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Lender Discrimination, Black Churches, and Bankruptcy

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ARTICLE

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ABSTRACT

Based on my original empirical research, in this Article I expose a disparity between the demographics of the roughly 650 religious congregations that have filed for Chapter 11 bankruptcy during part of the last decade and congregations nationwide. Churches with predominately Black membership—Black Churches—appeared in Chapter 11 more than three times as often as they appear among churches across the country. A conservative estimate of the percentage of Black Churches among religious congregation Chapter 11 debtors is 60%. The likely percentage is upward of 75%. Black Churches account for 21% of congregations nationwide.

Why are Black Churches filing under Chapter 11 more so than other churches? Reorganization allows businesses to restructure their debts. However, creditors may consensually agree to debt

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modifications, obviating the need for the expensive and time-consuming reorganization process. Combining insights from my interviews with seventy-six bankruptcy attorneys who represented religious organizations and forty-five leaders of religious organization debtors, with studies detailing discrimination against Blacks in financial transactions, the Article posits one reason: Lenders may have charged Black Churches more for credit and denied Black Churches' loan modification requests, leading these churches to file Chapter 11 to achieve restructurings.

In support of this explanation, the Article raises and rejects other reasons as fully explanatory of the disparity: denomination, location, financial resources, and the churches' internal governance, financial decisions, and views about bankruptcy. It also analyzes legal actions that may provide more evidence of whether Black Churches' bankruptcy filings stem from lenders' conduct, and if so, redress for the discriminatory practices. The Article ends by discussing the disparity's implications for bankruptcy and communities.

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I. INTRODUCTION

Based on my original empirical research, this Article exposes that Black Churches—churches with predominately Black membership[1]—are over-represented in Chapter 11 bankruptcy. Relying on my original quantitative dataset of approximately 650 religious congregations that filed Chapter 11 from 2006 to 2013, I find that at least 60% of the congregations were Black Churches.[2] This is a conservative estimate. Based on my interviews with bankruptcy attorneys who represented a sizable portion of the religious organizations, upward of 75% of the debtors likely were Black Churches.[3] Nationwide, 21% of congregations have predominately Black membership.[4]

Black Churches thus are fifteen times more likely to seek to reorganize than expected if congregations' racial demographics was uncorrelated with bankruptcy.[5] Exposing this disparity alone is

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1. *See* C. ERIC LINCOLN & LAWRENCE H. MAMIYA, THE BLACK CHURCH IN THE AFRICAN AMERICAN EXPERIENCE 1 (1990) (defining "Black Church").

2. Congregations are the subset of religious organizations that operate places of worship. I define "religious organization" as any organization whose operations are motivated in a meaningful way by faith-based beliefs and principles. *See infra* Part II.A for a discussion of my dataset and how I identified demographics.

3. *See infra* Part II.B for a discussion of these interviews.

4. *Continuity and Change in American Congregations*, NAT'L CONGREGATIONS STUDY 44 (2012), http://www.soc.duke.edu/natcong/Docs/NCSIII_report_final_tables.pdf [https://perma.cc/56CF-DJCN] (reporting congregations with at least 80% Black membership).

5. Assuming that Black Churches comprise 75% of religious congregation Chapter 11

critical to understanding who uses Chapter 11 and how different subsets of the American population are affected by the bankruptcy system. But the disparity begs the question, why are Black Churches in particular filing Chapter 11?

Reorganization provides a mechanism for businesses to restructure their debts. Most of the churches that filed did so in order to modify the mortgages on their church buildings after they had fallen behind on payments and after their lenders threatened foreclosure.[6] Alternatively, creditors and debtors may come to consensual deals that modify debts, obviating the need for the expensive and time-consuming reorganization process. The average bankruptcy attorney retainer in religious organization Chapter 11 cases was over $10,000.[7] Leaders also had to spend countless hours managing the technical aspects of the cases, while combatting the negative psychological effects, felt both by themselves and their members, of their churches' filings.[8] Of course, the churches that filed Chapter 11 alternatively could have closed.[9] Nonetheless, Black Churches in particular elected to pay to reorganize.

My qualitative interviews with 76 bankruptcy attorneys who represented 109 religious organization debtors, and 45 leaders who placed their religious organizations into Chapter 11 suggest one potential explanation for why Black Churches are paying to restructure their debts.[10] Lenders may have sold Black Churches

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filings, the Black Church to other congregation ratio is three to one. *See infra* Part II.B (discussing demographics of congregations that filed under Chapter 11). Given that Black Churches comprise 21% of congregations nationwide, the expected Black Church to other congregation ratio is five to one, making Black Churches about fifteen times more likely to file than predicted by chance. *Continuity and Change in American Congregations*, *supra* note 4, at 44.

6. Of the 530 debtors that cited a reason for their filing in any document submitted to the court, 442 (83%) stated they filed to save their property from foreclosure. *See* Pamela Foohey, *Secured Credit in Religious Institutions' Reorganizations*, 2015 U. ILL. L. REV. SLIP OPINIONS 51, 54 n.15, https://illinoislawreview.org/wp-content/uploads/2015/05/Foohey.pdf [https://perma.cc/8DK2-EJ8M] [hereinafter Foohey, *Secured Credit*].

7. *See infra* note 29.

8. *See* Pamela Foohey, *When Faith Falls Short: Bankruptcy Decisions of Churches*, 76 OHIO ST. L.J. 1319, 1343 & n.139 (2015) [hereinafter Foohey, *When Faith Falls Short*].

9. Churches also could have liquidated under Chapter 7. Because liquidation yields the same result as closing and dissolving under state law, if creditors are unwilling to negotiate, a church's options effectively are to file Chapter 11 or close. A. Mechele Dickerson, *Race Matters in Bankruptcy*, 61 WASH. & LEE L. REV. 1725, 1727–28 n.6 (2004) [hereinafter Dickerson, *Race Matters in Bankruptcy*]. About 3,200 (1%) congregations close per year, though the reasons for their closure are unknown. *See* Pamela Foohey, *Bankrupting the Faith*, 78 MO. L. REV. 719, 733–34 (2013) [hereinafter Foohey, *Bankrupting the Faith*].

10. *See* Interview with Attorney 120, at 6 (Apr. 22, 2014); Interview with Attorney 5, at 4 (Mar. 2, 2013); Interview with Attorney 106, at 3 (Apr. 14, 2014); *infra* Part II.B (discussing these interviews).

expensive loans, the equivalent of subprime home loans, to finance their buildings.[11] Likewise, whereas lenders negotiated with some churches when they were unable to repay their loans, Black Churches may have been "less forgiven" for their financial problems and turned away when they requested modifications.[12] As a result, Black Churches turned to Chapter 11 to achieve debt restructurings more often than their incidence in the population of congregations would predict.

Attorneys openly discussed what they perceived as lender bias against Black Churches in loan origination and modification. They described how lenders sold Black Churches unnecessarily expensive loans,[13] put pressure on pastors during negotiations,[14] and sometimes engaged in "witch hunting."[15] Church leaders likewise expressed frustration with creditors' demands, unresponsiveness, and "heartless" disrespect.[16]

Attorneys' and church leaders' perceptions that banks and other lenders may have treated seemingly similar churches differently aligns with prior research linking discrimination to Blacks paying more than similarly situated whites for cars, consumer goods and credit, home loans, and small business credit.[17] There likewise is a racial disparity in how individuals use bankruptcy that results in Blacks paying more to discharge their debts.[18] Indeed, bankruptcy filings provide a uniquely accessible source of data to uncover the possibility of disparities in lenders' treatment of churches.

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11. Interview with Attorney 120, at 6 (Apr. 22, 2014); Interview with Attorney 5, at 4 (Mar. 2, 2013); Interview with Attorney 106, at 3 (Apr. 14, 2014).

12. *See* Dov Cohen & Robert M. Lawless, *Less Forgiven: Race and Chapter 13 Bankruptcy*, *in* BROKE: HOW DEBT BANKRUPTS THE MIDDLE CLASS (Katherine Porter ed., 2012) (describing Black debtors as "less forgiven"). Lenders likely learned of congregants' race in two ways. First, historically Black traditions are identifiable by church name. *See* LINCOLN & MAMIYA, *supra* note 1, at 1. Second, Black Churches almost exclusively employ Black pastors and board members. *See* Foohey, *When Faith Falls Short*, *supra* note 8, at 1343–44. It was these people who called lenders, whereupon loan officers would detect their "blackness" through their names and speech. *See* John Baugh, *Linguistic Profiling*, *in* BLACK LINGUISTICS: LANGUAGE, SOCIETY AND POLITICS IN AFRICA AND THE AMERICAS (S. Makoni, et al. eds., 2003) (discussing "linguistic profiling"); Marianne Bertrand & Sendhil Mullainathan, *Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination*, 94 AM. ECON. REV. 991 (2004) (finding that fictitious potential employees responding to help-wanted ads with white-sounding names received 50% more callbacks than those with Black-sounding names).

13. *See infra* notes 122–25 and accompanying text.

14. Interview with Attorney 140, at 2 (May 6, 2014).

15. Interview with Attorney 137, at 2–3 (Apr. 30, 2014).

16. Interview with Leader 55, at 3 (May 6, 2013).

17. *See infra* Part III.A.

18. *See generally* Jean Braucher, Dov Cohen & Robert M. Lawless, *Race, Attorney Influence, and Bankruptcy Chapter Choice*, 9 J. EMPIRICAL LEGAL STUD. 323 (2012).

Part II of this Article relies on my empirical investigation of religious organizations' Chapter 11 cases to expose the phenomenon of Black Churches in Chapter 11. To identify a reason for the disproportion of Black Churches seeking to reorganize, Part III turns to studies finding that racial discrimination results in Blacks paying more than similarly situated whites for goods and credit. Drawing on my interviews with attorneys and church leaders, along with these studies, Part IV exposes the possibility that lenders are handling their loans to churches disparately based on congregations' demographics.

Part IV further focuses on two lenders whose loans frequently appeared in religious organizations' Chapter 11 cases.[19] A snapshot of data I gathered of these two lenders' extensions of credit to churches shows that they made loans to churches with a variety of demographics. Yet of the Chapter 11 cases in which these lenders appeared as creditors, Black Churches filed more than 80%.[20] These case studies provide additional support for my hypothesis that race is a crucial factor in determining whether a particular church will need to turn to Chapter 11 in order to receive a modification of its loans.

This snapshot of lending also repudiates another possible reason that Black Churches are over-represented in Chapter 11: They finance the purchase or renovation of their buildings much more frequently than other churches. Part V raises and dismisses this and other reasons for the predominance of Black Churches in Chapter 11. Because of data limitations, a sophisticated statistical analysis is not possible.[21] Nonetheless, available data allows for a comparison of the characteristics of churches that filed under Chapter 11 to the denominations and geographic locations of congregations nationwide;[22] to the income and wealth of relevant populations;[23] and to other churches' internal management and practices.

Chief among speculated reasons, denominations and locations of church debtors cannot explain the disparity. Black Church

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19. These two lenders sold secured loans to 9% of the debtors. *See infra* note 194 and accompanying text.

20. *See infra* Part IV.C.

21. *See infra* notes 213–15 and accompanying text.

22. Congregation data are from the Association of Statisticians of American Religious Bodies (ASARB) 2010 Religious Congregations and Membership Study. *U.S. Congregational Membership: Reports*, ASS'N RELIGIOUS DATA ARCHIVES (2010), http://www.thearda.com/RCMS2010/ [https://perma.cc/9HF2-9HRE]. Congregant data are from the 2008 U.S. Religious Landscape Study. PEW RES. CTR., http://religions.pewforum.org/ [https://perma.cc/C2ZC-AAMG].

23. Population data are from the United States Census Bureau's Census. *QuickFacts: United States*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/table/INC110215/00 [https://perma.cc/Y5X5-WPA8].

debtors hail from judicial districts across the county. Some of these districts are home to majority Black populations, some to mainly white populations, and all to a mix of churches that does not align with the denominations of the churches from those areas that sought to reorganize.[24] Further, though the Black populations in some of these areas are economically disadvantaged, churches with primarily white membership also are economically stratified. There are thousands of white congregations—similar to the Black Churches that filed under Chapter 11—that did not turn to bankruptcy.[25]

Likewise, speculations about differences in Black Churches' management, such as their leaders' propensity not to seek professional advice, do not seem to account for the predominance of Black Churches reorganizing.[26] A more plausible reason for the prevalence of Black Churches in Chapter 11 must exist, which I argue leaves the possibility that lenders' actions in loan origination and modification is a significant contributing factor to Black Churches in particular filing under Chapter 11.

Given the insufficiency of data available to establish whether disparities in lending to churches are occurring and pushing Black Churches into bankruptcy, Part VI assesses current laws prohibiting discrimination in lending on two bases. First, whether these laws may allow for discovery of more data to better evaluate if such disparities in lending to churches truly are occurring. Second, if so, whether these laws may provide redress for such discriminatory practices. Part VI also considers the social implications of churches' disparate use of reorganization and explores how Chapter 11 serves as a last resort for Black Churches. Part VII concludes with a discussion of the repercussions that this Article's findings have on churches and communities.

II. THE PHENOMENON OF BLACK CHURCHES IN CHAPTER 11

A. Location, Denomination, and Demographics Based on Court Records

During the eight-year period between the beginning of 2006 and the end of 2013,[27] 626 unique religious organizations located in the

24. *See infra* Parts V.A–B.
25. *See infra* Part V.C.
26. *See infra* Part V.E.
27. The start of this timeframe coincides with the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, 119 Stat. 23, which had an effective date of October 17, 2005. I chose a timeframe end date that allowed for significant events to occur in the cases by the time of analysis.

fifty states and the District of Columbia filed a total of 697 Chapter 11 cases.[28] In previous work, I detailed how I created the dataset using court records.[29] Of note, that dataset included 8 cases filed by the Catholic dioceses and related entities,[30] and excluded cases filed by debtors that duplicated services provided in the private market, such as YMCAs and hospitals.[31]

Of 90 possible federal judicial districts, religious organizations' Chapter 11 cases came from 76 districts. Figure 1 presents a map of the distribution of the filings across judicial districts. 19 districts received only 1 case during the study timeframe, whereas 50% of the filings clumped in 10 jurisdictions.[32] The Northern District of Georgia alone received 10% of the total number of religious organizations' cases during the study timeframe, followed by the Middle District of Florida with 8% of filings and the Central District of California with 6% of filings.[33]

28. The number of religious organizations Chapter 11 cases filed is greater than the number of unique religious organizations that filed because some debtors filed multiple times during the study timeframe. The breakdown of cases filed by year of the study is:

Year	2006	2007	2008	2009	2010	2011	2012	2013
# of Cases	43	72	88	87	96	118	106	87

The low filing rate in 2006 is explained by the enactment of BAPCPA. *See* Robert M. Lawless et al., *Did Bankruptcy Reform Fail? An Empirical Study of Consumer Debtors*, 82 AM. BANKR. L.J. 349, 350–51 (2008) (noting bankruptcy filing statistics).

29. My prior work relied on a dataset of religious organizations' Chapter 11 filings in the 50 United States and the District of Columbia from 2006 through 2011. Pamela Foohey, *When Churches Reorganize*, 88 AM. BANKR. L.J. 277, 278–79 (2014) [hereinafter Foohey, *When Churches Reorganize*]; Foohey, *Bankrupting the Faith*, *supra* note 9, at 730–32. I used the same methodology to identify cases filed in 2012 and 2013. The full dataset is on file with the Author.

30. In prior work, I excluded these cases because they resemble mass tort cases. Foohey, *Bankrupting the Faith*, *supra* note 9, at 731–32 & n.80. In this Article, as indicated *infra*, for the same reason, I exclude Catholic cases from financial calculations.

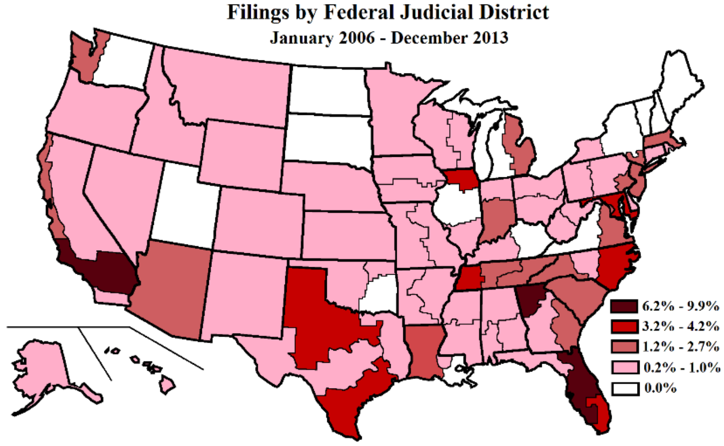
31. *Id.* at 732. The dataset includes one Jewish community center. Arguably, if YMCAs are excluded, this debtor should be excluded for the same reason. Its inclusion does not alter any of the results. I also combined jointly administered cases and counted combined cases as one case. *Id.* at 731.

32. *See* Foohey, *Bankrupting the Faith*, *supra* note 9, at 735.

33. In order, these districts received 69, 56, and 43 of the 697 filings.

The distribution of religious organization Chapter 11 cases does not match where Chapter 7, 11, or 13 cases are filed or where congregations concentrate across the country.[34]

Figure 1: Percentage of Religious Organization Chapter 11 Filings by Federal Judicial District
January 2006 - December 2013



In previous work, I argued that the clumping evident in Figure 1 partly is a function of social networking among church leaders.[35] Importantly for this Article, leaders did not turn to their social networks for help in deciding how to deal with their churches' financial problems until after their creditors declined to negotiate consensually, and instead initiated or threatened foreclosure.[36] Of the total 697 religious organization debtors that filed during the study timeframe, 654 debtors primarily operated places of worship. Almost all (625, or 96%) of those debtors were from Christian traditions.[37]

Concentrating on those debtors that operated Christian places of worship, as summarized in Table 2, a disproportionate percentage of filings were of non-denominational and congregationalist churches, such as Apostolic and Church of God in Christ (COGIC) churches.[38] Congregationalist churches are not subject to broad

34. *See* Foohey, *When Churches Reorganize*, *supra* note 29, at 280; *U.S. Congregational Membership: Reports*, *supra* note 22.

35. Foohey, *When Churches Reorganize*, *supra* note 29, at 286.

36. Foohey, *When Faith Falls Short*, *supra* note 8, at 1346–49.

37. Nationwide, 97% of congregations are affiliated with Christianity. *See U.S. Congregational Membership: Reports*, *supra* note 22.

38. Table 1's debtor figures are based on the number of Chapter 11 cases filed. If a debtor filed more than once during the study timeframe, it is counted as many times as it filed. Table 1 includes every denomination with which at least one debtor was affiliated. I identified affiliations based on the debtor's name, representations in case filings, internet searches of the debtor's and leader's name, as disclosed in filings, and interviews with debtors' leaders and attorneys. I categorized each Catholic diocese as one congregation. Debtors with "unclear" affiliations did not file sufficiently detailed pleadings or are not locatable online. Congregation data are from the *U.S. Congregational Membership: Reports*,

governing bodies and run their affairs internally with minimal outside intrusion or support.[39] In contrast, those churches affiliated with more structured denominations, such as Lutheran and United Methodist, are noticeably lacking among religious organization debtors.[40]

Table 1: Affiliations of Christian Religious Organization Chapter 11 Debtors Versus Affiliations of Christian Congregations Nationwide

	Debtors		Congregations	
	N	%	N	%
Nondenominational	243	38.9	35,496	10.7
Baptist—Generic	78	12.5	69,892	21.0
Missionary Baptist	55	8.8	1,283	0.4
Full Gospel Baptist	5	0.8	699	0.2
Church of God in Christ	51	8.2	3,119	0.9
Apostolic	23	3.7	1,033	0.3
Church of God	11	1.8	11,979	3.6
Assemblies of God	10	1.6	12,258	3.7
Pentecostal—Generic	9	1.4	6,360	1.9
Catholic	8	1.3	20,812	6.2
Churches of Christ	8	1.3	23,594	7.1
African Methodist Episcopal	4	0.6	5,913	1.8
Lutheran	4	0.6	18,796	5.6
Presbyterian	3	0.5	14,820	4.4
United Methodist	3	0.5	33,323	10.0
Church of the Nazarene	2	0.3	5,056	1.5
Orthodox	2	0.3	2,309	0.7
Amish /Mennonite	1	0.2	3,183	1.0
Disciples of Christ	1	0.2	3,625	1.1
Episcopal	1	0.2	6,794	2.0
Other	0	0.0	52,908	15.9
Unclear	103	16.5	0	0.0
TOTAL	625	100.0	333,252	100.0

supra note 22; *see also* Foohey, *When Churches Reorganize*, *supra* note 29, at 284–85 (discussing various Christian sects).

39. *See* Foohey, *When Churches Reorganize*, *supra* note 29, at 284–85.

40. *See id.* at 284–86; K. Peter Takayama, *Formal Polity and Change of Structure: Denominational Assemblies*, 35 SOC. ANALYSIS 17 (1975) (studying the structural features of twenty-nine Protestant denominations, including Lutheran and United Methodist).

The demographics of debtors operating places of worship also do not correspond with the demographics of congregations across the country. The striking proportion of debtors affiliated with the Missionary Baptist tradition foreshadows this disparity. Missionary Baptist is one of a handful of historically Black denominations, including African Methodist Episcopal, COGIC, and Full Gospel Baptist.[41] Across the country, 5% of congregations are historically Black.[42] As reported in Table 2, among places of worship that filed Chapter 11 during the study timeframe, 18% were historically Black.[43]

Also as reported in Table 2, churches not affiliated with historically Black denominations, but with predominately Black membership, filed under Chapter 11 in substantial numbers. These "other" Black Churches comprise about 16% of congregations nationwide.[44] They likewise appear almost three times as often in the population of Chapter 11 religious congregation debtors.

41. The 2010 Religious Congregations and Membership Study categorizes these and the following denominations as historically Black Churches: Christian Methodist Episcopal Church, Church of Our Lord Jesus Christ of the Apostolic Faith, Cumberland Presbyterian Church in America, National Baptist Convention of America, National Baptist Convention, USA, Inc., Progressive National Baptist Convention, and United Holy Church of America. *See Black Protestant Denominations*, ASS'N RELIGIOUS DATA ARCHIVES, http://www.thearda.com/rcms2010/blackprot.asp [https://perma.cc/C2D3-C92M].

42. *U.S. Membership Report*, ASS'N RELIGIOUS DATA ARCHIVES (2010), http://www.thearda.com/rcms2010/r/u/rcms2010_99_US_name_2010.asp [https://perma.cc/PJK7-UQ94]. This figure includes non-Christian congregations.

43. Table 2 reports the predominate demographic of a debtor's membership. I identified race based on internet searches of the debtor's and/or leader's name and address, as disclosed in court filings. "Multiracial" refers to a congregation having no more than 80% of one racial group. *See* CURTISS PAUL DEYOUNG, ET AL., UNITED BY FAITH: THE MULTIRACIAL CONGREGATION AS AN ANSWER TO THE PROBLEM OF RACE 2 (2004) (defining multiracial congregation); Mark Chaves & Shawna L. Anderson, *Changing American Congregations: Findings from the Third Wave of the National Congregations Study*, 53 J. SCI. STUDY RELIGION 676, 680 (2014) (reporting that 86% of American congregations are comprised of one racial group). If the debtor was affiliated with a historically Black denomination, I automatically categorized it as a Black Church. If I could not find other indications of demographics, if the debtor's leader appeared Black, I categorized the congregation as Black, and if a debtor's leader appeared white (44 debtors), I categorized that debtor as having "unclear" demographics. *See* DEYOUNG, *supra*, at 2 (explaining that most multiracial congregations are led by white pastors and that a congregation typically becomes predominately Black if a Black pastor is hired). I also relied on interviews with debtors' leaders and attorneys to categorize congregations. The "unclear" category is large because many debtors were not locatable online.

44. Black Churches comprise 21% of congregations nationwide. *See Continuity and Change in American Congregations*, *supra* note 4. Subtracting the 5% that are historically Black Churches yields 16%.

Table 2: Demographics of Religious Organization Chapter 11 Debtors Operating Places of Worship

	N	%
Historically Black Christian	115	17.6
Other Black Christian	280	42.8
White Christian	21	3.2
Hispanic Christian	6	0.9
Asian Christian	4	0.6
Multiracial Christian	10	1.5
Unclear Christian	189	28.9
Jewish	19	2.9
Muslim/Buddhist/Hindu	10	1.5
TOTAL	654	100.0

In total, 60% of religious congregation Chapter 11 debtors were Black Churches. To compare, 21% of congregations nationwide have membership that is at least 80% Black.[45] Moreover, my interviews with attorneys who represented a subset of the religious organization Chapter 11 debtors suggest that 60% is a low estimate of the percentage of religious organization debtors that were Black Churches.

B. Denomination and Demographics Based on Interviews

1. Bankruptcy Attorneys. To supplement the court records, I telephonically interviewed bankruptcy attorneys who represented religious organizations that filed for Chapter 11 between January 1, 2006, and December 31, 2011.[46] From a random sample of 180 attorneys to whom I mailed letters regarding the study,[47] 14 were not

45. *See id.*

46. I chose a timeframe two years shorter than the study timeframe to track post-bankruptcy outcomes and operations.

47. First I reached out to ninety attorneys who represented religious organizations located in the ten "hot" districts. I conducted these interviews between April and July of 2013. Next I reached out to ninety attorneys who represented religious organizations located in the other districts. I conducted these interviews in April and May 2014. For a description of my methodology, see Foohey, *When Churches Reorganize*, *supra* note 29, at 281–82. I conducted the interviews based on scripted, open-ended questions from which I occasionally deviated. *See* Jean Braucher, *Lawyers and Consumer Bankruptcy: One Code, Many Culture*s, 67 AM. BANKR. L.J. 501, 512–13 (1993) (interviewing bankruptcy attorneys and trustees using the same methodology); Sara Sternberg Greene, *The Broken Safety Net: A Study of Earned Income Tax Credit Recipients and a Proposal for Repair*, 88 N.Y.U. L. REV. 515, 526–27 (2013) (describing scripted open-ended interview methodology). Participants were not compensated. Prior to soliciting interviews, I obtained approval of the procedures from the University of Illinois's Institutional Review Board. Each of the respondents consented to my audio recording

locatable[48] and 76 agreed to interviews, for a response rate of 46%.[49] The interviews lasted an average of 33 minutes, during which I asked about the attorneys' practices and their religious organization clients.

As reported by the interviewed attorneys, these attorneys represented 109 of the 461 unique religious organizations that filed under Chapter 11 in the six years between January 2006 and December 2011, and another 36 religious organizations that filed outside the study timeframe. The attorneys practiced in a total of 39 districts. Table 3 summarizes the affiliations of the attorneys' clients that filed during the six-year timeframe, as reported by attorneys.[50]

Table 3: Affiliations of Interviewed Attorneys' Religious Organization Clients

	N	%
Non-denominational Christian	50	45.9
Baptist - Generic	16	14.7
Missionary Baptist	16	14.7
Church of God in Christ	7	6.4
Apostolic	4	3.7
Christian - Other Denominations	8	7.3
Christian - School	2	1.8
Other Religions	6	5.5
TOTAL	109	100.0

The affiliations of attorneys' religious organization clients generally align with the affiliations of all religious organizations that filed under Chapter 11 during the study timeframe, with the exception of Missionary Baptist churches, which appear more often among attorneys' clients than in the population of religious organization Chapter 11 debtors.[51]

Focusing on the demographics of the interviewed attorneys' clients that operated places of worship, as reported by attorneys and as set forth in Table 4, 79% were Black Churches. This percentage likely is slightly inflated because of the over-representation of

of the interview. I transcribed and coded the interviews myself. To preserve anonymity, I identify each interviewee based on a randomly assigned interview ID number. Interview scripts and transcriptions are on file with the Author.

48. These attorneys had left law practice or moved to government or in-house. The letters I sent were returned, and I could not find telephone numbers for them.

49. The response rate for the first round was 42%. *See* Foohey, *When Faith Falls Short*, *supra* note 8, at 1344. The response rate for the second round was 49%.

50. Table 3 combines some denominations to preserve interviewee anonymity.

51. *See supra* Table 1.

Missionary Baptist churches among attorneys' clients. Accounting for this over-representation, Black Churches most likely comprised 75% of the interviewed attorneys' clients.[52]

Table 4: Demographics of Attorneys' Religious Organization Clients Operating Places of Worship

	N	%
Historically Black Christian	26	24.3
Other Black Christian	58	54.2
White Christian	4	3.7
Asian Christian	2	1.9
Multiracial Christian	1	0.9
Unclear Christian	10	9.3
Jewish / Muslim / Buddhist / Hindu	6	5.6
TOTAL	107	100.0

Except for a few attorneys,[53] attorneys were aware of the racial makeup of their clients' members based on their visits to the churches and interactions with leadership and congregants.[54] Attorneys' experiences thus suggest that more religious organization Chapter 11 debtors were Black Churches than the conservative estimate of 60% based on court records.

2. Religious Organization Leaders. Additionally, I interviewed 45 leaders from 43 unique religious organizations that filed during the eight-year study timeframe.[55] 5 of the religious organization

52. Taking the 54.2% of Black Churches in Table 4, adding the 17.6% of historically Black Churches among the full population of religious organization Chapter 11 debtors, as reported in Table 2, and assuming that 50% of the over-represented portion of historically Black Churches among attorneys' clients were Black Churches (3.4%), the percentage of Black Churches would be 75.2%.

53. These religious organizations are categorized as "unclear" in Table 4.

54. The possibility that the interviewed attorneys represented a disproportionate number of Black Churches as compared to the population of religious organization debtors cannot be ruled out entirely.

55. Two leaders asked me to speak with another member of their organizations' leadership team. I conducted two rounds of interviews. For a description of my methodology, see Foohey, *When Churches Reorganize*, *supra* note 29, at 282–83. First I reached out to leaders of every religious organization in the ten "hot" districts that filed between Jan. 1, 2006 and Dec. 31, 2011. I mailed letters to 226 leaders, 93 of whom I successfully contacted. The other 133 organizations' phones were disconnected and the leaders did not respond on their own initiative. *See id.* at 282. 10 leaders agreed to interviews, for a response rate of 11%. Prior to soliciting these interviews, I obtained approval of the procedures from the University of Illinois's Institutional Review Board. These leaders were not offered compensation. For the second round of interviews, I obtained approval of the same procedures from Indiana University's Human Subjects Office, with one addition: Leaders were offered a $50 gift card. I mailed letters to 395 leaders of organizations that filed in districts other than the ten "hot"

debtors had primary operations other than places of worship.[56] The interviews lasted an average of 41 minutes, during which I asked about the organizations' history, bankruptcy, and post-bankruptcy operations. As detailed in Table 5, 71% of the interviewed leaders affiliated with religious congregations came from Black Churches.

Table 5: Demographics of Interviewed Leaders' Organizations Operating Places of Worship

	N	%
Historically Black Christian	6	15.8
Black Christian	21	55.3
White Christian	5	13.2
Asian Christian	1	2.6
Multiracial Christian	5	13.2
TOTAL	38	100.0

Because leaders from churches with particular demographics may have been more likely to respond to my requests for interviews, 71% likely is not an accurate estimate of the percentage of Black Churches that filed Chapter 11. Most concerning, white churches may have been more likely to successfully reorganize or otherwise survive for the same underlying reasons that drove Black Churches to bankruptcy.[57]

Nonetheless, the percentage of white churches whose leaders I interviewed is very low. In contrast, the percentage of multiracial churches is significantly higher than what I was able to determine based on court records and Internet searches. This suggests that a sizable minority of congregation Chapter 11 debtors had multiracial membership.[58] Regardless, interviewed leaders overwhelmingly came from Black Churches, which is consistent with the over-representation of Black Churches among religious congregation Chapter 11 debtors.

districts from Jan. 1, 2006 to Dec. 31, 2011, and leaders of organizations that filed in any district from Jan. 1, 2012 to Dec. 31, 2013. I successfully contacted 152 of these organizations. The other 243 organizations' phones were disconnected and the leaders did not respond on their own initiative. Of the 152 organizations that I contacted, 33 leaders agreed to interviews, for a response rate of 22%. Given the low response rate, I rely on my interviews with leaders to augment attorneys' observations.

56. These debtors operated educational institutions and missions.

57. *See infra* Part IV. Linguistic profiling also may have skewed which leaders were willing to speak with me. *See generally* Baugh, *supra* note 12. No leaders from Jewish or Hispanic congregations responded; two leaders were from Jewish educational institutions.

58. *See supra* Table 2.

C. Race Matters in Business Bankruptcy

Exposing that Black Churches disproportionately use Chapter 11 is important itself. What I have found is yet another instance in which race matters in bankruptcy.[59] It also is the first instance to implicate the business provisions of the Bankruptcy Code. Black Churches not only turn to Chapter 11 more frequently than other churches, but Chapter 11 may provide a safe haven for them in ways not as relevant to other churches and small businesses. Considering why bankruptcy is utilized in this business context is critical to debates about the extent to which a robust bankruptcy option is useful for small businesses.[60]

Moreover, understanding why Black Churches are filing under Chapter 11 in numbers inconsistent with their incidence in the population may yield insights into how lenders manage loans to churches. Religious organizations overwhelmingly turned to bankruptcy to save their buildings from foreclosure.[61] Based on assets and debts, they had financial profiles similar to smaller businesses: they owed a median of $1.05 million in debt, and had assets worth a median of $1.29 million.[62] Their largest assets were buildings, which accounted for a median of 96% of the total value of their assets.[63] In turn, they owed one or two creditors holding security interests in these buildings a median of 93% of their total debt.[64]

That a church owed a large portion of its debts to one or two secured creditors, seemingly giving those creditors substantial negotiating leverage, may be significant to explaining the predominance of Black Churches in Chapter 11. When a church falls behind on loan payments, it may come to a consensual loan modification with its lender, much like what would happen in Chapter 11, but obviating the need to file. Based on my interviews,

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59. *See generally* A. Mechele Dickerson, *Race Matters in Bankruptcy Reform*, 71 MO. L. REV. 921 (2006) [hereinafter Dickerson, *Race Matters in Bankruptcy Reform*]; Dickerson, *Race Matters in Bankruptcy*, *supra* note 9 (documenting how the Code favors an "ideal debtor" with financial and life characteristics more common among white households).

60. *See* Edward R. Morrison, *Bankruptcy's Rarity: An Essay on Small Business Bankruptcy in the United States*, 5 EUR. COMPANY & FIN. L. REV. 172, 187–88 (2008) (discussing whether having access to bankruptcy is productive for small businesses); *see also infra* Part VI.B.

61. *See supra* note 5.

62. Foohey, *Secured Credit*, *supra* note 6, at 54.

63. *Id.*

64. *Id.* The religious organizations' Chapter 11 cases also resemble single-asset real estate (SARE) cases. *See* Foohey, *Bankrupting the Faith*, *supra* note 9, at 768–71 (comparing and contrasting SAREs and religious organizations' cases).

leaders of churches that ultimately filed under Chapter 11 asked for modification deals from their creditors long before they ever thought of reorganizing.[65] But based on my interviews and extrapolating from the disparity in religious organization Chapter 11 filings, such deals for Black Churches were not forthcoming. Instead, lenders may have denied Black Churches in particular loan modifications, and possibly sold Black Churches relatively expensive loans in the first place.

Black Churches thus may have turned to Chapter 11 to try to force deals—and seemingly often successfully did so. More than half of the religious organizations' Chapter 11 cases ended in a confirmed reorganization plan or a consensual resolution.[66] But Chapter 11 is expensive and time-consuming. Black Church leaders had to find a bankruptcy attorney, who most likely required a retainer of over $10,000,[67] and had to pay the $1,000 filing fee.[68] Their pastors also had to spend countless hours meeting the requirements of Chapter 11,[69] time that could have been spent attending to their members and communities. Interviewed leaders lamented how much time and energy they spent attending to cases, how "the finances of th[e] church end[ed] up being the center of [their] focus as opposed to ministry,"[70] and how sometimes they didn't think they were "going to make it," but were determined to "make sure that all the paperwork was accurate and correct."[71]

The hypothesis that Black Churches had to pay to modify their loans in part because of their lenders' actions is consistent with studies finding that Blacks pay more than similarly situated

65. *See* Foohey, *When Faith Falls Short*, *supra* note 8, at 1343–44, 1346–48 (discussing leaders' progression from dealing with lenders to placing their churches in Chapter 11).

66. Foohey, *Secured Credit*, *supra* note 6, at 58.

67. Excluding Catholic dioceses and Crystal Cathedral Ministries (the largest non-Catholic case filed during the study timeframe), court records show that attorneys requested an average retainer in real dollars as of the petition date of $10,750. *See supra* note 29.

68. *See* Temporary Bankruptcy Judgeships Extension Act of 2012, Pub. L. No. 112-121, § 3(a), 126 Stat. 346, 348 (2012) (noting that the previous fee was $1,000). The Chapter 11 filing fee increased for cases filed on or after November 21, 2012 from a total of $1,046 to $1,213. *See Chapter 11 Bankruptcy Filing Fees to Increase*, U.S. CTS. (July 6, 2012), http://news.uscourts.gov/chapter-11-bankruptcy-filing-fees-increase [https://perma.cc/K2GZ-TKCA] (including the filing fee plus the $46 administrative fee).

69. *See infra* note 155 and accompanying text for a discussion of the filings required during Chapter 11. Debtors also must spend time negotiating plans and settlements, attending hearings, and meeting with their attorneys.

70. Interview with Leader 52, at 3 (May 3, 2013).

71. Interview with Leader 59, at 7–8 (Mar. 17, 2014).

whites across a range of financial transactions.[72] The next Part turns to those studies. Part IV links those studies with my interviews to posit that the demographic disparity in church Chapter 11 filings exposes for the first time the possibility of associated disparities in lending to churches, both in loan origination and modification.

III. BLACKS PAY MORE

A. Cars, Homes, and Credit

Empirical studies have established that Blacks pay more than other consumers for goods, such as cars and homes,[73] and financial products, such as credit cards.[74] Studies controlling for the risk factors lenders consider in underwriting loans further have shown that lenders reject applications submitted by Blacks

72. *See infra* Part III; *see also* Morrison, *supra* note 60, at 174 (noting that a "surprisingly large number of small business cases" are resolved consensually, and positing that bankruptcy may "be needed by firms that have lost the trust of their creditors").

73. *See, e.g.*, Ian Ayres & Peter Siegelman, *Race and Gender Discrimination in Bargaining for a New Car*, 85 AM. ECON. REV. 304 (1995) (finding statistically significant differences in prices quoted to test car buyers based on race); Ian Ayres, *Fair Driving: Gender and Race Discrimination in Retail Car Negotiations*, 104 HARV. L. REV. 817, 817–18 (1991) [hereinafter Ayres, *Fair Driving*] (studying racial and gender disparities in new car pricing at dealerships in Chicago); Kathryn Graddy & Diana C. Robertson, *Fairness of Pricing Decisions*, 9 BUS. ETHICS Q. 225, 225–26 (1999) (finding that fast-food franchises set prices based on neighborhood demographics); Gregory D. Squires, *Racial Profiling, Insurance Style: Insurance Redlining and the Uneven Development of Metropolitan Areas*, 25 J.U. AFF. 391, 392 (2003) (documenting racial profiling in the property insurance industry); Patrick Buyer et al., *Estimating Racial Price Differentials in the Housing Market* 5 (Nat'l Bureau of Econ. Research, Working Paper No. 18069, 2012), http://www.nber.org/papers/w18069.pdf [https://perma.cc/3UJX-TT3L] (relying on a dataset of housing transactions in four metropolitan areas over two decades to establish that Blacks pay 3–3.5% more for their homes than whites in almost every purchase setting). *But see* Pinelopi Koujianoi Goldberg, *Dealer Price Discrimination in New Car Purchases: Evidence from the Consumer Expenditure Survey*, 104 J. POL. ECON. 622, 651–52 (1996) (using regression analysis to explore price discrimination in car sales and concluding that there is "no evidence of price discrimination against blacks or women").

74. Ethan Cohen-Cole, *Credit Card Redlining*, 93 REV. ECON. & STATS. 700, 700–02 (2011) (finding that lenders set credit limits based on the racial composition of neighborhoods); *see also* Andrea Freeman, *Payback: A Structural Analysis of the Credit Card Problem*, 55 ARIZ. L. REV. 151, 153, 168 (2013) ("The credit card industry has also developed a subprime market for vulnerable consumers."); Wendy Edelberg, *Racial Dispersion in Consumer Credit Interest Rates* (Fed. Reserve Bd. Fin. & Econ. Discussion Series, Working Paper No. 2007-28, 2007), https://www.federalreserve.gov/pubs/feds/2007/200728/200728pap.pdf [https://perma.cc/2D4Z-H8U4] (examining racial dispersion in loans);*cf.* Jim Hawkins, *Are Bigger Companies Better for Low-Income Borrowers?: Evidence from Payday and Title Loan Advertisements*, 11 J.L. ECON. & POL'Y 303, 325 (finding Blacks make up 35% of pictures in advertising on payday and title lenders websites in Houston despite comprising 20% of the population). *But see* Kenneth P. Brevoort, *Credit Card Redlining Revisited*, 93 REV. ECON. & STATS. 714, 723–24 (2011) (using the same dataset as Cohen-Cole and suggesting that redlining may not be present).

far more frequently than those submitted by whites.[75] And if lenders decide to extend credit to Blacks, they charge them more than whites for that credit.[76] Across these lending scenarios, Blacks are less likely than whites to apply for credit in the first instance because they believe that lenders will deny them credit.[77]

The same dynamic of lenders denying loan applications, charging more for credit, and applicants deciding not to seek funds at all occurs in the context of lending to Black-owned businesses. Lenders deny Black business owners' requests for loans more frequently than white business owners, and Black business owners also face a higher probability of receiving a smaller loan amount than they requested.[78] Consequently,

75. *See* Dickerson, *Race Matters in Bankruptcy*, *supra* note 9, at 1761–64 (2004) (discussing studies finding that Blacks are more likely to be rejected for home mortgages than whites); Kerwin Kofi Charles & Erik Hurst, *The Transition to Home Ownership and the Black-White Wealth Gap*, 84 REV. ECON. & STATS. 281, 293–94 (2002) (finding that Blacks are twice as likely to be rejected for home loans than whites).

76. *See, e.g.*, Ping Cheng, Zhenguo Lin & Yingchun Liu, *Racial Discrepancy in Mortgage Interest Rates*, 51 J. REAL EST. FIN. & ECON. 101, 118 (2015) (using data from the U.S. Survey of Consumer Finance to find that Black borrowers pay an average of 29 basis points more than comparable white borrowers for home loans); Debbie Gruenstein Bocian, Keith S. Ernest & Wie Li, *Race, Ethnicity, and Subprime Home Loan Pricing*, 60 J. ECON. & BUS. 110, 111 (2008) (finding that Black borrowers are more likely to receive higher-rate subprime home loans than white borrowers); Kerwin Kofi Charles, Erik Hurst & Melvin Stephens, Jr., *Rates for Vehicle Loans: Race and Loan Source*, 98 AM. ECON. REV. 315, 315, 319 (2008) (finding that some Blacks received higher interest rates on auto loans originated from vehicle manufacturers, though not on auto loans originated from traditional lenders); Mark A. Cohen, *Imperfect Competition in Auto Lending: Subjective Markup, Racial Disparity, and Class Action Litigation*, 8 REV. L. & ECON. 21, 31–33 (2012) (reviewing evidence of the subjective markup of auto loans to Blacks).

77. *See* Charles, Hurst & Stephens, *supra* note 76, at 319 (noting that Blacks finance their cars through manufacturers' finance companies); Charles & Hurst, *supra* note 75, at 282 (finding that Blacks are less likely than whites to apply for home loans); David A. Skeel, Jr., *Racial Dimensions of Credit and Bankruptcy*, 61 WASH. & LEE L. REV. 1695, 1713–14 (2004) (describing studies assessing credit market discrimination).

78. *See, e.g.*, David G. Blanchflower et al., *Discrimination in the Small-Business Credit Market*, 85 REV. ECON. & STAT. 930, 930–31 (2003) (using data from the National Surveys of Small Business Finances to examine the existence of racial discrimination in the market for small business credit); Ken S. Cavalluzo & John Wolken, *Small Business Loan Turndowns, Personal Wealth, and Discrimination*, 78 J. BUS. 2153, 2154 (2005) (finding higher loan denial rates to Black entrepreneurs regardless of personal wealth); Ken S. Cavalluzo, Linda C. Cavalluzo & John D. Wolken, *Competition, Small Business Financing, and Discrimination: Evidence from a New Survey*, 75 J. BUS. 641, 643–44 (2002) (finding that Black business owners who applied for credit were more likely to be denied credit and that they avoided applying for credit); Naranchimeg Mijid & Alexandra Bernasek, *Decomposing Racial and Ethnic Differences in Small Business Lending: Evidence of Discrimination*, 71 REV. SOC. ECON. 443, 445 (2013) (finding that minority business owners have a 24% higher loan denial rate and a 5% higher probability of less funds than requested); Darius Palia, *Differential Access to Capital from Financial Institutions by Minority Entrepreneurs*, 13 J. EMPIRICAL LEGAL STUD. 756, 781 (2016) (finding that Black-owned firms are rejected for loans at a higher rate than white-owned firms of similar

Blacks turn to credit cards more often than whites to fund their businesses.[79]

Blacks seem to pay more in every imaginable lending scenario. For example, an investigation of one online peer-to-peer lending site found that loan listings that included pictures of Black applicants were 25%–35% less likely to receive funding than listings with the same credit profile featuring pictures of white applicants.[80] Black borrowers who received funding were charged interest rates sixty to eighty basis points higher than white borrowers with the same credit profile.[81]

B. Consumer Bankruptcy

Blacks also pay more when they cannot repay their more expensive debts. As compared to similarly situated white consumers, Black consumers are more likely to file under Chapter 13 than Chapter 7.[82] Chapter 13 is significantly more expensive monetarily than Chapter 7.[83] It also is a much longer proceeding. It takes three to five years to receive a Chapter 13 discharge, versus within six months to receive a Chapter 7 discharge.[84]

Black debtors do not necessarily pay more to discharge their debts of their own accord. Rather, it appears that some attorneys steer their Black clients to Chapter 13 while counseling similarly situated white clients to file under Chapter 7. Attorneys' responses to an experimental vignette designed by Jean Braucher, Dov Cohen, and Robert Lawless to ascertain how attorneys guide a debtor toward a particular bankruptcy Chapter revealed that, on average, attorneys seemed to want Black clients to "earn" their bankruptcy discharge.[85]

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risk).

79. *See* Aaron K. Chatterji & Robert C. Seamans, *Entrepreneurial Finance, Credit Cards, and Race*, 106 J. FIN. ECON. 182, 193 (2012) (noting that friction with traditional banks seems to cause Blacks to turn to credit cards).

80. Devin G. Pope & Justin R. Sydnor, *What's in a Picture? Evidence of Discrimination from Prosper.com*, 46 J. HUM. RESOURCES 53, 53–55 (2011).

81. *Id.* at 55.

82. Braucher, Cohen & Lawless, *supra* note 18, at 404; Rory Van Loo, *A Tale of Two Debtors: Bankruptcy Disparities by Race*, 72 ALB. L. REV. 231, 234 (2009) (finding that Blacks are three times more likely to file under Chapter 13 than whites and that they are less likely to receive a discharge than similarly situated white debtors).

83. *See* Braucher, Cohen & Lawless, *supra* note 18, at 394 (noting that Chapter 13 attorneys' fees range from $2,500 to $3,000, as compared to Chapter 7 attorneys' fees of about $1,000).

84. *See id.* (discussing the timing of Chapter 7 and 13 proceedings).

85. *Id.* at 393–94, 414; *see also* A. Mechele Dickerson, *Racial Steering in Bankruptcy*, 20 ABI L. REV. 623, 630–31 (2012) [hereinafter, Dickerson, *Racial Steering*] (discussing why

The vignette requested that the attorney advise a couple thinking of filing for bankruptcy. The vignette was designed such that an attorney would face a close call deciding whether to recommend filing under Chapter 7 or Chapter 13.[86] An attorney thus could feel comfortable recommending Chapter 7 or Chapter 13 depending on what the couple desired. The vignettes varied the debtors' names and church affiliations to signal Black and white, and whether the couple indicated that they wanted to file Chapter 7 or 13.[87]

In the study, attorneys viewed Black clients as competent and having "good values" when they expressed a preference for paying back their debts through the more expensive and time-consuming Chapter 13 process.[88] In contrast, attorneys viewed white clients as competent when they expressed a preference for Chapter 7.[89] Consistent with these views, attorneys, on average, protected confused "good" (white) clients from Chapter 13, and punished unrepentant "bad" (Black) clients with Chapter 7.[90]

As noted by Mechele Dickerson, these categorizations track with the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA)'s implicit grouping of consumer debtors as "good" and "bad."[91] BAPCPA altered the process by which consumers can access Chapter 7 by adding a means test that examines a debtor's income versus expenses.[92] Only those debtors who "can't pay" may file under Chapter 7 and access the faster discharge; "can pay" debtors have not earned this right.[93]

Statements made by members of Congress leading up to the enactment of BAPCPA indicate that they were reacting to the same value judgments that consumer bankruptcy attorneys seemed to impose on their clients. Reform was needed to stop people from using bankruptcy "to cheat their way out of debt"[94] and to reestablish "personal responsibility and integrity."[95]

it is difficult to file under either Chapter 7 or 13 pro se and why consumers turn to attorneys for help).

86. *See* Braucher, Cohen & Lawless, *supra* note 18, at 409 (describing the vignette).

87. *Id.* at 405–08.

88. *Id.* at 413–16.

89. *Id.* at 413–14.

90. *See* Dickerson, *Racial Steering*, *supra* note 85, at 625–27 (discussing the study).

91. *Id.* at 628.

92. The means test is codified at 11 U.S.C. § 707(b)(2)(A) (2012). *See* Dickerson, *Racial Steering*, *supra* note 85, at 627 & n.19 (discussing the means test and its history).

93. *See* Dickerson, *Racial Steering*, *supra* note 85, at 627 (noting that BAPCPA groups debtors into "can pays" and "can't pays").

94. 151 CONG. REC. E737 (daily ed. Apr. 22, 2005) (statement of Rep. Tiahrt).

95. H.R. REP. NO. 109-31, pt. 1, at 2 (2005); *see also* Dickerson, *Race Matters in*

Though BAPCPA's changes to the Code affected all debtors, the impetus behind the changes sprung from a similar negative view of debtors that bankruptcy attorneys, on average, imposed on their hypothetical Black clients.[96]

C. Discrimination in Financial Transactions and Other Settings

That the Code is written with an "ideal debtor" in mind accords with one explanation of why Blacks pay more for goods and credit and are steered toward a more expensive bankruptcy proceeding than similarly situated whites—racial discrimination.[97] The studies discussed above controlled for income, wealth, and other factors that may have explained the racial disparity in financial transactions.[98] The disparity seemingly persisted despite these controls, leading to the conclusion that race alone partially influenced both lending decisions and bankruptcy advice.[99]

Racial discrimination refers to the unequal treatment of a person or a group based on race.[100] Economic studies finding racial discrimination typically distinguish between two forms of discrimination—taste-based and statistical.[101] Taste-based (or prejudicial) discrimination refers to adverse treatment based on overt animus.[102] Statistical discrimination arises from

Bankruptcy Reform, *supra* note 59, at 938–39 (detailing the congressional debates).

96. *See* Dickerson, *Racial Steering*, *supra* note 85, at 628 (comparing the views of members of Congress to the views of bankruptcy attorneys from the study).

97. *See* Dickerson, *Race Matters in Bankruptcy*, *supra* note 59, at 1743 (documenting how the Code favors an "ideal debtor"); Dickerson, *Racial Steering*, *supra* note 85, at 646–47 (linking discrimination to the attorneys' steering of clients based on race); Daniel Keating, *From "Fair Driving" to "Fair Discharging": Racially Disparate Outcomes in Common Consumer Transactions*, 20 ABI L. REV. 701, 701–02 (2012) (comparing Ayres's "fair driving" study to the results of the Braucher, Cohen and Lawless vignette "Chapter Choice" study).

98. *See, e.g.*, Braucher, Cohen & Lawless, *supra* note 18, at 402–04 (detailing controls); Dickerson, *Race Matters in Bankruptcy Reform*, *supra* note 59, at 1761 n.62 and accompanying text (noting that studies controlled for risk factors lenders consider in underwriting loans).

99. *See, e.g.*, Braucher, Cohen & Lawless, *supra* note 18, at 394 (suggesting that "subtle biases" led to the racial sorting); Cavalluzzo & Wolken, *supra* note 78, at 2153–54 (noting that personal wealth, among other factors, does not explain the higher loan denial rate among Black business owners). *But see* D. James Greiner, *Causal Inference in Civil Rights Litigation*, 122 HARV. L. REV. 533, 534, 543–48 (2008) (discussing problems of using regression analysis to predict causation in the context of racial discrimination).

100. *See* Devah Pager & Hana Shepherd, *The Sociology of Discrimination: Racial Discrimination in Employment, Housing, Credit, and Consumer Markets*, 34 ANN. REV. SOC. 181, 182 (2008) (defining racial discrimination).

101. These two categories were first proposed in GARY S. BECKER, THE ECONOMICS OF DISCRIMINATION 14 (2d ed. 1971).

102. *See* Kenneth J. Arrow, *What Has Economics to Say About Racial*

assumptions about characteristics of people from a group that lead others to treat members of that group in a particular way based on seemingly "neutral" factors.[103] Though decisions that, when aggregated, create disparate impacts across race do not arise from direct hatred of people from a particular group, the result nonetheless is detrimental to individuals within that group, producing and reinforcing disadvantage.[104] The dichotomy between taste-based and statistical discrimination accords with research regarding explicit and implicit bias.[105]

In the economic context, statistical discrimination may take two sub-forms: cost-based and revenue-based.[106] Cost-based discrimination occurs when sellers or lenders think that dealing with members of certain groups imposes greater costs.[107] Revenue-based discrimination occurs when sellers or lenders think that people from certain groups are willing to pay more than people from other groups.[108]

Discrimination, of course, manifests in a variety of settings apart from financial transactions. Studies pinpointing discrimination offer additional examples of how racial discrimination plays out in society. Sociological research has linked "colorism," or discrimination based on the lightness or darkness of a person's skin, with perceived intelligence.[109] Studies further connect discrimination to physicians' medical treatment recommendations, to human resources personnel's offering of job interviews, and to jurors' interpretation of ambiguous evidence about the commission of a crime.[110]

As a final example, a recent field experiment in which trained testers, some who appeared white and some who appeared Black, attempted to board buses with empty fare cards, uncovered

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Discrimination?, 12 J. ECON. PERSP. 91, 94 (1998) (discussing taste-based discrimination).

103. *See id.* at 96–97 (discussing statistical discrimination). *See generally* Edmund S. Phelps, *The Statistical Theory of Racism and Sexism*, 62 AM. ECON. REV. 659 (1972) (expanding on Becker's analysis of statistical discrimination).

104. *See* Pager & Shepherd, *supra* note 100, at 197–200 (discussing "structural discrimination"); Barbara Reskin, *The Race Discrimination System*, 38 ANN. REV. SOC. 17, 17 (2012) (arguing that "race discrimination is a system whose emergent properties reinforce the effects of their components").

105. *See* Dickerson, *Racial Steering*, *supra* note 85, at 643–44 (discussing the implicit bias that accompanies stereotyping). Much of the research regarding implicit bias comes from the Implicit Association Test (IAT). *See id.* at 645–46 (discussing the IAT); PROJECT IMPLICIT, https://www.projectimplicit.net/index.html [https://perma.cc/9MVN-5UJK] (same).

106. *See* Ayres, *Fair Driving*, *supra* note 73, at 843–45.

107. *See id.* at 843 (discussing cost-based discrimination in car sales).

108. *See id.* at 843–45 (discussing revenue-based discrimination in car sales).

109. Whites are more likely to view Blacks and Latinos with lighter skin as intelligent as compared to those people with darker skin, regardless of education level. *See* Lance Hannon, *White Colorism*, 2 SOC. CURRENTS 13, 18 (2015).

110. *See* Dickerson, *Racial Steering*, *supra* note 85, at 645–46 & n.91 (discussing studies).

substantial discrimination.[111] Bus drivers accepted white testers at a rate twice that at which they accepted Black testers—72% versus 36%.[112] In short, white testers were more likely to receive one-off beneficial accommodations.[113]

Across these instances, people may not perceive their actions as discriminatory, and instead point to other reasons to explain and justify their decisions and actions.[114] Indeed, research shows that people whose actions amount to discrimination may aspire to be and consider themselves non-prejudiced.[115] Nonetheless, context strongly influences people's actions,[116] particularly in ambiguous situations where the non-prejudicial choice is not entirely clear,[117] such as whether to allow someone to ride the bus for free.

IV. BLACK CHURCHES PAY MORE

Black Churches taking out loans to finance their buildings and later approaching their lenders for help when they fall behind on payments present two interconnected scenarios eerily similar to the financial contexts in which Blacks pay more for reasons at least partially related to race. Analogizing from the studies discussed in

111. Redzo Mujcic & Paul Frijters, *Still Not Allowed on the Bus: It Matters if You're Black or White!* 7–12 (IZA Inst. of Labor Econ., Working Paper No. 7300, 2013), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2245970 [https://perma.cc/JVG8-PJDS].

112. *Id.* at tbl.5.

113. *See* Ian Ayres, Opinion, *When Whites Get a Free Pass: Research Shows That White Privilege Is Real*, N.Y. TIMES (Feb. 24, 2015), https://www.nytimes.com/2015/02/24/opinion/research-shows-white-privilege-is-real.html [https://perma.cc/ST8Y-WWHY] (discussing the study).

114. *See* Braucher, Cohen & Lawless, *supra* note 18, at 425 (discussing studies about how people identify acceptable criteria to justify their decisions); Michael I. Norton et al., *Mixed Motives and Racial Bias: The Impact of Legitimate and Illegitimate Criteria on Decision Making*, 12 PSYCHOL. PUB. POL'Y & L. 36, 39–41 (2006) (detailing how individuals manipulate nonracial information to justify decisions that align with their preferences based on illegitimate factors); Michael I. Norton, John M. Darley & Joseph A. Vandello, *Casuistry and Social Category Bias*, 87 J. PERSONALITY & SOC. PSYCHOL. 817, 817 (2004) (discussing casuistry—"specious reasoning in the service of justifying questionable behavior"—to "cloak" decisions).

115. *See, e.g.*, John F. Dovidio & Samuel L. Gaertner, *Aversive Racism and Selection Decisions: 1989 and 1999*, 11 PSYCHOL. SCI. 315, 315 (2000) (discussing "aversive racism"); Victor D. Quintanilla & Cheryl R. Kaiser, *The Same-Actor Inference of Nondiscrimination: Moral Credentialing and the Psychological and Legal Licensing of Bias*, 104 CALIF. L. REV. 1, 13–14 (2016) (same).

116. *See* Amy J. C. Cuddy, Peter Glick & Susan T. Fiske, *The BIAS Map: Behaviors from Intergroup Affect and Stereotypes*, 92 J. PERSONALITY & SOC. PSYCHOL. 631, 631 (2007) (discussing the BIAS map, which "systematically links discriminatory behavioral tendencies to the contents of group stereotypes and emotions, as rooted in structural components of intergroup relations").

117. *See* Dovidio & Gaertner, *supra* note 115, at 316–18.

Part III indicates the possibility that lenders may have (unknowingly) treated similarly situated churches differently in loan origination and modification. Interviewed attorneys' and church leaders' perceptions of why their clients and churches resorted to reorganization likewise suggest that lenders, on average, may have treated similarly situated churches inconsistently at these two points in the life of a church's finances. Additionally, a snapshot of lending to religious congregations by two creditors that specialize in lending to churches augments the attorneys' and leaders' perceptions of the discrepancy in lenders' treatment of churches.

A. Loan Extension

Though data limitations prevent an analysis of the terms of loans extended to churches,[118] interviewed attorneys' observations about their church clients' loans[119] suggest that the two sub-forms of statistical discrimination discussed above may help explain why Black Churches in particular file for Chapter 11: They pay more for their mortgages than other similarly situated churches. As linked with car sales and small business loans, lenders may have assumed that Black Churches' leaders were less able or willing to search for alternative lenders,[120] or that these pastors simply could be "suckered" into paying more for the loan.[121] Lenders also may have presumed that loans to Black Churches would cost the lender more over the long term.[122] Lenders thus would charge Black Churches more for funds than other similarly situated churches. Of course, because the attorneys represented mainly Black Churches, they may have been apt to exaggerate lender's "bad" behaviors toward Black Churches, while being more lenient when characterizing lenders' treatment of other churches.

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118. *See infra* Part V.D.

119. Qualitative research seeks to "describe and explain persons' experiences, behaviours, interactions and social contexts" by focusing on a small group of people and without relying on statistical models. Ellie Fossey et al., *Understanding and Evaluating Qualitative Research*, 36 AUSTL. & N.Z. J. PSYCHIATRY 717, 717 (2002). Qualitative research is concerned with "the applicability of [its] findings, based on how the nature and processes involved in experiences generalize." *Id.* at 730.

120. *See* Ayres, *Fair Driving*, *supra* note 73, at 848–50 ("Testers who indicated higher costs of search, less sophistication, and a greater need for a car . . . received significantly worse deals."); *supra* notes 77–78 and accompanying text.

121. *See* Keating, *supra* note 97, at 708 (discussing the "sucker theory"). This theory is consistent with research about the effects of "colorism." *See supra* note 108 and accompanying text.

122. *See* Keating, *supra* note 97, at 707 (discussing a cost-based discrimination explanation for sellers charging higher prices to members of particular groups); *see also* Ayres, *Fair Driving*, *supra* note 73, at 846 (discussing controlling for cost-based differences among testers).

Attorneys openly discussed what they perceived as lender bias in loan origination. Black Churches were sold balloon, step increase, and other "weird" mortgages—the equivalent of subprime loans.[123] Black Churches unnecessarily agreed to cross-collateralize,[124] and were "duped" into loans with interest rates over the legal rates[125] and other "bad loans . . . where little to no underwriting was done, where the focus was just on their rate of return."[126] One attorney went so far as to state that Black Churches "were targeted by some banks and . . . consultants who steered them to [certain] banks,"[127] even though more than these couple banks loaned money to churches. That the leadership of a Black Church could be "duped" into paying more for credit aligns with a revenue-based explanation of statistical discrimination.[128]

Interviewed pastors' discussions of their churches' loans also reveal costly terms, such as LIBOR-based payments skyrocketing to "$20,000 a month" on a loan with a balance at the time of the Chapter 11 filing (and after missing payments) of approximately $2.2 million.[129] Another leader of a Black Church described trying to meet loan payments of $11,000 a month on a debt of about $1.1 million.[130] In contrast, a white church that ultimately filed under Chapter 11 initially received a loan for $1.7 million with an interest rate of 1% over LIBOR. The church's pre-bankruptcy consensual modification from its lender provided for six-months of interest only payments and then higher (than what the note initially provided for) interest and principal payments of under $12,500 per month.[131]

B. Loan Modification

Black Churches with expensive loans would have been susceptible to experiencing financial problems so severe that they needed to ask their lenders for accommodations, possibly more often than churches with other membership demographics. Based on my interviews, almost all the churches approached their

123. *See* Interview with Attorney 120, at 6 (Apr. 22, 2014); *see also* Interview with Attorney 115, at 2–3 (Apr. 14, 2014).

124. Interview with Attorney 3, at 3 (Apr. 22, 2013).

125. *Id.* at 3–4.

126. Interview with Attorney 111, at 8 (Apr. 22, 2014).

127. Interview with Attorney 137, at 2 (Apr. 30, 2014).

128. *See* Keating, *supra* note 95, at 708 (discussing the "sucker theory").

129. Interview with Leader 56, at 2 (May 10, 2013).

130. Interview with Leader 176, at 2 (Aug. 24, 2015).

131. This information was obtained from bankruptcy court records of Leader 182's case. This record is not disclosed to preserve interviewee anonymity.

lenders for help before considering filing for bankruptcy.[132] The help that pastors asked for included deferment of payments, forbearance of defaults, and loan modifications.[133]

Importantly, these requests presented lenders with a distinct decision, the outcome of which seemingly was not dependent on the original loan terms. As noted, more than half of the religious organizations' Chapter 11 cases ended in a confirmed reorganization plan or a consensual resolution.[134] The plans restructured secured loans and paid unsecured creditors an average of 65% and a median of 100% of the dollar value of their claims.[135] These outcomes accord with religious organization debtors' statements that their real property was worth significantly more than the amount they owed on it at the time they filed under Chapter 11.[136] Resolutions seemed attainable.

Despite this reality, loan officers may have reacted to the same "good" and "bad" debtor categorizations that seemed to motivate consumer bankruptcy attorneys' recommendations to their hypothetical clients. When leaders from churches with predominately white membership, who most likely were white themselves,[137] asked for accommodations, loan officers may have expected competent pastors to request modifications that were in their churches' best interests.[138] When the requests came, loan officers were ready to grant these pastors and churches one-off accommodations.[139]

Conversely, when leaders from churches with predominately Black membership, who often were Black themselves,[140] requested similar accommodations, lenders may not have expected these requests, and perhaps may have seen these pastors as putting a desire for a "fresh start" above the church's duty to pay back its debts.[141] Loan officers would have been less

132. *See supra* note 64 and accompanying text.

133. *See, e.g.*, Interview with Leader 55, *supra* note 16, at 3 ("I asked . . . will you modify our loan, lower the interest rate and maybe cut off some of the principal . . . .").

134. Foohey, *Secured Credit*, *supra* note 6, at 58; *see also supra* note 65.

135. Foohey, *Secured Credit*, *supra* note 6, at 57.

136. Foohey, *Bankrupting the Faith*, *supra* note 9, at 726.

137. *See supra* note 42.

138. These perceptions align with the BIAS map. *See* Cuddy, Glick & Fiske, *supra* note 116, at 632.

139. *See* Ayres, *supra* note 113 (noting that "one-off accommodations where the decision-maker retains substantial discretion don't offer any easy point of comparison").

140. *See supra* note 42.

141. *See* Braucher, Cohen & Lawless, *supra* note 18, at 416 ("[I]t seems that the African-American (and race unspecified) couple expresses good values by indicating that they want to pay back their old debts by filing in Chapter 13."). These perceptions align with the BIAS map, and accord with how cost-based and revenue-based statistical

ready and less likely to grant these pastors and churches one-off accommodations. Taken on average, a consistent pattern emerges: White consumers are more likely to get a quick, inexpensive discharge,[142] white passengers get more free bus rides,[143] and white churches get loan modifications more often than Black Churches.

Interviewed attorneys' perceptions of how secured creditors responded to modification requests from Black Churches are consistent with this hypothesis. In recounting how their Black Church clients tried to negotiate with lenders before seeking the attorneys' help, attorneys maintained that consensual resolutions should have happened in some instances. For example, one church's mortgage bore a 12% interest rate, and the attorney thought that the lender "could have adjusted that and still made a decent return. And the church could have paid it."[144] But the lender apparently was struggling and was "under a lot of pressure to liquidate some loans. And this was one they chose to liquidate."[145] Another lender seemed "bound and determined, it wanted to be done with this loan."[146] Though in these two cases attorneys merely hinted at suspect motivations, they clearly suggested that lenders marked certain loans for liquidation.

Based on attorneys' perceptions, lenders also seemed wary of dealing with Black Churches absent the procedures and protections of Chapter 11, even when similar procedures and protections were possible outside of bankruptcy. One attorney described trying "to do a workout" with a particular lender on behalf of a church, but the lender was "plowing forward with foreclosure."[147] The lender apparently changed its tune and was "good to deal with" during the Chapter 11 case, which the attorney found "surprising" because the workout had failed."[148] Similarly, another attorney had asked contacts about this particular lender's practices and had come away with the impression that it would not deal with churches outside of bankruptcy.[149]

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discrimination can manifest in this context. *See* Cuddy, Glick & Fiske, *supra* note 116, at 632.

142. *See supra* Part III.B.

143. *See supra* notes 110–12 and accompanying text.

144. Interview with Attorney 129, at 3–4 (Apr. 24, 2014).

145. *Id.* at 4.

146. Interview with Attorney 105, at 2, 5 (Apr. 2, 2014); *see also* Interview with Attorney 32, at 3 (May 24, 2013) ("[T]he mortgage company was not willing to do anything.").

147. Interview with Attorney 26, at 3 (May 14, 2013).

148. *Id.* at 4.

149. Interview with Attorney 17, at 6 (May 2, 2013).

These attorneys' stories about that lender are consistent with other attorneys' impressions about different lenders. In short, though lenders appeared willing to negotiate, they "wanted to make sure [that] the value [of the churches' buildings] they were agreeing to was a true value."[150] Hiring an appraiser presumably could have assured the lender, but the lender instead wanted the appraisal to happen during a bankruptcy proceeding.[151]

Attorneys further commented on the value of bankruptcy to show lenders churches' financial situations.[152] Again, lenders seemingly could have hired accountants to assess the churches' finances, or they could have accepted churches' submitted financial documents. But a court-supervised process became the requirement for some Black Churches. Of course, some pastors of Black Churches were unresponsive to their lenders, but these stories stood out among attorneys' descriptions of what happened pre-bankruptcy.[153]

Lenders' apparent need to use formal proceedings to assess Black Churches' finances aligns with the expected results of revenue- and cost-based discrimination. Chapter 11 would force the churches to produce schedules detailing assets, debts, and financial affairs, and monthly reports of net income,[154] demonstrating to loan officers what Black Churches could pay going forward, and whether these churches were hiding or destroying assets. Chapter 11 also includes procedures that protect creditors from debtors' tendencies to neglect collateral.[155] These procedures would assure lenders that loans to Black Churches were not costing more than loans to other churches. Indeed, some pastors stated that it was their lender who initially raised Chapter 11 as a possibility.[156]

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150. Interview with Attorney 109, at 3 (Apr. 8, 2014); *see also* Interview with Attorney 29, at 3 (May 15, 2013) (noting that "valuation of a church property is very problematic").

151. *Id.*

152. *See, e.g.*, Interview with Attorney 120, at 3–4 (Apr. 22, 2014); Interview with Attorney 116, at 3–4 (Apr. 15, 2014); Interview with Attorney 114, at 2 (Apr. 14, 2014); Interview with Attorney 106, at 3–4 (Apr. 7, 2014).

153. One lender "had been working with the church minister trying to get something worked out, but then [the minister] never made good on his promises." Interview with Attorney 118, at 7 (Apr. 17, 2014). Another preacher went to jail for embezzlement and fraud. Interview with Attorney 101, at 3 (Apr. 4, 2014).

154. 11 U.S.C. § 521(a) (2012).

155. Secured creditors may seek adequate protection payments or a lift of the automatic stay if they think that the value of their collateral is declining during the bankruptcy case. 11 U.S.C. §§ 361, 362(d). To the extent that a secured creditor's collateral transforms into cash, the secured creditor is protected by provisions that require a debtor to seek a court order to use cash collateral. 11 U.S.C. § 363(c).

156. Foohey, *When Faith Falls Short*, *supra* note 8, at 1348–49 (summarizing why churches' attorneys thought lenders might suggest bankruptcy).

Other attorneys used more direct language. They thought lenders were "pissed off" that Black Churches were not honoring their promises.[157] Lenders were first to "draw blood,"[158] were "witch hunting,"[159] and were putting pressure on pastors.[160] As part of the "hunt," one Black Church's lender placed the church in receivership and then was "trying to find out that [the lead pastor] did something wrong or that the church did something wrong with their funds, things like that."[161]

Overall, lenders seemed ready to "foreclose on [the church] and find another victim."[162] For one Black Church, the attorney believed it did not help that its building was in a neighborhood that was gentrifying; the creditor wanted the land.[163] As another attorney summed up: "[S]ometimes if a congregation is very different from your own and then doesn't do things the way you think they should do it, it's easier to be unsympathetic."[164]

Though interviewed leaders understandably were looking for someone to blame,[165] many pastors and other leaders of Black Churches echoed attorneys' comments that creditors wanted the buildings and were ready to do anything to get them.[166] A loan officer purportedly stated: "I'm going to take your building."[167] Another leader asserted that its bank "wanted the dirt that we were sitting on" so it could replace the church with apartments.[168]

One interviewed pastor characterized the church's lender as "relentless," "heartless," and disrespectful.[169] The pastor intimated that he knew of white churches that supposedly had received better treatment from the same lender, and hypothesized its lender was less willing to deal with a Black Church.[170] Other Black Church leaders' stories of dealing with the same lender align with

157. Interview with Attorney 128, at 5 (Apr. 23, 2014).

158. Interview with Attorney 127, at 3 (Apr. 23, 2014).

159. Interview with Attorney 137, at 2–3 (Apr. 30, 2014).

160. Interview with Attorney 140, at 2 (May 6, 2014).

161. Interview with Attorney 137, at 2–3 (Apr. 30, 2014).

162. Interview with Attorney 25, at 5 (May 13, 2013).

163. Interview with Attorney 114, at 3 (Apr. 14, 2014).

164. Interview with Attorney 111, at 9 (Apr. 14, 2014).

165. *See* Foohey, *When Churches Reorganize*, *supra* note 29, at 1355–59 (discussing the mental processes by which consumer debtors and pastors justify filing for bankruptcy).

166. *See, e.g.*, Interview with Leader 52, at 2–3 (May 3, 2013) (hypothesizing that the bank could sell the property for a $500,000 profit); Interview with Leader 161, at 3 (May 8, 2015) ("They wanted that building, because, I mean, it was a cash cow for them."); Interview with Leader 169, at 2 (July 1, 2015) ("They wanted the property very, very badly.").

167. Interview with Leader 167, at 3 (June 26, 2015).

168. Interview with Leader 176, at 10 (Aug. 24, 2015).

169. Interview with Leader 55, at 3 (May 6, 2013).

170. *Id.* at 4.

this hypothesis. One Black Church never missed a note payment in ten years, but when the note's balloon came due, the lender refused to refinance or work with the church.[171] Similarly, the same lender refused to refinance another Black Church when its note's balloon came due. The church even offered to pay a higher interest rate, but the lender refused to settle and instead had "a sinister motive" and "just hell bent to take the building."[172]

In contrast, the same lender seemed to work with white churches. A leader from a white church described receiving two forbearances from this lender. The church simply could not meet the twice modified terms and thus filed under Chapter 11.[173] Once in bankruptcy, its lender did not seem intent on taking the church's property. The lender instead sold the note to an investor "[e]ssentially as soon as the [Chapter 11] filing took place."[174]

Straddling these two accounts, a leader of a multiracial church that had a longstanding relationship with the same lender acknowledged that "the intent of [the lender] was [not] to do [this church] harm,"[175] but also stated: "We've seen a number of African-American pastors who have had to step down and lost their church . . . . And it's almost like predatory kind of lending in a commercial sense."[176] This leader told a story of the lender experiencing "meteoric growth" by marketing over-collateralized loans on the secondary market.[177] When the Great Recession hit, the lender's survival strategy was to stop writing new loans and refused to renew some performing loans.[178]

This particular lender was not the only lender about which pastors and other leaders of Black Churches complained. However, this lender appeared in 5% of the religious organizations' Chapter 11 cases filed during the study timeframe, making it the lender that appeared the most often in these cases, which may explain its frequency among attorneys' and pastors' comments.[179]

Pastors from Black Churches told stories of other lenders effectively trapping their churches into defaulting. When one pastor

171. Interview with Leader 161, at 1 (May 8, 2015).

172. Interview with Leader 167, at 3, 6 (June 26, 2015).

173. This information was obtained from bankruptcy court records of Leader 182's case. This record is not disclosed to preserve interviewee anonymity.

174. Interview with Leader 182, at 4 (Aug. 31, 2015).

175. Interview with Leader 171, at 6 (Aug. 6, 2015).

176. *Id.* at 11.

177. *Id.* at 1.

178. *Id.* at 5.

179. This lender extended credit to 32 of the 589 religious organization debtors that filed schedules. *See infra* Part IV.C.

asked for forbearance, the church's lender "gave [the church] a roadmap of how to do [the forbearance]. . . . They say . . . the first thing we want you to do is to stop paying us monthly . . . . And then after about three months, then we will be able to do what it is that we need to do to help you . . . ."[180] After the church defaulted, as told to do, the bank apparently "took that and used that against [the church]."[181] When the church tried to catch up on payments, bank representatives "wouldn't even accept the money."[182] Similarly, another pastor spoke of the church's lender being so uncommunicative that the pastor could not get a clear answer about where to send payments: "[H]ow can you take care of business if we can't have dialogue?"[183] Finally, another pastor simply deemed its lender "totally cut throat and very, very scummy."[184]

In contrast, attorneys' and leaders' stories of how white churches landed in bankruptcy tell of less bumpy or abrupt paths to Chapter 11. One white church received a modification pre-bankruptcy and found another lender to refinance during Chapter 11.[185] Another received a settlement, but did not perform.[186] Yet another white church's bank worked with it for almost two years before the bank was sold to another bank that would not refinance.[187]

White and multiracial churches also seemed to file Chapter 11 to deal with issues unrelated to their lenders more often than Black Churches. One white church filed to deal with an issue with a lease, not its lender.[188] Though another white church was behind on its mortgage, the Internal Revenue Service (IRS) was the creditor who pushed the church into Chapter 11.[189] Similarly, one multiracial church filed because it had fallen significantly behind on payroll tax liabilities,[190] and another multiracial church filed

180. Interview with Leader 176, at 2–3 (Aug. 24, 2015).

181. *Id.* at 3.

182. *Id.*

183. Interview with Leader 154, at 2, 6 (Apr. 29, 2015). Some Black Churches ended up in Chapter 11 because of problems not stemming from their mortgages or encountered less fraught paths to Chapter 11. *See, e.g.*, Interview with Leader 159, 1–2 (May 7, 2015) (discussing issues with a contractor); Interview with Leader 184, 1–2 (Sept. 3, 2015) (describing how Chapter 11 was useful to deal with disparate bondholders).

184. Interview with Leader 169, at 1 (July 1, 2015).

185. Interview with Attorney 102, at 2–3 (Apr. 1, 2014).

186. Interview with Attorney 139, at 3 (Apr. 30, 2014).

187. Interview with Leader 173, at 2, 4 (Aug. 18, 2015).

188. Interview with Attorney 104, at 1–2 (Apr. 2, 2014).

189. Interview with Attorney 113, at 2–3 (Apr. 14, 2014). Another white church was much larger than most other church debtors; its case resembled a mid-sized business Chapter 11 case. *See* Interview with Attorney 122, at 1–3 (Apr. 22, 2014).

190. Interview with Leader 178, at 1–2 (Aug, 25, 2015).

because of issues with the IRS and a personal property lease.[191] Of course, some white and multiracial churches faced aggressive lenders but these stories stood out as outliers.[192]

Though attorneys' and leaders' impressions and stories do not include those from churches that did not file for bankruptcy,[193] the frequency of their comments that mirror why Blacks pay more across financial transactions provides support for the hypothesis that lenders may have treated similarly situated churches differently during loan origination and modification.

C. Snapshot of Church Lending

Attorneys' and pastors' discussion of particular lenders presents an avenue to assess on a limited basis the actions of financial institutions that lend to churches. They mentioned two lenders with notable specificity, which I call "Lender 1" and "Lender 2" for purposes of anonymity. These two lenders are among the banks and other institutions that provide financing to churches nationwide. Considered together, these two lenders made loans to 9% of the religious organizations that filed during the study timeframe.[194]

A snapshot of these two lenders' extensions of credit to churches shows that they made loans to churches with a variety of demographics, and not primarily to Black Churches. Of the ten "hot" districts which cumulatively oversaw more than 50% of the religious organization Chapter 11 cases during the study timeframe,[195] counties in the Middle and Southern Districts of Florida have the most accessible real property records.[196] To take a snapshot of lending, I searched the real property records in counties in the Middle and Southern District of Florida by the two grantees.

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191. Interview with Leader 168, at 1–3 (July 1, 2015).

192. *See* Interview with Leader 174, at 7 (Aug. 21, 2015) (describing a Canadian bank as "ruthless" and "un-Christian"); Interview with Leader 166, at 4 (June 23, 2015) (describing how a bank's employees seemed to have "a personal vendetta" against the church).

193. *See supra* note 10 and accompanying text.

194. Lender 1 extended credit to 32 (5.4%) of the 589 religious organization debtors that filed schedules. *See also supra* note 178. Lender 2 extended credit to 23 (3.9%) of the 589 religious organization debtors that filed schedules. Lender 1 extended credit to 29 unique debtors, and Lender 2 extended credit to 21 unique debtors.

195. *See supra* Figure 1, notes 32–33, and accompanying text.

196. For each district, all but one county's records are online and searchable for free. *See* FLORIDA PUBLIC RECORDS DIRECTORY, http://publicrecords.onlinesearches.com/Florida.htm [https://perma.cc/2JRH-B479]. I took a snapshot of lending in two "hot" districts to test whether financial institutions are lending to Black Churches more frequently than to churches with other membership demographics. *See infra* Part V.D.

As of March 2015, Lender 1 had loans outstanding to thirty churches in the Middle District of Florida and seven churches in the Southern District of Florida. As of March 2015, Lender 2 had loans outstanding to twenty-three churches in the Middle District of Florida and eight churches in the Southern District of Florida.[197] As compared in Table 6, the relative membership demographics of these churches broadly reflect the demographics of the populations in these two districts.[198]

Table 6: Demographics of Churches Extended Credit Versus Middle and Southern District of Florida Population

	Lender 1		Lender 2		Lenders 1 + 2	Population	
	N	%	N	%	%	N	%
White	20	54.1	6	19.4	38.2	9,262,117	54.3
Black	10	27.0	10	32.3	29.4	2,795,616	16.4
Latino	1	2.7	9	29.0	14.7	4,301,164	25.2
Asian	1	2.7	0	0.0	1.5	459,773	2.7
Other	2	5.4	1	3.2	4.4	244,386	1.4
Unclear	3	8.1	5	16.1	11.8	0	0.0
TOTAL	37	100.0	31	100.0	100.0	17,063,056	100.0

The churches with unclear demographics likely account for some of the disparity between the white population in these two districts and the percentage of churches with predominately white membership among these lenders' debtors.[199] The disparity between Lender 1's and Lender 2's loans to churches with Latino membership almost certainly stems from Lender's affiliation with a denomination that has a significant Latino membership. In addition, these two lenders simply may tend to lend to churches with particular demographics because of word of mouth, among other reasons. Overall, though both lenders extended loans to more churches with predominately Black membership than the percentage of Blacks living in those two districts, they both provided funding to more churches with mainly white membership than Black Churches.

Despite extending funds to a variety of churches, both lenders mostly appeared in Chapter 11 cases filed by Black Churches. Of

197. I searched real property records on March 16, 2015, and March 22, 2015.

198. To identify membership demographics, I relied on pictures online. If I found pictures of service attendees or of multiple pastors or leaders, all seemingly of a particular demographic, I so categorized the church. Population demographics are from the 2013 Census, *supra* note 23. The "Other" category includes multiracial churches and people not of white, Black, Latino, or Asian descent.

199. As with religious organization Chapter 11 debtors, I was conservative in categorization. *See supra* note 42.

the twenty-nine churches that received credit from Lender 1 that filed during the study timeframe,[200] twenty-one (72%) were Black Churches. Another was a Latino church, and only one church clearly had a majority of white members.[201] Lender 1 was the only creditor secured by real property in twenty-two (76%) of its debtors' cases.[202] Being the debtor's sole creditor secured by the building that was the debtor's largest financial consternation and the property that the debtor most wanted to keep most likely provided Lender 1 with significant leverage over the debtors prior to their Chapter 11 filings.[203]

Similarly, of the twenty-one churches that received loans from Lender 2 that filed during the study timeframe,[204] all but one (95%) were Black Churches. Lender 2 was the only creditor secured by real property in eighteen (86%) of its debtors' cases.[205] Lender 2 thus also seemingly had leverage over its debtors prior to their filings.

This snapshot suggests that two of the largest organizations that provide loans to churches lend to a variety of churches, yet may deal with Black Churches in ways that lead them to file under Chapter 11 in numbers disproportionate to their incidence in the church population. Though the universe of churches to which these two lenders have extended loans necessarily will face differing financial situations, given that these lenders are filling niche lending markets, the variation should not be so great that seemingly only their Black Church clients face circumstances that lead them to request loan modifications and similar accommodations from their lenders. Something else is driving Black Churches into Chapter 11. These case studies add support to interviewed attorneys' and leaders' comments suggesting that church lenders' actions during loan origination and modification plays a part.

D. Consequences of Black Churches Paying More

The result is that Black Churches spent more time and effort to attain loan modifications.[206] Along with paying attorneys and

200. *See supra* note 194.

201. Six churches had unclear membership demographics. *See supra* note 38.

202. Lender 1 was one of two creditors secured by the debtor's real property in five cases, and one of three creditors secured by the debtor's real property in two cases.

203. *See* Foohey, *Secured Credit*, *supra* note 6, at 53–54 (discussing the power of creditors secured by almost all of a debtor's assets); *supra* note 6 and accompanying text.

204. *See supra* note 194.

205. Lender 2 was one of two creditors secured by the debtor's real property in two cases, and one of three creditors secured by the debtor's real property in one case.

206. *See supra* notes 134–35 and accompanying text (discussing the outcomes of religious organization Chapter 11 cases).

fees and spending time meeting technical requirements,[207] leaders had to manage the emotional repercussions of their churches' Chapter 11 cases. Leaders themselves felt ashamed of having to place their churches in bankruptcy.[208] They mentioned how Chapter 11 was "a big black box," which meant they relied on their bankruptcy attorneys, which in turn sometimes "create[d] a lot of anxiety."[209] One pastor discussed not understanding why the church had to open new bank accounts, and the indignity of having to go through court security over and over: "I felt like I have to go to jail or something."[210] Another pastor spoke of the "leg work, information, questioning" that went with the church's Chapter 11 case, stating, "I might even call it interrogation."[211]

The Chapter 11 cases likewise impacted congregants, who required leaders to spend time helping members understand why filing was necessary. A pastor explained, "from a culture standpoint, internally, . . . to the church psyche, it's not good. It's just not good. . . . You don't [file for bankruptcy]."[212] Another pastor similarly summed up: "Because people are affected by what other people say and as try as you may not to let it get spread about what's going on, people find out and then—what's wrong with you all, your church, your pastor. So I wouldn't want to have them go through [bankruptcy] again."[213] In short, Black Churches paid more—monetarily, time-wise, and emotionally—to be forgiven.

V. EXPLAINING THE PHENOMENON: REJECTING OTHER REASONS

Having identified the actions of churches' creditors as one potential reason for the high percentage of Black Churches in Chapter 11, this Part raises and rejects other reasons to explain the disparity. Data limitations prevent sophisticated statistical analysis. No source tracks congregations by membership demographics, and the one source that tracks membership by demographics does not disaggregate the data by geographic region.[214] In addition, a sizable

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207. *See supra* notes 66–70 and accompanying text.

208. *See* Foohey, *When Faith Falls Short*, *supra* note 8, at 1352–55 (discussing leaders' statements about stigma and shame).

209. Interview with Leader 56, at 8 (May 10, 2013).

210. Interview with Leader 58, at 6–7 (July 17, 2013).

211. Interview with Leader 180, at 6 (Aug. 27, 2015).

212. Interview with Leader 56, at 9 (May 10, 2013).

213. Interview with Leader 54, at 5 (May 1, 2013).

214. The 2010 Religious Congregation and Membership Study tracks congregations by denomination and is disaggregated by county and metropolitan area. *See U.S. Congregational Membership: Reports*, ASS'N RELIGIOUS DATA ARCHIVES (2010), http://www.thearda.com/RCMS2010/ [https://perma.cc/YW3V-7G5A]; *see also supra* note 22 and accompanying text. The U.S. Religious Landscape Survey tracks nationwide

minority of religious organization debtors did not file information with the bankruptcy courts that specified denomination and congregation demographics. Many of these churches were not locatable through Internet searches, or only their denomination was evident,[215] leaving the debtors categorized as "unclear" as to denomination and demographics.[216] Even so, a less refined comparison of churches in Chapter 11 to churches across America shows that often posited reasons why Black Churches in particular seek to reorganize, considered alone or combined, do not seem to explain Black Churches' prevalence in Chapter 11.

A. Denomination

Many of the religious organization debtors were non-denominational and congregationalist churches.[217] These churches' lack of affiliations with denominations that operate with more structured governance,[218] and the associated potential ability to assist member churches when financial problems arise,[219] may have left these churches with nowhere to turn but Chapter 11 when their efforts to deal with the financial issues on their own failed.[220] Similarly, when these churches initially sought funds to purchase or renovate their buildings, they almost necessarily had to look to external sources, such as banks.[221] Interviewed attorneys identified the independent nature of the

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membership in specific denominations by demographics and income. *See Religious Landscape Study*, PEW RES. CTR., http://religions.pewforum.org/ [https://perma.cc/H5MR-JFAM]; *see also supra* note 22 and accompanying text.

215. *See supra* notes 38, 43.

216. *See supra* Tables 1 & 2.

217. *See supra* Table 1, note 38 and accompanying text.

218. *See supra* note 38 and accompanying text.

219. *See* NANCY TATOM AMMERMAN, PILLARS OF FAITH: AMERICAN CONGREGATIONS AND THEIR PARTNERS 100, 101 tbl.7 (2005) (identifying Mainline Protestant and Catholic & Orthodox congregations as most likely to receive financial support from their denominations).

220. *See supra* note 65 and accompanying text.

221. The founder of Foundation Capital Resources, a nationwide lender to churches, noted "that the approximately 400 active church denomination foundations in this country can only make loans within their denominations, and they are also often limited to $1 million or $2 million for a loan." *Churches Turn to Foundation Capital Resources for Big Money*, MISS. BUS. J. (June 20, 2005), http://msbusiness.com/2005/06/churches-turn-to-foundation-capital-resources-for-big-money/ [https://perma.cc/GC25-BRUY]. FCR is linked with the Assemblies of God, a Pentecostal denomination. Found. Capital Res., Securities Registration Statement (Form S-11/A) F-60 (Oct. 14, 2003), https://www.sec.gov/Archives/edgar/data/1126506/000090572903000350/fcrs11a_101403.htm [https://perma.cc/PD5C-8REX].The Assemblies of God's website explains, "Each church is sovereign in the choice of pastor, owning and holding property, . . . and voluntary participation in denominational programs." *The Assemblies of God*, ASSEMBLIES OF GOD (Nov. 19, 2009, 4:41 PM), http://ag.org/top/Press/organization.cfm [https://perma.cc/A5S8-JP69].

majority of their religious organization debtor clients as one of the primary reasons why they thought these churches relied on bankruptcy to help with their financial problems.[222]

Non-denominational and congregationalist churches also attract more diverse members.[223] Black Churches may appear more disproportionately in Chapter 11 because of their affiliations or lack of affiliation. That their membership is predominately Black thus may be coincidental. However, data regarding church demographics contradict this explanation.

Focusing on non-denominational churches, 11% of non-denominational congregations have predominately Black membership.[224] In contrast, nearly 80% of the religious organization debtors that operated non-denominational churches had predominately Black membership.[225] Considering that non-denominational churches comprise 11% of Christian congregations nationwide,[226] around 1% of churches nationwide likely are non-denominational Black Churches. Again in contrast, at the very least, 31% of the Christian churches that filed under Chapter 11 during the study timeframe were non-denominational Black Churches.[227]

Of congregationalist denominations, those with more than a small minority of Black adherents are historically Black Churches.[228] For instance, Blacks comprise 29% of Baptists nationwide, but when Baptists are separated according to evangelical, mainline, and historically Black traditions, it

222. *See* Foohey, *When Churches Reorganize*, *supra* note 29, at 285–86 (summarizing why attorneys thought that non-denominational and congregational churches' autonomy often resulted in the churches' need to turn to Chapter 11).

223. *See* Scott Thumma, *What God Makes Free Is Free Indeed: Nondenominational Church Identity and Its Networks of Support*, HARTFORD INST. FOR RELIGION RES. (Oct. 1999), http://hirr.hartsem.edu/bookshelf/thumma_article5.html [https://perma.cc/9PHD-8KJ2] (noting that non-denominational churches have more racially diverse congregations than denominationally-aligned congregations).

224. *See* Scott Thumma, *2010 Survey of Independent & Nondenominational Churches*, HARTFORD INST. FOR RELIGION RES. 2 (2010), http://hirr.hartsem.edu/cong/2010-Survey-Independent-Nondenominational-Churches.pdf [https://perma.cc/Z6ZA-74EH]. Data regarding non-denominational congregations comes from a 2010 survey by Faith Communities Today and other data from the Hartford Institute for Religious Research. *See id.*; FAITH COMMUNITIES TODAY, http://faithcommunitiestoday.org/fact-2010 [https://perma.cc/A3EQ-HE8D].

225. 194 of the 243 non-denominational Christian congregation debtors had predominately Black membership. *Supra* Table 1.

226. *See id.*

227. 194 of the 625 Christian churches were non-denominational Black Churches. *Id.* This is a conservative estimate. *See supra* notes 38, 43.

228. *See America's Changing Religious Landscape*, PEW RES. CTR. 124 (May 12, 2015), http://assets.pewresearch.org/wp-content/uploads/sites/11/2015/05/RLS-08-26-full-report.pdf [https://perma.cc/G5QZ-XEAC]. Because of data limitations, in some instances I compare congregants rather than congregations.

becomes clear that most Black Baptists worship at historically Black Churches: 5% of Baptists from the evangelical traditions are Black, 3% of Baptists from the mainline traditions are Black, and 97% of Baptists from the historically Black tradition are Black.[229] Methodist and Pentecostal churches have similar divergences among Black and white adherents.[230] The population of congregationalist Black Churches among Chapter 11 debtors noticeably diverges from the population of Black congregational churches nationwide.

B. Combination of Location and Denomination

Adding debtors' geographic location to the analysis may explain the over-representation of Black Churches in Chapter 11. Non-denominational churches are more prevalent in the South, and in smaller cities and towns.[231] Congregationalist churches likewise appear more often in the South.[232]

Many of the churches that filed during the study timeframe were located in the South.[233] The majority of the United States' Black population also lives in the South.[234] The combination of the most prevalent Christian denominations and racial demographics of these regions simply may mean that these regions are home to more Black Churches. But a comparison of the percentage of Black Churches among all religious congregation debtors in the regions where large numbers of churches filed to the percentages of Black Churches among all congregations in these areas does not seem to explain the preponderance of Black Churches in Chapter 11.

Ten judicial districts received 50% of the religious organization filings during the study timeframe.[235] The Northern District of Georgia alone received 10% of total filings.[236] Because this district received a critical mass of filings for a fuller analysis,

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229. *Id.* at 123.

230. *Id.*

231. 44% of all non-denominational churches are located in the South. Thumma, *supra* note 224, at 1. 31% of non-denominational churches are located in areas with less than 10,000 residents; 24% are located in areas of less than 50,000 residents. *Id.*

232. The Association of Statisticians of American Religious Bodies (ASARB) published a map which details the largest religious groups in each county. *See Maps and Charts for 2010*, U.S. RELIGION CENSUS (2010), http://www.rcms2010.org/maps2010.php?sel_denom=1999&sel_map%5B%5D=12&confirm=confirm [https://perma.cc/28XW-3C6H].

233. *See supra* Figure 1.

234. *See* Sonya Rastogi et al., *The Black Population: 2010*, U.S. CENSUS BUREAU 7 (Sept. 2011), http://www.census.gov/prod/cen2010/briefs/c2010br-06.pdf [https://perma.cc/AF3N-ZR2S] ("According to the 2010 Census, of all respondents who reported Black alone-or-in-combination, 55% lived in the South, 18% in the Midwest, 17% in the Northeast, and 10% in the West.").

235. *See supra* note 32 and accompanying text.

236. *See supra* note 33 and accompanying text.

I discuss it in detail as a case study. A less extensive analysis of filings in other districts and general comments follow.

1. Northern District of Georgia. Table 7 compares the denomination and demographics of the sixty-seven religious congregations that filed under Chapter 11 in the Northern District of Georgia to congregations in that district.[237] As summarized at the bottom of Table 7, 63% of the debtors had predominately Black membership. It is highly unlikely that 63% of similar churches in the district are Black Churches.[238]

Table 7: Affiliations and Demographics of Debtors Operating Places of Worship Versus Congregations in N.D. Georgia

	Debtors			Congregations	
	N Black	N Other	Total %	N	%
Nondenominational	28	2	44.8	814	13.7
Baptist—Generic	2	3	7.5	1,795	30.2
Missionary Baptist	1	0	1.5	17	0.3
Church of God in Christ	8	0	11.9	56	0.9
Apostolic	0	1	1.5	13	0.2
Pentecostal—Generic	1	0	1.5	184	3.1
Churches of Christ	1	0	1.5	226	3.8
United Methodist	1	1	3.0	689	11.6
Orthodox	0	1	1.5	32	0.5
Episcopal	0	1	1.5	71	1.2
Non-Christian	0	1	1.5	189	3.2
Unclear	0	15	22.4	0	0.0
Other Historically Black	0	0	0.0	293	4.9
Other	0	0	0.0	1,568	26.4
TOTAL	42	25	100.0	5,947	100.0
(Demographic %)	(62.7%)	(37.3%)			

237. Table 7 includes every denomination with at least one affiliated debtor. "Other" includes debtors with unidentifiable demographics. Congregation data are from the 2010 Religious Congregations and Membership Study. *See U.S. Congregational Membership: Reports*, *supra* note 22.

238. Only if every nondenominational, Baptist, Apostolic, Churches of Christ, other Pentecostal, and historically Black Church in the district were assumed to have predominately Black membership would the percentage of Black Churches in the district equal the percentage of Black Church debtors that filed during the study timeframe. *See U.S. Congregational Membership: Reports*, *supra* note 22.

The racial demographics of the Northern District of Georgia further suggest that Black Churches filed at a higher incidence than they appear in the relevant population. Focusing solely on those counties within the Northern District of Georgia where church debtors were located,[239] 37% of the population is Black.[240] Black Churches seemingly filed 1.7 times as often as they appeared in the counties where they operated.[241]

Drilling down to the city level, thirteen of the churches that filed under Chapter 11 during the study timeframe were located near Atlanta,[242] which has a population that is 54% Black.[243] All thirteen churches were Black Churches. Though most of these thirteen churches were located in zip codes with predominately Black populations, ranging from 70% up to 95% Black,[244] neighborhoods outside Atlanta with significantly smaller Black populations still sent only Black Churches to Chapter 11.[245] Also, once the analysis became as granular as comparing at the zip code level, most of the churches necessarily were located in predominately Black neighborhoods given that people generally live and worship segregated by race.[246]

239. The Northern District of Georgia includes 46 counties. *See* Northern District of Georgia Area of Service, U.S. MARSHAL SERVICE, https://www.usmarshals.gov/district/ga-n/ [https://perma.cc/4E9X-ZMPA]. Religious organizations that filed under Chapter 11 during the study timeframe were from 12 of those counties.

240. The total population of these twelve counties in 2013 was 4,363,768. *QuickFacts: United States*, *supra* note 23. 1,630,818 identified as Black or African American. *Id.*

241. This calculation uses population demographics as a proxy for congregation demographics. The exact proportion of Black Churches among all congregations in these counties thus may be higher or lower than 37%.

242. This calculation excludes one debtor from Atlanta that most likely did not operate a place of worship, but nonetheless is included in the larger analysis.

243. *QuickFacts: Atlanta City, Georgia*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/table/PST045215/1304000 [https://perma.cc/4EYS-GLMW].

244. Demographics based on zip code are from Zip Atlas. The Atlanta zip codes are 30310, 30315, 30331, 30349, and 30354. *See Percentage of Blacks (African Americans) in Atlanta, GA by Zip Code*, ZIP ATLAS, http://zipatlas.com/us/ga/atlanta/zip-code-comparison/percentage-black-population.htm [https://perma.cc/FF2H-GEZH].

245. For example, three non-denominational churches from Marietta, a larger town twenty miles northwest of Atlanta, filed during the study timeframe. All three churches had predominately Black congregations, though Marietta's population is 17% Black. *See Marietta, Georgia Zip Code Map & Detailed Profile*, ZIP ATLAS, http://zipatlas.com/us/ga/marietta.htm#race-distribution [https://perma.cc/2CSX-HA8T].

246. *See* Jacob S. Rugh & Douglas S. Massey, *Racial Segregation and the American Foreclosure Crisis*, 75 AM. SOC. REV. 629, 630–31 (2010) (detailing the persistent racial segregation of American neighborhoods); Michael Lipka, *Many U.S. Congregations Are Still Racially Segregated, but Things Are Changing*, PEW RES. CTR. (Dec. 8, 2014), http://www.pewresearch.org/fact-tank/2014/12/08/many-u-s-congregations-are-still-racially-segregated-but-things-are-changing-2/# [https://perma.cc/5QH6-94HP] (noting that 80% of Americans attend services at congregations where a single racial or ethnic group comprises 80% of the membership).

In addition, considering only the Northern District of Georgia's filings, the disparity between the percentages of historically Black Churches that filed under Chapter 11 and of historically Black Churches nationwide remained constant.[247] 15% of the religious organization debtors from the Northern District of Georgia were historically Black Churches, as compared to 6% of total congregations in the district that are affiliated with historically Black denominations.[248] In sum, based on the Northern District of Georgia, religious organizations' Chapter 11 filings do not seem to be an artifact of the location and denomination of the debtors.

2. Other "Hot" Districts. Analyses of the nine other "hot" Chapter 11 filing districts similarly show that the over-representation of Black Churches in bankruptcy persists even in the areas where they file most often. The Middle District of Florida received the second highest percentage of filings during the study timeframe.[249] Black Churches filed over 50% of those cases.[250] In contrast, the population of the counties in the district from which the church debtors hailed is 15% Black.[251] Likewise, 14% of the churches that filed in the district were historically Black Churches.[252] Historically Black Churches comprise 6% of the congregations located in the district.[253]

The disparity persists at the individual county level. Congregations located in Orange County (which includes the city of Orlando) filed twelve of the fifty cases. Two-thirds of these debtors were Black Churches. The population of Orange County is 22% Black.[254]

Disparities similarly emerge from the analysis of the Central District of California, which received 6% of total filings during the

247. *See supra* notes 42–43 and accompanying text.

248. *See supra* Table 7; *see also supra* note 41 (stating which denominations are historically Black).

249. *See supra* note 33 and accompanying text.

250. 26 of the 50 debtors were Black Churches.

251. 15 of the Middle District of Florida's 35 counties received filings during the study timeframe. *See Federal Judicial Districts of Florida*, U.S. DIST. CT. SO. DIST. FLA., http://www.flsd.uscourts.gov/?page_id=7850 [https://perma.cc/L8AF-GRNH]. The population of these counties in 2013 was 8,581,415, and 1,298,706 identified as Black or African American. *QuickFacts: Florida*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/table/PST045216/12 [https://perma.cc/NPT4-XHAU].

252. 2 debtors were COGIC and 5 were Missionary Baptist.

253. *See U.S. Congregational Membership: Reports*, *supra* note 22.

254. *QuickFacts: Orange County, Florida*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/table/PST045216/12095 [https://perma.cc/396P-H3LQ].

study timeframe.[255] Black Churches accounted for 69% of the filings in the Central District of California, with churches affiliated with the COGIC denomination alone filing eleven cases, which constituted 28% of the filings.[256] Focusing only on those counties in the district that received filings from COGIC churches, 2% of the congregations are COGIC.[257]

Likewise, twelve of the debtors came from Los Angeles. Ten of the debtors were Black Churches. The zip codes where these ten churches were located have Black populations ranging from 6% to 78% of residents.[258] The same holds true for other judicial districts and major metropolitan areas where religious organizations filed a relatively large number of cases during the study timeframe.[259] Black Churches' Chapter 11 filings seem geographically sporadic.

3. Black Churches from White Districts. Black Churches that filed Chapter 11 also hailed from areas with heavily white populations and with a mix of churches that included fewer non-denominational and congregationalist churches than the ten "hot" districts. For instance, four churches from the Western District of Oklahoma filed during the study timeframe. They were all Black Churches. Oklahoma's population is 7% Black.[260] The largest city in the district, Oklahoma City, where three of these debtors came from, has a 15% Black population.[261]

The reverse of the observation that mainly white districts often send only Black Churches to Chapter 11—that relatively few

255. *See supra* note 33 and accompanying text.

256. 27 of the 39 debtors were Black Churches, 11 of which were COGIC.

257. The counties are Los Angeles, Riverside, and San Bernardino. *U.S. Congregational Membership: Reports*, *supra* note 22.

258. The Los Angeles zip codes are 90003, 90007, 90008, 90019, 90047, 90057, 90061, and 90062. *See Zip Codes with the Highest Percentage of Blacks (African Americans) in California*, ZIP ATLAS, http://zipatlas.com/us/ca/zip-code-comparison/percentage-black-population.htm [https://perma.cc/W5GL-VKZD].

259. For example, Houston has a large Hispanic population—44% of residents. 2013 Census, *supra* note 23. *QuickFacts: Houston City, Texas*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/table/PST045216/4835000 [https://perma.cc/7QVH-R6TS] (Mar. 25, 2017). 24% of Houston's residents are Black. *Id.* Yet of the 9 churches from Houston that filed during the study timeframe, 7 were Black Churches. Likewise, the Western District of Tennessee received 29 cases filed by places of worship. All but one debtor was located within the Memphis city limits. Of the 29 debtors, 25 (86%) were Black Churches. Memphis's residents are 63% Black. *QuickFacts: Memphis City, Tennessee*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/table/PST045216/4748000,4835000 [https://perma.cc/4WXM-74UQ].

260. *QuickFacts: Oklahoma*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/table/PST045216/40,4748000,4835000 [https://perma.cc/4GT3-XJGS].

261. *QuickFacts: Oklahoma City, Oklahoma*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/table/PST045216/4055000,40,4748000,4835000 [https://perma.cc/JA68-8X2D]. As another example, nine churches filed in the Southern District of Indiana during the

Black Churches from areas with similar disparities in racial and denominational demographics as the "hot" districts file—also holds true. For example, Birmingham, Alabama, and Jackson, Mississippi are home to some of the largest Black populations in the United States.[262] Their residents also tend to worship at historically Black Churches and Baptist-affiliated churches more so than in other areas of the country.[263] If churches were filing under Chapter 11 because of a combination of demographics and denomination, Black Church filings should be prevalent in these districts. But the county containing Birmingham received one filing from a religious organization during the study timeframe.[264] Mississippi received two filings, both of Black Churches, during the study timeframe.[265] Both debtors came from areas with majority white populations.[266]

Overall, Black Church debtors hailed from districts across the country, including those with predominately white populations.[267]

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study timeframe. Seven of the debtors had predominately Black membership. The Black Church debtors came from cities (Anderson, Indianapolis, and Westfield) with Black populations ranging from 2% to 28%. *QuickFacts: Anderson, Indiana*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/table/PST045216/1801468,1836003,00 [https://perma.cc/28G7-BT5F]; *QuickFacts: Indianapolis, Indiana*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/table/PST045216/1836003,00 [https://perma.cc/4K72-EWNJ]; *QuickFacts: Anderson, Indiana*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/table/PST045216/1882700,1801468,1836003,00 [https://perma.cc/68HN-57DU].

262. Birmingham's population is 73.4% Black; Jackson's population is 79.4% Black. *QuickFacts: Birmingham, Alabama*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/table/PST045216/0107000,1882700,1801468,1836003,00 [https://perma.cc/FDY9-BCM3]; *QuickFacts: Jackson City, Mississippi*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/table/PST045216/2836000,0107000,1882700,1801468,1836003,00 [https://perma.cc/N9UN-QE3T].

263. Historically Black Churches account for 14% of the religious organizations in the Birmingham metro area and 18% in the Jackson metro area. Baptist-affiliated churches, excluding those from historically Black denominations account for 41% of the religious organizations in the Birmingham area and 33.5% in the Jackson area. *See Birmingham-Hoover, AL Metro-Area Membership Report*, ASS'N RELIGIOUS DATA ARCHIVES (2010), http://www.thearda.com/rcms2010/r/m/13820/rcms2010_13820_metro_name_2010.asp [https://perma.cc/BCE7-AGZJ]; *Jackson, MS Metro-Area Membership Report*, ASS'N RELIGIOUS DATA ARCHIVES (2010), http://www.thearda.com/rcms2010/r/m/27140/rcms2010_27140_metro_name_2010.asp [https://perma.cc/ZS8K-RZV6]; *supra* Table 1.

264. Voluntary Petition, *In re* New Generation Christian Ministry Church, Inc., No. 08-04630-TOM11 (Bankr. N.D. Ala. Sept. 18, 2008).

265. Voluntary Petition, *In re* New Beginning Outreach Ministries, Inc., No. 12-14313 (Bankr. N.D. Miss. Oct. 10, 2012); Voluntary Petition, *In re* Hillside Baptist Church, Inc., No. 09-51541 (Bankr. S.D. Miss. July 22, 2009).

266. One debtor came from Harrison County, which has a 22.1% Black population. *QuickFacts: Harrison County, Mississippi*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/table/PST045216/28047,00 [https://perma.cc/GDB4-ZT6V]. The other debtor came from Grenada County, which has 41.7% Black population. *QuickFacts: Grenada County, Mississippi*, U.S. CENSUS BUREAU, https://www.census.gov/quickfacts/table/PST045216/28043,28047,00#headnote-js-a [https://perma.cc/XYR9-2PTV].

267. This in further evident in that 65% of the religious organizations that filed in the

The location of the debtors, even when combined with denomination, does not seem to explain the preponderance of Black Churches in Chapter 11. Other factors must have contributed to these churches' heightened tendency to seek to reorganize.

C. Congregants' Financial Resources

Another reason for Black Churches' over-representation in Chapter 11 is that their members have less income and wealth than the members of churches with other demographics. Many of the churches that filed for bankruptcy cited the 2008 economic downturn as the main reason why they could not meet their financial obligations.[268] Socioeconomics also divide churches across the United States.[269] Some denominations' adherents are better off financially, both in terms of yearly income and accumulated wealth.[270] Because churches' revenue mostly comes from donations from congregants, if members make little money, they will be less able to contribute to their churches, particularly during economic crises.[271] Likewise, if a church's members own few assets (and thus have little wealth), if that church encounters severe financial problems, it is less likely that there will be a member (or a few members) ready and able to contribute a sufficiently large sum of money to rescue the church.

Given that Blacks are socio-economically disadvantaged and tend to worship together,[272] Black Churches logically may be more

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ten "hot" districts were Black Churches.

268. Foohey, *Bankrupting the Faith*, *supra* note 9, at 757–58.

269. *See* Ralph E. Pyle, *Trends in Religious Stratification: Have Religious Group Socioeconomic Distinctions Declined in Recent Decades?*, 67 SOC. RELIGION 61, 67 (2006) (concluding that the socio-economic stratification of religious groups did not decline significantly from 1972–2000); Christian Smith & Robert Faris, *Socioeconomic Inequality in the American Religious System: An Update and Assessment*, 44 J. SCI. STUD. RELIGION 95, 96 (2005) ("The system of socioeconomic inequality that characterized American religion at the end of the 20th century reflects a high degree of stability in reproducing itself over the years . . . .").

270. *See* Evelyn L. Lehrer, *Religion As a Determinant of Economic and Demographic Behavior in the United States*, 30 POPULATION & DEV. REV. 707, 714–17 (2004) [hereinafter Lehrer, *Religion as Economic Determinant*] (discussing studies); Evelyn L. Lehrer, *Religion As a Determinant of Educational Attainment: An Economic Perspective*, 28 SOC. SCI. RES. 358, 374 (1999) (finding that educational attainment is highest among adherents to Judaism and lowest among fundamentalist Protestants, with Catholics' and mainline Protestants' educational attainment in the middle); Sam Reimer, *Class and Congregations: Class and Religious Affiliation at the Congregational Level of Analysis*, 46 J. SCI. STUD. RELIGION 583, 588–90 (2007) (analyzing class effects at the congregational level); Smith & Faris, *supra* note 269, at 96–102 (tracking educational, income, and status stratification by religious groups).

271. *When Churches Reorganize*, *supra* note 29, at 296–97 & n.133.

272. *See* Rakesh Kochhar & Richard Fry, *Wealth Inequality Has Widened Along Racial,*

susceptible to experiencing financial distress when their members face financial distress themselves. However, churches with primarily white congregations are socio-economically stratified[273] and thus also are susceptible to their members' financial circumstances. Data regarding the incomes of churchgoers across congregationalist Christian denominations show that Black Churches' members are not alone in making little money, though historically Black denominations' members are less well off as compared to congregationalist churches with predominately white membership.[274] Indeed, assuming a linear relationship between a congregation's financial resources and bankruptcy filings, the ratio of the median income of Black households to non-Hispanic white households and the ratio of the percentage of members of predominately Black congregations to predominately white congregations who make below $30,000 per year, suggest that Black Churches should file under Chapter 11 about twice as often as churches with other demographics, not fifteen times.[275]

The relative economic disadvantage of Black churchgoers may explain in part why churches with predominately Black membership file under Chapter 11 more so than other churches. However, the size of the disparity in the numbers of Black

Ethnic Lines Since End of Great Recession, PEW RES. CTR. (Dec. 12, 2014), http://www.pewresearch.org/fact-tank/2014/12/12/racial-wealth-gaps-great-recession/ [https://perma.cc/B7YS-ZZMS] ("The wealth of white households was 13 times the median wealth of Black households in 2013, compared with eight times the wealth in 2010 . . . ."); Carmen DeNavas-Walt & Bernadette D. Proctor, *Income and Poverty in the United States: 2013*, U.S. CENSUS BUREAU 7 (2014), http://www.census.gov/content/dam/Census/library/publications/2014/demo/p60-249.pdf [https://perma.cc/3E88-USB4] ("The median income for non-Hispanic White households was $58,270, and it was $34,598 for Black households."); *supra* note 246 and accompanying text.

273. *See* Lehrer, *Religion as Economic Determinant*, *supra* note 270, at 722 (noting that studies of socio-economic stratification across religious groups primarily focus on non-Hispanic whites).

274. PEW FORUM ON RELIGION & PUB. LIFE, U.S. RELIGIOUS LANDSCAPE SURVEY 78–80 (2008), http://www.pewforum.org/files/2013/05/report-religious-landscape-study-full.pdf [https://perma.cc/N9Y2-LKKY]. For instance, based on data from 2008, half of congregants affiliated with historically Black Baptist churches made less than $30,000. *Id.* at 79. A slightly lower 44% of members of Baptist churches from the mainline tradition made less than $30,000. *Id.*

275. The median household income ratio is 1.7 to 1. *See* Walt & Proctor, *supra* note 272, at 7. With respect to the percentage of congregants who make below $30,000 per year, the ratio is 1.14 to 1. *See* PEW FORUM ON RELIGION & PUB. LIFE, *supra* note 274, 137–39. Though these ratios suggest that Black households on average are significantly less well-off than white households, the difference in magnitude as compared to religious congregation Chapter 11 filing ratios suggests that there must be a very strong non-linear effect for the disparity in Black Churches' filings to be explained fully by income. Of course, income data cannot account for the possibility that individual members of white churches are more likely to have sufficient wealth to rescue their congregations from financial troubles.

Churches that sought to reorganize as compared to their incidence in the population of congregations suggests that congregant income and wealth alone may not fully explain the disparity. There are thousands of similar congregations with predominately white membership located in equally impoverished areas across the United States that did file Chapter 11.[276]

D. Church Finances

Black Churches may finance the purchase, building, or renovation of their buildings with loans much more frequently than churches with other membership demographics. If Black Churches turn to secured lending more often than other churches, then they would appear more often among religious organization debtors. Unfortunately, reasonably accessible data regarding nationwide lending to religious organizations is not available.

Given that religious organization debtors' debts primarily are secured by their buildings,[277] real property records may be the most reliable method to assess which churches deal with banks and other lending institutions to finance their properties. These records should contain information regarding the financing of the properties. An accurate comparison of churches in Chapter 11 to churches in the population overall thus would require a comprehensive list of all churches in a specific area. However, churches are difficult to locate and no source lists all the religious organizations operating nationwide or in specific areas.[278] In addition, though some counties maintain searchable real property

276. One study found that class effects are stronger at the congregational level, and that the location of the congregation plays a key role in the socio-economic status of members. *See* Reimer, *supra* note 270, at 590–91. A corollary reason for the predominance of Black Churches in Chapter 11 may be that these churches were located in areas that experienced population shifts, making them more susceptible to economic fluctuations or decreasing membership. Population shifts are location specific. This explanation thus should be rejected for the same reasons that members' incomes as driving the predominance of Black Churches in Chapter 11 should be rejected.

277. *See supra* notes 63–64 and accompanying text.

278. One potential place to look for a list of all religious organizations is the IRS. However, the IRS often automatically grants religious organizations tax-exempt status, and does not require churches and certain other faith-based institutions to file tax returns. *See* IRS, PUBLICATION 1828 (REV. 8-2015), TAX GUIDE FOR CHURCHES AND RELIGIOUS ORGANIZATIONS 3, 22 (2015), https://www.irs.gov/pub/irs-pdf/p1828.pdf [https://perma.cc/7U4C-7EGE]. The ASARB's studies are the most comprehensive sources of religious organizations, but they do not contain lists of the names of religious organizations. *See U.S. Congregational Membership: Reports*, *supra* note 22. Remaining sources are the White or Yellow Pages, which may contain non-random gaps in listings, and the use of which would require manual compilation of a church list.

records online, counties in many states do not provide online access to these records.[279] The logistics of this analysis make it infeasible at this time.

Nonetheless, a number of nationwide lending institutions appeared as secured creditors in a sizable portion of the religious organizations' Chapter 11 cases. This presents an opportunity to analyze some of these lenders' loans. As detailed in the previous part, a Middle and Southern District of Florida specific snapshot of two lenders reveals that they extend credit to a mix of churches based on members' demographics.[280]

This snapshot suggests that financial institutions are not lending to Black Churches significantly more frequently than to churches with different demographics. Indeed, these two institutions' most common debtors were white churches.[281] A variety of churches seem to finance the purchase, building, or renovation of their buildings with loans.

E. Internal Governance

Despite data limitations, it is possible to roughly compare churches in Chapter 11 to churches across the country based on denomination, location, and membership income and wealth. Likewise, the snapshot of two financial institutions' loans presented above suggests that a variety of churches turn to lenders for funds. Other potential explanations for why Black Churches in particular file under Chapter 11 that are harder to analyze relate to the beliefs and actions of leaders and members.

First, as raised in the context of consumer bankruptcy filings,[282] one may speculate that leaders and members of Black Churches may view filing under Chapter 11 less negatively than leaders and members of other churches. Other churches may self-select out of Chapter 11, electing to close rather than file. However, the tenets of most religions emphasize the importance of repaying debts and counsel against filing for bankruptcy.[283] Interviewed leaders, almost all of whom were from Black

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279. For instance, ten of the nineteen counties in the Western District of Tennessee do not maintain real property records that are searchable online.

280. *See supra* Part IV.C.

281. *See supra* Table 6.

282. *See* Dickerson, *Racial Steering*, *supra* note 85, at 634–35.

283. *See* Rafael Efrat, *The Moral Appeal of Personal Bankruptcy*, 20 WHITTIER L. REV. 141, 167 (1998) ("Christianity, Islam, Judaism and Hinduism clearly foster in their believers a moral code that emphasizes the importance of debt repayment, and hence, the avoidance of bankruptcy at all costs.").

Churches,[284] and interviewed attorneys confirmed that pastors approached their lenders for assistance prior to filing under Chapter 11, filing only as a last resort.[285] Leaders also expressed stigma and shame related to their decisions to file, saying that bankruptcy was "the end of the world . . . the end of your worthiness."[286] Leaders of Black Churches feel guilty about filing.

Other speculations focus more on the actions of leaders and members. It may be assumed that pastors of Black Churches have a distinct leadership style that may put their churches in greater financial peril. Though little research about leadership styles across denominations exists,[287] attorneys commented that their Black Church clients seemed to give their pastors free reign to manage the congregation.[288] A study regarding churches with smaller membership similarly noted that "black congregations frequently are strongly pastor-centered."[289] The theory seems to be that leaders of pastor-centric churches have more autonomy, which itself could lead to mismanagement.

Relatedly, one may speculate that pastors of Black Churches may have emphasized contributing less than pastors of other churches. Their members thus may have been less prepared to use their own funds to help the congregation, even if they had sufficient funds, rendering these churches more likely to file for bankruptcy. In addition, possibly at the behest of their members, pastors of Black Churches may have used church funds to help congregants and the surrounding community rather than to pay the church's mortgage, even after the church fell behind on its debts.

Along with this premise, one may further speculate that pastors of Black Churches may be less experienced, business savvy, or financially literate as compared to leaders of other churches. One likewise may speculate that leaders of Black Churches may be less likely to have access to financial advisors or lawyers when taking

284. *See supra* Table 5.

285. *See supra* note 132 and accompanying text.

286. Interview with Leader 55, at 5 (May 6, 2013); *see also* Foohey, *When Faith Falls Short*, *supra* note 8, at 1352–55 (discussing stigma and shame).

287. Studies of pastor leadership link problems to church decline in general, or discuss leadership style across types of churches based on the number of members, but do not discuss membership or leader demographics. *See, e.g.*, ALICE MANN, THE IN-BETWEEN CHURCH: NAVIGATING SIZE TRANSITIONS IN CONGREGATIONS (1998); ANTHONY G. PAPPAS, ENTERING THE WORLD OF THE SMALL CHURCH (2000); LYLE E. SCHALLER, A MAINLINE TURNAROUND: STRATEGIES FOR CONGREGATIONS AND DENOMINATIONS (2005).

288. Foohey, *When Churches Reorganize*, *supra* note 29, at 285–87.

289. LYLE E. SCHALLER, THE SMALL CHURCH IS DIFFERENT! 29 (1982). A "small church" is defined as a church with fewer than 100 members. *See Small but Mighty*, U.S. CONGREGATIONAL LIFE SURVEY (2014), http://www.uscongregations.org/blog/2014/02/17/small-but-mighty/ [https://perma.cc/H4MB-FHLF].

out or renegotiating their churches' loans. A similar assertion that Black debtors may be less financially literate and thus more likely to choose to file under the more expensive and time-consuming Chapter 13 was raised (and rejected) in connection with attorneys steering consumer debtors to disparate bankruptcy chapters.[290] Financial literacy is a significant issue, and studies suggest that Blacks are less financially sophisticated than whites, which may lend some credence to the speculation that pastors of Black Churches may behave differently.[291]

These speculations ultimately seem unsatisfactory. Because of the high proportion of Black Churches as compared to other Christian churches that filed for Chapter 11, attorneys interacted with a skewed population of churches, making it unclear whether their observations are generalizable.[292] Smaller churches in general tend to adopt a pastor-centric model.[293] Black Churches are not the only churches with small congregations.[294] Other small churches with different membership demographics may employ a similar leadership structure that allows their pastors to manage the churches in the same dynamic style linked with predominately Black congregations—if these speculations about leaders and members even have a basis in fact.

Pinning the predominance of Black Churches in Chapter 11 on the supposition that pastors of Black Churches merely ask their members for money less often, feel pressured to allocate funds in a certain way, have less experience, are less financially savvy, or do not employ financial advisors when taking out or renegotiating loans also contradicts studies of churches located across the country. These studies find that many churches are adapting to changing economics and membership demands by altering their worshiping style.[295] The average age of pastors of non-denominational churches nationwide is fifty-five years old and the majority has obtained at least a college bachelor's degree.[296]

290. *See* Dickerson, *Racial Steering*, *supra* note 85, at 635–36.

291. *See id.* at 636–37 (discussing financial literacy).

292. *See supra* Table 4.

293. *See* SCHALLER, *supra* note 289, at 29.

294. *See* Small but Mighty, *supra* note 289 (finding that "56 percent of congregations average fewer than 100 people in worship"); *cf.* Foohey, *When Churches Reorganize*, *supra* note 29, at 288 (noting that scholars have suggested that a church's size may limit its sustainability and growth).

295. *See generally* David R. Roozen, *A Decade of Change in American Congregations 2000–2010*, FAITH COMMUNITIES TODAY (2011), http://faithcommunitiestoday.org/sites/default/files/Decade%20of%20Change%20Final_0.pdf [https://perma.cc/7T5C-TDWQ]. *See also* Thumma, *supra* note 224, at 1 (detailing changes in worship style among non-denominational churches from 2005 to 2010).

296. *See* Thumma, *supra* note 224, at 5.

My interviews confirm that there likely are no salient differences between Black Churches' leadership and other similar churches' leadership. Most of the churches represented by interviewed attorneys found their bankruptcy counsel via referrals from their financial advisors or from other pastors and church members.[297] Pastors also spoke of seeking advice about their churches' financial problems from members with professional backgrounds, including attorneys and underwriters,[298] or otherwise having "been in the business world."[299] Further, even if churches with other demographics are more apt to involve financial advisors during their loan negotiations, Black Church leaders' lack of outside assistance most likely would have amplified lenders' biases. This would have led loan officers to charge Black Churches more for loans or not to agree to modifications for the reasons linked with revenue- and cost-based discrimination, and not because Black Churches' finances dictated different terms.[300]

Overall, there is little reason to suspect that pastors of Black Churches are younger, less educated, noticeably less financially literate,[301] or lead their congregations in a style that is markedly dissimilar than other pastors. In the end, these suspicions smack of baseless stereotyping. The question remains, why do Black Churches file under Chapter 11 so often?

F. Racial Exposure and Paternalism

Loan officers' beliefs likewise may be supposed to have contributed to the predominance of Black Churches in Chapter 11. In the context of bankruptcy attorneys seemingly steering consumer debtors, "racial exposure" and paternalism were raised (and rejected) as explanations for the discrepancy.[302] Once analyzed, it becomes clear that these two suppositions relate to loan officers' biases that have the potential to cause discrimination.

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297. Foohey, *When Faith Falls Short*, *supra* note 8, at 1349–52 (discussing how social networking led pastors and other church leaders to their bankruptcy attorneys).

298. *See, e.g.*, Interview with Leader 56, at 3 (May 10, 2013) ("I had a key guy that deals with loss mitigation."); Interview with Leader 52, at 2 (Mar. 17, 2014) ("I have an attorney on my board . . . .").

299. Interview with Leader 58, at 4 (July 17, 2013).

300. *See* Ayres, *supra* note 73, at 842–45.

301. If leaders were noticeably financially illiterate, this illiteracy also most likely would have enhanced lenders' biases. Lenders would have seen pastors from whom they could extract revenue-generating concessions. *See* Dickerson, *Racial Steering*, *supra* note 85, at 636–38 (discussing how financial literacy appears to be less sophisticated for Black consumer debtors than white consumer debtors).

302. *See id.* at 631–33.

First, arguments about racial diversity assume that bias will decrease if people have more contact with people from different racial groups.[303] This outcome is consistent with the intergroup contact theory, which posits that contact between races leads to a reduction in intergroup prejudice.[304] The hypothesis here would be that loan officers' "racial exposure" may have influenced how they viewed Black Churches that requested loan modifications or initially applied for loans.

Thus, analyzing the population demographics in the judicial districts where Black Churches filed under Chapter 11 may explain why so many Black Churches file. However, Black Churches come from across the country, including areas with relatively large Black populations, large Hispanic populations, and predominately white populations.[305] If "racial exposure" was a key factor, Black Churches that filed under Chapter 11 seemingly should have been disbursed differently. Instead, the situations of Black Churches applying for loans or asking for modifications seem more likely to elicit discrimination.[306]

Second, it is possible that loan officers refused to negotiate with Black Churches or directed Black Churches to think about bankruptcy out of a sense of paternalism—a belief that forcing these churches to struggle to pull themselves up "by their bootstraps" would benefit them.[307] Though loan officers genuinely may have believed that these outcomes were better for Black Churches, if loan officers expressed such paternalistic tendencies, these tendencies seemingly would have stemmed from discrimination.[308] If they did not, more churches with other membership demographics should have appeared among religious organization Chapter 11 debtors because loan officers would have imposed the same paternalistic "bootstrapping" requirement on all churches. Again, other, more convincing reasons must exist to explain the phenomenon of Black Churches in Chapter 11.

303. *See id.* at 631–32 (discussing studies regarding "racial exposure").

304. *See* Thomas F. Pettigrew & Linda R. Tropp, *A Meta-Analytic Test of Intergroup Contact Theory*, 90 J. PERSONALITY & SOC. PSYCHOL. 751, 766 (2006). *See generally* Thomas F. Pettigrew, *Intergroup Contact Theory*, 49 ANN. REV. PSYCHOL. 65 (1998).

305. *See supra* Part V.B.

306. *See* Pettigrew & Tropp *supra* note 304, at 80 (summarizing how "individual differences and societal norms shape intergroup contact effects").

307. *See* Dickerson, *Racial Steering*, *supra* note 85, at 632–33 (discussing paternalism).

308. A belief that it is better (and necessary) for Black Churches to help themselves is consistent with the BIAS map, which would predict that loan officers would refrain from taking actions to help Black Churches. *See* Cuddy et al., *supra* note 116, at 632.

VI. Legal and Societal Implications

A. Legal Solutions

Interviewed attorneys' and leaders' perceptions of why Black Churches turned to Chapter 11 align with prior research linking racial discrimination with Blacks paying more than similarly situated whites for cars, consumer goods and credit, home loans, and small business credit. Whenever studies uncover discrimination in financial transactions, the next step is to analyze if existing laws addressing discrimination apply to the freshly exposed instance of discriminatory practices. In the case of Black Churches turning to Chapter 11 possibly because of disparities in treatment by lenders, these legal actions, most importantly, may allow for the discovery of more robust quantitative data to assess whether lenders' behavior during loan origination and modification is actually linked with Black Churches in particular seeking to reorganize.

Two laws often turned to are 42 U.S.C. §§ 1981 and 1982, which prohibit racial discrimination in contracting and the sale of real and personal property.[309] Under §§ 1981 and 1982, the plaintiff must establish a prima facie case that the defendant intentionally discriminated against the plaintiff and caused the plaintiff identifiable injury.[310] Though only disparate treatment claims, and not disparate impact claims, are cognizable under these sections, the "totality of the circumstances" test allows intent to discriminate to be inferred from circumstantial evidence, such as evidence that similarly situated others outside of the protected class received systematically better treatment.[311] If the plaintiff meets this initial burden of proof, then the defendant must show a "legitimate, non-discriminatory reason" for its actions.[312]

309. *See* 42 U.S.C. §§ 1981–1982 (2012).

310. *See* Patterson v. McLean Credit Union, 491 U.S. 164, 174 (1989) (holding that § 1981 prohibits racially motivated refusals to contract and offers to enter into contracts only upon discriminatory terms); Gen. Bldg. Contractors Ass'n v. Pa. United Eng'rs & Constructors, Inc., 458 U.S. 375, 391 (1982) (defining the elements of a § 1981 claim).

311. *See* Ayres, *Fair Driving*, *supra* note 73, at 857–63 (discussing the burden shifting and technical aspects of disparate treatment); Jason Hernandez, Comment, *Loan Discrimination at the Auto Dealership: Current Cases, Strategies and the Case for Intervention by Attorneys General* 9–10, http://web.law.columbia.edu/sites/default/files/microsites/careerservices/Loan%20Discrimination%20At%20The%20Auto%20Dealership.pdf [https://perma.cc/HR4G-N2A4] (discussing the viability of claims under §§ 1981 and 1982).

312. *See* McDonnell Douglas Corp. v. Green, 411 U.S. 792, 802 (1973) (articulating the burden shifting framework for alleging non-facially discriminatory claims under Title VII); Hotlzman v. World Book Co., 174 F. Supp. 2d 251, 258 (E.D. Pa. 2001) (noting that § 1981 claims follow the same legal framework as Title VII claims).

Analogizing to Blacks paying more for goods and credit,[313] if lender behavior is a contributing factor in the prevalence of Black Churches seeking to reorganize, unconscious statistical discrimination, not overt animus, most likely led to Black Churches paying more for loans and not receiving modifications.[314] Black Churches likely would face obstacles to presenting, let alone winning, claims under §§ 1981 and 1982—chief among them, proving the race-conscious conduct necessary to prevail.[315] Nonetheless, and perhaps more importantly in this context, the requirements for sustaining claims are not insurmountable given the ability to use a combination of direct and circumstantial evidence to demonstrate disparate treatment.

The most crucial step would be for a plaintiff to set forth sufficient factual allegations of a disparity in lenders' treatment of churches to survive a motion to dismiss.[316] At that point, discovery would allow for the analysis of loan-level data to which I do not have access. This data is necessary to assess whether attorneys' and leaders' perceptions of church lenders align with what truly is happening, on average, in the context of lending to churches.

Another existing law that could allow for such discovery is an action under Fair Housing Act (FHA).[317] Importantly, an action under the FHA may be more likely to survive to the discovery stage because, as recently held by the U.S. Supreme Court, disparate impact claims are cognizable under the FHA.[318] The FHA prohibits discrimination on the basis of race (among other protected classes) in the purchase, renting, or financing of "dwellings,"[319] the definition of which includes residential real property and other property where persons reside for extended periods of time.[320] Though Black Churches' places of worship are not "dwellings," some lenders extended financing for multiple buildings, including private residences, all rolled into one loan.[321] These loans seemingly would come under the purview of the FHA. In these instances, Black Churches would need to establish disparate

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313. *See supra* Part III.C.

314. *See* Keating, *supra* note 97, at 704 (noting "that conscious racial animus on the part of those discriminating is unlikely to explain the racially disparate effects . . . found").

315. *See* Ayres, *Fair Driving*, *supra* note 73, at 860–63 (discussing §§ 1981 and 1982's potential application in the "fair driving" context).

316. *See* FED. R. CIV. P. 12(b)(6); Ashcroft v. Iqbal, 556 U.S. 662, 677–78 (2009).

317. 42 U.S.C. §§ 3601–3631 (2012).

318. *See* Tex. Dep't. of Hous. & Cmty. Affairs v. Inclusive Cmtys. Project, Inc., 135 S. Ct. 2507, 2525 (2015).

319. 42 U.S.C. §§ 3604(a), 3605(a).

320. *Id.* § 3602(b) (defining "dwelling").

321. Foohey, Secured Credit, supra note 6, at 54.

impact, and not disparate treatment, to sustain an action based on their lenders' practices in loan origination and modification.[322]

Likewise, the Equal Credit Opportunity Act (ECOA)[323] allows for claims based on disparate impact.[324] The ECOA makes it "unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction" on the basis of race (among other protected classifications).[325] A church's lender meets the definition of a "creditor,"[326] the church meets the definition of an "applicant,"[327] and the ECOA applies to all stages of the lending relationship.[328] Regulation B interprets the ECOA as prohibiting practices that have the effect of discrimination based on outcomes—that is, disparate impact.[329]

The Dodd-Frank Wall Street Reform and Consumer Protection Act provides that the Department of Justice (DOJ) and the Consumer Financial Protection Bureau (CFPB) have jurisdiction to enforce the ECOA.[330] Recently the DOJ brought and settled several high-profile cases against banks under the ECOA for discrimination against minority borrowers based on disparate impact.[331] The DOJ could bring similar cases against lending institutions based on their origination or modification practices.[332]

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322. Robert G. Schwemm & Jeffery L. Taren, Discretionary Pricing, Mortgage Discrimination, and the Fair Housing Act, 45 Harv. C.R.-C.L. L. Rev. 375, 413 & n.202 (2010).

323. 15 U.S.C. §§ 1691–1691f.

324. CFPB, Consumer Laws and Regulations: Equal Credit Opportunity Act (ECOA) 1 (June 2013), http://files.consumerfinance.gov/f/201306_cfpb_laws-and-regulations_ecoa-combined-june-2013.pdf.

325. *Id.* § 1691.

326. *Id.* § 1691(a).

327. *Id.*

328. *See* CFPB, CONSUMER LAWS AND REGULATIONS: EQUAL CREDIT OPPORTUNITY ACT (ECOA) 1–2 (June 2013), http://files.consumerfinance.gov/f/201306_cfpb_laws-and-regulations_ecoa-combined-june-2013.pdf [https://perma.cc/CJF2-T7HX].

329. *See* Official Staff Interpretations, Regulation B, 12 C.F.R. pt. 202, Supp. I, § 202.6(a) (2009); CFPB, *supra* note 328, at 1 (describing the ECOA as having "two principal theories of liability: disparate treatment and disparate impact"); *see also* Cherry v. Amoco Oil Co., 490 F. Supp. 1026, 1030 (N.D. Ga. 1980) (holding that plaintiffs may state an ECOA claim based on the "effects test").

330. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, 124 Stat. 1376 (2010) (codified as amended in scattered sections of the U.S. Code); Press Release, Dep't of Justice Office of Pub. Affairs, Justice Department and Consumer Financial Protection Bureau Pledge to Work Together to Protect Consumers from Credit Discrimination (Dec. 6, 2012), https://www.justice.gov/opa/pr/justice-department-and-consumer-financial-protection-bureau-pledge-work-together-protect [https://perma.cc/C5HR-97YV].

331. *See* Mehrsa Baradaran, *Banking and the Social Contract*, 89 NOTRE DAME L. REV. 1283, 1302 (2014) (discussing these high-profile cases).

332. Press Release, Dep't of Justice Office of Pub. Affairs, Justice Department and Consumer Financial Protection Bureau Pledge to Work Together to Protect Consumers

In addition, the ECOA provides a private cause of action for actual and punitive damages of up to $10,000, along with attorneys' fees in successful actions.[333] Black Churches individually could bring ECOA claims against their lenders. As with actions brought under §§ 1981 and 1982 and the FHA, if an agency or private action under the ECOA is to succeed, the plaintiff will need to proffer evidence that demonstrates disparate impact sufficient to survive a motion to dismiss and allow for discovery.

Of note, however, even if these legal actions result in discovery of loan-level data, analysis of that data presents methodological challenges that make it difficult to disentangle discrimination from other legitimate business factors that may impact lending relationships.[334] Primarily because of the challenges in proving disparate impact, plaintiff's ECOA success rate has been mixed.[335] But with the right evidence, the ECOA and FHA in particular seem to offer two solid legal options first to identity and then address this potential instance of discrimination.

Finally, the Community Reinvestment Act of 1977 (CRA)[336] may provide a legal hook to encourage some lenders to examine their practices. The CRA was enacted to prevent redlining and clarify a "long-standing expectation" that banks and thrifts will serve the needs of their communities, including low- and moderate-income neighborhoods and individuals.[337] It empowers federal banking agencies (Office of Comptroller of the Currency, Board of Governors of the Federal Reserve System, and Federal Deposit Insurance Company (FDIC)) to periodically examine and rate FDIC-insured depository institutions on their performance meeting the credit needs of their entire communities, including through their small-business and community-lending

from Credit Discrimination (Dec. 6, 2012), https://www.justice.gov/opa/pr/justice-department-and-consumer-financial-protection-bureau-pledge-work-together-protect [https://perma.cc/C5HR-97YV].

333. 15 U.S.C. § 1691e(b) (2012).

334. *See* Amy J. Schmitz, *Secret Consumer Scores and Segmentations: Separating "Haves" from "Have-Nots"*, 2014 MICH. ST. L. REV. 1411, 1445–47 (discussing difficulties in establishing disparate impact under the ECOA when defendants may hide discriminatory practices under the guise of "business justifications"); Schwemm & Taren, *supra* note 322, at 406–07 (detailing how "discretionary pricing" impacts plaintiffs' ability to prove disparate impact in mortgage lending under the FHA).

335. *See* 1 DEE PRIDGEN & RICHARD M. ALDERMAN, CONSUMER CREDIT AND THE LAW §§ 3.1, 3.7 (2011).

336. 12 U.S.C. §§ 2901–2908.

337. OFFICE OF THE COMPTROLLER OF THE CURRENCY, COMMUNITY REINVESTMENT ACT 1 (Mar. 2014), http://www.occ.gov/topics/community-affairs/publications/fact-sheets/fact-sheet-cra-reinvestment-act.pdf [https://perma.cc/VY9E-NMSX]; *see also* Michael S. Barr, *Credit Where It Counts: The Community Reinvestment Act and Its Critics*, 80 N.Y.U. L. REV. 513, 516–17 (2005) (discussing the history of the CRA).

programs.[338] The CRA directs these agencies to "assess the institution's record" in this regard and to "take such record into account" in evaluating applications for mergers, acquisitions, and branch openings and closings.[339]

As part of the examination process, federal banking agencies could assess lending to Black Churches as an important aspect of regulated institutions' meeting their communities' needs.[340] The CRA is thought to have helped reduce barriers to credit in lower- and moderate-income communities, including encouraging small business development.[341] However, evaluation under the CRA is "guided" and performance is "judged in the context of information about the institution, its community, its competitors, and its peers."[342] This standards-based approach may allow disparate practices to continue unabated. The CRA also does not apply to credit unions insured by the National Credit Share Insurance Fund or non-bank entities that are supervised by the CFBP.[343] Thus only a portion of the lenders that extend credit to religious organizations are subject to the CRA's standards-based encouragements to serve communities equally.[344]

B. Extra-Legal Solutions and Implications

Semi-legal avenues and self-help may present the most effective ways to combat lenders' behavior. Because Black Churches primarily are small businesses, the Small Business Administration (SBA) may provide an avenue to publicly and nationally highlight the potential for problems with lending to churches. The SBA already offers resources specifically tailored to minority-owned businesses.[345] It could expand this program to include resources specifically for Black Churches. Though this solution is far from comprehensive, the SBA could provide one basis to helping Black Churches better protect themselves from lenders' potential biases.

338. *See* OFFICE OF THE COMPTROLLER OF THE CURRENCY, *supra* note 337, at 1–2; Barr, *supra* note 337, at 523–26 (discussing the purpose and provisions of the CRA).

339. 12 U.S.C. § 2903(a).

340. *See* Barr, *supra* note 337, at 553–54 (discussing how the CRA may combat the effects of statistical discrimination).

341. *See id.* at 561–65, 577–78 (highlighting studies that link growth in lending, home ownership, and community investment to the CRA).

342. *Id.* at 597 (quoting Joint Final Rule, Community Reinvestment Act Regulations, 60 Fed. Reg. 22,156, 22,162 (May 4, 1995) (codified at 12 C.F.R. § 25.21(b) (2016).

343. *See* OFFICE OF THE COMPTROLLER OF THE CURRENCY, *supra* note 337, at 1–2.

344. *See id.*

345. *See Minority-Owned Businesses*, U.S. SMALL BUS. ADMIN., https://www.sba.gov/content/minority-owned-businesses [https://perma.cc/55TQ-ZPSD].

Ultimately, Black Churches' pastors and other leaders becoming aware of the potential for creditors to treat their churches differently than other similarly situated churches may be the most effective way at present for combating the results of those possible biases. Seriously thinking about filing under Chapter 11, including retaining counsel, currently may be the most effective self-help remedy for Black Churches. If lenders, on balance, eventually will reject Black Churches' requests for forbearances and modifications, bypassing the time and expense of negotiating by turning to Chapter 11 overall may be less expensive for Black Churches.[346] Black Churches do not necessarily need to file bankruptcy to benefit. When leaders bring in counsel, this demonstration of their savviness may be sufficient to elevate their trustworthiness, and consensual deals may be forthcoming.[347]

Given that threatening or actually invoking bankruptcy may be beneficial to Black Churches in a way that it is not for other churches, education of actors in the business bankruptcy system—attorneys, U.S. Department of Justice officials, and judges—is crucial to ensuring that Chapter 11 is an actual safe haven for Black Churches.[348] How actors in the bankruptcy system handle religious organizations' Chapter 11 cases is an important question that I intend to address in a future paper. Bankruptcy courts are an integral part of the judicial system.[349] Studying how Black Churches are treated in Chapter 11 will further understanding of biases in bankruptcy and how to resolve them.

Lenders also bear a responsibility to educate their employees about the possible effects of implicit bias.[350] Though lenders are not part of the judicial system and barriers to asserting claims may prevent them from being held accountable as a legal matter for their actions if those actions do amount to discrimination, they nonetheless should hold themselves accountable for how they collectively treat their prospective clients. Churches occupy an important place in society. Interviewed attorneys and leaders recounted church debtors' contributions to their communities,

346. *See* Foohey, *Secured Credit*, *supra* note 6, at 58 (discussing rates of plan confirmation and consensual resolution in religious organizations' Chapter 11 cases).

347. Attorneys hypothesized that involving counsel earlier might lead to pre-bankruptcy resolutions. Foohey, *When Faith Falls Short*, *supra* note 8, at 1346.

348. *See* Braucher, Cohen & Lawless, *supra* note 18, at 424–25 (discussing educating actors in the bankruptcy system); Dickerson, *Racial Steering*, *supra* note 85, at 647–49 (proposing a "lawyer's memo to self" regarding biased advice).

349. Braucher, Cohen & Lawless, *supra* note 18, at 425.

350. See Dickerson, Racial Steering, supra note 85, at 644 (discussing implicit racial bias).

including operating soup kitchens, community centers, and other social services.[351] Black Churches in particular also were an important part of enhancing the image and economic opportunities of Black communities.[352] As one attorney commented, "there's a lot worth fighting for."[353]

VII. CONCLUSION

For almost a decade Black Churches have filed under Chapter 11 in numbers disparate to their incidence in the population of congregations. Denomination, location, financial resources, paternalism, or churches' financial decisions, literacy, views about bankruptcy, and other governance factors do not seem to fully explain the discrepancy. Given prior studies establishing that Blacks pay more for consumer goods, credit, and to obtain a discharge of their debts, it conceivable that discrimination in loan origination and modification affects churches' use of the bankruptcy system. Bankruptcy attorneys' and church leaders' stories and observations of why churches, particularly Black Churches, sought to reorganize support this theory.

Exposing race as a factor in determining if a church will turn to Chapter 11 reveals yet another instance in which discrimination may persist. In the absence of careful, systematic study, the fact that racial discrimination may be occurring in this set of transactions is far from obvious. Uncovering this possible instance of discrimination serves as a reminder that discrimination still may occur in many consumer and commercial contexts and largely remains unregulated by law. But highlighting the potential for discrimination against Black Churches in lending decisions is only the first step toward encouraging equality in the economic and legal systems. Having made that first step, lenders must acknowledge the potential for bias, and further study of why Black Churches in particular are filing Chapter 11 must be undertaken.

351. *See, e.g.*, Interview with Attorney 115, at 7–8 (Apr. 4, 2014) (discussing a soup kitchen); Interview with Attorney 121, at 4 (Apr. 22, 2014) (noting outreach to homeless youth and substance abusers); Interview with Leader 55, at 6 (May 6, 2013) (discussing a hunger program).

352. *See* Interview with Attorney 126, at 7 (Apr. 23, 2014).

353. *Id.*