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THE ECONOMICS OF RURAL FAILURE

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## GOING BROKE THE HARD WAY: THE ECONOMICS OF RURAL FAILURE

Katherine Porter\*

For most of the twentieth century, scholarship on the American legal system reflected the perspective of the most powerful group – white men. In recent decades, scholars have expanded their vision to consider the circumstances and perspectives of others, including women, people of color, gays and lesbians, and non-citizens. This more inclusive scholarship has exposed how people with different experiences view and use uniform laws differently, adding depth and texture to our understanding of how laws function. The perspectives of these subgroups have highlighted shortcomings and biases in the legal system while enriching our understanding of the larger group by providing a more complete picture of how law affects the lives of all Americans.

As some windows of perspective have opened, others have closed. An unspoken assumption permeates modern scholarship: The impact of laws should be measured exclusively in terms of how the legal system operates in America's cities and suburbs.

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Rural Americans have disappeared from view.<sup>1</sup> When policymakers discuss economic pressures on families, they refer to urban and suburban dwellers. When scholars collect empirical data, they frequently fail to sample rural residents. When reform proposals for legislation are debated, the impact of such laws on rural residents is often ignored. Fifty-five million strong,<sup>2</sup> rural Americans are ghosts in the legal system.<sup>3</sup> Their perspectives on the legal system and their legal needs are uncharted.

The American bankruptcy system serves those in financial trouble. A highly public process, bankruptcy offers an unequaled glimpse into the inner mechanics of financial collapse in the middle class. Bankruptcy scholars have been in the forefront of trying to understand the contours of economic hardship in American families. As consumer bankruptcy filings have soared to 1.6 million cases each year,<sup>4</sup> research has attempted to document who is going broke and what kinds of problems drive families to the bankruptcy system. To this end, recent studies have examined the presence of many demographic groups in the population of bankruptcy filers, including children in bankruptcy,<sup>5</sup> the elderly in bankruptcy,<sup>6</sup> two-income families in bankruptcy,<sup>7</sup> African

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<sup>1</sup> For a discussion of how the term “rural” is used in this Article, see *infra* at Part II.A.

<sup>2</sup> U.S. CENSUS 2000 SUMMARY FILE, URBAN/RURAL AND METROPOLITAN/NONMETROPOLITAN POPULATION: 2002, GCT-P1.

<sup>3</sup> The term “rural” is used in this Article to refer to non-metropolitan counties. This definition and other measures of rurality are discussed *infra* in Part II.A.

<sup>4</sup> BANKRUPTCY FILINGS UP FOR CALENDAR YEAR, NEWS RELEASE, ADMINISTRATIVE OFFICE OF THE U.S. COURTS, Feb. 25, 2004, available at [http://www.uscourts.gov/Press\\_Releases/pr02252004.pdf](http://www.uscourts.gov/Press_Releases/pr02252004.pdf).

<sup>5</sup> Elizabeth Warren, *Bankrupt Children*, 86 MINN. L. REV. 1003 (2002).

<sup>6</sup> Tamara Draut & Heather C. McGheet, *Retiring in the Red: The Growth of Debt Among Older Americans*, DEMOS BRIEFING PAPER (Feb. 2004), available at [http://www.demos-usa.org/pubs/Retiring\\_In\\_The\\_Red\\_WEB.pdf](http://www.demos-usa.org/pubs/Retiring_In_The_Red_WEB.pdf); Ed Flynn, Gordon Bernant, & Karen Bakewell, *Bankruptcy by the Numbers: A Closer Look at Elderly Chapter 7 Debtors*, 21 AM. BANKR. INST. JOURNAL (April 2002).

<sup>7</sup> ELIZABETH WARREN & AMELIA WARREN TYAGI, *THE TWO-INCOME TRAP* (2003).

Americans and Hispanics in bankruptcy,<sup>8</sup> and self-employed people in bankruptcy.<sup>9</sup> These studies assert that a more careful, textured view of the bankruptcy system is critical to understanding the American economy and the laws that govern those in financial distress.

Despite their role at the forefront of empirical research on the legal system, bankruptcy scholars are typical of the legal academy in their ignorance of the perspectives and experiences of rural Americans. No empirical study has systemically considered or acknowledged the role of community size in understanding when and why Americans turn to the bankruptcy system. Until now, the plight of rural families has been ignored. Overlooking the rural experience has impoverished our understanding of the financial pressures facing Americans. Without knowledge about rural Americans, who make up one-fifth of the U.S. population,<sup>10</sup> our collective knowledge about the bankruptcy system generally and the economic pressure on *all* families is deeply flawed.

The original data developed in this Article reveal that rural America is home to extraordinary, unexplored economic distress. Contrary to conceptions about a rural cultural resistance to debt and the pastoral nature of rural life, rural families appear to be facing more severe financial hardship than their urban counterparts. The bankruptcy data reveal the depth and nature of the financial squeeze on rural families. Rural

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<sup>8</sup> A. Mechele Dickerson, *Race Matters in Bankruptcy*, 61 WASH. & LEE L. REV. 1725 (2004).

<sup>9</sup> Robert Lawless & Elizabeth Warren, *The Myth of the Declining Business Bankruptcy*, 93 CAL. L. REV. \_\_\_\_ (forthcoming 2005).

<sup>10</sup> U.S. CENSUS 2000 SUMMARY FILE, URBAN/RURAL AND METROPOLITAN/NONMETROPOLITAN POPULATION: 2002, GCT-P1.

Americans live in areas where low wages and reduced job opportunities leave them with smaller incomes, but at the same time, they pay the same or higher prices for many of the same goods and services that urban Americans do. This is the worst of both worlds. Rural households have fewer dollars to spend and more demands on those dollars – both from past debts and current expenses. The nature of rural bankruptcies reflects the declining rural economy and the losing struggle of rural families who are trying to make ends meet despite severe income, job and medical problems. Far from being immune from the financial pressures on American households, rural families inhabit the deepest hollows in a map of economic well-being. Exploring this terrain offers critical insights on legal scholarship and bankruptcy policy.

The data presented in this Article expose important differences in the economics of bankrupt families that correlate with place of residence. Because these differences between urban and rural families have gone unexplored until now, our understanding of the bankruptcy system has been distorted. This distortion is more pernicious because scholars have frequently failed to acknowledge their urban bias. In showing how rural residence creates differences among bankruptcy filers, this Article exposes the need to consider rural perspectives in studies of all legal fields. Exploring how the role of “place” shapes use of the legal system opens up a new way to flush out variations in how laws actually operate. My conclusions suggest that future legal scholarship in all disciplines should be cognizant of the ways in which rurality, like race, gender, non-citizen status, or age, may influence perspectives on law.

The suffering of rural families revealed in the bankruptcy data has powerful implications for our understanding of the American economy as a whole. Learning how the economics of rural failure differ from that identified in urban areas allows a critical evaluation of how prior studies may have underreported the financial distress of bankrupt families by overlooking place of residence as a relevant factor. The rural bankruptcy data also offer a compelling example of the need for specialized rural policy in America. These findings highlight the need to build a healthy rural economy and offers insights into the problems that push rural families to bankruptcy, a financial breaking point.

The bankruptcy data on rural families also bear directly on anticipating the effects of the recent amendments to the Bankruptcy Code.<sup>11</sup> In recent years, sharp increases in bankruptcy filings have occurred in areas with large rural populations. To the extent that the rising number of bankruptcies helped motivate the reform of consumer bankruptcy laws, it is critical to understand the nature of financial collapse in rural areas. My data indicate that rural families are using bankruptcy exactly as intended – as a tool to try to regain financial stability in a troubled rural economy. The amendments in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), are likely to disproportionately harm rural Americans because they are anticipated to make bankruptcy relief more expensive and less available.<sup>12</sup> Among the worst off of all bankruptcy filers, rural Americans can least afford these changes. Other

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<sup>11</sup> Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat 23 (hereinafter “BAPCPA.”)

<sup>12</sup> The exact provisions at issue and how scholars anticipate they will function are discussed *infra* in Part IV.

amendments to the Bankruptcy Code particularly disadvantage rural people because they do not live near cities and face transportation difficulties that would be exacerbated under the new law. In these ways, BAPCPA penalizes rural people based on their place of residence. That these issues have gone unrecognized makes their potential effects insidious. Rural advocates did not organize to oppose BAPCPA, and leading Congressional sponsors of the bill were from states with large rural populations. Recognizing that rural families are caught in a special pinch between low incomes and high costs could influence the political process of bankruptcy reform. When the effects of reform on rural Americans are understood, rural voters – and their political representatives – can better evaluate the impact of changing the bankruptcy law on rural families.

This Article tells the story of economic collapse in rural America. Part I puts the financial distress of rural families in the context of modern rural life and highlights the failure of scholars to consider how legal systems, including bankruptcy, may function differently in rural communities. Part II presents original findings on the economic profiles of rural families in bankruptcy and compares them with their urban counterparts. These data show that while rural filers are demographically similar to urban filers, rural families are struggling with more severe financial problems when they enter bankruptcy. Part III examines the reasons for the greater hardships facing rural households, including the impact of cost-of-living differences between urban and rural areas and the presence of more severe job and medical problems in rural areas. Part IV discusses the implications of these findings. It highlights the danger of ignoring

rural America in legal scholarship, using the disproportionate harm that rural Americans may suffer under the new bankruptcy laws as one example of the importance of acknowledging how place of residence affects people's ability to use the legal system.

### I. The Silent Problem of Rural Financial Distress

For most of America's history, rural dwellers outnumbered urban citizens.<sup>13</sup> During an earlier time, the economy of rural America *was* the agricultural economy.<sup>14</sup> The cycle of the rural economy, and the financial well-being of rural citizens, depended on profits for family farmers.<sup>15</sup> Volatility in agricultural prices caused several periods of rural financial decline.<sup>16</sup> Each of these economic downturns threw millions of rural Americans into individual financial turmoil. The Great Depression is the most extreme and well-documented example of periodic financial havoc in the agricultural economy.

Because of the size of the rural population, the government once paid close attention to economic downturns in rural communities. Congress enacted policies to

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<sup>13</sup> The 1920 Decennial Census was the first time that the percentage of Americans living in urban areas (51.2) exceeded the percentage of Americans living in rural areas (48.8). See SELECTED HISTORICAL DECENNIAL CENSUS URBAN AND RURAL DEFINITIONS AND DATA: UNITED STATES 1790 TO 1990, TBL. 4, available at <http://www.census.gov/population/censusdata/table-4.pdf>.

<sup>14</sup> See DAVID B. DANBOM, BORN IN THE COUNTRY: A HISTORY OF RURAL AMERICA (REVISITING RURAL AMERICA) 69 (1995) ("In 1800, approximately four of every five Americans were engaged primarily in agricultural production . . . In short, agriculture made the whole economy go."); see also Judith E. Sommer, et al, *Structural and Financial Characteristics of U.S. Farm, 1995: 20<sup>th</sup> Annual Family Farm Report to the Congress*, U.S. DEP'T. OF AGRIC., INFO. BULL. NO. 746, 7 (Dec. 1998), available at <http://www.ers.usda.gov/publications/aib746/> (reporting that number of farms in United States peaked in 1935 at 6.8 million and has fallen steadily in each successive decade.)

<sup>15</sup> DANBOM, BORN IN THE COUNTRY at 65 (observing that between conclusion of Revolution and onset of Civil War, "government at all levels worked to encourage farmers as a social group and agriculture as an economic enterprise.")

<sup>16</sup> ID. at 186 (reporting fall of commodity prices in the early 1920s); at 199 (discussing how in Great Depression rural incomes fell to 50 percent of average manufacturing earnings); at 262 (describing triggering events in farm crisis of 1980s).

stimulate rural development and cushion rural families from harsh declines in the agricultural economy.<sup>17</sup> The federal government had specific rural policy objectives at least as far back as the middle of the nineteenth century when the Department of Agriculture and land grant system were established. The Country Life Commission of 1908 was organized to document rural conditions and to recommend specialized programs to enhance rural life.<sup>18</sup> These government initiatives acknowledged the importance of rural life to the American economy and focused the nation's attention on the needs of rural citizens.

In the twentieth century, America became more urbanized. As more families moved to cities and large cities grew in size, urban America replaced rural America as the focus of public policy.<sup>19</sup> Today, rural America infrequently garners national attention or media coverage. When it does, such coverage often presents rural America as a place of the past—a counterpoint to modern urban life.<sup>20</sup>

A notable exception to the silence surrounding issues in rural America was the “farm crisis” of the early 1980s. The crisis developed when macro-economic trends of a decline in land values and a rocketing interest rate made their effects felt on a micro-

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<sup>17</sup> See Donald E. Voth, *A Brief History and Assessment of Federal Rural Development Programs and Policies*, 25 U. MEM. L. REV. 1265 (Spring 1995).

<sup>18</sup> See *id.* at 1271-72.

<sup>19</sup> See CORNELIA BUTLER FLORA, ET AL, *RURAL COMMUNITIES: LEGACY AND CHANGE* 15 (2d ed. 2004) (“Our society has become so deeply urbanized that we almost assume urbanization to be a natural law.”)

<sup>20</sup> See PERCEPTIONS OF RURAL AMERICA: MEDIA COVERAGE, W.K. KELLOGG FOUNDATION 32-33, (January 2003), available at [http://www.wkkf.org/Pubs/FoodRur/MediaCoverage\\_00253\\_03795.pdf](http://www.wkkf.org/Pubs/FoodRur/MediaCoverage_00253_03795.pdf) (“The associations with rural life on television were negative in another sense. The term ‘rural’ was notable for its absence; on the rare occasions in which it appeared, it was frequently used in connection with records of criminal activity. A remarkable 78 percent of discussions of rural life on television news dealt with crime. . . .the world of ‘rural’ America was often presented by the media as a vestige of the past, a place being buffeted by its close encounters with the physical and cultural mainstream of contemporary urban society.”)

level in the pocketbooks of many rural families.<sup>21</sup> Events like the Farm Aid benefit concerts and a rash of bank closings in rural areas put the financial well-being of Midwestern farmers in the national spotlight.<sup>22</sup> The farm crisis drew attention to the plight of farmers, but its fame had potentially insidious effects on rural policy for financially distressed families.<sup>23</sup> First, the farm crisis served to reinforce the public's belief that rural life *is* agricultural life – a link that by the early 1980s was very weak. The vast majority of rural Americans had jobs in other sectors.<sup>24</sup> Second, the application of the term “crisis” to the economic problems experienced by rural families in 1980s suggested that such problems were likely to be short-lived. In fact, the rural poverty rate has consistently exceeded the urban poverty rate for nearly three decades.<sup>25</sup>

Understanding these two trends is important to putting in context the current financial crisis facing thousands of rural families . The bankruptcy data refute the idea that the financial distress of rural Americans is an agricultural or temporary phenomenon and highlight the severity of the economic crisis facing rural non-farm families.

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<sup>21</sup> See JEROME M. STAM ET AL., ECON. RES. SERVICE, U.S. DEP'T OF AGRIC., FARM FINANCIAL STRESS, FARM EXISTS, AND PUBLIC SECTOR ASSISTANCE TO THE FARM SECTOR IN THE 1980s (April 1991).

<sup>22</sup> See KATHRYN MARIE DUDLEY, DEBT AND DISPOSSESSION: FARM LOSS IN AMERICA'S HEARTLAND, 4-5, n.1 (2000) (describing Hollywood representations of the agricultural crisis and public protests such as the national tractorcades to Washington D.C.).

<sup>23</sup> See OSHA GRAY DAVIDSON, BROKEN HEARTLAND: THE RISE OF AMERICA'S RURAL GHETTO 53 (1996). (explaining frustration of Professor Mike Jacobsen of University of Iowa with term “farm crisis” because he saw it as “rural community crisis,” which made it “even scarier”).

<sup>24</sup> Between the 1950s and 1990s, farming employment dropped from just under 8 million to a little over 3 million. By 1995, less than 10 percent of the rural population lived on a farm. ECON. RES. SERVICE, U.S. DEPT. OF AGRIC., AGRIC. INFO. BULL. NO. 710, UNDERSTANDING RURAL AMERICA (Feb. 1995), available at <http://www.ers.usda.gov/publications/aib710/aib710c.htm>.

<sup>25</sup> “Throughout the 1980s and 1990s, the proportion of people living in poverty in the United States was significantly greater in nonmetropolitan (nonmetro) than metropolitan (metro) areas. In the 1980s, the average incidence of poverty was 4.4 percentage points higher in nonmetro areas; in the 1990s the average difference was 2.6 percentage points.” Dean Joliffe, Econ. Res. Service, U.S. Dep't. of Agric., *Comparisons of Metropolitan and Nonmetropolitan Poverty During the 1990s*, RURAL DEV. RES. REP., NO. 96, 1 (June 2003), available at <http://www.ers.usda.gov/publications/rdr96/rdr96.pdf>.

### A. Rural Does Not Equal Agricultural

A recent national survey found that Americans strongly associate rural life with agriculture.<sup>26</sup> Ideas about the intertwining of rural residence and farming play into the perception that rural life is a place of “serene and peaceful country living where people work hard to supply the nation with food.”<sup>27</sup> Such beliefs inform views about the nature and causes of rural financial distress. Americans identified factors affecting agricultural production as four of the six leading problems facing rural America.<sup>28</sup> These views, and the spurts of public attention historically given to “farm crises,” instruct Americans that financial distress in rural areas is a problem experienced by family farmers and rooted in the cycles of the agricultural economy.

Such beliefs are largely incorrect. It is a myth that most rural Americans are farmers. Rural employment is no longer synonymous with the agriculture industry. Today, most rural Americans work in the service-sector.<sup>29</sup> Overall, two out of three rural adults work in either a service or manufacturing job.<sup>30</sup> Only 7.6 percent of the

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<sup>26</sup> “Despite the fact that farming accounts for less than 11.7 percent of rural employment, the overwhelming majority of people in our study – both rural and non-rural – believe agriculture is the dominant industry of rural America. When asked to name, the main industries of rural America, nearly all respondents name agriculture, farming, or ranching.” PERCEPTIONS OF RURAL AMERICA, W.K. KELLOGG FOUNDATION 3, (2001), [hereinafter *KELLOGG STUDY*], available at <http://www.wkkf.org/pubs/FoodRur/pub2973.pdf>. The study’s data come from telephone interviews conducted with 242 residents of rural, suburban, and urban America from different regions in America during the fall of 2001. Respondents were interviewed using a series of directed questions.

<sup>27</sup> *KELLOGG STUDY* at 16.

<sup>28</sup> These four reasons were over-development/sprawl, price of crops, droughts/weather, and decline of family farms. The two non-agricultural dependent problems that were identified were lack of money/poor and lack of opportunities. See *KELLOGG STUDY* at 10.

<sup>29</sup> The service sector employs over half of rural workers, which mirrors the urban employment profile. ECON. RES. SERVICE, U.S. DEP’T OF AGRIC., *Understanding Rural America*, AGRIC. INFO. BULL. NO. 710 (1995) available at <http://www.ers.usda.gov/publications/aib710/>.

<sup>30</sup> *Id.*

rural workforce is employed in farming.<sup>31</sup> Even among farm households, nearly 90 percent of total household income originates from non-farm sources.<sup>32</sup> The decline in the role of agriculture in the rural economy is spread across the country. Seven out of eight rural counties nationwide are dominated by employment not related to farming.<sup>33</sup>

The modern reality is that living in a rural area does not mean farming employment or dependence on the agricultural economy. A vast majority of rural workers are employed in the same sectors of the economy that dominate urban America. Exploding the misconception that “rural equals agricultural” is important to understanding the circumstances of rural bankruptcies. The financial stresses on rural families cannot be understood by reference to brief, periodic “crises” caused by declines in commodity prices. Instead, rural families are affected by national economic trends. The common employment patterns among urban and rural families mean that downturns in the service and manufacturing sectors hurt both rural and urban workers. Indeed, there are reasons to believe that rural workers suffer disproportionately from economic hardships such as job loss.<sup>34</sup> Rural households face difficulties in adapting to economic change in part due to conditions that reflect rural America’s agricultural past, including low population density, an aging population, average lower levels of

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<sup>31</sup> *Id.* See also ECON. RES. SERVICE, U.S. DEP’T OF AGRIC., *Appendix D: Two Methods of Measuring Farm-Linked Employment*, RURAL CONDITIONS AND TRENDS, VOL. 10, NO. 2, available at <http://www.ers.usda.gov/publications/rcat/rcat102/rcat102r.pdf>.

<sup>32</sup> Leslie A. Whitener & David A. McGranahan, *Rural America: Opportunities and Challenges*, AMBER WAVES: THE ECONOMICS OF FOOD, FARMING, NATURAL RESOURCES, AND RURAL AMERICA (Feb. 2003), available at <http://www.ers.usda.gov/Amberwaves/Feb03/features/ruralamerica.htm>.

<sup>33</sup> *Id.* at 2. (reporting data from 1999).

<sup>34</sup> See Part II.B. *infra*; see also Karen S. Hamrick, ECON. RES. SERVICE, U.S. DEP’T OF AGRIC., *Displaced Workers: Differences in Nonmetro and Metro Experience in the Mid-1990s*, RURAL DEV. RES. REP. NO. 92, 29 (Oct. 2001) (describing lower probability that displaced rural worker will find new employment and lower probability that rural workers are covered by legislation providing benefits to displaced workers).

education, and greater distance to goods and services. Despite these remnants, the financial distress facing today's rural families is not a story about agriculture or the bankruptcies of family farmers.<sup>35</sup> In only four of the over three hundred rural bankruptcy cases that I studied did a debtor identify his or her occupation as "farming" or "farmer."<sup>36</sup> Today's rural families in financial crisis are rarely farmers. Instead, bankruptcies reflect the modern economics of rural life, which is no longer synonymous with farming. Policymakers err when they believe that efforts to help farmers will resolve the financial problems facing the majority of rural families.<sup>37</sup>

## **B. The Prevalence of Rural Poverty**

Americans persistently believe that "rural areas are idyllic, healthy settings in which people experience few significant stresses or problems."<sup>38</sup> This perception of rural life masks an ugly fact: families in rural areas are in serious financial trouble. This Article uses bankruptcy data as a lens to identify and study families experiencing economic hardship. Another important way to examine financial problems is to focus on the income poor. Statistics on rural poverty do not necessarily capture the same

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<sup>35</sup> The Bankruptcy Code contains a separate section for farmers, chapter 12, entitled "Adjustment of Debts of a Family Farmer with Regular Annual Income." However, this provision is rarely used. In 2001, there were only 383 Chapter 12 cases in the nation. See ADMIN. OFF. OF THE U.S. COURTS, BUSINESS AND NONBUSINESS CASES COMMENCED, BY CHAPTER OF THE BANKRUPTCY CODE, DURING THE 12-MONTH PERIOD ENDING DECEMBER 31, 2001, TBL. F-2 available at [http://www.uscourts.gov/Press\\_Releases](http://www.uscourts.gov/Press_Releases).

<sup>36</sup> The questionnaire asked debtors "What kind of work do you do?" The four responses that were classified as farming or agricultural employment were: "farming," "farmer," "unemployed/part time farming," and "raise chickens." Two debtors were in the rural Iowa sample, and two debtors were in the rural Tennessee sample. No urban debtor indicated a farm occupation.

<sup>37</sup> See Katherine Porter, *Phantom Farmers: Chapter 12 of the Bankruptcy Code*, \_\_\_\_ Am. Bankr. L.J. \_\_\_\_ (forthcoming 2005) (arguing that celebration surrounding BAPCPA's improvements to Chapter 12 bankruptcy for farmers masked hardships on vast majority of rural people, who are non-farmers, in the consumer bankruptcy reforms in BAPCPA).

<sup>38</sup> J. Dennis Murray & Peter A. Keller, *Psychology and Rural America: Current Status and Future Directions*, 46 AM. PSYCHOL. 200, 222 (Mar. 1991).

group of families as data on bankruptcy filers.<sup>39</sup> However, poverty data can inform an understanding of the households that file bankruptcy because many rural debtors have income below or near the poverty line at the time of their bankruptcy. Both poverty measures and bankruptcy data contribute to a complete and meaningful understanding of who clings to the bottom rung of the economic ladder in rural communities.<sup>40</sup>

Rural people are more likely to be poor than urban residents. In 2001, 14.2 percent of rural residents lived below the poverty level. In the same year the percentage of urban residents in poverty was 11.1 percent.<sup>41</sup> The gap between the urban and rural poverty rate is neither new nor diminishing. Poverty is persistently greater in rural than in urban areas.<sup>42</sup> For the last twenty-five years, the poverty rate of rural residents exceeded that for urban dwellers.<sup>43</sup> The trend in the 1990s was toward

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<sup>39</sup> See TERESA SULLIVAN, ELIZABETH WARREN, & JAY LAWRENCE WESTBROOK, *THE FRAGILE MIDDLE CLASS: AMERICANS IN DEBT*, 27 (Yale University Press 2000) (“The people who file for bankruptcy are a cross-section of society, and bankruptcy is a middle-class phenomenon.”) For example, bankruptcy filers are somewhat better educated than the general U.S. population. See *id.* at 53. People in poverty tend to have low educational attainment. See U.S. CENSUS BUREAU, *CURRENT POPULATION SURVEY, POVERTY TABLE 29: YEARS OF SCHOOL COMPLETED BY POVERTY STATUS, SEX, AGE, NATIVITY AND CITIZENSHIP (2004)*, available at [http://ferret.bls.census.gov/macro/032004/pov/new29\\_100\\_01.htm](http://ferret.bls.census.gov/macro/032004/pov/new29_100_01.htm).

<sup>40</sup> Other strategies to study consumer economic failure, each of which may identify a different set of people, include studying homeowners who are facing foreclosure or were evicted, families who seek credit counseling, people in default on credit card bills, and people with judgments for unpaid debts filed against them.

<sup>41</sup> U.S. CENSUS BUREAU, *CURRENT POPULATION SURV., 2001 & 2002 ANN. DEMOGRAPHIC SUPPLEMENTS, PEOPLE AND FAMILIES IN POVERTY BY SELECTED CHARACTERISTICS: 2000 AND 2001*, TBL. 1.

<sup>42</sup> Dean Joliffe, ECON. RES. SERVICE, U.S. DEP’T OF AGRIC., *Comparisons of Metropolitan and Nonmetropolitan Poverty During the 1990s*, RURAL DEV. RES. REP. NO. 96, 8 (June 2003), available at <http://www.ers.usda.gov/publications/rdr96/rdr96.pdf>. (applying three measures of poverty that capture its incidence, depth, and severity to conclude that for all years in the 1990s poverty under all measurements was higher in nonmetropolitan than in metropolitan areas); see also ECON. RES. SERVICE, U.S. DEP’T OF AGRIC., *RURAL INCOME, POVERTY, AND WELFARE: RURAL POVERTY BRIEFING ROOM*, available at <http://www.ers.usda.gov/briefing/IncomePovertyWelfare/ruralpoverty/>.

<sup>43</sup> See *id.*

widening this gap.<sup>44</sup> By 2000, 22 states had a rural-urban poverty gap of greater than 25 percent.<sup>45</sup> This poverty is widespread across America's rural geography. Among the nation's 500 poorest counties, 459 of these counties are rural.<sup>46</sup> In only one geographic region, the Northeast, is the incidence of urban poverty greater than rural poverty.

The persistence of rural poverty is troubling. Unlike urban areas, rural areas frequently do not experience a decline in poverty when the national economy is booming. For example, in 1999, the White House trumpeted the drop in the percentage of poor Americans after several years of economic growth.<sup>47</sup> Between 1998 and 1999, however, the percentage of poor in rural counties did not experience any statistically significant change.<sup>48</sup> Other measures of financial struggle support the conclusion that poverty is particularly persistent in rural areas. For example, the rate of food insecurity in rural areas remained unchanged in 2002, while the rate in metropolitan areas experienced a substantial drop.<sup>49</sup> The implication of these data is that the rural poor stay poor, even when urban America excels. On the other hand, when the overall economy declines, rural poverty grows more quickly than urban poverty. Between

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<sup>44</sup> Dean Joliffe, Econ. Res. Service, U.S. Dep't of Agric., *Rural Poverty Rate Stayed Under 15 percent in 1999*, RURAL AM. WINTER Vol. 16, No. 4 (2002).

<sup>45</sup> Kathleen K. Miller and Thomas D. Rowley, *Rural Poverty and Rural-Urban Income Gaps: A Troubling Snapshot of the "Prosperous" 1990s*, RUPRI DATA REP. P2002-5, available at <http://www.rupri.org/ruralPolicy/publications/p2002-5.pdf>.

<sup>46</sup> Id.

<sup>47</sup> OFFICE OF THE PRESS SECRETARY, WHITE HOUSE, KEY FACTS ON CENSUS INCOME AND POVERTY REPORT (Sept. 30, 1999), <http://www.hhs.gov/news/press/1999pres/19990930c.html> (noting drop in poverty among multiple demographics, including children, the elderly, African-Americans, and Hispanics).

<sup>48</sup> Christopher Holden, *Rural Poverty: Treading Water as the Economy Booms*, RURAL VOICES NEWSL. OF HOUSING ASSISTANCE COUNCIL (Winter 2000-2001).

<sup>49</sup> ECON. RES. SERVICE, U.S. DEP'T OF AGRIC., *Rural America at a Glance*, RURAL DEV. RES. REP. NO. RDRR94-1 (Sept. 2002) at 3, available at <http://www.ers.usda.gov/publications/rdr94-1/>; see also Sheena McConnell and James Ohis, Econ. Res. Service, U.S. Dep't of Agric., *Food Stamp Participation Down in Urban Areas, But Not in Rural*, FOOD REVIEW VOL. 24, available at <http://www.ers.usda.gov/publications/FoodReview/Jan2001/FRV24I1b.pdf>.

2000 and 2001, rural poverty increased by 0.8 percent while urban poverty grew significantly less, at a rate of only 0.3 percent in the same one-year period.<sup>50</sup> The rural poor get less benefit from economic upturns and suffer more severely during downturns. The effect is to prevent the rural-urban poverty gap from improving, regardless of macro-economic conditions.

These findings illustrate the ways in which poverty is a disproportionately rural experience. The absolute numbers of rural poor are sobering. In rural areas, one in seven people lives in poverty. In 2001, this translated to approximately 7.4 million rural poor.<sup>51</sup> Despite its prevalence and persistence, rural poverty has never received the attention of its urban cousin.<sup>52</sup> Poverty research generally focuses on urban areas.<sup>53</sup> The silence of rural poverty increases its perniciousness. Not only are rural people more likely to be poor, but they are less likely to receive public attention, which could aid in shaping policies to help rural families.

### **C. Understanding Bankruptcy and Legal Systems in Rural America**

The lack of attention to rural poverty is mirrored by the dearth of scholarship on other rural issues, including the operation of legal systems in rural areas. While

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<sup>50</sup> U.S. CENSUS BUREAU, CURRENT POPULATION SURV., 2001 & 2002 ANN. DEMOGRAPHIC SUPPLEMENTS, PEOPLE AND FAMILIES IN POVERTY BY SELECTED CHARACTERISTICS: 2000 AND 2001, TBL. 1.

<sup>51</sup> *Id.*

<sup>52</sup> See e.g., DANBOM at 257 (observing that nation's focus on problem of rural poverty in 1930s proved to be ephemeral); OHIO STATE UNIVERSITY EXTENSION FACT SHEET, HYG-5709-98, POVERTY FACT SHEET SERIES—RURAL POVERTY, available at <http://ohioline.osu.edu/hyg-fact/5000/5709.html>. (“Although rural poverty does not get a lot of media attention, there are rural centers with a high rate of poverty like the high rate of poverty in central cities.”); PERCEPTIONS OF RURAL AMERICA: MEDIA COVERAGE, W.K. KELLOGG FOUNDATION 32, (January 2003) (“Only one out of 10 stories was framed in terms that presented rural America as an economically challenged place . . .”).

<sup>53</sup> See MICHAEL HARRINGTON, THE OTHER AMERICA 58 (MacMillan 1969) (“In the opening phase of the Kennedy Administration, an important political truth became apparent: that the farm poor are, for the most part, without a real voice in the United States.”)

empirical studies of bankruptcy are increasingly common,<sup>54</sup> no study has analyzed whether the circumstances of urban and rural families are different. Indeed, the trend in bankruptcy empirical work seems to be toward research samples drawn solely from urban areas.<sup>55</sup> In latest phase of the Consumer Bankruptcy Project, which began in 2001, the sample of bankrupt households was constructed by distributing questionnaires at meetings of creditors held only in the largest city of each selected judicial district.<sup>56</sup> For example, in the Northern District of Illinois, only debtors whose residence resulted in their meeting of creditors being held in downtown Chicago were invited to participate in the study. No questionnaires were distributed at the other six locations for meetings of creditors in that district. These locations are in the suburbs of Chicago or in small cities in rural Illinois.<sup>57</sup> This method of sampling effectively screened many suburban residents and nearly all rural residents out of the study. The effect was to skew the sample away from a random distribution of people who live in communities of all sizes.

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<sup>54</sup> The Consumer Bankruptcy Project in 1981 (Phase I) conducted by Profs. Teresa Sullivan, Elizabeth Warren, and Lawrence Jay Westbrook was a large national study of consumer bankruptcy. Data from bankruptcy case records was collected for all cases filed in a particular judicial district. While the sample contained data on both urban and rural filers, an analysis was not performed of possible differences based on urban or rural residence.

<sup>55</sup> See, e.g., Teresa Sullivan, Elizabeth Warren and Jay Lawrence Westbrook, *Consumer Debtors Ten Years Later: A Financial Comparison of Consumer Bankrupts 1981-1991*, 68 AM. BANK. L.J. 121, 126 (Spring 1994) (explaining that primary data for Phase II of Consumer Bankruptcy Project came from questionnaires and court record data was only gathered for subset of sample from federal districts "that contain large cities.") No explanation is offered for why a subset from large cities was preferable or chosen. However, in the first Consumer Bankruptcy Project in 1981, data was randomly drawn from every case filed in three judicial districts. See TERESA SULLIVAN, ELIZABETH WARREN, AND JAY LAWRENCE WESTBROOK, AS WE FORGIVE OUR DEBTORS 18 (1989). The 1981 methodology would lead rural debtors to be included in the sample in proportion to their presence in the overall sample of bankruptcy filers.

<sup>56</sup> See ELIZABETH WARREN AND AMELIA WARREN TYAGI, *THE TWO-INCOME TRAP*, App. (2003) (stating that questionnaires were distributed to debtors in cities of Los Angeles, Chicago, Dallas, Philadelphia, and Nashville).

<sup>57</sup> In the Northern District of Illinois, meetings of creditors are regularly held in Chicago, Wheaton, Geneva, Waukegan, Joliet, Rockford, and Sterling. Similar situations exist in the other districts sampled by the Consumer Bankruptcy Project.

Other studies, including those conducted by private for-profit researchers, may have included rural residents but failed to analyze the data according to place of residence.<sup>58</sup>

Only one data set appears to exist that specifically identifies differences between urban and rural bankruptcy. Produced by a private, for-profit research company, the data compare the bankruptcy filing rates in urban and rural counties.<sup>59</sup> The “hidden problem” identified by this report is that while the per capita personal bankruptcy rate fell between 1998 and 1999, many rural counties saw a per capita increase in filings. In fact, 86 percent of the counties that saw an increased bankruptcy rate during this period were rural counties.<sup>60</sup> The report concludes that the surge in bankruptcy filings is a strongly rural phenomenon. This finding is echoed by the high per capita bankruptcy filing rates in states that have large rural populations.<sup>61</sup> While these data suggest that rural bankruptcies are rising, they offer no insight on the ways in which bankrupt families who live in rural areas may be different from urban families and offer no explanation for the causes of rural financial hardship.

The failure of researchers to explore the confluence of rural residence and financial distress reflects the general trend in legal scholarship to ignore the possible influence of “place” on legal systems. Professor Debra Bassett has argued that

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<sup>58</sup> See, e.g., VISA, CONSUMER BANKRUPTCY: BANKRUPTCY DEBTOR SURVEY (PRELIMINARY REPORT), 2 and Appendix A Regional Breakdown (April 1997) (summarizing methodology that suggests surveys were sent to debtors in all 50 states but providing no data on results by community size of respondent).

<sup>59</sup> THE SHIFT IN PERSONAL BANKRUPTCIES: A HIDDEN PROBLEM, SMITH BUSINESS SOLUTIONS (2000).

<sup>60</sup> *Id.* Between 1998 and 1999, there were 1,049 counties that experienced an absolute increase in the number of personal bankruptcies. Almost 900 of these counties were rural.

<sup>61</sup> During the one-year period ending June 30, 2001, eight of the nine judicial districts with the highest percentage increase in consumer bankruptcy filings were in states with rural populations that exceeded the national average. See American Bankruptcy Institute, Press Release, *New Bankruptcy Filings Break Quarterly Record* (Aug. 24, 2001).

discrimination against rural dwellers, which she terms “ruralism,” is pervasive in legal analysis.<sup>62</sup> She offers several examples: the presentation of “local bias” as a rural problem, the belief that rural areas are unfavorable venues for jury trials because rural residents are stingy in awarding verdicts, and the emphasis on population density in environmental law that places most toxic hazards in rural areas.<sup>63</sup>

Policymakers frequently fail to consider how policy changes would function in rural areas. As a rural social scientist explains, “[P]atterns and trends in service delivery that work well in urban and suburban areas often become the standards and patterns throughout the nation, emulated widely because they work in areas of large populations. But when they are extended to rural areas, they may be less appropriate and less effective.”<sup>64</sup> One author has argued that federal housing policy demonstrates this effect. He reports that rural areas receive only 20 percent of federal housing support, despite the fact that 33 percent of the nation’s substandard housing exists in rural areas.<sup>65</sup> In his opinion, the design and operation of federal housing programs have an anti-rural bias because many of the programs contain assumptions that are only appropriate for urban residents.<sup>66</sup> Another example is the debates about private school vouchers, which fail to consider how such reform would play out for rural citizens. For rural families that may live fifty or more miles from a city that has any private school,

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<sup>62</sup> Debra Lyn Bassett, *Ruralism*, 88 IOWA L. REV. 273 (Jan. 2003).

<sup>63</sup> *Id.* at 327-28.

<sup>64</sup> JANET M. FITCHEN, *ENDANGERED SPACES, ENDURING PLACES: CHANGE, IDENTITY, AND SURVIVAL IN RURAL AMERICA* 158-59 (1991).

<sup>65</sup> Craig Anthony Arnold, *Ignoring the Rural Underclass: The Biases of Federal Housing Policy*, 2 STAN. L. & POL’Y REV. 191, 194 (Spring 1990).

<sup>66</sup> *Id.* at 195 (arguing that very design and operation of federal housing programs such as Section 8 and public housing reflect an anti-rural bias).

vouchers do not offer any meaningful solution to the educational problems facing rural children and parents. These examples illustrate that the features of rural life are often different from urban or suburban life in ways that alter how laws function. Because of these differences, ignoring the role of “place” – that is of urban or rural residence – in debates about law or policy reform often leaves the problems of rural citizens unidentified and unsolved.

The failure to study rural bankruptcy reflects the gradual disappearance of rural America from public concern. Despite a lack of public attention, rural America – and the problems of financial crisis that exist there – have not disappeared. While very few rural families are farmers, the myth of rural equals agricultural blinds us from careful study of the real nature of rural financial distress. The limited available rural poverty research offers one set of insights on the troubling economics of rural America. Data on rural bankruptcies provides another lens through which to study the economic problems of rural families. Ignoring the rural perspective does a grave disservice to the twenty percent of Americans who live in rural areas.<sup>67</sup> Only when their profiles are added to the existing knowledge can a rich and complete picture be constructed of how and why Americans file bankruptcy. Such an understanding is essential to developing bankruptcy laws that respond effectively to the financial collapse of all families, regardless of their place of residence.

## II. The Bottom of the Barrel: The Economics of Rural Families

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<sup>67</sup> See U.S. CENSUS 2000 SUMMARY FILE, URBAN/RURAL AND METROPOLITAN/NONMETROPOLITAN POPULATION: 2002, GCT-P1.

Because bankruptcy is a highly public solution to financial distress, it provides a rich source for information about people in economic trouble. In this part of the Article, I present my analysis of the economics of rural families in bankruptcy. These data are surprising and unsettling. Rural families are in terrible financial shape at the time of their bankruptcy, even compared to urban households who file bankruptcy. This finding illustrates how the declining rural economy is being felt by rural families who are struggling with financial failure. The hardship facing rural debtors provides a powerful example of the need for accessible consumer bankruptcy relief. Bankruptcy may be a uniform national legal system, but the empirical data presented herein demonstrate the importance of acknowledging how place of residence may influence the circumstances of bankrupt families. My data strongly suggest that rural families will be among the hardest-hit by the recent amendments to the Bankruptcy Code.

#### A. Methodology<sup>68</sup>

To compare the profiles of rural and urban bankruptcy filers, I drew a sample of 691 consumer bankruptcy cases from the urban and rural counties in two judicial districts: the Southern District of Iowa and the Middle District of Tennessee.<sup>69</sup> These two districts were selected because they are representative of the two regions (Midwest and South) that are home to the largest number of rural citizens.<sup>70</sup> Rural poverty is also

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<sup>68</sup> The Appendix contains detailed information about the methodology of my study.

<sup>69</sup> See also 28 U.S.C. § 123 and 28 U.S.C. § 95 (describing what counties are in Middle District of Tennessee and Southern District of Iowa, respectively).

<sup>70</sup> RURAL CONDITIONS AND TRENDS, ECON. RES. SERVICE, U.S. DEP'T OF AGRIC., NONMETRO POPULATION REBOUND: STILL REAL BUT DIMINISHING, Vol. 9, No. 2, at 21 (Feb. 1999), available at <http://www.ers.usda.gov/publications/rcat/rcat92/>.

concentrated in these two geographic regions.<sup>71</sup> However, these two states represent several types of diversity among rural areas. Iowa has a poverty rate below the national average, while Tennessee exceeds the national figure.<sup>72</sup> Economically, Iowa and Tennessee capture a cross-section of the rural economy. Most workers in Tennessee are employed in manufacturing jobs, while most Iowa workers have jobs in the service sector.<sup>73</sup> The two states also vary in population density, which can influence the presence of certain high-wage industries and the delivery of services such as health care and telecommunications.<sup>74</sup> As a state, Tennessee is twice as densely populated as Iowa.<sup>75</sup>

Within the bankruptcy system, the Southern District of Iowa and the Middle District of Tennessee are also diverse. In 2001, Tennessee led the nation in per capita bankruptcies.<sup>76</sup> Iowa's filing rate was more moderate and ranked thirty-fourth in the

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<sup>71</sup> Most poor rural Americans live in the South (55.3%) and the North Central region (25%). See Gene F. Summers and Jennifer Sherman, *Who's Poor in Rural America? Working Together for a Change*, RURAL SOCIOLOGICAL SOCIETY (1997), available at <http://www.cpac.missouri.edu/newsuse/archive/poor.html>.

<sup>72</sup> In 1999, 9.1 percent of Iowans lived in poverty. In Tennessee, 13.5 percent of people lived in poverty. The national poverty rate for 1999 was 12.4 percent. See U.S. CENSUS BUREAU, PEOPLE QUICKFACTS FOR TENNESSEE AND IOWA, available at <http://quickfacts.census.gov/qfd/states>.

<sup>73</sup> U.S. CENSUS 2000, SUMMARY FILE 3, PROFILE OF SELECTED ECONOMIC CHARACTERISTICS, GEOGRAPHIC AREAS: IOWA AND TENNESSEE, DP-3.

<sup>74</sup> See Agency for Health Care Policy and Research, *Improving Health Care for Rural Populations*, RESEARCH IN ACTION FACT SHEET, AACPR PUB. NO. 96-P040, (Mar. 1996), available at

<http://www.ahrq.gov/research/rural.htm> ("Low population density in rural areas makes it inherently difficult to deliver services that target persons with special health care needs."); ECON. RES. SERVICE, U.S. DEP'T OF AGRIC., RURAL TELECOMMUNICATIONS: PRACTICABILITY FOR RURAL REGIONS, BRIEFING ROOM ON RURAL TELECOMMUNICATIONS, available at <http://www.ers.usda.gov/Briefing/telecom/practicability.htm>. ("Population density is a critical factor in service delivery cost, as costs are shared among households for telecommunications services.")

<sup>75</sup> In 2000, Tennessee had 138 persons per square mile. Iowa had 52.4 persons per square mile. See U.S. CENSUS BUREAU, PEOPLE QUICKFACTS FOR TENNESSEE AND IOWA, available at <http://quickfacts.census.gov/qfd/states>.

<sup>76</sup> 1 in 38 households in Tennessee filed bankruptcy in 2001. See AM. BANKR. INST., HOUSEHOLDS PER FILING, RANK: DURING THE 12-MONTH PERIOD ENDING JUNE 30, 2001 (2001).

nation in bankruptcy filings per household.<sup>77</sup> The two judicial districts also differ in the percentage of debtors who chose to file Chapter 7 and Chapter 13 bankruptcy.<sup>78</sup> In Tennessee, a large percentage of consumer debtors choose to file for relief under Chapter 13 of the Bankruptcy Code. In the Southern District of Iowa, Chapter 7 cases strongly predominate.<sup>79</sup> Because Chapter 13 debtors typically have more assets and higher incomes than Chapter 7 debtors,<sup>80</sup> it is particularly noteworthy that the differences between urban and rural debtors are found in samples from both districts.

To begin data collection, surveys were distributed to people who filed Chapter 7 and Chapter 13 bankruptcy in the two judicial districts in 2001 and 2002. The survey gathered demographic information and asked close-ended questions about the circumstances leading up to their bankruptcy filing.<sup>81</sup> Debtors also had the opportunity

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<sup>77</sup> *Id.* 1 in 114 households in Iowa filed bankruptcy in 2001.

<sup>78</sup> Chapter 7 bankruptcy involves a liquidation of any non-exempt assets of a debtor. These assets are then distributed pro rata to the debtor's creditors. See CHARLES JORDAN TABB, *THE LAW OF BANKRUPTCY 2* (1997). In Chapter 13 bankruptcy, debtors must have regular incomes, from which they pay a portion of their debt back over a period of time between three and five years. See *id.* at 80. Individuals may also file Chapter 11 or Chapter 12 bankruptcies. Because these represent a tiny fraction of all non-business bankruptcies, such cases were excluded from the study. See ADMIN. OFFICE OF THE U.S. CTS., *BUSINESS AND NONBUSINESS BANKRUPTCY CASES COMMENCED, BY CHAPTER OF THE BANKRUPTCY CODE, DURING THE 12-MONTH PERIOD ENDING DECEMBER 31, 2001*, TBL. F-2, available at [http://www.uscourts.gov/Press\\_Releases/1201f2.xls](http://www.uscourts.gov/Press_Releases/1201f2.xls).

<sup>79</sup> In 2001, 8,949 non-business Chapter 7 petitions and 5,384 non-business Chapter 13 petitions were filed in the U.S. Bankruptcy Court for the Middle District of Tennessee, making 37 percent of non-business filings Chapter 13 cases. In the same year, the Southern District of Iowa recorded 6,170 non-business Chapter 7 petitions and 425 non-business Chapter 13 petitions, such that only 6 percent of all non-business filings were Chapter 13 cases. See ADMIN. OFFICE OF THE U.S. CTS., *BUSINESS AND NONBUSINESS BANKRUPTCY CASES COMMENCED, BY CHAPTER OF THE BANKRUPTCY CODE, DURING THE 12-MONTH PERIOD ENDING DECEMBER 31, 2001*, TBL. F-2, available at [http://www.uscourts.gov/Press\\_Releases/1201f2.xls](http://www.uscourts.gov/Press_Releases/1201f2.xls).

<sup>80</sup> Among the core sample of 1,250 debtors collected in the 2001 Consumer Bankruptcy Project, Chapter 13 debtors had total assets of \$116,757. Chapter 7 debtors had total assets of \$53,819. This difference largely reflects the greater numbers of homeowners in Chapter 13. Debtors in the two chapters also reported significantly different annual incomes. Chapter 13 debtors earned \$34,057. Chapter 7 debtors earned much less, only \$24,534. Both differences are statistically significant.  $p < .001$ .

<sup>81</sup> A copy of the debtor survey is reproduced in Elizabeth Warren, *Bankrupt Children*, 86 Minn. L. Rev. 1003 (2002). Only debtors who completed the survey are included in the sample. Information about the

to tell the story of their bankruptcy in their own words. For each completed survey, I identified the corresponding court records. Data from the petition and schedules were coded for each case in the sample. These data provide a snapshot of debtors' financial situations at the time of filing.

A key decision in designing this study was determining how to define a "rural" dweller. Social scientists, demographers, and policy makers have not developed a uniform definition of rural.<sup>82</sup> "Despite [the] apparent simplicity [of the term "rural"] in commonsense terms, there is nothing mechanical or straight forward about developing a systematic working definition of rural."<sup>83</sup> There are several competing definitions of "rural" that differ in which variables are considered relevant and how restrictively they measure "rurality."<sup>84</sup> The most common method used by rural researchers and social scientists to define people as urban or rural is to use as a proxy their residence in a

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response rate to the survey is provided in the Appendix, but generally the response rate in these two judicial districts exceeded that in other studies.

<sup>82</sup> "[T]here is no standard definition of rural areas used in policy, research, and planning. There is no uniformity in how rural areas are defined for purposes of Federal program administration or distribution of funds." RURAL POL'Y RES. INST., *DEFINING RURAL: DEFINITIONS OF RURAL AREAS IN THE U.S.* (1999), available at <http://www.rupri.org/policyres/context/rural.html> (describing methodology, advantages, and limitations of several common definitions of rural).

<sup>83</sup> RALPH A. WEISHEIT ET AL., *CRIME AND POLICING IN RURAL AND SMALL-TOWN AMERICA* 4 (2d ed. Waveland Press 1999).

<sup>84</sup> For example, the United States Census Bureau has its own definition of rural, but this definition is not widely adopted by other federal agencies. In the 2000 census, the Census Bureau defined an "urbanized area" by reference to population density. An urbanized area includes a central city and the surrounding densely settled territory that together has a population density exceeding 1,000 people per square mile. Under this definition, all persons living in urbanized areas or in other places (towns, villages, etc.) with a population of more than 2,500 people are classed as the urban population. Those who do not fall into this category are considered rural. See U.S. CENSUS BUREAU, *CENSUS 2000 URBAN AND RURAL CLASSIFICATIONS* (April 30, 2002), available at [http://www.census.gov/geo/www/ua/ua\\_2k.html](http://www.census.gov/geo/www/ua/ua_2k.html). The Census Bureau's use of 2,500 as the urban population cut-off is not the result of thoughtful study or choice. Apparently this number was first used in a supplementary census report in 1906 with no explanation and has not been revised to reflect changing demographics in the nearly 100 years since. See Basset, *supra*, n. 61. The Census Bureau's failure to either update its definition of rural residence or justify the continued use of a very old definition is a significant drawback of its definition.

metropolitan or non-metropolitan county.<sup>85</sup> The Office of Management and Budget is responsible for classifying counties as metropolitan.<sup>86</sup> A metropolitan county is a county located inside a Metropolitan Area, which in turn is defined as a large population nucleus of over 50,000 people. Fringe counties (suburbs) that have a high degree of economic and social integration with the population nucleus are also classified as metropolitan.<sup>87</sup> A chief advantage of this definition is that Census Bureau data are updated annually on metropolitan and non-metropolitan criteria, which allows a more accurate comparison with the bankruptcy sample.<sup>88</sup> For this study, bankruptcy filers who listed a home address in a metropolitan county were classed in the urban sample.<sup>89</sup> Bankruptcy filers who resided in non-metropolitan counties make up the rural sample.

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<sup>85</sup> See RURAL POL'Y RES. INST., METROPOLITAN AND NON-METROPOLITAN COUNTIES (1999) at <http://www.rupri.org/policyres/context/omb.html> ("The Office of Management and Budget's definition of 'non-metropolitan' areas is the definition of 'rural' areas most commonly used for research, analysis, and policy making in the United States.") The Economic Research Service of the U.S. Department of Agriculture, which provides the most current comprehensive analysis on economic conditions in rural areas, also generally uses non-metropolitan residence as its definition of rural. See ECON. RES. SERVICE, U.S. DEP'T OF AGRIC., MEASURING RURALITY: WHAT IS RURAL? BRIEFING ROOM ON RURALITY, at <http://www.ers.usda.gov/briefing/rurality/WhatisRural>.

<sup>86</sup> The categorization of counties as metropolitan or non-metropolitan for this article was drawn from the Office of Management and Budget classifications that were published on June 30, 1999. See Office of Mgmt. & Budget, OMB BULL. 99-04, (June 30, 1999) available at <http://www.whitehouse.gov/omb/inforeg/msa-bull99-04.html>.

<sup>87</sup> OFFICE OF MGMT & BUDGET, *Standards for Defining Metropolitan and Micropolitan Statistical Areas*, 65 FED. REG. 249, (Dec. 27, 2000) available at <http://www.whitehouse.gov/omb/fedreg/metroareas122700.pdf>

<sup>88</sup> U.S. Census bureau data on non-metropolitan counties is updated at least annually, while data is only available through the decennial census about "rural" residents as defined by the U.S. Census Bureau's more restrictive definition of rural.

<sup>89</sup> The Southern District of Iowa contains 47 counties. Six of these counties are metropolitan: Dallas, Polk and Warren counties (Des Moines Metropolitan Statistical Area ("MSA")); Johnson county (Iowa City MSA); Pottawattamie county (Omaha, NE-IA MSA); and Scott county (Davenport-Moline-Rock Island IA-IL MSA). In the Middle District of Tennessee, 9 of the 32 counties in the judicial district are metropolitan counties: Cheatham, Davidson, Dickson, Robertson, Rutherford, Sumner, Williamson, Wilson (Nashville MSA) and Montgomery (Clarksville-Hopkinsville TN-KY MSA). All other counties are non-metropolitan counties.

Unless otherwise noted, all further references in this Article to “rural” are to residence in a non-metropolitan county.

### B. Demographics of Rural Filers: An Even More Fragile Middle Class

Before attributing any differences between urban and rural bankrupt families to place of residence, I analyzed the data to determine whether demographic differences existed between the samples. For example, I hypothesized that the average rural debtor might be much older because of a possible trend of young people migrating to urban areas. Such a difference could skew data on assets because people generally accumulate assets as they age.

Figure 1 summarizes my findings on the demographics of rural and urban debtors. For most of the variables, there was no statistically significant difference at the five percent confidence level between the urban and rural groups.<sup>90</sup> Overall, rural bankruptcy filers are demographically similar to their urban counterparts.

**FIGURE 1**  
**Demographics of Rural and Urban Families in Bankruptcy**

Variable	Rural	Urban	Significance Test
Average Age	40.8 years	39.5 years	$p=.138$
Percent of Female Debtors	53%	53%	$p=.900$
Percent of Married Debtors	60%	53%	$p=.030^*$
Percent Homeowners	49%	42%	$p=.061$
Percent with Some College Education or Higher	36%	44%	$p=.008^*$

\* Significant at  $p<.05$  level.

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<sup>90</sup> I used a t-test to measure the difference between the ages in each sample. For the other variables in Figure 1, I used a Pearson chi-square test.

The average debtor in both the rural and urban samples was approximately 40 years old.<sup>91</sup> Financial distress leading to bankruptcy seems to particularly strike early middle-aged people, regardless of community size. To gauge whether there was a significant sex difference among filers in the two samples, I measured what percentage of all debtors were women. The number of women in both samples was equal. My data confirm that more women than men are in bankruptcy.<sup>92</sup> This fact does not appear to be related to community size.

As Figure 1 shows, rural debtors were more likely to be married than urban debtors. The presence of more married couples in rural households led me to speculate that household income among rural debtors would be higher, since married couples potentially have two earners to generate income. Similarly, married couples should also have more assets. The economic profiles of rural and urban debtors, discussed *infra* in Part D, refuted these hypotheses. The presence of more married couples in the rural sample does not appear to distort the data on the economics of debtors in favor of rural families. Indeed, the fact that rural debtors are more likely to be married may actually expose these families to greater risk of financial failure. Elizabeth Warren and Amelia Tyagi report that married couples with children are more than twice as likely to file for bankruptcy as their childless counterparts.<sup>93</sup> In this way, the greater numbers of

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<sup>91</sup> See also Part III.C., *infra*, (discussing additional data on possible influence of an aging rural population on findings).

<sup>92</sup> See Elizabeth Warren, *What is a Woman's Issue? Bankruptcy, Commercial Law, and Other Gender-Neutral Topics*, 25 HARV. WOMEN'S L.J. 19 (Spring 2002).

<sup>93</sup> ELIZABETH WARREN & AMELIA WARREN TYAGI, *THE TWO-INCOME TRAP* 6 (2003).

married people in the rural sample buttress my conclusion that rural families are especially vulnerable to economic collapse.

Demographic data on the general population mirror my findings about the similarities of urban and rural households. The Consumer Expenditure Survey, a large study conducted by U.S. Department of Labor, collects demographic and financial data on American households.<sup>94</sup> It reports that rural and urban households are of the same average size, and that the average household in both areas had 1.4 people earning income per household.<sup>95</sup> This comparative sketch of the demographics of urban and rural households shows the similarities between the populations. Demographic factors do not explain the more severe financial distress that I find among rural families in bankruptcy.

Professor Elizabeth Warren has recently affirmed her previous finding that a vast majority of bankrupt families has a claim to middle class status.<sup>96</sup> Analyzing data from a sample of 1,250 urban filers, she uses, *inter alia*, educational attainment of at least some college and homeownership as proxies for membership in the middle class.<sup>97</sup> Like urban debtors, many rural debtors possess these characteristics of middle class status.

Almost half of rural debtors own their home at the time of their bankruptcy filing. A

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<sup>94</sup> The Consumer Expenditure Survey used residence in a Metropolitan Statistical Area as its definition of urban. However, it included in its definition of urban, people who lived in nonmetropolitan counties, if such people lived in a place that had 2,500 or more people. See U.S. DEP'T OF LABOR, GLOSSARY, CONSUMER EXPENDITURE SURVEY, at <http://www.bls.cex/csxgloss.htm>. This expanded definition of urban depresses the number of people counted as rural residents.

<sup>95</sup> CONSUMER EXPENDITURES IN 2001, U.S. DEP'T OF LABOR, REPORT 966, TBL. 7, HOUSING TENURE, TYPE OF AREA, RACE OF REFERENCE PERSON, AND HISPANIC ORIGIN OF REFERENCE PERSON: AVERAGE ANNUAL EXPENDITURES AND CHARACTERISTICS (April 2003).

<sup>96</sup> See Elizabeth Warren, *Financial Collapse and Class Status: Who Goes Bankrupt?*, 41 OSGOODE HALL L.J. 115 (Spring 2003) (discussing FRAGILE MIDDLE CLASS).

<sup>97</sup> *Id.* at 144.

similar number of urban debtors are homeowners. Purchasing a home usually requires a stable work history and present income, qualities that are strongly associated with membership in the middle class.<sup>98</sup> Both samples had large numbers of homeowners, although these numbers were below the national rate of 67 percent in 2001. If bankruptcy were used primarily by the chronic poor, very few people would be homeowners. In the discussion of debtors' financial characteristics, *infra* at Part II.C., mortgage debt is excluded from certain analyses so any influence of the greater numbers of homeowners in the rural sample is eliminated.

Educational attainment is also a marker of class status. When combined, the urban and rural bankruptcy filers mirror the distribution of education found in the general U.S. population.<sup>99</sup> Overall, debtors who live in rural areas have less education than filers who live in urban areas.<sup>100</sup> While the number of college graduates and advanced degree holders were nearly identical between the rural and urban groups,<sup>101</sup> rural debtors were less likely to have had at least some college, as reported in Figure 1. This difference is statistically significant. Rural debtors are also less likely to have

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<sup>98</sup> *Id.* at 136-137.

<sup>99</sup> When the urban and rural samples are combined, 33 percent of debtors have some college (but not a bachelor's degree) as the highest level of education completed. In the U.S. population, 27 percent of people report that their highest level of education is some college. Approximately three in four debtors in the combined sample are high school graduates. Among all Americans, this figure is 83 percent. See U.S. CENSUS BUREAU, EDUCATIONAL ATTAINMENT OF PEOPLE 18 YEARS AND OLDER, BY METROPOLITAN AND NONMETROPOLITAN RESIDENCE, AGE, SEX, RACE, AND HISPANIC ORIGIN: MARCH 2001, TBL. 11, available at <http://www.census.gov/population/www/socdemo/education/pp1-157.html>.

<sup>100</sup> In addition to the finding that rural debtors were less educated than rural debtors, I identified a sharp regional difference between the education of Iowans and Tennesseans. Debtors living in Iowa are much more educated than debtors from Tennessee. This geographic difference was present in both the urban and rural samples in each state. In other words, Iowa and Tennessee were quite different from each other, but urban debtors were more educated than rural debtors in each state.

<sup>101</sup> Seven percent of debtors in both samples had college degrees or advanced degrees.

earned a high school diploma.<sup>102</sup> The lower educational attainment of rural debtors may partially explain the lower incomes and greater job problems, discussed *infra* in Part III.B., that trouble rural families.

The data on homeownership and educational levels from the samples analyzed in this Article reinforce the findings of Professor Warren and her co-authors that most bankruptcy debtors are middle class Americans.<sup>103</sup> This characterization aptly describes the families in both the urban and rural samples studied in this Article. While rural debtors are somewhat less educated, they are more likely to own their homes. Overall, place of residence does not appear to influence strongly the class status of debtors. Like urban families, most rural families who go broke have a claim to middle class status.

### **C. Debts and Assets**

While the demographic profiles are similar, urban and rural families in bankruptcy have strikingly different economic profiles. Quite simply, rural families enter bankruptcy in terrible financial distress. The weak economy in rural America is leaving its mark on rural households. Even compared to urban bankruptcy filers, rural filers are in much worse financial shape, providing strong evidence of the severity of rural financial problems. Moreover, this finding about the relative worse economic trouble of rural families suggests that previous studies profiling bankrupt families may

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<sup>102</sup> Twenty six percent of rural debtors were not high school graduates. Twenty percent of urban graduates had no high school diploma.

<sup>103</sup> SULLIVAN, WARREN, AND WESTBROOK, *THE FRAGILE MIDDLE CLASS* at 73. Sullivan et al. further rely on occupational prestige as another indicia of middle-class status. This variable is not available for the rural sample. Thus, I rely solely on homeownership and educational levels as proxies for middle-class status.

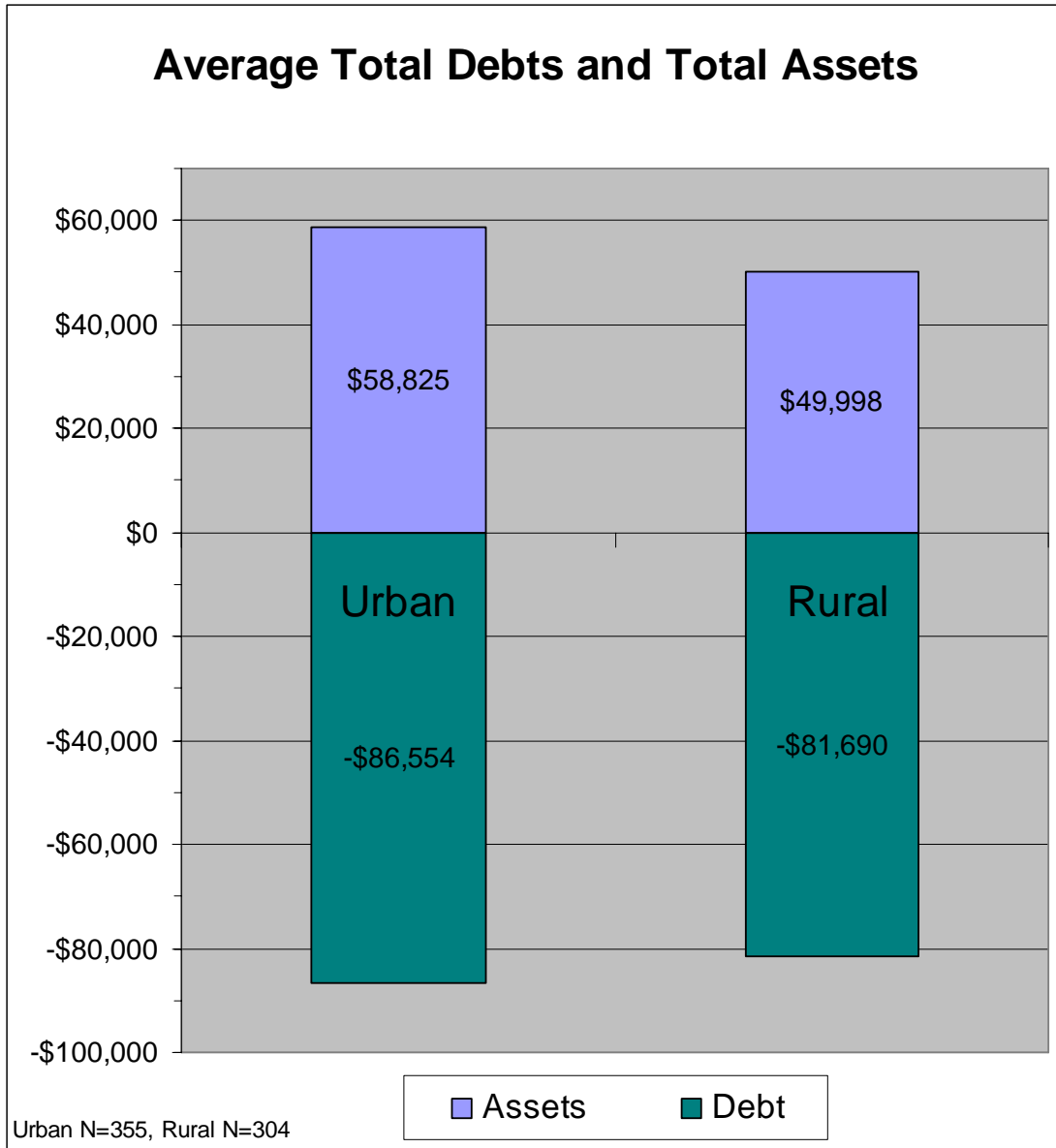
be flawed. To the extent that such studies excluded rural families, their data may underreport the hardships facing families in bankruptcy.

For an overview of the debtors' overall financial situations, the data on total assets and total liabilities from the bankruptcy schedules are helpful. Figure 2 illustrates the average total debt (secured and unsecured) and average total assets of urban and rural households in bankruptcy. Urban households appear to have somewhat more total debt, but this difference is not statistically significant.<sup>104</sup> The higher average debt for urban households reflects the distribution of debt among the sample. Urban households in the top two deciles of the sample owe debts that dwarf the debt of rural filers in the same two deciles. In the bottom half of the distribution, rural families owe more debt. The median rural household owes \$64,707, compared to the median urban household that has debts of \$59,155. At the 25<sup>th</sup> percentile, the gap is even more extreme, with rural households at this level owing 40 percent more to their creditors (\$33,949) than urban debtors (\$23,223). This distribution suggests that compared to urban households, fewer rural households file bankruptcy with only relatively small amounts of debt.

## FIGURE 2

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<sup>104</sup>  $p < .2$ .



Rural families in bankruptcy have fewer assets than urban families in bankruptcy. As shown in Figure 2, the average rural household in bankruptcy has approximately \$9,000 less assets than the average urban household. This difference is statistically significant.<sup>105</sup> This finding on the smaller assets of rural families dovetails

<sup>105</sup>  $p < .05$ .

with new sociology research on “asset poverty.”<sup>106</sup> This concept is gaining influence among researchers as a way to measure which households are vulnerable to economic collapse. A recent study of the general population concluded that living in a rural area is associated with a higher risk of being asset poor.<sup>107</sup>

The bankruptcy data support the conclusion that rural families are more likely to have insufficient assets to support their borrowing. Rural families that file bankruptcy exhibit larger net worth deficits than urban families in bankruptcy.<sup>108</sup> Although it bears emphasizing the negative net worth of debtors in both the urban and rural samples, rural households have strained their financial resources even farther. The effect of negative net worth is to limit how families can respond to financial strain. If a family has more assets than debts, a family has a choice – albeit a tough choice. It could sell an asset such as their home or car or dip into their savings. Additionally, a family with substantial assets that finds itself in financial trouble could borrow against its assets to avoid bankruptcy. Fewer assets leave rural families with reduced flexibility in managing their debts and responding to financial crisis. Because reduced assets limit

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<sup>106</sup> Asset-poor households are defined as those with insufficient wealth resources to meet the household’s basic needs for some limited period of time. Wealth concepts used in these analyses vary, but frequently include net worth, net assets minus home and vehicle equity, and totals of liquid financial assets. The limited period of time considered is usually three months. See Monica Fisher and Bruce Weber, *Does Economic Vulnerability Depend on Place of Residence? Asset Poverty Across the Rural-Urban Continuum*, RURAL POVERTY RES. CENTER, WORKING PAPER NO. 04-01 (March 29, 2004) at 3, available at <http://www.rupri.org/rprc/RPRCwp04-01.pdf>; see also M.L. Oliver and T.M. Shapiro, *Wealth of a Nation: A Reassessment of Asset Inequality in America Shows At Least One Third of Households Are Asset-Poor*, 49 *American J. of Economics and Sociology* 129 (1990).

<sup>107</sup> Monica Fisher and Bruce Weber, *Does Economic Vulnerability Depend on Place of Residence? Asset Poverty Across the Rural-Urban Continuum*, RURAL POVERTY RES. CENTER, WORKING PAPER NO. 04-01 (March 29, 2004) at 1, available at <http://www.rupri.org/rprc/RPRCwp04-01.pdf>.

<sup>108</sup> Again, this conclusion is mirrored in the non-bankruptcy population. See *id.* at 9 (“Thus, it appears that nonmetro county residents are more likely than metro county inhabitants to be net financial asset poor.”)

options for staving off economic failure, rural families may have a greater need for bankruptcy relief as a remedy for financial collapse.

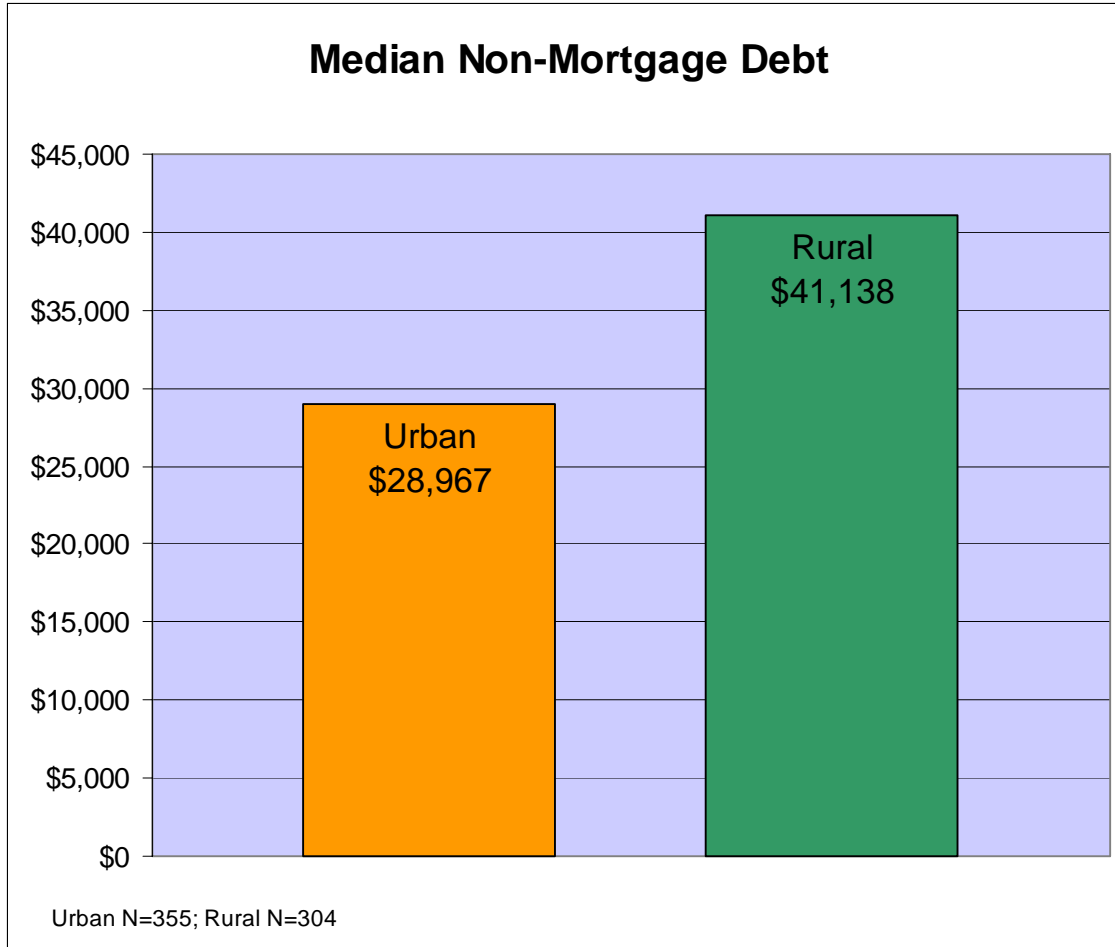
To better understand the nature of differences in the financial profiles of rural and urban debtors, I break down the debt category. Removing mortgage debt from the analysis offsets the higher cost, and higher asset value, of housing in urban areas. When the cost of homeownership is extracted from the data, the higher debt levels of rural filers are more sharply revealed. The average rural debtor has \$53,915 in non-mortgage debt. The average urban debtor has nearly \$8,000 less debt, owing \$45,954 in non-mortgage debt at the time of their bankruptcy.<sup>109</sup> The difference between the non-mortgage debt of urban and rural households is even sharper at the median, as illustrated by Figure 3. The median rural debtor has \$41,138 in non-mortgage debt. The median urban debtor owes thirty percent fewer dollars in such debt.<sup>110</sup>

### FIGURE 3

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<sup>109</sup> This difference is statistically significant at  $p < .05$ .

<sup>110</sup> The median urban debtor has \$28,967 in non-mortgage debt.



The trend of rural households owing much higher non-mortgage debts is found across the distribution of debt levels in the bankruptcy cases. At each quartile, rural households have more non-mortgage debt than urban households. The persistence of this finding strengthens the conclusion that rural households file bankruptcy only when they are mired in very substantial debt—even when compared to the debt levels that typically drive urban people to seek bankruptcy relief.

The amounts of non-mortgage debt found in both samples are sobering. While the data indicate that all debtors owe substantial amounts of money at the time of bankruptcy, rural debtors owe much more. Non-mortgage debt presents particular

problems for consumers in financial trouble. Mortgage debt is secured by an asset – the family home. While it may be emotionally traumatic or socially humiliating to allow a lender to foreclose, the ability to relinquish their house gives families an “out” from this debt. Because non-mortgage debt is typically either unsecured or undersecured, families cannot relinquish the collateral to erase the debt. They must find a way to pay it or turn to bankruptcy for help.

Non-mortgage debt places another burden on households under financial strain. Non-mortgage debt is much more costly than mortgage debt. Most non-mortgage debts owed by families fall in two categories: unsecured debt, such as credit card debt, medical bills, etc. or secured debt for cars. Because cars depreciate rapidly, such debts are rarely full secured. The value of the collateral is rarely enough to pay the entire loan balance, so even surrendering the car typically leaves a debtor with a large balance due. Lenders compensate for the difficulties in collecting these deficiency payments by charging a higher interest rate for non-mortgage secured debts. Unsecured debts carry even higher rates of interest to protect creditors from the risk of lending without any collateral. Because these interest rates make it is more expensive to be in default on non-mortgage debt, the greater non-mortgage debts facing rural families ratchet up the financial consequences – and the stress – of falling behind in their payments. As interest compounds on these bills, rural families continue to fall faster and deeper into trouble because their debt loads are weighted more toward non-mortgage debts. The combination of fewer assets and higher non-mortgage debts carried by rural families presents these families with particular difficulty in finding a non-bankruptcy solution to

their financial problems. The strain on rural households is even more troubling when these findings on assets and debt are analyzed in light of data on rural debtors' incomes.

#### **D. Household Incomes**

The financial pressures that greater short-term debts create on rural families are exacerbated by the low incomes earned by rural workers. Figure 4 shows that rural households earn less money than urban households. The average income of rural households in bankruptcy was \$21,794. Urban households earned approximately twenty percent more income, with the average urban family reporting a current income of \$26,102.<sup>111</sup> This difference is statistically significant.<sup>112</sup> At the median, a rural household also earns less income than its urban counterpart. With an annual income of \$20,000, the median rural family is in poverty or near poverty at the time of filing.

These income data illustrate two important facts. First, as others have documented, bankrupt households are income poor at the time of their bankruptcy filing.<sup>113</sup> While they may have other indicia of middle class status, as discussed *supra* in Part II.B., a vast majority of urban and rural families are earning very low incomes when they seek bankruptcy relief. The median urban household has an income that is

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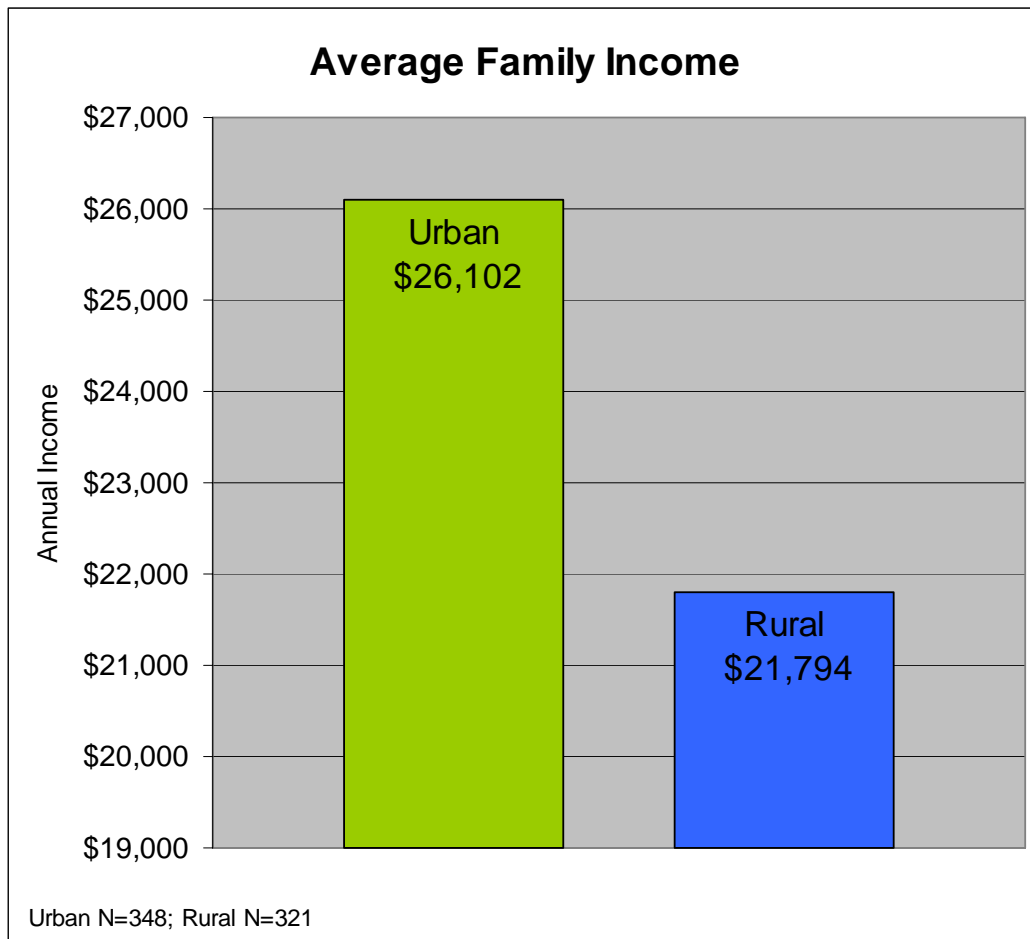
<sup>111</sup> Income figures reflect all income reported on Schedule I from any source. Annual figures are derived by multiplying monthly income by twelve.

<sup>112</sup>  $p < .001$

<sup>113</sup> Elizabeth Warren, *Financial Collapse and Class Status: Who Goes Bankrupt?*, 41 OSGOODE HALL L. J. 116, 125 (Spring 2003) ("In short, the typical family filing for bankruptcy had an annual income that would place the family in poverty or near poverty at the time of filing.")

just barely half of the median American household.<sup>114</sup> Rural families earn even lower incomes. Regardless of where they live, families in bankruptcy are struggling to live on much smaller incomes than Americans generally.

FIGURE 4



These income data make a second very important point. A large gap exists between the incomes of rural and urban households that file bankruptcy.<sup>115</sup> Rural

<sup>114</sup> The median urban household in this sample earned \$23,000. In the same year, 2001, the median income for American households was \$42,228. See CURRENT POPULATION SURVEY, U.S. CENSUS BUREAU, MEDIAN INCOME OF HOUSEHOLDS BY SELECTED CHARACTERISTICS, RACE, AND HISPANIC ORIGIN OF HOUSEHOLDER, TBL. 1, available at <http://www.census.gov/hhes/income/income01/inctab1.html>.

<sup>115</sup> Part III.A., *infra*, examines how different cost of living rates in urban and rural areas intersects with these data on income.

debtors are among the poorest people in America. The typical rural household in bankruptcy has an income that falls near the cut-off for the bottom quintile of all American households.<sup>116</sup> Both average and median figures for rural debtors' incomes are below those of urban debtors.<sup>117</sup> Rural debtors are impoverished even when compared to other bankruptcy filers – a group of people in such distress that they are willing to publicly declare their economic failures.

The income disparity found between urban and rural bankruptcy filers mirrors the earnings gap found in the general population. The U.S. Census Bureau reports that the median rural household earns a full one-third less than the median urban household.<sup>118</sup> This income gap between urban and rural residents is persistent and geographically widespread. Among the nation's 500 lowest per capita income counties, rural counties outnumber urban counties by an astounding 25 to 1 ratio.<sup>119</sup> In 41 states, the disparity between rural and urban per capita income increased in the 1990s.<sup>120</sup> The rural-urban earnings gap exists across industries and is not merely the result of farm jobs in rural areas.<sup>121</sup> The disparity between rural and urban incomes is also consistent over time. When adjusted for inflation, rural earnings per job were only 1 percent

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<sup>116</sup> Id. The first quintile, or bottom twenty percent, of American households earned \$17,960 or less in 2001.

<sup>117</sup> The median urban debtor in the sample earned \$23,100. The median rural debtor earned \$20,604.

<sup>118</sup> See CURRENT POPULATION SURVEY, U.S. CENSUS BUREAU, MEDIAN INCOME OF HOUSEHOLDS BY SELECTED CHARACTERISTICS, RACE, AND HISPANIC ORIGIN OF HOUSEHOLDER, TBL. 1.

<sup>119</sup> Kathleen K. Miller and Thomas D. Rowley, *Rural Poverty and Rural-Urban Income Gaps: A Troubling Snapshot of the "Prosperous" 1990s*, RUPRI DATA REPORT P2002-5 at 1, available at <http://www.rupri.org/ruralPolicy/publications/p2002-5.pdf>.

<sup>120</sup> *Id.*

<sup>121</sup> Econ. Res. Service, U.S. Dep't of Agric., *Rural Nonfarm Earnings Growth Lags Urban*, RURAL CONDITIONS AND TRENDS, VOL. 9, NO. 2 at 55, (reporting that in 1996 *nonfarm* earnings in rural areas were only 70.9 percent of nonfarm earnings in urban areas.)

higher in 2001 than in 1979.<sup>122</sup> In startling contrast, earnings for urban residents gained 23 percent in the same period.<sup>123</sup> The effect was to widen the income gap between urban and rural households. Essentially, rural families are struggling to live on the same incomes they earned twenty years ago, while urban families have enjoyed income growth.

The bankruptcy data reinforce the income problems facing many rural workers. Rural families, both in and outside of bankruptcy, have fewer dollars to spend to make ends meet. The rural economy's failure to provide rural households with sufficient income makes rural families more vulnerable to falling into financial crisis, but it also makes it more difficult for use bankruptcy to climb out of trouble. Lower income people can be priced out of bankruptcy relief. As detailed *infra* in Part IV.B., rural families may be disproportionately harmed by the new bankruptcy laws that are anticipated to increase attorneys' fees for consumer bankruptcy cases.<sup>124</sup>

#### **E. Debt to Income Ratios**

An effective way to comprehend the financial pinch facing families is to examine debt to income ratios. These figures reflect the amount of debt divided by the annual income for each household in the sample. The results are meaningful measures of the financial pinch facing each family because whether a certain amount of debt is excessive ultimately depends on how much income is available to service such debt.

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<sup>122</sup> ECON. RES. SERVICE, U.S. DEP'T OF AGRIC., BRIEFING ROOM, What do earnings trends tell us about the rural economy? *available at* <http://www.ers.usda.gov/Briefing/Industry/earningstrends>.

<sup>123</sup> *Id.*

<sup>124</sup> Charles Jordan Tabb, *The Death of Consumer Bankruptcy in the United States*, 18 BANKR. DEV. J. 1, 35 (2001) (anticipating that changes to bankruptcy laws will create entry barriers to bankruptcy such as higher attorneys' fees).

On average, rural households in bankruptcy owe nearly four times their annual income in debt. This means that the typical rural family would have to commit all of its income for four years (without using any money for food, housing, health care, etc. or accumulating any new debt) just to repay its debts in full. The average urban household owes nearly as much; the mean debt to income ratio for urban families is 3.5.<sup>125</sup> Both urban and rural families file bankruptcy with a great deal of debt relative to their incomes.

Two possible differences in urban and rural life may influence debt and income levels. Urban families may spend more on housing, which usually is more costly in large cities. However, rural families may owe money for debts on cars because the lack of public transportation in rural areas requires rural citizens to own more cars and to spend more to purchase reliable cars that can handle long commutes to urban areas for work and services. In Part III, *infra*, I explore these cost-of-living differences in more detail using non-bankruptcy data. To reduce the possible influence of differential spending on housing and transportation, I analyzed the debt to income ratios for both samples using only unsecured debt. Additionally, unsecured debt is a better way to measure the immediate financial pressure on families when they file bankruptcy because unsecured debt is usually short-term in nature and carries a high interest rate.

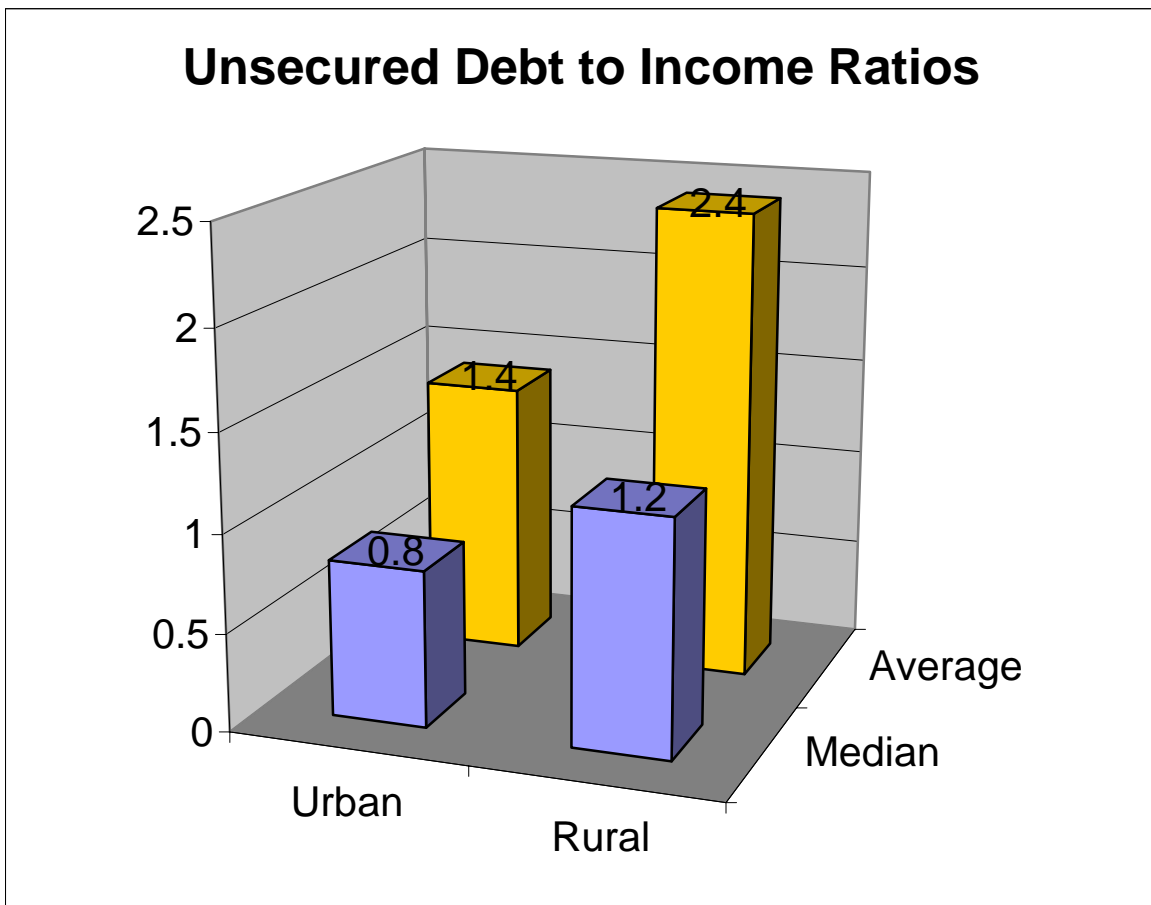
The results of the unsecured debt to income analysis are staggering. The average rural household owes approximately two and a half times its income in unsecured

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<sup>125</sup> The average debt to income ratio for rural debtors is 3.88. The average debt to income ratio for urban debtors is 3.52. This difference is not statistically significant because of large standard deviations.

debt.<sup>126</sup> As illustrated by Figure 5, this is significantly more than owed by the average urban family. Put in the most concrete terms, it would take rural families an entire extra year of putting every single cent of their income toward paying off their unsecured debts just to wind up in the same lousy shape as urban families, people whose situation was severe enough to cause them to file bankruptcy.

FIGURE 5



Rural families' more burdensome unsecured debt to income ratios exist across the spectrum. At both the median and every decile, rural filers carry more unsecured

<sup>126</sup> The standard deviation of the urban sample unsecured debt to income ratio is 1.9. The standard deviation of the rural sample unsecured debt to income ratio is 7.5. The larger standard deviation indicates a more varied distribution of unsecured debt to income ratios among the rural sample.

debt in relation to their income than urban filers. The disparity between rural and urban debtors widens as the ratios increase.<sup>127</sup> Among those in the worst shape, rural families owe much more than their urban counterpart.

The debt to income ratios strongly suggest that rural families file bankruptcy only when they are truly overwhelmed by short-term debt. Rural residents appear to be unique in this respect. Analyzing data from a heavily urban sample, Dr. Teresa Sullivan and Professors Elizabeth Warren and Jay Lawrence Westbrook conclude that “people tend to declare bankruptcy when the ratio of short-term debt to income approaches 1.5” and that this figure is a “remarkably constant drowning point for consumer debtors” over a period of decades.<sup>128</sup> My data show that rural families tend to file bankruptcy at a much higher non-mortgage debt-to-income ratio of 2.4. This finding reveals a critically important difference between urban and rural families that has two key implications. First, it strongly suggests that some previous studies may have underestimated the financial pressure on families at the time of bankruptcy because they did not include rural people in their sample. A sample that reflected the geographic diversity of American – urban and rural – would likely have produced data showing a higher debt-to-income ratio than previously reported. Such a finding refutes theories that families in bankruptcy could easily pay off their debts. Second, the higher ratio of short-term debt to income suggests that rural families may be more reluctant to

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<sup>127</sup> At the median, the rural sample has an unsecured debt to income ratio of 1.2 compared to .8 found in the urban sample. At the 75<sup>th</sup> percentile, the gap grows. The rural ratio is 2.2 and the urban ratio is only 1.5.

<sup>128</sup> SULLIVAN, WARREN, AND WESTBROOK, *THE FRAGILE MIDDLE CLASS* 128 (2000) (analyzing non-mortgage to debt ratios from 1991 Consumer Bankruptcy Project).

file bankruptcy than urban families. Rural households may accumulate more debt because they are willing to borrow more money relative to their incomes in an effort to avoid bankruptcy. Another possibility is that rural families may accumulate debt more quickly following a financial shock such as a job loss because they have fewer assets (such as savings or retirement plans) to draw on in an economic downturn. This thesis is explored *infra* in the next part of the Article.

Each measure of economic data gives the same indication: rural families in bankruptcy are in worse financial shape than urban families. With greater unsecured debts, fewer assets, and lower incomes, rural families face an even more difficult struggle than the urban families to overcome financial problems. In short, rural families are the bottom of the barrel of bankruptcy; they are in the lowest stratum of a group already in desperate need of financial relief. These findings refute the suggestion that the consumer bankruptcy system serves as a “financial planning tool” for those who simply lack the moral will to pay their bills.<sup>129</sup> Rural households simply do not fit this characterization. Indeed, the evidence indicates that rural families may struggle longer against financial collapse. When they arrive in bankruptcy, rural families are in dire need of debt relief. They are among the economically worst-off of all bankrupt people.

### III.

#### Understanding Rural Bankruptcies: The Pinch of the Rural Economy

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<sup>129</sup> 145 CONG. REC. S11,542 (Sept. 28, 1999) (statement of Sen. Grassley on Bankruptcy Reform Bill) (“If we pass this bill, higher-income people will not be able to use bankruptcy as a financial planning tool. All Americans will be better off.”); *id.* at 543 (“[W]e have to look deep into the eroding moral values of some people to find out what is driving the bankruptcy crisis. Some people flat out don’t want to honor their obligations and are looking for an easy way out.”)

Why are rural families in greater financial distress at the time of their bankruptcies? This section explores differences based on “place” – that is, community size – that may make rural families particularly vulnerable to financial collapse. Filing bankruptcy is a public acknowledgement of failure. Bankruptcies by individual rural families illustrate on a personal level the fallout from the overall decline in the rural economy. In this section, I cast doubt on the prevalent belief that rural families enjoy a cheaper cost of living that fully offsets their lower incomes. Using non-bankruptcy data from the Consumer Expenditure Survey, I argue that the gap between income and expenses makes rural households particularly vulnerable to financial collapse. I assert that rural families are under dual pressures. They earn lower incomes but pay the same or more for many essential goods or services. Because of these factors, rural families are already stretching their dollars farther to cover essential goods and services. Further, rural families are more likely to suffer the most severe types of job and medical problems that contribute to financial collapse. Understanding the factors that contribute to the financial problems of rural families is a crucial step to developing bankruptcy laws and public policies that effectively relieve the economic pressure on all Americans.

**A. The Cost of Living Myth: Rural Is Not Always Cheaper**

An existing stereotype is that rural dwellers are more cautious about debt than their urban counterparts because rural America embraces values of self-sufficiency, diligence, and hard work that are associated with fiscally conservative behavior.<sup>130</sup> Rural areas are also seen as offering less temptation to incur debt than urban areas

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<sup>130</sup> KELLOGG STUDY at 7.

because of reduced access to goods and services. Most importantly, rural life is supposed to be less expensive because rural areas offer lower costs of living. Critics have charged that rural poverty studies overstate the financial stresses faced by rural households because they fail to account fully for the higher cost of living in urban areas.

<sup>131</sup> The earnings gap between rural and urban workers is frequently brushed aside as inconsequential on the same theory. Differences in living expenses between urban and rural areas are presumed to equalize the income differential.

My findings on rural bankruptcies challenge the cost of living myth. Rural debtors have higher levels of non-mortgage debt than urban debtors. These higher debt levels suggest that the purported rural cost of living benefit may be insufficient to compensate for the lower wages and reduced employment opportunities in rural areas. Another possibility is that the cost of living gap may be illusory. That is, rural families may actually be paying more for identical goods and services than urban families. These two hypotheses are explored in turn.

First, do rural households enjoy a cost of living benefit that offsets the income gap? The Consumer Expenditure Survey (“CES”) conducted annually by the Bureau of

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<sup>131</sup> See, e.g., Elizabeth Powers, *Understanding Differences in Regional Poverty Rates*, ECONOMIC COMMENTARY 4 (Nov. 15, 1994) (“Poverty guidelines have long been criticized for ignoring regional differences in the cost of living.”); Mark Nord, *Does It Cost Less to Live in Rural Areas? Evidence from New Data on Food Security and Hunger?* RURAL SOC., Vol. 65, No. 1 (March 2000) (estimating that rural cost of living is 16 percent less than in urban areas by using data on food insecurity and hunger as a proxy for well-being). The federal policy guidelines have been repeatedly criticized because they do not reflect cost of living differences between urban and rural areas. ECONOMIC POLICY INSTITUTE, POVERTY AND FAMILY BUDGETS, available at [http://www.epinet.org/Issueguides/poverty/poverty\\_issueguide.pdf](http://www.epinet.org/Issueguides/poverty/poverty_issueguide.pdf) (stating that “most researchers agree that there needs to be adjustments to the thresholds based on cost of living differences between different regions of the U.S., and between urban, suburban, and rural areas.”).

Labor provides actual expenditures of households by category.<sup>132</sup> Because the CES uses the Census Bureau's definitions of rural and urban, the data do not wholly overlap with the rural and urban bankruptcy samples.<sup>133</sup> However, the CES provides the best available data on how expenditures differ between rural and urban households. To improve the comparison between the CES sample and the bankruptcy sample, all figures are from the 2001 CES, the same year in which the bankruptcy sample was drawn.

The CES documents that rural households indeed do live on less money than urban households. On average, a rural household in 2001 spent \$6,674 less than an urban household.<sup>134</sup> However, rural families are spending a greater percentage of their incomes. The average urban household sampled in the CES spent 82.5 percent of its pre-tax income. The average rural household spent 88.8 percent of its pre-tax income.<sup>135</sup> This disparity may be more powerful when measured in absolute dollars. After taxes were subtracted, the average urban respondent to the CES had \$4,477 of unspent income. The average rural respondent had only \$2,054 of unspent income.<sup>136</sup> The cost of living for the typical rural family may be less in absolute dollars, but this difference fails to

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<sup>132</sup> CONSUMER EXPENDITURES IN 2001, U.S. DEP'T OF LABOR, REPORT 966 (April 2003). For more information on the methodology of the Consumer Expenditure Survey, see U.S. DEP'T OF LABOR, FREQUENTLY ASKED QUESTIONS ABOUT CONSUMER EXPENDITURE SURVEY, Q 17 at <http://www.bls.gov/cex/csxfqs.htm#q1>

<sup>133</sup> See *supra* n. 83 (explaining Census Bureau's definition of rural).

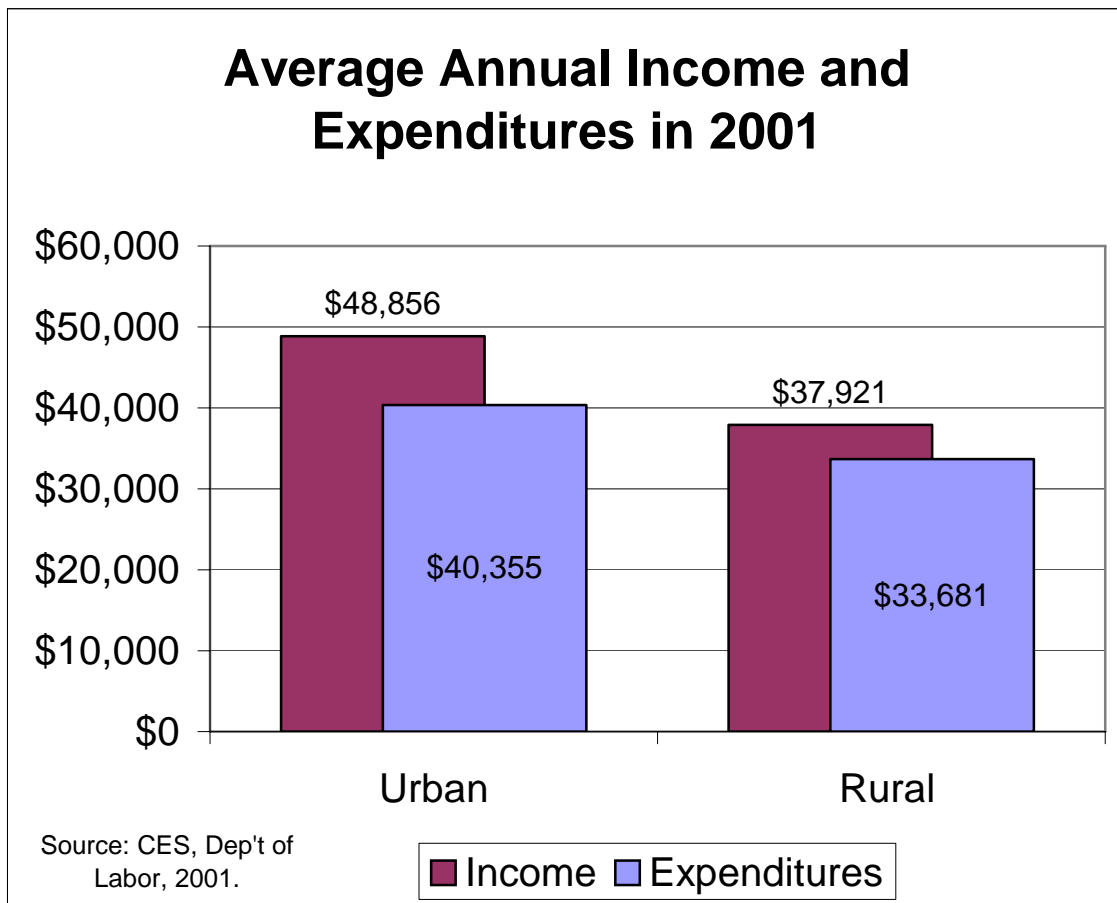
<sup>134</sup> CONSUMER EXPENDITURES IN 2001, U.S. DEP'T OF LABOR, REPORT 966, TBL. 7, HOUSING TENURE, TYPE OF AREA, RACE OF REFERENCE PERSON, AND HISPANIC ORIGIN OF REFERENCE PERSON: AVERAGE ANNUAL EXPENDITURES AND CHARACTERISTICS (April 2003) (reporting that urban consumer units had average annual expenditure of \$40,355 and rural consumer units had average expenditure of \$33,681.)

<sup>135</sup> 2001 CONSUMER EXPENDITURE SURVEY, U.S. DEP'T OF LABOR, TBL. 51, HOUSING TENURE, TYPE OF AREA, RACE OF REFERENCE PERSON, AND HISPANIC ORIGIN OF REFERENCE PERSON: SHARES OF AVERAGE ANNUAL EXPENDITURES AND SOURCES OF INCOME, at <http://www.bls.gov/cex/2001/share/tenracar.pdf>.

<sup>136</sup> *Id.* These figures reflect the difference between the average pre-tax income for urban and rural respondents and the average annual expenditures for urban and rural respondents.

compensate for rural workers' lower wages. Rural workers have fewer dollars left over from their incomes after making ends meet. Thus, they have fewer dollars to put toward savings or retirement or to use as a cushion to address financial downturns.

FIGURE 6

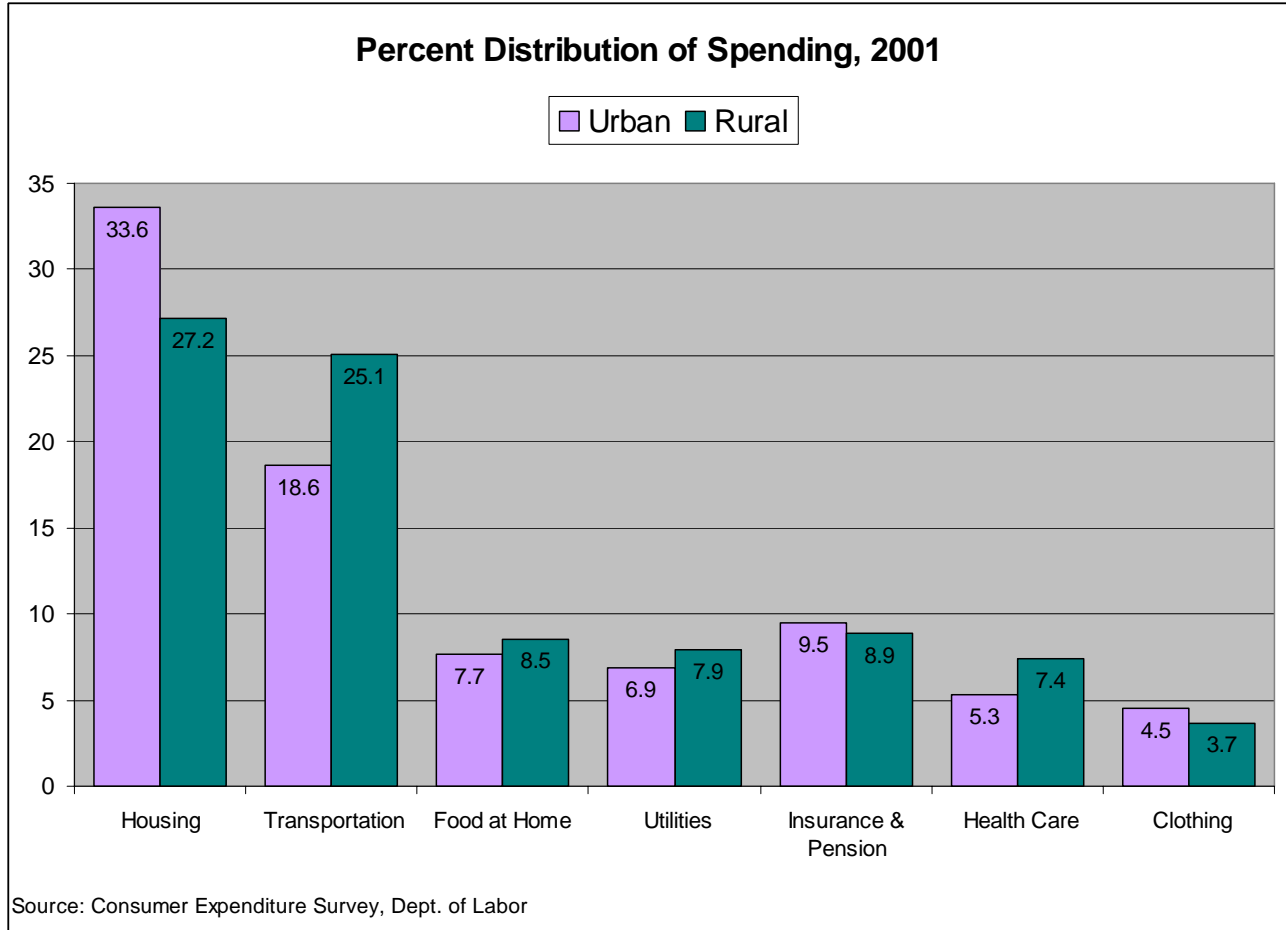


The effect of having less excess income is to make rural families more vulnerable to financial crisis. The extra thousands of dollars that urban families do not expend to meet their needs may function as a financial safety net in case of economic emergency. As illustrated in Figure 6, the typical rural household had 50 percent less excess income

after expenses than their urban counterparts. This deficit leaves rural families with a smaller cushion to put toward unforeseen expenses. If faced with sudden reduced income from a job loss, or increased expenses from a medical condition, rural families are more likely to have to resort to incurring consumer debt to meet such expenses. Borrowing to cover such expenses, rather than using their own assets, exposes rural families to the risk that they will not be able to repay the money to these creditors. As rural families ratchet up more debt to cover the budget shortfall created by job loss or medical problems, the financial strain on these families increases. Because they have less income or asset cushion to draw on in situations of economic emergency, rural families have a greater need for the bankruptcy system to provide a way out of financial hardship.

Rural families are also disadvantaged because of how they allocate their expenses. Figure 7 illustrates the percent of their incomes that urban and rural households spend to meet certain expenses.

#### FIGURE 7



Rural households allocate more of their income to essential expenses, including transportation, utilities, and non-restaurant food.<sup>137</sup> For example, the average rural household spent nearly \$1,000 more for transportation in 2001 than the average urban household.<sup>138</sup> In percentage terms, rural households devoted 25 percent of their income to transportation, compared to 19 percent spent by urban households.<sup>139</sup> Rural families

<sup>137</sup> Id.

<sup>138</sup> CONSUMER EXPENDITURES IN 2001, U.S. DEP'T OF LABOR, REPORT 966, TBL. 7, HOUSING TENURE, TYPE OF AREA, RACE OF REFERENCE PERSON, AND HISPANIC ORIGIN OF REFERENCE PERSON: AVERAGE ANNUAL EXPENDITURES AND CHARACTERISTICS (April 2003).

<sup>139</sup> 2001 CONSUMER EXPENDITURE SURVEY, U.S. DEP'T OF LABOR, TBL. 51, HOUSING TENURE, TYPE OF AREA, RACE OF REFERENCE PERSON, AND HISPANIC ORIGIN OF REFERENCE PERSON: SHARES OF AVERAGE ANNUAL EXPENDITURES AND SOURCES OF INCOME, at <http://www.bls.gov/cex/2001/share/tenracar.pdf>.

incur these additional costs because the geographic distances to jobs, schools, and services increases their need for vehicles, and their gas and maintenance expenses.<sup>140</sup>

Another reason for greater expenditures in rural areas may be that a lack of competition and greater transportation costs allow rural retailers and service providers to charge higher prices for equivalent goods than in urban areas.<sup>141</sup>

In areas of more discretionary expenditures, rural consumers are more frugal than their urban counterparts. In 2001, rural households devoted less income to eating out, alcoholic beverages, and clothing. These items top lists made by financial planners of “extras to be cut from budget.”<sup>142</sup> Rural families’ smaller expenditures in these areas suggest that the higher debts found in rural bankruptcy cases are unlikely to stem from splurging on luxury goods. In fact, rural families enjoy fewer “extras” and use a bigger percentage of their income for essentials.

The spending patterns of rural families are different than their urban counterparts. Outside of bankruptcy, rural families’ budgets are already stretched to pay for necessities – food, health care, transportation, and utilities.<sup>143</sup> They allocate more of their income to these areas and have fewer leftover dollars of unspent income. The

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<sup>140</sup> See JULIE N. ZIMMERMAN AND LORI GARKOVICH, *THE BOTTOM LINE: MAKING ENDS MEET IN RURAL KENTUCKY*, SOCIAL AND ECONOMIC EDUCATION FOR DEVELOPMENT, January 1998 (noting increased transportation costs in rural areas).

<sup>141</sup> OHIO STATE UNIVERSITY EXTENSION FACT SHEET, HYG-5709-98, *POVERTY FACT SHEET SERIES – RURAL POVERTY*, available at <http://ohioline.osu.edu/hyg-fact/5000/5709.html>. (“Because of the few places to get things, in many instances commodities and services are high in cost. Food and gas are examples of high price commodities in many small communities. Also, transportation for getting places is a service that presents a challenge to rural poverty populations.”)

<sup>142</sup> See ERIC TYSON, *PERSONAL FINANCE FOR DUMMIES* 98 (1994). “[Y]ou can and should dramatically reduce shopping binges throughout the year. Your budget is tight, yet at all the loot sits in your closet!”

<sup>143</sup> See CORNELIA BUTLER FLORA, ET AL, *RURAL COMMUNITIES: LEGACY AND CHANGE* 260 (2d ed. 2004) (“But increasing income inequality means that many in rural areas must choose carefully what they consume, making hard choices between fixing the car to get to work and paying the electricity bill.”)

fact that rural households put more toward essential goods and services contributes to these families' greater debts in times of financial hardship. Rural families have less "extras" in their budgets that they can forgo to reduce expenses if a loss of income or a spike in expenses occurs. In this way, rural families have less flexibility in reshaping their expenses to meet unexpected bills or cope with a loss of income. The income allocation of rural families toward more basic goods and services, and away from discretionary expenses, actually exposes rural families to greater risk of financial collapse. Because their dollars are already marked to meet necessary expenses, rural families are constrained from dealing with financial trouble by shuffling expenses in their budget.<sup>144</sup> In this way, rural families particularly may need the help of the bankruptcy system to right themselves financially.

The cost of living differential cannot be totally dismissed. Data show that rural residents do enjoy a significant break in the costs of housing. Rural households pay approximately \$3,500 less for shelter each year.<sup>145</sup> This is a substantial difference. However, it is much smaller than the gap in average income between the two groups. The average rural household has approximately \$10,000 less after-tax income to spend than the average urban household.<sup>146</sup> The housing differential does not equalize the

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<sup>144</sup> ELIZABETH WARREN & AMELIA WARREN TYAGI, *THE TWO-INCOME TRAP* 164-165 (2003) (advising families to focus on reducing fixed costs for vehicles, health care, housing, etc. instead of worrying on cutting back discretionary "extras" as a way to insulate themselves from financial crisis).

<sup>145</sup> CONSUMER EXPENDITURES IN 2001, U.S. DEP'T OF LABOR, REPORT 966, TBL. 7, HOUSING TENURE, TYPE OF AREA, RACE OF REFERENCE PERSON, AND HISPANIC ORIGIN OF REFERENCE PERSON: AVERAGE ANNUAL EXPENDITURES AND CHARACTERISTICS (April 2003).

<sup>146</sup> 2001 CONSUMER EXPENDITURE SURVEY, U.S. DEP'T OF LABOR, TBL. 51, HOUSING TENURE, TYPE OF AREA, RACE OF REFERENCE PERSON, AND HISPANIC ORIGIN OF REFERENCE PERSON: SHARES OF AVERAGE ANNUAL EXPENDITURES AND SOURCES OF INCOME, at <http://www.bls.gov/cex/2001/share/tenracar.pdf>. The

earnings gap.<sup>147</sup> For those families who are homeowners, less expensive housing may translate into their home being a smaller, and less useful, asset in times of economic trouble. Home equity is a financial resource that can be tapped in times of hardship. To the extent that rural families are allocating less of their incomes to housing and more money to disappearing commodities (food, utilities, etc.) that do not build asset value, rural families are reducing the availability of home equity loans as an alternative means of making ends meet when their incomes drop or their expenses rise. In this way, rural families' smaller spending on housing—an apparent financial benefit—may have a hidden drawback that increases their vulnerability for financial failure.

Additionally, the savings in rural housing may partly stem from rural families living in worse conditions. Substandard housing is more common in rural areas.<sup>148</sup> Housing experts also assert that rural housing costs are steadily increasing because urban workers are trying to fight inflation in housing by moving to rural areas but

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average urban consumer unit reported income after taxes of \$45,832. The average rural consumer unit reported income after taxes of \$35,735.

<sup>147</sup> See Lindsey, Lawrence B., *The Future of Rural America*, FED. RESERVE BANK OF MINNEAPOLIS, THE REGION (June 1995), at <http://minneapolisfed.org/pubs/region/95-06/reg956b.cfm>. (“But it would be a mistake to assume that all of this savings [in housing costs] is necessarily translatable into lower overall costs of living. The distances that exist between remote rural areas and more densely populated ones can only be overcome at a cost. Technology can overcome space but only at a price. This often translates into lower levels of both nominal and real income in rural areas. The nominal median income of families in non-metropolitan rural areas is one-sixth lower than in urban areas. It is not clear that cost-of-living differences can overcome this discrepancy.”)

<sup>148</sup> See Craig Anthony Arnold, *Ignoring the Rural Underclass: The Biases of Federal Housing Policy*, 2 STAN. L. & POL'Y REV. 191, 193-94 (Spring 1990). “Although rural areas are home to about 25 percent of the United States population, they contain roughly 33 percent of the nation's occupied substandard housing units and 38 percent of the nation's substandard units occupied by poverty-level households. The disparity holds true across several measures of housing quality: incomplete plumbing, inadequate kitchen facilities, and general physical defects.” See also EDWARD B. LAZERE, PAUL A. LENOARD, & LINDA L. KRAVITZ, *THE OTHER CRISIS: SHELTERING THE POOR IN RURAL AMERICA* at xvi (Center on Budget and Policy Priorities and Housing Assistance Council, 1989).

keeping their higher-paying urban jobs.<sup>149</sup> The greater cost of urban housing may have another deleterious effect on rural families. The recent explosion in urban housing costs may bar rural families from homeownership in urban areas.<sup>150</sup> Rural families who wish to move to urban areas to take advantage of better job opportunities cannot afford to buy into higher-priced urban housing markets. In this way, the lower cost of rural homes limits the economic mobility of rural families and traps them in the low-wage rural economy.

The CES data and the finding that rural families in bankruptcy have higher debts and lower incomes point in the same direction. The cost of living difference between rural and urban areas does not eliminate the tougher economics of rural areas. Indeed, a cost of living problem appears to be a primary culprit in exposing rural families to financial trouble. Rural incomes are simply too low to equalize the cost of living gap. Despite allocating their incomes more frugally, rural families wind up stretching their budgets tighter and saving less. The combination of spending differently for expenses and having much less unspent income leaves rural families feeling a doubly hard squeeze in trying to make ends meet. Rising bankruptcy filings among rural residents reflect the problem of low wages and surprisingly high expenses in rural areas. Bankruptcy relief cannot solve this problem, however. Rural households need employment policies that succeed in creating higher wage jobs to ease the cost of living

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<sup>149</sup> See Craig Anthony Arnold, *Ignoring the Rural Underclass: The Biases of Federal Housing Policy*, 2 STAN. L. & POL'Y REV. 191, 192 (Spring 1990).

<sup>150</sup> See CORNELIA BUTLER FLORA, ET AL, RURAL COMMUNITIES: LEGACY AND CHANGE 97 (2d ed. 2004)

pressures on rural families. If the cost of living in rural areas is not met with better paying jobs, financial crisis will continue to escalate in rural areas.

### **B. Rural Debtors Have More Severe Job Problems**

Job problems are the leading cause of bankruptcy nationwide.<sup>151</sup> Rural families are typical in this respect. Seventy percent of the rural sample reported one or more job problems; the same percentage was found in the urban sample.<sup>152</sup> This finding suggests that an identical factor—job problems—triggers the majority of both rural and urban bankruptcies.

A deeper analysis of the data reveals some important differences in the types of job problems reported by rural and urban debtors. Rural families were more likely to report severe job problems that dramatically reduced or eliminated income. This effect was most sharply exposed in the data on employment at the time of bankruptcy filing. Rural families in bankruptcy were more likely to have an unemployed adult in their household. Twenty-five percent of rural debtors were not working at the time of their bankruptcy, compared to 19 percent of urban debtors.<sup>153</sup> This difference is statistically significant. With an unemployed worker in nearly one-quarter of rural bankruptcies, many rural households face a near impossible task of trying to overcome their financial

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<sup>151</sup> See SULLIVAN, WARREN, & WESTBROOK, *THE FRAGILE MIDDLE CLASS* at 105. (“The jobs data are overwhelming: by every measure, the debtors in bankruptcy are there as a result of trouble at work. . . . Altogether more than two-thirds of the debtors who filed for bankruptcy identified a work-related problem.”)

<sup>152</sup> I used multiple measures to capture the incidence of job problems among debtors. Debtors were counted as having a job problem if they were unemployed but seeking work at the time of their bankruptcy, if they self-reported “job problem” or “employer’s business failed” as a reason for their bankruptcy, or if they had experienced an interruption of at least two weeks’ income or had their income or hours reduced significantly in the two years before their bankruptcy. These data come from the questionnaire that debtors completed.

<sup>153</sup>  $p < .05$ .

problems without bankruptcy relief. The lack of jobs deprives rural workers of the future income necessary to bail themselves out of debt.

Among the unemployed, rural families may be struggling harder to find available work. Eleven percent of rural debtors reported that they could not find work, despite efforts to find a job. Only 8 percent of urban debtors were similarly situated. The percentage of debtors who were not looking for work was also larger in the rural sample. Fourteen percent of rural debtors were not employed and not seeking work at the time of their bankruptcy. In the urban sample, this figure dropped to ten percent. This finding may reflect that rural areas are home to a higher proportion of discouraged workers who have given up job-seeking. Alternatively, it could result from the presence of more retired people, fully disabled people or others who are unable to work. Most people in these situations live on fixed incomes, which make it difficult for them to cope with unexpected expenses. The key finding is that rural debtors were more likely to be facing the worst sort of job problem – unemployment. Rural families appear to collapse into bankruptcy at least in part because the rural economy fails to provide sufficient jobs.

The data from outside the bankruptcy system mirrors the conclusion that severe job problems are more prevalent in rural areas. Rural areas are failing to produce enough jobs to keep pace with their modest increase in population. Between 1985 and 1995, employment in rural areas declined as a share of total employment.<sup>154</sup> In 1999,

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<sup>154</sup> ECON. RES. SERVICE, U.S. DEP'T. OF AGRIC, *Service Industries Expected to Dominate 1994-2005 Job Growth*, RURAL CONDITIONS AND TRENDS, VOL. 7, NO. 1 (July 1996) available at <http://www.ers.usda.gov/publications/rct71/rct71c.pdf>. ("Rural employment is more concentrated

rural areas accounted for only 3 percent of labor force growth despite representing 19 percent of the U.S. population.<sup>155</sup> These trends were mirrored in Iowa and Tennessee. Between 1999 and 2000, the rural areas of both states had decreasing employment rates, while the urban areas of these states either experienced a net improvement in their employment rates or a smaller decline than rural areas.<sup>156</sup> Higher unemployment in rural areas leaves rural residents facing more competition for the few new jobs that are generated by the rural economy. Even in times of prosperity, rural workers are also disproportionately troubled. In 2000, the unemployment rate was 2 percent higher in rural Tennessee (5.4 percent) than in urban Tennessee (3.3 percent).<sup>157</sup> Rural Iowans were also more likely to be unemployed in 2000 than urban Iowans.<sup>158</sup> Both inside and outside of the bankruptcy system, rural families are more likely to be struggling to find jobs.

Even when rural areas saw some job growth, these employment opportunities did not result in an increase in average income for rural families. New jobs in rural areas have tended to be low-wage positions.<sup>159</sup> As one anthropologist observed,

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than urban employment in industries and occupations expected to decline or grow slowly over the next 10 years.”)

<sup>155</sup> JOINT CENTER FOR POVERTY RESEARCH, RURAL DIMENSIONS OF WELFARE REFORM, CONGRESSIONAL RESEARCH BRIEFING, (June 21, 2000) available at <http://www.jcpr.org/conferences/ruralbriefing.html>.

<sup>156</sup> The employment rate in urban Iowa improved 0.8 percent from 1999 to 2000. In urban Tennessee, the employment rate declined slightly by 0.3 percent. Because both states have substantial rural populations, the overall employment change from 1999 to 2000 was negative.

<sup>157</sup> ECON. RES. SERVICE, U.S. DEP'T OF AGRIC., TENNESSEE FACT SHEET AS OF OCTOBER 22, 2001, at <http://www.ers.usda.gov/StateFacts/TN.htm>.

<sup>158</sup> ECON. RES. SERVICE, U.S. DEP'T OF AGRIC., IOWA FACT SHEET AS OF OCTOBER 22, 2001, at <http://www.ers.usda.gov/StateFacts/IA.htm>. The unemployment rate in rural areas of Iowa was 0.6 percent higher than in urban areas.

<sup>159</sup> Econ. Res. Service, U.S. Dep't of Agric., *Real Earnings per Non-Farm Job 1969-96*, RURAL CONDITIONS AND TRENDS, NO. 3, 67 (1999) cited in Charles W. Fluharty, *Refrain or Reality: A United States Rural Policy?*, 23 J. LEGAL MED. 57, 61 (March 2002).

“[n]ationwide, the rural poor show a strong commitment to work [but] in many rural areas . . . available employment simply does not yield adequate income.”<sup>160</sup> Almost half (46 percent) of rural residents interviewed in a recent survey reported that they had considered moving to an urban area because of low pay and sparse opportunities for advancement.<sup>161</sup> The lower pay for rural workers may stem from the types of jobs available in rural communities, which are more concentrated in minimum wage, part-time, and seasonal work.<sup>162</sup> Data from the rural bankruptcy sample support these conclusions. Among bankruptcy filers who reported income from earned wages, rural workers had paychecks of approximately \$200 less each month than urban workers.<sup>163</sup> On top of greater difficulties in finding jobs, rural people who do find work are earning lower wages than urban workers.

Because of reduced job opportunities and lower wages, a higher proportion of rural households in bankruptcy are trying to live on income derived from government assistance than urban debtors. Almost 25 percent of rural households in bankruptcy receive at least some income from government assistance. Only 15 percent of urban households in bankruptcy report receiving money from government assistance. Again, data from outside the bankruptcy system confirms this pattern of difference between

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<sup>160</sup> JANET M. FITCHEN, *ENDANGERED SPACES, ENDURING PLACES: CHANGE, IDENTITY, AND SURVIVAL IN RURAL AMERICA* 131 (1991).

<sup>161</sup> KELLOGG STUDY at 11.

<sup>162</sup> BRUCE WEBER AND GREG DUNCAN, *WELFARE REFORM AND FOOD ASSISTANCE IN RURAL AMERICA*, 6 (2000), paper prepared for June 21, 2000 Congressional Research Briefing on Welfare Reform and Rural Poverty, available at <http://www.jcpr.org/conferences/rural-summary.pdf> (asserting that underemployment rate (including discouraged workers, involuntary part-time workers, and low income workers) are also higher in rural areas.)

<sup>163</sup> The average debtor's net pay from earned wages was calculated after mandatory payroll deductions such as taxes and garnishments. The average rural debtor had monthly net pay of \$1,481. Urban debtors earned \$1,629. This difference is statistically significant.  $p=.02$ .

urban and rural areas. In 1998, nearly 70 percent of federal funds flowing into rural America were transfer payments to individuals for programs such as Medicaid or food stamps. In urban America, less than 40 percent of federal spending was for transfer payments.<sup>164</sup> Government assistance benefits may stave off dire, immediate hardship for families, but these benefits provide less income than received by average wage earners and are normally available for only a limited period. While government assistance may allow rural families to hold out longer before bankruptcy, it does not provide sufficient income to help families pay past debts. Indeed, relying on government benefits may actually raise debt levels of families in bankruptcy because interest continues to accrue on unpaid debts while families try to meet new expenses with benefit payments.

The jobs data from rural bankruptcies reinforce research in other disciplines finding that rural households face a weak job economy and reduced employment opportunities.<sup>165</sup> Rural families are struggling in stagnant economic conditions to find jobs. Rural workers who do have jobs earn less income from their work. The end result is that rural citizens have a harder time generating sufficient income to keep them out of financial trouble – and bankruptcy. Living in rural areas without enough jobs to

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<sup>164</sup> See Charles W. Fluharty, *Refrain or Reality: A United States Rural Policy*, 23 J. LEGAL MED. 57 (March 2002). Despite the differential in transfer payments, Fluharty points out that rural residents generally receive fewer per capita dollars in government assistance than urban residents, despite being taxed at the same rate. Also the fact that a higher percentage of government dollars to rural areas are for transfer payments means that rural areas are receiving less federal aid for programs aimed at structural changes to problems in rural communities.

<sup>165</sup> See, e.g., Eric Thompson and George W. Hammond, *Employment Risk in Nonmetropolitan Counties in the Southern United States* 2 (April 2001) at <http://www.rural.org/publications/reports.html> (determining that metropolitan counties posted levels of employment uncertainty about half as large as nonmetropolitan counties).

support them, more rural households tumble into bankruptcy with unemployed workers. The median bankrupt rural family who has any income earns only \$20,000. Even after bankruptcy, rural families face dim chances of a meaningful fresh start because of job problems. Unless adequate employment opportunities exist, rural families will find themselves back in trouble if income exceeds expenses. To protect rural families from financial collapse, rural policy needs to generate job growth and wage levels that can support life in rural communities. Until the job and income gaps are improved, bankruptcy provides rural families with critical help in surviving in the non-wage or low-wage rural economy.

### **C. Medical Problems Ratchet Up Debt Levels**

Medical problems take second place to job problems as leading causes of bankruptcy. Rural debtors are somewhat more likely to experience medical problems than urban debtors.<sup>166</sup> In the two years before their filing, 61 percent of rural debtors had at least one medical problem. Among urban filers, this number dropped to 57 percent.

I hypothesized that the increased presence of medical problems among rural bankrupts stemmed from the publicized trend of younger people leaving rural areas to

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<sup>166</sup> Measuring medical problems is complex because medical problems vary greatly in severity and duration. To capture a range of medical problems, the questionnaire made several inquiries about illness or injury, insurance, and medical bills. For example, debtors were asked: Was illness or injury a reason for their bankruptcy filing? Did they or a dependent have over \$1,000 in medical bills that were not covered by insurance in the last two years? Did they have a significant gap in work because of illness or injury of themselves or another? Did they or a dependent have a gap in health insurance in the two years before their bankruptcy filing? A debtor who answered yes to any one of the medical questions was counted as having a medical problem.

live in larger cities.<sup>167</sup> Because elderly people have more medical problems than young people, a demographic difference showing an aging rural population could explain the increased medical problems reported by rural debtors. The data defeat this explanation, however. Not only is the difference in the average age of rural and urban debtors statistically insignificant,<sup>168</sup> the percentage of people over 60 years old is actually smaller in the rural bankruptcy sample.<sup>169</sup> The greater presence of medical problems in rural families is not caused by a difference in the age composition of the urban and rural samples.

Breaking down the overall medical problem figure allowed analysis of which specific medical problems were more prevalent in rural bankruptcies. On one particular variable, there was a dramatic difference between urban and rural households. Rural debtors were much more likely to report high out-of-pocket medical bills. Thirty-eight percent of rural families reported that they were faced with medical bills exceeding \$1,000 in the two years before their bankruptcy. Only 26 percent of urban families had similar high out-of-pocket medical bills.

This finding suggests an immediate explanation. Rural debtors could have higher medical bills because they are more likely to be uninsured. The data do not support this conclusion. In both the rural and urban samples, 71 percent of households

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<sup>167</sup> "During the last 20 years, residents of small Midwestern towns have deserted rural America in ever increasing numbers. Raised and educated in small towns throughout the Midwest, rural youth have moved to larger cities in search of opportunities unavailable in small-town America." *Saving America's Great Places: The Role of Tax Incentives in Preserving Rural Communities: Hearing Before the S. Finance Comm.* 108<sup>th</sup> Cong. 1 (2004) (statement of Sen. Chuck Hagel).

<sup>168</sup>  $p=.138$ .

<sup>169</sup> Approximately 3 percent of the rural sample was 60 years of age or older, compared to 5 percent of the urban sample. This difference was not statistically significant at the .05 level.

had insurance at the time of their bankruptcy. While this figure is substantially lower than the overall population,<sup>170</sup> there was no difference between urban and rural households in bankruptcy as to the presence of insurance. However, this finding does not capture the nature of such health coverage. Insurance may be equally prevalent, but rural families may have less protective policies with fewer benefits.<sup>171</sup> This hypothesis would explain the increased out-of-pocket medical bills that rural families reported and the similar rates of insurance among both samples. Data from the Consumer Expenditure Survey (CES) lend some support to this theory. In 2001, rural households spent 1.6 percent of their incomes on medical services, while urban households spent 1.4 percent.<sup>172</sup> A similar difference exists for drug costs. Rural residents expended \$100 more on prescription drugs than urban residents.<sup>173</sup> Some of this differential may be explained by the fact that the average respondent to the CES from rural areas was four years older than the average urban respondent.<sup>174</sup>

Notwithstanding this influence, CES data reinforce the general conclusion that rural

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<sup>170</sup> According to the U.S. Census, 14.6 percent of the American population did not have health insurance in 2001. See Robert J. Mills, U.S. CENSUS BUREAU, HEALTH INSURANCE COVERAGE: 2001 at 3 (Sept. 2002) available at <http://www.census.gov/prod/2002pubs/p60-220.pdf>. Among bankrupt households, this figure doubles to 29 percent.

<sup>171</sup> See CORNELIA BUTLER FLORA, ET AL, RURAL COMMUNITIES: LEGACY AND CHANGE 99 (2d ed. 2004) "[Rural people] are less likely to have employer-provided insurance (although there is little difference in the proportion of workers who are totally uninsured in rural and urban areas.) Those without employer-provided insurance will either pay higher premiums or have more-limited coverage, since they are less likely to get group rates."

<sup>172</sup> 2001 CONSUMER EXPENDITURE SURVEY, U.S. DEP'T OF LABOR, TBL. 51, HOUSING TENURE, TYPE OF AREA, RACE OF REFERENCE PERSON, AND HISPANIC ORIGIN OF REFERENCE PERSON: SHARES OF AVERAGE ANNUAL EXPENDITURES AND SOURCES OF INCOME, at <http://www.bls.gov/cex/2001/share/tenracar.pdf>.

<sup>173</sup> *Id.* Drug costs took up 1.7 percent of the average rural household's income, but only 1.1 percent of urban incomes.

<sup>174</sup> The average rural respondent was 51.7 years old and the average urban respondent was 47.6 years old. CONSUMER EXPENDITURES IN 2001, U.S. DEP'T OF LABOR, REPORT 966, TBL. 7, HOUSING TENURE, TYPE OF AREA, RACE OF REFERENCE PERSON, AND HISPANIC ORIGIN OF REFERENCE PERSON: AVERAGE ANNUAL EXPENDITURES AND CHARACTERISTICS (April 2003).

residents face higher out-of-pocket expenses for medical costs. Greater medical expenses are one indication that rural residents enjoy less protective health insurance coverage than their urban counterparts. The effect of reduced coverage is that medical problems put a greater financial pinch on rural families. Although the incidence of injury or illness is the same, rural families accumulate more debt in coping with a medical problem. These greater medical debts put more pressure on rural families to make ends meet and may ultimately push rural families into bankruptcy.

Medical problems may contribute to the greater debts of rural families in bankruptcy in another way. CES data show that rural families pay more for their health insurance. In 2001, rural households paid \$270 more in medical premiums than urban households.<sup>175</sup> This translates to approximately twenty percent higher costs. Health insurance costs may be higher in rural areas because geographic distance and sparse population hinders the existence of health management organizations (HMOs) that offer reduced premiums. There may also be fewer large employers in rural areas that can afford to provide health insurance to their employees.<sup>176</sup> This could mean that more rural households are purchasing their own insurance directly from an insurer. For rural households, health insurance is another place where they face the dilemma of trying to

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<sup>175</sup> 2001 CONSUMER EXPENDITURE SURVEY, U.S. DEP'T OF LABOR, TBL. 51, HOUSING TENURE, TYPE OF AREA, RACE OF REFERENCE PERSON, AND HISPANIC ORIGIN OF REFERENCE PERSON: SHARES OF AVERAGE ANNUAL EXPENDITURES AND SOURCES OF INCOME, at <http://www.bls.gov/cex/2001/share/tenracar.pdf>. The average rural family expended \$1,279 (3.8 percent of an average total expenditure of \$33,681) on health insurance premiums. The average urban family paid \$1,008 for health insurance (2.5 percent of an average total expenditure of \$40,355).

<sup>176</sup> See Louis Pol, *Health Insurance in Rural America*, RURAL POLICY BRIEF, VOL. 5, NO. 11 (August 2000) at 2 ("Disproportionately more rural residents rely on individual insurance plans or coverage purchased through small employers."); *id.* at 8 (reporting that 55.1 percent of urban population has employer provided insurance, compared to 52.6 percent of rural population).

meet equal or greater expenses with smaller incomes. Rural families must spend more money to obtain similar – or perhaps inferior – services. Higher out-of-pocket medical costs and higher insurance premiums heighten the difficulty of making ends meet for rural families. Whether a result of more expensive insurance rates in rural areas or less generous employer policies, these differentials in medical care costs contribute to rural families facing financial collapse and bankruptcy because of medical problems.

#### **IV. Policy Implications**

The severe financial hardship of rural families in bankruptcy sheds light on the importance of place of residence in understanding how laws function. The differences that I identify between urban and rural families suggest that an urban bias in scholarship may hinder the development of a complete picture of how laws operate in multiple contexts. Data showing the more severe financial hardship of rural families have important implications for understanding the impact of the recent amendments to the Bankruptcy Code. Many of the changes are likely to particularly disadvantage rural families, a reality that went unrecognized during the years of debate about consumer bankruptcy reform. The economic pressure on rural families illustrates the importance of bankruptcy as a safety net for rural families and rebuts allegations that the system is rife with abuse. Additionally, the troubling profile of rural families in bankruptcy hints at the nature and depth of financial problems that may face thousands of other rural families who hover near economic collapse but have thus far avoided bankruptcy.

Understanding the pressures on rural families will help policymakers determine how to build and strengthen rural employment, health care, and poverty relief programs.

### **A. Implications for Legal Scholarship**

The differences that I identify between urban and rural families suggests that future studies should strongly consider studying how place of residence interacts with the operation of the legal system. Rural families are mired in more short-term debt when they file bankruptcy and are struggling by on smaller incomes to pull themselves out of financial collapse. These differential findings suggest that excluding rural families has harmed the accuracy of existing data on who files bankruptcy. Present statistics may be misleading because by failing to sample rural people they have underreported the severity of financial problems for *all* families in bankruptcy. Including rural residents would likely raise the average amount of non-mortgage debt and the short term debt-to-income ratio and lower the average income and asset figures reported for families in bankruptcy. Without studying the twenty percent of American households that live in rural areas, our understanding of bankrupt families is skewed. Gaining a complete picture of who files for bankruptcy will require considering whether place of residence alters the nature of financial distress. The effect would be to more accurately portray the financial hardship facing American families. My data also suggest that rural families may use credit and debt differently. Future studies of commercial law and consumer protection law, as well of bankruptcy, should be cognizant of ways in which rural families may have different financial experiences that shape their use of the legal system.

Examining place of residence as a key factor in analyzing other areas of law may strengthen legal scholarship. Recognizing that rural people may be differently situated than urban people could provoke a more nuanced examination of the effects of law. Further exploration of whether these different perspectives actually exist and how the law should account for them would enrich the inclusiveness of legal scholarship. Such scholarship would help eliminate legal reforms that would disproportionately harm rural residents, or at minimum, would force acknowledgement and justification of such disproportionate effects. A more textured view of law and its multiple functions would result. Expanding the focus of rural residence beyond bankruptcy may produce other insights about law. For example, the income gap between urban and rural families may highlight issues about the importance of access to free legal services. While I cannot estimate or predict these differences, the rural bankruptcy data should caution legal scholars to consider carefully whether and how place of residence influences people's perspectives on and experiences with legal systems.

## **B. Impact of Bankruptcy Reform Implications**

In 2005, Congress passed sweeping amendments to the Bankruptcy Code.<sup>177</sup> Congress had considered consumer bankruptcy reform legislation each year since 1998.<sup>178</sup> On February 1, 2005, Senator Charles Grassley (R-IA) introduced the "Bankruptcy Abuse Prevention and Consumer Protection Act of 2005," which was

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<sup>177</sup> BAPCPA, Pub. L. No. 109-8, § 101 et seq., 119 Stat. 23 (2005). The bill became law on April 20, 2005, but most provisions were not effective until October 17, 2005.

<sup>178</sup> Robin Jeweler, CONG. RESEARCH SERV., *Consumer Bankruptcy Reform in the 109<sup>th</sup> Congress: Background and Issues*, CRS-1 (Feb. 3, 2005).

substantially similar to previous versions of the legislation.<sup>179</sup> The central feature of the bill was the addition of a “means test” that purports to determine whether a household filing bankruptcy can repay a certain percentage of its debts.<sup>180</sup> If so, the household would be forced to repay their debts over a period of years as part of a Chapter 13 bankruptcy.<sup>181</sup> They would be ineligible for Chapter 7 bankruptcy, which results in a liquidation of non-exempt assets and an immediate discharge of most debt. Means testing was vigorously debated.<sup>182</sup> In the debate over consumer bankruptcy reform, leading critics contended that the paperwork required for means testing, in combination with enhanced attorney liability provisions, would constrict dramatically the availability and affordability of attorney representation in bankruptcy.<sup>183</sup>

Jean Braucher and others asserted that the pending consumer bankruptcy legislation “would make access to bankruptcy more difficult for all, imposing new costs and hurdles and thus pricing the worst off out of the system.”<sup>184</sup> The data in this Article demonstrate that rural families are among the “worst off.” They earn significantly smaller incomes at the time of their bankruptcy, and they have higher debt-to-income ratios. Compared to others who file bankruptcy, rural families are in disproportionately

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<sup>179</sup> 151 CONG. REC. S768 (daily ed. Feb. 1, 2005).

<sup>180</sup> See BAPCPA, Pub. L. No. 109-8, § 102, 119 Stat. 23, 27 (2005).

<sup>181</sup> *Id.*

<sup>182</sup> See, e.g., Edith Jones and Todd Zywicki, *It's Time for Means Testing*, 1999 B.Y.U. L. REV. 177 (supporting means testing); Charles Jordan Tabb, *The Death of Consumer Bankruptcy in the United States*, 18 BANKR. DEV. J. 1 (2001) (criticizing means testing).

<sup>183</sup> See Jean Braucher, *Means Testing Consumer Bankruptcy: The Problem of Means*, 37 FORDHAM J. CORP. & FIN. L. 407, 411 (2002) (“All these new burdens would make chapter 7 more cumbersome and thus more expensive and inaccessible.”)

<sup>184</sup> *Id.* at 408; see also Charles Jordan Tabb, *The Death of Consumer Bankruptcy in the United States*, 18 BANKR. DEV. J. 1, 35 (2001) (“The Reform Bill contains additional provisions that will create entry barriers [to bankruptcy].”)

greater need of relief. Although it is impossible to anticipate the exact effects of the new laws, families who wish to file bankruptcy are very likely to pay more in attorneys' fees than before the amendments.<sup>185</sup> The increased cost of paying for a bankruptcy attorney will particularly disadvantage rural people, who are least able to afford such higher fees because of their small incomes. Because rural people are among the poorest people who file bankruptcy, they are more likely to be priced out of legal relief as the new law forces attorneys to raise fees to cover the increased paperwork and investigation required under the amended Bankruptcy Code.

Rural people are also likely to suffer from the amendments that heighten sanctions on consumer bankruptcy attorneys. The amendments expose attorneys to personal liability if they filed a case under Chapter 7 that is later dismissed or converted to Chapter 13 for "abuse."<sup>186</sup> Commentators believe that these provisions will cause many attorneys to leave the practice of consumer bankruptcy.<sup>187</sup> Because of difficulties in accessing legal services in geographically isolated rural areas,<sup>188</sup> loss of even a

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<sup>185</sup> See Tabb, *supra* n. 179, at 32 "The probable effects of this sanctions rule are: first, to increase the costs to debtor of filing a chapter 7 case." The American Bar Association has written to Congress expressing its concerns that the proposed reforms will reduce access to bankruptcy because the bill's additional requirements will cause consumer attorneys to increase dramatically their fees. "Counsel will either charge substantial sums of money (which most debtors will be unable to afford) or will not take cases. . . . This then, will deny access to the bankruptcy court system by many debtors, since they will not be able to obtain or afford competent legal advice." Letter from Larry Feinstein, Chair, on behalf of ABA General Bankruptcy Practice Session (May 25, 2001) (copy on file with author).

<sup>186</sup> See BAPCPA, Pub. L. No. 109-8, § 102, 119 Stat. 23, 30 (2005). The bill makes an attorney's signature on the bankruptcy petition a "certification" that the attorney has conducted an investigation into the circumstances that gave rise to the petition; that the attorney has determined that the petition is well grounded in fact and is warranted by existing law; and that the attorney has no knowledge after an inquiry that the information in the accompanying schedules is incorrect

<sup>187</sup> See Tabb, *supra* n. 179, at 32. ("The probably effect of this sanction rule [is] to drive competent and ethical attorneys out of the consumer bankruptcy debtor field.")

<sup>188</sup> See American Bar Association, ABA Rural Pro Bono Delivery Initiative at [http://www.abanet.org/legalservices/probono/rural\\_delivery.html](http://www.abanet.org/legalservices/probono/rural_delivery.html). ("Despite this overwhelming need

moderate percentage of consumer bankruptcy attorneys would fall most heavily on rural families. Not all attorneys are equally likely to abandon bankruptcy because of the proposed changes in the law. Attorneys who take occasional bankruptcy cases as part of a “main street” practice are particularly likely to be discouraged from attempting to master the complex new requirements for filing consumer bankruptcy cases and to be unwilling to bear the increased risks of liability in consumer practice. Yet these “main street” lawyers are exactly who serve rural families, who frequently have less access to high-volume bankruptcy specialists who are concentrated in urban areas. The same problem plagues rural access to free legal services, another alternative if general practice attorneys abandon bankruptcy. Rural people already have the most tenuous access to legal representation in bankruptcy. Poorer than urban bankruptcy filers and limited by geographic isolation, rural families can least afford higher bankruptcy fees and reduced access to legal representation in bankruptcy.

The new bankruptcy reforms contain at least three other provisions that penalize residents of rural areas. As a jurisdictional prerequisite to filing consumer bankruptcy, any person who wishes to file bankruptcy would have to undergo credit counseling within 180 days before seeking bankruptcy relief.<sup>189</sup> Additionally, all debtors must complete an instructional course on personal financial management in order to receive a discharge under Chapter 7 or Chapter 13.<sup>190</sup> Credit counseling agencies do not exist in a

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for pro bono services, however, rural lawyers have unique limitations on providing such services. . . . For their part, rural clients also face greater challenges accessing legal services due to scarce resources, transportation problems, and a general lack of information about legal help.”)

<sup>189</sup> BAPCPA, Pub. L. No. 109-8, § 106, 119 Stat. 23, 37 (2005).

<sup>190</sup> BAPCPA, Pub. L. No. 109-8, § 105, 119 Stat. 23, 36 (2005).

vast majority of rural communities, and some predominantly rural states have few, if any, existing agencies.<sup>191</sup> The requirement for financial education poses a substantial barrier to obtaining bankruptcy relief for rural Americans. The law does permit credit counseling over the telephone or Internet.<sup>192</sup> For financial education course, distance education is more tenuous. The law says that a financial management instructional course must be conducted by an organization with “adequate facilities situated in reasonable convenient locations . . . except that such facilities may include the provision of such instructional course by telephone or through the Internet, if such instructional course is effective.”<sup>193</sup> The United States trustee for each judicial district is charged with making a determination of the effectiveness of telephone or Internet-based courses.<sup>194</sup> This discretion exposes rural families to the risk that they may be required to travel to urban areas for financial education courses, which could include multiple sessions. Because of population dispersion in rural areas, there likely will not be agencies providing financial education courses approved the United States trustee in small communities. Instead, rural families will have to travel to urban areas, which will impose increased expenses from missed work and transportation costs on rural

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<sup>191</sup> According to the Association of Independent Consumer Counseling Agencies, there are no available services in several rural states, including North Dakota and Wyoming. Other states have reputable non-profit credit counseling but only in urban areas. For example, Consumer Credit Counseling of Southern and Northern Nevada has offices in Las Vegas and Reno but offers only telephone service to the central part of the state, which is rural.

<sup>192</sup> BAPCPA, Pub. L. No. 109-8, § 106(a), 119 Stat. 23, 37 (2005) (stating that the required credit counseling briefing may include “a briefing conducted by telephone or on the Internet.”)

<sup>193</sup> See BAPCPA, Pub. L. No. 109-8, § 111(d)(1)(C), 119 Stat. 23, 40 (2005). See Erica Hill, *Rural Internet Use on the Rise* CNN Headline News (Feb. 18, 2004) at <http://www.cnn.com/2004/TECH/02/18/hln.wired.rural.internet/> (reporting 10 percent fewer rural people use the Internet than urban and suburban people). Additionally, families in financial distress often eliminate their Internet access as a cost-saving strategy.

<sup>194</sup> *Id.*

families. Additionally, the relief of Internet-based courses may prove illusory because many hard-pressed families discontinue their Internet service as a cost-cutting measure. Because rural families are less likely to have Internet access than urban residents, Internet courses may be an unrealistic solution for many of these families.

Finally, the new law makes it more difficult for financially strapped families keep their cars under bankruptcy law. For Chapter 7 debtors, the option to retain their car and continue making payments but not formally reaffirm the debt was removed.<sup>195</sup> With weak job prospects and low incomes, rural families are vulnerable to being unable to meet their car payments in the future. Under the new law, they must either surrender the car at the time of their bankruptcy or make a legally binding promise that makes them liable for the entire loan, including any deficiency owed if the collateral should be repossessed. Chapter 13 debtors also face an increased hurdle to retain their cars. If the motor vehicle was purchased within approximately two and a half years of the bankruptcy filing, the debtor cannot reduce the amount of the secured claim to the value of the collateral.<sup>196</sup> This “strip-down” technique was permissible under the pre-2005 Bankruptcy Code and helped debtors reduce the debt on the car to the value of their vehicles. Without this tool, many debtors will lack the necessary income to pay the entire amount of their monthly car payments. The low incomes of rural people, combined with their higher spending on transportation, raise the odds of incurring such a problem. Because rural people have few or no public transportation options, losing a

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<sup>195</sup> BAPCPA, Pub. L. No. 109-8, § 327, 119 Stat. 99-100 (2005) (eliminating “ride-through” option for retaining collateral that was permissible under case law of several U.S. Courts of Appeals).

<sup>196</sup> BAPCPA, Pub. L. No. 109-8, § 306, 119 Stat. 80 (2005).

car threatens to leave rural people completely stranded.<sup>197</sup> Unable to travel to urban areas for jobs, rural families would be stripped of their ability to earn an income and meet future expenses. These new provisions of the Bankruptcy Code may aid vehicle lenders, most of whom are national finance companies, but rural people who lose vehicles will find their ability to get a “fresh start” in bankruptcy severely diminished.

During the debate over bankruptcy reform, sponsors of the bankruptcy amendments, such as Senator Charles Grassley (R-IA), failed to consider or acknowledge how the reforms will impact their rural constituents.<sup>198</sup> The lack of attention to how the reforms would particularly harm rural people reflects the focus of legal scholars and policymakers on urban life. The model of law that underlies the new bankruptcy law assumes that families can choose from multiple consumer bankruptcy attorneys, can access credit counseling and financial management courses, could still travel to work without a car, and could afford to pay higher attorneys’ fees. While these assumptions probably do not hold true for many urban residents, they particularly overlook the realities of rural life and rural bankruptcies. The amendments will fall most harshly on the worst-off people in bankruptcy which my findings show include rural families. Simultaneously, the new law disproportionately harms rural people by imposing requirements that burden people who are geographically isolated from urban centers and public transportation.

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<sup>197</sup> I thank Jean Braucher for bringing this point to my attention.

<sup>198</sup> Senator Charles Grassley has argued that the proposed legislation will help rural people because it makes Chapter 12, a special form of reorganization bankruptcy for farmers, a permanent part of the Bankruptcy Code. As discussed *infra* in Part IV.C., equating rural people with farmers perpetuates a fallacy that prevents focus on the actual plight of rural people in financial trouble, very few of whom are farmers.

### C. Rural Policy Implications

My findings shed light on how policymakers should approach the problem of rural financial crisis. First, the fallacy of rural American as farmer must be debunked. Among the rural bankruptcy sample, only one percent of families identified themselves as farmers.<sup>199</sup> This critical finding highlights the danger of assuming that relief directed at the economic problems of farmers will aid the vast majority of rural families. Debt relief for farmers will fail to provide any direct relief to 99 percent of rural families in financial crisis.<sup>200</sup> The focus of many members of Congress on Chapter 12 (Adjustment of Debts of a Family Farmer) to the Bankruptcy Code cannot substitute for recognizing the economic crisis of non-farming rural residents.<sup>201</sup> Farmers may need meaningful debt relief and economic stimulation programs. However, the bankruptcy data show that most rural families are not farmers and that these households are facing overwhelming debts. They need rural policies – not merely farm policies – to prevent them from falling into financial distress.

The data in this Article challenge the belief that cost-of-living differences eliminate cause for concern about large, chronic gaps between urban and rural incomes. As with myth of rural equals agricultural, assumptions about rural cost of living are used to excuse a lack of meaningful attention to rural income disparities. Data on the

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<sup>199</sup> See *supra* n. 35.

<sup>200</sup> See Katherine Porter, *Phantom Farmers: Chapter 12 of the Bankruptcy Code*, 79 AM. BANKR. L.J. \_\_\_\_ (forthcoming 2005) (analyzing limited use of Chapter 12 and arguing that such specialized bankruptcy relief cannot substitute for meaningful farm supports or rural development policy.)

<sup>201</sup> See, e.g., Press Release of Senator Charles Grassley (R-IA), *Grassley Renews Efforts to Reform Bankruptcy Code: Bill Includes Permanent Chapter 12 Protection for Farmers, New Consumer Protections, Child Support Provisions*, (Feb. 2, 2005) (discussing Senator's efforts to make Chapter 12 permanent part of Bankruptcy Code without mention of other rural financial problems).

extraordinary short-term debts facing bankrupt rural families rebut the view that rural Americans can make ends meet on much less money. Programs aimed at stimulating job growth in rural areas and encouraging relocation of moderate and high wage industries are critical to helping rural families avoid financial collapse. Controlling employment risk in rural areas will help insulate rural families from job problems that can lead to bankruptcy. In light of the finding that rural families in bankruptcy have higher out-of-pocket medical bills than urban families, health care advocates should undertake future research on how quality of insurance may relate to place of residence. This recommendation refines the observation of leading scholars that quality of insurance may be the most critical factor of reducing the risk of economic collapse from medical problems.<sup>202</sup>

The grave economic hardship of rural families who file bankruptcy also bears on understanding how legal and social systems function in rural areas. Rural people's relatively more severe financial situations may result in greater psychological stresses on rural families before bankruptcy. Additionally, more rural families may be in financial trouble yet trying to struggle along without resorting to filing bankruptcy. This situation could elevate the burden on rural communities and charities to try to support families in hardship. Poverty scholars should add these findings about rural bankruptcies to their knowledge about the nature and depth of financial problems in

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<sup>202</sup> See Melissa B. Jacoby, Teresa A. Sullivan, and Elizabeth Warren, *Rethinking the Debates over Health Care Financing: Evidence from the Bankruptcy Courts*, 76 N.Y.U. L. REV. 375, 410 (May 2001).

rural areas. Not only do these data inform us about bankrupt families, they shed light on the plight of the larger universe of rural families who hover near economic collapse.

### **Conclusion**

Developing a rich and complete view of how legal systems work requires a careful consideration of how *all* Americans – including rural Americans – use law to solve their problems. Crucial differences exist between urban and rural Americans that have gone largely unrecognized. Legal scholarship that recognizes rural perspectives will be more inclusive, accurate, and meaningful. Bankruptcy provides both a window into understanding the rural economy and serves as a safety net for rural families in financial crisis. The severe financial hardship of rural families in bankruptcy highlights the need for scholars and policymakers to devote more attention to healing the economic problems of rural families. Unveiling the realities of rural life will help create more meaningful legal solutions to the problems facing rural America.

## APPENDIX

### Data and Methods

I collected this data as a supplement to the core sample of debtors studied in Phase III of the Consumer Bankruptcy Project, which was a collaborative effort of over a dozen academics at seven research institutions.<sup>203</sup> The Phase III study built on three previous empirical studies of families that file for personal bankruptcy conducted by Dr. Teresa Sullivan, Professor Jay Lawrence Westbrook, and Professor Elizabeth Warren.<sup>204</sup> For the first half of 2001, I served as the Project Director of Phase III of the Consumer Bankruptcy Project. In this role, I helped design the study, supervised the collection and coding of the debtor questionnaires, and initiated the coding of court records.

The idea of a supplementary sample of debtors living in rural areas grew directly out of the urban bias in the sample of the Consumer Bankruptcy Project. The Phase III core sample consisted of debtors who live in or very near the largest city in five judicial districts: the Central District of California (Los Angeles); the Northern District of Illinois (Chicago); the Eastern District of Pennsylvania (Philadelphia); the Middle District of Tennessee (Nashville), and the Northern District of Texas (Dallas). These five

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<sup>203</sup> See WARREN & TYAGI, *THE TWO-INCOME TRAP*, App. (2003) (providing a detailed description of the methodology, personnel, and goals of Phase III of the Consumer Bankruptcy Project).

<sup>204</sup> These earlier studies are detailed in the Appendices to published works by the investigators in the Consumer Bankruptcy Project. See SULLIVAN, WARREN, WESTBROOK, *AS WE FORGIVE OUR DEBTORS*: (reporting on court record data of 1,529 randomly chosen debtors from all judicial districts of Illinois, Pennsylvania and Texas in 1981); SULLIVAN, WARREN, & WESTBROOK, *THE FRAGILE MIDDLE CLASS*: (examining court records and one-page questionnaire for 2,400 random debtors for all judicial districts in five states in 1991); and Melissa Jacoby, Teresa Sullivan, and Elizabeth Warren, *Rethinking the Debates over Health Care Financing: Evidence from the Bankruptcy Courts*, 76 *NEW YORK UNIV. L. REV.* 375 (2001) (collecting questionnaire data from 1,455 families who filed bankruptcy in eight judicial districts in 1999).

cities are the centers of large metropolitan statistical areas, ranging in size from 16,374,000 (Los Angeles MSA) to 1,231,000 (Nashville MSA).<sup>205</sup> The rural sample was conceived of as way of examining the effect, if any, of an urban bias on the bankruptcy data and of understanding the influence of place or community size in the nature of financial distress.

The sample for this article was drawn from non-business Chapter 7 and Chapter 13 bankruptcies filed in the Southern District of Iowa and the Middle District of Tennessee. These judicial districts were selected because they represent the two geographic areas in which the largest rural populations live: the Midwest Plains and the South.<sup>206</sup> The districts also offer diversity in how the consumer bankruptcy system is used. In 2001, the Middle District of Tennessee led the nation in per household personal bankruptcy filings at a rate of 1 in 38 households. Iowa ranked 34<sup>th</sup> in the nation and recorded 1 in 114 households filing consumer bankruptcy in 2001.<sup>207</sup> The ratio of Chapter 7 to Chapter 13 cases was also quite different in the two districts. In the year preceding data collection, only 6 percent of Iowa nonbusiness bankruptcies were filed in Chapter 13.<sup>208</sup> In Tennessee, 40 percent of consumer cases were filed under Chapter 13. The data sample was drawn to reflect the distribution of cases between Chapter 7 and Chapter 13 in each district.

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<sup>205</sup> U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2002, 32 (122<sup>nd</sup> ed. Dec. 2002).

<sup>206</sup> U.S. CENSUS BUREAU, URBAN AND RURAL POPULATION: 1900 TO 1990, TBL. 1 at <http://www.census.gov/population/censusdata/urpop0090.txt>.

<sup>207</sup> AM. BANKR. INST., HOUSEHOLDS PER FILING, RANK: DURING THE 12-MONTH PERIOD ENDING JUNE 30, 2001 (2001).

<sup>208</sup> U.S. BANKR. CT. FOR THE S. D. OF IOWA, STATISTICS FROM THE CLERK OF COURT, *available at* <http://www.iasb.uscourts.gov/asp/aboutourcourt/All.asp>.

In each district, I sought the permission of the bankruptcy judges to conduct this study and the cooperation of the U.S. Trustees. The Chapter 7 and Chapter 13 panel trustees, who are private citizens that contract with the government to help administer bankruptcy cases, were also advised of the project and invited to participate in the data collection. The data comes from two instruments: a questionnaire distributed to debtors for voluntary completion and the corresponding court records for each debtor who completed a questionnaire. The procedures and instruments used in the data collection were reviewed by Harvard University and the University of Texas to ensure the use of adequate steps to protect human subjects. Protocols consistent with these reviews were developed to maintain the confidentiality of data.

The questionnaires were distributed to debtors at the meeting of creditors, which is required by statute to be held in each case.<sup>209</sup> A cover letter accompanied the questionnaire and explained that completion of the questionnaire was voluntary, that participation would not affect the debtor's case, that they could ask their attorney about the questionnaire, and that their responses would be kept confidential. I also provided a letter to debtors' counsel that gave detailed information about the study.

The sample was constructed by having panel trustees hand out questionnaires to all debtors who attended these meetings until the sample size was reached. The total sample of cases in this study was 691. The rural and urban samples were of approximately equal size. The rural sample was 334 cases; the urban sample was 357 cases. The cases were also split between Iowa and Tennessee.

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<sup>209</sup> See 11 U.S.C. § 341(a) (1994) (requiring meeting of debtor with his or her creditors and panel trustee).

Only one questionnaire was completed per case. When couples filed jointly, they completed a single questionnaire, but were asked for demographic information about both filers. The distribution and completion of the questionnaires introduced an opportunity for non-response bias if people who chose to complete the questionnaire differed systematically from those who did not participate. In Tennessee, 99 percent of urban debtors and 100 percent of rural debtors chose to participate. This is an outstanding response rate for a voluntary study and virtually eliminates any non-response bias. In Iowa, the response rate was somewhat lower, but multiple checks on participation at several meetings of creditors show that approximately 75 percent of rural and urban Iowans completed the questionnaire.

The questionnaire collected demographic data such as age, sex, race, number of dependents, and marital status, and asked questions about health insurance, medical expenses, child support, homeownership, mortgage debt, alternatives to bankruptcy, and reasons for filing bankruptcy. I conducted a pre-test of the questionnaire in January 2001 in the U.S. Bankruptcy Court for the District of Massachusetts. The questionnaire was refined based on this pre-test. During the pre-test, I observed the debtors' completing the questionnaires. Completion of the questionnaire took approximately six minutes, and no respondent expressed difficulty understanding the questions. The majority of questions were closed-ended; debtors were presented with a list of choices for answers. These inquiries were developed from responses to the open-ended questions asked in previous phases of the Consumer Bankruptcy Project. Debtors were often given the option to select "other" and write in an answer. In

addition, debtors were invited to use the back of the questionnaire to tell the story of their bankruptcies in their own words. At the end of the questionnaire, debtors were offered the opportunity to participate in three telephone interviews for a total of \$150. The Consumer Bankruptcy Project contacted those in the urban Tennessee sample who volunteered for telephone interviews. The cost of such research prohibited interviews with the other debtors in the sample. No data reported herein comes from telephone interviews.

Bankruptcy court records are fertile data instruments, offering a snapshot of a family's financial condition at the time of filing. Because these records are public information, I collected court files for every questionnaire respondent, which resulted in a 100 percent response rate for the court records. Approximately 160 data points were coded from each debtor's petitions and schedules and from the motions and orders filed in their bankruptcy cases. Examples of collected information are data on total assets and liabilities, information on secured debts on homes, amount paid in attorneys' fees, number and type of unsecured debts, debtors' incomes, Chapter 13 plan details, and information about the disposition of the cases.

The questionnaires and court records were coded into Microsoft Access™ databases that were designed specifically for this research. A codebook and coding training manual were developed for the coding process. Ann DeVille, an administrative assistant at Harvard Law School, and I coded all questionnaires. I coded all Iowa court records and rural Tennessee court records, and a percentage of the urban Tennessee court records. The remaining urban Tennessee court records were coded by

trained individuals who coded court records in the Consumer Bankruptcy Project. Dr. Deborah Thorne, Assistant Professor of Sociology at The Ohio University, checked the accuracy of a random sample of 15 percent of the court records. There were 160 data points per case on the court records. There was, on average, less than one error per case, which translates into accuracy exceeding 99 percent. I checked a random sample of 10 percent of the questionnaires. The questionnaire contained approximately 147 data points. There was significantly less than one error per questionnaire, such that the error rate per data point was .004 percent.

For statistical analysis, the data was imported to SPSS, a software package. The analyses were checked by being duplicated using formulas in Excel. To ensure that the data were reflective of a normal sample, each file was checked against criteria determined to be so unusual as to constitute an outlier. An outlier was defined as a debtor who had greater than \$1 million in total assets, greater than \$1 million in total debt, and greater than \$125,000 in annual income. In the rural sample, two cases were identified as outliers. In the urban sample, one case had criteria marking it as an outlier. These cases were removed from the samples before analysis. Information about the statistical significance of the data is presented in the footnotes accompanying each finding.