FOR-PROFIT COLLEGES AND UNIVERSITIES

Mr. DURBIN. Mr. President, there are various options available for graduates of high schools across the United States. Some of them choose to go to college or university, but even making that choice gives you a lot of options.

There are basically two categories of schools, though, that I want to address in this statement this morning. One category is called for-profit colleges and universities, and the other is the traditional not-for-profit colleges and universities, which would include your community colleges and public universities and many not-for-profit, private universities.

But I want to focus this morning on the for-profit colleges and universities in the United States. People sometimes can't make the distinction between which is which. Some of the big names in the for-profit industry include the University of Phoenix. That is one you probably heard of. DeVry University is another one you might have heard of.

There are some defining characteristics of these schools. They, of course, are in business to make money, and they have a different economic model than many of the other universities.

I have met the CEOs of for-profit colleges and universities and found that in some cases they have limited or no experience when it comes to education. They are investors. They are business people. The idea of education is a secondary part of why they were chosen.

There is an important statistic—in fact, two statistics—that I want to preface my remarks with, and these will be on the final, I might add, for those who are following this statement.

The numbers 9 and 33—9 and 33. Why are they important? Nine percent of postsecondary students go to for-profit colleges and universities—9 percent—but 33 percent of all the federal student loan defaults in the United States are students from for-profit colleges and universities—9 percent of the students, 33 percent of federal student loan defaults.

What is going on here?

Well, what is happening here, unfortunately, is that many of these students are signing up for the for-profit schools that they think are legitimate colleges and universities, and, frankly, they are dramatically overcharging them.

Every analysis we have gone through says that the tuition at these for-profit schools far exceeds what students are likely to pay, certainly, in a community college and in the case of many public colleges and universities. So they have a big tuition bill to start with, and they have poor results.

What kind of results? Students graduate believing that they are being trained or educated to do a certain profession, and then they find out that they can't do the job or they don't qualify for the job, or they get so deeply in debt on the way to graduating, they give up and quit—the worst of all possible outcomes.

So that is the preface on these for-profit colleges and universities. I have come to this floor many times over the years to talk about this industry because we treat it in the eyes of the public like higher education across the board, and yet it is much, much different. It is for profit as opposed to not for profit, and, frankly, the results of that education leave a lot to be desired.

It has been more than 5 years since the for-profit giant Corinthian College collapsed. Their economic model didn't work. For years, Corinthian had lied, inflating its job placement rates and engaging in high-pressure tactics to lure students into enrolling, often leaving them with massive student loan debt and a diploma that didn't work to find a job.

But Corinthian was not unique. As I have said many times, it turned out to be the canary in the coal mine. Since Corinthian College, we have seen the collapse of several other major predatory for-profit colleges and universities. They include ITT Tech, Westwood, Education Corporation of America, and Dream Center. Nearly every major for-profit college company has been the subject of extensive investigations and lawsuits for unfair and deceptive practices similar to Corinthian College.

Check with the attorney general of your home State about that for-profit college and university, and, almost without fail, you will find that they have been investigated for misleading and deceiving the students who go to school at their universities.

I have long said that we shouldn't leave the students holding the bag for the misdeeds of these institutions because, you see, we are complicit. The Federal Government is part of the problem.

How do these schools reach the point where you can take out a Federal student loan to attend? We accredit them. We recognize their accreditation. We tell the world and the families and the students that these are legitimate schools. Depending on that, these students who sign up for a better experience, are often misled, deceived, and overcharged. Ultimately, a third of them are in default on their student loans because they can't pay them back.

There is a provision in the Higher Education Act known as borrower defense. It gives the students the right to have their Federal student loans discharged by the Secretary of Education if they have been defrauded or subject to deception by these schools.

After Corinthian's collapse, this little known, rarely used provision in the law became a hot topic. All of a sudden, here were large numbers of students who had been defrauded and deceived by Corinthian College and went deeply into debt, and now the college goes out of business.

It turns out that most of the hours they took can't be transferred anywhere. It is worthless. They were defrauded, start to finish, and now they are left holding the student loan bag.

Thousands of Corinthian students and other borrowers, mostly from for-profit colleges, began applying for this borrower defense discharge from the U.S. Department of Education. It was in the law. It led the Obama administration to undertake a new rulemaking to update the borrower defense regulation, which dated back to 1994, and to create a standard process for dealing with the inundation and to attempt to prevent future collapses.

Soon after taking office, Secretary Betsy DeVos and the Trump administration delayed implementation of the Obama rule, despite the Department's own inspector general saying that implementing the rule would ''avoid costs to students and taxpayers that result from school closures.''

Secretary DeVos said: I am not going to be a party to that. Her delay was challenged in court. Her decision to delay this new rule was found illegal by a Federal judge, after which the current rule went into effect, and it remains in effect today. Secretary DeVos also announced she would begin a new rulemaking to replace the current rule.

In late August, Secretary DeVos released her borrower defense rule, the new rule which she wants to put in place. It actually guts the borrower and taxpayer protections in the current borrower defense rule and makes it nearly impossible for students holding this student loan debt who have been defrauded to get relief.

How does she make it so hard?

It is estimated that the rule will provide $11 billion less in relief to defrauded borrowers—students—than the current rule. Among other things, the new Betsy DeVos rule increases the burden on these defrauded students to gather and submit almost impossible amounts of evidence to somehow prove their claim. Student borrowers will have to provide evidence that the school intentionally harmed them.

Now, how are they supposed to do that?

The DeVos rule—the new one—requires borrowers to apply individually rather than receiving automatic discharges when they are part of a group of student borrowers who have been harmed by similar practices by places like Corinthian. In other words, you are on your own. Get your own lawyer. Lawyer up. Get some evidence together. Come see us, and maybe we will be convinced.

Student borrowers who have been cheated are not exactly the wealthiest group in America. They are often facing incredible financial difficulties and deep emotional strain, with a mountain of debt and nothing to show for it because of these for-profit schools. Now Secretary DeVos wants them to be investigators and lawyers and get their own relief one by one.

The DeVos rule also eliminates the current prohibition on class action restrictions and mandatory arbitration clauses in enrollment.

What does that mean?

Under the current rule which Secretary DeVos wants to replace, you could gather the other students from Corinthian College and work on this together as a class action claim, share whatever expenses that might be involved in proving your claim, and you couldn't be forced into an arbitration where you are likely to lose. You could have your day in court under the rule that Secretary DeVos wants to replace.

Class action restrictions and mandatory arbitration were used by Corinthian and ITT Tech and others that required students to sign away their rights to sue the school as an individual or as part of a class as a condition of enrollment.

The DeVos rule prevents students from holding schools directly accountable for their wrongdoing and seeking financial redress through the courts. It gives students no other option than to seek relief from taxpayers through borrower defense, but, as I just mentioned, it makes that process almost impossible.

And if anyone doubts the devastating effect this rule will have on the defrauded students' ability to get relief, just look at what Secretary DeVos has done to date.

Since taking office Secretary DeVos has had the authority to discharge hundreds of millions of dollars in student loan debt held by hundreds of thousands of defrauded student borrowers. Instead, she has allowed a backlog of more than 200,000 borrower defense claims from virtually every State in the Nation—student borrower defense claims coming from all 50 States—to build at the Department. She is sitting on it. She is playing slow ball. She has not approved a single claim. Although more than 200,000 claims are pending, she has not approved a single claim in more than 1 year.

Here I want to show you what is behind this. In the few cases where Secretary DeVos has been legally required to provide discharges, she has done so with extreme displeasure.

Think about that. Using her authority to help defrauded borrowers get a fresh start brings her extreme displeasure.

How do I know that?

She wrote it. Here is one of them. Recommendation to discharge. She approves it, signs it, and puts down as a comment: ''with extreme displeasure.''

Discharging a student loan from a for-profit institution that defrauded borrowers, she is displeased to be forced to do such a thing.

She defied a Federal court order and was held in contempt for continuing to collect from these students who had been defrauded by Corinthian.

This is not a Secretary who rewrote the borrower defense rule to help student borrowers. In September, I introduced a resolution in the Senate to overturn the DeVos borrower defense rule; 42 of my colleagues have cosponsored that resolution.

I plan to bring the resolution to a vote on the Senate floor where we will only need a simple majority to pass under the expedited procedures provided for in the Congressional Review Act. At that time, my colleagues will have a choice. Will you stand with Secretary DeVos or with the defrauded student borrowers in your State?

There is no doubt where the American people stand. In a 2016 New America poll, the question was asked whether Americans agreed that students should have their Federal student loan debt canceled if their college deceived them, exactly what the borrower defense rule is about.

Seventy-one percent of Republicans said yes, 87 percent of Democrats. On average, 78 percent of Americans understand it is fundamentally unfair to penalize these students, having been defrauded by a school that this U.S. Government said was doing business honestly and professionally. When you break the numbers down, it is clear. The overwhelming majority of people in this country stand by the students, but not by Secretary DeVos.

I will stand with the defrauded students and the American people over Secretary DeVos, and my colleagues in the Senate will get a chance to vote. I hope they will, too.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. SASSE). The Senator from South Dakota.

JUDICIAL CONFIRMATIONS

Mr. THUNE. Mr. President, yesterday, we confirmed Robert Luck, a Florida supreme court justice, to be a U.S. Circuit judge for the 11th Circuit Court of Appeals. With Justice Luck's confirmation, the Senate has now confirmed 47 appellate court judges during this administration and 163 Article III judges overall.

That is more appellate court judges than had been confirmed at this point in any of the previous five Presidential administrations, and it is a particularly outstanding number when you consider that the Democrats have made confirming these judges as difficult as they possibly can. From day one of this administration, Democrats were determined to obstruct anything this President did, his nominations in particular.

Again and again and again, they have attempted to block nominees for no other reason than the fact that they were nominated by this President. Democrats have subjected roughly 75 percent of the administration's judicial nominees to the time-consuming cloture process. Compare that to the treatment of President Obama's nominees. At this point in President Obama's administration, roughly 3 percent of his judicial nominees had been subjected to cloture votes—just 3 percent, 3 percent versus 75 percent for President Trump.

The difference in these numbers is not because this President has nominated scores of extreme nominees who Democrats felt they could not support. In fact, Democrats have repeatedly turned around and voted for the very same judges they have obstructed. In one particularly egregious example, in January of 2018, Democrats forced the Senate to spend more than a week confirming four district court judges, even though not one single Democrat voted against their confirmation. These judges could have been confirmed in a matter of minutes by voice vote, but Democrats forced the Senate to spend more than a week on their consideration, time that could have been spent on genuinely controversial nominees or on some of the important issues facing our country.

Despite Democrats' obstruction, we have continued to move forward, and as I said, yesterday, we confirmed our 163rd judge to the Federal bench. Today, we will confirm our 164th. We are putting judges on the bench with a real respect for the law and for the Constitution and a commitment to applying the law as written.

Now, those sound like basic requirements for a judge, but too often, it seems like my Democrat colleagues are interested not in judges who will uphold the law, but in judges who will act like superlegislators, rewriting the law and the Constitution when they do not fit with the Democrats' political opinions, and that is a very dangerous thing.

When judges rule based not on what the law actually says, but what they think the law should be, they undermine a fundamental principle of our system of government. Our system is based on belief in the rule of law. In the American system, the law is supposed to be the final, impartial arbiter. Cases are to be decided based on what the law says, not on what a particular judge feels.

Sure, it might seem nice when an activist judge goes outside the meaning of a law and rules for your preferred outcome. But what happens when that same judge reaches beyond the law to your detriment? What protection do you have if the law is no longer the highest authority? Equal treatment under the law, equal justice under the law, these principles can only be maintained as long as judges actually rule based on the law and not on their personal feelings or personal opinions.

My Democrat colleagues have shown a disturbing tendency to believe that their opinions are the only ones that should prevail. They disapproved of the outcome of the last election, and so for 3 years, they have done everything they can to undermine a duly-elected President. They are upset by the fact that the President got to replace a perceived swing vote on the Supreme Court, and the solution floated by more than one member of their party was to pack the Supreme Court.