Causes of the Consumer Bankruptcy Explosion: Debtor Abuse or Easy Credit?

Henry J. Sommer
CAUSES OF THE CONSUMER BANKRUPTCY EXPLOSION: DEBtor ABUSE OR EASY CREDIT?

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Between June and September of 1998, the United States House of Representatives and United States Senate passed legislation to radically change the Federal Bankruptcy Code,¹ which was last amended by the Bankruptcy Reform Act of 1978 ("BRA").² Representative George Gekas, Chair of the Judiciary Subcommittee in the United States House of Representatives which has jurisdiction over bankruptcy, introduced the bill that was eventually passed by the House.³ When introducing the bill, Representative Gekas stated:

The greatest, and perhaps most dangerous, irony I have come across in the past decade is that despite economic growth, low inflation, low unemployment, and increasing personal income, our nation has seen an alarming increase in the number of bankruptcy filings—1.3 million in 1997 to be exact. Think about that for a second. That is more than one family per every hundred in the United States and over $40 billion in debt that has been erased—in a year of strong economic growth.⁴

Furthermore, he stated that the “so-called ‘bankruptcy of conven-

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ience’ is a new phenomenon, borne out of the loss of stigma the word “bankruptcy’ once, but no longer, carried.”

Representative Gekas then went on to state that the “lack of stigma has become a weed infesting the bankruptcy landscape,” which sprouted from the BRA, and “has spread as bankruptcy became viewed more as a financial planning tool . . . and a first choice, rather than a last resort.”

He cited recent cases filed by celebrities such as Willie Nelson, Burt Reynolds, Kim Basinger, M.C. Hammer, Toni Braxton, and Arizona Governor Fife Symington, as examples of en vogue bankruptcy.

Representative Gekas also stated:

[T]he past six years have been a period of unparalleled economic growth—as any Wall Street broker would be happy to tell us. So obviously the growth in [bankruptcy filings] is not a response to the economy.

Nor can we justifiably [blame] the credit card industry[,] [because] . . . [c]redit card debt accounts for only 16% of all bankruptcy debt.

According to Representative Gekas’ statement, bankruptcy costs every household in the United States $400 because creditors pass on their losses in the form of higher interest rates and prices.

Representative Gekas therefore introduced his bill to provide for a “needs-based” bankruptcy system, in which consumer debtors would get only as much relief as they really needed.

He also cited his former colleague and former Treasury Secretary Lloyd Bentsen, in saying that “we must make an effort to restore the justifiable sense of embarrassment Americans once felt asking their neighbors to shoulder their burden.”

This Article examines first, whether the statements Representative Gekas made are correct and second, how he came to make those statements and introduce his bill in the Congress.

One thing there is no doubt about is that consumer bankruptcy cases have gone up dramatically, and they continue to go up. It is true

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5. Id. (emphasis added).
6. Id.
7. Id. (emphasis added).
10. See id.
11. See id. at E87.
12. Id. at E89.
13. See Lawrence M. Ausubel, Credit Card Defaults, Credit Card Profits, and Bankruptcy, 71 AM. BANKR. L.J. 249, 253 fig.2 (1997); Michael Higgins, Putting Back the Bite, A.B.A. J.,
that over one in one hundred households will file a bankruptcy case this year and if the trend continues, it is likely that 10% of all households will have filed by the year 2003. Chances are that most people may know someone who has filed a bankruptcy case, though they may not know that the person has filed. The tougher question, however, is why bankruptcies are rising. Have we become a nation of deadbeats, of credit addicts, or are there other causes?

The National Bankruptcy Review Commission ("Commission"), an advisory group created by Congress in 1994, examined this issue at some length. Bankruptcy debtors, and the lawyers who represent them, testified in front of the Commission that families were driven to bankruptcy by the same sorts of things that had always driven them to bankruptcy. They lost their jobs; they had medical bills they could not pay; they became disabled; they experienced marital separations, which created the additional expenses of a second household or a loss of income through failure of one spouse to pay alimony or support. The immediate triggering causes have been things like mortgage foreclosures on their homes, repossessions of their cars, lawsuits to collect debts, wage garnishments, and harassment by debt collectors calling at all hours, itself causing marital breakups and emotional problems.

The Commission also learned that there are many more people these days without medical insurance, that the divorce rates in this country are higher, and although the average family income in this country is up and unemployment is down, the benefits of prosperity are not being shared by all. We have gone through an era of unprecedented mergers and downsizing. Many of those who were laid off did find new jobs, but at lower wages. The enormous growth in two income households that we have experienced lessens the catastrophe of a primary breadwinner’s layoff, but makes job loss, and the ensuing financial disruption, twice as likely for the family.


15. See id. at 84-86.


17. See id. at 84-85.

18. See COMMISSION REPORT, supra note 14, at 84-85.

19. See Susan Stefan, "You’d Have to be Crazy to Work Here": Worker Stress, the Abusive Workplace, and Title I of the ADA, 31 LOY. L.A. L. REV. 795, 843 (1998).
In fact, the median income of those consumers in bankruptcy has not increased. In inflation-adjusted dollars, it is less than it was before the last recession.\textsuperscript{20} In addition, unemployment benefits, public assistance, and medical assistance are all being cut dramatically.\textsuperscript{21} While the stockbroker whom Representative Gekas wanted to ask about the economy probably feels he is doing great, that is not the case with the people who are actually filing for bankruptcy.\textsuperscript{22}

The Commission also heard testimony from a number of experts, academics, and other researchers such as the Congressional Budget Office, that historically, the number of bankruptcies has closely tracked the debt loads of American families and that those debt loads have gone up enormously over the past decade and a half, beginning around the time Congress and many states largely deregulated the consumer credit market.\textsuperscript{23} In other words, bankruptcies went up dramatically because consumer debt went up dramatically.\textsuperscript{24}

It is fairly common knowledge that commercial interest rates and the cost of funds to lenders went down significantly over the past ten years.\textsuperscript{25} While consumer interest rates followed suit on home mortgages and car loans, they hardly moved on credit cards.\textsuperscript{26} In fact, many fees, such as late charges, have gone up.\textsuperscript{27} At the same time, lenders have also enjoyed the cost savings of improved technology—it was not that long

\textsuperscript{20} See Elizabeth Warren, \textit{The Bankruptcy Crisis}, 73 IND. L.J. 1079, 1096 fig.2, app. at 1102-03 tbl.1 (1998). The large majority of those filing bankruptcy cases have incomes below the national median. See id. at 1087. In fact, there is some evidence that bankruptcy debtors are worse off in terms of income now than they were in the 1980s. See id. at 1098; see also COMMISSION REPORT, supra note 14, at 83 n.124 ("[D]ebtors in the 1990s are in as much or more financial trouble as debtors in the early 1980s.").
\textsuperscript{22} Those who actually file bankruptcy cases have much lower median incomes than those outside bankruptcy. See Warren, supra note 20, at 1087.
\textsuperscript{23} See Ausubel, supra note 13, at 256-57, 260-61; see also Warren, supra note 20, at 1081-83 (discussing the Congressional Budget Office's analysis of household indebtedness and the link between the deregulation of credit card interest rates and the rate of consumer bankruptcy filings).
\textsuperscript{24} Professor Warren arrives at the same conclusion regarding the explanation behind the rise in consumer bankruptcies. See Warren, supra note 20, at 1080-84. Warren feels "[t]he simple explanation of the rise in filings—bankruptcies rise as household debt rises—is undeniable." Id. at 1084.
\textsuperscript{25} See Ausubel, supra note 13, at 261; see also Lawrence M. Ausubel, \textit{The Failure of Competition in the Credit Card Market}, 81 AM. ECON. REV. 50, 54 fig.1 (1991) (demonstrating the decrease in the cost of funds to banks spanning the years 1982-1989).
\textsuperscript{27} See Ausubel, supra note 13, at 263.
ago that a credit card transaction involved a person calling for an authorization number, making a paper record, sending that record to the bank, and that record then being keyed into a computer. Now, this is all accomplished with the swipe of a card.28

All this has made the credit card business tremendously profitable. Over the past few years the returns of credit card banks, which are the primary credit card lenders, have been twice as high as the general return on assets for commercial banks in the same period, even when their defaults, which are not really losses but just decreases in those profits, are taken into account.29 Moreover, as Representative Gekas’ stockbroker would tell you, banks in general have been very profitable in recent years.30

This success has, in turn, produced the massive marketing of credit cards we have seen over the past four years, with literally billions of solicitations mailed out each year and many more solicited by phone or in person.31 Everyone has experienced some form of credit card solicitation where you are given a gift or prize if you sign up for a credit card.32 The amount of credit card loans at the end of 1996 was more than twice as much as in 1992, just four years earlier.33 While some of that is convenience use, with cardholders paying their full balance each month, the Federal Reserve estimates that convenience use represents only about one seventh of the total.34

Part of what has happened is that lower-income people have received credit, what the lenders call the “democratization of credit.”35


29. See Ausubel, supra note 13, at 259 fig.7; see also Katharine Q. Seelye, House to Vote Today on Legislation for Bankruptcy Overhaul, N.Y. TIMES, June 10, 1998, at A18 (“Credit-card lending is among the most profitable sectors of an intensely competitive banking industry that has little room for growth . . . .”).

30. Commercial banks have been posting record earnings for a number of years. See John R. Wilke, Banks’ Profits Climbed to Record in 3rd Quarter, WALL ST. J., Dec. 12, 1997, at A2.

31. See COMMISSION REPORT, supra note 14, at 92; Ausubel, supra note 13, at 264.

32. “The credit card companies have been saturating the public with their aggressive marketing tactics as they engage in a fierce competitive struggle for market share.” Charles A. Docter, Impact of Credit Card Use on Consumer Bankruptcies, AM. BANKR. INST. J., Feb. 1998, at 1, 42. The credit card companies have also been increasingly targeting young teenaged students. “Cards are available at many colleges to almost any student—no income, no credit history and no parental signature required.” See COMMISSION REPORT, supra note 14, at 93.

33. See Docter, supra note 32, at 42 tbl.

34. See Statements to the Congress, 82 FED. RESERVE BULL. 1000, 1001 (1996).

Due to the increased spread between credit card rates and the cost of funds to lenders, it became profitable to go deeper into the risk pool, to give more credit than previously, and to give it to families who could not obtain it before, families more likely to default. In fact, one of the most rapidly growing parts of the market is what is called the “sub-prime market” which provides high rate mortgages and car loans to people who are poor credit risks. You’ve probably seen the ads—“Bankruptcy? Bad credit? No problem. We’ll give credit to anyone.”

The result—a lot more families living near the financial edge. A lot more families have no savings and are encumbered by large debts, whose budgets could be disrupted by a big plumbing bill or car repair. These are families who are not financially sophisticated, who do not understand the enormous cost of just making minimum credit card payments that would take sometimes thirty-five or forty years to amortize the debt, and who are proud to have “good credit” because the credit card companies keep soliciting them to borrow more. In fact, cardholders who carry large balances are the most attractive customers because the creditors make the most money from them. It is pretty common to see families with incomes of $15,000 or $20,000 with two or even three times that much in debt on numerous cards, who keep making all the minimum payments until something disrupts their income. Then there is a quick downward spiral with the $25 monthly late charge on each card, the acceleration of the payments, and the inability to dig out of a very deep hole.

Yet these families struggle to avoid bankruptcy. They do things like take on a second job or give up their health insurance to avoid bankruptcy. Visits to consumer credit counseling agencies have gone up even faster than bankruptcy rates. The creditors claim there is no more stigma to bankruptcy, but they have not produced any debtors willing

36. See COMMISSION REPORT, supra note 14, at 92-93; Warren, supra note 20, at 1099.
37. See COMMISSION REPORT, supra note 14, at 84-85; Warren, supra note 20, at 1099; Christine Dugas, Going Broke, USA TODAY, June 10, 1997, at 1A.
38. See COMMISSION REPORT, supra note 14, at 93.
39. See Warren, supra note 20, at 1083, 1099.
40. See, e.g., COMMISSION REPORT, supra note 14, at 83; Jean Braucher, Increasing Uniformity in Consumer Bankruptcy: Means Testing as a Distraction and the National Bankruptcy Review Commission’s Proposals as a Starting Point, 6 AM. BANKR. INST. L. REV. 1, 5 (1998); see also Warren, supra note 20, at app. 1102-03 tbl.1 (listing the distribution of income and debts for Chapter 7 debtors for several different years).
41. It has been estimated that in 1997 alone some two million Americans sought some form of credit counseling. See Bill Kent, When the Credit Bubble Bursts, N.Y. TIMES, Jan. 25, 1998, § 14, at 1.
42. In the introduction of his bill, Representative Gekas asserted this creditor-friendly theme.
to come forward to say that they are proud to have filed. From time to
time at the Consumer Bankruptcy Assistance Project, we are asked if we
can find debtors willing to be interviewed by the media, and it is very
hard to find people willing to have their stories publicized, even those
whose bankruptcies clearly resulted from circumstances beyond their
control, like disability. Creditors also blame lawyer advertising for the
increase in bankruptcy filings. Of course, lawyer advertising does
make people more aware, but that has been true since the late 1970s.
And no significant changes in the restrictions on lawyer advertising
have occurred since then.

It is true that with more people filing for bankruptcy these days, it
is more likely those people filing will be a relative or a friend of some-
one else with financial problems. Awareness is up. That is different than
lack of stigma however; it just means people who need relief are more
likely to be aware of it. In fact, the same arguments were made in the
early 1980s—that the rise in filings at that time was caused by lawyer
advertising and lack of stigma. At bottom, the creditors’ argument that
there is no more stigma is really based upon circular reasoning. Accord-
ing to the creditors, there are so many bankruptcies these days, so there
must not be any more stigma. Clearly, the creditors then argue it is this
lack of stigma that has caused the rise in bankruptcies.

Is the rise in bankruptcy filings the fault of the creditors? Not ex-
tactly, since it is not a matter of fault. The creditors have acted like other
profit maximizers under our system and have lent more money to make

See supra notes 5-9 and accompanying text.

43. "Bankruptcy is not a free ride. Nobody who is bankrupt is having any fun." Kent, su-
pra note 41, at 1 (quoting Robert Wood, a Manasquan, New Jersey lawyer and Chapter 13 bank-
rupcy trustee).

44. For examples of lawyer advertising being cited as an encouragement or cause of the in-
crease in bankruptcy filings, see Braucher, supra note 40, at 5, and Resolved: The Time Has Come
for Means-Testing Consumer Bankruptcy, A Debate (Excerpts), AM. BANKR. INST. J., Apr. 1998,
at 6, 45 [hereinafter Resolved].

45. In 1977, the United States Supreme Court held that lawyer advertising is protected under
the First Amendment as commercial speech and thus, may not be restrained or subject to blanket
Commission asserted in its report that the social and economic "picture [surrounding bankruptcy]
has not changed appreciably since the early 1980s." COM Alission REPORT, supra note 14, at 83.

46. See Elizabeth D. Whitaker & David S. Coale, Professional Image and Lawyer Advertis-
ing, 28 T-x. TECH. L. REv. 801, 803-08 (1997) (discussing the state of the law on lawyer advertis-
ing since 1977).

47. See, e.g., Philip Schuchman & Thomas L. Rhorer, Personal Bankruptcy Data for Opt-
Out Hearings and Other Purposes, 56 AM. BANKR. L.J. 1, 2 (1982); see also Warren, supra note
20, at 1093-94 (discussing the credit industry's efforts in the 1980s to encourage bankruptcy re-
form).
greater profits. The spread between their cost of funds and interest rates allows them to sustain more defaults.\textsuperscript{48} Even with increased defaults, credit card lending was, and still is, very profitable.\textsuperscript{49}

But the rise in bankruptcy filings is an entirely predictable consequence of the creditors' activities. Not only do we have the long history of bankruptcy tracking consumer debtloads over years,\textsuperscript{50} it also follows plain, common sense economics. If you have more families in debt, and families with more debt, it would be very surprising if the number of bankruptcy cases did not go up.

The credit card lenders say that their debt accounts for only 16\% of the total debt,\textsuperscript{51} and, Representative Gekas argued that the credit card industry is not to blame.\textsuperscript{52} First of all, those figures include home mortgage debts which are long term debts, as well as car loans, which are close to a necessity for most Americans.\textsuperscript{53} Therefore, using a percentage of total debt is somewhat misleading. It is the credit card sector that is growing the most rapidly. In 1976, bank credit card debt was 5\% of all consumer credit. In 1996, it was one third, over a sixfold increase.\textsuperscript{54} The Consumer Federation of America has estimated that 56\%-60\% of all households carry revolving consumer credit balances that average $6000 to $7000.\textsuperscript{55} The creditors' own study found that credit cards made up over 35\% of non-housing debt in Chapter 7 cases, averaging over

\begin{footnotesize}
\begin{enumerate}
\item See Ausubel, supra note 13, at 263.
\item See id. at 249, 258-61.
\item See Docter, supra note 32, at 1; Warren, supra note 20, at 1082-83; see also Ausubel, supra note 13, at 253-54 (discussing the correlation between bankruptcy filings and credit card delinquencies).
\item See infra note 56 and accompanying text.
\item See Ausubel, supra note 13, at 254 n.13. Furthermore, consumer credit numbers, incidentally, do not include home mortgages. See Glenn B. Canner et al., Household Sector Borrowing and the Burden of Debt, 81 FED. RESERVE BULL. 323, 337 (1995).
\item See Debit Cards and Unsolicited Loan Checks: Hearing Before the Subcomm. on Fin. Insts. and Consumer Credit of the House Comm. on Banking and Fin. Servs., 105th Cong. 60 (1997) (statement of Steven Brobeck, Executive Director, Consumer Federation of America).
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$19,000. After you take out the car loan, it is likely to be almost 50% in many cases.

Are all debtors blameless? No, but many are—it is hard to fault someone who takes on a modest amount of debt and then cannot pay debts because of a disability or layoff. Some should have been wiser; they probably took on more debt than they should have, more than most of us would have. A lot of that is a matter of education, and education in family budgeting is sorely lacking in our schools. Many of my clients have no idea what they owe, much less the enormous amount they pay in finance charges. They only know the monthly payments they are making.

And you have to remember the tremendous amount of marketing that is done to induce people to incur credit. Everyone has seen the advertisements—"No payments until 1999." Soon it will be no payments until the next millennium. If creditors spent even 1% of what they spend on marketing on consumer education, some of these problems would not exist.

However, even for those people who do get in debt over their heads, who have made unwise decisions, what good does it do to punish them by denying them any way to get out from under, forbidding them from getting the fresh start bankruptcy provides? An analogy to tobacco can be drawn. Yes, people who smoke are making an unwise decision, often promoted by advertising. Yet, no one suggests closing the cancer wards. Bankruptcy filings are a symptom of the disease of too much

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57. See id.
60. See supra note 32 and accompanying text.
61. For one such example of this type of advertisement, see NEWSDAY (Long Island), Aug. 11, 1998, at A31.
62. Tobacco companies consistently spend billions of dollars on advertisements and promotions, including advertisements on the Internet. It is estimated that in 1996 the tobacco industry spent $5.1 billion on advertising and promotions. See Jeffrey Taylor, Senator May Push Limited Tobacco Bill, WALL ST. J., Mar. 18, 1998, at B4.
debt, not the cause. The bankruptcy court is a hospital for the financially ailing.

It is true that there is some outright fraud and abuse in the bankruptcy system. As in any system, there will always be some dishonest people. But ask the bankruptcy trustees, and they will tell you that the biggest abuses are in the cases of business debtors, not consumer debtors.64 Indeed, if you look at the publicized celebrity bankruptcy cases mentioned by Representative Gekas, not one of them was a consumer case—most involved business transactions, bad investments, and the like.65 In any event, the fact that there is a small amount of fraud in a system does not mean you need to change the basic system. Everyone knows that there is some fraud in the claiming of business tax deductions, but the Republicans are not advocating the elimination of tax deductions.

So let us review for a second. Indeed bankruptcy filings have gone up greatly,66 but the cause seems more related to increased debt than anything else, like a sudden transformation of Americans into deadbeats with no sense of shame. The causes of bankruptcy are the same as they always have been,67 but today more people live on the financial edge, in an unstable economy that has not been so prosperous for those in the lower half.68

Well, if that is the case, how did Representative Gekas come to believe that people are filing “bankruptcies of convenience,” using bankruptcy as a “financial planning tool,” that the stigma is gone, and that the bankruptcy laws need radical reform? Did he peruse the bankruptcy statistics one day and suddenly become astounded by the great increase? Did he talk to his constituents and find a lot of people who filed bankruptcy cases as a matter of convenience when they really could have paid their debts? Did he, or any of his staff, sit down and study the bankruptcy laws to come up with better ways to do things?

Not likely; things don’t work that way in Washington. Members of Congress are extremely busy and they do not have much time to study

64. “[T]here are no data showing that the consumer bankruptcy system is shot through with abuse.” Elizabeth Warren, A Principled Approach to Consumer Bankruptcy, 71 AM. BANKR. L.J. 483, 493 (1997). In fact, an emerging abuse of the bankruptcy system may be “the use of Chapter 13 by business debtors.” Alvin C. Harrell, The Consumer Issues Agenda of the National Bankruptcy Review Commission, 51 CONSUMER FIN. L.Q. REP. 9, 15 (1997).
65. See generally Kalogerakis et al., supra note 8 (explaining that many celebrity bankruptcy cases involved bad business transactions).
66. See supra note 4 and accompanying text.
67. See COMMISSION REPORT, supra note 14, at 82-83.
68. See Dugas, supra note 37, at 1A; Resolved, supra note 44, at 44.
statistics or pore over the laws they have passed or are in the process of passing. The story of the move for changes in the bankruptcy laws is pretty typical of what does go on, and it is a story of money, power, and politics.

What does happen is that when an industry group wants the laws changed, it spends some money.69 One thing everyone hears about, of course, is campaign contributions, and those contributions buy access.70 When an average citizen goes to the office of a member of Congress, he or she usually ends up speaking to a staff person for that member, a staff person who may or may not ever convey the citizen's thoughts to the member. When the American Bankers Association, Visa, and Household Finance go to a member's office, they talk to the member personally.71 Of course, the member is aware of any campaign contribution that organization made, so the member likes to accommodate them if he or she can. Surely Representative Gekas met with the creditor lobbyists many times before he introduced his bill.72 I am not aware of any meeting Representative Gekas had with any consumer organization or consumer representative, though I did get a meeting with a member of his staff.

But the story starts even before any lobbying of Representative Gekas or other members of Congress. In the first instance, the bankruptcy “issue” had to be created. For that task, the creditors hired public relations firms. What these firms do, as they like to say, is “get the word out” about an issue. They issue press releases, they create press events, contact reporters, telling them that the big rise in bankruptcy cases is a good story and here are some people you can talk to about it—representatives of Visa and Mastercard who are suffering these terrible losses due to bankruptcy.73 They get writers of newspaper columns to


72. See supra note 69.

73. See Fred R. Beakley, *Creditors Seek Tougher Bankruptcy Laws*, WALL ST. J., Dec. 17,
talk to these people and then write pieces about how terrible it is that so many people are walking away from their debts. It is apparent from reading the newspapers that every quarter when new bankruptcy statistics come out, Visa issues a press release, even before the official announcement by the courts. Those press releases include quotes from Visa officials about the end of the stigma, about bankruptcies of convenience, and many of those quotes end up in newspaper and magazine articles.

The public relations firms also come up with the catchphrases: "bankruptcies of convenience," "bankruptcy as a financial planning tool," and "bankruptcy as a first option rather than a last resort." These phrases constantly appear in creditor literature and in the newspaper articles, and ultimately they appeared in Representative Gekas' speech. These phrases, as well as the phrase "needs-based bankruptcy," are the creditors' description of their proposal to prohibit many debtors from filing for Chapter 7 straight bankruptcy and to allow them only to file under Chapter 13, a government-run payment plan. These phrases are the soundbites of the story. What could sound more reasonable than giving someone only as much bankruptcy as he or she needs?

One of the big press events created by the creditors was the announcement of a study they funded. An institution called the Credit Research Center ("CRC"), formerly at Purdue University but apparently moved to Georgetown, conducted the study. The study was previously called the Purdue Study; it is also now known as the Georgetown Study, or the Staten Study, after the person who conducted it. The CRC is

1996, at A2; McAllister, supra note 69, at A23; Schlesinger, supra note 69, at A1. "'The credit industry has launched a massive media and lobbying campaign to discredit the consumer bankruptcy system.'" Robert D. Hershey Jr., Creditors Lead Push to Curb Bankruptcy, N.Y. TIMES, May 10, 1998, § 3, at 10 (quoting Gary Klein, National Consumer Law Center).

74. See, e.g., McAllister, supra note 69, at A23; Schlesinger, supra note 69, at A1.

75. See, e.g., Visa Reports 1.3 Million Consumer Filings in 1997, CONSUMER BANKR. NEWS, Jan. 29, 1998, at 1. Moreover, "Visa has been the leader of the movement for bankruptcy reform legislation. The San Francisco-based company claims to be the largest repository of information on bankruptcy statistics and trends." Lisa Fickenscher, GAO Disputes Card Groups' Bankruptcy Reform Case, AM. BANKR. INST. J., Apr. 1998, at 1.

76. See, e.g., Bleakley, supra note 73, at A2; Cwiklik, supra note 69, at B1; Schlesinger, supra note 69, at A1.

77. See Schlesinger, supra note 69, at A1.


80. See Warren, supra note 20, at 1088; Cwiklik, supra note 69, at B1; Schlesinger, supra note 69, at A1.

81. See Warren, supra note 20, at 1088; Cwiklik, supra note 69, at B1; Fickenscher, supra
funded by the credit industry, and not surprisingly, their studies seem to always support what the credit industry wants to do. It is kind of like the Tobacco Institute for the credit industry.

Regardless, with great fanfare, the creditors announced the preliminary results of the study to the Commission in 1996. Subsequently, the creditors announced later results. The study claimed that 25% of Chapter 7 debtors could pay at least 30% of their debts if they were forced into Chapter 13 payment plans, although the numbers kept changing with each announcement. More tellingly, however, over half the debtors could pay nothing, and the remainder very little. Altogether, the study estimated that about 10-15% of the total debts discharged in Chapter 7 cases could be paid.

When the creditors took this study to the Commission, which was considering changing the law, some academics on the Commission staff and others who testified kept asking some difficult questions. Critics of the study pointed out that creditors included debts that those debtors were paying anyway, like car loans, as debts that Chapter 7 debtors could pay. Most Chapter 7 debtors need their cars to go to work or to shop, and if they do not pay those loans their cars will be repossessed; therefore, debtors pay those loans. They also pay debts which cannot be

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82. See supra note 81.
83. See Cwiklik, supra note 69, at B1.
86. The Credit Research Center ("CRC") released their study, entitled Personal Bankruptcy: A Report on Petitioners' Ability-to-Pay, on October 6, 1997. See CRC STUDY, supra note 56. The CRC issued a response to criticisms of its study the following year. See Michael E. Staten & John M. Barron, Credit Research Center, Response from Professors Michael E. Staten (Georgetown University School of Business) and John M. Barron (Krannert Graduate School of Management, Purdue University), Authors of the Credit Research Center Study "Personal Bankruptcy: A Report on Petitioners' Ability to Pay" 1 (1998) [hereinafter CRC Response]; infra note 99 and accompanying text.
87. See CRC STUDY, supra note 56, at 25 & tbl.11.
88. See id. at 24 fig.6.
89. See id. at 26 tbl.12.
92. Cf. Klein, supra note 91, at 294 (asserting that debtors need to make their ongoing car payments).
discharged, like student loans, many taxes, and alimony and support. The Commission asked the CRC if it could run the numbers to see what could be paid after those debts were taken into account, but the CRC refused. Academics asked if they could examine the data to run some numbers themselves, and the CRC failed to permit that. Critics also pointed out that by assuming a five year repayment period, the study was almost doubling the normal length of a Chapter 13 payment plan under current law.

Furthermore, the report suffered from other problems. It did not take into account the fact that debtors’ incomes were unstable and could not reliably be predicted to remain the same for sixty months. In fact, under the current law, two-thirds of the Chapter 13 plans voluntarily filed by debtors are not completed. So most of the money that would supposedly be collected, even under the study’s assumptions, would not really be there. In reality, only a tiny percentage of Chapter 7 filers could make any significant payments to creditors beyond what they already continue to pay after bankruptcy. Nevertheless, none of that affected the creditor press machinery. That study continued to be cited as fact for months in newspapers and magazines around the country. The Commission did not, however, take the study too seriously, and voted against accepting the creditors’ proposals to prohibit Chapter 7 for some debtors. Having devoted

94. See id. § 523(a)(1).
95. See 11 U.S.C. § 523(a)(5) (1994 & Supp. II 1997); see generally Klein, supra note 90, at 723 & n.44 (discussing the fact that the debtor must always pay nondischargeable debts); Warren, supra note 20, at 1089 (mentioning that debtor must pay nondischargeable debts, such as student loans, anyway).
96. Eventually in response to GAO criticisms, the CRC did analyze some of these issues. See supra notes 85-86 and accompanying text.
97. See Klein, supra note 90, at 716; Klein, supra note 91, at 294-95.
98. “Although three years is the presumptive length of a Chapter 13 plan under current law, much of the CRC study is focussed on how many Chapter 7 debtors could afford to make payments under a five-year plan.” Klein, supra note 90, at 717 (footnote omitted).
99. “The debtor’s income and expenses stated on the petition are assumed to continue, uninterrupted and unchanged, for the duration of the payment period.” CRC STUDY, supra note 56, at 10. Others have also pointed out this problem with the CRC study. See U.S. GEN. ACCOUNTING OFFICE, PERSONAL BANKRUPTCY: THE CREDIT RESEARCH CENTER REPORT ON DEBTORS’ ABILITY TO PAY 3-4, 7-9 (1998) [hereinafter GAO REPORT]; Klein, supra note 90, at 719; Warren, supra note 20, at 1089.
100. See COMMISSION REPORT, supra note 14, at 90; GAO REPORT, supra note 99, at 3-4; Klein, supra note 90, at 719; Resolved, supra note 44, at 44.
101. See Klein, supra note 90, at 719-20.
103. See COMMISSION REPORT, supra note 14, at 89-91; see also Warren, supra note 64, at
many hours to studying the matter, they noticed that no one was saying there was a big problem except the creditors. The consumer advocates disputed what the creditors were saying and so did other "neutral" groups. The Commission also questioned whether the additional amounts that could be collected from Chapter 7 debtors were sufficient to justify the expense of setting up a large bureaucracy necessary to consider every debtor's budget and closely monitor each case.

After the Commission had been in session for a number of months, the creditors began to realize that the Commission disagreed with them. Hence, even though they were among those who pushed hardest for establishment of the Commission, the creditors began attacking it. They took their case to Congress without even awaiting the Commission's report, and they did not go to Congress by themselves. The creditors hired virtually every top lobbying firm in Washington, spending millions of dollars. A report in The Washington Post in early 1998 listed numerous big lobbying firms hired by the creditors, including those employing Haley Barbour, former head of the Republican National Committee, to lobby Republicans, and Lloyd Bentsen, the former Treasury Secretary and Senator, to lobby the Democrats. As mentioned earlier, Representative Gekas quoted his "former colleague" Mr. Bentsen while introducing his bill. Mr. Bentsen had written an op-ed piece espousing the creditor position in The Washington Times, without revealing he was a paid lobbyist. The Post article mentioned that a bill introduced by Representative McCollum was "similar" to a measure drafted by another law firm hired by the creditors, which essentially

496 (mentioning that the Commission adopted the plan opposing the credit industry's plan); Schlesinger, supra note 69, at A1 ("[The Commission] rejected the creditors' more far-reaching proposals.").
104. See COMMISSION REPORT, supra note 14, at 89-91.
105. See id.; Schlesinger, supra note 69, at A1.
106. See COMMISSION REPORT, supra note 14, at 90; see also Warren, supra note 20, at 1090-91 (questioning whether the increased costs and fees involved with the creditors' proposals are worth the alleged increase in the amounts actually paid to creditors in bankruptcy cases); Warren, supra note 64, at 505-06 (discussing the expense of the shifting of judicial resources resulting from adopting a means test).
108. See Schlesinger, supra note 69, at A1; Seelye, supra note 29, at A18.
109. See McAllister, supra note 69, at A23.
112. See McAllister, supra note 69, at A23.
was the same as the bill Representative Gekas ultimately introduced.\footnote{See 144 CONG. REC. E88 (daily ed. Feb. 4, 1998) (statement of Rep. Gekas).} More recently, the venerable Lloyd Cutler, a legendary Washington superlawyer, if not an authority on consumer bankruptcy, testified on behalf of the creditors at a hearing.\footnote{See Bankruptcy Revision, Before the Subcomm. on Commercial and Admin. Law of the House Judiciary Comm., 105th Cong. (1998), available in Westlaw, Congtmy Library, 1998 WL 8992754 (testimony of Lloyd N. Cutler).} It is doubtful that he did it for free.

The lobbyists then took their clients' proposals to every member of the House of Representatives to get sponsors for their bill.\footnote{See McAllister, supra note 69, at A23; Schlesinger, supra note 69, at A1; Seelye, supra note 29, at A18.} They took with them their catch phrases, their study, and their campaign contributions. Moreover, they also kept up their media barrage, buying big ads in Roll Call, the Capitol Hill newspaper, talking about the bankruptcy crisis and the need for common sense, needs-based reform.\footnote{For an example of such advertisements, see ROLL CALL, July 27, 1998, at 7.} There were even television commercials in the Washington D.C. area to influence members of Congress. These ads talked about how bankruptcy costs every household $400 per year.\footnote{"The credit industry has launched a massive media and lobbying campaign to discredit the consumer bankruptcy system." Hershey, supra note 73, at 10 (quoting Gary Klein, National Consumer Law Center); see also Schlesinger, supra note 69, at A1 ("[Creditors publish] the results [of their studies] in advertisements decrying 'bankruptcies of convenience.'").} But where did that $400 number come from? As far as we can tell, it comes from taking the $40 billion in unsecured debts that creditors say are “erased” in bankruptcy,\footnote{See Schlesinger, supra note 69, at A1.} and dividing it by 100 million American households. The only problem with doing that is that almost none of those debts included in the $40 billion would have been paid even if no bankruptcy case were filed.\footnote{This 100 million household number comes from the estimates of the United States Census Bureau. See U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE UNITED STATES 1997, at 59 tbl.66 (117th ed. 1997).} Even the creditors' study claimed that only 10-15% could be paid.\footnote{See Klein, supra note 91, at 304 n.71.} Considering all of the problems with their study, that number is probably too high by a factor of ten or fifteen.\footnote{See CRC STUDY, supra note 56, at 26 tbl.12.} Most of the remaining amount that creditors say could be repaid is probably made up of debts that still are being paid; therefore, $40 billion number consists almost entirely of debts that the creditors admit the debtors cannot afford to pay and debts that debtors still continue to pay after bankruptcy. The real losses that can be attributed solely to bank-

\begin{thebibliography}{99}
\bibitem{115}See McAllister, supra note 69, at A23; Schlesinger, supra note 69, at A1; Seelye, supra note 29, at A18.
\bibitem{116}For an example of such advertisements, see ROLL CALL, July 27, 1998, at 7.
\bibitem{117}"The credit industry has launched a massive media and lobbying campaign to discredit the consumer bankruptcy system." Hershey, supra note 73, at 10 (quoting Gary Klein, National Consumer Law Center); see also Schlesinger, supra note 69, at A1 ("[Creditors publish] the results [of their studies] in advertisements decrying 'bankruptcies of convenience.'").
\bibitem{118}See Schlesinger, supra note 69, at A1.
\bibitem{119}See supra text accompanying notes 90-101.
\end{thebibliography}
CONSUMER BANKRUPTCY EXPLOSION

Bankruptcy are most likely no more than 1% of that $40 billion. But that has not stopped the creditors from continuing to use the number and newspapers from printing it. In fact, the $400 per household number appeared, unquestioned, in the New York Times, our supposed newspaper of record.\footnote{123}

Not surprisingly, when they were approached by their friends the lobbyists, members of Congress who knew nothing about bankruptcy were receptive to the creditors' proposed solutions.\footnote{124} The increased number of cases, more than a million in times of "prosperity," sounded like a problem in need of a solution. Yet only an enterprising few representatives contacted consumer representatives to find out if there was another side to the story. The creditor bill soon had 150 sponsors.\footnote{125}

When consumer advocates and I spoke to some of them later, it was clear that they knew little of the content of the bill. They saw the bill as a way of solving the so called "bankruptcy problem." After all, following all the flurry of creditor generated media coverage, it was by then accepted that the rise in bankruptcy filings was indeed alarming.\footnote{126}

Of course, an Association of Future Bankruptcy Debtors of America, which could take the other side in the lobbying debate, does not exist. Not many people think of themselves that way. Past bankruptcy debtors are glad to have the experience behind them and do not wish to publicize their bankruptcies. Consequently, the only voices on the other side are relatively unorganized; a few overextended consumer organizations and some bankruptcy professionals who do not have millions of dollars to spend on public relations and campaign contributions.\footnote{127}

What is the creditors' solution—the bill Representative Gekas introduced.\footnote{128} A detailed discussion of every aspect of that bill is beyond the scope of this Article. Put simply, it is literally a wish list of every-

\footnote{123. See Hershey, supra note 73, at 10. The $400 per household number also appeared on the front page of The Wall Street Journal, another highly respected newspaper. See Schlesinger, supra note 69, at A1.}

\footnote{124. See Schlesinger, supra note 69, at A1.}

\footnote{125. See John Berlau, Bankruptcy: A New Entitlement?, INV. BUS. DAILY, Mar. 13, 1998, at A1; see also Schlesinger, supra note 69, at A1 (stating that the bill that eventually became the basis for Representative Gekas' bill had 150 sponsors within two months).}

\footnote{126. See COMMISSION REPORT, supra note 14, at iii. In fact, Representative Gekas stated that the increase in bankruptcy filings was "alarming" when he introduced his bill to the House of Representatives. See 144 CONG. REC. E88 (daily ed. Feb. 4, 1998) (statement of Rep. Gekas).}

\footnote{127. For a discussion of the money spent by the creditors on public relations firms and campaign contributions for the purpose of having the consumer bankruptcy laws changed to allegedly allow them to collect more money from consumers who file bankruptcy, see Schlesinger, supra note 69, at A1.}

\footnote{128. See supra notes 3-12 and accompanying text.}
thing the creditors ever wanted to change about bankruptcy laws, and if enacted into law, it would not leave much reason for anyone to file a bankruptcy case. Among other things, it would make it much harder for people to save their homes from foreclosure, and make it much easier for creditors to threaten debtors with repossessions and litigation. The bill also includes the wish list of the Internal Revenue Service ("IRS"), certainly an odd addition coming from a Republican Party that has spent the past year demonizing that agency. It goes way beyond the supposed "needs-based" bankruptcy concept, that part is only worthy of a brief discussion.

Remember the slogan put forth by the creditors: Only as much bankruptcy relief as the debtor needs. It suggests an individualized determination of need based on each family's income and expenses. Well, the bill introduced by Representative Gekas is the precise opposite. It is based on mechanical formulas that do not look at individual income or expenses. First of all, the bill assumes the debtor's average income for the past six months will continue for the next year. If the debtor works for three months and then gets laid off for three months and is still laid off when he or she files for bankruptcy, the proposed legislation assumes that the debtor's income is significantly higher than it actually is. This is a result of the bill including the months the debtor had a job that currently does not exist in its average.

On the expense side, the bill adopts the IRS' "bread and water" living standards and assumes that is what the debtor will spend. If the debtor in reality spends more for rent, perhaps because the debtor lives in a high rent area, or for a long commute to work, or has some other expense not included in the IRS hypothetical standards, the debtor has to file an explanation for this "extraordinary expense," which carries with it a difficult burden of proof. Furthermore, the debtor may quite possibly have to go to a hearing to overcome a creditor's objection and convince a court that the expense is warranted, all of which entails additional time and expense. If the debtor lost or, more likely, could not

130. See id. § 124.
131. See generally id. §§ 501-519 (stating the tax provisions of the bill).
133. See supra notes 80-83 and accompanying text.
134. See H.R. 3150, § 101.
135. See id.; see also Hildebrand, supra note 79, at 16 n.2 (mentioning the details of the bill).
136. See H.R. 3150, § 102.
137. See id.
afford to contest the case, a family might have to move to a less expensive neighborhood, pull the kids out of school, or give up caring for an elderly relative since the IRS does not take into account expenses for people like elderly relatives. The probable result would be that the debtor would simply forego the ability to get bankruptcy relief at all.

It is interesting that the Republicans base their bill on the IRS collection techniques, but maybe it is all right if the proceeds from those collection techniques will go to private interests rather than the government. Of course, all of these calculations, objections, and hearings would also greatly increase the costs of bankruptcy courts and trustees at taxpayer expense. Many more judges, courtrooms, and all the other accouterments will be needed. Again, these are not your typical Republican objectives.

To briefly recap, the bill has a formula based on phantom income that the debtor may no longer have and hypothetical expenses that may bear no relation to the debtor’s expenses. It then uses this income and expense calculation to see if a debtor can pay 20% of unsecured debts; if so, the debtor may not file under Chapter 7. Thus, the debtors who have run up their debts the most are let off the hook. In fact, debtors would have an incentive to incur more debt before filing a bankruptcy case. At the same time, the bill also does almost nothing about unlimited homestead exemptions in states like Florida, where rich people can shelter millions of dollars from their creditors. The only requirement is that the debtor lives in the state, like Florida, for twelve months before bankruptcy, rather than six months. In other words, it does nothing to the biggest high rollers and the worst credit abusers. Perhaps this has something to do with the fact that Representative McCollum, one of the original sponsors of the bill, is from Florida.

Moreover, the bill certainly does nothing to restrain the avalanche of credit we have seen in recent years. Some academics believe it will lead to more, rather than less, risky lending. A competing bill, introduced by Representatives Jerrod L. Nadler of New York and John

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139. See Warren, supra note 20, at 1090-91.
140. See H.R. 3150, § 101.
141. See Higgins, supra note 13, at 77.
142. See H.R. 3150, § 181; Higgins, supra note 13, at 77.
144. See Anne Marriot, A Special Report: Credit Card Fever, WASH. TIMES, Nov. 6, 1997, at A1. In fact, credit card debt has increased even more in recent years than bankruptcy filings. See Docter, supra note 32, at 1.
145. See, e.g., Ausubel, supra note 13, at 251, 270.
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Conyers of Michigan, takes a much narrower approach, focusing on a small number of high income debtors who might actually be able to pay something. It also penalizes creditors who push debtors over the edge, who lend the most recklessly when it should have been obvious that the debtor could not afford to pay. These creditors hurt not only debtors, but also other more responsible creditors, since all creditors lose out when a debtor files bankruptcy, not just those that lend recklessly. Unfortunately, the Nadler-Conyers bill does not have armies of lobbyists pushing it, so it probably will not get very far.

Nevertheless, there are a few rays of hope. Senators Richard Durbin and Charles Grassley asked the General Accounting Office ("GAO") to evaluate the Staten Study, and recently the GAO came back with a report that was sharply critical of the study's methodology. The GAO report criticized it for many of the reasons that are discussed above, and because the study did not use statistically valid techniques. It also pointed out that the CRC study does not take into account the costs of Chapter 13, where the debtor's attorney's fees are higher and the court-appointed trustee takes a percentage of every payment as an administrative fee, usually about 10%. Professor Staten quickly redid his study and finally subtracted some of the debts that were going to be paid anyway. The new numbers were stated differently, but they were a lot lower. Instead of stating that 25% of the debtors could pay 30% of debts, the new numbers were stated in dollars. The top 25% could pay about $2500 over five years, about $500 a year toward unsecured debts. This amounts to approximately 6% of the average $40,000 in unsecured debts that Professor Staten attributed to Chapter 7 debtors, although the debtors with the greatest ability to repay, measured in dollars, probably have significantly higher than average debts. The creditors also commissioned another study, this one by

146. See Consumer Lenders and Borrowers Bankruptcy Accountability Act of 1998, H.R. 3146, 105th Cong. § 8; see also Higgins, supra note 13, at 76 (discussing the Nadler bill).
147. See H.R. 3146, § 2.
149. See id. at 2-6; see also supra notes 90-101 and accompanying text (discussing the problems with the CRC's study).
151. See id. at 20.
152. See Klein, supra note 90, at 724 & nn.50 & 52.
153. See CRC RESPONSE, supra note 86, at 3-4, 11 tbl.3.
154. See id. at 11 tbl.3.
155. See id. These figures are calculated on the assumption that debtors would reaffirm all of their non-housing debts. See id. at 4.
156. See id. at 9 tbl.1.
the accounting firm of Ernst and Young, that claimed that only 8-14% of Chapter 7 debtors would be impacted by the means test in Representative Gekas’ bill.¹⁵⁷

These numbers still do not take into account the increased fees, which by themselves would cut the potential repayment almost to zero. The Chapter 13 trustee’s percentage fee is charged on all secured and unsecured debt payments.¹⁵⁸ Therefore, if a debtor pays $250 per month on a car loan, the fees on that payment alone would be more than $1500 over five years. The attorney’s fees for a Chapter 13 bankruptcy are at least $500 higher than those charged for Chapter 7 in most places,¹⁵⁹ and even Professor Staten recognizes that some amount of income has to be reserved in a debtor’s budget for unexpected emergencies.¹⁶⁰ Adding all of these additional costs into the mix would totally exhaust the $2500 that would supposedly have been available to creditors.¹⁶¹ And that does not take into account the likelihood that most of the plans would fail.¹⁶² At best, the additional returns to creditors from such a system would be minimal, probably less than the costs of running the system.¹⁶³

However, this did not phase the creditors for long. They just paid for a few more studies and some more press releases.¹⁶⁴ The GAO dis-

¹⁵⁷. See POL’Y ECONS. AND QUANTITATIVE ANALYSIS GROUP, ERNST & YOUNG LLP, CHAPTER 7 BANKRUPTCY PETITIONERS’ ABILITY TO REPAY: ADDITIONAL EVIDENCE FROM BANKRUPTCY PETITION FILES 17 (1998) [hereinafter ERNST & YOUNG STUDY I]. Ernst & Young subsequently released a second study focusing on the national effects of Representative Gekas’ bill. In that national perspective study it was found that about “15 percent of 1997 Chapter 7 filers would have been impacted by the needs-based provision of H.R. 3150 and required to file Chapter 13.” POL’Y ECONS. AND QUANTITATIVE ANALYSIS GROUP, ERNST & YOUNG LLP, CHAPTER 7 BANKRUPTCY PETITIONERS’ ABILITY TO REPAY: THE NATIONAL PERSPECTIVE, 1997, at 1 (1998) [hereinafter ERNST & YOUNG STUDY II].


¹⁵⁹. See Klein, supra note 90, at 724 n.52; see also Jean Braucher, Lawyers and Consumer Bankruptcy: One Code, Many Cultures, 67 AM. BANKR. L.J. 501, 550 (1993) (“Median chapter 13 fees were higher than median chapter 7 fees . . . .”).

¹⁶⁰. See CRC RESPONSE, supra note 86, at 2.

¹⁶¹. See supra note 155 and accompanying text.

¹⁶². See sources cited supra note 100. In his reply to the GAO’s criticisms of his study, Professor Staten admitted that only about 36% of Chapter 13 plans are completed. See CRC RESPONSE, supra note 86, at 2.

¹⁶³. Others also question whether the actual additional returns to creditors will be worth the additional expenses put on the bankruptcy system. See, e.g., Klein, supra note 90, at 740; Warren, supra note 20, at 1091.

¹⁶⁴. “When the credibility of the CRC study was challenged, the credit industry responded by hiring more studies. . . . Undeterred, the credit industry paid for yet another study to be released as the GAO was making its unfavorable report on the earlier studies.” Warren, supra note 20, at 1092-93. For a discussion of the credit industry’s funded studies, public relations firms, and media blitzes to attempt to have legislation passed in its favor, see Schlesinger, supra note 69, at A1.
credited these studies too, but it is likely that the industry will always be able to stay one or two studies, and ten press releases, ahead of the GAO.

That is where we are today. As the 105th Congress headed for adjournment, both the Senate and House had passed bankruptcy bills, which would have fundamentally limited consumers' rights to relief, bills opposed by almost every major bankruptcy organization, by consumer groups, by academics, by bankruptcy judges, and by trustees. Essentially, no one supported these bills except the credit industry. However, the Senate bill, which was more in keeping with the views of the White House, was not radical enough for the credit industry lobby and its proponents in the House and Senate. When their Conference Report rejected all of the moderating provisions that had been added in the Senate, Senate Democrats and the White House refused to agree to it and the legislation failed to win final passage. It is certain to be reintroduced early in the 106th Congress and it is certain the credit industry will spend many millions of dollars more on lobbying and public relations.

Recalling a bit of history is a fitting conclusion here. In the early 1980s, the consumer credit industry mounted a similar attack on the bankruptcy laws. The credit industry blamed the still recent BRA for a new rise in bankruptcy cases. They argued, even back then, that the stigma was gone. They said that people who can afford to pay their debts were filing bankruptcy. They began a press campaign and an-

165. See Warren, supra note 20, at 1093.
166. See supra note 1 and accompanying text.
167. See Higgins, supra note 13, at 74-75 (consumer groups and bankruptcy lawyers); Schlesinger, supra note 69, at A1 (commenting on a "community of experts—judges, lawyers and scholars" criticizing the bill); Seelye, supra note 29, at A18 (consumer groups). See, e.g., Warren, supra note 20, at 1100-01 (academics).
170. See sources cited supra note 169.
172. See Black & Herbert, supra note 169, at 846; Countryman, supra note 169, at 822; see also Brown, supra note 171, at H1 ("[T]he 1978 bankruptcy law 'made it easier' for debtors to file 'and may have created an environment where many felt it was more acceptable to file for bankruptcy' . . . .") (quoting Joseph W. Duncan, principal author of a Dun & Bradstreet 1984 report on bankruptcy).
nounced a CRC study which purported to find that nearly 40% of debtors could repay at least half their debts. Over 200 co-sponsors introduced a bill and eventually Congress enacted much of what the creditors wanted. The bill reduced the amount of property debtors could keep, made more debts immune to the bankruptcy discharge, and added a provision to prevent "substantial abuse" by debtors who could pay their debts. Creditor lobbyists and spokesmen declared victory; the problem was solved.

What happened? Bankruptcies started going up faster than they had before. This ought to teach us that changes in the bankruptcy laws do not cause bankruptcy cases. Debt causes bankruptcy cases, and with deregulation at that same time in history, consumer debt exploded. Furthermore, this did not just happen here in the United States. The rate of bankruptcy filings in Canada, where the bankruptcy laws are very different but the consumer credit market is similar, went up just as much as ours did.

In the end, the bankruptcy debate is about the basic concept of the fresh start, which has been a part of our laws for a hundred years. Its roots go back much further, to the Biblical concept of forgiveness; in Deuteronomy it states that every seven years there shall be a release of debts. There is also a more practical reason—a fear that if people are forced to remain buried in debt they will give up hope, and become, if not public charges, dependent on welfare, discouraged, and depressed so they cannot again become productive members of the mainstream economy. That, in essence, is what bankruptcy is about—restoring hope and

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175. See id. § 306, 98 Stat. at 353.
176. See id. § 307, 98 Stat. at 353-54.
177. See id. § 312, 98 Stat. at 355.
179. See supra notes 23-24 and accompanying text.
181. See Charles Jordan Tabb, The Historical Evolution of the Bankruptcy Discharge, 65 AM. BANKR. L.J. 325, 364-65 (1991); see also Perez v. Campbell, 402 U.S. 637, 648 (1971) (stating that a primary purpose of the Bankruptcy Act of 1898 was to give debtors discharge and fresh start); Thomas H. Jackson, The Fresh-Start Policy in Bankruptcy Law, 98 HARV. L. REV. 1393, 1393 (1985) ("Discharge, the doctrine that frees the debtor's future income from the chains of previous debts, lies at the heart of bankruptcy policy.").
182. See Deuteronomy 15:1 (King James).
dignity to people. It has helped millions of people save their homes, their jobs, their marriages, their mental health, and even their lives in the past twenty years. Let's hope Congress figures out that it ought to be proud of the bankruptcy laws it has enacted—before it is too late.