



UNC
SCHOOL OF LAW

NORTH CAROLINA LAW REVIEW

Volume 100 | Number 6

Article 6

9-1-2022

Friend or Foe? The Government's Split Mission in Consumer Bankruptcy Cases

Steven M. Constantin

Follow this and additional works at: <https://scholarship.law.unc.edu/nclr>



Part of the [Law Commons](#)

Recommended Citation

Steven M. Constantin, *Friend or Foe? The Government's Split Mission in Consumer Bankruptcy Cases*, 100 N.C. L. REV. 1809 (2022).

Available at: <https://scholarship.law.unc.edu/nclr/vol100/iss6/6>

This Recent Developments is brought to you for free and open access by Carolina Law Scholarship Repository. It has been accepted for inclusion in North Carolina Law Review by an authorized editor of Carolina Law Scholarship Repository. For more information, please contact law_repository@unc.edu.

Friend or Foe? The Government's Split Mission in Consumer Bankruptcy Cases*

The consumer bankruptcy system in the United States seeks to advance dual objectives: facilitating creditor collections and providing relief for the downtrodden debtor who has no other financial respite. In most consumer bankruptcy cases, the creditor's only objective is the maximum recovery of property owed to it by the bankruptcy estate. However, in situations where the government is the creditor, there are competing social and economic goals that should influence the government's behavior toward debtors that seek to protect certain assets under the bankruptcy code's property exemptions. With one in ten individuals filing for bankruptcy in their lifetime, agencies such as the IRS, which often finds itself as creditor, have an obligation to consider the bigger picture surrounding the bankruptcy system other than just collection due to their unique positions as government actors.

This Recent Development seeks to explore the implications of the Fourth Circuit's ruling in Copley v. United States, where the IRS sought to collect unpaid taxes by offsetting a married couple's federal tax return, which they had sought to safeguard in bankruptcy through property exemptions. In deciding that the IRS's authority to collect delinquent tax debts superseded the debtors' rights to exempt their tax return, the Fourth Circuit laid the foundation for problematic outcomes for low-income individuals and contract workers. Ultimately, the Fourth Circuit failed to recognize the unique position of government creditors in consumer bankruptcy cases and their obligations to consider countervailing social and economic objectives.

INTRODUCTION

The consumer bankruptcy system is designed to help provide debtors with a “fresh start” post-bankruptcy and prepare them to reenter society as economically contributing individuals.¹ The system is also equally designed to ensure fair distribution of payments to creditors. In many ways, the foundation of American bankruptcy law is rooted in debt collection.² However, over time, the bankruptcy system has come to be seen as serving an essential social insurance function, acting as a safety net of last resort to help financially

* © 2022 Steven M. Constantin.

1. See *infra* Part I.

2. Sean C. Currie, *The Multiple Purposes of Bankruptcy: Restoring Bankruptcy's Social Insurance Function After BAPCPA*, 7 DEPAUL BUS. & COM. L.J. 241, 243 (2009).

distressed individuals find refuge when other avenues fail.³ The American bankruptcy system is a reflection of a struggle to “balance a punitive, purely debt collection purpose with a humanitarian and socially responsive one.”⁴ Normally, a creditor’s sole objective is to collect as much of its outstanding debt as possible from the liquidation of a bankrupt debtor’s estate. However, in bankruptcy proceedings where the government is a creditor, such as when the Internal Revenue Service (“IRS”) pursues the collection of unpaid taxes, there are countervailing economic and social goals that are tied to its collection efforts that should not be ignored. So, what happens when the government finds itself at a policy crossroads in consumer bankruptcy cases of promoting social and economic goals on one hand and collecting delinquent tax debts from low- and middle-income Americans on the other?

The Fourth Circuit found itself in this dilemma in *Copley v. United States*,⁵ where it sought to resolve an apparent statutory conflict between the rights of the IRS as creditor and the bankruptcy system’s goal to provide debtors with a “fresh start.”⁶ The case raises important questions surrounding the tension between the government’s interests as a creditor and its broader responsibility to contemplate the economic and social considerations underlying the bankruptcy system. The court resolved the statutory conflict in favor of the IRS’s right to collect preexisting tax debts notwithstanding provisions in the Bankruptcy Code designed to protect debtors.⁷ However, it was clear the court failed to consider the government’s competing roles and the impact its interpretation will have on low-income individuals and contract workers.

This Recent Development proceeds in four parts. Part I provides background on the primary goals of the bankruptcy system in the United States and how the government might find itself in conflicting roles as both creditor and protector of the general welfare. Part II discusses the factual and procedural background of the Fourth Circuit’s recent decision in *Copley*. Part III analyzes and critiques the Fourth Circuit’s reasoning, highlighting that the issue presented in *Copley* is open to reasonable differences of interpretation. Finally, Part IV argues that the Fourth Circuit’s decision presents problematic results for certain consumer bankruptcy filers that are inconsistent with policy goals of the bankruptcy system and broader governmental objectives.

3. See *id.* at 243–47.

4. *Id.* at 243.

5. 959 F.3d 118 (4th Cir. 2020).

6. *Id.* at 118.

7. *Id.* at 125–26.

I. THE GOVERNMENT'S COMPETING ROLES IN CONSUMER BANKRUPTCY AS CREDITOR AND SOCIAL WELFARE PROVIDER

A. *Twin Policy Goals of the Consumer Bankruptcy System*

The consumer bankruptcy system, or Chapter 7, has two primary objectives: relieving financially distressed debtors of obligations they are unable to repay and preserving the countervailing interests of creditors.⁸ “The Bankruptcy Code is more than just a complex law, it is an expression of social policy,”⁹ leading to congressional and judicial efforts to strike a balance between offering debtors a fresh start and ensuring fairness to creditors.¹⁰ About 8.7 million people filed for Chapter 7 bankruptcy between 2006 and 2017,¹¹ and at least one in ten Americans have filed for bankruptcy once in their lives,¹² highlighting the importance of these dual objectives in the American bankruptcy system and the magnitude of the interests at stake.

1. Bankruptcy Seeks To Provide Debtors with a “Fresh Start”

Many debtors use the bankruptcy system because they face serious financial problems and have trouble paying their debts.¹³ Individuals filing for bankruptcy overwhelmingly tend to be middle class, and roughly two-thirds of people who file for bankruptcy cite medical bills as a key contributor to their decision to file.¹⁴ An unexpected change in circumstances is the most common reason people file for bankruptcy and includes changes induced by providing

8. 11 U.S.C. §§ 701–784; KEVIN M. LEWIS, CONG. RSCH. SERV., R45137, *BANKRUPTCY BASICS: A PRIMER* 1 (2018).

9. ELIZABETH WARREN, JAY LAWRENCE WESTBROOK, KATHERINE PORTER & JOHN A.E. POTTOW, *THE LAW OF DEBTORS AND CREDITORS* 305 (7th ed. 2014) (explaining that our nation’s bankruptcy code is the product of political compromise over competing ideas about debt relief, with some viewing relief as rooted in morality while others seeing it as a necessary evil); *see also Process – Bankruptcy Basics*, U.S. CTS., <https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/process-bankruptcy-basics> [<https://perma.cc/9CMB-R3P7>] [hereinafter *Process*] (explaining how bankruptcy law “gives to the honest but unfortunate debtor . . . a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt” (quoting *Loc. Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934))).

10. LEWIS, *supra* note 8, at 1 (citing *In re Harding*, 423 B.R. 568, 575 (Bankr. S.D. Fla. 2010)).

11. *Just the Facts: Consumer Bankruptcy Filings, 2006-2017*, U.S. CTS., <https://www.uscourts.gov/news/2018/03/07/just-facts-consumer-bankruptcy-filings-2006-2017> [<https://perma.cc/NDS4-KUZ8>] [hereinafter *Consumer Bankruptcy Filings*].

12. *See* Sasha Indarte, *Moral Hazard Versus Liquidity in Household Bankruptcy* 1 (Oct. 26, 2020) (unpublished manuscript) (on file with the North Carolina Law Review).

13. *See, e.g., Hearing Before the Subcomm. on Fin. Insts. & Regul. Relief of the Comm. on Banking, Hous. & Urban Affs.*, 105 Cong. 101 (1998) [hereinafter *Hearing*] (statement of Gary Klein, Staff Attorney, National Consumer Law Center) (“Data shows that Americans in bankruptcy are far poorer than their nonbankrupt counterparts.”).

14. Lorie Konish, *This Is the Real Reason Most Americans File for Bankruptcy*, CNBC, <https://www.cnbc.com/2019/02/11/this-is-the-real-reason-most-americans-file-for-bankruptcy.html> [<https://perma.cc/S8F9-XAKB>] (last updated Feb. 11, 2019, 2:20 PM).

help to friends or relatives, paying down student loans, and going through divorce or separation.¹⁵ “A fundamental goal of the federal bankruptcy laws enacted by Congress is to give debtors a financial ‘fresh start’ from burdensome debts.”¹⁶ Considering the large number of people filing for Chapter 7 over the past decade, it comes as no surprise that the consumer bankruptcy system plays a vital role in our country and serves as a safety net for many individuals when other means of social welfare prove inadequate.¹⁷ The “fresh start” objective of the bankruptcy process recognizes that people entering bankruptcy remain members of society and those emerging from bankruptcy deserve a return to a productive economic life.¹⁸ Not only is this objective necessary to the debtor’s economic rehabilitation, but it is also replete with moral and ethical considerations.¹⁹

One way the Bankruptcy Code promotes this “fresh start” objective is through the allowance of exemptions, a concept that also benefits the federal government from the standpoint of macroeconomic objectives.²⁰ Exemptions allow the debtor to claim some property as exempt from execution so that “no debtor can be reduced to absolute destitution.”²¹ The Bankruptcy Code provides, with limited exceptions, that exempt property cannot be used to satisfy any of the bankruptcy debtor’s pre-petition debts.²² Exemption laws exist to ensure that debtors retain enough basic property to have an opportunity to recover financially, allowing a debtor to protect property necessary for their survival from collection.²³ It has been stated the “purpose[s] of . . . exemption laws ha[ve] been to protect a debtor from his creditors, to provide him with the

15. Hillary Hoffower, *Staggering Medical Bills Are the Biggest Drivers of Personal Bankruptcies in the U.S. Here’s What You Need To Know if You’re Thinking About Filing for Bankruptcy*, INSIDER (June 25, 2019, 2:16 PM), <https://www.businessinsider.com/causes-personal-bankruptcy-medical-bills-mortgages-student-loan-debt-2019-6> [<https://perma.cc/T9UK-C9XT>] (noting the five leading reasons for personal bankruptcy as medical issues, unaffordable mortgages or foreclosures, living above one’s means, providing help to friends or relatives, student loans, and divorce or separation); *see also* Konish, *supra* note 14 (“Attorney William Waldner of Midtown Bankruptcy told Business Insider he’s had an influx of clients dealing with divorce, such as single mothers who are taking care of multiple kids and not getting enough support or single men paying for legal fees.”).

16. *Process*, *supra* note 9.

17. Robert J. Landry, III & David W. Read, *Erosion of Access to Consumer Bankruptcy’s “Fresh Start” Policy in the United States: Statutory Reforms Needed To Enhance Access to Justice and Promote Social Justice*, 7 WM. & MARY POL’Y REV. 51, 53 (2015).

18. Currie, *supra* note 2, at 243–46.

19. *Id.* at 244.

20. *See* WARREN ET AL., *supra* note 9, at 79; Gary E. Sullivan, *A Fresh Start to Bankruptcy Exemptions*, 2018 BYU L. REV. 335, 337.

21. *See* WARREN ET AL., *supra* note 9, at 79.

22. *See* 11 U.S.C. § 522(c).

23. WARREN ET AL., *supra* note 9, at 79; LEWIS, *supra* note 8, at 6 (citing *Menninger v. Schramm*, 431 B.R. 397, 400 (B.A.P. 6th Cir. 2010)).

basic necessities of life so that even if his creditors levy on all of his nonexempt property, the debtor will not be left destitute and a public charge.”²⁴

Tying exemptions to the concept of economic rehabilitation, “research suggests that states with higher exemption allowances have the highest levels of entrepreneurship in the country.”²⁵ This is because “[a] debtor freed from creditor claims but left in an abject state of balance sheet poverty faces higher hurdles to rehabilitation than a debtor left with substantial property.”²⁶ Perhaps these states understand the positive relationship between high levels of entrepreneurship and economic growth.²⁷ At its base, exemptions help determine where the debtor begins their journey back to solvency and economic productivity.²⁸ Ultimately, allowing debtors to exempt specific property from creditor collection is a key component of consumer bankruptcy that allows an individual in Chapter 7 to “preserve at least a minimal standard of living and to reenter the economy in a productive role rather than being cast out from it.”²⁹ For example, the code allowing a debtor to exempt professional books or tools of the trade from collection means the debtor retains some ability to support themselves and still contribute to the economy by pursuing their trade or business.³⁰

2. Bankruptcy Seeks To Ensure Fair Payment to Creditors

On the other side of the policy divide is the bankruptcy system’s competing goal to “maximize total creditor return by distributing a subset of the debtor’s assets or income to creditors in an orderly, equitable, and efficient

24. *In re Copley (Copley I)*, 547 B.R. 176, 185 n.21 (Bankr. E.D. Va. 2016) (quoting H.R. Rep. No. 95595, at 126 (1977), reprinted in 1978 U.S.C.C.A.N. 5963, 6087); see also WARREN ET AL., *supra* note 9, at 80 (highlighting that debtors can either claim their property exemptions under federal bankruptcy law or state law, depending on whether their state has allowed them to opt out of state exemption laws).

25. Nathalie Martin, *The Role of History and Culture in Developing Bankruptcy and Insolvency Systems: The Perils of Legal Transplantation*, 28 B.C. INT’L & COMP. L. REV. 1, 29 (2005); see also 11 U.S.C. §§ 522(d)(1)–(12) (providing exemptions for certain levels of interests in real property, motor vehicles, household goods, unmatured life insurance contracts, professional books, and tools of trade).

26. Sullivan, *supra* note 20, at 338.

27. See generally Alexander S. Kritikos, *Entrepreneurs and Their Impact on Jobs and Economic Growth*, IZA WORLD LAB. (May 2014), <https://wol.iza.org/uploads/articles/8/pdfs/entrepreneurs-and-their-impact-on-jobs-and-economic-growth.pdf> [<https://perma.cc/2LM5-JXFF>] (illustrating the statistically positive impact entrepreneurs have on economic growth); Najm Mohamed, *Top 5 Takeaways on the Importance of Entrepreneurship*, DUKE SANFORD CTR. FOR INT’L. DEV. (Mar. 30, 2020), <https://dcid.sanford.duke.edu/importance-of-entrepreneurship/> [<https://perma.cc/2LM5-JXFF>] (noting the important role entrepreneurs have in a prosperous society).

28. Sullivan, *supra* note 20, at 336.

29. Richard E. Mendales, *Rethinking Exemptions in Bankruptcy*, 40 B.C. L. REV. 851, 852 (1999).

30. 11 U.S.C. § 522(d)(6).

fashion.”³¹ Debt collection has always been at the core of bankruptcy.³² Creditors seek to collect as much of their debts as possible. In consumer bankruptcy proceedings, the process involves liquidating a debtor’s nonexempt assets to pay the debtor’s creditors.³³ From a creditor’s perspective, bankruptcy helps reconcile conflicts with other creditors who have claims against the same debtor’s assets, and seeks to maximize creditor recovery by offering an organized procedure for debt repayment.³⁴ Most of bankruptcy law is “concerned . . . with providing a compulsory and collective system for satisfying the claims of creditors.”³⁵ Caught between these competing aims, courts often grapple with how to resolve conflicting interests of ensuring fair distribution of payments to creditors while facilitating a “fresh start” for the debtor.³⁶

3. The Government’s Dual Role in Consumer Bankruptcy: Property Exemptions and the IRS’s Right To Offset Preexisting Federal Tax Debt

The government often plays dual, opposing roles in bankruptcy proceedings: one as a creditor and one as an institution tasked with promoting the general welfare. For example, the IRS often plays the role of creditor, seeking to recoup outstanding tax debts while the government, from a perspective of broader policy objectives, is fundamentally tasked with promoting the general welfare.³⁷ Most creditors are only interested in maximizing the amount they recoup from a bankrupt debtor. However, there are instances in which the government finds itself in the unique position of having to choose between conflicting goals: protecting the debtor with the “fresh start” or ensuring repayment of its tax debts.

With about 13.1 million delinquent taxpayer accounts³⁸ and Americans holding roughly \$527 billion in tax debt,³⁹ the IRS often finds itself caught between these conflicting roles. In fact, millions of Americans are “subject to

31. LEWIS, *supra* note 8, at 1.

32. Brian Rothschild, *The Illogic of No Limits on Bankruptcy*, 23 EMORY BANKR. DEVS. J. 473, 477 (2007).

33. LEWIS, *supra* note 8, at 9.

34. Jay L. Zagorsky & Lois R. Lupica, *A Study of Consumer’s Post-Discharge Finances: Struggle, Stasis, or Fresh Start*, 16 AM. BANKR. INST. L. REV. 283, 283 (2008).

35. Thomas H. Jackson, *The Fresh-Start Policy in Bankruptcy Law*, 98 HARV. L. REV. 1393, 1395 (1988).

36. LEWIS, *supra* note 8, at 1.

37. See generally INTERNAL REVENUE SERV., PUBLICATION 908: BANKRUPTCY TAX GUIDE (2022), <https://www.irs.gov/pub/irs-pdf/p908.pdf> [<https://perma.cc/5E3X-J64Z>] (explaining the basic federal income tax aspects of bankruptcy).

38. Mike Brown, *Tax Season Is upon Us, and the \$527 Billion in American Tax Debt Should Serve as a Reminder To File Your Taxes Correctly*, INSIDER (Jan. 16, 2020, 9:15 AM), <https://www.businessinsider.com/what-is-tax-debt-season-how-to-file-correctly> [<https://perma.cc/CA3B-2TWN>].

39. *Id.*

tax refund offsets, with billions of dollars being intercepted annually.”⁴⁰ Considering the nearly 8.1 million Chapter 7 filings from 2007 to 2017,⁴¹ questions about the intersection of tax debt and bankruptcy are almost guaranteed to arise in bankruptcy proceedings, where the IRS’s collection efforts conflict with the institutional objectives of the government and bankruptcy system to provide financial relief for debtors and promote sound economic policy.

One such contradiction can be found between §§ 522(c) and 553(a) of the Bankruptcy Code and Internal Revenue Code (“IRC”) § 6402(a).⁴² Section 522(c) provides that “[u]nless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose . . . before the commencement of the case.”⁴³ However, IRC § 6402(a), the federal tax offset program, gives the Secretary of the Treasury the discretion to set off any tax overpayment against a taxpayer’s preexisting tax liabilities.⁴⁴ The apparent contradiction between the sections arises when a debtor claims their tax overpayment as exempt property. In plain language, the debtor’s ability to exempt a tax overpayment under § 522(c) conflicts with the IRS’s authority to take the tax overpayment to satisfy the debtor’s preexisting tax liabilities. While § 553(a) preserves a creditor’s right to “offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case,”⁴⁵ bankruptcy courts around the country have been divided on the question of whether the IRS’s authority to offset a preexisting tax liability using an overpayment supersedes the debtor’s right to exempt it in bankruptcy under federal or state property exemptions.⁴⁶ Courts within the Fourth Circuit have come to contradictory outcomes, as noted by the district court in *Copley* that the “bankruptcy court ‘masterfully understated’ the conflicting case law,” and that “courts across the country have taken varying approaches, and reach contrary outcomes, when addressing the interplay of setoffs and exemptions under the

40. Michelle Lyon Drumbl, *Bankruptcy, Taxes, and the Primacy of IRS Refund Offsets*: *Copley v. United States*, 72 S.C. L. REV. 893, 899 (2021).

41. *Consumer Bankruptcy Filings*, *supra* note 11.

42. 11 U.S.C. §§ 522(c), 553(a); 26 U.S.C. § 6402(a).

43. § 522(c).

44. § 6402(a).

45. § 553(a).

46. See *In re Sexton*, 508 B.R. 646, 662 (Bankr. W.D. Va. 2014) (noting that the automatic stay is the most powerful protection the Bankruptcy Code affords debtors and holding that the government’s post-petition withholding of the tax overpayment and post-petition offset of Ms. Sexton’s debt to the DOA against her overpayment violated the automatic stay); *In re Addison*, 533 B.R. 520, 530 (Bankr. W.D. Va. 2015). Compare *In re Benson*, 566 B.R. 800, 814–15 (Bankr. W.D. Va. 2017) (holding that the IRS’s offsetting a tax refund was proper despite a debtor exempting it under Virginia’s homestead exemption), with *In re Alexander*, 225 B.R. 145, 148 (Bankr. W.D. Ky. 1998) (holding that the debtor’s exempt property may not be subject to setoff).

Bankruptcy Code.”⁴⁷ In *Copley*, the Fourth Circuit was called upon to resolve this apparent contradiction in an issue of first impression in the circuit, and its ruling has several negative implications for certain populations of consumer filers.⁴⁸

II. FACTUAL AND PROCEDURAL BACKGROUND OF *COPLEY*

In 2014, Matthew and Jolinda Copley filed for Chapter 7 bankruptcy.⁴⁹ At the time of filing, the Copleys held roughly \$8,500 in assets and bank accounts, as well as outstanding debts on two vehicles.⁵⁰ They listed the IRS as a priority creditor, owing the agency \$13,547.10 in unsecured priority claims covering preexisting tax debt for the years 2008, 2009, and 2010.⁵¹ In their petition, the Copleys claimed their federal tax overpayment from the most recent fiscal year, 2013, as exempt property under Virginia’s homestead exemption.⁵² The overpayment totaled \$3,208.⁵³ At the time, the IRS did not object to the Copleys’ claim.⁵⁴ However, upon filing their 2013 taxes after the bankruptcy proceeding had begun, the IRS, instead of sending the Copleys a refund, exercised its discretion under the federal tax offset program to offset the Copleys’ preexisting tax liabilities from the prior years.⁵⁵

To determine whether the Copleys had a bankruptcy right to exempt their tax overpayment, the lower courts had to first determine whether the overpayment was part of the bankruptcy estate.⁵⁶ The court noted that “[n]o property can be exempted (and thereby immunized) . . . unless it *first* falls *within* the bankruptcy estate.”⁵⁷ The scope of the bankruptcy estate is expansive, and “consists of all interests in property, legal and equitable, possessed by the debtor at the time of filing, as well as those interests recovered or recoverable through

47. Drumbl, *supra* note 40, at 900 (quoting *United States v. Copley*, 591 B.R. 263, 274–75 (E.D. Va. 2018), *vacated and remanded by Copley v. United States*, 959 F.3d 118 (4th Cir. 2020)).

48. *Copley v. United States (Copley III)*, 959 F.3d 118, 118 (4th Cir. 2020).

49. *Id.* at 120–21.

50. Brief for the Appellees at 1, *Copley III*, 959 F.3d 118 (No. 18-2347).

51. *United States v. Copley (Copley II)*, 591 B.R. 263, 265 (E.D. Va. 2018).

52. *Copley III*, 959 F.3d at 121; VA. CODE ANN. § 34-4 (LEXIS through Ch. 2 of the 2022 Special Sess. I) (“Every householder shall be entitled, in addition to the property or estate exempt under §§ 23.1-707, 34-26, 34-27, 34-29, and 64.2-311, to hold exempt from creditor process arising out of a debt, real and personal property, or either, to be selected by the householder, including money and debts due the householder not exceeding \$5,000 in value or, if the householder is 65 years of age or older, not exceeding \$10,000 in value, and, in addition, real or personal property used as the principal residence of the householder or the householder’s dependents not exceeding \$25,000 in value.”).

53. *Copley III*, 959 F.3d at 121.

54. *Id.*

55. *Id.*; 26 U.S.C. § 6402.

56. *Copley I*, 547 B.R. 176, 180 (Bankr. E.D. Va. 2016); *Copley II*, 591 B.R. at 264.

57. *Copley III*, 959 F.3d at 122 (quoting *Owen v. Owen*, 500 U.S. 305, 308 (1991)) (first emphasis added).

transfer and lien avoidance provisions.”⁵⁸ The bankruptcy court determined, and the district court affirmed, that through this expansive interpretation, the overpayment was indeed part of the bankruptcy estate.⁵⁹

After finding the overpayment was part of the bankruptcy estate, both the district court and the bankruptcy court ruled in favor of the Copleys’ right to exempt the tax overpayment, holding that their right to exempt their overpayment under 11 U.S.C. § 522(c) superseded the IRS’s right to set off the overpayment under 11 U.S.C. § 553, which preserves creditor setoff rights.⁶⁰ Both courts found that the Copleys’ pre-petition interest in their tax overpayment became part of the bankruptcy estate, and thus could not be subject to the government’s right to offset the program because the Copleys exercised their right to exempt it under 522(c).⁶¹ Consequently, the bankruptcy court ordered the government to give the Copleys their overpayment, and the district court affirmed the decision.⁶²

On appeal, the Fourth Circuit was called to resolve the apparent conflict between the federal offset program and the Bankruptcy Code’s exempt property provision.⁶³ The question before the court was “which of these statutory directives controls when a bankruptcy debtor claims, as exempt property, a tax overpayment that the government seeks to set-off under the offset program.”⁶⁴ In answering this question, the Fourth Circuit evaluated two related legal challenges put forth by the government: (1) whether the Copleys’ 2013 tax overpayment was ever part of the bankruptcy estate and (2) whether the Copleys’ right to exempt the overpayment under Virginia’s homestead exemption superseded the government’s right to offset the overpayment against their preexisting tax debts.⁶⁵

The Fourth Circuit agreed with the bankruptcy court and district court, determining that given the expansive reach of a bankruptcy estate, the Copleys’ interest in their tax overpayment became part of the bankruptcy estate.⁶⁶ The court reasoned that “nothing in the bankruptcy code indicates that property interests subject to setoff are excluded from the bankruptcy estate . . . [but] [t]o the contrary, the offset provisions of the bankruptcy code suggest that such debt is part of the estate.”⁶⁷ Thus, because the Copleys’ interest in their overpayment remained subject to setoff at the time of their filing for Chapter 7 protection, it

58. *Id.*

59. *Copley I*, 547 B.R. at 185.

60. *Copley III*, 959 F.3d at 120.

61. *Id.* at 120–21.

62. *Id.* at 120.

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.* at 123.

67. *Id.* at 122.

did not remove the overpayment from the bankruptcy estate.⁶⁸ Ultimately, the court resolved the first challenge by holding that the Copleys' interest in their 2013 tax overpayment became part of the bankruptcy estate.⁶⁹

However, the Fourth Circuit disagreed with the lower courts on the second issue.⁷⁰ The court reasoned that “by its plain and unambiguous terms, Section 553 provides that no provision of Title 11 ‘affects a creditor’s right to offset a mutual, prepetition debt with a bankruptcy debtor.’”⁷¹ The court determined that the broad scope of § 553(a) includes the property exemptions in § 522(c) and that, although § 522(c) generally precludes exempt property from being used to satisfy a pre-petition debt, that provision must be read in conjunction with § 553(a).⁷² Thus, the court interpreted § 522(c) not to affect a creditor’s right to offset a mutual debt.⁷³ Acknowledging that § 553(a) creates no right to offset on its own, the court looked to the offset rights the IRS possesses outside of the bankruptcy code.⁷⁴ To do so, the court turned to the language of 26 U.S.C. § 6402(a), which provides the IRS may set off an overpayment against “any liability in respect of an internal revenue tax on the part of the person who made the overpayment.”⁷⁵

The court determined that 26 U.S.C. § 6402(a) authorized the IRS to offset the Copleys’ tax overpayment in this case, notwithstanding the Copleys’ attempt to claim the property as exempt.⁷⁶ Importantly, the court concluded that “the plain text of 11 U.S.C. § 553(a) prevents [the court] from reading an implicit exception into the offset statute based on the language of 11 U.S.C. § 522(c).”⁷⁷ Therefore, the Fourth Circuit held that the government’s right to offset the Copleys’ tax overpayment under 26 U.S.C. § 6402(a) cannot be “subordinated or otherwise affected by the Copleys’ attempts to claim the overpayment as exempt property.”⁷⁸

In the final pages of the court’s opinion, the Fourth Circuit addressed the Copleys’ main arguments: (1) the purpose of the Code and exemptions is to

68. *Id.* at 122. The court further noted that the government did not seek to exercise its setoff rights prior to the Copleys’ attempt to exempt the overpayment. *Id.* at 123. If it had, the Copleys would not have had any property interest to properly exempt. *Id.*

69. *Id.* at 123.

70. *Id.* at 123–26.

71. *Id.* at 124 (quoting 11 U.S.C. § 553(a)).

72. *Id.*

73. *Id.*

74. *Id.* The Fourth Circuit explained in this case that § 553(a) creates no right of offset on its own, but rather preserves the right of offset the creditor might have outside the bankruptcy code. *Id.* Thus, the court had to look to the source of the creditor’s offset right in order to determine whether the creditor’s attempt to offset a debt is valid. *See id.*

75. *Id.* The court noted that the statute’s reference to “any overpayment” did not provide an exception for overpayments made by a taxpayer who later declares bankruptcy. *Id.*

76. *Id.* at 125.

77. *Id.* at 124.

78. *Id.* at 125.

provide debtors with a “fresh start,” (2) the need to avoid rendering § 522(c) superfluous, and (3) the discretion of bankruptcy courts to disallow setoff under § 553(a).⁷⁹ In disposing the first argument, the court noted that while one purpose of the Bankruptcy Code is to provide debtors with a “fresh start,” the Code also serves to ensure fair payment to creditors, and thus, the “purposes of the bankruptcy code do not require a debtor’s right of exemption to supersede a creditor’s right of offset.”⁸⁰ Responding to the second argument, the court only briefly stated that while preserving the government’s right to offset tax liabilities recognizes an additional exception to the debtor’s right to exempt certain property under § 522(c), the result does not render § 522(c) “wholly superfluous” and “bereft of other application.”⁸¹ Lastly, the court disposed of the third argument, noting that although bankruptcy courts have historically been given discretion to disallow a setoff, discretion is limited and does not permit bankruptcy courts to disregard the plain language of 26 U.S.C. § 6402(a) and 11 U.S.C. § 553(a).⁸² Thus, the court vacated the district court’s judgment and remanded back to the district court to reconsider that “the plain language of 26 U.S.C. § 6402(a) and 11 U.S.C. § 553(a) dictates that the government’s right to offset was not affected by the Copleys’ attempt to claim their tax overpayment as exempt property.”⁸³ It is evident the Fourth Circuit’s analysis rests on a “plain language” reading of the statute that, in fact, is not so plain and also fails to appreciate the gravity of the Copleys’ first line of argument. While the court claims to be engaged in a straightforward statutory analysis, it undermines its own reasoning by ignoring key language in § 553(a)(1), and by insufficiently contemplating the underlying policy goals of the bankruptcy system vis-à-vis its own role as creditor.

III. ANALYSIS AND CRITIQUE OF THE FOURTH CIRCUIT’S REASONING IN *COPLEY*

The court in *Copley* ultimately failed to consider other pertinent statutory provisions within the Bankruptcy Code and larger policy issues at stake beyond the facts of the instant case that would make the court’s ruling incorrect. First, in its analysis, the court reasoned it cannot read an implicit exception into the offset statute for bankruptcy property exemptions.⁸⁴ Yet, the court later stated that preservation of the government’s right to offset recognizes an additional exception to the application of 11 U.S.C § 522(c) that is not present in the

79. *Id.*

80. *Id.*

81. *Id.*

82. *Id.* at 125–26.

83. *Id.* at 126.

84. *Id.* at 124.

Bankruptcy Code.⁸⁵ Thus, the court's reasoning is initially suspect as it is reading an implicit exception into § 522(c), which is exactly what it said it must avoid in 26 U.S.C. § 6402, the offset statute. Additionally, the Fourth Circuit unduly dismisses the language of 11 U.S.C. § 553(a)(1), which provides that the title does not affect any right of a creditor to offset a mutual debt except to the extent "the claim of such creditor against the debtor is disallowed."⁸⁶ As *Collier on Bankruptcy* states, a "creditor's 'claim' might be of the type that is subject to disallowance under some provision of the Code, and, thus, if the setoff had not been taken, it would be prohibited under [S]ection 553(a)(1)."⁸⁷ This issue is precisely what occurred in *Copley*. The government did not take its setoff with respect to the Copleys' tax liabilities, and it was prohibited from doing so under § 522(c) once the Copleys chose to exempt their tax refund. Further, the Fourth Circuit bases its reasoning on a so-called plain language interpretation, yet the language of § 553(a) does not itself foreclose a contrary interpretation as disallowing a creditor to offset property that the debtor has exempted under § 522(c). The Fourth Circuit even cites to *Collier* ¶ 553.02[3] to support its position that its discretion to disallow setoff is confined, but glosses over a key part of ¶ 553.02[3], that "[a] right of setoff should be recognized in bankruptcy . . . unless it is otherwise proscribed by some express provision of the Code."⁸⁸ A plain reading of that sentence does not support the court's purported plain textual reading that prevents it from disallowing such a setoff, especially since exemptions for residences are expressly found in both the Virginia Code and the federal exemptions.⁸⁹ And the great weight of conflicting case law concerning the effect of a bankruptcy filing on a tax-refund offset in other circuits, as well as within the Fourth Circuit, lends support to the fact that this is not so clear.⁹⁰

For example, in the Fourth Circuit, the bankruptcy court in *In re Addison*⁹¹ noted that "[c]ourts are also divided over whether Section 522(c) trumps a creditor's right to setoff preserved under Section 553."⁹² However, it also acknowledged "more courts that have reached this issue 'have held that exempt property is not subject to setoff, than have reached the opposite conclusion.'"⁹³ The *Addison* court also stated, "In the eastern district and western districts of Virginia, 'it is settled law . . . that a properly-claimed exemption trumps a

85. *Id.* at 125.

86. 11 U.S.C. § 553(a)(1); see *Copley III*, 959 F.3d at 126 (citation omitted).

87. 5 COLLIER ON BANKRUPTCY ¶ 553.09[1][c] (2021).

88. *Copley III*, 959 F.3d at 125.

89. 11 U.S.C. § 522(d)(1); VA. CODE ANN. § 34-4 (LEXIS through Ch. 2 of the 2022 Special Sess. I).

90. See Drumbl, *supra* note 40, at 903–07; see also *supra* note 46 and accompanying text.

91. 533 B.R. 520 (Bankr. W.D. Va. 2015).

92. *Id.*

93. *Id.*

creditor's right to offset mutual prepetition debts and liabilities."⁹⁴ The court in *In re Sexton*⁹⁵ similarly found "it is settled law within the Fourth Circuit that a properly-claimed exemption trumps a creditor's right to offset mutual prepetition debts and liabilities" and "absent relief from the [automatic] stay and a challenge to the claim exemption."⁹⁶ The court concluded the government could not reach the debtor's overpayment.⁹⁷

Courts in other circuits have similarly ruled in favor of the debtor. In fact, a majority view has emerged recognizing a debtor's exemption prevails over the government's right to offset.⁹⁸ The court in *In re Alexander*⁹⁹ similarly acknowledged a majority of courts has determined property exempted pursuant to § 522 may not be subject to setoff.¹⁰⁰ The *Alexander* court actually ruled in favor of the debtor, who had a similar argument to the Copleys', and found "[i]f the rule were otherwise, § 522(c) would simply have no meaning" and subordinating offset rights "comports with the purposes and policies of the Bankruptcy Code, chief among which is providing Debtor with a fresh start."¹⁰¹ The court in *Alexander* also found the legislative history surrounding § 522 supports its conclusion that "Congress did not intend that exempt property be liable for discharged tax debts, through set-off or otherwise."¹⁰² In particular, it noted one version of § 522(c) never enacted by Congress would have allowed exempt property to remain liable for discharged taxes.¹⁰³ The divided case law on the issue indicates that courts hold varying interpretations of which statute prevails, which undercuts the Fourth Circuit's reliance on a plain reading of the statutes in reaching its decision. Therefore, the "plain language" interpretation of the statutes may not be as obvious as the court suggests.

Construing § 522(c) as superseding the government's setoff rights does not necessarily strip the IRS of its ability to recoup outstanding tax debts. As the Fourth Circuit correctly notes, had the IRS exercised its right to offset the Copleys' preexisting tax debt prior to their filing for bankruptcy or their moving to exempt the repayment, § 522(c) would have been inapplicable.¹⁰⁴ Further, the IRS could have petitioned to have the automatic stay lifted and challenged

94. *Id.* (quoting *In re Sexton*, 508 B.R. 646, 662 (Bankr. W.D. Va. 2014) (citing *In re Ward*, 210 B.R. 531, 536 (Bankr. E.D. Va. 1997) (stating that "[t]he general rule in Virginia is that a creditor may not exercise a right of setoff against exempt property"))).

95. 508 B.R. 646 (Bankr. W.D. Va. 2014).

96. *Id.* at 662.

97. *Id.*

98. Drumbl, *supra* note 40, at 903.

99. 225 B.R. 145 (Bankr. W.D. Ky. 1998).

100. *Id.* at 148.

101. *Id.* at 149.

102. *Id.* at 150.

103. *Id.*

104. *Copley III*, 959 F.3d 118, 123 (4th Cir. 2020).

the Copleys' claimed exemption.¹⁰⁵ However, interpreting the statutes to allow the IRS to offset the Copleys' preexisting tax debt notwithstanding their exemption wholly undermines the objective of § 522(c) to allow a debtor to start post-bankruptcy with something instead of nothing. And while the Fourth Circuit seems to acknowledge that one purpose of the Bankruptcy Code is to give debtors some forward-looking relief, it nonetheless dismisses this argument in five sentences because it is not the sole purpose.¹⁰⁶ Though the purposes of the Bankruptcy Code do not "require a debtor's right of exemption to supersede a creditor's right to offset," the court places determinative weight on the side of creditors' rights.¹⁰⁷ Giving the IRS a legal foundation to avoid the Bankruptcy Code's property exemptions minimizes larger policy goals of preserving people's ability to be productive members of society and afford paying taxes.¹⁰⁸

Prioritizing the IRS's right to set off preexisting tax liabilities notwithstanding property exemptions also ignores countervailing government objectives in bankruptcy proceedings and the potential for negative externalities. By affirming the decision of the lower courts, the Fourth Circuit would have appropriately accounted for these externalities and balanced the unique position of the IRS as a creditor and government agency tied to larger governmental obligations to the public and the economy, especially considering the discretionary nature of the offset program.

IV. THE FOURTH CIRCUIT'S DECISION WILL EXACERBATE THE BLEAK ECONOMIC OUTLOOK MANY CONSUMER BANKRUPTCY FILERS FACE POST-BANKRUPTCY

At the time of filing, the Copleys had a mere \$8,000 in household goods, \$150 in clothing, and \$642 in the bank.¹⁰⁹ By choosing to offset the Copleys' federal tax overpayment, the IRS stripped them of \$3,208, or about twenty-eight percent of their property interests.¹¹⁰ While the Copleys' annual income placed them slightly above the median household income of Spotsylvania

105. See *In re Sexton*, 508 B.R. 646, 662 (Bankr. W.D. Va. 2014); see also Drumbl, *supra* note 40, at 899 (noting that the exception to the automatic stay allowing the IRS to offset a pre-petition income tax refund against a pre-petition tax liability does not extend to an offset under the Treasury Offset Program).

106. *Copley III*, 959 F.3d at 125.

107. *Id.*

108. Sullivan, *supra* note 20, at 355 (explaining that the National Bankruptcy Review Commission issued a final report in 1998 which included a report written by Judge William H. Brown and Professor Lawrence Ponoroff that argued for a national, mandatory federal property exemption scheme that would recognize bankruptcy's "fresh start" as a principle of national concern).

109. Brief for the Appellees at 23, *Copley III*, 959 F.3d 118 (4th Cir. 2020) (No. 18-2347).

110. *Id.* at 5.

County,¹¹¹ the Fourth Circuit’s interpretation of the relationship between 62 U.S.C. § 6402(a) and 11 U.S.C. § 522(c) is overinclusive and creates problematic consequences for many low-income individuals and contract workers.

A. *Low-Income Individuals*

A debtor’s ability to repay their debts is limited by their income, and “data shows that Americans in bankruptcy are far poorer than their non-bankrupt counterparts.”¹¹² The bankruptcy system gives much-needed debt relief to financially troubled families at a low cost to taxpayers.¹¹³ Allowing the IRS, or other government agencies, to set off preexisting debt liabilities despite a valid property exemption presumably strips low-income individuals of a large percentage of their assets when these assets are crucial to starting anew post-bankruptcy.¹¹⁴ Vast amounts of resources are spent supporting the bankruptcy system and “for millions of consumers it remains one of the few avenues of respite from debt.”¹¹⁵ One study found that, “[i]f the fresh start objective of bankruptcy is achieved, most consumers who receive a bankruptcy discharge should, before long, look financially similar . . . to those consumers with similar financial profiles who have not experienced the financial distress that leads to a bankruptcy filing.”¹¹⁶ Unfortunately, the study also found that the average person who files for bankruptcy takes at least two decades to recover to a point where the impact of the financial distress is nonrecognizable in their finances.¹¹⁷ In their research, they found debtors generally struggle financially for some time before deciding to file for bankruptcy.¹¹⁸ Allowing the IRS to use Chapter 7 proceedings to seize an individual’s overpayment for a good income year, prior to filing for bankruptcy, risks prolonging low-income individuals’ return to financial stability.

There are numerous innocuous reasons why Americans fail to pay sufficient taxes, but data indicates a sizable portion of the population is burdened by tax debt, and the penalties for underpaying taxes or filing late are

111. *QuickFacts Spotsylvania County, Virginia*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/spotsyvaniancountyvirginia/PST120219> [<https://perma.cc/8ZKT-BJ3L>].

112. *Hearing*, *supra* note 13, at 101 (noting that “[t]he median income of a family in chapter 7 bankruptcy is approximately half the national median”).

113. *Id.* at 188.

114. *See Sullivan*, *supra* note 20, at 387.

115. *Zagorsky & Lupica*, *supra* note 34, at 286.

116. *Id.* Jay Zagorsky is a research scientist at The Ohio State University Center for Human Resource Research. Lois Lupica is a Professor of Law at the Maine Law Foundation.

117. *Id.* at 314.

118. *Id.* at 289 (citing Act of Nov. 4, 1978, Pub. L. No. 95-595, 92 Stat. 2541 (codified as amended in scattered sections of 29 and 31 U.S.C.)); Douglas G. Baird, *Bankruptcy’s Uncontested Axioms*, 108 YALE L.J. 573, 581 (1998)).

severe.¹¹⁹ For example, prior to COVID-19 legislation, unemployment benefits were subject to state and federal taxes,¹²⁰ and millions of unemployed workers faced surprise tax bills ranging from several hundred to several thousand dollars they might not be able to pay.¹²¹ In 2020, less than forty percent of the more than forty million unemployed workers in the United States had taxes withheld from their unemployment benefits, and many people who have been unemployed long-term face a sizable financial burden to pay their tax delinquencies.¹²² People may overlook paying taxes on unemployment if they are in an insecure financial situation, yet the taxes on those benefits will nonetheless be due when they file their tax returns.¹²³

Faced with sudden downturns in the economy or unexpected events, many poor, unemployed Americans will be confronted with the reality of a large tax bill from the federal government when they least expect it.¹²⁴ Bankrupt individuals who decide to file for Chapter 7 due to hefty financial burdens may find relief from many of their debts. Ironically, however, they will not find mercy from the IRS for tax debts they accrued during the time leading up to bankruptcy. Many of these individuals will look forward to receiving tax refunds at the end of a good year prior to bankruptcy, if choosing to exempt it, as a possible means to achieving a fresh start post-bankruptcy.¹²⁵ However, under the Fourth Circuit's reasoning, the IRS's collection authority supersedes

119. See Brown, *supra* note 38; Sarah O'Brien, *Here's What To Do if You Can't Pay Taxes by April 15*, CNBC (Feb. 21, 2019, 1:24 PM), <https://www.cnbc.com/2019/02/21/heres-what-to-do-if-you-cant-pay-that-surprise-tax-bill-by-april-15.html> [<https://perma.cc/FCD2-9UC6>] (explaining that the IRS imposes a penalty of 5 percent of the unpaid balance for each month payment is late up to a maximum of twenty-five percent of the total amount due).

120. Michele Evermore, Opinion, *Why Millions of Unemployed Workers May Face Unexpected Tax Bills*, WASH. POST (Jan. 28, 2021, 10:56 AM), <https://www.washingtonpost.com/opinions/2021/01/28/why-millions-unemployed-workers-may-face-unexpected-tax-bills/> [<https://perma.cc/G3W5-B89K>] (dark archive)].

121. Heather Long, *'It Just Sucks': America's Jobless Owe Thousands of Dollars in Taxes on Their Unemployment*, WASH. POST (Mar. 2, 2021, 10:02 AM), <https://www.washingtonpost.com/business/2021/03/01/unemployment-benefits-are-taxed/> [<https://perma.cc/W47N-CE8U>] (dark archive)]; see also *Survey Uncovers the Truth About Americans' Tax Debt in Every State*, PR NEWSWIRE (Aug. 19, 2020, 12:00 ET), <https://www.prnewswire.com/news-releases/survey-uncovers-the-truth-about-americans-tax-debt-in-every-state-301114524.html> [<https://perma.cc/25XL-3SFU>] (“[O]nly 8% of Americans with tax debt make \$125,000 or more: the lowest percentage of any income bracket.”).

122. Long, *supra* note 121.

123. Jonnelle Marte, *8 Reasons You Could End Up with a Surprise Tax Bill This Year*, WASH. POST (Apr. 5, 2017, 7:01 AM), <https://www.washingtonpost.com/news/get-there/wp/2017/04/05/8-reasons-why-you-could-end-up-with-a-surprise-tax-bill-this-year/> [<https://perma.cc/7G8Z-U2MJ>] (dark archive)].

124. Long, *supra* note 121.

125. See Denitsa Tsekova, *IRS Sends 430,000 Additional Tax Refunds Over Unemployment Benefits*, YAHOO NEWS (Nov. 1, 2021), <https://news.yahoo.com/irs-sends-additional-tax-refunds-over-unemployment-190645101.html> [<https://perma.cc/L8YA-6TPP>] (finding that the IRS sent 430,000 tax refunds to filers who paid too much taxes for their 2020 unemployment benefits).

larger notions of helping low-income individuals begin the journey back to economic stability. For individuals with few assets to exempt, the IRS's ability to collect pre-petition tax debts and bypass the exemption provisions in the Bankruptcy Code means low-income individuals are at a significant risk of the government seizing a sizable portion of their assets. By losing their tax refund, a liquid asset ready to spend,¹²⁶ the post-bankruptcy economic recovery of low-income filers is hampered even further, prolonging the time it takes for these individuals to return to an economic status similar to their peers who never filed for bankruptcy. The IRS capitalizing on the more volatile nature of employment for low-income individuals¹²⁷ stands in stark contrast to both the importance of the bankruptcy system's "fresh start" objective and larger social and economic policy goals the government supposedly champions.

B. *Contract Workers*

Many individuals with surprise tax debts are contract workers. People driving for Uber, delivering for companies like Postmates, or taking on freelance work as independent contractors likely do not have taxes withheld from their paychecks.¹²⁸ These individuals must estimate tax payments four times a year as well as pay any taxes they owe at their end-year return, and failure to properly pay estimated taxes can result in a penalty.¹²⁹ As individuals are subject to withholding taxes more accurately, the chances are higher that contract workers might have overpaid or underpaid in the past, which is evidenced by the fact that the tax compliance rate for self-employed individuals is less than 40% compared to 99% for wage earners subject to withholding.¹³⁰ With downturns in the economy, people may flock to alternative work as a reaction to sudden unemployment, only to make the honest mistake of failing to withhold sufficiently for the IRS.¹³¹ They might turn to Chapter 7 bankruptcy to keep their head above water, only to have the IRS strip them of any money

126. *What Are Liquid Assets?*, BANKRATE, <https://www.bankrate.com/glossary/l/liquid-assets/> [<https://perma.cc/L8YA-6TPP>].

127. KRISTEN F. BUTCHER & DIANE WHITMORE SCHANZENBACH, CTR. ON BUDGET AND POL'Y PRIORITIES, MOST WORKERS IN LOW-WAGE LABOR MARKETS WORK SUBSTANTIAL HOURS, IN VOLATILE JOBS, SNAP OR MEDICAID WORK REQUIREMENTS WOULD BE DIFFICULT FOR MANY LOW-WAGE WORKERS TO MEET 2-3 (2018), <https://www.cbpp.org/sites/default/files/atoms/files/7-24-18pov.pdf> [<https://perma.cc/LK6F-MAHY>].

128. Marte, *supra* note 123.

129. Kathleen DeLaney Thomas, *The Modern Case for Withholding*, 53 U.C. DAVIS L. REV. 81, 89-90 (2019).

130. *Id.* at 90 (stating that "more than half of the tax due on [self-employment income] is not paid").

131. See DOUGLAS HOLTZ-EAKIN, BEN GITIS & WILL RINEHART, ASPEN INST., THE GIG ECONOMY, RESEARCH AND POLICY IMPLICATIONS OF REGIONAL, ECONOMIC, AND DEMOGRAPHIC TRENDS 2 (2017), <https://www.aspeninstitute.org/wp-content/uploads/2017/02/Regional-and-Industry-Gig-Trends-2017.pdf> [<https://perma.cc/M7E7-7S2J>].

they might have overpaid the agency in the past, thus potentially countering some of the more significant economic benefits provided by individuals moving to the independent-contract economy during periods of economic stress.¹³² Unless these citizens are astute in filing taxes correctly and accurately, gig economy workers and independent contractors are at risk of running high tax debts. If the economy takes a downward turn, as it did during the housing crisis and pandemic, these workers may be forced to file for bankruptcy. The same entity tasked with facilitating economic recovery could choose, as it did in *Copley*, to collect on pre-petition tax liabilities despite filers' exemptions. Such a scenario presents potential consequences that are at odds with the bankruptcy code's "fresh start" mantra and the government's goal to promote economic growth.

CONCLUSION

Many individuals turn to the bankruptcy system in Chapter 7 to achieve a "fresh start" by obtaining relief from debts that have become an insurmountable financial burden. To facilitate its goal to provide debtors with a "fresh start," the Bankruptcy Code allows debtors to exempt certain property to ensure the debtor can recover from bankruptcy to work back to financial stability. Ironically, if these debtors have past debts due to the IRS, they might be unable to achieve this "fresh start." The government, using the authority of both the federal offset program and the holding of the Fourth Circuit's *Copley* decision, may seek to override this fundamental goal of bankruptcy. The present statute and *Copley* decision strip the debtor of a potential tax refund that could be used to aid their economic comeback. Diminishing the "fresh start" goal of bankruptcy and disregarding the unique considerations of the government in bankruptcy proceedings, the Fourth Circuit's decision is problematic both in its reasoning and in its effects on low-income individuals and contract workers who file for Chapter 7. Ultimately, the Fourth Circuit should reverse this decision and recognize the unique position of the government in Chapter 7 bankruptcies when it is a creditor, where there is more at stake for the system than collecting a small amount of delinquent tax debt from an insolvent couple.

STEVEN M. CONSTANTIN**

132. *Id.*

** I am immensely thankful to all those who helped me in getting this piece to where it is today. To all the board and staff of the *North Carolina Law Review*, thank you for your hard work and diligence in the many hours you all spent poring over this piece. I am especially thankful for the work of my primary editor, Matthew DeWitte. And special regards to Professors Melissa Jacoby and Kathleen Thomas for your guidance from formulation of the topic through publication. Lastly, I would like to pay a special thanks to my parents Robert and Kathryn Constantin, my brother Ryan Constantin, and my partner Katherine Putnam, for your unwavering support.