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I. Introduction

Bankruptcy issues are prevalent today as the number of bankruptcy filings continues to grow.[1] The last real bankruptcy reform was the Bankruptcy Reform Act of 1978.[2] Since 1978, the number of bankruptcy filings has increased. National bankruptcy filings rose more than 60 percent between 1995 and 1999,[3] despite unprecedented economic growth in the United States. Approximately 1.5 million people will file for bankruptcy in 2001.[4] This drastic increase in bankruptcy filings, especially in light of the prosperous economy, concerned legislators and led to talk of another bankruptcy reform.[5]

Historically, Congress has implemented bankruptcy laws to protect both consumers and creditors. The founding fathers granted the federal government the power to enact bankruptcy laws in the Constitution, and, using this power, Congress has attempted to implement a fair bankruptcy system.[6] Since 1800, the federal government has attempted to enact laws that conform to the need to balance creditor rights and debtor rights.[7]

The current law gives debtors who file for bankruptcy the option of filing under Chapter 7 or Chapter 13.[8] Filing under Chapter 7 allows the debtor to exempt his homestead and certain other personal property, while the court eliminates all of the debtor's dischargeable debts.[9] The only time a debtor is not allowed to file under Chapter 7 is if the court determines that he or she is

abusing the system — termed "substantial abuse" in the statute.[10] Since there are no guidelines in the statute as to what constitutes "substantial abuse", courts have had to interpret the meaning.[11] Courts generally implement a totality of the circumstances test to determine what constitutes substantial abuse.[12] Debtors can also file under Chapter 13, which allows them to pay their debts over a three to five year period.[13] Under Chapter 13, the court works out a repayment schedule, allowing the debtor to have enough money to live, while repaying some of the debt.[14]

Congress expressed concern that people who could file under Chapter 13 and repay some of their debt still filed under Chapter 7, which eliminated all of their dischargeable debt, and so abused the current system.[15] The Bankruptcy Reform Bill of 2001 ("Reform Bill") addresses the issue of whether a debtor can file under Chapter 7 or Chapter 13 by adopting a means test.[16] The means test establishes a median income based on factors such as family size and income.[17] If the debtor falls below the median income, then he or she can choose whether to file under Chapter 7 or Chapter 13, which is the same option the debtor had under the old bankruptcy law.[18] However, if the debtor falls above the median income, the debtor must pay back a portion of his or her debt.[19] There is much controversy among legislators and professionals in many fields regarding this requirement.[20]

There are several other changes discussed in this note. The first is Reaffirmation Abuse. Congress tightened the law for creditors who attempt to have debtors reaffirm their debt by ensuring that debtors have the opportunity to make an informed decision. Congress also included the Schumer-Leahy Amendment in the Reform Bill. Congress included this amendment so that debtors who have monetary judgments against them for perpetrating violence and threats against family planning clinics non-dischargeable. Congress also addresses child support and alimony in the Reform Bill, moving children

and spouses into the first priority spot for receiving support after a debtor files for bankruptcy. Finally, Congress added the Sessions-Kohl Provision to the Reform Bill. The Senate included, in S 420, a 100,000 cap on any homestead exemption. Extensive debate among members of both political parties and experts in various fields resulted from these proposed sections in the Reform Bill.

II. Background

To fully understand the Bankruptcy Reform Act of 2001, it is important to understand the history of bankruptcy in the United States. Three main concerns underlie the need for bankruptcy reform: (1) the need in certain circumstances for a debtor who cannot repay his debts to be given a fresh start with a clean slate; (2) the burden on creditors who may have to absorb debt; and (3) the abuse that occurs when debtors utilize the bankruptcy system when they do not need to.[21] Legislation needs to address these concerns, protect all parties involved, and prevent abuse of the system.

These concerns have been present since Congress enacted the first federal bankruptcy act in 1800.[22] Congress ratified three bankruptcy acts during the 1800's: the Bankruptcy Act of 1800, the 1841 Act, and the 1867 Act.[23] Congress passed all of these acts in response to economic problems.[24] These acts varied in purpose, but were rooted in some common policies of bankruptcy law that hold true today.[25] The two main themes that ran through all of the acts were cooperation and honesty; having both of these traits was the only way for a debtor to receive a discharge of indebtedness.[26]

Congress then passed the 1898 Act, a fully modern bankruptcy act.[27] The 1898 Act allowed for both voluntary and involuntary proceedings to file for bankruptcy, whereas the prior acts allowed for only involuntary proceedings.[28] The complexity of bankruptcy discharge continued to grow.[29] From 1898 to 1978, the grounds for

denying a discharge expanded along with the class of dischargeable debts.[30] The growth of reasons to deny a discharge coupled with the similar growth of classes of debt that could be discharged evidenced an attempt to balance the debtor and creditor interests. Also clear in this Act are the continuing policies of debtor honesty, candor, and cooperation in dealing with the bankruptcy process.[31] The Act denied a discharge for any debtor who was found to be concealing any information necessary to the disposition of his assets to the court.[32]

The collective policy of honesty and cooperation that is present in all of the bankruptcy acts, as well as the growing number of dischargeable debts, set the stage for more modern bankruptcy reforms.[33] Under current law, courts can dismiss a Chapter 7 claim because the debtor could file under Chapter 13.[34] This mandatory repayment is one of the checks on abuse employed by the bankruptcy laws.[35] Despite the attempt at a uniform system, these laws and the legislative history behind them are unclear and do not provide a uniform bankruptcy law for courts to employ.[36] As a result, the number of bankruptcy abuses has increased. In an attempt to curb this abuse, Congress has tried for several years to reform the current law.[37]

The National Bankruptcy Review Commission, after extensive study, drafted the Comprehensive Bankruptcy Reform Bill in 1997.[38] In 1998, this Reform Bill passed in the Senate 94 to 2, but the bill stalled in committee before it could be passed.[39] In 1999, Congress reintroduced the Reform Bill.[40] This time, the Senate passed the Reform Bill by a vote of 70 to 28, but the President employed his pocket veto.[41] Congress introduced the bill once again in 2001. The extensive legislative history of the Reform Bill of 2001, generated by multiple attempts to pass bankruptcy reform legislation, indicates that Congress has researched and discussed various issues involving bankruptcy on many occasions for over 200 years.[42]

History has shown the need for the legislature to enact a bill that would balance the interests of both debtors and creditors while preventing abuse of the system.[43] The Bankruptcy Reform Act of 2001 is the culmination of legislators' attempts to meet the need for bankruptcy reform. Congress' reform is clearly needed in order to meet the needs of both creditors and debtors.

III. Discussion

A. The Means Test

An important change made in the Bankruptcy Reform Bill of 2001 is the insertion of a means test. Drafters of the Reform Bill incorporated the means test to end the abuses of the system by debtors.[44] When a debtor files bankruptcy under Chapter 7, the court removes all of the debtor's dischargeable debt.[45] When the court eliminates the debt, the losses to the creditor are passed on to the consumer through higher interest rates.[46] Bankruptcy costs Americans an estimated $400 to $550 per year per household.[47]

The means test determines whether some repayment is possible by an individual.[48] If so, the Reform Bill prohibits the debtor from filing under Chapter 7 and requires the debtor to file under Chapter 13.[49] The means test requires an individual making above the median income to file under Chapter 13 and repay part of his or her debt.[50] This result is tempered by judicial discretion in cases where there are special circumstances that would make it impossible for the debtor to repay his or her debts.[51] If the debtor's income falls below the median, then he or she can still choose between filing under Chapter 7 or Chapter 13.[52]

The means test sets out firm guidelines to determine who qualifies for Chapter 7 and who must file under Chapter 13. Under the current system, the courts must affirmatively find the people who may be abusing

the system.[53] The means test identifies those individuals who make above median income who have substantial repayment capacity, and presumes that they can repay some of their debt.[54] A court would still have discretion to look into the particular circumstance in case the person cannot actually afford to repay part of his or her debt.[55]

The means test establishes basic guidelines to determine a debtor's ability to pay back part of his or her debt. The means test attempts to reform the system to prevent abuse.[56] This test also sends the moral message that people should repay their debts if they are financially able.[57] Proponents of the Reform Bill argue that the means test places reasonable expectations on the consumer.[58] Debtors are required to pay back as much of their debt as they can if they make above the median income as a condition of discharge.[59]

Opponents of the means test, however, in the Reform Bill see it as overly restrictive on the poor who need to file for bankruptcy.[60] The opponents argue that the test is too burdensome, since it will call for five additional forms in addition to what courts currently require.[61] Opponents note that the means test will require debtors to produce tax returns and a credit counseling certificate just to begin the process.[62] Judge Randall Newsome asserts that, "[t]he problem for 97 percent of those who file will not be passing the test; it will be taking the test."[63] Opponents of the means test conclude that adding all of these requirements to a simple Chapter 7 case will make legal services too expensive for most consumers.[64]

Opponents also argue that the Reform Bill will move virtually no one from Chapter 7 to Chapter 13.[65] They argue that the means test will move no more than three percent of debtors who would file in Chapter 7, from Chapter 7 to Chapter 13.[66] Proponents dispute this figure, relying on different sources that indicate the Reform Bill will move 7 to 10 percent of people who would file from Chapter 7 to Chapter 13.[67] Regardless of

the percentage moved, opponents of the Reform Bill argue that it will eliminate any incentive for debtors to voluntarily file under Chapter 13.[68]

Further, opponents rely on academic research that indicates that the majority of people who file for bankruptcy are in need of financial relief.[69] These people include working families overloaded with debt who file bankruptcy in response to a catastrophic event in their lives.[70] Examples of events that force consumers into bankruptcy are job loss, divorce, and unexpected medical expenses.[71] Opponents claim this data indicates that the reason for increased filings in recent years is the growing number of low income debtors, rather than growing abuse of the system.[72]

Finally, the bankruptcy system needs to balance the interests of creditors and debtors.[73] Opponents claim this Reform Bill does not hold creditors accountable for their part in the increase in debt, which inevitably leads to the increase in bankruptcy.[74] Creditors send millions of credit card solicitations to American consumers every year.[75] These solicitations have contributed to the large increase in consumer debt.[76] The Reform Bill implemented the means test partially to help creditors collect some of the debt they would otherwise have to discharge.[77] With that in mind, opponents of the Reform Bill argue that it is only fair that the credit industry be involved in the bankruptcy reform and help alleviate the debts that they helped create.[78] If bankruptcy reform is going to help the credit industry collect debt, credit card companies should be responsible for helping debtors who use credit cards.[79]

On the other hand, proponents of the Reform Bill argue that reform efforts are focused too much on bankruptcy and not enough on credit corporations' responsibility for the debt.[80] The Reform Bill needs to remedy the problems of bankruptcy regardless of the factors that may have contributed to debtors going bankrupt.[81] The Judiciary Committee does not have jurisdiction over

rules for credit cards or bank lending; instead, these rules are under the jurisdiction of the Banking Committee.[82]

B. Consumer Protection

1. Reaffirmation Abuse

The Reform Bill addresses reaffirmation abuse to help protect consumers from creditors.[83] Reaffirmation of debt occurs when a debtor agrees to repay a discharged debt to a creditor. Under the current bankruptcy system, there is no firm recourse against reaffirmation abuse.[84] Proponents of the Reform Bill argue that credit companies coerce naive and inexperienced debtors into reaffirming debt that has been properly discharged.[85] Such a practice goes against the purpose of bankruptcy law — to give the debtor a fresh start without debt.[86] Generally, a discharge relieves a debtor from all pre-filing dischargeable debt.[87] The debtor may subsequently choose to reaffirm some of the discharged debt.[88] Under current law, a reaffirmation agreement is only binding if made in compliance with 11 U.S.C. § 524.[89] This provision requires that the parties file the agreement with the bankruptcy court and the debtor knows he may rescind the agreement within sixty days of the filing.[90]

Under current law, however, proponents of the Reform Bill say it is too easy for creditors to circumvent this rule. First, debtors have no private right of action in Section 524.[91] Courts may utilize Section 105(a), which allows them to provide an equitable remedy to preserve a right found elsewhere in the code, but this is not always construed by the court as giving the right to impose damages for a breach of Section 524.[92] As a result, courts apply the law unevenly and creditors are not sufficiently prevented from using coercive and underhanded means to attempt to get debtors to reaffirm.

The Bankruptcy Reform Bill of 2001 addresses this issue and implements solid rules that courts can apply

uniformly to reaffirmation agreements. Section 203 of the Reform Bill addresses the abuse of reaffirmation practices.[93] The Reform Bill requires several disclosures from the creditor in order to make the reaffirmation valid.[94] Included in these disclosures are the exact amount of the reaffirmation, the annual percentage rate to be applied, and other penalties for reaffirming and not paying.[95] Further, the disclosures must be written clearly and conspicuously.[96] Creditors must disclose the two main terms, Amount Reaffirmed and Annual Percentage Rate, more conspicuously than other terms, by making the printing larger, putting the information on the front page, making the numbers bolder, or any other means that sufficiently makes the information stand out.[97] These safeguards will make it more difficult for creditors to coerce debtors into reaffirming debt under false pretenses. Also, since these requirements are mandated by statute, they will be applied evenly for everyone.

Further, the Reform Bill requires the creditor to provide a debtor contemplating bankruptcy to receive information about credit counseling and assistance in performing a budget analysis before a debtor can receive a discharge.[98] Proponents of the Reform Bill assert that this education is a critical part of any sensible bankruptcy reform.[99] Phillip Strauss, attorney, forwards the notion that, "[a]ny sensible bankruptcy reform should include education requirements to give debtors the tools they need to make wise decisions about filing for bankruptcy and ... to succeed financially after bankruptcy."[100] Proponents feel that this education will prevent these debtors from suffering from debt problems after they have discharged their current debt and attained a fresh start.[101]

2. Child Support and Alimony

Under current law, nothing specifies that child support and alimony get preferential treatment in a bankruptcy proceeding.[102] When a debtor files under

Chapter 13, he or she gets an automatic stay so the wage assignment or earnings withholding stops and the spouse expecting the child support or alimony does not get paid.[103] In some jurisdictions, judges make the debtor continue with child support payments as a top priority.[104] Other jurisdictions, however, simply tell the creditor spouse that they must seek relief.[105] A creditor spouse seeking relief on his or her own is very expensive if a public agency does not help.[106]

The Reform Bill addresses this problem by requiring anyone filing under Chapter 13 to set up checkpoints, one of which is paying all post-petition ongoing support obligations.[107] The Reform Bill prioritizes support payments so that anyone seeking relief has to ensure that their support obligations are paid first.[108] If the debtor stops paying the support, the court can dismiss the bankruptcy claim.[109]

Opponents of the Reform Bill assert that placing child support first on the payment list is an insufficient protection.[110] Under the Reform Bill, there are too many new debts that are nondischargeable, and the net effect is that support payments will not get paid.[111] If a debtor gets garnished too much, he or she will not be able to pay any of his or her obligations, including support payments.[112]

However, proponents of the Reform Bill respond that the opponents' argument assumes an even playing field, which the Reform Bill prevents.[113] Once a wage is garnished to pay support, only the remaining percentage of income allocated to debt payment can be used to pay other creditors. This scheme ensures that support will always get paid regardless of how many other debts there are.[114]

C. Sessions-Kohl Provision

Under current law, there is no federally mandated cap under the homestead exemption.[115] As a result, the wealthy can hide assets in expensive homes in states that

have no homestead cap and still declare bankruptcy to avoid debt.[116] The Sessions-Kohl provision would place a federally mandated cap on the amount a debtor can exempt in his or her homestead.[117] Proponents of the Sessions-Kohl provision see this as a substantial abuse of the system; they propose a federally mandated cap.[118]

Contention amongst legislators exists regarding the homestead exemption.[119] The Senate amendment limits the amount of equity kept in a house to $125,000.[120] Currently, five states allow unlimited homestead exemptions so long as the debtor has owned a house for two years.[121] Proponents of the amendment argue that the Senate proposal would eliminate this exemption.[122] Opponents of the homestead exemption support the House of Representatives' bill.[123] The House proposal allows a debtor to temporarily shield $100,000 if the debtor owned the house for less than two years.[124] Once the debtor has owned his or her house for over two years, there is no cap placed upon the equity sustained in the house.[125]

Proponents of the homestead exemption contend that the elimination of the loopholes for the rich would lead to a more evenhanded bankruptcy law that would continue to eliminate abuse of the system.[126] Proponents of the amendment argue that it, "eliminates one of the grossest abuses in bankruptcy law which is the Unlimited Homestead Exemption."[127] Currently, a person living in a state with no limit on homestead exemptions can own a home with five million dollars in equity and file for bankruptcy.[128] The debtor keeps the house and gets relieved of other debt that he or she cannot pay.[129] Proponents argue that this allows millionaires to shield large amounts of money, making the system inequitable.[130] Opponents of this amendment want to keep the current law that allows each state to set the limit of their exemptions.

D. Schumer-Leahy Amendment

Congress proposed an amendment affecting people with judgments against them for illegal behavior against family planning clinics. The Schumer-Leahy Amendment would make fines resulting from violence and threats against family planning clinics non-dischargeable in bankruptcy.[131] Proponents of this amendment argue that those who perpetuate and promote violence with complete disregard of the laws do not deserve protection of the bankruptcy laws.[132] The proposed amendment would prevent further abuse of the bankruptcy system.[133] The amendment would also ensure that people could not commit a crime and have a judgment against them in court, then simply file bankruptcy to avoid payment of the judgment for their unlawful activity.[134]

Currently, there is no bankruptcy law providing that debts from judgments for perpetrating violence against family planning clinics are non-dischargeable.[135] As a result, after the court enters a judgment, and the debtor the judgment was entered against files bankruptcy, the family planning clinic must go to court and argue that the conduct was willful and malicious to receive money.[136] If the person can prove the conduct was willful and malicious, then the court will not discharge that debt.[137] If the person cannot prove willful and malicious conduct, the court may discharge the debt and the wronged person will not receive relief from the judgment.[138]

Opponents of the Reform Bill and this amendment state that the amendment is unnecessary, since the debts can become non-dischargeable by proving that the actions were willful and malicious.[139] These opponents claim there is already a process in place to prevent an abuse of bankruptcy laws in this manner.[140] However, proponents of the amendment argue that this process is extremely expensive and time consuming and guarantees

no results.[141] Proponents of the amendment conclude that those who commit acts of violence should not be able to use the bankruptcy laws to perpetuate their illegal activity.[142]

IV. Analysis

Most legislators acknowledge the need for bankruptcy reform. To promote policies such as debtor honesty requires measures in the bankruptcy law to prevent abuse. Current law attempts to prevent abuse by judicial means, but the uneven application of substantial abuse does little to hamper individuals from taking abusing the system. In support of this proposition, Todd Zywicki asserts that, "few believe that even a small part of the fraud and abuse that's current in the system is caught."[143]

Unlike the substantial abuse test, the means test adopted by the Reform Bill sets forth a bright line test to determine who can afford to repay some of their debt and who can file under Chapter 7 and obtain relief from all dischargeable debt. This bright line test is necessary to uniformly prevent abuse. A major problem with the means test is that it may be too strict. However, this strict line is tempered by the discretion left to judges to investigate the circumstances of each individual debtor and determine whether that debtor is able to pay. Any reform that does not set a test that can be uniformly applied would fall short of the objective to end abuse and would be no more effective than the current law.

Significantly, many people who file for bankruptcy end up in debt by living above their means. Easy access to credit allows individuals to purchase items that they would otherwise do without. This can be a good thing if it allows people to obtain truly necessary items that they need but cannot afford at the present time. However, there is a thin line between need and want, and individuals who incur large credit card bills for luxury items and then file for bankruptcy do not deserve the protection of

the system. These people end up having other consumers pay more to subsidize their own debt. The contribution of the debtor to the debt problem should be taken into consideration in a bankruptcy action, and the individuals whose debt results from foolish spending should have to repay as much of their debt as possible.

The Reform Bill has many other features that make it a consumer friendly bill. The consumer protection provisions that protect recipients of alimony and child support ensure that they will continue to get paid and are the given top priority with respect to other creditors in the allocation of money. The protection against reaffirmation abuses allow the debtor to be better informed before tying themselves back into discharged debt. Both the Sessions-Kohl provision and the Schumer-Leahy Amendment address important issues that Congress ignored in prior bankruptcy laws. A cap on the homestead exception to prevent abuse by the wealthy is essential. A bankruptcy law that allows loopholes for the rich misses the objective of fairness and the underlying goal of giving a second chance to those in need. The Schumer-Leahy Amendment is equally important. This amendment prevents a different abuse of the system. Allowing people to avoid paying judgments against them based on their violation of the law is an extreme perversion of the system. Forcing family planning clinics to litigate a claim to receive a judgment and then forcing them to re-litigate after the debtor files bankruptcy to ensure that their judgment is non-dischargeable is onerous and unfair. A system that allows people to advance their illegal activity by shielding their punishment with bankruptcy laws is not meeting its objective.

One problem with the Reform Bill is the lack of provisions addressing bad creditor practices. Congress should include provisions requiring more disclosure of information to consumers so they can avoid debt,[144] rather than just attempting to help the debtor when it is too late. Also, Congress should attempt to incorporate

credit industry reform.[145] Credit companies should not be allowed to reap the benefits of increased income by lowering their standards for granting credit by increasing interest rates for people who might not be able to repay. This abuse by creditors adds to the cumulative problem of debt. Credit companies taking advantage of consumers need to be addressed either in this Reform Bill or elsewhere. To have a fair system with a balance of creditor and debtor interests, Congress must ensure that the creditors do not benefit at the expense of debtors.

Another problem in the Reform Bill is the added hardship involved in filing for bankruptcy. Debtors under the new system will have additional steps to go through before they can file. These new filing requirements may seem particularly harsh for those who need the relief that bankruptcy provides. The only way to prevent abuse of the system, however, is to tighten the application process. It is important to remember that debtors who qualify for and receive bankruptcy relief are given a fresh start. This fresh start should be available, but it should not be too easily accessible. Making it more difficult to apply for bankruptcy may have the effect of weeding out those debtors who are looking for an easy way out of debt and do not really need the relief bankruptcy provides. Further, the added hardship on a few as a result of new filing requirements is minor compared to the large negative impact on society if the continued corruption of bankruptcy law is allowed unchecked.

V. Impact

The Reform Bill will have a positive impact on debtors, creditors, and consumers. Congress has implemented many changes in the Reform Bill that will prevent continued abuses in the system. Without these abuses, the system will run more efficiently and will enable courts to apply the laws more evenly among all consumers and debtors.

The first change intended to help reform the bankruptcy system is the proposal for a means test that prohibits people who can repay some of their debt from eliminating all of their debt. This means test is important because many debtors are capable of repaying a portion of their debt.[146] As such, it is necessary that these debtors attempt to repay what they can so that others do not have to. While forgiveness of debt and a clean slate are important and integral parts of our bankruptcy system, debtors who take advantage of the clean slate when they are capable of partial repayment add to the burden imposed on society through increased prices on goods and services.

The result of debtors paying off a portion of their debt is that creditors do not have to write off as much bad debt. When creditors have to write off bad debt, they do not absorb the loss. Rather they raise the interest rates for other consumers. When creditors have fewer bad debts, they will not raise the interest rates for other consumers. With lower interest rates, other consumers are able to pay off their debts more easily and avoid bankruptcy.

While the Reform Bill addresses those debtors who can repay a portion of their debt, Congress also addressed those debtors who truly need all of their debt eliminated and need a fresh start. Under the Reform Bill, people who cannot pay back any of their debt have the option of filing under Chapter 7 and being relieved of all debt. This option for complete debt forgiveness prevents total financial destruction of an individual and allows for the second chance that is crucial to our system.

In addition to the sweeping change that the means test will have on bankruptcy law, Congress also addresses certain consumer protection issues in the Reform Bill. Congress added amendments that will make the system more equitable for all and protect those most in need. The alimony and child support provision will ensure that single parents receive the money they rely on

for survival by placing them first for disbursement of money. This should help ensure that these important payments do not slip through the system, and that alimony and child support are available when needed.

An extremely important amendment is still being debated by the Senate and the House of Representatives. The Senate proposal that caps all homestead exemptions at $125,000 is the most effective provision in eliminating abuse. It is not equitable to allow wealthy debtors to hide money in a home worth millions of dollars and allow those same debtors to file bankruptcy and avoid paying bills that will be passed on to other consumers. The House of Representatives' proposal would allow the wealthy to continue to hide money. When comparing all debtors who file for bankruptcy, it is difficult to align the need of a debtor without any other recourse to file bankruptcy for a fresh start and a wealthy individual looking to abuse the system by retaining ownership of an expensive house. The wealthy debtor could feasibly pay a portion of his or her debt by liquidating the home.

The Reform Bill takes an important step by requiring debt education before allowing a debtor to file for bankruptcy. A system that attempts to merely address the symptoms but not the cause is ineffective. Hopefully, by requiring the debtor to take a course in debt management, that debtor will know how to handle money a little better and will not end up in the bankruptcy system again. This emphasis on education includes debt reaffirmation. Creditors who want to have a debtor reaffirm his or her debt must provide the terms of the reaffirmation clearly, and ensure that the debtor understands what the terms mean. This further attempt at empowering the debtor through knowledge will eliminate future filings for bankruptcy because the debtor is better armed to deal with the creditors.

The Reform Bill addresses another important area that is relatively new. The Schumer-Leahy Amendment prevents debtors who break the law from receiving relief

through the bankruptcy process. When family planning clinics attempt to seek justice in the judicial forum against those who perpetrate violence, and are granted a judgment against the debtor, they are unable to collect because the debtor files for bankruptcy. This loophole for those breaking the law is unacceptable. The laws of the United States should not have loopholes that allow criminal behavior to go unpunished. Without this amendment, there is no monetary repercussion for unlawful behavior toward family planning clinics. Without a monetary deterrent, debtors are more likely to continue to break the law and attack these family planning clinics.

The Reform Bill implements many provisions aimed at stemming abuse of the bankruptcy system. Without reform of the bankruptcy system, debtors will continue to abuse the system and consumers will pay the price. Amendments aimed at preventing abuse of the bankruptcy system are necessary for the continual growth of the economy as a whole, as well as protection of the individual consumer.

VI. Conclusion

The Bankruptcy Reform Bill of 2001 is a necessary reform to the current bankruptcy law. Starting with the first bankruptcy laws, the policies of honesty and cooperation have appeared consistently through all of the bankruptcy legislation. Good public policy dictates that a person who can repay some of their debt should be required to do so. The current bankruptcy laws are too open to interpretation, which allows for abuse of the system. The abuse of the system leads to higher costs spread out amongst consumers and general animosity by the public toward the bankruptcy laws.

Without reform, bankruptcy will become a more frequently used solution to debt problems, rather than a last resort. The provisions in the Reform Bill that deal with consumer protection and the other abuses of the

system are also necessary. Overall, the Reform Bill addresses the important problem areas of the current system and attempts to adopt a uniform treatment for everyone. This conformity in application is a vast improvement over the haphazard approach of the bankruptcy laws of today that allow abuse and discrepancy to be rampant throughout the system. Passing the Bankruptcy Reform Bill of 2001 is necessary to implement many of the changes that the bankruptcy system needs to flourish and help those in need.

Endnotes

1. 147 CONG. REC. S2343, S2344 (daily ed. March 15, 2001) [hereinafter CONG. REC.] (statement of Sen. Sessions).

2. *Id.* at S2343.

3. *The Bankruptcy Reform Act of 2001: Before the House Comm. on the Judiciary*, 107th Cong., at 20 (2001) [hereinafter *The Bankruptcy Reform Act of 2001*, Sheaffer Testimony] (statement of Dean Sheaffer, Vice President and Director of Credit, Boscovs Department Store).

4. CONG. REC., *supra* note 1, at S2344.

5. *Id.*

6. In re Arnold, 255 B.R. 845, 852, n. 17 (Bankr. W.D.Tenn. 2000), citing U.S. CONST. art. I, § 8, cl. 4 (Congress shall have power "to establish ... uniform Laws on the subject of Bankruptcies throughout the United States").

7. *See* Richard E. Coulson, *Consumer Abuse of Bankruptcy: An Evolving Philosophy of Debtor Qualification for Bankruptcy Discharge*, 62 ALB. L. REV. 467, 470-487 (1998).

8. CONG. REC., *supra* note 1, at S2344.

9. *Id.* at S2343.

10. Coulson, *supra* note 7, at 503.

11. *Id.* at 505.

12. *Id.* at 506.

13. CONG. REC., *supra* note 1, at S2344.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

20. *See e.g.* CONG. REC., *supra* note 1; *The Bankruptcy Reform Act of 2001*, Sheaffer Testimony, *supra* note 4.

21. *Id.*; *see also* Coulson, *supra* note 7.

22. Coulson, *supra* note 7, at 471.

23. *Id.* at 471-475.

24. *Id.*

25. *Id.*

26. *Id.*

27. *Id.* at 477.

28. *Id.*

29. *Id.*

30. *Id.*

31. *Id.* at 483.

32. *Id.* at 479.

33. *See id.* at 468-87.

34. *Id.* at 495-96.

35. *See id.* at 508.

36. *Id.* at 506.

37. *The Bankruptcy Reform Act of 2001: Before the House Comm. on the Judiciary, supra* note 4 [hereinafter *The Bankruptcy Reform Act of 2001,* Hatch Testimony] (statement of Sen. Hatch, chairman of committee).

38. *Id.*

39. *Id.*

40. *Id.; see also* Coulson, *supra* note 7, at 470-87.

41. *The Bankruptcy Reform Act of 2001,* Hatch Testimony, *supra* note 37.

42. *Id.*

43. *The Bankruptcy Reform Act of 2001: Before the House Comm. on the Judiciary, supra* note 4 [hereinafter *The Bankruptcy Reform Act of 2001,* Leahy Testimony] (statement of Sen. Leahy).

44. CONG. REC., *supra* note 1, at S2344.

45. *The Bankruptcy Reform Act of 2001: Before the House Comm. on the Judiciary, supra* note 4 [hereinafter *The Bankruptcy Reform Act of 2001,* Sessions Testimony] (statement of Sen. Sessions); *see also The Bankruptcy Reform Act of 2001,* Hatch Testimony, *supra* note 37.

46. *Id.; see also The Bankruptcy Reform Act of 2001,* Hatch Testimony, *supra* note 37.

47. *Id.*

48. *The Bankruptcy Reform Act of 2001: Before the House Comm. on the Judiciary, supra* note 4 [hereinafter *The Bankruptcy Reform Act of 2001,* Zywicki Testimony] (statement of Todd Zywicki, assistant professor of law, George Mason University School of Law).

49. CONG. REC., *supra* note 1, at S2344.

50. *Id.*

51. *Id.*

52. *Id.*

53. *The Bankruptcy Reform Act of 2001*, Zywicki Testimony, *supra* note 48.

54. *Id.*

55. *Id.*

56. CONG. REC., *supra* note 1, at S2344.

57. *The Bankruptcy Reform Act of 2001*, Zywicki Testimony, *supra* note 48.

58. *Id.*

59. *Id.*

60. *The Bankruptcy Reform Act of 2001: Before the House Comm. on the Judiciary, supra* note 4 [hereinafter *The Bankruptcy Reform Act of 2001*, Newsome Testimony] (testimony of Judge Randall Newsome, United States Bankruptcy Court, Northern District of California).

61. *Id.*

62. *Id.*

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. *The Bankruptcy Reform Act of 2001*, Zywicki Testimony, *supra* note 48.

68. *The Bankruptcy Reform Act of 2001*, Newsome Testimony, *supra* note 60.

69. *Bankruptcy Overhaul: Hearing on H.R. 333: Before the House Comm. on the Judiciary*, 107th Cong. (2001) (testimony of Damon Silvers, Associate General Counsel American Federation of Labor and Congress of Industrial Organizations).

70. *Id.*

71. *Id.*

72. *Id.*

73. *The Bankruptcy Reform Act of 2001*, Leahy Testimony, *supra* note 43.

74. *Id.*

75. *Id.*

76. *Id.*

77. *The Bankruptcy Reform Act of 2001*, Zywicki Testimony, *supra* note 48.

78. *The Bankruptcy Reform Act of 2001*, Leahy Testimony, *supra* note 43.

79. *Id.*

80. CONG. REC., *supra* note 1, at S2344.

81. *Id.*

82. *Id.*

83. Kerry Haydel Ducey, *Bankruptcy, Just For the Rich? An Analysis of Popular Fee Arrangements for Pre-petition Legal Fees and a Call to Amend*, 54 VAND. L. REV. 1665, 1673 (2001).

84. Bessette v. AVCO Financial Services, 230 F.3d 439, 444 (1st Cir. 2000).

85. Ducey, *supra* note 83, at 1673.

86. *Id.*

87. *Bessette*, 230 F.3d at 444.

88. *Id.*

89. *Id.*; Ducey, *supra* note 83, at 1676-78.

90. *Bessette*, 230 F.3d at 444; *see also* Ducey, *supra* note 83, at 1676-78.

91. *Bessette*, 230 F.3d at 444; *see also* Ducey, *supra* note 83, at 1676-78.

92. *Bessette*, 230 F.3d at 444-45; *see also* Ducey, *supra* note 83, at 1676-78.

93. Bankruptcy Reform Act of 2001, H.R. 333, 107th Cong. § 203 (2001).

94. *Id.*

95. *Id.*

96. *Id.*

97. *Id.*

98. *The Bankruptcy Reform Act of 2001: Before the House Comm. on the Judiciary, supra* note 4 [hereinafter *The Bankruptcy Reform Act of 2001,* Beine Testimony] (statement of Ken Beine, president of Shoreline Credit Union in Two Rivers, Wisconsin, speaking on behalf of the Credit Union National Association).

99. *Id.*

100. *Id.*

101. *Id.*

102. *The Bankruptcy Reform Act of 2001: Before the House Comm. on the Judiciary, supra* note 4 [hereinafter *The Bankruptcy Reform Act of 2001,* Strauss Testimony] (statement of Phillip Strauss, Principal Attorney, San Francisco Department of Child Support Services).

103. *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *The Bankruptcy Reform Act of 2001*, Newsome Testimony, *supra* note 60.

111. *Id.*

112. *Id.*

113. *The Bankruptcy Reform Act of 2001*, Strauss Testimony, *supra* note 102.

114. *Id.*

115. *The Bankruptcy Reform Act of 2001*, Sessions Testimony, *supra* note 45.

116. *The Bankruptcy Reform Act of 2001*, Leahy Testimony, *supra* note 43.

117. CONG. REC., *supra* note 1, at S2344.

118. *Id.*

119. Anne Danahy, *Bill Pending in Congress Would Change Rules of Game for Bankruptcy*, KNIGHT-RIDDER TRIB. BUS. NEWS, April 27, 2001.

120. *Id.*

121. *Id.*

122. *Id.*

123. *Bankruptcy Bill Runs Into A Major Problem*, CardFAX, Volume 2001; Issue 69, April 9, 2001, 2001 WL 8724904.

124. *Id.*

125. *Id.*

126. *Id.*

127. *The Bankruptcy Reform Act of 2001: Before the House Comm. on the Judiciary, supra* note 4 [hereinafter *The Bankruptcy Reform Act of 2001*, Williamson Testimony] (statement of Brady Williamson, former chair of the National Bankruptcy Review Commission).

128. CONG. REC., *supra* note 1, at S2345.

129. *Id.*

130. *Id.*

131. *The Bankruptcy Reform Act of 2001: Before the House Comm. on the Judiciary, supra* note 4 [hereinafter *The Bankruptcy Reform Act of 2001,* Vullo Testimony], (statement of Maria Vullo, attorney with Paul, Weiss, Rifkind, Wharton & Garrison).

132. *Id.*

133. *Id.*

134. *Id.*

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *The Bankruptcy Reform Act of 2001: Before the House Comm. on the Judiciary, supra* note 4 [hereinafter *The Bankruptcy Reform Act of 2001,* Biden Testimony] (statement of Sen. Biden).

140. *Id.*

141. *The Bankruptcy Reform Act of 2001,* Vullo Testimony, *supra* note 131.

142. *Id.*

143. *The Bankruptcy Reform Act of 2001,* Zywicki Testimony, *supra* note 48.

144. *The Bankruptcy Reform Act of 2001,* Leahy Testimony, *supra* note 43.

145. *Id.*

146. Coulson, *supra* note 7, at 502.