

Nos. 25-2878 and 25-2879 (consolidated)

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**IN THE  
UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT**

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In re:

City of Chicago  
Appellant-Creditor

v.

Stephen Falkner and Ahmed Alayah  
Appellees-Debtors

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Appeals from the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division, Nos. 25-bk-09387 and 25-bk-09060, The Honorable Donald R. Cassling, Bankruptcy Judge Presiding

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**BRIEF OF *AMICI CURIAE* NATIONAL CONSUMER  
BANKRUPTCY RIGHTS CENTER, NATIONAL ASSOCIATION  
OF CONSUMER BANKRUPTCY ATTORNEYS, TRACY LYNN  
UPDIKE AS CHAPTER 13 TRUSTEE FOR THE NORTHERN  
DISTRICT OF INDIANA, AND THOMAS H. HOOPER AS  
CHAPTER 13 TRUSTEE FOR THE NORTHERN DISTRICT  
OF ILLINOIS, EASTERN DIVISION, IN SUPPORT OF  
APPELLEES AND AFFIRMANCE OF THE JUDGMENTS BELOW**

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APPEARANCE & CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Appellate Court No: 25-2878 and 25-2879 (consolidated)

Short Caption: In re: City of Chicago, Appellant-Creditor v. Stephen Falkner and Ahmed Alayah, Appellees-Debtors

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.

PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3): National Consumer Bankruptcy Rights Center, as Amicus Curiae

National Association of Consumer Bankruptcy Attorneys, as Amicus Curiae

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court: Herbert Smith Freehills Kramer (US) LLP

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

None

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

None

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

n/a

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

n/a

Attorney's Signature: s/Thomas Moers Mayer Date: February 26, 2026

Attorney's Printed Name: Thomas Moers Mayer

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes [checked] No [ ]

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PLEASE CHECK HERE IF ANY INFORMATION ON THIS FORM IS NEW OR REVISED AND INDICATE WHICH INFORMATION IS NEW OR REVISED.

(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3): Tracy L. Updike, Chapter 13 Trustee for the Northern District of Indiana as Amicus Curiae and

Thomas H. Hooper, Chapter 13 Trustee for the Northern District of Illinois, Eastern Division as Amicus Curiae

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:

James J. Haller, Attorney at Law

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

None

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

None

(4) Provide information required by FRAP 26.1(b) – Organizational Victims in Criminal Cases:

n/a

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

n/a

Attorney's Signature: /s/ James J. Haller Date: February 26, 2026

Attorney's Printed Name: James J. Haller

Please indicate if you are Counsel of Record for the above listed parties pursuant to Circuit Rule 3(d). Yes [checked] No [ ]

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## STATEMENT OF INTEREST OF *AMICI CURIAE*

The National Consumer Bankruptcy Rights Center (NCBRC) is a 501(c)(3) organization, dedicated to preserving the bankruptcy rights of consumer debtors and protecting the integrity of the bankruptcy system. NCBRC files amicus 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.

The National Association of Consumer Bankruptcy Attorneys (NACBA) is a non-profit organization of approximately 1,500 consumer bankruptcy attorneys practicing throughout the country. Incorporated in 1992, NACBA is the only nationwide association of attorneys organized specifically to protect the rights of consumer bankruptcy debtors.

NCBRC and NACBA have filed amicus briefs in the Supreme Court of the United States in several cases involving the rights of consumer debtors. *See, e.g., Bank of America v. Caulkett*, 575 U.S. 790 (2015); *Harris v. Viegelahn*, 575 U.S. 510 (2015); *Clark v. Rameker*, 573 U.S. 122 (2014); *Schwab v. Reilly*, 560 U.S. 770 (2010) (*amicus* brief cited in dissenting opinion). NCBRC and NACBA have filed amicus briefs in the U.S. Court of Appeals for the Seventh Circuit in more than a dozen cases over the last decade.

Tracy Lynn Updike is the Standing Chapter 13 Trustee for the United States Bankruptcy Court in the Northern District of Indiana, and as such is responsible for the administration of chapter 13 cases in the Northern District of Indiana.

Thomas H. Hooper is the Standing Chapter 13 Trustee for the United Bankruptcy Court in the Northern District of Illinois, Eastern Division, and as such is responsible for the administration of chapter 13 cases in the Northern District of Illinois, Eastern Division.

Amici have a strong interest in the outcome of this appeal and defeating the arguments advanced by appellant City of Chicago because such arguments would render chapter 13 relief unattainable for tens of thousands of individuals in this Circuit (including individuals in the Northern District of Indiana and the Northern District of Illinois (Eastern Division, where Ms. Updike and Mr. Hooper are the Standing Chapter 13 Trustees), depriving them of the ability to save their homes from foreclosure, save their cars from repossession, and obtain the fresh start relief from crushing debt that bankruptcy is meant to provide.

Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), *Amici* certify that no person or entity, other than *Amici* or their counsel, made a monetary contribution to the preparation or submission of this brief or authored this brief in whole or in part.

The parties have consented to the filing of this brief.

## SUMMARY OF ARGUMENT

Chapter 13 allows a consumer debtor to file a plan whereby he<sup>1</sup> may retain his assets and, in particular, retain his residence and his car by curing defaults under his mortgage (or apartment lease) and paying his car loan on modified terms, in return for paying creditors over time. A chapter 13 plan **must, with limited exceptions,**<sup>2</sup> pay administrative expenses and priority claims in full, section 1322(a)(2). The plan **may** pay general unsecured creditors less than in full over the objection of an unsecured creditor such as Chicago, in return for applying all of the debtor's "projected disposable income" to unsecured creditors calculated over a "commitment period" of five years (if the debtor's income is above the median income in his state, section 1325(b)(4)(A)(i), or at least three years (if the debtor's income is below the median income in his state, section 1322(b)(4)(A)(ii)).

More than 700,000 people have sought relief under chapter 13 of the Bankruptcy Code in the last five years, including more than 200,000 in the 12 months ended June 30, 2024. More than half of debtors filing chapter 13 petitions

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<sup>1</sup> As both debtors in this appeal are men, this brief uses the male pronouns to refer to a debtor.

<sup>2</sup> Less than full payment is permitted if the creditor agrees or under the limited exception in section 1322(a)(4). Since these exceptions are not relevant here, this brief treats full payment as required by section 1322(a).

appear to be “below median income” debtors – that is, each has disposable income that is less than the median income in his state.<sup>3</sup>

Appellees in this case are “below-median income” debtors that appellant Chicago seeks to exclude from chapter 13, in an attempt to collect unsecured claims for unpaid parking fines. Chapter 13 is the only form of bankruptcy relief where claims for such fines can be discharged.<sup>4</sup>

Below-median income debtors, Chicago argues, cannot pay administrative expenses – including debtor attorney fees approved in these cases without objection<sup>5</sup> -- until unsecured creditors of lower priority are either paid in full or receive three

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<sup>3</sup> See Pamela Foohey, Robert M. Lawless & Deborah Thorne, *DEBT’S GRIP: RISK AND CONSUMER BANKRUPTCY* (University of California Press 2025) at 32 (only 24% of chapter 13 debtors in random sample of 8,800 cases from 2013-2023 had an income above the state median); Pattison & Millimet, *Eligibility Screening and Means Testing in Consumer Bankruptcy* (Jan. 2025) Online Appendix at OA.13 (40% of chapter 13 debtors disclosed above-median income), available at: [https://pattison-nate.github.io/files/eligibility\\_screening.pdf](https://pattison-nate.github.io/files/eligibility_screening.pdf);

<sup>4</sup> Morrison, Pang & Uettwiller, *Race and Bankruptcy: Explaining Racial Disparities in Consumer Bankruptcy*, 63 J. L. & ECON. 269 (2020) (After Mayor Rahm Emanuel adopted a policy of strict enforcement and collection of parking fines, chapter 13 filings increased because those fines are dischargeable in chapter 13); *In re Ezell*, 502 B.R. 798, 812 (Bankr. N.D. Ill. 2013) (Debtor's parking citations were subject to discharge through Chapter 13); *City of Chi. v. Gallagher (In re Gallagher)*, 71 B.R. 138, 139 (Bankr. N.D. Ill. 1987) (While debts within § 523(a)(7) are not dischargeable under § 727, they are dischargeable under § 1328(a)).

<sup>5</sup> Ahmed Alayah’s debtor attorney fees were approved without objection in the amount of \$5,411.71; Stephen Falkner’s debtor attorney fees were approved without objection in the amount of \$5,529.71.

years of the debtor's disposable income without deduction for payment of administrative expenses.

Chicago's argument has no merit.

Without a single supporting precedent, Chicago advocates a novel interpretation of 20-year-old statutory language that would, for the first time in more than a century of bankruptcy law, subordinate payment of all administrative expenses to prior payment of general unsecured creditors. Chicago's argument contravenes decades of Congressional recognition that administrative expenses must be paid for the bankruptcy system to work,<sup>6</sup> and violates numerous provisions of the current statute enacted to achieve that end.

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<sup>6</sup> Both section 12 of the Bankruptcy Act of 1898 providing an alternative to liquidation, and chapter XIII enacted in 1938 allowing wage-earners to pay creditors over time, provided for the payment of trustee's fees and expenses and the debtor's attorney reasonable fees out of distributions and prior to the payment of unsecured claims. NATIONAL BANKR. CONF., 74TH CONG., ANALYSIS OF H.R. 12889 (Comm. Print 1936) (analyzing the bill that was the precursor to chapter XIII), available at <https://catalog.hathitrust.org/Record/100957953>. See also REPORT OF THE COMMISSION ON THE BANKRUPTCY LAWS OF THE UNITED STATES, H.R. Doc. 93-137, pt. 1, at 214 (1973) (from the government commission that initiated the legislative process leading to today's Bankruptcy Code: "It is not feasible to consider any alternative to according first priority to administrative expenses. Such expenses must be paid first to assure the availability of the services needed to administer a liquidation or reorganization case."), available at <https://catalog.hathitrust.org/Record/001882022>.

The Code requires a chapter 13 plan to pay administrative expenses (including debtor attorney fees). The Code requires commitment of “*projected* disposable income” to the payment of unsecured creditors if an objection to confirmation is filed under section 1325(b). “Projected disposable income” is calculated by deducting allowed expenses, including required payments of administrative expenses. Chicago’s argument to the contrary:

- interprets “projected disposable income” contrary to Supreme Court precedent,
- violates the Code,
- leads to absurd results including a ban on payment of some secured claims, and
- effectively eliminates chapter 13 relief for almost all debtors not paying their creditors in full.

**I. The Challenged Chapter 13 Plans Correctly Provided for Payment of Debtor Attorney Fees Before Applying “Projected Disposable Income” to Unsecured Creditors**

The challenged chapter 13 plans provided for full payment of debtor attorney fees in installments, payments on secured car loans, payment of priority claims (in Ahmed Ayalah’s case) and payment of chapter 13 trustee fees; the plans provided

for residual amounts of plan payments, if any, to be applied to the payment of general unsecured creditors such as Chicago.<sup>7</sup>

Section 1322(b)(11) provides that a chapter 13 plan may include any provision “not inconsistent with” the Code. The plans’ provisions are consistent with the Code – indeed, the plans’ provisions are required by the Code.

Section 1325(b)(1)(B) requires a less-than-full-payment plan to apply the debtor’s “projected disposable income”, if any, to the payment of unsecured creditors if an objection to confirmation is filed under section 1325(b). The plans at issue in this case met that requirement. The Code sections discussed below show that “projected disposable income” is net of required payments of administrative expenses, including debtor attorney fees, priority claims, chapter 13 trustee fees and secured claims. It is a “fundamental canon of statutory construction” that “the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” *United States v. Miller*, 604 U.S. 518, 520 (2025) (quoting *Davis v. Mich. Dep’t of Treasury*, 489 U.S. 803, 809 (1989)).

Under section 1322(a)(1), the plan must submit “future earnings or other future income” to the supervision and control of the chapter 13 trustee to carry out

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<sup>7</sup> Ahmed Alayah’s plan provided for payment of \$800 to general unsecured creditors; Stephen Falkner’s plan did not provide any amount for general unsecured creditors. Chicago Opening Brief at 5-6.

the plan. The chapter 13 trustee collects a percentage fee on chapter 13 plan payments (which cannot exceed 10%) to fund the actual and necessary expenses of the Office of the Chapter 13 Trustee incurred in administering all chapter 13 cases in her district or division, including compensation. 11 U.S.C. § 1326(b)(2); 28 U.S.C. § 586(e)(1)&(2).

Under section 1322(a)(2), the plan “shall” provide for payment in full, in deferred cash payments, of all administrative expenses and claims entitled to priority under section 507 – including debtor attorney fees. 11 U.S.C. §§ 330(a)(4)(B) & 503(b)(2).

Section 1326(b) provides that “before or at the time of each payment to creditors” under the plan, “there shall be paid”

- any claim or administrative expense entitled to priority under section 507(a)(2) (including debtor attorney fees), and
- the percentage fee fixed for the chapter 13 trustee.

11 U.S.C. §§ 1326(b)(1)&(2).

Finally, section 1325(a)(6) requires a court to find that the debtor will be able to make all payments under the plan, including payments of administrative expenses and priority claims required by sections 1322(a)(2) and 1326(b).

It follows that the calculation of “projected disposable income” reflects deduction of amounts that must be paid under sections 1322(a)(1)&(2) and 1326(b)(1)&(2).

Chicago errs in equating “projected disposable income” under section 1325(b)(1)(B) with “disposable income” under sections 1325(b)(2)&(3). The terms are different.

“Disposable income” is based on “current monthly income.” “Current monthly income” is defined in section 101(10A) as the average income of the six months prior to the bankruptcy petition (with certain exclusions) and is used to determine whether the debtor is above the median income in his state (in which case his applicable commitment period is five years) or below the median income in his state (in which case his applicable commitment period is three years<sup>8</sup>).

By contrast, “projected” disposable income refers to the total amount of projected income (other than excluded income such as child support to the extent reasonably necessary for support of the child<sup>9</sup>), net of allowed future expenses, over the three or five year commitment period. *Hamilton v. Lanning*, 560 U.S. 505 (2010) (“*Lanning*”) (“projected disposable income” as used in section 1325(b)(1)(B) is not the same as “disposable income” in section 1325(b)(2)).<sup>10</sup>

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<sup>8</sup> A below-median income debtor may, with court approval, extend his plan term to five years. 11 U.S.C. § 1322(d)(2).

<sup>9</sup> See *In re Brooks*, 784 F.3d 380 (7th Cir. 2015).

<sup>10</sup> In *Lanning*, the chapter 13 trustee argued that section 1129(a)(15)(B)’s reference to “projected disposable income (as defined in section 1325(b)(2))” showed that the terms “projected disposable income” and “disposable income” were the same for purposes of a chapter 13 plan. The Supreme Court rejected that argument. *Lanning*, 560 U.S. at 520.

“Projected disposable income” was not defined in the Code prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) and it was not defined by or after BAPCPA. The Supreme Court accordingly endorsed pre-BAPCPA precedents which recognized projected changes in income and expenses in the determination of “projected disposable income”:

Consistent with the text of § 1325 and pre-BAPCPA practice, we hold that when a bankruptcy court calculates a debtor's projected disposable income, the court may account for changes in the debtor's income or expenses that are known or virtually certain at the time of confirmation.

*Lanning*, 560 U.S. at 524.

The Code requires payment of debtor attorney fees, chapter 13 trustee fees, other administrative expenses and priority claims. Therefore payments on account of these claims and expenses are “known or virtually certain at the time of confirmation” and are appropriate deductions in determining the total amount of “projected disposable income” which must be applied to pay unsecured creditors – consistent with section 521(a)(1)(B)(vi), which requires a chapter 13 debtor to file “a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of the filing of the petition.” (Emphasis added).

Just as chapter 13 debtors may deduct a car ownership allowance only if they actually have expenses for car payments, *Ransom v. FIA Card Servs., N.A.*, 562 U.S.

61, 75 n.5 (2011) (“*Ransom*”), so chapter 13 debtors must deduct all expenses they are required to pay, such as administrative expenses (including debtor attorney fees) and priority claims. In *Ransom* and *Lanning*, the Supreme Court rejected “an interpretation of the Bankruptcy Code that would produce [the] senseless result[t] of deny[ing] creditors payments that the debtor could easily make”, *Ransom*, 562 U.S. at 71 (paraphrasing *Lanning*, 560 U.S. at 520). This Court should reject an equally “senseless result”: calculating projected disposable income without deducting payments of claims and administrative expenses that a debtor must make.

In the cases on appeal, the plans committed to pay unsecured creditors the debtors’ projected disposable income, if any, calculated after deducting required payments. Chicago makes no argument to the contrary other than its objection to the payment of debtor attorney fees – an argument which is wrong under the Code.

## **II. Chicago’s Argument is Wrong Under the Bankruptcy Code.**

Chicago erroneously calculates “projected disposable income” without reduction for required payment of administrative expenses and argues that such unreduced “projected disposable income” must be paid to unsecured creditors during the commitment period so that plans cannot pay debtor attorney fees because the fees constitute an “administrative expense” and the debtor attorney is not an “unsecured creditor”.

With respect to this fundamental premise of its argument, Chicago is wrong: A debtor attorney is an “unsecured creditor” as of the commencement of the chapter 13 case as defined in section 101(10). Amounts due to the debtor attorney under a pre-petition retention agreement comprise an unsecured claim on the petition date, *see Bethea v. Robert J. Adams & Assocs.*, 352 F.3d 1125, 1128 (7th Cir. 2003); subsequently, the court approves them as an administrative expense under section 330(a)(4):

The Chapter 13 form does not provide a deduction from disposable income for the Chapter 13 debtor's anticipated attorney fees. There is no specific statutory allowance for such a deduction, and none appears necessary. Section 1325(b)(1)(B) requires that disposable income contributed to a Chapter 13 plan be used to pay "unsecured creditors." A debtor's attorney who has not taken a security interest in the debtor's property is an unsecured creditor who may be paid from disposable income.<sup>11</sup>

Advisory Committee Note to Official Chapter 13 Form (formerly Form 22), promulgated shortly after the enactment of Section 1325(b)(1)(B) by the Judicial Conference of the United States, available at [https://www.uscourts.gov/sites/default/files/2025-04/b\\_122\\_cn\\_cumulative\\_0425-](https://www.uscourts.gov/sites/default/files/2025-04/b_122_cn_cumulative_0425-)

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<sup>11</sup> The Committee Note demonstrates the irrelevance of one senator’s rejected amendment to allow payment of debtor attorney fees, cited by Chicago at page 25 of its opening brief. The Committee Note shows the amendment was not necessary. As the Supreme Court has often observed, a floor statement by an individual legislator ranks “among the least illuminating forms of legislative history.” *Advocate Health Care Network v. Stapleton*, 581 U.S. 468, 481 (2017) (Kagan, J.), quoting *NLRB v. SW Gen., Inc.*, 580 U.S. 288, 307 (2017) (Roberts, C.J.).

[committee-note.pdf](#), p. 32. Federal Rule of Bankruptcy Procedure 2016 provides the procedure for seeking attorney's fees from the estate -- a procedure distinct from filing a proof of claim under Rules 3001-2.

Chicago thus errs when it argues that a debtor attorney holds an “administrative expense”<sup>12</sup> and not a “claim”. In chapter 13, administrative expenses allowed under section 503(b), including debtor attorney fees, are also “claims”. 11 U.S.C. § 1326(a)(2).<sup>13</sup> Therefore, even if administrative expenses were not deductible in determining projected disposable income, they may be paid as priority unsecured claims out of projected disposable income.

As a policy matter, Chicago's argument – that a less-than-full-payment plan must pay unsecured creditors before any payment is made on court-approved attorney fees -- would make chapter 13 relief unavailable unless the debtor can pay his attorney's fees in advance (which most debtors cannot afford) or obtained

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<sup>12</sup> Chicago is wrong to assert that “administrative expense” is by definition an expense incurred to preserve the “estate”. Chicago cites only chapter 11 cases for this assertion. Chicago Opening Brief at 13-14. Chapter 13 is different. In particular, section 330(a)(4)(B) provides for court approval of fees for services rendered to benefit the chapter 13 debtor personally, including pre-petition services rendered before there was “an estate”.

<sup>13</sup> If a chapter 13 plan is not confirmed, section 1326(a)(2) requires the chapter 13 trustee to return any undisbursed funds to the debtor after deducting any “unpaid *claim*” allowed as an administrative expense under section 503(b), including debtor attorney fees allowed under section 503(b)(2). 8 COLLIER ON BANKRUPTCY ¶ 1326.02[2][c] at 1326-14 (Richard Levin & Henry J. Sommer, 16<sup>th</sup> ed. Rel. 176-12/20/2025).

counsel who will wait three years for payment and run the risk that the case is dismissed, as about half of all chapter 13 cases are, before counsel fees are paid (highly unlikely).

As a statutory matter, Chicago's argument is contradicted by sections 1326(b)(1)&(2), which require payment of administrative expenses (such as debtor attorney fees) and chapter 13 trustee fees prior to distributions to unsecured creditors.<sup>14</sup> Chicago would have this court read the statute to deny confirmation of any chapter 13 plan that pays administrative expenses before unsecured creditors.

Finally, as set forth below, Chicago's argument would preclude a less-than-full-payment chapter 13 plan from paying secured claims for past-due support to a former spouse— an absurd and intolerable result.

### **III. Chicago's Argument Leads to Absurd Results.**

Notwithstanding section 1325(b)(1)(B)'s command that projected disposable income be paid to unsecured creditors, Chicago argues that section 1325(b)(2)'s calculation of "disposable income" does not permit administrative expenses to be

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<sup>14</sup> Chicago did not object to payment of the chapter 13 trustee's fees in these cases, asserting that section 707(b)(2)(A)(ii)(III) authorizes deduction of those fees. Chicago Opening Brief at 12-13 n.5. However, the Code provides for using section 707(b)(2) to determine disposable income only for above median debtors. Chicago's argument against payment of attorney's fees would also preclude payment of trustee fees by below-median income debtors from being considered in determination of projected disposable income and thus treat above-median income debtors better than below-median income debtors, a result the Supreme Court has found illogical. *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 71 n.5 (2011).

deducted in determining payments to unsecured creditors. Section 1325(b)(2) defines “disposable income” as current monthly income (other than amounts received from foster care payments, child support or disability payments reasonably necessary to support a dependent 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 . . . . in an amount not to exceed 15 percent of gross income of the debtor in 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 the business.”

Chicago would allow only expenses in the above-quoted subparagraphs to be deducted from amounts that, Chicago erroneously argues, must be paid to unsecured creditors in a chapter 13 plan.

Chicago’s interpretation permits a chapter 13 debtor to pay 15% of his gross income to charity while not paying debtor attorney fees, chapter 13 trustee fees or (as shown below) a secured pre-petition domestic support obligation (“DSO”)<sup>15</sup> to a

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<sup>15</sup> A DSO is often secured by a marital separation agreement, a divorce decree or a support order. 750 Ill. Comp. Stat. § 5/505(d); 42 U.S.C. § 666(a)(4) (requiring all states to enact procedures under which arrearages for child support result in liens on the real and personal property of the payor); *See* 11 U.S.C. § 522(f)(1)(A) (lien securing DSO continues to attach to debtor’s exempt property).

former spouse<sup>16</sup>.

Indeed, Chicago's interpretation creates a conflict between plan provisions paying a secured DSO and Chicago's proposed prohibition against deducting other amounts the debtor must pay in determining projected disposable income.<sup>17</sup> Chicago is, in effect, arguing for the subordination of a pre-petition secured DSO to Chicago's collection of parking fines.

These results demonstrating the error of Chicago's interpretation of "projected disposable income."

Congress has made clear that it considers payment of domestic support obligations of the highest importance. *See* H.R. Rep. 109-31, at 16-17 (2005). A chapter 13 plan must provide for full payment of a pre-petition secured DSO to discharge the DSO<sup>18</sup> and avoid enforcement of a DSO lien (which may be a lien on

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<sup>16</sup> Section 1325(b)(2)(A) allows a plan to provide for support of the debtor and his dependents. A former spouse is not usually a dependent.

<sup>17</sup> Under Chicago's erroneous interpretation, a chapter 13 plan cannot deduct amounts needed to pay a pre-petition secured DSO to determine disposable income and also cannot pay a pre-petition secured DSO out of disposable income. Under Chicago's theory, 11 U.S.C. § 1325(b)(2)(A)(i) permits only post-petition DSOs to be deducted in the calculation of disposable income and § 1325(b)(1)(B) permits only unsecured claims may be paid out of projected disposable income during the commitment period. Thus, Chicago's erroneous interpretation would preclude payment of pre-petition secured DSOs during the commitment period of at least three years.

<sup>18</sup> A chapter 13 debtor can discharge a pre-petition DSO only to the extent it is fully paid under the plan. 11 U.S.C. §§ 523(a)(5) & 1328(a)(2).

all of the debtor's property).<sup>19</sup> Once the plan provides for payment of a secured DSO, such payments are required under section 1325(a)(5)(B)(ii), just as payment of debtor attorney fees are required under section 1326(b)(1) and payment of chapter 13 trustee fees are required under section 1326(b)(2).

If, after deducting required payments, little or no income remains, that is the amount payable to general unsecured creditors under section 1325(b)(1)(B). *United Sav. Ass'n of Tex. v. Timbers of Inwood Forest Assocs.*, 484 U.S. 365, 371 (1988) (Statutory construction is a “holistic endeavor” and a term becomes clear when “only one of the permissible meanings produces a substantive effect that is compatible with the rest of the law.”) (Scalia, J. writing for a unanimous court).

## CONCLUSION

Section 1325(b)(1)(B) requires a less-than-full-payment plan to commit “projected disposable income” to the payment of unsecured creditors if an objection to confirmation is filed under that provision. “Projected disposable income” is calculated by deducting allowed expenses, which include required payments of approved debtor attorney fees, chapter 13 trustee fees, other administrative expenses, priority claims and secured claims. Therefore, appellees’ plans, which paid debtor attorney fees as priority administrative expenses prior to the payment of Chicago’s

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<sup>19</sup> 750 Ill. Comp. Stat. § 5/505(d).

nonpriority unsecured claims, contained provisions consistent with (and indeed, required) by the Code, and the orders of the Bankruptcy Court confirming the plans should be affirmed, for the reasons set forth above.

Dated: February 26, 2026

Respectfully submitted,

/s/ Thomas Moers Mayer

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**CERTIFICATE OF COMPLIANCE**

1. I certify that this Amicus Brief complies with the word limitation set forth in Circuit Rule 29 of this Court because this document contains fewer than 7,000 words.

2. I further certify that this document complies with the font requirements set forth in Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14 Font.

*/s/ Thomas Moers Mayer*

Thomas Moers Mayer

**CERTIFICATE OF SERVICE**

I hereby certify that on this the 26<sup>th</sup> day of February, 2026 the foregoing was filed with the Clerk of Court using the CM/ECF system which will send notification of such filing to all parties to this proceeding and/or serviced a copy by U.S. Mail as follows

Via Electronic Service:

/s/ Thomas Moers Mayer

Thomas Moers Mayer