US Senate clears last obstacle for bill to punish bankrupt debtors

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In a series of votes from March 7 to March 9, the US Senate cleared the way for final passage of legislation that will drastically revise the terms of US bankruptcy laws to strengthen the hand of banks and credit card issuers against working class debtors. Senate Republican leaders used their 55-44 majority to beat back amendments aimed at either killing the bill or lessening its impact.

The Bankruptcy and Abuse Prevention and Consumer Protection Act of 2005 is one of the most blatant pieces of class legislation ever introduced in Congress. Its sole purpose is to extract an additional pound of flesh from middle-income families ruined by health calamities or job loss, to swell the profits of the financial services industry and the ruling class as a whole.

The principal change in bankruptcy law will be to require debtors with incomes above the median in their states to file for bankruptcy under a Chapter 13 proceeding, where a judge orders a repayment plan, rather than under a Chapter 7 proceeding, where debts are erased once most of the debtors' assets are liquidated. This will force hundreds of thousands of middle-income debtors to make significant payments to creditors from their current income, even if they subsequently lose their jobs or suffer other economic reverses.

Banks and credit card companies have pressed for such legislation for the past eight years, claiming that the upsurge in personal bankruptcies in the US is a form of abuse of the legal system by debtors with the ability to make repayment. The American Bankers Association, Ford Motor Credit, GMAC, Visa, MasterCard, Citicorp, Capital One, and MBNA, among others, have spent more than $40 million in political contributions over that period, an investment which now stands to reap a multibillion-dollar reward.

The Republican majority in Congress has generally supported the creditors' position, but President Clinton vetoed early versions of the bill. More recently, under Bush, Senate Democrats used legislative maneuvers to block the bill, attaching an amendment in 2002 that would have barred violent antiabortion demonstrators from using the bankruptcy laws to escape payment of fines and damages for their efforts to blockade abortion clinics. House Republicans scuttled the legislation rather than approve a bill with a provision deemed inimical to the Christian fundamentalist right.

New York Senator Charles Schumer attempted a similar tactic March 8, but his amendment was voted down 53-46. Several Republican senators who supported his amendment in 2002 switched their position this year in response to pressure from the White House and the congressional Republican leadership.

Another amendment, defeated even more narrowly, 49-46, would have attached a provision raising the minimum wage by $2.20 an hour over the next several years. Sponsored by Senator Edward Kennedy of Massachusetts, the amendment's purpose was not to raise the minimum wage but to make the bill as a whole unacceptable to House Republicans. Only four Republicans voted for it.

The real bipartisan support for the legislation, however, was reflected in another vote, by 69-31, to limit debate to a total of 30 hours. Fourteen Democrats joined all 55 Republicans to bar a filibuster that would have killed the bill, including such leading figures as Joseph Biden of Delaware, Joseph Lieberman of Connecticut, and Robert Byrd of West Virginia. Debbie Stabenow of Michigan, a state with one of the highest unemployment rates, also voted to close debate.

The credit card companies and the Bush administration portray the skyrocketing bankruptcy rate as a demonstration of profligacy by people who are squandering their money on gambling and excessive shopping or seeking to avoid financial obligations like child support. The accusation of fiscal irresponsibility is a piece of barefaced cynicism, coming from an administration which has transformed a huge federal budget surplus into record-breaking deficits through trillion-dollar tax cuts for the wealthy. Moreover, the charge is a slander: most of those forced to file for bankruptcy do so because of unforeseen emergencies like a sudden illness, layoff or divorce.

In fact, the 10 states with the highest rates of personal bankruptcy are mostly in the South and mountain West; their populations are disproportionately rural, and all 10 voted for Bush in the 2004 election. Most of these top 10 states are represented in the Senate by Republicans who voted to punish their own constituents with the punitive changes in bankruptcy law.

A recent Harvard University study found that medical bills were responsible for more than half of all bankruptcy filings. Most of these cases involved people who had health insurance, but found that it did not cover many of their costs. As for supposedly living high on the hog on one's credit cards, one third of all bankruptcy filings are made by families already living under the federal poverty level.

There is real abuse of the bankruptcy system, but this is carried out by wealthy individuals who can afford expensive legal and financial stratagems to game the system. The Senate bill actually protects the loopholes used by the financial elite, such as the creation of an "asset protection trust." An amendment to limit this practice was defeated, with 54 of the 55 Republican senators voting against it.

The same majority defeated amendments to exempt families bankrupted by severe illnesses, to protect the homes of the elderly against foreclosure and forced sale, and to protect soldiers, many of whom are reservists and National Guardsmen whose incomes have been slashed when they were ordered to leave their jobs and go on active duty.

The number of bankruptcy filings is a barometer of the intensifying economic insecurity and ever-rising debt load of American families. Personal bankruptcies have soared from 200,000 a year in 1978 to 1.6 million in 2004. The debt burden carried by the average US household is staggering. In 1946, at the beginning of the post-World War II economic boom, consumer debt amounted to 22 percent of after-tax household income. Now debt is proportionally five times as great, amounting to nearly 110 percent of income.

For much of the postwar boom period, rising consumer debts took the form of home mortgages, car notes and revolving credit balances with department stores. Credit card debt only began to become a major factor in the 1970s and 1980s. From 1989 to 2001, according to a recent report by the public policy group Demos, credit card debt nearly tripled, from $238 billion to $692 billion. During the same period, the savings rate plunged and the number of bankruptcy filings jumped 125 percent.

While middle-class families saw a 75 percent increase in credit card debt, the more vulnerable were much more likely to plunge over their heads: credit card debt for senior citizens rocketed 149 percent, and for very low-income families, making $10,000 a year or less, the increase was 184 percent. In other words, credit card companies preyed on the weakest and most financially unschooled sections of the population.

According to the Demos report, "Late fees have become the fastest growing source of revenue for the industry, jumping from $1.7 billion in 1996 to $7.3 billion in 2002. Late fees now average $29, and most cards have reduced the late payment grace period from 14 days to zero days. In addition to charging late fees, the major credit card companies use the first late payment as an excuse to cancel low, introductory rates—often making a zero percent card jump to between 22 and 29 percent." The amounts collected by credit card companies for penalty fees rose to $14.8 billion in 2003, nearly 11 percent of total revenues.

Two additional factors have fueled the rise in consumer debt during the Bush administration: the boom in home mortgage refinancing and the increasing instability of working class and middle class incomes, which has compelled more and more families to rely on credit to offset sudden drops in earnings and sustain consumption.

From 2000 to 2003, home mortgage debt soared by more than one-third, from $4.9 trillion in 2000 to $6.8 trillion in 2003. Even though many homeowners refinanced their mortgages to use home equity to pay down debt, non-mortgage consumer credit still climbed by 15 percent, or $300 billion. The result: American homeowners have used up more and more of their personal assets to cover immediate spending needs. The proportion of homeowners' equity in their own homes was 86 percent in 1945; by 1990 it had fallen to 61 percent and by 2003 to only 55 percent of the value of their homes.

Homeowners have been driven to engage in increasingly risky and speculative behavior to deal with their personal financial crises. In the second quarter of 2004, according to the Mortgage Bankers Association, 35 percent of new mortgages were at adjustable rates, up sharply from 27 percent in the fourth quarter of 2003. Such mortgages are much more vulnerable to interest rate hikes, which could force millions of homeowners into default, bankruptcy and foreclosure.

This process is affecting broad layers of the middle class, including many once considered relatively well off. In 2003, for instance, in Fairfax County, Virginia, an affluent suburban area outside Washington, DC, there were more home refinancings in 2003 than there were homes, meaning that the average home was refinanced more than once in a single year.

According to a study by the *Los Angeles Times*, based on data collected by the Panel Study of Income Dynamics, run by the University of Michigan, American family incomes are subject to greatly increased instability. The probability that a family will see its income cut in half from one year to the next has doubled since the 1970s, to more than 20 percent. The result: tens of millions of families can be plunged from relative comfort into poverty by events such as an illness, a layoff, a divorce, a fire, even the birth of a child.

Looked at from the standpoint of the economy as a whole, rather than the individual, the speculative boom in home equity is a manifestation of weakness and crisis, rather than strength. As an analysis in the *New York Times* explained last fall: "From the beginning of 2001 to the end of 2003, the economy added $1.317 trillion in gross domestic product and $4.2 trillion in debt. That means that each new dollar of economic output was accompanied by $3.19 in new debt."

More and more debt is required to generate relatively minimal increases in GDP. This is the hallmark of a society on the brink of exhaustion—and of a social and political explosion.