Statement of

The Honorable Richard J. Durbin

United States Senator
Illinois
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Senate Judiciary Committee
Hearing on S. 256, the Bankruptcy Abuse Prevention and Consumer Protection Act
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Thank you, Mr. Chairman. I appreciate your willingness to schedule today's hearing before launching into a markup of this 501 page bill.

The bankruptcy debate has moved around the Congressional stove - from high boil to low simmer - for eight years now, but it has been four years since this Committee conducted a hearing on this bill.

Much has changed in four years. Our nation was attacked by terrorists. We endured a prolonged recession. A wave of corporate scandals shook our economy, leading to massive layoffs and ravaged pensions and 401(k) plans. Large corporate bankruptcies left workers and retirees across the country with reduced wages, crippled pensions plans and significantly reduced health benefits.

All of those things happened since the last time this Committee considered this bill.

One thing that didn't happen last year is also worth noting. Despite the fact that these continue to be hard economic times for many Americans, personal bankruptcies did not increase. In fact, the number of Americans filing for bankruptcy actually declined slightly last year.

That raises an interesting question: If bankruptcies are declining, what is the rush? Why are we in such a hurry to pass this bill?

The banks and the big credit card companies -- which stand to make billions from this bill -- will tell you it is needed to stop greedy people who game the system and refuse to honor their debts, even though they can afford to pay them.

That characterization is cruel and it is false.

We are fortunate to be joined today by Professor Elizabeth Warren of Harvard Law School. Professor Warren is the author of the new study examining the relationship between bankruptcy and medical debt. The findings of her study ought to give us all pause.

Professor Warren's study found that the average bankruptcy petitioner is a 41 year old middle class woman with children and at least some college education. The median income of those filing for bankruptcy protection is $25,000 per year, and almost half of the people who file for bankruptcy do not own a home.

These are middle-class families who have done everything they're supposed to do and suffered a serious financial setback. They may have lost a job or been divorced. Even more likely, they or someone in their family has suffered a serious illness or injury and needed expensive medical care that wasn't covered by insurance.

Half of all the bankruptcies in this country are the result of medical debt. Even more shocking, in three quarters of those bankruptcies, the people actually had health insurance; they were bankrupted by uncovered medical costs.

Families with children were especially hard hit. About 700,000 children live in families that declared bankruptcy because of medical debt.

These are dignified people who have tried hard to avoid bankruptcy. Professor Warren's study found that in the two years before filing for medical bankruptcy, 22 percent of families had gone without food, 30 percent had had a utility shut off, 61 percent had gone without needed medical care, and 50 percent had failed to fill a needed prescription. To demonize these struggling souls is unconscionable.

I am particularly concerned about the harm this bill could cause military families, especially members of the Guard and Reserve and their families. Forty percent of the troops serving today in Iraq and Afghanistan are members of the Reserves and National Guard. Many have been deployed for a year or more since 9/11. Some are on their second tour of duty.

These are citizen soldiers who have left behind other lives and other jobs that paid more than their military wages. It's not unusual that their income is cut in half.

Now, a lot of us could probably get by on half our income for a month or so - but how many of us could get by on half of our income for a year or more? Some Guard members and Reservists who are entrepreneurs are losing their businesses. And an increasing number are in danger of bankruptcy.

We had hoped to hear today from a Reservist who is a co-owner of a restaurant. He and his business partner have both been called to active duty since 9/11. He has had to file for bankruptcy and is in danger of losing the business.

I believe it's wrong to ask military families to take such drastic cuts for such extended periods. I will be reintroducing the Reservist Pay Security Act, a bill to ensure that federal employees who are members of the National Guard or Reserves continue to receive the difference between their civilian pay and their military pay when they are called up for active duty. We ought to lead by example. If you're on foot patrol in Baghdad, the last thing you should have to worry about is whether your family is going to end up destitute.

I also continue to be deeply troubled by another aspect of this bill, that is the "minimum payment" trap that ensnares many families in perpetual debt. People are encouraged to pay just a fraction of their debt each month, while the bulk of the debt continues to collect interest and grow.

Consumers need to know exactly how much making only minimum payments actually costs in additional interest. I've been working with Senator Akaka and others on a bill that would require lenders to spell out clearly how long it will take to pay off a debt making minimum payments only, and how much it will cost in interest.

We know who will suffer most if this bill passes: hard working, middle class families, especially those with children.

Who stands to gain? Some of the most profitable industries in America today: credit card companies and banks. In 2003, credit card companies enjoyed a $30 million profit - their highest profits in 15 years.

If credit card companies were truly concerned about limiting their bankruptcy losses, you would think they would issue fewer credit cards to families in difficult financial circumstances. In fact, just the opposite is true. Some credit card companies take advantage of these people by offering them additional credit cards loaded with outrageous fees and exorbitant interest rates. Late fees are 2.5 times higher than they were just a decade ago and still going up. The average late fee is now over $31 and some run as high as $49. Late fees now represent the third largest source of revenue for credit card issuers.

There is more than one way to build a debtor's prison. You can build a debtor's prison with bricks-and-mortar, or you can build it with unjust laws that deny people hope of ever paying off their debt, no matter how they acquired it, or how hard they work to get rid of it. That is what this bill, in its current form, would do for many middle-class families. And make no mistake, as medical costs continue to soar, more and more Americans will find themselves in this situation.

I am glad we are having this hearing; I hope it is not our only hearing on this bill. Before we make radical changes in our bankruptcy laws, we have a responsibility to make sure the facts justify our actions. At a minimum, I believe we should change this bill to give bankruptcy judges the discretion to exempt from the harsher provisions in this proposal those people who are pushed into medical bankruptcy by catastrophic medical debt.

I welcome our witnesses, and look forward to hearing their perspectives. Thank you, Mr. Chairman.