

Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 345, S. 1873, the Missile Defense System legislation.

Trent Lott, Thad Cochran, Strom Thurmond, Jon Kyl, Conrad Burns, Dirk Kempthorne, Pat Roberts, Larry E. Craig, Ted Stevens, Rick Santorum, Judd Gregg, Tim Hutchinson, Jim Inhofe, Connie Mack, R.F. Bennett, and Jeff Sessions.

Mr. LOTT. For the information of all Senators, this cloture vote will occur on Wednesday, 1 hour after the Senate convenes and establishes a quorum, unless changed by unanimous consent. All Senators will be notified as to when cloture will actually be scheduled, but again, to reiterate, this cloture vote will occur sometime on Wednesday morning of next week.

I withdraw the motion to proceed.

The PRESIDING OFFICER. The motion is withdrawn.

Mr. LOTT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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 President, I ask unanimous consent that the order for the quorum call be rescinded.

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

#### UNANIMOUS CONSENT REQUEST— S. 1301

Mr. LOTT. Mr. President, I ask unanimous consent that the Senate now turn to S. 1301, the bankruptcy bill.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Mr. President, reserving the right to object.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. The request has been made to go to the bankruptcy bill which affects about 1,300,000 people in this country. We do have an opportunity to consider other legislation, like the HMO bill, that affects 120 million people, and we are being asked to go to the bankruptcy bill when we are not scheduling the campaign finance bill that passed the House of Representatives that involves the elimination of many of the abuses of campaign finance. Some are very concerned about the fact that some \$50 million have been expended by banks and credit card companies to move this legislation forward.

I am interested in inquiring of the leader whether we can have any indication as to when we might have the opportunity of scheduling these other measures which affect the average family, rather than special interests, such as the banks and the credit card companies. When I go back home, people talk to me about health care. It is the bankers and credit card people who are talking about the bankruptcy bill.

I wonder whether we are going to have any kind of assurance that we are going to move ahead with this legisla-

tion and we are going to have an opportunity to address and debate the merits of the Republican legislation, as well as the merits of the legislation, for example, on HMOs that has been introduced by the Democratic leader.

Mr. LOTT. Before I ask for the regular order, let me respond. I am perfectly prepared to go to the Patients' Bill of Rights bill. We have our bill ready to go. We would be glad for Senator KENNEDY to offer his bill. We have even offered to have three amendments on each bill and go to final passage. That offer still stands. It is a very fair offer. The minute the Senator and his leadership indicates they are willing to do that, we will be glad to go to both of those bills and have the votes and go to conclusion.

Regular order, Mr. President.

The PRESIDING OFFICER. The regular order is, Is there objection?

Mr. KENNEDY. I object.

The PRESIDING OFFICER. Objection is heard.

Mr. LOTT. Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. LOTT. Mr. President, I want to give the Senator from Massachusetts one more opportunity to agree to our unanimous consent request that we go to the bankruptcy bill. So I ask unanimous consent, once again, that the Senate now turn to S. 1301, the bankruptcy bill.

The PRESIDING OFFICER. Is there objection?

Mr. KENNEDY. Mr. President, for the time being, for the moment, I object.

#### CONSUMER BANKRUPTCY PROTECTION ACT—MOTION TO PROCEED

##### CLOTURE MOTION

Mr. LOTT. Mr. President, I move to proceed, in light of the objection, to S. 1301, and I send a cloture motion to the desk.

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

The assistant legislative clerk read as follows:

##### CLOTURE MOTION

We, the undersigned Senators, in accordance with the provision of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 394, S. 1301, the Consumer Bankruptcy Protection Act:

Trent Lott, Orrin G. Hatch, Charles Grassley, Arlen Specter, Strom Thurmond, Connie Mack, Ben Nighthorse Campbell, Thad Cochran, Tim Hutchinson, Wayne Allard, Christopher Bond, Rod Grams, Rick Santorum, Chuck Hagel, Larry E. Craig, and Jon Kyl.

Mr. LOTT. Mr. President, for the information of all Senators, this cloture vote will occur on Wednesday afternoon at a time to be determined and announced in advance, after consultation with the Democratic leader. We will talk to him, but it will be some time Wednesday afternoon. I do not know whether it will be 3 or 4, but something like that. All Senators will be notified exactly what time that vote will occur next Wednesday.

I now withdraw the motion to proceed.

The PRESIDING OFFICER. The motion is withdrawn.

#### MORNING BUSINESS

Mr. LOTT. Mr. President, I ask unanimous consent there be a period for the transaction of routine morning business with Senators permitted to speak for up to 10 minutes each.

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

Mr. GRASSLEY addressed the Chair. The PRESIDING OFFICER (Mr. DEWINE). The Senator from Iowa.

#### THE BANKRUPTCY BILL

Mr. GRASSLEY. Mr. President, we have just been delayed somewhat in the start of the bankruptcy bill. But I think it would still be appropriate to make some comments, even though in morning business, on the issue of why we need a bankruptcy bill.

I suggest, first of all, as the Senator from Massachusetts has correctly stated, there were 1.4 million bankruptcies last year. That was a 30-percent increase over the previous year. And the previous year was a big percentage increase over that previous year. So in the last 3 years we have seen an explosion of bankruptcy filings in the United States.

That is a tremendous economic problem. It is a problem for families that have to go through this. It is a problem for the consumers because bankruptcies raise costs for consumers. And there are lots of reasons for the rise in bankruptcies. In the 20 years since we have last had major bankruptcy legislation, we have seen a dramatic increase in bankruptcy filings, more than under any previous act. And we have had national bankruptcy legislation for 100 years this year.

In the period of time since we have had the latest bankruptcy legislation that was passed in the year 1978, out at the grassroots of America there has been a feeling that it is too easy to get into bankruptcy.

I don't want to say that a bankruptcy law, in and of itself, is the only reason we are having a high number of bankruptcy filings. But during this period of time in the last 20 years, I have had hundreds of people tell me that it is too easy to get into bankruptcy. I have had not one person say to me that

it ought to be easier to get into bankruptcy. And I have even had some people who have gone through bankruptcy who said it was too easy.

I mentioned the legislation of 1978 may be one reason for the increase in bankruptcies. I think also the Federal Government itself in that period of time has not set a very good example for personal finances by having 30 years of unbalanced Federal budgets. After all, if the national leadership of America can spend beyond its means for 30 years, doesn't it kind of set an ethic and a tone for the people of this country that maybe debt isn't so bad and it is possible to live beyond your means?

Hopefully, this September 30, at the close of this fiscal year, for the first time in 30 years we are going to balance the budget and have a surplus. And we are going to pay down at least \$68 billion, according to the latest estimates of what we will pay down in that national debt. Maybe we are going to turn that bad example around a little bit so that if people now do not see the Federal Government borrowing money for such long periods of time, maybe families and businesses of America will take a little bit different look at their debt as well.

Then, of course, we have had the banks of America sending out so many credit cards, maybe not with the idea that they encouraged debt, but at least have left the impression upon the consumers of America that there was another way of doing business than just out of the billfold. I do not think that has set a very good example. I am not saying that there isn't a legitimacy about credit cards and that probably it is very convenient for some people and other advantages, but again, it is a new approach that parallels this high number of filings that we have had and may be another reason beyond the Federal Government's borrowing, beyond a 1978 statute that made it a little easier to go into bankruptcy, another reason why we had 1.4 million people filing for bankruptcy last year.

Then lastly—and maybe I should not say lastly—but lastly as far as the reasons I would give, and there might be a lot of other reasons that somebody else could give, but there does not seem to be the shame connected with bankruptcy that there used to be. I do not know why. It may be all of the above that I have mentioned—more credit cards, making it easier to get into debt, and you just chip away at people's ethical thinking, the Federal Government setting a bad example, a liberal bankruptcy law passed in 1978. But somehow we have to think in terms of people looking at the moral dimension of their finances, and also then an extension of that moral dimension is a moral look at bankruptcy—right or wrong—and whether or not it is OK to break a contractual obligation to respect debt and meet the obligation.

One other thing I should say is that I think that to some extent—and it is

difficult to quantify all these factors that I give—but I think that within the legal profession there are some lawyers who are not counseling people about bankruptcy the way lawyers used to feel an obligation to counsel people coming to them for help. I guess we think that is a serious enough problem that we put some discouragement in our legislation to the bar just willy-nilly putting people into chapter 7 bankruptcy.

But I think if we could get the bar itself to take another look at the practice of bankruptcy lawyers, and suggest a little more caution, a little more counseling, a little less use of paralegals in the process of the filing of petitions, and probably a person that is maybe not in a very good position to counsel, that all of these things would help. So we have a situation that needs to be dealt with. That is why we offer this legislation.

Mr. President, I want to provide some overview of the need for bankruptcy reform and how the bankruptcy reform bill before the Senate makes meaningful bankruptcy reforms in a fair and balanced way. In fact, in the Judiciary Committee, the bill passed out of the committee on a strong, bipartisan vote of 16 to 2. So, we have a good bill and one that most Members of the Senate should be able to support.

Mr. President, the polls are clear that the American people want bankruptcy reform. In Iowa, 78 percent of Iowans surveyed favor bankruptcy reform. And the picture is the same nationally. According to the PBS program "Techno-Politics," almost 70 percent of Americans support bankruptcy reform. Clearly, the time to act is now.

Let me start out by saying there is some justification for bankruptcy. People hurt by natural disasters, catastrophic illness, divorce, etc., are entitled to a new start. Our society has provided for that. About 80 percent of the people who declare bankruptcy are in desperate financial straits. The problem is that some people use bankruptcy as a financial planning tool to get out of paying debts which they could pay. The convenient use of the existing bankruptcy laws is the driving force behind bankruptcy reform. We have a bankruptcy system that lets higher-income people write off their debts with no questions asked and no real way for creditors to prevent this from happening. The end-result is that everybody else who pays their bills ends up paying for these abuses through higher prices.

Last year we had a record number of Americans file for bankruptcy. Of course, each bankruptcy case means that someone who extended credit in good faith won't get paid. While estimates differ as to the exact number, American businesses are losing around \$40 billion a year as a result of bankruptcies.

Now, big banks and big business are in a somewhat stronger position to deal with these losses than smaller

businesses. Large banks and big business can offset bankruptcy losses by increasing the amount they charge to other customers. That's an important point, Mr. President. Under the best of circumstances, where a big business can stay afloat in the face of large losses due to bankruptcies, other consumers pay the price. Hence, the hidden bankruptcy tax.

This hidden tax affects consumers who play by the rules. These consumers, the vast majority of consumers, must pay through higher prices and interest rates for consumers who write their debts off in bankruptcy. My legislation will reduce this tax by requiring those consumers who have the capacity to repay their debts, or some portion of their debts, to do so.

But that's the situation with big businesses who can survive in the face of huge bankruptcy losses. What about the small business people who have to close their doors because they can't afford to absorb the loss of so much income. The Consumer Bankruptcy Reform Act that is before us will reduce bankruptcy losses by ensuring that those who can repay their debts be required to do so. That's just common sense. On the other hand, if you're truly down and can't afford to pay anything, this bill still guarantees complete bankruptcy relief.

The editorial page of the Des Moines Register stated on March 13, 1997, that bankruptcy "was never intended as the one-stop, no-questions-asked solution to irresponsibility." But that's just what we have today. And that is just the problem this bill addresses.

So, as we move forward to more debate on bankruptcy reform, I hope we keep in mind the fact that bankruptcies of convenience impose a hidden tax on hardworking Americans who play by the rules and pay their bills on time. Let's cut that tax. Lenient bankruptcy standards seem to foster a lack of personal responsibility. After all, why tighten your belt and pay what you owe when you can just walk away from debts by declaring bankruptcy? I think my bill makes sense and that's why it passed out of the Judiciary Committee by a vote of 16 to 2.

Mr. President, I would like to say a few words about the history of bankruptcy. Congress' authority to create bankruptcy legislation derives from the body of the Constitution. Article I, section 8, clause 4 authorizes Congress to establish "uniform laws on the subject of bankruptcies throughout the United States." Until 1898, we did not have permanent bankruptcy laws in this country. The previous bankruptcy laws were temporary in nature and were largely enacted as a reaction to a financial crisis. With each successive bankruptcy act and each major reform or our Nation's bankruptcy laws, we've refined our conception of how bankruptcy should promote the important social goal of giving honest and unfortunate American a fresh start.

The bill we're considering today makes fundamental changes to our bankruptcy laws. These changes are a logical outgrowth and extension of our various bankruptcy reform efforts. From 1898 until 1938, consumers had only one way to declare bankruptcy. It was called "straight bankruptcy" or "chapter 7" bankruptcy. Under chapter 7, which is still in existence, bankrupts surrender some of their assets to a bankruptcy court. The court sells these assets and uses the proceeds to pay creditors. Any deficiency is wiped out.

But starting in 1938, Congress created chapter 13, which allows a debtor to repay a portion of his or her debts and keep all assets. Under current law, the choice between chapter 7 and chapter 13 is voluntary. In the mid-1980's, Senator Dole and Congressman Mike Synar tried to steer higher income bankrupts—who could repay some of their debts—into chapter 13. My legislation follows the attempts at reform Senator Dole made when he was on the Judiciary Committee.

Finally, Mr. President, when and if we get to S. 1301, there will be a managers' amendment, which will permanently reauthorize Chapter 12. Chapter 12, which I authored in 1986 because of the farm crisis, is due to expire this October. I hope that, for the sake of the farmers of America, we will be able to get this bill brought before us. We now have a motion to proceed because there was an objection from a Senator, and I hope that all of these Senators will take into consideration that with low farm prices now—and I hope there is not an agricultural crisis long-term although there is a crisis this minute—and that farmers will have special protections under Chapter 12 bankruptcy, like other sectors of our economy have a special procedures for them, so that we will be able to have an orderly handling of that.

**THE PRESIDING OFFICER.** The Senator's 10 minutes have expired. Does the Senator ask for additional time?

**Mr. GRASSLEY.** Was there really a 10-minute time limit?

**THE PRESIDING OFFICER.** There is. The Senator can request additional time.

**Mr. GRASSLEY.** I ask unanimous consent for 2 additional minutes.

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

The efforts of Senator Dole and Congressman Synar ultimately resulted in the creation of Section 707(b) of the Bankruptcy Code. This section gives bankruptcy judges the power to dismiss the bankruptcy case of someone who has filed for chapter 7 bankruptcy if that case is a "substantial abuse" of the bankruptcy code.

While this idea sounds good, it has not worked well in the real world. First, nobody knows what the term "substantial abuse" actually means. So we have conflicting court decisions around the country and people just aren't sure what the rules are. Second, creditors and private trustees are actu-

ally forbidden from bringing evidence of abuse to the attention of a bankruptcy judge.

The Consumer Bankruptcy Reform Act corrects these shortcomings. Under this bill, 707(b) now permits creditors and private trustees to file motions and bring evidence of chapter 7 abuses to the attention of a bankruptcy judge. This change is very important since creditors have the most to lose from bankruptcy abuse, and private trustees are often in the best position to know which cases are abusive in nature.

Additionally, the bill requires judges to consider repayment capacity of bankrupts in chapter 7. Under this bill, if someone who has filed for chapter 7 bankruptcy can repay 20 percent or more of his or her general unsecured debts, then the bankruptcy judge can kick them out of the bankruptcy system or transfer them to chapter 13.

Taken together, these changes will bring the bankruptcy system back into balance. Importantly, these changes preserve an element of flexibility so that not every debtor is pushed into an inflexible and rigid formula. This means that each bankrupt will have his or her own unique situation taken into account.

Of course, S. 1301 also contains tough fines against creditors who misuse their new powers to harass or intimidate honest consumers rather than to stop abuses. This is a key feature of S. 1301. Whenever we give creditors a new tool, we also give debtors a new shield to restrain potential creditor abuses.

Let me give another example of how my bill gives debtors important new tools to deter and punish abusive creditor conduct. In the last few years, there have been a number of reports about creditors coercing debtors into agreeing to pay their debts even though the debt could be wiped away in bankruptcy. The bankruptcy code allows debtors to reaffirm debts if they choose to do so voluntarily. The problem is that some companies have been threatening consumers in order to force a reaffirmation. Under the bill we're considering today, creditors will face treble damages and high fines if they use coercive tactics to force a reaffirmation.

So, Mr. President, as we proceed to consider this bill, I hope colleagues will keep in mind the balanced, fair nature of this legislation.

#### PRIVILEGE OF THE FLOOR

**Mr. DURBIN.** Mr. President, I ask unanimous consent that Anne McCormick be granted privileges of the floor on all Judiciary Committee-related matters for the remainder of this session.

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

**Mr. DURBIN.** Mr. President, it has been my good fortune to work on the subcommittee with Senator CHUCK GRASSLEY of Iowa. We have worked closely together for more than a year. We disagree on some political issues—that is no surprise—but I respect him

very much. He is a man of his word. He is a hard-working Senator, and it has been a pleasure for me to work with him on this very complicated issue. We will probably have our disagreements when this matter comes to the floor, but my respect for him will continue as during the course of preparing this complicated legislation.

I also acknowledge the hard work of my staff members, Victoria Bassetti and Anne McCormick, on this complicated issue. Were it not for them, I don't believe I would be able to stand here and defend my point of view. They have educated me well. I will do my best to represent them, as well as the people of Illinois, on this issue. This is a highly technical and convoluted subject. We hear words like cramdowns, reaffirmations, panel trustees, lien stripping, automatic stays, codebtor stays, discharge stays, nondischargeable debt, super discharge, and on and on. Most people's eyes are glazing over and wondering what this bankruptcy debate is all about on the floor.

This important Federal bankruptcy law is a delicate and perilous balance. When a person files for bankruptcy, they have a limited amount of assets. They come before the bankruptcy court and ask: What are we going to do with what we have left? It isn't enough to pay our bills and what do you suggest we do to discharge ourselves from this debt and go forward with a clean slate?

When you push on one thing in bankruptcy, almost invariably something else will give. That is because no matter how hard you wish otherwise, we are dealing with a limited amount of assets—a pie of fixed dimensions. Try as we might, in almost every case the pie will not be made any bigger. All we can do is increase the fighting over that small pie—and usually no one really comes out ahead in that fight.

In those cases where we can make the pie bigger, I fully support whatever we can do. We must ferret out those people who are abusing the bankruptcy system. One example is the homestead exemption. The homestead exemption allows a person, in some States, depending on State law, to claim that their home should be exempt from being subject to the claims of creditors. That sounds reasonable. People like to protect their home. But each State sets a different standard. Some States set almost unreasonable standards. That is why you can find a former Governor of a major State, or a former commissioner of baseball, racing to the right State to file bankruptcy—buying a huge home before they file bankruptcy, and then having it exempt from the bankruptcy estate. Luckily, this bill does away with that exemption. The House bill does not. On the floor of the House, unfortunately, we left this abuse in the bankruptcy code. I hope we will stand fast on this issue and that, if this matter goes to conference, we can prevail.

Let me talk about the people who do file bankruptcy, who don't fall into the

category of the rich and famous, never have been and never will. Let me show you one of the charts that indicates what happened in terms of the income people earn who are filing for chapter 7 bankruptcy in the United States. This is an interesting chart. The median family income is \$42,769. In 1981, the median income of people filing for bankruptcy was \$23,254. Look what happened. Over the next 16 years, we have seen a steady decline in the median income of people filing for bankruptcy. What it tells us is that people in the bankruptcy system are just getting poorer. We are not dealing with smoothies here who are racing out to get attorneys and find some way to protect some treasured assets. We are dealing with people who have a very limited amount of income and with very low-income and perilous circumstances. As distasteful as bankruptcy is, the fact remains that we need it. We can't dismantle or radically alter it without doing serious damage to our economy, to creditors, and to millions of individuals.

To see what would happen if we didn't have a bankruptcy system, imagine a world where people could not declare bankruptcy when they were in bad financial straits. In this world, each individual creditor would have to file suit in State court when the debtor defaulted. And then it would be a race to the courthouse door. Some would end up with nothing. Almost nobody would win in this situation. So the bankruptcy code is important. But keep in mind that this median income person, with \$17,652, really is not salivating for the opportunity to file for bankruptcy; a disaster has hit that person or his family.

The information I am about to give you has not been produced by some consumer group, but by the major credit card companies. Visa and MasterCard did an analysis of the people who declared bankruptcy in 1997. Here is what they found: 11.6 percent of the people who filed for bankruptcy did so because of a divorce or separation; 16.5 percent declared bankruptcy because of medical or health reasons, and 15.3 percent, because of unemployment. Two-thirds of the people surveyed reported that creditors did not try to work with them to help them avoid filing for bankruptcy.

You must remember the feeling. I can remember it in my early life after graduating from law school, deep in debt, trying to pay off student loans and having no really substantial income. It was a chore to fight off the people calling on credit cards.

They really weren't offering the milk of human kindness in those telephone calls.

From the Visa study, they went on to say:

Although conventional wisdom holds that there is less stigma associated with personal bankruptcy filings today than there has been in the past, the experience of the respondents suggests just the opposite: A substan-

tial majority—75.2 percent—had not been able to reestablish credit. Nearly a quarter of the respondents—24.7%—still owed income taxes after the bankruptcy was filed. More than half—52 percent—reaffirmed some of their outstanding debt \* \* \*

Let's talk for a moment about the debt. Credit card companies send out as many as 2.8 billion credit card solicitations a year to potential card holders.

Let me show you a chart about one family that I happen to know a little bit about, the Durbin family of Springfield, Illinois.

In a 6-month period of time at our house, we received in Springfield, Illinois, opportunities and invitations for credit cards, some wonderful credit cards. It used to be that they talked about gold credit cards. Here is one called "gold." Now we are talking about titanium and platinum credit cards.

If you look at the total amount of credit that was offered to my home and household, it comes to over \$600,000.

There was a time when I can recall getting my first car loan—of about \$1,000—sitting nervously across from a loan officer at the First National Bank of Springfield, Illinois. Now, sight unseen, each day in the mail, come invitations to go deeply into debt—in this case over \$600,000 worth. And this doesn't count the e-mail credit solicitation which I am currently receiving.

What it suggests to me is that the credit card industry bears some responsibility for the increased filings and bankruptcy.

We found in a 3-month period in 1997 that banks in the United States mailed a record-setting 881 million solicitations.

I have some that my staff received here. I will not go through them all.

I believe everyone here that is witnessing this debate on the Senate floor and those by television on C-SPAN know what I am talking about. You go home every night and start tossing out the preapproved credit card solicitations that say, "Just sign the back of this check, and we will send you a certain amount of money." And you, of course, can have a second mortgage on your home.

All of these things are coming at us fast and furious.

In addition to the mail, credit card companies logged 24.1 million hours in 1996 on the telephones telemarketing their cards.

You can be at home at night watching TV and listening to the radio. The phone starts ringing. It could be some charity. It might be some opportunity to change your phone service. It might also be a credit card solicitation.

So if we are going to correctly analyze the current situation about the increases in bankruptcy, let us honestly look at what is happening here.

You want to know why so many more people are filing for bankruptcy? Look at this. Track consumer debt in America, and track the filings in bankruptcy, and what you find is the lines are virtually identical.

This isn't a matter of America losing its morality in family values because of the increased filings in bankruptcy. It is because we are deeper in debt as a nation and the credit card industry continues to lure people into debt. Yes. It is a free will choice. But many people are not as well informed as they get into it. The lure of consolidating your debts, and the lure perhaps of buying something that you might not otherwise be able to afford drags people deeper and deeper into debt with risky credit. One bad occurrence, as mentioned in the Visa and MasterCard study, and the next thing you know these folks are in bankruptcy court.

Some people in the credit industry come to see you and say, "You know, I think these people have lost the idea of the moral stigma of bankruptcy." The Visa study says they haven't. I am not sure they have either. I say to the people in the credit industry, "If there is no moral stigma to bankruptcy, then how do you explain the practices of your own industry, an industry that would consider installing ATM machines in casinos, which we now do in America? Where is the moral stigma there?"

Let me talk to you about this bill in particular.

I am pleased that Senator GRASSLEY and I have been able to work well on many issues in this bill, and I will try to continue to do so. But let me suggest there are some changes that I would still like to see in this bill.

We must make sure that reform of the bankruptcy system doesn't actually end up hurting vulnerable groups like women trying to collect alimony, children dependent on child support payments, and the elderly living on fixed incomes.

We have a fixed amount of money here; a limited amount of assets. There will be a struggle and a fight over who will walk away with them. If you give additional assets from a bankrupt estate to a credit card company, you could do it at the expense of child support obligations. The Children's Defense Fund is opposed to the bill. That is one of the major reasons. Their concern is that this bill still does not protect child support payments. I think that is a major concern.

We have to make certain that we lift that up to a level that is sensible. Keep in mind if we do not, we are going to assume that burden as a society. Children who do not receive their child support payments are kids who end up on welfare; kids who end up dependent on the Treasury of the United States and the States of our Union in an effort to survive.

I hope we will be able to adopt an amendment which will, in fact, provide more protection when it comes to child support.

Second, we must make sure that the reforms do not increase opportunities for creditors to themselves abuse and distort this system.

I will not go through the lengthy history that we have of this process of reaffirmation.

What is reaffirmation? I file for bankruptcy and I have a debt, and instead of having it discharged so I don't owe it any longer, I voluntarily agree to reaffirm that debt and to continue to pay all or part of it. Why would a person do that? What if you walked into the bankruptcy court and you owed money on your car? You need a car to get to work. You better reaffirm that debt on the car so you can continue to make the payments, even if you are discharged from bankruptcy from all other debts. It makes sense. Someone walks into a bankruptcy court and says, "My family has done business with that department store downtown for three generations, and I just could not stiff them. I will reaffirm my debt. I will pay it. Just discharge the rest of my debts."

The problem we have is in many instances creditors—major department stores and retail chains—have misled the debtors into believing they must reaffirm their debts; that they can't get off the hook in bankruptcy. I want to make sure that this bill does not create more opportunities for this to happen. I hope just the opposite will be true.

Finally, let me urge that in the course of the debate on bankruptcy we address both sides of the problems. To those who are abusing the bankruptcy system, who walk into court and try to, through all sorts of chicanery, escape their obligations and their debts, we say: This will stop. And, on the other side, we say to the credit card industry: You also have an obligation.

Sadly, all of this focus on the bankruptcy code simply helps to obscure a far more important and dangerous feature of our consumer economy—the profligate availability of risky credit.

Merely making bankruptcy abuse harder is only part of the equation. The other part is preventing bankruptcy in the first place by encouraging more responsibility from the banks, as well as consumers.

Come with me to a "Big-Ten" football game this autumn—a wonderful experience—in Champaign or Bement, Illinois—and walk into that stadium. What you are going to find there will be a booth giving away T-shirts. Mark my words. If you will take a T-shirt, you will also take an application for an official University of Illinois credit card. Kids fresh out of high school are signing up for credit cards when they are 18 to get a free T-shirt. You will find these booths at virtually all sorts of events.

These sorts of things are going on at such a pace that, frankly, it has become almost scandalous. Credit cards are being issued to people who are mentally incompetent. They are being issued to pets; being issued to folks who have no business owning a credit card.

I want to make sure that we straighten up that side of the equation as well.

I want to make sure that the people who send us monthly credit card statements are open and honest. When they say your minimum monthly payment is "X," they ought to tell you how many months it will take you to pay it off if you make the minimum monthly payment, and how much you are going to pay in interest. They ought to provide people with a simple worksheet so when they apply for a credit card they will understand where they stand financially. If fact, if the credit card company hasn't done any kind of analysis of your credit standing and they are offering credit blindly, you ought to know that.

In addition, I want to make sure that we provide in these credit card statements a clear statement of the conditions.

This same University of Illinois credit card solicitation—I don't want to pick on them—said, and I quote, "permanent introductory rate of 5.9 percent."

You don't have to be a business major to understand that "permanent" and "introductory" don't go together. What happens, of course, is that in a short period of time the interest rate goes through the roof.

Let me conclude on this note.

We can spend all of our time trying to punish or prevent a small number of abuses. We can also work on something infinitely more constructive. We can try to help prevent financial catastrophes.

What I propose is a small step in that direction which works on the principle that a well-informed consumer is best able to protect himself. I am happy to join with my colleague, Senator GRASSLEY, in an effort to change the bankruptcy code, but let us do it in a fair way that does not penalize the recipients of child support, that doesn't give an upper hand to creditors who abuse the system, and which says to the credit card industry, yes, we will clean up abuses in bankruptcy court but certainly you should extend your responsibility to issue credit responsibly to a well-informed consumer.

I yield back the remainder of my time.

Mr. KENNEDY addressed the Chair.

The PRESIDING OFFICER (Mr. SANTORUM). The Senator from Massachusetts.

#### CONSIDERATION OF THE PATIENTS' BILL OF RIGHTS

Mr. KENNEDY. Mr. President, just about an hour ago, we had the majority leader taking the floor and making the request that we go to the bankruptcy legislation, as is his authority, and then making a motion to move toward the bankruptcy bill and filing cloture. And I assume, as others would, that we will be debating this legislation next week.

In an exchange with the majority leader, I questioned him as to why we were not considering taking up the

HMO legislation, the Patients' Bill of Rights. We could either take up the legislation that had been introduced by the Republicans and lay that down as our leader, Senator DASCHLE, has suggested, or permit some other way or means that we could have a full debate and discussion on that legislation.

As I pointed out in the very brief exchange with the majority leader, we are talking considering legislation that affects about 1.4 million bankruptcies, with all the importance and consequences that has, as expressed by our friends and colleagues from Iowa and from Illinois and stated eloquently by both of them in recent times, or whether we should be considering a measure that affects 165 million Americans with health insurance coverage.

When I go home to Massachusetts and travel around the state, I hear from families wondering when the Congress is going to take action to make sure that health care decisions are going to be made by medical officials, by doctors and by nurses, rather than by accountants and insurance company personnel. That is what the people are talking about. That is what they were talking about during August.

I asked the majority leader whether we would be able to have the opportunity to debate this issue. And as is the wont of the majority leader and the assistant majority leader, Senator NICKLES, they have said, look, you are either going to take it or leave it with our proposal. You are either going to take it the way we want it—that is, you can offer two or three amendments, and we can offer two or three amendments—and, if you are willing to take that, we are willing to schedule it; otherwise, we are not.

They are, for all intents and purposes, gagging the Senate. We do not have any such condition on the measure that is before us this afternoon, the bankruptcy bill. There are a number of very worthwhile, substantive amendments for this measure. The majority leader did not come out here and say take it or leave it on the bankruptcy bill. No, no. Why? Because the credit card industry and the banking industry have the votes to pass this legislation, and, as has been publicly recognized, they have expended some \$50 million in order to support the movement of this legislation.

Yet, we find out that there are children in our country today who are being denied a CAT scan because of an automobile accident or because of a bicycle accident or because of some other kind of an accident. They do not make large contributions to push forward legislation that will help them. Nor do the women who are denied access to clinical trials or obstetrical and gynecological care.

And so, Mr. President, we are being effectively gagged by the Republican leadership in debating and discussing and voting on the most important health measure that we will be faced with this year. Again, when asked