Statement of

The Honorable Patrick Leahy

United States Senator

Vermont

November 19, 2008

Statement of Chairman Patrick Leahy

"Helping Families Save Their Homes: The Role of Bankruptcy Law"

Senate Judiciary Committee

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I thank Senator Durbin for chairing today's hearing. This hearing is about the important issue of providing relief to struggling homeowners. It is a matter that Senator Durbin, Senator Specter and I all thought worthy of another hearing this week.

Everyone acknowledges that homeownership is a fundamental part of the American dream and that the housing crisis has contributed enormously to the current economic downturn. Homeownership is a primary source of financial well-being for families and individuals, and for most of us, the most valuable investment we will ever make. Through home ownership, Americans find security, community, stability, and pride. These are values that Federal policy should support and preserve.

In 2003, President Bush made increased home ownership a central part of his domestic policy, saying: "This Administration will constantly strive to promote an ownership society in America. We want more people owning their own home. It is in our national interest that more people own their own home. After all, if you own your own home, you have a vital stake in the future of our country." Five years later, as thousands of American families have been evicted from their homes, this administration has sided with banks -- not ordinary Americans -- through their opposition to our efforts to provide authority to bankruptcy judges to adjust the terms of mortgages on primary residences.

Sheila Bair, the Chair of the Federal Deposit Insurance Corporation, has proposed a relief program that would provide significant incentives for lenders to modify the interest rates for borrowers behind on their mortgage payments. This proposal would use a portion of the funds authorized in the bailout package to assist homeowners and protect lenders, and could compliment additional authority in the bankruptcy courts. Unfortunately, Secretary Paulson and the administration have not embraced this proposal, and continue to insist that the funds Congress provided be used only to help banks.

In December 2007, the Committee held a hearing on the Helping Families Save Their Homes in Bankruptcy Act of 2008, S.2136. A number of witnesses endorsed the measure as one of the more efficient, effective, and immediate measures for helping Americans stay in their homes. At that time, economist Mark Zandi estimated that such authority could keep nearly 600,000 people in their homes. Far from a bailout, it was a mechanism to help homeowners and turn troubled mortgages into productive assets. Homeowners who gained relief from a bankruptcy court would continue to pay each month toward the satisfaction of the debt. Halting mortgage defaults is a critical component of our economic recovery. The reality is that whether a bankruptcy court determines the value of a home to modify a mortgage, or a bank forecloses on that home, in both cases the home is worth only what the market will bear.

In March and April, this Committee considered and voted to report Senator Durbin's legislation to authorize bankruptcy courts to modify primary home mortgages to the Senate. The bill was reported in July and a Committee report in support was filed in September. Because the crisis persists and we have not been able to enact this measure, we are holding this follow-up hearing. It may serve to refocus on this measure now or in a few weeks when the Obama administration is left to resolve the foreclosure and economic crises.

Banks critical of providing this authority to bankruptcy courts claimed that doing so will cause interest rates to rise, and will make mortgages harder to obtain. What has caused the difficulty in obtaining mortgages is the unprecedented credit crisis that has seen enactment of a $700 billion rescue plan. The credit crisis did not stem from this bankruptcy authority, but from more fundamental and serious concerns about the practices of the financial institutions themselves.

I recently received a letter from the National Conference of Bankruptcy Judges expressing confidence that the bankruptcy courts are well-equipped to handle this authority and, further, that the existence of such authority may spur parties to come to agreement without judicial intervention. There has been too little meaningful progress in the private sector to modify home mortgages. Congress has given bankruptcy courts authority to modify mortgages on family farms and second homes. There is no reason not to do so for primary home mortgages, especially when so many Americans are struggling. I am confident that the men and women who serve as bankruptcy judges will exercise such authority responsibly and fairly.

The bottom line is that American families need relief. Fears of litigation have apparently hampered efforts in the private sector among financial institutions and investors. This bankruptcy court authority can provide protection for lenders as they proceed with mortgage workouts for homeowners and fewer foreclosures, and it can do so at no cost to taxpayers.

With all that Congress has done, and all that the administration is doing, to provide relief to the country's biggest banks and financial institutions, Americans are right to demand action from Congress that focuses on the needs of ordinary, hardworking people. As the new administration prepares to inherit the severe economic challenges and failed deregulatory policies left to it by the outgoing administration, this is authority that Congress should provide.

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