No. 10-1443

In The Supreme Court of the United States

AMERICREDIT FINANCIAL SERVICES, INC.,

Petitioner,

v.

MARLENE A. PENROD,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF *AMICI CURIAE* AMERICAN FINANCIAL SERVICES ASSOCIATION, NATIONAL AUTOMOBILE DEALERS ASSOCIATION AND CALIFORNIA BANKERS ASSOCIATION IN SUPPORT OF PETITIONER

JAN T. CHILTON
Counsel of Record

SEVERSON & WERSON,
A PROFESSIONAL CORPORATION
One Embarcadero Center, 26th Floor
San Francisco, CA 94111
(415) 398-3344
jtc@severson.com

Counsel for Amici Curiae
American Financial Services Association
National Automobile Dealers Association
California Bankers Association

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The American Financial Services Association ("AFSA"), the National Automobile Dealers Association ("NADA") and the California Bankers Association ("CBA") respectfully submit this brief as *amici curiae* in support of Americredit Financial Services, Inc.'s Petition for a Writ of Certiorari.[1]

INTEREST OF *AMICI CURIAE*

1. AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA has a broad membership, ranging from large international financial services firms to single-office, independently owned consumer finance companies. The association represents financial services companies that hold a leadership position in their markets and conform to the highest standards of customer service and ethical business practices. AFSA has provided services to its members for more than 90 years. The association's officers, board, and staff are dedicated to continuing this legacy of commitment through the addition of new

[1] Counsel of record for all parties received notice at least 10 days before the due date of *amici curiae's* intention to file this brief. Both parties have consented to the filing of this brief. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amici curiae*, their members or their counsel made a monetary contribution to the preparation or submission of this brief.

members and programs, and increasing the quality of existing services.

AFSA has a vital interest in the outcome of this case. The members of AFSA are primarily motor vehicle installment sale financers. They are directly affected by the issue raised by Americredit's Petition in this case; namely, whether, for purposes of 11 U.S.C. § 1325(a)'s "hanging paragraph," the purchase money security interest created on financing of the sale of a motor vehicle includes "negative equity" in the buyer's trade-in vehicle.

AFSA's members hold motor vehicle installment sale contracts that financed hundreds of millions of dollars of negative equity. Resolution of the issue raised by Americredit's Petition will directly impact the value of those assets as well as the terms on which AFSA's members may purchase similar contracts in the future.

2. Founded in 1917, NADA is a non-profit trade organization whose members hold franchises to sell at retail passenger cars and trucks, and related goods and services, as authorized dealers of the various motor vehicle manufacturers and distributors doing business in the United States. Nearly 16,000 new car and truck dealers, with almost 32,000 separate franchises, in the United States are members of NADA. Stated another way, NADA represents approximately 90% of the new motor vehicle dealer industry which employs over a million Americans.

Among its other services, NADA advises members of relevant legal and regulatory issues. NADA closely monitors federal statutes, state statutes, and court rulings interpreting such laws. NADA appears before and submits briefs to courts and other tribunals as an *amicus curiae* to advocate interpretations of federal and state statutes that will advance the interests of its members as a group.

Over a third of new car sales nationally involve the financing of negative equity on the buyer's trade-in vehicle. Resolution of the issue raised by Americredit's Petition could have a major impact on the availability and price of financing of negative equity and thus affect a significant percentage of the sales made by NADA's members.

3. Established in 1891, the CBA is a non-profit organization that represents most of the FDIC-insured depository financial institutions in the state of California. Its members include commercial banks and savings associations of all asset sizes, from community banks to the largest banks in the nation.

The CBA frequently submits *amicus curiae* briefs to state and federal courts in matters that significantly affect the business of banking. This is such a matter. Banks purchase a large percentage of motor vehicle installment sale contracts. Many of them finance negative equity on trade-in vehicles. The issue raised by Americredit's Petition is a matter of vital importance to banks, as it affects their ability to recover the entire debt.

REASONS FOR GRANTING THE WRIT

Congress adopted § 1325(a)'s hanging paragraph as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") to prevent Chapter 13 debtors from stripping an automobile financer's claim down to the vehicle's value under 11 U.S.C. § 506(b) and then cramming down a Chapter 13 plan that repaid the financer less than the total amount owed.

The hanging paragraph prevents the strip-down/cram-down abuse[2] by providing that the allowed amount of the automobile financer's claim shall be determined without reference to § 506.[3]

> The hanging paragraph eliminates the cram-down occurring under § 1325(a)(5)(B) by eliminating bifurcation under § 506. Without § 506, creditors falling within the scope of the hanging paragraph are fully secured so that when a debtor elects to retain the collateral, the debtor must propose a plan that will pay the full amount of the claim.

In re Westfall, 599 F.3d 498, 501 (6th Cir. 2010) (*quoting In re Long*, 519 F.3d 288, 294 (6th Cir. 2008)).

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[2] For a description of the pre-BAPCPA strip-down/cram-down, see William C. Whitford, A History of the Automobile Lender Provisions of BAPCPA, 2007 U. Ill. L. Rev. 143, 144-49.

[3] Under 11 U.S.C. § 1325(a)(5), a cram-down Chapter 13 plan must provide for a creditor to receive value, as of the date of the plan, equivalent to the allowed amount of the creditor's claim.

To secure this favored treatment under the hanging paragraph, a creditor's claim must satisfy several requirements. Only the first of them is at issue here. It is that the "creditor has a purchase money security interest securing the debt that is the subject of the claim." 11 U.S.C. § 1325(a)(*).

The question presented by Americredit's Petition is whether negative equity[4] is included in the automobile financer's purchase money security interest and thus is entitled to favored treatment under § 1325(a)'s hanging paragraph.

Eight Circuits have squarely held that negative equity is included in the purchase money security interest. The Court should grant Americredit's Petition and reverse the Ninth Circuit's aberrant contrary holding so that a single, uniform rule will apply nationwide on this important issue of bankruptcy law.

I. There Is A Sharp, Mature Conflict Among The Courts Of Appeals Regarding The Treatment Of Negative Equity Under 11 U.S.C. § 1325(a)'s Hanging Paragraph

1. The conflict on the issue raised by Americredit's Petition is sharp. Eight federal circuit courts

[4] "Negative equity" is the amount of secured debt a car buyer owes on his or her trade-in vehicle in excess of that vehicle's market value. To facilitate a sale, a car dealer will often accept the trade-in vehicle, advance the amount needed to repay the debt secured by that vehicle, and include the negative equity in the amount financed on purchase of the new vehicle.

have held that a seller's or lender's purchase money security interest includes negative equity.[5]

In those eight circuits, the negative equity component of the automobile financer's claim may not be stripped down under § 506(b). To retain the vehicle, the debtor must propose a Chapter 13 plan that pays the automobile financer the full amount of its claim including any negative equity even if the amount of the claim exceeds the vehicle's value.

In this case, the Ninth Circuit deliberately broke ranks, creating an 8-to-1 split among the Courts of Appeals on this issue.

> In total . . . eight circuits have held that a creditor has a purchase money security interest in the negative equity of a debtor's trade-in vehicle.
>
> We decline to adopt the reasoning of our sister circuits. We acknowledge that our decision creates a circuit split, and we do not do this lightly.

In re Penrod, 611 F.3d 1158, 1160-61 (9th Cir. 2010); Pet. App. 5a-6a (citations omitted).

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[5] *In re Peaslee*, 585 F.3d 53 (2d Cir. 2009); *In re Price*, 562 F.3d 618 (4th Cir. 2009); *In re Dale*, 582 F.3d 568 (5th Cir. 2009); *In re Westfall*, 599 F.3d 498 (6th Cir. 2010); *In re Howard*, 597 F.3d 852 (7th Cir. 2010); *In re Mierkowski*, 580 F.3d 740 (8th Cir. 2009); *In re Callicott*, 580 F.3d 753 (8th Cir. 2009); *In re Ford*, 574 F.3d 1279 (10th Cir. 2009); *In re Graupner*, 537 F.3d 1295 (11th Cir. 2008).

Or, as the four dissenters from denial of rehearing en banc put it, we [the Ninth Circuit] "find[ ] ourselves on the wrong end of an eight to one circuit split. . . ." *In re Penrod*, 636 F.3d 1175, 1176 (9th Cir. 2011) (Bea, J., dissenting); Pet. App. 75a.

2. The issue on which the circuits are thus split is also mature. The nine circuit courts and the New York Court of Appeals have issued 15 majority and dissenting opinions on this issue. Scores of bankruptcy court, district court, and Bankruptcy Appellate Panel decisions add further judicial consideration of the issue raised by Americredit's Petition. *See* Pet. App. 201a-208a.

Hundreds of briefs have been filed in those cases advancing nearly every conceivable argument pertinent to the issue. Eminent UCC scholars, such as Professors James J. White and Barkley Clark, have authored some of those briefs. Prominent bankruptcy lawyers penned others.

Given this spate of judicial and legal attention to the relatively narrow issue of statutory construction raised by Americredit's Petition, it is unlikely that any major argument, significant bit of legislative history, or other indication of congressional intent has been overlooked. Further litigation of the issue in the few courts that have not already resolved it will probably contribute little that is new or important to the discussion.

What there is to say on the subject has been said. There is no reason to wait. The issue will not ripen. It will only age. Meanwhile, the split among the circuits will remain, causing problems for courts, creditors, debtors and potentially for the consuming public and automobile and auto finance industries as well.

II. The Conflict Detrimentally Impacts A Large Sector Of The Nation's Economy

1. The Court should grant Americredit's Petition because the Ninth Circuit's divergent interpretation of section 1325's hanging paragraph is likely to have a significant negative impact on an important sector of the nation's economy, both within the Ninth Circuit and nationwide.

In 2010, new car dealers' sales totaled $552.9 billion, about 14.1% of total retail sales in the United States.[6] In California, the largest state in the Ninth Circuit, new car dealers' 2010 sales were $57.7 billion, accounting for 15.1% of total retail sales in the

[6] *See* Nat'l Auto. Dealers Ass'n, Driving the United States' Economy: Annual Contributions of the United States' New-Vehicle Dealers, publicly available at <http://www.nada.org/NR/rdonlyres/EB112555-3EDF-4FBD-AB6C-3CDE12BF9EC7/0/DrivingUnitedStatesEconomy2011.pdf>. Census Bureau statistics show that light vehicle sales in the United States during 2007 (including both new and used car dealers) $665.6 billion. *See* <http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=D&-fds_name=EC0700A1&-ds_name=EC0744SLLS1&-_lang=en>.

state.[7] During 2010, new car dealers employed about 892,000 workers nationally, and 90,600 in California. *See* nn. 6 & 7.

Most motor vehicles are sold on credit. More than a third of those sales involve the financing of negative equity.[8] (Undoubtedly, an even higher percentage of car sales to persons who later file Chapter 13 petitions involve negative equity since Chapter 13 debtors typically carry more debt than the general population.) Both the percentage of sales involving negative equity and the amount of negative equity financed as part of a sale have increased over the years as vehicle manufacturers and automobile financers have striven to keep cars affordable by lowering down payment requirements and lengthening amortization periods to offset increased car prices. *See* James A. Wilson, Jr. & Sandra L. DiChiara, n. 8.

Financing negative equity on a trade-in is a common practice that has become an integral element

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[7] *See* Nat'l Auto. Dealers Ass'n, Driving California's Economy: Annual Contributions of California's New-Vehicle Dealers, publicly available at <http://www.nada.org/NR/rdonlyres/9CD726DF-4D43-44F0-A8FC-77FAF1604408/0/DrivingCaliforniaEconomy2011.pdf>.

[8] James A. Wilson, Jr. & Sandra L. DiChiara, The Changing Landscape of Indirect Automobile Lending, in 2 FDIC Supervisory Insights No. 1 (Summer 2005) ("J.D. Power and Associates estimates that approximately 38 percent of new car buyers have negative equity at trade-in, compared to 25 percent two years ago.").

of vehicle financing.[9] More car buyers find themselves with negative equity due to the lower payments required by installment sales contracts that now often last six or more years.[10] Most car buyers cannot buy another car without trading in their existing car and financing any negative equity that remains on it. Certainly, that is true of most individuals who later file Chapter 13 petitions.

> Many consumers would be unable or unwilling to acquire a new vehicle unless the dealer finances the net negative equity. This practice benefits consumers by providing them with a convenient means of clearing the title to their trade-in vehicle and disposing of it. Additionally, this practice can be particularly advantageous to consumers when debt attributable to negative equity is included in a RISC with subvented rate.

Letter, n. 9, at 9.

A substantial number of cars are sold each year to persons who later file Chapter 13 petitions. During

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[9] Letter from Bill Himpler, AFSA Executive Vice President, to Federal Trade Commission re Motor Vehicle Roundtables (Mar. 28, 2011), p. 9, publicly available at <http://www.afsaonline.org/library/files/legal/comment_letters/AFSAMotorVehicleRoundtablesProjectNo104811.pdf>; *see also* Pet. 12; Pet. App. 198a-200a (citing 36 states' statutes concerning financing of negative equity).

[10] *See* James A. Wilson, Jr. & Sandra L. DiChiara, *supra* n. 9; David Kiley, Car Buyers Burned By Negative Equity, USA Today (July 6, 2003), p. 1.

calendar year 2010, 434,739 Chapter 13 bankruptcy cases were commenced nationwide.[11] Likely, those debtors bought about 100,000 cars during the year before filing their bankruptcy petitions.[12] As already explained, in well more than a third of those sales negative equity was financed.

The Ninth Circuit's divergent interpretation of section 1325's hanging paragraph negatively impacts those sales and many more besides. As the dissenters from denial of rehearing in this case put it: "Would anyone extend this line of credit and pay off the buyer's negative equity in her old car if he could not get a purchase money security interest ("PMSI") in the total amount of debt he assumed? Not if he wanted to stay in business." *Penrod*, 636 F.3d at 1176 (Bea, J., dissenting); Pet. App. 76a (fn. omitted).

The Ninth Circuit's holding increases an automobile financer's risk of loss on the negative equity portion of the amount financed under a retail installment sale contract. Economically rational creditors will increase the price of credit to offset that

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[11] James C. Duff, Judicial Business of the United States Courts: Annual Report of the Director, Table F-2 (2010), updated through 12-month period ending December 31, 2010, publicly available at <http://www.uscourts.gov/uscourts/Statistics/BankruptcyStatistics/BankruptcyFilings/2010/1210_f2.pdf>.

[12] On average, American consumers keep a new car three to five years. *See* Jonathan Welsh, When a $38,000 Car Costs $44,000, Wall St. J. D1 (May 22, 2007); <http://wiki.answers.com/Q/How_long_does_the_average_consumer_keep_a_new_car>.

increased risk or, as the Ninth Circuit's dissenters suggest, restrict the supply of credit to avoid this increased risk. Either response is likely to harm commerce in an important, but still fragile sector of the economy and adversely affect the economy as a whole.[13] The Ninth Circuit's holding "leaves an already struggling auto industry in perilous waters and affects thousands of commercial transactions each year." *Penrod*, 636 F.3d at 1176 (Bea, J., dissenting); Pet. App. 75a.

2. The Ninth Circuit's decision to disregard the holdings of eight other circuits will have deleterious consequences not only in the Ninth Circuit, but in other parts of the country as well, making the need for this Court's review more urgent.

Matters would be bad enough if the Ninth Circuit's decision affected only commerce in the nine states whose federal courts must now follow *Penrod*. Last year, bankruptcy courts in those nine states handled 20% of the nation's Chapter 13 filings. James C. Duff, *supra* n. 11, Table F-2. An equal percentage of the nation's population lives in the Ninth Circuit. The states within that circuit account for 20% of the nation's gross domestic product.[14] Last year, more

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[13] *See* Inst. of Labor & Indus. Relations, Univ. of Michigan, The Effect of the Withdrawal of Automobile Leasing on the State of New York Economy (Feb. 2004), publicly available at <http://www.cargroup.org/pdfs/CARNewYork.PDF>.

[14] U.S. Census Bureau, The 2011 Statistical Abstract, Table 670, publicly available at <http://www.census.gov/compendia/statab/

(Continued on following page)

than 15% of new car sales nationally were made by dealers located in the Ninth Circuit. *See* Nat'l Auto. Dealers Ass'n, *supra* n. 6.

But the damage wrought by the Ninth Circuit's aberrant holding is not confined to those nine states, big as they are. Unlike houses, cars move. So do their owners. An automobile financer must take the Ninth Circuit's view into account in buying car contracts in Maine because some who buy cars in Maine will move West and file a Chapter 13 petition within the Ninth Circuit.

Thus, a circuit split on an important issue of bankruptcy law like this affects commerce throughout the United States, not just in the Ninth Circuit. Uniformity of bankruptcy law has been a goal since the founding of the Republic. "As James Madison observed: '[t]he power of establishing uniform laws of bankruptcy is so intimately connected with the regulation of commerce . . . that the expediency of it seems not likely to be drawn into question.'" *Railway Labor Executives Ass'n v. Gibbons*, 455 U.S. 457, 465-66 (1982) (*quoting* The Federalist No. 42).

The constitutional requirement of uniformity of bankruptcy legislation imposes only loose limits on congressional powers. *Id.* at 469, 473. But where, as here, Congress has enacted one bankruptcy law for

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statab/2011/tables/11s0670.pdf>; Christopher Chantrill, GDP by State, publicly available at <http://www.usgovernmentspending.com/gdp_by_state>.

the entire nation, this Court should exercise its powers, as a co-equal branch of government, to secure the uniformity that the Framers desired and Congress has decreed.

III. The Conflict Is Best Resolved By Granting Americredit's Petition

1. This case presents the issue of negative equity's proper treatment under section 1325's hanging paragraph in a cleanly focused manner.

The relevant facts are few and uncontested. Most of them are apparent on the face of Penrod's car purchase contract, bankruptcy petition, and Chapter 13 plan as well as the lower court opinions in the case.

In September 2005, Penrod bought a car on credit, trading in her prior car. The dealer repaid the $13,137 Penrod still owed on the trade-in car, credited her $6,000 for the trade-in's value, and rolled the $7,137 difference, the negative equity, into the amount financed under her new installment sale contract. The contract gave the seller a security interest in the new car Penrod had purchased. The seller assigned Penrod's contract to Americredit. Pet. App. 158a.

Penrod filed a Chapter 13 petition 523 days later. Pet. App. 135a. She proposed a Chapter 13 plan based on stripping Americredit's claim down to the value of the car, paying that amount in full as a secured claim and treating the rest of Americredit's claim as

unsecured to be paid at cents on the dollar. Pet. App. 146a-157a. Americredit's timely objection to Penrod's plan, based on the hanging paragraph, was overruled in part. Pet. App. 69a-72a, 136a-140a. Americredit appealed unsuccessfully to the Ninth Circuit's Bankruptcy Appellate Panel ("BAP"), then to the Ninth Circuit, which later denied Americredit's Petition for rehearing en banc, over a four-judge dissent. Pet. App. 1a-15a, 16a-68a, 73a-87a.

The case is uncluttered by any extraneous issues. At no prior stage of this case has any procedural issue been raised as an obstacle to consideration of the hanging paragraph issue. Nor has any other substantive issue been litigated in the case. As the BAP aptly put it:

> This appeal presents a pure question of law: When a debtor trades in a motor vehicle in connection with buying a new one, and the lender who is financing the purchase assumes the debtor's "negative equity" on the trade-in, how should the transaction be treated under the troublesome "hanging paragraph" of § 1325(a) of the Bankruptcy Code?

Pet. App. 17a.

Both Americredit and Penrod are represented by able counsel who presented the arguments on both sides of this issue well in their lower court briefs and who will undoubtedly do so again in this Court. *Amicus curiae* briefs, some by noted legal scholars, addressed the issue from additional perspectives

and assured that no pertinent point was overlooked. At least as many *amicus* briefs are likely to be filed in this Court. The Court also has the benefit of extensive lower court opinions in this case. In particular, the BAP opinion and the four-judge dissent from denial of rehearing en banc crystalize the opposing views on the hanging paragraph issue. *See* Pet. App. 16a-68a, 73a-87a.

2. The hanging paragraph issue is unlikely to be presented again, or as clearly, for this Court's review for a considerable period, if at all.

In 9 of the 12 circuits, the issue is now settled. Neither creditors nor debtors have any incentive to appeal the issue, as their only hope of a different result lies in the remote chance of a Court of Appeals' granting rehearing en banc or this Court's granting certiorari. The amount at stake in any single Chapter 13 case is relatively small, less than $7,137 here, for example. Neither a creditor nor a debtor will be motivated to spend many times that amount to appeal the issue given the very low probability of success.

The three circuits which have not yet decided the hanging paragraph issue handle comparatively few Chapter 13 cases. Only 376 nonbusiness Chapter 13 petitions were filed in the District of Columbia Circuit during 2010. During the same period, 15,588 similar petitions were filed in the First Circuit, and 20,903 were filed in the Third Circuit. By comparison, 86,814 nonbusiness Chapter 13 petitions were filed during 2010 in the Ninth Circuit alone, and 397,872

in all nine of the circuits that have already spoken on the hanging paragraph issue.[15]

Because the three remaining circuits handle relatively few Chapter 13 cases, the hanging paragraph issue is less likely to arise in those courts soon, if ever. Debtors' counsel in those circuits are less likely to litigate the issue through two levels of appeals. The relatively small sums at stake render the appeal of any single case an uneconomic proposition. As relatively few debtors in those circuits file Chapter 13 petitions, the cost of an appeal cannot be recouped as easily from other debtors' cases.

Moreover, the odds are decidedly against a debtor in appealing this issue. The remaining three circuits are more likely to follow the eight-circuit majority reasoning than adopt the Ninth Circuit's lone dissenting view. So pursuing a debtor's appeal on the hanging paragraph issue in any of the remaining circuits is a high-cost, low-probability-of-success proposition. Carrying any unsuccessful appeal on to this Court would only increase the cost and lower the probability of success.

As a practical matter, therefore, it is unlikely that another petition will raise the hanging paragraph issue for this Court's resolution again any time soon. Such a petition would probably be filed only if

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[15] All the Chapter 13 filing statistics are taken from James C. Duff, *supra* n. 11, Table F-2.

the issue is appealed to one of the three remaining circuits and that court adopts the Ninth Circuit's dissenting view. The odds are distinctly against that happening. Consequently, Americredit's Petition may be the only – and is certainly the best – opportunity this Court will have to resolve this harmful split among the circuits.

3. The only other way bankruptcy law can be brought back into uniformity on this issue is by congressional action. It is unlikely, however, that Congress will pass legislation clarifying the hanging paragraph in the foreseeable future.

To finally enact the BAPCPA took nearly a decade of sustained congressional effort filled with enough twists and turns of political fortune to fill an 89-page law review article devoted solely to tracing the Act's legislative history.[16] Major bankruptcy reform is achieved only once a generation, the last before BAPCPA having been enactment of the current Bankruptcy Code in 1978. Even smaller, cleanup measures are infrequent in the bankruptcy area. Between 1978 and 2005 there were only four significant statutory amendments to the Bankruptcy Code.[17]

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[16] *See* Susan Jensen, A Legislative History Of The Bankruptcy Abuse Prevention And Consumer Protection Act of 2005, 79 Am. Bankr. L.J. 485 (2005); *see also* William C. Whitford, *supra* n. 2, 2007 U. Ill. L. Rev. at 164-86.

[17] *See* Richardo I. Kilpatrick, Selected Creditor Issues Under The Bankruptcy Abuse Prevention And Consumer Protection Act of 2005, 79 Am. Bankr. L.J. 817 (2005).

Further congressional action on key BAPCPA provisions, such as section 1325's hanging paragraph are particularly unlikely because they proved such divisive issues during the original effort to pass what became BAPCPA that it is unlikely that legislators or affected interest groups would be willing to reopen debate on them. By the end of BAPCPA's epic journey through Congress, the legislation's advocates were so weary of the effort that they did everything possible to keep existing compromises from being re-examined, realizing that reconsideration of even a single contentious provision might unravel the bill's support yet again.[18]

Thus, it appears unlikely that Congress will act to resolve the conflict among the circuits as to the

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[18] *See In re McNabb*, 326 B.R. 785, 791 (Bankr. D. Ariz. 2005) ("It has been reported that a 'technical amendments' bill is in the works to fix various glitches in BAPCPA, notwithstanding Congressional testimony that it was so perfect that not a word need be changed."); Brad A. Goergen, The Post-Reform Bankruptcy Code; Is It Just A Pig In A Dress?, 49-JAN Advocate (Idaho) 15 (2006) ("Another possible (and more cynical) explanation for some of the incongruities between some of BAPCPA's provisions is that the political coalition favoring its passage could not withstand any amendments, even intelligent ones."); *see also* 149 Cong. Rec. H1991 (daily ed. Mar. 19, 2003) (remarks of Rep. Sensenbrenner) ("The time for these reforms is long overdue. This body has on six previous occasions passed similar bankruptcy reform bills. It is my hope that today we will again do the right thing and pass this needed bipartisan bankruptcy reform legislation. Perhaps the seventh attempt will prove to be a charm and finally lead to the enactment of these critically important reforms.").

hanging paragraph's meaning. Unless this Court grants Americredit's Petition and decides the issue, in most of the nation's Chapter 13 cases, debtors will be required to repay negative equity rolled into the purchase price of their current cars, while the Ninth Circuit's 20% share of the nation's Chapter 13 filings will be governed by a different rule, confounding the constitutional command that Congress enact "uniform" bankruptcy laws and causing economic dislocations in an important sector of the nation's economy.

CONCLUSION

For the reasons stated above and those stated in Americredit's Petition, the Court should grant the petition and reverse the Ninth Circuit's judgment.

Respectfully submitted,

JAN T. CHILTON
Counsel of Record

SEVERSON & WERSON,
A PROFESSIONAL CORPORATION
One Embarcadero Center, 26th Floor
San Francisco, CA 94111
(415) 398-3344

Counsel for Amici Curiae
American Financial Services Association
National Automobile Dealers Association
California Bankers Association

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