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Breaking Bias: A Singular Chapter Solution for Racial Equity in Consumer Bankruptcy

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Breaking Bias: A Singular Chapter Solution For Racial Equity In Consumer Bankruptcy

JERRON R. WHEELER*

ABSTRACT

This article explores the aftermath of the Covid-19 pandemic, revealing a looming medical debt crisis among Black families, while examining the intersection of racial bias, attorney practices, and the existing two-chapter consumer bankruptcy system. Proposing a solution, the article advocates for the consolidation of Chapters 7 and 13 into a single chapter, citing the Consumer Bankruptcy Reform Act of 2020 (CBRA) as a potential remedy. Further, this article argues that a single chapter would simplify the bankruptcy process, reducing the influence of attorney bias and promoting uniform eligibility criteria. This approach aims to make debt relief more accessible, especially for Black Americans disproportionately facing financial challenges exacerbated by the pandemic.

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INTRODUCTION

The COVID-19 pandemic exacerbated racial inequities in the American healthcare system.[1] In the early months of the pandemic, Black Americans were twice as likely as White Americans to die from COVID-19.[2] Even today, four years since the pandemic began, Black Americans continue to face disproportionate risks of hospitalization and death.[3] Disparate health outcomes, coupled with disproportionate job losses, make Black Americans more vulnerable than ever.[4] In the context of longstanding wealth inequities, the aftermath of the pandemic has only further spotlighted the storm of financial disarray that many have long suffered from.[5] Cascading

1. Ruqaiijah Yearby, et al., *Structural Racism in Historical and Modern US Health Care Policy*, 41 HEALTH AFF. 187, 187 (2022), https://www.healthaffairs.org/doi/epdf/10.1377/hlthaff.2021.01466; Aftab Ala et al., *Covid-19 and the Uncovering of Health Care Disparities in the United States, United Kingdom and Canada: Call to Action,* 5 HEPATOLOGY COMMC'NS. 1791, 1792–93 (2021), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8426700/pdf/HEP4-5-1791.pdf.

2. Maritza Vasquez Reyes, Student Essay, *The Disproportional Impact of Covid-19 on African Americans*, 22 HEALTH & HUM. RTS. J. 299, 300 (2020), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7762908/pdf/hhr-22-02-299.pdf; Scott Neuman, *Covid-19 Death Rate for Black Americans Twice That for Whites, New Report Says,* NPR (Aug. 13, 2020), https://www.npr.org/sections/coronavirus-live-updates/2020/08/13/902261618/covid-19-death-rate-for-black-americans-twice-that-for-whites-new-report-says.

3. *Diseases Disproportionately Affecting Minorities*, NAT'L INST. OF ALLERGY & INFECTIOUS DISEASES, https://www.niaid.nih.gov/research/diseases-disproportionately-affecting-minorities#:~:text=Black%20or%20African%20American%2C%20non,of%20death%201.7%20times%20more (last visited Sept. 13, 2023); Vanessa Williams, *Disproportionately Black Counties Account for Over Half of Coronavirus Cases in the U.S. and Nearly 60% of Deaths, Study Finds*, WASH. POST (May 6, 2020), https://www.washingtonpost.com/nation/2020/05/06/study-finds-that-disproportionately-black-counties-account-more-than-half-covid-19-cases-us-nearly-60-percent-deaths/.

4. ELISE GOULD & VALERIE WILSON, ECONOMIC POLICY INST., BLACK WORKERS FACE TWO OF THE MOST LETHAL PREEXISTING CONDITIONS FOR CORONAVIRUS-RACISM AND ECONOMIC INEQUALITY 2, 5 (2020), https://files.epi.org/pdf/193246.pdf.

5. Neil Bhutta et al., *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, BD. OF GOVERNORS OF THE FED. RSRV. SYS. FEDS NOTES (Sept. 28, 2020), https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.html.

circumstances have made it extremely difficult for Black families to maintain employment, housing, and other necessities linked to financial stability.[6] The result —a medical debt crisis coming off the heels of a national and global debt crisis.[7]

Financial setback is not the only problem associated with skyrocketing medical debt. High amounts of medical debt have been linked to health problems.[8] The burdens associated with increased expenses cause people to delay necessary medical care, resulting in increased health complications.[9] Therefore, the inability to repay medical debts has forced families to resort to bankruptcy for relief. In fact, medical debts contribute to approximately 60% of all personal bankruptcy filings, outpacing those for credit card bills and home mortgages. [10]

This article seeks to: (1) highlight racial disparities and attorney bias in consumer bankruptcy; (2) examine possible solutions on a systemic level; and, (3) advocate for consolidating consumer bankruptcy's two-chapter system into one, single chapter as the best way to eliminate racial bias within the bankruptcy system going forward. This article focuses on systemic level changes rather than on individual actors as the most effective means to significantly reduce the influence of individual bias on bankruptcy filer outcomes.

I. CONSUMER BANKRUPTCY TODAY

Consumer bankruptcy generally works in one of two ways: Chapter 7,[11] —where a filer can liquidate their assets to pay back their debts— or Chapter 13[12], where a filer establishes a payment plan to pay back as much of their

6. CHRISTIAN E. WELLER & LILY ROBERTS, CTR. FOR AM. PROGRESS, ELIMINATING THE BLACK-WHITE WEALTH GAP IS A GENERATIONAL CHALLENGE 1, 3 2021), https://www.americanprogress.org/wp-content/uploads/sites/2/2021/03/BlackWhiteWealthGap-report11.pdf.

7. BRIANNA WELLS, THE GREENLINING INST., SOLVING THE MEDICAL DEBT CRISIS 2–3 (2021), https://greenlining.org/wp-content/uploads/2021/03/Greenlining-Medical-Debt-Crisis-Report-2021.pdf; Marcelo Estevao & Sebastian Essl, *When the Debt Crises Hit, Don't Simply Blame the Pandemic*, WORLD BANK: VOICES BLOG (June 28, 2022), https://blogs.worldbank.org/voices/when-debt-crises-hit-dont-simply-blame-pandemic.

8. The Dose, *How Medical Debt Makes People Sicker —and What We Can Do About It*, COMMONWEALTH FUND (Oct. 27, 2023), https://www.commonwealthfund.org/publications/podcast/2023/oct/how-medical-debt-makes-people-sicker-what-we-can-do-about-it.

9. *Id.*

10. David Himmelstein et al., *Medical Bankruptcy in the United States, 2007: Results of a National Study*, 122 AM. J. OF MED. 741, 743 (2009), https://www.amjmed.com/action/showPdf?pii=S0002-9343%2809%2900404-5; Dan Mangan, *Medical Bills Are the Biggest Cause of US Bankruptcies: Study,* CNBC (June 25, 2013), https://www.cnbc.com/id/100840148.

11. 11 U.S.C. § 701.

12. 11 U.S.C. § 1301.

debts as possible.[13] Chapter 7 is the quicker form of consumer bankruptcy.[14] The primary benefit offered by Chapter 7 is immediate debt relief.[15] Typically, a trustee collects and sells a filer's nonexempt assets[16] and then uses the proceeds to pay back its creditors, a process otherwise known as liquidation.[17] In exchange, filers receive a financial "fresh start".[18] Notably, most Chapter 7 cases end with a successful discharge of debt.[19]

The other form of consumer bankruptcy is Chapter 13. Chapter 13 was developed in Depression-era Birmingham, Alabama, and is known to some as the "honorable form of bankruptcy."[20] Chapter 13 filers get to keep their non-exempt assets but must commit their disposable income to repay their debts.[21] From there, a Chapter 13 trustee then distributes the money to their creditors, granting filers a discharge *only* after the successful completion of their proposed payments.[22] Most Chapter 13 payment plans last between three and five years.[23] Comparatively, Chapter 7 cases typically lasts three and a half months from filing to discharge.[24] Unfortunately, only about 40% of chapter 13 filers complete their plan[25], which is less than half the success rate of Chapter 7 filings. For these reasons, Chapter 13 is far less popular than Chapter 7.[26]

It is important to note, Chapter 13 has some advantages. Chapter 13 is great for filers who wish to preserve equity in their homes, restructure car

13. *Id.*

14. *A Consumer Bankruptcy Timeline, Part 1: Chapter 7*, AM. BANKR. INST., https://www.abi.org/feed-item/a-consumer-bankruptcy-timeline-part-1-chapter-7.

15. 11 U.S.C. § 524.

16. Some examples of nonexempt assets are personal property, secondary vehicles, and secondary residences. *See Non-Exempt Property Under Bankruptcy Law*, JUSTIA, https://www.justia.com/bankruptcy/exemptions/non-exempt-property-in-bankruptcy/. (last visited May 10, 2024).

17. 11 U.S.C. § 726.

18. Chapter 7 – Bankruptcy Basics, U.S. CTS., https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-7-bankruptcy-basics (last visited May 10, 2024).

19. Paul Kiel, *Bankruptcy: What's the Difference Between Chapter 7 and Chapter 13?*, PROPUBLICA (Sept. 27, 2017), https://www.propublica.org/article/bankruptcy-difference-filing-chapter-7-13-success ("about 96 percent of debtors who file under Chapter 7 receive a discharge of their debts.").

20. Paul Kiel & Hannah Fresques, *How the Bankruptcy System is Failing Black Americans*, PROPUBLICA (Sept. 27, 2017), https://features.propublica.org/bankruptcy-inequality/bankruptcy-failing-black-americans-debt-chapter-13/.

21. *Exemptions Under Chapter 13 Bankruptcy Law*, JUSTIA, https://www.justia.com/bankruptcy/exemptions/chapter-13-exemptions/ (last visited May 10, 2024).

22. 11 U.S.C. § 1302(b)(3); 11 U.S.C. § 1328.

23. 11 U.S.C. § 1322.

24. Kiel, *supra* note 19.

25. *Id.*

26. *Just the Facts: Consumer Bankruptcy Filings, 2006-2017*, U.S. CTS. (Mar. 17, 2018), https://www.uscourts.gov/news/2018/03/07/just-facts-consumer-bankruptcy-filings-2006-2017.

loans to protect high value cars, or pay debts such as child support and taxes.[27] Even if no discharge is obtained, a Chapter 13 filer buys themselves more time to stave off home foreclosures and other asset seizures.[28] Additionally, a Chapter 13 filer can pay their attorneys' fees over time, unlike in Chapter 7, where most attorneys require full payment upfront.[29]

II. RACIAL DISPARITIES & ATTORNEY BIAS IN CONSUMER BANKRUPTCY

Bankruptcy, provided by United States Bankruptcy Code, is the principal remedy available to those who cannot repay their debts.[30] One of, if not the main, goal of bankruptcy is to provide filers with a financial fresh start.[31] The United States Constitution demands Congress to pass uniform bankruptcy laws.[32] Despite this mandate, lawyers have applied the Bankruptcy Code in varying ways, especially in terms of which groups of people they recommend certain chapters to.[33]

Stereotypes and bias with respect to race and bankruptcy persist today.[34] Racial stereotyping, although unpleasant, is grounded in observations of normal, everyday life.[35] Therefore, all actors within in the bankruptcy system must accept that the system is not colorblind. Even judges, who have an avowed commitment to impartiality, exhibit biases.[36] When you have a system as complex as the American bankruptcy system, these biases are certain to play out. Because no actors within the system are in charge of looking out for such biases, they are likely to escape detection.

27. Chapter 13 – Bankruptcy Basics, U.S. CTS., https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-13-bankruptcy-basics (last visited May 10, 2024).

28. *See id.*

29. Kiel & Fresques, *supra* note 20.

30. *In re* Tomco, 339 B.R. 145, 151–52 (W.D. Pa. 2006) ("The effect of Congress revising the Bankruptcy Code . . . is that bankruptcy is a remedy of last resort for the honest but unfortunate debtor.").

31. Process – Bankruptcy Basics, U.S. CTS., https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/process-bankruptcy-basics (last visited Feb. 5, 2024).

32. U.S. Const. art. I, § 8, cl. 4.

33. A. Mechele Dickerson, *Race Matters in Bankruptcy Reform*, 71 MO. L. REV. 920, 925 (2006).

34. Tara Siegel Bernard, *Blacks Face Bias in Bankruptcy, Study Suggests*, N.Y. TIMES (Jan. 21, 2012), https://www.nytimes.com/2012/01/21/business/blacks-face-bias-in-bankruptcy-study-suggests.html.

35. *How Do Stereotypes Form and Can They Be Altered?*, NW. UNIV. INST. FOR POL'Y RSCH. (Aug. 25, 2015), https://www.ipr.northwestern.edu/news/2015/eagly-stereotypes-social-role-theory.html.

36. Artika R. Tyner, *Unconscious Bias, Implicit Bias, Microaggressions What Can We Do About Them?*, 36 A.B.A. GPSOLO 30, 32 (2019).

The reality is — everyone has biases.[37] These biases reside deep in the subconscious and often differ markedly from known biases.[38] The implicit associations held deep in the subconscious can cause feelings and beliefs about others based on characteristics such as race, gender, ethnicity, and age.[39] These associations begin at a very early age and develop over a lifetime of direct and indirect stimuli.[40] For example, studies show that people associate the color black with negative characteristics.[41] These types of biases, even if unconscious, can lead to policies and practices that result in certain social groups being advantaged and others being devalued.[42]

Some scholars believe that consumer bankruptcy, in practice, operates in ways that work to the advantage of White Americans and to the disadvantage of Black Americans.[43] In other words, many Black debtors have been unable to reap the benefit of a financial fresh start through the bankruptcy system.[44] Black Americans file for bankruptcy more than any other racial group, yet, still are half as likely as other racial groups to permanently eliminate their debts.[45] Black Americans are also more likely to file for the more expensive, burdensome, and less successful Chapter 13[46]

37. Karen Steinhauser, *Everyone is a Little Biased*, AM. BAR ASS'N. BUS. L. TODAY (Mar. 16, 2020), https://www.americanbar.org/groups/business_law/resources/business-law-today/2020-april/everyone-is-a-little-bit-biased/#:~:text=We%20all%20have%20biases%20that,don't%20recognize%20we%20have.

38. KIRWAN INST. FOR THE STUDY OF RACE & ETHNICITY, OHIO STATE UNIV., STATE OF THE SCIENCE: IMPLICIT BIAS REVIEW 2015, 62 (2015).

39. HARINI S. SHAH & JULIE BOHLEN, IMPLICIT BIAS 1 (2024) (ebook). https://www.ncbi.nlm.nih.gov/books/NBK589697/#:~:text=Implicit%20bias%20includes%20the%20subconscious,%2C%20affect%20their%20decision%2Dmaking.

40. *Module 4: Implicit Bias & Microaggressions*, PROJECT READY: REIMAGINING EQUITY & ACCESS FOR DIVERSE YOUTH, https://ready.web.unc.edu/section-1-foundations/module-4-implicit-bias-microaggressions/ (last visited Apr. 22, 2024).

41. Kendra Cherry, *The Color Psychology of Black*, VERYWELL MIND (Dec. 5, 2022), https://www.verywellmind.com/the-color-psychology-of-black-2795814.

42. *Institutional Bias*, OXFORD REFERENCE, https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100005347 (last visited Apr. 23, 2024).

43. Dickerson, *supra* note 33, at 925, 937 (concluding that the "ideal debtor" who benefits most from the Bankruptcy Code is likely to be White).

44. Kiel & Fresques, *supra* note 20.

45. Leslie A. Pappas, *Bankruptcy Racial Disparities Poised to Add to Pandemic Pain*, BLOOMBERG L. (Aug. 31, 2020), https://news.bloomberglaw.com/bankruptcy-law/bankruptcys-racial-disparities-poised-to-add-to-pandemics-pain ("A 2017 analysis—co-authored by now-U.S. Rep. Katie Porter—found Black filers half as likely as other groups to permanently eliminate their debts, no matter which type of personal bankruptcy case they filed.").

46. Paul Kiel & Hannah Fresques, *Data Analysis: Bankruptcy and Race in America*, PROPUBLICA (Sept. 27, 2017), https://projects.propublica.org/graphics/bankruptcy-data-analysis ("The main driver of this disparity is chapter choice. Black people struggling with debts are choosing to file under Chapter 13, as opposed to Chapter 7, at much higher rates.").

more than any other racial group.[47] Among many explanations for such disparities, attorney influence is one of them.[48]

Two studies illustrate the role that attorneys have played in creating a disadvantage for Black Americans in bankruptcy. In the first, titled *Race, Attorney Influence, and Bankruptcy Chapter Choice*, Jean Braucher, Dov Cohen, and Robert Lawless set out to examine why a disproportionate number of Black bankruptcy filers turn to Chapter 13 instead of the cheaper, more generous, Chapter 7.[49] Their study revealed that attorneys played an active role in steering filers' chapter choices.[50] Even when filers' financial profiles were *identical*, attorneys were still more likely to place Black filers in Chapter 13 than White filers.[51] Even more troubling, Black filers were disproportionately placed in Chapter 13 even when they explicitly preferred Chapter 7.[52] Ultimately, the study revealed that attorney's thoughts and beliefs regarding a filers' race affected their chapter choice recommendations.[53]

A subsequent study titled *Opposite of Correct: Inverted Insider Perceptions of Race and Bankruptcy*, set out to determine whether attorneys were aware of the racial disparities that exist among filers' chapter choices.[49] Interestingly, participating attorneys *overestimated* Chapter 13 usage for White filers while, in contrast, underestimated Chapter 13 usage for Black filers.[50] Despite the pervasive disparities that exist, the study demonstrates that those acting inside the bankruptcy system have little knowledge of them.[51] It is important to note, however, that neither study identified explicit bias as a cause for the racial disparities among chapter choices. While the authors could not pinpoint the specific causes for such disparities, they

47. *See* Dov Cohen et al., *Opposite of Correct: Inverted Insider Perceptions of Race and Bankruptcy*, 91 AM. BANKR. L.J. 623, 631, 633 (2017) (reporting a study where African Americans filed for Chapter 13 bankruptcy at much higher rates, 55.0%, compared to 26.3% of debtor households in which no one identified as African American); *see also* Jean Braucher et al., *Race, Attorney Influence, and Bankruptcy Chapter Choice*, 9 J. EMPIRICAL LEGAL STUD. 393, 400 (2012) (reporting a study where 54.7% of African American bankruptcy filers filed for Chapter 13 compared to 28.2% of debtor households that filed for bankruptcy in which no debtor identified as African American).

48. *See* Edward J. Janger, *Consumer Bankruptcy and Race: Current Concerns and a Proposed Solution*, 33 LOY. CONSUMER L. REV. 328, 338 (2022) ("[T]he current structure of the consumer bankruptcy system has substantial disparate impact on debtors based on race. The sources of that disparate impact are diverse. They include social mores about debt repayment, judicial views about debt relief, implicit bias, and consumer bankruptcy attorneys' business model.").

49. Braucher et al., *supra*, at 393–95.

50. *Id.* at 405–06.

51. *Id.* at 406–07, 411–12.

52. *Id.* at 411–12, 421.

53. *Id.* at 414–18, 420.

49. Cohen, et al., *supra*, at 624.

50. *Id.* at 624, 638, 640, 645–46.

51. *Id.* at 624, 645–46.

believe "subtle biases" operating within a complex system, such as bankruptcy, can allow for disparate results.[52]

Biases, whether explicit or implicit, often escape notice when people can point to reasons other than race that can sensibly justify their choices. Bankruptcy scholars have offered a host of other explanations for racial sorting in bankruptcy chapter choice, including, but not limited to: attorney's fees,[53] parking tickets,[54] and even unpaid utilities.[55] While likely unintentional, these types of biases can, have, and will continue to lead to disparate outcomes if unaddressed.

III. A SINGLE CHAPTER TO ELIMINATE ATTORNEY BIAS IN CONSUMER BANKRUPTCY

The two-Chapter system is a major driver of disparate results within consumer bankruptcy. Bankruptcy practitioners have known this for quite some time.[56] Previously proposed solutions have largely focused on individual actors through increased data collection and implicit bias trainings.[57] While practical in nature, implicit bias trainings are likely not enough to effectuate the large-scale change needed to close racial gaps[58] in consumer bankruptcy. The alternative solution would be to create meaningful change at a systemic level. For effective, long-term change, the entire system must be overhauled.

One way to create such sweeping change is to consolidate Chapters 7 and 13 into a single Chapter, creating a more streamlined system that would eliminate the potential of attorney bias to seep in. This is not a new idea; Professor Jean Braucher proposed it years ago.[59] She argued that a single Chapter would make it much easier to move towards similar results for the

52. Braucher et al., *supra*, at 394.

53. Kiel, *supra* note 19.

54. *Parking Tickets Drive Bankruptcy's Racial Disparity*, COLUM. L. SCH. (Oct. 24, 2019), https://www.law.columbia.edu/news/archive/parking-tickets-drive-bankruptcys-racial-disparity.

55. Kiel & Fresques, *supra* note 20.

56. Jean Braucher, *A Fresh Start for Personal Bankruptcy Reform: The Need for Simplification and a Single Portal*, 55 AM. U. L. REV. 1295, 1321 (2006) ("The obvious way to do a better job of sorting individual debtors according to ability to repay some of their old debts is to give debtors only one bankruptcy option . . . With one option, debtors would not be left–as they are now–to sort themselves.").

57. AM. BANKR. INST., FINAL REP. OF THE ABI COMM'N ON CONSUMER BANKR. 2017~2019 at 165 (2019), https://www.nclc.org/wp-content/uploads/2022/08/rpt-abi-commission-on-consumer-bankruptcy.pdf.

58. *See* Jessica Nordell, *Is This How Discrimination Ends?*, THE ATL. (May 7, 2017), https://www.theatlantic.com/science/archive/2017/05/unconscious-bias-training/525405/.

59. Braucher, *supra* note 61.

similarly situated.[60] Braucher envisioned a single Chapter as essentially Chapter 7 with a repayment feature added.[61] By combining the best of both Chapters, she maintained that Congress could accomplish the abuse prevention purpose of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA)[62], without the unintended consequences of reducing access to bankruptcy relief for those who need it most.[63] Other prominent bankruptcy scholars have also contemplated the idea of eliminating Chapter 13.[64]

Picking up where Professor Braucher and others left off, Senator Elizabeth Warren introduced the Consumer Bankruptcy Reform Act of 2020 (CBRA),[65] the first major consumer bankruptcy legislation to be introduced since 2005.[66] The CBRA would replace Chapters 7 and 13 with an all-new Chapter 10, eliminating differences in treatment among filers based on chapter choice. Under the CBRA, any filer with debts less than $7.5 million could receive a discharge of debt after satisfying all minimum payment obligations, similar to Chapter 13.[67] But, if a filer has a minimum payment obligation of $0, then they would receive an immediate discharge, similar to Chapter 7.[68] Any such payment obligations would be based on a filer's assets and income.

The CBRA seeks to wholly reform the current system by reducing filing fees, simplifying payment terms, and adding other consumer-friendly protections that make it easier for individuals and families dealing with bankruptcy to get back on their feet.[69] Another notable feature of the CBRA would include making student loan debt dischargeable to help struggling student borrowers.[70] If passed, the CBRA would be a total overhaul of consumer bankruptcy law. Unfortunately, the CBRA has never made it to a floor vote and its progress has screeched to a halt.[71] To date, no further actions have been taken towards its passage.

60. Braucher, *supra* note 61; *see also* Jean Braucher, *How to Address Apparent Racial Disparity in the Consumer Bankruptcy System*, AM. BANKR. INST., https://www.abi.org/feed-item/how-to-address-apparent-racial-disparity-in-the-consumer-bankruptcy-system.

61. Braucher, *supra* note 61 ("moving the repayment feature of Chapter 13 into Chapter 7 and repealing Chapter 13.").

62. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 11 Stat. 23 (codified as amended in scattered sections of 11 U.S.C.).

63. Braucher, *supra* note 61, at 1331.

64. Jean Braucher et al., *Reflections on the Responses to "Race, Attorney Influence, and Bankruptcy Chapter Choice"*, 20 Am. Bankr. Inst. L. Rev. 725, 737 (2012).

65. Consumer Bankruptcy Reform Act of 2020, S. 4991, 116th Cong. (2019-2020).

66. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 11 Stat. 23 (codified as amended in scattered sections of 11 U.S.C.).

67. Consumer Bankruptcy Reform Act of 2020, S. 4991, 116th Cong. § 1031 (2019-2020).

68. *Id.* at § 1021(d).

69. *See id.* at § 104(a); *see also id.* at § 1025.

70. *Id.* at § 101(a)(6).

71. *All Actions: S. 4991 116th Congress (2019-2020)*, CONGRESS.GOV, https://www.congress.gov/bill/116th-congress/senate-bill/4991/all-actions.

Whether it is the CBRA, or a different legislative proposal, turning to a single Chapter would still be the best option for simplifying the bankruptcy process, eliminating attorney influence, and, ultimately, making debt relief more accessible for all individuals. A single Chapter would also establish uniform eligibility criteria, eliminating the complexity of choosing between two different Chapters based on one's financial situation. This should subsequently reduce the likelihood of disparities based on race. Simplifying the process would also reduce the reliance on attorney expertise, making it more difficult for bias to influence outcomes. Shrinking the risk for attorney bias would help individuals of all racial backgrounds take advantage of an opportunity to truly obtain a fresh start. Additionally, a single Chapter would streamline procedures, potentially reducing the overall cost of filing for bankruptcy. Lowering costs would also make the process more accessible to individuals who might otherwise be dissuaded from filing under Chapter 7 due to financial constraints.

Broad reform does not come without its challenges. In a divided Congress, large-scale bankruptcy reform will likely face difficult headwinds, as competing interests and political parties may hinder the passage of significant reform.[72] Especially with a presidential election looming this year, changes in political leadership or other shifts in the political landscape could certainly alter the trajectory of bankruptcy consolidation efforts. More recently, more targeted relief measures have been legislatively prioritized, especially those related to the COVID-19 pandemic.[73]

CONCLUSION

In conclusion, this article emphasizes the urgency of addressing racial bias in the bankruptcy system, particularly in the wake of the COVID-19 pandemic. As pandemic aid has waned, returning many Americans back under immense financial pressure, bankruptcy filings have correspondingly ticked back up.[74] Black Americans, in particular, are experiencing the adverse effects of mounting medical debt, coupled with disparate treatment within the bankruptcy system. This difference in treatment further undermines overall wealth protection, exacerbating widened gaps in economic inequality.

72. Vince Sullivan, *Washington Policy Rush Could Crowd Out Bankruptcy Reform*, LAW360 (Jan. 29, 2021), https://www.law360.com/articles/1350173/washington-policy-rush-could-crowd-out-bankruptcy-reform.

73. *See* Covid-19 Bankruptcy Relief Extension Act of 2021, Pub. L. No. 117-5, 135 Stat. 249 (introduced in early March 2021 and signed into law later that month with overwhelming bipartisan support).

74. Khristopher J. Brooks, *Now That Pandemic Aid Has Vanished, Bankruptcies Are on the Rise*, CBS NEWS (Feb. 17, 2023), https://www.cbsnews.com/news/bankruptcy-filings-2022-company-personal-epiq/?ftag=CNM-00-10aab8d&linkId=202503603.

The Bankruptcy Code has simply not evolved to meet the needs of today's consumers. However, pursuing meaningful change is a multifaceted challenge. Any viable solution will require collaboration between legal professionals, policymakers, and other stakeholders. Success would depend on the nature of implemented reforms, ongoing monitoring, regular trainings for attorneys, and continuous efforts to ensure fairness and equal treatment for all individuals. For the actors in the bankruptcy system, the broader goal should be to create a bankruptcy system that is fair, equitable, and accessible to individuals of all racial backgrounds. Congress can take the first step by revisiting the CBRA or passing similar legislation. In doing so, debt relief would be less elusive, especially for Black Americans, who bear the brunt of the financial challenges wrought by the Covid-19 pandemic.

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