No. 25-1303

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BOBBY EUGENE GODDARD,
Debtor – Appellant,

– v. –

MICHAEL BRANDON BURNETT,
Trustee – Appellee.

On Appeal from the United States District Court
for the Eastern District of North Carolina
(5:24-cv-00368-D)

BRIEF OF *AMICI CURIAE* NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS AND NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER IN SUPPORT OF APPELLANT

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

The National Association of Consumer Bankruptcy Attorneys is a nonprofit corporation. It has no parent corporation, and no publicly held company owns a 10% or more interest in NACBA.

The National Consumer Bankruptcy Rights Center is a nonprofit corporation. It has no parent corporation, and no publicly held company owns a 10% or more interest in NCBRC.

This case arises out of a bankruptcy proceeding. Appellee serves as the duly appointed Trustee of the bankruptcy estate of Bobby Eugene Goddard.

There is no creditors' committee.

RULE 29(a)(2) STATEMENT

Both Appellant and Appellee have consented to the filing of this brief.

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IDENTITY AND INTEREST OF *AMICI CURIAE*[1]

The National Association of Consumer Bankruptcy Attorneys (NACBA) is a nonprofit organization of approximately 1,500 consumer bankruptcy attorneys nationwide. NACBA advocates nationally on issues that cannot adequately be addressed by individual member attorneys. It is the only national association of attorneys organized for the specific purpose of protecting the rights of consumer bankruptcy debtors.

The National Consumer Bankruptcy Rights Center (NCBRC) is a nonprofit organization dedicated to preserving the bankruptcy rights of consumer debtors and protecting the bankruptcy system's integrity. The Bankruptcy Code grants financially distressed debtors rights that are critical to the bankruptcy system's operation. Yet consumer debtors with limited financial resources and minimal exposure to that system often are ill-equipped to protect their rights in the appellate process.

[1] Pursuant to Fed. R. App. P. 29(c)(5), no counsel for any party authored this brief in whole or in part, and no person or entity other than NACBA and NCBRC, its members, and its counsel made any monetary contribution toward the preparation or submission of this brief.

NACBA and NCBRC regularly file[2] *amicus curiae* briefs in systemically important cases to ensure that courts have a full understanding of the applicable bankruptcy law, the case, and its implications for consumer debtors. NACBA, NCBRC, and Chapter 13 debtors throughout the Fourth Circuit have a vital interest in the outcome of this case.

Only individuals can file for Chapter 13 bankruptcy protection. 11 U.S.C. § 109(e). The Chapter 13 debtor, in this case, a disabled combat veteran was denied confirmation of his Chapter 13 plan because he proposed to pay the amounts owed to all of his secured vehicle lenders—a proposition that is specifically permitted by the Bankruptcy Code. However, despite following the applicable bankruptcy statutes, the courts below held that the debtor wanting to pay his secured creditors was not "good faith," finding at least one of the vehicles was

[2] When referencing *amicus curiae* briefs that contribute citations to U.S. Supreme Court opinions in bankruptcy cases, it has been noted that, "The contribution of the NACBA briefs is not surprising. Aside from the Solicitor General, the NACBA is the most common single amicus to appear in these [bankruptcy] cases…" See, Ronald J. Mann, Bankruptcy and the U.S. Supreme Court, p. 213, n. 6 (2017).

unnecessary,[3] and that stopping payments on a vehicle loan would free up more money for unsecured creditors.

Respectfully, NACBA and NCBRC submit that all Chapter 13 bankruptcy debtors have an interest in the issue at the heart of this case—whether a debtor continuing to pay allowed secured claims can constitute a lack of "good faith" that justifies denying confirmation of a Chapter 13 plan. This issue directly implicates consumers' rights.

SUMMARY OF ARGUMENT

The amounts a chapter 13 debtor must pay unsecured creditors is decided by statute. This formulaic approach was developed by Congress with the passage of The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109–8, 119 Stat. 23 (April 20, 2005) ("BAPCPA"). BAPCPA sought, *inter alia*, to remove judicial discretion when calculating how much a debtor should pay unsecured creditors.

Mr. Goddard followed the formula provided by Congress and the Official Forms when calculating the amount needed to pay his unsecured creditors. Despite Mr. Goddard following the law, the lower courts found

[3] "The Debtor's testimony did not establish any necessity for all three Vehicles." [J.A. 23].

that he had not acted in good faith because he proposed to continue paying his vehicle loans. Continuing to pay these car loans, the lower courts decided, prevented him from paying more to his unsecured creditors. However, while such an argument might be true, it is also contrary to the provisions of the Bankruptcy Code, the intent of Congress, the holdings of this Court and other circuits.

ARGUMENT

I. The holding of the courts below punishes debtors and secured creditors for following the Bankruptcy Code

A. Chapter 13 debtors can deduct *all* of their secured debt payments when calculating the chapter 13 means test

Should the trustee or an unsecured creditor object to confirmation, to confirm a Chapter 13 Plan, a debtor with above-median income must provide all of their projected disposable income to be received in the 60-month applicable commitment period. 11 U.S.C. § 1325(b)(1)(B). To calculate a debtor's "disposable income" the debtor is to take their "current monthly income," as determined under § 101(10A), and subtract "amounts reasonably necessary to be expended." 11 U.S.C. § 1325(b)(2).

If a debtor's "current monthly income" exceeds the median family income level for their household size, § 1325(b)(3) provides that "amounts

reasonably necessary to be expended under [§ 1325(b)(2)], *shall be determined* in accordance with subparagraphs (A) and (B) of section 707(b)(2)." (emphasis added). Section 707(b)(2)(A)(i)[4] ("Clause 1") states that expenses in Sections 707(b)(2)(A)(ii) ("Clause 2"), (iii) ("Clause 3"), and (iv) ("Clause 4") are to be deducted from a debtor's current monthly income.

It is Clause 3 that relates to calculating the proper deductions for secured debt payments. Section 707(b)(2)(A)(iii) states:

> 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 filing of the petition;
>
> (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.

11 U.S.C. § 707(b)(2)(A)(iii) (emphasis added).

[4] The relevant language of 11 U.S.C. § 707(b)(2)(A)(i) reads, "the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv)…"

Following the plain language of Clause 3, Mr. Goddard deducted all of his contractual secured vehicle loan payments when he completed his Chapter 13 means test form. [J.A. 90-93]. By following the Official Forms[5] and deducting the entirety of his vehicle payments, Mr. Goddard followed the Bankruptcy Code.

1. As stated above, Clause 1 dictates that a debtor's income is "reduced by amounts determined under clauses (ii), (iii), and (iv)." 11 U.S.C. § 707(b)(2)(A)(i). A plain reading of Clause 1 shows that expenses falling within any of the three clauses can be deducted from a debtor's income. See, In re Axline, 618 B.R. 454, 468, n. 86 (Bankr. N.D. Tex. 2020) (quoting Ransom v. FIA Card Servs., N.A., 562 U.S. 61, 65 (2011) ("Under the means test, a debtor calculating his 'reasonably necessary' expenses is directed to claim allowance for defined living expenses [i.e. expenses under Clause (ii)], ***as well as*** for secured [i.e. Clause (iii)] and priority [i.e. Clause (iv)] debt")) (emphasis in original).

2. Subpart I of Clause 3 specifies the amount of a debtor's deduction for their secured debt expenses. By its very language—"The

[5] Official Form 122C-2, "Chapter 13 Calculation of Your Disposable Income," Administrative Office of the U.S. Courts, https://www.uscourts.gov/sites/default/files/2025-04/b_122c-2_0425-form.pdf (last visited July 12, 2025).

debtor's average monthly payments on account of secured debts ***shall*** be calculated as the sum of—… ***all amounts*** scheduled as contractually due to secured creditors," this Clause clearly establishes that no other method is to be used for calculating payments upon secured debts. With Congress using the term "shall," the bankruptcy court is required to use this standard in Clause 3 and nothing else for determining the deduction for secured debts. Cf. Lexecon v. Milberg Weiss Bershad Hynes & Lerach, 523 U.S. 26, 35 (1998) (use of term shall, "normally creates an obligation impervious to judicial discretion.").

Discretion is further divested from the bankruptcy court with the language of § 1325(b)(3) also using the term "shall" to determine what expenses of a debtor are reasonable. See, Drummond v. Welsh, 711 F.3d 1120, 1134 (9th Cir. 2013) ("BAPCPA replaced the old definition of what was 'reasonably necessary' with a formulaic approach for above-median debtors. 11 U.S.C. § 1325(b)(3)."). In fact, one of the core purposes of BAPCPA was limiting the discretion of bankruptcy judges in determining the propriety of expenses. See, Ransom, 562 U.S. at 68 ("In eliminating the pre-BAPCPA case-by-case adjudication of above-median-income debtors' expenses, on the ground that it leant itself to abuse, Congress

chose to tolerate the occasional peculiarity that a brighter-line test produces.").

3. A necessary or reasonableness requirement for expenses in subpart I of Clause 3 also runs counter to the language of the surrounding statutes. In Clause 2, the word "reasonable" appears no less than seven (7) times. However, "reasonable" appears nowhere in Clause 3. This omission must have meaning. Cf. Duncan v. Walker, 533 U.S. 167, 173 (2001) ("where Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.") (quotation marks and citation omitted). This omission was also recognized by the Ninth Circuit. See, Welsh, 711 F.3d at 1135 ("In enacting the BAPCPA, Congress did not see fit to limit or qualify the kinds of secured payments that are subtracted from current monthly income to reach a disposable income figure. Given the very detailed means test that Congress adopted, we cannot conclude that this omission was the result of oversight.").

Moreover, § 1325(b)(3) also clearly shows that so long as an expense is determined under Section 707(b)(2)—that determination in accordance

with Section 707(b)(2) is what makes the expense reasonable. See, 11 U.S.C. § 1325(b)(3) ("Amounts reasonably necessary to be expended…*shall be determined* in accordance with…section 707(b)(2).") (emphasis added). Congress already made the call as to what expenses are "reasonable." It is those expenses that are found in Sections 707(b)(2)(A) & (B). Because the vehicle expenses of Mr. Goodard were correctly determined under Clause 3, his listing of these expenses is reasonable under the chapter 13 means test.

Lastly, subpart II of Clause 3 does include a "necessary" requirement; however, that requirement only relates to curing arrears owed to a secured creditor—not to maintaining the contractual amounts owed. 11 U.S.C. § 707(b)(2)(A)(iii)(II). Meaning, that when the bankruptcy court below denied confirmation due to an "unnecessary" secured debt payment being maintained under subpart I of Clause 3, it erred because such an analysis only applies to the additional cure payments to the secured creditor.

4. When filing for bankruptcy protection, debtors do not have a choice; they must use the Official Forms developed by the Judicial Conference of the United States. See, Fed. R. Bankr. Pro. 9009(a). see

also, 28 U.S.C. § 2075. These forms "shall be construed to be consistent with these rules and the Code." Fed. R. Bankr. Pro. 9009(c). Previously, this Court found that a bankruptcy debtor who properly completes the means test form follows Section 707(b)(2). See, Lynch v. Jackson, 853 F.3d 116, 119 (4th Cir. 2017) ("the debtors' use of the IRS Local Standard allowances for their housing and vehicle exemptions on Form 22A-2 comports with ... the plain language of the statute.") (quotations omitted). The very decision that Lynch v. Jackson affirmed found that, "The Official Forms, however, synthesize the various requirements of the [means test] statute." In re Jackson, 537 B.R. 238, 247 (Bankr. E.D.N.C. 2015), *aff'd*, Lynch v. Jackson, 853 F.3d 116 (4th Cir. 2017).

The Official Form completed by Mr. Goddard follows Section 707(b)(2)(A). According to Official Form 122C-2:

> Deductions for Debt Payment
> 33. **For debts that are secured by an interest in property that you own, including home mortgages, vehicle loans, and other secured debt, fill in lines 33a through 33e.**
>
> To calculate the total average monthly payment, add all amounts that are contractually due to each secured creditor in the 60 months after you file for bankruptcy. Then divide by 60.

Official Bankruptcy Form 122C-2, p. 5.

This provision on the official form nearly mirrors the language of Clause 3. No party claims Mr. Goddard improperly completed the form—quite the contrary. The trustee and bankruptcy court stated Mr. Goddard correctly completed his means test form. [J.A. 17, 19-20]. Because Mr. Goddard correctly filled out the Official Form according to its instructions, and because the Official Form must be interpreted to follow the relevant statutes under Bankruptcy Rule 9009(c), he cannot have acted in bad faith as he was just following the Bankruptcy Code.

B. No court of appeals has adopted appellee's position

As pointed out by the bankruptcy court below,[6] ruling in favor of the Trustee will create a result directly at odds with the Ninth Circuit in Drummond v. Welsh (In re Welsh), 711 F.3d 1120 (9th Cir. 2013). The applicable holding of Welsh is: "We conclude that Congress's adoption of the BAPCPA forecloses a court's consideration of a debtor's … payments to secured creditors as part of the inquiry into good faith under 11 U.S.C. § 1325(a)." Id. at 1135.

Welsh prohibited a Chapter 13 trustee from arguing that payments to secured creditors whose collateral were "luxury" items were evidence

[6] ("this Court disagrees with the Ninth Circuit's conclusion") [J.A. 22].

of a lack of good faith. Id. at 1130 ("the means test allows for the deduction of secured debts without regard for the nature of the collateral. The result may be that, consistent with the means test, the debtors could make secured payments on luxury or comfort items, such as ATVs and motor homes, with the result that little 'disposable income,' as that figure is calculated, remains to pay unsecured creditors."). This is precisely what the Chapter 13 trustee has done here -- objected to Mr. Goddard's payments on "luxury" vehicles because by surrendering some of those vehicles (stopping payments and defaulting), he could then pay more to his general unsecured creditors.[7] [J.A. 18-19]. Ruling in favor of the trustee in this case will be a direct confrontation with the holding in Welsh.

Upholding the rulings below will also undermine this Court's decision in Bledsoe v. Cook, 70 F.4th 746 (4th Cir. 2023). This Court in

[7] It should be noted that many unsecured debts paid in chapter 13 cases are not paid to their original creditors. Rather, they are paid to debt buying collection agencies who buy them for pennies on the dollar. See, Federal Trade Commission, *The Structure and Practices of the Debt Buying Industry*, p. T-4, Table 4 (January 2013) found at: https://www.ftc.gov/sites/default/files/documents/reports/structure-and-practices-debt-buying-industry/debtbuyingreport.pdf (last visited July 15, 2025). That is also the case here, many of the general unsecured claims in Mr. Goddard's chapter 13 case are held by debt buyers. See, In re Bobby Eugene Goddard, Jr., E.D.N.C. Bankr. case no. 23-02532-5-DMW, claims register: https://ecf.nceb.uscourts.gov/cgi-bin/SearchClaims.pl?333393 (last visited July 15, 2025).

Bledsoe wholeheartedly adopted the reasoning of Welsh. Id. at 748 ("We join the Sixth and Ninth Circuits in holding the Chapter 13 means test permits above-median income debtors to deduct the actual costs of their mortgage payments when calculating their disposable income.") (citing Welsh). As part of the Bledsoe decision, this Court also rejected the idea that payments on secured debts could be used as a tool to try and increase payments to unsecured creditors. Id. at 750-751 ("Like the Ninth Circuit [in Welsh], we recognize our interpretation of Clause Three means debtors could make secured payments on luxury or comfort items—or expensive home mortgages—with the result that little disposable income, as that figure is calculated, remains to pay unsecured creditors."). Essentially, the Trustee is now asking this panel to overrule one of the core tenets of the Bledsoe decision. Such a request must be rejected, as one panel of this Court cannot overrule a prior ruling of another. See e.g., McMellon v. U.S., 387 F.3d 329 (4th Cir. 2004) (*en banc*).

C. The Trustee is attempting to force the debtor to pay excluded VA disability income into the plan

All parties agree that Mr. Goddard correctly filled out his means test forms to properly calculate that he had no disposable monthly income to pay to his unsecured creditors. As part of filling out those forms, Mr.

Goddard excluded his disability income from the U.S. Department of Veterans Affairs. This exclusion of his VA disability income was provided by the Honoring American Veterans in Extreme Need Act of 2019, Pub. L. 116–52 (August 23, 2019) ("HAVEN Act"). Under the HAVEN Act, among other things, VA disability income is specifically excluded from the calculation of "current monthly income" required by the means test. 11 U.S.C. § 101(10A)(B)(ii)(IV).

Mr. Goddard has no money to pay to his unsecured creditors under the precise formula Congress created. Despite this fact, the lower courts and the Trustee now want to force Mr. Goddard to pay more money into his plan to his unsecured creditors. The only source of income to make these increased payments would be his Congressionally excluded VA disability benefits. This backdoor attempt by a trustee trying to grab exempt income[8] has been previously rejected by this Court and should be rejected again in this case. See, Mort Ranta v. Gorman, 721 F.3d 241, 251 (4th Cir. 2013) ("Social Security income must also be excluded from 'projected disposable income.' Indeed, every other circuit to address this

[8] Social Security benefits, like VA disability benefits, are excluded from a debtor's "current monthly income." 11 U.S.C. § 101(10A)(B)(ii)(I).

issue has arrived at the same conclusion.") (citing Welsh and three other circuit decisions).

D. Secured creditors such as car lenders will be harmed by affirmance

The legislative history of BAPCPA shows that it added several provisions to the Bankruptcy Code to help protect secured lenders. See, H.R. Rep. No. 109-31, p. 17 (2005) ("*Protections for Secured Creditors*."). More specifically, these provisions redounded to the benefit of secured car lenders. Under BAPCPA, a Chapter 13 debtor cannot bifurcate the claim of a car lender into both a secured and unsecured claim if the collateral was purchased in the 910-day period before the bankruptcy case. 11 U.S.C. § 1325(a) "hanging paragraph;" see also, Wells Fargo Fin. Acceptance v. Price (In re Price), 562 F.3d 618, 628 (4th Cir. 2008) ("Congress's intent in enacting the hanging paragraph: to protect secured car lenders from having their claims bifurcated in Chapter 13.").

Since BAPCPA, when a consumer is valuing a secured claim collateralized by a vehicle, that vehicle is to be valued at replacement value, not the actual value of the collateral. 11 U.S.C. § 506(a)(2). If a consumer debtor does not timely reaffirm (sign an agreement preventing the loan from being discharged pursuant to § 524(c)) their vehicle loan,

the automatic stay terminates more quickly so that it may be repossessed faster. 11 U.S.C. § 362(h)(1). After BAPCPA, a vehicle lender now retains its lien in a chapter 13 case until the underlying debt is repaid, or the discharge is entered. 11 U.S.C. § 1325(a)(5)(B)(i)(I).

With the inclusion of these additional protections for vehicle lenders in BAPCPA, it would not make sense to force a Chapter 13 debtor to surrender their vehicle—just because they were making their payments to a secured vehicle lender, instead of to the general unsecured creditors. The fallacy of the lower courts' logic is further exemplified by the leading bankruptcy treatise. See, 6 Collier on Bankruptcy ¶ 707.04 (16th ed. 2025) ("[T]he means test allows deduction of amounts payable on secured and priority debts, presumably on the theory that a debtor should not be forced to default on secured or priority debts in order to pay general unsecured debts in a chapter 13 case."); see also, Id. ("Courts should reject arguments that debtors should be required to move from more expensive homes and default on their mortgages in order to provide chapter 13 distributions for unsecured creditors. Requiring such a result would stand the means test on its head and prefer the interests of unsecured creditors over those of secured creditors."). And it is certainly

not the job of the chapter 13 trustee to pick and choose among creditors and decide he favors unsecured creditors over secured creditors. Cf. 11 U.S.C. § 1302(b)(4) ("The trustee shall—(4) advise, other than on legal matters, and assist the debtor in performance under the plan.").

Courts choosing unsecured creditors over secured creditors (a result that would require defaulting on otherwise current loans) would conceivably serve to disrupt the "flow of capital" into the vehicle lending market. Cf. Nobelman v. American Savings Bank, 508 U.S. 324, 332 (1993) (Stevens, J., concurring) ("At first blush it seems somewhat strange that the Bankruptcy Code should provide less protection to an individual's interest in retaining possession of his or her home than of other assets. The anomaly is, however, explained by the legislative history indicating that favorable treatment of residential mortgagees was intended to encourage the flow of capital into the home lending market.") (citation omitted). A disruption to car lenders is what Congress clearly does not want to occur, as shown through numerous provisions of BAPCPA.

CONCLUSION

For these reasons, *Amici Curiae* respectfully request that the Order and Judgment of the district court be VACATED, and this case be remanded to the Bankruptcy Court to act on the debtor's proposed plan in accordance with this Court's order.

Respectfully submitted, this the 16th day of July, 2025.

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing Brief complies with the type-volume limitation of Fed. R. App. P. Rule 29(a)(5) because this brief contains 3,569 words, excluding the portions thereof exempted by Fed. R. App. P. 32(f); and,

I certify that the foregoing Brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Century Schoolbook.

CERTIFICATE OF SERVICE

I certify that on July 16, 2025 the foregoing document was served on all parties or their counsel of record through the CM/ECF system:

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