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Senate

Statement of Senator Dianne Feinstein

“S. 256, the Bankruptcy Reform Bill”

Mrs. FEINSTEIN. Mr. President, I thank the distinguished Senator from New York.

We are both members of the Judiciary Committee. We had an opportunity to discuss and debate this amendment in the Judiciary Committee.

Senator Schumer's amendment is a critical amendment. Essentially, when this body in 1994 passed the Freedom of Access to Clinic Entrances Act, we said that individuals should be able to go into clinics without being obstructed. The law was very clear.

The law also has led to successful criminal and civil judgments against groups that use intimidation and outright violence to prevent people from obtaining or providing reproductive health services.

This law would be seriously damaged if we do not close this loophole that has allowed some antiabortion extremists to use bankruptcy to shield their assets. The Senator from New York mentioned the founder of Operation Rescue, Randall Terry, who said in 1998 after filing for bankruptcy :

I have filed a chapter 7 petition to discharge my debts to those who would use my money to promote the killing of the unborn.

In my home State of California there was a similar incident involving a man by the name of John Stoos and several other people in 1989 who were sued by the operators of a Sacramento abortion clinic for allegedly blocking the clinic's entrance and harassing patients. A judge ordered Stoos and others to pay nearly \$100,000 in attorney's fees incurred by the clinic.

As a result, Stoos filed for personal bankruptcy , listing that debt among many he could not pay. These actions are clear evidence of abuse of the bankruptcy system. This bankruptcy bill should stop them.

I hope the Schumer amendment would be accepted by this Senate.

Let me use this time to speak a bit more generally about this bill. I voted for this bill when it left committee. I have decided to vote against this bill in the Senate. I want to say why. In committee, we were asked to withhold all amendments to the floor. We knew the bill was not a perfect bill. We have seen it improved over the years. We knew it was better than the House bill. And with all complicated, difficult bills, the tradition of the Senate has always been the floor debate and discussion. In a majority of times as a product of floor debate and discussion, problems in the bill can be remedied.

We knew there were problems in the bill. For example, I have an amendment which I have withdrawn which says that the credit card companies should, in fact, notify a minimum payer how long it would take that payer of a credit card, if he only paid the minimum amount of interest, to pay off the debt. Senator Akaka had a similar amendment. It was summarily defeated. I had an amendment; I had two Republican cosponsors. I learned it would also be summarily defeated. Thanks to Senator Shelby and Senator Sarbanes, the Banking Committee has taken an interest in this and in the future and will take a look at it.

Nonetheless, the fact of the matter is this bill is all for the credit card companies. I know there is credit card

fraud. I know that has to be met. I felt the bill was important to pass. However, I also felt the bill should be balanced and that we should see that the consumer is also protected in this process, protected with notice of what a minimum payment means, and also, frankly, protected against high interest rates.

Senator Dayton moved an amendment which would limit interest rates on credit cards to 30 percent. The amendment was summarily defeated. The fact is with penalties, with other charges, with high interest rates--and many companies have interest rates, believe it or not, well in excess of 30 percent--a minimum payer cannot ever pay the full debt because the interest on the debt, if combined with certain penalties and/or fixed payments, becomes such that it overwhelms the principal. Many people do not know that.

The fact is 40 percent of credit card holders pay off their debt every month; 40 percent make only the minimum payment; and 20 percent are kind of 50/50 in that category. For those 60 percent who are generally people who are not as informed, not as able to pay back their bill, who may have one, two, three, four, five, six different credit cards, because this is a credit economy, credit card companies have been able, with very little notice to the payer of the debt, to solicit huge fees, penalties, and interest rates. This is plain wrong.

If we are unable to correct it, which I had hoped would be corrected by these amendments that have been presented, I cannot vote for this bill as long as these gross injustices remain.

Let's for a moment look at the 30-percent interest rate. It is very high. Inflation is about 2 percent. The interest rate on 3-month Treasury bills is 2.75 percent. The national average lending rate on a 30-year mortgage is 5.59 percent. Yet an amendment to limit interest rates on credit cards to 30 percent went down dramatically.

I mention there are companies that are charging high annual interest rates. Some charge 384 percent, 535 percent. Amazingly, one Delaware-based company has charged 1,095 percent, according to the Minnesota chapter of the National Association of Consumer Bankruptcy Attorneys.

The Washington Post, the Los Angeles Times, other major newspapers have pointed out where fees, rates, and charges have buried debtors. They have pointed out a multitude of cases. A special education teacher from my home State worked a second job to keep up with \$2,000 in monthly payments. She collectively went to five banks to try to pay \$25,000 in credit card debt. Even though she did not use her cards to buy anything else, her debt doubled to \$49,574 by the time she filed for bankruptcy last June. Effectively, interest payments are half of the debt. She will never be able to pay that off.

To push people like this from chapter 7 into chapter 13, when what is the problem is interest rates and penalty fees that truly do victimize an unsuspecting individual--how could this Senate do that, if someone is going to charge a 100-percent interest rate?

One of my own staff members found that simply getting a credit card cash advance resulted in an immediate 3 percent fee which was simply added to the interest rate.

The result is even the most careful credit card users find themselves often swamped, particularly those who can only afford to make a minimum payment, and the fees, charges, and interests pile up, making it virtually impossible to ever pay off the debt.

This amendment would have been a meaningful addition to the bill. It certainly would have added fairness. It certainly would have sent a signal to credit card companies that the sky is not the limit. Yet it was defeated.

Senator Schumer's asset protection trust, of which I was a cosponsor, was

another indication of where wealthy people could shelter assets and not have to pay back in chapter 13. These are some of the inequities.

In recent years a number of financial and bankruptcy planners have taken advantage of the law of a few States to create what is called an "asset protection trust." These trusts are basically mechanisms for rich people to keep money despite declaring bankruptcy.

They are unfair, and violate the basic principle of this underlying legislation--that bankruptcy should be used judiciously to deal with the economic reality that sometimes people cannot pay their debts, but to prevent abuse of the system.

This loophole is an example of where the law, if not changed, permits, or even encourages, such abuse.

The amendment was simple. It set an upper limit on the amount of money that could be shielded in these asset protection trusts, capping the amount at \$125,000.

The bottom line: Without this amendment, wealthy people will be able to preserve significant sums of money in an asset protection trust, effectively retaining their assets while wiping away their debts.

The proposed cap amount, \$125,000, is not a small sum. It is more than enough to ensure that the debtor is not left destitute. I believe it is a reasonable amount--it is deliberately based on the now-accepted \$125,000 limit for the homestead exemption, which will also remain available to a debtor.

I would also like to say a few words about my concerns about what appears to be a new policy in the Senate.

It appears that the Republican leadership has decided that rather than honoring the 200 plus year tradition of the Senate as a deliberative body, the Senate should be run like the House of Representatives. There appears to be a new process being implemented in which the Senate should no longer seriously consider amendments on the floor to improve bills.

We are now in the middle of the second major piece of legislation where the majority has decided that amendments by the minority will be rejected wholesale regardless of the merits.

It appears that even when serious problems in the underlying legislation are raised and even when the Republican leadership agrees that the problem exists, amendments offered by the minority will be rejected.

In fact, when the Judiciary Committee was marking up the bill, Senators were asked not to offer amendments and instead offer them on the floor. Statements were made by the Acting-Chairman like, "I know we are going to go through this on the floor and I don't see any reason to keep us here all day and all night"; and, "[You will] have every opportunity to present these amendments on the floor."

Yet, upon reaching the floor, Senators have found that their amendments are not being considered on the merits.

It is the Senate's job to carefully debate, carefully consider, and pass the very best laws we can. But now the Senate is being asked to simply pass legislation as drafted, regardless of its content.

This lack of consideration and care does a disservice to the Senate and to the Senators who work hard to reach compromises and find common ground. But more importantly, it does a disservice to the American people.

We are here to develop the best policy we can, not to simply play political games and jam through legislation for the sake of expediency.

As I began, I want to be clear. I support bankruptcy reform legislation, and I support many of the provisions in the underlying bill. However, throughout this process many important issues have been raised that identify serious problems that must be addressed. The Senate has been and should remain a deliberative body that seeks to draft the best legislation we can. Unfortunately, that is not what we are doing.

And unfortunately, based on these concerns, I regret that I am no longer able to support the bankruptcy legislation. I do not believe the bill before us is balanced. There remain many serious problems that must be addressed before I am ready to support the legislation. I have decided because of the summary disposition of amendments by the other side, this Democrat Member is going to vote "no" in the Senate.