March 11, 1999

MEMORANDUM FOR HILLARY RODHAM CLINTON

FROM: NICOLE RABNER

CC: MELANNE VERVEER

SUBJECT: CALL TO SEN. TORRICELLI ON BANKRUPTCY REFORM

Melanne and I recommend that you call Senator Torricelli sometime today; White House Legislative Affairs agrees. The purpose of the call is to bolster Torricelli by thanking him for his leadership and reminding him how much is at stake.

Background

As we discussed yesterday, there is significant movement on bankruptcy reform this week. Senator Grassley continues to enlist Senator Torricelli as an original co-sponsor to his bankruptcy reform bill, and their staffs have been in active negotiation. Grassley is using last year's conference report as his starting point -- that bill, as you know, stripped essential balancing provisions achieved by Senate Democrats and received strong support from the Administration. Torricelli sees his role as the ranking Democrat on the relevant Judiciary Subcommittee as trying to achieve a bill that a majority of the Democratic caucus could support. His staff reports that while they have won important concessions from Grassley in their negotiations, they doubt that they will be enough for Torricelli to join the bill. Still, we understand that Grassley and Torricelli plan to meet either tomorrow or Monday to negotiate further. Grassley plans to introduce his bill either way next week (it is unclear whether other Senate Democrats will join the bill if Torricelli refuses; Biden, Harry Reid, and Johnson have reportedly already agreed to do so).

On the House side, Representatives Conyers and Nadler sent the attached letter to the President on March 4, thanking him for his and your "leadership role" and "personal involvement" in the bankruptcy debate last year. In addition, the Congressmen noted that Members in the House and Senate are questioning whether the Administration "will continue to insist that legislation be balanced, fair, and workable" even though the sponsors of this year's House bill were "arrogant and reckless" enough to reintroduce last year's Conference Report which drew a "strong and credible veto threat." The Administration will respond quickly to the letter, stating that the issues we cared about last year we will care about again this year. We will also weigh in strongly once the Grassley bill is introduced in the form of a letter to the Judiciary Committee. As you'll recall, our major concerns with the conference report legislation are: (1) achieving significant judicial discretion in limiting access to Chapter 7; (2) establishing safeguards against coercive reaffirmations and violations of the automatic stay; (3) abolishing new categories of nondischargeable debt that could compete with child support and alimony collection; and (4) including balancing provisions that require responsibility of creditors as well as debtors.

<u>Talking Points for Call to Senator Torricelli</u>

- I wanted to thank you for your leadership on bankruptcy reform, and your commitment to achieving a bill that Senate Democrats can support. This is a mind-numbing issue to get one's arms around, but as you know has important implications for families across the country.

- The Administration supports fair and responsible bankruptcy reform. We all recognize that the system needs fixing, but we want a bill only if it's the right bill.

- The Administration is going to care about the same issues we cared about last year. Our position on last year's conference report legislation -- which stripped essential, balancing provisions achieved by Senate Democrats -- is on the record.

- I was heavily engaged in this fight last year, and look forward to working with you this year.

3/22/99 mtg

Treasury/CEA of Analysis of Evidence on Bankruptcy Means Testing

To what extent do Chapter 7 debtors have the ability to repay a significant portion of their unsecured, nonpriority debt? Chapter 7 bankruptcy provides an opportunity for debtors to discharge their unsecured, nonpriority debt with minimal repayment. The "means test" of bankruptcy reform proposals involves (1) a median-income test and (2) an evaluation of ability to repay -- according to a formula based on IRS expenses in the House bill. Those who meet the means test would be required to file a repayment plan under Chapter 13.

Recent Studies

1. *Ernst& Young/VISA, March 1998*

- Funded by creditors.

- Apparently excellent data, developed using sophisticated sampling techniques from all bankruptcy filings in the United States in 1997.

- Original study analyzed the ability of debtors to repay according to the needs-based provisions of an early version of HR 3150. Followup study prepared for Treasury examined ability to repay under final HR 3150 provisions: gross income above 100% of the national median (adjusted for family size), with ability to repay at least $50 monthly and 20% of their unsecured nonpriority debts within 5 years, after making secured and priority debt payments and paying for "reasonable" living expenses. The bill used IRS National Collection Standards to define reasonable living expenses.

- **Findings:** About 28% of debtors satisfy the 100% median-income threshold. About 12% could repay at least $50 monthly, and 11% could repay at least $50 monthly and at least 20% of their unsecured, nonpriority debts. The median gross income of the 11% of debtors so impacted is $48,000.

2. *Culhane and White (Creighton Law School), December 1998*

- Funded by American Bankruptcy Institute.

- Not as good data -- cases filed in 1995 from 7 judicial districts chosen to give a cross-section of the population.

- It examined the later version of HR 3150, as in the E&Y study prepared for Treasury.

- **Findings:** About 21% of debtors satisfied the gross income test. Of these only about 4% could repay at least $50 monthly and 3% could satisfy both the ability to repay tests. The median gross income of the 3% of debtors so impacted is about $52,000.

- **Differences from E&Y:** (1) *Older data, possibly not nationally representative* -- see above; characteristics of filers have probably changed since 1995. (2) *More generous income cutoff:* The study applied a "one-earner" gross income cutoff for single debtors in the median-income part of its means test. This cutoff is significantly higher than the "household of size one" cutoff applied by E&Y, though virtually all of the affected debtors do not meet the expense test anyway. (3) *Much more generous "reasonable" transportation expenses:* the Creighton study included as allowable expenses the greater of the debtors' actual payment on their automobile debt or the IRS ownership allowance; E&Y allowed only the actual payment. *Because many debtors claimed little actual transportation expenses (e.g., they had paid off an old car), this is probably the major source of the differences between the studies.* (4) *Included bankruptcy administrative expenses,* particularly the chapter 13 Trustees' expenses, as expenses to be paid before applying the repayment tests. The House and conference bills do not include these expenses in the test. These expenses ($800 lawyer fees plus Trustee's fee for review, and a Trustee's fee equal to a small percentage of other repayments) probably account for a relatively small part of the difference.

3. ***The Executive Office for the US Trustees (EOUST), December 1998***

- Internally funded by EOUST.

- National sample of "no asset" Chapter 7 filers in 1997-early 1998. About 1-2% of consumer debtor filers have assets, and these debtors are likely to have higher incomes than the typical filers.

- Did not "score" specific means-test provisions of the House or Senate bills.

- **Findings:** About 31% of debtors would have been impacted by the 100% national median, "household size one" thresholds; about 18% would have been impacted by the 100% national median, "one-earner" thresholds. For payback equaling 25%-75% of the excess of debtor's income above the national median threshold, the total amount of debt that could be paid back was $1.4-$3.2 billion per year. This is significantly lower than the E&Y estimate of recoverable debt of $3-5 billion.

- **Differences from E&Y and Creighton**: This study shows that the differences in the share of filers affected by the "median income" part of the means test explains a large part of the differences in shares of affected filers in the previous studies. The "household size one" threshold of $18,762 is more stringent than the "one-earner" threshold of $29,780. The study used percentages of income above the national median, adjusted for family size, as an indicator of likely ability to repay. It did not calculate the share of debtors who could pay a significant portion of their debt after accounting for "reasonable expenses."

Interpretation and Conclusions

The Table below summarizes the findings about the share of filers affected by a House-like means test. A Senate test based on actual expenses would have a slightly higher share of affected filers, since actual expenses are mostly lower than IRS-allowed amounts.

Filer Characteristics	Treasury/CEA Best Estimate	E&Y	Creighton	EOUST
Meet >100% Median Income, Household Size One Test	Around 30%	28%	N/A	31% (no assets)
Meet >100% Median Income, One-Earner Test	19-21%	N/A	21%	18%
Meet Median Income and House Formulaic Expense Test	10-12%	11%	3-4%*	N/A
Share of Filers *Actually* Affected if Formulaic Means Test Adopted	<10%**	N/A	3-4%	<10%**

* Likely incorrect interpretation of House means test.
** Strict formulaic approach may allow a significant share of filers to manipulate their expenses to avoid meeting the means test.

- **The studies had reasonably consistent results on the share of filers affected by the "100% national median" part of the means test.** Almost all of the "gap" filers who meet the less generous (household size one) versus more generous (one-earner household) median-income test fail the expense part of the means test. The more generous definition subjects fewer filers to expense documentation but captures as many filers able to repay.

- **The E&Y and Creighton studies reached very different conclusions about the share of filers who do not meet the "reasonable expense" part of the means test, because of different methods of calculating expenses.** In several key respects – especially by imputing generous auto expenses not reported in filings, and by including administrative expenses – the Creighton study departed from the letter of the House means test.

- **The small share of filers affected in the Creighton study highlights the ease with which many filers could avoid a formulaic means test in practice.** For example, under the IRS guidelines, many filers who do not have significant auto payments could purchase or lease a car, and incur enough "reasonable" additional expenses to avoid the means test. The Creighton results show that such actions would reduce the ability to repay of many filers below the cutoff amount of the means test. EOUST also emphasizes that IRS rules provide for discretion in many types of expenses – pension contributions, medical and health insurance spending, life insurance, and others.

- **The EOUST study also emphasizes that the formulaic approach is particularly likely to favor the wealthiest debtors, who have most ability to plan or litigate around the formula limits.** The study reasoned that the wealthiest debtors have the most resources available to increase their expenses or debt, and to challenge any court findings. In addition, IRS food and household expense allowances are higher for high-income debtors – so that, for example, a high-income household of one has greater allowed expenses than a lower-income household of five. They would also be most able to avoid the 20% repayment threshold, by increasing the amount of debt they hold. (The conference bill addressed this problem by imposing a fixed-dollar threshold for repayment ability.)

Hill Briefs

Joint Hearing Produces Sparks On Bankruptcy Reform

■ A RARE JOINT HEARING on bankruptcy reform staged Thursday by **Senate Judiciary Administrative and Commercial Law Subcommittee Chairman Charles Grassley**, R-Pa., and **House Judiciary Commercial and Administrative Law Subcommittee Chairman George Gekas**, R-Pa., made for an unusual forum for some familiar arguments.

The meeting provided the backdrop for Grassley and Gekas to present a united front on bankruptcy reform. Grassley, however, indicated that his bankruptcy bill, which he plans to introduce Monday, will differ somewhat from the bill Gekas unveiled in late February.

While the two legislators praised each other for their work during last year's House-Senate conference on bankruptcy, **House Judiciary Commercial and Administrative Law Subcommittee ranking member Jerrold Nadler**, D-N.Y. — who has complained of being locked out of that conference — offered his own take on Gekas' bill, calling it "one-sided and unbalanced."

Nadler also took issue with Gekas' decision to hold three hearings in succession next week, with a markup tentatively scheduled for the following week.

Sparks flew briefly when Gekas lashed out at suggestions that he is moving the process too quickly. Gekas said he would "not abide" suggestions that he is trying to "bulldoz[e]" them.

In a related development Thursday, the House by a 418-1 vote approved a bill granting a six-month extension of Chapter 12 protection for farmers.

Subpanel OKs Bill Loosening Encryption Export Controls

■ A BILL TO LOOSEN CONTROLS on the export of encryption products — sponsored by **Rep. Bob Goodlatte**, R-Va. — won voice vote approval from the House Judiciary Courts and Intellectual Property Subcommittee, *National Journal's Technology Daily* reported.

The bill would allow for the export of encryption hardware and software and other computer products with encryption capabilities, and would prohibit the federal government from requiring the use of products with a "recovery" feature that would enable a third party with a "key" to unscramble encrypted data.

Supporters say current export restrictions are hampering the high technology industry's ability to compete with foreign manufacturers.

But the White House and other opponents of the bill say it will hurt national security and law enforcement.

Bingaman Seeks Study Of Oil Import Restrictions

■ **SENATE ENERGY and Natural Resources ranking member Jeff Bingaman**, D-N.M., plans to send a letter to Commerce Secretary Daley today asking him to investigate whether the Clinton administration should restrict the import of oil to protect national security.

Bingaman, who is circulating the letter to other senators, wants Daley to report to the president on the issue within 60 days.

"With domestic producers virtually on their backs, we need to pay especially close attention to the impact of these imports," he said.

Bingaman noted that, in 1994, the Commerce Department found that growing reliance on foreign oil threatened security because of increased dependence on oil-producing countries — but the administration did not take action.

Since then, he said, U.S. reliance on foreign oil has increased to 56 percent from 51 percent.

Al Gore, Father Of The Internet?

■ **HOUSE MAJORITY LEADER Armey** Thursday could not resist taking a poke at Vice President Gore over Gore's claim in a CNN interview a day earlier that he "took the initiative in creating the Internet."

Armey's staff faxed a press release to Capitol Hill reporters, saying, "If the vice president created the Internet, then I created the interstate highway system."

Gore's remark was in response to a question about the vice president's accomplishments during his tenure.

A Gore spokesman gleefully responded by noting that the late **Albert Gore Sr.** — during his tenure in the House and Senate — had shepherded legislation creating the interstate highway system.

"In fact, his father's leadership on the interstate highway system served as the model for the vice president's vision for a network of data highways," the spokesman continued. "As for Congressman Armey, in his time in Congress, what he has created is division, divisiveness and partisan rancor, but seemingly little else."

Correction: A story in Wednesday's *CongressDailyAM* reported that a medical information privacy bill by **Senate Health, Education, Labor and Pensions Chairman Jeffords** and **Sen. Christopher Dodd**, D-Conn., was silent on the rights of patients paying out-of-pocket for their care to keep their medical records private.

Last year's version of the bill was silent on that issue — but this year's version would allow patients paying out-of-pocket to keep their medical records private.

Kennedy Bill Directs States On Spending Tobacco Funds

HEALTH

A BATTLE THAT has been engaged sooner than anyone expected drew a new combatant late Wednesday — when **Health, Education, Labor and Pensions ranking member Edward Kennedy**, D-Mass., introduced legislation requiring states to spend half the funds collected in their settlement with the tobacco industry on health, education and tobacco-related initiatives.

Should the states abide by the restrictions, the federal government would waive its claim to the money.

The Clinton administration believes it is entitled to a share of the funds — since many of the state suits against cigarette makers were based on state payments under Medicaid to treat smoking-related illnesses, and the federal government pays about 57 percent of state Medicaid costs.

But White House officials have said the administration would forgo its take if the states agreed to spending restrictions such as those outlined in the Kennedy measure.

Under the bill, of the 50 percent of the state money subject to restrictions, at least 35 percent must be allotted for programs directly related to reducing smoking — such as counter-advertising, community or school-based prevention, and youth access restrictions.

The remainder of what would have approximated the federal share could be used for a variety of healthcare and child development initiatives.

States could either supplement existing programs or create others. But new ideas would first have to pass muster with the HHS secretary.

In tobacco-growing states, 25 percent of money that would be spent on health care and child development could be used to provide transition assistance to tobacco farmers.

Kennedy had to move quickly on the bill when backers of a rival measure authored by **Sen. Kay Bailey Hutchison**, R-Texas, tacked their plan onto the supplemental appropriations bill approved last week by the Senate Appropriations Committee. A floor fight is now shaping up between backers of the two measures.

The Kennedy bill is similar to a measure offered earlier this week by **Reps. James Hansen**, R-Utah, and **Martin Meehan**, D-Mass.

However, Hansen and Meehan would require states only to spend the federal share on tobacco-related initiatives.

— *By Keith Koffler*

House Subpanel OKs Census Bills Amid Partisan Rancor

GOVERNMENT OPERATIONS

THE HOUSE Government Reform Census Subcommittee Thursday marked up four GOP bills that would change how the Census Bureau conducts the 2000 census — while Democrats expressed their anger over a GOP advertising campaign to oppose the bureau's sampling methods.

Deflecting criticism that Congress is meddling in bureau affairs, **Census Subcommittee Chairman Dan Miller**, R-Fla., said Congress must act because the bureau has yet to put forth a detailed plan and budget.

"Since we don't have a budget ... common sense would lead one to conclude that the plan is still in the making and it is not too late for Congress to act," he said.

Along party lines, the committee voted 5-2 to require the bureau to send out two rounds of census questionnaires, and by a 6-4 margin approved a bill to add more than 30 languages to census forms.

By a voice vote, the panel also passed a bill to establish a matching grant program and a bill to increase the census ad budget by $300 million — defeating Democratic amendments on each item.

Overshadowing the panel's votes was a Democratic furor over reports that Republicans intend to wage a media campaign to make their case against the bureau plan to use statistical sampling — and to seek to soften the blow of a looming budget showdown in June over census funding.

At an afternoon news conference, **Census Subcommittee ranking member Carolyn Maloney**, D-N.Y., said it is an "outrage" that Republicans would prepare for a government shutdown.

"It's amazing to me that they didn't learn from the debacle of 1995," Maloney said. "A shutdown is not going to go over well no matter how they spin it. But they're actually planning on it."

Under the FY99 spending bill, bureau funding will expire on June 15 along with money for the Commerce, Justice and State departments. Congress will have to release funding for the rest of the fiscal year.

The Supreme Court ruled in January the bureau must use traditional methods for apportionment, but the bureau intends to use sampling for other purposes.

Earlier Thursday, Senate Commerce-Justice-State Appropriations Subcommittee members pressed Commerce Secretary Daley at a hearing to give them a date certain for producing the administration's new FY2000 request for the census.

"I'd like a specific date when I could get a number," said **Subcommittee Chairman Judd Gregg**, R-N.H.

Daley said he could not promise a specific date, but said it would almost certainly come before the bureau completes its master activities schedule in April.

"I'm optimistic that it would be before then, and I am pushing the Census Bureau and the OMB to get it before then," Daley said.

The administration originally requested $2.8 billion for the bureau in FY2000, but based its request on the assumption it would use less expensive sampling techniques.

— *By Mark Wegner*

To: Sarah Rosen/OPD/EOP

cc:

Subject: what grassley gave torricelli

Hey Sarah -- I may be up on the hill, and Jennifer is crashing in prep for the 2:00 hearing. I did speak to her for a second, and she said what she told me on Tuesday is largely where they are now. Based upon that, here's what I know (I'll follow the paper she gave us (by title and number)):

Means-Testing framework - same as conf report.

1. will do state median income and will apply which ever is higher
2. will not go to Senate test, but will direct the Admin (Justice?) to promulgate new standards that would be bankruptcy specific NO - same
3. won't change percent but will go up to 15,000 look at numbers - success of repay

debate over necessary

4. accepted ✓
5. accepted ed still be limited to 1st
6. accepted ✓
7. NO WAY!
8. gave language on tuesday -- seemed amenable but wanted to protect small businesses

Cramdown

w/in 6 mo - no cramdown
after 6 m - cramdown

1 & 2. best torricelli could get was 6 months on non-autos and 2 yrs on autos

aft 2 yrs on autos - actual value

Torricelli will - car - forget
• debts for attorney

Nondischargeability Provisions

prob okay w/ compromise

1. up to 750
2. drop to 70 days
3. torricelli now thinks this is okay -- biden is somehow involved
4. just gave grassley language as of tuesday
5. OUR ADDED -- DEBTS INCURRED TO GET NONDISCHARGEABLE DEBT -- just gave grassley language as of tuesday (open)

Audit Provisions

1. torricelli thought that the current language would make ALL low income debtors get audited -- grassley apparently fixed the language

Eviction Stay withdrawn weapons in / They're not going to fight - Farr.

1. NO WAY! -- protection sessions

Notice Provisions

1. grassley okay with principle, but no language agreement yet

Homestead Exemption we should mention it.

1. won't place in bill due to gramm -- will do amendment on flow and grassley will support -- kohl okay with this because believes a recorded vote gives them more power in conference

In Forma Pauperis $5 filing fee. / 3% of cases - [illegible] original amendment

1. will give in chapter 13 -- obviously trying to not create an incentive to file in 7, but under their bill the chapter 13's are the folks less needed of the fee waiver

Executory Contracts

1. a business bankruptcy provision i don't quite understand -- apparently grassely agreed to strike, however

Disclosure Provisions #1. commitment from managers - that they will supp a part amendment

1. will not do in the bill -- will TRY and get an amendment allowed on the floor and will support SOME of this

weigh in on need for balance - / get events.

Reaffs

1. agreed to drop class actions
2. LOTS of Resistance
3. LOTS of Resistance
4. already in
5. i mentioned not allowing the debtor to have to pay the creditor's atty's fees -- she said she'd bring it to grassley w/o our name on it

What Torricelli Asked For

HRC 833 - cong report bill intro by Gekas.

MEANS-TESTING

1) safe harbor should apply to regional median income, not national median income

2) alternative to IRS standards

3) raising levels in ability to repay formula from $5000 to $15,000 and from 25% to 30%

4) changing "extraordinary circumstances" to "special circumstances"

5) drop the word "only" before requirement to demonstrate circumstances / a. circum... b.

6) replace the word "require" with "justify" → necessary & reasonable

7) debtors' attorneys should not be personally liable unless they pursue a case in violation of Rule 11 standards policy mechanism → allows judge discretion attorney for filing frivolous
non-discret— rule to dismiss (→ dismissing filing under 7)
atty fees drop

8) creditor penalties for abusive motions even if their claims are under $1000

→ difficult for debtors to be represented

CRAMDOWN

1) strike the cramdown on non-autos

2) limit the cramdown on autos to 6 months - 1 year

NONDISCHARGEABILITY PROVISIONS

1) raise limit on cash advances to $1000

2) drop time period to 45 days

3) tighten the definition of "luxury goods"

4) in superdischarge narrow presumption of fraud for credit card use

AUDIT PROVISIONS

1) needs to be cleaned up so that audits for low-income debtors are not mandated

now 1/250 audits - ch

EVICTION STAY

1) current provision is overly broad - language is below that provides expedited relief for the landlord if the debtor is not paying post-petition

Sec. 139. Automatic stay.

Section 362 of title 11, United States Code is amended by adding at the end thereof—

> *(j) If a lessor of residential real property makes a request for relief under subsection (d) of this section and the debtor has not paid rent that first became due after the commencement of the case, the stay provided by subsection (a)(3) of this section is terminated with respect to the lessor 20 days after request is filed, unless the debtor files and serves upon such lessor a written objection to the request.*

NOTICE PROVISIONS

1) require creditors to simply file information about where they want information sent with the court

HOMESTEAD EXEMPTION

1) $100,000 cap should be included

CREDIT COUNSELING

1) allow debtors to prefile in order to gain benefit of the automatic stay, they are then required to undergo counseling, if it is successful, simply nullify the filing

2) provide an exception for geographical hardship or exigent circumstances

IN FORMA PAUPERIS

[illegible] - only cont w/ [illegible], but only court self-funded

1) waive filing fees for indigent debtors - last year's Feingold floor amendment

EXECUTORY CONTRACTS

1) strike section 415(a)(1)(A)(ii)

DISCLOSURE PROVISIONS

1) reinsert the TILA provisions from last year's Senate bill

REAFFIRMATIONS

1) drop the bar on class actions

2) provide for some judicial review by requiring creditors to file the information that forms the basis of the reaffirmation - language below

3) add provision requiring treble damages for violation of the reaffirmations provisions and the discharge injunction (section 203 of last year's Senate bill)

4) add provision clarifying that it violates the automatic stay to threaten the debtor with 707(b) motions or 523(a) motions if the debtor is doing it to coerce the debtor
(section 210 of last year's Senate bill)

file bankruptcy

1.

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PRACTICE LIMITED TO
DOMESTIC RELATIONS LAW

September 24, 1999

Senator Christopher J. Dodd
Subcommittee on Children and Families
Committee on Labor and Human Resources
444 Russell Senate Building
Washington D.C. 20510

Re: S.625

Dear Senator Dodd:

I write to you again because of your past demonstrated interest in championing the rights of men and women who do not have the resources to compete with the billion-dollar machinery of the banking industry. In their continued campaign of misinformation, the bankers and their bretheren in the credit card and commercial credit industries persist in their advocacy of a bankruptcy bill that I earlier described as being written, bought and paid for by the bankers, commercial creditors and members of the credit card industry. (See my letter to you dated June 10, 1998, a copy of which is enclosed herewith)

The purpose of this letter is to urge you and your colleagues in the Senate to stand firm in your resistance to S.625, so deviously described as a Bankruptcy Reform Act.

Although the Senate Democrats recently successfully defeated a cloture petition on S.625, there is no reason to expect that the bankers and commercial creditors who have expended millions of dollars of lobbying and campaign contributions will not try again to get what they paid for - passage of a bill that lines their pockets at the expense of the economically disadvantaged of society.

I have served as Chairman of the Family Law Section of the American Bar Association (1992-1993), Founding President of the Ohio Chapter of the American Academy of Matrimonial Lawyers, and Chief United States Delegate to the First World Congress on Rights of Children and Families in Sydney, Australia (1993). However, I write not on behalf of these organizations, but on behalf of my colleagues in the Family Law community who deal on a daily basis with the struggles of men and women whose economic woes, during and after divorce, will be compounded by passage of S.625. Unlike the bankers, I have no direct economic interest in this bill. My efforts are only as an observer of that which is for the public good.

My comments refer to four issues:

1. The orchestrated public relations campaign to sell S.625 as being **good** for women;

2. The misguided efforts of the California District Attorney's Family Support Bureau, who support S.625, but who are merely apologists for the failures of government support collection bureaucracies;

3. The wisdom of the collective opinions of the overwhelming majority of bankruptcy law professors who have studied S.625; and

4. The effect of the bill on bankrupt women, as opposed to women whose support-paying ex-husbands seek bankruptcy protection.

A. The Campaign to Sell the Bill

In response to the defeat on cloture, those who have the most to gain, the credit industry, have embarked upon an advertising campaign trumpeting S.625 as being "good for women." Accompanying their ads, those in the industry recently circulated a letter dated September 14, 1999 to all senators trumpeting the fact that the bill places support recipients in a "first priority" position. Anything that sounds too good to be true usually is too good to be true! So it is with the claims of the letter of September 14, 1999, signed by 302 organizations, of which over two-thirds have the words "Banker," "Credit," "Financial," "Retail," or "Merchants" (or their derivatives) in their title.

One asks why, if 302 organizations can be listed, **not one organization advocating consumer rights, women's rights, children's rights, or individual rights could be found to be included in the list of signators**. The answers are evident. First, the narrow interest of the credit industry, as opposed to consumers, is being presented to the exclusion of all else. Second, as the professors of bankruptcy law point out in their letter to the senators dated September 7, 1999, the issue of "first priority" is a red herring. The law professors state, "Giving 'first priority' to domestic support obligations does not address the problem." The number of bankruptcy cases with assets is negligible. Most bankruptcy cases are "no asset" cases. Thus, first priority to creditors in a bankruptcy case provides virtually no benefit whatsoever. Further, "first priority" is meaningless after bankruptcy when credit card companies, whose debts have been excepted from discharge under the pending bankruptcy bill, will be free to again go after the support payor, thus competing with the support payee.

I don't know what women S.625 is good for, as the bankers claim, certainly not my clients or those of my colleagues. Only women bankers will benefit.

B. The Cheerleading of the California District Attorneys

Just as they did last year, the government lawyers in California have weighed in on the side of the bankers, rather than with the private practitioners of family law. Unlike the government lawyers, private practitioners collect support for women and children, not the state.

Before considering the statement of the district attorneys of San Francisco for accuracy, let us consider their credibility. Unlike the remarkable record of collection of the credit card industry, which record was stated to be 96% by an MBNA witness, San Francisco County collected no more than 8% of support that was due in 1996-1997. The groups of California government lawyers identified in their September 14, 1999 letter supporting S.625 are participants in a state system that resulted in a 1998 study by the National Center for Youth Law, the Child Support Reform Initiative, and Children Now entitled "California's Child Support Program: The Cost of Failure." This report utilized data reported by the district attorneys of California that, if anything, overreported their "success". Relying on the opinions of this group whose failures were documented in the report can only be an exercise in foolishness!

At least in its September 14, 1999 letter, unlike its letter in support of the Bankruptcy Relief Act last year, the comments were not taken verbatim from earlier banking industry lobbying documents. Nevertheless, factually, the government lawyers are still wrong. If S.625 passes, support-ordering courts faced with a support payor who cannot discharge certain debts in bankruptcy and thus pay his (or her) support will grant relief to such payors by way of post-divorce modifications of support. Such modification will obviate the various collection methods otherwise provided by law, since a lower amount will be court-ordered. Government lawyers do not deal with this problem, but I do. The argument of the California government lawyers is faulty.

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C. The Opinions of Professors of Bankruptcy Law

On September 7, 1999, the comments of 82 professors of bankruptcy law concerning S.625 was circulated to members of the Senate. One of their principal concerns was the adverse affect of S.625 upon women. Their comments were sound and should be heeded. Their studied analysis, rather than the greedy self-interest of the bankers, should be the foundation upon which reasoned consideration should rest.

D. The Effect of S.625 upon Women Filing for Bankruptcy

Lost in the current debate over whether support recipients (usually women) who seek support from a payor who attempts to obtain bankruptcy protection is the support recipient, who, herself, seeks bankruptcy protection. Such person, described by several studies by Harvard law professor Elizabeth Warren and others, is one of the fastest growing segments of the population in bankruptcy court. It is this woman and her children who will suffer the greatest harm from S.625. Post-divorce support recipients almost uniformly suffer a reduction in economic health. They desperately need every dollar of support they receive to meet their day-to-day needs. If S.625 passes, these women and children, in ever-increasing numbers, will suffer grievously. The means testing, credit card nondischargability, reaffirmation provisions, and limits on dischargability features of S.625 will attack these women and children by placing disposable funds available to them at further risk. The credit card industry, whose debt may be protected from discharge by S.625, will not hesitate to attach the bank account of a woman whose monetary lifeblood, her support check, is deposited into such an account! How then, is S.625 "good" for these women and children? I submit that it obviously is not!

I urge you and your colleagues to continue to protect those in our society who are least able to protect themselves from the voracious greed of those who support S.625. I urge you the defeat of S.625.

Very truly yours,

Marshall J. Wolf

Marshall J. Wolf

MJW/ske

Enclosure

WOLF AND AKERS
A LEGAL PROFESSIONAL ASSOCIATION
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1717 EAST NINTH STREET
CLEVELAND, OHIO 44114
(216) 623-9999

MARSHALL J. WOLF
DEBORAH R. AKERS

PRACTICE LIMITED TO
DOMESTIC RELATIONS LAW

June 10, 1998

Senator Christopher J. Dodd
Subcommittee on Children and Families
Committee on Labor and Human Resources
444 Russell Senate Building
Washington D.C. 20510

Re: H.R. 3150 and S. 1301

Dear Senator Dodd:

As past chair of the Family Law Section of The American Bar Association, I have had a great interest in the pending bills concerning bankruptcy "reform" now pending in the House and in the Senate. I enclose a copy of my formal statement dated May 13, 1998 which I believe was made a part of the record of the House Judiciary Committee hearings on H.R. 3150 by Representative Jackson-Lee of Texas. While I cannot speak officially on behalf of The American Bar Association, I am aware that at my request the governing council of the Family Law Section recently voted unanimously to seek approval of The American Bar Association Board of Governors for blanket authority to <u>oppose</u> H.R. 3150 and S. 1301.

I have recently reviewed a copy of a letter dated June 4, 1998 supporting H.R. 3150 purportedly written on behalf of the California Family Support Council to Representative Gekas, the principal sponsor of H.R. 3150. What is immediately striking about the content of the letter is that it's tone, syntax, and language are virtually identical to other writings I have reviewed which were written by credit card industry proponents of these bills.

The pending bills in their present form obviously have been bought, paid for and written by the credit card industry and it's lap-dog campaign finance beneficiaries in Congress to suit the agenda of the banking industry to the eventual detriment of well-meaning people who need to rely upon the bankruptcy laws of this nation. Men and women of good will who sometimes unfortunately go through a divorce and also find themselves before the bankruptcy courts of this nation need the protection of the bankruptcy laws to permit them to collect and pay past due alimony and child support obligations <u>following</u> a bankruptcy. The letter from the California Family Support

Council ignores this principle and is simply more of the same irrelevancies and inaccuracies that previously have been submitted as testimonials for these big business bills.

The correspondence from the California Family Support Council limits it's laudatory comments to that which will occur during a bankruptcy proceeding, thereby completely ignoring the disastrous consequences that the bills' provisions would have after a discharge in bankruptcy or the approval of a payment plan under Chapter 13. Similarly, the fact that "plans could not be confirmed or discharges granted unless all post petition support payments were made..." is highly illusory and fails to meet the objections set forth earlier by me in the attached statement. The evil is not that alimony and child support arrearages will not be paid at all, the evil is that women and children who need the money for their basic sustenance today will have less funds available to them immediately. They will be left to fight for scraps left behind by the professional collectors-credit card companies-thereby receiving the past due alimony and child support needed for daily expenses over a long period of time into the future (and without the benefit of the interest rates charged by the professional creditors on unpaid balances).

It is true that Congress provides many tools to give the collection of alimony and child support an impetus. However, these various tools outlined by the California Family Support Council have absolutely nothing to do with the current debate or the bankruptcy laws. To include them in a discussion of pending bankruptcy bills is to muddy the water of the debate with irrelevancies. Moreover, if H.R. 3150 is passed in it's present form, these other tools previously provided by Congress will be diluted.

The California Family Support Council is far more limited in it's scope and interest than others who deal with the collection of alimony and child support. The Council is primarily interested in the state's recoupment of welfare funds from deadbeat dads whose families are being supported with state funds. Their statement to Representative Gekas that his "...proposed amendments would make the effect of bankruptcy on a child support creditor negligible" would be humorous if it weren't so incredibly and patently mean spirited and wrong! Those who deal with individual's interests as opposed to the state's interests in recovering welfare funds do not share the views of the group of district attorneys referred to as The California Family Support Council.

The California district attorneys acknowledge that there is opposition to H.R. 3150 because of the effect non-dischargeability of credit card debt would have on alimony and child support collection. However, they naively excuse the effects of H.R. 3150 by stating that child support collection is in competition with credit card companies now. What the Council either ignores or intentionally refuses to consider is that the "competition" that they see now occurring will be exaggerated and prolonged if H.R. 3150 is adopted. Currently the "competition" referred to by

WOLF AND AKERS
A LEGAL PROFESSIONAL ASSOCIATION

the California group between alimony and child support creditors and credit card companies ends if the payor can discharge his credit card debt in bankruptcy. Without discharged creditors to compete with, more disposable funds are attachable by the alimony and child support creditor because the "competition" for these dollars has ended. By eliminating the dischargeability of some credit card debt, H.R. 3150 prolongs the "competition." This fact is lost on the California district attorneys group.

As public policy, the comments of The California Family Support Council and the bill that they support is bad policy, injurious to people and beneficial only to big banking. As a legal argument, the comments of the Council are unpersuasive and badly reasoned. The district attorneys in California and the support recipients they serve would be better served if the Council would address California's woeful lack of compliance with federally mandated collection standards.

Very truly yours,

Marshall J. Wolf

Marshall J. Wolf

MJW/jp

G:\Users\jp\Hr3150

PREPARED STATEMENT OF MARSHALL J. WOLF

REGARDING H.R. 3150 AND S. 1301

MAY 13, 1998

Marshall J. Wolf is an attorney in the Cleveland, Ohio law firm of Wolf and Akers, whose practice is limited to family law. Mr. Wolf is a past chair of the Family Law Section of The American Bar Association, a Fellow of the American and International Academies of Matrimonial Lawyers and, in 1993 served as the Chief United States delegate and keynoter to the First World Congress on Family Law and Rights of Children in Sydney, Australia. He is a frequent writer and lecturer on matters of family law throughout the United States and is regularly listed in various publications of outstanding lawyers in the field of family law.

Ladies and Gentlemen:

My name is Marshall J. Wolf. I am an attorney in Cleveland, Ohio and practice exclusively in the area of family law. For thirty years I have seen first hand the emotional and economic strains that members of our society and their children experience following a divorce.

Although I appear here today solely as an individual and not in any official capacity on behalf of any group, I am past chair of the Family Law Section of The American Bar Association, a Fellow of the American and International Academies of Matrimonial Lawyers and, in 1993, served as the Chief United States delegate and keynote speaker at the First World Congress on Family Law and Rights of Children in Sydney, Australia.

I appear here today to voice the objections I share with my colleagues in family law to those portions of H.R. 3150 and S. 1301 that seek to amend the bankruptcy laws so that a portion of credit card debts become nondischargeable in Chapter 7 bankruptcy proceedings. These bills further seek to amend the bankruptcy laws so that debtors in Chapter 13 proceedings are required to pay all unsecured debt in pro rata installments with nondischargeable debts - specifically including child support and alimony.

My colleagues in family law including, unanimously, the governing counsel of the Family Law Section of The American Bar Association who are currently seeking endorsement of its position by the entire Bar Association object to those portions of H.R. 3150 and S. 1301 for these reasons:

1. Portions of these bills will have disproportionate and unfair effect on single parents and divorce recipients of child support and alimony by reducing the ability of such recipients to receive child support or alimony following a discharge in bankruptcy of the support payor. If credit card debt is added to the current list of items that are now not dischargeable

(alimony and child support, taxes and educational loans), after a bankruptcy of a support payor, the alimony and child support recipient will be forced to compete with the well organized, well financed, and obscenely profitable credit card companies to receive payments from the limited income of the poor guy who just went through a bankruptcy. It is not a fair fight and it is one that women and children who rely on support will lose!

2. The proposed amendments to the bankruptcy code contained in these bills will make it more difficult for the support payors to provide for family members in need of such support. It is not true that all support payors refuse or don't want to pay their court ordered support obligations. If, however, aggressive credit card collection procedures are allowed to continue even after a bankruptcy, the well meaning support payors will be stymied in their attempts to clear their debts, start over and be able to honor their family support obligations, as they desire to do.

3. Recipients of alimony and child support who go bankrupt will still have outstanding credit card obligations following a bankruptcy if the pending bills are inacted in present form. The result will be that, after a bankruptcy, the support recipient will be forced to use funds received as support, not for current or future support, but for payment of past due credit card debt not permitted to be discharged in bankruptcy.

4. The proposed language of H.R. 3150 and S. 1301 will further encourage the reckless extension of credit by, and the unnecessary protection of the extraordinarily profitable credit card industry. Because one of the leading causes of divorce in our society is the stress and strife created by financial pressures upon the family, there can be no reasonable dispute that if family members are prevented from discharging credit card debt in appropriate circumstances, the financial stress upon a family will cause a significant rise in divorce in our society.

Men, women and children whose lives are in upheaval following a divorce will not benefit from this proposed legislation. They will suffer! These men, women and children cannot expend the vast sums that have been expended by the credit card banking industry on lobbying efforts in support of these bills. Rather, these men, women and children must rely on the social responsibility of their legislators to consider these issues based upon what benefits people (people who vote), not banks.

On behalf of those who cannot speak for themselves and on behalf of my colleagues whose profession it is to speak for them, I urge you to oppose the portions of H.R. 3150 and S. 1301 to which I have referred.

Subcommittee on Children and Families
Committee on Labor and Human Resources
Senator Christopher J. Dodd
Ranking Member

RECEIVED JUN 9 1998

FACSIMILE TRANSMITTAL FORM

Phone: (202)224-5630
Fax: (202)224-7475

DATE: 6/9/98 TIME: 10 10 A.M. P.M.

TO: Marshall Wolf

of

FAX# (216) 623 0629

PHONE # ( )

FROM:
✓ Brooke Byers – 202 224 5480
Suzanne Day
Jim Fenton
Jeanne Ireland
Other:

NUMBER OF PAGES, including this form: 3

COMMENTS / MESSAGE: Rep Gekas has obtained the attached letter supporting the "Child Support fixes" of H.R. 3150. Would you consider drafting a letter of response? E.g. that there are few different Child Support enforcement systems etc. Just let me know when you get a chance. Hope all is well.

CALIFORNIA FAMILY SUPPORT COUNCIL

June 4, 1998

The Honorable George W. Gekas
United States House of Representatives
Washington, D.C. 20515

Re: H.R. 3150 – Commercial and Administrative Law Subcommittee

Dear Chairman Gekas:

The California Family Support Council is an organization of district attorneys and other professionals in the State of California who represent the interest of the children of this state in the establishment and collection of support under the federal child support enforcement program (Social Security Act, Title IV-D). As president of the Council I wish to express the gratitude of our members for your inclusion of provisions in H.R. 3150 to improve child support collections when a debtor has filed for protection under the Bankruptcy Code.

In particular, section 146 of H.R. 3150 contains a veritable "wish list" of provisions which substantially enhances our efforts to enforce support obligations during the bankruptcy of a support obligor. It closes many of the "loopholes" which currently exist in bankruptcy and which greatly hamper our efforts to enforce support debts when a debtor has other creditors who are also seeking participation in the distribution of the assets of a debtor's bankruptcy estate.

Congress has already provided many tools which give us an enormous collection advantage over other creditors outside bankruptcy. We can, for example, intercept tax refunds; prosecute for criminal non-support or contempt of court; revoke, suspend or non-renew licenses; obtain income withholding orders which, under federal law, have an absolute priority over other creditors' claims (42 U.S.C. §666(b)(7); obtain penalties against employers who fail to honor income withholding orders; obtain such income withholding orders without leave of court; and obtain security bonds or guarantees for the payment of support. In addition nonpayment of support interstate is a federal crime. All of these collection techniques—and many more—are available at little or no cost to support obligees through the child support enforcement program.

During bankruptcy, however, many of these remedies must be reconciled with other bankruptcy code provisions which protect the debtor and place support obligees in competition with other creditors. What is worse, in cases filed under Chapters 12 and 13, income withholding must cease and the support debts must be structured to conform to the debtor's plan.

JUN 08 '98 10:38 FR

If the amendments you propose in section 146 of H.R. 3150 were enacted, the opposite would be true. Plans could not be confirmed or discharges granted unless all postpetition support payments were made; income withholding would not be affected by the filing of a bankruptcy petition; lingering issues relating to the dischargeability of certain support debts would be clarified; and distinctions between assigned and unassigned support would be eased. In short, your proposed amendments would make the effect of bankruptcy on a child support creditor negligible.

I have been informed that there is some opposition to H.R. 3150 based on the premise that support creditors would be worse off if certain credit card debts were made nondischargeable and credit card creditors and support creditors were in competition for the same post-discharge assets. I can only say that we are in competition with those creditors prior to bankruptcy now. We do not see such debts as impairing our ability to collect support, especially in view of the advantages child support creditors have under current state and federal law as outlined above. Our problems stem not from competition with credit card creditors outside bankruptcy, but from the disadvantages we incur as collectors of support under current bankruptcy law during bankruptcy. Your proposed amendments would give support creditors an enormous advantage over other creditors during bankruptcy and greatly aid us in the discharge of our support enforcement responsibilities.

I just want you to know that, on behalf of the public child support enforcement community in California, we enthusiastically support your efforts and look forward to the swift enactment of H.R. 3150.

Yours very truly,

Jonathan Burris
President

OPINION

The new women's issue: bankruptcy law

By Elizabeth Warren

FAMILY and medical leave. Equal pay. Sexual discrimination. Harassment. These always have been "women's issues," and defined that way, they have become focal points for this country and its progress.

Yet there is a new "women's issue" that will dramatically affect almost three-quarters of a million women this year: bankruptcy law. Congress is about to take a step backward on that issue, stripping economic protection away from many of America's most vulnerable women.

How could something as complex, arcane, and ostensibly neutral as a bankruptcy law be a "women's issue"? Despite gains by women in the workplace, a growing number of households headed by women are facing economic stress, a fact echoed in the bankruptcy data.

In 1981, married couples and men filing alone accounted for about 80 percent of all bankruptcies. Today, households headed by women account for about 40 percent of all bankruptcies. Since 1981 their numbers have grown from about 69,000 to 538,000, making the rate of growth for women more than twice the rate of men filing alone, and more than triple the rate of married couples filing joint petitions. Yet bankruptcy laws were amended in 1984, and again in 1994, to cut back debtor protection.

The bill would give creditors more leverage to pressure financially troubled families. A growing number of those are headed by women.

Meanwhile, women are having more trouble making ends meet. According to a new study from the Census Bureau, 28.5 percent of women heads of household have trouble paying for rent, utilities, or health care during a given year. That's almost twice as many as their male counterparts. For those who can't pay for two or more of those basic needs in a given year, the gap is equally wide: 16.2 percent of women versus 8.4 percent of men.

Next week the Senate is scheduled to take up a bill to reduce consumer protection in bankruptcy laws again. The bill would give lenders more leverage to pressure troubled families for repayment.

This bill would fall hardest on women who are at the bottom of the economic ladder.

Women who file for bankruptcy are disproportionately divorced, separated, and widowed. A divorced woman, for example, is three times as likely to file for bankruptcy as her married sister.

The credit industry says the legislation pending in the Senate won't affect many women. Their research shows that households headed by women in bankruptcy are poorer than those headed by men, which means the one provision based on family income would affect fewer households headed by women.

True enough, but that's only a small part of the story. While the public-relations campaign proclaims this bill is trying to make those debtors pay who can afford to pay, more than 100 pages of provisions make financial rehabilitation harder for every household.

Two provisions illustrate the devastating effects of this bill, regardless of the debtor's income.

More debts would survive bankruptcy. This problem hurts financially troubled women in two ways. It gives them and their families less protection when they file for bankruptcy. Unlike present law, the new measure would leave them saddled with

LISA HANEY

their collection departments.

This provision will affect an estimated 200,000 women a year above and beyond the half-million who file for bankruptcy.

At a time when most divorced mothers cannot collect more than 40 percent of the child support they are owed, this provision

is shameful.

Options for repayment would decrease. The bill increases the amount of money that car lenders and some other creditors can demand when a debtor tries a bankruptcy repayment plan.

According to a study by the National Association of Chapter 13 Trustees, this provision alone would prevent about a quarter of all debtors who try to repay from

credit-card debts that cannot be discharged. And credit-card companies would be able to continue raising interest and penalties and trying to collect forever.

Even for women who manage to stay out of bankruptcy, the provision is a disaster. Alimony and child support have long had protected status as two of the very few debts that survive a bankruptcy filing. This bill would elevate a portion of credit-card debt to the same status. So when a woman's ex-husband files for bankruptcy, she would have to compete against big lenders and

doing so under the protection of the bankruptcy court.

For the 1 in 3 bankrupt women (and 1 in 2 bankrupt couples) trying to save their homes by paying the home mortgage in full, losing the opportunity for a court-protected repayment plan means they lose their last chance

to avoid foreclosure.

While these and other provisions hammer away at families trying to get by on less than $25,000 a year, the bill continues protection for million-dollar homesteads. The well-heeled who want to put their assets into trusts also will be fully protected.

There is a need for bankruptcy reform, but not reform that puts struggling households in the cross hairs while letting the

rich off the hook.

Make no mistake. The bill will also be harmful to households headed by men. For families filing for bankruptcy after a layoff, or trying to recover from the devastation of uninsured medical debts or a failed small business, this bill removes the middle-class safety net. But for women trying to stabilize their economic fortunes following the breakup of their families, and for those trying to provide for children on small incomes, the proposed changes to bankruptcy law would be a particularly hard blow.

Is bankruptcy a women's issue? Rep. George Gekas (R) of Pennsylvania, sponsor of the House bill, proclaims that he "helps women with this bill." Lobbyists flatly proclaim, "There is no women's issue."

But 30 women's groups, along with Consumers Union, Consumer Federation of America, and Mothers Against Drunk Driving oppose the bill, while a creditors' lobby, spending a reported $61 million, continues its push for greater opportunities to squeeze hard-pressed families.

At a time when more women than ever are finding themselves with no option but filing for bankruptcy, the Senate should not take that option away.

■ Elizabeth Warren teaches law at Harvard University, in Cambridge, Mass. She is an adviser to the National Bankruptcy Review Commission.

HARVARD LAW SCHOOL

CAMBRIDGE · MASSACHUSETTS · 02138

2.

ELIZABETH WARREN
LEO GOTTLIEB PROFESSOR OF LAW

Direct Phone: (617) 495-3101
Direct Fax: (617) 496-6118

September 24, 1999

Marshall Wolf
Wolf and Akers
1515 The East Ohio building
Cleveland, Ohio 44114
216-623-9999

Dear Marshall:

We may need you again. On Tuesday, the Senate Democrats held together and defeated a cloture petition on the bankruptcy bill. But the wheeling and dealing is just beginning.

There is an orchestrated campaign to sell the idea that the bankruptcy bill is *good* for women. The credit industry has been running advertisements and has put together a group letter to all senators. Now Terence Hallinan of San Francisco is back. Joan Entmacher of the National Partnership for Women and Families is familiar with Hallinan, as the attached email shows.

The law professors are trying to help out, but we may need help from an expert. Think about a letter to Senator Dodd, with cc's all around. (I have the mailing list, or we can get one of the staffers to distribute.)

Also, in the press of things our person from the Center on Budget Policy and Perspectives has never followed up with you to talk with your sister. I think I should just go ahead. I'm not a sophisticated strategist, but I understand this bankruptcy bill and I would like to have the chance to talk with her about it. Can you make the introduction?

Thanks for everything. You have helped tens of thousands of women all across the country with your involvement.

Very truly yours,

Elizabeth

Elizabeth Warren
Leo Gottleib Professor of Law

Bankruptcy reform helps women and children. Distorting the facts about reform helps no one.

The truth is that bankruptcy reform gives much-needed help to single parents and their children who are dependent on family support payments.

Today, parents who owe child support or alimony can avoid making these payments by simply filing—and then withdrawing—a bankruptcy application. The Bankruptcy Reform Act (S. 625) will put a stop to deadbeat parents who abuse the system to avoid their responsibilities to their families.

The bill will also:

- Make child support and alimony payments the top priority—no exceptions. Current law makes these family support payments the seventh highest priority in obligations to be paid.
- Require a debtor to pay all past due child support and alimony before any debts can be erased in bankruptcy.
- Provide single parents with key information, including an alert that their ex-spouse has filed for bankruptcy; phone numbers of the closest child support collection agencies; and last known address information for a parent who has "disappeared."

Bankruptcy reform will vastly improve the collection of child support and alimony in bankruptcy. Don't let politics stand in the way of this helping hand for single parents and their children.

KNOW THE FACTS. SUPPORT S. 625

American Bankers Association • American Financial Services Association • America's Community Bankers • Bankruptcy Issues Council • Consumer Bankers Association • Independent Bankers Association of America • National Retail Federation • Agricultural Retailers Association • Air Conditioning Contractors of America • American Sheep Industry Association • American Subcontractors Association • American Equipment Distributors • Associated General Contractors of America • Equipment Leasing Association • International Mass Retail Association • Livestock Marketing Association • National Apartment Association • National Association of Wheat Growers • National Automobile Dealers Association • National Cattlemen's Beef Association • National Community Pharmacists Association • National Funeral Directors Association • National Grange • National Home Furnishings Association • National Independent Automobile Dealers Association • National Lumber & Building Materials Dealers Association • National Multi Housing Council • National Pork Producers Council • National Retail Hardware Association • National Ski & Snowboard Retailers Association • National Sporting Goods Association • North American Equipment Dealers Association • North American Retail Dealers Association • World Floor Covering Association

September 14, 1999

Dear Senator:

The undersigned organizations write to you today to urge expedited consideration of S. 625, the Bankruptcy Reform Act of 1999.

In 1998, over $40 billion was written off as a result of bankruptcy, costing the average American household about $400 in the form of higher costs for goods and services. Even more worrisome, however, is that our bankruptcy laws contain a fundamental flaw that allows higher-income filers to walk away from debts they can afford to repay. Wealthier filers walk away from an estimated $3 billion per year of debt that they simply choose not to pay, despite having the clear ability to do so. This is simply not fair to the majority of Americans who pay their bills each month, but have to pick up the tab for those who choose not to pay.

S. 625 repairs this flaw by requiring those higher-income filers to repay what they can afford, thereby restoring the principles of fairness and personal responsibility to our bankruptcy system. The bill also includes several financial education provisions that will inform debtors of their alternatives to bankruptcy, provide debtors with new financial skills they can use after bankruptcy, and even a secondary education financial management program to help our children gain valuable knowledge they will use after graduation.

Additionally, S. 625 vastly improves the position of women and children who depend on family support payments from an absent parent who has filed for bankruptcy. Today, "deadbeat" parents use our bankruptcy system to evade these vital support payments. Additionally, women and children are currently seventh on a list of priorities in the bankruptcy system, behind such things as attorneys' fees. S. 625 will close these loopholes by moving the family support payment obligation to the first priority, and by requiring all child support payments to be made in advance of approval of a filer's bankruptcy petition. No obligation is more important than that of a parent to his or her children – not attorneys' fees, not credit card payments – and this legislation recognizes that obligation by naming it the top priority. No exceptions.

Women and children have waited long enough to be the first priority in the bankruptcy system. Consumers have waited long enough for education and disclosures to help them make informed financial decisions. Americans have waited long enough for the restoration of the principles of fairness and personal responsibility to our bankruptcy laws. Bankruptcy reform is a priority for voters and consumers, and we urge you to support this important legislation.

Sincerely,

American Bankers Association
America's Community Bankers
American Financial Services Association
Associated Credit Bureaus
Association of Financial Services Holding Companies
Consumer Bankers Association
Consumer Mortgage Association
Financial Services Roundtable
Independent Community Bankers of America
National Home Equity Mortgage Association
National Home Furnishings Association
National Retail Federation
U.S. Chamber of Commerce

Alabama Bankers Association
Alabama Retail Association
Alaska Bankers Association
Arizona Bankers Association
Arizona Retailers Association
Arkansas Bankers Association
Arkansas Community Bankers
Arkansas Grocers and Retail Merchants Association
Associated Oregon Industry Retail Council
California Bankers Association
California Financial Services Association
California Independent Bankers
California Retailers Association
California State Association
Colorado Bankers Association
Colorado Retail Council
The Community Bankers Association of Alabama
Community Bankers Association of Georgia
Community Bankers Association of Illinois
Community Bankers Association of Indiana
Community Bankers Association of Kansas
Community Bankers Association of Ohio
Community Bankers Association of Oklahoma
Community Bankers of Kentucky, Inc.
Community Bankers of Louisiana
Community Bankers of New Hampshire
Community Bankers of Wisconsin
Community Bank League of New England
Connecticut Bankers Association
Connecticut Community Bankers
Connecticut Retail Merchants Association
Delaware Bankers Association
Delaware Retail Council
Florida Bankers Association

Florida Financial Services Association
Florida Retail Federation
Georgia Bankers Association
Georgia Financial Services Association
Georgia Industrial Loan Association
Georgia Retail Association
Hawaii Bankers Association
Idaho Bankers Association
Idaho Retailers Association
Illinois Bankers Association
Illinois Financial Services Association
Illinois Retail Merchants Association
Independent Bankers Association of New York State
Independent Bankers Association of Texas
Independent Bankers Division of Tennessee Bankers Association
Independent Bankers of Colorado
Independent Bankers of South Carolina
Independent Bankers of South Dakota
Independent Community Bankers of Minnesota
Independent Community Bankers of New Mexico
Independent Community Bankers of North Dakota
Independent Finance Association of Illinois
Indiana Bankers Association
Indiana Retail Counsel
Iowa Bankers Association
Iowa Financial Services Coalition
Iowa Independent Bankers
Iowa Retail Federation
Kansas Bankers Association
Kansas Financial Services Association
Kansas Retail Council
Kentucky Bankers Association
Kentucky Consumer Finance Association
Kentucky Retail Federation
Louisiana Bankers Association
Louisiana Retailers Association
Maine Association of Community Banks
Maine Bankers Association
Maine Merchants Association
Maryland Bankers Association
Maryland Financial Services Association
Maryland Retailers Association
Massachusetts Bankers Association
Massachusetts Independent Bankers Association, Inc.
Michigan Association of Community Bankers
Michigan Bankers Association
Michigan Retailers Association
Mid Atlantic Financial Services Association

Minnesota Bankers Association
Minnesota Retail Merchants Association
Mississippi Bankers Association
Mississippi Consumer Finance Association
Missouri Bankers Association
Missouri Financial Services Association
Missouri Independent Bankers Association
Missouri Retailers Association
Montana Bankers Association
Montana Consumer Finance Association
Montana Equipment Dealers Association
Montana Independent Bankers
Montana Retail Association
Montana Tire Dealers
Nebraska Bankers Association
Nebraska Financial Services Coalition
Nebraska Independent Bankers Association
Nebraska Retail Association
Nevada Bankers Association
Nevada Financial Services Association
New England Financial Services Association
New Hampshire Bankers Association
New Jersey Bankers Association
New Jersey Retail Merchants Association
New Mexico Bankers Association
New Mexico Financial Services Association
New Mexico Retail Association
New York Bankers Association
North Carolina Association of Financial Institutions
North Carolina Bankers Association
North Carolina Financial Services Association
North Carolina Retail Merchants Association
North Dakota Bankers Association
North Dakota Retail Association
Ohio Bankers Association
Ohio Counsel of Retail Merchants
Oklahoma Bankers Association
Oklahoma Retail Merchants Association
Oregon Bankers Association
Pennsylvania Association of Community Bankers
Pennsylvania Bankers Association
Pennsylvania Retailers Association
Puerto Rico Bankers Association
Retail Association of Nevada
Retail Merchants of Hawaii
Retailers Association of Massachusetts
Retail Council of New York
Retail Merchants Association of New Hampshire

Rhode Island Bankers Association
Rhode Island Retail Federation
South Carolina Bankers Association
South Carolina Financial Services Association
South Carolina Merchants Association
South Dakota Bankers Association
South Dakota Consumer Finance Association
South Dakota Retailers Association
Tennessee Bankers Association
Tennessee Consumer Finance Association
Tennessee Council of Retail Merchants
Texas Bankers Association
Texas Financial Services Association
Texas Retailers Association
Utah Bankers Association
Utah Retail Merchants Association
Vermont Bankers Association
Vermont Retail Association
Virginia Association of Community Bankers
Virginia Bankers Association
Virginia Financial Services Association
Virginia Retail Merchants Association
Washington Bankers Association
Washington Independent Community Bankers Association
Washington Retail Association
West Virginia Association of Community Bankers
West Virginia Bankers Association
West Virginia Consumer Finance Association
West Virginia Retailers Association
Wisconsin Bankers Association
Wisconsin Financial Services Association
Wisconsin Merchant Federation
Wyoming Bankers Association
Wyoming Retail Merchants Association

Advanta Corporation
American General Finance
American General Financial Group
American Retail Credit Services, LLC
Aristar Incorporated
Aronson Furniture Company
Associates First Capital Corporation
Auto Title Lenders
Badcock Home Furnishing Centers
Bank America Business Credit
Bank of America
BANK ONE CORPORATION

Banner Finance of Illinois, Inc.
Bonlar Loan Company
Boscov's Department Store, Inc.
Brundage Management
Budget Finance
Carriage House Furniture
Charming Shoppes, Inc.
Chartwell Financial Services
Chase Manhattan Bank
Chrysler Financial Co., L.L.C.
Circuit City Stores
Citibank
Colonial Heights Furniture
Colorado Prime Corp.
Commercial Credit Corporation
Concord Financial Services
Consolidated Investment, Inc.
Consumer Acceptance Corp.
Continental Furniture Company
Countrywide Home Loan, Inc.
CSC Credit Service
Dillard National Bank
Discover Financial Services, Inc
Dow Financial, Inc.
Equifax Credit Info Services
Equifax, Inc.
Experian
Factual Data Corp.
Famous-Barr
Fannie Mae
Farmers Furniture Company
Filene's
Financial American Life
First Capital Finance Co., Inc.
First Union Corp
Foley's
Ford Motor Credit Co.
Fredde Furniture Co.
Future Finance Company, Inc.
GE Capital Corp.
General Motors Acceptance Corporation
GMAC
Great American Finance Company
Greater Chicago Finance Company
Hecht's
Heilig-Meyers Company
Household International
Huntington Bancshares Incorporated

Instant Cash Advance
J.C. Penney Company, Inc.
John Deere Credit Company
Kanes Furniture
Kaufmann's
Keycorp
Loan Express Co., Inc.
Lord & Taylor
Louis Shanks of Texas, Inc.
MasterCard International Incorporated
MBNA America
Meier & Frank
Mellon Bank
Mercury Finance Company (MNF Financial)
Michael Pekay, P.C.
Midland Acceptance Corp.
Midland Acceptance Company
Morgan Stanley Dean Witter & Co.
Morrill & Associates
Morrison & Saltz, P.C.
Nationwide Acceptance Corporation
Norwest Financial Preferred Capital
Norwest Financial Services
Payday Check Advance, Inc.
Pier One Imports
Plaza Finance Company, Inc.
PNC Bank
Robinsons-May
Rooms To Go
Royce Financial, Inc.
Saks Incorporated
Schewel Furniture Co.
Sears, Roebuck and Co.
Security Finance Corporation
Security Finance Company
Slumberland Furniture
Southern Financial Inc.
Spiller Furniture Stores, Inc.
Standard Furniture Companies
Star Furniture Co.
Steer Financial Services, Inc.
Strawbridges
Sun Loan Company, Inc.
Suntrust Banks, Inc.
Surety Finance Services
TCF Financial Corporation
The Bon-Ton Stores, Inc.
The Cash Store, LTD.

The Chase Manhattan Corporation
The Jonas Store
The Money Lenders, Inc.
Trans Union, LLC
Turner Acceptance Corp.
Union Auto Finance
Universal Lenders, Inc.
U.S. Bancorp
UnionBanCal Corporation
VISA U.S.A. Incorporated
Voyager Insurance Companies
Wachovia Bank
Wells Fargo
Wolf Furniture Company
World Finance Corp.
W.S. Badcock Corp./Badcock Home Furnishing Centers
Zale Corporation

TERENCE HALLINAN
DISTRICT ATTORNEY
CITY AND COUNTY
OF SAN FRANCISCO

EDWINA YOUNG
DIRECTOR
FAMILY SUPPORT BUREAU

DISTRICT ATTORNEY FAMILY SUPPORT BUREAU

617 Mission Street, San Francisco, CA 94103 Tel. (415) 356-2900

September 14, 1999

Senators Orrin G. Hatch (Chair, Judiciary); Charles Grassley (Chair, Subcommittee, Judiciary); Senators Patrick Leahy, Robert G. Torricelli, Jeff Sessions, Strom Thurmond, Spencer Abraham, Russell D. Feingold, and Charles Schumer

Re: S. 625 [Bankruptcy Reform Act]

Dear Senators:

I am writing this letter in response to the July 14, 1999 letter prepared by the National Women's Law Center. That letter asserts in conclusory terms that the Bankruptcy Reform Act would put women and children support creditors at greater risk than they are under current bankruptcy law. The letter ends with the endorsement of numerous women's organizations.

I have been engaged in the profession of collecting child support for the past 27 years in the Office of the District Attorney of San Francisco, Family Support Bureau. I have practiced and taught bankruptcy law for the past ten years. I participated in the drafting of the child support provisions in the House version of bankruptcy reform and testified on those provisions before the House Subcommittee on Commercial and Administrative Law this year.

I believe it is important to point out that none of the organizations opposing this legislation which are listed in the July 14th letter actually engages in the collection of support. On the other hand, the largest professional organizations which perform this function have endorsed the child support provisions of the Bankruptcy Reform Act as crucially needed modifications of the Bankruptcy Code which will significantly improve the collection of support during bankruptcy. These organizations include:

1. The National Child Support Enforcement Association
2. The National District Attorneys Association
3. The National Association of Attorneys General
4. The Western Interstate Child Support Enforcement Council

The thrust of the criticism made by the National Women's Law Center is that by not discharging certain debts owed to credit and finance companies, the institutions would be in competition with women and children for scarce resources of the debtor and that the bill fails "to insure that support payments will come first." They say that the "bill does not ensure that, in this intensified competition for the debtor's limited resources, parents and children owed support will prevail over the sophisticated collection departments of these powerful interests."

With all due respect, nothing could be further from the truth. While the argument is superficially plausible, it ignores the reality of the mechanisms actually available for collection of domestic support obligations in contrast with those available for non-support debts.

Absent the filing of the bankruptcy case, no professional support collector considers the existence of a debt to a financial institution as posing a significant obstacle to the collection of the support debt. The reason is simple; the tools available to collect support debts outside of the bankruptcy process are vastly superior to those available to financial institutions and, in the majority of cases, take priority over the collection of non-support debts.

More than half of all child support is collected by earnings withholding. Under federal law such procedures have priority over *any* other garnishments of the debtor's salary or wages and can take as much as 65% of such salary or wages. By contrast the Consumer Credit Act prevents non-support creditors from enforcing their debts by garnishing more that twenty-five percent of the debtor's salary.

In addition, there are many other techniques that are only made available to support creditors and not to those "sophisticated collection departments of . . . [those] powerful interests:" These include:

1. Interception of state and federal tax refunds to pay child support arrears.
2. Garnishment or interception of Workers' Compensation or Unemployment Insurance Benefits.
3. Free or low cost collection services provided by the government.
4. Use of interstate processes to collect support arrearage, including interstate earnings withholding orders and interstate real estate support liens.
5. License revocation for support delinquents.
6. Criminal prosecution and contempt procedures for failing to pay support debts.
7. Federal prosecution for nonpayment of support and federal collection of support debts.
8. Denial of passports to support debtors.
9. Automatic treatment of support debts as judgments which are collectible under state judgment laws, including garnishment, execution, and real and personal property liens.
10. Collection of support debts from exempt assets.
11. The right of support creditors or their representatives to appear in any bankruptcy court without the payment of filing fees or the requirements of formal admission.

While the above list is not exhaustive, it is illustrative of the numerous advantages given to support creditors over other creditors. And while all of these advantages may not ultimately guarantee that support will be collected, they profoundly undermine the assumption of the National Women's Law Center that the mere existence of financial institution debt will somehow put support creditors at a disadvantage. To put it otherwise, support may sometimes be difficult to collect, but collection of support debt does not become more difficult simply because financial institutions also seek to collect their debts.

The National Women's Law Center analysis concludes without specification that the support "provisions fail to insure that support payments will come first, ahead of the increased claims of the commercial creditors." Professional support collectors, on the other hand, have no trouble in understanding how this bill will enhance the collection of support ahead of the increased claims of commercial creditors. To them, such creditors are irrelevant outside the bankruptcy process. And in light of the treatment of domestic support obligations as priority claims under current law and the enhanced priority treatment of such claims in the proposed legislation, this objection seems particularly unfounded.

Where support creditors are indeed at a disadvantage under current law is during the bankruptcy of a support debtor. Under existing bankruptcy law support creditors frequently have to hire attorneys to enforce support obligations during bankruptcy or attempt the treacherous task of maneuvering through the complexities of bankruptcy process themselves. Attorneys working in the federal child support program--indeed, even experienced family law attorneys--may find bankruptcy courts and procedures so unfamiliar that they are ineffective in ensuring that the debtor pays all support when due. Ideally, procedures for the enforcement of support during bankruptcy should be self-executing and uninterrupted by the bankruptcy process. The pending bankruptcy reform legislation goes far in this direction. To suggest that women and children support creditors are not vastly aided by this bill is to ignore the specifics of the legislation.

In the first place support claims are given the highest priority. Commercial debts do not have any statutory priority. Thus when there is competition between commercial and support creditors, support creditors will be paid first. And, unlike commercial creditors, support creditors must be paid in full when the debtor files a case under chapter 12 or 13. Unlike payments to commercial creditors, the trustee cannot recover as preferential transfers support payments made during the ninety days preceding the filing of the bankruptcy petition, and liens securing support may not be avoided as they may be with commercial judgment liens. Unlike commercial creditors, support creditors may collect their debts through interception of income tax refunds, license revocations, and adverse credit reporting, all--under this bill--without the need to seek relief from the automatic bankruptcy stay.

In addition, support creditors will benefit--again, unlike commercial creditors--from chapter 12 and 13 plans which must provide for full payment of on-going support and unassigned support arrears. Further benefits to support creditors which are not available to commercial creditors is the security in knowing that chapter 12 and 13 debtors will not be able to discharge other debts unless all postpetition support and prepetition unassigned arrears have been paid in full.

Finally, and most importantly, support creditors will receive--even during bankruptcy--current support and unassigned arrearage payments through the federally mandated earnings withholding procedures without the usual interruption caused by the filing of a bankruptcy case. Like many other provision of the bill, this provision is self-executing; the bankruptcy proceeding will not affect this collection process. Frankly, and contrary to the assertions of the National Women's Law Center, it is difficult to conceive how this bill could better insure that "support payments will come first, ahead of the increased claims of the commercial creditors."

The National Women's Law Center states that some improvements were made in the Senate Judiciary Committee. This organization may wish to think twice about that conclusion. What the Senate amendments did was to distinguish in some cases between support arrears that are assigned (to the government) and those that are unassigned (owed directly to the parent). The NWLC might have a point if assigned arrears were strictly government property and provided no benefit to women and children creditors. However, upon a closer look, arrears assigned to the government may greatly inure to the benefit of such creditors.

In the first place the entire federal child support program was created to recover support which should have been paid by absent parents, but was not. Such recovered funds became and remain a source of funding to pay public assistance benefits, especially by the states which contribute about one half of the costs of such benefits.

More directly significant, however, is the fact that under the welfare reform legislation of 1996 (the Personal Responsibility and Work Opportunity Reconciliation Act) support arrearage assigned to the government and not collected during the period aid is paid reverts to the custodial parent when aid ceases. This scenario will become increasingly common in the very near future as the five year lifetime right to public assistance ends for individual custodial parents. In such cases this parent will face the double whammy of being disqualified from receiving the caretaker share of public assistance and--because of the Senate amendments--not receiving arrears or intercepted tax refunds because they were assigned *at the time* the debtor filed for bankruptcy protection.

In addition, prior to the Senate Judiciary Committee amendments a debtor could not obtain confirmation of a plan if he were not current in making all postpetition support payments. The advantage of this scheme was that it was self-executing. Under the Senate amendments a debtor may obtain confirmation even when he is not paying his on-going support obligation. He is only required to provide for such payments in his plan. In such cases it will then be the burden of the support creditor to bring a bankruptcy proceeding to dismiss the case if the debtor stops paying. While this procedure is a welcome addition to the arsenal of remedies available to support creditors, it should not have supplanted the self-executing remedy which required the debtor to certify he was current in postpetition support payments before the court could confirm the plan.

While the Senate version of bankruptcy reform should certainly be amended to restore the advantages of the earlier draft, it does, even it its present form, provide crucial improvements in the protections and advantages afforded spousal and child support creditors over other creditors during the bankruptcy process. These improvements will ease the plight of all support creditors--men, women, and children--whose well-being and prosperity may be wholly or partially dependent on the full and timely payment of support. Congress has created the federal child support program within title IV-D of the Social Security Act. It is the opinion of those whose job it is to carry out this program that the Bankruptcy Reform Act provides the long overdue assistance needed for success in collecting money during bankruptcy for child and spousal support creditors.

Most of the concerns raised by the groups opposing the bill do not, in fact, center on the language of the domestic support provisions themselves. Instead they are based on vague generalized statements that the bill hurts debtors, or the women and children living with debtors, or the ex-wives and children who depend on the debtor for support. It is difficult to respond point by point to such claims when they provide no specifics, but they appear to fall into two categories.

The first suggests that the reform legislation will result in leaving debtors with greater debt after bankruptcy which will "compete" with the claims of former spouses and children. As discussed above, there is little likelihood that such competition would adversely affect the collection of support debts. In any event the bill does little to change the number or types of nondischargeable debt held by commercial lenders. It will slightly expand the presumption of nondischargeability for luxury goods charged during the immediate pre-bankruptcy period and will make debt incurred to pay a nondischargeable debt also nondischargeable. It is doubtful that either provision will, in reality, have much effect on the vast majority of "poor but honest" debtors who do not use bankruptcy as a financial planning mechanism or run up debts immediately before filing for bankruptcy in anticipation of discharging those obligations.

The second contention is presumably directed at a number of provisions in the bill that are designed to eliminate perceived abuses by debtors in the current system. The primary brunt of this attack is borne by the so-called "means testing" or "needs based bankruptcy" provisions which would amend the current language of Section 707(b). Most of the opposition appears to stem from the notion that means testing would be a wholly novel proposition. Such a conclusion is plainly incorrect. Virtually every court that has ever considered the issue holds that Section 707(b) already includes a means test--or, more accurately, a hundred or a thousand means tests, one for each judge who considers the issue. The current Code language sets no standards or guidelines for applying this test, thus leaving the outcome of a motion subject to the unstructured discretion of each bankruptcy judge. The proposed bankruptcy reform legislation attempts to prescribe *one* test that all courts must apply.

The precise terms of that standard have been under constant revision since the bankruptcy reform bills were introduced last year, and undoubtedly they will continue to be fine-tuned to ensure that they strike a balance between preventing abuse and becoming unduly expensive and burdensome. But mere opposition to any change in the present law, and vague claims that any and all attempts to address such existing abuses as serial filings are oppressive and will harm women and children, does nothing to advance the dialogue. And worse, the critics appear content to sacrifice the palpable advantages which this legislation would provide to support creditors during the bankruptcy process for defeat of this legislation based on vague and unarticulated fears that women will be unfairly disadvantaged as bankruptcy debtors. In more ways than one the critics would favor throwing out the baby with the bath water. No one who has a genuine interest in the collection of support should permit such inexplicit and speculative fears to supplant the specific and considerable advantages which this reform legislation provides to those in need of support.

Yours very truly,

PHILIP L. STRAUSS
Assistant District Attorney

cc. Senator Diane Feinstein
Senator Barbara Boxer

from Joan Entmacher, Natl Partnership

To all,

Terrence Hallinan is the District Attorney for San Francisco County. Some background on their child support enforcement record.

In 1998, The National Center for Youth Law, The Child Support Reform Initiative, and Children Now published a report entitled, "California's Child Support Program: The Cost of Failure." The report analyzed the performance of California counties in collecting support using data that the District Attorneys are required to submit to the State. (If anything, this county-reported data probably overstates the success of the California District Attorneys in collecting support. The California State Auditor found that the State of California underreported the amount of uncollected child support by nearly $1.6 billion as of Sept. 30, 1998. California State Auditor, "Child Support Enforcement Program: Without Stronger Leadership, California's Child Support Program Will Continue to Struggle," August 1999).

With those caveats, the report found that in 1996-97 (the latest data then available) San Francisco County collected 8.2% of support due; over 90% -- over $156 million -- was uncollected. San Francisco county ranked 55th out of 58 counties in collection of support. Among the large counties, it ranked 14th out of 15 -- only LA County was worse. Statewide, California collected 10.1% of support due, compared to 20.8% nationwide.

I don't have collection data from the credit card industry or other creditors, other than the statistic mentioned by an MNBA witness, that 96% of their accounts paid as agreed. Does anyone else have some industry data for comparisons?

Joan

Law professors' letter – gathering signatures now

September 21, 1999

The Honorable Orrin Hatch
Chairman
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

The Honorable Patrick Leahy
Ranking Member
Committee on the Judiciary
United States Senate
Washington, D.C. 20510

Re: The Bankruptcy Reform Act of 1999 (S. 625)

Dear Senators:

In a letter to you dated September 7, eighty-two (82) professors of bankruptcy law expressed their concerns about some of the provisions of S. 625. Only two professors (in a letter dated September 16) took the opposing view. One of the principal worries the 82 professors voiced was that S. 625 "may adversely affect women and children."

Proponents of the bill – namely, the consumer credit industry -- have responded with a media blitz trumpeting the view that "Bankruptcy reform helps women and children." A full-page advertisement dated September 14 asserts, "The truth is that bankruptcy reform gives much-needed help to single parents and their children who are dependent on family support payments." The advertisement cautions in large type: "Distorting the facts about reform helps no one."

The undersigned professors agree that "distorting the facts about reform helps no one." The real distortion, though, is the assertion that S. 625 would benefit women and children. The truth is that, notwithstanding the pleas of the bill's proponents, S. 625 does *not* help women and children. Some clue to this reality should be taken from the fact that numerous groups who seek to promote the best interests of women and children continue to oppose the pending bankruptcy reform. The concerns expressed in the professors' letter of September 7 regarding how S. 625 would hurt women and children have not been resolved.

First, one of the biggest problems the bill presents for women and children was stated in the September 7 letter:

> *"Women and children as creditors will have to compete with powerful creditors to collect their claims after bankruptcy."*

As the professors' letter explained, this increased competition for women and children will come from many quarters: from powerful credit card issuers, whose credit card claims increasingly will be excepted from discharge; from large retailers, who will have an easier time obtaining reaffirmations; and from creditors claiming they hold security, even when the alleged collateral is virtually worthless. *None* of the changes made to S. 625 in the past few weeks address these problems. "The truth" remains: if S. 625 is enacted in its current form, women and children will face increased competition in collecting their alimony and support claims after the bankruptcy case is over.

Second, it is a red herring to argue, as do advocates of the bill in touting how the bill will help women and children, that it will "Make child support and alimony payments the top priority – no exceptions." True enough – but, as the law professors pointed out in the September 7 letter:

> *"Giving 'first priority' to domestic support obligations does not address the problem."*

Why isn't granting first priority to alimony and support claims the magic solution the consumer credit industry claims? To begin with, "priority" is relevant only for distributions made to creditors *in* the bankruptcy case itself. Such distributions are made in only a negligible percentage of cases. Most bankruptcy cases are "no asset" cases. In all of these "no asset" cases, a grant of first priority to alimony and support claims provides no benefit whatever to women and children.

Indeed, giving *first* priority to alimony and support claims may be counterproductive. Under current law the administrative expenses of the bankruptcy case itself are paid first. If that were not done, then it would be extremely difficult to get anyone to administer the bankruptcy at all. One can one hardly expect a trustee to spend time and money trying to recover the debtor's assets for the benefit of creditors when that trustee is not going to be paid for those efforts. S. 625 proposes to do exactly that by placing the claims of women and children first. Administrative expenses must be paid first.

Finally, granting first priority to women and children does not address at all the critical problem that women and children will face increased competition from powerful creditors *after* the bankruptcy case is over. The best chance for women and children to recover something usually is from the debtor's post-bankruptcy earnings. But, as explained above, S. 625 would actually make it harder for women and children to collect from the debtor after bankruptcy.

For these reasons, we reiterate our concerns that S. 625 would hurt women and children. We implore you not to let that happen.

Thank you for your consideration.

cc: All United States Senators

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MARSHALL J. WOLF
DEBORAH R. AKERS

PRACTICE LIMITED TO
DOMESTIC RELATIONS LAW

June 10, 1998

Senator Christopher J. Dodd
Subcommittee on Children and Families
Committee on Labor and Human Resources
444 Russell Senate Building
Washington D.C. 20510

Re: H.R. 3150 and S. 1301

Dear Senator Dodd:

As past chair of the Family Law Section of The American Bar Association, I have had a great interest in the pending bills concerning bankruptcy "reform" now pending in the House and in the Senate. I enclose a copy of my formal statement dated May 13, 1998 which I believe was made a part of the record of the House Judiciary Committee hearings on H.R. 3150 by Representative Jackson-Lee of Texas. While I cannot speak officially on behalf of The American Bar Association, I am aware that at my request the governing council of the Family Law Section recently voted unanimously to seek approval of The American Bar Association Board of Governors for blanket authority to <u>oppose</u> H.R. 3150 and S. 1301.

I have recently reviewed a copy of a letter dated June 4, 1998 supporting H.R. 3150 purportedly written on behalf of the California Family Support Council to Representative Gekas, the principal sponsor of H.R. 3150. What is immediately striking about the content of the letter is that it's tone, syntax, and language are virtually identical to other writings I have reviewed which were written by credit card industry proponents of these bills.

The pending bills in their present form obviously have been bought, paid for and written by the credit card industry and it's lap-dog campaign finance beneficiaries in Congress to suit the agenda of the banking industry to the eventual detriment of well-meaning people who need to rely upon the bankruptcy laws of this nation. Men and women of good will who sometimes unfortunately go through a divorce and also find themselves before the bankruptcy courts of this nation need the protection of the bankruptcy laws to permit them to collect and pay past due alimony and child support obligations <u>following</u> a bankruptcy. The letter from the California Family Support

Council ignores this principle and is simply more of the same irrelevancies and inaccuracies that previously have been submitted as testimonials for these big business bills.

The correspondence from the California Family Support Council limits it's laudatory comments to that which will occur <u>during</u> a bankruptcy proceeding, thereby completely ignoring the disastrous consequences that the bills' provisions would have <u>after</u> a discharge in bankruptcy or the approval of a payment plan under Chapter 13. Similarly, the fact that "plans could not be confirmed or discharges granted unless all post petition support payments were made..." is highly illusory and fails to meet the objections set forth earlier by me in the attached statement. The evil is <u>not</u> that alimony and child support arrearages will not be paid at all, the evil is that women and children who need the money for their basic sustenance <u>today</u> will have less funds available to them immediately. They will be left to fight for scraps left behind by the professional collectors-credit card companies-thereby receiving the past due alimony and child support needed for daily expenses over a long period of time into the future (and without the benefit of the interest rates charged by the professional creditors on unpaid balances).

It is true that Congress provides many tools to give the collection of alimony and child support an impetus. However, these various tools outlined by the California Family Support Council have absolutely nothing to do with the current debate or the bankruptcy laws. To include them in a discussion of pending bankruptcy bills is to muddy the water of the debate with irrelevancies. Moreover, if H.R. 3150 is passed in it's present form, these other tools previously provided by Congress will be diluted.

The California Family Support Council is far more limited in it's scope and interest than others who deal with the collection of alimony and child support. The Council is primarily interested in the state's recoupment of welfare funds from deadbeat dads whose families are being supported with state funds. Their statement to Representative Gekas that his "...proposed amendments would make the effect of bankruptcy on a child support creditor <u>negligible</u>" would be humorous if it weren't so incredibly and patently mean spirited and wrong! Those who deal with individual's interests as opposed to the state's interests in recovering welfare funds do not share the views of the group of district attorneys referred to as The California Family Support Council.

The California district attorneys acknowledge that there is opposition to H.R. 3150 because of the effect non-dischargeability of credit card debt would have on alimony and child support collection. However, they naively excuse the effects of H.R. 3150 by stating that child support collection is in competition with credit card companies <u>now</u>. What the Council either ignores or intentionally refuses to consider is that the "competition" that they see now occurring will be exaggerated and prolonged if H.R. 3150 is adopted. Currently the "competition" referred to by the California group between alimony and child support creditors and credit card companies ends if the payor can discharge his credit card debt in bankruptcy. Without discharged creditors to compete with, more disposable funds are attachable by the alimony and child support creditor because the "competition" for these dollars has ended. By eliminating the dischargeability of some credit card debt, H.R. 3150 prolongs the "competition." This fact is lost on the California district attorneys group.

As public policy, the comments of The California Family Support Council and the bill that they support is bad policy, injurious to people and beneficial only to big banking. As a legal argument, the comments of the Council are unpersuasive and badly reasoned. The district attorneys in California and the support recipients they serve would be better served if the Council would address California's woeful lack of compliance with federally mandated collection standards.

Very truly yours,

Marshall J. Wolf

Marshall J. Wolf

MJW/jp

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PREPARED STATEMENT OF MARSHALL J. WOLF

REGARDING H.R. 3150 AND S. 1301

MAY 13, 1998

Marshall J. Wolf is an attorney in the Cleveland, Ohio law firm of Wolf and Akers, whose practice is limited to family law. Mr. Wolf is a past chair of the Family Law Section of The American Bar Association, a Fellow of the American and International Academies of Matrimonial Lawyers and, in 1993 served as the Chief United States delegate and keynoter to the First World Congress on Family Law and Rights of Children in Sydney, Australia. He is a frequent writer and lecturer on matters of family law throughout the United States and is regularly listed in various publications of outstanding lawyers in the field of family law.

Ladies and Gentlemen:

My name is Marshall J. Wolf. I am an attorney in Cleveland, Ohio and practice exclusively in the area of family law. For thirty years I have seen first hand the emotional and economic strains that members of our society and their children experience following a divorce.

Although I appear here today solely as an individual and not in any official capacity on behalf of any group, I am past chair of the Family Law Section of The American Bar Association, a Fellow of the American and International Academies of Matrimonial Lawyers and, in 1993, served as the Chief United States delegate and keynote speaker at the First World Congress on Family Law and Rights of Children in Sydney, Australia.

I appear here today to voice the objections I share with my colleagues in family law to those portions of H.R. 3150 and S. 1301 that seek to amend the bankruptcy laws so that a portion of credit card debts become nondischargeable in Chapter 7 bankruptcy proceedings. These bills further seek to amend the bankruptcy laws so that debtors in Chapter 13 proceedings are required to pay all unsecured debt in pro rata installments with nondischargeable debts - specifically including child support and alimony.

My colleagues in family law including, unanimously, the governing counsel of the Family Law Section of The American Bar Association who are currently seeking endorsement of its position by the entire Bar Association object to those portions of H.R. 3150 and S. 1301 for these reasons:

1. Portions of these bills will have disproportionate and unfair effect on single parents and divorce recipients of child support and alimony by reducing the ability of such recipients to receive child support or alimony following a discharge in bankruptcy of the support payor. If credit card debt is added to the current list of items that are now not dischargeable

(alimony and child support, taxes and educational loans), after a bankruptcy of a support payor, the alimony and child support recipient will be forced to compete with the well organized, well financed, and obscenely profitable credit card companies to receive payments from the limited income of the poor guy who just went through a bankruptcy. It is not a fair fight and it is one that women and children who rely on support will lose!

2. The proposed amendments to the bankruptcy code contained in these bills will make it more difficult for the support payors to provide for family members in need of such support. It is not true that all support payors refuse or don't want to pay their court ordered support obligations. If, however, aggressive credit card collection procedures are allowed to continue even after a bankruptcy, the well meaning support payors will be stymied in their attempts to clear their debts, start over and be able to honor their family support obligations, as they desire to do.

3. Recipients of alimony and child support who go bankrupt will still have outstanding credit card obligations following a bankruptcy if the pending bills are inacted in present form. The result will be that, after a bankruptcy, the support recipient will be forced to use funds received as support, not for current or future support, but for payment of <u>past due</u> credit card debt not permitted to be discharged in bankruptcy.

4. The proposed language of H.R. 3150 and S. 1301 will further encourage the reckless extension of credit by, and the unnecessary protection of the extraordinarily profitable credit card industry. Because one of the leading causes of divorce in our society is the stress and strife created by financial pressures upon the family, there can be no reasonable dispute that if family members are prevented from discharging credit card debt in appropriate circumstances, the financial stress upon a family will cause a significant rise in divorce in our society.

Men, women and children whose lives are in upheaval following a divorce will not benefit from this proposed legislation. They will suffer! These men, women and children cannot expend the vast sums that have been expended by the credit card banking industry on lobbying efforts in support of these bills. Rather, these men, women and children must rely on the social responsibility of their legislators to consider these issues based upon what benefits people (people who vote), not banks.

On behalf of those who cannot speak for themselves and on behalf of my colleagues whose profession it is to speak for them, I urge you to oppose the portions of H.R. 3150 and S. 1301 to which I have referred.

Ohio Lawyer Fights Bankruptcy Change

MARSHALL J. WOLF is out on a limb.

A divorce lawyer, Mr. Wolf, of Cleveland's Wolf & Akers, can't recall the last time he saw the inside of a bankruptcy court. Yet he is one of the few members of the American Bar Association who has gone on the record about the impact of bills racing through Congress that would make it harder for consumers to declare bankruptcy.

Mr. Wolf, a former president of the ABA's family law section, got involved in the debate in early May, after reading an opinion piece in The New York Times by Harvard Law School Prof. Elizabeth Warren about a proposed change in the law. The proposal would add credit card debts piled up in the 90 days before a bankruptcy filing to the list of the debtor's nondischargeable debts.

In her editorial, and subsequent ABA address, Professor Warren warned that the provision would have a devastating impact on the collection of alimony and child support, which have always been nondischargeable, because it would make women and children compete with credit card companies for payment.

After hearing Professor Warren, the family law section's leadership voted to seek "blanket authority," a process by which ABA groups can move quickly to adopt a policy on legislation without a vote from the group's House of Delegates, which meets only twice a year.

But the section never acted. "It got bogged down, as I suspected it would," said Mr. Wolf. The section's action stalled after Mr. Wolf got a fax from an ABA staffer noting that Philip S. Corwin, a lobbyist for the American Bankers Association, and William J. Perlstein, a partner at D.C.'s Wilmer, Cutler & Pickering, who represents credit card companies, had "debunked" the family law section's concerns to the ABA's legislative counsel in D.C.

MORI TUCKER

Morally Bankrupt: *Lawyer Marshall Wolf criticizes changes he says would hurt women and children.*

Proponents of the bills insist that both the House version, which passed June 10 by a 306 to 118 vote, and the Senate bill, which is expected to go to a floor vote in July, have been amended to create a first priority for alimony and child support.

But Mr. Wolf insisted credit card companies will still come out on top. "They have the procedures and the vehicles and the wherewithal to make sure they get paid first." So, he fired off a June 10 letter to Sen. Christopher J. Dodd, D-Conn., charging that the bills have "obviously been bought, paid for and written by the credit card industry."

Others in the ABA are more cautious, including Ernest B. Williams IV, of Nashville, Tenn.'s Williams & Proshaska P.C., who heads the consumer bankruptcy committee of the ABA's business law section. Calling Mr. Wolf's actions the work of an "itinerant" lawyer without ABA backing, Mr. Williams says he is working toward getting blanket authority to weigh in on the proposed reforms. He said there are problems with both the House and Senate versions of the bill on a key reform, which makes it harder for consumers to file a Chapter 7 petition to liquidate their debts, rather than set up a repayment schedule under Chapter 13.

The "means testing" adopted by the House is too rigid, he said, "making the availability of bankruptcy similar to the availability of welfare payments." The Senate version, which leaves up to the courts the question of who may remain in Chapter 7, will lead to erratic decisions, Mr. Williams said.

Taxing Issues

So far, the ABA has expressed an official opinion on just one aspect of the reforms: tax issues. That is because the ABA's tax section worked with the National Bankruptcy Review Commission, a group created by Congress in 1994, which made recommendations to change the system in October 1997.

But the report was "dead on arrival on Capitol Hill," said Paul H. Asofsky, a partner in the Houston office of New York's Weil, Gotshal & Manges L.L.P., who advised the bankruptcy commission about taxes. He attributes its dead-letter status to the Republican majority's view that "a person who avails themselves of the bankruptcy process is an evil person."

Mr. Asofsky also helped draft an ABA report criticizing the tax implications of the House bill for being heavily weighted in favor of tax collectors. He added, "The craziness of it is that here is this important piece of legislation, and the only piece of it that the ABA has a position on is the tax stuff." —KAREN DONOVAN