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LET'S TALK ABOUT GUNS: SHOULD THE CODE GIVE GUN OWNERS PROTECTION?

ABSTRACT

In 1978, Congress added the term “household goods” to § 522(f)(1)(B) of the Bankruptcy Code, allowing a debtor to avoid a creditor’s nonpossessory, nonpurchase-money security interest in otherwise exempt property. However, Congress did not clarify what items fit within the term “household goods” at that time.

In 2005, following the Bankruptcy Abuse Prevention and Consumer Protection Act, Congress implemented § 522(f)(4)(A) and (B) to clarify which items fit within the definition of “household goods.” Despite the clarification that § 522(f)(4)(A) and (B) somewhat added, Congress neglected to classify firearms.

Although the topic of firearms is often highly debated, the predominant amount of American gun owners use firearms in a way that could arguably fit firearms within the classification of “household goods” referred to in § 522(f)(4)(A). The recent proposals of the Protecting Gun Owners in Bankruptcy Acts of 2010, 2011, 2014, and 2015, all of which request the addition of firearms into § 522(f)(4)(A), make this a timely issue that should be addressed. This Comment examines the recent proposals of the Protecting Gun Owners in Bankruptcy Act and discusses if Congress could realistically classify a firearm as a “household good” in the Bankruptcy Code.

INTRODUCTION

More individuals own firearms in the United States than in any other country.¹ Americans own an estimated 110 million rifles, 86 million shotguns, and 114 million handguns.² Despite the prolific ownership of firearms³ in the United States, firearms have not been listed within or outside of the term “household goods” under § 522(f)(4)(A) or (B) of the Bankruptcy Code (the “Code”).⁴ Sections 522(f)(4)(A) and (B) list several items that fall within or outside of the classification of “household goods.”⁵ Section 522(f)(4)(A) and (B) present a modified version of the Federal Trade Commission’s definition of “household goods,” which was based on if a household item was a common necessity or had unique personal value.⁶

This Comment discusses firearms instead of other common household items and intersects with the Code because of the recent proposals of the Protecting Gun Owners in Bankruptcy Acts of 2010, 2011, 2014, and 2015, which have proposed adding firearms into § 522(f)(4)(A).⁷ The recent proposals specifically raised the question of whether firearms could actually belong in the Code and sought to allow a debtor to exempt a nonpossessory, nonpurchase-money security interest “not to exceed \$3,000 in value, in a single firearm or firearms” under § 522(f)(4)(A).⁸

¹ Aaron Karp, SMALL ARMS SURVEY 2007, ch. 2 app. 4, <http://www.smallarmssurvey.org/fileadmin/docs/A-Yearbook/2007/en/Small-Arms-Survey-2007-Chapter-02-annexe-4-EN.pdf> (last visited Jan. 13, 2016).

² WILLIAM KROUSE, CONG. RESEARCH SERV., RL32842, HOW MANY GUNS ARE IN THE UNITED STATES? GUN CONTROL LEGISLATION 8–9 (2012) (citing U.S. Dep’t of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives, *Firearms Commerce in the United States 2011*, August 2011, p. 15).

³ Whenever discussing guns or firearms, this Comment is referring to rifles, shotguns, and pistols, not military assault weapons or firearms similar in nature to military assault weapons.

⁴ See 11 U.S.C. § 522(f)(4)(A), (B) (2012).

⁵ See *id.*

⁶ Trade Regulation Rule; Credit Practices, 49 Fed. Reg. 7740 (Mar. 1, 1984) (codified at 16 C.F.R. § 444.1(i)); 7 COLLIER ON BANKRUPTCY ¶ 522.11 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2014); see also *Bankruptcy Reform Act of 1999 Part 2: Hearing on H.R. 833 Before the Subcomm. on Commercial & Admin. Law of the House Comm. on the Judiciary*, 106th Cong. 13 (1999) (stating that the list was derived from the list of household goods developed in the Federal Trade Commission’s Credit Practices Rule, with the addition of one VCR, educational materials and equipment primarily for use of children, and children’s toys and hobby equipment).

⁷ Protecting Gun Owners in Bankruptcy Act of 2010, H.R. 5827, 111th Cong. (2010); Protecting Gun Owners in Bankruptcy Act of 2011, H.R. 1181, 112th Cong. (2011); Protecting Gun Owners in Bankruptcy Act of 2014, H.R. 3933, 113th Cong. (2014); Protecting Gun Owners in Bankruptcy Act of 2014, H.R. 3933, 114th Cong. (2015) (proposing an amendment for § 522(f)(4)(A)(xvi)).

⁸ Protecting Gun Owners in Bankruptcy Act of 2014, 113 H.R. 3933, 114th Cong. (2015).

Section 522(f)(4)(A) of the Code specifies certain items that are considered to be “household goods” for purposes of a debtor being able to avoid a nonpossessory, nonpurchase-money lien.⁹ On the other side of the statute, § 522(f)(4)(B) includes specific items that are not considered to be “household goods.” By classifying a firearm as a “household good,” a debtor may exempt the firearm during bankruptcy even if it is subject to a nonpossessory, nonpurchase-money security interest.¹⁰ Section 522(f)(4)(A) and (B) present a modified version of the Federal Trade Commission’s definition of “household goods,” which listed items that were common necessities or had unique personal value.¹¹ This Comment will show that the majority of gun owners in the United States own firearms for reasons that could allow a debtor’s firearm to be classified as “household good” under § 522(f)(4)(A), which was modeled after the FTC definition.¹²

Following the passage of the Bankruptcy Abuse Prevention and Consumer Protection Act (the “BAPCPA”) in 2005, Congress added § 522(f)(4)(A) and (B) to the Code to help determine whether a particular item fits within the “household goods” classification.¹³ Previously debated items, such as boats and motor vehicles, were excluded from the classification of “household goods” by § 522(f)(4)(B).¹⁴ Despite previous debate in bankruptcy courts of whether a firearm constituted a “household good” under § 522(f)(1)(B),

⁹ 11 U.S.C. § 522(f)(4)(A), (B).

¹⁰ 11 U.S.C. § 522(f)(1)(B). *See generally* Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, 108 Stat. 4106 (changing § 522(f)(2)(A) to § 522(f)(1)(B)).

¹¹ Trade Regulation Rule; Credit Practices, 49 Fed. Reg. 7740 (1984) (codified at 16 C.F.R. § 444.1(i) (1985)); 7 COLLIER ON BANKRUPTCY, *supra* note 6; *see also* Bankruptcy Reform Act of 1999 Part 2: Hearing on H.R. 833 Before the Subcomm. on Commercial & Admin. Law of the House Comm. on the Judiciary, 106th Cong. 13 (1999) (stating that the list was derived from the list of household goods developed in the Federal Trade Commission’s Credit Practices Rule, with the addition of one VCR, educational materials and equipment primarily for use of children, and children’s toys and hobby equipment).

¹² *See* Art Swift, *Personal Safety Top Reason Americans Own Guns Today*, GALLUP POLITICS, <http://www.gallup.com/poll/165605/personal-safety-top-reason-americans-own-guns-today.aspx> (Oct. 28, 2013); *Why Own a Gun? Protection is Now Top Reason: Perspective of Gun Owners, Non-Owners*, PEW RESEARCH CENTER, <http://www.people-press.org/2013/03/12/why-own-a-gun-protection-is-now-top-reason/> (Mar. 12, 2013) (listing statistics that state the top two reasons for individuals owning firearms are for protection and hunting).

¹³ 11 U.S.C. § 522(f)(4)(A), (B); Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, §§ 113(a)(4)(A) & (B), 119 Stat. 23 (enacted Apr. 20, 2005).

¹⁴ *In re Rice*, 35 B.R. 431, 432 (Bankr. Kan. 1982); *In re Psick*, 61 B.R. 308, 314 (Bankr. D. Minn. 1985) (stating that a motor vehicle could not qualify as a “household good”); *In re Vale*, 110 B.R. 396, 407–08 (Bankr. N.D. Ind. 1989); *In re Lenczowski*, 79 B.R. 392, 393 (Bankr. W.D. Ind. 1987) (holding that a boat does not qualify as a “household good”).

Congress's revision of the Code in 2005 provided no clarification of where firearms were classified in § 522(f)(4)(A) or (B).¹⁵

Even though it is not unusual to find firearms in American homes,¹⁶ the Code has failed to take a stance on whether firearms constitute "household goods" in § 522(f)(1)(B).¹⁷ Other items that Americans commonly own, such as clothing, televisions, and radios, are listed as "household goods" under § 522(f)(4)(A).¹⁸ Moreover, Congress has taken a definitive stance in § 522(f)(4)(B) by classifying commonly owned items such as motor vehicles, works of art, and jewelry, as not being "household goods."¹⁹ This Comment will now address and explain the background of § 522(f)(1)(B).

I. BACKGROUND

Section 522(f)(1)(B) allows a debtor to discharge a creditor's interest in a particular piece of property if that property would be exempt without the existence of the creditor's lien or security interest.²⁰ Section 522(f)(1)(B) allows a debtor to avoid a nonpossessory²¹, nonpurchase-money²² security interest²³ in any:

- (i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

¹⁵ 11 U.S.C. § 522(f)(4)(A), (B) (not stating whether a firearm is a "household good"); *see also In re McGreevy*, 955 F.2d 957, 962 (4th Cir. 1992) (holding that the debtor's firearms do not constitute "household goods"); *In re Rhines*, 227 B.R. 308, 310 (Bankr. D. Mont. 1998) (holding that the debtor's firearm should be classified as a "household good"); *In re Heath*, 318 B.R. 115, 118 (Bankr. W.D. Ky. 2004) (holding that the debtor's firearm is a "household good"); *In re Raines*, 161 B.R. 548, 551 (Bankr. N.D. Ga. 1993) (holding that the debtor's firearm is a "household good"); *Crawford v. First Family Fin. Servs. (In re Crawford)*, 226 B.R. 484, 485 (Bankr. N.D. Ga. 1998); *In re Wetzel*, 46 B.R. 254, 255 (Bankr. W.D. Va. 1984) (holding that the debtor's firearm is not a "household good"); *In re Oglesby*, 98 B.R. 960, 962 (Bankr. E.D. Mo. 1989); *In re Gray*, 87 B.R. 591, 593 (Bankr. W.D. Mo. 1988) (holding that the debtor's firearm is not a "household good").

¹⁶ Jim Supica, *A Brief History of Firearms*, <http://www.nramuseum.org/gun-info-research/a-brief-history-of-firearms.aspx>, NRA MUSEUM, (last visited Jan. 23, 2016).

¹⁷ Marcia Yablon, *Why Annie Gets to Keep Her Gun: An Analysis of Firearm Exemption in Bankruptcy Proceedings*, 21 EMORY BANKR. DEV. J. 553, 565–66 (2005).

¹⁸ 11 U.S.C. § 522(f)(4)(A).

¹⁹ 11 U.S.C. § 522(f)(4)(B).

²⁰ 11 U.S.C. § 522(f)(1)(B); 7 COLLIER ON BANKRUPTCY, *supra* note 6.

²¹ 7 COLLIER ON BANKRUPTCY, *supra* note 6 (stating that only nonpossessory, nonpurchase-money interest are subject to lien avoidance under § 522(f)(1)(B)).

²² *Id.*

²³ *Id.* (the term "security interest" is defined in § 101(51) as "a lien created by an agreement").

- (ii) implements, professional books, or tools, of the trade of the debtor or the trade dependent of the debtor; or
- (iii) professionally prescribed health aids for the debtor or dependent of the debtor.²⁴

The implementation of § 522(f)(4)(A) and (B) was set out to define what items fit are considered “household goods” in § 522(f)(1)(B).²⁵

II. BACKGROUND OF § 522(f)(4)(A) AND (B)

As enacted in 1978, the Code did not specifically define “household goods” for the purpose of lien avoidance under § 522(f)(1)(B).²⁶ As a result of BAPCPA, § 522(f)(4)(A) and (B) narrow the scope of “household goods” for purposes of lien avoidance for a debtor’s otherwise exempt piece of property.²⁷ Below are the items that § 522(f)(4)(A) lists that are considered to be “household goods”:

the term “household goods” means—

- (i) clothing;
- (ii) furniture;
- (iii) appliances;
- (iv) 1 radio;
- (v) 1 television;
- (vi) 1 VCR;
- (vii) linens;
- (viii) china;
- (ix) crockery;
- (x) kitchenware;
- (xi) educational materials and educational equipment primarily for the use of minor dependent children of the debtor;
- (xii) medical equipment and supplies;
- (xiii) furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor;
- (xiv) personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor; and
- (xv) 1 personal computer and related equipment²⁸

²⁴ 11 U.S.C. § 522(f)(1)(B)(i)–(iii).

²⁵ 11 U.S.C. § 522(f)(4)(A), (B).

²⁶ See generally Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2587; 7 COLLIER ON BANKRUPTCY, *supra* note 6.

²⁷ *In re Zieg*, 409 B.R. 917, 920 (Bankr. W.D. Mo. 2009).

²⁸ 11 U.S.C. § 522(f)(4)(A).

Congress also added § 522(f)(4)(B) to list items that are expressly not considered to be “household goods.”²⁹

[T]he term “household goods” does not include—

- (i) works of art (unless by or of the debtor, or any relative of the debtor);
- (ii) electronic entertainment equipment with a fair market value of more than \$650 in the aggregate (except 1 television, 1 radio, and 1 VCR);
- (iii) items acquired as antiques with a fair market value of more than \$650 in the aggregate;
- (iv) jewelry with a fair market value of more than \$650 in the aggregate (except wedding rings); and
- (v) a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), a boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.³⁰

Prior to BAPCPA, there were conflicting decisions on whether firearms constituted “household goods” for the purpose of lien avoidance.³¹ Some courts did not classify firearms as “household goods” because they were not viewed as essential to a debtor’s fresh start.³² In contrast, other courts classified firearms as “household goods” because firearms supported the debtor’s daily life and would assist the debtor’s fresh start.³³ For example, the bankruptcy court in *In re Crawford* required a “functional nexus” between the item and the debtor’s household.³⁴

²⁹ *In re Stewart*, No. 07-02189, 2007 Bankr. LEXIS 2915, at *3 (Bankr. D.S.C. Sept. 6, 2007).

³⁰ 11 U.S.C. § 522(f)(4)(B).

³¹ See, e.g., *In re McGreevy*, 955 F.2d 957, 961–62 (4th Cir. 1992); *In re Raines*, 161 B.R. 548, 551 (Bankr. N.D. Ga. 1993).

³² *McGreevy*, 955 F.2d at 961–62; *In re Oglesby*, 98 B.R. 960, 962 (Bankr. E.D. Mo. 1989); *In re Gray*, 87 B.R. 591, 593 (Bankr. W.D. Mo. 1988); *In re Weaver*, 78 B.R. 135, 139 (Bankr. N.D. Tex. 1987); *Oswald v. ITT Financial Services (In re Oswald)*, 85 B.R. 541, 543 (Bankr. W.D. Mo. 1986); *In re Wetzel*, 46 B.R. 254, 255 (Bankr. W.D. Va. 1984); *In re Noggle*, 30 B.R. 303, 306 (Bankr. E.D. Mich. 1983).

³³ *Crawford v. First Family Fin. Servs. (In re Crawford)*, 226 B.R. 484, 485 (Bankr. N.D. Ga. 1998); *In re Rhines*, 227 B.R. 308, 310 (Bankr. D. Mont. 1998); *In re Heath*, 318 B.R. 115, 118 (Bankr. W.D. Ky. 2004).

³⁴ 226 B.R. at 485. See *McGreevy*, 955 F.2d at 961–62 for a discussion about how courts generally would classify a firearm as a “household good” if it was viewed to support and facilitate the daily household living of the debtor.

III. REASONING BEHIND § 522(f)(1)(B)

Congress recognized that creditors could coerce debtors by threatening repossession of certain goods that had little resale value but were necessary for a debtor's fresh start.³⁵ The creditors' ability to repossess certain items of the debtor gave them considerable leverage,³⁶ often prompting debtors to pay their obligations because they could not afford to replace the goods.³⁷ Congress authorized lien avoidance for household goods under the 1978 Bankruptcy Code to protect debtors from such threats of repossession.³⁸

As enacted in 1978, the Code did not define household goods for purposes of lien avoidance.³⁹ Courts generally adopted a broad definition of "household goods" that included certain basic items of personal property "kept in or around the home and used by the debtor or his dependents to support or facilitate day to day living within the home."⁴⁰

In 1985, the FTC defined "household goods" in the Trade Regulation Rule on Credit Practices.⁴¹ The FTC defined household goods as: "clothing, furniture, appliances, one radio and one television, linens, china, crockery, kitchenware, and personal effects (including wedding rings) of the consumer and his or her dependents."⁴² The FTC also excluded the following items from the "household goods" definition: "(1) Works of art; (2) Electronic entertainment equipment (except one television and one radio); (3) Items acquired as antiques; and (4) Jewelry (except wedding rings)."⁴³ The FTC formulated the definition by listing items that were common household necessities together with items that would be of unique personal value to the debtor.⁴⁴ Also, the FTC clarified what items that were not considered "household goods."⁴⁵

³⁵ See *McGreevy*, 955 F.2d at 962 n.4.

³⁶ Michael J. Herbert, *Straining the Gnat: A Critique of the 1984 Federal Trade Commission Consumer Credit Regulations*, 38 S.C. L. REV. 329, 352 (1987).

³⁷ *McGreevy*, 955 F.2d at 962 n.4.

³⁸ *Id.*

³⁹ Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2587; 7 COLLIER ON BANKRUPTCY, *supra* note 6.

⁴⁰ *McGreevy*, 955 F.2d at 960; 7 COLLIER ON BANKRUPTCY, *supra* note 6.

⁴¹ FTC Credit Practices Rule, 16 C.F.R. § 444.1(i) (1985).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Trade Regulation Rule; Credit Practices, 49 Fed. Reg. 7740 (1984) (codified at 16 C.F.R. § 444.1(i) (1985)).

⁴⁵ *Id.*

In 2005, following BAPCPA, Congress modeled the list in § 522(f)(4)(A) and (B), which defined which items are “household goods” to some extent after the FTC definition.⁴⁶ However, like the FTC definition, § 522(f)(4)(A) and (B) did not provide guidance on whether firearms are classified as “household goods.”⁴⁷

IV. THE FUNCTIONAL NEXUS TEST

Before the 2005 additions of § 522(f)(4)(A) and (B), bankruptcy courts used three different tests to determine if items should be classified as “household goods”: the necessity test, the broad test, and the functional nexus test.⁴⁸ Courts never used the necessity test or the broad test to determine if firearms should be classified as “household goods,” rather courts only used the functional nexus test.⁴⁹

The functional nexus test required there to be a functional nexus between the good and the household for an item to be considered a “household good.”⁵⁰ A functional nexus exists when the debtor uses the item to support and facilitate daily life within the household.⁵¹ Courts used the functional nexus test to determine if a firearm constituted a household good under § 522(f)(1)(B) because it struck a balance between the broad test and the necessity test.⁵²

Adding § 522(f)(4)(A) and (B) in 2005 may make the need for a “household good” test irrelevant and unnecessary.⁵³ However, because firearms have not been listed in § 522(f)(4)(A) and (B), the functional nexus test can provide guidance for whether a firearm should be classified as a “household good.”⁵⁴

⁴⁶ 7 COLLIER ON BANKRUPTCY, *supra* note 6.

⁴⁷ See 11 U.S.C. § 522(f)(4)(A), (B) (2012); Trade Regulation Rule; Credit Practices, 49 Fed. Reg. 7740.

⁴⁸ *In re Heath*, 318 B.R. 115, 117 (Bankr. W.D. Ky. 2004).

⁴⁹ The necessity test focused on whether “the item in question served a vital function to the debtor’s fresh start.” *Id.* (citing *In re McGreevy*, 955 F.2d 957, 959–60 (4th Cir. 1992); *In re Cottingham*, No. 95-32441-B, 1996 Bankr. LEXIS 594 (Bankr. W.D. Tenn.)). The broad test considered any and all goods typically found in the home to be household goods, regardless if they were necessary for a debtor’s fresh start. *Id.*

⁵⁰ *McGreevy*, 955 F.2d at 961.

⁵¹ *Id.*

⁵² *Heath*, 318 B.R. at 117.

⁵³ Julian McDonnell & James Nehf, *IC-20 Secured Transaction Under the UCC § 20.05 Permitting Avoidance of Security Interests in Exempt Goods* (2014).

⁵⁴ *In re Mason*, 254 B.R. 764, 773 (Bankr. D. Idaho 2000) (stating that since there is neither a per se inclusion nor a per se exclusion of firearms within the definition of “household goods,” the functional nexus test should be used).

For the functional nexus test, courts have also used the debtor's cultural environment and geographic location to determine if a debtor's firearm constitutes a household good.⁵⁵ In *In re Rhines*, the Bankruptcy Court for the District of Montana classified the debtors' rifle and shotgun as household goods because they were used for hunting to supply food for their family.⁵⁶ The court was persuaded to allow the debtor to exempt firearms as "household goods" under § 522(f)(1)(B) by three factors: the debtors' geographic location, the debtors' need to feed themselves, and the Montana state exemption statute containing a specific firearm exemption.⁵⁷ Similarly, in *Crawford*, the debtors filed a bankruptcy petition to classify their rifle as a household good because the rifle was used for defensive purposes in and around the home.⁵⁸ Based upon the debtors' need to use the rifle for protection, the Bankruptcy Court for the Northern District of Georgia ruled that the rifle was a "household good" under § 522(f)(1)(B).⁵⁹

In *In re Heath*, the Bankruptcy Court for the Western District of Kentucky allowed the debtor to avoid a lien on a 30/30 rifle.⁶⁰ The court classified the rifle as a "household good" because the debtor used the rifle as a means to supply food for his family.⁶¹ The court also pointed out that in rural Kentucky, using a rifle for hunting is common and culturally appropriate, further justifying such classification of the firearm as a "household good."⁶²

On the other hand, in *In re McGreevy*, the Fourth Circuit held that a rifle and a shotgun that were used for hunting away from the vicinity of the household were not considered "household goods" under § 522(f)(1)(B).⁶³ The debtor primarily used the rifle and shotgun for hunting deer away from his home, not supporting or facilitating day-to-day living.⁶⁴ The debtor's rifle and shotgun were also used for target practice away from the home.⁶⁵ Even though the debtor argued that the rifle and shotgun could be used for household

⁵⁵ *In re Rhines*, 227 B.R. 308, 310 (Bankr. D. Mont. 1998).

⁵⁶ *Id.*

⁵⁷ *Rhines*, 227 B.R. at 310–11; *see also Heath*, 318 B.R. at 118 (stating that the cultural and geographic environment of the debtors is of particular importance in determining if a rifle is a household good under § 522(f)(1)(B)).

⁵⁸ 226 B.R. 484, 485 (Bankr. N.D. Ga. 1998).

⁵⁹ *Crawford*, 226 B.R. at 485.

⁶⁰ 318 B.R. 115, 118 (Bankr. W.D. Ky. 2004).

⁶¹ *Id.*

⁶² *Id.*

⁶³ 955 F.2d 957, 962 (4th Cir. 1992).

⁶⁴ *Id.*

⁶⁵ *Id.*

protection, the court did not find this argument persuasive, holding that the firearms did not constitute “household goods” under § 522(f)(1)(B).⁶⁶ If the firearms were used primarily around the home, then they could be classified as “household goods.”⁶⁷

Because firearms are not included in § 522(f)(4)(A) or (B), the functional nexus test used by the courts can help provide guidance as to whether a firearm should be included within the classification of “household goods.” If firearms are used in a way that satisfies the functional nexus test, then the proposals of the Protecting Gun Owners in Bankruptcy Acts seem more plausible in trying to impose firearms being classified as “household goods” under § 522(f)(4)(A).

In the next section, this Comment will provide possible reasons why Congress has not taken a definitive stance on how to classify firearms.

V. POSSIBLE REASONS WHY FIREARMS ARE NOT CLASSIFIED

This section will demonstrate the differing viewpoints that are held regarding the topic of firearms in Congress and geographically.

A. Differing Viewpoints in Congress

Demonstrated from the debates about the Protecting Guns in Bankruptcy Act of 2010, individuals have differing views about whether firearms should be classified as “household goods” in § 522(f)(4)(A).⁶⁸

One argument is that a bankrupt debtor should be able to retain a firearm for family protection.⁶⁹ Another argument is that gun ownership is “a right and that this right extends to all people, including those in bankruptcy.”⁷⁰

On the other hand, some individuals oppose adding a provision that classifies firearms as “household goods.”⁷¹ One argument for not classifying firearms as “household goods” is that they are not seen as essential to a

⁶⁶ *Id.*

⁶⁷ *Id.* (stating that a rifle and shotgun do not constitute “household goods” under 11 U.S.C. § 522(f)(2)(A), which was subsequently changed to 11 U.S.C. § 522(f)(1)(B) by the Bankruptcy Reform Act of 1994).

⁶⁸ See *Protecting Gun Owners in Bankruptcy Act of 2010*, 156 Cong. Rec. H. 6137 (2010).

⁶⁹ *Id.* (statement of Rep. John Boccieri and Rep. Daniel Lungren).

⁷⁰ *Id.* (statement of Rep. Mark Critz).

⁷¹ *Protecting Gun Owners in Bankruptcy Act*, 156 Cong. Rec. E. 1673 (2010) (statement of Hon. Betty McCollum).

debtor's fresh start.⁷² Representative Betty McCollum stated that, "assets such as clothing, household furnishings, retirement funds, and social security benefits are exempt from seizure . . . so that those struggling through bankruptcy have something to restart their lives with . . . a special carve-out for guns would do nothing to help families emerge from the crisis of bankruptcy."⁷³

Additionally, some individuals believe that bankrupt debtors should not be allowed to exempt guns because of safety concerns from the debtor going through economic stress.⁷⁴ Representative Carolyn McCarthy from New York stated that, "the presence of guns in households, especially those experiencing bankruptcy, enhances the risk of suicide, or even worse, murder-suicide."⁷⁵

One speculative reason why Congress has refrained from placing firearms within § 522(f)(4)(A) or (B) is because of differing individual views on whether debtors should be able to keep their firearms.⁷⁶

B. Geographical Differences About Firearm Importance

Different states also have different views about the importance of gun possession,⁷⁷ as evidenced by state exemption statutes that specifically allow exemptions for firearms.⁷⁸ Thirteen states explicitly exempt firearms within

⁷² *Id.*

⁷³ *Id.*

⁷⁴ *Protecting Gun Owners in Bankruptcy Act of 2010*, 156 Cong. Rec. H. 6137 (2010) (statement of Rep. Carolyn McCarthy).

⁷⁵ *Id.*

⁷⁶ *See generally Protecting Gun Owners in Bankruptcy Act of 2010*, 156 Cong. Rec. H. 6137 (2010) (statement of Rep. John Boccieri); *Protecting Gun Owners in Bankruptcy Act of 2010*, 156 Cong. Rec. H. 6137 (statement of Rep. Daniel Lungren) (discussing that a bankrupt debtor should be able to keep his or her gun as a "household good"); *Protecting Gun Owners in Bankruptcy Act of 2010*, 156 Cong. Rec. H. 6137 (statement of Rep. Carolyn McCarthy) (opposing the idea of a bankrupt debtor being able to exempt a gun as a "household good"); *Protecting Gun Owners in Bankruptcy Act*, 156 Cong. Rec. E. 1673 (statement of Hon. Betty McCollum) (opposing that a bankrupt debtor should be able to exempt a gun as a "household good").

⁷⁷ *In re Rhines*, 227 B.R. 308, 310 (Bankr. D. Mont. 1998); *see also In re Heath*, 318 B.R. 115, 118 (Bankr. W.D. Ky. 2004) (stating that the cultural and geographic environment of the debtor is of particular importance in determining if a firearm is a household good).

⁷⁸ *See* VA CODE ANN. § 34-26 (West 2011); MISS. CODE ANN. § 85-3-1 (West 2014); 2014 La. Sess. Law Serv. Act 322 (H.B. 145) (West 2014); TEX. PROP. CODE ANN. § 42.002(7) (West 2001); MONT. CODE ANN. § 25-13-609(1) (West 2013); OR. REV. STAT. ANN. § 18.362 (West 2014); IOWA CODE ANN. § 627.6.2 (West 2013); WIS. STAT. ANN. § 815.18(3)(d) (West 2012); IDAHO CODE ANN. § 11-605 (West 2014); ARIZ. REV. STAT. ANN. § 33-1125(7) (West 2014); OKLA. STAT. ANN. tit. 31, § 1 (West 2002); OHIO REV. CODE ANN. § 2329.66 (West 2013); NEV. REV. STAT. ANN. § 21.090 (West 2013).

their state exemption statutes: Virginia,⁷⁹ Arizona,⁸⁰ Idaho,⁸¹ Iowa,⁸² Louisiana,⁸³ Mississippi,⁸⁴ Montana,⁸⁵ Nevada,⁸⁶ Ohio,⁸⁷ Oklahoma,⁸⁸ Oregon,⁸⁹ Texas,⁹⁰ and Wisconsin⁹¹ all provide for specific firearms exemptions.⁹²

To show a further difference in viewpoints, conditions of how a debtor can exempt a firearm also differ among the states that allow for specific firearms exemptions.⁹³ For example, Arizona allows a debtor to exempt the maximum of one firearm along with several other items that collectively count towards the one thousand dollar aggregate monetary exemption cap.⁹⁴ Similarly, the Wisconsin state exemption statute imposes an aggregate \$12,000 monetary cap and allows a debtor to attempt to exempt a firearm along with other household items.⁹⁵ Although Wisconsin has a higher aggregate monetary cap and there is no limitation on the amount of firearms a debtor can exempt, there is not a specific exemption to ensure that a debtor can exempt his or her firearm.⁹⁶

In contrast to the Wisconsin and Arizona state exemption statutes, the Texas state exemption statute specifically allows a debtor to exempt two firearms.⁹⁷ Additionally, Texas does not limit the aggregate monetary value of

⁷⁹ VA CODE ANN. § 34-26; CAROL PETTIT & VASTINE PLATTE, CONG. RESEARCH SERV., R41799, EXEMPTIONS FOR FIREARMS IN BANKRUPTCY 2 (2013).

⁸⁰ ARIZ. REV. STAT. ANN. § 33-1125(7).

⁸¹ IDAHO CODE ANN. § 11-605.

⁸² IOWA CODE ANN. § 627.6.2.

⁸³ La. Sess. Law Serv. Act 322 (H.B. 145).

⁸⁴ MISS. CODE ANN. § 85-3-1 (West 2014).

⁸⁵ MONT. CODE ANN. § 25-13-609(1) (West 2013).

⁸⁶ NEV. REV. STAT. ANN. § 21.090 (West 2013).

⁸⁷ OHIO REV. CODE ANN. § 2329.66 (West 2013).

⁸⁸ OKLA. STAT. ANN. tit. 31, § 1 (West 2002).

⁸⁹ OR. REV. STAT. ANN. § 18.362 (West 2014).

⁹⁰ TEX. PROP. CODE ANN. § 42.002(7) (West 2001).

⁹¹ WIS. STAT. ANN. § 815.18(3)(d) (West 2012).

⁹² PETTIT & PLATTE, *supra* note 79, at 4–6.

⁹³ *Id.* at 2.

⁹⁴ ARIZ. REV. STAT. ANN. § 33-1125(7) (West 2014) (allowing a debtor to exempt “one typewriter, one computer, one bicycle, one sewing machine, a family bible, a lot in any burial ground, one shotgun, or one rifle, or one pistol, not in excess of an aggregate fair market value of one thousand dollars”).

⁹⁵ WIS. STAT. ANN. § 815.18(3)(d) (allowing a debtor to exempt “household goods and furnishings, wearing apparel, keepsakes, jewelry . . . appliances, books, musical instruments, firearm, sporting goods . . . not to exceed \$12,000 in aggregate value”).

⁹⁶ *Id.*

⁹⁷ TEX. PROP. CODE ANN. § 42.002(7) (West 2001).

the firearms that a debtor can exempt.⁹⁸ These provisions show the importance Texas places on debtors' ability to exempt firearms.⁹⁹ Because the Texas exemption statute places such a strong emphasis on the debtor's ability to exempt firearms, it raises the question whether Texas even considers firearms to be "household goods" because firearms are listed in a separate provision.¹⁰⁰

The different emphasis that states and geographical regions place on gun ownership may be a central reason why there is no definitive stance regarding firearms' classification in the Code.

In the upcoming Analysis Section, this Comment will seek to prove that firearms could be classified as "household goods" because of firearms being commonly used by gun owners in a way that satisfies the functional nexus test, the *Heller*¹⁰¹ decision placing a renewed emphasis on Second Amendment rights for an individual to own a firearm for household protection, and by highlighting the general need for revision of the lists in § 522(f)(4)(A) and (B).

ANALYSIS

This section takes a previous request made pre-BAPCPA¹⁰² a step further by not only asking Congress to clarify whether a firearm constitutes a "household good" but also by arguing that firearms should be included in the list of "household goods" in § 522(f)(4)(A).¹⁰³ To support this proposal, this section will first discuss previously proposed legislation, which shows that the issue of classifying firearms should be addressed. Next, this section will discuss why individuals own firearms today and how these reasons satisfy the functional nexus test. Then, this section will show how some state exemption statutes allow firearms to be exempt if they are used for a household purpose consistent with the rationale from the functional nexus test. Last, this section will demonstrate the general need for revising § 522(f)(4)(A)'s list. Therefore,

⁹⁸ *Id.*; *c.f.* MISS. CODE ANN. § 85-3-1 (West 2014); La. Sess. Law Serv. Act 322. (West 2014); MONT. CODE ANN. § 25-13-609(1) (West 2013); OHIO REV. CODE ANN. § 2329.66 (West 2013); OKLA. STAT. ANN. tit. 31 § 1 (West 2002); IDAHO CODE ANN. § 11-605 (West 2014); WIS. STAT. ANN. § 815.18(3)(d) (placing a cap on the aggregate monetary value of firearms a debtor can exempt).

⁹⁹ TEX. PROP. CODE ANN. § 42.002(7) (imposing a state exemption statute that allows for two firearms to be exempt that are not subject to any sort of monetary cap for the exemption).

¹⁰⁰ *Id.* (specifically listing two firearms as a piece of property that a debtor can exempt).

¹⁰¹ 554 U.S. 570, 636 (2008).

¹⁰² Yablon, *supra* note 17, at 578 (stating that Congress should have provided more guidance regarding the meaning of "household goods" pre-BAPCPA, and particularly on whether firearms are "household goods").

¹⁰³ 11 U.S.C. § 522(f)(4)(A) (2012).

this section will show that the idea behind the proposed Protecting Gun Owners in Bankruptcy Acts, which suggests adding firearms to the list of “household goods” in § 522(f)(4)(A), could be implemented into the Code.

I. PROPOSED LEGISLATION

This Comment wrestles with whether firearms are considered “household goods” because there have been four recently proposed bills that have requested the addition of firearms under the list of “household goods” in § 522(f)(4)(A): the Protecting Gun Owners in Bankruptcy Acts of 2010, 2011, 2014, and 2015.¹⁰⁴

The Protecting Gun Owners in Bankruptcy Act of 2010 (the “Act of 2010”) supported adding firearms as items that debtors can exempt under § 522(d) of the Code and adding firearms to the list of “household goods” in § 522(f)(4)(A).¹⁰⁵ The Act of 2010 would have amended § 522(d) to include an exemption for “a single rifle, shotgun, or pistol of any value or any combination of rifle, shotgun, or pistol in aggregate value not to exceed \$1500.”¹⁰⁶ The Act of 2010 also would have amended § 522(f)(4)(A), adding “a single rifle, shotgun, or pistol or any combination of rifle, shotgun, or pistol in aggregate not to exceed \$1500” to the enumerated list.¹⁰⁷ Like the other items listed in § 522(f)(4)(A), the proposed amendment would have allowed a debtor to avoid a lien on an otherwise exempt piece of property in which a creditor had a nonpossessory, nonpurchase-money security interest.¹⁰⁸

Much of the reasoning behind the proposed Act of 2010 was to ensure “families hit hard by . . . economic downturn and forced to file bankruptcy do not [have to] hand over their right to protection or their right to possess a firearm.”¹⁰⁹ Thirty-one cosponsors supported the bill.¹¹⁰ On July 28, 2010, the

¹⁰⁴ Protecting Gun Owners in Bankruptcy Act of 2010, H.R. 5827, 111th Cong. (2010); Protecting Gun Owners in Bankruptcy Act of 2011, H.R. 1181, 112th Cong. (2011) (proposing an amendment for § 522(f)(4)(A)(xvi)); Protecting Gun Owners in Bankruptcy Act of 2014, H.R. 3933, 113th Cong. (2014); Protecting Gun Owners in Bankruptcy Act of 2015, H.R. 3933, 114th Cong. (2015).

¹⁰⁵ H.R. 5827.

¹⁰⁶ After the initial proposal to the House of Representatives, the language of the Act of 2010 was amended to state for both § 522(d) and § 522(f)(4)(A), “the debtor’s aggregate interest, not to exceed \$3,000 in value, in a single rifle, shotgun, or pistol, or any combination thereof.” *Id.*

¹⁰⁷ *Id.*

¹⁰⁸ PETTIT & PLATTE, *supra* note 79, at 3.

¹⁰⁹ *Protecting Gun Owners in Bankruptcy Act of 2010*, 156 Cong. Rec. H. 6137 (2010) (statement of Rep. John Boccieri).

motion to suspend the rule and pass the proposed bill in the House resulted in 307 yeas and 113 nays.¹¹¹ Even though the House passed the bill, the bill failed in the Senate.¹¹² The last action on the Act of 2010 was a remark by Representative Betty McCollum in the House of Representatives on September 16, 2010, stating her disapproval of providing bankrupt debtors with a firearm exemption.¹¹³ After September 16, 2010, there was no further action on the bill.

Similarly, on March 17 of the following year, the Protecting Gun Owners in Bankruptcy Act of 2011 (the “Act of 2011”) was proposed.¹¹⁴ The Act of 2011 also proposed an amendment to § 522(d) that allowed a debtor to exempt the “aggregate interest, not to exceed \$3000 in value, in a single rifle, shotgun, or pistol, or any combination thereof.”¹¹⁵ The Act of 2011 also proposed an amendment to § 522(f)(4)(A), adding “the debtor’s aggregate interest, not to exceed \$3000 in value, in a single rifle, shotgun, or pistol, or any combination thereof” to the enumerated list.¹¹⁶ The proposed amendment would also apply to otherwise exempt property in which a creditor had a nonpossessory, nonpurchase-money security interest.¹¹⁷ Forty-one cosponsors supported the Act of 2011.¹¹⁸ The proposed bill was then referred to the House Committee on the Judiciary, which tabled the bill.¹¹⁹ After this, there was no further action.¹²⁰

Subsequently, on January 27, 2014, the Protecting Gun Owners in Bankruptcy Act of 2014 (the “Act of 2014”) once again proposed adding firearms into § 522(f)(4)(A).¹²¹ Fifteen representatives cosponsored the proposed Act of 2014.¹²² The proposed Act of 2014 slightly changed the language from the previously proposed Act of 2011,¹²³ adding “the debtor’s

¹¹⁰ H.R. 5827 (stating that the Protecting Gun Owners in Bankruptcy Act of 2010 is co-sponsored by eighteen Democrats and thirteen Republicans).

¹¹¹ *Protecting Gun Owners in Bankruptcy Act of 2010*, 156 Cong. Rec. H. 6215 (2010).

¹¹² *Id.*

¹¹³ *Id.* (statement of Hon. Betty McCollum).

¹¹⁴ *Protecting Gun Owners in Bankruptcy Act of 2011*, 2011 Bill Tracking H.R. 1181.

¹¹⁵ *Protecting Gun Owners in Bankruptcy Act of 2011*, 112 H.R. 1181, 112th Cong. (2011).

¹¹⁶ *Id.* (proposing an amendment for § 522(f)(4)(A)(xvi)).

¹¹⁷ PETTIT & PLATTE, *supra* note 79, at 4–6; H.R. 1181, 112th Cong. § 2 (2011).

¹¹⁸ *Protecting Gun Owners in Bankruptcy Act of 2011*, 2011 Bill Tracking H.R. 1181 (stating that the Act is co-sponsored by thirty-nine Republicans and two Democrats).

¹¹⁹ *Id.*

¹²⁰ *Id.*

¹²¹ 2013 Legis. Bill Hist. U.S. H.B. 3933 (113th Cong.).

¹²² *Protecting Gun Owners in Bankruptcy Act of 2014*, H.R. 3933, 113th Cong. (2014).

¹²³ *Compare* *Protecting Gun Owners in Bankruptcy Act of 2011*, H.R. 1181, 112th Cong. (2011), *with* H.R. 3933.

aggregate interest, not to exceed \$3000 in value, in a single firearm or firearms” to § 522(d).¹²⁴ Similarly, the proposed Act of 2014 added “the debtor’s aggregate interest, not to exceed \$3000 in value, in a single firearm or firearms” to the enumerated list in § 522(f)(4)(A).”¹²⁵ The Act of 2014 was last acted upon on January 27, 2014, when it was referred to the House Committee on the Judiciary.¹²⁶ Like the two previous bills, this bill has been tabled.¹²⁷ There has been no further action on the bill since then.¹²⁸

Most recently, on March 19, 2015, the Protecting Gun Owners in Bankruptcy Act of 2015 (the “Act of 2015”) was proposed in the House of Representatives.¹²⁹ Once again, the Act of 2015 proposed that a debtor be able to avoid a creditor’s nonpossessory, nonpurchase-money security interest in his or her firearm.¹³⁰ The statute specifically proposed to implement “the debtor’s aggregate interest, not to exceed \$3000 in value, in a single firearm or firearms” into § 522(f)(4)(A) with other household items that a debtor is allowed to exempt.¹³¹ The last action on the proposed bill of the Protecting Gun Owners in Bankruptcy Act of 2015 took place on April 21, 2015, when the bill was referred to the Subcommittee on Regulatory Reform, Commercial & Antitrust Law.¹³²

The four proposed acts prove that attempting to add firearms into § 522(f)(4)(A) within “household goods” is timely, relevant, and should be addressed.¹³³ Moreover, the bills received support whenever they were proposed.¹³⁴ Because more individuals today own guns for household protection,¹³⁵ bills such as the Acts of 2010, 2011, 2014, and 2015 will likely continue to be proposed until firearms are specifically referenced in § 522(d) or § 522(f)(4)(A) of the Code.

¹²⁴ H.R. 3933.

¹²⁵ *Id.*

¹²⁶ *Protecting Gun Owners in Bankruptcy Act of 2014*, 2014 Bill Tracking H.R. 3933.

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Protecting Gun Owners in Bankruptcy Act of 2015*, H.R. 1488, 114th Congress (2015).

¹³⁰ *Id.*

¹³¹ *Id.* (proposing an amendment for § 522(f)(4)(A)(xvi) to include firearms in the Code).

¹³² *Protecting Gun Owners in Bankruptcy Act of 2015*, 2015 Bill Tracking H.R. 1488.

¹³³ *Protecting Gun Owners in Bankruptcy Act of 2010*, H.R. 5827, 111th Cong. (2010); *Protecting Gun Owners in Bankruptcy Act of 2011*, H.R. 1181, 112th Cong. (2011) (proposing an amendment for § 522(f)(4)(A)(xvi)); H.R. 3933; H.R. 1488.

¹³⁴ *Protecting Gun Owners in Bankruptcy Act of 2011*, 2011 Bill Tracking H.R. 1181 (stating that the Act of 2011 is co-sponsored by thirty-nine Republicans and two Democrats); H.R. 5827 (stating that the Act of 2010 is co-sponsored by eighteen Democrats and thirteen Republicans).

¹³⁵ PEW RESEARCH CENTER, *supra* note 12.

II. REASONS FOR GUN OWNERSHIP SUPPORT FIREARMS BEING A “HOUSEHOLD GOOD”

This first portion of this section will discuss the functional nexus test courts used to determine if a firearm constituted a “household good” under § 522(f)(1)(B) prior to the addition of § 522(f)(4)(A) and (B) in 2005.¹³⁶ The next portion of this section will discuss how statistical data supports the argument that individuals commonly own firearms in a way that satisfies the functional nexus test, and adds to the argument that firearms could be included in the list of “household goods” in § 522(f)(4)(A). Including firearms in the list of “household goods” in § 522(f)(4)(A) would be consistent with the recent proposals of the Protecting Gun Owners in Bankruptcy Acts.

A. Test Used by the Court Pre-BAPCPA

In *In re Mason*, the Bankruptcy Court for the District of Idaho stated that because firearms are neither per se included nor per se excluded from the category of household goods under § 522(f)(1)(B), a functional nexus needs to be shown between the item and the debtor’s household.¹³⁷ Because firearms were not included in the “household goods” classification in § 522(f)(4)(A) or (B) the functional nexus test is the last known test that can be used to provide guidance for where firearms should be classified.

In this Comment, the functional nexus test will be used to evaluate if firearms should be classified as “household goods” because it was the test commonly used by bankruptcy courts pre-BAPCPA.¹³⁸ As discussed earlier, a firearm satisfies the functional nexus requirement if it is used to support and facilitate daily life within the household of the debtor.¹³⁹

B. Statistical Data of Reasons Why Individuals Own Firearms

In many cases a debtor satisfied the functional nexus test if they owned their firearms for hunting to supply food for their family or for household

¹³⁶ *In re McGreevy*, 955 F.2d 957, 961–62 (4th Cir. 1992); *In re Raines*, 161 B.R. 548, 551 (Bankr. N.D. Ga. 1993); *In re Heath*, 318 B.R. 115, 118 (Bankr. W.D. Ky. 2004); *Crawford v. First Family Fin. Servs.* (*In re Crawford*), 226 B.R. 484, 485 (Bankr. N.D. Ga. 1998); *In re Rhines*, 227 B.R. 308, 310 (Bankr. D. Mont. 1998).

¹³⁷ *In re Mason*, 254 B.R. 764, 773 (Bankr. D. Idaho 2000).

¹³⁸ *McGreevy*, 955 F.2d at 961–62; *Raines*, 161 B.R. at 551; *Heath*, 318 B.R. at 118; *Crawford*, 226 B.R. at 485; *Rhines*, 227 B.R. at 310.

¹³⁹ *McGreevy*, 955 F.2d at 961.

protection.¹⁴⁰ Based upon statistical data, there is a growing number of individuals who use firearms in a way that satisfies the functional nexus test.¹⁴¹ The top two reasons Americans own firearms today are protection and hunting.¹⁴² Figure 1 shows the increase in the percentage of gun owners who own firearms for protection between August 1999 to February 2013.¹⁴³ The percentage of American gun owners listing protection as the primary reason for ownership jumped from 26% in August 1999 to 48% in 2013.¹⁴⁴ Individuals owning firearms for the main reason of protection overtook hunting, which previously stood as the main reason individuals owned firearms.¹⁴⁵

¹⁴⁰ *Rhines*, 227 B.R. at 310 (holding that a firearm constitutes a “household good” because it was used to supply meat for the debtor’s family); *Heath*, 318 B.R. at 118 (holding that the debtor’s firearm is a “household good” because it is used to supply meat for the family); *Raines*, 161 B.R. at 551 (holding that the debtor’s firearm is a “household good” because it is used for protection); *Crawford*, 226 B.R. at 485 (holding that a rifle is a household good because it is used for protection in and around the home); *In re Gonshorowski*, 110 B.R. 51, 55 (Bankr. N.D. Ala. 1990).

¹⁴¹ PEW RESEARCH CENTER, *supra* note 12; Swift, *supra* note 12.

¹⁴² PEW RESEARCH CENTER, *supra* note 12; Swift, *supra* note 12.

¹⁴³ PEW RESEARCH CENTER, *supra* note 12.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

Figure 1¹⁴⁶

Why Do You Own a Gun?

	Aug 1999	Feb 2013	Change
<i>Among gun owners</i>	%	%	
Protection	26	48	+22
Hunting	49	32	-17
Target/sport shooting	8	7	-1
Constitutional right/ 2 nd amendment	4	2	-2
Collect guns/Hobby	4	2	-2
Other	10	7	-3
Don't know	--	1	
	100	100	

PEW RESEARCH CENTER Feb. 13-18, 2013. Based on those who personally own a gun. August 1999 data from ABC News/Washington Post. Figures may not add to 100% because of rounding.

Figure 2 shows that each questioned group of gun owners, which included women, men, 18 to 49 year old individuals, individuals over 50 years of age, post college grads, Republicans, and Democrats, all listed protection as the top reason they owned a gun.¹⁴⁷ The individual group of men gun owners owning a gun for the reason of protection jumped from 21% to 42%.¹⁴⁸ Women gun owners owning a gun for the main reason of protection also increased to 65% in 2013 from the previous percentage of 43% in 1999.¹⁴⁹ Also, Democrat and Republican gun owners both similarly listed protection as the top reason for why they owned a gun.¹⁵⁰ Compared to 1999, where 22% of Republican gun owners owned guns because of protection, the percentage increased by 23% to 45% of Republican gun owners owning guns for protection in 2013.¹⁵¹ Furthermore, 53% of Democrat gun owners owned guns for the main reason of protection in 2013 compared to 28% in 1999.¹⁵² Despite political disagreement

¹⁴⁶ *Id.*
¹⁴⁷ *Id.*
¹⁴⁸ *Id.*
¹⁴⁹ *Id.*
¹⁵⁰ *Id.*
¹⁵¹ *Id.*
¹⁵² *Id.*

about gun control rights, a growing percentage of Republican and Democrat gun owners list protection as the main reason that they own a gun.¹⁵³ The increased percentage of individuals owning guns for the purpose of protection proves that individuals commonly own firearms in a way that satisfies the functional nexus test.¹⁵⁴

Figure 2¹⁵⁵

What is main reason you own a gun?	1999			2013			2013 N
	Pro-tection	Hunting	Other	Pro-tection	Hunting	Other	
	%	%	%	%	%	%	
All gun owners	26	49	26	48	32	18	421
Men	21	55	24	42	36	20	303
Women	43	26	31	65	21	13	118
18-49	27	47	25	52	29	18	157
50+	22	52	26	45	36	18	260
College grad+	25	49	26	45	28	25	154
Some college	34	45	21	53	31	14	128
HS grad or less	22	51	27	45	37	17	138
Rep/Lean Rep	23	50	27	45	39	14	216
Dem/Lean Dem	28	49	23	53	28	19	155

PEW RESEARCH CENTER Feb. 13-18, 2013. Q49. First mentions shown; for first and second mentions see topline. 1999 data from ABC News/Washington Post.

Similar to Figures 1 and 2, Figure 3 indicates that protection is the top reason that Americans own firearms.¹⁵⁶ Figure 3 states that 60% of Americans who own firearms own them for the purpose of protection.¹⁵⁷

The statistics from Figures 1, 2, and 3 also list hunting as the second reason that Americans own firearms.¹⁵⁸ Figures 1 and 2 state that 32% of gun owners

¹⁵³ *Id.*

¹⁵⁴ See Crawford v. First Family Fin. Servs. (*In re Crawford*), 226 B.R. 484, 485 (Bankr. N.D. Ga. 1998).

¹⁵⁵ PEW RESEARCH CENTER, *supra* note 12.

¹⁵⁶ Swift, *supra* note 12.

¹⁵⁷ *Id.*

¹⁵⁸ See Swift, *supra* note 12 (listing protection and hunting as the top reasons gun owners own guns); PEW RESEARCH CENTER, *supra* note 12.

own a gun for the main purpose of hunting and Figure 3 states that 37% of American gun owners own guns for the primary purpose of hunting.¹⁵⁹

Hunting and protection are the two primary means that convinced courts using the functional nexus test that the debtor's firearms constituted a household good under § 522(f)(1)(B).¹⁶⁰ Collectively, 80% of gun owners in Figures 1 and 2 and 96% of gun owners in Figure 3 own firearms in a manner that possibly satisfies the functional nexus test.¹⁶¹ Although the statistics do not specifically say that the individuals who list hunting as the primary purpose for which they own a gun, hunt to supply food for their family,¹⁶² protection still remains as the top reason an individual owns a gun which has been enough to convince the court to classify firearms as "household goods."¹⁶³

¹⁵⁹ See Swift, *supra* note 12; PEW RESEARCH CENTER, *supra* note 12.

¹⁶⁰ *In re Heath*, 318 B.R. 115, 118 (Bankr. W.D. Ky. 2004) (holding that the debtor's firearm is a household good because it is used to obtain meat for the family); *In re Raines*, 161 B.R. 548, 551 (Bankr. N.D. Ga. 1993) (holding that the debtor's firearm is a household good because it is used for protection); *Crawford v. First Family Fin. Servs. (In re Crawford)*, 226 B.R. 484, 485 (Bankr. N.D. Ga. 1998) (holding that a rifle is a household good because it is used for protection in and around the home).

¹⁶¹ See Swift, *supra* note 12 (listing protection and hunting as the top reasons gun owners own guns); PEW RESEARCH CENTER, *supra* note 12.

¹⁶² See *In re Rhines*, 227 B.R. 308, 310–11 (Bankr. D. Mont. 1998); *Heath*, 318 B.R. at 118 (stating that the debtor's firearm is a household good because the debtor uses the firearm to hunt to supply meat for his family).

¹⁶³ PEW RESEARCH CENTER, *supra* note 12; see also *Raines*, 161 B.R. at 551 (holding that the debtor's firearm is a household good because it is used for protection); *Crawford*, 226 B.R. at 485 (holding that a rifle is a household good because it is used for protection in and around the home).

Figure 3¹⁶⁴

Reasons Americans Own Guns

There are many reasons why some people choose to own guns and others do not. What are some of the reasons why you own a gun? [Open ended]

	Oct 3-6, 2013
	%
Personal safety/Protection	60
Hunting	36
Recreation/Sport	13
Target shooting	8
Second Amendment right	5
Like guns/Wanted one/Enjoy using	5
Antique/Family heirloom/Passed down	5
Have always owned/Raised with guns/Family tradition	4
Related to line of work -- police, military	3
Animal/Pest control/Euthanize sick animals, pets	1
Collect guns/Hobby	1
Other	1
No reason in particular	3

Note: Percentages total more than 100% due to multiple responses

GALLUP^{*}

The statistical evidence of the increased amount of individuals owning firearms for the purpose of protection coupled with hunting being the second most common reason an individual owns a gun, helps support that firearms are being owned in a way that would satisfy the functional nexus test. Since firearms are more commonly being owned in ways that would satisfy the functional nexus test, Congress should consider implementing firearms within the list of “household goods” in § 522(f)(4)(A).

The next section of this Comment will include cases to demonstrate how the court classified a firearm as a household good because the debtor used the firearm for the purpose of household protection.

¹⁶⁴ Swift, *supra* note 12.

C. Court Decisions That Emphasize Protection

In *In re Raines*, the Bankruptcy Court for the Northern District of Georgia found that because the debtor used a .357 Smith & Wesson handgun for defense purposes in and around the home that it should be classified as a “household good” under § 522(f)(1)(B).¹⁶⁵ Furthermore, the Bankruptcy Court for the Northern District of Alabama, in *In re Gonshorowski*, held that a .22 revolver was classified as a “household good” subject to lien avoidance under § 522(f)(1)(B).¹⁶⁶ Even though this case was in 1990 and individuals did not use firearms as much as they do today for household protection, the court stated, “revolvers of this type are typically used for defense by debtors and their dependents” and held that the firearm fit within the term of “household goods” under § 522(f)(1)(B).¹⁶⁷

Similarly, in *Crawford*, the Bankruptcy Court for the Northern District of Georgia held that a Remington Model 700 rifle used by the debtor should be classified as a “household good” subject to lien avoidance because the debtor primarily used it for protection of his household.¹⁶⁸ The court used the reasoning from *Raines*¹⁶⁹ that stated, “items used to protect the home and its occupants support and facilitate daily household living.”¹⁷⁰ The reasoning from *Raines*, *Gonshorowski*, and *Crawford* proves that when firearms are used for protection of the household, which is the top reason that individuals own guns today, the firearm is seen to fit within the definition of “household goods” in § 522(f)(1)(B).¹⁷¹ Since individuals predominantly own firearms for protection, firearms could possibly be classified as “household goods” under § 522(f)(1)(B) and thus implemented into the list under § 522(f)(4)(A) that lists specific “household goods”.

The next section will discuss how the *Heller* decision from 2008 may add emphasis to the importance of a bankrupt debtor being able to keep possession of her firearm for household protection.

¹⁶⁵ 161 B.R. at 551 (holding that the debtor’s firearm is a household good because it is used for protection).

¹⁶⁶ 110 B.R. 51, 55 (Bankr. N.D. Ala. 1990).

¹⁶⁷ *Id.* at 53.

¹⁶⁸ 226 B.R. 484, 485 (Bankr. N.D. Ga. 1998) (holding that a rifle is a household good because it is used for household protection).

¹⁶⁹ 161 B.R. 548, 551 (Bankr. N.D. Ga. 1993).

¹⁷⁰ *Crawford*, 226 B.R. at 485.

¹⁷¹ *Raines*, 161 B.R. at 551; *Crawford*, 226 B.R. at 485; *Gonshorowski*, 110 B.R. at 53.

III. DISTRICT OF COLUMBIA V. HELLER ADDS EMPHASIS

District of Columbia v. Heller has brought more attention to possibly protecting firearms from being repossessed by creditors.¹⁷² The *Heller* decision brings to light the emphasis of an individual being able to possess a firearm for protection around the home.¹⁷³ This raises the question of whether a debtor should be able to avoid a creditor's lien on an otherwise exempt firearm because it is used for household protection.¹⁷⁴

In *Heller*, the Supreme Court held that the District of Columbia's law banning the possession of handguns in private homes and the requirement that lawful firearms be kept inoperable, even when necessary for self-defense, violated the Second Amendment.¹⁷⁵ The *Heller* decision recognized the right of an individual to use firearms for the core lawful purpose of protection in the home.¹⁷⁶ However, the court stated that the right to bear arms is not an unlimited constitutional right and made sure to still allow for reasonable restrictions of an individual's ability to use a firearm.¹⁷⁷

The *Heller* decision would have likely influenced previous cases that decided that a debtor's firearm did not constitute a "household good" to come to a different conclusion.¹⁷⁸ For example, in 1992 in *In re McGreevy*, the debtor's argument that his firearms were used for protection was not convincing to the court.¹⁷⁹ Along with making an argument that the firearms were used for hunting away from the home, the debtor made an argument that he also used the guns for household protection.¹⁸⁰ The court did not find either one of the debtor's arguments convincing enough to make the firearms fall

¹⁷² PETTIT & PLATTE, *supra* note 79, at 1.

¹⁷³ See *Protecting Gun Owners in Bankruptcy Act of 2010*, 156 Cong. Rec. E. 1474 (statement of Hon. Gwen Moore) ("I believe that is fundamentally unfair to deny a second amendment protected item from being included in this list."); see also *Protecting Gun Owners in Bankruptcy Act of 2010*, 156 Cong. Rec. E. 1448 (statement of Hon. John Dingell).

¹⁷⁴ *Protecting Gun Owners in Bankruptcy Act of 2010*, 156 Cong. Rec. E. 1448 (statement of Hon. John Dingell) (referencing the *Heller* decision when arguing that bankrupt individuals should be able to exempt their firearms).

¹⁷⁵ 554 U.S. 570, 636 (2008).

¹⁷⁶ *Id.* at 628–29.

¹⁷⁷ *Id.* at 626–27.

¹⁷⁸ See *In re McGreevy*, 955 F.2d 957, 961–62 (4th Cir. 1992) (holding the debtor's firearms were not considered to be household goods even though the debtor stated that he needed the firearms for protection in and around the home).

¹⁷⁹ *Id.*

¹⁸⁰ *Id.*

within the definition of “household goods” in § 522(f)(1)(B).¹⁸¹ The debtor’s arguments were not persuasive because the debtor did not use the firearms to supply food for his family and the court classified the debtor’s protection argument as secondary.¹⁸² The debtor’s argument that the firearms were used for protection would most likely carry more weight today in light of *Heller*.¹⁸³ Because of the rising amounts of individuals today using firearms for protection along with the emphasis from *Heller*, the *McGreevy* court possibly would have allowed the debtor’s firearm to be classified as a “household good” under § 522(f)(1)(B).

The *Heller* decision further supports that the right an individual has to possess a firearm for protection around the home should be recognized.¹⁸⁴ The mindset by the court in *Heller* should be adopted in the bankruptcy context by allowing firearms to fit within the “household goods” classification because individuals are increasingly using firearms for protection.¹⁸⁵

The next section will show that current state exemption statutes use language that recognizes a firearm should be exempt whenever it is used for a household purpose, which resembles the reasoning from the functional nexus test.

IV. STATES CLASSIFYING A FIREARM AS A “HOUSEHOLD GOOD”

State exemption statutes that reflect the rationale from the functional nexus test show that when a debtor commonly uses a firearm for a household purpose that it can be exempt as a “household good.”¹⁸⁶ Therefore because more Americans are using firearms for a household purpose today, a similar rationale could be used for making the determination of whether firearms should be included within the list of “household goods” in § 522(f)(4)(A) of the Code.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Protecting Gun Owners in Bankruptcy Act of 2010*, 156 Cong. Rec. E. 1448 (statement of Hon. John Dingell) (referencing the *Heller* decision when arguing that bankrupt individuals should be able to exempt their firearms).

¹⁸⁴ *See id.*; 156 Cong. Rec. E. 1474 (statement of Hon. Gwen Moore) (“I believe that is fundamentally unfair to deny a [Second Amendment] protected item from being included in this list.”).

¹⁸⁵ PEW RESEARCH CENTER, *supra* note 12; Swift, *supra* note 12 (listing protection and hunting as the top reasons gun owners own guns).

¹⁸⁶ *See, e.g.*, OHIO REV. CODE ANN. § 2329.66 (West 2013); OKLA. ST. ANN tit. 31 § 1 (West 2002); WIS. STAT. ANN. § 815.18(3)(d) (West 2012).

Ohio, Oklahoma, and Wisconsin recognize a debtor's right to use a firearm for a household use by using language in their state exemption statutes that resembles the functional nexus test.¹⁸⁷ These statutes use the language, "held primarily for the personal, family, or household use of the debtor" whenever discussing a debtor's ability to exempt a firearm,¹⁸⁸ showing that firearms used for household use should be exempted in bankruptcy.¹⁸⁹

Similarly, Missouri listed firearms within the classification of "household goods" in its state exemption statute.¹⁹⁰ In 2014, in *In re Gentry*, the United States Bankruptcy Court for the Western District of Missouri, held that the debtors' 12 gauge pump shotgun, .22 pump rifle, and 20 gauge pump shotgun, valued collectively at \$250, were classified as "household goods" in the Missouri exemption statute.¹⁹¹ Even though the court in *Gentry* did not determine whether the firearms at issue were "household goods" for purposes of § 522(f)(1)(B) of the Code but rather for the Missouri state exemption statute, the court came to conclusion that the firearms were within the definition of "household goods" because they are typically used for hunting and self-protection.¹⁹² The court held that the debtor's firearms should constitute household goods under the Missouri exemption statute because guns could be found to be "necessary to the functioning of a household."¹⁹³ Similar to the functional nexus test, the firearms were deemed to be exempt and classified as a household good because debtors commonly use them for protection and hunting.¹⁹⁴ Therefore, firearms could fit within the definition of "household goods" in the Code based on the court's reasoning from *Gentry*.¹⁹⁵

The examples of how the rationale from the functional nexus test is used in state exemption statutes shows that the reasoning from the test can be used when deciding the issue of whether to implement firearms into the list of "household goods" in § 522(f)(4)(A) of the Code.

¹⁸⁷ OHIO REV. CODE ANN. § 2329.66; OKLA. ST. ANN tit. 31 § 1; WIS. STAT. ANN. § 815.18(3)(d).

¹⁸⁸ OHIO REV. CODE ANN. § 2329.66; OKLA. ST. ANN tit. 31 § 1; WIS. STAT. ANN. § 815.18(3)(d); *see also* OR. REV. STAT. ANN. § 18.362 (West 2014) (specifying that the firearms must be "for the own use and defense of the citizen").

¹⁸⁹ OHIO REV. CODE ANN. § 2329.66; OKLA. ST. ANN tit. 31 § 1; WIS. STAT. ANN. § 815.18(3)(d).

¹⁹⁰ *In re Gentry*, 519 B.R. 531, 534 (Bankr. W.D. Mo. 2014).

¹⁹¹ *Id.*

¹⁹² *Id.*

¹⁹³ *Id.*

¹⁹⁴ *Id.*

¹⁹⁵ *Id.*

The next section explores the general need for revision of § 522(f)(4)(A) and (B). The need for the revision of the lists in § 522(f)(4)(A) and (B) adds to the argument that firearms should be inserted into the list of “household goods” in order to meet current needs of debtors.

V. SECTIONS 522(f)(4)(A) AND (B) NEED TO BE AMENDED

Section 522(f)(4)(A) lists items that are considered to be “household goods” under § 522(f)(1)(B) and § 522(f)(4)(B) lists items that are not considered to be “household goods.”¹⁹⁶ Even though § 522(f)(4)(A) and (B) clarify what constitutes a household good, the lists’ inflexible approach could prevent the Code from keeping pace with changing consumer goods relevant to debtors filing for bankruptcy.¹⁹⁷ For example, an issue arises with the placement of VCR within the term of “household goods” under § 522(f)(4)(A)(vi).¹⁹⁸ Even though a VCR is listed as a household good it is most likely not applicable with current technology and is not commonly owned by debtors.¹⁹⁹ Today, debtors will most likely own Blu-ray players or DVD players rather than VCR’s.²⁰⁰

Cases that occurred after the addition of § 522(f)(4)(A) acknowledge that the list is not up to date with the times for items such as the VCR.²⁰¹ In *In re Mundy* in 2006, a court recognized that a DVD player is akin to a VCR and even though a DVD player is not listed for purposes of lien avoidance a debtor should be able to avoid the nonpossessory, nonpurchase-money security interest on a DVD player.²⁰² Similarly, in 2009, in *In re Zieg*, a court recognized that the technology has changed since BAPCPA was drafted in 2005 and that a VCR can be reasonably interpreted to include the debtor’s DVD player for purposes of lien avoidance.²⁰³

¹⁹⁶ 11 U.S.C. § 522(f)(4)(A), (B) (2012).

¹⁹⁷ 7 COLLIER ON BANKRUPTCY, *supra* note 6.

¹⁹⁸ 11 U.S.C. § 522(f)(4)(A)(vi).

¹⁹⁹ 7 COLLIER ON BANKRUPTCY, *supra* note 6.

²⁰⁰ *Id.*; see also Andrew Dugan, *Americans’ Tech Tastes Change with Times*, GALLUP ECONOMY (Jan. 6, 2014), <http://www.gallup.com/poll/166745/americans-tech-tastes-change-times.aspx> (reporting that there has been a thirty percent decrease in the amount of Americans who own VCRs since 2005).

²⁰¹ See *In re Mundy*, 2006 Bankr. LEXIS 109, 13–14 (D.S.C. 2006); *In re Zieg*, 409 B.R. 917, 920 (Bankr. W.D. Mo. 2009) (interpreting a VCR to include a DVD player because of changes in consumer preferences after the BAPCPA was drafted).

²⁰² *Mundy*, 2006 Bankr. LEXIS 109, at *13–14.

²⁰³ *Zieg*, 409 B.R. at 920.

Even though the prevalence of firearms ownership has not grown because of changes in technology like the DVD player or Blu-ray player, more people now own firearms today for a household purpose.²⁰⁴ Based on these examples, Congress's definition of what constitutes a "household good" in § 522(f)(4)(A) could be adjusted to match the current needs of debtors currently filing for bankruptcy.

The § 522(f)(4)(A) list also contains some items that require interpretation. For example, an "appliance" is classified as a "household good."²⁰⁵ Because of the ambiguity, the term appliance leaves the door open for the court to interpret what an appliance actually is.²⁰⁶

Further, trying to read firearms into the definition of an item currently listed under § 522(f)(4)(A) like DVD players are read into the definition to mean VCRs is most likely implausible.²⁰⁷ The best chance that a firearm has in being read into the definition of "household goods" is under "personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor."²⁰⁸ Whether a firearm actually falls under the category of "personal effects of the debtor and the dependents of the debtor" would still be ambiguous and not explicitly stated.²⁰⁹ Therefore, firearms would likely need to be explicitly and separately identified within the list of § 522(f)(4)(A).

Even though the Code identifies items that fit within the definition of "household goods" in § 522(f)(1)(B), there are still items, like firearms, which have been left off the list. The lists in § 522(f)(4)(A) and (B) are now in some instances outdated and ambiguous. In light of individuals more commonly

²⁰⁴ Swift, *supra* note 12.

²⁰⁵ 11 U.S.C. § 522(f)(4)(A)(iii) (2012); Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (enacted Apr. 20, 2005).

²⁰⁶ See Zieg, 409 B.R. at 921 (classifying a lawn mower as an appliance for purposes of § 522(f)(4)(A)(iii)); *In re Stewart*, No. 07-02189, 2007 Bankr. LEXIS 2915, at *5-6 (Bankr. D.S.C. 2007) (holding that a utility building is not considered an appliance for § 522(f)(4)(A)(iii) after the debtor tried to argue that the lien should be voided because it fit within the definition of "appliance").

²⁰⁷ Zieg, 409 B.R. at 920.

²⁰⁸ 11 U.S.C. § 522(f)(4)(A)(xiv); Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23 (enacted Apr. 20, 2005).

²⁰⁹ See 11 U.S.C. § 522(f)(4)(A)(xiv); Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, 109 Pub. L. No. 109-8, 119 Stat. 23 (enacted Apr. 20, 2005).

possessing a firearm for a functional use in and around the home,²¹⁰ the § 522(f)(4)(A) list of “household goods” should be revised.

VI. SUGGESTIONS FOR THE PROPOSED AMENDMENT

This section will include suggestions that Congress should consider for implementing firearms into the list of “household goods” in § 522(f)(4)(A). Because the recent proposals of the Protecting Gun Owners in Bankruptcy Acts have been unsuccessful, this section will offer suggestions about what could possibly be used to successfully get a subsequent Protecting Gun Owners in Bankruptcy Act accepted and implemented into the Code.

A proposed amendment that would add firearms into the list of “household goods” in § 522(f)(4)(A) would need to include a limit on the aggregate fair market value of the firearms that a debtor could exempt.²¹¹ A specific cap on the aggregate fair market value of the firearms is preferred to offering a debtor an opportunity to exempt a firearm along with other household goods under a certain aggregate fair market value.²¹² Even though offering the debtor an opportunity to exempt a firearm among other household goods under a certain aggregate fair market value would ensure that the firearm is important to the debtor, § 522(f)(4)(A) does not impose an aggregate fair market value limit for the total amount of household goods that a debtor can exempt.²¹³ Therefore, the proposed amendment should impose a limit on the aggregate fair market value specifically allowed for firearms a debtor can exempt.

Similar to the Protecting Gun Owners in Bankruptcy Act of 2015, a proposed amendment would probably need to include “the debtor’s aggregate interest, not to exceed . . . in value.”²¹⁴ Another suggestion to put a cap on the aggregate monetary interest that can be exempted could be to include, “the

²¹⁰ PEW RESEARCH CENTER, *supra* note 12; Swift, *supra* note 12 (listing protection and hunting as the top two reasons that Americans own firearms).

²¹¹ See Protecting Gun Owners in Bankruptcy Act of 2014, H.R. 3933, 113th Cong. (2014) (proposing a \$3000 monetary cap on the firearm or firearms that the debtor would exempt).

²¹² Several states have adopted such aggregate caps. See ARIZ. REV. STAT. ANN. § 33-1125(7) (West 2014) (allowing a debtor to exempt “one shotgun, or one rifle, or one pistol” among other household goods as long as the aggregate fair market value is under \$1000); WIS. STAT. ANN. § 815.18(3)(d) (West 2012) (allowing a debtor to exempt a firearm among other household goods as long as the total aggregate value is under \$12,000).

²¹³ See 11 U.S.C. § 522(f)(4)(A), (B).

²¹⁴ See Protecting Gun Owners in Bankruptcy Act of 2014, H.R. 3933, 113th Cong. (2014) (proposing a \$3000 monetary cap on the firearm or firearms that the debtor would exempt).

combined value of all firearms claimed as exempt may not exceed”²¹⁵ Limiting the aggregate monetary interest in firearms that a debtor will be able to exempt will help control the amount of guns that a debtor can exempt and prevent the debtor from obtaining large monetary exemptions for her exempt firearm.²¹⁶

Furthermore, the amount of firearms that a debtor would be able to exempt would need to be limited to the amount of firearms that are actually needed to facilitate a debtor’s daily life. At most, a debtor needs to exempt two firearms: one for household protection, and one for hunting to supply food for her family.²¹⁷ Therefore, the maximum number of firearms that a debtor should be allowed to exempt is two.²¹⁸ For example, the proposed amendment could include, “one rifle or shotgun, and pistol” to allow two firearms to be exempt.²¹⁹ The Protecting Gun Owners in Bankruptcy Act of 2015 also proposed that the option of a combination of firearms should be allowed by proposing, “the debtor’s aggregate interest, . . . in a single firearm or firearms.”²²⁰ The Act of 2015 recognized that the debtor might need to exempt a combination of firearms.²²¹ However, the Act of 2015 did not recognize that a debtor should be just allowed to exempt the maximum of two firearms. Limiting the amount of firearms to just two will make the proposed amendment seem not as extreme since it will not allow a debtor to be able to exempt several firearms. Thus, a proposed amendment should impose a limit on the amount of firearms a debtor can exempt.

Therefore, a subsequent proposal of a Protecting Gun Owners in Bankruptcy Act should have a cap on the aggregate monetary value of firearms

²¹⁵ OR. REV. STAT. ANN. § 18.362 (West 2014) (not allowing the combined value of all firearms claimed as exempt to exceed \$1000).

²¹⁶ See *In re Eichelberger*, No. L-89-00013W, slip op. at 11 (Bankr. N.D. Iowa Sept. 29, 1989) (allowing a debtor to exempt a \$22,000 rifle); *In re McCabe*, 280 B.R. 841, 845 (Bankr. N.D. Iowa 2002) (allowing the debtor to exempt a \$10,000 shotgun).

²¹⁷ *In re Heath*, 318 B.R. 115, 118 (Bankr. W.D. Ky. 2004) (holding that only the debtor’s 30/30 rifle constituted a “household good” because the debtor used this rifle for the primary purpose of obtaining meat for his family; debtor’s two twelve gauge shotguns, 4-10 shotgun, and .22 automatic rifle did not constitute “household goods” because they were not the most appropriate firearm for that purpose).

²¹⁸ See *In re Rhines*, 227 B.R. 308, 310 (Bankr. D. Mont. 1998) (allowing for a 7mm Remington Magnum rifle and Masenberg 12 gauge shotgun to constitute “household goods” under § 522(f)(1)(B) because both firearms were used for different purposes).

²¹⁹ OR. REV. STAT. ANN. § 18.362 (West 2014).

²²⁰ See Protecting Gun Owners in Bankruptcy Act of 2014, H.R. 3933, 113th Cong. (2014).

²²¹ See *id.*

that a debtor can exempt, as well as limit the debtor to the maximum exemption amount of two firearms.

CONCLUSION

Because of the differences in opinion on gun control and the emphasis different parts of the United States place on firearms possession, the step of implementing firearms specifically into the Code is a difficult one to make. Moreover, state exemption statutes that specifically mention firearms even differ in the amount of firearms that a debtor can exempt,²²² the limit for the aggregate monetary value of the firearms that debtors can exempt,²²³ and the justifications for letting debtors exempt a firearm.²²⁴ However, just because the decision to provide for firearms in the Code is difficult does not mean that Congress should refrain from providing clarification.

Firearms are more commonly being used today in a way that would support them being included within the classification of “household goods” in § 522(f)(4)(A). The majority of gun owners own firearms for reasons that satisfy the functional nexus test, which was used by courts to determine if firearms should be classified as “household goods” pre-BAPCPA.²²⁵ Thus, the proposal to implement firearms within the classification of “household goods” is possible and can be supported by rationale that has been previously used by bankruptcy courts. Even though the proposals of the Protecting Gun Owners in Bankruptcy Acts have not been accepted, the test used pre-BAPCPA to evaluate if a firearm constituted a “household good” seems to provide guidance and even shows that firearms could be included within the list of “household goods” in § of 522(f)(4)(A) of the Code.

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²²² See TEX. PROP. CODE ANN. § 42.002(7) (West 2001) (allowing a debtor to exempt two firearms); IDAHO CODE ANN. § 11-605(8) (West 2014) (allowing a debtor to exempt one firearm).

²²³ See OR. REV. STAT. ANN. § 18.362 (stating that the combined value of the debtors one rifle and one shotgun or pistol that are exempt may not exceed \$1000); OHIO REV. CODE ANN. § 2329.66 (West 2013) (stating that a debtor’s exempt firearm may not exceed \$525); TEX. PROP. CODE ANN. § 42.002(7) (not giving an aggregate value that the debtor’s exempt firearms need to stay under).

²²⁴ See OKLA. ST. ANN. tit. 31 § 1 (West 2002); WIS. STAT. ANN. § 815.18(3)(d) (West 2012); OHIO REV. CODE ANN. § 2329.66 (stating that a firearm should only be exempt if it is held by the debtor primarily for personal, family, or household use).

²²⁵ PEW RESEARCH CENTER, *supra* note 12 (listing protection and hunting as the top reasons Americans own guns).

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