United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 109th CONGRESS, FIRST SESSION

Vol. 151 WASHINGTON, MONDAY, MARCH 7, 2005 No. 25

Senate

The Senate met at 2 p.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray.

Merciful God, Who lives and reigns forever, You know every heart and mind. You are the shield and protection of those whose hearts are right. We thank You for being so near to us. We thank You also for the gift of life and for the blessing of this new day.

Give wisdom to our lawmakers in their work. Let kindness and justice characterize their deliberations. May the decisions they make help build defenses for the weak and shelters for the strangers. Give them words that will bring healing and a renewal of hope.

Destroy the power of evil and give strength to those who follow You. God all powerful, listen and answer, for we trust in You. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RESERVATION OF LEADER TIME

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

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration of S. 256, which the clerk will report.

The assistant legislative clerk read as follows:

A bill (S. 256) to amend title 11 of the United States Code, and for other purposes.

Pending:

Leahy amendment No. 26, to restrict access to certain personal information in bankruptcy documents.

Feinstein amendment No. 19, to enhance disclosures under an open end credit plan.

Kennedy amendment No. 44, to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal minimum wage.

Dorgan/Durbin amendment No. 45, to establish a special committee of the Senate to investigate the awarding and carrying out of contracts to conduct activities in Afghanistan and Iraq and to fight the war on terrorism.

Pryor amendment No. 40, to amend the Fair Credit Reporting Act to prohibit the use of any information in any consumer report by any credit card issuer that is unrelated to the transactions and experience of the card issuer with the consumer to increase the annual percentage rate applicable to credit extended to the consumer.

Reid (for Baucus) amendment No. 50, to amend section 524(g)(1) of title 11, United States Code, to predicate the discharge of debts in bankruptcy by a vermiculite mining company meeting certain criteria on the establishment of a health care trust fund for certain individuals suffering from an asbestos related disease.

Dodd amendment No. 52, to prohibit extensions of credit to underage consumers.

Dodd amendment No. 53, to require prior notice of rate increases.

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. FRIST. Mr. President, today, we are resuming consideration of the bankruptcy legislation. Under the order from last week, at 2:30, we will begin 3 hours of debate in relation to the Kennedy and Santorum amendments regarding minimum wage. That consent agreement provides for two votes to begin at 5:30 today on the Kennedy and Santorum minimum wage amendments.

I do remind my colleagues that a cloture motion was filed on Friday, and that cloture vote will occur at 2:15 on Tuesday. Senators should also be aware that under the provisions of rule XXII, and pursuant to our unanimous consent agreement, all first-degree amendments should be filed by 2:30 today and second-degrees by noon tomorrow. We also have a unanimous consent agreement that provides for a vote in relation to the Schumer amendment at 12:15 p.m. tomorrow, on Tuesday.

With that said, we will have busy sessions over the next couple of days as we try to finish our work on the bankruptcy bill. I do hope we can invoke cloture tomorrow afternoon and bring this bill to a final vote. As all Senators know, if cloture is invoked, germane amendments are still in order, and there could be up to an additional 30 hours of consideration.

Last week, we had a productive week. We had full days of debate and votes. Therefore, I expect we will complete action on the bill either Tuesday or Wednesday of this week.

Mr. President, I would be happy to turn to the Democratic leader.

Mr. President, I would like to make a few comments on another issue now because at 2:30 today we will be going to the debate on the minimum wage amendments.

PILGRIMAGE TO SELMA AND THE 40TH ANNIVERSARY OF BLOODY SUNDAY

Mr. President, I rise to spend a few moments reflecting on a historical event that occurred 40 years ago today. Historians view the 1965 Selma to Montgomery Voting Rights March as one of the emotional high points of the modern civil rights movement that began in the 1950s.

Yesterday, a number of Members of Congress went on a pilgrimage to Selma and marched across that Edmund Pettus Bridge. I was part of that delegation. I had that opportunity to do that same march in remembrance of the Selma to Montgomery 1965 crossing of that bridge in the past.

From a historical standpoint, as we look back, we recall that 40 years ago today—actually on a Sunday—but 40 years ago today, on that Sunday, on

that march, approximately 600 people left historic Brown Chapel and walked a few blocks and then went around the corner and over that Edmund Pettus Bridge, going east toward Montgomery. They went on the other side of that arching bridge, and they encountered local law enforcement officers. The group of officers and some others drove the marchers back across the bridge in a violent episode and series of actions over the next few minutes. They were pushed back the equivalent of several blocks over the bridge and then back to the church.

The activity was chaotic. They had billy clubs, tear gas. Most of us are familiar with the tragic story. That Sunday now has become known, since that time, as Bloody Sunday, and thus today is the 40th anniversary of Bloody Sunday. That Bloody Sunday earned, appropriately, national attention. And much of what happened in terms of the evolution of the civil rights movement, reaching that huge landmark on August 6, 1965, when President Johnson signed the Voting Rights Act, was realized.

Just a couple of comments about the course of the day. Again, it was a large bipartisan delegation of House and Senate Members. We arrived in Selma early yesterday morning and visited two of the museums there. We then went to the church service at the historic Brown Chapel AME, African Methodist Episcopal, Church.

I had the opportunity to visit and worship in that church before, but yesterday it captured me. The church itself was packed. It is a historic church, and there is a large balcony in the back and balconies on either side.

As our delegation, which was probably 40 or 50 House and Senate Members, crowded in with another several hundred people, with the balconies full, you could not help but to imagine what it must have been like 40 years ago—41, 42 years ago. In that period, that church became the real refuge, sense of security for the movement that evolved and really instigated, in many ways, the ability for all Americans to vote today, culminating in that signing by President Johnson later in 1965, on August 6, 1965.

Yesterday, in the church service, Rev. James Jackson, the pastor of that church, opened the service itself. And we had a wonderful sermon that was delivered in commemoration by the Rev. C.T. Vivian. Reverend Vivian was an inspirational speaker in his presentation.

But what was fascinating to me was it was his early participation, really, in Nashville, TN, working alongside others who were there yesterday, Congressman JOHN LEWIS and so many others, that in Nashville that nonviolent movement, and the discipline involved in that movement, was developed. It was developed in meetings, in churches all over Nashville, TN, setting out a defined curriculum based on the great teachings in the Bible and from Gandhi and so many others.

It was that same discipline that yesterday now-Congressman JOHN LEWIS shared with us, as they marched from Brown Chapel, two by two by two, where he and Hosea Williams led that march up on that sidewalk, dressed in their suits, recognizing that once they got over that bridge, or to the peak of that bridge, at the bottom of the hill down there, there were law enforcement officers whom they knew in all likelihood would drive them back.

Yesterday was a gorgeous day. To be able to march arm in arm, linked across that bridge, with people like Congressman JOHN LEWIS and Fred Shuttlesworth, who played such a prominent role in Birmingham, and Bernard Lafayette, a close personal friend of mine who now lives in Connecticut, was a great privilege and a great opportunity.

I share all this with my colleagues to thank those who could be with us but also in recognition of today being that 40th anniversary that, yes, was called Bloody Sunday, but did become a turning point and led to the rights that we all enjoy today, but underscoring the importance of fighting for, with discipline and nonviolence, those rights of justice and equality and freedom.

Mr. President, I yield the floor.

The PRESIDENT pro tempore. The Senator from Oregon.

ENERGY PRICES

Mr. WYDEN. Mr. President, with crude oil prices at almost $54 a barrel, and OPEC meeting in 9 days, I have come to the floor this afternoon to urge the administration to pursue what they promised; that is, to stand up for our consumers who are facing high oil and gasoline prices.

The news just this last weekend was not good on the pricing front as it relates to the American consumer. The Lundberg survey of American gasoline retailers came out Sunday and confirmed what a lot of Americans suspected. The price of gas is rising high, and it is rising fast.

According to the survey that came out Sunday, the price of gasoline has risen nearly 7 cents per gallon in the last 2 weeks, across the board, for all grades. And the Lundberg survey indicates that this is just the beginning, that higher prices are on the way.

Now, last week, Mr. President and colleagues, I asked the U.S. Secretary of Energy, Mr. Bodman, whether he was going to do what the administration promised; that is, to stand up for the consumer and try to push OPEC as hard as possible to get some pricing relief when they meet in a few days.

Mr. Bodman said, in response to my questions, that he had not made that call and, well, he had a whole lot on his plate. I do not think that is good enough. I think we have to ask this administration, and the President specifically, about using their political capital now to stand up for the American consumer who is getting clobbered by these gasoline and oil prices.

If they are not going to use it now, when are they going to use it? Why not use it on behalf of American consumers when there is such a demonstrable cause and effect between the price of crude oil rising and the price of gasoline rising?

Over the weekend, the Secretary of the Treasury, Secretary Snow, said rising energy prices have the potential to stifle economic growth in the near future. Maybe Secretary Snow is willing to get on the phone with OPEC if Secretary Bodman will not. But I know somebody ought to be doing it. And that is exactly what the President of the United States promised in 2000. He said that if the country elected him, he would push OPEC very hard to try to turn on the spigot and get some pricing relief.

OPEC is making all the usual noises. They are concerned, they have said, about rising prices. They think the market has plenty of oil.

As I said before, OPEC is going to look out for OPEC. The question is whether this administration is going to stand up for the American consumer as they promised in 2000. If the Secretary of Energy won't pick up the phone to do that, the American people deserve a better answer than to say, Well, gosh, I have a whole lot on my plate. If the average American didn't send their tax return in on April 15 saying, Gosh, I have a lot on my plate, I don't think that would be acceptable, not to this administration, not to me, not to anybody. So the excuse doesn't wash when it comes to the Energy Department's duty to go to bat against high oil prices.

We need, at home, on a bipartisan basis, as it relates to OPEC abroad, to stand up for our consumers who are faced with escalating energy prices that seem to go up by the day. I don't think it is right to let OPEC run roughshod over the American consumer and we make no comment other than to say, Gosh, we have a lot on our plate.

Nine days from now OPEC is going to meet. Time is ticking away. But there is still time for the administration to deliver on what they promised to the American people; that is, to protect our consumers from high oil and gasoline prices. I urge they take just that action. If Mr. Bodman won't do it, as he indicated last Thursday, maybe somebody else in the Bush administration will.

I yield the floor.

The PRESIDENT pro tempore. As a Senator from the State of Alaska, I suggest the absence of a quorum.

The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

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

Mr. MCCONNELL. Mr. President, what is the pending business?

The PRESIDING OFFICER. The pending business is S. 256 which has been reported.

Mr. MCCONNELL. Mr. President, I rise today on behalf of every American who each year is forced unknowingly to pay a hidden tax. We all know we have to pay an income tax, a sales tax, a payroll tax, but what about a bankruptcy tax? You may not have heard of this tax, but you and every other man, woman, and child in America pay it every single year. It is the accumulated cost of higher interest rates on credit, higher downpayments on a car or other essential items, and higher penalty fees and late charges for financial transactions. It is the result of the abuse of America's bankruptcy system which allows people who still have the ability to pay back some or all of their debt to declare bankruptcy and escape responsibility for what they owe.

Somebody has to pay those unpaid bills. And that somebody is you. Companies have no choice but to pass them on to the consumer.

When I mention this bankruptcy tax, you may think I am talking about small change, the kind of money you can find under your couch cushions. You would be wrong. According to a Department of Justice study, the bankruptcy tax amounts to a staggering $400 for every man, woman, and child in America once a year every year. Let me repeat that so I can be sure it soaks in. That is $400 for every man, woman, and child in America once a year every year.

That amount of money would mean a lot to a family in my home State of Kentucky where the median income is $36,936 a year. That means the average Kentuckian has to work 4 days a year to pay the bankruptcy tax. In fact, it is the lower income families who feel the sting of the bankruptcy tax the most. Higher interest rates can stop them from getting access to credit for a home, transportation to a necessary job, or even higher education.

Our bankruptcy system was originally created to give those who were hopelessly mired in debt a way out and a second chance. As long as it was used sparingly and applied only to those who most needed its mercy, it was the compassionate way for America to make sure that none of her neediest became trapped in a lifetime of deficit and despair. But in recent years, too many are abusing the bankruptcy system. Last year nearly 1.6 million individuals filed for bankruptcy, a record high. This number is five times greater than the number of individual bankruptcy filings 20 years ago.

It seems odd so many more Americans would choose bankruptcy over that 20-year period, especially when you recognize that the last 20 years have set new records for economic growth, low unemployment, and low interest rates. The answer to this mystery is fraud and abuse of the bankruptcy system. In fact, the FBI has estimated over 10 percent of all bankruptcy filings involve at least some fraud.

Bankruptcy was created as a ladder to greater economic opportunity. It should not be an escape hatch to avoid responsibility. A few weeks ago this Senate, on a bipartisan basis, passed the moderate, commonsense Class Action Fairness Act to curb some of the abuses of our legal system. It was the first substantive bill passed by this new Congress. It was supported by Democrats and Republicans and has been signed into law by President Bush. I am very pleased that this 109th Congress has started off in a tone of bipartisan agreement and cordiality. I think passing the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 can be the next step in furthering that sense of cooperation. Like the Class Action Fairness Act, this bill is a moderate, commonsense bill with bipartisan support. It passed out of the Judiciary Committee with bipartisan support. It has passed this Senate with bipartisan majorities before. It should be entirely within our power to pass it now and send it on to the President for his signature.

Right now individuals have two options for declaring bankruptcy. They may file under chapter 7, surrender their assets to be sold, and then be released from all debt. They start again with a fresh slate, leaving their creditors unpaid.

The second option is to file under chapter 13. In that case an individual must work with a bankruptcy court and draft a payment plan to satisfy as much outstanding debt as possible, given the debtor's income. The problem is too many people are filing under the more lenient chapter 7, leaving their debts unpaid even when they have sizable income and sizable assets. Some are choosing it as an avenue to commit fraud.

The bill currently before the Senate will institute a means test to sort out those who file chapter 7 but actually have the ability to live up to their obligations. This is not a draconian measure, by any means. Only about 7 to 10 percent of chapter 7 filers will be screened out by the means test which will be administered by a bankruptcy court.

Any debtor who earns less than their State's median income—and that includes about 80 percent of the debtors in question—will remain in chapter 7. Those earning more than the State median income will be allowed to deduct certain obligations and expenses from their net worth, thus allowing some of them to also remain in chapter 7. And anyone left will be able to show special circumstances for why they should be allowed to still file under chapter 7. So there will be plenty of opportunities for the neediest among us to file chapter 7 and use the safe haven of bankruptcy as it was originally intended.

Those remaining will be required to file under chapter 13. It is not too much to ask people to pay back what they owe when they clearly have the means to do so. And those who are abusing the system will be exposed. Catching the individuals who are defrauding the system to avoid responsibility will save America $3 billion a year—a good start for reforming our system. That $3 billion rightfully belongs to the American people who are forced to pay the egregious bankruptcy tax. They are being robbed by an unscrupulous few.

It is our responsibility to end the fraud and abuse in the bankruptcy system by passing this bill. It will strengthen our economy, and it is also the right thing to do.

I yield the floor and 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. KENNEDY. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

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

Under the previous order, the hour of 2:30 having arrived, there will now be 3 hours of debate, equally divided, on the Santorum and Kennedy amendments.

The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, as I understand it, we have an hour and a half on our side.

The PRESIDING OFFICER. The Senator is correct.

AMENDMENT NO. 44

Mr. KENNEDY. Mr. President, I ask unanimous consent that the pending amendment be temporarily set aside.

The PRESIDING OFFICER. Without objection, it is so ordered. The pending amendment is laid aside.

Mr. KENNEDY. Mr. President, at 5:30, the Senate will have an opportunity to vote on an increase in the minimum wage, and we have not had an opportunity to increase the minimum wage for some 8 years. The purchasing power of the minimum wage is now probably at its second lowest purchasing level in the history of the minimum wage and is deteriorating every single day, in terms of purchasing power.

These individuals that work at the minimum wage are hard-working individuals, men and women of great pride—primarily women, and women with children, and in many instances men and women of color. Historically, this issue has not been a partisan issue. Republicans and Democrats have joined together to raise the minimum wage because we have believed as a country and as a society that work is important, work should be rewarded, and that men and women who work hard, 40 hours a week, should not have to live in poverty, particularly those who have children. Nonetheless, we have seen that those millions of workers who work hard and work at the minimum wage have been falling farther and farther behind.

People can ask, why is this relevant to the bankruptcy bill? In fact, a third of all bankruptcies take place from people who have income below the poverty level.

What we see on this chart is the fact that the real minimum wage has fallen now to just about $10,000 a year for a family of three. It is about $5,000 below the poverty line. If you are able to get individuals up so they have more purchasing power, particularly against the background which has seen an explosion of health care premiums, housing costs—in my own State of Massachusetts, we have the second highest housing costs of any State in the country. The cost of the general standard of living has put enormous pressure on these individuals that are hard-working and are at the lower end of the economic ladder. So this has a direct relevancy to the bankruptcy bill—trying to raise individuals to a point where they are going to be able to meet their financial obligations; that is extremely important. We have seen, as I just mentioned, over the period of these past 5 years what has happened with health insurance, college tuition, housing, and gasoline.

Most of these minimum wage workers have no such thing as health insurance, few are able to save for college tuition, housing has gone up dramatically, and many of them are dependent upon driving in order to get to available jobs. So they have been enormously impacted by the increase in costs. We have seen that four million more Americans have gone into poverty over the last 4 years. As a result of the census, more than 1 million more children have gone into poverty over the last 4 years.

These statistics tell the story. What also tells the story is this chart, which shows that Americans' work hours have increased more than any other industrialized country in the world. This chart indicates, using a baseline, what has happened from 1970, the last 30 years, in terms of people working. We found out that Americans are working longer and harder than in most other industrial nations in the world. What we find is that they are working longer and harder and, look at the results of working long and hard. They are producing more but making less. The increase in terms of productivity has been anywhere from 25 to 30 percent American workers. Do you think that has been reflected in any increase in the minimum wage? Absolutely not. That is because Congress has been unwilling to increase the minimum wage. As a matter of fact, when I offered this legislation even on the welfare bill, which my friend and colleague from Pennsylvania says is where it belongs, the legislation was pulled last year, rather than having a debate and vote on an increase in the minimum wage.

I offered it on State Department reauthorization because the other side—the Republican leadership—would not give us an opportunity or a vehicle on which to consider this legislation, or by itself, so it was necessary to try to amend existing legislation. They said, oh, no, and they pulled that legislation. When I offered it last year on the class action bill, they pulled the class action bill because they did not want to vote on an increase in the minimum wage.

So we find that Americans are working harder; we find a dramatic increase in productivity; we see explosions in cost; we see the purchasing power of the minimum wage going down to its second lowest level; and we see that so many of these individuals who are below the line of poverty end up in bankruptcy.

This is just the background. There will be those who will say we cannot really afford to have an increase in the minimum wage because it is going to add a great deal to the problems of inflation. Right? Wrong.

First of all, this chart indicates exactly what the impact of the increase in the minimum wage is in our budget. All Americans combined earn $5.4 trillion a year. A minimum wage increase to $7.25 would be less than one-fifth of 1 percent of national payroll. Do we understand that? The payroll is $5.4 trillion a year and we are talking about less than one-fifth of 1 percent. This doesn't have an adverse impact on inflation in terms of this country. We have seen from the various studies, which we will refer to later, that neither does it have in terms of employment.

This is an issue, ultimately, about fairness. That is why this is so important. It is interesting that this Congress has not hesitated to vote itself a pay increase during this period of time, but not for the minimum wage earners. The height of hypocrisy will be this afternoon. The height of hypocrisy will be this afternoon when those individuals in the U.S. Senate say no to $7.25 an hour for hard-working Americans after they have accepted a $28,500 pay increase for themselves over the last 8 years.

Do you understand that? They have been willing to vote on a pay increase for themselves, and we will find out whether they are going to vote for hard-working Americans who are trying to make ends meet and provide for their families and their children.

It is as stark as that. That is what happened. This is where the minimum wage has been since the last increase in 1997. It has been flat over all these years—but not for the Members of Congress. You can understand why Members don't want to vote on increasing the minimum wage; it is because of that.

It is not very surprising to me because we had an increase under the first President Bush. We had an increase in the minimum wage under President Ford and one under President Eisenhower. We have had it in a bipartisan way throughout history. But absolutely not now. The Republican leadership in the House of Representatives and the Senate of the United States says, no way. This is the record of where we have seen it: Dwight Eisenhower, Jerry Ford, the first President Bush, Franklin Roosevelt, John Kennedy, Lyndon Johnson, Jimmy Carter, and Bill Clinton. It has been bipartisan over the period of history.

It is baffling to me why in the world we cannot get an increase now. What is the reason? What is the reason we hear so much about values? Don't we figure that working hard is a value in our society? Don't we think that rewarding work is a value in our society? We will find out this afternoon. We will find out this afternoon, at 5:30, whether our colleagues think that rewarding the men and women who work hard, not just on one minimum wage job but often two or three minimum wage jobs, is a value.

A principal, in surveys of children of these minimum wage workers, asked the children what their biggest complaints are. It is not that they are not able to get Christmas presents at Christmastime. It is not that they cannot afford to buy a birthday present for a fellow student's birthday. It is not that they cannot afford any skates to be able to join the other children skating. It is that they say they don't see their parents enough. They don't see their parents enough. There is not enough time with their parents. That is repeated time in and time out, again and again, as one of the primary concern of the children of minimum wage workers.

Here we are debating the bankruptcy bill that has been written by the credit card companies, which have $30 billion in profits this year and are looking to collect billions of dollars more as a result of this legislation. That is going to turn our bankruptcy courts into collecting agencies for the credit card industry. And we are going to say, oh, no, no, we cannot afford $7.25 for working men and women.

We can afford billions of dollars for the credit card companies—and I mean billions of dollars, probably the most profitable industry in this country—but we cannot afford to have an increase in the minimum wage. No, it adds to the payrolls of companies. It is going to be inflationary. Why are we setting a minimum wage? Let these people work harder.

At 5:30 p.m., we are going to have two votes. One is going to be to increase the minimum wage to $7.25 an hour in three steps: 70 cents 60 days after enactment, 70 cents a year later, and 70 cents a year after that. My friend from Pennsylvania has offered an alternative amendment, the Santorum amendment. For those who are giving some thought to the fact that maybe going to $7.25 is a little bit too much, maybe the Santorum amendment makes more sense. I hope they will listen to me now.

The Santorum amendment gives half of the increase to minimum wage workers with one hand and then—listen to me—takes away minimum wage, overtime, and equal pay rights from over 10 million workers with the other hand. It takes just one page of the

Santorum amendment—here is my amendment, Mr. President. It is three pages to raise the minimum wage to $7.25. Here is the Santorum amendment—85 pages. If he was only raising the minimum wage half of what I propose, he would be able to do it in three pages, too. That ought to say something to our colleagues.

What else is in the amendment? It is extraordinary. It takes one page, as I mentioned, to raise the minimum wage, and 84 pages are special interest giveaways that take rights away from workers.

The Senator from Pennsylvania has a record of opposing the increase in the minimum wage, and I understand that. That is his record. He has voted against it at least 17 times in the last 10 years, so today is really no different.

The Santorum amendment will increase the minimum wage by $1.10 cents an hour. It will benefit 1.8 million workers. Do we understand that—1.8 million workers. He goes up to $6.25. Ours goes to $7.25 and benefits 7.3 million directly and an additional 8 million more Americans; 3.4 million of those are parents with children. But Santorum benefits only 1.8 million. He is not just saying we will take $6.25 in place of $7.25; we only want that. Oh, no, he is only covering 1.8 million. That is enormously important.

So what does he do? The Santorum amendment makes more than 10 million workers no longer eligible for the minimum wage, no longer eligible for overtime pay, no longer eligible for equal pay rights by repealing the individual coverage under the Fair Labor Standards Act and raising the threshold to $1 million a year from $500,000. Those workers who work in the small stores that are involved in interstate commerce who are covered under minimum wage, not under Santorum, are excluded. If there is a State minimum wage, they are covered. We have a number of States that do not have any minimum wage whatsoever. Then he raises the level from $500,000 to $1 million as a threshold for the coverage.

This is what he does: By eliminating the individual Fair Labor Standards Act coverage and raising the business exemption to $1 million, the Republican proposal jeopardizes worker protections for over 10 million workers. Those workers will lose minimum wage, overtime, and equal pay protections.

What do I mean by they lose overtime? This is what the Santorum amendment does. Under current law, if the employer wants to work out flexible time with their employees, they can do it as long as it is done within the 40-hour workweek. That is all legitimate and fair. But under the current law, if an employer wants to work a worker 50 hours this week and 30 hours the next, they have 10 hours of overtime. Under the Santorum amendment, they can work 50 hours one week and 30 hours the next and no overtime. This affects millions of workers who are going to find out they are going to get a real pay cut. That is what is in the Santorum amendment.

The Santorum amendment also prohibits States from providing stronger wage protections than the Federal Government for waiters, waitresses, and other employees who rely heavily on their tips for earnings. Do we understand that, Mr. President? The Santorum amendment puts the long Federal arm right at the throats of the States and tells them there is no way they can provide the extra reimbursement to these workers.

In the State of Pennsylvania, employers are required to pay their tipped employees $2.83 an hour. Yet this amendment would deny the hard-working waiters and waitresses the 70 cents an hour employee-provided wages. That is not true in every State, but Pennsylvania made that decision. And here on the floor of the Senate is an amendment to deny the people of Pennsylvania from carrying forward their judgment.

Mr. President, 22-year-old Julie Phillips in Johnstown, PA, is working two part-time jobs—one at minimum wage making $5.15 an hour and another as a waitress at a Chinese restaurant. This amendment would deny Julie 70 cents an hour in wages from her minimum wage job. She would have to rely on unpredictable tips from her second job instead.

The amendment also gives a free pass to violators of a broad range of consumer, environmental, and labor protections by prohibiting the Federal agencies from assessing civil fines for first-time reported violations. It also preempts the ability of States to enforce these laws. The States are enforcing these laws, but under the Santorum amendment, they will be denied the opportunity to enforce those laws. Those laws are there to protect the workers, but he preempts the ability of States to enforce these laws.

Once again, we are on the Senate floor with legislation written by special interests which will help them the most. The bankruptcy bill was written by the credit card companies, the class action bill was written by corporations, deceiving and overcharging their customers, and now we have the minimum wage bill written by the restaurant industry and retailers looking for a way to fatten their bottom lines. If the Republicans were truly interested in raising the minimum wage, they would not have loaded their proposal with these antiworker poison pills that are special interest giveaways. It is hard to believe our Republican colleagues are serious about this thinly veiled attack on low-income workers.

There are many ways to help small businesses without denying rights to millions of minimum wage workers. We worked together in the past to provide reasonable small business tax relief, along with the minimum wage. I would be willing to do that again. Three times in the last Congress, the Republican leadership brought down a bill rather than let us vote on it. So their actions speak louder than words.

A week ago, our Republican friends were touting their so-called anti-poverty agenda. But as we see with their agenda, what they really are doing is creating a deeper poverty agenda. If they are truly serious about helping hard-working families rise above the poverty line, they will support our amendment to give a fair raise to America's low-income workers.

It is shameful that in America today, the richest, most powerful Nation on Earth, nearly one-fifth of all children go to bed hungry because their parents are working full time at the minimum wage and still cannot make ends meet. That is a key part of any real anti-poverty agenda: ending childhood poverty. But the Republican proposal will actually plunge even more children into poverty.

Mr. President, 3.4 million children have parents who would get an immediate raise under our proposal. Hundreds of thousands of those children will be left behind by the Santorum amendment. The poison pills in the Santorum amendment will be particularly harsh for children. Think about the single mother with two children working as a waitress in Minnesota. Under the Santorum amendment, she will lose her guaranteed right to the minimum wage, leaving her paycheck smaller and her children less secure. Think about a garment worker working 80 hours a week to provide for her family. Her husband, a janitor, relies on overtime as well to pay for food, rent, and clothes for their children. They will lose their overtime coverage under this amendment, and both parents will take a pay cut. Some anti-poverty agenda.

According to the Families and Work Institute, among the most important aspects children would most like to change about their working parents are these: They wish their parents were less stressed out by their work; they wish they were less exhausted by their work; and they wish they could spend more time with them. But this amendment will deny overtime for more than 10 million workers, leaving them less time to spend with their children.

What is more, this amendment would tie the hands of Federal and State agencies trying to enforce the Federal laws that protect families, children, and communities. It weakens the gun safety protections under the Brady Act, which could lead to an increase in weapons sales to criminals, jeopardizing our neighbors and children's safety. It weakens environmental laws that require companies to disclose their toxic emissions. It weakens reporting requirements under the Clean Water Act and Safe Drinking Water Act. It undermines consumer protection laws that require companies to report on the safety of their food. These provisions put all Americans, especially

children, at risk of increased exposure to pollution, toxic substances, and serious illness from unsafe foods.

We teach our children the importance of hard work. We encourage them to do their best in school and be good citizens. We tell them their reward will be good jobs that fulfill their hopes and dreams and enable them to support healthy families. That is what America is about. But for the 36 million Americans who live and work in poverty today, that dream is unfulfilled. They work as hard as any American—often harder—but too often they are forced into bankruptcy because the minimum wage will not cover their bills and give their families the support they need.

We can no longer turn our back on our fellow citizens, but that is exactly what is happening in the Senate. Raising the minimum wage is critical to preventing the economic free-fall that often leads to bankruptcy. Amending the bankruptcy bill to increase the minimum wage will help many of the people this so-called reform is likely to hurt: low-income families, minorities, and women.

As I mentioned, nearly a third of those who file for bankruptcy are in poverty at the time they file. That is half a million families who are already living below the poverty line and will be plunged into further hardship with this bankruptcy bill, and many of them are minimum wage earners.

In the current economy, millions of Americans are suffering: 8 million are unemployed, 45 million are without health insurance, and 13 million children live in poverty. Poverty has doubled for full-time, full-year workers since the 1970s. Minimum wage employees work 40 hours a week, 52 weeks a year, and they deserve to be fairly paid.

Low-income families are being squeezed in every direction by the economy, and families are just barely balancing on a cliff of piling bills, hoping they will not topple over. Their costs are rising but not their wages.

To make matters worse, the credit card companies prey on low-income workers. They know these workers are desperate. They offer loans at exorbitant interest rates that are made to seem cheaper than they are by three of the most deceptive words in the English language: minimum monthly payment.

While workers struggle, credit card companies reap skyrocketing profits from their hardships. This is not only an economic issue, it is a family issue and women's issue. Divorced women are 300 percent more likely than single or married women to find themselves in bankruptcy court, often because they are owed child support or alimony and cannot collect it. They are trying to raise their children but they face a daunting challenge. This bill will make it harder for them to meet that challenge.

Sixty-one percent of those who will benefit from the minimum wage increase are women and one-third of those women are mothers. The minimum wage is so low today that many workers have to work several minimum wage jobs in order to make ends meet.

Look what our program will do: Raise the minimum wage to $7.25. That is $4,400 to a minimum wage family. That is 2 years of child care. That is full tuition for a community college. That is a year and a half of heat and electricity. It is more than a year of groceries. It is more than 9 months of rent. That may not sound like a lot for people around here, but that means a great deal to the people who can benefit from this.

History clearly shows that raising the minimum wage does not have a negative effect on jobs, employment, or inflation. In the first 4 years after the last minimum wage increase, the economy had its strongest growth in three decades. More than 11 million new jobs were added at a rate of 200,000 a month. Compare that to the 530,000 private sector jobs lost since this administration took office.

Minimum wage will not cause more job losses, but staying the course on failed economic policies will. Overwhelming numbers of our fellow citizens in Nevada and Florida showed the way last November by voting for a higher minimum wage in their States. It is time for the Republican Party to stop obstructing a fair increase in the minimum wage for all employees across the Nation, and I hope that our Members would support this.

I ask unanimous consent that Senators LIEBERMAN, DURBIN, SARBANES, and HARKIN be added as cosponsors to the amendment.

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

The Senator from New Hampshire.

Mr. SUNUNU. Mr. President, I rise to oppose the Kennedy amendment. I appreciate very much the Senator's remarks and his commitment and passion on this issue, but I did want to make a couple of brief points before Senator SANTORUM, who is offering an alternative, has a chance to talk about the provisions of his amendment.

While I appreciate the belief of the Senator from Massachusetts, I do think it is important to take a step back and allow this debate to include a sense of what the deeply held concerns are about raising the minimum wage, because it is not all a single-sided story. I do not support the Kennedy amendment because I do not support raising the minimum wage, and the reason is as follows: When the minimum wage is raised, workers are priced out of the market. That is the economic reality that seems to be missing, at least so far, from this discussion.

When the minimum wage is raised, some workers are priced out of the labor market, and we could have a discussion about how many are priced out of the market, what mechanisms we might have to deal with that fact, but it is an economic fact and the proponents of raising the minimum wage like to dismiss this by saying, well, we have a hard time measuring it, or the economy is large, or we have not been able to measure significant increases in inflation as a result of increasing the minimum wage.

I am not talking about inflation necessarily or economic growth. I am talking about the workers themselves who are priced out of the market, and if one does not believe that or they want to dismiss the economics, think about this: If there was not an economic impact, why are we not debating raising the minimum wage to $20 an hour?

Well, the answer is obvious. Because if the minimum wage were raised to $20 an hour, even the proponents of the Kennedy amendment would have to admit it would be cost prohibitive. Thousands, if not millions, of people would be priced out of the market. The number of jobs would shrink. Certainly the number of entry level jobs would be reduced.

Oh, but they say, we are not proposing raising the minimum wage to $20 an hour because we know that is not a good idea. Well, then why are they not proposing to raise it to $10 an hour? Because at $10 an hour they would still have to admit the negative economic effects on prices and on the total number of jobs, especially those at the entry level that would be priced out of the market. So instead they seek a lower level where the negative consequences are much more difficult to measure but they still exist, because it is an economic fact of life that when the minimum wage is raised, people are being priced out of the markets.

The same economic fact is true for $8, $7, or $6 an hour. People are being priced out of the market. I think this is most disturbing because those priced out of the market are the very ones who most need the opportunity. They are entry level workers. They are first-time job seekers. They are people making the transition from welfare to work and they are teenagers experiencing their first time in the labor force. They are the ones who most need that job opportunity to build a foundation to develop the experience that will enable them to earn even more money in the future.

If one does not believe that, they can go to any small business and ask them if they are hiring in at minimum wage—and there are very few firms that do hire in at minimum wage, but if they do, how long those employees actually earn at the minimum wage level. It is not long because once a person has shown 3, 4 or 6 months of ability in a role with an employer, their value has been proven and they are very quickly going to move above whatever the entry level threshold was.

Those who are going to be priced out of the labor market by an increase in the minimum wage are those who most

need that first job opportunity, and that is why I strongly disagree with the Senator from Massachusetts and his amendment. The impact may be small, and our economy is $11 trillion. It may only be 10 jobs that are affected or 20,000 or 30,000 who never get that first job opportunity at a job. Unfortunately, it is very difficult to measure 10,000, 20,000, or 30,000 jobs in an economy the size of America's, but it is there. The economic consequences are real. Again, if one does not believe it, if they believe there are no economic consequences, then they should be willing to step down to the Senate floor and offer an amendment to raise the minimum wage to $20 or $30. Or why even stop there?

One final point I do want to make is in regard to a phrase that was used by the Senator from Massachusetts. It was a question or a phrase about rewarding work. The question was whether we were willing to stand up in the Congress or, I suppose, the Senate in particular, and reward work by supporting an increase in the minimum wage.

I have a concern about this phrase because it suggests that as Federal legislators it is our job to reward work. That may sound nice, but it suggests that it is our job to set prices, that it is our job to set wages, that it is our job to decide whether the work any citizen is doing in the economy, in the private sector, is worth a particular amount of money, whose work is worth more than someone else's and what kind of rewards does the Federal Government give the taxpayer for doing their job. That is not the role of the Federal Government. We should not be deciding who gets rewarded for work, whose work is of value and whose work is not of value.

In fact, there are few countries left on Earth where the central government has the responsibility of rewarding work in and of itself, and those are countries such as Cuba and North Korea that decide only the federal government should be able to determine what one earns or does not earn, how much one can charge and or not charge for a given good. Our job is to pass good legislation that creates an economic environment where people have incentives to commit capital to start businesses to create economic opportunity and to create jobs and a good quality of life.

It sounds nice to say we should reward work in the Senate, but the only way to do that in passing Federal legislation is to start and to try to set wages, to try to set prices, and to try to control the levers of the economy. We have seen where that slippery slope can be taken. We do not have to look farther than the former Soviet Union and the former eastern European countries that have rejected that kind of centralized state economy.

I appreciate the passion and the commitment of those on the other side. I think they are wrong on the economics because the economics hurt the very individuals who most need these entry level, first-time job opportunities. They are certainly wrong with the idea that setting prices for labor, setting prices for goods and deciding whose work has value and whose work does not have value should start in Washington, D.C. That is not the way our market economy works.

I yield the floor.

The PRESIDING OFFICER. The Senator from Pennsylvania.

Mr. SANTORUM. Mr. President, I rise to offer an alternative to the Kennedy amendment on minimum wage. I listened in part to my colleague from Massachusetts describe that. Obviously I have a slightly different take on what my amendment does than the Senator from Massachusetts suggests, and I will go through that point by point and point out where the Senator from Massachusetts may have exaggerated some of the claims about what destruction this amendment would do to workers in my State or any State.

I start out by suggesting why I am offering an increase in the minimum wage. On this first chart it is important to see this green line which is the percentage of hourly workers who are paid the minimum wage. Since the minimum wage was instituted—actually not since it was instituted but in the last 25 years we can see that the percentage of workers now covered by the minimum wage is actually the lowest it has been in quite some time. It is 2.7 percent of hourly paid workers who now get paid the minimum wage. When one looks at that number, it sort of cries out a bit and says it is time to bring it back up to be not the absolute bottom where no one is paying that and there is effectively no minimum wage—very few people are paid it—to a point which sort of comports with at least recent history. That is what we are trying to accomplish with our amendment, which is to bring it back up to about here.

Our $1.10 increase over a period of 2 years would cover about 7.4 percent of all workers, which is actually slightly higher than it has been over the last 15 years and is a little above historic trends. Senator KENNEDY's increase would actually put it to about almost 17 percent of workers in the economy who would be making minimum wage, which at least going back to the 1970s would be much higher than it has ever been as a percentage of wages.

So I think what we are suggesting is something that comports with the current economy, certainly the way the economy has worked over the last 20-plus years, as opposed to something that harkens back to long ago days where this was not just a minimum, it actually had, as Senator SUNUNU suggested, a dramatic impact on the economy and a potentially very inflationary impact if one looks at where the wages were of this percentage of payroll and we have hyperinflation. You remember the 20-percent mortgages and all the other things that were going on during the time. That set the wages at a very high level. So look at how we are providing a responsible floor for workers without having, as Senator SUNUNU suggested, an impact on the economy, which could be inflationary and damaging to all workers, as well as, particularly, lower wage workers, looking at high rates of inflation, as well as making sure we do not disadvantage businesses by pricing them out of the ability to have workers, and also pricing laborers out of the marketplace.

When you have extraordinarily high rates, as Senator SUNUNU suggested, $20-an-hour, $30-an-hour minimum wage, you are going to be pricing a lot of people out of the workforce.

I think what we are suggesting is a responsible approach. It keeps up with the tradition over the past few years of a responsible floor for a minimum wage. I am very comfortable that our proposal keeps the balance between the ability of lower skill employees to enter the workforce at a wage in which they are compensated for the skills they bring to the job, and at the same time not forcing employers—because, again, see, we are pretty far down on the number of people working at this level—not forcing employers to forego employment with people in that slightly increased amount we are suggesting. So it is not going to hurt employment, it is not going to hurt their businesses dramatically, and to the extent it does, as Senator KENNEDY, at least, described the provisions—I don't know that he accurately described the provisions—we do have provisions in the legislation that deal with the smaller businesses.

It is a general rule in the Federal Government that we have lots of requirements—family and medical leave is one example, but there are others, labor laws—that exempt small businesses. We either do it by the number of employees or, in the case of the Fair Labor Standards Act, by the amount of revenue that employer happens to take in.

In this case, we do raise the cap from $500,000 of revenue for your business as being exempt from this provision to $1.2 million. That provision was set, by the way, back in 1990. If you would have indexed that for inflation, it would be $1.5 million today. So we are not even keeping up with inflation. We are actually well below inflation in the proposal that is being put forward, but we are capturing more small businesses that are not affected.

This just affects the States that sort of tie their minimum wage laws to the Federal laws. If you have a State that has no minimum wage—I think there are six or seven of those—they would stay at the $500,000 level. We left that provision in place, in a sense to protect workers because the States have not spoken on this. But for States that are tied to the Federal level, we raised it. Obviously, if the States want to go back, they are certainly welcome to do

so. But it does provide an exemption for smaller businesses—those that are mom-and-pop stores, those who are just starting to build their business—from the Fair Labor Standards Act.

It is important to understand. There are other things I will go through, but before I move off into the other areas of the bill I want to talk about how important it is not to dramatically increase the minimum wage the way Senator KENNEDY has suggested.

What we have seen about overtime is that this is where we are today with the real value, if you add in a combination of the minimum wage and the earned-income tax credit. Why do we say the earned-income tax credit? You heard the Senator from Massachusetts talk about trying to support a family, trying to make a living. I am sure he is not going to go out and try to argue for the teenage son of a wealthy businessman, that we have to make sure they earn a minimum wage because that wealthy businessman's son needs the money. He may need it in his own right, but that is not the purpose of the minimum wage. That is not what it is for.

The argument for the minimum wage is we have to make sure those out there in society whom the Senator from Massachusetts talked about—the young lady in Johnstown, PA, making sure she had coverage. By the way, the provision we authored that Senator KENNEDY said applied to her with the tip credit doesn't apply to the State of Pennsylvania. It is written specifically to exclude States that have spoken on the tip credit. It is only those that have not that this covered. So the young woman in Johnstown, PA, is not covered by the provision. So the example given by the Senator is inaccurate.

But, again, going back to the central point, which is what are we trying to accomplish with the minimum wage, what we are trying to accomplish is helping those people trying to support a family or themselves out there working at low-wage jobs, welfare-to-work—that is the example that is used. I am someone, in my office, who takes that responsibility of making sure those who are on welfare have opportunities for employment and, in fact, in my office we have hired, over the course of my time in the Senate, eight people off of welfare-to-work. I take that responsibility as an employer, and also going out and talking to employers about the importance of giving people who are transitioned off of welfare, trying to make a living for themselves and their families, the opportunity to do so.

One of the ways we have done that is through the earned-income tax credit. What the earned-income tax credit does is target those who are trying to sustain a family. It helps them by building, on top of the minimum wage, some Federal support. But it is targeted support. That earned-income tax credit doesn't go to the teenager who is claimed on his father's income taxes who is a wealthy businessman. It goes to the mom who has two kids, who needs some help from the Federal Government to be able to support those children.

This is much more targeted relief, if you will, than the blunt instrument of a minimum wage increase.

Having said that, in this chart you see a decline—go all the way back to 1939. You see the earned-income tax credit comes in and you see the difference it makes up here recently. We are suggesting to bring it back up by $1.10. If you add $1.10 to $7.22, you are at $8.32, which would be higher than it has ever been with the combination of earned-income tax credit and minimum wage.

So, again, to suggest somehow or another, as the Senator from Massachusetts suggested, that his increase that would bring it off the chart, if you will, is a responsible increase—it is a blunt instrument that would benefit teenage kids of millionaires much more than it would benefit these moms here. Why? Because as you get into the higher income area, the earned-income tax credit goes away, it starts to phase out. So this blunt instrument of the minimum wage helps folks who are not the point of what a minimum wage is all about. When people come out here and say they need the minimum wage, they don't talk about the son of the wealthy businessman as the point. They talk about this mom. Increasing the minimum wage, yes, helps everyone—if you want to say ''helps.'' Obviously, it will hurt many because they will not be able to keep their job at this high rate of pay, for the maybe low skills that the employee may bring to the business.

But here is what we do. What we do is balance it. We raise it slightly to bring the level up to at least this level, which is where it was several years ago when we last raised the minimum wage, without affecting employers and the ability for low-skill workers to get the jobs they need and to hold on to them and not to disproportionately benefit a lot of workers out there making minimum wage who are not the point of the minimum wage, and that is folks who are doing so sort of as a side line and are not in need of Government interference in the market to make sure that they have plenty to eat and a place to sleep.

It is a much more surgical attempt. I think what we are attempting makes a lot more sense, to help those in need more directly, more surgically, than the blunt instrument the Senator from Massachusetts has suggested. I encourage our colleagues, when they look at our amendment, I encourage Republican and Democrat colleagues to look at what we want to accomplish.

Let me talk about another provision the Senator from Massachusetts seemed to focus on quite a bit, which is the issue of flextime. The Senator from Massachusetts talked about how flextime in this legislation is going to force workers into working more than 40 hours a week and deny them all of these—I will not repeat it. Read the transcript. Read the Senator's arguments about how devastating this would be to people, to have flextime imposed upon them.

No. 1, this provision as written does not impose anything. What it says is that the employer and the employee have to enter into a written agreement, where both have to sign, to agree that the employee will work more hours in 1 week—no more than 10 in addition to the 40 hours, in exchange for commensurate hours off the following week. Again, it is mutual agreement. It has to be in writing. Of course, the employee can decide to withdraw himself or herself from that agreement.

I happen to believe that flextime is a good thing. We have several employees in my office who job share, who use flextime. Federal employees have been able to use flextime for a long time. It is something that is very popular in the Federal workforce. What we are trying to do is make it available to others outside. Why? I can tell you an example in my own office. The people who job share and have flexible hours are moms who are in the workplace. Obviously, we have seen a dramatic change in the workplace in the United States since the minimum wage laws and the 40-hour workweek was put in place. This entry into the workforce of nontraditional workers, if you will, has given rise to a lot of workers seeking to have their hours reflected with their obligations at home. What we are trying to do is have the laws of the Federal Government reflect the changing dynamics in the workplace without forcing anybody into a situation where they are not getting fairly compensated.

But as I talked to I don't know how many parents who are friends and neighbors and constituents, they suggested to me the most important thing they would like to get out of the workplace is more flexibility and more time to be able to do the things that their other job—most people think their more important job, and that is being a husband or a wife or a father or a mother—requires them to do at home.

The most amazing thing is the Senator from Massachusetts opposes this. I know many who are supporters of the Kennedy amendment and oppose this, also. We just went on to the AFL–CIO Web site and just pulled off some things. This is their Web site. You can read the small print, the exact Web page:

> Alternative work schedules encompass work hours that do not often necessarily fall inside the perimeters of the traditional and often rigid 8-hour workday or 40 hour work week. Such schedules allow working people to earn a paycheck while having the flexibility to take care of children, older relatives and other needs.

The AFL–CIO says they want that, and we are providing that. And all of a sudden, maybe because we are providing it, maybe because it is in a Republican alternative, maybe this is not

a good idea. Again, this is right off the AFL–CIO Web site:

Changes in the workforce and in the kinds of hours people work are making alternative work schedules increasingly important for working families trying to balance job and family responsibilities.

Suggested family friendly provisions: Compressed work week.

Common examples of things asked are schedules that allow workers to work eight 9-hour days and one 8-hour day for an extra day off every 2 weeks.

Under the provisions we have in this law, that is exactly what we have, allowing a mother or father who wants to stay at home instead of working 10 8-hour days a week, work 9 10-hour days. Work extra hours the days that you work for the day off. Again, that is not allowed under the current law. We would have provided that flexibility. Again, it would be upon a mutual agreement of both the employee and the employer.

Look, there are some suggestions as to how we can make this more explicit, although from everything I read it is very explicit in the legislation as to how that would work. I am certainly happy to sit down and talk with the Senator from Massachusetts and see what we can work out in the future.

What we do in these provisions—yes, we do provide some tax benefits for smaller businesses. We allow for small business expensing. We allow for restaurants to be depreciated. Again, who is going to be affected by this predominantly? It is going to be the restaurant industry that pays employees at this level, and the travel and tourism industry. Those are the folks who will be most affected. Those are the ones paid at the lower end of the wage scale. So, yes, we do provide some support for them because it is going to cost some of these businesses a substantial amount of money.

We want to provide some relief from a Government mandate, mandating additional cost. So we want to provide additional relief in doing so.

What I think we are trying to do is find an acceptable compromise to be able to pass in the Senate.

I candidly don't believe—and I told the Senator from Massachusetts when I spoke to him last week—this is the appropriate place for his amendment. I understand there are a lot of dynamics at play here. But the Senator from Massachusetts feels compelled to offer it on the bankruptcy bill. I don't think there is any secret, after listening to the debate over the past week, that we very much would like to keep this bill on the Senate floor the way it came out of committee and the way it has been forged over a period of three Congresses. This compromise has almost passed this year, and time and time again for the last three Congresses. Now we have an opportunity to actually get this thing signed—passed by the House in the form it is right now on the floor of the Senate, and then to the President.

I was hoping the Senator from Massachusetts would not offer his amendment and would allow this amendment to the minimum wage laws to be offered at a different time. I think we are marking up the welfare reform bill this week. It is an extension of the 1997 act. It is an appropriate place, in my opinion. We are talking about welfare-to-work, and we are talking about helping low-income individuals transition into the workplace and providing them with a quality of life that is family sustaining. I was hoping the Senator from Massachusetts would wait until that time, and maybe we could sit down and work out some sort of compromise that the President would sign. During the campaign, he talked about his willingness to sign a minimum wage proposal similar to what I put forward. I don't think he would support what the Senator from Massachusetts proposed.

If you want to actually do something to bring this level up, and do it in a sort of targeted way that actually helps the people you are really wanting to help focus on—that is, those who are trying to provide for themselves and their families, not working summer jobs or part-time jobs or going to school; that is really what we are focusing on—we can do that in a way that I would argue does not have a poison pill attached to it.

I take great exception to what the Senator from Massachusetts said. These are not poison pills. These are responsible, proworker, pro-small-business provisions that greatly help the people in this new and dynamic workplace of America. It is a very different one than when the 40-hour week was established.

The Senator wants to offer his amendment and lock in a vote. But I hope, candidly, that we don't agree to either amendment at this time, although I would certainly vote for my amendment and vote against the amendment offered by the Senator from Massachusetts.

But I am hopeful that we can get the requisite number of votes down the road on a welfare bill, actually pass this legislation, and get it over to the House. House leadership has not expressed a willingness to bring this up.

Again, as we work on this, we have an opportunity to get it to conference and hopefully be able to do something which provides much more targeted relief to workers who are in need, as opposed to Senator KENNEDY's approach which is very blunt, forceful, and destructive, I would argue, and brings a measure of damage to a lot of lower skilled, lower income workers. And it would be very damaging to business at the same time in that the economy is recovering very nicely right now.

This is a modest approach. It has half the increase the Senator from Massachusetts is suggesting. It focuses on those who are most in need. At the same time, it doesn't hurt the small business community. In fact, it provides a much needed incentive for them to be able to continue to hire employees and grow, which is obviously the ticket to middle-class America.

There are other provisions in the bill that I certainly want to talk about a little later. But we have other speakers. I don't want to use up all the time.

With that, let me yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I will take a moment or two to respond to my good friend from New Hampshire and then also to the Senator from Pennsylvania with regard to the points they have made.

First of all, I will respond to the Senator from New Hampshire about the question of whether the increase in minimum wage is really good for low-income working people and whether this isn't going to create more problems for working people because of the increase in the minimum wage.

He mentioned, if this was such good medicine—$7.25—why aren't we going for $20 or $25? The obvious simple answer for that is we are talking about a minimum wage, we are not talking about a maximum wage.

I haven't even gotten into discussing what has been happening at the upper end of the economic ladder and the stories over the weekend that showed the bonuses are going to the wealthiest individuals in the corporate world. They have increased astronomically in a period of the last few years.

Since the midthirties, we have had a minimum wage because we believed as a matter of social justice men and women who are going to work in this country and have families should at least have some minimum standard, some minimum safety net; that this society is not the society of survival of the fittest, but it is also a ''we'' society, not just a ''me'' society.

There has been a recognition of the importance of the minimum wage.

I will include in the RECORD the support for the increase of the minimum wage.

Mr. President, 552 economists agree, including a number of Nobel laureates. This is a summation of what they say.

We believe that a modest increase in the minimum wage would improve the well being of low-wage workers and would not have the adverse effect that critics have claimed. In particular, we share the view of the Council of Economic Advisers' economic report, that the weight of evidence suggests that the modest increase in the minimum wage has had very little or no effect on employment.

That is what an outstanding group of economists have said. Let us not just take what they have said, let us take a look at the facts in terms of employment and job growth.

If you look over at this chart, you will find the increase in the minimum wage in October of 1996. We had an increase in the minimum wage. In October of 1997, it went up again. The minimum wage increased to $4.75 in 1996, and then it went up to $5.15 an hour.

This red line is an indication of the job growth during this period of time.

I don't accept the arguments that my good friend from New Hampshire has made—that this is going to mean the loss of jobs. It just has not been so.

If you look at the historic lows of unemployment after the minimum wage, if you look again in 1996, the minimum wage went to $4.75, and unemployment went up. It picked up a tenth of a point, but then it started down.

The minimum wage goes up to $5.15, and what happened? It continues to go down.

Here is the last time that we have the increase in the minimum wage, and we see it had absolutely no impact—none, zero—in terms of unemployment, as we reported, for good reason, because it is less than one-fifth of 1 percent of total payroll. So it has no impact in terms of unemployment, and it has virtually no impact in terms of inflation. But it does have an important impact in terms of social justice.

This chart is interesting. It indicates that the States with the higher minium wage add more jobs. These are the 39 States with the minimum wage at $5.15. Their employment growth has been 4.1 percent, and some have been somewhat higher at 6.2 percent.

We have debated this time in and time out. The most inclusive studies were the Card-Krueger studies and the conclusions they have made. They are from Princeton, NJ.

Contrary to the central prediction of the textbook model of the minimum wage, but consistent with a number of recent studies based on a cross-sectional time series comparison of affected and under-affected communities of unaffected markets or employees, we find no evidence that the rise in New Jersey's minimum wage reduced employment.

This is pretty well established. It has a dramatic impact in other areas.

I listened with interest to the Senator from Pennsylvania talking about the increase in the minimum wage. Better than 60 percent of the increase in the minimum wage goes for the lowest 40 percent on the economic ladder.

Let us look at what has been happening in our country in the recent times since the last increase in the minimum wage.

This is in the area of hunger. We have the survey of hunger and homelessness by the Conference of Mayors. This is December 2004. This is in their summary:

Officials in the survey estimate that during the past year, requests for emergency food assistance increased by an average of 14 percent, with 96 percent of the cities registering an increase; requests for food assistance by families with children increased by an average of 13 percent; 56 percent of the people requesting emergency food were members of families, children and parents; 34 percent of adults requesting food assistance were employed.

These are people who just can't make it with the $5.15 increase in the minimum wage.

Then I heard about flextime. We are all for flextime. The argument is very simple on the issue of flextime. Our Republican friends want flextime when the employer can decide it. They have flextime now under current minimum wage. They can work that out with regard to flextime, up to 40 hours. Then, if it is going to be more than 40 hours, they have the overtime. But they negotiated that out. That is permitted today under the law.

But that isn't what the Senator's amendment would say. If the employer wants that individual to work 50 hours 1 week, and 30 hours the next week, the employer can make up their mind.

Why is it always the individual employer who makes it up?

It was nice to hear my friend from Pennsylvania say they work it out over in their office, and sometimes they work longer hours.

I would say, by and large, they work it out—the employees work it out.

I doubt very much for many of us in the Senate, if we just told our people what they were going to have to do, if they did not do it in the sense of expectation and teamwork, I don't think we are going to be very much value to many of our constituents.

The fact is, under the Santorum amendment one person makes that decision on flextime, and that is the employer. If the employee says, Look, I have a child who is in a play that I would like to go to, and the employer says, No, you can't go—you don't go.

We tried for many years. I mentioned before the Senator arrived on the floor of the Senate, I think he has been against any increase in the minimum wage 17 times. It is a little difficult to get much encouragement.

I think the Murray amendment asked that an employee would be able to take 24 hours off with sufficient notice because of a child with medical appointments, or because a child might be in a play, or a child might have some special event. I was here many times when the Senator from the State of Washington offered that amendment. It was voted down every single time. The only way we get flextime is when the employer does it. That is not fair. That is not right. He is correct. That is what this bill does. And he will permit the employer to make that judgment.

I want to make another point or two about the U.S. Conference of Mayors study.

Seventeen percent of the homeless people in cities, according to the Conference of Mayors, are employed. Ten percent are veterans.

The demand for emergency shelter is increasing. Seventy percent of the cities are reporting an increase in the last year, and the percentage of cities reporting an increase with homeless families with children is even greater.

This is what is happening. It isn't just the Senator from Massachusetts. This is the Conference of Mayors telling about what is happening in urban and rural America. It is also about growth.

This is the general challenge. We have too many Americans who are now living in poverty.

One in every 10 families, up to 44 million Americans, live poverty—one out of every six children; one out of every five Hispanics; one out of every four Americans. The greatest impact of raising the minimum wage is going to be lifting up Hispanics and African American workers. That is what the statistics demonstrate.

I don't know why we have the imperative of constantly saying no, that we are just not going to help people who are working and want to work.

An interesting point—not a major one—is that when we raise the minimum wage, it not only affects the 15 million lowest income people; some of those people then will not be eligible for some of the other programs. So it saves the taxpayer some money. We move them out and work with the earned-income tax credit. We have the earned-income tax credit that works with families who have children. If there is an increase in the earned-income tax credit, if you have two or three children, that is the way to go. For a single worker, if we are talking about a single mom with one or two children, an increase of the minimum wage is the way to go.

As a society, if you are interested in trying to do something about poverty and working families, you are trying to do something about both of those.

My friend from Iowa is here and I want to mention to him, because he has been a leader in the Senate regarding overtime compensation, under the Santorum amendment, this will take away the overtime rights that exist for minimum wage workers because it excludes 10 million workers from the Fair Labor Standards Act—6 million last year—and it will result in millions losing their overtime coverage.

The second point I mention to my friend from Iowa, in this legislation there is a prohibition for States to enforce their tax credit provisions. We have the tip credit for $2.12 or $2.13, and that is the Federal credit. Under the Santorum amendment, we are taking away any kind of enforcement of that, not just by the Federal Government but the State government.

I brought this up earlier because I want to remind the Senator from Iowa the amendment on the increase in the minimum wage happens to be 3 pages long; his is 85 pages. That includes not only the tip credit, not only eliminating from coverage those workers who work even in companies that are capitalized at $500,000, if they are in interstate commerce—That has been part of the minimum wage since the 1930s—but the Senator from Pennsylvania wants to take out that kind of coverage. Hundreds of thousands of workers will lose their coverage.

I don't understand why he is targeting those individuals. Quite frankly, the most incredible provision in this amendment is to eliminate any kind of enforcement.

The Senator might have difficulty in following all of the points I am raising

on the amendment, but on page 14 of the Santorum amendment it sounds very appealing. Small Business Paperwork Reduction; skip over to page 16 and we find out on the bottom of that, line 22, what it is about.

Notwithstanding any other provision, no State may impose a civil penalty on a small business concern.

And it applies that to every kind of unsafe work conditions, including air pollution, toxic substances, unsafe food. What in the world are we thinking of? Why would we include those? What is the reason we are doing that?

I don't understand it. I can understand the Senator from Pennsylvania saying he wants a lower increase in the minimum wage, but then to have provisions in his amendment which are so punitive to millions of workers—not just on the overtime but in terms of protecting those workers that get the tip credit of $2.12 and then depend on tips for the rest of it, and to say, no, we are not going to enforce the $2.12.

Mr. SANTORUM. Will the Senator yield?

Mr. KENNEDY. Briefly.

Mr. SANTORUM. Mr. President, I point out to the Senator page 20 of my amendment discusses the tip credit. It specifically refers to only States that are covered by this provision as States that do not have a tip credit. I believe it is seven States that are the only States covered by this provision.

So I don't know where you get ''millions'' of workers.

Mr. KENNEDY. If you read from page 21, the top line from 2 down to line 16, it effectively states: ''may not establish or enforce any laws that require employers to tip credit employee.''

Mr. SANTORUM. I refer the Senator to line 20 through line 25. If the Senator would read that, he will find that any State which prohibits any portion of employee tips from being considered as wages, so that is the operative language that limits this provision—just in the States that do not allow a tip credit.

Mr. KENNEDY. The Senator understands that every State has to have the tip credit at the present time. They have to have the $2.12.

Mr. SANTORUM. My understanding is that is not the case and there are seven States that do not.

Mr. KENNEDY. Under Federal law at the present time, every State has to have a minimum of $2.13 and then the States can add on top of that. Many of the States do. The State of Pennsylvania has added, I believe, 60 or 70 cents on top of that.

So when you talk about not permitting any States to enforce the tip credit, you are talking all the States. That is the way we read it.

Mr. SANTORUM. I say to the Senator from Massachusetts—

Mr. KENNEDY. If the Senator can clarify that language, we would be glad to work with him.

I see my friend and colleague. We have pointed out the fact that we have not increased the minimum wage now in 8 years. It is at the second lowest purchasing level in nearly 60 years. A third of all those that go into bankruptcy are those below the poverty line. This has a direct relevancy to the underlying bill because we are trying to raise up people with the minimum wage. We are not going to get them up to the poverty line, but we will probably raise up some people as a result of the increase.

Therefore, it is appropriate to this legislation. It is long, long overdue. It seems to me at a time we are doing so much for the credit card industries, companies that have billions of dollars in profits, that we ought to be willing to make work pay.

I know that bothers some Senators. It bothers the Senator from New Hampshire who criticized this and said, Well, we do not want to be like the Soviet Union and like communist countries.

It is interesting that Great Britain just went up to more than $9 for the minimum wage last week. They have the most successful economy in Europe at the present time. They have taken 1.2 million children out of poverty. They have the lowest home mortgages in 50 years. They brought unemployment down. And they are trying to do better for the children that are living in poverty. They have just raised their minimum wage in Great Britain.

I will include the other countries that are not, allegedly, Communist. That includes a good many of the European countries: Belgium, Ireland, U.K., Portugal, France, Spain, and Greece.

I don't think the argument was serious.

Mr. HARKIN. Will the Senator yield?

Mr. KENNEDY. I am happy to yield.

Mr. HARKIN. Did I hear the Senator correctly that someone was suggesting the minimum wage is communistic?

Mr. KENNEDY. I think the argument made by my friend—and I want to be careful about how I explain it. He took issue when I said in the Senate Chamber what I believed, that this is a value issue. We hear a great deal about the importance of values, having work pay, respecting that work is a value issue. It is a family issue that affects children. However, it is a value issue. It indicates that we believe work should pay.

My good friend, and he is my friend from New Hampshire, said that sounded an awful like a government establishing pay like Communist economies did. I don't want to go into it a great deal more.

Mr. HARKIN. If the Senator would yield, it seems we have settled that issue in this country. Going back how many years now have we had a minimum wage?

Mr. KENNEDY. More than 60 years.

Mr. HARKIN. More than 60 years we have had a minimum wage in this country.

I don't have the data with me right now, but I have seen the data that indicates when the minimum wage was higher relative to, say, corporate salaries and what CEOs were making, that, in fact, our country enjoyed a higher standard of living. Is it not true that if people are making a more decent minimum wage, it lifts them out of poverty; they are better able to provide food and clothing and shelter for their kids and their family, better able to pay tuition to go to college.

It seems to this Senator, and I ask my friend from Massachusetts, under the underlying bill, the bankruptcy bill, we are providing all kinds of support, immunities, coverage, for creditors and especially credit card companies; we are providing them all protection, but now when it comes to providing minimum protection for the lowest income people in this country, we cannot seem to do it.

It seems incongruous that we would protect the biggest, but for the smallest we cannot seem to do that.

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

Mr. KENNEDY. The Senator is absolutely right.

I want to catch my friend from Pennsylvania before he walks out. The Senator is quite correct. In a more basic way, this has been something Republicans and Democrats have worked on together. President Eisenhower, the first President Bush, President Ford—all supported an increase. Since the time I have been here we have had bipartisan coalitions. But as the Senator remembers, under the Republican leadership they have refused to do so.

I mention one thing to my friend from Pennsylvania. I have a letter, which I will include in an appropriate place, from Ohio State University, from a professor of law who said the proposed Santorum legislation would also reduce existing protections provided to tip employees by prohibiting State and local governments from enforcing any State or local law that fails to grant a 100 percent tip credit. That is, employers would be allowed under State and local law to pay nothing to tip employees as long as their tips from customers add up to the minimum wage. This provision would even override the laws of States that have eliminated the tip credit entirely or that require tip employees to be paid minimum wage by their employers.

That is the reason I mentioned this earlier. If that was not the intention of the Senator, hopefully we can correct that.

The PRESIDING OFFICER. The Senator from Pennsylvania is recognized.

Mr. SANTORUM. Mr. President, I will be brief. I know the Senator from Iowa is here. I do not want to stop him from making his remarks. I just want to respond to several of the things the Senator from Massachusetts said.

First, I would be happy to look at the letter from the Ohio State professor and see how he, in my opinion, misread the provision we had. I think I am very

clear on the intent. If there is some language clarification, I would be happy to sit down and work on that. I know Senator ENZI, of course, from the HELP Committee worked on this language and would be willing to do so also.

A couple of comments. The Senator from Massachusetts talked at length about economists and others who are suggesting that we need—I think I am using the Senator's words—a modest increase in the minimum wage. I did not see any of the charts that he brought out that supported his particular minimum wage increase. And he used the term ''modest'' repeatedly. I am not sure there would be too many economists in the economy of today who would say a 40-percent increase in the minimum wage would be modest. I think a 40-percent increase, by definition, probably is outside the bounds of what most people would consider modest.

I would make the argument that a 20-percent increase—this is what we are suggesting—a 21-percent increase would probably be extending the bounds of modesty, but it would certainly be much more within what most people consider to be the traditional definition.

I would just like to thank the Senator from Massachusetts for bringing up support for my amendment because I think, in comparing the two, the increase we are putting forth of $1.10 comports very well with what the economists are saying would not be damaging to the economy and fit in very well with what would not be damaging to employees and employers. So the $1.10, fits the modest framework.

Secondly, the issue of flextime. Again, I would just point the Senator to the actual language in the amendment. On page 3 of the amendment, it says:

> Except as provided in paragraph (2), no employee may be required to participate in a program described in this section.

So it is purely voluntary. It says employers may do this. Employees may participate. It provides for a written agreement arrived at with collective bargaining. Obviously, the collective bargaining unit, the labor union, would be responsible for any kind of flextime, which is the way it would be under the law.

Here, with respect to an employee who is not represented by a labor organization: No. 1, ''a written agreement arrived at between the employer and employee before the performance of the work involved if the agreement was entered into knowingly and voluntarily by such employee and was not a condition of employment.''

Now, again, I would ask the Senator from Massachusetts, if there is stronger language he would like us to use to make sure this is a voluntary agreement and that the employee and employer enter into it willingly—there are quadruple damages if the employer violates this.

Also, the Senator from Massachusetts talks about how onerous this is on employees. The Senator from Massachusetts voted for this with respect to Federal employees. He voted for this provision, as we see here, flextime, for Federal employees on more than one occasion. As you know, we now have this provision, this ''onerous'' provision, which, I can tell you, my employees do not see as onerous. They see it as something that is of a great benefit to them and their families.

So again, if the Senator from Massachusetts has some tougher language he would like—but I think the language I have read from my amendment—and I am not reading the summary. This is my amendment.

AMENDMENT NO. 128

(Purpose: To promote job creation, family time, and small business preservation in the adjustment of the Federal minimum wage)

In fact, Mr. President, I send the amendment to the desk and ask for its consideration.

The PRESIDING OFFICER. The clerk will report the amendment.

The legislative clerk read as follows:

> The Senator from Pennsylvania [Mr. SANTORUM] proposes an amendment numbered 128.

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

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

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

Mr. SANTORUM. So I am reading from the text of the amendment. And again, the Senator from Massachusetts may quibble, and certainly has, with the voluntariness of this program. I think the language certainly expresses my intent and the intent of all those who are supporting this amendment, that it is a voluntary program and an employee goes into it knowingly and voluntarily with a written agreement. If there is other language that the Senator from Massachusetts would like, obviously we are not going to do that today, but I would be happy to sit down and see if there is a word that is more voluntary than ''voluntary.''

I think usually when you use the word ''voluntary'' that sums up voluntary very well. But if there is a better word for voluntary than the word ''voluntary,'' then I am pretty happy to do so. If there is a better word—whether it is ''discretionary''—than the word ''may,'' I am happy to look at a better word than ''may.'' ''May'' is usually a pretty good word when it describes ''you do not have to.'' ''May,'' that is what we usually use. But if ''voluntary'' and ''may'' are not strong enough words, I will be happy enough to sit down with the Senator from Massachusetts and come up with a better one.

I repeat, the Senator from Massachusetts has voted for this for Federal employees, and there are quadruple damages—quadruple damages—for employers who violate this provision and impose this on their workers unknowingly and involuntarily or as a condition of employment. So I would just suggest there are pretty high and threatening damages to employers who abuse this provision.

One final point I want to make. The Senator talks about its importance, that this is the only way we are going to help people out of poverty. I would suggest that is simply not the case. There are lots of ways, in fact, I would say very much more complicated ways that people get out of poverty than just by the blunt instrument of the Government setting minimum wages.

In fact, looking at this chart, the welfare reform bill we passed in 1996 shows just how effective other ways are. Requiring work is the best way. The Senator put up poverty statistics. What he did not tell you is what those numbers looked like before 1996 and the welfare reform law, which I stood on the floor and argued passionately for. And I was called a whole number of things as to what I was going to do to all these poor children.

What happened as a result of the welfare reform bill was that poverty among African-American children, the thing Senator KENNEDY referred to, was at its lowest rate ever by the year 2000. It has crept up slightly during the economic decline of the early part of this decade, but it is going back down.

So the idea that the minimum wage solves these problems is just a fallacy. There are lots of things that work. One of them is work. Another is marriage. We are going to have an opportunity on the floor of the Senate, when the welfare bill comes up, to talk about how we shift Government policy away from, at best—I think it is ''at best''—neutrality toward marriage, how we shift Government policy when it comes to interacting with families and being neutral with respect to marriage. See what the huge impact is on the poor, the huge impact on poor communities and poor children, when moms and dads are helped to stay together in marriage and, more importantly, when they are introduced to the concept because many women and, unfortunately, men choose not to marry when children are born out of wedlock.

So there will be plenty of time for debate on this issue of other things we can do. But I can tell you, if you look at all these other things we are studying, the thing that is most powerful is, No. 1, jobs. The concern many have—and there are studies we can put into the RECORD about what the impact of a dramatic increase—not a small increase, as we are proposing, but a dramatic increase—in the minimum wage would have to the employment picture of these very people who came off welfare and their ability to find work and get out of poverty. It will have a dramatically negative impact on them, a 40-percent increase in the minimum wage.

But again, there are positive things we can do as we look to the future.

This bill, in my opinion, belongs on welfare legislation, requiring work, more work, which is what is going to be required in this bill, as well as some things to bring fathers back into the home with the Father Initiative that Senator BAYH and Senator DOMENICI and I have been pushing for several years, as well as the marriage initiative that the President has talked about.

This is a complex picture and blunt instruments like minimum wages are not the answer. Yes, I am proposing an increase. I am doing one that I think comports with balancing the interest of low-income workers having a better wage with making sure they have a job in the first place because that is the most important thing. I think we have done so with this $1.10 increase and the provisions I have.

Yes, it is a long amendment. But there are a lot of things in here that I think will add to the quality of life of many workers and certainly help small businesses absorb some of the costs of the increase in the minimum wage.

So with that, Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Iowa is recognized.

Mr. HARKIN. Parliamentary inquiry: Who controls the time?

The PRESIDING OFFICER. The Senators from Pennsylvania and Massachusetts control the time.

Mr. HARKIN. Mr. President, how much time is left on either side?

The PRESIDING OFFICER. The Senator from Massachusetts has 32½ minutes and the Senator from Pennsylvania has 48 minutes 17 seconds.

Mr. HARKIN. I will take 12 minutes. Will the Chair please remind the Senator when 10 minutes is used up?

The PRESIDING OFFICER. The Chair will so notify the Senator.

Mr. HARKIN. I appreciate that.

Mr. President, with the increase in the unemployment rate that we learned of last Friday, it is clear we are in the midst of a two-tiered economic recovery. We have one recovery for high-income Americans, for people on Wall Street, and we have a very different recovery for people working on Main Street.

The Neiman Marcus crowd is popping champagne corks, but it is a very different story for Wal-Mart and K-mart shoppers and for the Americans who work at Wal-Mart and K-mart and in other jobs paying low wages. The number of Americans in poverty has increased by more than 4 million since President Bush took office. Nearly 36 million people live in poverty, 13 million children. Among full-time year-round workers, poverty has doubled since the late 1970s, from about 1.3 million then to 2.6 million now. Every day that the minimum wage is not increased, it continues to lose value and workers fall further and further behind.

Unfortunately, the Bush administration's priority is not lifting working Americans out of poverty; its priority is keeping labor costs low for corporate America. But this is not surprising. The President has been quite frank and open about taking care of what he calls his ''base.''

I strongly support Senator KENNEDY's amendment to raise the minimum wage to $7.25 in three steps. It is long overdue. It has been 5 years since we last had a vote on the minimum wage, and it has been 8 years since we last voted to raise the minimum wage. To have the same purchasing power it had in 1968, the minimum wage would have to be nearly $8.50 today, not $5.15. Since the last increase in 1997, the value has eroded by more than 15 percent.

I noticed that the Senator from Pennsylvania was saying that this would increase the minimum wage by 40 percent. Actually, it is 37 percent that Senator KENNEDY's amendment would raise the minimum wage. In three stages, it would increase it by 37 percent. The Senator from Pennsylvania said this was unprecedented. Under Franklin Roosevelt, it went up 53 percent; under Truman, 47 percent. Under Eisenhower, it went up 33 percent. Under the first President Bush, it went up 25 percent. The point is that since 1997, the last time we raised it, the value has eroded by 15 percent. So if we are going to boost it up over the next 3 years and it increases by 37 percent, you are really only going up by 22 percent more than what it was in 1997. I don't think that is an undue burden on business in America.

Since 1997, the last time we raised the minimum wage, Members of Congress have raised their own pay seven times in the last 8 years by $28,500. Think about that. We vote to raise our pay seven times in 8 years by $28,500, but for minimum wage workers earning $10,700 a year, we can't vote to raise their minimum wage—shame on the Senate.

We have heard in the past that it is mostly teenagers and part-time workers who are working for the minimum wage. That is not the case. The facts are, 35 percent of those earning the minimum wage are the family's sole breadwinners, 61 percent are women, and almost a third of those women are raising children.

The Senate Finance Committee may soon be marking up a welfare reauthorization bill. As the Senate contemplates welfare reauthorization, as we address the goal of moving people from welfare to work, it is especially important we act to raise the minimum wage. Since 1996, we reduced the number of welfare cases by half.

I was intrigued by the chart the Senator from Pennsylvania put up because many of the people who moved off of welfare did not move out of poverty. Why? Because the minimum wage is not a living wage; it is a poverty wage. But an increase to $7.25, such as Senator KENNEDY wants to do, would make a dramatic difference. For a full-time year-round worker, that would add $4,370 in income. That could be a real value to a family living in poverty. For a low-income family of three, let's say one wage earner, single mother, two children, that would be enough money to pay for a year and a half of heat and electricity or a full tuition for a family member pursuing a community college degree.

The Senator from Pennsylvania said what really lifts people out of poverty is more work, not raising the minimum wage. I ask: How can a single mother of two working a minimum wage job work more? What is she supposed to do—work 16 hours a day at the minimum wage? How much more can people be expected to work?

The amendment of the Senator from Pennsylvania changes the 40-hour workweek to an 80-hour work period over 2 weeks, with the maximum that anyone can work in 1 week of 50 hours. Add it up. It doesn't take a mathematician. Eighty hours for 2 weeks; you can work up to 50 hours in 1 week. So you work 50 hours 1 week, 30 hours the next week. Guess what. You just got cheated out of 10 hours of overtime. Before, you would work 40 hours. If you worked 50, you would get 10 hours of overtime. Now you don't get any overtime. That is what is happening to low-income workers in America today.

First of all, we have a bankruptcy bill that slaps them in the face. It makes them pay through the nose. I don't know if anyone read the article in the Washington Post yesterday. I will ask consent to print this article at the conclusion of my remarks. They mention a Ruth Owens in Cleveland who tried for 6 years to pay off a $1,900 balance on her Discover card, sending the credit company a total of $3,492 in monthly payments from 1997 to 2003. Yet her balance grew to $5,564.28 even though she never used the card to buy anything more. So she paid $3,492 on a $1,900 balance, and she still has yet to pay off her balance.

They mention another person, a special education teacher, Fatemeh Hosseini, who worked a second job to keep up with the monthly payment she collectively sent to five banks to try to pay $25,000 in credit card debt. Even though she had not used the cards to buy anything more, her debt nearly doubled to $40,574 by the time she filed for bankruptcy last June.

That is what is happening to poor people. The credit card companies suck them in with a credit card, go out and charge it up, nice and easy. They find they have a $1,900 bill to pay. They start paying a little bit here and there. They miss a couple of payments. All of a sudden they have $5,564 to pay.

Nearly 7.5 million workers would directly benefit from the Kennedy amendment. In Iowa, 87,400 workers would benefit from the increase. That is over 6 percent of Iowa's workforce. The minimum wage needs to be raised to a level that is not a subsistence wage. The way to do that is to raise the

minimum wage to a level that respects work, honors it, and rewards work at a reasonable level.

Just last week our friends on the other side of the aisle were touting what they called their ''Republican poverty alleviation agenda.'' I say watch what they do, not what they say. The President sent up a budget request replete with cut after cut to anti-poverty programs. Now the Senator from Pennsylvania has launched a new attack on the minimum wage and the 40-hour workweek. Now the Senator from Pennsylvania says he wants to increase the minimum wage, albeit only $1.10 an hour over the next 2 years, about half of the Kennedy amendment. But again, he guts it by ending the 40-hour workweek and going to this 50-hour max, 80-hour work period over 2 weeks.

The PRESIDING OFFICER. The Senator has used 10 minutes to this point.

Mr. HARKIN. I thank the Chair.

Last year, the Bush administration's new rule effectively eliminated overtime pay protection for some 6 million American workers. The Senator from Pennsylvania is opening a second front in the war on the minimum wage and the 40-hour workweek. While 1.2 million workers would qualify for the minimum wage increase under the Santorum amendment, another 6.8 million workers would lose their current minimum wage protection.

As I said, then we get the 80-hour work period for a 40-hour workweek. This has only one purpose: to allow more employers to avoid paying overtime compensation. In my 30 years in Congress, I don't recall such a bold, brazen assault on the compensation of American workers than what we see in the Santorum amendment. It ought to be called the shock-and-awe amendment. Workers get the shock, and corporate America sits back in awe at the latest gift from the party it financed in the last election.

I am proud to stand with Senator KENNEDY to raise the minimum wage to $7.25. The present one, at $5.15, is a poverty wage. It doesn't respect the dignity of their work, including the most humble. As Senator KENNEDY said, of all the issues we are debating, this is a values issue. Think about this compared to all the things we are doing to help the credit card companies with the bankruptcy bill. Think about that. We are going to stick it to low-income people, hard-working Americans like Ruth Owens and Fatemeh Hosseini, and then we are going to stick it to them again by not allowing them to even have an increase in the minimum wage.

I would have hoped that the President would have come and asked for an increase in the minimum wage and got his party in the Congress to work with us to increase it. We have done it under Republican Presidents in the past and Democratic Presidents. I don't know why we cannot do it again.

Mr. President, I ask unanimous consent that the Washington Post article entitled ''Credit Card Penalties, Fees Bury Debtors'' by Kathleen Day and Caroline E. Mayer, which appeared yesterday, be printed at this point in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

[From the Washington Post, Mar. 6, 2005]

CREDIT CARD PENALTIES, FEES BURY DEBTORS

(By Kathleen Day and Caroline E. Mayer)

For more than two years, special-education teacher Fatemeh Hosseini worked a second job to keep up with the $2,000 in monthly payments she collectively sent to five banks to try to pay $25,000 in credit card debt.

Even though she had not used the cards to buy anything more, her debt had nearly doubled to $49,574 by the time the Sunnyvale, Calif., resident filed for bankruptcy last June. That is because Hosseini's payments sometimes were tardy, triggering late fees ranging from $25 to $50 and doubling interest rates to nearly 30 percent. When the additional costs pushed her balance over her credit limit, the credit card companies added more penalties.

''I was really trying hard to make minimum payments,'' said Hosseini, whose financial problems began in the late 1990s when her husband left her and their three children. ''All of my salary was going to the credit card companies, but there was no change in the balances because of that interest and those penalties.''

Punitive charges—penalty fees and sharply higher interest rates after a payment is late—compound the problems of many financially strapped consumers, sometimes making it impossible for them to dig their way out of debt and pushing them into bankruptcy.

The Senate is to vote as soon as this week on a bill that would make it harder for individuals to wipe out debt through bankruptcy. The Senate last week voted down several amendments intended to curb excessive fees and other practices that critics of the industry say are abusive. House leaders say they will act soon after that, and President Bush has said he supports the bill.

Bankruptcy experts say that too often, by the time an individual has filed for bankruptcy or is hauled into court by creditors, he or she has repaid an amount equal to their original credit card debt plus double-digit interest, but still owes hundreds or thousands of dollars because of penalties.

''How is it that the person who wants to do right ends up so worse off?'' Cleveland Municipal Judge Robert J. Triozzi said last fall when he ruled against Discover in the company's breach-of-contract suit against another struggling credit cardholder, Ruth M. Owens.

Owens tried for six years to payoff a $1,900 balance on her Discover card, sending the credit company a total of $3,492 in monthly payments from 1997 to 2003. Yet her balance grew to $5,564.28, even though, like Hosseini, she never used the card to buy anything more. Of that total, over-limit penalty fees alone were $1,158.

Triozzi denied Discover's claim, calling its attempt to collect more money from Owens ''unconscionable.''

The bankruptcy measure now being debated in Congress has been sought for nearly eight years by the credit card industry. Twice in that time, versions of it have passed both the House and Senate. Once, President Bill Clinton refused to sign it, saying it was unfair, and once the House reversed its vote after Democrats attached an amendment that would prevent individuals such as anti-abortion protesters from using bankruptcy as a shield against court-imposed fines.

Credit card companies and most congressional Republicans say current law needs to be changed to prevent abuse and make more people repay at least part of their debt. Consumer-advocacy groups and many Democrats say people who seek bankruptcy protection do so mostly because they have fallen on hard times through illness, divorce or job loss. They also argue that current law has strong provisions that judges can use to weed out those who abuse the system.

Opponents also argue that the legislation is unfair because it ignores loopholes that would allow rich debtors to shield millions of dollars during bankruptcy through expensive homes and complex trusts, while ignoring the need for more disclosure to cardholders about rates and fees and curbs on what they say is irresponsible behavior by the credit card industry. The Republican majority, along with a few Democrats, has voted down dozens of proposed amendments to the bill, including one that would make it easier for the elderly to protect their homes in bankruptcy and another that would require credit card companies to tell customers how much extra interest they would pay over time by making only minimum payments.

No one knows how many consumers get caught in the spiral of ''negative amortization,'' which is what regulators call it when a consumer makes payments but balances continue to grow because of penalty costs. The problem is widespread enough to worry federal bank regulators, who say nearly all major credit card issuers engage in the practice.

Two years ago regulators adopted a policy that will require credit card companies to set monthly minimum payments high enough to cover penalties and interest and lower some of the customer's original debt, known as principal, so that if a consumer makes no new charges and makes monthly minimum payments, his or her balance will begin to decline.

Banks agreed to the new rules after, in the words of one top federal regulator, ''some arm-twisting.'' But bank executives persuaded regulators to allow the higher minimum payments to be phased in over several years, through 2006, arguing that many customers are so much in debt that even slight increases too soon could push many into financial disaster.

Credit card companies declined to comment on specific cases or customers for this article, but banking industry officials, speaking generally, said there is a good reason for the fees they charge.

''It's to encourage people to pay their bills the way they said they would in their contract, to encourage good financial management,'' said Nessa Feddis, senior federal counsel for the American Bankers Association. ''There has to be some onus on the cardholder, some responsibility to manage their finances. ''

High fees ''may be extreme cases, but they are not the trend, not the norm,'' Feddis said.

''Banks are pretty flexible,'' she said. ''If you are a good customer and have an occasional mishap, they'll waive the fees, because there's so much competition and it's too easy to go someplace else.'' Banks are also willing to work out settlements with people in financial difficulty, she said, because ''there are still a lot of options even for people who've been in trouble.''

Many bankruptcy lawyers disagree. James S.K. ''Ike'' Shulman, Hosseini's lawyer, said credit card companies hounded her and did not live up to several promises to work with her to cut mounting fees.

Regulators say it is appropriate for lenders to charge higher-risk debtors a higher interest rate, but that negative amortization and other practices go too far, posing risks to the banking system by threatening borrowers' ability to repay their debts and by being unfair to individuals.

U.S. Bankruptcy Judge David H. Adams of Norfolk, who is also the president of the National Conference of Bankruptcy Judges, said many debtors who get in over their heads ''are spending money, buying things they shouldn't be buying.'' Even so, he said, ''once you add all these fees on, the amount of principal being paid is negligible. The fees and interest and other charges are so high, they may never be able to pay it off.''

Judges say there is little they can do by the time cases get to bankruptcy court. Under the law, ''the credit card company is legally entitled to collect every dollar without a distinction'' whether the balance is from fees, interest or principal, said retired U.S. Bankruptcy Judge Ronald Barliant, who presided in Chicago. The only question for the courts is whether the debt is accurate, judges and lawyers say.

John Rao, staff attorney of the National Consumer Law Center, one of many consumer groups fighting the bankruptcy bill, says the plight consumers face was illustrated last year in a bankruptcy case filed in Northern Virginia.

Manassas resident Josephine McCarthy's Providian Visa bill increased to $5,357 from $4,888 in two years, even though McCarthy has used the card for only $218.16 in purchases and has made monthly payments totaling $3,058. Those payments, noted U.S. Bankruptcy Judge Stephen S. Mitchell in Alexandria, all went to ''pay finance charges (at a whopping 29.99%), late charges, overlimit fees, bad check fees and phone payment fees.'' Mitchell allowed the claim ''because the debtor admitted owing it.'' McCarthy, through her lawyer, declined to be interviewed.

Alan Elias, a Providian Financial Corp. spokesman, said: ''When consumers sign up for a credit card, they should understand that it's a loan, no different than their mortgage payment or their car payment, and it needs to be repaid. And just like a mortgage payment and a car payment, if you are late you are assessed a fee.'' The 29.99 percent interest rate, he said, is the default rate charged to consumers ''who don't met their obligation to pay their bills on time'' and is clearly disclosed on account applications.

Feddis, of the banker's association, said the nature of debt means that interest will often end up being more than the original principal. ''Anytime you have a loan that's going to extend for any period of time, the interest is going to accumulate. Look at a 30–year-mortgage. The interest is much, much more than the principal.''

Samuel J. Gerdano, executive director of the American Bankruptcy Institute, a nonpartisan research group, said that focusing on late fees is ''refusing to look at the elephant in the room, and that's the massive levels of consumer debt which is not being paid. People are living right up to the edge,'' failing to save so when they lose a second job or overtime, face medical expense or their family breaks up, they have no money to cope.

''Late fees aren't the cause of debt,'' he said.

Credit card use continues to grow, with an average of 6.3 bank credit cards and 6.3 store credit cards for every household, according to Cardweb.com Inc., which monitors the industry. Fifteen years ago, the averages were 3.4 bank credit cards and 4.1 retail credit cards per household.

Despite, or perhaps because or, the large increase in cards, there is a ''fee feeding frenzy,'' among credit card issuers, said Robert McKinley, Cardweb's president and chief executive. ''The whole mentality has really changed over the last several years,'' with the industry imposing fees and increasing interest rates if a single payment is late.

Penalty interest rates usually are about 30 percent, with some as high as 40 percent, while late fees now often are $39 a month, and over-limit fees, about $35, McKinley said. ''If you drag that out for a year, it could be very damaging,'' he said. ''Late and overlimit fees alone can easily rack up $900 in fees, and a 30 percent interest rate on a $13,000 balance can add another $1,000, so you could go from $2,000 to $5,000 in just one year if you fail to make payments.''

According to R.K. Hammer Investment Bankers, a California credit card consulting firm, banks collected $14.8 billion in penalty fees last year, or 10.9 percent of revenue, up from $10.7 billion, or 9 percent of revenue, in 2002, the first year the firm began to track penalty fees.

The way the fees are now imposed, ''people would be better off if they stopped paying'' once they get in over their heads, said T. Bentley Leonard, a North Carolina bankruptcy attorney. Once you stop paying, creditors write off the debt and sell it to a debt collector. ''They may harass you, but your balance doesn't keep rising. That's the irony.''

Mr. HARKIN. Again, I urge my colleagues to disavow the Santorum amendment and support the Kennedy amendment. It is the least we can do for the least among us—to raise their minimum wage, give value to their work. This is a values issue. This is at the heart of it. It is an issue of what kind of country we want, what kind of Congress we are, and what kind of Senators we are.

With that, I yield the floor.

The PRESIDING OFFICER. The Senator from Nebraska is recognized.

Mr. HAGEL. Mr. President, I ask unanimous consent that I be allowed to speak as in morning business for the purpose of introducing legislation. My time would be charged against Senator SANTORUM's time.

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

(The remarks of Mr. HAGEL pertaining to the introduction of S. 540 are located in today's RECORD under ''Statements on Introduced Bills and Joint Resolutions.'')

The PRESIDING OFFICER. Who yields time?

The Senator from Massachusetts.

Mr. HARKIN. Will the Senator yield for a unanimous consent request?

Mr. KENNEDY. Yes.

Mr. HARKIN. I ask that the pending amendments be set aside so I can offer a germane filed amendment.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 66

Mr. HARKIN. Mr. President, I call up amendment No. 66.

The PRESIDING OFFICER. The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Iowa [Mr. HARKIN], for himself, Mr. ROCKEFELLER, Mr. LEAHY, Mr. DAYTON, and Mr. KENNEDY, proposes an amendment numbered 66.

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

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

The amendment is as follows:

(Purpose: To increase the accrual period for the employee wage priority in bankruptcy)

On page 498, strike lines 23 and 24, and insert the following:

(1) in paragraph (4), by striking ''within 90 days'';

Mr. HARKIN. I offer this amendment on behalf of myself, Senators ROCKEFELLER, LEAHY, and DAYTON, and I ask unanimous consent that Senator KENNEDY be added as a cosponsor.

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

Mr. HARKIN. I ask that the amendment be set aside.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The Senator from Massachusetts is recognized.

AMENDMENT NO. 44

Mr. KENNEDY. Mr. President, there is a point that I would hope our colleagues would pay close attention to, and that is that the Santorum amendment will eliminate the equal pay provision for women working for companies with sales of less than $1 million. This is enormously important.

The Republican amendment gives pennies to minimum wage workers with one hand. With the other, it takes thousands of dollars away from minimum wage, middle-class, and women workers. As I mentioned earlier, it slowed it up with antiworker poison pills, and the pill that is the hardest to swallow of the Republican amendments effectively denies over 10 million more workers minimum wage, overtime pay, and equal pay protections by eliminating the Fair Labor Standards Act coverage completely.

Currently, all employees who work for employers that are engaged in interstate commerce and have gross annual sales of at least $500,000 are guaranteed Fair Labor Standard protections. But even in businesses that have less than $500,000 in annual sales, the employees still have individual Fair Labor Standard coverage if they are engaged in interstate commerce.

The Santorum amendment raises the $500,000 annual sales threshold to $1 million, as he mentioned, and virtually eliminates this individual Fair Labor Standard coverage, even for workers who are engaged in interstate commerce. It makes one exception for workers engaged in industrial housework.

It allows businesses to pay their workers less than the Federal minimum wage, requires them to work longer hours without overtime pay, and to be able to pay men and women differently.

The gross annual sales threshold was created as a way to determine the employers that are engaged in interstate

commerce, not as a way to exempt the workers from the Fair Labor Standards Act.

For over 60 years, Congress has amended the Fair Labor Standards Act to provide even more workers with the minimum wage. Instead of trying to exclude over 10 million workers from the guaranteed minimum wage, we should raise it.

I refer to the paragraph of the Fair Labor Standards Act, paragraph 206, that says each employer shall pay to each of his employees whose work is engaged in commerce, in the production of goods for commerce—that is those who are being paid who are working for companies earning less than $500,000. In the same paragraph it says:

No employer having employees subject to any provisions of this section shall discriminate.

Those are eliminated. So we don't have equal pay for equal work in the United States. There are only a few areas where we do. It is in this particular area that we do and the Santorum amendment eliminates it for those individuals. I say to our colleagues here in the Senate who care about equal pay for equal work for women, this is a bad deal.

The PRESIDING OFFICER. Who yields time? The Senator from Pennsylvania.

Mr. SANTORUM. I would say in response to the Senator from Massachusetts, my understanding of this legislation, the way it is written, there was an error made in the drafting of the statute such that the threshold had been basically ignored because of the provision to which the Senator from Massachusetts refers. It was a difference between an ''and'' and an ''or'' as to how it was written. My understanding is that the intent of the Congress was to exempt small businesses as we do from a variety of different labor laws. I mentioned before the one I am most familiar with, the Family and Medical Leave Act, which has an employee threshold. There are others that have thresholds in the Federal law, where we chose not to include very small businesses in some of the mandates the Federal Government imposes, a variety of different labor mandates. We do so because of the nature of the small business. A lot of these are mom-and-pop businesses, a garage, very small employers, where the burden of complying with a variety of Federal statutes having to do with labor laws when it comes to a small operation can be an onerous one and costly one. It can be a barrier to starting a business.

So many, including Senator HARKIN and Senator REID, your leader, have supported this small business exemption as a clean exemption with no ''or'' provision, ''as engaged in interstate commerce.''

Why? Because we understand that Federal law and these kinds of provisions can be very costly to very small businesses and can be a barrier of entry to businesses and can involve them in a cost which they may not be willing to assume.

So there has always been, to my knowledge, in almost every, if not every, Federal labor law a small business exemption, what the Senator from Massachusetts has said there should not be in this case. That is a very legitimate position. I do not think the Members of this body would agree—on either side of the aisle, I might add—that there should be no exemption for any business from this provision of the Fair Labor Standards Act. That is what we attempt to correct, to make that comport with what was broadly agreed was the intent. Unfortunately, it has never been remedied.

If the Senator from Massachusetts wants to make the argument that there should be no businesses exempt from the Federal Fair Labor Standards Act, fine. Make that argument and we will have that debate and we will find out how many votes we have, whether there should be a small business exemption or not. But don't suggest what I am doing here is some sort of subterfuge other than to clarify that there are exemptions for legitimate reasons for very small businesses. The threshold was set at half a million dollars back in 1990. If you index that to inflation, it would be $1.5 million today. We set it at a million, which is lower than the rate of inflation. That is hardly overreaching on the part of this amendment.

If the Senator wants to say there should be no exemption, that all businesses should be covered and there should be no small business exemption to any labor law, fine, if that is what the Senator from Massachusetts wants. Understand the consequences, that Democrats and Republicans for years have understood here, which is these mandates on very small startup businesses in particular, but any small business, can be damaging to the economy in our poorest neighborhoods, in the cleaning services, in the landscape businesses, and a whole host of other small businesses where people are trying to make ends meet by pursuing their entrepreneurial spirit. By putting these kinds of requirements and labor laws and regulations on these small businesses, we damage and destroy the very small businesses in this country.

I do not think that is where most on his side of the aisle are. That may be where the Senator from Massachusetts is. If that is where he is, fine, but I would be very proud to defend that provision that says the smallest businesses in America should not have these kinds of mandates imposed on them by Federal law.

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

Mr. SANTORUM. I am happy to yield for a question.

Mr. DURBIN. I am sorry that I just arrived. I am trying to catch up with this debate. Would the amendment reduce the number of workers in America eligible for overtime pay and reduce the number of businesses in America required to pay the minimum wage?

Mr. SANTORUM. I think I was pretty clear about that. The answer is yes. Because we raise the threshold from a half million, small business, to a million. As I said before, the half million threshold was set in 1990. It has not been indexed. I hear a lot of comments about why we should index things here. We should index the minimum wage, we should index a whole host of other things that have the benefit of, in this case, increasing workers' pay. If that is the case, if we thought $500,000 was a legitimate threshold in 1990, I don't know why it should not be indexed to include in real terms that same class of small businesses at this time.

Mr. DURBIN. Will the Senator yield for a further question?

Mr. SANTORUM. I am happy to.

Mr. DURBIN. If the Senator is prepared to double the size of the business from $500,000 to $1 million because it should keep up with inflation, would the Senator be prepared to double the minimum wage of 1990 to what it should be today?

Mr. SANTORUM. I say to the Senator from Illinois, we are increasing—in fact, my amendment does increase the minimum wage by 20 percent.

Mr. DURBIN. By 100 percent?

Mr. SANTORUM. I don't recall exactly what the increase was. I will check and see what the wage was in 1990 as compared to what it is today. We are proposing a modest increase. If the Senator is suggesting it should be a smaller increase, I will be happy to negotiate a smaller increase if it makes the Senator comfortable.

The Senator from Massachusetts is not suggesting it should be a smaller increase. He is suggesting there should be no exemption at all and that there was a provision—and that is what the debate is about—that if they included anyone in interstate commerce, even one employee, that they should be covered. In fact, that is my understanding of how the Labor Department has interpreted this provision. In a sense, there has not been any threshold.

Again, if the Senator from Illinois would like to have a threshold that indexes with the minimum wage, I would be happy to accept that as a reasonable index. But I think to suggest it should not change at all over a period of time does, of course, begin to gather and cover more and more businesses that are small by nature and then again it would be a barrier to entry and a difficulty in sustaining those businesses over time.

I am willing, if there is a legitimate concern about this as to how much we are raising the cap, again, we are willing to negotiate that. That is not what the Senator from Massachusetts is saying. What the Senator from Massachusetts is saying is there should not be any threshold at all; we should keep the zero threshold which exists today in law.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. The history for interstate workers is that from 1938, when the minimum wage was first passed, the minimum wage has applied to them. That is being changed by the Senator from Pennsylvania. We understand that. That is being changed. It is going to have a profound effect on millions of workers.

It is not only by the provisions, the coverage of the Fair Labor Standards Act, it is not only the payment, but it is also the equal payment.

Second, there have been different rules with regard to retail workers. There was the overall figure of $1 million that was used on retail workers. That was reduced to $500,000 and even down to $250,000. So we have been dealing with this for many times.

The point of the matter is, under the Santorum amendment, the way it is constructed, there will be millions and millions and millions who will be outside the coverage of the Fair Labor Standards Act. That is plain and simple.

Mr. SANTORUM. Will the Senator yield?

Mr. KENNEDY. I only have a few minutes left now. The point I was making earlier, when I offered our amendment, it is 3 pages long, to deal with the increases in the minimum wage for workers. The Senator from Pennsylvania has an 85-page law. He has opposed the minimum wage 17 times in 10 years. Minimum wagers, beware.

Mr. SANTORUM. Mr. President, does the Senator from Massachusetts yield?

Mr. KENNEDY. I have to withhold my remaining time.

Mr. SANTORUM. Mr. President, I would like to correct the record. I have supported the minimum wage on more than one occasion during my time in Congress. When I started in the House, the last minimum wage that passed I supported. Under the Clinton administration, I voted for an increase. I have voted for an increase in the minimum wage in the past. I voted for a similar minimum wage increase in the last session of Congress, or the time before. I have not had any ideological problems supporting minimum wage. I want to correct the record about what the Senator from Massachusetts said.

I would also say with respect to workers not being covered as a result of this provision of raising the threshold, as you know and as the Senator from Massachusetts knows, there are operative State laws which provide worker protections in addition to Federal law. In fact, for the States that do not have operative State laws which provide these worker protections, we leave the threshold at 500-fold. We don't change the threshold for the States that do not have operative worker protections for the things that the Fair Labor Standards Act applies to.

I want to make the record clear. No one is falling through the cracks here. The States that only have Federal law covering this area do not change. The ones that do have State laws change accordingly. Again, many of those State laws will remain in place and cover workers who are not covered under the Fair Labor Standards Act under their own State labor protection laws.

I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak for 5 minutes, and I ask the Chair to notify me when I have used 4 minutes.

The PRESIDING OFFICER. Does this time come out of the time of the Senator from Massachusetts?

Mr. KENNEDY. I yield 5 minutes.

Mr. DURBIN. Mr. President, Members of the Senate will have a choice in just a few minutes about the future of the minimum wage.

There was a time when we didn't even debate this. There was a time when Democrats and Republicans agreed that every once in a while you have to raise the minimum wage. The cost of living goes up in America. Republican and Democratic Presidents alike said: Can't we come together and reasonably increase the minimum wage so that the poorest among us have a fighting chance for a decent life?

We used to do it that way. When we stopped doing it 8 years ago when Republicans took control of Congress, they decided this was a partisan issue, that good Republicans didn't support an increase in the minimum wage; only Democrats supported it. Today, we have a choice. The choice is very stark.

Senator SANTORUM comes to the Senate floor and says let us raise the minimum wage for 1.8 million Americans. That is a pretty good thing. At least they are going to get some help. But look at Senator KENNEDY's alternative. In his alternative, 7.3 million Americans would have an increase in the minimum wage.

The Santorum Republican approach helps 1 out of 4 of the workers who Senator KENNEDY's approach helps. But it gets worse. In order for Senator SANTORUM to work up the political courage to bring this to the floor, he said: I have to turn around and do something on the business side. So what I will do is to exempt 10 million workers in America from coverage for overtime pay.

Think about that. You can work 50 hours a week at straight time. That is the deal we are going to offer you for a slight increase in the minimum wage. Does that make sense?

He goes further and says we are going to say that fewer businesses in America are required to pay the minimum wage. What a deal. After waiting 8 years, he helps 1 out of 4 of the workers who Senator KENNEDY helps, and for the 1.8 million he helps, he pushes 5 times as many overboard. He says: You are not going to get overtime. I will vote for an increase in minimum wage, but that is just part of the deal.

It is really appropriate that we have this debate on the bankruptcy bill, isn't it, when you think about it? We are going to force some of the most marginal workers, so many of the hardest working people in America, into a position where they can't pay their bills; then our beautiful Bankruptcy Code reform pushed by the credit card industry will make sure they are saddled with debt for a lifetime. That is what this debate comes down to.

In order to bring up the courage on the Republican side to offer any minimum wage increase, they had to offer to the business community this disqualification for overtime pay the incentive that many businesses would not pay a minimum wage, not to mention adhere to the equal pay provisions. Some of these minimum wage workers across America are young, single mothers struggling to raise kids. Sometimes they are working one or two minimum wage jobs. They would like to be paid equal pay in their workplace. Senator SANTORUM thinks that goes too far when it comes to small businesses. I think this is wrong.

We need to get back to the bipartisan consensus we had on minimum wage. If you stand for moral values—wasn't that the big issue in the last campaign?—wouldn't one moral value be as follows: If you get up and go to work every day in America, if you follow the rules and show up for work, you shouldn't live in poverty in America. That is a fact. Some people working every single day at a minimum wage job are living below the poverty line.

Poverty has doubled since the late 1970s. The poverty rolls have increased by 4 million people since President Bush has taken office. The low minimum wage is a big part of that. Minimum wage employees who work 40 hours a week earn $10,750 a year. Think about how you would get by on $10,700 a year. In fact, we say officially that this is $5,000 less than you need to raise a family of three. We acknowledge that. If you go to work, work hard, and are paid the minimum wage, you are going to live in poverty.

We believe on the Democratic side of the aisle that America, if it is a just nation, should move to the point where hard-working Americans get a decent paycheck.

That is what Senator KENNEDY has been fighting for for 8 years. I would be happy to be part of that fight.

I say in conclusion that we talk a lot in the Senate about what our priorities should be. The top priority of this Senate now is to make the bankruptcy laws more difficult for those swamped by medical bills. We have tried to offer amendments to stand up for the activated Guard and Reserve people who are forced into bankruptcy. The Republican side rejected every single amendment we offered. Now we come with a sensible, just amendment to, frankly, raise the minimum wage up to a decent level in America, and what we are offered on the other side of the aisle is an unacceptable alternative.

I yield the floor.

Mr. HATCH. Mr. President, today the Senate will consider two minimum wage amendments to the bankruptcy reform bill, S. 256. Senator TED KENNEDY's minimum wage amendment proposes to increase the minimum wage by $2.10 per hour in three steps over 26 months, and Senator RICK SANTORUM's amendment would raise the minimum wage by $1.10 an hour over 18 months.

I have always believed that increasing the minimum wage is not an effective way to improve living standards for the Nation's working poor. Simply put, raising the minimum wage is a Federal government mandate which creates negative ripples throughout the national economy by making goods and services more expensive for families. Raising the minimum wage closes the doors of many small businesses, and forces companies to move jobs offshore to less costly countries. Such an increase makes it more difficult for many lower skilled U.S. workers to get started in the job market.

Small businesses are the engine for economic growth in America and represent a powerful vehicle for opportunity. A minimum wage increase would negatively affect small businesses across the nation and in my home State of Utah.

For example, Wangsgard's grocery store of Ogden, UT, offers a full line of groceries, along with a meat shop, oven-fresh bakery, fresh produce, a deli and snack bar, coffee counter, garden center and Ace Hardware. Without a doubt, this store really is a one-stop solution.

Phillip Child, president and owner of Wangsgard's grocery store, informs me that a minimum wage increase would force him to reduce jobs. In fact, Mr. Child confirms that of his 93 employees, those who are earning minimum wage are either in high school or living at home with their parents. These employees are not supporting families. With the goal to open a second Wangsgard's grocery store in the near future, Mr. Child is concerned that an increase in minimum wage would certainly cut the number of new jobs available to the community.

I believe education and job-training programs are the key to raising take-home pay. Of course, it's much easier to pose as the champion of the poor and worry about the consequences later. Yet if Congress does move to increase the minimum wage, it should adopt a small, more gradual increase, and offset the negative consequences of a wage hike with measures to protect the small businesses that generate a majority of all new jobs and employ most Americans. That is why I support the Santorum amendment and oppose the Kennedy amendment.

Mr. CORZINE. Mr. President, I rise today to speak in support of Senator KENNEDY's amendment that would amend the Fair Labor Standards Act of 1938 to provide for gradual increases in the Federal minimum wage.

An increase in the Federal minimum wage is long overdue.

It has now been over 7 years since Congress last raised the minimum wage to its current level of $5.15 per hour. Since that last increase, Congress's failure to adjust the wage for inflation has reduced the purchasing power of the minimum wage to record low levels. In fact, after accounting for the loss of real value due to inflation, the purchasing power of the minimum wage has not been this low since the wage increase of 1945.

When Congress last raised the minimum wage in 1996, the wage was raised from $4.75 to its current $5.15. At the time, this modest increase had real results. The adjustment increased the take home pay of nearly 10 million hard working Americans. But with inflation, the real dollar value of that increase is long gone.

So that we are clear, raising the minimum wage is a family issue. So often in this body we talk about family issues. This is our chance to act.

No family gets rich from earning the minimum wage. In fact, the current minimum wage does not even lift a family out of poverty. A person earning the current minimum wage, working 40 hours a week, 52 weeks a year, earns only $10,700—nearly $4,000 below the poverty line for a family of three.

Seven out of every 10 minimum wage workers are adults, and 40 percent of minimum wage workers are the sole breadwinners of their families. Moreover, a disproportionate number of minimum wage workers are women. Sixty percent of the 11 million minimum wage workers are women, and many are single mothers who must put food on the table, make rent payments, and provide childcare. Increasing the minimum wage by a mere $1.50 per hour would mean an extra $3,000 a year for working families. These additional dollars can provide tangible help to these families in the form of groceries, rent, and the ability to pay one's utility bills.

The problems posed by our insufficient minimum wage are stark in my home State of New Jersey.

According to New Jersey Department of Labor statistics, there are just over 181,000 people making minimum wage in the State. While some States have set higher minimum wage levels, New Jersey is like most States—its minimum wage mirrors the Federal minimum wage. But New Jersey is also different because the cost of living in New Jersey far exceeds the national average and working families in the State are unable to make ends meet at the current minimum wage. As a result, minimum wage workers in New Jersey are worse off than minimum wage workers living in other parts of the country.

Let me quantify the severity of this problem in a high-cost State such as New Jersey. Last year, Legal Services of New Jersey released a self-sufficiency study that found that—without private or public assistance—a New Jersey family of four needs a yearly salary of anywhere from $37,516 to $56,670 to make ends meet. Now remember, as I mentioned earlier, an individual earning the current minimum wage, working 40 hours a week, 52 weeks a year, earns only $10,700. What that then means is that in New Jersey, a family of four that has both parents working full-time for the minimum wage would still face an annual shortfall likely in excess of $20,000 in order to cover basic living needs.

While the Kennedy amendment seeks to provide a real wage increase to workers that will help them keep up with the rising cost of living in our Nation, the Santorum amendment offered by my Republican colleagues is a cruel hoax on hard-working Americans.

It is politics over policy, and it is just plain wrong.

The Santorum amendment only provides about half of the minimum wage increase of the Kennedy amendment. It also denies minimum wage, overtime and equal pay rights from over 10 million workers.

The Santorum amendment will increase the minimum wage by a mere $1.10 per hour. This amendment will benefit only 1.8 million workers—5.5 million fewer than the Kennedy amendment.

The difference between an increase to $7.25 and an increase to $6.25 for a minimum wage worker has a real impact on people's lives, particularly in a State such as New Jersey. It means on average 15 fewer months of child care; over a year less of tuition at a community college; 10 fewer months of heat and electricity; 6 fewer months of groceries; and 5 fewer months of rent.

The Santorum amendment denies more than 10 million workers minimum wage, overtime pay and equal pay rights by ending individual Fair Labor Standards coverage and raising the enterprise coverage threshold to $1 million from $500,000.

The Santorum amendment would be the death of the 40-hour workweek and the American weekend. After the Administration's denial last year of overtime protections for 6 million workers, this proposal would further undermine overtime protections by allowing employers to refuse to pay workers up to 10 hours of earned overtime pay every 2 weeks.

That means a pay cut of $3,000 a year for a median income earner—$43,000 per year—and an $800 pay cut for minimum wage workers. Employers are already free to offer more flexible schedules under current law—the only difference is that now they have to pay workers overtime when they work more than 40 hours in a week.

Finally, the Santorum amendment prohibits states from providing stronger wage protections than the Federal standard for tipped employees like waiters and waitresses.

There are some items in the Santorum amendment that can help our small businesses. But this amendment has been so bloated down with

provisions that are harmful to American workers that as a whole it is not just bad for workers, it is ultimately bad for business.

All of our hard working families nationwide need and deserve a minimum wage that reflects the increased cost of living in America. It is the least we can do for people who work hard and make a positive contribution to our great Nation.

Let's not dishonor them or their efforts. I urge my colleagues to support the Kennedy amendment.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I rise today in opposition to the amendment offered by Senator KENNEDY which would increase the minimum wage by an unprecedented 41 percent. Apart from its numerous other problems, this proposal is fundamentally flawed because it presumes that Congress, by simply imposing an artificial wage increase, will meaningfully address the real issues of the lowest paid workers. That is simply not the case.

Regardless of the size of a wage increase Congress might impose, the reality is that yesterday's lowest paid worker, assuming he still has a job, will continue to be America's lowest paid worker tomorrow. Advancement on the job and earned wage growth can simply not be legislated. We do a disservice to all concerned—most especially the chronic low-wage worker—to suggest that a Federal wage mandate is the answer. What we need to focus on is not an artificially imposed number but on the acquisition and improvement of jobs and job-related skills. In this context, we should recognize that only 68 percent of the students entering the ninth grade 4 years ago are expected to graduate this year. For minority students, this number hovers around 50 percent. In addition, we continue to experience a dropout rate of 11 percent per year.

These noncompletions and dropout rates and the poor earnings capacity that comes with them cannot be fixed by a Federal wage policy. We always have to keep this in mind. The phrase ''minimum wage worker'' is an arbitrary designation. A more accurate description and one that should always be at the center of this debate is that we are seeking to address those workers who have few if any skills that they can use to compete for better jobs and command higher wages. The effect may be low wages, but the cause is low skills. In short, the problem is not a minimum wage. The problem is minimum skills.

I had a Workforce Investment Act bill that the Senate 2 years ago passed unanimously. We cannot get a conference committee to do upgrades in skills for 900,000 people a year. That would have upped the minimum wage, and it would have upped it in a true way. If we are to approach this debate in a constructive and candid way, we need to know certain basic principles of economics. Wages do not cause sales. Sales are needed to provide wages. Wages do not cause revenue. Revenue drives wages. Wages can cause productivity, but the productivity has to come first to be able to afford the wages.

Skills, however, operate differently than wages. Skills do create sales. Sales produce revenue. Skills do create productivity. Skills get compensated with higher wages or else the employee simply goes elsewhere for true higher wages. Wage increases without increased sales or higher productivity have to be paid for by higher prices. Higher prices wipe out wage increases. Skills, not artificial wage increases, produce the true net gains in income.

The minimum wage should be for all workers what it is for most: A starting point; a starting point in an individual's lifelong working career. Viewed as a starting point, it becomes clear that the focus needs to be less on where an individual begins his or her working career. Instead, more emphasis should be placed on how an individual can best progress.

Real wage growth happens every day and it is not the function of a Government mandate. It is the direct result of an individual becoming more skilled and therefore more valuable to his or her employer.

As a former small business owner, I know that these entry level jobs are a gateway into the workforce for people without skills or experience. These minimum skills jobs can open the door to better jobs and better lives for low-skilled workers if we give them the tools they need to succeed.

We have a great example in Cheyenne, WY, of minimum skilled workers who were given the tools and the opportunity to reach the American dream. Mr. Jack Price, the owner of eight McDonald's restaurants in Wyoming—everyone likes to use McDonald's for the example—had three employees who started working for McDonald's at minimum wage. Now those three employees, those minimum wage employees, own a total of 20 restaurants. They got the skills.

This type of wage progression and success should be the norm for workers across our country. However, there are some minimum skilled workers for whom stagnation at the lower tier wage is a longer term proposition. The answer for these workers, however, is not simply to raise the lowest wage rung, which raises all the other rungs, which drives up the price and takes away their advantage; rather, these individuals must acquire the training and skills that result in meaningful and lasting wage growth.

We must equip our workers with skills they need to compete in this technology-driven global economy. It is estimated that 60 percent of tomorrow's jobs will require skills that only 20 percent of today's workers possess. It is also estimated that graduating students will likely change careers some 14 times in their life, and 10 of those jobs have not even been invented yet.

To support these needs, we need a system in place that can support a lifetime of education, training, and retraining for workers. The end result would be the attainment of goals that provide meaningful wage growth. As legislators, our efforts should better focus on ensuring that the tools and the opportunities for training and enhancing skills over a Worker's lifetime are available and are utilized.

We tried to do that through the Work First Investment Act that got blocked in the last Congress; 900,000 people trained to higher skilled jobs each year. That would have been a lot of people getting higher wages each and every year.

Since 1998, the Democrats have been pushing a drastic increase in the Federal minimum wage except—listen to this—except when they were in the majority, when they controlled this body. In the 18 months from mid-2001 through all of 2002, while the Democrats held the majority they did not bring the minimum wage vote to the floor. The question must be asked, who would really be helped? Who would be hurt by this amendment we have today to raise the minimum wage by an unprecedented 41 percent, to $7.25 an hour.

First, we must realize that the large increase in minimum wage will hurt low-income, low-skilled individuals, the very workers proponents claim they want to help. Let us be clear: Mandated hikes in the minimum wage do not cure poverty. They clearly do not create jobs.

The Congressional Budget Office has said most economists would agree that an increase in the minimum wage rate would cause firms to employ fewer low-wage workers or employ them for fewer hours. That is the CBO estimate of October 18, 1999. In 1999, based on a dollar increase, CBO found that a plausible range of estimates for the potential job losses holds that a 10-percent increase—not a 41-percent increase, a 10-percent increase—in the minimum wage would result in a half to 2 percent reduction in the employment level of teenagers and a smaller percentage reduction for young adults ages 20 to 24. These estimates imply employment losses for an increase in the minimum wage of the amount provided in the 1999 proposal of roughly 100,000 to half a million jobs. Applying that same analysis today could actually double this prediction. Upwards of one million low-wage workers, mostly teenagers and young adults, can expect to lose their jobs or lose opportunities due to the proposal before the Senate for the $2.10 an hour increase.

What every student who has ever taken an economics course knows, if you increase the cost of something—in this case, the minimum wage—you decrease the demand for those jobs. Misleading political rhetoric cannot change the basic principles of supply

and demand. The majority of economists continue to affirm the job-killing nature of mandated wage increases.

A recent poll concluded that 77 percent—that is nearly 17,000 economists—believe that a minimum wage hike causes job loss. The argument these economists understand is this: By requiring employers to pay a higher wage for positions they consider entry level, the mandate forces employers to search for higher skilled employees. Moreover, mandated higher entry-level wages force employers to redefine the nature of the job and the expectations they have for their entry-level workers. Unskilled and low-skilled workers without the new qualifications will, therefore, be the first to be displaced and the last to be employed.

In short, Congress can mandate how much employers pay entry-level employees, but they cannot mandate which workers employers pay.

Even Dr. Rebecca Blank, a former member of President Clinton's Council of Economic Advisers, has admitted that without the earned-income credit there would be greater pressure to increase the minimum wage, which has growing disemployment effects as it rises, since it induces employers to substitute away from less-skilled labor toward other technologies.

Let me repeat what President Clinton's Economic Adviser said, because this is something proponents on the Senate floor are unwilling to meet. Minimum wage increases induce employers to substitute away the less-skilled labor toward other technologies. Low-skilled workers will be displaced and lose jobs or will not be hired in the first place.

This massive Federal wage proposal is based on a false assumption that a business that employs 50 minimum wage workers before this wage increase is enacted will still employ 50 minimum wage workers afterwards. Whether a business is in Washington or Wyoming, employers cannot absorb a 41 percent increase in their costs without a corresponding decrease in the number of jobs or of benefits they can provide workers.

So we know there are losers when we raise the minimum wage, but who are the individuals who benefit? While minimum wage supporters often claim the wage floor must be raised in order to lift employees out of poverty, this is simply not the case. Again, the average family income of potential beneficiaries from a $7.25-an-hour minimum wage rate is over $41,000 a year. Clearly, the minimum wage is not a poverty level wage for most employees.

Minimum wage earners who support a family solely based on the wage are actually few and far between. Fully 85 percent—this is very important—of the minimum wage earners live with their parents, have a working spouse, or are living alone without children. Forty percent live with a parent or relative. Twenty-one percent live with another wage earner. Twenty-four percent are single or are the sole breadwinner in a household with no children. And they lack skills. They have minimum skills. They get paid for minimum skills.

Research shows that the poor targeting and other unintended consequences of the minimum wage make it terribly ineffective at reducing poverty in America—the intended purpose of the policy. In fact, two Stanford University economists concluded that a minimum wage increase is paid for by higher prices that hurt poor families the most.

A 2001 study conducted by Stanford University economists found that only one in four of the poorest 20 percent of families would benefit from an increase in the minimum wage. Three in four of the poorest workers would be hurt by a wage hike because they would shoulder the costs of the resulting higher prices.

Artificial wage hikes drive prices up. They have to. You cannot pay the wages without it. Everything but Government spending has to be paid for. To pay a higher minimum wage and other wages that have to go up because of it means prices have to be raised. We should not trick workers into thinking they are earning more when they still cannot pay the bills at the end of the month.

As we discuss the Federal minimum wage, we must keep in mind the dangers, also, of a ''Washington knows best'' and a ''one size fits all'' mentality. An increase in the Federal minimum wage is a classic lesson that Washington does not know best and that one size does not fit all. A Federal wage mandate does not account for the cost of living that varies across the country. It costs over twice as much to live in New York City than it does in Cheyenne, WY. However, a Federal minimum wage hike that applies from coast to coast is like saying a bag of groceries in New York City must cost the same as a bag of groceries in Cheyenne. Local labor market conditions and the cost of living determine pay rates, not Federal minimum wage laws dictated from Washington.

Incidentally, that is why Maine has a higher wage rate than the Federal Government. That is why a lot of States have a higher rate. It fits their State. The States can do it without our help. Isn't that amazing.

Now, proponents of a large, federally mandated increase in the minimum wage repeatedly state that the wage floor is too low and that minimum wage earners earn below the poverty line. This argument neglects to figure in the effects of the earned-income credit.

Proponents of large minimum wage increases argue that we should return the starting wage to its 1968 value, when the minimum wage was at its all-time high when adjusted for inflation. However, it is important to note, that the real value of the current minimum wage in 2004 dollars plus the real value of the Earned income credit for a full-time minimum wage employee with two children comes close to matching the 1968 value Democrats claim they are targeting.

As my colleagues are no doubt aware, the earned income credit is a Federal income tax credit for low-income workers that reduces the amount of tax an individual owes, and is frequently returned in the form of a refund. This can supplement incomes by as much as $4,290, for a single adult with two dependents which works out to a cash credit equal to more than $2 per hour paid directly to the worker.

For every dollar in wages earned by a low-income family with two children, the Federal Government provides a tax credit of 40 percent.

Workers with one child have an effective minimum wage rate of $6.90 per hour, $5.15 per hour, plus a 34-percent credit of $1.75 per hour.

Workers with two or more children have an effective minimum wage rate of $7.22 per hour, $5.15 plus a 40-percent credit of $2.07 per hour.

As a household's income rises above around $15,000 per year, the earned income credit begins to be phased out.

It would take a minimum wage increase of around a dollar per hour to reach the ''appropriate'' 1968 rate, when the earned income credit is applied.

The earned income credit has retained the value of the minimum wage for employed workers with families by supplementing their income while avoiding the adverse effects of minimum wage hikes. In fact, using the earned income credit allows us to more effectively target assistance to those workers raising families on low incomes.

Contrast this targeted policy with massive increases in the minimum wage that inefficiently distribute ''assistance'' to individuals without children—mostly teenagers from wealthy families. In summary, the earned income credit is ignored by wage-hike proponents because it proves the flaws in their arguments. Regardless of whether their arguments made sense in 1938, or even in 1968, their rhetoric has been overridden by newer policies such as the earned income credit. I prefer to promote modern policies that help the poor, and not to dwell on stale arguments that no longer ring true.

My colleagues on the other side of the aisle suggest that the only time low-income workers receive wage increases is when Congress mandates an increase in the minimum wage. It is preposterous and demeaning to argue that only Congress can give low-wage workers a pay raise. More often than not, it is the workers' own dedication, hard work, and willingness to learn that results in their earning higher wages. Workers who were making the minimum wage when it was last hiked in 1997 have learned job skills, received valuable experience, and, as a result, have earned raises above the minimum wage.

Whenever they seek to increase the minimum wage, the Democrats announce the number of workers who will ''benefit'' from the mandate. Interestingly, however, that number has shrunk dramatically over the past 6 years.

On September 3, 1998, Senator KENNEDY issued a press release counting the number of minimum-wage-increase beneficiaries at 12 million. That was when his wage hike went up to $6.65 per hour instead of today's $7.25 per hour increase. Today, however, he puts the number at only 7.5 million. That is 4.5 million fewer workers affected by a minimum wage increase. Where did they go?

Where did the other 4.5 million individuals go? They earned raises, on their own, without Congress imposing a Federal wage hike. In fact, statistics show that most minimum-wage workers will earn raises in their first year on the job. These minimum-skilled workers will earn raises as their skills and experience increase.

I share the same goal as Senator KENNEDY—to help American workers find and keep well-paying jobs. Minimum skills—not minimum wages—are the problem. Education and training will solve that problem and lead to the kind of increased wages and better jobs we all want to create for our Nation's workers. Lets get the Workforce Investment Act passed and conferenced so the President can sign it and get higher skills training accelerated.

The PRESIDING OFFICER (Mr. BURR). The Senator's time has expired.

Mr. ENZI. Mr. President, it is a false economy, and if we really wanted to raise it, we would have done something with the Workforce Investment Act, the job training. We would have raised skills, and then employees would have been compensated well.

I yield the floor.

The PRESIDING OFFICER. The Democratic leader is recognized.

Mr. REID. Mr. President, I will use leader time for this presentation.

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

Mr. REID. Mr. President, I have not been on the floor all day to listen to the debate, but I have listened to part of it. I am stunned by some of the remarks by those opposed to raising the minimum wage. To indicate that people who are drawing minimum wage live with their parents or others—they do because they make so little money. And all the denigration of these entry-level jobs—these are jobs that people have to have filled. They may be low, entry-level jobs, but they are jobs people need. People are not hiring these people out of the goodness of their heart, to say: Well, here is somebody. We'll hire a few minimum wage employees.

There are a few people like that, but the reason you have these minimum wage jobs is because people need results. The employer needs the work done. The employee needs the job.

I have heard on this floor a number of times today people saying: It is pushing a drastic increase in the minimum wage. The minimum wage was valid when it was initiated many years ago. It is valid today. We should at least keep up with the cost of living. Using the logic of those who oppose the increase in the minimum wage with these ''drastic,'' as they say, minimum wage increases, the longer you wait, the less chance there would be to raise it because it would become more ''drastic,'' in their words, all the time. All we are trying to do, all Senator KENNEDY is trying to do, is keep up with the cost of living.

My friend, the distinguished Senator from Wyoming, indicated that during the short time we were in control—of course, a lot of the time we were in charge there was no legislative business going on, but keep in mind that every time we have attempted, no matter who is in the majority in the last 8 years, the Republicans have stopped it, either through an actual filibuster or through some parliamentary maneuver. They have opposed raising the minimum wage.

I think the logic of so doing, that it is a ''drastic'' increase—I repeat—means that the longer you wait until you attempt to raise the minimum wage, the less chance it would have to pass because it would become, in their minds, more drastic. Think of the poor people who are trying to earn a living with this minimum wage. It becomes very drastic for them.

I was heartened last week to see my Republican colleagues express their commitment to addressing the issue of poverty. Press conferences were held. But I believe the time has come for them to back up their words with action and vote to increase the minimum wage to $7.25 an hour. It is not going to happen. We understand that the marching orders have been given, and they will all walk up here and vote against increasing the minimum wage.

In a country that values work and the opportunity to get ahead, a hard day's work should bring a decent day's pay, whether it is an entry-level job or a job that is a more skilled job. In America, this is not the case as it relates to entry-level work. We have mothers and fathers working full time in minimum wage jobs but still living in poverty, still struggling to get ahead.

I met with some of these workers in Nevada last month. When you talk with them, you begin to understand that increasing the minimum wage is not about helping teenagers earn more from their summer jobs, it is about helping families realize the promise of America. This fact was driven home during a conversation I had with a woman from Reno named Natasha. She is married, has a child, and works as a server in a popular restaurant. She works hard. In fact, the restaurant is one of my favorites. It is in a little strip mall. The restaurant is called Pinocchio's. It is a wonderful restaurant.

She has served me on a number of occasions. She works hard, as does her husband. But with a minimum wage job, she has trouble making ends meet and affording basics, such as food, clothing, and housing. She has tried to get ahead by taking classes at a community college in the area, but she had to cut back because she could not afford to go to school and also pay for what she needed to take care of her family. She earns the minimum wage, plus her tips.

Now, I would say to my friend from Wyoming, the employer is not going to eliminate her job if the minimum wage is increased. He needs somebody to wait those tables, and she is willing to do this because she needs the work. And the tips are not that bad. She is trying to live the American dream by going to school and getting ahead but unable to do it because the minimum wage in this country is not enough money.

Her story is like many others we have all heard, if we listen—stories of families caught in the cycle of poverty, a cycle we can begin to end today by increasing the minimum wage.

An increase in the minimum wage will help 7 million Americans. This may not sound like a lot of money, but to these people it is a lot of money. An increase of this size can help a family heat their home, pay for transportation to work, or can help a mother afford childcare so she does not have to worry about her kids while she is away.

The majority is calling to increase the minimum wage to $6.25 and further attempting to end the 40-hour workweek with what they call flextime. These measures are unacceptable. Raise the minimum wage, not play games with making it easier for employers to stagger the work of employees. They have already, through the President, eliminated overtime in many instances.

First, a nominal increase in the minimum wage will help millions of Americans. This is important. Ending the 40-hour workweek, replacing it with flextime, would deny over 10 million minimum wage workers the ability to earn overtime pay.

We can do better. Helping our families live more productive lives must be our top priority. Providing workers a wage that is consistent with the rising cost of living is both fair and just. I urge my colleagues to pass this increase in the minimum wage.

The distinguished Senator from Massachusetts has spent a lifetime in the national legislature helping people who don't have lobbyists. When Senators walk up to this door here—sometimes we come in by subway—many times we are overwhelmed by lobbyists, so many that we can't work our way through them. But we will not see lobbyists here representing minimum wage workers.

I send to my friend through the Chair my appreciation for a lifetime of work

helping those who don't have lobbyists, people who are working like Natasha trying to make ends meet. The minimum wage should be increased. It is a shame that we have to fight for it so hard. Frankly, we have not been successful for 8 years. I say to my friend—and I don't like to hear myself say this—they have their marching orders over there. We are going to lose again.

The people who are in these entry-level jobs are again going to be without an increase. There are people out there who had hope. I am sorry. The marching orders have been given, and there will be no increase.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, how much time remains?

The PRESIDING OFFICER. The Senator has 8 minutes.

Mr. KENNEDY. I ask the Chair to let me know when I have used 7 minutes.

Mr. President, we have had a good discussion with my friend and colleague, the Senator from Pennsylvania. During the course of the debate, I did mention that a range of different groups are supporting our position. I will include those endorsements in the RECORD. One I would like to mention is from the Catholic Bishops. This is their position:

The Catholic Bishops have been long time supporters of the minimum wage. In Catholic teaching, the principle of a living wage is integral to our understanding of human work. Wages must be adequate for workers to provide for themselves and their families in dignity. Because the minimum wage is not a living wage, the Catholic Bishops have supported increasing the minimum wage over the decades.

We are aware that some accommodations are being offered to alleviate possible adverse effects on small businesses . . . that might occur with a modest increase in the minimum wage. However, other changes and modification being contemplated that will affect overtime pay or the 40 hour workweek are unwarranted and unwise. Other workers should not lose minimum wage protection or overtime pay as the price of increasing the wages of America's lowest paid workers. At the very least, such changes to the Fair Labor Standards Act should be considered in the formal legislative process, not attached to a popular increase in the minimum wage as a condition of passage.

They indicate their support for our amendment.

In just a few moments the Senate will have an opportunity to vote either in favor of the Santorum amendment or my amendment. I believe a vote for the Santorum amendment is a vote to deny the minimum wage to more than 10 million workers. Those workers are looking to us for a fair raise to reward their hard work and to help care for their families.

But the Santorum amendment takes away their minimum wage rights entirely. A vote for the Santorum amendment is a vote to deny overtime pay to more than 10 million workers. These workers rely on overtime pay to make ends meet, and overtime pay is compensation for many long hours away from their families.

A vote for the Santorum amendment is a vote for a pay cut for workers who rely on tips—waitresses, taxi drivers, and hairdressers. This is contrary to our values as Americans. We believe that work should have a reward. The Santorum amendment dishonors that. It is an insult to the low-wage workers of this country.

The amendment I offer is about everything that we stand for as a nation. It is about opportunity. It ensures that every American at least has the opportunity to move up and achieve the American dream. It is about fairness. What is fair about working hard 52 weeks of the year and still living in poverty? What is fair when Members of Congress raise their own salaries seven times, by $28,000, over the last 8 years and refuse to vote for an increase in the minimum wage? What is fair about that? What is fair about executives who pay themselves millions of dollars but can't find a way to pay a decent minimum wage?

It is about making our economy work for everyone, not just the privileged few. There is no doubt that this is one of the central moral questions of our time. It is how we treat the least of those among us. It is why religious leaders have supported a minimum wage increase. The Santorum amendment fails the fundamental obligations of a just and fair society. Under the guise of raising the minimum wage, it cuts overtime pay and leaves out too many individuals.

Who are these minimum wage workers? First of all, they are men and women of dignity. They assist in the classrooms every day to teach the children. They work in nursing homes to help care for the elderly who have sacrificed for their children and have made such a difference for this country. This issue is about women working in our society, because a majority of those who will benefit from this minimum wage increase are women. It is a women's issue. It is a children's issue because a third of those women have children. It is a children's and a women's issue—and a family issue. It is a civil rights issue because so many of the men and women who receive the minimum wage are men and women of color. And most of all, it is a fairness issue.

If there is a value which the American people understand, it is fairness. The American people believe if you work 40 hours a week, 52 weeks of the year, you should not have to live in poverty. They are living in poverty today with the second lowest minimum wage in nearly the last 60 years.

The amendment I offer will provide a helping hand to men and women of dignity to live in a decent and fair respect.

I hope the Senate will accept it.

I yield back my time and ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The question is on agreeing to amendment No. 44.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. The following Senators were necessarily absent.

The Senator from Nevada (Mr. ENSIGN) and the Senator from Pennsylvania (Mr. SPECTER).

Mr. DURBIN. I announce that the Senator from Montana (Mr. BAUCUS), the Senator from North Dakota (Mr. CONRAD), and the Senator from Maryland (Ms. MIKULSKI) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 46, nays 49, as follows:

[Rollcall Vote No. 26 Leg.]

YEAS—46

Akaka	Dorgan	Lincoln
Bayh	Durbin	Murray
Biden	Feingold	Nelson (FL)
Bingaman	Feinstein	Nelson (NE)
Boxer	Harkin	Obama
Byrd	Inouye	Pryor
Cantwell	Jeffords	Reed
Carper	Johnson	Reid
Chafee	Kennedy	Rockefeller
Clinton	Kerry	Salazar
Coleman	Kohl	Sarbanes
Corzine	Landrieu	Schumer
Dayton	Lautenberg	Stabenow
DeWine	Leahy	Wyden
Dodd	Levin	
Domenici	Lieberman	

NAYS—49

Alexander	Dole	Murkowski
Allard	Enzi	Roberts
Allen	Frist	Santorum
Bennett	Graham	Sessions
Bond	Grassley	Shelby
Brownback	Gregg	Smith
Bunning	Hagel	Snowe
Burns	Hatch	Stevens
Burr	Hutchison	Sununu
Chambliss	Inhofe	Talent
Coburn	Isakson	Thomas
Cochran	Kyl	Thune
Collins	Lott	Vitter
Cornyn	Lugar	Voinovich
Craig	Martinez	Warner
Crapo	McCain	
DeMint	McConnell	

NOT VOTING—5

Baucus	Ensign	Specter
Conrad	Mikulski	

The PRESIDING OFFICER. Under the previous order, the amendment not having garnered 60 votes in the affirmative, the Senate action on this amendment is vitiated and the amendment is withdrawn.

VOTE ON AMENDMENT NO. 128

The PRESIDING OFFICER. The question is on agreeing to amendment No. 128.

Mr. SANTORUM. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There is a sufficient second.

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Maryland (Ms. MIKULSKI) is necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 38, nays 61, as follows:

[Rollcall Vote No. 27 Leg.]

YEAS—38

Allen	Frist	Santorum
Bennett	Graham	Sessions
Brownback	Grassley	Shelby
Bunning	Hagel	Smith
Burns	Hatch	Snowe
Coleman	Hutchison	Specter
Craig	Kyl	Stevens
Crapo	Lugar	Talent
DeWine	Martinez	Thomas
Dole	McCain	Thune
Domenici	McConnell	Voinovich
Ensign	Murkowski	Warner
Enzi	Roberts	

NAYS—61

Akaka	Corzine	Levin
Alexander	Dayton	Lieberman
Allard	DeMint	Lincoln
Baucus	Dodd	Lott
Bayh	Dorgan	Murray
Biden	Durbin	Nelson (FL)
Bingaman	Feingold	Nelson (NE)
Bond	Feinstein	Obama
Boxer	Gregg	Pryor
Burr	Harkin	Reed
Byrd	Inhofe	Reid
Cantwell	Inouye	Rockefeller
Carper	Isakson	Salazar
Chafee	Jeffords	Sarbanes
Chambliss	Johnson	Schumer
Clinton	Kennedy	Stabenow
Coburn	Kerry	Sununu
Cochran	Kohl	Vitter
Collins	Landrieu	Wyden
Conrad	Lautenberg	
Cornyn	Leahy	

NOT VOTING—1

Mikulski

The PRESIDING OFFICER. Under the previous order, the amendment not having garnered 60 votes in the affirmative, the Senate action on this amendment is vitiated and the amendment is withdrawn.

The Democratic leader.

AMENDMENT NO. 19 WITHDRAWN

Mr. REID. On behalf of Senator FEINSTEIN, I ask unanimous consent that amendment No. 19 be withdrawn.

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

The Senator from Connecticut.

AMENDMENT NO. 67

Mr. DODD. Mr. President, I ask unanimous consent that the pending amendment be laid aside and that amendment No. 67 be called up, the reading of the amendment be dispensed with, and the amendment laid aside so that the next amendment may be called up.

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

The amendment is as follows:

AMENDMENT NO. 67

(Purpose: To modify the bill to protect families, and for other purposes)

At the end of the bill, add the following:

TITLE XVI—MODIFICATIONS FOR THE PROTECTION OF FAMILIES

SEC. 1601. MODIFICATIONS FOR THE PROTECTION OF FAMILIES.

(a) DISMISSAL OR CONVERSION.—Section 707(b)(2)(A)(ii) of title 11, United States Code, as amended by this Act, is further amended—

(1) in subclause (IV), by striking ''$1,500'' and inserting ''$5,000''; and

(2) by adding at the end the following:

''(VI) In addition, the debtor's monthly expenses shall include—

''(aa) taxes and mandatory withholdings from wages;

''(bb) alimony, child, and spousal support payments;

''(cc) legal fees necessary for the debtor's case;

''(dd) pension payments;

''(ee) religious and charitable contributions;

''(ff) union dues;

''(gg) other expenses necessary for the operation of a business of the debtor or for the debtor's employment;

''(hh) ownership costs for 1 motor vehicle (or 2 in the case of a joint filing), determined in accordance with Internal Revenue Service transportation standards, reduced by any payments on debts secured by the motor vehicle or vehicle lease payments made by the debtor;

''(ii) expenses for children's toys and recreation for children of the debtor, tax credits for earned income determined under section 32 of the Internal Revenue Code of 1986; and

''(jj) miscellaneous and emergency expenses.''.

(b) DEFINITION OF CURRENT MONTHLY INCOME.—Section 101(10A)(B) of title 11, United States Code, as amended by this Act, is further amended by inserting ''payments received as domestic spousal obligations,'' after ''Social Security Act,''.

(c) PROPERTY OF THE ESTATE.—Section 541 of title 11, United States Code, as amended by this Act, is further amended—

(1) in subsection (a)(5)(B) by inserting ''except as provided under subsection (b)(11),'' before ''as a result''; and

(2) in subsection (b)—

(A) in paragraph (8), by striking ''or'' after the semicolon;

(B) in paragraph (9), by striking the period at the end and inserting a semicolon; and

(C) by inserting after paragraph (9) the following:

''(10) any—

''(A) refund of tax due to the debtor under subtitle A of the Internal Revenue Code of 1986 for any taxable year to the extent that the refund does not exceed the amount of an applicable earned income tax credit allowed under section 32 of such Code for such year and the amount of an applicable child tax credit allowed under section 24 of such Code for such year; and

''(B) advance payment for an earned income tax credit described in subparagraph (A); or

''(11) the right of the debtor to receive domestic spousal obligations for the debtor or dependent of the debtor.''.

(d) PROTECTION OF EARNED INCOME TAX CREDIT AND SUPPORT PAYMENTS UNDER BANKRUPTCY REPAYMENT PLANS IN CHAPTER 12.—Section 1225(b) of title 11, United States Code, as amended by this Act, is further amended by adding at the end the following:

''(3) In determining disposable income, the court shall not consider amounts the debtor receives or is entitled to receive from—

''(A) any refund of tax due to the debtor under subtitle A of the Internal Revenue Code of 1986 for any taxable year to the extent that the refund does not exceed the amount of an applicable earned income tax credit allowed under section 32 of the Internal Revenue Code of 1986 for such year and the amount of an applicable child tax credit allowed under section 24 of such Code for such year;

''(B) any advance payment for an earned income tax credit described in subparagraph (A); or

''(C) child support, foster care, or disability payment for the care of a dependent child in accordance with applicable nonbankruptcy law.''.

(e) PROTECTION OF EARNED INCOME TAX CREDIT AND SUPPORT PAYMENTS UNDER BANKRUPTCY REPAYMENT PLANS IN CHAPTER 13.—Section 1325(b) of title 11, United States Code, as amended by this Act, is further amended by adding at the end the following:

''(5) In determining disposable income, the court shall not consider amounts the debtor receives or is entitled to receive from—

''(A) any refund of tax due to the debtor under subtitle A of the Internal Revenue Code of 1986 for any taxable year to the extent that the refund does not exceed the amount of an applicable earned income tax credit allowed by section 32 of the Internal Revenue Code of 1986 for such year and the amount of an applicable child tax credit allowed under section 24 of such Code for such year;

''(B) any advance payment for an earned income tax credit described in subparagraph (A); or

''(C) child support, foster care, or disability payment for the care of a dependent child in accordance with applicable nonbankruptcy law.''.

(f) EXEMPTIONS.—Section 522(d)(10) of title 11, United States Code, as amended by this Act, is further amended—

(1) in subparagraph (C), by inserting ''or'' after the semicolon;

(2) by striking subparagraph (D); and

(3) by striking ''(E)'' and inserting ''(D)''.

(g) PERSONAL PROPERTY.—

(1) SECTION 521.—Section 521(a)(6) of title 11, United States Code, as amended by this Act, is further amended by striking ''of personal property'' and inserting ''of an item of personal property purchased for more than $3,000''.

(2) SECTION 362.—Section 362(h)(1) of title 11, United States Code, as amended by this Act, is further amended by striking ''to personal property'' and inserting ''to an item of personal property purchased for more than $3,000''.

(h) RESTORING THE FOUNDATION FOR SECURED CREDIT.—Section 1325(a) of title 11, United States Code, as amended by this Act, is further amended in the flush matter at the end by striking ''if the debt was incurred'' and inserting ''to the extent that the debt was incurred to purchase that thing of value''.

(i) HOUSEHOLD GOODS.—

(1) DEFINITION.—Section 101 of title 11, United States Code, as amended by this Act, is further amended—

(A) by redesignating paragraph (27A) as paragraph (27B); and

(B) by inserting before paragraph (27B) the following:

''(27A) 'household goods '—

''(A) includes tangible personal property normally found in or around a residence; and

''(B) does not include motor vehicles used for transportation purposes;''.

(2) FOR PURPOSES OF SECTION 522.—Section 522(f) of title 11, United States Code, as amended by this Act, is further amended by striking paragraph (4).

(j) LIMITATION ON LUXURY GOODS.—Section 523(a)(2)(C)(i) of title 11, United States Code, as amended by this Act, is further amended—

(1) in subclause (I)—

(A) by striking ''$500'' and inserting ''$1,000'';

(B) by striking ''90'' and inserting ''70''; and

(C) by inserting ''if the creditor proves by a preponderance of the evidence at a hearing that the goods or services were not reasonably necessary for the maintenance or support of the debtor or the dependents of the debtor'' after ''nondischargeable''; and

(2) in subclause (II)—

(A) by striking ''$750'' and inserting ''$1,225''; and

(B) by striking ''70'' and inserting ''60''.

(k) EXCEPTIONS TO DISCHARGE.—Section 523 of title 11, United States Code, as amended by this Act, is further amended—

(1) in subsection (c), by inserting ''or (14)(A),'' after ''or (6)'' each place it appears; and

(2) in subsection (d), by striking ''(a)(2)'' and inserting ''(a)(2) or (14A)''.

AMENDMENTS NOS. 68 THROUGH 72, AND 119

Mr. DODD. Mr. President, I ask unanimous consent that the pending amendment be laid aside and, on behalf of Senator KENNEDY, that amendments Nos. 68, 69, 70, 71, 72 and 119 be called up in turn, that reading of each amendment be dispensed with, that each amendment be laid aside so that the next amendment may be called up.

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

The amendments are as follows:

AMENDMENT NO. 68

(Purpose: To provide a maximum amount for a homestead exemption under State law)

On page 191, between lines 11 and 12, insert the following:

(c) FURTHER LIMITATION ON HOMESTEAD EXEMPTION.—Section 522(b) of title 11, United States Code, is amended by adding at the end the following:

''(5) Notwithstanding any other provision of this section, the maximum amount of a homestead exemption that may be provided under State law shall be $300,000.''.

AMENDMENT NO. 69

(Purpose: To amend the definition of current monthly income)

On page 20, line 16, strike ''Act,'' and insert ''Act, income from any job in which the debtor is no longer employed, income from any activity which the debtor can no longer engage in due to disability,''.

AMENDMENT NO. 70

(Purpose: To exempt debtors whose financial problems were caused by failure to receive alimony or child support, or both, from means testing)

On page 19, between lines 13 and 14, insert the following:

''(8)(A) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if the debtor, in any consecutive 12-month period during the 2 years before the date of the filing of the petition, failed to receive alimony or child support income, or both, that such debtor was entitled to receive pursuant to a valid court order, totaling an amount in excess of 35 percent of the debtor's household income for such 12-month period.''.

AMENDMENT NO. 71

(Purpose: To strike the provision relating to the presumption of luxury goods)

Beginning on page 155, strike line 3 and all that follows through page 156, line 5.

AMENDMENT NO. 72

(Purpose: To ensure that families below median income are not subjected to means test requirements)

On page 28, between lines 21 and 22, insert the following:

SEC. 102A. PROTECTION OF FAMILIES BELOW MEDIAN INCOME.

Section 707(b) of title 11, United States Code, as amended by section 102, is further amended—

(1) in paragraph (2)(C), by striking ''calculated'' and inserting ''calculated, except that a debtor described in paragraph (7) need only provide the calculations or other information showing that the debtor meets the standards of such paragraph''; and

(2) in paragraph (7)(A), by striking ''No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2)'' and inserting ''Paragraph (2) does not apply, and the court may not dismiss a case based on any form of means testing,''.

AMENDMENT NO. 119

(Purpose: To amend section 502(b) of title 11, United States Code, to limit usurious claims in bankruptcy)

On page 45, strike lines 22 through 24, and insert the following:

(a) REDUCTION OF CLAIM.—Section 502 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (8), by striking ''or'' at the end;

(B) in paragraph (9), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(10) such claim is for a credit transaction involving a consumer (as defined in section 103(h) of the Truth in Lending Act (15 U.S.C. 1602(g))), and the interest included as part of such claim exceeds the maximum amount allowed by the laws of the State, Territory, or District in which the debtor resides.''; and

(2) by adding at the end the following:

VOTE EXPLANATION

Mr. SPECTER. Mr. President, I have sought recognition to comment on the last two votes. I had traveled with the President to Pittsburgh, PA today so that I was absent during the vote on the Kennedy amendment. Had I been present, I would have voted for the Kennedy amendment. I arrived 7 minutes into the vote on the Santorum amendment. I would like to have made the vote for the first amendment but voted for the Santorum amendment. As between the two, my preference would have been the Kennedy amendment because it raised the minimum wage more, and after a 7½ year hiatus, it seemed to me that that amendment was in order.

I commend Senator KENNEDY for his continuing efforts on the minimum wage, and I commend my distinguished colleague for his efforts which bridged a considerable gap. I wanted to explain or comment for the record why I was absent on the Kennedy amendment but present on the Santorum amendment, even though I would have preferred the Kennedy amendment to the Santorum amendment. But I would have in any event voted for both of them.

The last time Congress voted to raise the minimum wage was in 1996, raising it from $4.25 to $4.75 to eventually $5.15. Since 2000, the number of Americans in poverty has increased by 4.3 million for a grand total of 36 million people, which includes 13 million children. Among full-time, year-round workers, poverty has doubled since the late 1970s from about 1.3 million then to more than 2.6 million. Since 1981 on 10 different occasions, I have voted to increase the minimum wage.

History clearly demonstrates that raising the minimum wage has no adverse impact on jobs, employment, or inflation. In the 4 years after the last minimum wage increase passed, the economy experienced its strongest growth in over three decades. More than 11 million new jobs were added, at the pace of 232,000 per month.

Nearly 7½ million workers will directly benefit from this minimum wage increase while 8 million more will benefit indirectly. That is a total of 15½ million Americans who would get a raise due to this legislation and would enable a working family to afford almost 2 more years of childcare, full tuition for a community college degree, and many other staples for a healthy standard of living. Unfortunately, the current minimum wage fails to meet these standards.

I thank the Chair and yield the floor.

The PRESIDING OFFICER. The Senator from Hawaii.

AMENDMENT NO. 105

Mr. AKAKA. Mr. President, I ask unanimous consent that the pending amendments be set aside so that I may offer an amendment.

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

Mr. AKAKA. Mr. President, I call up amendment No. 105.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from Hawaii [Mr. AKAKA] proposes an amendment numbered 105.

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

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

The amendment is as follows:

AMENDMENT NO. 105

(Purpose: To limit claims in bankruptcy by certain unsecured creditors)

On page 45, strike lines 22 through 24, and insert the following:

(a) REDUCTION OF CLAIM.—Section 502 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (8), by striking ''or'' at the end;

(B) in paragraph (9), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(10) such consumer debt is an unsecured claim arising from a debt to a creditor that does not have, as of the date of the order for relief, a policy of waiving additional interest for all debtors who participate in a debt management plan administered by a nonprofit budget and credit counseling agency described in section 111(a).''; and

(2) by adding at the end the following:

Mr. AKAKA. Mr. President, I ask unanimous consent that my amendment be set aside.

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

The Senator from Wisconsin.

AMENDMENTS NOS. 87 THROUGH 101

Mr. FEINGOLD. Mr. President, I have filed a number of amendments to this bill, most of which I believe are germane and therefore can be offered and debated and voted on even if cloture is invoked tomorrow. I wanted to make sure that my amendments have been called up prior to cloture so that I am assured of getting a vote on any amendment that is germane. It is not my intention to debate these amendments tonight. That is what this request is designed to do, merely to allow my germane amendments to be voted

on prior to a vote on final passage of the bill.

I ask unanimous consent that the pending amendment be laid aside and that each of my amendments Nos. 87 through 101 be called up in turn, that the reading of each amendment be dispensed with, and each amendment in turn be laid aside so that another amendment can become the pending business, and that the last amendment in the list then be laid aside so that the amendment that is now pending is again the pending business.

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

The amendments are as follows:'

AMENDMENT NO. 87

(Purpose: To amend section 104 of title 11, United States Code, to include certain provisions in the triennial inflation adjustment of dollar amounts)

On page 445, strike lines 10 through 13, and insert the following:

SEC. 1202. ADJUSTMENT OF DOLLAR AMOUNTS.

Section 104(b) of title 11, United States Code, as amended by this Act, is further amended—

(1) by inserting ''101(19A),'' after ''101(18),'' each place it appears;

(2) by inserting ''522(f)(3),'' after ''522(d),'' each place it appears;

(3) by inserting ''541(b), 547(c)(9),'' after ''523(a)(2)(C),'' each place it appears;

(4) in pagagraph (1), by striking ''and 1325(b)(3)'' and inserting ''1322(d), 1325(b), and 1326(b)(3) of this title and section 1409(b) of title 28''; and

(5) in paragraph (2), by striking ''and 1325(b)(3) of this title'' and inserting ''1322(d), 1325(b), and 1326(b)(3) of this title and section 1409(b) of title 28''.

AMENDMENT NO. 88

(Purpose: To amend the plan filing and confirmation deadlines)

Beginning on page 230, strike line 7 and all that follows through page 231, line 6, and insert the following:

''(e) In a small business case—

''(1) only the debtor may file a plan until after 180 days after the date of the order for relief, unless that period is—

''(A) extended as provided by this subsection, after notice and a hearing; or

''(B) the court, for cause, orders otherwise;

''(2) the plan and a disclosure statement (if any) shall be filed not later than 300 days after the date of the order for relief, unless that period is—

''(A) extended as provided by this subsection, after notice and a hearing; or

''(B) the court, for cause, orders otherwise; and

''(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e) within which the plan shall be confirmed, may be extended only if—

''(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time;

''(B) a new deadline is imposed at the time the extension is granted; and

''(C) the order extending time is signed before the existing deadline has expired.''.

AMENDMENT NO. 89

(Purpose: To strike certain small business related bankruptcy provisions in the bill)

Beginning on page 221, strike line 1 and all that follows through page 240, line 4, and insert the following:

Subtitle B—Small Business Bankruptcy Provisions

SEC. 431. SCHEDULING CONFERENCES.

Section 105(d) of title 11, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking '', may''; and

(2) by striking paragraph (1) and inserting the following:

''(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and''.

SEC. 432. SERIAL FILER PROVISIONS.

Section 362 of title 11, United States Code, as amended by sections 106, 305, and 311, is amended—

(1) in subsection (k), as so redesignated by section 305—

(A) by striking ''An'' and inserting ''(1) Except as provided in paragraph (2), an''; and

(B) by adding at the end the following:

''(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.''; and

(2) by adding at the end the following:

''(n)(1) Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor—

''(A) is a debtor in a small business case pending at the time the petition is filed;

''(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

''(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

''(D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.

''(2) Paragraph (1) does not apply—

''(A) to an involuntary case involving no collusion by the debtor with creditors; or

''(B) to the filing of a petition if—

''(i) the debtor proves by a preponderance of the evidence that the filing of the petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

''(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.''.

AMENDMENT NO. 90

(Purpose: To amend the provision relating to fair notice given to creditors)

Beginning on page 167, strike line 3 and all that follows through page 169, line 25, and insert the following:

(a) NOTICE.—Section 342 of title 11, United States Code, is amended—

(1) in subsection (c), by adding before the period at the end the following: ''unless the creditor cannot with reasonable effort identify the account to which the notice applies without the information required by this subsection''; and

(2) by adding at the end the following:

''(e) At any time in a case under chapter 7 or 13 concerning an individual debtor, a creditor may file with the court and serve on the debtor a notice of the address to be used for service of notice on the creditor in that case. Beginning 10 days after the creditor files and serves the notice, any notice that the court or the debtor is required to give shall be given at the address contained in the creditor's notice of address.

''(f)(1) An entity may file with any bankruptcy court a notice of address to be used by all the bankruptcy courts or by particular bankruptcy courts, as so specified by such entity at the time such notice is filed, to provide notice to such entity in all cases under chapters 7 and 13 pending in the courts with respect to which such notice is filed, in which such entity is a creditor.

''(2) In any case filed under chapter 7 or 13, any notice required to be provided by a court with respect to which a notice is filed under paragraph (1), to such entity later than 30 days after the filing of such notice under paragraph (1) shall be provided to such address unless with respect to a particular case a different address is specified in a notice filed and served in accordance with subsection (e).

''(3) In any case filed under chapter 7 or 13, any notice required to be provided by any party in interest with respect to which a notice is filed under paragraph (1), to such entity later than 120 days after the filing of such notice under paragraph (1) shall be provided to such address unless with respect to a particular case a different address is specified in a notice filed and served in accordance with subsection (e).

''(4) A notice filed under paragraph (1) may be withdrawn by such entity.

''(g)(1) Notice given to a creditor other than as provided in this section is not effective until that notice has been brought to the attention of the creditor. If the creditor designates a person or department to be responsible for receiving notices concerning bankruptcy cases by a filing in accordance with subsection (d) or (e) and establishes reasonable procedures so that bankruptcy notices received by the creditor are actually delivered to the person or department, notice is not considered to have been brought to the attention of the creditor until that person or department receives the notice.

''(2) The court may not impose either a sanction under section 362(h) or a sanction that a court may otherwise impose on account of a violation of the stay under section 362(a) or a failure to comply with section 542 or 543 on account of any action of the creditor unless the action occurs after the creditor has received either notice of the commencement of the case effective under this section or other actual notice reasonably calculated to come to the attention of the creditor, the creditor's attorney, the creditor's agent taking the action, or other appropriate person.''.

AMENDMENT NO. 91

(Purpose: To amend section 303 of title 11, United States Code, with respect to the sealing and expungement of court records relating to fraudulent involuntary bankruptcy petitions)

On page 205, between lines 16 and 17, insert the following:

SEC. 332. FRAUDULENT INVOLUNTARY BANKRUPTCY.

(a) SHORT TITLE.—This section may be cited as the ''Involuntary Bankruptcy Improvement Act of 2005''.

(b) INVOLUNTARY CASES.—Section 303 of title 11, United States Code, is amended by adding at the end the following:

''(*l*)(1) If—

''(A) the petition under this section is false or contains any materially false, fictitious, or fraudulent statement;

''(B) the debtor is an individual; and

''(C) the court dismisses such petition,

the court, upon the motion of the debtor, shall seal all the records of the court relating to such petition, and all references to such petition.

''(2) If the debtor is an individual and the court dismisses a petition under this section, the court may enter an order prohibiting all consumer reporting agencies (as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))) from making any consumer report (as defined in section 603(d) of that Act) that contains any information relating to such petition or to the case commenced by the filing of such petition.

''(3) Upon the expiration of the statute of limitations described in section 3282 of title 18, for a violation of section 152 or 157 of such title, the court, upon the motion of the debtor and for good cause, may expunge any records relating to a petition filed under this section.''.

(c) BANKRUPTCY FRAUD.—Section 157 of title 18, United States Code, is amended by inserting '', including a fraudulent involuntary bankruptcy petition under section 303 of such title'' after ''title 11''.

AMENDMENT NO. 92

(The amendment is printed in today's RECORD under ''Text of Amendments.'')

AMENDMENT NO. 93

(Purpose: To modify the disclosure requirements for debt relief agencies providing bankruptcy assistance)

On page 112, strike line 17 and all that follows through page 120, line 24, and insert the following:

''(12A) 'debt relief agency' means any person, other than an attorney or an employee of an attorney, who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include—

''(A) any person who is an officer, director, employee, or agent of a person who provides such assistance or of the bankruptcy petition preparer;

''(B) a nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

''(C) a creditor of such assisted person, to the extent that the creditor is assisting such assisted person to restructure any debt owed by such assisted person to the creditor;

''(D) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such depository institution or credit union; or

''(E) an author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.''.

(b) CONFORMING AMENDMENT.—Section 104(b) of title 11, United States Code, is amended by inserting ''101(3),'' after ''sections'' each place it appears.

SEC. 227. RESTRICTIONS ON DEBT RELIEF AGENCIES.

(a) ENFORCEMENT.—Subchapter II of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

''§ 526. Restrictions on debt relief agencies

''(a) A debt relief agency shall not—

''(1) fail to perform any service that such agency informed an assisted person or prospective assisted person it would provide in connection with a case or proceeding under this title;

''(2) make any statement, or counsel or advise any assisted person or prospective assisted person to make a statement in a document filed in a case or proceeding under this title, that is untrue and misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading;

''(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, with respect to—

''(A) the services that such agency will provide to such person; or

''(B) the benefits and risks that may result if such person becomes a debtor in a case under this title; or

''(4) advise an assisted person or prospective assisted person to incur more debt in contemplation of such person filing a case under this title or to pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a case under this title.

''(b) Any waiver by any assisted person of any protection or right provided under this section shall not be enforceable against the debtor by any Federal or State court or any other person, but may be enforced against a debt relief agency.

''(c)(1) Any contract for bankruptcy assistance between a debt relief agency and an assisted person that does not comply with the material requirements of this section, section 527, or section 528 shall be void and may not be enforced by any Federal or State court or by any other person, other than such assisted person.

''(2) Any debt relief agency shall be liable to an assisted person in the amount of any fees or charges in connection with providing bankruptcy assistance to such person that such debt relief agency has received, for actual damages, and for reasonable attorneys' fees and costs if such agency is found, after notice and a hearing, to have—

''(A) intentionally or negligently failed to comply with any provision of this section, section 527, or section 528 with respect to a case or proceeding under this title for such assisted person;

''(B) provided bankruptcy assistance to an assisted person in a case or proceeding under this title that is dismissed or converted to a case under another chapter of this title because of such agency's intentional or negligent failure to file any required document including those specified in section 521; or

''(C) intentionally or negligently disregarded the material requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such agency.

''(3) In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this section, the State—

''(A) may bring an action to enjoin such violation;

''(B) may bring an action on behalf of its residents to recover the actual damages of assisted persons arising from such violation, including any liability under paragraph (2); and

''(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorneys' fees as determined by the court.

''(4) The district courts of the United States for districts located in the State shall have concurrent jurisdiction of any action under subparagraph (A) or (B) of paragraph (3).

''(5) Notwithstanding any other provision of Federal law and in addition to any other remedy provided under Federal or State law, if the court, on its own motion or on the motion of the United States trustee or the debtor, finds that a person intentionally violated this section, or engaged in a clear and consistent pattern or practice of violating this section, the court may—

''(A) enjoin the violation of such section; or

''(B) impose an appropriate civil penalty against such person.

''(d) No provision of this section, section 527, or section 528 shall—

''(1) annul, alter, affect, or exempt any person subject to such sections from complying with any law of any State except to the extent that such law is inconsistent with those sections, and then only to the extent of the inconsistency; or

''(2) be deemed to limit or curtail the authority or ability—

''(A) of a State or subdivision or instrumentality thereof, to determine and enforce qualifications for the practice of law under the laws of that State; or

''(B) of a Federal court to determine and enforce the qualifications for the practice of law before that court.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 525, the following:

''526. Restrictions on debt relief agencies.''.

SEC. 228. DISCLOSURES.

(a) DISCLOSURES.—Subchapter II of chapter 5 of title 11, United States Code, as amended by section 227, is amended by adding at the end the following:

''§ 527. Disclosures

''(a) A debt relief agency providing bankruptcy assistance to an assisted person shall provide—

''(1) the written notice required under section 342(b)(1); and

''(2) to the extent not covered in the written notice described in paragraph (1), and not later than 3 business days after the first date on which a debt relief agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons that—

''(A) all information that the assisted person is required to provide with a petition and thereafter during a case under this title is required to be complete, accurate, and truthful;

''(B) all assets and all liabilities are required to be completely and accurately disclosed in the documents filed to commence the case, and the replacement value of each asset as defined in section 506 must be stated in those documents where requested after reasonable inquiry to establish such value;

''(C) current monthly income, the amounts specified in section 707(b)(2), and, in a case under chapter 13 of this title, disposable income (determined in accordance with section 707(b)(2)), are required to be stated after reasonable inquiry; and

''(D) information that an assisted person provides during their case may be audited pursuant to this title, and that failure to provide such information may result in dismissal of the case under this title or other sanction, including a criminal sanction.

''(b) A debt relief agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subsection (a)(1) the following statement, to the extent applicable, or one substantially similar. The statement shall be clear and conspicuous and shall be in a single document separate from other documents or notices provided to the assisted person:

''`IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM A BANKRUPTCY PETITION PREPARER.

''`If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get

help in some localities from a bankruptcy petition preparer who is not an attorney. THE LAW REQUIRES A BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST. Ask to see the contract before you hire anyone.' ''

AMENDMENT NO. 94

(Purpose: To clarify the application of the term disposable income)

Beginning on page 24, strike line 9 and all that follows through page 26, line 7, and insert the following:

(h) APPLICABILITY OF MEANS TEST TO CHAPTER 13.—Section 1325(b) of title 11, United States Code, is amended by striking paragraph (2) and inserting the following:

''(2) For purposes of this subsection, the term 'disposable income' means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

''(A)(i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

''(ii) for charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

''(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

''(3) Amounts reasonably necessary to be expended under paragraph (2)(A)(i), shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.''.

AMENDMENT NO. 95

(Purpose: To amend the provisions relating to the discharge of taxes under chapter 13)

On page 265, between lines 18 and 19, insert the following:

SEC. 707A. DISCHARGE UNDER CHAPTER 13.

Section 1328(a) of title 11, United States Code, as amended by this Act, is further amended—

(1) in paragraph (2), by striking ''(1)(B), (1)(C),'';

(2) in paragraph (3), by striking ''or'' after the semicolon;

(3) in paragraph (4), by striking the period at the end and inserting ''; or''; and

(4) by adding at the end the following:

''(5) for taxes with respect to which the debtor filed a fraudulent return.''.

AMENDMENT NO. 96

(Purpose: To amend the provisions relating to chapter 13 plans to have a 5-year duration in certain cases and to amend the definition of disposable income for purposes of chapter 13)

Beginning on page 24, strike line 16 and all that follows through page 26, line 7, and insert the following:

''(2)(A) For purposes of this subsection, the term 'disposable income' means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

''(i)(I) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

''(II) for charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

''(ii) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

''(B) However, the debtor's disposable income may be adjusted if the debtor demonstrates special circumstances that justify adjustments of current monthly income for which there is no reasonable alternative, as described in section 707(b)(2)(B) of this title.

''(3)(A) Amounts reasonably necessary to be expended under paragraph (2) shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

''(i) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(ii) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

''(iii) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

''(B) However, this paragraph shall not apply if the debtor demonstrates special circumstances that justify adjustments of current monthly income for which there is no reasonable alternative, as described in section 707(b)(2)(B) of this title, and which bring the debtor's income below the applicable amount set forth in this paragraph.''.

(i) REDUCTION OF THE TERM OF THE PLAN FOR CERTAIN DEBTORS.—Section 1329 of title 11, United States Code, is amended by adding at the end the following:

''(d) Notwithstanding paragraphs (1)(B) and (4) of section 1325(b), if the actual income of the debtor, or in a joint case the debtor and the debtor's spouse, has dropped below the applicable amount stated in section 1325(b)(3), either before or after the petition, and is unlikely to increase above such amounts within 1 year, the debtor's plan may be modified to reduce the term of the plan to a time period equal to or greater than the applicable commitment period in section 1325(b)(4)(A)(i) and the debtor shall not be subject to section 1325(b)(3).''.

AMENDMENT NO. 97

(Purpose: To amend the provisions relating to chapter 13 plans to have a 5-year duration in certain cases and to amend the definition of disposable income for purposes of chapter 13)

On page 182, between lines 3 and 4, insert the following:

SEC. 318A. APPLICABILITY OF MEANS TEST AND PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.

(a) APPLICABILITY OF MEANS TEST TO CHAPTER 13.—Section 1325(b) of title 11, United States Code, as amended by this Act, is further amended—

(1) in paragraph (2), by inserting ''or, if lower and not likely to increase substantially in the 2 months after the order for relief, the debtor's monthly income on the date of the order for relief under this chapter'' after ''received by the debtor'';

(2) in paragraph (3), by inserting ''(or, if lower and not likely to increase substantially in the 2 months after the order for relief, the debtor's monthly income on the date of the order for relief under this chapter)'' after ''if the debtor has current monthly income''; and

(3) in paragraph (4)—

(A) in subparagraph (A)(ii), by striking ''debtor and the debtor's spouse combined'' and inserting ''debtor, and in a joint case the debtor and the debtor's spouse, or, if lower and not likely to increase substantially in the 2 months after the order for relief, the monthly income on the date of the order for relief under this chapter'';

(B) in subparagraph (A)(ii)(III), by striking ''and'' after the semicolon;

(C) in subparagraph (B), by striking the period at the end and inserting ''; and''; and

(D) by adding at the end the following:

''(C) provided that if the debtor's income decreases during the case to less than the amount set forth in subparagraph (A)(ii), and is not likely again to exceed that amount within 1 month, may be reduced to 3 years.''.

(b) CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.—Section 1322(d) of title 11, United States Code, as amended by this Act, is further amended—

(1) in paragraph (1), by striking ''debtor and the debtor's spouse combined'' and inserting ''debtor, and in a joint case the debtor and the debtor's spouse, or, if lower and not likely to increase substantially in the 2 months after the order for relief, the monthly income on the date of the order for relief under this chapter''; and

(2) in paragraph (2), by striking ''debtor and the debtor's spouse combined'' and inserting ''debtor, and in a joint case the debtor and the debtor's spouse, or, if lower and not likely to increase substantially in the 2 months after the order for relief, the monthly income on the date of the order for relief under this chapter''.

AMENDMENT NO. 98

(Purpose: To modify the disclosure requirements for debt relief agencies providing bankruptcy assistance)

On page 112, line 17, insert '', other than an attorney or an employee of an attorney'' after ''any person''.

On page 120, lines 12 and 13, strike ''AN ATTORNEY OR'' and insert ''A''.

On page 120, line 19, strike ''AN ATTORNEY OR'' and insert ''A''.

On page 120, lines 21 and 22, strike ''ATTORNEY OR''.

AMENDMENT NO. 99

(Purpose: To provide no bankruptcy protection for insolvent political committees)

On page 205, between lines 16 and 17, insert the following:

SEC. 332. NO BANKRUPTCY FOR INSOLVENT POLITICAL COMMITTEES.

Section 109 of title 11, United States Code, is amended by adding at the end the following:

''(i) A political committee subject to the jurisdiction of the Federal Election Commission under Federal election laws may not be a debtor under this title.''.

AMENDMENT NO. 100

(Purpose: To provide authority for a court to order disgorgement or other remedies relating to an agreement that is not enforceable)

On page 63, between lines 3 and 4, insert the following:

''(4) Nothing in this section shall preclude a court from ordering disgorgement of payments accepted, or other remedies under this title or other applicable law, when a creditor has accepted payments under such agreement or in anticipation of such agreement and the agreement is not enforceable.

AMENDMENT NO. 101

(Purpose: To amend the definition of small business debtor)

Beginning on page 222, strike line 23 and all that follows through page 223, line 21, and insert the following:

''(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition or the date of the order for relief in an amount not more than $1,250,000 (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor; and

''(B) does not include any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than $1,250,000 (excluding debt owed to 1 or more affiliates or insiders);''.

Mr. SESSIONS. Mr. President, on the unanimous consent request, reserving the right to object, I know the Senator from Wisconsin has worked hard on the bankruptcy bill and has a number of relevant, germane amendments. I know he cares about the bill. I think he would like to see it die, but he wants to make it better. How many amendments did he have?

Mr. FEINGOLD. Fifteen total. This is not a number that I would actually offer. I will be able to pare that list down, but I wanted to preserve my right to have any germane amendment voted on postcloture.

Mr. SESSIONS. I have great respect for the Senator from Wisconsin, and I will not object if he will use his best judgment and try to avoid as many votes as we can.

Mr. FEINGOLD. Mr. President, I have found the Senator very reasonable in working on these amendments. Certainly some will not be offered, others are not major amendments, others will require votes, but it will be a list significantly smaller than 15.

Mr. SESSIONS. I will not object.

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

AMENDMENT NO. 121

Mr. TALENT. Mr. President, I ask unanimous consent that the pending amendment be set side and my amendment No. 121 be called up, the reading be dispensed with, and it then be set aside.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendment (No. 121) is as follows:

(Purpose: To deter corporate fraud and prevent the abuse of State self-settled trust law)

On page 500, between lines 2 and 3, insert the following:

(4) by adding at the end the following:

''(e)(1) In addition to any transfer that the trustee may otherwise avoid, the trustee may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if—

''(A) such transfer was made to a self-settled trust or similar device;

''(B) such transfer was by the debtor;

''(C) the debtor is a beneficiary of such trust or similar device; and

''(D) the debtor made such transfer with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made, indebted.

''(2) For the purposes of this subsection, a transfer includes a transfer made in anticipation of any money judgment, settlement, civil penalty, equitable order, or criminal fine incurred by, or which the debtor believed would be incurred by—

''(A) any violation of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws; or

''(B) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 781 and 78o(d)) or under section 6 of the Securities Act of 1933 (15 U.S.C. 77f).''.

AMENDMENT NO. 129 TO AMENDMENT NO. 121

Mr. SCHUMER. Mr. President, I offer a second-degree amendment to amendment No. 121, proposed by Senator TALENT.

The PRESIDING OFFICER. The clerk will report.

The legislative clerk read as follows:

The Senator from New York [Mr. SCHUMER] proposes an amendment numbered 129 to amendment No. 121.

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

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

The amendment is as follows:

(Purpose: To limit the exemption for asset protection trusts)

Beginning on page 1 of the amendment, strike all after (4) and insert the following:

''(e)(1) In addition to any transfer that the trustee may otherwise avoid, the trustee may avoid any transfer of an interest of the debtor in property that was made on or within 10 years before the date of the filing of the petition, if—

''(A) such transfer was made to a self-settled trust or similar device;

''(B) such transfer was by the debtor; and

''(C) the debtor is a beneficiary of such trust or similar device.

''(2) Paragraph (1) shall not apply to the trusts specified in section 522(d)(12).''.

Mr. SCHUMER. Mr. President, I will be very brief. Late last week, this body, in its wisdom, defeated our amendment to close the millionaire's loophole, an amendment that would allow certain trusts to be set up by anybody, but, of course, they are expensive and only those very wealthy who have a purpose would do it and shield their assets in the trust and then declare bankruptcy and shed their debt.

It meant that if you were very wealthy, and you could afford some fancy lawyers, you were a lot better off than somebody who went bankrupt who made $40,000, $45,000, $50,000, or $55,000. I was hoping the amendment could have been adopted, but it was not.

After that point, a number of my colleagues from the other side said, let's try to work something out. We tried this morning but did not reach agreement. So Senator TALENT, my friend from Missouri, just offered his amendment, which I regret to say does not close the millionaire's loophole at all. It is something of a subterfuge. There are two basic problems with it.

First, you would have to prove that the intent of the filer of the trust was to avoid bankruptcy. I do not have to tell anyone here who is a lawyer that to prove that intent, especially when the filer would want to make sure that intent could not be proven and would leave no paper trail, no documents or anything else, would be next to impossible. So in a sense, it would not close the loophole at all.

But there is a broader point. Whether the intent was to do it or not, why should someone be able to shield millions of dollars of assets and declare bankruptcy? We are trying to close abuses here. Why are the abuses of the wealthy any less worthy of being closed than, say, of the middle class, someone who might gamble their meager assets away?

This amendment removes the requirement that you must prove the intent of setting up the trust was simply to avoid your assets being taken in bankruptcy, as well as doing one other thing. The amendment has another problem with it which deals with pensions, and our amendment corrects that as well.

Their amendment on pensions would subject pensions to these rules, and we do not want to do that. That is quite different than somebody hiding their assets in these trusts. But some of these trusts are used by pension plans. We do not bring pension plans into it. In fact, we take them out.

The Talent amendment has kept the pension proposal. I am sure we will be debating the Talent amendment and my second-degree amendment to the Talent amendment at some point as we

move forward on the bankruptcy bill, but I wanted to let my colleagues know what has happened.

I yield the floor.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, will the Senator from New York yield for a question?

Mr. SCHUMER. I will be happy to yield for a question.

Mr. SESSIONS. Mr. President, we went through a debate last time over the retirement benefits, the savings plans. I thought we capped those at $1 million.

My question to the Senator from New York, Mr. President, is, how confident is he under the bankruptcy bill as written that these trusts will be held by bankruptcy judges as not subject to being part of the assets of the debtor's estate? Is this something about which the Senator from New York is concerned? And we are not sure or do we have any law that will give the Senator cause to believe that they would not be captured as part of the estate?

Mr. SCHUMER. The lawyers we have consulted have said it is pretty clear-cut that these assets would be held immune from bankruptcy. But probably more important than my opinion, there was an article in the New York Times written by a Pulitzer Prize-winning author who is an expert on the Tax Code who checked this out with many different sources, as I read the article, and said it is pretty clear that these assets would be held immune from bankruptcy.

Let me remind my colleague, only five States allow the setting up of these trusts, but neither Alabama nor New York. Citizens in our States could set up these trusts in Utah. I do not remember all the other States. I remember Utah because Senator HATCH came over to me and said: that is my State you are picking on. They could set up these trusts, use the trusts in those States, and they would be immune from bankruptcy, no matter what the jurisdiction.

Mr. SESSIONS. I thank the Senator from New York. It is a matter that could be significant, and I am glad we are discussing it.

Mr. SCHUMER. If my colleague will yield for a minute, I would prefer not to second degree the amendment of my friend from Missouri. I would like to come to a compromise that truly closes this loophole. I know my friend from Iowa, the leader on this bill, had mentioned in his remarks that he was interested in closing this. My colleague from Utah had mentioned that he was interested in closing this, and rather than having a debate on the amendment of the Senator from Missouri and my second degree, if we could come to a compromise that truly closes the loophole without going further, I would be happy to do that.

Mr. SESSIONS. I thank the Senator for that offer and will look forward to taking him up on that.

Mr. SCHUMER. I thank my colleague, and I yield the floor.

The PRESIDING OFFICER. The Senator from Illinois.

AMENDMENTS NOS. 110, 111, 112

Mr. DURBIN. Mr. President, I ask unanimous consent that the pending amendment be set aside for the purpose of offering en bloc amendments Nos. 110, 111, and 112.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

The amendments are as follows:

AMENDMENT NO. 110

(Purpose: To clarify that the means test does not apply to debtors below median income)

On page 18, strike line 1 and all that follows through ''(2)'' on line 3, and insert the following:

(7)(A) Notwithstanding paragraph (2), a debtor described in this paragraph need only provide the calculations or other information showing that the debtor meets the standards of this paragraph. Paragraph (2) shall not apply, and the court may not dismiss a case based on any form of means testing,

AMENDMENT NO. 111

(Purpose: To protect veterans and members of the armed forces on active duty or performing homeland security activities from means testing in bankruptcy)

On page 13, between lines 13 and 14, insert the following:

''(D) Subparagraphs (A) through (C) shall not apply, and the court may not dismiss or convert a case based on any form of means testing, if—

''(i) the debtor or the debtor's spouse is a member of the armed forces—

''(I) on active duty (as defined in section 101(d)(1) of title 10); or

''(II) performing a homeland defense activity (as defined in section 901(1) of title 32);

''(ii) the debtor or the debtor's spouse is a veteran (as defined in section 101(2) of title 38), and the indebtedness occurred primarily during a period of not less than 180 days, during which he or she was—

''(I) on active duty (as defined in section 101(d)(1) of title 10); or

''(II) performing a homeland defense activity (as defined in section 901(1) of title 32);

''(iii) the debtor or the debtor's spouse is a reserve of the armed forces, and the indebtedness occurred primarily during a period of not less than 180 days, during which he or she was—

''(I) on active duty (as defined in section 101(d)(1) of title 10); or

''(II) performing a homeland defense activity (as defined in section 901(1) of title 32); or

''(iv) the debtor's spouse died while serving as a member of the armed forces—

''(I) on active duty (as defined in section 101(d)(1) of title 10); or

''(II) performing a homeland defense activity (as defined in section 901(1) of title 32).

AMENDMENT NO. 112

(Purpose: To protect disabled veterans from means testing in bankruptcy under certain circumstances)

On page 13, between lines 13 and 14, insert the following:

''(D) Subparagraphs (A) through (C) shall not apply, and the court may not dismiss or convert a case based on any form of means testing, if the debtor is a disabled veteran (as defined in section 3741(1) of title 38), and the indebtedness occurred primarily during a period during which he or she was—

''(i) on active duty (as defined in section 101(d)(1) of title 10); or

''(ii) performing a homeland defense activity (as defined in section 901(1) of title 32).

AMENDMENT NO. 26, AS MODIFIED

Mr. DURBIN. Mr. President, on behalf of Senator LEAHY, I send a modification of amendment 26 to the desk. This amendment has been cleared on both sides.

The PRESIDING OFFICER. Is there objection to the modification?

The PRESIDING OFFICER. Without objection, it is so ordered. The amendment will be so modified.

The amendment (No. 26), as modified, is as follows:

(Purpose: To restrict access to certain personal information in bankruptcy documents)

On page 132, between lines 5 and 6, insert the following:

SEC. 234. PROTECTION OF PERSONAL INFORMATION.

(a) RESTRICTION OF PUBLIC ACCESS TO CERTAIN INFORMATION CONTAINED IN BANKRUPTCY CASE FILES.—Section 107 of title 11, United States Code, is amended by adding at the end the following:

''(c)(1) The bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual's property:

''(A) Any means of identification (as defined in section 1028(d) of title 18) contained in a paper filed, or to be filed, in a case under this title.

''(B) Other information contained in a paper described in subparagraph (A).

''(2) Upon ex parte application demonstrating cause, the court shall provide access to information protected pursuant to paragraph (1) to an entity acting pursuant to the police or regulatory power of a domestic governmental unit.

''(3) The United States trustee, bankruptcy administrator, trustee, and any auditor serving under section 586(f) of title 28—

''(A) shall have full access to all information contained in any paper filed or submitted in a case under this title; and

''(B) shall not disclose information specifically protected by the court under this title.''.

(b) SECURITY OF SOCIAL SECURITY ACCOUNT NUMBER OF DEBTOR IN NOTICE TO CREDITOR.—Section 342(c) of title 11, United States Code, is amended—

(1) by inserting ''last 4 digits of the'' before ''taxpayer identification number''; and

(2) by adding at the end the following: ''If the notice concerns an amendment that adds a creditor to the schedules of assets and liabilities, the debtor shall include the full taxpayer identification number in the notice sent to that creditor, but the debtor shall include only the last 4 digits of the taxpayer identification number in the copy of the notice filed with the court.''.

(c) CONFORMING AMENDMENT.—Section 107(a) of title 11, United States Code, is amended by striking ''subsection (b),'' and inserting ''subsections (b) and (c),''.

Mr. LEAHY. Mr. President, the recent debacles at ChoicePoint and Bank of America remind us that we must vigilantly protect our personal information at all points of vulnerability. The bankruptcy process, which inherently involves the exchange of highly personal information, should be no different.

This is a bipartisan amendment that balances the need to protect personal

information with the needs of creditors, regulators and law enforcement to access critical information. The amendment is strongly supported by the non-partisan Judicial Conference, and also by the Center for Democracy and Technology.

I am pleased that my colleagues Senator SNOWE and Senator CANTWELL have agreed to cosponsor this amendment, and that Chairman SPECTER and Senator GRASSLEY worked so closely with us to improve the amendment even further. They have all been leaders on privacy issues, and I appreciate their support.

Our bipartisan amendment does two things. It enhances court discretion to balance the need to know against the need to protect personal information, and it requires truncation of social security numbers in publicly filed documents. This protection is particularly important in an electronic filing environment, where information once filed is immediately available to the public via the Internet.

The amendment allows the court, for cause, to protect personal information. For example, the court can seal or redact information, such as the home or employment address of a debtor, because of a personal security risk, including fear of injury by a former spouse or stalker. The amendment would also give the court the leeway to protect other information normally considered private, such as personal medical records.

Our bipartisan amendment still protects law enforcement and creditors where necessary. A law enforcement provision ensures that police and regulators can get needed information directly from the bankruptcy court, and a creditor protection provision specifies that creditors, including the IRS, receive the full Social Security number of a debtor in the initial notice of the case. Finally, we also clarify that these protections should not limit the access of the trustees, administrators and auditors to necessary information.

We must be careful that our efforts to require documentation for accuracy and accountability do not inadvertently create problems for privacy and security. As modified, the amendment properly balances these concerns, and protects the needs of those who need to know.

This has been a cooperative, bi-partisan effort, I extend special thanks to Senator SNOWE, Chairman SPECTER, and Senator GRASSLEY for all their hard-work in reaching an agreement, and I am pleased to submit this modification.

Ms. SNOWE. Mr. President, I support the amendment offered by my colleague Senator LEAHY, to ensure that the private, personal identification information filed in bankruptcy proceedings does not fall into the hands of identity thieves, violent stalkers, and other persons with criminal intentions. I, along with my colleague Senator CANTWELL, join as cosponsors to the Leahy amendment and urge its adoption by the Senate. This amendment is endorsed by the Judicial Conference of the United States, which is presided over by Chief Justice Rehnquist, and to which Congress regularly defers in the writing of the rules of our Federal court system.

Bankruptcy court filings, like most other court proceedings, are public record, and most papers filed in these cases are publicly available record. This is a good thing, because the administration of justice in our country should not be a secret affair. It is the public's right to know how its courts are meting out justice. The Bankruptcy Code affirmatively adopts this policy.

At the same time, bankruptcy proceedings are unique in that the explicit financial information of the debtor and its creditors are filed with the court, and likewise available for public review. Such information includes not only a person's name and address, but information such as the person's social security number, date of birth, driver's license number, and electronic addresses and routing codes. This information has long been available for public review at our Nation's courthouses. However, in today's information age, more and more Federal courts are making all of their public documents available on-line as well. While this is an advancement in efficiency in most regards, it opens up a great potential for abuse for identity thieves and others who access the Internet with the intent to commit fraud, physical harm, or other crimes.

More and more agencies today gain access to such personal information through publicly available documents. And as the recent computer hacking incident at Choice Point Corporation demonstrates, such personal information can be obtained even from companies in the businesses of collecting and securely storing such information. Moreover, access to such personal, sensitive information could pose serious risks to victims of domestic abuse, stalking, and other violent crime. Because any person with a computer can obtain these court documents, a person's safety and the safety of her property could be seriously put at risk.

Senator LEAHY, Senator CANTWELL, and I have devised this amendment to help prevent these harmful invasions of privacy from ever occurring. Currently the Bankruptcy Code allows courts to issue protective orders to prevent public disclosure of trade secrets and confidential research and commercial information. Our amendment would expand the court's authority to provide for similar protection of the personally identifiable information that I just described, as well as give the court the ability to shield other information if its release would create an undue risk of either identity theft or of injury to an individual's person or property. It further provides that when publicly available notices are filed with the court, only the last four digits of a person's social security number are required to be included in the documents. A separate filing with the full social security number will be sent privately to each party in interest in the bankruptcy proceeding. This amendment also creates an exception to ensure that law enforcement can gain access, and it has the support of the Department of Justice.

Furthermore, I have worked closely with the sponsors of the underlying bill, which I support, to ensure that this amendment does nothing to harm the efficient functioning of the credit and banking industries. Credit reporting agencies often rely on taxpayer identification numbers—most often social security numbers—to determine a person's creditworthiness. To ensure accuracy in such credit reports, we have modified the original language of this amendment to address the industry's concerns without in any way weakening the protections that we seek to enact. The new language strikes the appropriate balance for all concerned, and I understand that the industry finds the modification acceptable.

Giving the sensitive nature of bankruptcy filings and the increased threat of identity theft in today's society, this is a common sense measure to the underlying bankruptcy reform bill, which I support. I am pleased that all sides have come to agreement, and that this amendment will be adopted.

Ms. CANTWELL. Mr. President, I want to thank my colleagues on the Senate Judiciary Committee and others who have worked together for many years, despite considerable differences in the area of bankruptcy reform, to produce a bill that has passed the Senate a number of times. All that said, the bill is far from perfect, and the Senate should take full advantage of this opportunity to take a number of steps to amend this bill and improve it. I have supported amendments that improve the bill in areas where it affects particularly vulnerable consumers and retirees, and I believe we should also address incidents of corporate abuse. There are also ways to bring the bill up to date with modern technology and crime.

For example, I proudly join my colleague from Vermont, Mr. LEAHY, in recommending to all my colleagues the pending Leahy-Cantwell-Snowe privacy amendment, Amendment No. 26. This amendment is an appropriate response to the recent erosion of informational privacy in our society, demonstrated by the ChoicePoint and Bank of America personal informational security breaches, where the personal information of thousands of people was misappropriated by identity thieves.

Consumers should not have to surrender their privacy rights, just to gain access to our Nation's bankruptcy system. There are a number of reasons why it is simply sound practice for bankruptcy courts to join other Federal courts that already have a viable

mechanism to file personal information of debtors and others under seal. Identity theft is a predictable outcome when criminals have virtually unfettered access to an obvious public database of people who are already vulnerable in public bankruptcy court files. In some instances, a debtor might be a battered woman, a victim of a stalker or another victim of domestic violence, and the disclosure of that person's private information may subject her to further abuse. Congress has recognized the need to render private such personal information in court filings in much of the Federal court system, and this body should now add the bankruptcy courts to the list of properly protected public entities. Although I recognize that bankruptcy courts have some discretion to protect ''scandalous or defamatory matter,'' the point or preserving privacy of this information should also be to protect information that could be used to injure the consumer, either financially or even physically. It is also clear that such courts do not have the same ability to do protect information for cause as do other Federal courts. It is time to fix this unjustifiable distinction between the privacy rights of litigants in one kind of Federal court and another. I ask my colleagues to support Leahy-Cantwell-Snowe, because people's economic and even their physical security may be in jeopardy otherwise. Let's not wait for the inevitable abuse of this loophole, which could lead to stolen identities, or physical harm, before we act.

I urge my colleagues to vote for the Leahy-Cantwell-Snowe amendment.

Mr. DURBIN. Mr. President, I rise to speak very briefly about the amendments I have offered this evening to the pending bankruptcy bill. I have found as I traveled back in Illinois and around the country that some people follow the C–SPAN floor debate very closely. Just over this weekend, having traveled to Arizona and Nevada, I am amazed to find people who heard my speech on the bankruptcy bill, which always intrigues me that so many people suffer from insomnia that they watch C–SPAN gavel to gavel, but in all honesty I admire them for their interest in our Government, and I hope that they follow this debate. But if one is a newcomer to this bankruptcy bill debate, I will say a few words about the bill and the amendments which I have offered.

When it comes to the bill itself, which is 510 pages, it will amend the bankruptcy law of America. It is a bill which has been considered for years. We have had versions of this bill over the last 9 or 10 years. I know because years ago I worked with Senator GRASSLEY on one of the first modifications to the Bankruptcy Code. Some of these changes passed the Senate and failed in the House. Some have passed the House and Senate and been vetoed by President Clinton. The bill has had its ups and downs. It never did become law in that period of time.

Now for the second bill of the session, one of the highest priorities on the Republican side of the aisle—they are pushing for the bankruptcy reform bill. When one thinks of all the challenges in America, the obvious question is, why are we considering bankruptcy reform before we would even consider health care in America or doing something about the economy creating jobs or addressing the budget deficit in America or even addressing Social Security? Why is this bankruptcy bill such a high priority? Well, the reason is this bill makes fundamental changes in the law as to which Americans will qualify for bankruptcy.

Bankruptcy, of course, was created in the law of many civilized nations such as the United States because in the old days if one went deeply into debt they could be put in prison. People decided that was barbaric. They said there should reach a point, if one cannot pay their debts, they can be exonerated or have those debts wiped clean from their record and start new, start fresh. That is what bankruptcy is all about.

Chapter 7 of the Bankruptcy Code is that situation. One walks into the court and they say, here are all of my debts, here are all of my assets, and the court should basically liquidate whatever they have, pay off as much of the debt as possible, and at the end of the day they walk out of the court without much left on this Earth but without any debts, wipe the slate clean. That is bankruptcy.

There are other provisions in the Bankruptcy Code, notably chapter 13. Under chapter 13, one walks into court and says: I have more debts than I can pay, but I can pay something. The court then says: We will work out a schedule for what you will pay over a period of time. That is chapter 13. So one does not walk out with their debts relieved, but they may walk out with fewer debts to pay and a schedule to pay them. The court monitors their progress under chapter 13. So in chapter 7, one walks out with the slate clean. Chapter 13, they walk out still paying off their debts.

In came the credit card companies and the major banks to Congress about 10 years ago and said, we believe that too many people are having the slate wiped clean and that they should continue to pay off their debts, even if they think they should be relieved of all liability. The purpose of this bill is to say that people walking into bankruptcy court are now going to have a much more difficult time wiping the slate clean to start over. More likely than not, particularly if they are making more than the median income in America, which is not a huge, princely sum, the credit card industry comes in and says, we want to make sure that if someone comes into court and wants to file bankruptcy, when it is all said and done, they will still have credit card bills to pay, and not just credit card bills. They could be medical bills. They could be any number of different bills. So they pushed hard for 10 years to get this bill passed by the Senate in the hopes that fewer Americans will have an opportunity to start fresh and to start new. So we have been debating for over a week changes in this bill, changes that were designed to take into consideration special circumstances.

I give credit to my friends on the Republican side of the aisle. They have rejected every single change. Let me say what they have rejected so far. I offered an amendment that said if one served in the Guard or Reserve, if they are in the military and they are serving their country overseas and as a result of their service their family or their business goes into bankruptcy, we are not going to be so harsh on them. We are going to give them an easier time of it in bankruptcy because their circumstances serving our country, risking their lives for America, warrant better consideration than some other circumstances. I thought that was a reasonable amendment. I hear all my fellow Senators praising our men and women in uniform, how they are standing behind them. Well, I had veterans groups and military family groups all supporting my amendment. They said this is a reasonable thing to do. A lot of people who are activated end up losing their businesses, and they should be given some consideration in bankruptcy court.

I lost that amendment 58 to 38. Every Republican Senator voted against it. I cannot quite understand why, but that was their position.

Then came Senator KENNEDY. Senator KENNEDY said we just did a survey, and the No. 1 reason people file bankruptcy now is because of medical bills. Senator KENNEDY said if someone has gone through a medical crisis in their life and they have medical bills they cannot pay, we will at least say that when they go into bankruptcy court because of those bills, they can protect a small home, $150,000 home, which in some communities in America would be a very small home. It says that even though one has been through an illness, they had all of these medical bills, they have been forced into bankruptcy, they will have a roof over their head. That amendment was rejected, too. The thought that we would give people and their families facing medical catastrophes a break to be able to keep a home was rejected.

I then offered an amendment that said, what if the creditor is what we call a predatory lender, somebody who breaks the rules, breaks the law—for example, offers a second mortgage on a home at an unreasonable interest rate, hidden charges, balloon payments that prey upon people like senior citizens—what are we going to do when they come to bankruptcy court? Why should we allow them to take away the home of a person if they have broken the law in giving the loan?

I thought that was pretty obvious. A person coming into bankruptcy court

as a creditor doesn't have clean hands if they have broken the law with the loan they are trying to enforce. I thought at least we would stand for the law, that we would only enforce legal loans, not illegal loans.

Rejected. It was rejected largely on a party-line vote. Every Republican Senator but one voted against it.

As you can see, as we have gone through these amendments, whether we are talking about men and women in the military, whether we are talking about people with medical bills, whether we are talking about victims of predatory loans, even if we are talking about people who are victims of identity theft—we are all following the news accounts of ChoicePoint where a lot of personal information has been disclosed about individuals. It scares a lot of folks that someone will grab their Social Security number and their identity and run up some bills. It happens. Unfortunately it happens a lot.

Senator BILL NELSON of Florida said if you are a victim of identity theft, you should be given a break in bankruptcy court. They weren't debts you incurred; they were debts incurred by someone who stole your identity. I thought that was a reasonable amendment, too.

Rejected. Every Republican voted against it. They don't want to take into consideration the real-life tragedies and misfortunes that bring someone into bankruptcy court. They want to make sure that at the end of the day the credit card companies and the major financial institutions will get more money from people walking into bankruptcy court.

Senator AKAKA offered an amendment and said, shouldn't these credit card companies disclose more in their monthly statements, these companies that just inundate us with applications for credit cards? Shouldn't their monthly statements at least say: If you make the minimum monthly payment, this is how long it will take to pay off the loan and here is how much you will pay in interest? Is that unreasonable? I don't think it is.

These companies are making huge amounts of money. In 2003 the credit card companies made $30 billion in profit.

So Senator AKAKA offered an amendment that said at least these credit card monthly statements should tell the consumer more so they make the right choices for themselves and their families.

Rejected, again, on a party-line vote, with only one Senator from the Republican side of the aisle voting for it.

You think to yourself, if you can't hold the credit card companies to even that minimum standard, what is this debate all about? We are not creating exceptions for real-life situations. We are not giving consumers more tools to decide what is a reasonable amount of credit. All we are doing is saying, at the end of the day, the credit card companies are going to get their bill and they are going to get more money out of people filing in bankruptcy court.

Time and again in this debate, many of my colleagues, whom I respect much, have said: Senator DURBIN, you have it all wrong. If people make less than the median income in America, they will not be affected by this bill. They are going to be off the hook. You have to be making over the median income to possibly get into a situation where you are going to have to pay off more of your debts.

I have listened to that over and over. My staff and I, over the weekend, read the bill. It turns out that is not the case. In order to prove that you are below median income, you have to go through an expensive and extensive process under this bill. So I felt that it was only reasonable to say to my colleagues: Why don't we give those below median income a better chance to prove that they should not be covered by the provisions in this bill?

We make clear in amendment No. 110 that debtors in bankruptcy falling below median income need only provide calculations or other information showing the debtor's situation satisfies the below-median-income standard.

In other words, you don't have to hire a lawyer. You don't have to incur thousands of dollars of legal debt if you are below median income. You establish that to the court and then you move forward.

Second, the amendment says that a court may not dismiss a case based on any forms of means testing if the current monthly income of the debtor falls at or below the median family income of the applicable State. What the language in my amendment does is reinforce every argument we have heard from the other side of the aisle. Time and again they have said: If you make low income in America, you will not be affected by this bill.

We say: Fine, then let's change the bill and clarify that so a person filing for bankruptcy doesn't have to go through all of the pain and all of the expense of filing all the documents required under this bill.

We had a program under President Clinton not that long ago called the COPS Program—you may remember it—bringing more police back to the communities of America. It was a wildly successful program. It brought thousands of policemen to the State of Illinois and many other States. We ended up having a one-page application for that program. We prided ourselves on the fact that we were not absolutely swamping people in communities with all kinds of Federal paperwork and applications. With one page you could qualify for a COPS grant in your community.

What we are saying here is, shouldn't a person in bankruptcy court, already probably embarrassed by the process, already worried about paying the legal bills, if they are below median income, shouldn't we simplify the process for them?

I am going to give my colleagues a chance to vote on that.

The second thing we do is to return to the issue of veterans and members of the Armed Forces on active duty, and whether they are going to be treated the same in bankruptcy as other people. I will go back to the argument. I think if someone is serving our country, risking their lives for America, to protect me and my home, that we should do everything we can to help them. So we say, in this case, if your indebtedness as a veteran or a member of the military is primarily incurred while you are on active duty, that you can go into the bankruptcy court and escape the worst parts of the means test. It is a way to consolidate some of the arguments made earlier and to try to appeal to my friends on the Republican side of the aisle, for one last time, to be sensitive to some of the real hardships that have been created for families of Guardsmen and Reserves who have been activated.

The last point is one I almost offer in desperation, amendment No. 112. I cannot believe my colleagues have rejected all of these amendments when they relate to men and women in the armed services, but the last amendment relates to disabled veterans, men and women who become disabled as a result of their service in America and face bankruptcy. It is a final appeal to my friends on both sides of the aisle: If you cannot work up sympathy for men and women in uniform serving our country, at least have some concern for those who are disabled and come back and face bankruptcy. Don't put them through these unreasonable tests and standards in this bill. I would think all of us could agree that disabled veterans should be given some sort of a helping hand in this bankruptcy process.

So we will try again with the amendments that we offer. I know some of them will be debated at length. I just sincerely hope this week the supporters of this bill will at least take a little time and consider the possibility of amending this bill.

To my knowledge, the only perfect law that was ever written were the Ten Commandments, and they were not written by Senators. They were written by somebody in higher office.

This bill, as good as it may be, can be better. It should be better. It should be more sensitive to some of the real-world challenges that we face. I hope we will consider these amendments favorably, enact them soon, and make them part of this legislation. It will make a bill which I think is unfair in many respects a lot fairer.

AMENDMENT NO. 26, AS MODIFIED

One last thing. I ask unanimous consent the Leahy-Snowe privacy amendment No. 26, as modified, be accepted.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The amendment (No. 26), as modified, was agreed to.

The PRESIDING OFFICER. The Senator from Alabama.

Mr. SESSIONS. Mr. President, I would just say Senator DURBIN is an excellent advocate, but this is the fourth time that this bill in substantially this form has been before this body. It has been marked up in the Judiciary Committee four times. We have had weeks on it each time it has come up for debate here. After several weeks of debate, the last time it came up it passed 83 to 15.

The issues that he raises are really covered by the bill. If someone, anyone is disabled and they have a continuing extra medical expense, that would be considered in whether or not they would ever have to pay any of their debts back. If their income is below median income, they would never be required to pay their debts back. All they would have to do is introduce some evidence from their pay stubs or their income tax, what their income is. Certainly we have a right to ask that before we discharge, wipe out, eliminate all debts, as people do when they come into bankruptcy.

I really would just say that we have given great consideration to these issues. We could disagree, but these amendments, for the most part, have been up before. I do not believe that most are going to be accepted. But there is every right of my colleague's side to offer them.

MORNING BUSINESS

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

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

TRIBUTE TO FRANCIS P. STEAD

Mr. DURBIN. Mr. President, I rise today to pay tribute to Francis P. ''Frank'' Stead, who passed away at the age of 90 on January 31, 2005, following an extended illness.

Frank Stead and I were neighbors in Springfield, IL starting in 1969 when I returned home to Illinois after graduating from Georgetown University Law School. He was a good neighbor, a good friend, and he will certainly be missed by the many people whose lives he touched.

Frank was one of the many unsung heroes of an era that journalist Tom Brokaw has dubbed ''The Greatest Generation.'' Coming of age during the Great Depression and serving our country during World War II, Frank shared in the values of a generation that helped make our country what it is today: a sense of honor and bravery, a commitment to service, and above all, a love of family and country.

In 1943, at the height of the U.S. action in World War II, Frank enlisted in the U.S. Navy and was assigned to the Pacific theater, leaving behind his sweetheart, Dorothy Mlaker. While on duty in the Pacific, Frank sent a letter to Dorothy proposing marriage. Later, after receiving her acceptance letter, Frank ordered an engagement ring from the catalog of a Chicago jeweler. He sent payment to the jeweler via money order, with instructions for the ring to be mailed to Dorothy. When he was able to take leave, Frank returned to Springfield and wed Dorothy on July 26, 1944.

Frank was honorably discharged from the U.S. Navy in 1945, having been awarded the Asiatic-Pacific and Good Conduct Medals. Upon his return to civilian life, Frank began his 25-year career as a salesman with several of Springfield's finest men's clothiers, including Robert's Brothers, Arch Wilson's, and Myers Brothers.

Frank again answered the call to serve his country when he joined the U.S. Naval Reserve in 1949. He was called to active duty during the Korean war in 1952, and he was stationed with the Department of Defense in Arlington, VA. In 1979, Frank retired from the Naval Reserve, having served 30 years and achieved the rank of chief petty officer yeoman.

Frank demonstrated his commitment to service not only through his career in the military, but also through his many civic activities. He served the community of Springfield as an active member of AFSCME, as a parishioner of Christ the King Catholic Church and Blessed Sacrament Catholic Church, and as a life member of the Knights of Columbus. In addition, Frank Stead served on the board of directors and was past president of Saint John's Hospital Samaritans. He also served on the board of directors of the Illinois chapter of AARP.

In 1974, Frank Stead was appointed executive director of the Springfield Election Commission, serving in that post for 15 years before retiring in 1989. Later, he would serve as a Democratic Precinct Committeeman in Springfield. I came to know Frank and his wife, Dorothy, well through their involvement in Springfield politics. They volunteered countless hours for my campaign when I was running for the House of Representatives.

Frank and Dorothy Stead shared nearly 60 years of marriage before Dorothy passed away on February 4, 2004. They are survived by their four children: one son and three daughters, along with seven grandchildren and four great-grandchildren.

I am honored to have had the opportunity to know this fine member of our Nation's ''Greatest Generation.'' His military service, civic involvement, commitment to his faith, and love of family have left an enduring impression on those of us who had the pleasure of knowing him. He will be missed.

HONORING OUR ARMED FORCES

CORPORAL TRAVIS EICHELBERGER

Mr. BROWNBACK. Mr. President, I rise today to honor a truly heroic Kansan, CPL Travis Eichelberger.

Corporal Eichelberger, a member of the 1st Battalion of the 2nd Marine Division, was one of the thousands of valiant young men and women who fought for the cause of liberty in Operation Iraqi Freedom. Sadly, in March 2003, while lying in a shallow foxhole in the sand, a 67-ton Abrams tank rolled over him, crushing his pelvis and severely damaging his lower body. Corporal Eichelberger, a native of Atchison, KS, returned home to the United States for rehabilitation and, in April 2003, was awarded a Purple Heart for his war injuries.

Recently, the Marine Corps realized their terrible mistake. While this brave young man's wounds occurred in a combat zone, he was not injured by hostile fire, a necessary qualification for the Purple Heart. For the sake of the award and all those who have been honored by it, the Marine Corps decided to revoke Corporal Eichelberger's Purple Heart. GEN Michael W. Hagee, Commandant of the Marine Corps, has appropriately personally offered his apologies to Corporal Eichelberger. I, too, extend my sincere sympathies to Corporal Eichelberger and his family during this trying and confusing time. This error has caused significant embarrassment to my fellow Kansan, as well as to the Marine Corps, and we must take care that it is never repeated.

After speaking with Corporal Eichelberger, I sense that his is a resilient spirit—and no one can doubt his courage. Corporal Eichelberger's service and dedication will long be remembered and honored. His unwavering commitment to our great Nation is a badge of honor he can proudly wear for the rest of his life.

I commend Corporal Eichelberger for his distinguished service and sacrifice.

SECOND LT. RICHARD B. ''BRIAN'' GIENAU

Mr. GRASSLEY. Mr. President, I rise today in tribute to a noble Iowan who has given his life for his country. 2LT Richard ''Brian'' Gienau was killed on Sunday, February 27, in Ar Ramadi, Iraq, when his military vehicle was struck by an explosive device. He was 29 years old, a fellow alumnus of my alma mater, the University of Northern Iowa, and a member of A Company, 224th Engineer Battalion, Army National Guard, Burlington, IA.

Second Lieutenant Gienau is remembered as a hard-working family man with a history of military service. He joined the U.S. Navy in 1994 and enlisted in the Iowa Army National Guard in 1999. After graduating in 2003 from University of Northern Iowa, he was commissioned in the Reserve Officers' Training Corps as a second lieutenant. He was mobilized last October.

Second Lieutenant Gienau is survived by his mother, Debbee Way, of Dunkerton, IA, and his father, Richard Gienau, of Waterloo, IA. He also leaves behind a young son. My prayers go out today to his family and friends in their time of loss. Let us today remember