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## Do I Own This Car - The Supreme Court Creates a Standard for BAPCPA Car Ownership

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## NOTE

# Do I Own This Car? The Supreme Court Creates a Standard for BAPCPA Car Ownership

*Ransom v. FIA Card Services, N.A.*, 131 S. Ct. 716 (2011).

ANNE BENTON HUCKER\*

### I. INTRODUCTION

On Monday, October 4, 2010, reporters and other observers packed the red upholstered benches and filled the white marble courtroom of the United States Supreme Court.<sup>1</sup> They came to witness a newsworthy event – the first day of the Court’s new Term and, more importantly, Justice Elena Kagan’s first day on the job.<sup>2</sup> The Court opened the Term with a fairly routine case, the type of “workaday dispute that makes up far more of the docket than the constitutional barnburners the [J]ustices occasionally entertain.”<sup>3</sup> This first case of the Term would be the subject matter of Justice Kagan’s first opinion.<sup>4</sup>

The case was *Ransom v. FIA Card Services, N.A.*, and the dispute was whether, under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Appellant Jason Ransom should be able to claim a vehicle ownership expense for purposes of Chapter 13 bankruptcy for the unencumbered car that he owned.<sup>5</sup> Practitioners in the bankruptcy field had been watching the progression of this case and were eager to learn the Court’s

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\* B.A., University of Virginia, 2004; J.D. Candidate, University of Missouri School of Law, 2012; Senior Lead Articles Editor, *Missouri Law Review*, 2011-12. This article is in memory of my parents, Linda Foister and Charles Hucker, the finest writers I know.

1. Joan Biskupic, *Justices Resume Routine Like They Don Robes*, USA TODAY, Oct. 5, 2010, at 5A, available at [http://www.usatoday.com/news/washington/judicial/2010-10-04-supreme-court-first-day-kagan\\_N.htm](http://www.usatoday.com/news/washington/judicial/2010-10-04-supreme-court-first-day-kagan_N.htm).

2. *Id.*

3. Jess Bravin, *On Her First Day, Justice Kagan Dives into the Fray*, WALL ST. J. L. BLOG (Oct. 4, 2010, 3:04 PM), <http://blogs.wsj.com/law/2010/10/04/on-her-first-day-justice-kagan-dives-into-the-fray/>.

4. Jess Bravin, *Justice Kagan Pens First Opinion, an 8-1 Win for Credit Card Companies*, WALL ST. J. L. BLOG (Jan. 11, 2011, 4:58 PM), <http://blogs.wsj.com/law/2011/01/11/justice-kagan-pens-first-opinion-an-8-1-win-for-credit-card-companies/>.

5. 131 S. Ct. 716 (2011).

resolution of the issue.<sup>6</sup> The interest was due to two reasons. First, the outcome of the case would affect approximately 250,000 Chapter 13 petitioners.<sup>7</sup> Second, the case would resolve an issue on which the lower courts had not been able to reach a consensus.<sup>8</sup>

BAPCPA was “poorly crafted” and “hastily designed,” leaving one bankruptcy judge to lament that

“those responsible for . . . passing [BAPCPA] . . . did all in their power to avoid the proffered input from sitting United States Bankruptcy Judges, various professors of bankruptcy law at distinguished universities, and many professional associations filled with the . . . bankruptcy lawyers in the country as to the perceived flaws in the Act.”<sup>9</sup>

Another bankruptcy judge complained that the law was “[u]nquestionably . . . the most poorly written piece of legislation that I or anyone else has ever seen . . . . No one has ever seen a piece of garbage like this . . . . There’s going to be the most fantastic anarchy in bankruptcy courts for years.”<sup>10</sup>

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6. See, e.g., *Elena Kagan Gives First Opinion as a Supreme Court Justice*, CHRISTIAN SCI. MONITOR (Jan. 11, 2011), <http://www.csmonitor.com/USA/Latest-News-Wires/2011/0111/Elena-Kagan-gives-first-opinion-as-a-Supreme-Court-Justice>; Laura Fishman, *Ownership Costs Cannot Be Deducted Without Making Car Payment*, PHOENIX BANKR. L. NEWS (Jan. 13, 2011, 12:54 PM), <http://phoenixbankruptcynews.com/2011/01/ownership-costs-cannot-be-deducted-without-making-car-payment.html>; Bill Rochelle, *Auto Deductions, Touse, Tribune, Lehman: Bankruptcy*, BLOOMBERG (Oct. 5, 2010, 6:29 AM), <http://www.bloomberg.com/news/2010-10-05/car-deduction-touse-tribune-international-garden-loehmann-bankruptcy.html>; Nina Totenberg, *Supreme Court Rules in Bankruptcy Case*, NPR (Jan. 11, 2011), <http://www.npr.org/2011/01/11/132843108/kagan-writes-first-opinion-in-bankruptcy-case>.

7. *Bankruptcy Experts Discuss Supreme Court’s Ruling in Ransom v. FIA Card Services and Its Effect on “Projected Disposable Income” for Chapter 13 Debtors*, AM. BANKR. INST. (Jan. 13, 2011), [http://www.abiworld.org/webinars/2011/Ransom\\_FIA/index.html](http://www.abiworld.org/webinars/2011/Ransom_FIA/index.html) [hereinafter *Bankruptcy Experts*].

8. *eCast Settlement Corp. v. Washburn*, 579 F.3d 934, 936-37 (8th Cir. 2009); *Tate v. Bolen*, 571 F.3d 423 (5th Cir. 2009); *Ross-Tousey v. Neary*, 549 F.3d 1148, 1156-57 (7th Cir. 2008).

9. Steve Jakubowski, *Justice Scalia Won’t “Ransom” His Principles to Grant Justice Kagan a Unanimous First Opinion That Looks to BAPCPA’s “Text, Context, and Purpose” to Support a Dubious Result*, BANKR. LITIG. BLOG (Jan. 23, 2011), <http://www.bankruptcylitigationblog.com/archives/us-supreme-court-cases-justice-scalia-wont-ransom-his-principles-to-grant-justice-kagan-a-unanimous-first-opinion-that-looks-to-bapcpas-text-context-and-purpose-to-support-a-dubious-result.html> (quoting U.S. Bankruptcy Judge Frank Monroe).

10. Brian J. Rogal, *Bankruptcy Law in Shambles*, IN THESE TIMES, June 5, 2006 (internal quotation marks omitted), available at [http://www.inthesetimes.com/article/2662/bankruptcy\\_law\\_in\\_shambles/](http://www.inthesetimes.com/article/2662/bankruptcy_law_in_shambles/).

When the Court issued its opinion, holding that Ransom could not claim a vehicle ownership expense if he owned an unencumbered car, Justice Kagan created a tidy framework through which to interpret all future BAPCPA provisions: to determine the meaning of the statute, one must look at the text, context, and purpose of BAPCPA.<sup>11</sup>

But Justice Antonin Scalia refused to overlook the manifest problems with BAPCPA's construction, and thus, he dissented.<sup>12</sup> In his dissent, he contended that Justice Kagan's opinion was simplistic and that it glossed over BAPCPA's real issues.<sup>13</sup> He argued that the Court's opinion in *Ransom* created more questions than it answered.<sup>14</sup>

## II. FACTS AND HOLDING

On July 5, 2006, Jason Ransom filed for Chapter 13 bankruptcy relief in the United States Bankruptcy Court for the District of Nevada.<sup>15</sup> Ransom had accrued \$82,542.93 in unsecured debt, including \$32,896.73 that Ransom owed to MBNA American Bank (MBNA).<sup>16</sup> During the process of filing for bankruptcy, Ransom completed Form B22C, which is the Debtor's Statement of Current Monthly Income and Calculation of Commitment Period and Disposable Income.<sup>17</sup> On this form, Ransom reported his monthly income of \$4248.56 and his annual income of \$50,982.72.<sup>18</sup> At the time, the median income for a single-family household in Nevada was \$38,506.<sup>19</sup> Because Ransom's income exceeded the median income for Nevada, the bankruptcy code required Ransom to create a five-year payment plan.<sup>20</sup>

The bankruptcy code instructs debtors such as Ransom to deduct reported monthly expenses from the debtors' reported monthly income to determine the amount which will be repaid to creditors.<sup>21</sup> The bankruptcy code allows several categories of potential expenses, including household expenses, car expenses, and utility expenses.<sup>22</sup> For certain categories, such as car expenses,

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11. *Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. 716, 730 (2011).

12. *Id.* (Scalia, J., dissenting).

13. *Id.* at 732-33.

14. *See id.* at 730-33.

15. Brief for Petitioner at 5, *Ransom*, 131 S. Ct. 716 (No. 09-907).

16. *Id.*

17. *Id.*

18. *Id.*

19. *Census Bureau Median Family Income by Family Size (in 2005 Inflation-Adjusted Dollars)*, U.S. DEPARTMENT JUST., [http://www.justice.gov/ust/eo/bapcpa/20060213/bci\\_data/median\\_income\\_table.htm](http://www.justice.gov/ust/eo/bapcpa/20060213/bci_data/median_income_table.htm) (last visited Apr. 15, 2011).

20. Brief for Petitioner, *supra* note 15, at 28a.

21. *See* 11 U.S.C. § 707(b)(2)(A)(i) (2006).

22. *See* Bankruptcy Form 22A (Chapter 7), Part VI, pp. 4-6 (Dec. 2010), *available*

the bankruptcy code instructs debtors to use Internal Revenue Service (IRS) Standards to establish the allowable expense amounts.<sup>23</sup> Specifically, the IRS provides that a debtor can be eligible for ownership and operating costs with respect to a motor vehicle.<sup>24</sup> After a debtor calculates his expenses, he subtracts these expenses from his monthly income.<sup>25</sup> The surplus is the amount that the debtor is able to pay each month to his creditors in his payment plan.<sup>26</sup>

At the time of Ransom's bankruptcy filing, he owned a 2004 Toyota Camry outright, with no liens or security interests.<sup>27</sup> Ransom calculated his monthly expenses using the IRS Standards in accordance with the bankruptcy code.<sup>28</sup> For his 2004 Toyota Camry, Ransom listed ownership and operating costs as reported monthly expenses.<sup>29</sup> After calculating these expenses, together with his other expenses, he deducted this amount from his reported monthly income, which resulted in approximately \$500 of net income per month.<sup>30</sup> Thus, Ransom filed a Chapter 13 bankruptcy plan in which he would pay creditors \$500 per month for five years.<sup>31</sup>

The trustee of Ransom's bankruptcy case and MBNA contested the plan and filed motions in opposition to the plan, arguing that the court should prohibit Ransom from taking an ownership expense for a vehicle that he owned in full.<sup>32</sup> The bankruptcy court found in favor of the trustee and MBNA, holding that an ownership expense is not appropriate if the debtor is not making any car payments.<sup>33</sup>

Ransom appealed the bankruptcy court's ruling to the bankruptcy appellate panel.<sup>34</sup> While the bankruptcy appellate panel acknowledged that many courts had found that a debtor could deduct an ownership expense even if the debtor owned an unencumbered car, the bankruptcy appellate panel noted that many other courts had prohibited debtors from deducting an ownership expense in that situation.<sup>35</sup> The bankruptcy appellate panel found the latter line

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[http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/BK%20Forms%201210/B\\_22A\\_1210.pdf](http://www.uscourts.gov/uscourts/RulesAndPolicies/rules/BK%20Forms%201210/B_22A_1210.pdf).

23. *Id.* at 5.

24. *Id.* Notably, the IRS Standards are not meant for use in bankruptcy proceedings. *See infra* Part V.B.

25. 11 U.S.C. § 707(b)(2)(A)(i); *see* Bankruptcy Form 22A (Chapter 7), Part VI, p. 8, line 49.

26. *See* Bankruptcy Form 22A (Chapter 7), Part VI, p. 8, line 50.

27. Brief for Petitioner, *supra* note 15, at 5.

28. *See id.*

29. *Id.* at 6.

30. *Id.*

31. *Id.*

32. *Id.* at 6-7.

33. *Id.* at 7.

34. *Id.*

35. *Id.*

of cases more persuasive; consequently, it affirmed the bankruptcy court's decision.<sup>36</sup>

Ransom appealed the bankruptcy appellate panel's decision to the United States Court of Appeals for the Ninth Circuit.<sup>37</sup> In a unanimous opinion, the court affirmed the bankruptcy appellate panel's ruling, holding that debtors do not have applicable ownership expenses if they are not making loan or lease payments on the car.<sup>38</sup> The court reached this holding by defining the term "applicable" as "capable of or suitable for being applied."<sup>39</sup> Next, the court determined that "applicable" modified the phrase "monthly expense amounts."<sup>40</sup> Consequently, a vehicle ownership expense could become "capable of being applied" only when the debtor had an actual vehicle ownership expense.<sup>41</sup> Otherwise, the court reasoned, the term "applicable" would be meaningless.<sup>42</sup>

Ransom appealed the Ninth Circuit's decision to the United States Supreme Court, which affirmed the Ninth Circuit's ruling.<sup>43</sup> In an eight-to-one decision, the United States Supreme Court held that based on the "text, context, and purpose" of the statutory language regarding vehicle expenses, a debtor could not take a vehicle ownership deduction if that debtor was not making loan or lease payments.<sup>44</sup>

### III. LEGAL BACKGROUND

Scholars believe that the term "bankruptcy" comes from an Italian phrase, *banco rotto*, referring to a merchant's "broken bench."<sup>45</sup> The phrase described the common Italian practice of merchants selling their goods and products from benches.<sup>46</sup> When merchants were unable to pay their obliga-

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36. *Id.*

37. *Id.*

38. *Ransom v. MBNA, Am. Bank, N.A.*, 577 F.3d 1026, 1030-31 (9th Cir. 2009), *aff'd sub nom. Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. 716 (2011).

39. *Id.* at 1031 (quoting MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 60 (11th ed. 2005)) (internal quotation marks omitted).

40. *See id.*

41. *Id.*

42. *Id.*

43. *Ransom*, 131 S. Ct. at 723.

44. *See id.* at 720-21.

45. Robert J. Landry, III & Nancy Hisey Mardis, *Consumer Bankruptcy Reform: Debtors' Prison Without Bars or "Just Desserts" for Deadbeats?*, 36 GOLDEN GATE U. L. REV. 91, 118 (2006); *see* Harvey R. Miller & Shai Y. Waisman, *Does Chapter 11 Reorganization Remain A Viable Option for Distressed Businesses for the Twenty-First Century?*, 78 AM. BANKR. L.J. 153, 155 (2004).

46. Uriel Rabinovitz, *Toward Effective Implementation of 11 U.S.C. § 522(d)(1)(e): Invigorating a Powerful Bankruptcy Exemption*, 78 FORDHAM L. REV. 1521, 1524 (2009).

tions, their creditors would take possession of the merchant's goods and would break the merchant's bench to prevent the merchant from selling goods.<sup>47</sup> While creditors were able to punish insolvent debtors, this Italian practice also left merchants unable to earn a living.<sup>48</sup>

Since its inception, bankruptcy law has struggled to balance the competing concerns of creditors and of debtors.<sup>49</sup> Legislation has vacillated from favoring one group to favoring the other group.<sup>50</sup> For many decades, the bankruptcy code strongly favored debtors, leading to loud complaints from the creditor community.<sup>51</sup> With the enactment of BAPCPA, the pendulum swung back in favor of creditors.<sup>52</sup> Despite this victory for creditors, BAPCPA has created turmoil for all the parties involved in the bankruptcy process.<sup>53</sup>

### *A. The Beginnings of Bankruptcy Laws in America*

Because the flow of commerce always has required a solution to deal with unsuccessful businesses and individuals, America's founding fathers considered bankruptcy laws when they drafted the Constitution.<sup>54</sup> The drafters viewed bankruptcy as an important tool in handling business and personal financial failures.<sup>55</sup> In particular, James Madison wrote in Federalist Paper 42 that the creation of "uniform laws of bankruptcy is so intimately connected with the regulation of commerce, and will prevent so many frauds where the parties or their property may lie or be removed into different States, that the expediency of it seems not likely to be drawn into question."<sup>56</sup> Consequently, the drafters of the Constitution included the Bankruptcy Clause, which stated that Congress had the power to pass "uniform Laws on the subject of Bankruptcies."<sup>57</sup>

In the late eighteenth century, an economic panic swept across the young nation.<sup>58</sup> Calls for a federal bankruptcy law rang out across the country.<sup>59</sup> Congress responded by passing the United States's first bankruptcy

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47. *Id.*

48. Miller & Waisman, *supra* note 45, at 155.

49. *See infra* Part III.A-D.

50. *See infra* Part III.A-D.

51. *See infra* Part III.A-C.

52. *See infra* Part III.D.

53. *See* eCast Settlement Corp. v. Washburn, 579 F.3d 934, 936 (8th Cir. 2009); Tate v. Bolen, 571 F.3d 423, 426 (5th Cir. 2009); Ross-Tousey v. Neary, 549 F.3d 1148, 1156-57 (7th Cir. 2008).

54. Rabinovitz, *supra* note 46, at 1527; *see also* U.S. CONST. art. I, § 8, cl. 4.

55. THE FEDERALIST NO. 42 (James Madison).

56. *Id.*

57. U.S. CONST. art. I, § 8, cl. 4.

58. Miller & Waisman, *supra* note 45, at 159.

59. *See id.*

law, the Bankruptcy Act of 1800.<sup>60</sup> Congress passed the law with the goal of helping creditors maximize their recovery, not ensuring that debtors received a fresh start.<sup>61</sup> Notably, the Bankruptcy Act of 1800 authorized only involuntary bankruptcy proceedings.<sup>62</sup> As the economy stabilized, much of the American public no longer saw the need for bankruptcy legislation.<sup>63</sup> Consequently, Congress repealed the Bankruptcy Act of 1800 just three years after passing it.<sup>64</sup> This cycle – financial panic, passage of a bankruptcy law, economic stabilization, and eventual repeal of the bankruptcy law – occurred two more times in the mid-nineteenth century, with the Bankruptcy Acts of 1841 and 1867.<sup>65</sup>

### *B. Lasting Change for the Bankruptcy System*

At the end of the nineteenth century, the American economy underwent rapid expansion, due in large part to the booming railroad industry.<sup>66</sup> The United States “had become a commercial nation once and for all,” and consequently, its leaders recognized the need for permanent federal bankruptcy legislation.<sup>67</sup> Thus, Congress enacted the Bankruptcy Act of 1898.<sup>68</sup>

While pro-creditor groups had lobbied for the Bankruptcy Act of 1898, pro-debtor groups lobbied for and obtained debtor-friendly changes in the legislation.<sup>69</sup> Despite the thriving commercial activity at the end of the nineteenth century, many Americans faced a fragile financial future because of the rapidly changing economy.<sup>70</sup> Consequently, legislators who represented farmers and small merchants advocated for debtor-friendly bankruptcy laws.<sup>71</sup> The most important victory for these legislators was the inclusion of voluntary bankruptcy in the Bankruptcy Act of 1898.<sup>72</sup> In essence, voluntary bankruptcy meant that debtors could file for bankruptcy when creditors were attempting to enforce their obligations, instead of “leaving the power exclu-

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60. Rabinovitz, *supra* note 46, at 1528.

61. *Id.* at 1528-29.

62. *Id.* at 1529.

63. See Charles Jordan Tabb, *The History of the Bankruptcy Laws in the United States*, 3 AM. BANKR. INST. L. REV. 5, 15 (1995); John Fabian Witt, *Narrating Bankruptcy/Narrating Risk*, 98 NW. U. L. REV. 303, 314-315 (2003).

64. Witt, *supra* note 63, at 314.

65. See Tabb, *supra* note 63, at 16-21.

66. See Miller & Waisman, *supra* note 45, at 160.

67. David A. Skeel, Jr., *The Genius of the 1898 Bankruptcy Act*, 15 BANKR. DEV. J. 321, 325 (1999).

68. *Id.* at 322.

69. *Id.* at 325.

70. *Id.* at 333.

71. *Id.*

72. Lauren Goldberg, *Dealing in Debt: The High-Stakes World of Debt Collection After FDCA*, 79 S. CAL. L. REV. 711, 715 (2006).



sively to creditors.”<sup>73</sup> Hence, the Bankruptcy Act of 1898 started the trend of American bankruptcy law favoring the debtor.

Moreover, unlike the three previous federal bankruptcy laws, which Congress repealed shortly after their enactment, the Bankruptcy Act of 1898 remained in effect until 1978 due to party politics and the creation of the bankruptcy bar.<sup>74</sup> When Congress enacted the 1898 Act the Republican Party controlled Congress and remained in power for more than a decade.<sup>75</sup> This control lasted long enough “for the bankruptcy bar to get on its feet.”<sup>76</sup> When the Republicans lost control of Congress in 1910, “the bankruptcy . . . bar that owed [its] existence to the Act [was] now in a position to help make sure that the Act was not repealed.”<sup>77</sup>

The 1898 Act created much of the modern bankruptcy system, which is comprised of nine chapters in the United States Code.<sup>78</sup> Specifically, under Chapter 7, a debtor liquidates her assets and discharges her remaining debts.<sup>79</sup> Under Chapter 13, a debtor may keep most of her assets but must adhere to the terms of a court-approved payment plan, through which her creditors receive monthly payments.<sup>80</sup> After the payment plan concludes, the debtor may discharge her remaining debts.<sup>81</sup>

### *C. Fundamental Overhaul in the Twentieth Century*

The Bankruptcy Act of 1898 remained the governing law for bankruptcy proceedings for more than eighty years, but “[b]y the 1970s, the creaky construct of the 1898 Act was ripe for overhaul.”<sup>82</sup> As personal bankruptcy filings skyrocketed during the 1950s and 1960s, the creditor industry pushed for bankruptcy reform.<sup>83</sup> In 1970, Congress responded to this effort by creating the Commission on the Bankruptcy Laws of the United States.<sup>84</sup> This Commission was authorized to study and make recommendations on existing bankruptcy law.<sup>85</sup> The findings of the Commission led to the enactment of

73. *Id.*

74. Skeel, *supra* note 67, at 337; *The History of Bankruptcy*, IHATEDEBT.COM, [http://ihatedebt.com/DealingWithYourMoney/ThePathsOutOfDebt/The\\_History\\_of\\_Bankruptcy.php](http://ihatedebt.com/DealingWithYourMoney/ThePathsOutOfDebt/The_History_of_Bankruptcy.php) (last visited Oct. 3, 2011).

75. Skeel, *supra* note 67, at 337.

76. *Id.* at 338.

77. *Id.*

78. See 11 U.S.C. §§ 101-1532 (2006 & Supp. IV 2010).

79. *Id.* §§ 701-84.

80. See *id.* §§ 1301-30 (2006).

81. *Id.* § 1328.

82. Todd J. Zywicki, *The Past, Present, and Future of Bankruptcy Law in America*, 101 MICH. L. REV. 2016, 2020 (2003).

83. *Id.*

84. Tabb, *supra* note 63, at 32.

85. *Id.*

the Bankruptcy Reform Act of 1978, which replaced the Bankruptcy Act of 1898.<sup>86</sup>

Although the creditor community instigated the 1978 Act, the bankruptcy bar and pro-debtor groups “seized the reins of the reform effort.”<sup>87</sup> The final result was debtor-friendly bankruptcy legislation. For example, the 1978 legislation encouraged greater use of Chapter 13,<sup>88</sup> yet Congress prohibited creditors from seeking involuntary Chapter 13 cases.<sup>89</sup> Additionally, if a debtor chose to participate in a Chapter 13 proceeding instead of a Chapter 7 liquidation proceeding, Congress provided a “super discharge” of certain debts that would not have been dischargeable in a liquidation proceeding.<sup>90</sup> Thus, the Bankruptcy Reform Act of 1978 fundamentally changed the American bankruptcy system. The 1978 Act resulted in the dramatic increase in personal bankruptcy filings from 300,000 in 1980 to 1,500,000 million in 2002.<sup>91</sup>

#### *D. The Enactment of BAPCPA*

As personal bankruptcy filings continued to rise throughout the late 1990s, the credit industry made repeated attempts to overhaul bankruptcy legislation in its favor.<sup>92</sup> Pro-creditor groups believed that individuals not only abused the bankruptcy system, but that many individuals could pay more of their debts than they were paying in Chapter 7 bankruptcies.<sup>93</sup>

In 2005, the credit industry achieved its goal of stricter bankruptcy legislation when Congress overwhelmingly passed the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA).<sup>94</sup> The cornerstone of this legislation was the “means test,” which ensures “that debtors will pay creditors the maximum that they are able to afford.”<sup>95</sup>

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86. *Id.*

87. Zywicki, *supra* note 82, at 2020.

88. Tabb, *supra* note 63, at 35 (referring to Chapter 13 as “the mode of relief allowing for the readjustment of the debts of individuals with regular income”).

89. *Id.*

90. *Id.* (internal quotation marks omitted).

91. Zywicki, *supra* note 82, at 2021.

92. *See id.* at 2032-33.

93. *See* Jean Braucher, Rash and Ride-Through Redux: The Terms for Holding on to Cars, Homes and Other Collateral Under the 2005 Act, 13 AM. BANKR. INST. L. REV. 457, 458-59 (2005); Susan Jensen, A Legislative History of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, 79 AM. BANKR. L.J. 485, 565 (2005).

94. *See* Jensen, *supra* note 93, at 565.

95. Rabinovitz, *supra* note 46, at 1531 (internal quotation marks omitted).

The means test applies to Chapter 7 and Chapter 13 bankruptcies.<sup>96</sup> For a Chapter 7 filing, the means test determines whether a debtor is eligible for a liquidation proceeding.<sup>97</sup> For a Chapter 13 filing, the means test determines the amount that a debtor is able to pay her creditors each month by subtracting “amounts reasonably necessary to be expended” for the support of the debtor and her dependents from the debtor’s income.<sup>98</sup> These reasonably necessary expenses are “the debtor’s applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor’s actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides.”<sup>99</sup>

The IRS National and Local Standards, found in the Internal Revenue Manual, delineate the applicable monthly expenses.<sup>100</sup> The IRS uses these standards when creating a repayment plan for taxpayers.<sup>101</sup> Specifically, these standards represent the amounts necessary to provide for a taxpayer and her family’s living expenses.<sup>102</sup> The IRS created the National and Local Standards for allowable expenses to establish consistency in how much the IRS requires taxpayers to repay.<sup>103</sup> When determining if a taxpayer may have an allowable expense, the IRS limits the taxpayer “to the lesser of actual expenses or the local standard” but gives the taxpayer the National Standard amount even if it is greater than the taxpayer’s actual expenses.<sup>104</sup> The Local Standards list several allowable expense categories.<sup>105</sup> One of these categories includes expenses related to car ownership.<sup>106</sup> The IRS would allow a taxpayer to take the lesser of his actual car ownership expense or the local standard for the car ownership expense.<sup>107</sup> Consequently, if a taxpayer does

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96. Chelsey W. Tulis, Note, *Get Real: Reframing the Debate over How to Calculate Projected Disposable Income in § 1325(B)*, 83 AM. BANKR. L.J. 345, 353-54 (2009).

97. *See id.* at 353.

98. 11 U.S.C. § 1325(b)(2)(A)(i) (2006).

99. *Id.* § 707(b)(2)(A)(ii)(I) (Supp. IV 2010).

100. *See* INTERNAL REVENUE SERVICE, INTERNAL REVENUE MANUAL pt. 5, ch. 15, § 1.8-.9 [hereinafter IRS MANUAL], available at [http://www.irs.gov/irm/part5/irm\\_05-015-001.html#d0e1012](http://www.irs.gov/irm/part5/irm_05-015-001.html#d0e1012) (last visited Oct. 3, 2011).

101. ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, THE LAW OF DEBTORS AND CREDITORS 154 (6th ed. 2009).

102. *Id.*

103. *See id.* at 154-55.

104. *Id.* at 155.

105. *See* IRS MANUAL, *supra* note 100, pt. 5, ch. 15 § 1.9.

106. *Id.*

107. *Collection Financial Standards*, INTERNAL REVENUE SERVICE, <http://www.irs.gov/individuals/article/0,,id=96543,00.html> (last visited Sept. 30, 2011).

not have a car ownership expense – which the IRS defines as a loan or lease payment<sup>108</sup> – then the taxpayer may not claim a car ownership expense.

Observers roundly criticized the draftsmanship of BAPCPA. Specifically, commentators noted that “a number of provisions of the amendments were inartfully drafted, revealing that the drafters were not well acquainted with their subject and they refused expert help.”<sup>109</sup> The problems with BAPCPA’s statutory construction have created interpretation issues for the courts.<sup>110</sup> Notably, these problems have arisen in the allowance or disallowance of a car ownership expense.<sup>111</sup>

However, since the enactment of the BAPCPA, the circuit courts of appeals had been split as to whether a debtor could take an ownership cost for a car that was paid in full.<sup>112</sup> In *Ross-Tousey v. Neary*, the Seventh Circuit addressed the issue and based its ruling on three main points.<sup>113</sup> First, the court held that because the word “applicable” was used with respect to Local Standard Expenses, while the word “actual” was used with respect to Other Necessary Expenses, Congress must not have intended the words “applicable” and “actual” to mean the same thing in the statute.<sup>114</sup> Second, the court decided that the word “applicable” in “applicable monthly expense amounts” referred to the predetermined amount in the Local Standards that applied to the debtor’s specific circumstances.<sup>115</sup> Finally, the court reasoned that ownership costs of a car included more than loan or lease payments, including “depreciation, insurance, licensing fees and taxes.”<sup>116</sup> Consequently, a debtor who owned an unencumbered car would be eligible to claim a vehicle ownership expense.<sup>117</sup> After the Seventh Circuit decided *Ross-Tousey*, the Fifth

108. See IRS MANUAL, *supra* note 100, pt. 5, ch. 15 § 1.7.4.B.

109. WARREN & WESTBROOK, *supra* note 101, at 106.

110. See, e.g., *In re Attorneys at Law and Debt Relief Agencies*, 353 B.R. 318, 321 (S.D. Ga. 2006) (interpreting the definition of “debt relief agencies”); *In re Lopez*, 350 B.R. 868 870-71 (Bankr. C.D. Cal. 2006) (interpreting compensation of the trustee under BAPCPA), *aff’d sub nom.* *Cohen v. Lopez*, 372 B.R. 40 (B.A.P. 9th Cir. 2007).

111. See, e.g., *eCast Settlement Corp. v. Washburn*, 579 F.3d 934, 939-40 (8th Cir. 2009); *Tate v. Bolen*, 571 F.3d 423, 426-28 (5th Cir. 2009); *Ross-Tousey v. Neary*, 549 F.3d 1148, 1156-57 (7th Cir. 2008).

112. Compare *eCast Settlement Corp.*, 579 F.3d at 935 (holding that a debtor can deduct an ownership cost for a vehicle, regardless of whether the debtor has an actual monthly vehicle ownership expense), and *Tate*, 571 F.3d 423, 426-28 (5th Cir. 2009) (same), and *Ross-Tousey*, 549 F.3d at 1156-57 (same), with *Ransom v. MBNA, Am. Bank, N.A.*, 577 F.3d 1026, 1030 (9th Cir. 2009) (holding that a debtor may not deduct an ownership cost for a vehicle without an actual ownership expense), *aff’d sub nom.* *Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. 716 (2011).

113. *Ross-Tousey*, 549 F.3d at 1160.

114. *Id.* at 1158.

115. *Id.*

116. *Id.* at 1160.

117. *Id.* at 1161.

Circuit in *Tate v. Bolen* and the Eighth Circuit in *eCast Settlement Corp. v. Washburn* followed suit, using the same reasoning.<sup>118</sup>

The Ninth Circuit took an approach different from the other circuit courts. The court determined that the word “applicable” in “applicable monthly expenses” meant “capable of or suitable for being applied.”<sup>119</sup> Consequently, a vehicle ownership expense was capable of being applied only when the debtor had an actual expense.<sup>120</sup> Therefore, the court concluded that if a vehicle ownership cost does not exist, then a deductible expense also does not exist.<sup>121</sup>

#### IV. INSTANT DECISION

##### A. *The Majority Opinion*

Writing for an eight-member majority, Justice Kagan began the Court’s opinion in *Ransom v. FIA Card Services, N.A.* by reciting the purposes of BAPCPA, namely, that the legislation was meant “to correct perceived abuses of the bankruptcy system” and “to help ensure that debtors who can pay creditors do pay them.”<sup>122</sup> The Court explained that BAPCPA created the means test to achieve these purposes.<sup>123</sup>

The Court determined that the dispositive issue in *Ransom* was whether a debtor who owned an unencumbered vehicle could deduct the vehicle ownership cost as an “applicable” monthly expense.<sup>124</sup> The Court found that the answer to this question turned on the definition of the term “applicable.”<sup>125</sup> In deciding what the term “applicable” meant with respect to BAPCPA, the Court looked to the text of the statutory language, the context of the statute, and the purposes of BAPCPA.<sup>126</sup>

First, the Court looked to the ordinary meaning of the word “applicable.”<sup>127</sup> The majority did so by consulting Webster’s Third New International Dictionary, concluding the definition of the term “applicable” was “appropri-

118. *eCast Settlement Corp. v. Washburn*, 579 F.3d 934, 935 (8th Cir. 2009); *Tate v. Bolen*, 571 F.3d 423, 426-28 (5th Cir. 2009).

119. *Ransom v. MBNA, Am. Bank, N.A.*, 577 F.3d 1026, 1031 (9th Cir. 2009) (citations omitted) (quoting MERRIAM-WEBSTER’S COLLEGIATE DICTIONARY 60 (11th ed. 2005)), *aff’d sub nom.* *Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. 716 (2011).

120. *Id.*

121. *Id.*

122. *Ransom*, 131 S. Ct. at 721 (emphasis removed) (internal quotation marks omitted).

123. *Id.* at 721-22.

124. *Id.* at 721, 724.

125. *Id.* at 724.

126. *Id.* at 724-25.

127. *Id.* at 724.

ate, relevant, suitable, or fit.”<sup>128</sup> Given this definition, the Court reasoned that a monthly expense amount was applicable only if that amount was relevant to that specific debtor’s financial situation.<sup>129</sup> Accordingly, the Court ruled that a debtor may claim a vehicle ownership expense but only if that expense is relevant to the debtor.<sup>130</sup> The Court maintained that a vehicle ownership expense is relevant to a debtor only if that debtor has actual costs – either in a loan or lease payment – in that category.<sup>131</sup>

Next, the Court looked to the statutory context of BAPCPA.<sup>132</sup> The Court held that the context supported its definition of “applicable.”<sup>133</sup> Specifically, the Court established that “[b]ecause Congress intended the means test to approximate the debtor’s reasonable expenditures on essential items, a debtor should be required to qualify for a deduction by actually incurring an expense in the relevant category.”<sup>134</sup> The Court concluded that an amount is not reasonably necessary if the debtor does not incur the expense.<sup>135</sup>

Finally, the Court held that the purposes of BAPCPA, namely the twin goals of establishing a more efficient administration of bankruptcy proceedings and “ensur[ing] that [debtors] repay creditors the maximum they can afford,”<sup>136</sup> supported its definition of “applicable.”<sup>137</sup> The Court asserted that a debtor receiving a deduction for an expense that the debtor does not incur undermines the purpose of BAPCPA.<sup>138</sup>

Consequently, the Court held that a debtor cannot claim a vehicle ownership expense unless the debtor has that expense.<sup>139</sup> To determine if a debtor incurred a vehicle ownership expense, the Court analyzed what type of costs were included in the term.<sup>140</sup> To do so, the Court looked to IRS definitions of two different types of expenses: vehicle ownership expense and vehicle operating expense.<sup>141</sup> The IRS defined vehicle ownership expense as a lease or loan payment on that vehicle.<sup>142</sup> Under the IRS definition, vehicle operating expense included costs such as insurance, fuel, maintenance, and toll road payments.<sup>143</sup> Because a debtor could account for costs of possessing a car by

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128. *Id.* (citing WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 105 (2002)).

129. *Id.*

130. *Id.*

131. *Id.* at 724-25.

132. *Id.* at 724.

133. *Id.*

134. *Id.* at 725.

135. *Id.*

136. *Id.*

137. *Id.*

138. *Id.*

139. *Id.*

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

taking a vehicle operating expense, the Court ruled a vehicle ownership expense included only loan or lease payments on the vehicle.<sup>144</sup> The Court explained that “[t]he Collection Financial Standards – the IRS’s explanatory guidelines to the National and Local Standards – explicitly recognize this distinction between ownership and operating costs, making clear that individuals who have a car but make no loan or lease payments may claim only the operating allowance.”<sup>145</sup>

The Court then addressed three arguments that Ransom raised.<sup>146</sup> First, Ransom argued that the Court’s definition of “applicable” was incorrect.<sup>147</sup> Ransom claimed that the statute uses the term “applicable” only to specify the categories of allowable expenses in the IRS Local Standards that apply to the debtor, whether or not the debtor incurs that expense.<sup>148</sup> The Court rejected this view, holding that this definition undermined the text, context, and purpose of BAPCPA.<sup>149</sup> Moreover, the Court ruled that this definition “render[ed] the term ‘applicable’ superfluous.”<sup>150</sup> The Court held that if it were to use the definition of “applicable” that Ransom provided, the word only would be necessary to “direct[] each debtor to the correct box (and associated dollar amount of deduction) within every table.”<sup>151</sup>

Next, Ransom asserted that the Court’s definition of vehicle ownership expense was too narrow.<sup>152</sup> Ransom argued that the bankruptcy code states that applicable monthly expenses cannot be debts, whereas the IRS defines ownership costs as debts (loan or lease payments).<sup>153</sup> Thus, Ransom maintained that vehicle ownership expense must be something other than loan or lease payments.<sup>154</sup> The Court disagreed, ruling that “any friction between the two [definitions] likely reflects only a lack of attention” and does not display congressional intent.<sup>155</sup>

Finally, Ransom made two policy arguments regarding the proper definition of the terms “applicable” and vehicle ownership expense.<sup>156</sup> First, Ransom argued that a debtor could time his car payments so there were only one to two payments remaining, while still claiming the deduction for his repayment plan.<sup>157</sup> The Court dismissed this argument, holding that this type

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144. *Id.* at 725-26.

145. *Id.* at 726.

146. *Id.* at 726-29.

147. *Id.* at 726.

148. *Id.*

149. *Id.*

150. *Id.* at 726-27.

151. *Id.* at 726.

152. *Id.* at 728.

153. *Id.*

154. *Id.*

155. *Id.* at 728-29.

156. *Id.* at 729.

157. *Id.*

of oddity was inevitable with a standardized test.<sup>158</sup> The Court further explained that this type of oddity was preferable to the previous case-by-case determinations that permitted too much abuse.<sup>159</sup> Second, Ransom argued that the Court's definition of "applicable" encouraged people to remain in debt because if debtors had a car payment then they could take a vehicle ownership deduction.<sup>160</sup> The Court replied that the goal of the applicable deductions was not to influence "any broad federal policy as to saving or borrowing, the deductions serve merely to ensure that debtors in bankruptcy can afford essential items."<sup>161</sup> While the Court answered all of those questions, it did not address whether a debtor who had an ownership cost that was lower than the applicable amount would be entitled to the whole amount or his or her lesser actual payment.

Therefore, the Court held that because Ransom owned an unencumbered vehicle, he did not incur an applicable vehicle ownership cost per the IRS Local Standards.<sup>162</sup> Consequently, the vehicle ownership expense was not applicable to Ransom, and he could not take the deduction.<sup>163</sup>

### *B. Justice Antonin Scalia's Dissenting Opinion*

Justice Scalia dissented from the majority opinion, stating that, while the Court viewed the IRS interpretations of the National and Local Standards as a "directive," the IRS interpretations did not bind the Court.<sup>164</sup> Justice Scalia reasoned that the Standards should not be used in the same way with regard to Chapter 13 of the bankruptcy code solely because the IRS used the National and Local Standards for revenue collection purposes.<sup>165</sup>

Justice Scalia further opined that the Court had misinterpreted the meaning of the term "applicable."<sup>166</sup> Justice Scalia departed from the majority's analysis in his determination that under BAPCPA, "applicable" did not mean relevant.<sup>167</sup> Instead, he explained that the phrase "according to the applicable provisions of the attached table" could be expressed just as easily as "according to the attached table."<sup>168</sup> Thus, Justice Scalia argued that the term "applicable" did not have a special meaning within the context of the bankruptcy code just because Congress used the word "applicable" when it did not need

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158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.* at 730.

162. *Id.*

163. *Id.*

164. *Id.* (Scalia, J., dissenting).

165. *Id.* at 730-31.

166. *Id.* at 731.

167. *Id.*

168. *Id.* (internal quotation marks omitted).



to do so.<sup>169</sup> Justice Scalia determined that while each word in a statute must be given meaning, “[t]he canon against superfluity is not a canon against verbosity.”<sup>170</sup> Moreover, Justice Scalia reasoned that if Congress intended the word “applicable” to mean relevant for purposes of BAPCPA, then Congress “would have been most precise to say ‘monthly expense amounts specified under the National Standards and Local Standards, if applicable for IRS collection purposes.’”<sup>171</sup>

Justice Scalia asserted another definition for the term: in his estimation, “applicable” meant that the debtor claims the predetermined amounts in the Local Standards that were applicable to the debtor’s specific situation.<sup>172</sup> Specifically, if a debtor owns a car, he should claim an ownership deduction.<sup>173</sup> On the other hand, if a debtor does not own a car, he is not able to claim an ownership deduction.<sup>174</sup>

Finally, Justice Scalia maintained that his definition of “applicable” did not undermine the purposes of BAPCPA.<sup>175</sup> He acknowledged that, while his definition might create some oddities in specific situations, “in the Court’s own terms, [the] occasional over allowance . . . ‘is the inevitable result of a standardized formula like the means test. . . . Congress chose to tolerate the occasional peculiarity that a brighter-line test produces.’”<sup>176</sup>

## V. COMMENT

### A. Immediate Effects on Bankruptcy Proceedings

Since the passage of BAPCPA, courts have muddled through, trying to interpret the confusing new bankruptcy system provisions.<sup>177</sup> The *Ransom* decision fundamentally changed the landscape of BAPCPA litigation. Specifically, the *Ransom* decision will have three immediate effects. First, *Ransom* will affect the amount of money that debtors will repay their creditors. Second, the Court’s holding will affect findings of “abuse” in Chapter 7 bankruptcy filings. Finally, the *Ransom* decision will affect the Court’s future rulings regarding BAPCPA litigation. Each of these effects will be discussed in greater detail below.

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169. *See id.*

170. *Id.*

171. *Id.*

172. *See id.* at 732.

173. *See id.*

174. *See id.*

175. *See id.*

176. *Id.* (quoting *id.* at 729 (majority opinion)).

177. Jean Braucher, *A Guide to Interpretation of the 2005 Bankruptcy Law*, 16 AM. BANKR. INST. L. REV. 349, 411 (2008).

### 1. Debtors Will Pay More Money to Creditors

The most obvious result of *Ransom* is that debtors will be required to repay creditors more money; therefore, the decision fulfills one of BAPCPA's main objectives – ensuring that creditors are repaid as much of their debt as possible.<sup>178</sup> A debtor can no longer claim a vehicle ownership expense if the debtor's vehicle does not have any encumbrances.<sup>179</sup> Because the debtor cannot take a vehicle ownership expense, the debtor will have one fewer “applicable monthly expense” under the means test in section 707(b)(2). Ultimately, debtors who would have been able to discharge some of their unsecured debts will not be able to do so and, instead, will have more disposable income to distribute to and repay their creditors. For example, Jason Ransom now will have to pay his creditors approximately \$28,000 more than he would have had to under his initial repayment plan because he can no longer claim a vehicle ownership cost.<sup>180</sup>

The Court's opinion did not address the situation in which a debtor's actual ownership costs – in the form of either loan or lease payments – differed from listed amounts in the Local Standards. Actual car ownership costs can differ from the listed amounts in the Local Standards in two ways.

First, a debtor's actual car ownership costs could be higher than the amounts listed in the Local Standards. Most car payments are secured debts,<sup>181</sup> and the bankruptcy code allows debtors to claim the full amount of secured debt payments as expenses.<sup>182</sup> Thus, the *Ransom* decision will not affect the amount debtors can claim for secured car payments that are higher than the amounts listed in the Local Standards. However, in the unlikely event that a car payment is unsecured, future courts could find that *Ransom* dictates that the amounts listed in the Local Standards are an absolute cap. Additionally, the Court would not want to reward a debtor who has an expensive car payment by giving the debtor a larger deduction than the Local Standards allow.<sup>183</sup> Doing otherwise would be contrary to the purpose of BAPCPA.

Second, a debtor's actual car ownership costs could be lower than the amounts listed in the Local Standards. Future courts likely will not limit the logic that underlies the *Ransom* decision to debtors who have unencumbered cars. Specifically, a debtor who owns an encumbered car, but the monthly lease or loan payment is less than the current \$496 allowed by the IRS Local Standards, likely will be prohibited from taking the full \$496 deduction.

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178. *Ransom*, 131 S. Ct. at 725.

179. *Id.* at 730.

180. *Id.* at 723.

181. See *Bankruptcy*, VERONA L. GROUP P.A., [http://www.veronalawgroup.com/practice\\_areas\\_pages/bankruptcy.htm](http://www.veronalawgroup.com/practice_areas_pages/bankruptcy.htm) (last visited Oct. 6, 2011).

182. 11 U.S.C. § 707(b)(2)(A)(iii) (2006).

183. *Bankruptcy Experts*, *supra* note 7.

Courts may require this debtor to take a deduction of actual expenses.<sup>184</sup> This logic follows IRS directions with respect to its Local Standards. Specifically, the IRS instructs the taxpayer to claim the lesser of actual expenses or the IRS Local Standards.<sup>185</sup> Thus, requiring debtors of encumbered cars to take only the actual expense will increase further the amount that creditors are repaid.<sup>186</sup>

These results affect much more than car ownership costs. Since the enactment of BAPCPA, debtors commonly include deductions at the maximum allowable amount, even if the debtor's actual expenses are lower than the allowable amount.<sup>187</sup> This situation frequently occurs with respect to allowable housing expenses. For example, in *In re Phillips*, a Massachusetts bankruptcy court held that a Chapter 13 debtor was permitted to claim the maximum allowable expense for housing costs, even though the debtor's expense was significantly less than the allowed housing expense under IRS Local Standards.<sup>188</sup> Likewise, a Florida bankruptcy court held in *In re Morgan* that a debtor who had no housing payments still was entitled to claim the maximum allowable housing expense pursuant to IRS Local Standards.<sup>189</sup> Consequently, if the *Ransom* reasoning is applied to other categories of deductions, debtors will have even more disposable income to distribute to creditors.

## 2. Effects on Chapter 7 Cases

Future courts likely will use the reasoning of the *Ransom* Court not just in Chapter 13 cases, but in Chapter 7 cases as well.<sup>190</sup> Even though the means test has a different purpose in Chapter 7 than in Chapter 13, the means test is calculated the same way under both Chapters.<sup>191</sup> If courts choose to apply the *Ransom* reasoning to Chapter 7 filings, the effects will be drastic.

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184. *Id.*

185. *Collection Financial Standards*, *supra* note 107.

186. *See* Oral Argument, *Ransom v. FIA Card Servs., N.A.*, at 43:21, 131 S. Ct. 716 (SC 09-907) [hereinafter Oral Argument], available at [http://www.supremecourt.gov/oral\\_arguments/argument\\_audio.aspx](http://www.supremecourt.gov/oral_arguments/argument_audio.aspx) (Maynard: "In the 2007 study that U.S. Trustees did . . . at Congress's request . . . the average overpayment of a debtor in claiming this transportation ownership expense was \$335, which is a lot when you're talking about the standard in the chart being \$471.").

187. *See, e.g., In re Phillips*, 382 B.R. 153, 174 (Bankr. D. Mass. 2008); *In re Morgan*, 374 B.R. 353, 356 (Bankr. S.D. Fla. 2007).

188. *In re Phillips*, 382 B.R. at 165, 172.

189. *In re Morgan*, 374 B.R. at 356.

190. *Bankruptcy Experts*, *supra* note 7.

191. *See* 11 U.S.C. § 707 (2006 & Supp. IV 2010).

In 1997, Marianne Culhane<sup>192</sup> and Michaela White, then professors at Creighton Law School, studied these potential drastic effects through a grant from the American Bankruptcy Institute Endowment.<sup>193</sup> While Culhane and White carried out this study eight years before the passage of BAPCPA in 2005, Congress had been debating essentially the same piece of legislation for the prior ten years.<sup>194</sup> Culhane and White studied a “database of over 1,000 individual [C]hapter 7 cases from seven judicial districts in seven federal circuits across the nation.”<sup>195</sup> In the first study, Culhane and White calculated the means test for these 1000 debtors by allowing the debtors the full vehicle ownership expense deduction.<sup>196</sup> Under this calculation, only 3.6% of debtors failed the means test.<sup>197</sup> Culhane and White next calculated the means test for the 1000 debtors but did not include a deduction for the vehicle ownership expense.<sup>198</sup> Under this calculation, the number of debtors who failed the means test almost doubled to 6.8%.<sup>199</sup> By failing the means test in Chapter 7, these debtors violated the “substantial abuse” test and were not permitted to file Chapter 7 bankruptcy petitions.<sup>200</sup>

After reviewing the *Ransom* decision, Culhane concluded that the ruling will create an increase in the number of debtors “whose petitions raise a presumption of abuse.”<sup>201</sup> Consequently, the number of people who will be able to participate in Chapter 7 bankruptcy proceedings likely will decrease as a result of the *Ransom* decision, especially if the Court’s reasoning in *Ransom* is applied to other IRS expense amounts.

### 3. New Standard Created for Future BAPCPA Litigation

The *Ransom* decision created a new standard for courts to interpret BAPCPA’s provisions. Many commentators have noted that BAPCPA is an

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192. Marianne Culhane is now Dean of the University of Creighton School of Law. Marianne B. Culhane, CREIGHTON U. SCH. L., <http://www.creighton.edu/law/faculty/culhane/index.php> (last visited Oct. 6, 2011).

193. Marianne B. Culhane & Michaela M. White, *Taking the New Consumer Bankruptcy Model for a Test Drive: Means-Testing Real Chapter 7 Debtors*, 7 AM. BANKR. INST. L. REV. 27, 30 (1999). While this study was carried out over ten years before the *Ransom* case, the legislation that Culhane and White were using was essentially the same as what was eventually passed in 2005. *See id.* at 32.

194. *See id.* at 30; Zywicki, *supra* note 82, at 2027.

195. Culhane & White, *supra* note 193, at 30.

196. *See id.* at 31, 43-46.

197. *Id.* at 31.

198. *Id.* at 46.

199. *Id.*

200. *See id.* at 28-29.

201. Email from Marianne Culhane, Dean, Creighton University School of Law, to Anne B. Hucker (Mar. 3, 2011, 7:07 PM) (on file with author).

endless source of litigation because of its ambiguous terms.<sup>202</sup> In fact, lower courts have been split in their rulings over countless BAPCPA provisions. For instance, lower courts disagree over the exempt status of inherited IRAs.<sup>203</sup> In *In re Chilton*, a Texas bankruptcy court held that a debtor could not exempt an IRA which was inherited from her mother.<sup>204</sup> However, in *Doeling v. Nessa*, the Eighth Circuit bankruptcy appellate panel departed from the Texas bankruptcy court, holding that a debtor could exempt an IRA which was inherited from her father.<sup>205</sup> To deal with these types of difficulties of BAPCPA, future courts may well utilize Justice Kagan's three factors to determine the meaning of the provision: (1) the text of the provision, (2) the context of the provision, and (3) the purposes of BAPCPA.<sup>206</sup>

### B. The Court's Misguided Approach

The sense that the Court got it wrong lurks beneath the apparent simplicity of the *Ransom* decision. The *Ransom* Court reached its conclusion by relying on the IRS interpretation of how to use the National and Local Standards.<sup>207</sup> The *Ransom* Court held that the bankruptcy code should use the Local Standards in the same manner that the IRS uses the Local Standards.<sup>208</sup> This logic is flawed for two reasons.

First, the IRS states that its National and Local Standards are for tax purposes only.<sup>209</sup> In particular, the IRS maintains that these Standards "are intended for use in calculating repayment of delinquent taxes. These Standards are . . . for purposes of federal tax administration only."<sup>210</sup> By inference, the IRS asserts that the bankruptcy code should not rely on the IRS Standards and IRS interpretation of those Standards.

Second, the legislative history of BAPCPA suggests that Congress did not intend for the means test to rely on IRS interpretation of the National and Local Standards. An earlier draft of BAPCPA stated that

expense allowances under the applicable National Standards, Local Standards and Other Necessary Expenses allowance . . . for the

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202. Braucher, *supra* note 93, at 457-58.

203. Compare *In re Chilton*, 426 B.R. 612, 622 (Bankr. E.D. Tex. 2010) (holding that inherited IRA funds are a non-exempt asset of the debtor's bankruptcy estate), *rev'd sub nom.* *Chilton v. Moser*, 444 B.R. 548 (E.D. Tex. 2011), with *Doeling v. Nessa*, 426 B.R. 312, 315 (B.A.P. 8th Cir. 2010) (holding that inherited IRA funds are an exempt asset of the debtor's bankruptcy estate).

204. *Chilton*, 426 B.R. at 622.

205. *Doeling*, 426 B.R. at 315.

206. *Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. 716, 730 (2011).

207. *Id.* at 726.

208. *Id.*

209. *Collection Financial Standards*, *supra* note 107.

210. *Id.*

debtor . . . in the area in which the debtor resides as determined under the Internal Revenue Service financial analysis for expenses in effect as of the date of the order for relief

should be used in determining a debtor's allowable expenses.<sup>211</sup> Ultimately, Congress removed the "as determined under the Internal Revenue Service financial analysis" language and inserted "applicable monthly expense amounts."<sup>212</sup> If Congress had intended for the bankruptcy code to adhere to IRS interpretations of the National and Local Standards, Congress would not have removed language from the statute instructing the bankruptcy code to follow IRS methodology.

### C. *The Elephant in the Room*

Most commentators have criticized BAPCPA. One observer remarked that BAPCPA "is rife with bad draftsmanship, dumbfounding contradictions, and curious, even comical, special interest exceptions."<sup>213</sup> It is hard to admire the quality of BAPCPA's draftsmanship.<sup>214</sup> Judges and scholars have not hesitated to criticize Congress for the details of BAPCPA.<sup>215</sup> And yet Justice Scalia was the only member of the Supreme Court to admit the existence of these problems.<sup>216</sup>

In the Court's most recent bankruptcy decisions, Justice Scalia was the lone dissenter.<sup>217</sup> Some observers believe that Chief Justice John Roberts assigned the *Ransom* case to Justice Elena Kagan as her first opinion to compel Justice Scalia to join the Court's decision.<sup>218</sup> But Justice Scalia refused to join the Court's opinion and, in doing so, brought attention to BAPCPA's glaring flaws.

While Justice Kagan found meaning in the text, context, and purpose of BAPCPA, the Court's opinion is badly flawed, though these flaws likely would be present in any opinion about BAPCPA. As one commentator wrote, *Ransom* is "fiction, because the text is convoluted, the context is manufactured, and the purpose is presupposed."<sup>219</sup> In fact, Justice Kagan goes through judicial gymnastics to find meaning in the text, context, and purpose

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211. H.R. 3150, 105th Cong. § 101 (2d Sess. 1998).

212. 11 U.S.C. § 707(b)(2)(A)(ii)(I) (2006).

213. David Gray Carlson, *Means Testing: The Failed Bankruptcy Revolution of 2005*, 15 AM. BANKR. INST. L. REV. 223, 227 (2007).

214. *Id.*

215. *Id.*

216. *See Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. 716, 730-31 (Scalia, J., dissenting).

217. *See Hamilton v. Lanning*, 130 S. Ct. 2464, 2478 (2010) (Scalia, J., dissenting).

218. Jakubowski, *supra* note 9.

219. *Id.*

of BAPCPA. Notably, appellant Jason Ransom argued that while the Court requires a debtor to incur a debt in the form of a loan or lease payment to claim a car ownership expense, BAPCPA prohibits debts from being claimed as expenses.<sup>220</sup> The majority in *Ransom* disagreed, ruling that “any friction between the two likely reflects only a lack of attention to how an across-the-board exclusion of debt payment would correspond to a particular IRS allowance.”<sup>221</sup> This lackluster response caused one incredulous commentator to wonder, “[W]e’re supposed to believe that ‘meaning, context, and purpose’ can be found in Congressional ‘lack of attention’?”<sup>222</sup>

The lengths that Justice Kagan went to to find meaning in BAPCPA are particularly galling, given that one of the purposes of creating BAPCPA was to eliminate judicial discretion.<sup>223</sup> Justice Kagan seems to be trying to fix the draftsmanship mistakes of a “hastily-designed and poorly-crafted statute.”<sup>224</sup> Perhaps the Court chose to take this route because Congress does not have “any stomach at all” to make changes to BAPCPA.<sup>225</sup>

But fixing legislation is not the Court’s role, and Justice Scalia deftly pointed out that the statute remains on the books, regardless of how poorly written it is.<sup>226</sup> Justice Scalia was correct to note that, under his interpretation of BAPCPA, while the Court is concerned about the “imagined horrible in which ‘a debtor entering bankruptcy might purchase for a song a junkyard car,’” the Court’s own interpretation leads to “the imagined horrible that . . . a debtor entering bankruptcy might purchase a junkyard car for a song plus a \$10 promissory note payable over several years. He would get the full ownership expense deduction.”<sup>227</sup>

Though Justice Breyer joined the Court’s majority opinion, he echoed Justice Scalia’s concerns in oral argument. He stated:

[D]o a simple thing. It says ownership expense. You go to the registry of motor vehicles and you say, “[I]s Smith the owner?” And they’ll tell you, yes or no. And if the answer is yes, he deducts \$471. Sometimes that’s too little; sometimes that’s too much. But once we depart from that, we’re really in a nightmare of trying to figure out what all these things mean that were written for other purposes.<sup>228</sup>

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220. *Ransom*, 131 S. Ct. at 728.

221. *Id.* at 728-29.

222. Jakubowski, *supra* note 9.

223. *See* Rabinovitz, *supra* note 46, at 1531.

224. Jakubowski, *supra* note 9.

225. *Bankruptcy Experts*, *supra* note 7.

226. *Ransom*, 131 S. Ct. at 732-33 (Scalia, J., dissenting).

227. *Id.* at 732 (quoting *id.* at 729 (majority opinion)).

228. Oral Argument, *supra* note 186, at 38:48.

The Court should not pretend to find meaning in something that is poorly written. Consequently, the Court should read the plain language of the bill and apply the law to the debtor's specific situation accordingly.

#### *D. Scalia as Consumer Advocate?*

While some commentators believe that Justice Scalia was advocating for debtors in his dissent, he has had a weak record with regard to consumer rights.<sup>229</sup> He is, however, well-known for his "textualism" jurisprudence.<sup>230</sup> Thus, his dissent likely is not a result of his sympathy for consumers, but rather just exhibits his frustration with a poorly written statute. Despite Scalia's probable motivations, the logical result of his dissent favors consumers. Specifically, his dissent's logical result would recognize the reality of why most debtors file for bankruptcy and would account for the ongoing needs of debtors as they go through the bankruptcy process.

Most debtors who file for bankruptcy have suffered "a serious economic shock such as a job loss or medical problem."<sup>231</sup> Additionally, most debtors who file for bankruptcy are not trying to abuse the bankruptcy system.<sup>232</sup> Therefore, a debtor would benefit from the cushion of receiving a full car ownership expense deduction, even if that debtor had no loan or lease payment or if that debtor had a loan or lease payment that was less than the deduction amount. Providing a cushion is important for two reasons. First, modifying a Chapter 13 plan is expensive and time-consuming. Thus, the debtor is unlikely to amend her Chapter 13 plan. However, if a debtor owns her car outright, she likely owns an older car.<sup>233</sup> Therefore, she might need to buy a car in the next five years.<sup>234</sup> By withholding a cushion for the debtor, *Ransom* places impractical and expensive burdens on the debtor. Second, only 30% of Chapter 13 plans are successful.<sup>235</sup> Thus, while debtors are permitted to modify their repayment plans due to a change in circumstances, life is uncertain and complicated, and providing a cushion up front is a more realistic and efficient approach than modifying a repayment plan after the inevitable problems in ordinary life occur.<sup>236</sup>

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229. See generally Philip Morris USA Inc. v. Scott, 131 S. Ct. 1 (2010); Mark Sherman, *Conservatives Limit Consumer, Rights Lawsuits*, USATODAY.COM (June 25, 2011, 11:43 PM), [http://www.usatoday.com/money/topstories/2011-06-25-3645309660\\_x.htm](http://www.usatoday.com/money/topstories/2011-06-25-3645309660_x.htm).

230. Zachary Price, *The Rule of Lenity as a Rule of Structure*, 72 FORDHAM L. REV. 885, 892 (2004).

231. WARREN & WESTBROOK, *supra* note 101, at 106.

232. See *id.*

233. See Culhane & White, *supra* note 193, at 45-46.

234. See *id.*

235. WARREN & WESTBROOK, *supra* note 101, at 345.

236. 11 U.S.C. §§ 1323, 1329 (2006).



Moreover, loan and lease payments are not the only expense in owning a car (that are not also covered by the vehicle operating expense provided by IRS Local Standards). Cars “depreciate in value, have a useful life, and need to be replaced.”<sup>237</sup> A vehicle ownership expense deduction would be helpful to a debtor so that a debtor could save money to purchase a new car if needed. Notably, the facts of the *Ransom* case are unique. Most debtors entering Chapter 13 bankruptcy do not own a car that is fully paid-for, of high quality, and relatively new.<sup>238</sup> Instead, most debtors entering Chapter 13 own a car that is old and in poor condition.<sup>239</sup> Consequently, many debtors may have to purchase a new vehicle during the course of their Chapter 13 plan. Permitting a debtor to claim a vehicle ownership expense, even if the debtor has an unencumbered car, would allow the debtor to purchase a new vehicle if necessary.

## V. CONCLUSION

The United States Supreme Court’s decision in *Ransom v. FIA Card Services, N.A.* marked a paradigm shift in BAPCPA litigation. The Court provided a roadmap for future courts on how to interpret BAPCPA provisions.<sup>240</sup> Future courts will look to the text, context, and purpose of BAPCPA to interpret its statutory language.<sup>241</sup> More specifically, the *Ransom* decision will have immediate effects on the administration of the bankruptcy system. First, debtors who own unencumbered cars will be unable to claim a vehicle ownership expense; consequently, debtors will pay creditors more money.<sup>242</sup> Second, many debtors who file for Chapter 7 bankruptcy will be forced to convert their petitions to Chapter 13 bankruptcy.<sup>243</sup> Thus, creditors again will be repaid more money.

Despite the tidiness of the Court’s holding, Justice Scalia’s dissent highlighted the real problems with BAPCPA. In particular, Justice Scalia addressed the poor construction and draftsmanship of the statute.<sup>244</sup> He noted that either under the Court’s interpretation of the statute or under his interpretation of the statute, odd results occur.<sup>245</sup> Thus, these results should not determine how the Court interprets the provisions of BAPCPA.

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237. Jeffrey Solomon, *Supreme Court Decision Harms Debtors*, BANKR. BLOG (Jan. 16, 2011, 7:19 PM), <http://www.bankruptcylawfortlauderdaleblog.com/supreme-court-decision-harms-debtors-ransom-v-fia-card-services>.

238. See Culhane & White, *supra* note 193, at 45-46.

239. See *id.*

240. See *Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. 716, 725-27 (2011).

241. See *supra* Part V.A.3.

242. See *supra* Part V.A.1.

243. See *supra* Part V.A.2.

244. *Ransom*, 131 S. Ct. at 730-31 (Scalia, J., dissenting).

245. *Id.* at 732-33.

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The Court should not create meaning in a statute that is poorly written and avoid, in yet another decision, the fundamental problems with BAPCPA. Instead, the Court should adopt Justice Scalia's approach, interpret the statute as it is, and let Congress fix the problems that it created.

