks or take on these payday loans or take on these lenders? No.

Was the Senate willing to provide an exemption for people who went under because of medical bills? No.

Today I have an amendment that at least says do this for people who lost their jobs. There will probably be again another ''no'' vote.

We have in this legislation the following provisions:

Prebankruptcy credit counseling requirements at the debtor's expense.

So you lose your job. You are being put under because of an injury or a disability or a medical bill based upon a major illness. How do you counsel away a job loss? Why are we asking people who have lost their jobs or are filing for bankruptcy because of medical bills to go through prebankruptcy credit counseling at their own expense? Can someone explain that?

No limits on prefilings, regardless of personal circumstances;

Revocation of automatic stay relief for failure to surrender collateral;

You can't file a new 7 case for 8 years or a new chapter 13 case for 5 years.

There is no current law under chapter 13. That is in one of my amendments.

My friend—I wish I had known him well—Hubert Humphrey, a Senator from Minnesota, later Vice President of the United States of America, once said—and we have all heard this quote—that the moral test of a society in that matter of government is the way we treat people in the dawn of their lives, the children; the way we treat people in the twilight of their lives, the elderly; and the way we treat people in the shadow of their lives, people who are struggling with a disability; and people who are poor.

This bankruptcy bill fails that moral test.

The majority leader says he is delighted with the vote. I say to the majority leader I believe this piece of legislation fails that moral test. I believe the Senate, when it votes for this legislation, will fail that moral test. I believe this will be a vote for the heavy hitters, the investors, the well connected, and the big players. And this will be a vote against ordinary people.

Bankruptcy has been a safety net for them—not just for low-income people but for middle-income people as well. It is being shredded with this piece of legislation. I have tried, as my friend from Iowa knows, for 2½ to 3 years to do this.

This bill is going to pass. When it passes, all I can say is we will have to judge it.

Initially, the case was made that it was all about fraud—that people were gaming the system. But the American Bankruptcy Institute took care of that argument when it said only 3 percent were gaming the system. Other studies got it up to 10 or 13 percent, at the most, of people who were gaming the system and who were filing for chapter 7 but really could pay back more. That is not widespread fraud or abuse.

The argument that there was a dramatic increase in filing of bankruptcies, although in the last year and a half it has gone down, is kind of chasing a problem that doesn't exist. This

economy may very well turn down. Then there will be more people who live in our States who will find themselves in difficult economic circumstances through no fault of their own. They will go to try to file for bankruptcy, and they will find it impossible to rebuild their economic lives. And they will hold us accountable. They will say: Were you on the side of the financial services industry with all of these big banks and all of these big lenders and this credit card industry? Why weren't you on our side?

I think it is only fitting—I will conclude this way and reserve the rest of my time—that the bankruptcy bill is considered right after we did with the ergonomics rule and right before campaign finance reform because basically last week when we were dealing with repetitive stress injury, we took a rule that was a result of 10 years of work—repetitive stress injury, blue-collar, white-collar workers, the majority of workers women, the most serious injury in the workplace, provide people with some protection—and in 10 hours the Senate overturned it. That was not a good week for working people.

Then we go to bankruptcy. Now when one of our constituents is injured in the workplace—because we have stripped away the protection—and she can't work because of a disability, when she goes to file for bankruptcy, she may find it impossible, given all of these provisions and all of these hurdles and obstacles, to rebuild her life for herself and her children.

Do we have out here for consideration legislation to raise the minimum wage? No.

Do we have any kind of legislation that talks about a living wage; that is to say, an income where people can support their families and give their children what they need and deserve? No.

Do we have legislation that focuses on affordable prescription drug costs for elderly people? No.

Do we have legislation to expand health care coverage for people so they don't have to file for bankruptcy? No.

Do we have legislation which would call for much more by way of resources to expand the amount of available low-cost housing for people? This has become a huge crisis. No.

Do we have legislation that calls for a fair trade policy so that workers on the Range and other workers in this country don't end up losing their jobs

through no fault of their own? No.

The only thing we have is a bill that is a wish list for the credit card industry and a nightmare for vulnerable families and vulnerable citizens in Minnesota and the country.

(Mr. ALLEN assumed the chair.)

Mr. President, I guess this is a bridge to campaign finance reform because I am not going to argue that any Senator's vote or support for this bill is because of contributions because there are Senators who have a different viewpoint. Senator GRASSLEY absolutely believes in this, has argued for it, has been effective, and will get this bill passed. It is what he believes. I know that.

But I will say, thinking about it in institutional terms, which is the only way I can do it—not in personal terms—anybody can say any Senator's vote or position is based on campaign finance. We do that to everybody. But if you look at it in broader institutional terms, I am sorry, this is a classic example of too few people with too much wealth, too much power, too much access, and too many people in the country locked out, left behind.

If the standard of a representative democracy is that each person should count as one, and no more than one, I will tell you something: This political process fails that standard. And I will tell you something else: I think the next debate we have will be the most fundamental debate of all when it comes to what representative democracy is about because if we fail that test, that each person should count as one, and no more than one—and there is not one Senator in this Chamber who believes that that is true; we have strayed far away from that—then we are undercutting representative democracy.

If legislation that is passed—and what happens in the Senate; the majority leader said he is so pleased about this—is the result of who has power in Washington, who can march on Washington every day, who can do a full court press for several years, I hand it to the financial services industry; you have done that well.

If that is the test of a representative democracy, the pattern of power in the Nation's Capital, we are in really serious trouble because a whole lot of ordinary people are left out, and they know it.

I will tell you what. This debate has me thinking more about this campaign finance reform bill. I do not want to make an absolute commitment, but I want to say a few things about it. I am absolutely convinced that the McCain-Feingold bill is a step in the right direction. But most of the money is hard money, not soft money. These proposals to raise the limit from $2,000 to 6,000 are just unbelievable to me.

Do you know it is something like four-tenths of 1 percent who contribute over $200. So now what we are going to say is, for the four-tenths of 1 percent who can contribute over $200—who have the big bucks, from whom all of us ask for funding when we run for office—we are now going to put more importance on these citizens, the highest incomes and the wealthiest, who, by the way, quite often contribute because they want to support you, they do not do it, hopefully, because they are corrupt or because we are corrupt. But now we are going to attach more importance to them and leave even more people out, and having even more people believe if you pay, you play, and if you don't pay, you don't play. I will spend hours opposing that proposal.

I am absolutely convinced McCain-Feingold is a step in the right direction but does not even get at one-tenth of the way in which money hijacks politics. We have an example—I need to say this well—of corruption—not corruption as in the wrongdoing of individual officeholders, the wrongdoing of individual Senators; no, not that. I do not think so. I do not think so. I am trying to get everybody to like me. I do not think so. I really believe not. But there is a worse kind of corruption, systemic corruption, where too few people have all the access and the say.

This bankruptcy bill has been a perfect example of it. The vast majority of the people are left out. There is a huge imbalance between the big givers and investors—yes, in both parties—and the majority of people.

I will tell you something. I am going to make sure we have a vote on a public financing bill. I have written the clean money/clean election bill. JOHN KERRY has joined me on it. We should have a vote on it.

When my good friend MITCH MCCONNELL comes to the floor, first of all, he will say it is constitutionally legal. It is constitutional. That is what he will say, which I appreciate. Then he will say—and he will say it better than I can say it—this is ''food stamps'' for politicians. Then we will have the debate.

But the debate will be: But wait a minute, do the elections belong to politicians? Does the Government belong to politicians or does it belong to people? And if you could take the clean money/clean election efforts—successful in Massachusetts, and started in Maine, and then in Arizona—I forget the other State—and Vermont; I am sorry, Vermonters, people from Vermont—why not apply that to Federal elections?

Another amendment would be to just simply change three words in the Federal election code, which would allow any State that wanted to—the Presiding Officer might like this one—which would just say: leave it up to Virginia, leave it up to Iowa, leave it up to Minnesota. And if our States want to apply clean money/clean election to Federal elections, they should be able to do so.

There was an Eighth Circuit Court of Appeals decision on this which said: Look, Minnesota, if you want to apply some kind of public financing to elections, we might be for it, but the way the Federal election law reads, you cannot. I would like to enable States to do it if they want to; then let the discussion bubble up from the State level.

But I am telling you something. What we have been going through over the last couple of weeks, and the last couple of years, on a variety of different pieces of legislation—what we have done and what we have not done; what has been on the agenda and what has been off the agenda; what has been on the table and what has been off the table; who decides who benefits and

who is asked to sacrifice—those are the questions I ask.

As I look at this within that kind of framework, we need McCain-Feingold-plus. We need sweeping campaign finance reform, we need clean money, and we need clean elections. Ultimately, we have to go down the path of the people owning these elections, and therefore they will have a much better chance of owning the Government and a much better chance of defeating a harsh bankruptcy bill.

I yield the floor and reserve the remainder of my time.

How much time do I have, Mr. President?

The PRESIDING OFFICER. The Senator has 30 minutes remaining.

Mr. WELLSTONE. I reserve the remainder of my time for later today. I thank the Chair.

Mr. GRASSLEY addressed the Chair.

The PRESIDING OFFICER. The Senator from Iowa, Mr. GRASSLEY.

Mr. GRASSLEY. I have had an opportunity now for 30 minutes to listen to the Senator from Minnesota. Besides responding to his specific amendments, I would like to—on, hopefully, the last day of debating this bill; and there have been a lot of ''last days'' over the last three Congresses to finally get a bill to the President that will be signed into law—take an opportunity to express some history.

First of all, let me suggest to the Senator from Minnesota that there are a lot of trade associations that are very interested in getting this bill passed. I am not oblivious to that. But I think you ought to take into consideration how Senator GRASSLEY got to the point of considering legislation such as this.

I have town meetings around Iowa, just as I am sure you do in Minnesota. You go to the small towns of Minnesota to hold town meetings; I go to the small towns of Iowa, in each of the 99 counties every year, to hold town meetings. Maybe it is not always a town meeting. It might be at a coffee break for the workers at a factory; it might be at a Rotary Club, and all those things. I have a dialog with my constituents. And over the period of the time I have been in the Senate—maybe not immediately, but in the late 1980s and early 1990s—where did I first hear about abuses of bankruptcy laws that we passed in 1978, which were not intended to make it easier to get into bankruptcy but it ended up that way, 20 years later, so we realized?

It was from the small business people of Main Street USA that I heard about the irritating impact of people declaring bankruptcy. Maybe in some of those cases those bankruptcies would have been legitimate. As we all agree, some people deserve a fresh start. Even under that circumstance, it is irritating to the small businessperson to have somebody declare bankruptcy and then, maybe a month later, to see that person driving a new car.

These are the impressions I have of the use of bankruptcy that brought me to this point, along with the Senator from Alabama, Mr. Heflin, who, until he left the Senate in 1996, was either chairman of this subcommittee when Democrats were in the majority, or I was the chairman and he was the ranking member. He and I worked together on bankruptcy legislation. It was nothing very major through the 1980s and early 1990s, just a technical correction here or there. We were impressed with the number of small businesspeople who would tell us about the abuse of bankruptcy laws, people not paying their bills, and then the small businessperson being stuck with it. That is one point.

The second point is, over the period since the 1978 law passed, we have had a lot of changes in the economy of our country and also the globalization of the economy. The bankruptcy law has not changed with the economics and the changing conditions of the American economy. So early in the 1990s—and I think it took us about 4 years to get a commission set up—we decided, even though we had been working on bankruptcy legislation for a period of time and making some technical corrections, things of that nature—nothing real major—we had been thinking about how to handle this proposition of some corrections, some fine-tuning of the bankruptcy code—we decided to set up the Bankruptcy Commission.

All during that period of time of hearing from our constituents at the grassroots of America about abuse of bankruptcy laws or our seeing the need for some change in bankruptcy laws because of the changing economy, we never heard from these trade associations the Senator is referring to that a commission ought to be set up to change the bankruptcy laws. We set up a commission not made up of political people but experts in bankruptcy laws to bring about some suggested changes. Three Congresses ago, Senator DURBIN and I introduced the results of that commission.

Obviously, at that point, people started lobbying for and against legislation. That is the way the process has worked for a long time. We are here today not because of those trade associations that are very much involved for and against this bill. Don't forget, when you talk about the business interests, there is as much fighting within business as to who is going to be on top or who is going to be on the bottom in the priorities as there is between business as creditors and the debtors the Senator is protecting.

There is a lot of dispute among these trade associations; there is a lot of dispute among various segments of our business community as to just exactly how the laws should be changed. I suggest to the Senator that there is probably as much effort in lobbying between business as there is between all business on one hand and the debtors on the other hand.

I am not saying anything he said is incorrect, nothing whatsoever. I am just saying that, please, look at it from the perspective of the 15 years that I have been involved in bankruptcy legislation and how we came from point A to point B today.

Mr. WELLSTONE. Will the Senator yield?

Mr. GRASSLEY. I will yield.

Mr. WELLSTONE. The reason I make this awkward request is that in just a minute or two, I have to go back to the office for a conversation with journalists about a mental health bill. I apologize for leaving.

I say to the Senator from Iowa two things: First, here is our disagreement. I think there has been abuse. That is what the Senator from Iowa has focused on and heard about in his town meetings. I just think, to be as honest as I can be, that we have lost our way, and we went way beyond dealing with the abuse and ended up with this bill, as opposed to the original bill. I was the only vote against it. Frankly, if I had known what was going to happen, I wish I would have voted for it. I think we lost our way, and we went way beyond dealing with the abuse. We have written a bill that makes it easier for the credit card companies. That is my honest view. I have been speaking about this day after day.

I thank my colleague for what he said. This may sound too flowery—if that is the right word—but I don't think there is anything the Senator from Iowa would say on the floor of the Senate that I would not believe came out of his personal and political conviction. I know that, period.

This is a profound and deep, honest disagreement. It is not personal. He is a great Senator.

Mr. GRASSLEY. I thank the Senator from Minnesota for his kind remarks and his intellectually honest approach to this issue, even though there is great disagreement. One of the tests, I suggest to the Senator from Minnesota, that my position might be right is the fact that this bill passed three Congresses ago, 97–1. It passed two Congresses ago, one time 84–13, another time 70–28. It would be the law of the land now because we had the votes to override a veto, except that it was pocket vetoed by President Clinton. It was not vetoed by President Clinton in the way that we could override it.

I hope, for the cynical people—maybe everybody is somewhat cynical about Congress, but some people are more cynical than others—they are a little less cynical on legislation that gets broad bipartisan support. In other words, what I am saying is, there are 31 Members of Senator WELLSTONE's party who voted for cloture on this bill yesterday to help us get it passed. That is a test that this legislation is well compromised—in my judgment, maybe too much compromised; I would rather have a stronger bill—and it is a good product to send to the President to be the law of the land.

This legislation should be passed. I hope it will. I am going to leave to

other Republicans to speak about the merits or demerits of the Wellstone legislation because I have to go to a committee meeting. I do want to give a historical context of why we are here today.

I pursued this bankruptcy legislation because I have a real conviction that when you are right, you eventually win out. This is the third Congress. It would be the law of the land now except for President Clinton's pocket veto. President Bush has said he will sign it. The bipartisanship shows the rightness of it. We are going to have an example this year of right winning out.

I thank the Senator from Utah for coming to the floor. The distinguished chairman of the Judiciary Committee has done so much to help move this legislation along, particularly when I have been so busy as the new chairman of the Senate Finance Committee. I thank Senator HATCH for doing that.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I am here in opposition to the Wellstone amendment to permit a debtor to repeatedly use chapter 13. The effect of his amendment is that it strikes the provisions of the reform act which require a debtor to wait 5 years between chapter 13 bankruptcies.

Present law allows the debtor to file repeated chapter 13s, one right after another. The amendment is unnecessary. Senator LEAHY and myself have already worked out an adjustment to be included in the managers' amendment, which permits a debtor to refile a chapter 13 within 2 years after a previous bankruptcy and provides a hardship exception if the debtor absolutely has to have chapter 13 relief more frequently.

The amendment encourages debtors to repeatedly use chapter 13 regardless of whether they need it. It undercuts personal responsibility. Repeated use of chapter 13 should only be rarely necessary. It should never be allowed, unless a judge determines the debtor is really experiencing hardship. The amendment encourages bankruptcy mills to abuse the system by repeatedly putting their clients into chapter 13. This is a documented abuse that has been noted by many observers.

It is difficult for me to see what merit the distinguished Senator from Minnesota finds in this particular amendment. I oppose this amendment that would undercut personal responsibility and encourage abuse of the bankruptcy system.

I hope our colleagues will vote this amendment down.

Now, with regard to the other amendments the Senator from Minnesota has called up this morning, I oppose the Wellstone amendment to allow the debtor to defraud the court and shield income.

With regard to this legislation, the legislation calculates a debtor's ''current monthly income'' for purposes of the means test by averaging the debtor's monthly income from all sources over a 6-month period.

The amendment of the distinguished Senator from Minnesota would change the time period to a 2-month period instead of 6 months. This amendment would allow the debtor to defraud the system more easily. By limiting the scope of current monthly income, the amendment allows the debtor to hide earnings from the court more easily. For example, it may be worthwhile for the debtor to quit a job for 2 months in order to have no income for purposes of the means test than to take the income into account and risk being converted to chapter 13.

The point of the legislation is to cut down on loopholes, not create them. This amendment of the distinguished Senator from Minnesota creates an obvious loophole, which would allow debtors to game the system prior to filing.

A 2-month period does not give an accurate picture of an individual's income. Wealthier debtors may receive quarterly or semiannual investment distributions which may not be picked up under the Wellstone definition if the debtor is lucky, or extremely clever.

Supporters of the amendment may claim a 6-month period is too long, taking into account income or circumstances that are no longer relevant at the time of filing; that is, the debtor may have recently lost his job. This is the exact reason the legislation includes provisions to allow the judge to take such ''special circumstances'' into account. It is more appropriate to deter fraud in all cases and allow the judge to allow special circumstances in some cases than to presume such circumstances in all cases while making fraud easier.

So I hope our colleagues will oppose that Wellstone amendment as well.

I also oppose the Wellstone amendment excepting those who lose their jobs on account of imports from all provisions of the reform legislation.

The effect of his amendment is, if a debtor can demonstrate ''the reason for filing is due to the debtor having become unemployed'' on account of imports, the debtor is exempt from every provision of S. 420 except those he or she elects to cover them.

The amendment unwisely creates two classes of debtors: One class must use the bankruptcy bill as 420 would amend it, and another class can use bankruptcy law as it exists today, or pick and choose what provisions of this new law apply. To allow some group of our citizens, no matter how unfortunate, to pick and choose what parts of the law will apply to them is absolutely unprecedented.

The amendment would allow debtors to evade child support, alimony, and marital property settlement provisions of this bill that help women and children. That is one thing this bill is doing—moving women and children, or spouses and children, to the front of the line. The debtor who owes child support could evade his basic responsibilities to pay child support by fitting under the loophole created by the Wellstone amendment.

This particular amendment would allow debtors to evade the homestead exemption caps imposed by this bill.

The amendment is unworkable. For example, creditors would not know if they had to make the truth-in-lending disclosures this bill imposes on them until after the debtor files for bankruptcy; yet the disclosures must be given in credit card solicitations and on the monthly statement.

The amendment would have the strange effect of apparently exempting creditors from complying with consumer protections in this bill, such as the reaffirmation reforms, the restrictions on creditors that fail to credit plan payments, the privacy protections, and so forth.

The amendment ignores the basic reality that the bill's primary effect is to require debtors who have the means to repay a meaningful portion of their debts. In most cases, people who lose their jobs will likely not be affected by the means test. For those who still have the ability to repay a meaningful portion of their debts—because they are independently wealthy, regardless of employment—the fact that the person lost a job has nothing to do with whether the debtor can repay a meaningful portion of his or her debt.

We cannot allow this loophole in this legislation. Although I am sure the efforts of the distinguished Senator from Minnesota are well intentioned and made in good faith, the fact is these amendments would do a great deal of harm rather than good and would undermine the purposes of this bill and what we are trying to do, which is bring honesty and justice to the bankruptcy code.

I surely hope our colleagues will vote down all three of the amendments of the distinguished Senator from Minnesota and that we can go forward and, of course, get this bill completed today. I hope we can keep all amendments from being on this bill, except perhaps the managers' package, which we hope we can work out before final passage.

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

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

Under the previous order, the hour of 10:30 having arrived, the Senator from Wisconsin, Mr. KOHL, is recognized to call up No. 68, on which there shall be 90 minutes of debate, equally divided.

AMENDMENT NO. 68

Mr. KOHL. Mr. President, I send this amendment to the desk and ask for its immediate consideration.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Wisconsin [Mr. KOHL] proposes an amendment numbered 68.

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

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

(The text of the amendment is printed in today's RECORD under ''Amendments Submitted.'')

Mr. KOHL. Mr. President, I rise today to offer an amendment with Senator FEINSTEIN to eliminate the most flagrant abuse of the bankruptcy system—the unlimited homestead exemption.

The homestead exemption allows debtors in five states to purchase expensive homes and shield millions of dollars from their creditors. All too often, millionaire debtors take advantage of this loophole by buying mansions in states with unlimited exemptions like Florida and Texas, and declaring bankruptcy—yet continuing to live like kings. Our amendment will generously cap the homestead exemption at $125,000—that is, it permits a debtor to keep $125,000 of equity in his home after declaring bankruptcy.

The Senate voted on our amendment last session 76–22 after rejecting an amendment that would have gutted our amendment by a vote of 69–29. That was the right thing to do then, and it is the right thing to do now.

Let me give you a few of the numerous examples of rich debtors taking advantage of this loophole:

Abe Gosman, a health care and real estate magnate, declared bankruptcy last week in Florida citing debts of over $233 million. Despite these debts incurred from business losses in Massachusetts and Rhode Island, he will hold onto his 64,000 square foot mansion in West Palm Beach on a street known as ''Billionaire's Row.''

This January, convicted Wall Street financier Paul Bilzerian filed bankruptcy for the second time while owing at least $140 million in debts, but still kept his $5 million, 37,000 square foot Florida mansion.

Movie star Burt Reynolds wrote off more than $8 million in debt through bankruptcy, but still held onto his $2.5 million estate, named Valhalla.

Sadly, those examples are just the tip of the iceberg. We asked the General Accounting Office to study this problem. They estimated that 400 homeowners in Florida and Texas—all with over $100,000 in home equity—profit from this unlimited exemption each year. While they continue to live in luxury, they write off an estimated $120 million owed to honest creditors. A Brown University study estimated that 3 percent of all people who move to Texas and Florida are motivated by bankruptcy concerns.

Opponents of this amendment will say that while their hearts are with us on this issue, there is a compromise in this bill that is satisfactory. That is, they simply require someone be a resident of a state for 2 years. Unfortunately, that so-called compromise is so watered down that it doesn't accomplish anything. Instead, it bends over backwards for millionaire debtors who are trying to evade their creditors.

There are several ways that the current provision fails. First, it is easily evaded. It lets anyone who has had their home for more than two years to take advantage of the homestead loophole. Bankruptcy professors throughout the nation have written us to say that any decent bankruptcy planner will be able to stall for two years while their client squirrels money away in a mansion and away from creditors. If you can afford a multi-million dollar house, you can afford an attorney good enough to get around this provision.

Second, the provision would do absolutely nothing to catch the wealthy debtor who already lives in Florida, Texas, or three other states. Former Governor John Connally, who hid millions from his creditors in Texas, and Burt Reynolds, who shielded $2.5 million in Florida, do not deserve their mansions any more than people who just moved to Florida from Wisconsin or California.

For these reasons, Mr. President, the provision in the bill is just not good enough. It is a blueprint for rich debtors. It shows them how to dodge their creditors. Avoiding personal responsibility and using the bankruptcy laws as a method of financial planning is contrary to the stated purpose of this bill. A hard cap is not only the best policy; it also sends the best message: bankruptcy is a tool of last resort, not financial planning. And it gives credibility to reform by targeting the worst abusers, no matter how wealthy.

This is a simple idea that makes sense. There is no greater bankruptcy abuse than this. Last Congress, an overwhelming number of our colleagues agreed with us and voted to cap the homestead exemption by a vote of 76–22. The vote this year is exactly the same as the one last Congress. If you were against rich debtors avoiding their creditors last time, then you should be against rich debtors avoiding their creditors this time.

Mr. President. I reserve the remainder of my time.

The PRESIDING OFFICER. Who yields time? The Senator from Utah, Mr. HATCH.

Mr. HATCH. Mr. President, one of the most difficult aspects of this bankruptcy bill we have had is trying to resolve the problems with regard to home ownership and homestead exemption. It has been a very difficult problem and we have worked on both sides of Capitol Hill to try to come up with a solution that will work. Frankly, the solution we have come up with is in this bill, basically recognizing the States have the right to set the homestead cap rather than the Federal Government.

My distinguished friend, Senator KOHL, is trying to change that with this amendment. This amendment jeopardizes bankruptcy reform by stripping out the bipartisan compromise homestead provision that we have worked out over a long period of time, over many years. This bipartisan compromise homestead exemption is in the bill, and the distinguished Senator from Wisconsin would require home equity, wherever acquired, that exceeds $125,000, will be subject to collection under the bankruptcy code. The bipartisan compromise homestead provision now in the bill substantially improves current law by requiring home equity acquired within 2 years before bankruptcy, not to exceed $100,000, to be subject to crediting in a bankruptcy estate.

What the code does is prohibits individuals from shielding more than $100,000 in new equity in their home—paying down the mortgage, building an addition—if that new equity was obtained within 2 years of filing.

Finally, the compromise would disallow any acquisition of homestead property within 7 years of filing if done to ''delay, hinder, or defraud'' a creditor.

The amendments proposed by Senators KOHL and FEINSTEIN would add no additional antifraud protection and would, instead, threaten final passage of the bankruptcy bill. The Bush administration supports the existing homestead language contained in the underlying bill, the compromise that we have all worked out, and the Kohl-Feinstein amendment is opposed by the National Governors' Association and the National Conference of State Legislators. I think we would be very wrong to go against allowing the States to set their own standards in this area.

Some States will have different standards than others, but it is up to the States. If they set the standards too high or too low, they are going to suffer as a result of it. They will gradually get it right. But for us to arbitrarily set a homestead exemption standard here in the Senate, in this bankruptcy bill, is the wrong thing to do. I prefer to leave it up to the States.

I hope our colleagues will vote against this homestead exemption language of the distinguished Senator from Wisconsin.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin, Mr. KOHL.

Mr. KOHL. Just briefly, to respond to Senator HATCH, bankruptcy is a Federal proceeding that occurs in Federal courts, so there is every logical reason to have Federal standards. Right now, there are only five States with an unlimited exemption—Florida, Texas, South Dakota, Nebraska, and Iowa—and only two States have one over $125,000, and that is $200,000. Those two States are Minnesota and Massachusetts. Every other State has an exemption of $125,000, which is ours, or less. The argument that every State should

be allowed to set an unlimited exemption if they so wish is not logical because it is not a States rights issue. Bankruptcy is a Federal issue.

I think that argument doesn't hold water. Again, I point out the exemption that has been worked out simply says that a person would have to have 2 years residency in any one of these five States, and then they could shield an unlimited amount in a home in a bankruptcy proceeding. As I said in my earlier statement, it is very easy to work a 2-year residency while you are planning to have a bankruptcy proceeding. Furthermore, it does nothing to address the issue of people who currently live in those five States—maybe for 5 years, 10 years, 15 years, or 20 years. They would have the opportunity to shield an unlimited amount in a home.

This is a very simple amendment. We debated it 2 years ago, and by a 76–22 margin, the Senate accepted that amendment 2 years ago. We are simply requesting that same expression of the Senate's intent be stated again today.

I reserve the remainder of my time.

Mr. HATCH. Mr. President, 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. BROWNBACK. Mr. President, I ask unanimous consent the order for the quorum call be dispensed with.

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

The Senator from Kansas. Who yields time to the Senator?

Mr. BROWNBACK. Mr. President, I rise to speak against the amendment.

Mr. HATCH. I will be happy to yield 10 minutes to the Senator.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. I thank the chairman of the committee for yielding the 10-minute time for me to speak on this topic.

Mr. President, we have an issue that has been worked on extensively. I appreciate my colleague from Wisconsin bringing this back to the floor this year. We had spirited debate and discussion on it last year. We had an aggressive effort to work this out in conference. We did—I don't think to everybody's satisfaction—but there are a number of people on that side of the aisle and our side of the aisle who thought this was an area that should be addressed.

I personally think this is an area that should be left in the State's constitution and away from bankruptcy law the way it has been for 132 years, and I continue to believe that now. But what has come forward has been a compromise that has been worked out by a number of people who worked on the bankruptcy issue, people of good faith from different perspectives, and that compromise is in the bill.

The chairman of the committee spoke about what that compromise was. To deviate from that will cause a number of us to then say that is something with which we will not be able to live. I personally will be voting against the bill if that is in it, and I will fight this bill coming back in any form from conference if it has this new language in it.

I respect the thoughts on the part of my colleague from Wisconsin. I know his heart is good and clear on this.

But there is another matter here for me; that is, Kansas, along with a number of other States, has put in the State constitution a homestead provision that says you are entitled to be able to keep your home and 160 contiguous acres. This dates back to the period of homesteading, which Kansas, the State of Nebraska, and the United States granted to people. It said, if for 5 years you can go out there and tame 160 acres and build a home, you get to keep it. It is yours. That is your homestead. We settled much of the Midwest in that way—not all of it. It was settled that way.

Over succeeding years, a number of farmers would borrow against the land. They would say, I need to buy fertilizer, or seed, or some stock and cattle to put on it. They would borrow against the land. Then a bad market would hit, or bad weather would hit, and they would lose the land. So a number of States built not just in their laws but their constitution a law to say you can protect your home and 160 contiguous acres so you can farm again.

This was very much thought through, and it has been used a lot—even as recently as the eighties in Kansas. This provision was used extensively by farmers who lost most of their land, most of their machinery, and most of their livestock. But they could keep the home and 160 acres to be able to start farming again.

At that time, I did a number of foreclosures for farmers, defending farmers, and bankruptcy work for farmers. A number of them lost everything but the home and 160 acres. Today they are still out there farming—some because they were able to protect it. They were able to continue and start farming again.

A compromise has been carefully worked out in this legislation that says we are not going to let people defraud others, or try to protect more than they are entitled to, and we are going to continue to allow States 2 years out—people who have lived there for more than 2 years—to protect what the State law would allow you to protect.

In my State, 160 acres is your homestead; or, in town, a home and one-half acre. That is in our law and the constitution of the State of Kansas. I think that is fully appropriate. It is fair. I think it is right, and it is what a number of States have done.

I point out some of the States that have worked on this either in their constitution or in their laws—Florida, Iowa, Kansas, South Dakota, Texas, Oklahoma, Minnesota, and Massachusetts. And there are other States that have different provisions as well.

We have had a Federal bankruptcy law for 133 years that has not addressed this issue and has said this should be left to what an individual State would decide. If California or Wisconsin or Kansas want to do this differently within their State, we will let the State determine what they want to do. I think it is important we allow that provision to continue. The effect of this would be that the Federal Government identifies this law and would say for the first time in 133 years that we are going to take up this issue.

There have been a few high profile instances of abuse of the homestead exemption. Debtors have moved to other States to take advantage of a higher exemption in that State or have transferred assets of the homestead to shield them. Those are, by far, the exception rather than the rule.

I can tell you that during the 1980s during the bankruptcy crisis in Kansas they weren't moving. Some were trying to shield assets but most were trying to hold onto enough so they could start farming again. That is, by far, the typical situation, while there have been some high profile cases where it has been different. In fact, a recent survey of bankruptcies by the Executive Office for the United States Trustees said they ''did not find a single debtor who came close to the popular stereotype of homestead abuse. Our conclusion is that this is a relatively rare phenomenon in bankruptcy.''

For every Burt Reynolds-type example out there, there are hundreds of honest, middle-class people who find themselves in financial trouble who would be forced to move out of their homes or off their farms under this particular well-meaning amendment. As well meaning as it may be, it is going to hit them, and it is going to harm them.

What is in the bill now to end homestead abuse?

The bill now contains compromise language on the homestead issue that was adopted during the debate on the bill last year. That was approved by the Senate as part of the overall bill by a 70-vote margin. We worked a long time to get this language worked out. There were a lot of parties involved. We were able to get it through by a 70-vote majority. Taken together, the protections against homestead abuse contained in the bill virtually guarantee that the few instances of true abuse will never occur again.

They include a cap of $100,000, indexed to inflation, on any new equity obtained in the homestead within 2 years of filing for bankruptcy. Thus, a debtor would not be able to shield a $200,000 addition to a house built within 2 years of filing. This would, however, leave the large majority of homeowners unaffected since very few homeowners can expect to acquire more than $100,000 in equity within a 2-year period.

The bill requires that, before a debtor can use the homestead exemption in a particular State, he or she must have resided in that State for no less than 2 years. This will prevent the problem of ''forum shopping'' by bankruptcy filers.

If you are trying to plan bankruptcy and looking more than 2 years out, that is a pretty aggressive effort. And, like I said, from the Bankruptcy Trustees' perspective in their study, they don't find any cases of this abuse, and there is a relatively very rare phenomenon of that.

The bill contains a heightened scrutiny of any transfer of assets to the homestead made within 7 years of filing for bankruptcy done to ''delay, hinder, or defraud'' creditors—for example, getting cash from a credit card to fraudulently pay-down a mortgage before filing for bankruptcy.

The bill now makes it very hard for anyone who makes or who can make above the national median income to even file chapter 7, where the homestead exemption is at issue. This effectively guarantees that high-income debtors will not be able to shield their assets in their home and discharge their debts.

Finally, these and other general provisions of the bill and of existing law grant any bankruptcy judge in the country the power to disallow the use of the homestead or any other exemption, if it is being used improperly to shield assets. The bankruptcy judge can step in as well and say: No. I am not going to allow this to take place.

With all of these protections against abuse or fraud, one can only conclude that this amendment will have the effect of forcing middle-class Americans to sell their homes if they encounter financial difficulty.

As I stated, if this gets in the bill, I will be voting against the overall bankruptcy bill, and I will be fighting against it coming out of conference. I will be fighting against it in conference and on the floor by every means possible. It is in the Kansas Constitution. Their right of a homestead is in it. It is in the constitution of several States. It is something that has been used by farmers for generations and will continue to be used.

For those reasons, I will adamantly oppose the Kohl amendment, with as much respect as I have for the Senator from Wisconsin and his heart and his desire to see that people do not fraudulently keep too many of their assets. But it is going to have a detrimental impact on my State. I cannot support that.

I reserve the remainder of our time.

The PRESIDING OFFICER. The Senator from Wisconsin.

Mr. KOHL. Mr. President, I will briefly respond to the Senator from Kansas.

He argues against changing what is in the current bill and is against accepting my amendment and believes that farmers would undergo an extreme correction.

This bill and its amendment can be crafted for acceptance on the floor today to protect a farmer's exemption. There is a recognition that the intention of this amendment is not to impoverish any farmers or homesteaders, as Senator BROWNBACK has referred. And if that language is not clear enough, we would be more than happy to work out the farmer exemption, which is currently in our amendment. The intent of our amendment is not to do anything to get at family farmers who have owned their land for many years and who would be impoverished beyond reasonableness in a bankruptcy proceeding.

I don't think it is an argument that should be used against this amendment because the amendment includes the recognition that farmers need an exemption.

I thank the Chair.

The PRESIDING OFFICER (Mr. ALLARD). Who yields time?

Mr. HATCH. 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. REID. 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. REID. Mr. President, there is an attempt to start some votes in about half an hour, at about 11:35. We have a long list of people who have germane amendments. If any of those individuals wish to offer their amendments, this would be an ideal time to do that. As the day wears on, there is going to be less and less time to do that. There may come a time when all time has expired and they will not be able to call up their amendments.

So if those people who have germane amendments wish to come and offer them, they should do so because otherwise—I have spoken to Senator HATCH and Senator LEAHY, and we could be finished early this afternoon on everything.

So I think the Senator from Utah would agree, Senators should get over here and get moving on these amendments; otherwise, there will come a time this afternoon when there will not be any time and we will wrap up consideration of the bill.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. I agree with the distinguished Senator. I think we should move ahead. I understand there is one other person, the distinguished Senator from Texas, who would like to speak on the Kohl amendment. After she gets here and gives her remarks, we intend to proceed to a vote on the Kohl amendment. Then we will try to stack votes on the two Leahy amendments, I think with a minute on each side to explain them, if I have that right. So we are hopeful we can move this.

Mr. REID. If my friend will yield, the mere fact that you have a germane amendment does not mean it automatically is protected. There are certain procedures that have to be initiated before there can be a vote.

The point is, we have had some down time already this morning. We will have some during the noon hour. These amendments could be called up.

So I hope people who have these amendments—they are listed; it would be easy to ascertain who they are and what the amendments are—will call them up as soon as possible.

There are some people who have already started calling the Cloakroom. They have other things they want to do this evening and tomorrow and are asking us when we are going to be able to complete this bill.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

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

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

Mrs. HUTCHISON. Mr. President, I rise today in opposition to the Kohl-Feinstein amendment now before the Senate. I do so because it is unwarranted and unwise—it is an intrusion upon well-established State constitutions and laws—and because it throws out the window a carefully crafted compromise reached last year on this issue that virtually guarantees the elimination of any fraud or abuse of State homestead exemptions.

I am pleased to be joined in my opposition to this amendment by my colleagues from Kansas and Florida, as well as the managers of the bill, Senators HATCH, GRASSLEY, and SESSIONS, as well as our leader and assistant leader, Senators LOTT and NICKLES.

Also on our side is the President of the United States who has singled out this issue in the bankruptcy debate and who supports the existing language in the bill.

Finally, my colleagues should know that the National Governors' Association, the National Conference of State Legislatures, and the National Association of Home Builders strongly oppose this amendment.

As my colleagues know, this amendment would impose a one-size-fits-all nationwide cap of $125,000 on all State homestead exemptions in bankruptcy. I must confess that I don't think you could, by any stretch of the imagination, say that property values in Wisconsin are the same as those in Florida or New York the same as those in California or Texas the same as those in Kansas. The arbitrary limit runs roughshod over the constitution and laws of at least nine States that have homestead protection above that amount.

In my home State of Texas, we don't even mention amount. We go by acreage. It is in the State constitution. It has been there for over 100 years. Other

States that have different caps are Kansas, Iowa, South Dakota, Oklahoma, Minnesota, and Massachusetts.

It would also immediately threaten the homestead exemptions of two other States, Nevada and California, which are right at the $125,000 figure that is in their amendment. It would threaten two States, and it would, frankly, threaten all States because there is no allowance in the amendment for the rate of real estate inflation which we all know has been on the rise in recent years.

This is a States rights issue. We have, for over 130 years, allowed the States to set homestead exemptions because, clearly, property values are different in different States. Bankruptcy is a Federal issue. Homestead exemptions have been allowed to be set by the States because we differ in our approach to homesteads and to bankruptcy itself. It is important that we address this issue in a way that allows States to have the ability to keep their constitutions intact. There is no overriding interest for us to run over a State constitution.

It is very important that we curb fraud and abuse. That is why this bill contains the airtight antifraud and antiabuse provisions that it does. Under this bill, you must live in a State for at least 2 years before you can even avail yourself of that State's homestead exemption. Moreover, even if you have lived in a State for more than 2 years, you can only protect up to $100,000 in any new equity you obtain in that home within 2 years of filing for bankruptcy. This eliminates the scenario of someone running to a State, buying a home, putting a lot of equity into it, and then filing for bankruptcy.

It is important that we look at this issue in the bigger picture of bankruptcy reform. When we took this amendment up last year, it passed overwhelmingly in the Senate. The House was diametrically opposed. The House had a State opt-out. That would have been my position, to keep States rights in the homestead exemption as it has been for 130 years. I would like to have had the House position. I lost on the Senate floor.

When this bill went to conference, this amendment was hammered out in a very hard-fought conference negotiation. What was hammered out between the two Houses and agreed to by the House and Senate is what we have in the bill today.

Senator SESSIONS and Senator GRASSLEY were two of those who fought hard for the Kohl amendment last year. This year they are saying: Stay with the bill so we can keep the compromise that was forged last year and so we will have a chance to get in place the other bankruptcy reforms that this bill provides.

They are doing something that I think has great integrity because they are saying, we have hammered it out now let's stick to the agreement we made. In fact, I urged my colleagues on the House side not to go back to their original position because I thought the Senate would stick with the bill. I think this goes against what we hammered out last year, and the bill was vetoed by President Clinton, so we are back this year. But President Bush, who has the ability to veto the bill again, has specifically said he hopes the provision that is in the bill that would be altered by the Kohl amendment stays in the bill.

If we vote for the Kohl amendment, we are now putting the bill in jeopardy once again, and if we don't prevail in conference with what is in the bill today, we could face another delay or, possibly, a veto of the bankruptcy reform bill.

So if you are a Senator who favors bankruptcy reform, you should not vote for the Kohl-Feinstein amendment. Instead, you should stick with the bill, stick with the compromise that was forged in a bipartisan way in Congress last year between the House and the Senate, and let's allow States to have the ability to set their own homestead exemptions, except in the case of fraud and abuse and in the case of someone who moves and in 2 years declares bankruptcy.

I think the bill provides closure of every loophole that would allow someone to come in, buy a big house, declare bankruptcy, and still have the big house in which to live. The statistics show that the declarations of bankruptcy in the last couple of years have actually gone down. So the purpose of the bankruptcy bill has been alleviated by the fact that people are not declaring as many bankruptcies.

What we want to do is provide a fair bill that deals with creditors in a fair way but also requires that people pay their debts, if they possibly can. That is the purpose of the bankruptcy reform bill. Running roughshod over States rights is not a good addition to this bill. And, of course, if we do run roughshod over States rights, I could not possibly support a bill that would violate my State's constitution. It would be unthinkable.

So I am urging my colleagues to set this to rest once and for all with the compromise that was hard fought, but forged, last year between the two Houses of Congress, if you believe in real bankruptcy reform. If you do, we should not let this amendment derail the whole bill. If it passes and if it prevails, it will do so. I hope that does not happen.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. KOHL. Mr. President, I will just respond to the Senator from Texas. I think one of the major arguments, if not the major argument, she makes is that this amendment is about States rights, in her opinion, and that we should preserve States rights.

I want to make the point that, in my judgment, nothing could be further from the truth because anybody who files for bankruptcy is choosing to invoke Federal law in a Federal court to get a fresh start, which is uniquely a Federal benefit. So in these circumstances it is only fair to impose Federal kinds of limits.

In fact, this bill is full of provisions that do rewrite State law. For example, one of the provisions in this bill establishes a Federal provision that allows creditors to come into a debtor's home, if necessary, to take their stereo and then sell it. So there is no reason Federal law should determine if you can keep a stereo but not the amount of equity in your house. I believe this argument about States rights with respect to a Federal bankruptcy bill just doesn't equate.

The other point she makes is that we worked out a generous compromise and that is the one we should keep. That is the compromise that requires 2 years of residency before you can keep the equity in your house to the full extent. Bankruptcy professors and practitioners across our Nation have told us, and will tell you, that the 2-year residency requirement is something that any planner can deal with in providing for the bankruptcy of their client. So that is not an adequate kind of a resolution, and that is why we are here today to make our arguments in favor of this amendment.

I thank the Chair.

Mrs. HUTCHISON. Mr. President, I say to the distinguished Senator from Wisconsin that I think the fact that we have a 7-year antifraud lookback certainly assures that someone who is planning a bankruptcy and comes in and makes the 2-year move is still going to be very vulnerable. In fact, that was part of the hard-fought compromise.

That 7-year antifraud lookback means it doesn't matter what else is in your favor if you have fraudulently tried to come in and, within 5 years or 6 years—which it would be very hard to plan for—declare a bankruptcy; then you can go back 7 years to make sure you catch someone who would defraud the court or the debtors and lenders of another State.

Secondly, I think that to take away what has been a State right for 130 years is against the rest of the States rights that are allowed in the exemptions the Federal courts take into account. We don't put a limit on the value of personal property. Someone could have a fabulous art collection and defraud creditors, perhaps, in one State. We haven't taken on that. They could have a great car collection that would not have a cap.

The point is, if someone does this in a fraudulent way, we have steps in the bill that can be taken to keep someone from defrauding their lender. We take care of that in the bill. But we have different property values in different States. We have different valuations in personal property, different valuations

of cars, and we in this country have acknowledged that, very wisely, for the last 130 years.

It is certainly not unusual but, in fact, oftentimes the Federal courts look to the State laws to be the guiding principle. So that is not an argument not to allow States rights to prevail as they have for 130 years in this country.

So I hope we will look at the bigger picture and keep States rights intact. We have amply provided for antifraud provisions in the compromise that was forged between the two Houses last year. I hope the Senate will stick with that compromise and keep the integrity of the bill.

The PRESIDING OFFICER. The Senator from Wisconsin is recognized.

Mr. KOHL. Mr. President, I want to respond briefly. There is in the bankruptcy code today a limit on cars. I think it is $5,000. There is a limit on art, along with other provisions, which I think is at $8,000. The claim that you can shield an unlimited amount of art, or a fabulous car collection, in a bankruptcy proceeding today is simply not true.

Mrs. HUTCHISON. Mr. President, I will respond by saying the States set their own limit on personal property.

The PRESIDING OFFICER. The Senator from Utah is recognized.

Mr. HATCH. Mr. President, I understand the distinguished Senator from Florida would like to speak prior to the vote. How much time does the Senator desire?

Mr. GRAHAM. Ten minutes.

Mr. HATCH. And the distinguished Senator from Wisconsin would like some time to respond?

Mr. KOHL. I am prepared to yield my time if we want to vote.

Mr. HATCH. I ask unanimous consent after the 10 minutes of the distinguished Senator from Florida, all time be yielded back in relation to the pending Kohl amendment; that further, the Senate proceed to a vote in relation to the amendment at that time, which would be approximately 11:41, to be immediately followed by a vote in relation to the Leahy amendment numbered 41.

Finally, I ask consent that the second vote in the series, that is, the Leahy amendment, be limited to 10 minutes.

Mr. REID. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Nevada.

Mr. REID. I will not object other than to inform Senators that it appears, following the two votes, Senator BOXER will be over to offer her amendment. Then we really don't have many amendments remaining. Senator FEINGOLD has two amendments and he has tentatively agreed to time agreements. We have Wellstone amendments of which we have to dispose. I don't know if he will offer more, but we have at least three votes there. Senator LEAHY has a number of issues to be resolved and, of course, Senator SESSIONS. We need to work on matters he wants to bring up. We are getting down to the end of this bill. With a little bit of luck, we could be completed late this afternoon.

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

Mr. NELSON of Florida. Mr. President, the Florida Constitution grants the citizens of my State unlimited protection of the equity in their homes. I think we can all agree that this provision was not created so that wealthy, non-resident debtors could escape their obligations. The provision was created because the people of my State understood the importance of preserving a debtor's most essential asset, their home.

I do not think that a previously wealthy person should have the right to purchase a very expensive home in order to shield his remaining assets from creditors, and I do agree that we must address homestead abuse. But, we should not take away the homes of innocent debtors who have worked hard to build equity in their homestead. The median income of debtors in bankruptcy is $22,000 per year. Working people in that income range do not have the ability to shelter a significant amount of money in a home.

My State has many retirees from around the country. Many have worked their entire lives to own their own home and under the Kohl amendment they may lose their residence even though they fell into hard times through no fault of their own. Forcing a bankrupt retiree out of her home simply because she has more than $125,000 in equity does not meet any standard of fair play.

The $125,000 cap proposed by this amendment does not adequately represent the value of homes in Florida today and certainly will not reflect the value of homes five years from now. The Kohl amendment's catch-all, national cap ignores the differences in property value that vary not only from State to State, but also from city to city. Furthermore, the amendment unfairly lumps long-time residents and retirees into the same category as abusers who move to the State one day and file for bankruptcy the next.

The current language of S. 420 avoids these problems by protecting homeowners who have fallen on hard times, but who have worked and played by the rules in a State for more than 2 years. The current language is clear, if you move to a State simply to avoid paying your creditors you will not be protected and you should not be protected. However, people who play by the rules will have a real chance to start over without losing the equity in their homes.

I ask my colleagues today to protect the home equity of those debtors who legitimately need a fresh start by opposing this amendment.

Mrs. FEINSTEIN. Mr. President, I rise in support of the Kohl-Feinstein amendment to cap the homestead exemption at $125,000 for all States, and to eliminate from our bankruptcy laws a loophole so large that you could fit a $50 million mansion right through it.

This amendment will correct a longstanding discrepancy between the States, a discrepancy that on the one hand forces most debtors to struggle to pay back every dime they owe, but on the other hand allows many of the most ''wealthy'' debtors declaring bankruptcy to shield their assets in multi-million dollar homes.

The discrepancy I speak of occurs because in five States, Florida, Texas, South Dakota, Iowa and Kansas, where debtors are allowed to keep their homes no matter what they owe, or to whom they owe it, and no matter how much the home is worth.

The ''homestead'' laws in these five States differ radically from the other 45:

Many States have virtually no homestead exemption at all. In Michigan, for instance, the cap is $3,500; in Pennsylvania, just $300.

Other States, recognizing a benefit in allowing debtors some ability to remain in their homes as they dig out of bankruptcy, place slightly higher caps on their homestead exemptions and allow debtors to keep $15,000, $30,000, $60,000, or even $75,000 equity in their homes.

My own State of California has a sliding scale cap, ranging from $75,000 for most debtors to $125,000 for seniors.

Massachusetts and Minnesota have relatively high caps of $200,000, and Minnesota's cap even goes to $500,000 for farms, the highest cap of all the States that have at least some restriction on how much equity can be protected.

A vast majority of the 50 States have homestead caps of under $125,000, and this bill would do nothing to affect those States.

The glaring exceptions are those five cases where a State has chosen to allow debtors to hide assets in luxury homesteads and essentially avoid their obligations under Federal bankruptcy law.

What does this mean? This means that wealthy debtors facing bankruptcy can take their remaining assets, buy a home in one of those five States, and tell their creditors to get lost. Their assets are protected permanently.

Let me give an example of homestead abuse that has been highlighted in the press and even on ''Sixty Minutes.''

When this Wall Street financier and convicted felon finally declared bankruptcy, he listed more than $140 million in debts and only $15,805 in assets.

But one particular asset was not itemized, and the financier was not obligated to itemize it. That asset was his 37,000 square foot Florida mansion, worth an estimated five to $6 million.

This ''house'' has ten bedrooms, two libraries, a business center, a double gourmet kitchen, an indoor squash and

racquetball court, an indoor basketball court complete with electronic scoreboard, a private movie theater, full weight and exercise rooms, a swimming pool, a spa, an outdoor entertainment area, game rooms, a nine-car garage, a lakefront gazebo, an elevator, 21 bathrooms, and a 6,000 square foot quest house.

The quest house alone has been described as a mansion in and of itself.

But in Florida, the entire home, 21 bathrooms and all, as well as the property on which it sits, is completely exempt from the bankruptcy laws. The ''bankrupt'' financier owes millions, but through careful planning he can continue to live like a king.

Meanwhile, his creditors can only stand outside the gates of the home and look with awe upon the home they paid for—$140 million in debts, and nothing his creditors can do.

And this case is not all that unique. Actors, Wall Street financiers, participants in felonious savings and loan scandals, and others, all have taken advantage of the homestead exemption loophole.

Essentially, these five States act as heavens for the most determined avoiders of debt, an escape of last resort for wealthy individuals who play fast and loose with their money.

A General Accounting Office study of bankrupt debtors who take advantage of the homestead loophole in Florida and Texas alone found that each year more than 400 wealthy debtors are able to protect more than $100,000 in equity in their home, at a cost to creditors of $120 million.

The bankruptcy reform bill as a whole attempts to increase personal responsibility by forcing more people to repay more of their debts. This goal is a good one, but the bill as drafted sends mixed signals.

To poor debtors struggling to climb out of bankruptcy and to simply put a roof over the heads of their family, the bill takes a stern view, debts must be paid back, assets must be sold, and you'll face some hard years ahead.

To more sophisticated debtors, many of whom had every advantage before making the bad, or even criminal, decisions that led to bankruptcy, the bill says that with a little planning, you can get away scot free.

This is just plain wrong.

This bankruptcy bill forces lower- and middle-class families to give up the family computer in many instances.

The bill takes your second television set and even family heirlooms.

The bill requires most debtors to enter strict payment plans to pay back even extraordinary medical or other debts incurred due to circumstances beyond their control.

Yet the homestead exemption allows sophisticated debtors to avoid repayment entirely.

This must be changed.

That is why Senator KOHL and I are proposing a cap of $125,000. For States that already have a cap of or below that $125,000 level, and this is almost every State in the Union, this amendment will do nothing to change current bankruptcy proceedings.

For those few States that have chosen to provide a safe haven for debtors fleeing from their creditors, this amendment will create a new, national cap that must be followed.

The last time the Senate considered a homestead cap, an even lower $100,000, we approved of the cap by an overwhelming margin.

The provision was watered down during a shadow conference so that in the end, the conference report and now this bill do virtually nothing to prevent debtors from shielding millions of dollars in luxurious mansions.

Some will argue that the current bill does provide a ''compromise'' homestead exemption cap.

As drafted, that cap only applies if a debtor purchases a home within two years of bankruptcy. Any good bankruptcy attorney will tell you that this provision can be easily avoided. In fact, dozens of professors and attorneys have told us just that. I ask unanimous consent that their letter be printed in the RECORD after my remarks.

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

(See Exhibit 1.)

Mrs. FEINSTEIN. Under this so-called ''compromise'' language, as long as a debtor plans a couple of years in advance, or already lives in one of those five States, there is no cap. This is a very soft cap, indeed.

So the current language in the bill does not represent a real compromise, it does little to stop wealthy debtors from protecting their assets through bankruptcy and living the rest of their lives in luxury, while leaving their creditors with nothing.

Bankruptcy is a federal matter. In fact, our Constitution explicitly gives Congress the right to establish ''uniform laws on the subject of bankruptcies throughout the United States.''

So this Congress is constitutionally authorized, even obligated, to see that bankruptcy laws are fair and uniform throughout our Nation.

We must ensure that bankruptcy is a refuge of last resort for those truly in need of a fresh start, not just another financial planning tool to help felons and deadbeats protect their assets from creditors.

This bill rightly encourages responsibility for those who enter bankruptcy, so that those who can pay their debts, do pay their debts.

But we must encourage responsibility across the board, not just for those who cannot afford a god accountant or don't happen to live in Texas, Florida, Iowa, South Dakota or Kansas.

I urge my colleagues to support his amendment. I thank my distinguished colleague, Senator KOHL, for working so diligently on this amendment.

EXHIBIT 1

OCTOBER 30, 2000.

Re the Bankruptcy Reform Act Conference Report (H.R. 2415).

DEAR SENATORS: We are professors of bankruptcy and commercial law. We have been following the bankruptcy reform process with keen interest. The 91 undersigned professors come from every region of the country and from all major political parties. We are not a partisan, organized group, and we have no agenda. Our exclusive interest is to seek the enactment of a fair and just bankruptcy law, with appropriate regard given to the interests of debtors and creditors alike. Many of us have written before to express our concerns about the bankruptcy legislation, and we write again as yet another version of the bill comes before you. This bill is deeply flawed, and we hope the Senate will not act on it in the closing minutes of this session.

In a letter to you dated September 7, 1999, 82 professors of bankruptcy law from across the country expressed their grave concerns about some of the provisions of S. 625, particularly the effects of the bill on women and children. We wrote again on November 2, 1999, to reiterate our concerns. We write yet again to bring the same message: the problems with the bankruptcy bill have not been resolved, particularly those provisions that adversely affect women and children.

Notwithstanding the unsupported claims of the bill's proponents, H.R. 2415 does *not* help women and children. Thirty-one organizations devoted exclusively to promoting the best interests of women and children continue to oppose the pending bankruptcy bill. The concerns expressed in our earlier letters showing how S. 625 would hurt women and children have not been resolved. Indeed, they have not even been addressed.

First, one of the biggest problems the bill presents for women and children was stated in the September 7, 1999, letter: ''Women and children as creditors will have to compete with powerful creditors to collect their claims after bankruptcy.'' This increased competition for women and children will come from many quarters: from powerful credit card issuers, whose credit card claims increasingly will be excepted from discharge and remain legal obligations of the debtor *after* bankruptcy; from large retailers, who will have an easier time obtaining reaffirmations of debt that legally could be discharged; and from creditors claiming they hold security, even when the alleged collateral is virtually worthless. *None* of the changes made to S. 625 and none being proposed in H.R. 2415 addresses these problems. The truth remains: if H.R. 2415 is enacted in its current form, women and children will face increased competition in collecting their alimony and support claims after the bankruptcy case is over. We have pointed out this difficulty repeatedly, but no change has been made in the bill to address it.

Second, it is a distraction to argue—as do advocates of the bill—that the bill will ''help'' women and children and that it will ''make child support and alimony payments the top priority—no exceptions.'' As the law professors pointed out in the September 7, 1999, letter: ''Giving 'first priority' to domestic support obligations does not address the problem.'' Granting ''first priority'' to alimony and support claims is not the magic solution the consumer credit industry claims because ''priority'' is relevant only for distributions made to creditors in the bankruptcy case itself. Such distributions are made in only a negligible percentage of cases. More than 95 percent of bankruptcy cases make NO distributions to any creditors because there are no assets to distribute.

Granting women and children a first priority for bankruptcy distributions permits them to stand first in line to collect nothing.

Women's hard-fought battle is over reaching the ex-husband's income after bankruptcy. Under current law, child support and alimony share a protected post-bankruptcy position with only two other recurrent collectors of debt—taxes and student loans. The credit industry asks that credit card debt and other consumer credit share that position, thereby elbowing aside the women trying to collect on their own behalf. The credit industry carefully avoids discussing the increased post-bankruptcy competition facing women if H.R. 2415 becomes law. As a matter of public policy, this country should not elevate credit card debt to the preferred position of taxes and child support. Once again, we have pointed out this problem repeatedly, and nothing has been changed in the pending legislation to address it.

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

Finally, when the Senate passed S. 625, we were hopeful that the final bankruptcy legislation would include a meaningful homestead provision to address flagrant abuse in the bankruptcy system. Instead, the conference report retreats from the concept underlying the Senate-passed homestead amendment. ''The homestead provision in the conference report will allow wealthy debtors to hide assets from their creditors.'' Current bankruptcy law yields to state law to determine what property shall remain exempt from creditor attachment and levy. Homestead exemptions are highly variable by state, and six states (Florida, Iowa, Kansas, South Dakota, Texas, Oklahoma) have literally unlimited exemptions while twenty-two states have exemptions of $10,000 or less. The variation among states leads to two problems—basic inequality and strategic bankruptcy planning. The only solution is a dollar cap on the homestead exemption. Although variation among states would remain, the most outrageous abuses—those in the multi-million dollar category—would be eliminated.

The homestead provision in the conference report does little to address the problem. The legislation only requires a debtor to wait two years after the purchase of the homestead before filing a bankruptcy case. Well-counseled debtors will have no problem timing their bankruptcies or tying-up the courts in litigation to skirt the intent of this provision. The proposed change will remind debtors to buy their property early, but it will not deny anyone with substantial assets a chance to protect property from their creditors. Furthermore, debtors who are long-time residents of states like Texas and Florida will continue to enjoy a homestead exemption that can shield literally millions of dollars in value.

These facts are unassailable: H.R. 2415 forces women to compete with sophisticated creditors to collect alimony and child support after bankruptcy. H.R. 2415 makes it harder for women to declare bankruptcy when they are in financial trouble. H.R. 2415 fails to close the glaring homestead loophole and permits wealthy debtors to hide assets from their creditors. We implore you to look beyond the distorted ''facts'' peddled by the credit industry. Please do not pass a bill that will hurt vulnerable Americans, including women and children.

Thank you for your consideration.

[Signed by 91 law professors.]

Mr. HATCH. I ask for the yeas and nays on the Kohl amendment.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The yeas and nays were ordered.

The Senator from Florida is recognized for 10 minutes.

Mr. GRAHAM. Mr. President, for 133 years, since Congress established a Federal personal bankruptcy law, there has been a recognition that the law is a balance of the interests of the National Government in uniformity and the interests of the States in terms of local values and circumstances. Federal law presently allows States, for instance, to establish how much of their residents' property can be protected or exempt from seizure during bankruptcy.

This delicate relationship tests our fundamental commitment to the concept of federalism. Everybody is for federalism. Everyone favors more local control, placing decisions closest to those who are involved, until it begins to affect a specific interest of their own. Then they become what I refer to as ''situational federalists.'' If the situation does not result in a conclusion that is to your liking, you decide that federalism becomes a lesser value.

We are being tested today on, do we believe, as this Congress has for 133 years, that personal bankruptcy should be a balance of the interests of uniformity at the national level, but recognize the legitimate interests of the States and their citizens in protecting certain important values.

Since most of the creditor-debtor relationships tend to be within a single State, this is an issue in which States have had to make the same kinds of hard choices that we have been dealing with in consideration of this bill: How to set the proper balance between the person who has indebted himself and who is now unable to meet their responsibilities against the person who has extended that credit.

Many States, including my own, have placed such an importance on protecting the value of the residence in which an individual lives that they have enshrined that in their State constitution.

I have the following commentaries on the amendment before us as it relates to that Federal-State balance. The amendment makes no allowance for the wide variance in property values from State to State. There are places in America where if you live in a home valued at $125,000, it is a veritable mansion. There are other places in America where a home valued at $125,000 meets minimum adequacy standards. This bill provides only one standard to cover the wide range of circumstances.

The standard itself, even by national standards, is inadequate. The national average value of existing single family homes in the United States of America is $176,000, $51,000 higher than the proposed cap on the amount that can be exempt from foreclosure in bankruptcy. This amendment would threaten home ownership for millions of American families.

States also have given special recognition to individual classes of persons as it relates to the exemption. For instance, some States have recognized a different standard for seniors or disabled citizens and providing additional homestead protection when they experience a serious illness or other financial crisis. We know, for instance, that seniors tend to have a higher proportion of their net worth in the equity of their home, typically because they have been living in the home for an extended period of time and have paid down the mortgage. The circumstance of older Americans will become more pronounced in the immediate future because within two decades 54 million Americans will be 65 years of age or older. An estimated two-thirds of these seniors will own their own homes free and clear.

This amendment makes no allowance for real estate inflation. In the last few years, parts of America have been experiencing a real estate inflation on residential housing above 10 percent per year. Fewer and fewer States will be able to protect home and farm ownership in the same way they do now as real estate purchasing power of the $125,000 limit contained in this amendment is eroded by inflation.

As the Senator from Texas has already stated, this bill does not ignore, is not unmindful of this balance between the National Government's interest in uniformity and the State's interest in the particular circumstances of its citizens. This bill contains compromised language on the homestead issue which was adopted during debate on the bill last year and has already been approved once by the Senate.

As an example, in this bill before the Senate, without the amendment that has been proposed, the homestead exemption would be capped at $100,000, with an inflation adjustment provision for any property purchased within 2 years of filing for bankruptcy. So the case that is frequently cited as the reason to require this amendment, the

person who rushes into a State such as mine which has an exemption of the residential property from bankruptcy in the last moments before they declare, will not be the case. If you have not owned that home for 2 years before declaring bankruptcy, your exemption is limited to $100,000 adjusted for inflation.

There is a further requirement before a debtor can use the homestead exemption in a particular State that he or she must have been a resident of that State for more than 2 years—again, an appropriate recognition of the national desire for uniformity.

Additionally, these and other provisions of the bill and of existing law grant any bankruptcy judge in the country the power to disallow the use of the homestead or any other exemption if it is being used improperly to shield assets.

So this legislation contains effective barriers to inappropriate use of the homestead exemption while recognizing the 130-year theory of Federal relationship within the personal bankruptcy law between national uniformity and State values.

This amendment tests our commitment to the fundamental principle of federalism. The States and the Federal Government share in the responsibility for developing and applying our bankruptcy code. In my judgment, this amendment distorts that relationship. The provisions that are already in the bill honor federalism.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I move to table the Kohl amendment.

The PRESIDING OFFICER. There is still time remaining. That motion is not in order at the present time.

Mr. KOHL. Mr. President, I request just 1 minute.

Mr. HATCH. I request the Senator have 1 minute.

Mr. KOHL. I will respond to some of the comments made by the distinguished Senator from Florida.

We need to recognize there is no question in this legislation that we have every right and have, in fact, asserted a Federal right in bankruptcy legislation. We have done it in many cases in this legislation. To suggest we do not have the right or it is improper to assert in bankruptcy a Federal right in establishing a minimum amount to shield a home just is not consistent with the rest of this legislation.

I also want to point out that the $125,000 limit we imposed is negotiable in conference to $150,000 to $200,000. There are only five States with unlimited exemptions. There are only two States with exemptions in excess of $125,000—Minnesota and Massachusetts, which have $200,000. So it is not difficult to correct any of these problems in conference.

Again, by a vote of 76–22 2 years ago, we accepted this amendment. I am requesting and hoping the Senate will again vote to accept this amendment today.

I yield the floor.

The PRESIDING OFFICER. Does the Senator yield back his time?

Mr. KOHL. I yield back my time.

The PRESIDING OFFICER. The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I move to table the Kohl amendment and I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to the motion to table amendment No. 68.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

The result was announced—yeas 39, nays 60, as follows:

[Rollcall Vote No. 30 Leg.]

YEAS—39

Allard	Frist	Miller
Allen	Graham	Murkowski
Bennett	Gramm	Nelson (FL)
Bond	Grassley	Nickles
Brownback	Gregg	Roberts
Bunning	Hagel	Sessions
Burns	Hatch	Shelby
Campbell	Hutchinson	Smith (NH)
Cochran	Hutchison	Stevens
Craig	Inhofe	Thomas
Crapo	Kyl	Thompson
Ensign	Lott	Thurmond
Enzi	Lugar	Voinovich

NAYS—60

Akaka	Dodd	Lincoln
Baucus	Domenici	McCain
Bayh	Dorgan	McConnell
Biden	Durbin	Mikulski
Bingaman	Edwards	Murray
Boxer	Feingold	Nelson (NE)
Breaux	Feinstein	Reed
Byrd	Harkin	Reid
Cantwell	Helms	Rockefeller
Carnahan	Hollings	Santorum
Carper	Inouye	Sarbanes
Chafee	Jeffords	Schumer
Cleland	Johnson	Smith (OR)
Clinton	Kennedy	Snowe
Collins	Kerry	Specter
Conrad	Kohl	Stabenow
Corzine	Landrieu	Torricelli
Daschle	Leahy	Warner
Dayton	Levin	Wellstone
DeWine	Lieberman	Wyden

ANSWERED ''PRESENT''—1

Fitzgerald

The motion was rejected.

Mr. HATCH. Mr. President, I move to vitiate the yeas and nays.

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

The question is on agreeing to amendment No. 68.

The amendment (No. 68) was agreed to.

Mr. LEAHY. Mr. President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to reconsider was laid on the table.

VOTE ON AMENDMENT NO. 41, AS MODIFIED

The PRESIDING OFFICER. The question now is on agreeing to the Leahy amendment No. 41, as modified. The yeas and nays have been ordered. The clerk will call the roll.

Mr. LEAHY. Mr. President, parliamentary inquiry: Was there not time reserved of 1 minute before the vote?

The PRESIDING OFFICER. The 2 minutes were vitiated by the last unanimous consent agreement.

Mr. LEAHY. Mr. President, I ask unanimous consent that I have 1 minute and the Senator from Utah have 1 minute.

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

The Senator from Vermont.

Mr. LEAHY. I thank my friend from Kentucky.

Mr. President, our amendment protects the identity of minor children in bankruptcy court records. It permits a debtor to withhold the name of a minor child in the public record, especially as these records go on the Internet where anybody who wants the names and addresses of children can find them. To prevent fraud, it permits the judge, or trustee, or an auditor to review a child's name in a nonpublic record.

The amendment is modest, but it is a first step in protecting personal privacy and protecting criminal activity through the unnecessary disclosure of personal information. We know, unfortunately, that there are people who prey on children who are out there. What my friend from Utah and I are trying to do is to prevent their access to these names.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, this is a good amendment. It protects the privacy of minors. It is just one of the steps the distinguished Senator from Vermont and I are taking to try to protect privacy rights. I recommend everybody vote for this amendment.

I yield back the remainder of my time.

The PRESIDING OFFICER. All time is yielded back. The question is agreeing to the Leahy amendment No. 41, as modified. The yeas and nays have been ordered. The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. FITZGERALD (when his name was called). Present.

The result was announced—yeas 99, nays 0, as follows:

[Rollcall Vote No. 31 Leg.]

YEAS—99

Akaka	Corzine	Hutchinson
Allard	Craig	Hutchison
Allen	Crapo	Inhofe
Baucus	Daschle	Inouye
Bayh	Dayton	Jeffords
Bennett	DeWine	Johnson
Biden	Dodd	Kennedy
Bingaman	Domenici	Kerry
Bond	Dorgan	Kohl
Boxer	Durbin	Kyl
Breaux	Edwards	Landrieu
Brownback	Ensign	Leahy
Bunning	Enzi	Levin
Burns	Feingold	Lieberman
Byrd	Feinstein	Lincoln
Campbell	Frist	Lott
Cantwell	Graham	Lugar
Carnahan	Gramm	McCain
Carper	Grassley	McConnell
Chafee	Gregg	Mikulski
Cleland	Hagel	Miller
Clinton	Harkin	Murkowski
Cochran	Hatch	Murray
Collins	Helms	Nelson (FL)
Conrad	Hollings	Nelson (NE)

Nickles	Sessions	Thomas
Reed	Shelby	Thompson
Reid	Smith (NH)	Thurmond
Roberts	Smith (OR)	Torricelli
Rockefeller	Snowe	Voinovich
Santorum	Specter	Warner
Sarbanes	Stabenow	Wellstone
Schumer	Stevens	Wyden

ANSWERED ''PRESENT''—1

Fitzgerald

The amendment (No. 41), as modified, was agreed to.

Mr. LEAHY. Mr. President, I move to reconsider the vote.

Mr. HATCH. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The Senator from Utah.

Mr. HATCH. Mr. President, I ask unanimous consent Senator BOXER be recognized in order to call up amendment No. 42, and further, following the debate, the amendment be temporarily set aside. Further, I ask that at 2:30 today the Senate proceed to a vote in relation to the Boxer amendment No. 42 and, following that vote, the Senate proceed to votes in relation to the Wellstone amendments Nos. 70, No. 71, No. 73, and Leahy No. 19.

Further, I ask consent there be 2 minutes equally divided in the usual form between each vote and there be no second-degree amendments in order to the amendments prior to the votes.

Finally, I ask that following the first vote, the remaining votes in the series be limited to 10 minutes in length.

The PRESIDING OFFICER. Is there objection?

The Senator from Nevada.

Mr. REID. Mr. President, I ask my friend from Utah to change the unanimous consent agreement as follows: That immediately the senior Senator from West Virginia would be recognized and use whatever period of time up to an hour that he wishes. I have been told by the Senator he would yield to Senator BOXER so she could offer her amendment.

Mr. HATCH. That is appropriate and fine with me.

The PRESIDING OFFICER. Is there objection?

Mrs. BOXER. Mr. President, if I might, I so appreciate the opportunity to offer the amendment. I know Senator BYRD is going to yield to me to do that and then he will get the floor. I just want to make sure we can vote on that in the next block, which we are hoping will be around the 2:30 area.

Mr. REID. It is in the unanimous consent agreement.

The PRESIDING OFFICER. The Senator from West Virginia is recognized.

Mr. REID. Will the Senator yield?

Mr. BYRD. Mr. President, I thank the Chair. I ask unanimous consent that I may yield to the distinguished minority whip without losing my right to the floor.

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

Mr. REID. I ask that Senator FEINGOLD's amendments No. 76 and No. 51 be called up and then set aside.

Mr. HATCH. Reserving the right to object.

The PRESIDING OFFICER. The Senator from Utah is reserving the right to object?

Mr. HATCH. It is my understanding that on the Sessions amendment we have asked for a modification.

Mr. REID. We are doing our best to work that out.

Mr. HATCH. I know you are trying to work that out. We have tried to work on modifications for your side as well. I hope that can be worked out.

Mr. REID. We are doing our best.

Mr. HATCH. May we withhold until we get that resolved?

Mr. REID. Yes.

Mr. HATCH. I appreciate that.

The PRESIDING OFFICER. Objection is heard.

The Senator from West Virginia.

Mr. BYRD. Mr. President, I thank the Chair.

Mr. President, I ask unanimous consent that I may speak out of order.

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

Mr. BYRD. Mr. President, I ask unanimous consent that I may yield to the distinguished Senator from California, Mrs. BOXER, for not to exceed 15 minutes without losing my right to the floor.

The PRESIDING OFFICER. Without objection, it is so ordered. The Senator from California is recognized.

Mr. BYRD. Mr. President, I also ask unanimous consent that the time utilized by the distinguished Senator not come out of my hour under the cloture rule.

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

AMENDMENT NO. 42

Mrs. BOXER. Mr. President, I thank my good friend, my dear friend, for yielding me this time. This is an amendment about which I care an awful lot. Senator CLINTON cares a lot about this. We just want to take a brief time, and speak as concisely as we can, to explain why we believe this amendment is so important.

I think I must call up amendment No. 42 because I have this amendment pending at the desk, and I ask the clerk to report it.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from California [Mrs. BOXER] proposes an amendment numbered 42.

Strike Section 310.

Mrs. BOXER. Mr. President, I am very sad to say that there is great controversy surrounding this amendment because there is a misunderstanding about it. I guess what I want to say is I am putting my faith in a number of groups that have written to me about the current status of this bill. I would like to put the names of those groups up on the easel right now. These are groups that have very astute attorneys who have studied this bill. They have enlisted our support. We are about to tell you who they are:

The American Association of University Women, Children NOW, Children's Defense Fund, Center for Law and Social Policy, Feminist Majority, National Association of Commissions For Women, National Center for Youth Law, National Organization for Women, National Partnership for Women and Families, National Youth Law Center, National Women's Conference, National Women's Law Center, NOW Legal Defense and Education Fund, the Older Women's League, the Women Activist Fund, Wider Opportunities for Women, Women Employed, Women Work, Women's Law Center of Maryland, and the YWCA.

I put my faith in these groups. Their purpose is to protect women and children. I believe they are correct when they say this bill will hurt women and children. Let me explain their position, and mine.

Under the current bankruptcy laws—I want you to remember this number, $1,075—it is presumed that 60 days before you declare bankruptcy, if you have accumulated charges of $1,075 or more, then those charges are presumed fraudulent and the credit card companies can go after those charges. I think it is fair. This number did not come out of the air. It has been adjusted for inflation. It makes sense. I think the credit card companies have the right to say, if you are going to declare bankruptcy and you have charged that much, that you should not be able to discharge it.

Let me tell you what happens in S. 420. That number, rather than being increased for inflation, is brought down to $250 over 90 days. So if someone charges, in that 90-day period, more than $250, all charges on that card in a 90-day period are presumed to be fraudulent and the credit card companies can go after you.

Can you prove these were not luxuries? Sure. You could take time off from work, time away from your children. Can you hire a lawyer? You can fight the credit card companies. But it just makes me ill to think we are presuming that a single woman who may be plagued with all kinds of problems who used her credit card to purchase food at the supermarket would in fact be told that she is a fraud, that she meant to defraud the poor credit card companies.

I have to tell you a story.

The member of my family who has part-time work and is going through a difficult time right now just received today an application for a credit card where they say: Take a trip to exotic lands and put it on your credit card. It happens to be Diners Club. And, don't worry about paying it back for months. The poor credit card company. You would think they would investigate to whom they were sending these cards. But, no, they want us to protect them from some poor woman with a single child, perhaps, or two, who is struggling with a divorce, and let us say is charging $250 on her credit card over 90 days. These charges are fraudulent.

Let me read for you a letter that was sent to me by a women's group, and then I am going to yield 5 minutes to Senator CLINTON.

Mr. President, how much time do I have remaining?

The PRESIDING OFFICER. The Senator has used 5 minutes 45 seconds.

Mrs. BOXER. If the Chair would inform me when I have used another 5 minutes, I would greatly appreciate it. Thank you.

This is the letter:

The undersigned women's and children's organizations write to urge you to support Senator Boxer's amendment to S. 420, the ''Bankruptcy Reform Act of 2001.'' This amendment is necessary to protect parents and children owed child support from facing increased competition from credit card companies after bankruptcy.

Senator Boxer's amendment to the ''luxury goods'' provision of S. 420 would prevent credit card debt from being routinely elevated to the same protected status as child support and alimony obligations after bankruptcy. Under current law, child support and alimony are among the few debts that are not dischargeable in bankruptcy. The bankruptcy process allows debtors to get back on their feet and focus their resources on paying their most important debt: their obligation to support their families. Credit card debts generally are discharged in bankruptcy, unless there has been an abuse of the bankruptcy process; for example, by purchasing ''luxury goods'' on the eve of filing for bankruptcy.

S. 420 would apply the label ''luxury goods'' to very modest levels of expenditures, allowing much more credit care debt to survive bankruptcy and compete with support obligations. Under S. 420, purchases on a credit card that total $250 over the 90-day period prior to filing bankruptcy would be presumed to be nondischargeable ''luxury goods.'' For example, a debtor who charged just $25 a week at the supermarket would have to prove that the purchases—because they would exceed $250 over the 90-day period—were necessities, not luxuries. Cash advances of any more than $75 per week in the 70 days before filing for bankruptcy would be presumed to be nondischargeable.

Senator Boxer's amendment would retain the current ''luxury goods'' exception, preventing abuse of the bankruptcy process by debtors without allowing its abuse by the credit card industry. We urge you to support this important amendment to prevent the credit card industry from making it even more difficult for women and children to collect child support after bankruptcy.

I already talked about how credit card companies solicit and coax people into spending more than they earn.

I do not feel sorry for the companies. I have seen the interest rates. I have seen the profits. Mr. President, $250 is not an amount that says it is a luxury over a 90-day period.

Where is the committee coming from? I don't understand it.

Let's take an example. A woman who grocery shops with a credit card for her family of four at the local Safeway or Albertson's would be able to spend no more than $25 per week in the 12 weeks before declaring bankruptcy. It is true. My colleagues on the other side of the aisle say: No problem. They just have to prove that in a court of law as they go through the filing.

This is a mother who is going through probably a hellish time in her life and she now has to dig out the receipts, or get a lawyer, by the way, or take off from work. Why are we presuming that a person is bad if they charge $250 over 90 days before they file bankruptcy? Can't we give people a break? Don't we respect the American people? People do not want to do this. Keep the current law.

There are many other examples I could show you, all of which they would have to prove in a court of law. The burden is on them. Why not give this exemption? Why not keep the current law?

That is the purpose of this amendment. It just says trust folks a little bit more. That is why I believe very strongly.

I ask Senator CLINTON if she would now wish to use 5 minutes on this amendment at this time.

The PRESIDING OFFICER. The Senator has 5 minutes remaining on her time.

Mrs. BOXER. I ask the Senator to take 4 minutes and I will wrap it up.

Mrs. CLINTON. Mr. President, I thank the Senator.

AMENDMENT NO. 104

First, I ask unanimous consent that it be in order, considered germane for the purpose of S. 420, and the following agreed to: In the amendment on behalf of myself and Mr. HATCH, on page 80, line 25, after the word ''resides)'' add the following: '', and the holder of the claim,''.

I ask that this be adopted because this remedies the problem that was also brought to our attention with respect to this particular legislation.

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

The amendment (No. 104) was agreed to, as follows:

At page 80, on line 25, after ''resides)'' insert the following: '', and the holder of the claim,''.

AMENDMENT NO. 42

Mrs. CLINTON. Mr. President, I rise to support my very good friend, the Senator from California, who is one of the strongest advocates on behalf of women and children in our entire country. I do so because I find myself in agreement that there is some confusion about the meaning and application of this provision. That certainly should be clarified before we move to a vote on the underlying legislation.

As the Senator has so eloquently stated, we are making a dramatic change in both cutting the amount and the period of time for which a debtor would be held accountable with respect to any luxury goods or services.

I respect my very good friend, the Senator from Delaware, in his pointing out that the legislation makes clear that this is not goods for services and is reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor.

We have several issues with this. One which the Senator from California pointed out is the size and the timing. The other is to make clear that this presumption is absolutely sustainable with respect to the meaning of support and maintenance.

I urge that we adopt the amendment of the Senator from California because I believe it is reasonable for existing law to have the amount and the time period.

I don't believe it is a great disservice to the credit card companies and other creditors to keep the status quo in this provision since we are so dramatically changing the law in so many other respects.

I yield the remainder of my time to the Senator from California.

Mrs. BOXER. How much time is remaining, Mr. President?

The PRESIDING OFFICER. The Senator has 2 minutes 20 seconds.

Mrs. BOXER. I thank Senator CLINTON for her support. I know Senator BIDEN would like to have some time. I am glad he got that by unanimous consent.

I reserve the remainder of my time.

The PRESIDING OFFICER. The Senator from Delaware.

Mr. BIDEN. Mr. President, I ask the distinguished Senator from West Virginia, since he has the floor, whether I can use up to 5 minutes of the hour I have under cloture.

Mr. BYRD. Mr. President, I have no objection to such a request.

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

Mr. BIDEN. I will be necessarily brief.

First of all, with regard to the credit card companies, this isn't a problem for credit card companies. If you go to the grocery store and use a credit card, it lists the grocery store. You have an automatic receipt. There is a presumption that you went to the grocery store and you bought groceries. They are not luxury goods. That is automatic. You could go in and charge $1,000 of groceries on that credit card and there would be no problem.

Second, if you take a look at what we are talking about, in addition to the credit card companies, you can draw up to $750 in cash. You if go above $750, you have to explain. If you go up to $749 in cash, you don't have to explain anything to anybody.

We are talking about the mother who is in real trouble and can't pay her bills. I am as sympathetic to that as anyone. But that is not with this is about. We are misreading.

First of all, it applies to only luxury goods. On page 147, line 2, a consumer's debt owed to a single creditor—if you have five different credit cards and go out and charge $250 on five different credit cards, it doesn't matter. This is a bunch of malarkey, with all due respect.

I understand the intention, and I think this is just a misreading of the legislation.

Let me speak to the issue of my good friend. I happen to be on the opposite

side of Senator BOXER. She is literally my closest friend in the Senate. I don't like doing this. But here is the deal.

Her staff—my former staff—is telling her how this works, as well as these groups are telling her how this works. This is how it works. When you file for bankruptcy, you go before a bankruptcy judge or you go before a master. You have to show up. You have to pay for the cab or the bus to get there. You have to be there.

When you get there, it is a one-stop shopping deal. You have a list, and you have to submit what you spent. You have to submit everything as to why you deserve to go into chapter 13. It is required under the law. For anybody now—no matter when—it is required.

So you have the list and the credit card. You list the credit card. You have all these groceries you bought on the credit card. They are listed. The problem is the non-credit-card guys. You go into Boscov's—and you have credit with Boscov's—and you decide to buy a couch. It is arguable whether that is a luxury good or not. Boscov's might want to fight you about that. They then have to come into court and say: Hey, judge, that was a couch she bought. That was not a luxury good, she says. No, no. It was a crib for my baby. Well, then, file the receipt. Was it a crib for a baby and/or was it a brand new leather couch? What is the deal?

Look, I will do anything I can to change this to accommodate what the concern is of my friends. But I do not understand the concern. It says ''Per creditor.'' You could have five credit cards, No. 1. No. 2, you can take up to $750 in cash out per credit card that you have. You can take it out. No. 3, you can go in and spend $249 on a zircon ring for your daughter because it has been a bad day at Boscov's. That is a luxury good, but you can do that. And, No. 4, you can take all your credit cards and/or your checking account and/or anything and buy $10,000 worth of jeans for your kids—shirts for your baby, formula—whatever dire example I am going to be given here.

Look, with all due respect, this is much ado about nothing. It is the same way in which you would have to go in under $10,750 under the law now. How do you do it now?

Mrs. BOXER. It is $1,075.

Mr. BIDEN. Excuse me, $1,075. You walk in now and say: Judge, here is my form. You get a date to show up or you are going to be discharged from bankruptcy, whether you are going to be in chapter 7 or chapter 13. You walk in—with or without a lawyer—and say: Your Honor, here is the deal. And you list your debt. You list your obligations and you list your assets. You have to do that no matter what.

If you list $1,075 now, and it turns out you bought $1,075 worth of good wine, the creditor can come in and say: Whoa, they bought wine with that—in grocery stores like when I used to stack Schaefer beer in New York State when I was in law school working for the Schaefer beer company. They do not sell alcohol in those stores in my State, but in New York State I think they still do. If you say you bought $1,075 worth of beer, then it is not dischargeable. That would not be dischargeable, any more than $250 or $750 would be.

Look, it is easy to make it sound complicated. When you take out your credit card, it lists what you bought. You have a receipt. You walk in and file and say: Judge, I used five credit cards, and I spent $5,000 in the last 90 days on food and clothing. Here is the deal. That is dischargeable. But if you walk in with those credit cards, and you spend it on, say, Versace——

The PRESIDING OFFICER. The Senator's 5 minutes have expired.

Mr. BIDEN. I thank the Chair.

Mrs. BOXER. Mr. President, this is painful, to have a debate with your brother. But the question of who is full of malarkey is debatable. I have some pretty good folks on my side. May we show them again? I have never known my friend to say the American Association of University Women is full of malarkey, or the Children's Defense Fund, or on and on. I really haven't. That is a debate we will have privately.

But this is the point. To me, it is a question of faith and trust in Americans—in particular, in this case, women, who most of all find themselves caught in this problem. I would like to know where you get a leather couch for $250.

Mr. BIDEN. You don't.

Mrs. BOXER. If you can find one, let me know, because I need one. The fact is, you can't.

The other fact is, if we could put this chart back up, under current law this is the cash card advance. You play with that, too, I say to my friend. It used to be $1,075 over 60 days. Now he rolls it back to $750 and says it is a great deal.

This reminds me of the debates on a woman's right to choose. The presumption is, we can't trust women to make this decision. People supported a 24-hour waiting period, as if a woman never thought about it. They want Government to be involved and make the rules. In a way, it is very similar. It is treating people with distrust.

We have a good law here, the current law. At $1,075, it is presumed you needed these things. It is fine. The other point about: Oh, you have the receipts; it is not a problem, I would ask every American today to put their hands on their receipt that they got when they made their last purchase. Now maybe I am just not good at it. My husband is good. He is probably the one guy I know who keeps every receipt.

Mr. BIDEN. Will the Senator yield for 2 seconds?

Mrs. BOXER. Yes.

Mr. BIDEN. The credit card company, as you point out, will send you the bill. That is your receipt.

The PRESIDING OFFICER. The Senator's time has expired.

Mrs. BOXER. I ask for 3 seconds.

The PRESIDING OFFICER. The Senator from West Virginia controls the time.

Mrs. BOXER. May I have 30 seconds?

Mr. BYRD. Mr. President, I have never seen 3 seconds yielded in this Chamber. Does the Senator want 1 minute or 2 minutes or 3 minutes?

Mrs. BOXER. I would be delighted to have 1 minute.

Mr. BYRD. I yield 1 minute to the Senator.

Mrs. BOXER. The only reason I asked for 3 seconds is my friend asked for 2 seconds. I am trying to be fair.

The bottom line here is, as I look at this, this is the little person against the huge credit card companies. The CEOs, who are getting paid millions of dollars, look at the little people and say if they charge $250 cumulatively over 90 days before they declare bankruptcy, they are presumed to be bad people. I have more faith in people than that. I really hope that Senators will support this amendment.

Let's go back to current law. It is fair. And let's reject this portion of S. 420. It is unfair.

I thank my friend from West Virginia very much for his generosity.

The PRESIDING OFFICER. The Senator from West Virginia is now recognized.

Mr. BYRD. Mr. President, the distinguished Senator from California is very gracious, and she was welcome to whatever time I have been able to yield to her.

THE BUDGET AND TAX CUTS

Mr. BYRD. Mr. President, on February 28, 2001, President Bush sent to the Congress his fiscal year 2002 budget outline entitled, ''A Blueprint for New Beginnings.'' Sadly, this budget is a blueprint for putting tax cuts for the wealthy at the front of the line, above all of the needs of the American people.

Now I say to my colleagues, caution, we have not yet seen the real budget. The President's budget will be sent up to the Hill in the early part of April. We have not seen it yet. So I would suggest to all of us that we go slowly until we see the fine print in the President's budget.

What we have seen thus far is a mere blueprint entitled ''A Blueprint for New Beginnings.'' But I say again, this is a blueprint for putting tax cuts for the wealthy at the front of the line, above all other needs of the American people.

The President's Budget allocates 80 percent, over $2 trillion of the $2.5 trillion non-Social Security, non-Medicare surplus, on tax cuts.

Two trillion dollars. Does anyone know how long it would take to count $1 trillion at the rate of $1 per second? It would take 32,000 years—32,000 years—to count $1 trillion at the rate of $1 per second.

The President's budget allocates 80 percent, over $2 trillion—that would