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No. 09-907

In the Supreme Court of the United States

JASON M. RANSOM, PETITIONER

v.

MBNA, AMERICA BANK, N.A.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING RESPONDENT

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QUESTION PRESENTED

In a Chapter 13 bankruptcy proceeding, if a trustee or unsecured creditor objects to the confirmation of a debtor's plan, and the plan does not provide for all unsecured creditors to be paid in full, the bankruptcy court may confirm the plan only if all of the debtor's "projected disposable income" will be used to pay unsecured creditors. 11 U.S.C. 1325(b)(1)(B). The Bankruptcy Code defines the debtor's "disposable income" as his current monthly income less certain "reasonably necessary" expenses. 11 U.S.C. 1325(b)(2)(A)(i). For an above-median-income debtor like petitioner, those reasonably necessary expenses are determined using the means test set forth in 11 U.S.C. 707(b)(2). See 11 U.S.C. 1325(b)(3). That means test allows deductions for a variety of expenses, including the "debtor's applicable monthly expense amounts specified under the National Standards and Local Standards" issued by the Internal Revenue Service (IRS). 11 U.S.C. 707(b)(2)(A)(ii)(I). As relevant here, the IRS Local Standards include expense amounts for vehicle ownership expenses. The question presented is as follows:

Whether a Chapter 13 debtor who is not making any loan or lease payments on his vehicle may claim a vehicle ownership expense deduction in calculating the projected disposable income he has available to pay unsecured creditors.

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INTEREST OF THE UNITED STATES

This case presents the question whether a Chapter 13 debtor who makes no car loan or lease payments may deduct a vehicle ownership expense in calculating the disposable income he will have available to pay unsecured creditors. The United States has a direct interest in the resolution of that question because United States Trustees—who are Department of Justice officials appointed by the Attorney General—supervise the administration of bankruptcy cases. See 28 U.S.C. 581-589a (2006 & Supp. II 2008); H.R. Rep. No. 595, 95th Cong., 1st Sess. 88 (1977). In Chapter 13 cases, United States Trustees are authorized to review proposed repayment plans and submit comments about them to the bankruptcy courts. 28 U.S.C. 586(a)(3)(C). Congress has

provided that "[t]he United States trustee may raise and may appear and be heard on any issue in any [bankruptcy] case or proceeding." 11 U.S.C. 307.

STATEMENT

1. a. Chapter 13 of the Bankruptcy Code permits an individual with regular income whose debts fall within statutory limits to obtain a discharge of those debts while retaining possession of his assets. 11 U.S.C. 1301 *et seq*. The debtor must agree to a court-approved plan under which he will repay his creditors a portion of his future income. 11 U.S.C. 1306(b), 1321, 1322, 1325. The debtor typically receives a discharge of debts only after he pays creditors in accordance with the terms of the plan. 11 U.S.C. 1325-1328.

Chapter 13 establishes several prerequisites to confirmation of the debtor's plan. See 11 U.S.C. 1325. If the trustee or an unsecured creditor objects to confirmation of the plan, and the plan does not provide for payment of all unsecured claims in full, the court may not confirm the plan unless "all of the debtor's projected disposable income to be received" during the plan period "will be applied to make payments to unsecured creditors under the plan." 11 U.S.C. 1325(b)(1)(B). The question in this case concerns the manner in which a Chapter 13 debtor's "projected disposable income" is calculated.

b. Determining the debtor's "projected disposable income" is a two-step process. First, the bankruptcy court must calculate the debtor's "disposable income," based on his current income and expenses. 11 U.S.C. 1325(b)(2). Second, to determine the debtor's "projected disposable income" during the plan period, the court should account for "known or virtually certain informa-

tion about the debtor's future income or expenses" that makes the initial calculation of disposable income a demonstrably unreliable predictor of the debtor's financial condition during the plan period. *Hamilton* v. *Lanning*, 130 S. Ct. 2464, 2474-2475 (2010); see 11 U.S.C. 1325(b)(1).

i. The Bankruptcy Code defines the term "disposable income" as the debtor's "current monthly income" minus the debtor's "reasonably necessary" expenses for "maintenance or support," qualifying charitable contributions, and business expenditures. 11 U.S.C. 1325(b)(2). For an above-median-income debtor like petitioner, the amounts that are "reasonably necessary" for support or maintenance are determined using the methodology (commonly known as the "means test") set forth in Section 707(b)(2). See 11 U.S.C. 1325(b)(3).[1]

Under the means test, certain allowed monthly expenses are deducted from the debtor's income to determine what funds he has available to pay creditors. As relevant here, the allowed monthly expenses include "the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service [IRS]." 11 U.S.C. 707(b)(2)(A)(ii)(I).

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[1] Because the Section 707(b)(2) means test is also used to determine whether an individual is eligible for bankruptcy relief under Chapter 7, see 11 U.S.C. 707(b)(2)(A)(i), the Court's decision in this case may affect the disposition of Chapter 7 bankruptcy proceedings as well as cases under Chapter 13.

Section 707(b)(2) was amended in respects not relevant here in 2008. This brief refers to the 2006 version, which was in effect when petitioner filed his bankruptcy petition.

The IRS has established Local Standards for vehicle "ownership costs" and vehicle "operating costs." Resp. Br. App. 2a-3a.[2] For the vehicle ownership expense deduction, which is at issue here, the Local Standards identify amounts of $471 per month for a debtor's first car and $332 per month for his second. *Id.* at 5a. Those dollar amounts are based on the average cost of financing a vehicle as determined annually by the Federal Reserve Board. *Id.* at 3a; see *In re Meade*, 384 B.R. 132, 136 (Bankr. W.D. Tex. 2008). The IRS Collection Financial Standards state that "[t]he transportation standards consist of nationwide figures for loan or lease payments referred to as ownership costs, and additional amounts for monthly operating costs broken down by" geographic area. Resp. Br. App. 2a (italics omitted). They further explain that "[i]f a taxpayer has no car payment, or no car, only the operating costs portion of the transportation standard is used to come up with the allowable transportation expense." *Id.* at 3a.[3]

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[2] In connection with its own tax-collection efforts, the IRS uses the National and Local Standards "to help determine a taxpayer's ability to pay a delinquent tax liability." Resp. Br. App. 1a; see 26 U.S.C. 7122(d)(2). This brief generally cites the National and Local Standards in place at the time petitioner filed for bankruptcy, because those are the standards that apply to this case. See 11 U.S.C. 301(b), 707(b)(2)(A)(ii)(I).

[3] The Collection Financial Standards explain that, for IRS tax-collection purposes, "[t]axpayers are allowed the total National Standards amount for their family size and income level, without questioning amounts actually spent." Resp. Br. App. 1a. Under the Local Standards, by contrast, "the taxpayer is allowed the amount actually spent or the standard, whichever is less." *Ibid.* The Collection Financial Standards note that "[t]he ownership cost portion of the transportation standard, although it applies nationwide, is still considered part of the Local Standards." *Id.* at 2a.

ii. As this Court explained in *Lanning*, calculating a Chapter 13 debtor's "disposable income" is only the first step in determining the amount of "projected disposable income" the debtor will have available to repay unsecured creditors. 130 S. Ct. at 2471. The bankruptcy court also must "project" the debtor's disposable income over the life of the plan and "account for changes in the debtor's income or expenses that are known or virtually certain at the time of confirmation." *Id.* at 2471-2472, 2478; see 11 U.S.C. 1325(b)(1)(B). In so doing, the court tailors the results of the mathematical calculation of "disposable income" to account for circumstances that will affect the debtor's ability to repay creditors. *Lanning*, 130 S. Ct. at 2471-2472.

2. Petitioner filed a voluntary Chapter 13 bankruptcy petition in July 2006. Pet. App. 3, 17. Among his assets, he listed a 2004 Toyota Camry. *Id.* at 3. Petitioner owns that vehicle outright and therefore does not make any loan or lease payments. *Ibid.*; see J.A. 38, 44. Petitioner reported liabilities of $82,542.93 in general unsecured claims, including a $32,896.73 claim held by respondent. Pet. App. 3; J.A. 40-41. Petitioner reported a current monthly income of $4248.56, which qualified him as an above-median-income debtor. Pet. App. 3; J.A. 45-48.

In calculating his monthly disposable income, petitioner claimed the $471 vehicle ownership expense deduction. Pet. App. 3; J.A. 49. With that deduction, petitioner's total monthly expenses would be $4038.01, making his monthly disposable income $210.55. Pet. App. 3; J.A. 53. If petitioner's plan had been confirmed, the vehicle ownership deduction would have allowed petitioner to shield approximately $28,000 from unsecured creditors over the five-year life of his plan.

Petitioner proposed to pay $500 per month over the life of the plan, $389 per month of which would be paid to unsecured creditors, resulting in repayment of approximately 25% of the unsecured claims. Pet. App. 3, 45; J.A. 53, 56. The Chapter 13 trustee, respondent, and another unsecured creditor objected to confirmation of petitioner's plan on the ground that the plan did not provide for all of petitioner's projected disposable income to be used to pay unsecured claims, as required by 11 U.S.C. 1325(b)(1). J.A. 60, 71. They contended that petitioner had understated his projected disposable income by taking a vehicle ownership expense deduction that was not "applicable" to him because he has no loan or lease payment. J.A. 60, 67-71.

3. The bankruptcy court denied confirmation of the plan. Pet. App. 36-47. Relying on its prior decision in *In re Slusher*, 359 B.R. 290 (Bankr. D. Nev. 2007), the court determined that, under the "plain language" of 11 U.S.C. 707(b)(2), a debtor "may only deduct a vehicle ownership expense if he is currently making loan or lease payments on that vehicle." Pet. App. 40-41.

4. The bankruptcy appellate panel affirmed. Pet. App. 15-35. The panel determined that Congress's use of the word "applicable" in Section 707(b)(2)(A)(ii)(I) evidenced its intent to limit the vehicle ownership deduction to debtors who are actually making loan or lease payments. *Id.* at 30-33. The panel explained that the vehicle ownership deduction "becomes relevant to the debtor (i.e., appropriate or applicable to the debtor)" only "when he or she in fact has such an expense." *Id.* at 32.

5. The court of appeals affirmed. Pet. App. 1-14. The court concluded that the "statutory language, plainly read" does not allow a debtor "to deduct an 'own-

ership cost' that the debtor does not have." *Id.* at 11. The court explained that, because the ordinary meaning of "applicable" is "capable of or suitable for being applied," the vehicle ownership expense deduction is "applicable" only if the debtor actually has an expense associated with vehicle ownership. *Id.* at 12 (internal quotation marks omitted). To allow the debtor to "assert a deduction for an expense he does not have," the court stated, would "read[] 'applicable' right out of the" statute. *Ibid.* (internal quotation marks omitted). The court of appeals further concluded that allowing a debtor to "diminish payments to unsecured creditors * * * on the basis of a fictitious expense not incurred by [him]" would be contrary to the statute's main objective, which is "to ensure that debtors repay as much of their debt as reasonably possible." *Id.* at 11, 13 (internal quotation marks omitted).

SUMMARY OF ARGUMENT

I. Because petitioner owns his vehicle outright and does not make loan or lease payments on the car, he is not entitled to deduct vehicle ownership expenses in calculating his "disposable income."

A. In calculating petitioner's monthly disposable income, the bankruptcy court was required to deduct, *inter alia*, "the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards." 11 U.S.C. 707(b)(2)(A)(ii)(I); see 11 U.S.C. 1325(b)(3) (incorporating Section 707(b)(2) means test to calculate the disposable income of an above-median-income Chapter 13 debtor). A deduction for a particular type of expense is not "applicable" if the debtor will not pay that expense during the plan period. That reading of the statute is strengthened by Con-

gress's reference to "the debtor's" applicable expenses, which suggests that the applicability of a particular deduction depends in part on the debtor's own circumstances.

Petitioner's reading of Section 707(b)(2)(A)(ii)(I), under which any debtor with a car may claim a vehicle ownership expense deduction, disserves the purposes for which the debtor's expenses are calculated. A debtor's "applicable monthly expense amounts" are deducted from his monthly income in order to ascertain what resources are available to pay his creditors. Allowing petitioner to deduct $471 per month in vehicle ownership expenses, notwithstanding the fact that petitioner owes no car loan or lease payments, would make that calculation demonstrably less accurate. Petitioner's approach also ignores the fact that the IRS Local Standards provide separate deductions for vehicle ownership and vehicle operating expenses. That distinct treatment of ownership and operating expenses would be superfluous if every debtor with a vehicle could claim both deductions.

B. Other provisions of the Bankruptcy Code confirm that a debtor who has no loan or lease payments is not entitled to a vehicle ownership expense deduction. In several places, Congress used the word "applicable" to require a threshold finding that an action or procedure is justified based on the individual debtor's specific circumstances, and "applicable" should have the same meaning here. Contrary to petitioner's contention, requiring such a threshold showing would not equate "applicable" with "actual." If a debtor qualifies for a vehicle ownership expense deduction because he has loan or lease payments, then the IRS Local Standard prescribes a standard amount to be used. Petitioner is likewise mistaken in relying on the statute's exclusion of "pay-

ments for debts." That provision excludes certain deductions that otherwise would be allowed; it cannot authorize a deduction for an expense that is not "applicable" to the debtor.

C. In enacting Section 707(b)(2)(A)(ii)(I)'s means test, and in directing that the test be used to calculate the disposable income of an above-median-income Chapter 13 debtor, Congress sought to ensure that such a debtor would pay as much as reasonably possible to his unsecured creditors during the life of his plan. Restricting the vehicle ownership deduction to debtors who will make vehicle loan or lease payments furthers that objective, while petitioner's approach would allow him to shield more than $28,000 in income from creditors during the plan period. Moreover, although Congress took steps in 2005 to scrutinize and circumscribe the expenses of above-median-income debtors, petitioner's approach would give such individuals a windfall not available to below-median-income debtors.

II. Even if a debtor without vehicle loan or lease payments could claim a vehicle ownership deduction under Section 707(b)(2)(A)(ii)(I)'s means test, no such deduction would be appropriate in calculating a Chapter 13 debtor's "projected disposable income" under 11 U.S.C. 1325(b)(1)(B). As this Court explained in *Hamilton* v. *Lanning*, 130 S. Ct. 2464 (2010), a bankruptcy court may account for "known or virtually certain information about the debtor's future income or expenses" that makes the initial calculation of disposable income an unreliable predictor of the debtor's available resources during the plan period. *Id.* at 2475. Here, allowing petitioner to claim a vehicle ownership expense would "deny creditors payments the debtor could easily make," a result that Congress sought to avoid. *Id.* at 2476.

ARGUMENT

WHEN CALCULATING HIS PROJECTED DISPOSABLE INCOME, AN ABOVE-MEDIAN-INCOME CHAPTER 13 DEBTOR WHO HAS NO VEHICLE LOAN OR LEASE PAYMENTS TO MAKE MAY NOT DEDUCT VEHICLE OWNERSHIP EXPENSES

A debtor who seeks Chapter 13 bankruptcy relief and who cannot satisfy all of his unsecured claims must propose a plan in which all of his "projected disposable income" will be used to pay unsecured creditors. 11 U.S.C. 1325(b)(1)(B). As part of the calculation of "disposable income," an above-median-income Chapter 13 debtor may deduct his "*applicable* monthly expense amounts specified under the National Standards and Local Standards." 11 U.S.C. 707(b)(2)(A)(ii)(I) (emphasis added); see p. 3, *supra*. Because the IRS Local Standard for vehicle ownership expenses covers loan and lease payments alone, the "expense amounts specified under" that Standard are not "applicable" to debtors who do not make such payments. Limiting the vehicle ownership expense to debtors who actually incur loan or lease payments directly furthers Congress's efforts "to ensure that debtors repay creditors the maximum they can afford." H.R. Rep. No. 31, 109th Cong., 1st Sess. Pt. 1, at 2 (2005) (*House Report*).

I. THE VEHICLE OWNERSHIP EXPENSE DEDUCTION IS NOT "APPLICABLE" TO A DEBTOR WHO WILL NOT MAKE ANY LOAN OR LEASE PAYMENTS DURING THE PLAN

Under the means test contained in 11 U.S.C. 707(b)(2), petitioner may deduct the vehicle ownership expense only if it is "applicable" to him. The word "applicable" is naturally construed to require a threshold

showing that the debtor will pay the expense over the life of the plan. That understanding is firmly rooted in the context of the statute, and it furthers the statute's primary purpose, which is to ensure that Chapter 13 debtors pay as much as they can reasonably afford before obtaining a discharge of their debts.

A. Section 707(b)(2)(A)(ii)(I) Allows Deduction Of Vehicle Ownership Expenses Only If Such Expenses Are "Applicable"

"As with any case of statutory construction, [this Court's] analysis begins with the language of the statute." *Hughes Aircraft Co.* v. *Jacobson*, 525 U.S. 432, 438 (1999) (internal quotation marks omitted). Congress provided that only "applicable" expense amounts under the National and Local Standards may be deducted from an above-median-income debtor's income. The vehicle ownership expenses expense amounts contained in the relevant IRS Local Standard are not "applicable" to a debtor who will not be making any loan or lease payments on his vehicle.

1. Under the Bankruptcy Code, a debtor's "disposable income"—*i.e.*, the presumptive amount he has available to pay unsecured creditors—is calculated by subtracting from the debtor's income his "reasonably necessary" expenses for "maintenance or support," qualifying charitable contributions, and business expenditures. 11 U.S.C. 1325(b)(2). For an above-median-income debtor like petitioner, the means test contained in Section 707(b)(2) is used to determine the amounts that are "reasonably necessary" for maintenance and support. 11 U.S.C. 1325(b)(3).

> The means test provides, in pertinent part:
>
> The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides.

11 U.S.C. 707(b)(2)(A)(i)(I). This language identifies two categories of allowable expenses: "applicable" expense amounts specified in the IRS's National and Local Standards, which establish schedules for expenses such as food, clothing, health care, housing, and transportation; and "actual" amounts for certain other necessary expenses, such as legal and accounting fees, child-care expenses, and education expenses. See Resp. Br. App. 21a-27a.

Because the Bankruptcy Code does not define the word "applicable," that term should be given its ordinary meaning. See, *e.g.*, *Hamilton* v. *Lanning*, 130 S. Ct. 2464, 2471 (2010); *Smith* v. *United States*, 508 U.S. 223, 228 (1993). In ordinary use, "applicable" means "relevant," "appropriate," or "suitable." See *The New Oxford American Dictionary* 74 (2d ed. 2005) ("applicable" is "relevant or appropriate"); 1 *The Oxford English Dictionary* 405 (1978) ("applicable" is "[c]apable of being applied" or "fit or suitable for its purpose, appropriate"); *Webster's Third New International Dictionary of the English Language* 105 (1993) ("appropriate" is "capable of being applied; having relevance" or "[f]it, suitable, or right to be applied: appropriate"). This Court has used that common definition, see *Patterson* v. *Shumate*, 504 U.S. 753, 758-759 (1992) (equating

"applicable" with "relevant" in the phrase "applicable nonbankruptcy law"), as did the court of appeals below, see Pet. App. 12 ("applicable" is "capable of or suitable for being applied" (internal quotation marks omitted)).

In Section 707(b)(2)(A)(ii)(I), "applicable" modifies "monthly expense amounts," which are the dollar amounts listed in the National and Local Standards. That structure evidences the purpose of the word "applicable," which is to identify those expenses that are relevant to the particular debtor. Congress did not say that the debtor may deduct *all* expense amounts listed in the National and Local Standards; it limited the deduction to "applicable" expense amounts. Congress thus required a threshold determination, based on the debtor's circumstances, that a particular expense category is "appropriate" or "suitable." Section 707(b)(2)(A)(ii)(I)'s reference to "*the debtor's* applicable monthly expense amounts" (emphasis added) reinforces that understanding and confirms that the applicability of a particular amount depends in part on the debtor's own expenses. See *In re Slusher*, 359 B.R. 290, 309 (Bankr. D. Nev. 2007).

2. To determine whether the vehicle ownership expense deduction listed in the Local Standards is "applicable" to petitioner, the courts below correctly sought to identify the types of expenses that are covered by the deduction and to ascertain whether petitioner will have those expenses. The vehicle ownership expense deduction accounts for the debtor's monthly expenses associated with acquiring use of the vehicle, *i.e.*, it is for "monthly loan or lease payments." Resp. Br. App. 2a. A table in the IRS Local Transportation Standards gives two standard nationwide amounts for vehicle ownership costs, one for a debtor's first car and the other for the

debtor's second car. *Id.* at 5a. As the court of appeals recognized, those expense amounts are "relevant to the debtor (i.e., appropriate or applicable to the debtor)" only if "he or she in fact has such an expense." Pet. App. 12 (internal quotation marks omitted).

This understanding of the term "applicable" is consistent with the word's usage in other contexts. For example, one dictionary provides the example of "add[ing] the applicable sales tax." *The American Heritage Dictionary of the English Language* 87 (4th ed. 2006) (italics omitted). No sales tax would be "applicable" if an individual did not purchase any items, just as no vehicle ownership expense would apply if the debtor did not have a car. But a sales tax similarly would not be "applicable" to a purchased item that was exempt from tax under the relevant law. By the same token, the vehicle ownership expense amounts specified in the Local Standards are not "applicable" to a debtor who owns a vehicle free and clear and therefore incurs no loan or lease payments.

3. Petitioner acknowledges (Br. 33) that bankruptcy courts must make a threshold determination—that the debtor has a car—before allowing the vehicle ownership deduction. He contends (Br. 14, 51), however, that the vehicle ownership expense is "applicable" to every debtor who owns a vehicle, regardless of whether he even has any loan or lease payments to make. In his view, "an applicable expense is one set down for a category, such as vehicle ownership expense, according to geographic region and number of cars." Br. 14; see NACBA Amicus Br. 9.

Petitioner's argument disregards the purposes that the means test is intended to serve. As the court of appeals explained, "what is important is the payments that

debtors actually make, not how many cars they own, because the payments that debtors make are what actually affect their ability to make payments to their creditors." Pet. App. 11 (internal quotation marks omitted). Petitioner's approach also cannot be reconciled with the IRS's decision to establish two separate vehicle expense deductions—one for ownership costs and one for operating costs. Resp. Br. App. 2a-3a, 5a-6a. That separate treatment of ownership and operating costs would be superfluous if every debtor with a vehicle were allowed both expenses. The distinction between the two deductions in the IRS Standards reflects the real-world fact that debtors who are making car payments have less income available to pay creditors than those who are not making such payments, even if both have vehicle operating expenses.

4. Petitioner suggests (Br. 3, 43, 45-48) that the court of appeals improperly gave precedence to the IRS's tax-collection guidelines rather than following the "plain language" of the Bankruptcy Code. That argument is misconceived.

Section 707(b)(2)(A)(ii) incorporates by reference the "National Standards and Local Standards" issued by the IRS, and it allows the debtor to deduct his "applicable monthly expense amounts specified under" those Standards. That provision directs bankruptcy courts to look to certain aspects of IRS tax-collection practice in identifying the expenses that particular debtors may deduct. To determine whether a particular Local Standard is "applicable" to a particular debtor, the court must identify the categories of expenses that the Standard is intended to cover. Although the Bankruptcy Code does not incorporate every aspect of the IRS's tax-collection practices, the IRS's authoritative explanation of the Na-

tional and Local Standards may assist the court in properly applying those Standards.

In its Collection Financial Standards, the IRS explained that "[t]he transportation standards consist of nationwide figures for loan or lease payments referred to as ownership costs, and additional amounts for monthly operating costs broken down by" geographic area. Resp. Br. App. 2a (italics omitted); see *id.* at 16a; see also IRS, *Local Standards: Transportation* (Mar. 18, 2010), http://www.irs.gov/businesses/small/article/0,,id=104623,00.html (current version).[4] The Collection Financial Standards further provide that "[i]f a taxpayer has no car payment, or no car, only the operating costs portion of the transportation standard is used to come up with the allowable transportation expense." Resp. Br. App. 3a.

In giving weight to those statements by the IRS (see Pet. App. 10), the court of appeals did not improperly disregard the text of the Bankruptcy Code. Rather, the court appropriately treated those statements as relevant to the proper interpretation of the pertinent statutory language. The court correctly understood the IRS's explication of the Local Standards governing transportation expenses to establish that the "expense amounts specified under the" vehicle ownership Local Standard

[4] Petitioner contends (Br. 15, 53) that the vehicle ownership expense is also designed to cover expenses such as taxes and depreciation. That is incorrect. Taxes, including personal property taxes associated with a vehicle, are considered "Other Necessary Expenses" by the IRS; they are not part of the National Standards and Local Standards. See Resp. Br. App. 20a-27a. Depreciation is not an expense but a way to measure the change in a car's value over time. See, *e.g.*, *Black's Law Dictionary* 506 (9th ed. 2009). The transportation expenses in the Local Standards do not account for depreciation of a vehicle; they are designed to determine monthly cash flow, not to measure the value of assets over time.

are not "applicable" to petitioner's own circumstances because those expense amounts pertain to a category of costs that petitioner does not incur.

B. The Statutory Context Confirms That "Applicable" Expenses Are Those The Debtor Will Actually Pay

In interpreting a statutory term, the Court considers not only "the language itself [and] the specific context in which that language is used," but also "the broader context of the statute as a whole." *Robinson* v. *Shell Oil Co.*, 519 U.S. 337, 341 (1997). Here, other provisions of the Bankruptcy Code confirm that a debtor who has no loan or lease payments is not entitled to a vehicle ownership expense deduction.

1. In the subclause immediately following the one at issue here, Congress provided that a "debtor's monthly expenses may include, *if applicable*, the continuation of actual expenses paid by the debtor" to care for an elderly, ill, or disabled household or family member. 11 U.S.C. 707(b)(2)(A)(ii)(II). In that context, the word "applicable" requires a threshold finding that the expense is one the debtor expects to continue paying during the plan period. It would be anomalous to interpret "applicable" to require that showing in Subclause (II), but to preclude it in the portion of Subclause (I) at issue here, when both provisions are designed to determine allowable expenses in bankruptcy. See, *e.g.*, *NASA* v. *FLRA*, 527 U.S. 229, 235 (1999) (word or phrase "should ordinarily retain the same meaning wherever used in the same statute").

Other provisions of the Bankruptcy Code similarly use the term "applicable" to denote rules or procedures that are triggered by the specific factual circumstances of the bankruptcy case. One such provision requires a

debtor to file a statement of intention to retain or surrender property and, "if applicable, specify[] that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property." 11 U.S.C. 521(a)(2)(A). The word "applicable" is used to signify that the debtor should take only the actions that are justified by his own circumstances.

Similarly, the bankruptcy court may enter a Chapter 11 or 13 discharge only if it finds that 11 U.S.C. 522(q)(1) is not "applicable" to the debtor. 11 U.S.C. 1141(d)(5)(C), 1328(h). Section 522(q)(1) concerns a debtor who has been convicted of a felony that demonstrates the bankruptcy filing is abusive, or who owes a debt arising from certain securities law violations and torts. Here again, determining whether a particular restriction on dischargeability is "applicable" requires an inquiry into the debtor's individual circumstances—*i.e.*, whether he has a conviction or debt of the type specified in Section 522(q)(1).

2. Section 707(b)(2)(A)(ii)(I) refers separately to the debtor's "applicable monthly expense amounts" under the National and Local Standards and his "actual monthly expenses" for the other necessary expense categories allowed by the IRS. 11 U.S.C. 707(b)(2)(A)(ii)(I). Petitioner suggests (Br. 26, 39-42) that, by restricting the vehicle ownership expense deduction to debtors with loan or lease payments, the court of appeals improperly disregarded the statutory distinction between "applicable" and "actual" expenses. That argument misconceives the manner in which the vehicle ownership expense deduction is calculated under the relevant Local Standard.

The IRS Local Standard for vehicle ownership expenses prescribes an amount of $471 for a first car and $332 for a second car. See Resp. C.A. Br. 5a. Although the applicability of that Local Standard depends on the debtor's actual circumstances (*i.e.*, whether the debtor has vehicle loan or lease payments, and if so on how many vehicles), the "expense amounts specified under the National Standards and Local Standards," 11 U.S.C. 707(b)(2)(A)(ii)(I), are standardized amounts that are determined without reference to a particular debtor's actual monthly payments. See, *e.g.*, *Fokkena* v. *Hartwick*, 373 B.R. 645, 650 (D. Minn. 2007). That approach to determining the allowed expense amount is different from Congress's approach to "Other Necessary Expenses." The IRS has not promulgated any table of standardized amounts for those expenses, and the statute requires that "actual" costs be used. 11 U.S.C. 707(b)(2)(A)(ii)(I). This approach "gives meaning to the distinction between 'applicable' and 'actual' without taking a further step to conclude that 'applicable' means 'nonexistent' or 'fictional.'" *In re Ross-Tousey*, 368 B.R. 762, 765 (Bankr. E.D. Wis. 2007), rev'd, 549 F.3d 1148 (7th Cir. 2008).

3. The Collection Financial Standards explain that, when the IRS uses the Local Standards in its tax-collection efforts, "the taxpayer is allowed the amount actually spent or the standard, whichever is less." Resp. Br. App. 1a; see note 3, *supra*. Respondent contends (Br. 12, 45-46) that bankruptcy courts should apply the same methodology in calculating the debtor's monthly expenses under Section 707(b)(2)(A)(ii)(I). Under that approach, a debtor who makes car loan or lease payments that are less than the standardized amounts reflected in the governing IRS table (here, $471 per

month, see Resp. Br. App. 5a), could deduct only his actual monthly payments rather than the standardized amounts.

That argument is not without force, since use of a debtor's actual vehicle ownership expenses (when they are less than the standardized amounts) would more fully accomplish Congress's purpose of making the debtor's entire resources available to unsecured creditors. In the government's view, however, Section 707(b)(2)(A)(ii)(I) is better read to allow a debtor with a car loan or lease payment to deduct the standardized amount even when it is greater than his actual payment. As applied to vehicle ownership expenses, Section 707(b)(2)(A)(ii)(I) thus strikes a balance between precision and ease of administration by requiring a debtor who invokes that deduction to establish the existence, but not the exact amount, of a vehicle loan or lease payment. See pp. 25-26, *infra*.

Section 707(b)(2)(A)(ii)(I) does not incorporate by reference every feature of the IRS's tax-collection methodology, but rather allows the debtor to deduct his "applicable monthly expense amounts specified under the National Standards and Local Standards." Although the IRS in collecting delinquent taxes considers the taxpayer's actual loan or lease payments, those actual "expense amounts" are not "specified" either in the Local Standards themselves or in any accompanying statements, but are instead derived from evidence unique to the particular debtor involved. The only vehicle ownership "expense amounts" that are "specified under the * * * Local Standards," 11 U.S.C. 707(b)(2)(A)(ii)(I), are the standardized amounts ($471 per month for a first car and $332 per month for a second, Resp. Br. App. 5a) listed in the relevant IRS table. The IRS's statement

that "the taxpayer is allowed the amount actually spent or the standard, whichever is less," *id.* at 1a, supports this reading of the Bankruptcy Code, since that statement *contrasts* the "standard" with the "amount actually spent" and presumes that the former term refers to the standardized amounts set out in the IRS tables. This reading of Section 707(b)(2)(A)(ii)(I) also accords with the consensus view among the bankruptcy courts, see, *e.g.*, *In re Briscoe*, 374 B.R. 1, 6-7 (Bankr. D.D.C. 2007), and with the view of the Advisory Committee on the Federal Rules of Bankruptcy Procedure (Advisory Committee), see Official Bankr. Forms 22A, 22B & 22C advisory committee's note C.1 (2005-2008). In any event, the Court in this case need not decide the proper deduction for a debtor with vehicle loan or lease payments of less than the standardized amounts, since petitioner has no vehicle loan or lease payments at all.

4. Petitioner also contends (Br. 21, 27-28, 44-45) that he may claim the vehicle ownership expense deduction, even though he has no vehicle loan or lease payments, because 11 U.S.C. 707(b)(2)(A)(ii)(I) further provides that, "[n]otwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include payments for debts." Petitioner's reliance on that sentence is misplaced.

By its terms, the sentence in question operates to *exclude* "payments for debts" from the debtor's "monthly expenses," even when such payments are encompassed by the remaining sentences of Section 707(b)(2)(A)(ii)(I). Under no circumstances can the "notwithstanding" sentence have the effect of authorizing a deduction for an expense that the remainder of Section 707(b)(2)(A)(ii)(I) does not cover. Thus, if the court of appeals' analysis is otherwise sound—*i.e.*, if the

amounts specified in the Local Standards for vehicle ownership expenses are not "applicable" to a debtor who has no loan or lease payments—the "notwithstanding" sentence provides no basis for allowing an ownership expense deduction.

Properly understood, the "notwithstanding" sentence serves to ensure that the bankruptcy court does not include unsecured debt payments in the calculation of the debtor's monthly expenses. In addition to forward-looking expenses such as child care and education expenses, the IRS standards for "Other [Necessary] Expenses" include a category for "unsecured debts" and for student loan payments (which are unsecured debts). Resp. Br. App. 21a, 25a-26a. Although the IRS treats these unsecured debts as expenses in determining a taxpayer's ability to pay delinquent taxes, that approach would be inappropriate in the means test calculation under the Bankruptcy Code, since the purpose of that calculation is to determine the amount of money the debtor has available to pay unsecured debts after accounting for his living expenses. Congress therefore excluded "payments for debts" from the list of other expenses the IRS otherwise would allow. See, *e.g.*, *In re Knight*, 370 B.R. 429, 436-437 (Bankr. N.D. Ga. 2007) (applying this reasoning to student loan debts).

The exclusion of "payments for debts" also can serve to avoid double-counting of expenses that could fall within two different expense provisions of the means test. Under 11 U.S.C. 707(b)(2)(A)(iii), a debtor may deduct as monthly expenses certain "payments on account of secured debts." Section 707(b)(2)(A)(ii)(I)'s exclusion of "payments for debts" helps to ensure that a debtor who makes vehicle loan payments may not deduct both the standardized amount set forth in the vehi-

cle ownership Local Standard (under Clause (ii)(I)) and his actual monthly payment (under Clause (iii)). See, *e.g.*, *In re Hardacre*, 338 B.R. 718, 726-727 (Bankr. N.D. Tex. 2006); see also Pet. Br. 33-34 (accepting this view).[5]

C. Allowing Debtors Without Loan Or Lease Payments To Deduct Vehicle Ownership Expenses Would Disserve Congress's Purposes In Enacting BAPCPA And Would Lead To Inequitable Results

Congress enacted the provision at issue here in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, 119 Stat. 23. Congress's overarching objectives in enacting BAPCPA were to ensure that debtors pay as much of their debts as reasonably possible and to eliminate opportunities for abuse. Treating the standardized vehicle ownership expense amounts as "applicable" to debtors who have no loan or lease payments would subvert those goals.

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[5] A vehicle loan payment typically is secured by the vehicle and thus would qualify as a secured debt. There is some uncertainty about how the "notwithstanding" sentence operates in this context. It could be read to allow the debtor to deduct his car loan payment under Clause (iii), but not to claim any amount under Clause (ii), on the theory that the Clause (ii) standardized amount is intended to compensate him for a debt payment. Or it could be read to allow the debtor to deduct his car loan payment under Clause (iii), and claim the portion of the standard amount in Clause (ii) that exceeds his actual debt payment, on the theory that the Clause (ii) amount is an allowance to which the debtor is entitled so long as he has car ownership expenses, and that the "notwithstanding" sentence simply requires him to subtract out any amounts he will actually pay for debts. This is the approach taken on Form 22C, which was developed by the Advisory Committee for use in determining disposable income in Chapter 13 cases. See J.A. 49, 52-53. This debate is far afield from the dispute in this case, however, because petitioner has no loan or lease payments whatsoever.

1. As the House Judiciary Committee report explained, a primary goal of BAPCPA is "to ensure that debtors repay creditors the maximum they can afford." *House Report* 2. The report explained that consumer bankruptcy filings were having significant "adverse consequences for our nation's economy," with creditors passing on to other consumers the substantial losses associated with bankruptcy. *Id.* at 4. The report concluded that those "bankruptcy debtors [who] are able to repay a significant portion of their debts" should do so, and that Congress should eliminate the "loopholes and incentives" in the current bankruptcy system that permit "opportunistic personal filings and abuse." *Id.* at 5.

In order to achieve those objectives, Congress changed the way in which bankruptcy courts would ascertain debtors' ability to repay their creditors. See *House Report* 2 (defining this change as "the heart of [BAPCPA's] consumer bankruptcy reforms"). Before BAPCPA was enacted, a Chapter 13 debtor's "disposable income" was defined as the debtor's current income less the amounts that were "reasonably necessary" for the debtor's "maintenance or support," "charitable contributions," or "business * * * expenditures." 11 U.S.C. 1325(b)(2)(A)-(B) (2000). Because the Bankruptcy Code provided no additional guidance for determining when an expense was "reasonably necessary," bankruptcy courts addressed that question on a case-specific basis. See, *e.g.*, *Hebbring* v. *United States Trustee*, 463 F.3d 902, 907-908 (9th Cir. 2006). In BAPCPA, Congress established a means test to determine whether a debtor seeking Chapter 7 bankruptcy relief has sufficient ability to repay creditors that he should instead be required to proceed under Chapter 13. BAPCPA § 102(a)(1)(C), 119 Stat. 27 (enacting 11 U.S.C.

707(b)(2)). Congress also incorporated that means test into Chapter 13 in order to cabin the amounts that above-median-income debtors may shield from creditors. *Id.* § 102(h)(2), 119 Stat. 33 (enacting 11 U.S.C. 1325(b)(2)-(3)).

2. In revising the method of calculating a debtor's "reasonably necessary" expenses, Congress sought, *inter alia*, to effectuate the Bankruptcy Code's requirement that a Chapter 13 debtor repay creditors to the maximum extent possible before obtaining a discharge. See 11 U.S.C. 1325(b)(1)(B). If petitioner were allowed to claim a vehicle ownership expense deduction that is unrelated to any expense he will actually incur, he would be able to shield approximately $28,000 from creditors over the lifetime of his plan. See p. 5, *supra*. That is precisely the type of "senseless result" Congress wanted to avoid. *Lanning*, 130 S. Ct. at 2475-2476.

Indeed, petitioner's argument suggests that BAPCPA opened rather than closed a loophole for above-median-income debtors. Prior to BAPCPA, petitioner could have deducted from his income only those expenses that he demonstrated were "reasonably necessary." See 11 U.S.C. 1325(b)(2)(A)-(B) (2000). Under that standard, petitioner would not have been allowed to deduct a vehicle ownership expense he did not have. In petitioner's view, however, the changes worked by BAPCPA allow him to deduct such an amount. Such a perverse reading of the statute "flies in the face of all Congress intended to accomplish" in BAPCPA. *In re Washburn*, 579 F.3d 934, 943 (8th Cir. 2009) (Magnuson, J., dissenting).

3. Petitioner's amicus observes (NACBA Br. 22) that "BAPCPA moved bankruptcy courts from a system of case-by-case determinations of reasonableness to a

more uniform approach, based on standardized deductions listed in IRS tables." The amicus is correct that, by incorporating the "expense amounts specified under the National Standards and Local Standards," 11 U.S.C. 707(b)(2)(A)(ii)(I), Congress obviated the need for an individualized determination of all the debtor's actual expenses. But by limiting permissible deductions to the "applicable" expense amounts, Congress made clear that, even with respect to types of expenses for which the IRS Standards prescribe a standardized deduction, the debtor's own circumstances remain relevant to the expense calculation. Allowing a debtor with no loan or lease payments to deduct vehicle ownership expenses would disserve the balance struck by Congress between precision and ease of administration.

The amicus further contends (NACBA Br. 23) that, "[g]iven the inherent uncertainties of predicting a debtor's expenses several years into the future," Congress could reasonably eschew any inquiry into "the particular mix of a debtor's actual vehicle expenses at the time the case is commenced." Petitioner himself concedes (Br. 33), however, that a debtor who claims a vehicle ownership expense must at least make the threshold showing that he owns a car. There is no reason to believe that requiring bankruptcy courts to make the additional determination whether the debtor is making loan or lease payments will meaningfully increase the administrative burden on the courts. And there is likewise no reason to believe that a debtor who owns a vehicle free and clear when his bankruptcy petition is filed is more likely to incur loan or lease payments during the plan period than a debtor who at the time of filing owns no car at all.

4. In addition to furthering the important goal of ensuring that debtors pay their debts to the extent possible, disallowing a vehicle ownership expense deduction under the circumstances presented here fosters equitable treatment of debtors under the Bankruptcy Code. Not only would petitioner's view create a new loophole in the Bankruptcy Code, but it would do so for only one class of Chapter 13 debtors—those with above-median incomes. Under petitioner's view, an above-median-income debtor could shield income from creditors by claiming expenses he will never incur, while a below-median-income debtor would have to prove that each of his expenses—including vehicle ownership expenses—are reasonably necessary under 11 U.S.C. 1325(b). Such a result would loosen expense requirements for the very class of Chapter 13 debtors that Congress wished to scrutinize more closely. Under the court of appeals' approach, by contrast, above-median and below-median debtors are both entitled to deductions only for those types of automobile expenses they actually pay.

Petitioner (Br. 55) and his amicus (NACBA Br. 24-25) suggest that the court of appeals' approach will penalize thrifty debtors who continue to drive old vehicles and encourage debtors to take on additional debt to purchase new cars. The Bankruptcy Code, however, takes the debtor as he is on the date he files his petition. Based on the debtor's financial circumstances at that time, the court determines what amounts he requires for living expenses and what amounts he will be able to pay creditors. *Lanning*, 130 S. Ct. at 2471. As one court explained, "[t]he statute is only concerned about protecting the debtor's ability to continue owning a car, and if the debtor *already* owns the car, the debtor is ade-

quately protected. * * * When the debtor has no monthly ownership expenses, it makes no sense to deduct an ownership expense to shield it from creditors." *In re Ross-Tousey*, 368 B.R. at 766.

Rather than assume that Congress was trying to further policy goals far afield of what the means test was designed to accomplish, this Court should faithfully apply the BAPCPA provisions by which Congress sought to ensure that Chapter 13 debtors—particularly those with higher monthly incomes—will repay creditors as much as they reasonably can afford. In any event, debtors who drive older cars will not in fact be worse off than those who buy new cars, since the former will have less overall debt than the latter. And a thrifty debtor who needs to buy a new car during the life of the plan may seek a plan modification to account for that expense. See 11 U.S.C. 1329(a).

5. Petitioner contends (Br. 17, 60-61) that disallowing a vehicle ownership deduction in the circumstances presented here would deny Chapter 13 bankruptcy relief to himself and to other honest debtors. Petitioner is mistaken. As a general matter, a debtor like petitioner who has a positive monthly disposable income, so that he is able to make regular payments to creditors, should be able to propose a confirmable Chapter 13 plan. See 11 U.S.C. 1325(b) (listing requirements for plan confirmation). In most cases, the debtor's monthly income will be the same during the plan period as it was during the six months before he filed his petition, and his expenses will be the same during the plan period as at the time of filing. See *Lanning*, 130 S. Ct. at 2474-2475; see 11 U.S.C. 707(b)(2) (means test). If it is known or reasonably certain that a debtor's income or expenses will change in a manner that will affect his ability to pay

creditors, the bankruptcy court may account for that prospect in projecting his disposable income over the life of the plan. *Lanning*, 130 S. Ct. at 2471.

Petitioner's belief that he cannot obtain confirmation of a Chapter 13 plan absent a deduction for a vehicle ownership expense appears to rest on errors in his calculation of income and expenses. For example, on Form 22C, the form for calculating Chapter 13 debtors' disposable income, petitioner failed to claim a $70.00 health care expense and a $247.50 retirement deduction expense, even though he identified those expenses on his Schedule J, which lists current expenditures. See J.A. 43, 44, 53, 56; 11 U.S.C. 707(b)(2)(A)(ii)(I) (authorizing deduction of "Other Necessary Expenses," which include health care); 11 U.S.C. 541(b)(7), 1306(a)(1) (authorizing deduction for contributions to qualified retirement plans). Petitioner also listed different income amounts for his income and for taxes on Schedule I (which shows current income) and on Form 22C. See J.A. 43, 45, 50. When these discrepancies are resolved, petitioner's monthly disposable income will be known and he should be able to obtain confirmation of a Chapter 13 plan.

Petitioner is also mistaken in contending (Br. 28, 34) that Form 22C authorizes him to deduct vehicle ownership expenses he will not pay. The form instructs debtors to "[c]heck the number of vehicles for which you *claim* an expense," J.A. 49 (emphasis added), leaving it to the debtor and his attorney to determine whether that expense category is applicable to him. Contrary to petitioner's suggestion (Br. 28-31), the Advisory Committee has not taken the position that debtors who have no loan or lease payments may deduct vehicle ownership expenses. Instead, recognizing the disagreement in the

lower courts on this issue, the Committee recently clarified that "[t]he forms take no position on the question of whether the debtor must actually be making payments on a vehicle in order to claim the ownership/lease allowance." Official Bankr. Forms 22A, 22B & 22C advisory committee's note C.1 (2005-2008). In any event, even if the form or the Committee's note supported petitioner's view, they could not trump the text of the statute, which requires the vehicle ownership expense to be "applicable" to the debtor. See, *e.g.*, *Schwab* v. *Reilly*, 130 S. Ct. 2652, 2660 & n.5 (2010).

II. A DEBTOR'S "PROJECTED" DISPOSABLE INCOME SHOULD NOT EXEMPT VEHICLE OWNERSHIP EXPENSES THE DEBTOR WILL NOT INCUR

Even if this Court determines that a debtor without loan or lease payments may deduct a vehicle ownership expense under the means test used to calculate "disposable income," that does not end the matter. As this Court explained in *Lanning*, the Bankruptcy Code requires that all of a Chapter 13 debtor's "projected disposable income" be dedicated to repaying unsecured creditors. In determining the debtor's projected disposable income, the bankruptcy court should take account of the fact that funds claimed as vehicle ownership expenses are in fact available to pay secured creditors.

1. Calculating a Chapter 13 debtor's "disposable income" under the means test in Section 707(b)(2) is only the first step in determining what funds the debtor has available for his repayment plan. In order to confirm the plan, the bankruptcy court must ensure that the amount the debtor proposes to repay uses all the disposable income that the debtor is "projected" to receive over the plan's five-year life span. 11 U.S.C. 1324,

1325(b)(1)(B). As this Court explained in *Lanning*, that two-step process ensures that, in determining the debtor's ability to repay creditors, the court will take account of "known or virtually certain information about the debtor's future income or expenses." 130 S. Ct. at 2475.

2. Even if the means test would mechanically allow every debtor with a vehicle to claim a vehicle ownership expense deduction, the bankruptcy court should take account of the fact that some debtors will not pay those expenses. Here, where it is known that petitioner has no vehicle loan or lease payments, the bankruptcy court should ensure that the amounts petitioner claims under the Local Standard for vehicle ownership expenses are available to creditors as part of his "projected disposable income." That step is necessary so that all of petitioner's available funds can be used to pay unsecured creditors; without it, he will be able to shield more than $28,000 over the lifetime of the plan.

Although the facts of this case are slightly different from those in *Lanning*, the Court's holding and rationale apply equally here. Shortly before filing her bankruptcy petition, the debtor in *Lanning* had received a one-time buyout that made her pre-petition monthly income a demonstrably poor predictor of the income that she could expect to receive during the plan period. 130 S. Ct. at 2470. The Court explained that a "forward-looking approach" was necessary to ensure that the debtor would not be required, as a condition of plan confirmation, to commit to pay more during the plan period than she could actually afford. *Id.* at 2474-2475. Here, deducting vehicle ownership expenses in calculating petitioner's "projected disposable income" would be inappropriate, not because any change in the relevant cir-

cumstances has occurred or is expected to occur, but because petitioner currently has no vehicle loan or lease payments and has identified no reason to believe that he will make such payments during the plan period.

The Court in *Lanning* did not limit its holding to changed circumstances; it stated that the bankruptcy court could account for "known or virtually certain *information* about the debtor's future income or expenses" that makes the initial calculation of disposable income a demonstrably unreliable predictor of the debtor's financial condition during the plan period. 130 S. Ct. at 2474-2475 (emphasis added). And the concern that led the Court to the forward-looking approach is directly applicable here. If this Court rejects the construction of Section 707(b)(2)(A)(ii)(I) advocated by the government and by respondent, and holds that the IRS Local Standard for vehicle ownership expenses is "applicable" to petitioner, use of the "mechanical approach" in projecting petitioner's disposable income "would deny creditors payments the debtor could easily make." *Id.* at 2476. Here, as in *Lanning*, there is no reason to "throw[] out undisputed information bearing on how much a debtor can afford to pay." *In re Turner*, 574 F.3d 349, 355 (7th Cir. 2009); accord *In re Wentzel*, 415 B.R. 510, 517-518 (Bankr. D. Kan. 2009) (relying on this reasoning to deny vehicle ownership deduction for individual who had no car loan or lease payments). Accordingly, the fact that petitioner is not "projected" to have any vehicle ownership expenses provides an independent basis for affirming the judgment below.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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APPENDIX

1. 11 U.S.C. 707 provides:

Dismissal of a case or conversion to a case under chapter 11 or 13

(a) The court may dismiss a case under this chapter only after notice and a hearing and only for cause, including—

(1) unreasonable delay by the debtor that is prejudicial to creditors;

(2) nonpayment of any fees or charges required under chapter 123 of title 28; and

(3) failure of the debtor in a voluntary case to file, within fifteen days or such additional time as the court may allow after the filing of the petition commencing such case, the information required by paragraph (1) of section 521, but only on a motion by the United States trustee.

(b)(1) After notice and a hearing, the court, on its own motion or on a motion by the United States trustee, trustee (or bankruptcy administrator, if any), or any party in interest, may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts, or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title, if it finds that the granting of relief would be an abuse of the provisions of this chapter. In making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or continues to make, charitable contributions (that meet the definition of "charitable contribution"

under section 548(d)(3)) to any qualified religious or charitable entity or organization (as that term is defined in section 548(d)(4)).

(2)(A)(i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of—

(I) 25 percent of the debtor's nonpriority unsecured claims in the case, or $6,000, whichever is greater; or

(II) $10,000.

(ii)(I) The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent. Such expenses shall include reasonably necessary health insurance, disability insurance, and health savings account expenses for the debtor, the spouse of the debtor, or the dependents of the debtor. Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts. In addition, the debtor's monthly expenses shall include the debtor's reasonably necessary expenses incurred to maintain the safety of the debtor and the family of the debtor from family vio-

lence as identified under section 309 of the Family Violence Prevention and Services Act,[1] or other applicable Federal law. The expenses included in the debtor's monthly expenses described in the preceding sentence shall be kept confidential by the court. In addition, if it is demonstrated that it is reasonable and necessary, the debtor's monthly expenses may also include an additional allowance for food and clothing of up to 5 percent of the food and clothing categories as specified by the National Standards issued by the Internal Revenue Service.

(II) In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (including parents, grandparents, siblings, children, and grandchildren of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case who is not a dependent) and who is unable to pay for such reasonable and necessary expenses.

(III) In addition, for a debtor eligible for chapter 13, the debtor's monthly expenses may include the actual administrative expenses of administering a chapter 13 plan for the district in which the debtor resides, up to an amount of 10 percent of the projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees.

(IV) In addition, the debtor's monthly expenses may include the actual expenses for each dependent child less than 18 years of age, not to exceed $1,500 per year

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[1] See References in Text note below.

per child, to attend a private or public elementary or secondary school if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

(V) In addition, the debtor's monthly expenses may include an allowance for housing and utilities, in excess of the allowance specified by the Local Standards for housing and utilities issued by the Internal Revenue Service, based on the actual expenses for home energy costs if the debtor provides documentation of such actual expenses and demonstrates that such actual expenses are reasonable and necessary.

(iii) The debtor's average monthly payments on account of secured debts shall be calculated as the sum of—

(I) the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition; and

(II) any additional payments to secured creditors necessary for the debtor, in filing a plan under chapter 13 of this title, to maintain possession of the debtor's primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents, that serves as collateral for secured debts;

divided by 60.

(iv) The debtor's expenses for payment of all priority claims (including priority child support and alimony

claims) shall be calculated as the total amount of debts entitled to priority, divided by 60.

(B)(i) In any proceeding brought under this subsection, the presumption of abuse may only be rebutted by demonstrating special circumstances, such as a serious medical condition or a call or order to active duty in the Armed Forces, to the extent such special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative.

(ii) In order to establish special circumstances, the debtor shall be required to itemize each additional expense or adjustment of income and to provide—

(I) documentation for such expense or adjustment to income; and

(II) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.

(iii) The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required.

(iv) The presumption of abuse may only be rebutted if the additional expenses or adjustments to income referred to in clause (i) cause the product of the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than the lesser of—

(I) 25 percent of the debtor's nonpriority unsecured claims, or $6,000, whichever is greater; or

(II) $10,000.

(C) As part of the schedule of current income and expenditures required under section 521, the debtor shall include a statement of the debtor's current monthly income, and the calculations that determine whether a presumption arises under subparagraph (A)(i), that show how each such amount is calculated.

(D) Subparagraphs (A) through (C) shall not apply, and the court may not dismiss or convert a case based on any form of means testing, if the debtor is a disabled veteran (as defined in section 3741(1) of title 38), and the indebtedness occurred primarily during a period during which he or she was—

(i) on active duty (as defined in section 101(d)(1) of title 10); or

(ii) performing a homeland defense activity (as defined in section 901(1) of title 32).

(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in subparagraph (A)(i) of such paragraph does not arise or is rebutted, the court shall consider—

(A) whether the debtor filed the petition in bad faith; or

(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.

(4)(A) The court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of

Bankruptcy Procedure, may order the attorney for the debtor to reimburse the trustee for all reasonable costs in prosecuting a motion filed under section 707(b), including reasonable attorneys' fees, if—

(i) a trustee files a motion for dismissal or conversion under this subsection; and

(ii) the court—

(I) grants such motion; and

(II) finds that the action of the attorney for the debtor in filing a case under this chapter violated rule 9011 of the Federal Rules of Bankruptcy Procedure.

(B) If the court finds that the attorney for the debtor violated rule 9011 of the Federal Rules of Bankruptcy Procedure, the court, on its own initiative or on the motion of a party in interest, in accordance with such procedures, may order—

(i) the assessment of an appropriate civil penalty against the attorney for the debtor; and

(ii) the payment of such civil penalty to the trustee, the United States trustee (or the bankruptcy administrator, if any).

(C) The signature of an attorney on a petition, pleading, or written motion shall constitute a certification that the attorney has—

(i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and

(ii) determined that the petition, pleading, or written motion—

(I) is well grounded in fact; and

(II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1).

(D) The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

(5)(A) Except as provided in subparagraph (B) and subject to paragraph (6), the court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may award a debtor all reasonable costs (including reasonable attorneys' fees) in contesting a motion filed by a party in interest (other than a trustee or United States trustee (or bankruptcy administrator, if any)) under this subsection if—

(i) the court does not grant the motion; and

(ii) the court finds that—

(I) the position of the party that filed the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

(II) the attorney (if any) who filed the motion did not comply with the requirements of clauses (i) and (ii) of paragraph (4)(C), and the motion was made solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

(B) A small business that has a claim of an aggregate amount less than $1,000 shall not be subject to subparagraph (A)(ii)(I).

(C) For purposes of this paragraph—

(i) the term "small business" means an unincorporated business, partnership, corporation, association, or organization that—

(I) has fewer than 25 full-time employees as determined on the date on which the motion is filed; and

(II) is engaged in commercial or business activity; and

(ii) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

(I) a parent corporation; and

(II) any other subsidiary corporation of the parent corporation.

(6) Only the judge or United States trustee (or bankruptcy administrator, if any) may file a motion under section 707(b), if the current monthly income of the debtor, or in a joint case, the debtor and the debtor's spouse, as of the date of the order for relief, when multiplied by 12, is equal to or less than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of

the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

(7)(A) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if the current monthly income of the debtor, including a veteran (as that term is defined in section 101 of title 38), and the debtor's spouse combined, as of the date of the order for relief when multiplied by 12, is equal to or less than—

(i) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(ii) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(iii) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

(B) In a case that is not a joint case, current monthly income of the debtor's spouse shall not be considered for purposes of subparagraph (A) if—

(i)(I) the debtor and the debtor's spouse are separated under applicable nonbankruptcy law; or

(II) the debtor and the debtor's spouse are living separate and apart, other than for the purpose of evading subparagraph (A); and

(ii) the debtor files a statement under penalty of perjury—

(I) specifying that the debtor meets the requirement of subclause (I) or (II) of clause (i); and

(II) disclosing the aggregate, or best estimate of the aggregate, amount of any cash or money payments received from the debtor's spouse attributed to the debtor's current monthly income.

(c)(1) In this subsection—

(A) the term "crime of violence" has the meaning given such term in section 16 of title 18; and

(B) the term "drug trafficking crime" has the meaning given such term in section 924(c)(2) of title 18.

(2) Except as provided in paragraph (3), after notice and a hearing, the court, on a motion by the victim of a crime of violence or a drug trafficking crime, may when it is in the best interest of the victim dismiss a voluntary case filed under this chapter by a debtor who is an individual if such individual was convicted of such crime.

(3) The court may not dismiss a case under paragraph (2) if the debtor establishes by a preponderance of the evidence that the filing of a case under this chapter is necessary to satisfy a claim for a domestic support obligation.

2. 11 U.S.C. 1325 provides:

Confirmation of plan

(a) Except as provided in subsection (b), the court shall confirm a plan if—

(1) the plan complies with the provisions of this chapter and with the other applicable provisions of this title;

(2) any fee, charge, or amount required under chapter 123 of title 28, or by the plan, to be paid before confirmation, has been paid;

(3) the plan has been proposed in good faith and not by any means forbidden by law;

(4) the value, as of the effective date of the plan, of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date;

(5) with respect to each allowed secured claim provided for by the plan—

(A) the holder of such claim has accepted the plan;

(B)(i) the plan provides that—

(I) the holder of such claim retain the lien securing such claim until the earlier of—

(aa) the payment of the underlying debt determined under nonbankruptcy law; or

(bb) discharge under section 1328; and

(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law;

(ii) the value, as of the effective date of the plan, of property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and

(iii) if—

(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or

(C) the debtor surrenders the property securing such claim to such holder;

(6) the debtor will be able to make all payments under the plan and to comply with the plan;

(7) the action of the debtor in filing the petition was in good faith;

(8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by

a judicial or administrative order, or by statute, to pay such domestic support obligation; and

(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.

For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.

(b)(1) If the trustee or the holder of an allowed unsecured claim objects to the confirmation of the plan, then the court may not approve the plan unless, as of the effective date of the plan—

(A) the value of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

(B) the plan provides that all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan will be applied to make payments to unsecured creditors under the plan.

(2) For purposes of this subsection, the term "disposable income" means current monthly income received

by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

(A)(i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

(ii) for charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3)[1] to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

(3) Amounts reasonably necessary to be expended under paragraph (2), other than subparagraph (A)(ii) of paragraph (2), shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

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[1] So in original. Probably should be followed by a second closing parenthesis.

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

(4) For purposes of this subsection, the "applicable commitment period"—

(A) subject to subparagraph (B), shall be—

(i) 3 years; or

(ii) not less than 5 years, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

(II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4; and

(B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period.

(c) After confirmation of a plan, the court may order any entity from whom the debtor receives income to pay all or any part of such income to the trustee.