

# CASE NOTE: *DAVIDSON V. UNITED AUTO CREDIT CORPORATION*

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## I. INTRODUCTION

Under the Military Lending Act (MLA)’s auto-finance exception, a loan is excluded from the MLA if it was (1) “procured in the course of purchasing a car”; (2) “offered for the express purpose of financing the purchase” of that car; and (3) “secured by the car.”<sup>1</sup> Considering these factors,

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1. *Davidson v. United Auto Credit Corp.*, 65 F.4th 124, 128 (4th Cir. 2023), *aff’g* 2021 WL 2003547 (E.D. Va. May 19, 2021).

the question arises: what does “express” purpose mean? Does it mean the “specific” purpose? Or must it be the “sole” purpose? That was the question before the U.S. Court of Appeals for the Fourth Circuit in *Davidson v. United Auto Credit Corporation*, where the court was tasked with determining whether the MLA’s auto-finance exception applied to a purchase-money auto-finance transaction<sup>2</sup> (whether evidenced by a loan agreement or a retail installment contract) that included a GAP waiver.<sup>3</sup>

While the Fourth Circuit’s analysis ultimately hinged on the court’s textual interpretation of the MLA, the amici curiae supporting both sides highlighted the tension between the industry and its regulators. The United States, including the Department of Justice, the Department of Defense, and the Consumer Financial Protection Bureau, asked the court to overturn the Eastern District of Virginia’s ruling that the plaintiff’s retail installment contract was not subject to the MLA.<sup>4</sup> To provide legislative insight, seven current or former members of Congress wrote in support of affirmance, providing a window into the actual legislative intent.<sup>5</sup> Six industry groups, including the American Financial Services Association and the Chamber of Commerce for the United States, also joined together to support the creditor and seek affirmance.<sup>6</sup>

The Fourth Circuit sided with the creditor, holding that the “express” purpose meant the “specific” purpose, and because the “specific” purpose of the retail installment contract was to purchase a car, the retail installment contract could also finance the related GAP waiver without subjecting the transaction to the MLA.<sup>7</sup> While this decision means that purchase-money auto loans for servicemembers remain exempt from the MLA, given the Consumer Financial Bureau’s watchful eye cast upon voluntary add-on products, this decision may prompt the Bureau to bolster its efforts to curtail products it deems lack benefits.

## II. BACKGROUND

The parties, the district court, the Fourth Circuit, and all of the amici focused upon the purpose and design of the MLA—the statutory basis for

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2. The MLA uses the word “loan,” which includes both direct loans and indirect financing, for example, through a retail installment contract. See Brief of the American Financial Services Association et al. as Amici Curiae in Support of Defendant-Appellee and in Support of Affirmance, at 5 n.1, *Davidson*, 65 F.4th 124 (No. 21-1697), 2022 WL 903110, [hereinafter *Industry Amicus Brief*].

3. *Davidson*, 65 F.4th at 126.

4. Brief for the United States of America as Amicus Curiae Supporting Appellant, *Davidson*, 65 F.4th 124 (No. 21-1697), 2022 WL 141574 [hereinafter U.S. Amicus Brief].

5. Brief Amici Curiae of Seven Current or Former Members of Cong[re]ss in Support of Defendant-Appellee and in Support of Affirmance, *Davidson*, 65 F.4th 124 (No. 21-1697), 2022 WL 903113 [hereinafter Congress Amicus Brief].

6. See *Industry Amicus Brief*, *supra* note 2.

7. *Davidson*, 65 F.4th at 133.

plaintiff Davidson's claims. This Article likewise begins with a brief overview of the MLA before considering the specific facts of this case. Given that a GAP waiver was at the heart of the controversy, a brief discussion about what a GAP waiver is (and is not) is also warranted.

#### A. Military Lending Act.

In 2006, the Department of Defense (DoD) identified certain "predatory" loan products that were evidently targeting military servicemembers and their dependents.<sup>8</sup> In response, Congress enacted the federal MLA.<sup>9</sup>

The MLA imposes various limits on "consumer credit" extended to servicemembers and their dependents, such as a 36% "all-in" rate cap, a prohibition on mandatory arbitration, and certain required disclosures.<sup>10</sup> Any loan that violates the MLA is void from inception.<sup>11</sup> Borrowers have a private right of action against creditors, and the MLA gives the Consumer Financial Protection Bureau and Federal Trade Commission enforcement authority while tasking the DoD with implementing regulations.<sup>12</sup>

Since its inception, however, certain kinds of credit, including purchase-money auto-finance transactions, have been exempt from the MLA.

The MLA only applies to extensions of "consumer credit."<sup>13</sup> As defined through rulemaking, "consumer credit" encompasses any loan offered "primarily for personal, family, or household purposes," which either includes "a finance charge" or is payable in more than four installments.<sup>14</sup> The MLA excludes from the definition of "consumer credit" "a loan procured in the course of purchasing a car or other personal property when that loan is offered for the express purpose of financing the purchase and is secured by the car or personal property procured."<sup>15</sup> In other words, if a loan or retail installment contract is (1) "procured in the course of purchasing a car," (2) "offered for the express purpose of financing the [car] purchase," and (3) "secured by the car," then the transaction is exempt from the MLA.<sup>16</sup>

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8. DEP'T OF DEF., REP. ON PREDATORY LENDING PRACS. DIRECTED AT MEMBERS OF THE ARMED FORCES AND THEIR DEPENDENTS (2006), <https://apps.dtic.mil/sti/pdfs/ADA521462.pdf> [hereinafter 2006 DoD Report].

9. 10 U.S.C. § 987.

10. *Id.*

11. *Id.* § 987(f)(3).

12. *Id.* § 987(f)(6) (Incorporating the enforcement provisions of the Truth in Lending Act, 15 U.S.C. § 1607); *id.* § 987(h)(1) ("The Secretary of Defense shall prescribe regulations to carry out this section.")

13. *Id.* § 987(i)(6).

14. 32 C.F.R. § 232.3(f)(1).

15. 10 U.S.C. § 987(i)(6).

16. *Id.*; see also Davidson v. United Auto Credit Corp., 65 F.4th 124, 133 (4th Cir. 2023).

In 2016 and 2017, the DoD issued interpretive rules regarding the purchase-money loan exceptions.<sup>17</sup> The 2016 guidance provided that personal property “hybrid loans,” which financed the purchase of both an exempt product (such as personal property) and a nonexempt product (such as a cash advance), were not within the “consumer credit” exception and thus were subject to the MLA.<sup>18</sup> The 2017 guidance answered substantially the same question, but in the auto-loan context.<sup>19</sup> The 2017 guidance’s answer, however, was more complex. According to the DoD, whether a hybrid auto loan fell within the auto-finance exception turned on whether the financing costs were “related to the object securing the credit” or whether they were financing “credit-related costs.”<sup>20</sup> The 2017 guidance specifically noted that “a credit transaction that includes financing for Guaranteed Auto Protection insurance or a credit insurance premium would not qualify for the exemption[.]”<sup>21</sup>

After publishing the 2017 guidance, the DoD received “several formal requests” to withdraw the 2017 guidance.<sup>22</sup> Creditors were concerned about technical compliance because there was an argument that they could not take a security interest in the vehicle if they financed add-on products, such as GAP waiver.<sup>23</sup> The DoD concluded this concern had merit and withdrew the 2017 guidance.<sup>24</sup>

#### B. GAP Waivers.

Guaranteed asset protection (or sometimes, guaranteed auto protection) or “GAP” is a catchall term for certain products designed to cover the difference or “gap” between the remaining balance on a loan and the in-

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17. Military Lending Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 81 Fed. Reg. 58,840–41 (Aug. 26, 2016) [hereinafter 2016 Guidance]; Military Lending Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 82 Fed. Reg. 58,739, 58,740 (Dec. 14, 2017) [hereinafter 2017 Guidance].

18. 2016 Guidance, *supra* note 17.

19. 2017 Guidance, *supra* note 17.

20. *Id.*

21. *Id.*

22. Military Lending Act Limitations on Terms of Consumer Credit Extended to Service Members and Dependents, 85 Fed. Reg. 11,842–43 (Feb. 28, 2020) [hereinafter 2020 Withdrawal].

23. *Id.*

24. *Id.* (“The Department finds merit in this concern and agrees additional analysis is warranted. In withdrawing the amended Q&A #2, published on December 14, 2017, because of unforeseen technical issues between the amended Q&A #2 and 32 CFR 232.8(f), the Department, absent of additional analysis, takes no position on any of the arguments or assertions advanced as a basis for withdrawing the amended Q&A #2 from the December 14, 2017 Interpretive Rule.”).

insurance payout if the car is stolen or totaled.<sup>25</sup> When a vehicle purchaser makes an insurance claim following a total loss, the insurance payout is typically limited to the actual cash value of the vehicle, less any applicable deductible.<sup>26</sup> But because car values depreciate rapidly in the first few years, there can be a considerable gap between the insurance payout and the balance remaining on the consumer's account.<sup>27</sup> GAP products bridge that gap and ensure that borrowers are not stuck paying off loans for cars they no longer own.<sup>28</sup>

GAP products include both GAP waivers and GAP insurance.<sup>29</sup> A GAP *waiver* is the guarantee from the creditor that it will waive the gap between the account balance and insurance payment.<sup>30</sup> A GAP waiver amends the loan agreement or retail installment contract between the creditor and the borrower to provide the waiver guarantee by the creditor.<sup>31</sup> GAP *insurance*, on the other hand, is typically sold as an endorsement to an auto insurance policy by an insurer.<sup>32</sup> GAP waivers are significantly more accessible than GAP insurance; GAP insurance is not offered by all auto insurance companies and is typically unavailable in the higher risk auto insurance market.<sup>33</sup>

### III. THE DAVIDSON CASE

#### A. Davidson's Purchase and District Court Litigation.

In 2018, while an active member of the United States military, Jerry Davidson bought an SUV from a dealership in Virginia.<sup>34</sup> He financed this purchase through the dealership and the retail installment contract was thereafter assigned to United Auto Credit Corporation.<sup>35</sup> The retail installment contract extended credit for Davidson's purchase of the car as well as the cost of a GAP waiver he chose to purchase and other fees.<sup>36</sup>

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25. See CONSUMER FIN. PROT. BUREAU, SUPERVISORY HIGHLIGHTS, at 3 (2019), [https://files.consumerfinance.gov/f/documents/cfbp\\_supervisory-highlights\\_issue-19\\_092019.pdf](https://files.consumerfinance.gov/f/documents/cfbp_supervisory-highlights_issue-19_092019.pdf).

26. Letter from National Automobile Dealers Association to William S. Castle, Principal Deputy Gen. Couns., Off. of the Gen. Couns., U.S. Dep't of Def., at 4 (Oct. 12, 2018) [hereinafter 2018 NADA Letter] (available at <https://www.consumerfinance.com/wp-content/uploads/sites/14/2019/03/NADA-letter-to-Defense-Dept.pdf>, at 7-16).

27. *Id.*

28. *Id.*

29. See Stephen D. Britt et al., *Are You Covered?: Behind the Drive to Regulate GAP Waivers*, 76 CONSUMER FIN. L.Q. REP. 81, 82 (2022).

30. See 2018 NADA Letter, *supra* note 26, at 4.

31. See Industry Amicus Brief, *supra* note 2, at 17.

32. See 2018 NADA Letter, *supra* note 26, at 4.

33. See 2018 NADA Letter, *supra* note 26, at 14 (CCIA handout).

34. Davidson v. United Auto Credit Corp., No. 120CV1263LMBJFA, 2021 WL 2003547, at \*1 (E.D. Va. May 19, 2021), *aff'd*, 65 F.4th 124 (4th Cir. 2023).

35. Davidson v. United Auto Credit Corp., 65 F.4th 124, 127 (4th Cir. 2023).

36. *Id.* at 127 & n.2.

Two years later, Davidson sued United Auto Credit individually and on behalf of a putative class for allegedly violating the MLA.<sup>37</sup> He claimed that the retail installment contract fell within the MLA because it financed more than just the vehicle—it financed the GAP waiver as well as a processing fee and prepaid interest fee.<sup>38</sup> So, he argued United Auto Credit violated the MLA because it allegedly failed to provide the true military annual percentage rate, and it required Davidson to arbitrate disputes.<sup>39</sup> Extrapolating from United Auto Credit’s alleged 4,500 auto dealers and 53,000 borrowers, Davidson alleged that the class consisted of “easily thousands of consumers,” and he sought the statutory penalty of \$500 per violation, as well as actual and punitive damages.<sup>40</sup>

The case was transferred from Central California to Eastern Virginia. United Auto Credit filed a motion to dismiss, which was decided by U.S. District Court Judge Leonie M. Brinkema.<sup>41</sup> The district court considered the purpose of the MLA, giving particular consideration to the DoD’s 2016 and 2017 Q&A Interpretations<sup>42</sup> and the subsequent 2020 withdrawal.<sup>43</sup> The court reasoned that Davidson’s interpretation of the MLA’s auto-finance exception would effectively reinstate the withdrawn 2017 guidance.<sup>44</sup> The court held that because the charges at issue were “inextricably tied to [Davidson’s] purchase of the vehicle,” the auto-finance exception applied and the loan was not subject to the MLA.<sup>45</sup> Accordingly, the action was dismissed. Davidson appealed to the U.S. Court of Appeals for the Fourth Circuit.

#### B. The Fourth Circuit Sides with Creditors.

Between the parties’ and the amicus curiae briefs,<sup>46</sup> the Fourth Circuit was presented with widely diverging interpretive theories and policy considerations. But the court’s decision, authored by Judge Julius Richardson and joined by Judge Stephanie Thacker,<sup>47</sup> hones in on the statutory text and

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37. See generally Complaint (ECF No. 1), *Davidson*, 2021 WL 2003547.

38. *Davidson*, 65 F.4th at 126–27 & n.2. The litigation ultimately centered on the GAP waiver. *Id.* at 127 n.2 (“The complaint also alleges that the loan here included a processing fee and a prepaid-interest fee. But those fees do not affect our analysis.”).

39. *Davidson*, 2021 WL 2003547, at \*1.

40. Second Amended Complaint (ECF No. 31), ¶ 41 & Prayer for Relief, sub. C, *Davidson*, 2021 WL 2003547 (citing 10 U.S.C. § 987(f)(5)(A) with respect to the damages sought).

41. *Davidson*, 2021 WL 2003547, at \*1.

42. See 2016 Guidance, *supra* note 17; 2017 Guidance, *supra* note 17.

43. See 2020 Withdrawal, *supra* note 22.

44. *Davidson*, 2021 WL 2003547, at \*5.

45. *Id.*

46. See Industry Amicus Brief, *supra* note 2; U.S. Amicus Brief, *supra* note 4; Congress Amicus Brief *supra* note 5.

47. In a somewhat atypical split, the majority opinion was authored by a Trump appointee and joined by an Obama appointee. Judge Wilkinson, the dissenter, was appointed to the bench by Ronald Reagan.

the meaning of the word “express.”<sup>48</sup> Judge J. Harvie Wilkinson III dissented, opining that the court’s decision undermines the MLA by expanding the auto-finance exception, creating an “unregulated back door” for creditors to evade the MLA.<sup>49</sup>

1. *The meaning of “express” is determined based on the statute’s text, not dictionary definitions.*

The Fourth Circuit began with a review of the MLA’s framework and the exception for auto loans.<sup>50</sup> The MLA applies to an “extension of consumer credit” to servicemembers and their dependents.<sup>51</sup> But the definition of “consumer credit” excludes “a loan procured in the course of purchasing a car . . . when that loan is offered for the express purpose of financing the purchase and is secured by the car . . . procured.”<sup>52</sup> The parties agreed that the loan was “procured in the course of purchasing a car” and that it was “secured by the car . . . procured.”<sup>53</sup> Thus, the only question was whether the loan was “offered for the express purpose of financing the purchase” of the car.<sup>54</sup>

Summarizing the issue and its holding, the court explained:

The Military Lending Act regulates lenders when they extend “consumer credit” to members of the military. Yet the Act makes an exception. . . . So if a member of the military takes out a secured loan to purchase a car, then the [auto-finance] exception is satisfied and the Act does not apply. But what happens when the loan finances both the car and some related costs? Is the statute’s exception contingent on the loan financing solely the purchase of the car—i.e., is the dual-purpose loan no longer offered for the express purpose of financing the car? The district court said no and we agree. If a loan finances a car and related costs, then it is for the express purpose of financing the car purchase and the exception can apply.<sup>55</sup>

The parties differed on whether “express” means for the “specific purpose” or for the “sole purpose.” The court reasoned that if it means “specific,” United Auto wins. If it means “sole,” then Davidson wins.<sup>56</sup>

To answer that question, the Fourth Circuit determined the meaning of “express” purpose.<sup>57</sup> The court first considered how dictionaries (*five* dictionaries) define “express.”<sup>58</sup> The court concluded that dictionaries sup-

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48. See generally *Davidson v. United Auto Credit Corp.*, 65 F.4th 124 (4th Cir. 2023).

49. *Id.* at 133.

50. *Id.* at 127–28.

51. See 10 U.S.C. § 987(c)(1), (e).

52. *Id.* § 987(i)(6).

53. *Davidson*, 65 F.4th at 128 n.7.

54. *Id.* at 128.

55. *Id.* at 126.

56. *Id.* at 128.

57. *Id.*

58. *Id.* at 129.

ported both interpretations.<sup>59</sup> “Express” could mean the “only” purpose, according to the *Oxford* and *Encarta* dictionaries, or it could mean the “specific” purpose, based on *Webster’s* dictionary or Bryan Garner’s *Modern American Usage*.<sup>60</sup> The dictionary definitions were a wash, and the court’s decision turned upon a plain language interpretation of the MLA for the meaning of “express” purpose.

The court considered the language of the auto-finance exception to determine the meaning of the “express” purpose. Considering the statute’s language and structure, the court reasoned that the MLA uses “for the express purpose” to set a condition.<sup>61</sup> The court reasoned that the auto-finance exception is worded as a condition: “If you do this (the condition), then you get that (the conclusion). When the condition is met—for our purposes—the conclusion *must* follow.”<sup>62</sup> If A, then B—if A is satisfied, B follows even if a third variable is introduced. Further, “the express purpose” includes the singular and the plural and would allow multiple purposes unless the context dictates otherwise.<sup>63</sup> The court concluded, “here it does not.”<sup>64</sup> The court reasoned that “[t]he express purpose the exception cares about is financing the purchase of a car. It says nothing about other express purposes the loan might have.”<sup>65</sup> Therefore, the court rejected Davidson’s argument that “express” purpose means the “sole” purpose.<sup>66</sup>

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59. *Id.*

60. *Id.* (citing *Express*, Concise Oxford American Dictionary 315 (2006) (“Precisely and specifically identified to the exclusion of anything else.” (emphasis added)); *Express*, Encarta Concise English Dictionary 504 (2001) (defining express as “definitely, and usually exclusively, intended or specified” (emphasis added)); *Express*, Garner’s Modern American Usage 434 (3d ed. 2009) (explaining that when used adjectivally, “express” means “specific, definite, and clear”); *Express*, Webster’s Third New International Dictionary of the English Language Unabridged 803 (2002) (“specifically designed or chosen for its purpose . . . of a particular or special sort: SPECIFIC (he came for that [express] purpose)”); *Express*, Random House Webster’s Unabridged Dictionary 683 (2d ed. 2001) (“special; definite: *We have an express purpose in being here.*”).

61. *Davidson*, 65 F.4th at 129–30. This is in contrast to a statute that is “directive,” telling someone to do or not do something. When “for the express purpose” is used as part of a directive, it generally means for the “sole purpose.” However, the MLA’s auto-finance exception is not worded that way. *Id.* at 131–32.

62. *Id.* at 130 (emphasis in original).

63. As the court explained, “words importing the singular include and apply to several . . . things’ unless context indicates otherwise.” *Id.* at 132 (quoting 1 U.S.C. § 1 (“In determining the meaning of any Act of Congress, unless the context indicates otherwise—words importing the singular include and apply to several persons, parties, or things; words importing the plural include the singular; words importing the masculine gender include the feminine as well; words used in the present tense include the future as well as the present; . . .”))

64. *Id.* at 132.

65. *Id.* at 133.

66. *Id.*



Thus, a transaction may have more than one purpose and still satisfy the auto-finance exception. As the court held, the auto-finance exception is met if the transaction was offered for the specific purpose of financing the purchase of a car, even if it also financed other items:

Once we interpret “express” to mean “specific” and not “sole,” the analysis is easy. Section 987(i)(6) says that consumer credit does not include—and thus the Act does not apply to—a loan if it is: (1) “procured in the course of purchasing a car”; (2) “offered for the express purpose of financing the purchase” of that car; and (3) “secured by the car.” Placing those requirements on a checklist we ask: Was it procured in the course of purchasing a car? Yes. Was it offered for the specific purpose of financing the purchase of that car? Yes. And was it secured by the car? Yes. Did it also finance GAP protection? We do not care and we do not ask. The conditions have all been satisfied and the conclusion must follow. The loan is exempted from the Act, no matter what else it financed.<sup>67</sup>

Davidson’s loan was offered for the specific purpose of financing his car purchase. That satisfies the auto-finance exception’s relevant condition, making the MLA inapplicable.<sup>68</sup> Accordingly, United Auto’s loan to Davidson was not covered by the MLA. Since “for the express purpose,” as used in the MLA means for the “specific” purpose, a loan whose specific purpose is financing a car purchase still satisfies the auto-finance exception even if it has other purposes. Because United Auto’s loan to Davidson had the specific purpose of financing Davidson’s car purchase and met the exception’s other requirements, it fell outside the MLA.<sup>69</sup> The court reasoned that since Davidson’s loan financed a car and “related costs,” then it was “for the express purpose of financing the car purchase” and it falls within the auto-finance exception.<sup>70</sup>

Additionally, the court considered Davidson’s argument that the MLA auto-finance exception should be interpreted in a manner beneficial to servicemembers. In Davidson’s view, the beneficial interpretation would require “express” purpose to mean the “sole” purpose. Ultimately, the court could not determine the beneficial interpretation of the auto-finance exception, noting that there are legitimate arguments that the auto-finance exception in fact benefits servicemembers.<sup>71</sup>

As the court explained, if Davidson’s interpretation were adopted and the transaction was held to not receive the exception and thus be subject to the MLA, it could have negative repercussions for servicemembers:

Yet since the Act forbids using a servicemember’s car as security for consumer credit, § 10 U.S.C. 987(e)(5), that would bar all servicemembers from taking out secured dual-purpose auto loans. And restricting servi-

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67. *Id.*

68. *Id.*

69. *Id.* at 127.

70. *Id.* at 126.

71. *Id.* at 129 n.8.

cemembers borrowing options in this way might hurt—rather than benefit—them. See Amicus Brief of Seven Current or Former Members of Congress at 19–20. As the exception recognizes, getting secured auto loans benefits servicemembers. So an expansive, rather than narrow, reading of the exception may well be what the canon would suggest.<sup>72</sup>

Thus, the court rejected Davidson’s argument that the auto-finance exception must be read narrowly.<sup>73</sup>

2. *The dissent: the “unregulated back door” for “hybrid” loans.*

Judge Wilkinson dissented from the decision.<sup>74</sup> Considering the statutory text broadly, the dissent opined that because “express” could not logically mean “explicitly stated” or “related,” that left only one possible interpretation: that “express” must mean “specific, precise, and exact[.]”<sup>75</sup> This proposed interpretation was premised upon the greater policy purposes of the MLA and a concern for the potential for abuse by unscrupulous creditors. In the dissent’s view, the majority’s decision leaves military members “vulnerable” by creating an “unregulated back door” that creditors could use to evade the MLA’s purpose.<sup>76</sup>

The dissent began with the principle that the statute should be read narrowly in light of its underlying consumer-protection purpose, analogizing the MLA to the Truth in Lending Act.<sup>77</sup> In interpreting “express purpose,” the dissent suggested there are essentially three potential definitions for “express”: (1) “explicitly stated,” (2) “related,” and (3) “precise and exact.” According to the dissent, the first two options are implausible because they are on “the brink of absurdity” and “untethered from the statutory text,” respectively, and suffer from redundancy and administrability issues.<sup>78</sup> Reject-

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72. *Id.*

73. *Id.*

74. Davidson v. United Auto Credit Corp., 65 F.4th 124, 133 (4th Cir. 2023) (Wilkinson, J., dissenting).

75. *Id.* at 134.

76. *Id.* at 133–34.

77. *Id.* at 134–35 (citing Curtis v. Propel Prop. Tax Funding, LLC, 915 F.3d 234, 245 (4th Cir. 2019) and 15 U.S.C. § 1601). The majority disagreed with the dissent’s conclusion that the statute must be narrowly construed. *Id.* at 129 n.8 (majority op.). The majority pointed out that there are no textual indications requiring a narrow construction of the auto-finance exception. *Id.* Further, the majority asserted there is no clear indication as to which construction would afford greater protection to servicemembers. *Id.* Thus, it was incorrect, in the majority’s view, to presume that the MLA’s auto-finance exception required a narrow reading. *Id.*

78. Davidson, 65 F.4th at 135–36. The dissent asserted that “explicitly stated” doesn’t work because it would render the second element of the auto-finance exception superfluous because the first element already requires that the loan be “procured in the course of purchasing a car.” *Id.* at 136. Also, this definition would create a loophole by allowing lenders to issue payday loans and other

ing the first two definitions, the dissent concluded that the third definition—“precise and exact”—should apply.<sup>79</sup>

The dissent opined that “express purpose” must have the “idiomatic” meaning of “specific, deliberate, and total purpose.”<sup>80</sup> The dissent referenced a variety of dictionaries to ultimately conclude that, under the idiomatic definition of “express purpose,” Davidson’s loan did not meet the elements of the auto-finance exception because the loan had financed the GAP coverage and thus went beyond the “specific and exact” purpose of financing only the car purchase.<sup>81</sup>

The dissent viewed add-ons such as extended warranty, leather seats, and sales tax as within the narrowly construed “express purpose.”<sup>82</sup> However, GAP coverage is not within that narrow scope.<sup>83</sup> The dissent was persuaded by the Department of Defense’s support for Davidson.<sup>84</sup> Given the MLA’s purpose of protecting servicemembers, who are often “young,” “without the guidance or assistance of family,” and “lacking in financial experience,” the dissent reasoned that the MLA’s auto-finance exception must be interpreted in a manner that prevents creditors from taking advantage of these naive buyers and the auto-finance exception.<sup>85</sup> In the dissent’s view, financing GAP coverage does not serve servicemembers. The dissent opined that the majority’s broader interpretation allows creditors to jeopardize the nation’s military preparedness by tacking on “add-ons on top of add-ons.”<sup>86</sup>

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financial products outside the MLA’s regulation simply by tacking on the disclaimer, “This loan is offered to finance the purchase of a car.” *Id.* Similarly, the dissent concluded there was no textual support in the MLA to interpret “express” as meaning “related to.” In the dissent’s view, this was the approach the majority had taken. *Id.* at 137. The majority decision states in response that it does not understand “express” to mean “related.” The majority decision explains that the term “related” to is used to “factually describe the fees Davidson’s loan financed”; they could have “just as readily call[ed] those fees ‘other’ or ‘additional.’” *Id.* at 130 n.9 (majority op.).

79. *Id.* at 135–36.

80. *Id.* at 138.

81. *Id.* at 138. Interestingly, the dissent, contrasting an “express” purpose with an “explicitly stated” purpose, posited that “[w]hen one goes to baseball game, he need not announce his intention. He simply walks into the stadium with the express purpose of watching the contest.” *Id.* Under the dissent’s reasoning, however, this hypothetical fellow must be quite the baseball diehard—he’s going for the “sole” and “exclusive” purpose of watching the contest and so cannot have any other purpose, such as partaking in camaraderie or enjoying ballpark food and libations.

82. *Id.* at 139.

83. *Id.*

84. *Id.* at 140.

85. *Id.*

86. *Id.* at 140–41.

#### IV. LESSONS FROM DAVIDSON

*Davidson* is the first federal court of appeals decision interpreting the scope of the MLA's coverage and the first interpreting the auto-finance exception. It is binding in the Fourth Circuit, but it is an important decision that would be expected to be followed by other courts outside the Fourth Circuit.

As the *Davidson* decision notes, district courts in other circuits have similarly held that the "express purpose" does not mean the "sole purpose."<sup>87</sup> The court's decision is not fact-specific, and its reasoning would extend to other items beyond just GAP coverage and fees. So long as the consumer credit was offered for the express purpose of financing the purchase of a car, and the other two elements of the exception are met, the transaction is exempt from the MLA, "no matter what else it financed."<sup>88</sup> The MLA is inapplicable to such transactions. If the credit transaction finances a car and related costs, then it meets the express purpose element, and the auto-finance exception applies.

*Davidson* also makes clear that there can be more than one purpose of the transaction. Extending this to other situations, the auto-finance exception applies if the transaction is offered for the purpose of financing the purchase of a car and other items are also financed, such as credit insurance or vehicle service contracts. The court used the term additional "related" costs, which may be financed in the transaction. The court did not, however, define what "related" costs might include (or not include).

Additionally, *Davidson* speaks to the DoD regulations on the definition of consumer credit and the auto-finance exception. The court held that the DoD regulations are "so much like the exception's statutory language" that they are "irrelevant" to the analysis.<sup>89</sup> And, for the DoD's nonlegislative interpretations of the regulations, "they would not be due any deference."<sup>90</sup>

*Davidson* also does not address the 2016 guidance or 2017 guidance. However, it seems to implicitly reject the 2017 guidance. It is uncertain what the outcome would be for cash advances under *Davidson*. If all the elements are met, and the transaction is for the purpose of financing the purchase of a car, it would seem the analysis does not change if it is also for the purpose of a cash advance.

Finally, the court's analysis appears to credit the proposition that the auto-finance exception benefits servicemembers and that it might harm servicemembers to remove the exception for these transactions and make them subject to the MLA.

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87. *Davidson v. United Auto Credit Corp.*, 65 F.4th 124, 131 n.12 (4th Cir. 2023) (citing *Juarez v. Drivetime Car Sales Co., LLC*, No. 3:19-CV-1132-BJD-JRK, 2021 WL 2404118, at \*3 (M.D. Fla. June 1, 2021) and *Yurth v. Experian Info. Sols., Inc.*, 622 F. Supp. 3d 89, 99 n.6 (E.D. Pa. 2022)).

88. *Id.* at 133.

89. *Id.* at 128 n.6.

90. *Id.*