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An Empirical Examination of Access to Chapter 7 Relief by Pro Se Debtors

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ARTICLES

AN EMPIRICAL EXAMINATION OF ACCESS TO CHAPTER 7 RELIEF BY *PRO SE* DEBTORS

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The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") represents the most significant overhaul of federal bankruptcy law since the Bankruptcy Code's enactment in 1978. The legislation expanded the grounds on which a debtor's chapter 7 case may be dismissed. Moreover, it increased the administrative requirements imposed upon debtors who file for bankruptcy (e.g., increased financial disclosures), which in turn has had the effect of increasing the direct costs of filing for bankruptcy (e.g., filing fees and attorneys' fees). With this increased cost and complexity in accessing chapter 7 relief, the question arises whether BAPCPA has had a disproportionate impact on pro se *debtors. This Article seeks to provide preliminary insight into answering the question by examining dismissal rates in chapter 7 cases filed by consumer debtors in the U.S. Bankruptcy Court for the Western District of Washington from 2003 through 2007. It is hypothesized that (1) dismissal rates for* pro se *debtors will be statistically significantly higher than for represented debtors and (2) dismissal rates for post-BAPCPA* pro se *debtors will be statistically significantly higher than for pre-BAPCPA* pro se *debtors. Analyses of the data support both hypotheses. This Article concludes that, if* pro se *debtors who would otherwise be eligible for chapter 7 relief cannot*

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access that relief due to lack of representation, serious access-to-justice concerns arise that must be addressed by the courts and Congress.

INTRODUCTION

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") represents the most significant overhaul of federal bankruptcy law since the Bankruptcy Code's enactment in 1978. A dramatic growth in bankruptcy filings presaged the statutory amendments to the Code: After surpassing the one million mark in 1996 for the first time in our nation's history, bankruptcy filings continued to climb through 2005, in excess of one million filings per year and with more than 90% of those filings constituting consumer bankruptcy cases.[1] Congress interpreted these historically-high bankruptcy filing rates as evidence that the bankruptcy system was broken, victimized by abusive debtors who had the ability to repay their creditors, and Congress sought to restore the system's health by enacting BAPCPA.[2] The legislation expanded the grounds on which a debtor's chapter 7 case may be dismissed.[3] Moreover, it increased the administrative requirements imposed upon debtors who file for bankruptcy (e.g., increased financial disclosures), which in turn has had the effect of increasing the direct costs of filing for bankruptcy (e.g., filing fees and attorneys' fees).[4]

With this increased complexity in accessing chapter 7 relief, the question arises whether BAPCPA has had a disproportionate impact on *pro se* debtors. This Article seeks to provide preliminary insight into answering the question by examining dismissal rates in chapter 7 cases filed by consumer debtors in the U.S. Bankruptcy Court for the Western District of Washington during the five-year period beginning on January 1, 2003 and ending on December 31, 2007. It is hypothesized that (1) dismissal rates for *pro se* debtors will be statistically significantly higher than for represented debtors and (2) dismissal rates for post-BAPCPA *pro se* debtors will be statistically significantly higher than for pre-BAPCPA *pro se* debtors. Analyses of the data support both hypotheses.

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[1] *See* U.S. Courts, Bankruptcy Statistics, http://www.uscourts.gov/bnkrpctystats/bankruptcystats.htm (last visited July 20, 2009) (providing statistics for bankruptcy filings by calendar year and fiscal year, among others).

[2] *See* Rafael I. Pardo, *Eliminating the Judicial Function in Consumer Bankruptcy*, 81 AM. BANKR. L.J. 471, 473–78 (2007).

[3] *See id.* at 478–79.

[4] *See infra* notes 38–64.

This Article proceeds in the following manner. Part I establishes the background for this empirical study. Part I.A establishes a framework for assessing the need of chapter 7 consumer debtors for legal representation. Part I.B situates the study within the recent shift in the legal landscape of bankruptcy law—specifically, the manner in which amendments to the Bankruptcy Code in 2005 substantively and procedurally curtailed access to chapter 7 relief. Part I.B observes that these changes are likely to have a disproportionate impact on *pro se* debtors. Part II sets forth the design of this empirical study and presents findings from bivariate analyses of the data. This Article concludes that, if *pro se* debtors who would otherwise be eligible for chapter 7 relief cannot access that relief due to lack of representation, serious access-to-justice concerns arise that must be addressed by the courts and Congress.

I. BACKGROUND

A. Assessing Chapter 7 Debtors' Needs for Legal Representation

In order to place a chapter 7 debtor's need for legal representation into its proper context, one must understand that, although bankruptcy is formally a judicial process, the process historically has been and continues to be substantively administrative in nature.[5] For a debtor to access voluntarily the federal bankruptcy forum, he or she must file a case under the operative chapter of the Bankruptcy Code pursuant to which the debtor wishes the case to proceed (e.g., chapter 7).[6] The case itself is an administrative proceeding,[7] within which disputes may, but need not, arise.[8]

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[5] *See* Richard B. Levin, *Towards a Model of Bankruptcy Administration*, 44 S.C. L. REV. 963, 965–68 (1993).

[6] *See* 11 U.S.C. § 301(a) (2006). Federal district courts have original and exclusive jurisdiction of cases commenced under the Bankruptcy Code. 28 U.S.C. § 1334(a) (2006). District courts have the authority to refer cases commenced under the Bankruptcy Code to bankruptcy judges. *Id.* § 157(a). Nationwide, district courts have implemented "standing orders of reference" that refer all bankruptcy cases in the first instance (rather than on a case-by-case basis) to the bankruptcy courts. 9 AM. JUR. 2D *Bankruptcy* § 731 (2008).

[7] Menk v. Lapaglia (*In re* Menk), 241 B.R. 896, 910 (B.A.P. 9th Cir. 1999) ("[A bankruptcy case] has two main functions. It provides for the existence, and the nonjudicial administration, of the estate under which the prime function is the performance of the duties of the trustee under the supervision of the U.S. Trustee. Second, it serves as the administrative mechanism by which the debtor receives a discharge and a fresh start."); *see also* S. REP. NO. 95-989, at 31 (1978) ("The term adjudication is replaced by [order for relief] in light of the clear power of Congress to permit voluntary bankruptcy without the necessity for an adjudication, as under the 1898 act, which was adopted when voluntary bankruptcy was a concept not thoroughly tested."), *reprinted*

While bankruptcy law offers debtors relief in many forms,[9] the ultimate relief sought by debtors is the discharge, which generally releases the individual from personal liability on pre-bankruptcy debts.[10] The Bankruptcy Code requires a court to grant an individual chapter 7 debtor a discharge unless the debtor falls within a particular class of individual, usually defined by reference to a limited set of circumstances that relate to debtor fraud or misconduct in connection with the bankruptcy case.[11] An objection to a chapter 7 debtor's discharge must generally be filed no later than sixty days

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in 1978 U.S.C.C.A.N. 5787, 5817; H.R. REP. NO. 95-595, at 321 (1977) (same), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6277.

[8] The Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") divide disputes into one of two categories: (1) an adversary proceeding or (2) a contested matter. Adversary proceedings resemble other federal lawsuits insofar as Part VII of the Bankruptcy Rules governing such proceedings virtually incorporates (with occasional modification) the Federal Rules of Civil Procedure. *See, e.g.*, FED. R. BANKR. P. 7003 (FED. R. CIV. P. 3); *id.* 7004(a) (portions of FED. R. CIV. P. 4); *id.* 7012(b) (FED R. CIV. P. 12(b)-(h)); *id.* 7056 (FED. R. CIV. P. 56). The Bankruptcy Rules classify only a limited number of disputes as adversary proceedings. *See* FED. R. BANKR. P. 7001. If a dispute cannot be classified as an adversary proceeding, it is deemed to be a "contested matter" and proceeds according to less complex procedures than an adversary proceeding—including request for relief by motion, *see id.* 9014(a), rather than the filing of a complaint, *see id.* 7003. *See* Khachikyan v. Hahn (*In re* Khachikyan), 335 B.R. 121, 125 (B.A.P. 9th Cir. 2005) ("In a contested matter, there is no summons and complaint, pleading rules are relaxed, counterclaims and third-party practice do not apply, and much pre-trial procedure is either foreshortened or dispensed with in the interest of time and simplicity.").

[9] One example is the automatic stay, which immediately goes into effect upon the filing of a bankruptcy petition. *See* 11 U.S.C. § 362(a). The automatic stay effectuates relief by enjoining, among other things, creditor attempts to collect pre-bankruptcy debts from the debtor. *See id.* § 362(a)(6). By providing breathing room to the debtor, the automatic stay represents the first step in relieving the debtor from the financial pressures that prompted the seeking of bankruptcy relief. *See* H.R. Rep. No. 95-595, at 340, *reprinted in* 1978 U.S.C.C.A.N. 5963, 6296–97; *cf.* Alan D. Eisler, *The BAPCPA's Chilling Effect on Debtor's Counsel*, 55 AM. U. L. REV. 1333, 1338–39 (2006) ("While a discharge is the ultimate goal of a bankruptcy filing, many filers rely on the automatic stay to stave off foreclosure or repossession of assets and the entry of a judgment or imposition of a lien."); Scott F. Norberg & Andrew J. Velkey, *Debtor Discharge and Creditor Repayment in Chapter 13*, 39 CREIGHTON L. REV. 473, 504 (2006) ("Some Chapter 13 debtors are able to regain their financial footing simply as a result of the breathing spell afforded by the automatic stay. This breathing spell—perhaps no longer than a few months or a year between filing and dismissal of a case—is enough to allow the debtor to cure defaults or pay off debts without further court supervision or debt relief.").

[10] *See* 11 U.S.C. § 524(a)(2) (providing that a discharge in a case under the Bankruptcy Code "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any [discharged] debt as a personal liability of the debtor"). The scope of a bankruptcy discharge generally extends solely to pre-bankruptcy debts. *See id.* § 727(b) (providing that a chapter 7 discharge "discharges the debtor from all debts that arose before the date of the order for relief [i.e., the date of the filing of the bankruptcy petition] under this chapter"). Certain debts, however, have been specifically excepted from the scope of the chapter 7 discharge. *See id.* § 523(a).

[11] *Id.* § 727(a). Only the trustee, U.S. Trustee, or a creditor has standing to bring a discharge objection against a chapter 7 debtor. *Id.* § 727(c)(1).

after the first date set for the meeting of creditors,[12] which must be set no earlier than twenty days and no later than forty days after the date that the chapter 7 debtor filed for bankruptcy.[13] Accordingly, approximately three months after filing for bankruptcy, a chapter 7 debtor will likely know whether a discharge will be forthcoming.[14] Most courts will enter a discharge order without requiring the debtor to appear in court on the rationale that doing so would impose unnecessary costs on the debtor.[15] At its essence, then, a chapter 7 consumer case involves properly filling out forms so as to ensure that the debtor's case is processed seamlessly and ultimately results in discharge.[16]

While the possibility of dismissal for a deficient filing has always existed, extensive amendments to the Bankruptcy Code in 2005, which constituted 195 pages in one volume of the official federal session laws,[17] have expanded the grounds for dismissal of a debtor's chapter 7 case.[18] These amendments have had the effect of making access to chapter 7 relief increasingly more complex,[19] thus perhaps placing a greater premium on obtaining representation.[20] This Article now turns to an account of the nature of

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[12] FED. R. BANKR. P. 4004(a). A court, however, may extend for cause the time for filing an objection to discharge. *Id.* 4004(b).

[13] *Id.* 2003(a).

[14] Failure of a party in interest to file a complaint objecting to discharge within the time allotted by the Bankruptcy Rules precludes denial of a chapter 7 discharge, unless procedural considerations—such as an extension of the time for filing a complaint objecting to discharge or a pending motion to dismiss the debtor's case—warrant otherwise. *See id.* 4004(c)(1). A chapter 7 debtor's discharge may be revoked, however, if obtained fraudulently and if the requesting party lacked knowledge of the fraud when the discharge was originally granted. 11 U.S.C. § 727(d)(1).

[15] ELIZABETH WARREN & JAY LAWRENCE WESTBROOK, THE LAW OF DEBTORS AND CREDITORS 229 (6th ed. 2009).

[16] *See* 1 HENRY J. SOMMER ET AL., CONSUMER BANKRUPTCY LAW AND PRACTICE 81 (John Rao ed., 8th ed. 2006) ("Once it has been decided that bankruptcy is appropriate in a particular case, most of the remaining work is relatively routine. A good deal of it involves preparation of the necessary papers for the initial filing. . . . Preparing a bankruptcy case is mostly a matter of gathering documents and filling in the blanks on a standard set of forms.").

[17] Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23, 23-217.

[18] *See infra* notes 45–49 and accompanying text.

[19] To get a sense of this increased complexity, see, for example, Ad Hoc Comm. on Bankr. Court Structure and Insolvency Processes, ABA Section of Bus. Law, *Working Paper: Best Practices for Debtors' Attorneys*, 64 BUS. LAW. 79, 84, 85 (2008) (setting forth in a seventy-page report "recommendations regarding matters into which attorneys should inquire to ensure legally sufficient disclosure of information in the filing of a non-emergency bankruptcy case," with "emphasis on consumer cases").

[20] *See* A. Mechele Dickerson, *Race Matters in Bankruptcy Reform*, 71 MO. L. REV. 919, 951 (2006) ("Because of BAPCPA's requirement that all debtors participate in credit counseling and because of the significantly higher filing fees, it is even more important now that debtors have access to funds to pay for the costs of filing for bankruptcy. Likewise, the Byzantine maze of eligibility hurdles, and pre-filing and post-

eligibility for bankruptcy relief in order to place these statutory reform efforts into context and thus to facilitate an understanding of their import for a chapter 7 debtor's need for legal representation.

B. Access to Chapter 7 Relief

When discussing the substantive relief that bankruptcy law provides to debtors, it is difficult to do so without considering the words penned nearly seventy-five years ago in *Local Loan Co. v. Hunt* by Justice George Sutherland:

> Th[e] purpose of the [Bankruptcy Act] has been again and again emphasized by the courts as being of public as well as private interest, in that it gives to the honest but unfortunate debtor who surrenders for distribution the property which he owns at the time of bankruptcy, a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt.[21]

Perhaps the passage has commanded so much attention because it nicely captures the two animating issues that underlie the substantive relief for individual debtors in bankruptcy: (1) eligibility for relief and (2) scope of relief. Eligibility issues turn on whether an individual may seek respite from financial failure under the protective cover of bankruptcy law, whereas scope issues address the extent of relief that will be conferred upon individuals who have satisfied the eligibility threshold.[22] Justice Sutherland's description of the operative effect of bankruptcy law suggests that eligibility for relief should be extended to the "honest but unfortunate debtor" and that the scope of relief

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filing reporting requirements make it all the more important that debtors have access to counsel, or to someone who can explain these new requirements." (footnote omitted)); Henry J. Sommer, *Trying to Make Sense Out of Nonsense: Representing Consumers Under the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005,"* 79 AM. BANKR. L.J. 191, 191 (2005) (observing that, by virtue of the 2005 amendments to the Bankruptcy Code, "[t]here is no doubt that bankruptcy relief will be more expensive for almost all debtors, less effective for many debtors, and totally inaccessible for some debtors as a result of the new law"); *see also* Richard I. Aaron, *Access to Justice: Consumer Bankruptcy*, 2006 UTAH L. REV. 925, 936 (stating that BAPCPA "increases costs and frustrates participants by seemingly pointless burdens, quixotic choices, and confusion").

[21] Local Loan Co. v. Hunt, 292 U.S. 234, 244 (1934). For a discussion of the origins of the phrase "honest but unfortunate debtor," see Margaret Howard, *A Theory of Discharge in Consumer Bankruptcy*, 48 OHIO ST. L.J. 1047, 1047 n.1 (1987). For a critique of the honest-but-unfortunate-debtor archetype, see Lawrence Ponoroff & F. Stephen Knippenberg, *Debtors Who Convert Their Assets on the Eve of Bankruptcy: Villains or Victims of the Fresh Start?*, 70 N.Y.U. L. REV. 235, 293–99 (1995).

[22] Pardo, *supra* note 2, at 473; Rafael I. Pardo & Michelle R. Lacey, *Undue Hardship in the Bankruptcy Courts: An Empirical Assessment of the Discharge of Educational Debt*, 74 U. CIN. L. REV. 405, 417 (2005).

should be the release of pre-bankruptcy debt in exchange for the debtor's pre-bankruptcy property.

Defining the scope of relief in bankruptcy necessarily entails judgments about the robustness of a debtor's fresh start—that is, the extent to which we, as a society, want to facilitate "a new opportunity in life and a clear field for future effort"[23] for eligible debtors who seek relief through the bankruptcy system.[24] The very existence of our bankruptcy law and the fact that it provides for discharge confirm the societal consensus that forgiveness of debt is normatively desirable.[25] Societal consensus, however, does not go so far as to say that the fresh start should be given freely and that it should be boundless. Limits have been imposed generally in one of two forms: (1) the "price" of discharge and (2) the amount of debt discharged. In the former vein, debtors must relinquish either all of their pre-bankruptcy nonexempt assets or a portion of their future income.[26] In the latter vein, a discharge in bankruptcy does not extend to all pre-bankruptcy debts.[27]

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[23] *Local Loan Co.*, 292 U.S. at 244.

[24] *See* KAREN GROSS, FAILURE AND FORGIVENESS: REBALANCING THE BANKRUPTCY SYSTEM 1 (paperback ed. 1999) ("[The U.S. bankruptcy system] is the stage on which American society acts out its choices concerning how to treat those who have failed in a credit-based economy. It is the arena in which we, as a society, are forced to consider the prices—expressed in both economic and noneconomic terms—that we want to exact and are willing to pay for the individual and business failures that express themselves in monetary terms."); Bruce H. Mann, *Failure in the Land of the Free*, 77 AM. BANKR. L.J. 1, 1 (2003) ("Whether a society forgives its debtors and how it bestows or withholds forgiveness are more than matters of economic or legal consequence. They go to the heart of what society values.").

[25] *See* S. REP. NO. 95-989, at 7 (1978) ("At the heart of the fresh start provisions of the bankruptcy law is section 727 covering discharge. The discharge provisions require the court to grant the debtor a discharge of all his debts except for very specific and serious infractions on his part."), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5793; GROSS, *supra* note 24, at 93 ("The fresh start is how society (through the bankruptcy system) mandates that creditors and other members of society forgive nonpaying debtors.").

[26] A debtor who files for chapter 7 relief relinquishes all property in which he or she had a "legal or equitable interest" prior to filing for bankruptcy ("property of the estate"), except property that can be claimed as exempt. *See* 11 U.S.C. § 541(a)(1) (2006) (providing that commencement of a case creates an estate consisting of "all legal or equitable interests of the debtor in property as of the commencement of the case"); *id.* § 704(a)(1) (requiring trustee to "collect and reduce to money the property of the estate"); *id.* § 726(a) (providing for distribution of property of the estate); *id.* § 522(b) (allowing debtor to claim as exempt certain property from property of the estate). On the other hand, a debtor who files for chapter 13 relief retains all property of the estate, but must devote future income for repayment to creditors. *See id.* § 1306(b) (stating that "[e]xcept as provided in a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate"); *id.* § 1327(b) (providing that confirmation of debtor's repayment plan "vests all of the property of the estate in the debtor"); *id.* § 1322(a)(1) (requiring debtor's repayment plan to "provide for the submission of all or such portion of future earnings or other future income of the debtor . . . as is necessary for the execution of the plan").

[27] *See, e.g.*, *id.* §§ 523(a), 1328(a)(2).

For the past quarter-century, debate over the scope of relief in bankruptcy has primarily centered on the price of discharge.[28] Consumer bankruptcy debtors generally consider filing for bankruptcy relief under one of two Bankruptcy Code chapters—chapter 7 or chapter 13. While a debtor who files for chapter 7 relief will receive an immediate discharge in exchange for his or her nonexempt assets,[29] a debtor who files for chapter 13 relief will receive a discharge only after he or she has completed a repayment plan pursuant to which a portion of the debtor's future income has been devoted to repaying creditor claims.[30] These structural differences reveal that there exist two alternative models for creditor repayment in bankruptcy—an asset-based model and an income-based model. While in theory these models need not be mutually exclusive, the statutory reality is that chapter 7 relief places a debtor's future income beyond the reach of creditors.[31]

The preferred choice of chapter for consumer debtors has historically been and continues to be chapter 7.[32] This choice has been a source of consternation for creditors because the overwhelming majority of chapter 7 cases do not have nonexempt assets for distribution (commonly referred to as "no-asset cases").[33] Creditor claims in no-asset cases will, of course, go unpaid. To make matters worse, creditors whose claims against a chapter 7 debtor have been discharged

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[28] *See* Pardo, *supra* note 2, at 473–79. This idea, of course, is not one of recent vintage, but rather one with which society has previously grappled. *See* William O. Douglas, *Some Functional Aspects of Bankruptcy*, 41 YALE L.J. 329, 331 (1932) ("Bankruptcy of course has been the subject of much discussion and investigation during the last generation. But most of the energy has been directed (but by no means misdirected) towards . . . increasing returns to creditors, [among other things] . . . ." (footnote omitted)).

[29] *See supra* note 26.

[30] *See id.*

[31] *See* 11 U.S.C. § 541(a)(6) (excluding from property of the estate "earnings from services performed by an individual debtor after the commencement of the case"); *id.* § 726(a) (providing for distribution of property of the estate in a chapter 7 case to holders of certain claims). Chapter 13 does provide a debtor the possibility of using pre-bankruptcy assets, in addition to post-bankruptcy income, to repay creditor claims. *See id.* § 1321 (providing that chapter 13 debtor must file a repayment plan); *id.* § 1322(a)(1) (providing that a chapter 13 repayment plan must "provide for the submission of all or such portion of future earnings or other future income of the debtor to the supervision and control of the trustee as is necessary for the execution of the plan"); *id.* § 1322(b)(8) (providing that a chapter 13 repayment plan may "provide for the payment of all or part of a claim against the debtor from property of the estate or property of the debtor"). Here, then, one sees evidence that, as a matter of statutory design, the price of discharge does not need to be structured in terms of a binary choice (i.e., an asset-based repayment model or an income-based repayment model).

[32] Non-business chapter 7 cases constituted 71% of total non-business filings in 2003, 72% in 2004, 80% in 2005, 58% in 2006, and 61% in 2007. *See* U.S. Courts, *supra* note 1.

[33] *See* U.S. TR. PROGRAM, U.S. DEP'T OF JUSTICE, PRELIMINARY REPORT ON CHAPTER 7 ASSET CASES 1994 TO 2000, at 7 (2001), *available at* http://www.usdoj.gov/ust/eo/private_trustee/library/chapter07/docs/assetcases/Publicat.pdf ("Historically, the vast majority (about 95 to 97 percent) of chapter 7 cases yield no assets.").

will generally have no post-bankruptcy recourse to collect from the debtor.[34] Thus, a chapter 7 filing usually represents the "kiss-of-death" for the ability of a creditor to recoup directly from the debtor any pre-bankruptcy amounts owed by the debtor to the creditor.

From a creditor's perspective, the typical chapter 7 debtor obtains forgiveness of debt without having to pay a price, merely as a result of having filed for relief under chapter 7 rather than chapter 13.[35] A creditor likely perceives this outcome to be unjust based on the conviction that the debtor will generate future income that, but for the chapter 7 filing, could have been devoted to repayment of the creditor's claim—either outside of bankruptcy had the debtor never filed for bankruptcy or within bankruptcy pursuant to a chapter 13 repayment plan. Over the last couple of decades, this narrative has underscored bankruptcy reform efforts,[36] a narrative which Congress has recast in terms of abuse of the bankruptcy system—specifically, by classifying debtors with an ability to repay past debts from future income as abusive

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[34] *See* 11 U.S.C. § 524(a)(2) (providing that a discharge in a case under the Bankruptcy Code "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any [discharged] debt as a personal liability of the debtor"). The possibility exists, however, that a debtor may nonetheless choose to pay voluntarily a discharged debt through informal means. *See id.* § 524(f). Moreover, prior to obtaining a discharge, some debtors choose to enter into a formal agreement with a creditor to repay a debt that would otherwise have been discharged. *See id.* § 524(c).

[35] Such an argument, however, proves too much. Although a chapter 7 debtor may not have to give up any property under certain circumstances, such a debtor nonetheless pays a price for discharge. Filing for bankruptcy can impose both pecuniary and non-pecuniary costs on a debtor. In terms of pecuniary costs, future extensions of credit may be more difficult for a debtor to obtain post-bankruptcy. *See* Katherine Porter & Deborah Thorne, *The Failure of Bankruptcy's Fresh Start*, 92 CORNELL L. REV. 67, 122 (2006). In terms of non-pecuniary costs, debtors must struggle with the stigma associated with filing for bankruptcy. *See* Teresa A. Sullivan, Elizabeth Warren & Jay Lawrence Westbrook, *Less Stigma or More Financial Distress: An Empirical Analysis of the Extraordinary Increase in Bankruptcy Filings*, 59 STAN. L. REV. 213 (2006) (concluding that, over a twenty-year period, data from the Consumer Bankruptcy Study indicate that stigma of bankruptcy has increased).

[36] For example, in signing the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23, into law, President Bush stated the following:

> In recent years, too many people have abused the bankruptcy laws. They've walked away from debts even when they had the ability to repay them. . . . The bill I sign today helps address this problem. Under the new law, Americans who have the ability to pay will be required to pay back at least a portion of their debts.

Press Release, White House Press Office, President Signs Bankruptcy Abuse Prevention, Consumer Protection Act (Apr. 20, 2005); *see also* 151 CONG. REC. S1856 (Mar. 1, 2005) (statement of Sen. Grassley) ("The Bankruptcy Reform Act of 2005 asks the very fundamental question of whether repayment is possible by an individual. It is this simple: If repayment is possible, then he or she will be channeled into Chapter 13 of the Bankruptcy Code which requires people to repay a portion of their debt as a precondition for limited debt cancellation.").

debtors who should not be eligible for chapter 7 relief. This has had the effect of transforming a scope issue into an eligibility issue.[37]

As a result of this transformation, the system has had to reorient itself to screen chapter 7 debtors more rigorously. The current mechanism for doing so is a means test, a formulaic statutory directive that requires courts to presume abuse of the bankruptcy system by chapter 7 debtors who seemingly have an ability to repay past debts from future income.[38] Such debtors face the possibility of either having their cases dismissed or, with their consent, converted to chapter 13.[39] Implementing the screening function of the means test has necessitated an increase in the amount of disclosures required of debtors in order to facilitate an assessment of their repayment ability. It is these newly added burdens and the effect of noncompliance that threaten to curtail access to bankruptcy relief for consumer debtors.

In addition to the substantive relief bankruptcy law extends to debtors, bankruptcy operates as a collective proceeding that aims to distribute the debtor's assets for the benefit of creditors.[40] The marshalling and distribution

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[37] *See* Pardo, *supra* note 2, at 473 n.8 ("The Bankruptcy Code's provision regarding dismissal of a debtor's Chapter 7 case on the basis of abuse further augments the Code's bankruptcy eligibility rules by deeming certain cases to be improperly administered and adjudicated under that chapter."); *see also* Porter & Thorne, *supra* note 35, at 80 ("The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 restricts access to Chapter 7 bankruptcy. This change in bankruptcy policy may reflect Congress's belief that an immediate fresh start is such a generous benefit that it should be limited to those who are judged truly needy because they lack the means to pay their debts." (footnote omitted)).

In this regard, one witnesses a shift away from Congress's prior view that chapter 13 bankruptcy ought to be purely voluntary. S. REP. NO. 95-989, at 32 (1978) ("Involuntary chapter 13 cases are not permitted either. To do so would constitute bad policy, because chapter 13 only works when there is a willing debtor that wants to repay his creditors. Short of involuntary servitude, it is difficult to keep a debtor working for his creditors when he does not want to pay them back."), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5818; H.R. REP. NO. 95-595, at 322 (1977) (same), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6278. Certainly, a formalistic argument can be made that BAPCPA has not changed the voluntary nature of chapter 13: In the event that a chapter 7 debtor's case is dismissed on the basis of abuse, the debtor has the choice of either (1) dismissal or (2) conversion to chapter 13 if the debtor consents. *See* 11 U.S.C. § 707(b)(1). But this argument disregards the reality that a debtor who lacks access to chapter 7 relief may confront an absence of meaningful choice. If the debtor truly needs relief from financial distress that only bankruptcy law can provide, then dismissal is not a pragmatic option.

[38] *See* 11 U.S.C. § 707(b)(2).

[39] *Id.* § 707(b)(1).

[40] *See* THOMAS H. JACKSON, THE LOGIC AND LIMITS OF BANKRUPTCY LAW 20 (1986) ("Bankruptcy provides a collective forum for sorting out the rights of . . . creditors and others with rights against a debtor's assets. . . . This makes the basic process one of determining who gets what, in what order." (emphasis omitted)); Andrew DeNatale & Prudence B. Abram, *The Doctrine of Equitable Subordination As Applied to Nonmanagement Creditors*, 40 BUS. LAW. 417, 418 (1985) ("Generally, all the substantive provisions of bankruptcy law relate to either the marshalling or distribution functions.").

functions of a bankruptcy proceeding can only be carried out properly with adequate information regarding the debtor's financial circumstances (e.g., assets, liabilities, income, and expenses).[41] Accordingly, the Bankruptcy Code has structured a self-reporting system pursuant to which a debtor must make such disclosures.[42] Prior to BAPCPA's enactment, the Bankruptcy Code required a debtor's filing to include: (1) a list of creditors, (2) a schedule of assets and liabilities, (3) a schedule of current income and expenditures, and (4) a statement of the debtor's financial affairs.[43] Failure of a chapter 7 debtor to file any of these documents within fifteen days after the commencement of the case provided cause for the U.S Trustee to move for dismissal of the case.[44]

With BAPCPA's enactment, in addition to filing the disclosures that were mandated prior to BAPCPA, a debtor must now also file: (1) copies of all payment advices received from an employer in the two months preceding the bankruptcy filing; (2) a statement of monthly net income, itemized to show how the amount is calculated; and (3) a statement disclosing any reasonably anticipated increase in income or expenditures for the year following the bankruptcy filing.[45] A chapter 7 debtor who fails to file any of these documents not only faces possible dismissal upon a motion by the U.S. Trustee, but also faces *automatic* dismissal of the case, without court action, for failure to file any of these documents within forty-five days after filing for bankruptcy.[46] A debtor must also file a certificate of pre-bankruptcy credit counseling and the debtor's federal income tax return from the tax year preceding the bankruptcy filing.[47] Failure to file the certificate presumably

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[41] *See* Siegel v. Weldon (*In re* Weldon), 184 B.R. 710, 715 (Bankr. D.S.C. 1995) ("The bankruptcy schedules and statements of affairs are carefully designed to elicit certain information necessary to the proper administration and adjudication of the case."); *cf.* 1 SOMMER ET AL., *supra* note 16, at 81 ("In answering the various questions posed in the Official Forms, it is important to have a general understanding of the purpose of those questions. The overall purpose is to give the court, the trustee, and the creditors a full and accurate picture of the debtor's case.").

[42] *See* 11 U.S.C. § 521 (imposing duty upon debtor to file numerous disclosures and financial information).

[43] *Id.* § 521(1) (2000) (amended 2005).

[44] *Id.* § 707(a)(3). Subsequent to BAPCPA's enactment, a debtor's failure to file such documents has continued to constitute cause for the U.S. Trustee to move for dismissal of the case. *Id.* § 707(a)(3) (2006).

[45] *Id.* § 521(a)(1)(B)(iv)–(vi) (2006).

[46] *Id.* § 521(i)(1). There are some narrow exceptions to this rule. *See id.* § 521(i)(3) (allowing extension of time to file documents that does not exceed an additional forty-five days); *id.* § 521(i)(4) (granting court discretion under a narrow set of circumstances not to dismiss the debtor's case, but only upon motion of the trustee before expiration of initial forty-five day period for filing mandated disclosures).

[47] *Id.* § 521(b)(1) (credit-counseling certificate); *id.* § 521(e)(2)(A) (tax return).

provides cause for any party in interest to move to dismiss the debtor's case,[48] whereas failure to file the tax return requires the court to dismiss the debtor's case unless the debtor's noncompliance resulted from circumstances beyond the debtor's control.[49]

It should be clear from this description that, as a procedural matter, consumer debtors now face a variety of hurdles in gaining access to the federal bankruptcy forum. Chapter 7 debtors must also contend with the specter of an abuse dismissal pursuant to the means test. This substantive hurdle entails its own procedural hurdle. As part of the schedule of current income and expenditures that all debtors must file,[50] a chapter 7 debtor must also include a statement of the debtor's current monthly income and calculations that determine whether the presumption of abuse arises under the means test.[51] The official form for documenting these calculations consists of fifty-seven subparts, the first fifteen of which must be completed by all debtors.[52] Debtors who do not fall within the safe harbor of the means test—that is, those debtors whose annual income is greater than the median family income for a family of comparable size to the debtor's household—must complete all fifty-seven subparts.[53]

It has been documented that, based on a sample of bankruptcy filings between April and November 2006 in eight judicial districts, approximately 8% of chapter 7 debtors were subject to means testing and that only 10% of the debtors from that group had sufficient disposable monthly income to trigger the presumption of abuse.[54] In other words, only eight-tenths of one percent of consumer chapter 7 cases involved debtors whose disposable income exceeded a predetermined threshold statutorily deemed to constitute abuse of the bankruptcy system. Thus, notwithstanding that the overwhelming majority of

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[48] *Id.* § 707(a)(3); *In re* Dyer, 381 B.R. 200, 206 (Bankr. W.D.N.C. 2007).

[49] 11 U.S.C. § 521(e)(2)(B).

[50] *See id.* § 521(a)(1)(B)(ii).

[51] *See id.* § 707(b)(2)(C).

[52] *See id.* app. at 533 (Official Form B22A).

[53] *See id.* § 707(b)(7); *id.* app. at 533 (Official Form B22A).

[54] EXECUTIVE OFFICE FOR U.S. TRS., U.S. DEP'T OF JUSTICE, REPORT TO CONGRESS: IMPACT OF THE UTILIZATION OF INTERNAL REVENUE SERVICE STANDARDS FOR DETERMINING EXPENSES ON DEBTORS AND THE COURT 3–4 (2007), *available at* http://www.usdoj.gov/ust/eo/public_affairs/reports_studies/docs/Rpt_to_Congress_on_IRS_Standards.pdf.

debtors lacked repayment ability, they nonetheless were forced to grapple with the collateral effects of a statute never intended to reach them.[55]

It has been predicted that these collateral effects will have an adverse impact on a debtor's access to chapter 7 relief. First, filing fees and expenses have increased for consumer debtors.[56] Second, the combination of new liability provisions for attorneys who represent consumer debtors and the deluge of paper work have exacerbated the due-diligence burden borne by attorneys who represent consumer debtors.[57] This, in turn, is likely to have increased the costs of legal representation,[58] which will have the effect of making legal representation unaffordable for some debtors, forcing them either to file *pro se* or not to file at all.[59] For those debtors who file *pro se*,[60] they run

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[55] A cynical, but not necessarily inaccurate, take on this state of affairs is that the proponents of this legislation actually intended this result with the hope of deterring filings by debtors who would otherwise be eligible for chapter 7 relief. *See, e.g.*, David Gray Carlson, *Means Testing: The Failed Bankruptcy Revolution of 2005*, 15 AM. BANKR. INST. L. REV. 223, 318–19 (2007); James J. White, *Abuse Prevention 2005*, 71 MO. L. REV. 863, 874 (2006).

[56] *See* U.S. GOV'T ACCOUNTABILITY OFFICE, REPORT NO. GAO-08-697, DOLLAR COSTS ASSOCIATED WITH THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005, at 29–33 (2008), *available at* http://www.gao.gov/new.items/d08697.pdf; Robert J. Landry & Amy K. Yarbrough, *An Empirical Examination of the Direct Access Costs to Chapter 7 Consumer Bankruptcy: A Pilot Study in the Northern District of Alabama*, 82 AM. BANKR. L.J. 331, 335–38 (2008); *see also* Sommer, *supra* note 20, at 211 ("The biggest increases in fees and expenses for consumer debtors will result from the numerous new document production requirements that will be imposed upon those debtors.").

[57] *See* Aaron, *supra* note 20, at 945 ("The cost of legal representation has also increased in a number of ways. A direct cost is the increased burden on the lawyer whose service measure is time. The lawyer is responsible for assembling and evaluating the large number of documents now required. More significant, the lawyer must sign off on the debtor's information, putting a due diligence burden that is reflected in increased fees.").

[58] *See* Charles J. Tabb & Jillian K. McClelland, *Living with the Means Test*, 31 S. ILL. U. L.J. 463, 511 (2007) ("Certainly debtor's attorneys' fees in consumer chapter 7 cases have increased dramatically since BAPCPA became law, and the perceived risk of sanctions could be one contributing cause."); Eugene R. Wedoff, *Means Testing in the New § 707(b)*, 79 AM. BANKR. L.J. 231, 278 (2005) ("The assembly and review of the documentation required to comply with the means test will thus require substantial additional work by debtor's counsel, and will add significantly to the cost of debtor representation."). For empirical evidence that BAPCPA has increased attorneys' fees for consumer chapter 7 debtors, see U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 56, at 21–23; Landry & Yarbrough, *supra* note 56, at 340–44.

[59] *See* Aaron, *supra* note 20, at 947 ("The obvious solution for the financially strapped debtor is self-representation."); Keith M. Lundin, *Ten Principles of BAPCPA: Not What Was Advertised*, AM. BANKR. INST. J., Sept. 2005, at 1, 70 ("BAPCPA requires a lot more work for debtors' attorneys. Debtors will pay for that work, and some debtors will simply be priced out of bankruptcy."); Sommer, *supra* note 20, at 230 ("There is also no question that many debtors, especially those priced out of bankruptcy relief due to increased costs, will be negatively impacted by [BAPCPA]."); *see also* Jean Braucher, *Means Testing Consumer Bankruptcy: The Problem of Means*, 7 FORDHAM J. CORP. & FIN. L. 407, 408 (2002) (predicting prior to BAPCPA's enactment that means testing "would make access to bankruptcy more difficult for all, imposing new costs and hurdles and thus pricing the worst off out of the system").

the risk of being denied access to the bankruptcy forum if they fail to comply with the myriad filing requirements.[61] Worse yet, debtors whose cases are dismissed and who subsequently attempt to regain access to the bankruptcy forum run the risk of being deemed repeat filers who will be denied the benefit of the automatic stay.[62] Finally, some attorneys may be discouraged from continuing to represent consumer debtors,[63] thus reducing the supply of legal representation. In sum, a perfect storm appears to be brewing that could disproportionately impact access to chapter 7 relief by *pro se* debtors.[64] The

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[60] Shortly after BAPCPA's enactment, at least one commentator hypothesized that the number of consumer bankruptcy cases filed *pro se* would decline by virtue of the deterrent effect stemming from the law's complexity. *See* Dickerson, *supra* note 20, at 951 n.181 ("There were very few *pro se* filers pre-BAPCPA, and that number likely will decrease since bankruptcy petitions and schedules are even longer and more detailed than they were under the pre-reform law, and the means testing formula is almost undecipherable."). That hypothesis is supported by data from a recent report by the U.S. Government Accountability Office, which estimates that "11 percent of Chapter 7 consumer cases were filed pro se in February–March 2005, compared with the 5.9 percent of Chapter 7 cases that [the Administrative Office of the United States Courts] reported were filed pro se in calendar year 2007." U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 56, at 27–28.

Data from this study also support the hypothesis. For all voluntary cases that were originally commenced under chapter 7 and filed in the Western District of Washington by individual debtors during the five-year period beginning on January 1, 2003 and ending on December 31, 2007, approximately 18.0% of those cases were filed *pro se*. While the proportion of pre-BAPCPA *pro se* cases was similar to the proportion in the overall population (approximately 18.8%), the proportion of post-BAPCPA *pro se* cases was only approximately 13.2%. Analysis pursuant to a chi-square test with one degree of freedom indicates that there is less than a 0.0001 probability that random chance alone would have yielded a difference this large, thus confirming a statistically significant association between when the case was filed (i.e., pre-BAPCPA or post-BAPCPA) and the *pro se* status of the debtor.

[61] *See* Aaron, *supra* note 20, at 947 ("Pro se bankruptcy drops the cost of lawyering, but the new law is salted with little land mines making the savings foolish and deceptive."); Dickerson, *supra* note 20, at 951 n.181 ("[F]iling *pro se* is not a realistic option. . . . [G]iven the complexity of BAPCPA's filing and reporting requirements, it is even more likely that a *pro se* petition will be dismissed because of procedural defaults.").

[62] *See* 11 U.S.C. § 362(c)(3)-(4) (2006); *see also* Aaron, *supra* note 20, at 948 ("The pro se debtor who errs faces more than the cost and burden of filing with the correct documents. The repeat filer is punished by termination of the automatic stay within thirty days if another case was filed within the prior year."). For a description of the automatic stay, see *supra* note 9.

[63] *See* Eisler, *supra* note 9, at 1334 (observing that BAPCPA's attorney liability provisions "will likely increase the cost of consumer bankruptcy filings and drive qualified practitioners away from bankruptcy practice").

[64] Prior to the Senate's vote on the bill that would ultimately be enacted as BAPCPA, Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, S. 256, 109th Cong. (2005), ninety-two bankruptcy and commercial law professors (including this author) sent a letter to Senate leaders warning them of this perfect storm. *See* Letter from Bankruptcy and Commercial Law Professors to Senator Arlen Specter and Senator Patrick Leahy (Feb. 16, 2005) (on file with author), *available at* http://www.abiworld.org/pdfs/LawProfsLetter.pdf ("Our problem is not with means-testing *per se*. Our problem is with the collateral costs that this particular means-test would impose. This is not a typical means-test, which acts as a gatekeeper to the system. It would instead burden the system with needless hearings, deprive debtors of access to counsel, and arbitrarily deprive families of needed relief. . . . The vast majority of individuals and families that file for

remainder of this Article seeks to ascertain whether disquieting signs of this storm exist.

II. EMPIRICALLY EXAMINING ACCESS TO CHAPTER 7 RELIEF

This Part presents the results of empirical analyses that attempt to discern the effect, if any, that BAPCPA has had on the ability of *pro se* debtors to access chapter 7 relief. Dismissal of a debtor's case is used as the metric for failure to access chapter 7 relief. The rationale for selecting this metric is based on the fact that dismissal of a debtor's case will dispositively result in the failure of the debtor to obtain a discharge and thus bankruptcy's fresh start.[65] It is hypothesized that (1) dismissal rates for *pro se* debtors will be statistically significantly higher than for represented debtors and (2) dismissal rates for post-BAPCPA *pro se* debtors will be statistically significantly higher than for pre-BAPCPA *pro se* debtors as a result of the increased complexity in the law brought about by the 2005 amendments to the Bankruptcy Code. Analyses of the data provide support for both hypotheses.

It must be kept in mind that this study confines itself to examining the experience of chapter 7 consumer debtors in a single federal judicial district during a half-decade period. In light of this, the findings set forth below cannot be generalized to the experience of debtors in the same district during a different time period or to the experience of debtors in other districts regardless of the time period. Having made that disclaimer, the value of these findings should be emphasized. By using empirical analyses to reveal past patterns that have been associated with substantive outcomes, the hope is to generate a better understanding of the effect that lack of representation and increased complexity in the law have had upon a particular set of participants in the consumer bankruptcy system. The account that emerges will hopefully encourage others to test and reconsider certain assumptions that have been made regarding access to chapter 7 relief and, perhaps most importantly, to re-evaluate the manner in which they have assessed the need of debtors for legal representation.

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bankruptcy are honest but unfortunate. The main effect of the means-test . . . will be to deny them access to a bankruptcy discharge."). Congress did not heed this warning.

[65] Obviously, a debtor's case remaining within the bankruptcy system will not dispositvely result in a discharge insofar as the debtor's circumstances may warrant denial of discharge. *See supra* note 11 and accompanying text. That said, the reality is that, of the 84,025 non-dismissed chapter 7 cases in this study, 99.7% resulted in a discharge for the debtor. In other words, remaining within the system virtually guaranteed access to chapter 7 relief for consumer debtors.

A. Study Design

Before presenting the findings from this study, a description is warranted of some of the salient characteristics of the study's location, the Western District of Washington (the "Western District"). The Western District consists of nineteen counties, both rural and metropolitan.[66] It was estimated in 2006 that the district's population of persons age eighteen and over was 3,822,780. Nearly three-quarters (73.4%) of that population resided in four counties—King, Pierce, Snohomish, and Clark Counties—with the remainder scattered over fifteen counties. Consumer debtors in the adult population (eighteen years and older) of the Western District appear to file for bankruptcy at a rate comparable to the national average, as evidenced by data from (1) the Census 2000 Demographic Profile,[67] (2) estimates from the 2006 American Community Survey,[68] and (3) bankruptcy filing statistics from the Administrative Office of the U.S. Courts ("AOUSC").[69] Nationally, six out of every 1,000 adults filed for bankruptcy relief in 2000, in comparison to seven out of every 1,000 adults in the Western District during the same year.[70] Six years later, three out of every 1,000 adults filed for bankruptcy nationwide, in comparison to two out of every 1,000 adults in the Western District.[71] It should be noted, however, that the proportion of chapter 7 consumer cases filed *pro se* in the Western District appears to be on the high end of the national scale. AOUSC data indicate that the proportion of chapter 7 consumer cases that were filed *pro se* during the 2007 calendar year exceeded ten percent in only sixteen federal judicial districts.[72] According to the data from this

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[66] Those counties are Clallam, Clark, Cowlitz, Grays Harbor, Island, Jefferson, King, Kitsap, Lewis, Mason, Pacific, Pierce, San Juan, Skagit, Skamania, Snohomish, Thurston, Wahkiakum, and Whatcom Counties. *See* 28 U.S.C. § 128(b) (2000).

[67] *See* Census 2000: Demographic Profiles, http://www.census.gov/Press-Release/www/2002/demoprofiles.html (last visited Nov. 3, 2008).

[68] *See* American Community Survey ("ACS"), http://www.census.gov/acs/www/ (last visited Nov. 3, 2008).

[69] *See* U.S. Courts, *supra* note 1.

[70] In 2000, there were 1,217,972 non-business bankruptcy filings in the nation, and the adult population nationally was 209,128,094. By comparison, there were 22,420 non-business bankruptcy filings in the Western District of Washington, and the adult population in the District was 3,438,668.

[71] In 2006, there were 597,965 non-business bankruptcy filings in the nation, and the adult population nationally was 225,633,342. By comparison, there were 8,171 non-business bankruptcy filings in the Western District of Washington, and the adult population in the District was 3,822,780. The dramatic downturn in bankruptcy filing rates that occurred in 2006 has been attributed to the surge of filings that occurred prior to October 17, 2005, the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. *See* Robert M. Lawless et al., *Did Bankruptcy Reform Fail? An Empirical Study of Consumer Debtors*, 82 AM. BANKR. L.J. 349, 350 (2008); Pardo, *supra* note 2, at 487–88 & 488 n.77.

[72] U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 56, at 27.

study, approximately 11.2% of all voluntary cases that were originally commenced under chapter 7 and filed in the Western District by individual debtors during the 2007 calendar year were filed *pro se*.[73]

In terms of judicial structure, the Western District has two U.S. Bankruptcy Courthouses, one in Seattle and the other in Tacoma. The District has five bankruptcy judges,[74] three of whom preside over cases in Seattle, one of whom presides over cases in Tacoma, and one of whom presides over cases in both Seattle and Tacoma. Individual debtors who reside in Clallam, Island, Jefferson, King, Kitsap, San Juan, Skagit, Snohomish, and Whatcom Counties must file their cases in Seattle, while debtors from the other counties in the Western District must file their cases in Tacoma.[75] Once a case has been filed, the clerk of the court randomly assigns it to one of the respective judges of the court.[76]

The data for this study, obtained from the Office of the Clerk of Court (the "Clerk's Office") for the U.S. Bankruptcy Court for the Western District of Washington, consist of some of the information that the Clerk's Office internally tracks for individual cases. These case-level data are derived from the self-reported information provided by the debtor to the court in the debtor's petition and accompanying schedules,[77] and they are generally available to the

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[73] The U.S. Government Accountability Office has also estimated that "11 percent of Chapter 7 consumer cases were filed pro se in February–March 2005." *Id.* According to the data from this study, approximately 18.4% of all voluntary cases that were originally commenced under chapter 7 and filed in the Western District of Washington by individual debtors from February 1, 2005 through March 31, 2005 were filed *pro se*.

[74] *See* 28 U.S.C. § 152(a)(2) (2000).

[75] *See* Amended Local Bankruptcy Rule for the Western District of Washington 1072-1(a) (July 1, 2008), *available at* http://www.wawb.uscourts.gov/read_file.php?file=1525&id=510. The local rule for case filing did not change throughout the time period covered in this study: January 1, 2003 through December 31, 2007. *See* http://www.wawb.uscourts.gov/read_file.php?file=1529&id=511 (last visited Jan. 13, 2009) (redlined document comparing Local Rules of Bankruptcy Procedure for the Western District of Washington (effective April 1, 1999) with the Amended Local Bankruptcy Rules for the Western District of Washington (effective July 1, 2008)).

[76] Amended Local Bankruptcy Rule for the Western District of Washington 1073-1 (July 1, 2008), *available at* http://www.wawb.uscourts.gov/read_file.php?file=1525&id=510. The local rule for assignment of cases did not change throughout the time period covered in this study: January 1, 2003 through December 31, 2007. *See* http://www.wawb.uscourts.gov/read_file.php?file= 1529&id=511 (last visited Jan. 13, 2009) (redlined document comparing Local Rules of Bankruptcy Procedure for the Western District of Washington (effective April 1, 1999) with the Amended Local Bankruptcy Rules for the Western District of Washington (effective July 1, 2008)).

[77] The specific data provided by the Clerk's Office were (1) the case number; (2) the name of the debtor (or debtors if a joint case); (3) whether the debtor filed *pro se*; (4) the name of the debtor's attorney (if the debtor was represented); (5) the filing date of the case; (6) the date that the case was administratively closed;

public through the Public Access to Court Electronic Records ("PACER") system for the U.S. Bankruptcy Court for the Western District of Washington.[78] The Clerk's Office provided the information on all voluntary cases that were originally commenced under chapter 7 of the Bankruptcy Code and filed in the Western District by individual debtors during the five-year period beginning on January 1, 2003 and ending on December 31, 2007.[79] In total, the dataset from which this study's findings are derived consists of 85,623 cases (the "study population").

B. Bivariate Analyses

This section presents findings from bivariate analyses of the data. The primary interest lies in two statistical relationships: first, the relationship between the *pro se* status of a debtor and dismissal of the debtor's case; and second, when controlling for the *pro se* status of a debtor, the relationship between the filing of a case subsequent to BAPCPA's enactment and dismissal of the debtor's case.

In the absence of a relationship between the *pro se* status of a chapter 7 debtor and dismissal of the debtor's case, one would expect to see approximately 1.9% of all chapter 7 cases dismissed (i.e., the proportion of dismissed chapter 7 cases observed in the study population). The data reveal, however, that approximately 6.4% of the chapter 7 cases involving *pro se* debtors were dismissed, in stark contrast to approximately 0.9% of cases

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(7) the dismissal date of the case (if dismissed); (8) the discharge date (if a discharge was granted to the debtor); (9) the payment status of the filing fee (e.g., whether paid in installments); (10) the disposition of the case (e.g., standard discharge, discharge denied, dismissed); (11) the debtor's current zip code; (12) the debtor's county of residence on the filing date; (13) the debtor's estimated assets; (14) the debtor's estimated liabilities; (15) the debtor's total real property, derived from Official Form 6A ("Schedule A – Real Property"), *see* 11 U.S.C. app. at 444 (2006); (16) the debtor's total personal property, derived from Official Form 6B ("Schedule B – Personal Property"), *see id.* app. at 445; (17) the debtor's total secured debts, derived from Official Form 6D ("Schedule D – Creditors Holding Secured Claims"), *see id.* app. at 449; (18) the debtor's total priority unsecured debts, derived from Official Form 6E ("Schedule E – Creditors Holding Unsecured Priority Claims"), *see id.* app. at 451; (19) the debtor's total nonpriority unsecured debts, derived from Official Form 6F ("Schedule F – Creditors Holding Unsecured Nonpriority Claims"), *see id.* app. at 454; (20) the debtor's monthly income, derived from Official Form 6I ("Schedule I – Current Income of Individual Debtor(s)"), *see id.* app. at 458; and (21) the debtor's monthly expenses, derived from Official Form 6J ("Schedule J – Current Expenditures of Individual Debtor(s)"), *see id.* app. at 459.

[78] The PACER system for the U.S. Bankruptcy Court for the Western District of Washington can be accessed at https://ecf.wawb.uscourts.gov/cgi-bin/login.pl.

[79] Excluded from the study are cases that were originally commenced under a chapter other than chapter 7 (e.g., chapter 13) but subsequently converted to chapter 7, as well as cases that were originally commenced under chapter 7 but subsequently transferred to another federal judicial district.

involving represented debtors. Analysis pursuant to a chi-square test with one degree of freedom indicates that there is less than a 0.0001 probability that random chance alone would have yielded a difference as large as that witnessed between the observed and expected values. Table 1 sets forth these findings.

TABLE 1
DISMISSAL DISPOSITION BY *PRO SE* STATUS OF DEBTOR

	Dismissal		
Pro Se	No	Yes	Total
No	69,575 (99.12%)	616 (0.88%)	70,192 (100.00%)
Yes	14,449 (93.64%)	982 (6.36%)	15,431 (100.00%)
Total	84,025 (98.13%)	1,598 (1.87%)	85,623 (100.00%)
Note: Row percentages are reported in parentheses. The *p*-value from a chi-square test with one degree of freedom is less than 0.0001.			

When controlling for the *pro se* status of a chapter 7 debtor, the data show that a statistically significant association exists between the filing of the case subsequent to BAPCPA's enactment and dismissal of the case, with that association seemingly stronger for cases involving *pro se* debtors. In the absence of a relationship between filing a post-BAPCPA case and dismissal of a debtor's case, one would expect to see dismissal rates of approximately 6.4% (i.e., the proportion of dismissed, *pro se* chapter 7 cases observed in the study population) for all cases involving *pro se* debtors. Among *pro se* debtors, however, the data reveal that approximately 15.0% of post-BAPCPA cases were dismissed in contrast to approximately 5.4% of pre-BAPCPA cases. Analysis pursuant to a chi-square test with one degree of freedom indicates that there is less than a 0.0001 probability that random chance alone would have yielded a difference as large as that witnessed between the observed and expected values. For cases involving represented debtors, one would expect to see a dismissal rate of approximately 0.9% (i.e., the proportion of dismissed, non-*pro-se* chapter 7 cases observed in the study population) in the absence of a relationship between filing a post-BAPCPA case and dismissal of a debtor's case. Among represented debtors, however, the data reveal that approximately 1.04% of post-BAPCPA cases were dismissed in contrast to approximately 0.85% of pre-BAPCPA cases. Analysis pursuant to a chi-square test with one

degree of freedom indicates that there is a 0.048 probability that random chance alone would have yielded a difference as large as that witnessed between the observed and expected values. Table 2 sets forth these findings.

TABLE 2
DISMISSAL DISPOSITION BY *PRO SE* AND BAPCPA STATUS

Panel A: *Pro Se* Debtors

	Dismissal		
BAPCPA Status	No	Yes	Total
Pre-BAPCPA	13,104 (94.62%)	745 (5.38%)	13,849 (100.00%)
Post-BAPCPA	1,345 (85.02%)	237 (14.98%)	1,582 (100.00%)
Total	14,449 (93.64%)	982 (6.36%)	15,431 (100.00%)
Note: Row percentages are reported in parentheses. The *p*-value from a chi-square test with one degree of freedom is less than 0.0001.			

Panel B: Represented Debtors

	Dismissal		
BAPCPA Status	No	Yes	Total
Pre-BAPCPA	59,246 (99.15%)	507 (0.85%)	59,753 (100.00%)
Post-BAPCPA	10,330 (98.96%)	109 (1.04%)	10,439 (100.00%)
Total	69,576 (99.12%)	616 (0.88%)	70,192 (100.00%)
Note: Row percentages are reported in parentheses. The *p*-value from a chi-square test with one degree of freedom is 0.048.			

In order to gain a sense of the size of the effect on dismissal of filing *pro se* for chapter 7 relief subsequent to BAPCPA's enactment, one can evaluate the dismissal rates set forth in Table 3 in terms of odds ratios. This can be accomplished by comparing the odds of dismissal for post-BAPCPA *pro se* debtors with the odds of dismissal for (1) pre-BAPCPA *pro se* debtors, (2) post-BAPCPA represented debtors, and (3) pre-BAPCPA represented debtors. Table 3 sets forth the odds of dismissal for each of the four classes of individual described above.

TABLE 3
ODDS OF DISMISSAL

	Pro Se Status	
BAPCPA Status	Pro Se	Represented
Pre-BAPCPA	0.0569	0.0086
Post-BAPCPA	0.1762	0.0106

As indicated in Table 3, post-BAPCPA *pro se* debtors were the worst off of the four debtor groups, facing the highest odds of dismissal. By dividing the odds of dismissal for post-BAPCPA *pro se* debtors by the odds of dismissal for each of the other three groups, one witnesses that the odds of dismissal for post-BAPCPA *pro se* debtors are (1) 3.10 times greater than pre-BAPCPA *pro se* debtors, (2) 16.62 times greater than for post-BAPCPA represented debtors, and (3) 20.49 times greater than for pre-BAPCPA represented debtors. Although peripheral to the focus of this study, it is interesting to note that the odds of dismissal of a post-BAPCPA represented debtor's case are only 1.233 times greater than for a pre-BAPCPA represented debtor's case, thus suggesting that BAPCPA's effect on the dismissal of represented debtors' cases has been marginal due to the assistance of counsel. On the other hand, the data strongly suggest that the combination of lack of representation and filing for bankruptcy post-BAPCPA has had an overwhelmingly negative effect on the probability of a debtor gaining access to chapter 7 relief.

The dismissal rate, of course, does not shed light on the *reasons* for dismissal. If the dismissal of cases involving *pro se* debtors has occurred for reasons unrelated to the increased burdens imposed by BAPCPA, then the theorized account of the adverse effect of BAPCPA on *pro se* debtors would have weak empirical support and thus would not be a compelling theory. This concern warrants an exploration of the grounds for dismissal of the cases in the study population.

In the data provided by the Clerk's Office regarding the disposition of each chapter 7 case in the study's dataset,[80] the disposition was coded as "Dismissed for Other Reason" for 92% of the dismissed cases (i.e., 1,474 of 1,598). To further explore the grounds for dismissal in the study population, a random sample was drawn of 500 dismissed cases from the study population's 1,598 dismissed cases (the "random sample"). Each of the 500 cases was

[80] *See supra* note 77.

independently examined to ascertain why it was dismissed. Using PACER,[81] dismissal data were obtained from the docket sheet for the case, including any motions filed in the case relating to dismissal and any court orders resolving such motions. A case was coded as having been dismissed on the basis of one of seven grounds: (1) failure of the debtor to file the information required by statute or by rule ("failure to file information"),[82] (2) failure of the debtor to attend the first meeting of creditors,[83] (3) failure of the debtor to pay the filing fee that must accompany a petition commencing a bankruptcy case,[84] (4) substantial abuse (for pre-BAPCPA cases)[85] or abuse (for post-BAPCPA cases),[86] (5) voluntary dismissal by the debtor,[87] (6) an erroneous duplicate filing,[88] or (7) the catch-all category of "other" for any case dismissed on a

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[81] *See supra* note 78 and accompanying text.

[82] For a discussion of the information that the Bankruptcy Code requires a debtor to disclose, see *supra* notes 42–53 and accompanying text. For examples of information that the Bankruptcy Rules require a debtor to disclose, see FED. R. BANKR. P. 1007(a)(1) (requiring a debtor in a voluntary case to file a list containing the name and address of each creditor included in the debtor's schedules); *id.* 1007(f) (requiring an individual debtor in a voluntary case to submit to the court with the petition a verified statement of the debtor's social security number or lack of one).

[83] The Bankruptcy Code provides for a meeting of creditors that is convened and presided over by the U.S. Trustee. 11 U.S.C. § 341(a) (2006). In a chapter 7 case, the meeting must initially be set no earlier than twenty days and no later than forty days after the date that the debtor filed for bankruptcy. FED. R. BANKR. P. 2003(a). Among other things, a debtor is likely to be questioned under oath at the meeting of creditors, *see* 11 U.S.C. § 343, about the accuracy of his or her schedules. *See, e.g.*, United States v. Naegele, 341 B.R. 349, 352 (D.D.C. 2006). A debtor who provides inaccurate information on his or her schedules potentially faces criminal penalties. *See* 18 U.S.C. § 152(2)-(3) (2006) (providing criminal sanctions for false oaths and false declarations in any case under title 11).

[84] *See* 28 U.S.C. § 1930(a)(1)(A) (2000) (setting forth filing fee for chapter 7 case); FED. R. BANKR. P. 1006(a) (providing general rule that "[e]very petition shall be accompanied by the filing fee"). A chapter 7 debtor's failure to pay the filing fee constitutes cause for dismissal of the case. 11 U.S.C. § 707(a)(2). A debtor who cannot pay the fee at the time of filing for bankruptcy may request to pay the fee in installments. 28 U.S.C. § 1930(a); FED. R. BANKR. P. 1006(b)(1). A chapter 7 debtor whose income is less than 150% of the poverty line and who is unable to pay the filing fee in installments may request a waiver of the fee. 28 U.S.C. § 1930(f)(1); FED. R. BANKR. P. 1006(c).

[85] 11 U.S.C § 707(b) (2000) (providing for dismissal of "a case filed by an individual debtor under [chapter 7] whose debts are primarily consumer debts . . . if [the court] finds that the granting of relief would be *a substantial abuse* of the provisions of [chapter 7]" (emphasis added)) (amended 2005).

[86] 11 U.S.C § 707(b)(1) (2006) (providing for dismissal of "a case filed by an individual debtor under [chapter 7] whose debts are primarily consumer debts . . . if [the court] finds that the granting of relief would be *an abuse* of the provisions of [chapter 7]" (emphasis added)).

[87] Debtors who sought a voluntary dismissal of their cases generally did so on the basis that post-filing circumstances had rendered bankruptcy an ineffective or unnecessary form of relief. They would initiate such motions pursuant to the Bankruptcy Code provision that permits a court to dismiss a chapter 7 case for cause. *Id.* § 707(a).

[88] As one might expect with an electronic case-filing system and the inevitable opportunity for the erroneous transmission of information, a debtor occasionally would file his or her case twice on the same day and subsequently seek to have the duplicate case dismissed as having been filed in error.

basis different than one of the preceding six grounds. Table 4 sets forth the percentage of dismissed cases that fell within each of the above-referenced categories.

TABLE 4
GROUNDS FOR DISMISSAL

	Percentage of Dismissed Cases	95 % Confidence Interval (Clopper-Pearson)	
Failure to File Information	33.2%	29.1%	37.5%
Failure to Attend Meeting of Creditors	31.6%	27.5%	35.9%
Failure to Pay Filing Fee	15.6%	12.5%	19.1%
(Substantial) Abuse	7.6%	5.4%	10.3%
Voluntary Dismissal	5.0%	3.3%	7.3%
Duplicate Filing	4.2%	2.6%	6.3%
Other	2.8%	1.5%	4.7%
Note: Data are derived from a random sample of 500 dismissed chapter 7 cases drawn from the population of 1,598 dismissed chapter 7 cases in the Western District of Washington during the five-year period beginning on January 1, 2003 and ending on December 31, 2007.			

Table 4 reveals that approximately one-third (33.2%) of the dismissed cases in the random sample were dismissed on the ground that has been theorized as likely having the most disparate impact on *pro se* debtors due to the increased procedural hurdles imposed by BAPCPA, namely failure of the debtor to file the information required by statute or rule.[89] Put another way, most debtors whose cases were dismissed were not denied access to chapter 7 relief as a result of the failure to satisfy procedural filing requirements. In light of this, the dismissal rates discussed above need to be interpreted with caution. More specifically, the pronounced increase in dismissals of *pro se* cases subsequent to BAPCPA cannot predominantly be attributed to increased procedural hurdles, thus making the picture somewhat murkier. Nonetheless, it can be said that procedural filing requirements have created a barrier for a considerable number of chapter 7 debtors—an estimated 531 [465, 599][90]

[89] *See supra* notes 60–61 and accompanying text.

[90] This Article implements the recommended practice of conveying levels of uncertainty when performing inference by using the notation [#, #] to indicate the lower and upper bounds of the 95% confidence interval around estimates. *See* Lee Epstein, Andrew D. Martin & Matthew M. Schneider, *On the Effective Communication of the Results of Empirical Studies, Part I*, 59 VAND. L. REV. 1811, 1835–37 (2006).

debtors during the time period of this study.[91] In order to ascertain whether this barrier has disproportionately blocked post-BAPCPA *pro se* debtors in their attempts to access chapter 7 relief, one can examine in the random sample of dismissed cases the percentage of cases dismissed for failure to file information while controlling for the *pro se* status of the debtor and the BAPCPA status of the case.

As an initial matter, in the absence of a relationship between the *pro se* status of a chapter 7 debtor and dismissal of the debtor's case on the ground of failure to file information, one would expect to see approximately 33.2% of all dismissed chapter 7 cases to be dismissed on this basis (i.e., the proportion of chapter 7 cases dismissed for failure to file information that were observed in the random sample). The data reveal, however, that approximately 41.4% of the dismissed chapter 7 cases involving *pro se* debtors were dismissed for failure to file information, in stark contrast to approximately 18.2% of cases involving represented debtors. The difference between the observed and expected values is statistically significant. Table 5 sets forth these findings.

TABLE 5
GROUND FOR DISMISSAL BY *PRO SE* STATUS OF DEBTOR

	Dismissal for Failure to File Information		
Pro Se	No	Yes	Total
No	144 (81.82%)	32 (18.18%)	176 (100.00%)
Yes	190 (58.64%)	134 (41.36%)	324 (100.00%)
Total	334 (66.80%)	166 (33.20%)	500 (100.00%)
Note: Row percentages are reported in parentheses. The *p*-value from a chi-square test with one degree of freedom is less than 0.0001.			

When controlling for the *pro se* status of the debtor and the BAPCPA status of the case, the data show that a statistically significant association exists between the filing of the case subsequent to BAPCPA's enactment and dismissal of the case for failure to file information, with that association seemingly stronger for cases involving *pro se* debtors. In the absence of a

[91] The number of cases in the study population dismissed on the basis of failure to file information was estimated using the random sample. Approximately 33.2% [29.1, 37.5] of the dismissed cases in the random sample were dismissed on this basis. This figure was multiplied by 1,598 (i.e., the number of dismissed cases in the study population), yielding the estimated number of 531.

relationship between filing a post-BAPCPA case and dismissal of a debtor's case for failure to file information, one would expect to see a dismissal rate of approximately 41.4% (i.e., the proportion of *pro se* cases observed in the random sample as having been dismissed for failure to file information) for dismissed cases involving *pro se* debtors. Among *pro se* cases, however, the data reveal that approximately 67.4% of post-BAPCPA dismissed cases were dismissed for failure to file information, in contrast to approximately 31.9% of pre-BAPCPA cases. For cases involving represented debtors, one would expect to see a dismissal rate of approximately 18.2% (i.e., the proportion of non-*pro-se* cases observed in the random sample as having been dismissed for failure to file information) in the absence of a relationship between filing a post-BAPCPA case and dismissal of a debtor's case for failure to file information. Among represented debtors, however, the data reveal that approximately 33.3% of post-BAPCPA dismissed cases were dismissed for failure to file information in contrast to approximately 15.1% of pre-BAPCPA cases. The differences between the observed and expected values for both *pro se* and represented debtors are statistically significant. Table 6 sets forth these findings.

TABLE 6
GROUND FOR DISMISSAL BY *PRO SE* AND BAPCPA STATUS

Panel A: *Pro Se* Debtors

	Dismissal for Failure to File Information		
BAPCPA Status	No	Yes	Total
Pre-BAPCPA	162 (68.07%)	76 (31.93%)	238 (100.00%)
Post-BAPCPA	28 (32.56%)	58 (67.44%)	86 (100.00%)
Total	190 (58.64%)	134 (41.36%)	324 (100.00%)
Note: Row percentages are reported in parentheses. The *p*-value from a chi-square test with one degree of freedom is less than 0.0001.			

Panel B: Represented Debtors

	Dismissal for Failure to File Information		
BAPCPA Status	No	Yes	Total
Pre-BAPCPA	124 (84.93%)	22 (15.07%)	146 (100.00%)
Post-BAPCPA	20 (66.67%)	10 (33.33%)	30 (100.00%)
Total	144 (81.82%)	32 (18.18%)	176 (100.00%)
Note: Row percentages are reported in parentheses. The *p*-value from a chi-square test with one degree of freedom is 0.018.			

To gain a sense of the size of the effect of a post-BAPCPA *pro se* filing on dismissal for failure to file information, one can evaluate the dismissal rates set forth in Table 6 in terms of odds ratios. This can be accomplished by comparing the odds of dismissal for failure to file information for post-BAPCPA *pro se* debtors with the odds of dismissal for failure to file information for (1) pre-BAPCPA *pro se* debtors, (2) post-BAPCPA represented debtors, and (3) pre-BAPCPA represented debtors. Table 7 sets forth the odds of dismissal for each of the four classes of individual described above.

TABLE 7
ODDS OF A DISMISSED CASE HAVING BEEN DISMISSED FOR FAILURE TO FILE INFORMATION

	Pro Se Status	
BAPCPA Status	Pro Se	Represented
Pre-BAPCPA	0.4691	0.1774
Post-BAPCPA	2.0714	0.5000

As indicated in Table 7, post-BAPCPA *pro se* debtors were the worst off of the four debtor groups, facing the highest odds of dismissal on the basis of failing to file information. By dividing the odds of dismissal for post-BAPCPA *pro se* debtors by the odds of dismissal for each of the other three groups, one witnesses that the odds of dismissal for post-BAPCPA *pro se* debtors were (1) 4.42 times greater than for pre-BAPCPA *pro se* debtors, (2) 4.14 times greater than for post-BAPCPA represented debtors, and (3) 11.68 times greater than for pre-BAPCPA represented debtors. The data strongly suggest that the combination of lack of representation and filing for

bankruptcy post-BAPCPA has had an overwhelmingly negative effect on the probability of a debtor overcoming the procedural hurdles that impede access to chapter 7 relief. If nothing else, consider that, among the study population's post-BAPCPA dismissed cases involving *pro se* debtors, it is estimated that approximately 67.4% [56.5, 77.2] of those cases were dismissed on the basis of failure to file information. The plight of the would-be chapter 7 debtor who is unassisted by counsel has indeed become dire.

CONCLUSION

In roughly the two-year period following BAPCPA's effective date, there were 12,021 voluntary chapter 7 cases commenced by individual debtors in the Western District of Washington, of which 346 were dismissed. It is estimated that 36 [19, 60] of those dismissed cases were dismissed on the basis of abuse—that is, only 0.3% [0.2, 0.5] of all post-BAPCPA cases.[92] In other words, nearly every post-BAPCPA debtor who has filed for bankruptcy relief in the Western District has generally been deemed nonabusive. And yet, every one of these debtors has been forced to live with the onerous requirements of a law that screens for abuse. To make matters worse, it is clear that the costs of administering this system, which was designed by the consumer credit lobby,[93] will be staggering and externalized on society as a whole.[94]

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[92] The number of post-BAPCPA cases in the study population dismissed on the basis of abuse was estimated using the random sample. Approximately 10.3% [5.5, 17.4] of the post-BAPCPA dismissed cases in the random sample were dismissed on the basis of abuse. This figure was multiplied by 346 (i.e., the number of post-BAPCPA dismissed cases in the study population), yielding the estimated number of 36.

[93] *See* Sommer, *supra* note 20, at 191–92 ("[M]any of the consumer provisions of the 2005 legislation were largely drafted by lobbyists with limited knowledge of real-life consumer bankruptcy practice. It is perhaps a credit to the bankruptcy bar that no true expert in bankruptcy participated in drafting the consumer provisions sought by the financial services industry; apparently the industry did not trust any experienced bankruptcy attorneys, even creditor attorneys, to carry out its mission of defacing the Code." (footnote omitted)).

[94] Prior to BAPCPA's enactment, the Congressional Budget Office estimated that taxpayers will pay over $400 million from 2006 through 2010 to implement BAPCPA's statutory directives. CONG. BUDGET OFFICE, COST ESTIMATE FOR BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005, at 1 (2005), *available at* http://www.cbo.gov/ftpdocs/61xx/doc6130/s256.pdf. This amount includes $150 million to implement the means test. *Id.* at 5; *see also* U.S. GOV'T ACCOUNTABILITY OFFICE, *supra* note 56, at 3–4 ("At our request, the [U.S.] Trustee Program estimated that for fiscal years 2005 through 2007, its costs related to carrying out responsibilities resulting from the Bankruptcy Reform Act were approximately $72.4 million, mostly for personnel. The costs included $42.5 million to implement the means test, $6.1 million related to credit counseling and debtor education requirements, and $3.0 million to supervise and conduct debtor audits.").

Evidence from this study suggests that the complexity of the system has imposed an additional severe cost on certain debtors, who, in all likelihood, are honest but unfortunate and thus deserving of a fresh start in bankruptcy. By virtue of not being able to obtain attorney representation to assist in deciphering BAPCPA's convoluted system, some *pro se* debtors fail to access the benefit of bankruptcy's fresh start. If such adverse consequences do exist, serious consideration of statutory and judicial reform efforts is warranted. As more and more individuals seek bankruptcy relief in our distressed economy,[95] the nation must confront the issue of access to justice for *pro se* debtors.

[95] *See* Tara Siegel Bernard & Jenny Anderson, *Downturn Drags More Consumers into Bankruptcy*, N.Y. TIMES, Nov. 16, 2008, at A1; *see also* Sanjay Bhatt, *State's Bankruptcy Filings Spike by 40%*, SEATTLE TIMES, Nov. 24, 2008, at A1 (reporting rise in bankruptcy filings in Washington State); Sanjay Bhatt, *Bankruptcy Filings Climb in Washington*, SEATTLE TIMES, Feb. 26, 2009, at A12 (reporting that Washington State ranked second among the states in the rate of increase of bankruptcy filings from December 2008 to January 2009).