

THE CONGRESS PROJECT

Assignment Prompt Sheet

The Bankruptcy Reform Act of 1978

Overview

Act Titles: The Bankruptcy Reform Act of 1978

Congress: 95th Congress (1977-1978)

Session/Sessions: 1-2

Statute No: 92 Stat. 2549-2688

Public Law No: 95 PL 598

Eid: 950598

Gid: 234-010

Bill: [HR 8200](#)

Sponsor: Rep. Don Edwards (D-CA)

House Committees: Judiciary

Senate Committees: Judiciary; Finance

Companion Bill: [S 2266](#)

Related Bills: HR 6

House Rules: [Hres 826](#)

Past Bills: 93 HR 10792; 93 S 4026; 94 HR 32; 94 S 235; 94 S 236

Introduced Date- Law Date: July 11, 1977-
November 6, 1978

House Floor Days: 5

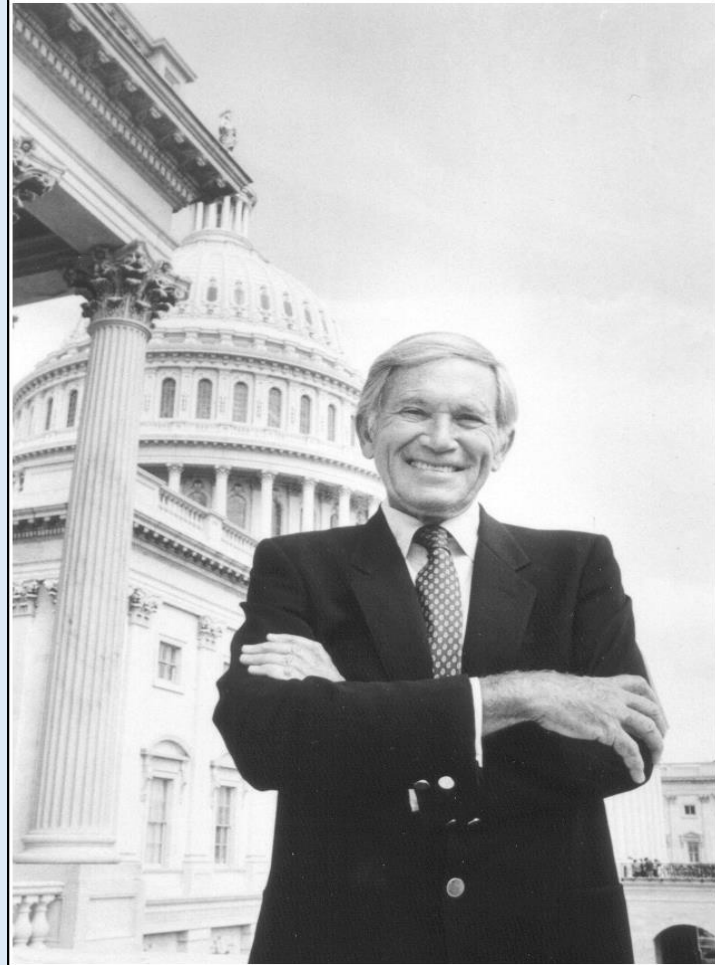
Senate Floor Days: 2

Roll Call Votes: 7 (1 in the Senate on S 2266; 6 in the House on HR 8200)

Issues: business regulation; economics; sop

Procedures: open rule; substitute amendment; pulled bill; committee of the whole; voice vote; ping-pong

Last Updated: 2/19/24



(Above) The Sponsor of the Bankruptcy Reform Act of 1978, Rep. Don Edwards (D-CA). A former president of the California Young Republicans, Edwards went on to serve as an FBI agent before forging a career in Congress as “one of the most liberal Democrats [in the chamber].”

First elected in 1963, Edwards was an early opponent of the Vietnam War. IN addition to the Bankruptcy Act of 1978, Edwards managed the Equal Rights Amendment and the 1982 Voting Rights Act Reauthorization. He retired from Congress in 1994 and passed away in 2015 at the age of 100 (see [New York Times 2015](#)).

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Legislative History Comments

The Bankruptcy Reform Act of 1978 (95 PL 598) created a new system of bankruptcy judges and updated the federal bankruptcy law for creditors and debtors. Specifically, the law “seeks to relieve debtors of certain obligations they are unable to repay by providing them with a ‘fresh start’ from financial difficulties” and it attempts to “preserve the countervailing interests of creditors and other stakeholders by maximizing total creditor return in an orderly and efficient fashion ([CRS 2022, 2](#)).” The Act was “the first major revision of the nation’s bankruptcy laws in nearly 40 years ([CQ Almanac 1978](#)).”

The Bankruptcy Reform Act of 1978 is generally associated with an increase in Bankruptcy filings (see e.g. [New York Times 1997](#)). And a key eliminate of the bill involving the appointment of bankruptcy judges was struck down in [Northern Pipeline Construction Company v. Marathon Pipe Line Company \(1982\)](#). The Bankruptcy Reform Act of 1978 was rated as a landmark piece of legislation by Stathis (2014), though not Mayhew (2005). It was ranked as the 33rd most impactful law passed by the 95th Congress by Clinton and Lapinski (2006).

For more on the broader, contemporary debate over U.S. bankruptcy laws, see Last Week Tonight (2021):

- <https://www.youtube.com/watch?v=GzFG0Cdh8D8>

The measure was initially considered non-controversial, though its enactment would be held up by the involvement of Supreme Court Chief Justice Warren Burger. Burger’s aggressive lobbying against the measure was frowned upon by members of Congress, with the Senate bill sponsor, Sen. Dennis DeConcini (D-AZ) asserted the Justice was “very, very irate and rude ([CQ Almanac 1978](#)).”

From a process standpoint, this is a pretty straight forward measure with a caveat. The House considered HR 8200 under Hres 826, an open rule. As you noted, an amendment by Rep. George Danielson (D-CA) was [narrowly adopted on the floor that struck the proposed changes to bankruptcy court judge selection](#). They then pulled the bill from the floor for several months and held additional hearings on it. The committee dumped the Danielson amendment and the bill was brought back to the floor via a motion to resolve. Danielson offered the amendment again and [it was defeated handedly](#). I’ve linked the Voteview vote splits. The Senate considered S 2266 in July and passed it, striking the text from HR 8200 and inserting its bill. Instead of going to conference, two separate deals were worked out between the chambers. The first was interrupted by Burger. The second apparently passed by chambers by voice vote.

This shouldn’t be too tough a measure from a process standpoint, but consult [CQ Almanac \(1977\)](#), [CQ Almanac \(1978\)](#), or e-mail me with questions! I think this is a really interesting bill and the Burger involvement always fascinates me.

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Assignments

For the sections below, you're going to want to answer the questions and write-up the process sections that correspond to your assigned number. Here they are:

#1. Open

#2. Open

#3. Open

Background Questions

1. Discuss the broader political context this bill was considered in. Who controlled the House? The Senate? By how many? Who was President? Was this part of the President's agenda? What other pieces of legislation were being considered/passed in this Congress?

The Stathis (2014) piece might worth a citation here.

2. What does this act actually do? Who was pushing for it? Was it significantly altered during consideration? What were the problems it was trying to rectify?

What did existing federal policy look like in this specific issue area? Why did reformers feel it needed to be changed? See e.g. [CRS \(2022\)](#) for more on this.

3. What motivated consideration of this legislation in this specific Congress? Was it in response to a specific event? Or was this a slower build over time? What happened in previous congresses regarding this? Had Congress considered comparable legislation?

Why had Congress not updated the nation's bankruptcy laws since 1938?

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Process Sections

Please write-up the sections that correspond to your number. Feel free to incorporate any notes I might have dumped in the margins.

#1. Initial House Consideration of HR 8200 (October 27-28, 1977)

HR 8200 was introduced in the House on July 11, 1977 by Rep. Don Edwards (D-CA) and was immediately referred to the House Committee on the Judiciary.

Prior to considering HR 8200 on the floor, the House considered Hres 826. Hres 826 sought to provide for consideration of HR 8200 under an open rule.¹ After a short debate, Hres 826 was agreed to by voice vote. Debate on HR 8200 began shortly afterwards.

Rep. Peter Rodino (D-NJ) acknowledged that the United States economy had changed significantly since 1938, which was the last major revision of the bankruptcy laws. He argued the laws must change “because they are designed to be the cushion for both businesses and individuals that fall in our economic system (*Congressional Record*, 95th Congress, October 27, 1977, 35444).”

In opposition, Rep. Thomas Railsback (R-IL) “strongly disagree[d] with the policies underlying the judicial and administrative framework that would be created by this measure (*Congressional Record*, 95th Congress, October 27, 1977, 35453).” Railsback was concerned with HR 8200’s adulteration of the Federal judicial structure in the name of bankruptcy reform, in addition to the cost of its administrative and judicial framework. After explaining the problematic aspects underlying Title II of the bill, Railsback stated that come amendment time, Rep. George

¹ Hres 826 was agreed to by a voice vote (*Congressional Record*, 95th Congress, October 27, 1977, 35449).

The text of Hres 826:

“Resolved, That upon the adoption of this resolution it shall be in order to move, section 303(a) of the Congressional Budget Act of 1974 (Public Law 93-344) and clause 3 of rule XIII to the contrary notwithstanding, that the House resolve itself into the Committee of the Whole House on the State of the Union for the consideration of the bill (H.R. 8200) to establish a uniform law on the subject of bankruptcies. After general debate, which shall be confined to the bill and shall continue not to exceed two hours, to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary, the bill shall be read for amendment under the five- minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on the Judiciary now printed in the bill as an original bill for the purpose of amendment under the five-minute rule, said substitute shall be read for amendment by titles instead of by sections, and all points of order against said substitute for failure to comply with the provisions of section 303(a) of the Congressional Budget Act of 1974 (Public Law 93-344) are hereby waived. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions (*Congressional Record*, 95th Congress, October 27, 1977, 35438).”

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Danielson (D-CA) would offer a substitute to Title II, and its purpose was to remedy the two main problems addressed while also “preserving the laudable reforms of this legislation (*Congressional Record*, 95th Congress, October 27, 1977, 35453).”

Danielson claimed that the administration supported/favored his amendment, in which Edwards claimed the administration had taken no such position, but he acknowledged that the Attorney General had written a letter. Rep. Robert McClory (R-IL) rose in opposition to the amendment. His argument emphasized the gutting qualities the amendment had, and he claimed that the Danielson amendment “certainly would distort the bill and convert it into something quite contrary to what the subcommittee and the committee have undertaken to recommend (*Congressional Record*, 95th Congress, October 28, 1977, 35683).” Rep. Robert Kastenmeier (D-WI) rose in support of the amendment because he believed that the bankruptcy reform ought to not include the creation of additional Article III courts.²

The Danielson amendment was [adopted 183-158 on](#) October 28th.

Edwards then immediately moved that the Committee of the Whole rise.³ This was [agreed to 268-62](#). The bill was then withdrawn from the floor and additional hearings were held. Shortly after this vote, Edwards was quoted in the Wall Street Journal claiming that “absenteeism made the big difference.”⁴

² He was the Chairman of the subcommittee on Courts, Civil Liberties, and the Administration of Justice of the Committee on the Judiciary.

³ Article 1, Section 5 of the U.S. Constitution specifies that “each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, *and a Majority of each shall constitute a Quorum to do Business*; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.” The Committee of the Whole is the House or Senate chamber in another form (like a large committee). It developed in response to the Constitution’s quorum provision. Generally, it is used for the purpose of debate and dispensing with amendments. Every legislator is a member. In the modern Congress, it is frequently associated with the U.S. House. The presiding officer is chosen by the Speaker of the House and is normally a member of the majority party who does not hold the chair of a standing committee.

Procedurally, the Committee of the Whole differs from the House of Representatives even though they have identical membership. The Committee of the Whole only requires 100 House members for a quorum. In the modern Congress, only 25 members are required to force a recorded rather than voice vote. Historically, recorded voting in the House (but not Senate) Committee of the Whole was prohibited. This changed in the House after the adoption of the Legislative Reorganization Act of 1970 (first applied in the 92nd Congress). All amendments adopted in the Committee of the Whole are considered after the Committee of the Whole dissolved. Members can reserve the right to request a recorded, division, teller or voice vote on specific amendments (even those that were defeated in the Committee of the Whole).

⁴ *The Wall Street Journal*, 1977. “House Rejects Proposal to Set Up Courts with Sole Jurisdiction over Bankruptcies.” October 31.

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#1. Secondary House Consideration of HR 8200 (February 1, 1978)

HR 8200, with the Danielson amendment, were brought back to the floor on February 1, 1978 via a motion to resolve into the committee of the whole.⁵ Edwards asked for unanimous consent that the remainder of the bill be considered as read, printed in the record, and open to amendment at any point.⁶

Rep. Mo Udall (D-AZ) was the first congressman to speak up regarding the Danielson amendment. He explained that he initially voted in favor of the amendment due to the extremely persuasive argument Danielson and Railsback made. However, he explained that after the additional hearings were held, he came to the realization that “the bill as reported by the Judiciary Committee would in the long run be less expensive and more efficient than the system provided by the amendment (*Congressional Record*, 95th Congress, February 1, 1978, 1800).” Udall was the only member to speak about the amendment before the Committee of the Whole rose. Under the rule, the previous question was ordered and Edwards demanded a separate vote on the Danielson amendment, which was adopted in the Committee of the Whole on October 28, 1977.

Danielson demanded the yeas and nays, and the House reversed their initial decision and [rejected the amendment 146-262](#). The measure than passed via voice vote.

Newspaper reports suggested Edwards and Rep. Caldwell Butler (R-VA) were successful in their efforts to rally Congressmen against the Danielson amendment. As previously mentioned, initially the Danielson amendment passed the House by a slim majority of 23 votes. However, after this vote, both Edwards and Butler “lobbied especially hard among the 92 Congressmen absent when the October vote was taken”.⁷

⁵ Rep. John Ashbrook (R-OH) objected to the question of further consideration of the bill on the ground that a quorum was not present, so a roll call vote was taken, and the nays won 405 to the yeas 4.

⁶ Rep. Allen Ertel (D-PA) offered an amendment that was created for the purpose of keeping student loan programs intact, but also preventing abuse of the system (*Congressional Record*, 95th Congress, February 1, 1978, 1791). Rep. Christopher Dodd (D-CT) argued against this amendment in depth claiming that the problem is not in bankruptcy, it is in defaults. Rep. Robert Cornell (D-WI) offered an amendment to Ertel’s amendment that attempted to “identify such persons (individuals who abuse the government’s student loan programs and use bankruptcy to avoid repayment of their student loans) by prohibiting within the 5-year period discharge of debts if the student loan constitutes 65 percent or more of the person’s indebtedness (*Congressional Record*, 95th Congress, February 1, 1978, 1794).” Ertel urged the House to reject the Cornell amendment and adopt his. After a recorded vote, Cornell’s amendment was rejected 21-34, and Ertel’s amendment was agreed to by a 54-26 vote. Other amendments were offered but did not create a large amount of debate.

⁷ “New Court System Just for Bankruptcies Backed as House Votes to Reverse Itself.” 1978. *The Wall Street Journal*, February 2.

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#2. Senate Consideration of S 2266 & HR 8200 (September 7, 1978)

S 2266 was introduced as a companion measure by Sen. Dennis DeConcini (D-AZ) on July 14, 1978 and was referred to the Committee on Finance.

On September 7, 1978, the Senate Majority Leader, Senator Robert Byrd (D-WV), asked for, and received “unanimous consent that the Senate proceed” to its consideration (*Congressional Record*, 95th Congress, September 7, 1978, 28254).”

Perhaps the most significant amendment discussed in this session of the Senate was the Bartlett amendment. The purpose of the Bartlett amendment was to “allow a bankrupt to rescind any revival or reaffirmation within 30 days of such action (*Congressional Record*, 95th Congress, September 7, 1978, 28261).” Sen. Dewey Bartlett (R-OK) argued that a previously addressed amendment that was introduced by the Committee on the Judiciary ultimately would deprive consumers of a right they have always had, which is that of renewing a debt discharged in bankruptcy. Bartlett further argues that without this right “consumers will be denied the opportunity to protect a consigner such as wife, a relative, or other family member from liability; or to protect collateral such as an automobile from repossession; or to honor a moral obligation (*Congressional Record*, 95th Congress, September 7, 1978, 28261).”

The Bartlett amendment [was agreed to 51-20](#). S 2266 was passed by voice vote shortly afterwards. The text of HR 8200 was then struck and the contents of S 2266 inserted.

#3. House Consideration of the Senate Amendments to HR 8200 (September 28, 1978)

On September 28, 1978, the Clerk read the Senate amendment to HR 8200. As opposed to going to conference, the chambers worked out separate deals.

Edwards explained to the members of the House that he, along with Butler, worked closely with the Senate managers of the bill after their response and amendment to HR 8200’s initial form and they reached an agreement. He claimed that the final major issues were solved, and the new amendment he is offering is reflective of the substance of that agreement.

Butler explained that the principal disagreement between the House and the Senate was the structure of the court system. The House took the position that the bankruptcy court should be an independent Article III court. The Senate view differed in the sense that it wanted to maintain the adjunct system of courts. Because the House and Senate could not come to an agreement on this position, the House resolved this particular area of disagreement “by creating bankruptcy courts that are not adjuncts of the district courts but adjuncts of the court of appeals (*Congressional Record*, 95th Congress, September 27 1978, 32391).”

Edwards asked for, and received, unanimous consent that the House concur in the Senate amendment with his amendment. A motion to reconsider was then laid on the table.

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#3. Senate Consideration of the House Amendments to the Senate Amendments to HR 8200 (October 5, 1978)

Chief Justice Warren E. Burger projected himself into the process of the consideration of this bill. His 11th-hour lobbying effort occurred “shortly after the House gave what appeared to be its final seal of approval to the legislation,” where he asked Strom Thurmond (R-SC) to put a hold on the bill to prevent Senate consideration. Burger’s main concerns involved “gold-plated” retirement benefits for bankruptcy judges, making the bankruptcy courts adjuncts to the appeals courts, and allowing a presidential appointment of bankruptcy judges.⁸

By contacting Thurmond, Burger was successful in his efforts to delay the bill, which prior to the call, was ready to be sent to the White House for the President’s signature. Burger was reported to have “expressed objections to the House-Senate compromise version, which call[ed] for new bankruptcy judges to be adjuncts of the federal court of appeals”.⁹ This was perceived negatively due to the fact that it is extremely “unusual for the head of the government’s judicial branch to intervene so directly in a legislative matter before Congress.”¹⁰

The debate between the Chief Justice and Congress led to a larger debate regarding separation of powers.

In the three-week gap between the initial Senate consideration and the tertiary House consideration, a small number of members from both chambers negotiated between the House and Senate bills. DeConcini addressed this on the floor, explaining that S 2266 was largely different than HR 8200 in its original form, yet through further discussion on the matter, the provisions of the most recent House amendment were created through the negotiation of the members. Before the reading of the new amendments, DeConcini claimed he concurred in the House amendment and was prepared to accept it after the proposal of several amendments.

The Senate agreed to the compromise on October 5, 1978 by a voice vote.

⁸ See “Congress Approves New Bankruptcy System.” In CQ Almanac 1978, 34th ed., 179-82. Washington, DC: Congressional Quarterly, 1979. <http://library.cqpress.com.proxy-remote.galib.uga.edu/cqalmanac/cqal78-1238053>.

⁹ “Chief Justice Seeks Delay On Bankruptcy Legislation.” 1978. *The Wall Street Journal*, October 3.

¹⁰ “Chief Justice’s Request Delays Congress’s Final Vote on Bankruptcy-Law Overhaul.” 1978. *The Wall Street Journal*, October 2.

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#3. House Consideration of the Senate Amendments to the House Amendments to the Senate Amendments to HR 8200 (October 6, 1978)

On October 6th, Rep. Herbert Harris (D-VA) asked for unanimous consent to consider the Senate amendments to the House amendments to the Senate amendments..

Of all the new amendments, only four were discussed in depth on the floor. First, section 362(b) was amended to permit the Secretary of the Department of Housing and Urban Development “to commence an action to foreclose a mortgage or deed of trust” and “the commencement of such an action is necessary for tax purposes (*Congressional Record*, 95th Congress, October 6, 1978, 34144).”

Second, the Senate amendment changed the new 28 U.S.C. 771 by inserting the words “based on need” as a prerequisite for a bankruptcy court to be entitled to a clerk of court. Third, the Senate added a provision that the “President shall give due consideration to the recommended nominees of the Judicial Council of the Circuit within which an appointment is to be made (*Congressional Record*, 95th Congress, October 6, 1978, 34144).”

HR 8200 was passed in the House on October 6, 1978 by a voice vote.

Member Spotlight

Choose one of the following for your member spotlight:¹¹

#1. Rep. Don Edwards (D-CA); Rep. Peter Rodino (D-NJ); Rep. Thomas Railsback (R-IL); Rep. George Danielson (D-CA); Rep. Robert McClory (R-IL); Rep. Robert Kastenmeier (D-WI); Rep. Thomas “Tip” O’Neal (D-MA)

#2. Sen. Dennis DeConcini (D-AZ); Sen. Robert Byrd (D-WV); Sen. Dewey Bartlett (R-OK); Sen. Ted Kennedy; Sen. Malcolm Wallop (R-WY); Sen. Orrin Hatch (R-UT); Sen. Charles Mathias (R-MD)

#3. Rep. Mo Udall (D-AZ); Rep. Caldwell Butler (R-VA); Rep. Christopher Dodd (D-CT); Sen. Strom Thurmond (R-SC); Rep. Herbert Harris (D-VA); Rep. Bob Bauman (R-MD); Sen. Howard Baker (R-TN); Rep. John Ashbrook (R-OH)

¹¹ Edwards was a really well regarded member on both sides. His New York Times obituary though notes that J. Edgar Hoover hated him (see Clymer, Adam. 2015. “Don Edwards, Congressman Who Championed Civil Rights, Dies at 100.” *New York Times*, October 2. <https://www.nytimes.com/2015/10/03/us/politics/don-edwards-congressman-who-championed-civil-rights-dies-at-100.html>.) Danielson retired in 1982 after accepting an appointment to the California Court of Appeals. And DeConcini did not run for reelection after being implicated in the Keating Five scandal.

Honestly though, there are a ton of interesting characters involved in this bill: Thurmond, Ted Kennedy, Peter Rodino, Bob Byrd, Mo Udall, Dodd, Ashbrook and Bauman either all had fascinating careers or went down in interesting scandals (sometimes both!). So you have a lot of options here.

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Aftermath Questions

1. How was this act viewed upon passage? What did the newspapers say? How did the final measure differ from the one reformers were pushing?

How has this act been viewed by scholars? Did it achieve its stated goals? Do scholars highlight any major limitations? Are there aspects of the bill that are viewed more favorably than others? Discuss the relevance of this act as it pertains to contemporary policy.

2. Discuss the constitutional questions posed by this legislation. What were there? What happened at the Supreme Court level? Was this measure featured in any major Supreme Court cases?

Specifically, despite Burger's pressure, Congress retained the clause granting the President the ability to appointment bankruptcy judges for fourteen years. However, Article III of the Constitution provides that appointed judges "shall hold their offices during good behavior." By not providing them lifetime appointments, Congress was arguing these judges were not Article III judges.

This was struck down by the court in [*Northern Pipeline Construction Company v. Marathon Pipe Line Company \(1982\)*](#).¹² In 1984, Congress passed ***the Bankruptcy Amendments and Federal Judgeship Act (989 PL 353)*** which conferred on circuit courts of appeals the power to appoint bankruptcy judges.

What does this measure (and scholars) say about judicial selection mechanisms?

3. How has this law evolved over time? Was it significantly altered by subsequent legislation? Specifically, what happened with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (109 PL 8)? Why pass that law? [Vox \(2020\)](#) notes that: "that researchers believe exacerbated the Great Recession by inducing more foreclosures." How come?

How relevant is this issue currently? What about this act specifically? Are there additional issues related to it that reformers have been pushing to change?

¹² Burger dissented in Northern Pipeline.

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Suggested Sources

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Newspaper Pieces

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- <https://www.nytimes.com/1993/04/12/business/economic-watch-critics-of-bankruptcy-law-see-inefficiency-and-waste.html>
- <https://www.washingtonpost.com/archive/business/1986/08/14/ex-judge-named-to-monitor-robins/b2f3e1ff-042a-448a-adb5-d936b9baa1f9/>
- <https://www.washingtonpost.com/archive/business/1984/03/04/business-failures-level-off-but-plateau-remains-high/f16987eb-d225-4f98-a70b-7368b935a180/>
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