□ 1515

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. HANSEN) at 3 o'clock and 15 minutes p.m.

WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 333, BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2002

Mr. SESSIONS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 606 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 606

Resolved, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 333) to amend title 11, United States Code, and for other purposes. All points of order against the conference report and against its consideration are waived.

The SPEAKER pro tempore. The gentleman from Texas (Mr. SESSIONS) is recognized for 1 hour.

Mr. SESSIONS. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Texas (Mr. FROST), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, the resolution provides the standard rule under which we consider conference reports and waives all points of order against the conference report and its consideration.

Mr. Speaker, I am exceedingly pleased that today we will finally consider the conference report for much-needed bankruptcy reform legislation. I am proud of the tireless efforts of many of the staff members and the Members who have put countless hours towards the passage of this important legislation. Their efforts allow each of us to ensure that our bankruptcy laws operate fairly, efficiently, and free of abuse. We must end the days when debtors who are able to repay some portion of their debts are allowed to game the system. This bill is crafted to ensure the debtor's rights to a fresh start while protecting the system from flagrant abuses by those who are able to pay their bills. The result is a carefully crafted package that balances and protects Americans from all walks of life and provides access to bankruptcy for all Americans who have a legitimate need.

I urge my colleagues to support this rule and the underlying legislation.

Mr. Speaker, I reserve the balance of my time.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

(Mr. FROST asked and was given permission to revise and extend his remarks.)

Mr. FROST. Mr. Speaker, I rise in support of this conference report and urge my colleagues to support this rule so that the House may proceed to the consideration of the conference agreement. The House has, in the past two Congresses, consistently supported bankruptcy reform. In the 107th Congress, the House passed its version of the bill by a vote of 306 to 108. This agreement, which is the product of months of negotiations, makes sensible changes in the law that will save American consumers millions of dollars a year. This conference agreement adheres to the principle that if an individual has the capacity to repay a substantial portion of their debt, then that debtor should have an obligation to repay. This conference agreement will rein in abuse of the system and ensure that those debtors who cannot pay are given the fresh start they need.

Mr. Speaker, I commend the conferees for their hard work on this issue and for bringing the House a conference report that is worthy of support.

I would point out, Mr. Speaker, that there are Members on our side of the aisle who strongly object to this conference report, and we will be hearing from them in the course of this debate.

Mr. Speaker, I reserve the balance of my time.

Mr. SESSIONS. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. SMITH), the chairman of the Committee on Veterans' Affairs.

Mr. SMITH of New Jersey. I thank my friend for yielding me this time.

Mr. Speaker, I rise in strong opposition to this rule. Some of my colleagues were not here back in 1993 and 1994 when we debated the Freedom of Access to Clinic Entrances Act, which penalized pro-lifers in a way that was totally unfair and discriminatory, mandating ruinous lawsuits, criminal penalties and the like, for doing the same thing that some other nonviolent civil disobedient person might do. If you stood in front of an abortion clinic, you could have the book literally thrown at you, and do the same thing in front of NIH or somewhere else and have a whole different set of penalties. Today we are dealing with the same thing but an extension of that very, very wrongheaded and misguided piece of legislation.

In 1994, Chairman Sensenbrenner said this about the same language we are debating today:

''Political protest has been at the forefront of social change. From the Boston Tea Party to the abolitionist movement, from the antiwar protests to the activism of the civil rights movement, civil disobedience has been an intimate part of our history. This is perhaps the first time in our Nation's history''—this is the second, today—''that those in the power have so openly sought to use the authority of government to broadly suppress the legitimate actions of a movement with which they do not agree. The legislation, FACE,'' which this makes it worse, you cannot discharge a civil complaint that has been brought against you, the penalty, ''sweeps with broad and heavy hand to target peaceful, nonviolent, constitutionally protected activities on the same terms as violent or forceful acts.''

Chairman Sensenbrenner had it right then. He went on to say that this was McCarthyism. What we are dealing with today, with all due respect, is McCarthyism. Much has been made about the Starr memo. Let me say this: The difference is if you are from PETA or some other organization where sit-ins and civil, nonviolent disobedience, where you get arrested, is part of the intent of what you want to do to bring a focus, and Martin Luther King certainly had intent when he protested and got arrested more than a dozen times or so. The fundamental issue here is that pro-lifers are treated differently. Under the FACE bill, ruinous lawsuits, extreme penalties are leveled against nonviolent protestors.

I urge a no on the rule.

Mr. FROST. Mr. Speaker, I yield 4 minutes to the gentleman from Virginia (Mr. BOUCHER).

(Mr. BOUCHER asked and was given permission to revise and extend his remarks.)

Mr. BOUCHER. Mr. Speaker, I thank the gentleman from Texas for yielding me this time. I am pleased to rise in support of the rule for consideration in the House of the conference report to accompany the bankruptcy reform legislation. I urge approval both of the rule and of the conference report.

The reform of the Nation's bankruptcy laws, which our actions today will accomplish, is well justified. This reform is strongly in the interest of consumers. It will significantly reduce the annual hidden tax of approximately $400 that the typical consumer pays because others are misusing the bankruptcy laws. That amount represents the increased cost of credit and the increased price of consumer goods and services occasioned by bankruptcy law misuse. This reform will lower that hidden tax.

The reform also helps consumers by requiring clearer disclosures of the cost of credit on credit card statements. And the reform will be a major benefit to single parents who receive alimony or child support. That person today is fifth in priority for the receipt of payment under the bankruptcy laws. The reform before us today elevates the spouse-support recipient to number one in priority.

This reform proceeds from a basic premise that people who can afford to repay a substantial part of the debt that they owe should do so. The bill requires that repayment while allowing the discharge in bankruptcy of the debts that cannot be repaid and in so doing responds to the broad misuse of chapter 7's complete liquidation provisions that we have observed in recent years.

The reform measure sets a threshold for the use of chapter 7. Debtors who

can make little or no repayment can use its provisions without limitation and can discharge all of their debts. Debtors whose annual income is below the national mean of about $50,000 per year are also untouched by the provisions of this reform. They can make full use of chapter 7 and discharge all of their debts even if they could afford to make a substantial debt repayment.

And so, Mr. Speaker, the financially unfortunate and middle-income consumers are not affected at all by this reform. They can continue to use the bankruptcy laws as they can under current law. But upper-income consumers who can make substantial repayments will be expected to enter into court-supervised repayment plans under chapter 13. This modest requirement of personal financial responsibility is appropriate, and I am pleased today to urge approval of this well-justified reform which is contained within the conference agreement.

Mr. Speaker, I am pleased today to urge approval of the rule that brings that conference agreement to the floor as well as the conference agreement itself.

Mr. SESSIONS. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. PITTS).

(Mr. PITTS asked and was given permission to revise and extend his remarks.)

Mr. PITTS. Mr. Speaker, I want to rise in opposition to this rule and make it clear that I support bankruptcy reform laws very much. But not this version, not with these words that have been inserted by the conference. They did take the reference to the FACE Act, standing for Free Access to Clinic Entrances, meaning an abortion clinic, that was passed in 1994; and we have the FACE language here in white and the identical words are in the bankruptcy reform bill. They did change ''reproductive health services'' to ''lawful goods or services.'' That is the one change. The key words are ''interferes with'' or ''physical obstruction.'' Under FACE, peaceful pro-life protesters are being arrested and sentenced to jail for just praying on a sidewalk outside an abortion clinic, or handing a leaflet to a woman as an alternative. One man was even successfully sued for leaving his business card on the clinic's door.

Mr. Speaker, under FACE, people are being fined hundreds of thousands of dollars. What we are doing in this bill is taking the identical language and putting it in the bankruptcy bill so now they cannot even file for bankruptcy, unfair bankruptcy. So we are condemning peaceful, innocent people who have a conscience to protest just to try to save the life of an unborn to a life of financial ruin.

I have a couple of letters, one from Harvard law professor Mary Ann Glendon, a good analysis of the bill, but let me just read the last paragraph:

''A large and nondischargeable debt, beyond one's capacity to pay, especially in the hands of a hostile and motivated creditor, is a financial death sentence. That is what even peaceful pro-life protesters have to fear if the proposed language is added to the existing aggressive judicial interpretation of FACE and similar laws.''

Mr. Speaker, I will submit the other letter from the Catholic Bishops for the RECORD.

BANKRUPTCY CONFERENCE REPORT H.R. 333:

SEC. 330. Nondischargibility of debts incurred through violations of law relating to the provision of lawful goods and services

(a) Debts incurred through violations of law relating to the provision of lawful goods and services.—Section 523(a) of title 11, United States Code, as amended by section 224, is amended—

(1) in paragraph (18) by striking ''or'' at the end;

(2) in paragraph (19) by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(20) that results from any judgment, order, consent order, or decree entered in any Federal or State court, or contained in any settlement agreement entered into by the debtor (including any court-ordered damages, fine, penalty, or attorney fee or cost owned by the debtor), that arises from—

''(A) the violation by the debtor of any Federal or State statutory law, including but not limited to violations of title 18, that results from intentional actions of the debtor that—

''(i) by force or threat of force or by physical obstruction, intentionally injure, intimidate, or interfere with or attempt to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing lawful goods or services;

''(ii) by force or threat of force or by physical obstruction, intentionally injure, intimidate, or interfere with or attempt to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship; or

''(iii) intentionally damage or destroy the property of a facility, or attempt to do so, because such facility provides lawful goods or services, or intentionally damage or destroy the property of a place of religious worship; or

''(B) a violation of a court order or injunction that protects access to a facility that or a person who provides lawful goods or services or the provision of lawful goods or services if—

''(i) such violation is intentional or knowing; or

''(ii) such violation occurs after a court has found that the debtor previously violated—

''(I) such court order or such injunction; or

''(II) any other court order or injunction that protects access to the same facility or the same person; except that nothing in this paragraph shall be construed to affect any expressive conduct (including peaceful picketing, peaceful prayer, or other peaceful demonstration) protected from legal prohibition by the first amendment to the Constitution of the United States.''.

(b) RESTITUTION.—Section 523(a)(13) of title 11, United States Code, is amended by inserting ''or under the criminal law of a State'' after ''title 18''.

FACE

(Freedom of access to [abortion] clinic entrances)

Signed by President Clinton in 1994—Introduced in the House by Rep. Chuck Schumer (D-NY)

Roll Call: *http://clerkweb.house.gov/cgibin/vote.exe?year-1994&rollnumber-70*

18 USC Sec. 248

Sec. 248. Freedom of access to clinic entrances.

(a) PROHIBITED ACTIVITIES.—Whoever—

(1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;

(2) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship; or

(3) intentionally damages or destroys the property of a facility, or attempts to do so, because such facility provides reproductive health services, or intentionally damages or destroys the property of a place of religious worship,

(d) Nothing in this section shall be construed—(1) to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the Constitution;

———

HARVARD LAW SCHOOL,
Cambridge, MA, November 12, 2002.

Hon. CHRISTOPHER SMITH,
House of Representatives,
Washington, DC.

DEAR CONGRESSMAN SMITH: I am taking the liberty of writing to you today because I am deeply concerned about the application of H.R. 333 to peaceful pro-life protestors. I hope the following opinion letter will be helpful to you.

The proposed legislation would create a new 11 U.S.C. §523(a)(20), denying discharge for and judgments under the Freedom of Access of Clinic Entrances Act, 18 U.S.C. §248 (2000), or under similar state laws, or under injunctions restricting protest at abortion clinics.

The impact of the provision on peaceful pro-life protestors would be grave. Existing law substantially restricts protest at abortion clinics, and in their zeal to eliminate violent protests and obstruction protests, courts and legislators have forbidden much protest that is peaceful and nonobstructive. Proposed §523(a)(20) would add an additional sanction to all this existing law: money judgments for abortions protest would follow protestors to the ends of their lives. No matter their financial circumstances, no matter the size of the judgment or the nature of the protest, these judgments could never be discharged in bankruptcy.

1. THE FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT (FACE)

Proposed §523(a)(20)(A) precisely tracks the key substantive language of FACE. FACE prohibits conduct that: ''by force or threat of force or by physical obstruction, intentionally injuries, intimidates or interferes with'' access to ''reproductive health services,'' or attempts to do so. 18 U.S.C. §248(a)(1) (2000).

Proposed §523(a)(20) denies discharge for any judgment arising from actions of the debtor that: ''by force or threat of force or

by physical obstruction, intentionally injure, intimidate, or interfere with'' access to lawful goods or services. The key language in the two block quotes is obviously identical save for the difference between singular and plural verbs (''whoever'' is the subject in FACE; the debtor's ''actions'' is the subject in proposed §523(a)(2)).

Because the proposed language is substantively identical to FACE, it will be read in light of existing decisions under FACE. Existing interpretations of FACE will almost certainly be read into §523(a)(20). Worse, abortion clinics and their supports will likely argue that by re-enacting the same statutory language, Congress has approved existing decisions and thus confirmed their status as valid and appropriate interpretations of FACE itself. This is a critical point, because existing interpretations of FACE in the lower courts, extraordinarily favorable to the abortion clinics and their supporters, have not yet been accepted or rejected by the Supreme Court of the United States. Congressional passage of proposed §523(a)(20) could figure prominently in eventual Supreme Court arguments on the interpretation of FACE, lending plausible support to the worst interpretations of the statute.

I will not consider in this opinion letter the interpretations of ''force or threat of force,'' ''intentionally injure,'' or ''intimidate.'' Some interpretations of those provisions have been surprisingly expansive, but those forms of protest are not the issue for most protestors. The real work of FACE, and of proposed §523(a)(20), is in the provisions that target anyone who ''by physical obstruction * * * interferes with * * * or attempt to * * * interfere with'' access to a clinic. Each of these terms has been construed or defined to mean more than first appears. No actual interference, and no actual physical obstruction is required for a violation. Courts have found violations in peaceful protest that did not actually prevent access to clinics.

''Physical obstruction'' is defined in 18 U.S.C. §248(e)(4) to mean making ingress or egress ''impassable * * * or unreasonably difficult or hazardous.'' What is ''unreasonably difficult'' has, in the lower federal courts, sometimes turned out to be remote from physical obstruction.

Thus in, United States v. Mahoney, 247 F.3d 270 (D.C. Cir. 2001), the court found physical obstruction and interference with access from a single protestor kneeling in prayer outside a locked door to an abortion clinic. Id. at 283–84. The door was a ''rarely used'' emergency exit. The court said that someone might have used the door, and that the law does not distinguish frequently and infrequently used doors. More remarkable still, the court held that a single person keeling in prayer rendered use of that door ''unreasonably difficult'' and forced patients to use a difference entrance. *Id.* at 284.

Mahoney also held that six other defendants physically obstructed and interfered with access to another door. The court of appeals' entire discussion of this holding is that five protestors ''knelt or sat within five feet of the front door,'' that the sixth defendant ''was pacing just behind them,'' and that they ''offered passive resistance and had to be carried away.'' *Id.* at 283. The court does not even say whether they were arrayed across the sidewalk or along the sidewalk, whether they left a passage open, or any other fact that might go to a plain meaning understanding of ''physical obstruction'' or to preserving a reasonable right to protest. It was enough for a violation that they were near the door.

Both FACE and proposed §523(a)(20) are limited to ''intentional'' violations, but *mahoney* shows that protection to be illusory. The court found specific intent to interfere with access to the clinic, even in the case of the lone protestor praying before the locked door. It relied on the fact that the protestor prayed that women approaching the clinic would change their minds about getting an abortion; the court quoted his prayer as evidence of criminal intent. 247 F.3d at 283–84. To similar effect is *United States* v. *Gregg*, 32 F. Supp. 2d 151, 157 (D.N.J. 1998), aff'd 226 F.3d 253 (3d Cir. 2000), cert. denied, 523 U.S. 971 (2001). Gregg had much more evidence of actual obstruction than Mahoney. Even so, the Gregg court relied on defendants' ''anti-abortion statements, including imploring women not to go into the clinic or not to kill their babies,'' and on the fact that defendants ''carried anti-abortion signs,'' as evidence of forbidden intent. The government in these cases has offered evidence of opposition to abortion as evidence of specific intent to obstruct access, and the courts have relied on this evidence for that purpose. Clinics and their supporters would of course argue that Congress has codified these holdings if it enacts proposed §523(a)(20).

Courts have emphasized that FACE plaintiffs need not prove actual obstruction. ''It is not necessary to show that a clinic was shut down, that people could not get into a clinic at all for a period of time, or that anyone was actually denied medical services.'' *People* v. *Kraeger*, 160 F.Supp. 2d 360, 373 (N.D.N.Y. 2001). Plaintiffs need not ''show that any particular person was interfered with by the defendants' obstruction.'' *United States* v. *Wilson*, 2 F. Supp. 2d 1170, 1171 n.1 (E.D. Wis.), *aff'd as United States* v. *Balint*, 201 F.3d 928 (7th Cir. 2000).

To sum up, proposed §523(a)(20) would reenact statutory language that has been interpreted not to require actual obstruction, has been interpreted to prohibit a single protestor kneeling in prayer near an unused exit, and has been interpreted to treat anti-abortion statements as evidence of criminal intent. These interpretations would almost certainly be read into §523(a)(20), and there would be a serious argument that Congress had confirmed these interpretations in FACE itself.

2. INJUNCTIONS

Proposed §523(a)(20)(B) makes nondischargeable any debt arising from violation of an ''injunction that protects access to'' a facility that provides lawful goods or services. Nothing in proposed §523(a)(20)(B) even purports to confine this subsection to violent or obstructive protest.

Under FACE and under other sources of law, courts have issued injunctions establishing buffer zones and bubble zones, forbidding protestors from coming within stated distances of the property line of abortion clinics or within stated distances of persons approaching abortion clinics. In *Madsen* v. *Women's Health Center, Inc.*, 512 U.S. 753 (1994), the Supreme Court upheld the constitutionality of an injunction forbidding protestors to step onto clinic property, or onto public property within 36 feet of the clinic's property line. The effect was to confine protestors to the other side of the street. The Court also affirmed an injunction against making any noise audible within the clinic. In *Schenck* v. *Pro-Choice Network*, 519 U.S. 357 (1997), the Court upheld an injunction against any defendant ''demonstrating within fifteen feet'' of any doorway or driveway at any abortion clinic in the Western District of New York. The injunction in that case also prohibited any defendant from ''trespassing'' on any clinic's parking lot. (The injunction is set out *id.* at 366 n.2.)

Since *Madsen*, the lower courts have become more aggressive about issuing buffer zone injunctions without first attempting to control alleged obstruction with less intrusive means. Examples include the buffer zone injunction issued on remand after the limited violations in *United States* v. *Mahoney*, under the case name *United States* v. *Alaw*, 180 F. Supp. 2d 197 (D.D.C. 2002), and the preliminary injunction confining a single protestor to the other side of the street in *United States* v. *McMillan*, 946 F. Supp. 1254 (S.D. Miss. 1995).

Many forms of protest inside such buffer zones would not obstruct or interfere with anything. A single picketer with a pro-life sign, held in contempt of court for standing quietly inside a buffer zone, would be covered by proposed §523(a)(20)(B), and any fines, compensation, or attorneys' fees awarded would be nondischargeable. The protection for peaceful protest in proposed §523(a)(20)(B) is supposed to come from the clause excluding protest protected by the First Amendment. But given *Madsen* and *Schenck*, this protection means little; much protest that is peaceful and nonobstructive is not protected by current interpretations of the First Amendment.

3. STATE LAWS

Proposed §523(a)(20)(A) also denies discharge for judgments arising from violation of state laws protecting access to clinics if the violation includes actions that by ''force or threat of force or by physical obstruction, intentionally injure, intimidate, or interfere with'' clinic access, or attempt to do so. Certainly this includes statutes like the New York Clinic Access and Anti-Stalking Act, which substantially tracks FACE. (This law is codified as N.Y. Penal Law §§240.70 and 240.71 (McKinney Supp. 2002), and N.Y. Civil Rights Law §79-m (McKinney Supp. 2002)).

It will be a matter of interpretation and litigation whether §523(a)(20)(A) denies discharge for other state laws imposing more expansive restrictions on pro-life protest. For example, in *Hill* v. *Colorado*, 530 U.S. 703 (2000), the Supreme Court upheld Colo. Rev. Stat. §18–9–122(3) (West 1999), which makes it illegal to approach within eight feet of another person without that person's consent, for any form of ''protest, education, or counseling'' within one hundred feet of the entrance to a health care facility. The Court relied in part on the state's interest in ''unimpeded access to health care facilities.'' 530 U.S. at 715.

Now consider a pro-life protestor who approaches a person outside an abortion clinic and offers a leaflet. Plainly this protestor would be violating the statutory eight-foot bubble zone. The statute currently authorizes compensatory damages for this violation, Colo. Rev. Stat. §18–9–122(6) (West 1999) and Colo. Rev. Stat. §13–21–106.7 (West 1997), and it could easily be amended to add liquidated damages or civil penalties on the model of FACE. In discharge litigation under proposed §523(a)(20), abortion clinics and their supporters would argue that the statute was a reasonable prophylactic means to prevent physical obstruction that interferes with clinic access, and that any violation of the statute amounts to such physical obstruction and interference. Prospective patients would prefer to enter the clinic without being offered a leaflet, and they may think the proffer of the leaflet made their entrance unreasonably difficult. If any of these arguments were accepted, judgments for violating state bubble-zone statutes would be nondischargeable under proposed §523(a)(20).

I do not think that would be a correct interpretation of proposed §523(a)(20). But after examining judicial interpretations of FACE, I think there is a substantial risk that some courts would reach this interpretation. If

judgments for violating buffer-zone and bubble-zone injunctions are nondischargeable, it would likely seem a small step to hold that judgments for violating bubble-zone statutes are also nondischargeable.

4. THE MAGNITUDE AND NATURE OF THE JUDGMENTS AT ISSUE

Proposed §523(a)(20) is not confined to compensatory damages. The statutes at issue authorize punitive damages, liquidated statutory damages, civil penalties, attorneys' fees, expert witness fees, and criminal fines. Their purpose is to deter and punish, not just—or even principally—to compensate for any harm done. In fact, awards of actual compensatory damages are quite rare. The plaintiffs' preference for liquidated damages and penalties is most important in those cases in which there is no obstruction in the ordinary meaning of the word, or only brief and marginal obstruction. In such cases, there is little or no actual damage, but there still be can substantial monetary judgments.

FACE authorizes $5,000 per violation in statutory damages, at the election of plaintiffs, either private or governmental. 18 U.S.C. §248(c)(1)(B) (2000). In actions by the United States or by any State, it authorizes a civil penalty of $10,000 per protestor for the first non-violent physical obstruction, and $15,000 per protestor for each subsequent nonviolent physical obstruction. 18 U.S.C. §§248(c)(2)(B) and 248(c)(3)(B) (2000).

The lower federal courts have held that the statutory damages are per violation, not per protestor. So if ten people combine to block a clinic entrance, a single judgment of $5,000 in statutory damages (plus costs and attorneys' fees) may be entered jointly and severely against them. *United State* v. *Gregg*, 226 F.3d 253, 257–60 (3d Cir. 2000), *cert. denied*, 523 U.S. 971 (2001).

But this ''per violation'' protection does not prevent multiple awards for multiple violations, and each alleged act of interference may be parsed as a separate violation. Moreover, civil penalties may be awarded against each protestor, and civil penalties and statutory damages may be awarded in the same case for the same violation. Thus a federal court has entered $80,200 in judgments against four members of a single family, for ten separate violations, none of them violent and none of them creating anything like an effective ''blockade'' of the clinic. *People* v. *Kraeger*, 160 F. Supp. 2d 360, 377–80 (N.D.N.Y. 2001). And of course there is no federal limit on the damage and penalty provisions that states might enact for judgments that would be nondischargeable under §523(a)(20).

5. THE EFFECT OF WITHHOLDING DISCHARGE

I am not an expert on bankruptcy law or debtor-creditor law, and I have not done extensive research on the options available to the protestor with a nondischargeable judgment beyond his capacity to pay. But the basics are clear enough to anyone with credit cards and a mortgage. If you are unable to pay, the creditors first threatens your credit rating, then your possessions; eventually, if there is enough at stake, the creditor sends the sheriff to seize your possessions. If you are unable to pay and unable to discharge the debt in bankruptcy, the threats and seizures would never end.

For the rest of his life, the protestor subject to a nondischargeable judgment would find it difficult or impossible to get credit. He could not get a mortgage; he could not get a loan for a new car. The creditor might be an abortion clinic motivated to make examples of pro-life protestors; such a creditor could make vigorous and continuing efforts to collect for as long as the protestor lived. In most states, the protestor's home could be seized, his wages could be garnished, his financial accounts could be emptied. In some states, even his furniture could be seized. All or part of everything the protestor ever earned or acquired for the rest of his life could be seized by the abortion clinic creditor, until and unless the judgment was paid in full, with interest.

A large and nondischargeable debt, beyond one's capacity to pay, especially in the hands of a hostile and motivated creditor, is a financial death sentence. That is what even peaceful pro-life protestors have to fear if proposed §523(a)(20) is added to the existing aggressive judicial interpretation of FACE and similar laws. I believe that any more optimistic interpretation of the bill is wishful thinking.

Very truly yours,

MARY ANN GLENDON,
Harvard Law Professor.

SECRETARIAT FOR PRO-LIFE ACTIVITIES,
Washington DC, November 13, 2002.

DEAR MEMBER OF CONGRESS:

Disagreements have arisen in Congress over the conference report on the Bankruptcy Abuse Prevention and Consumer Protection Act, particularly over Section 330 on the dischargeability of debts arising from sit-ins at abortion clinics. A legal analysis of this provision by our Office of General Counsel is enclosed. Based on this analysis, we have a serious concern about the form in which the bankruptcy bill is being presented for final passage.

The bishops' conference has always strongly condemned any resort to violence in the pro-life struggle. We have never endorsed, or taken a position on, the practice of conducting sit-ins or other forms of nonviolent civil disobedience at abortion clinics. However, we have strongly opposed the Freedom of Access to Clinic Entrances Act (FACE) as a discriminatory and ideologically motivated attack on the rights of peaceful pro-life demonstrators. The current language on protesters in the bankruptcy bill closely parallels the language of FACE, and will be used to impose another layer of penalties upon protesters whose only offense was to place their bodies in the path of those who take innocent children's lives.

The discriminatory nature of this provision seems clear. It could be used to take away the savings, homes and other property of low- or middle-income peaceful protesters to pay fines and the attorneys' fees of their opponents—a form of punishment now reserved chiefly for those who are guilty of inflicting willful and malicious injury upon others. This penalty would apply even if the protesters caused no harm to person or property but only ''interfered'' with abortions.

We hope the House will reject the Rule on the Conference Report so this unfair and discriminatory provision can be removed.

Sincerely,

GAIL QUINN,
Executive Director.

OFFICE OF THE GENERAL COUNSEL,
Washington, DC, September 12, 2002.

MEMORANDUM

We have been asked for an analysis of the Schumer amendment to the Bankruptcy Abuse Prevention and Consumer Protection Act, H.R. 333.

SUMMARY

Under existing law, a pro-life demonstrator seeking bankruptcy protection may not discharge a debt for a judgment arising from injuries he or she intentionally causes. The Schumer amendment would expand the law by preventing a demonstrator from discharging a debt (a) based on lesser degrees of cupability, *i.e.*, when the debtor did not intend or cause injury to person or property, and (b) when the demonstrator, regardless of his or her state of mind, commits a second violation of a court order protecting a clinic, even if the violation was not intended to, and did not, interfere with clinical access.

An exception in the amendment for expressive conduct protected from legal prohibition by the First Amendment does not change this analysis. Obviously, with or without the exception, Congress lacks the power to prohibit by the First Amendment does not change this analysis. Obviously, with or without the exception, Congress lacks the power to prohibit conduct protected from prohibition by the First Amendment.

The amendment is not limited to violent or even crimical conduct. For reasons discussed below, it seems likely that the amendment will have a disproportinate impact on pro-life demonstrators.

ANALYSIS

Among the debts that may not be discharged in bankruptcy is any debt ''for willful and malicious injury by the debtor to another entity or to the property of another entity.'' 11 U.S.C.§523(a)(6). The word ''willful'' in section 523(a)(6) ''modifies the word 'injury,' indicating that nondischargeability takes a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury.'' *Kawaauhau* v. *Geiger*, 523 U.S. 57, 61 (1998) (original emphasis). ''[D]ebts arising from recklessly or negligently inflicted injuries do not fall within the compass of §523(a)(6).'' *Id.* at 64. Debts arising from actions that cause no injury at all are likewise outside the scope of section 523(a)(6).

Section 523(a)(6) bars the discharge of debts resulting from judgments against pro-life activists arising from deliberate or intentional injuries that they cause. *In re Treshman*, 258 B.R. 613 (Bankr. D. Md. 2001) (debt for intentional injury resulting from violation of Freedom of Access to Clinic Entrances Act was not dischargeable in bankruptcy); *In re Bray*, 256 B.R. 708 (Bankr. D. Md. 2000) (debt for intentional injury resulting from violation of FACE was not dischargeable in bankruptcy); *In re Behn*, 242 B.R. 229 (Bankr. W.D. N.Y. 1999) (debt for intentinal injury resulting from pro-life demonstrator's violation of temporary restraining order was not dischargeable in bankruptcy). There is some authority that an injury is *ipso facto* intentional when it results from violation of a court order directed specifically at the particular debtor, *Behn*, 242 B.R. at 238, but the same court left ''to another day the question of the applicability of §523(a)(6) in other fact patterns, such as if there had been no court order directed specifically at the debtor, and instead the debt arose out of a judgement for trespass or menacing.'' *Id.* at 239 n. 6. Criminal trepass statutes generally do not require injury in the sense of actual damage to property or an intent to cause such damage; unauthorized entry or remaining unlawfully on property is usually sufficient. *See* 75 Am.Jur.2d Trespass §164.

The Schumer amendment can be divided into three parts. It prevents the discharge in bankrupty of any debt from a judgment, order, consence order, decree, or settlement agreement arising from—

(1) The debtors violation of any Federal or State resulting from intentional actions of the debtor that by force, threat of force, or physical obstruction, does any of the following—

Intentionally injures any person;

Intentionally intimidates any person;

Intentionally interferes with any person;

Attempts to injure, intimidate, or interfere with any person for any of the following reasons—

Because that person is or has been obtaining or providing lawful goods or services;

To intimidate that person from obtaining or providing lawful goods or services; or

To intimidate any other person or class of persons from obtaining or providing lawful goods or services.

(2) the debtor's violation of any Federal or State statute resulting from intentional actions of the debtor that—

Intentionally damage or destroy the property of a facility because it provides lawful goods or services, or

Attempts to damage or destroy the property of a facility because it provides lawful goods or services.

(3) a violation of a court order protecting access to a facility or person that provides lawful goods or services, or that protects the provision of such goods or services, if—

The violation is intentional or knowing, or

The violation occurs after a court has found that the debtor previously violated such a court order, or any other court order protecting access to the facility or person.

The Schumer amendment does not require an intentional injury. Parts 1 and 2, dealing with violation of federal or state law, require only an intentional act. The phrase ''intentionally injure, intimidate, or interfere with'' does not require intentional injury because the word ''or'' is used. Part 3 requires only an intentional or knowing violation of a court order, or a second violation of a court order, intended or not. The amendment would therefore expand existing law by stripping pro-life demonstrators of bankruptcy protection for injuries they did not intend, or only attempted but did not cause. Indeed, the amendment does not even require any injury in the sense of actual damage to person or property. It would remove bankruptcy protection in cases where there is neither damage to person or property nor any intent or attempt to cause such damage.

The amendment is not limited to violent crime. Physical obstruction or violation of a court order is sufficient to trigger the amendment. No crime is necessary, only violation of some federal or state statute (not necessarily a criminal statute) or court order.

It seems likely that the amendment will have a disproportionate impact on pro-life demonstrators and be invoked most frequently against them. Though broader in its current form, the amendment is based on FACE and substantially tracks it. For the most part, other federal crimes are not implicated. The amendment uses the phrase ''physical obstruction,'' for example, which appears nowhere in the federal criminal code except in FACE. Words like ''intimidate'' appear elsewhere in the code, but usually not in reference to the receipt or provision of goods or services. Most federal crimes do not carry a civil remedy; FACE does. Thus, the Schumer amendment is carefully designed to impact demonstrators. There may be other instances in which the amendment would be theoretically applicable (e.g., environmental protestors who disrupt logging operations), but abortion seems the most common instance in which the targets of protest regularly allege interference with their business and often seek large judgments against their adversaries.

The amendment seems unfair not only because it has the practical effect of singling out demonstrators, but because those demonstrators, like others, are presently subject to the nondischargeability of debts for intentional injuries. Present exceptions to dischargeability for particular crimes generally involve intentional financial wrongdoing or conduct in which the debtor created a grave and unjustifiable risk to human life. Had Congress intended to remove bankruptcy protection for debt from some broader category of injury or conduct, it is unclear why that penalty should assume a form, as this amendment does, that in practical terms will be used only or primarily to deprive demonstrators, not others, of bankruptcy protection—unless, of course, the intent were to punish or chill speech, which is constitutionally impermissible.

To say that a demonstrator can avoid the problem by not violating an order or statute misses the point. The point is not to absolve unlawful conduct, but to fashion criminal and bankruptcy penalties that are proportionate to the gravity of the offense and the degree of injury and culpability—precisely what the law has traditionally done when assessing penalties. A minor or technical violation of a trespass statute resulting in no actual harm to person or property would hardly seem the sort of conduct that should trigger the severe nondischargeability penalty that this amendment would impose.

Perhaps even more significant is the risk that the amendment will chill lawful conduct. The amendment includes an exception for expressive conduct protected from legal prohibition by the First Amendment, but that does not change what the bill does or its likely chilling effect on protesters. Congress already lacks the power to prohibit conduct that is protected from prohibition by the First Amendment, and no bill can change that, yet anecdotally we hear of instances in which people decline to participate in legitimate pro-life demonstrations because of concerns about liability. Those concerns are not exaggerated give present misuse of the federal racketeering statute. People should not have to fear putting their assets at risk simply by doing what the Constitution permits. The amendment, in my view, is likely to heighten that fear and further deter legitimate and lawful protest.

MICHAEL F. MOSES,
Associate General Counsel.

Mr. FROST. Mr. Speaker, I yield 10 minutes to the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Speaker, I rise today in opposition to this rule. For my colleagues on both sides of the aisle who have profound concerns about this bill, I hope that you will realize that the crucial vote will be on the rule, not the bill. Because the rule is where it will have real effect.

There are many reasons to oppose this bill. This bill is opposed by almost all bankruptcy professionals, people who know anything about bankruptcy. It is opposed by organized labor, by almost every women's group, by children's advocates, by every consumer group, by civil rights organizations, and by most bankruptcy scholars. It is supported and is being pressed forward by a coalition of banks, credit card companies and other business interests who want to profit exorbitantly at the expense of families and small businesses at a time of crisis.

It is shocking that at a time when the American people are rightly outraged at the illegal and unethical machinations of many in corporate America, at a time when thousands of Americans are losing their jobs, at a time when many businesses large and small are in bankruptcy trying to stay alive and reorganize and preserve jobs, it is shocking that we would even be considering this kind of a special interest bill that will enrich lenders at the expense of families, jobs and small businesses and will force many businesses into liquidation and job destruction instead of reorganization and survival. Whatever Members may have thought of this legislation in the past, I hope they will take a very careful look at the bill we have before us today and think about what has happened since this bill was first proposed 5 years ago and since it was really debated on the floor at great length and people may have made up their minds.

We know that the lenders who have been demanding this bill, the big credit card companies and the big banks, are highly profitable. They are making big money off our constituents with high interest rates that have not come down with drops in bankruptcy or the prime rate. The prime rate is the lowest it has ever been. Have credit card interest rates come down?

My colleague from the State of Virginia says that there is a hidden tax of $400 per family because of deadbeats who do not pay. That is nonsense. What he is really saying is that the credit card companies would lower their interest rates if this bill passed. The prime rate has gone down by 8 or 9 points. Have the credit card companies lowered their interest rates? Credit card companies will never lower their interest rates because it is an oligopolistic business and they gouge from the people what they can gouge.

We know that many large banks have played a role in some of the more egregious financial scandals that have robbed workers and investors of their life's savings and their jobs. We know that this bill which serves their interests and their interests only will make it easier for these same large institutions to squeeze small debtors even more, to squeeze small businesses even more, to place outrageous and undue pressure on people to give up their right to a fresh start, and to make even larger profits at the expense of the most vulnerable.

□ 1530

We know that the millionaires exemption, the unlimited homestead exemption in six States, will not be changed, will not be capped. The bill will only limit that outrageous loophole that allows one to put all of one's money into one's mansion, go bankrupt, and still have $10 million in the mansion, and this bill will limit that only if a wealthy debtor manages to get found guilty of a specific type of fraud or of a limited number of crimes or the most extreme torts resulting in serious physical injury or death. It does nothing, let me say that again, this bill does nothing about a multimillionaire who wants to shield millions of dollars in assets from creditors in a mansion, whether those creditors are small businesses or other lenders or in some cases the taxpayers. But the small debtor, him we will get.

What this bill will do is squeeze the more than 1½ million Americans who

each year get in over their heads and need to reorder their finances, pay off as much of their debts as they can and then start over. These small debtors, the ones who do not have huge mansions in Texas or Florida, will be squeezed beyond the breaking point by the draconian provisions of this bill.

Let me repeat that statistic. Last year there were a million and a half individual bankruptcies. The proponents of this bill will tell us that that is a sign that we need to change the system and allow the banks and the credit card companies to squeeze families even harder so fewer people will go into bankruptcy. But there is another way to look at this. These million and a half Americans every year who file for bankruptcy are not crooks. Ninety percent of the people who filed for bankruptcy did it either because they were laid off from their job, they got divorced, or they had a medical emergency. They are in bankruptcy because they lost jobs, because Congress failed to enact an adequate national health care insurance program, because Congress failed to provide a prescription drug benefit program, because people lost their retirement savings because they invested in Enron, because Congress allowed their unemployment insurance to run out, because Congress voted to ship their jobs overseas, or for a variety of other misfortunes. Yet our answer to them is not to give them a helping hand in crises but to make things even harder for them. Is that what we are going to offer them? Is that going to be our answer? That is unconscionable.

The so-called means test in this bill would hold people to what the IRS says they would need to live on even if their actual expenses are higher. That test was so draconian that Congress told the IRS they should not use it on tax cheats, but now we are going to let the big credit card companies do what we have told the IRS it cannot do.

This bill would require the courts to assume that the income of a family in bankruptcy is what it received in the 6 months preceding the bankruptcy filing. So if someone got laid off, if they are 55 years old and got laid off from their $75,000-a-year middle management job at IBM and will never make $75,000 again, it does not matter. Their income must be assumed to be $75,000 even though they are now only making $25,000. It does not matter what the future holds. If someone once made $75,000, they will forever make $75,000 says the income test that in this bill, and the judge has no discretion about that. It ignores the facts in reality. Many people in this economic climate will be in bankruptcy precisely because they lost the jobs that used to pay them a good income. Even still, if a family in crisis is found to be able on the basis of this ridiculous means test to pay as little as $100 a month for the next 5 years, they will be denied chapter 7 relief. They will be branded by the law as abusers of the bankruptcy system.

We will be told that this bill does not affect families with incomes below the median income. That is not true. Read the bill. It still allows landlords to evict people below the median income more easily. It still allows creditors to bring abusive and coercive motions against people below the median income more easily. It still exempts many creditors from the application of the bankruptcy rule that prohibits abusive and coercive motions even against people below the median income. It still makes it harder to save the family car in bankruptcy, and it will make it easier to force many small businesses into liquidation and thus cost jobs instead of allowing those businesses to reorganize and survive. If my colleagues think this will not hurt families at all income levels, I have a few bridges I want to sell them.

I want to remind my colleagues that chapter 7 is no walk in the park. It requires a debtor to liquidate all his or her assets and repay as much of their debts as they can. A secured loan such as a home and a car must still be paid off or the debtor loses the property. Bankruptcy never relieves one of that obligation, and the bankruptcy stays in their credit report for years and impacts their ability to borrow money in the future and their ability to get a job or rent an apartment. Even a debtor witness called by supporters of this bill complained that she had these problems after she filed for chapter 7.

And the bill rewrites chapter 13. Even though two-thirds of the people who voluntarily go into chapter 13 and had promised to repay a portion of their debts failed to do so. They cannot make the goals of the plan. This will throw millions of people into chapter 13 involuntarily, and because it will be written the way it is written, we will have many, many debtors who are judged too rich for chapter 7 but they cannot meet the requirements of the bill for chapter 13. They do not have enough money under the means test; so they are too poor for chapter 13. Too rich for chapter 7, too poor for chapter 13. They cannot get any relief. They cannot go bankrupt. That is absurd.

The bill will make it harder for businesses to reorganize. Think about the large retail chains that are now in bankruptcy. Landlords will be able to shut down the reorganizations and have an absolute veto power over the planning process. Chains like K-Mart or the various cinema chains would have to close hundreds of stores and eliminate thousands of jobs instead of reorganizing.

What this bill does not do is protect workers who lose their wages or their retirement savings or their jobs because of corporate malfeasance and bankruptcy. There have been a number of proposals by the distinguished gentleman from Massachusetts (Mr. DELAHUNT), the lead sponsor of this bill, the gentleman from Pennsylvania (Mr. GEKAS), by the junior Senator from Missouri and the junior Senator from Iowa to do this, yet there is nothing in this bill to protect workers from corporate wrongdoing. And if they are victims of corporate wrongdoing, we are going to sock them in the teeth with this bill. They have to take a number behind the crooks and behind the banks and the law firms.

This bill is part of the trifecta that we are giving businesses to make up for the accounting reform that was passed because of public outrage. We should not sacrifice our constituents to the special interests at a time when they are hurting worse than at any time in a decade. I urge a no vote on the rule. I urge a no vote on the conference report. And with a no vote on the rule we would have a chance of taking a fresh look in, I might remind my colleagues, a Republican House and Senate next January, a fresh look at this bill and see if we really want to say to the low income people and the middle income people in this country we are going to sock them in the teeth. I urge a no vote on this rule, and I thank the gentleman for yielding me this time.

Mr. SESSIONS. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana (Mr. PENCE).

(Mr. PENCE asked and was given permission to revise and extend his remarks.)

Mr. PENCE. Mr. Speaker, I rise with a very heavy heart today to oppose this rule, and I must confess to being a bit befuddled to this very hour. I am a Member of this institution, like many, who supported the outstanding work that this Chamber did on bankruptcy reform, and it was politicized in the conference committee by the efforts of a Senator that I should not name and whose actions I dare not characterize into what has now become a debate over abortion in a bankruptcy bill. But since it has become that and more to the point, Mr. Speaker, it has become a debate over the freedom of speech, I must rise to oppose this rule because I would offer today that the freedom of speech and freedom to peacefully protest in the United States of America is more urgent and more important than any individual legislation will ever be, and I am not alone in thinking of this.

Professor Mary Ann Glendon, the Learned Hand Professor of Law at Harvard University, supports the view that this legislation will provide a chilling effect on the exercise of pro-life protestors in America. She is joined also in her opinion by the United States Conference of Catholic Bishops that argues ''The current language on protestors in the bankruptcy bill will be used to impose another layer of penalties upon protestors whose only offense was to place their bodies in the path of those who take innocent children's lives,'' saying that the intent of the provision is clear. And even the Family Research Council, calling that provision morally bankrupt, said it was ''plainly an attempt to silence by intimidation those who would participate in legitimate nonviolent protest.''

Where the first amendment is concerned, prudence dictates caution, Mr. Speaker, and I urge a no vote.

Mr. FROST. Mr. Speaker, I reserve the balance of my time.

Mr. SESSIONS. Mr. Speaker, I yield 2 minutes to the gentleman from Missouri (Mr. AKIN).

(Mr. AKIN asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. AKIN. Mr. Speaker, America does not have many home grown terrorists, and that is because we have a first amendment. Unfortunately this bill before us does terrible damage to the first amendment that our forefathers and all of us have stood so bravely for in the past. In summary, a Harvard law professor says that this is the financial death sentence for peaceful protestors.

I recall so many years ago on a cold street standing with a sign and I recall this woman that was going in to consider getting an abortion or not, and I felt completely inadequate but I told her that we would help her with services if she decided to keep her child. Today that child is probably now trying to practice to get a driver's license.

I can never support a rule or a bill on this floor which would have effectively imposed a financial death sentence on somebody who is merely standing on a sidewalk trying to help save a life.

[From The Wall Street Journal, Aug. 15, 2002]

BANKRUPTCY AND ABORTION—II

We've written before about Senator Charles Schumer's not-so-magnificent obsession with abortion and bankruptcy. He's at it again. The New York Democrat continues to play abortion politics with a promising bankruptcy bill.

The legislation in question passed both the House and Senate in 1998 with bipartisan, veto-proof majorities. The bill would make it more difficult for borrowers to file for bankruptcy and thus evade debts that they can afford to pay. Banks, which lose millions of dollars each year to these Chapter 7 filers, favor the measure for obvious reasons. But consumers also stand to benefit from a crackdown, since they're the ones burdened with higher fees and interest rates to compensate lenders for revenue lost through defaults.

Congress passed the latest version early last year and it would be law today save for Mr. Schumer, whose agenda-laced rider on abortion has mired the bill in conference ever since. His amendment would prevent pro-life activists, and only them, from using bankruptcy to avoid paying fines. The provision, said Mr. Schumer, ''ensures those who use violence to close clinics can't use bankruptcy as a shield.''

But no anti-abortion protestor has every succeeded in doing such a thing. Current law, which already prevents people from using bankruptcy to avoid paying fines related to violence, makes the Schumer rider redundant. The Senator's real targets aren't violent protestors of abortion but peaceful ones. And the unspecific language in his proposal—''physical obstruction,'' ''force or the threat of force'' and other pliable expressions for enterprising litigators—is a bald attempt to blur any legal distinction between the two. As it's written, vigils, sit-ins, picketing and other nonviolent activities could be interpreted as federal offenses.

We've seen this strategy from Mr. Schumer before. As a Congressman back in 1994, he successfully navigated into law the Freedom of Access to Clinic Entrances Act. Like his current proposal, FACE uses vague terminology to group together violent and peaceful protests for purposes of meting out federal punishment. Under FACE, a first-time offender convicted of ''interfering with'' or ''intimidating'' a clinic patron is subject to a $10,000 fine and six months in jail. No doubt, when civil rights protestors occupied segregated lunch counters, they intimated many. Still, the law managed to distinguish between civil disobedience and militancy.

All their talk about deterring violence notwithstanding, the Senator and his supporters are well aware that someone lunatic enough to bomb a building is unlikely to change his mind due to adjustments in the bankruptcy code. But someone planning to distribute adoption pamphlets outside a clinic, or participate in a prayer vigil on a public sidewalk, might very well have second thoughts if a civil fine could cost him his home.

Congress is set to revisit the issue when it returns next month. Mr. Schumer insists that he ''is wholly committed to passing a bankruptcy bill.'' Don't believe it. If he were true to his word, he would removed his amendment, allow the bankruptcy bill to pass, and reintroduce his abortion provision as a separate piece of legislation.

But Democrats know that it's Republicans who are more likely to be blamed if bankruptcy reform dies. Watch for Mr. Schumer to keep his poison pill in place right through November and continue presenting his obstructionism as ''a victory for women.'' It certainly won't hurt his fund raising.

Republicans, nonetheless, would be wise to wait him out. The issue here is not abortion so much as free speech. Using violent extremists as straw men, liberals are hoping to snatch a formidable tool of protest from the opposition. Their efforts should be resisted on principle.

Mr. FROST. Mr. Speaker, I reserve the balance of my time.

Mr. SESSIONS. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. GEKAS), a champion of this bill.

Mr. GEKAS. Mr. Speaker, I thank the gentleman for yielding me this time.

When we began this odyssey on bankruptcy reform some 5 years ago, we began with two staunch principles guiding our pathway. One was to guarantee that those who are so overburdened, so swamped, so flooded with financial obligations that they could no longer make their way into our society's ways that they would be given the ample opportunity for a fresh start. That is what bankruptcy is all about. We guaranteed it and expanded it. As a matter of fact, it can be said that someone seeking a fresh start today under the bankruptcy reform that we want to put into the law would have an easier time than the current law. So for that purpose alone we should be supporting this legislation.

The other principle was and is that those who do approach the possibility of repaying some of the debt should be accorded a mechanism by which they can repay some of that debt over a period of years. Mind, we said, not all the debt; mind, we said, over a period of years, but yet the opportunity to regain some of the losses that the general public would encounter if this individual were allowed not to pay anything back. So those two principles have guided us right down to this moment here on this floor.

The other point that has to be made in support of the rule and the bankruptcy reform measure that underlies the rule is the fact, as was mentioned by both gentlemen from Texas in their opening remarks, that this measure over 5 years has enjoyed tremendous bipartisan support, gaining over 300 votes each and every time that it has come to the floor. Three hundred votes by any magician's count can determine through that number by itself that this was a bipartisan approval of the legislation, and it also is bicameral in different stages at different times, but by the time we came to this floor today it was bipartisan in nature.

I thank the gentleman for yielding me this time.

Mr. FROST. Mr. Speaker, I yield 5 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texax asked and was given permission to revise and extend her remarks.)

□ 1545

Ms. JACKSON-LEE of Texas. Mr. Speaker, just a couple of weeks ago, an unspeakable tragedy hit not only this Congress, but it hit this Nation. That was the loss of Senator Paul Wellstone, his wife and daughter, staff and others who traveled with him on that fateful day. We lost a warrior who was not afraid to speak for the voiceless and those that could not be heard.

So I stand here today unabashedly opposed to this conference report and this rule; and I believe Senator WELLSTONE would not mind me standing in respect and admiration for his fight, for it was his unrelenting work in the other body that caused this issue to remain in the forefront, that although the representation of this legislation is what many of us would have wanted it to be, a respect for consumer interests as well as fiscal responsibility, it is a stomping out of the rights of the poor who cannot speak.

For anyone to say that people go happily into the bankruptcy court, I take issue, for the facts will prove out that those who file bankruptcy, the bulk of Americans who file bankruptcy, are faced with catastrophic illnesses; or the elderly, who have fallen upon hard times because of their illness; divorcees; single parents; individuals who have been laid off and now face the economic hard times of this Nation, the very people right now who are now facing 5 and 6 percent unemployment; the airline industry employees who lost their jobs after 9–11; the small business owners who collapsed in New York after 9–11. Those are who file bankruptcy. Yet we have determined that these are the very individuals that

we are going to knock outside of the boundaries of having access to the bankruptcy court.

Let me tell you why. We have tried over and over again. Professor Warren at Harvard University, a specialist in bankruptcy law, for the past 5 years has said the means test is what it is, mean. It does not help my good friends in the credit union, because what it does is it puts a barrier, it closes the door, it puts the finger in the dike, if you will, for innocent, hard-working Americans who simply want to get themselves in order. It puts a means test in front of those who seek to enter the bankruptcy court; and as well, if you want to fight the issue, you must take monies that you do not have and go into a Federal Court to go and be able to dismantle that particular means test.

It argues against the mindset to support our children, for it promotes credit card debts and other debts over the ability to pay your child support payments. We have argued over and over about this, and it has not been fixed.

This is a bill that does not address the tragedy that I had in my community, Mr. Speaker, and that is the collapse of Enron. This bill does not address the tragedy of Cathy Peterson and her husband. I have committed to fight until the end so that Cathy Peterson's fight can be heard around the Nation.

What happened to Cathy Peterson? Her husband worked for Enron. While he worked for Enron, he was felled, if you will, with a catastrophic illness, terrible deadly cancer. And while Enron was engaged in its malfeasance, of course, you realize that Enron filed for bankruptcy, and within 24 hours 5,000 people were laid off or fired. Cathy Peterson's husband was one of those.

They had to pay their COBRA insurance. They lost their home, Mr. Speaker. They lost their home. He was suffering from an enormous tragic illness. They lost their home. He was fired. While Enron filed bankruptcy, while a corporate structure was allowed to stand, the Petersons were knocked off their feet.

So Cathy Peterson has asked us to put a provision in that disallows those who are filing bankruptcy, large corporations, from firing those who are off on the basis of catastrophic illnesses. We did not address that issue. So in Cathy Peterson's name, this bill should not go forward.

We must recognize that in the name of those Enron employees who were laid off, 5,000 of them, who would not have been able to secure a dime of recovery had it not been for the fight of the AFL-CIO, for the fight that I engaged in, for the fight that the Wall Street and Rainbow Push engaged in, that we were able through the court process to get each of them $13,500. Some of them still have not recovered, laid off, children coming out of school.

This bankruptcy bill does not address the needs of Americans who have fallen on hard times, who are sincere; and it does not address my good friends in the credit union industry, because those are the consumers who come every day to utilize those resources.

So in the name of women and children and hard-working Americans, taxpayers, this bill should not go forward. In the name of my dear friend and our friend, Senator Paul Wellstone, who stood in the other body, standing on behalf of those who could not speak, I am committed to say whatever happens, that we will fight to ensure that the bankruptcy laws of this Nation do not stand as a barrier to those who have worked and upon whose shoulders we have stood and built this economy.

I can stand and say with all emotion that anyone who views these passionate words as ones that cause them great discomfort, that is the purpose of these words, because the voiceless cannot speak today.

The issue of bankruptcy reform has been a heated topic of debate in this body since the first session of the 105th Congress, when shortly before the National Bankruptcy Review Commission issued its report recommending changes to the current bankruptcy laws; legislation was introduced to dramatically change the way in which consumer bankruptcies are administered under the U.S. Code, 11 U.S.C. sec. 101 et seq. We have battled with this issue until now and we see that the leadership of the House, with a renewed vigor, will force a vote on legislation for some of its favorite companies before the irons of the last election have even cooled and a day before we adjourn for the year.

Mr. and Ms. America, today is a preview of things to come. Today is the beginning of a time when corporate interests, in this case the interests of large creditors, will reign supreme and the interests of the little guy will slip further down to the bottom of the barrel.

I have consistently said that the greatest challenge before us in the bankruptcy reform efforts is solving the widely recognized inadequacies of the law in the area of consumer bankruptcy. As it has always been in the Congress, the key to this process, is, of course, successfully balancing the priorities of creditors, who desire a general reduction in the amount of debtor filing fraud, and debtors, who desire fair and simple access to bankruptcy protections when they need them. H.R. 333 does not accomplish this goal. Instead it runs the interest of consumers into the ground.

The bill before us today, will break the backs of working women, disappoints children, and discourages people who are struggling to do the right thing to get their lives back in order. This is a measure that unfairly subverts the interests of consumers to the interest of creditors—many whoms marketing strategies target individuals with questionable means of paying back the debt they incur.

During prior consideration of this bill I pointed out the unruly conduct of credit card companies that target college students with no income knowing that they are vulnerable and likely to charge up significant debts often without the knowledge and guidance of their parents. ''An analysis [by Nellie Mae], a leading provider of student loans, of students who applied for credit-based loans with Nellie Mae in calendar year 2000 showed that 78 percent of undergraduate students (aged 18–25) have at least one credit card. This is up from the 67 percent of undergraduates included in a similar study by Nellie Mae in 1998. In years past, these same students would not have been given credit cards, certainly not without a cosigner.'' This is continued evidence that the credit card industry continues to prey on the lack of wisdom that many of our nation's youth have about the burdens of accumulating massive amounts of debt. This bill gives them license to continue to do so.

This bill also uses an unrealistic inflexible formula to determine who is eligible for Chapter 7 bankruptcy relief. The measure uses Internal Revenue Service guidelines to determine what expenses a consumer has as opposed to using the debtors actual living expenses. The effect of this is to render many debtors ineligible for relief under Chapter 7 bankruptcy by estimating their living expenses as much less than they actually are. The formula also uses the debtors prior six months income to calculate what the debtor will have available to pay creditors even if that income is no longer available. The only way for the debtor to change these assumptions is to go into court. Let me ask you Mr. and Ms. America, what person seeking bankruptcy can afford to go to court and litigate the matter. The prospect of this expense alone is enough to force consumers to take extreme measures in order to satisfy their debts.

H.R. 333, also places the interests of creditor over the interest of children. By allowing a greater number of non-child support debts to survive bankruptcy, the measure diverts more money to creditors and away from parents paying and receiving child support. The bill sets up a competition for scarce resources between parents and children benefitting from child support both during and after the bankruptcy. Single parents facing financial crises brought on by divorce, nonpayment of support, the loss of a job, uninsured medical expenses or domestic violence will find it harder to regain economic stability through the bankruptcy process.

Many women find themselves as single parents and the primary providers for their children. As a result women are the fastest growing and largest group filing bankruptcy today. In 1999, over half a million women filed for bankruptcy by themselves—more than men filing by themselves or married couples. Of this number, over 200,000 women who filed for bankruptcy in 1999 tried to collect child support or alimony. The domestic support provisions of H.R. 333 does not solve the problems faced by women in bankruptcy and does nothing to address the additional problems it would cause to the hundreds of thousands of women forced into bankruptcy each year, including the single mothers forced into bankruptcy because they are unable to collect child support.

While women, children, students and the average working person in America are forced to make more available for creditors to seize in the event of financial difficulty, the bill makes minimal changes to that which the wealthy will be forced to part with in the same circumstance. Although the bill contains some new limits on the once unlimited homestead exemption, the so-called ''millionaires' loophole,'' it still allows some rich debtors (those who have not been found to have committed certain types of wrongdoing, or those who

have owned their home in the state longer than 40 months) to protect an unlimited amount of value in their residences. The wealthy should not be permitted to walk away from their debts and pocket millions, while working Americans get squeezed by a stringent and inflexible new rule.

I am for bankruptcy reform, but I believe that it must be equitable and fair to all interested parties. I am for bankruptcy reform that recognizes the financial interest at stake for the debtor, his or her family and the creditors. As elected officials for the American people we must protect America's families. In this time when corporations like Enron and Worldcomm have laid off thousands of employees, we should at least consider granting them the priority status they deserve. Under a bill that I had proposed, H.R. 5110, the omnibus Corporate Reform and Restoration Act, we would have raised the bankruptcy claim for workers from $4000 to $15,000. This would have ensured that they receive compensation as priority creditors for the corrupt actions of corporate malfeasance.

Financial hardship is a serious matter that deserves legislative reform that is the product of a deliberative process. This bill, is an extreme bill undertaken at the behest of special interest groups. We must protect working—class families. We must work to find a viable solution that deters abuse of the bankruptcy system while preserving the fresh start for debtors whose debts have been discharged. It is ironic that the consumer lending industry actively solicits consumers with promises of easy access to credit. We all know the pitches: ''buy-now, pay later;'' ''No interest expenses for the first six months/year etc;'' ''No credit check, your job is your credit.'' Then, after addicting debtors to this ''financial crack'' lenders come to us begging for reform. Surely lenders bare some culpability for these beguiling and misleading advertising blitzes which entice individuals who might not otherwise qualify or apply for credit. Surely they have some roll to play in the unprecedented levels of American debt.

Congress has a time honored tradition of careful consideration of bankruptcy laws dating back 100 years. In the past members of this body have elected to carefully preserve an insolvency system that provides for a fresh start for honest, hard working debtors, protects small businesses and jobs, and fairly balances the rights of debtors against the rights of creditors. This measure is an unfortunate departure from this tradition and places the financial well being of the American people in harms way. I oppose this legislation and urge my colleagues to do the same.

Mr. SESSIONS. Mr. Speaker, I yield 1 minute to the gentleman from Tennessee (Mr. JENKINS).

Mr. JENKINS. Mr. Speaker, I rise in support of this rule. This legislation appears to me to be a compromise that is filled with positive aspects of the give and take of the legislative process and saturated with the element of common sense that both sides to this controversy say that they strive to achieve.

In one aspect that has already been mentioned, it penalizes the adjudicated intentional violator of the law and the intentional tort feasor and precludes him from escaping the consequences of his act by hiding behind the provisions of the bankruptcy act. I think this is entirely proper, because the bankruptcy act was never intended to protect anyone in this situation.

At the same time, it protects the innocent who are simply exercising their constitutional rights, who are lawfully assembled or expressing their freedom of speech.

I urge my colleagues to vote for the rule and to vote for the conference report.

Mr. FROST. Mr. Speaker, I reserve the balance of my time.

Mr. SESSIONS. Mr. Speaker, I yield 1 minute to the gentleman from Arizona (Mr. SHADEGG).

Mr. SHADEGG. Mr. Speaker, I thank the gentleman for yielding me time.

Mr. Speaker, I rise in reluctant, but adamant, opposition to this rule. I say to my colleagues, make no mistake about it. The issue before us is not abortion, and the issue before us is not bankruptcy. The issue before us today is very important. It is the constitutional right of free speech and peaceful protest.

Mr. Speaker, this rule is an unprecedented and shameful attack on the right of free speech and peaceful protest. It does not matter where you stand on abortion; you should oppose this rule and you should oppose this legislation. If we pass this legislation, what we will be doing is for the first time in American history creating two categories of free speech, two categories of peaceful protest: one protected by our laws and one not protected. We will be saying that, based on content of your protest, you are either protected by our law or not protected.

It does not matter where you stand on the abortion law. If you care about the right of peaceful protest, if you believe in the right of people to exercise their constitutional first amendment rights, you must defeat this rule and we must go back and do this legislation again. Those who honor the right of free speech, those who honor the right of peaceable protest must understand this is a fundamental assault on the Constitution of the United States.

I urge the defeat of both the rule and the underlying legislation.

Mr. SESSIONS. Mr. Speaker, I yield 1⅙ minute to the gentlewoman from Pennsylvania (Ms. HART).

Ms. HART. Mr. Speaker, I rise in support of the rule for bankruptcy reform. This Congress and prior Congresses have been very dedicated to making sure that this country benefits from bankruptcy reform and these attempts have been made to draw up a very good bill. Now we finally have the opportunity to finish the job.

Congress has a responsibility to pass this legislation now and to stop the bankruptcy system's abusers, those who have actually the ability to repay these debts but use the current bankruptcy system as a financial planning tool. This gaming of the system carries too high a cost to consumers, by raising costs at an extremely critical time for our economy.

Our economy needs all the help it can get. Consumer spending and consumer credit are key elements of any plan for economic growth, and bankruptcy abuse is having such a horrific effect on consumers' finances that if current practices continue, approximately one out of seven households will have filed for bankruptcy within the past decade.

Bankruptcy legislation has been debated. It has been refined; it has been revised and amended for years. It is now time for action.

Unfortunately, much of this debate has been focused on the abortion provisions in this bill. I ask my colleagues to look at the real effects of those provisions. They are not effective. They will not harm lawful protesters. I urge my colleagues to support the rule.

Mr. SESSIONS. Mr. Speaker, I yield 4 minutes to the gentleman from Indiana (Mr. SOUDER).

(Mr. SOUDER asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. SOUDER. Mr. Speaker, I rise deeply disappointed. I am a strong supporter of bankruptcy reform. I was a former retailer and business person, and many of my supporters are in support of this. I cannot believe that we are here on the floor debating this today and that this bill has been brought up.

We are likely to hear in the closing remarks from some of our leadership that this does not apply to pro-lifers and it does not sit on free speech. I think they are terribly wrong, and they put many of us in deep conflict in trying to defend civil liberties and, at the same time, reform bankruptcy; and many of us are deeply disappointed in our leadership that this bill has come forth.

I think many Americans around the country, as nearly every pro-family and pro-life group in America, has stood arm in arm against this bill. National Right to Life, which does not take positions on issues such as this, is about the only one, and it does not mean that they favor the bill; it just means they are silent.

This is going to be double-scored if the rule passes, and many Members are going to have their ratings go down among conservative groups, as well as liberal groups, permanently, because they have not listened to their constituents at the grassroots level and the organizations that represent them.

We are going to hear probably quoted from a memo by Kenneth Starr, who has been hired by the business interests to advocate a position that is manifestly inaccurate in his memo. He, for example, tries to address the question and correctly points out that ''willful'' and ''intentional'' are the same. But that memo is silent on ''malicious,'' and that is a critical, critical point on this. He does not have anything in there on ''malicious.''

The FACE Act makes it a tie; it ties the two together and makes pro-lifers liable in a way that others are not. PETA is not liable. They do not have a FACE Act. This law focuses on pro-life demonstrators. Yes, it can reach many other demonstrators, possibly even anti-war demonstrators if they protest in front of a factory that produces weapons.

Peaceful protestors. The Mahoney case, one protester, kneeling in prayer, was in front of a locked door, was found guilty by the D.C. Circuit Court. One kneeling Christian, silently protesting abortion, has had the force of law thrown at them. Where are we going in America?

Also in the Starr memo there is another false assumption, and that is that somehow the courts are going to interpret this separate from the same-as-additional law. The courts never interpret a new law as redundant. They assume that we have a purpose. Senator SCHUMER is correct in saying there is a congressional intent with this law. The courts will rule that.

This is, in fact, a broad expansion of the government potentially restricting civil liberties in all parts of protest, but particularly those of us who were very pro-business, are first and foremost deeply motivated by defending the most innocent of life, the little children. We are not talking about violent protests. We tried to compromise. We definitely favor it for violent, but peaceful, kneeling prayer should never be deprived from civil liberties.

I urge my colleagues to carefully consider those commands from Mary Ann Gloran of the Harvard Law School.

Because the proposed language is substantively identical to FACE, it will be read in light of existing decisions under FACE. Existing interpretations of FACE will almost certainly be read into §523(a)(20). Worse, abortion clinics and their supporters will likely argue that by re-enacting the same statutory language, Congress has approved existing decisions and those confirmed their status as valid and appropriate interpretations of FACE itself. This is a critical point, because existing interpretations of FACE in the lower courts, extraordinarily favorable to the abortion clinics and their supporters, have not yet been accepted or rejected by the Supreme Court of the United States. Congressional passage of proposed §523(a)(20) could figure prominently in eventual Supreme Court arguments on the interpretation of FACE, lending plausible support to the worst interpretations of that statute.

I will not consider in this opinion letter the interpretations of ''force or threat of force,'' ''intentionally injure,'' or ''intimidate.'' Some interpretations of those provisions have been surprisingly expansive, but those forms of protest are not the issue for most protestors. The real work of FACE, and of proposed §523(a)(20), is in the provisions that target anyone who ''by physical obstruction . . . interferes with . . . or attempts to . . . interfere with' interfere with'' access to a clinic. Each of these terms has been construed or defined to mean more than first appears. No actual interference, and no actual physical obstruction, is required for a violation. Courts have found violations in peaceful protest that did not actually prevent access to clinics.

''Physical obstruction'' is defined in 18 U.S.C. §248(e)(4) to mean making ingress or egress ''impassable . . . or unreasonably difficult or hazardous.'' What is ''unreasonably difficult'' has, in the lower federal courts, sometimes turned out to be remote from physical obstruction.

Thus, in United States v. Mahoney, 247 F.3d 279 (D.C. Cir. 2001), the court found physical obstruction and interference with access from a single protestor kneeling in prayer outside a locked door to an abortion clinic. Id. at 283–84. The door was a ''rarely used'' emergency exit. The court said that someone might have used the door, and that the law does not distinguish frequently and infrequently used doors. More remarkable still, the court held that a single person kneeling in prayer rendered use of that door ''unreasonably difficult'' and forced patients to use a different entrance. Id. at 284.

Mahoney also held that six other defendants physically obstructed and interfered with access to another door. The court of appeals' entire discussion of this holding is that five protestors ''knelt or sat within five feet of the front door,'' that the sixth defendant ''was pacing just behind them,'' and that they ''offered passive resistance and had to be carried away.'' Id. at 283. The court does not even say whether they were arrayed across the sidewalk or along the sidewalk, whether they left a passage open, or any other fact that might to a plain meaning understanding of ''physical obstruction'' or to preserving a reasonable right to protest. It was enough for a violation that they were near the door.

Both FACE and proposed §523(a)(20) are limited to ''intentional'' violations, but Mahoney shows that protection to be illusory. The court found specific intent to interfere with access to the clinic, even in the case of the lone protestor praying before the locked door. It relied on the fact that the protestor prayed that women approaching the clinic would change their mind about getting an abortion; the court quoted his prayer as evidence of criminal intent. 247 F.3d at 283–84. To similar effect is United States v. Gregg, 32 F. Supp. 2d 151, 157 (D.N.J. 1998), aff'd, 226 F.3d 253 (3d Cir. 2000), cert. denied, 523 U.S. 971 (2001). Gregg had much more evidence of actual obstruction than Mahoney. Even so, the Gregg court relied on defendants' ''anti-abortion statements, including imploring women not to go into the clinic or not to kill their babies,'' and on the fact that defendants ''carried anti-abortion signs,'' as evidence of forbidden intent. The government in these cases has offered evidence of opposition to abortion as evidence of specific intent to obstruct access, and the courts have relied on this evidence for that purpose. Clinics and their supporters would of course argue that Congress has codified these holdings if it enacts proposed §523(a)(20).

Courts have emphasized that FACE plaintiffs need not prove actual obstruction. ''It is not necessary to show that a clinic was shut down, that people could not get into a clinic at all for a period of time, or that anyone was actually denied medical services.'' People v. Kraeger, 160 F. Supp. 2d 360, 373 (N.D.N.Y. 2001). Plaintiffs need not ''show that any particular person was interfered with by the defendants' obstruction.'' United States v. Wilson, 2 F. Supp. 2d 1170, 1171 n.1 (E.D. Wis.), aff'd as United States v. Balint, 201 F.3d 928 (7th Cir. 2000).

To sum up, proposed §523(a)(20) would reenact statutory language that has been interpreted not to require actual obstruction, has been interpreted to prohibit a single protestor kneeling in prayer near an unused exit, and has been interpreted to treat anti-abortion statements as evidence of criminal intent. These interpretations would almost certainly be read into §523(a)(20), and there would be a serious argument that Congress had confirmed these interpretations in FACE itself.

□ 1600

Mr. SESSIONS. Mr. Speaker, I yield 1 minute to the gentleman from Utah (Mr. CANNON).

(Mr. CANNON asked and was given permission to revise and extend his remarks.)

Mr. CANNON. Mr. Speaker, I rise today in support of H. Res. 606, the rule providing for consideration of the Bankruptcy Abuse, Prevention and Consumer Protection Act Conference Report. Congress has been working on balanced bankruptcy reform legislation for nearly 5 years. The conference report on H.R. 333 reflects countless hours of bipartisan efforts.

This conference report does not penalize any lawful behavior. It only applies when a person violates the law; second, a court then enters an award against that person; third, the person later files a bankruptcy other than a chapter 13 bankruptcy or liquidation bankruptcy; and fourth, that person thereafter seeks to discharge a debt based on fines or penalties assessed because of the unlawful protest activity.

This provision is written in an even-handed, neutral way. It does not single out abortion-related protests, but it targets any violent protestors of providers of any lawful goods or services. It would equally apply to the anti-IMF/World Bank protestors who threw rocks through the window of the bank and attempted to impede delegates from entering the World Bank's headquarters. It could also apply to similar protests by animal rights activists, environmentalists, and unions.

As a committed pro-life Member of Congress, I am satisfied that the compromise does not impose unconstitutional or discriminatory burden upon peaceful pro-life protestors. I want to thank the chairman, the gentleman from Wisconsin (Mr. SENSENBRENNER) for his leadership on this issue, and I urge my colleagues to support the rule and the underlying bill.

Mr. SESSIONS. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey (Mr. SMITH).

Mr. SMITH of New Jersey. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, again, I want to reiterate, I rise in very strong opposition to this rule and to the underlying bill that will follow it if the rule does pass.

Let me again point out that this bankruptcy reform conference report

contains an unrelated provision that was not included in the bill that passed out of this body that discriminates against peaceful, pro-life protestors, and that is why I oppose this.

Mary Ann Glendon wrote an incisive analysis that every Member should read. The Catholic Conference has put out a very strong statement pointing out how unjust this language is. This takes the FACE bill passed back in 1994 over the opposition of my good friend, the distinguished chairman of the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER) and myself, and makes it even worse by making civil fines that are levied nondischargeable.

Much has been made about the Starr memo, which I would respectfully submit misses the point by a mile and is unworthy of Ken Starr. He argues, for example, and the gentleman from Utah (Mr. CANNON) made this point a moment ago, that rigorous intent requirements; i.e. law-breaking, are included in the conference report. Martin Luther King was an intentional law breaker. We rightly honor him with a national holiday. A tremendous man who went to prison—served short prison sentences—and faced modest and proportionate penalties in his quest for social justice. For Dr. King, law breaking was a means to an end.

Pro-lifers, on the other hand, are subjected to ruinous penalties for the same acts of civil disobedience. Nonviolent civil disobedience, obstruction, getting in the way, as was mentioned by one of my colleagues, kneeling in front of a door, praying at an abortion clinic, is construed to be a violation of the FACE Act and then, when the penalties are levied, the pro-lifers cannot discharge the ruinous judgements imposed on them.

Mr. Starr also says that section 330 is evenhanded. That, I say to my colleagues, is unmitigated nonsense, it is misleading, and it is false. Section 330 only has the appearance of evenhandedness. Other activists, labor activists, antiwar, PETA, all the groups that use civil disobedience as a means of bringing attention to their cause get a slap on the wrist, a 30-buck fine, they are out of jail the next day. Not so for pro-life protestors. They are under the FACE Act and are discriminated against and singled out for ruinous monetary penalties and criminal penalties and, again, we are talking about nonviolent activities.

Back in 1994 I would remind my colleagues I offered the substitute amendment to FACE on the floor that said for those who throw bombs or kill at abortion clinics, are jailed and appropriately fined. But for peaceful protestors, those men and women whose only motive is to try to deter an abortion, another act of violence, to say there is another way, so they have a sit-in. Perhaps they sit in front of a door or they have a pray-in. These things happen all the time. A successful complaint made by the abortion clinic, for example, would be nondischargeable under this legislation.

So to say section 330 is evenhanded when the underlying statute is applied unevenly to pro-lifers versus all other activists is unmitigated nonsense, and again I am very discouraged that Mr. Starr would put out such a misleading memo.

Vote ''no'' on the rule.

Mr. FROST. Mr. Speaker, I continue to reserve the balance of my time.

Mr. SESSIONS. Mr. Speaker, I yield 6 minutes to the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the Committee on the Judiciary.

(Mr. SENSENBRENNER asked and was given permission to revise and extend his remarks.)

Mr. SENSENBRENNER. Mr. Speaker, before I begin my remarks, let me insert for the RECORD the memo written on October 4, 2002 by the Honorable Kenneth Starr addressed to Mr. BARTLETT of the Financial Services Roundtable, since the gentleman from New Jersey (Mr. SMITH) has repeatedly referred to it.

Washington, DC, October 4, 2002.

Hon. STEVE BARTLETT,

President, the Financial Services Roundtable, Washington, DC

DEAR MR. BARTLETT: This letter responds to your request for my views with respect to Section 330 of the Conference Report on H.R. 333, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2002. In particular, you requested my view concerning two aspects of Section 330: the effect it will have on anti-abortion protests, be they lawful or unlawful; and the effect it will have on other types of protests, including the recent IMF/World Bank protests.

In my view, Section 330 will have very little practical effect. Importantly, the provision does not penalize any lawful behavior. To the contrary, it applies only if (i) a person violates the law; (ii) a court then enters an award against that person or the person settles the charges; (iii) the person later files a bankruptcy other than a Chapter 13 bankruptcy; (iv) the person thereafter seeks to discharge a debt based on fines, damage awards, or other penalties assessed because of the unlawful protest activity; and (v) the creditor continues to pursue the matter. Even then, Section 330 overlaps almost entirely with Bankruptcy Code §523(a), which already prohibits the discharge of fines payable to the government and civil damages resulting from intentional injury to others. As a result, Section 330 will have at most minimal practical effect. What is more, the Conference version of Section 330 contains rigorous intent requirements that should prevent any innocent protesters from being swept up in its provisions. Thus, even if Section 330 does have some limited practical effect, that effect should be felt only by the intentional lawbreakers it expressly targets.

In answer to your second question, Section 330 is written in an evenhanded, neutral fashion. It applies not only to abortion-related protests, but also to unlawful protests targeted at the providers of any lawful goods or services. By its express terms, Section 330 applies—with no exceptions—to all those who unlawfully intimidate or interfere with a person by physical obstruction or threat of force if those actions were motivated by the person's obtaining or providing of any lawful goods or services. Thus, it would apply, for example, to the anti-IMF/World Bank protesters who apparently threw rocks through the window of a bank and attempted to impede delegates from entering or departing the World Bank's headquarters. So too, it would apply to similar protests by animal rights activists, environmentalists, and unions.

It bears emphasis that the Conference compromise bill represents a substantial improvement over the original Senate bill. Under the Senate bill, debt related to an unproven allegation of ''harassment,'' or an unintentional violation of a court order, could have been nondischargeable. In contrast, under the Conference compromise, there must have been an actual and intentional ''violation'' of either the federal Freedom of Access to Clinic Entrances Act, 18 U.S.C. §248 (''FACE''), or a court order. These significant improvements over the now-replaced Senate version are some of the reasons that Section 330 will not have significant practical or legal effect in light of the state of existing law.

Section 330 is primarily a restatement of existing law

Section 330 is primarily a restatement of existing law. The Bankruptcy Code has long provided that any debt ''for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit'' is not dischargeable in bankruptcy. 11 U.S.C. §523(a)(7). As a result, criminal fines and civil penalties payable to the government are already nondischargeable.

The Bankruptcy Code further provides that civil damages payable to private parties are nondischargeable if they result from ''willful and malicious injury by the debtor to another entity or to the property of another entity.'' 11 U.S.C. §523(a)(6). The courts have interpreted this language broadly to include injuries to intangible personal or property rights. See 4 Collier on Bankruptcy ¶523.12[2] (15th ed. rev. 2002). As a result, the pivotal limitation on this provision is the intent element—a debt is nondischargeable in bankruptcy only if the debtor intentionally caused the injury. See Kawaauhau v. Geiger, 523 U.S. 57, 61 (1998).

Our research has revealed that, to date, three courts have issued published decisions on the question whether debtors' abortion protest-related debts were dischargeable in bankruptcy. Each held the debts to be nondischargeable under Section 523(a)(6). See In re Treshman, 258 B.R. 613 (Bankr. D. Md. 2001); In re Bray, 256 B.R. 708 (Bankr. D. Md. 2000); In re Behn, 242 B.R. 229 (Bankr. W.D.N.Y. 1999). As one court explained, the debt was not dischargeable because the debtor had acted ''with the specific intent to interfere with or intimidate the plaintiffs from engaging in legal medical practices and procedures.'' Bray, 256 B.R. at 711. Each court also noted that the conduct at issue, which included apparent death threats, was unlawful and unprotected by the First Amendment.

Of course, the ultimate issue of dischargeability necessarily depends on the facts of each case. But Section 330 is drafted in such a way that it overlaps with Section 523(a)(6). Under Section 330, a debt is nondischargeable only if the debtor violated either FACE or a pre-existing court order or injunction.

Under the first of those circumstances, a debt is nondischargeable only if the debtor: (i) intentionally injured, intimidated, or interfered with a person, (ii) by force, threat of force, or physical obstruction, (iii) because the person was obtaining or providing any lawful goods or services (such as fur products or banking services). Because the injury, intimidation, or interference must be intentional, any such debt would likely satisfy the existing criteria for

nondischargeability under Section 523(a)(6). One might argue that Section 523(a)(6) erects a higher standard than Section 330 because it requires ''willful and malicious'' (as opposed to intentional) injury, but the terms ''intentional,'' ''willful,'' and ''malicious'' have similar meanings in the law. The Supreme Court has held, for example, that ''willful'' means ''deliberate or intentional'' in Section 523(a)(6). Geiger, 523 U.S. at 61. Thus, the Section 330 and 523(a)(6) standards appear to be very similar.

The second circumstance under which Section 330 renders debt nondischargeable is when (i) the debtor violated a court order or injunction that complies with the First Amendment and protects the provision of lawful goods or services, and (ii) either the debtor's violation was ''intentional or knowing,'' or the violation occurred after the debtor had previously been found to have violated the same court order or another order protecting access to the same facility or person. This provision of Section 330 might expand somewhat on Section 523(a)(6), because a debtor might argue that although he meant to violate an injunction (such as an injunction prohibiting him from approaching within 8 feet of a clinic entrance), he had no intent to intimidate or impede anyone while within the restricted area. Thus far, however, the courts have held that damages attributable to violation of a court injunction against abortion-related protest activity are ''ipso facto the result of a 'willful and malicious injury''' for purposes of Section 523(a)(6), in part because the violation reflects an ''intention to cause the very harm to the protected persons that [the] order was designed to prevent.'' Behn, 242 B.R. at 238. While I find this rationale questionable, it reflects the fact that courts to date have already used Section 523(a)(6) for the same purpose that Section 330 would serve. Thus, Section 330 represents either a restatement of existing law or, at most, a modest extension of that law.

Even if section 330 were interpreted more broadly than the existing nondischargeability provisions of the bankruptcy code, it would still have no effect on lawful protest and little effect on unlawful protest

Even if courts were to interpret Section 330 more broadly than Section 523, the practical consequences would be minimal. Section 330 does not affect lawful protest at all. Even with respect to unlawful protest, it applies only if: a person committed an intentional violation of the federal FACE statute or a pre-existing court order or injunction; a court entered an award against that person, or the person settled the charges; the person later filed bankruptcy other a Chapter 13 bankruptcy; the person would otherwise be entitled to discharge a protest-related debt in bankruptcy, notwithstanding Section 523(a) and the Bankruptcy Code's other existing limitations on dischargeability; and the creditor continued to pursue the matter. It would appear that very few, if any, people will fall into this category. As noted above, we have found only three reported cases in which people challenged the dischargeability of abortion protest-related debt, and in each instance the court held the debt was nondischargeable under existing law. Thus, Section 330 would have had no effect in any of the reported cases to date.

Even if a small number of protesters are affected by Section 330, the Conference version of the bill seeks to ensure that ''innocent'' protestors will not be affected. As explained above, Section 330 applies only to those who either (1) intentionally injure, intimidate, or interfere with a person by force, threat of force, or physical obstruction; or (ii) intentionally or repeatedly violate a court order that complies with the First Amendment. While some such conduct can be ''peaceful,'' it is nonetheless intentional conduct that has a physical element to it (in the case of the FACE statute) or that has already been judicially determined to thwart legitimate state interests (in the case of an existing injunction). Moreover, peaceful of ''innocent'' conduct is not likely to lead to substantial damage awards that a debtor would need to discharge in bankruptcy. Instead, the reported cases to date have involved much more provocative, highly aggressive behavior, including perceived death threats, ''wanted'' posters, and the like. For these reasons, it is unlikely that anyone other than intentional and determined lawbreakers, no matter how sincere the may be, will be affected.

Section 330 is non-discriminatory

In any event, neutrality of operation is the order of the day. Section 330, as I indicated above, applies by its express terms to all those who unlawfully intimidate or interfere with a person by physical obstruction or threat of force if their actions were motivated by the victim's obtaining or providing of any lawful goods or services. Thus, it applies equally and neutrally to unlawful activity directed toward the providers or recipients of all lawful goods or services, not only abortion-related services.

The recent IMF/World Bank protests provide a useful example of Section 330's intended neutrality. Many protestors, it appears, attempted to interfere, by physical obstruction, with the ability of the IMF/World Bank delegates to attend or leave meetings because they disapproved of lawful services provided by the IMF and World Bank. Other protestors reportedly threw rocks through a window of a bank. All of this behavior is covered by the plain language of Section 330. Also protected are similar protests by animal-rights activists against stores that lawfully sell fur products and the like; environmentalists that target oil and other companies; and some unlawful union strike activity. As long as an unlawful protest satisfies the Section 330 criteria, it is covered to the same extent as an anti-abortion protest.

Conclusion

In sum, as modified in conference, Section 330 is primarily a restatement of existing law. It targets only intentional unlawful activity, and even then is not likely to have significant practical effect. To the extent that it does have such effect, Section 330 will apply neutrally and evenhandedly to anti-abortion protests and other protests aimed at business establishments.

While there is, to be sure, some risk that a court might construe the statute unreasonably, the conference minimized that risk by drafting the statute clearly. To provide further protection, however, one of the sponsors of the legislation (or another Representative) might consider making a statement of intent on the House floor. While courts vary in their treatment of such statements, some judges give consideration to floor statements, especially those made by a sponsor of the legislation. As a result, a suggested floor statement is attached to this letter, for such consideration as may be deemed appropriate.

Sincerely,

KENNETH W. STARR.

Mr. Speaker, I rise in support of the rule and the underlying bill. This is essential bankruptcy reform which will help revive our economy.

In 1998, $40 billion of debt was written off, and that amounts to a hidden tax of $400 for every family in this country who pays their bills on time and is agreed upon, and that tax hits the poor people hardest because that type of a tax is regressive.

We need to pass this legislation to prevent bankruptcy from being used as a financial planning tool.

Now, my friends over here on my right claim that this is going to hurt poor people. That is absolutely not true, because people who are genuinely unable to repay their bills will be able to get their discharge through chapter 7. But where there is a possibility of people repaying their bills over a 5-year period of time, or some of their bills, then they have to go through a reorganization, so that the money is recouped and not passed on to the consumers.

I would point out that if this legislation goes down, either on the vote on the rule or the vote on the conference report, the current homestead exemption which is unlimited in places like Texas and Florida will end up still being the law and the corporate crooks will be able to put millions in their mansions and shield them from bankruptcy. There is a partial plug to prevent people who defraud the public from being able to do that, notwithstanding State law. So voting down the rule gives the corporate crooks a get-out-of-bankruptcy-free card.

Now, to my friends over here on my left, we have heard an awful lot of allegations that this bankruptcy provision that was negotiated between Senator SCHUMER and the gentleman from Illinois (Mr. HYDE) is an outrageous attempt to financially ruin pro-life protestors. There is not a person in this Chamber that has given his life more to the pro-life movement than the gentleman from Illinois (Mr. HYDE), and he negotiated this and he signed off on this agreement, and I think that we ought to respect his work for this pro-life movement.

We have heard that section 330 of the bill is an outrageous trampling of first amendment rights. Let me read it for my colleagues.

It says, ''Except that nothing in this paragraph shall be construed to affect any expressive conduct, including peaceful picketing, peaceful prayer, or other peaceful demonstration protected from legal prohibition by the first amendment of the Constitution.''

Read the bill. It does not affect first amendment rights. They are protected by the Constitution, and the black and white text of this provision protects things that are protected by the first amendment.

We have heard about the infamous Starr memorandum. A part of that says that section 330 does not affect lawful protest at all. What it does do is affect unlawful protest. And you are on the side of people who break the law, who want to break the law. What we do here is we protect people who want to abide by the law.

Now, in order for section 330 to come into play, there have to be nine steps that are done by the person whose debt

is to be declared nondischargeable, and I want to go through them.

First, there must be a violation of Federal or State statutory law. Second, the violation must result in some type of monetary liability such as civil or statutory damages. Third, the monetary liability must be based on a Federal or State court order or from a settlement agreement entered into by the debtor. Fourth, the violation of the law must result from an intentional act by the debtor. This does not apply to unintentional violations of the law and, thus, it would not apply to innocent protestors. Fifth, the intentional act must involve force, the threat of force, or physical obstruction. Sixth, the intentional act must result in intentional injury, intimidation, or interference, or intentional damage or destruction of property. Seventh, the debtor must have injured, intimidated, or interfered with a person because such person obtained or provided lawful goods or services or because a facility provides lawful goods or services. Eighth, the debtor must file for bankruptcy relief; and ninth, the party holding the monetary judgment against the debtor must bring an action in the bankruptcy court for the purpose of having the court determine whether the debtor's liability for the judgment is nondischargeable under section 330.

They have to do all nine of these things to get a debt nondischargeable.

Now, if the opponents of this bill and the opponents of the rule are successful, the current bankruptcy law which would stand makes all fines and forfeitures nondischargeable, including those that arise under the FACE Act. So defeating a necessary bankruptcy reform is not going to accomplish this purpose. The rule and the bill ought to pass.

Mr. SESSIONS. Mr. Speaker, at this time we are nearing the end of the speakers that we have and I would welcome an opportunity for the gentleman from Texas (Mr. FROST) to close, and then it would be my intent to briefly speak and then yield to our final speaker.

Mr. FROST. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as we have heard, there is controversy on this rule. This matter has been pending for some time. I personally support the rule and the bill, and I urge adoption of the rule.

Mr. Speaker, I yield back the balance of my time.

Mr. SESSIONS. Mr. Speaker, I yield myself such time as I may consume.

This has been a vigorous debate today, one which has I think allowed the opportunity for both sides of our conference to speak forthrightly about the issues and the ideas which they see on this bankruptcy bill. I will tell my colleagues that I believe that this is an economic development package, part of the plan that we have from the Republican Conference to help consumers and to help make sure the economy moves properly. So I support not only this rule, but the underlying legislation.

Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. ARMEY) to close.

Mr. ARMEY. Mr. Speaker, let me begin by thanking the gentleman from Pennsylvania (Mr. GEKAS), the gentleman from Wisconsin (Mr. SENSENBRENNER), the gentleman from Illinois (Mr. HYDE), and the Committee on the Judiciary for the extraordinarily long and hard years of dedicated work that they have attended to this subject.

Mr. Speaker, let me make another statement fairly clear. I believe it is safe to say that if it were not for my personal insistence this bill would not be on the floor today. Therefore, I think it is safe to conclude that it is I that put this bill on the floor. Why would I do that? Why would I put a bill on the floor that gives even myself a conflict of visions?

There are two great values that are addressed in this bill, two values that I hold dear in my heart and high in my hopes and dreams for this great Nation: The one that precious lives will be saved, and the other that they will be taught how to live precious lives.

Mr. Speaker, a good nation has a government that honors the goodness of its people. A good nation is a nation that has law that knows the goodness of its people and reflects and encourages them.

□ 1615

A good Nation will have a law that honors what we teach our children, so that in the law itself our children are encouraged to those teachings which we pray into their lives will make their lives successful in their own right and a blessing in the lives of others.

One of those things we teach our children is to be careful what obligations we make in our lives, and to fulfill our obligations, and default only as a last resort and as a matter of personal embarrassment.

Our existing bankruptcy laws do not reflect that teaching. Our existing bankruptcy laws belie our teaching when we are parents at our best, instructing our children on the hopes that are our highest, about their personal responsibilities. In short, Mr. Speaker, our existing bankruptcy law says to our very same children: little darling, you are a fool if you do not file. It is wrong, Mr. Speaker.

This bill is not here about the money. To think this bill is about who gets the money or who keeps the money is too shallow an understanding. This bill is about the character of a Nation and the character of that Nation's law, and it is important. It is critical.

In this and in other ways, we must strive to have a government that knows the goodness of its own people and has the decency to expect it and to reflect it. That is why we are here with bankruptcy reform. That is what we are about.

And yes, because of a provision that was put into this bill in the other body, we are forced, and I, as deeply in my heart as any Member in this Chamber, am forced to find myself in conflict with another, perhaps even higher value, the right to present myself in encouragement to others to not do this thing that would destroy this life, and to do so without fear of punishment in our courts under a misguided law that has no respect for our very own Bill of Rights, and that is the FACE Act. It is a sabotage, we know that.

But bless his heart, our first, best champion for the life of the unborn, the gentleman from Illinois (Chairman HYDE), fought this demon to a draw to the best of his ability. We have people now who say to the gentleman from Illinois (Chairman HYDE), that is not good enough. I am not sorry, I say to the gentleman from Illinois (Chairman HYDE). I thank the gentleman from Illinois. He is, in this case, as he has always been, for the precious life of our precious babies, a good, true, and faithful servant. He did his best. I love the gentleman for his commitment. The gentleman from Illinois (Mr. HYDE) is to be respected for what he did here to help our cause.

How do we save our precious allies and friends and neighbors and devoted servants that go out there at risk already from the terror, the economic terror of the FACE Act? We do not do it by changing this law. The chairman of the committee has made that clear. There is no protection under FACE by defeating this bill.

If FACE is the evil, a trespass against our Bill of Rights, a trespass against our desire to save the unborn that we say it is, then let us not fight this mock battle; let us fight the real battle. The assault should be on FACE.

I believe I am correct in saying that those who find life precious on both sides of the aisle are the majority in this body, and the majority of this body drawn from both sides of the aisle can defeat FACE. That is what we ought to be doing.

So I say to my friends, save what we can; do not lose what we can over the hope that is without substance. Do not sacrifice the gains in the instruction of our children over the failed effort to protect those who would try to save our children. Vote for this rule; vote for this bill. Give our children a better break and a better understanding, and honor their parents as they teach their babies. Then come back, if you will, with a vengeance and defeat this atrocity against our basic human liberties called FACE. Get the villain and save the children.

Mr. JENKINS. Mr. Speaker, I rise in support of the rule for the consideration of H.R. 333, the Bankruptcy Abuse Prevention and Consumer Protection Act.

This legislation appears to be a compromise that is filled with positive aspects of the give and take involved in the legislative process and saturated with the element of comment sense that both sides to this controversy say that they strive to achieve.

Today, I rise to discuss one aspect that has been mentioned frequently on the floor today. The compromise language agreed to be the conference committee penalizes the adjudicated intentional violator of the law and the intentional tortfeasor and precludes him from escaping the consequences of this act by hiding behind the provisions of the bankruptcy act. This is entirely proper because the bankruptcy act was never intended to protect anyone in this situation.

At the same time, it protects the innocent who are simply exercising their constitutional rights—who are lawfully assembled or exercising their freedom of speech.

We should remember that this legislation is the product of years of hard work by the Judiciary Committee in both the House and Senate. This legislation answers a plea from across our land to address a serious weakness that exists in our system of providing relief to those who are overwhelmed by financial burdens.

I urge my colleagues to vote in favor of the rule.

Mrs. KELLY. Mr. Speaker, I rise today in strong support for the rule providing consideration for H.R. 333, the Bankruptcy Reform Conference Report, because this issue boils down to two words: personal responsibility. If a person assumes a debt, they are obligated to do everything in their power to pay it off. Creditors should be made whole, if possible. However, a safety net must remain for those who legitimately cannot pay their debts.

Some of my colleagues are trying to paint the word creditors to mean faceless financial institutions who are tricking consumers into assuming debt. They specifically speak of credit card debt. They unfortunately fail to note that credit card debt in the United States amounts to only three point eight percent of all household debt. Furthermore, only one percent of credit card accounts end up in bankruptcy. Of that one percent it is estimated that fifteen percent of those accounts can afford to repay some or all of their debt.

The people who are truly being hurt by our current bankruptcy system are Americans who play by the rules and pay off their debts. Bankruptcy costs the average American family about $400 a year.

Needs-based bankruptcy reform is well overdue, and that is what this Bankruptcy Conference Report delivers. It is the people who game the system that we need to stop.

I listened to my colleague from Virginia (Mr. MORAN). He stated that more people filed for bankruptcy than graduated from college. That is a staggering fact. It's a transference of cost from those who overspend to those who carefully manage their money.

I support the Bankruptcy Conference Reports provisions which strengthen Code protections for ex-spouses and children. They have to be supported. In the current bankruptcy law, child support and alimony are placed seventh behind attorney fees as debt obligations. If enacted, this bill would move child support and alimony payments to first on the list of debt obligations.

Also under current law, some debtors use the automatic stay to avoid paying child support payments after they file for bankruptcy. The Bankruptcy Conference Report ensures less delay in the proper payment of child support. I vehemently oppose any legislation that would reduce the ability of women and children to receive support payments.

This Conference Report is a good legislation that moves us in the right direction, and I ask my colleagues from both sides of the aisle to join me in support of this reasonable reform by voting in favor of the rule providing for consideration of this Conference Report.

Mr. BEREUTER. Mr. Speaker, this Member rises today to express his support for the rule on the conference report for the Bankruptcy Abuse Prevention and Consumer Protection Act (H.R. 333). This Member is an original cosponsor of H.R. 333, which the House first passed on March 1, 2001, by a vote of 306–108. This Member is pleased that the House and Senate conferees have finally reached an agreement on bankruptcy reform which President George W. Bush is expected to sign. It is important to note that bankruptcy reform bills passed both the House and the Senate in the 105th and 106th Congresses. In the 105th Congress, the House passed a bankruptcy reform conference report, while the Senate failed to pass the conference report. In the 106th Congress, former President Bill Clinton pocket vetoed a bankruptcy reform conference report. During this Congress, the Conference Report was delayed for too long over of all things, a tenuous connection drawn to the subject of abortion clinics by conferees from the other body.

First, this Member would thank the distinguished gentleman from Pennsylvania [Mr. GEGAS], for introducing the original House bankruptcy legislation, H.R. 333. This Member would also like to express his appreciation to the distinguished gentleman from Wisconsin [Mr. SENSENBRENNER], the Chairman of the Judiciary Committee, for his efforts in bringing this conference report to the House Floor for consideration.

This Member supports the conference report for the Bankruptcy Abuse Prevention and Consumer Protection Act for numerous reasons; however, the most important reasons include the following:

First, this Member supports the provision in the conference report for H.R. 333 which provides for a means testing, needs-based, formula when determining whether an individual should file for Chapter 7 or Chapter 13 bankruptcy. Chapter 7 bankruptcy allows a debtor to be discharged of his personal liability for many unsecured debts. In addition, there is no requirement that a Chapter 7 filer repay many of his or her debts. However, Chapter 13 bankruptcy filers commit to repay some portion of his or her debts under a repayment plan.

Some Chapter 7 filers actually have the capacity to repay some of what they owe, but they choose Chapter 7 bankruptcy and are able to walk away from these debts. For example, the stories in which an individual filed for Chapter 7 bankruptcy and then proceeds to take a nice vacation and/or buys a new car are too common. Moreover, the status quo is costing the average American individual and family increased costs for consumer goods and credit because of the amount of debt which is never repaid to creditors.

As a response to these concerns, the needs-based test of the conference report of H.R. 333 will help ensure that high income filers, who could repay some of what they owe, are required to file Chapter 13 bankruptcy as compared to Chapter 7. This needs-based system takes a debtor's income, expenses, obligations and any special circumstances into account to determine whether he or she has the capacity to repay a portion of their debts.

Second, this Member supports the additional monthly expense items that are exempted from consideration under the needs-based test which determines, under the conference report of H.R. 333, whether a person can file either a Chapter 7 or 13 version of bankruptcy. These expenses include the following: reasonable expenses incurred to maintain the safety of the debtor and debtor's family from domestic violence; an additional food and clothing allowance if demonstrated to be reasonable and necessary; and actual expenses for the care and support of an elderly, chronically ill, or disabled member of the debtor's household or immediate family.

Third, this Member supports the permanent extension of Chapter 12 bankruptcy in the conference report of H.R. 333 since it allows family farmers to reorganize their debts as compared to liquidating their assets. Using the Chapter 12 bankruptcy provision has been an important and necessary option for family farmers throughout the nation. It has allowed family farmers to reorganize their assets in a manner which balances the interests of creditors and the future success of the involved farmer.

If Chapter 12 bankruptcy provisions are not permanently extended for family farmers, its expiration on January 1, 2003, would be another very painful blow to an agricultural sector already reeling from low commodity prices. Not only will many family farmers have no viable option but to end their operations, it likely will also cause land values to plunge. Such a decrease in value of farmland will affect the ability of family farmers to obtain adequate credit to maintain a viable farm operation. It will impact the manner in which banks conduct their agricultural lending activities. Furthermore, this Member has received many contracts from his constituents supporting the extension of Chapter 12 bankruptcy because of the situation now being faced by our nation's farm families. It is clear that the agricultural sector is hurting and by a permanent extension of the Chapter 12 authorization, Congress can avoid one more negative possibility.

Lastly, this Member supports the provision in the conference report of H.R. 333 which requires that people convicted of a felony or who owe a debt from a securities fraud violation in the five years before filing for bankruptcy cannot claim an unlimited homestead exemption. Currently, there are only six states, including Texas and Florida, which provide unlimited bankruptcy protection for a person's home. Nebraska is not one of those six states as it has a maximum homestead exemption of $12,500. This Member believes that this provision in the conference report is imperative in light of the recent corporate scandals at Enron and WorldCom. For example, this provision would apply to the $7 million penthouse in Houston of Kenneth Lay, the former chairman of Enron, if he both files for personal bankruptcy in the future and owes a debt due to any conviction of securities fraud. In addition, this provision may also be relevant to Scott D. Sullivan, the former chief financial officer of WorldCom, who is building a $15 million mansion in Boca Raton, Florida.

In closing, for these aforementioned reasons and many others, this Member urges his colleagues to support the conference report of H.R. 333.

Mr. SMITH of Texas. Mr. Speaker, I support the Bankruptcy Conference Report. I know there has been deliberation about the effect of section 330 of the bill on anti-abortion protests. But I believe section 330 will have little practical effect. And the rest of this bill will an overwhelmingly positive impact on the bankruptcy system.

Section 330 does not penalize any lawful behavior. It will apply only if a person violates the law, a court enters an award against that person, the person later files a non-chapter 13 bankruptcy and seeks to discharge a debt based on their unlawful activity, and the creditor pursues the matter.

It does not apply only to abortion-related protests, but also to unlawful protests aimed at the providers of any lawful good or service.

The compromise reached in conference on this issue also contains very stringent requirements that should prevent any innocent protesters from being included in these provisions.

Moreover, this bill will curb bankruptcy abuse and protect consumers. It will also address the loophole in current law that allows debtors in certain states with unlimited homestead exemptions to shield an almost unlimited value of their homes from their creditors.

In order to game the system, some debtors move to a state with an unlimited homestead exemption just before they file for bankruptcy in order to take advantage of that state's more generous homestead protections.

H.R. 333 closes this loophole by requiring a debtor to reside in a state for at least two years before that debtor can claim the state's homestead exemption. In addition, a debtor must own the homestead for at least forty months before they can claim the state's homestead exemption protections.

H.R. 333 will stop corporate thieves from hiding their homestead assets from those whom they have defrauded. It will cap a debtor's homestead exemption at $125,000 if the debtor was convicted of a felony, if the debtor violated a securities law, or if they engaged in any criminal act, intentional tort, or reckless misconduct that caused serious physical injury or death to another individual.

Homeownership strengthens the fabric of our society. It's the American dream—and over 70% of Americans are living it. Owning a house gives individuals and families a place to call home, where they can arise their children and become active participants in their neighborhoods and communities.

Since 1867, federal lawmakers have recognized the role of the states in determining appropriate homestead exemptions.

States are in a much better position to determine an appropriate exemption—they can more closely examine the factors that differ from state to state, such as property values, real estate inflation, and even demographics.

The balance between states' rights and the federal government is important. Any abuses of the homestead exemption can and should be addressed by the individual states themselves.

In Texas, the homestead exemption is embedded in the state constitution to prevent the sale of one's home to repay debts, except in three specific cases: when there is a debt for the purchase of a home, a debt to finance the improvements to the home, or a debt for property taxes or federal income and estate taxes.

The homestead exemption provisions were among the most contentious in the conference and I am pleased we were able to reach a compromise on this issue. The compromise we reached will prevent 'bad actors' from abusing the homestead exemption without punishing those who legitimately belong in bankruptcy.

The overwhelming majority of people who declare bankruptcy do so because they have no other choice. Bankruptcy law is intended to give debtors a fresh start, not to punish them. Less than one percent of bankruptcy debtors abuse the bankruptcy press. This bill will address those 'bad actors' while retaining the goal of giving sincere debtors a fresh start.

I strongly support this conference report and I urge my colleagues to support it, as well.

Mr. SESSIONS. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. GUTKNECHT). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FROST. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 172, nays 243, not voting 17, as follows:

[Roll No. 478]

YEAS—172

Armey
Bachus
Baird
Baker
Barton
Bass
Bentsen
Bereuter
Berry
Biggert
Blunt
Boehlert
Boehner
Bonilla
Bono
Boswell
Boucher
Brady (TX)
Brown (SC)
Burr
Buyer
Calvert
Camp
Cannon
Cantor
Capito
Carson (OK)
Castle
Chabot
Clement
Coble
Collins
Cox
Cramer
Crane
Crenshaw
Crowley
Culberson
Davis (FL)
Deal
DeLay
Dicks
Dooley
Dreier
Duncan
Dunn
Edwards
Emerson
English
Etheridge
Fletcher
Foley
Ford
Fossella
Frelinghuysen
Frost
Gallegly
Ganske
Gekas
Gibbons
Gilchrest
Gillmor
Gilman
Gonzalez
Gordon
Goss
Granger
Graves
Green (WI)
Greenwood
Hansen
Hart
Hastert
Hastings (WA)
Herger
Hill
Hinojosa
Hobson
Horn
Hulshof
Hyde
Isakson
Israel
Issa
Jenkins
Johnson (CT)
Johnson, E. B.
Keller
Kelly
Kind (WI)
King (NY)
Kingston
Kirk
Knollenberg
Kolbe
Lampson
Larsen (WA)
Latham
LaTourette
Leach
Linder
Lucas (KY)
Lucas (OK)
Maloney (CT)
Maloney (NY)
Matheson
McCarthy (NY)
McCrery
McHugh
McInnis
Meeks (NY)
Miller, Dan
Moore
Moran (VA)
Morella
Myrick
Nethercutt
Ney
Northup
Nussle
Ose
Oxley
Peterson (PA)
Petri
Platts
Price (NC)
Pryce (OH)
Quinn
Radanovich
Ramstad
Regula
Reynolds
Riley
Rivers
Rogers (KY)
Rohrabacher
Rothman
Royce
Ryan (WI)
Schrock
Sensenbrenner
Sessions
Shays
Sherwood
Simmons
Simpson
Skeen
Skelton
Smith (MI)
Smith (TX)
Smith (WA)
Snyder
Spratt
Stenholm
Strickland
Sweeney
Tanner
Tauscher
Taylor (NC)
Thomas
Thompson (CA)
Tiberi
Turner
Upton
Walden
Walsh
Watkins (OK)
Weller
Wilson (NM)
Wu
Wynn
Young (AK)

NAYS—243

Abercrombie
Ackerman
Aderholt
Akin
Allen
Andrews
Baca
Baldacci
Baldwin
Ballenger
Barcia
Barr
Barrett
Bartlett
Becerra
Berkley
Berman
Bilirakis
Bishop
Blumenauer
Bonior
Boozman
Borski
Brady (PA)
Brown (FL)
Brown (OH)
Bryant
Burton
Capps
Capuano
Cardin
Carson (IN)
Chambliss
Clay
Clayton
Clyburn
Conyers
Costello
Coyne
Cubin
Cummings
Cunningham
Davis (CA)
Davis (IL)
Davis, Jo Ann
DeFazio
DeGette
Delahunt
DeLauro
DeMint
Deutsch
Dingell
Doggett
Doyle
Ehlers
Engel
Eshoo
Evans
Everett
Farr
Fattah
Ferguson
Filner
Flake
Forbes
Frank
Gephardt
Goode
Goodlatte
Graham
Green (TX)
Gutierrez
Gutknecht
Hall (TX)
Harman
Hastings (FL)
Hayes
Hayworth
Hefley
Hilleary
Hilliard
Hinchey
Hoeffel
Hoekstra
Holden
Holt
Honda
Hostettler
Hoyer
Hunter
Inslee
Istook
Jackson (IL)
Jackson-Lee (TX)
Jefferson
John
Johnson (IL)
Johnson, Sam
Jones (NC)
Jones (OH)
Kanjorski
Kaptur
Kennedy (MN)
Kennedy (RI)
Kerns
Kildee
Kilpatrick
Kleczka
Kucinich
LaFalce
LaHood
Langevin
Lantos
Larson (CT)
Lee
Levin
Lewis (CA)
Lewis (GA)
Lewis (KY)
Lipinski
LoBiondo
Lofgren
Lowey
Luther
Lynch
Manzullo
Markey
Mascara
Matsui
McCarthy (MO)
McCollum
McDermott
McGovern
McIntyre
McKeon
McNulty
Meehan
Meek (FL)
Menendez
Mica
Millender-McDonald
Miller, Gary
Miller, George
Miller, Jeff
Mollohan
Moran (KS)
Murtha
Nadler
Napolitano
Neal
Norwood
Oberstar
Obey
Olver
Ortiz
Osborne
Otter
Owens
Pallone
Pascrell
Pastor
Paul
Payne
Pelosi
Pence
Peterson (MN)
Phelps
Pickering
Pitts
Pombo
Pomeroy
Portman
Putnam
Rahall
Rangel
Rehberg
Reyes
Rodriguez
Roemer
Rogers (MI)
Ros-Lehtinen
Ross
Roybal-Allard
Rush
Ryun (KS)
Sabo
Sanchez
Sanders
Sandlin
Sawyer
Saxton
Schaffer
Schakowsky
Schiff
Scott
Serrano
Shadegg
Shaw
Sherman
Shimkus
Shows
Shuster
Slaughter
Smith (NJ)
Solis
Souder
Stark
Stearns
Stupak
Sullivan
Sununu
Tancredo
Tauzin
Taylor (MS)
Terry
Thompson (MS)
Thornberry
Thune
Thurman
Tiahrt
Tierney
Towns
Udall (CO)
Udall (NM)
Velazquez
Visclosky
Vitter
Wamp
Waters
Watson (CA)
Watt (NC)
Watts (OK)
Waxman
Weiner
Weldon (FL)
Weldon (PA)
Wexler
Whitfield
Wicker
Wilson (SC)
Wolf
Woolsey
Young (FL)

NOT VOTING—17

Blagojevich
Boyd
Callahan
Combest
Condit
Cooksey
Davis, Tom
Diaz-Balart
Doolittle

Ehrlich	Houghton	Stump
Grucci	McKinney	Toomey
Hooley	Roukema	

□ 1717

Messrs. SHUSTER, GRAHAM, BARR of Georgia and ROGERS of Michigan, Mrs. CUBIN, Messrs. EVERETT, REHBERG, BURTON of Indiana, OTTER, OSBORNE, MICA, TERRY, KENNEDY of Minnesota, NORWOOD, GOODLATTE, CHAMBLISS, PUTNAM, PORTMAN, POMBO, LEWIS of Kentucky, SAXTON, TIAHRT, LoBIONDO, SHAW, WILSON of South Carolina and SUNUNU, Ms. ROS-LEHTINEN, and Messrs. WHITFIELD, HOYER, McKEON, MENENDEZ, KERNS, BOOZMAN, THORNBERRY, LEWIS of California, FERGUSON, LaHOOD, YOUNG of Florida and JOHNSON of Illinois changed their vote from ''yea'' to ''nay.''

Mr. MORAN of Virginia, Mr. STENHOLM, Ms. RIVERS, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. MEEKS of New York, Mrs. MYRICK, and Messrs. SPRATT, FOSSELLA, BROWN of South Carolina, CANTOR and EDWARDS changed their vote from ''nay'' to ''yea.''

So the resolution was not agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed a bill of the following title in which the concurrence of the House is requested:

S. 3156. An Act to provide a grant for the construction of a new community center in St. Paul, Minnesota, in honor of the late Senator Paul Wellstone and his beloved wife, Sheila.

PROVIDING FOR CONSIDERATION OF SENATE AMENDMENTS TO H.R. 5063, ARMED FORCES TAX FAIRNESS ACT OF 2002

Mr. LINDER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 609 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 609

Resolved, That upon adoption of this resolution it shall be in order to take from the Speaker's table the bill (H.R. 5063) to amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, with the Senate amendments thereto, and to consider in the House, without intervention of any point of order, a single motion offered by the chairman of the Committee on Ways and Means or his designee that the House concur in each of the Senate amendments with the respective amendment printed in the report of the Committee on Rules accompanying this resolution. The Senate amendments and the motion shall be considered as read. The motion shall be debatable for one hour equally divided and controlled by the chairman and ranking minority member of the committee on Ways and Means. The previous question shall be considered as ordered on the motion to final adoption without intervening motion or demand for division of the question.

The SPEAKER pro tempore (Mr. GUTKNECHT). The gentleman from Georgia (Mr. LINDER) is recognized for 1 hour.

Mr. LINDER. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentlewoman from New York (Ms. SLAUGHTER), pending which I yield myself such time as I might consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 609 provides us the opportunity to take H.R. 5063, with the Senate amendments, and to consider without intervention of any point of order a motion offered by the chairman of the Committee on Ways and Means or his designee. The motion provides the opportunity for the House to concur in each of the Senate amendments with the amendment that has been printed in the Committee on Rules report accompanying this resolution. The rule also waives all points of order against consideration of the motion to concur in the Senate amendments with amendments, and it provides 1 hour of debate in the House equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means.

Finally, Mr. Speaker, H. Res. 609 provides that the previous question shall be considered as ordered on the motion to final adoption without intervening motion or demand for division of the question.

Mr. Speaker, as we prepare to complete the work of the 107th Congress and take H.R. 5063 from the Speaker's table, there are a couple of items of importance that will be inserted in this vehicle that the House will now have the opportunity to support following the adoption of this rule.

First, the amendments provide for a full extension through March 31, 2003, of current funding and program rules in the Temporary Assistance for Needy Families program and the Child Care, Abstinence Education, and Transitional Medical Assistance programs.

In 1996, the creation of the Temporary Assistance for Needy Families program fixed block grants for State designated programs of time-limited and work-conditioned aid to families with children. It also created a mandatory block grant to States for child care for low-income families, funded through fiscal year 2002. While the first continuing resolution passed by the House in September extended these programs through December 31, 2002, the CR passed by the House this week further extended those programs through the date of January 11, 2003. Unfortunately, in terms of the feasibility of approving funding for these programs through January 11 of next year, it makes much more programmatic sense for us to provide funds to the States on a quarterly basis and therefore extend the funding and program rules through an entire quarter to March 31, 2003.

Second, the amendment extends federally funded temporary unemployment benefits of current recipients and those in high unemployment States through January of 2003. In brief, this amendment will extend unemployment benefits for up to an additional 5 weeks per individual by moving the cutoff date to February 1, 2003. I believe that the House and Senate will eagerly support this provision that provides supplementary weeks of employment benefits to over 800,000 persons across the United States.

Mr. Speaker, I urge adoption of the rule and the subsequent motion to be offered by the chairman of the Committee on Ways and Means.

Mr. Speaker, I reserve the balance of my time.

Ms. SLAUGHTER. Mr. Speaker, I thank the gentleman from Georgia (Mr. LINDER) for yielding me the customary half hour, and I yield myself such time as I may consume.

(Ms. SLAUGHTER asked and was given permission to revise and extend her remarks.)

Ms. SLAUGHTER. Mr. Speaker, I had hoped to come to the well today to congratulate my colleagues for crafting a measure in the nick of time that addressed the real need in the communities. But like the vast majority of the legislation emerging from the 107th Congress, this is a pitiful stopgap measure that in the end will benefit far fewer than the rhetoric from the other side of the aisle suggests. I wish the unemployed had the lobbying might of the credit card companies who are enjoying the consideration of a last minute bankruptcy bill that will hammer our most vulnerable constituents, or even the insurance companies at the moment being blessed with a last minute measure to absolve them of liability in the event of future attacks, but the unemployed do not have the attention of the majority party and we do not believe they ever will.

The measure before us today is woefully inadequate when it comes to addressing the needs of our Nation's unemployed workers. I would note that these are newly unemployed workers, those that have paid into the system in the event of an economic slowdown. Mr. Speaker, the economy has not hit a soft patch. It is in a recession. Moreover, the money these workers paid into the system is there. They are workers who paid into the system when times were good and are now in need when the economy is rough. Why put obstacles in front of working families that need this aid? Indeed, most of our constituents will not qualify for an additional 13 weeks of benefits in this bill.