IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:	)	
	)	**In Proceedings under**
	)	**Chapter 13**
	)	
GREG C. SCOTT and	)	**No. 10-33131**
KA SANDRA S. SCOTT,	)	
	)	
And	)	
	)	
MARCUS WHITE and	)	**No. 10-33300**
JACQUELYN WHITE,	)	
	)	
And	)	
	)	
JAMES F. SHEWMAKE and	)	**No. 10-32582**
LAURIE L. SHEWMAKE	)	
	)	
Debtors.	)	

CONSOLIDATED AMICUS BRIEF IN OPPOSITION TO THE OBJECTION TO CONFIRMATION OF THE CHAPTER 13 TRUSTEE

Comes now The National Association of Consumer Bankruptcy Attorneys (NACBA) by its undersigned attorneys and for its amicus curiae brief in support of the Debtors and in opposition to the Objections to Confirmation of the Chapter 13 Trustee, state as follows:

STATEMENT OF INTEREST OF *AMICUS CURIAE*[i]

The National Association of Consumer Bankruptcy Attorneys ("NACBA") is a non-profit organization of more than 4,800 consumer bankruptcy attorneys nationwide. It is the only national association of attorneys organized for the specific purpose of

i This brief has been filed with the consent of all parties.

protecting the rights of consumer bankruptcy debtors. Member attorneys and their law firms represent debtors in an estimated 800,000 bankruptcy cases filed each year.

NACBA seeks to protect the rights of consumer bankruptcy debtors and advocates nationally on issues that cannot adequately be addressed by individual member attorneys. Among other things, NACBA works to educate the bankruptcy bar and the community at large on the uses and misuses of the consumer bankruptcy process. NACBA has participated as *amicus* in numerous cases, including *Hamilton v. Lanning*, No. 08-998 (U.S. June 7, 2010), *Schwab v. Reilly*, No. 08-538 (U.S. June 17, 2010), and *Kawaauhau v. Geiger*, 523 U.S. 57 (1998).

NACBA and its membership have a vital interest in the resolution of the question presented because the proper method of calculating a chapter 13 debtor's projected disposable income is of vital interest to consumer debtors. NACBA member attorneys represent individuals in a large portion of all consumer debtor cases filed. Through its educational and representational functions, NACBA seeks to ensure the predictability of bankruptcy relief for both consumer bankruptcy debtors and the consumer bankruptcy bar.

ISSUE BEFORE THE COURT

Whether a debtor who owns a motor vehicle and makes secured debt payments on that vehicle is permitted to deduct the full Ownership Costs described in the IRS Local Standards when calculating projected disposable income under sections 1325(b)(3) and 707(b)(2)(A)(ii)(I).

ARGUMENT

The Chapter 13 Trustee objects to confirmation of the Debtors' chapter 13 plans he claims that they do not submit all their projected disposable income to the plan pursuant to sections 1325(b)(3) and 707 of the Bankruptcy Code. The Trustee asserts that the recent Supreme Court opinion of *In re Ransom*, 131 S. Ct. 716, 722 (2011) indicates that when interpreting the Bankruptcy Code, that courts should do so with the overriding interest of maximizing dividends to unsecured creditors. This view is not supported by the plain language of the statute, the *Ransom* decision, case law or legislative history of BAPCPA.

I. THE PLAIN LANGUAGE OF THE BANKRUPTCY CODE MANDATES THAT A DEBTOR WHO OWNS A VEHICLE AND HAS A SECURED DEBT PAYMENT ON THAT VEHICLE MAY CLAIM THE FULL AMOUNT OF THE OWNERSHIP EXPENSE SPECIFIED IN THE IRS STANDARDS.

The interpretation of the Bankruptcy Code starts "where all such inquiries must begin: with the language of the statute itself." *Ransom v. FIA Card Servs. N.A.*, 131 S. Ct. 716, 723-24, 178 L. Ed. 2d 603 (2011)(citing *United States v. Ron Pair Enters., Inc.* 489 U.S. 235, 241, 109 S. Ct. 1026, 103 L. Ed. 2d 290 (1989)). In other words, a court begins with the understanding that Congress "says in a statute what it means and means in a statute what it says there." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.* 530 U.S. 1, 6, 120 S. Ct. 1942, 147 L. Ed. 2d 1 (2000). Therefore, when the statute's language is plain, "the sole function of the courts is to enforce the statute according to its terms" where the disposition required by the text is not absurd. *Ron Pair,* 489 U.S. at 241; *Union Planters,* 530 U.S. at 6. Courts "must give effect to every word of a statute wherever possible" and ensure that each word in a statute carries meaning. *Ransom*, 131 S. Ct. at 724 (citing *Leocal v. Ashcroft*, 543 U.S. 1, 12, 125 S. Ct. 377, 160 L. Ed. 2d 271

(2004)); *Rake v. Wade*, 508 U.S. 464, 471, 113 S. Ct. 2187, 124 L. Ed. 2d 424 (1993). Effect is to be given to every word of a statute if possible, so that no portion of a statute is rendered redundant, inoperative, or superfluous. *Bank of Am. v. 203 LaSalle St. P'ship*, 526 U.S. 434, 452, 119 S. Ct. 1411, 143 L. Ed. 2d 607 (1999).

The Supreme Court in *Ransom* framed the issue in the instant cases as follows:

> In Chapter 13 proceedings, the means test provides a formula to calculate a debtor's disposable income, which the debtor must devote to reimbursing creditors under a court-approved plan generally lasting from three to five years. §§ 1325(b)(1)(B) and (b)(4). . . . For a debtor whose income is above the median for his State, the means test identifies which expenses qualify as "amounts reasonably necessary to be expended." ***The test supplants the pre-BAPCPA practice of calculating debtor's reasonable expenses on a case-by-case basis, which led to varying and often inconsistent determinations.*** *See, e.g., In re Slusher*, 359 B.R. 290, 294 (Bkrtcy.Ct.Nev. 2007). (Emphasis added.)

Ransom, 131 S.Ct. at 721-22.

Determining projected disposable income by using the means test for an above median income debtor is directed by 11 U.S.C. §1325(b)(3). *Ransom*, 131 S. Ct. at 722 ("[A] debtor calculating his 'reasonably necessary' expenses is directed to claim allowances for defined living expenses, as well as for secured and priority debt. §§ 707(b)(2)(A)(ii)-(iv)."). For debtors with income above their state median income, section 1325(b)(3) provides that: "Amounts reasonably necessary to be expended under paragraph (2)...shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2)." In turn, section 707(b)(2) states in relevant 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 [IRS] for the area in which the debtor resides.

11 U.S.C. § 707(b)(2)(A)(ii)(I).

"Shall be" in the quoted section above is unequivocal. There is no room for discretion. "Applicable monthly expense amount specified under the National Standards and Local Standards" must be counterposed against "actual monthly expenses for the categories specified as Other Necessary Expenses..." Congress intentionally omitted the requirement that debtors deduct their "actual" monthly average car payments in section 707(b)(2)(A)(ii)(I) and instead allowed debtors the amount specified under the Local Standards. Under the maxim *expressio unius est exclusio alterius,* "the expression of one thing is the exclusion of another," an express statutory requirement here, contrasted with statutory silence there, shows an intent to confine the requirement to the specified instance. Section 707(b)(2)(A)(ii)(I) refers specifically to Other Monthly Expenses which must be "actual" and Local Standards expenses which must be "applicable." As the Supreme Court noted,

> Our interpretation of the statute, however, equally avoids conflating "applicable" with "actual" costs. **Although the expense amounts in the Standards apply only if the debtor incurs the relevant expense, the debtor's out-of-pocket cost may well not control the amount of the deduction.** If a debtor's actual expenses exceed the amounts listed in the tables, for example, the debtor may claim an allowance only for the specified sum, rather than for his real expenditures. For the Other Necessary Expense categories, by contrast, the debtor may deduct his actual expenses, no matter how high they are. Our reading of the means test thus gives full effect to "the distinction between 'applicable' and 'actual' without taking a further step to conclude that 'applicable' means 'nonexistent.'" *In re Ross-Tousey*, 368 B. R. 762, 765 (Bkrtcy.Ct.E.D. Wis. 2007) rev'd, 549 F.3d 1148 (C.A. 7 2008). (Emphasis added.)

Ransom, 131 S. Ct. at 727-28. The two phrases cannot both refer to actual expenses as the Trustee suggests. Instead, "monthly expense amount specified" represents the dollar

figure of the allowance, rather than some other number.

"Applicable," as defined by the Supreme Court in *Ransom*, refers to whether the debtor will incur that ***kind*** of expense during the life of the plan. It represents a "threshold determination of eligibility" for the expense not the amount of the deduction permitted. *Ransom*, 131 S.Ct. at 724. In *Ransom*, the debtor had no lien or lease payment, and therefore, he did not pass through the gateway created by the word "applicable" and was not eligible to take the ownership allowance. By contrast, in these cases, the Debtors cross the threshold described by the Supreme Court because they have the kind of expenses—secured debt payments—described by the Local Standard for Ownership Costs. The Debtors are therefore eligible to deduct the "monthly expense amount specified" for the ownership allowance.

II. THE PLAIN LANGUAGE OF THE BANKRUPTCY CODE AND THE INTERNAL REVENUE MANUAL INDICATE THAT CONGRESS REJECTED THE TRUSTEES ARGUMENT THAT LOCAL STANDARDS ARE ONLY CAPS AND THAT THE DEBTORS' ARE ENTITLED TO ONLY THEIR ACTUAL EXPENSES.

The plain language of the Bankruptcy Code contrasted with the language of the Internal Revenue Manual ("IRM") demonstrates that Congress did not intend for Local Standards to be limited to a debtor's actual expense. Instead, debtors should receive the entire Ownership Costs deduction if they satisfy the threshold question established by the Supreme Court in *Ransom*. That question is whether debtors will have the kind of expense described in the Local Standards during the life of their plan.

Section 707(b)(2)(A)(ii)(I) delineates between expenses that are applicable and those that are actual. This language contrasts with the language of the IRM that states that the debtor only receives the lower of their actual or capped standard expense. Specifically,

the IRM states: "Maximum allowances for housing and utilities and transportation, known as the Local Standards, vary by location. In most cases, the taxpayer is allowed the amount actually spent, or the local standard, whichever is less."ii However, under the IRM, taxpayers may be able to take a higher expense than provided for in the standard if the expense is necessary and substantiated. *See* Local Standards, available at http://www.irs.gov/businesses/small/article/0,,id=104623,00.html. Notably, the Trustee has not indicated that such upward adjustments should be available to above-median income debtors. Instead, the Trustee argues for an asymmetric rule which is not consistent with either the IRM or the plain language of the statute: if the expense is lower than the standard allowance then the debtor only gets the lower amount and if the debtor's expense is greater than the standard allowance then the debtor still only gets the lower amount. Thus it is clear that the Trustee does not intend the IRM to be controlling.

While it is appropriate for a bankruptcy court to use the IRS standards to assist in determining to the meaning of certain language, it is not appropriate to take language or meaning from the IRM when it is at odds with the statute. *See Ransom*, 131 S.Ct. at 726. ("The guidelines of course cannot control if they are at odds with the statutory language."). It is clear that the IRM is at odds with the statutory language here. The statute requires only that the Local Standard be "applicable." If applicable, that is if debtor has the kind of expense described in the Local Standards, then the debtor can deduct the amount specified in the Local Standards for the ownership costs. The IRM, on the other hand, states that debtors may deduct either the standard cap or the debtor's actual expenses, whichever is lower. The underlined language is not found in section 707(b)(2)(A)(ii)(I) and should be rejected.

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ii See http://www.irs.gov/individuals/article/0,,id=96543,00.html

III. OTHER COURT DECISIONS PRIOR TO *RANSOM* AND THE ONLY POST-*RANSOM* CASE SQUARELY ON POINT CONCLUDE THAT DEBTORS WHO OWN VEHICLES AND MAKE SOME LOAN OR LEASE PAYMENT MAY DEDUCT THE FULL AMOUNT SPECIFIED IN THE LOCAL STANDARDS.

The only case decided after the *Ransom* decision that is squarely on point with the issue at hand is *In re Miranda*, 2011 WL 940241 (Bankr. D.P.R. Mar. 9, 2011). In that case the court addressed the same issue as in these cases, namely, whether the debtors should be allowed to deduct from their B22C form the full Ownership Cost for an encumbered vehicle under the IRS Local Standards or whether the debtors' lower average monthly payment should be used. Quoting from the brief of the United States Government in *Ransom*, the *Miranda* court stated that section 707(b)(2)(A)(ii)(I) "'strikes a balance between precision and ease of administration by requiring a debtor who invokes the deduction to establish the existence, but not the exact amount' of a certain expense." *Miranda*, 2011 WL 940241 at *7. The *Miranda* court further noted that such a reading "supports Congress' policy behind the mean test which was the uniform application of a bright-line test, which was more important than accuracy and which limited judicial discretion in the application of the same." Id. (citations omitted); *see also Ransom*, 130 S.Ct. at 729 ("Congress chose to tolerate the occasional peculiarity that a brighter-line test produces.")

This Court addressed the same issue in the case of *In re Barrett*, 371 B.R. 855, 858 (Bankr. S.D. Ill. 2007). In that case this Court specifically rejected the argument raised now by the Trustee. The Court held:

> The Court finds the language in §707(b)(2)(A)(ii)(I) clear and unambiguous. The statute expressly states that debtor's allowed expense deductions shall be the applicable monthly expense amounts specified

> under the National and Local Standards. There is no provision for reducing the specified amounts to the debtor's actual expenses, nor does the statute suggest that the amounts specified in the Standards are to be used only as maximum amounts. **Thus, "a plain reading of the statute would allow a deduction of the amounts listed in the Local Standards even where the debtor's actual expenses are less."** Eugene R. Wedoff, Means Testing in the New §707(b), 79 Am. Bankr. L.J. 231, 256 (2005). *See also In re Farrar-Johnson*, 353 B.R. 224, 229-230 (Bankr.N.D.Ill. 2006). (Emphasis added.)

Id. Similarly, in *In re Carlton*, 362 B.R. 402, 409 (Bankr. C.D. Ill. 2007), Judge Gorman held that:

> The IRS standards, for IRS purposes, include an allowance for secured debt payments and a taxpayer gets the standard deduction regardless of the actual amount of secured debt payment which must be made from that allowance.

In *In re Reinstein,* 393 B.R. 838, 840-841 (Bankr. E.D. Wis. 2008), Judge Shapiro stated that:

> Because 707(b)(2)(A)(ii)(I) provides that the debtor's allowed expense deductions "shall be" the "amount specified" under the Local Standards - and because the statute makes no provision for reducing the specified amounts to the debtor's actual expenses - a plain reading of the statute would allow a deduction of the amounts listed in the Local Standards even where the debtor's actual expenses are less.

U.S. District Judge William Griesbach in *In re Ross-Tousey*, 368 B.R. 762, 765 (E.D. Wis. 2007), wrote an opinion consistent with *Ransom* and added the following helpful rationale:

> Instead of viewing "applicable" and "actual" as having virtually opposite meanings, another reading of the statute would allow a debtor to deduct the auto expense listed in the Standards if the debtor actually had an auto expense in the first place. This reading gives meaning to the distinction between "applicable" and "actual" without taking a further step to conclude that "applicable" means "nonexistent" or "fictional." Under this reading, it is true that the debtor's "actual" expense does not control the *amount* of the deduction, but the debtor must still have *some* expense in

> the first place before the Standard amount becomes "applicable." The term "applicable" merely means, in this context, that when a debtor has an automobile ownership expense, his deduction is not based on that actual expense but on the applicable expenses listed in the Standards.

Finally, Bankruptcy Judge Eugene Wedoff in his article "Means Testing in the New Section 707(b)" 79 Am.Bankr. L.J. 231, 256 (Spring 2005), states:

> Because 707(b)(2)(A)(ii)(I) provides that the debtor's allowed expense deductions "shall be" the "amount specified" under the Local Standards - and because the statute makes no provision for reducing the specified amounts to the debtor's actual expenses - a plain reading of the statute would allow a deduction of the amounts listed in the Local Standards even where the debtor's actual expenses are less.

The holdings of pre-*Ransom* cases and the comments of Judge Wedoff are not incompatible with *Ransom*. To the contrary, allowing debtors that have some ownership expense to claim the full ownership deduction is consistent with the Ransom decision and harmonizes the language of section 707(b)(2)(A)(i)(II).

IV. THE "CREDITOR ALWAYS WINS" RULE OF STATUTORY CONSTRUCTION SHOULD NOT BE EMPLOYED TO CONTRAVENE THE PLAIN LANGUAGE OF THE STATUTE AND TO UNBALANCE THE CAREFULLY CRAFTED TEST CREATED BY CONGRESS.

Cases holding that the expenses in the Local Standards are a cap and not an allowable deduction generally use the "creditor always wins" rule of statutory interpretation. The rule is based on the presumption that the sole purpose of the BAPCPA was to maximize the return for creditors. However, this policy was not the only policy animating BAPCPA. Nor does it override the "fresh start" principle that is the foundation and guiding principle of the Bankruptcy Code for over one hundred years. *See Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934); *Williams v. U.S. Fidelity & Gaur.*

Co., 236 U.S. 549, 555 (1915).

Indeed, in *In re Nance*, 371 B.R. 358, 366-367 (Bankr. S.D. Ill. 2007), this Court has previously questioned the overriding principle that BAPCA was solely designed to maximize repayment to creditors.

> Similarly, the Court is not persuaded that the "clear" goal of BAPCPA was to "ensure that debtors repay creditors the maximum they can afford." *In re Zimmerman*, 2007 Bankr. LEXIS 410, 2007 WL 295452, at * 8 (Bankr. N.D. Ohio 2007) (citing H.R. Rep. No. 109-31). Congress excluded several sources of income from the disposable income calculation, including repayment of 401(k) loans and Social Security Act benefits, thereby calling into doubt whether maximum repayment to creditors was its main intent. *See In re Hanks*, 362 B.R. 494, 500 (Bankr. D. Utah 2007) (questioning whether maximum repayment was the goal of BAPCPA). Further, by focusing on repayment to creditors as Congress' ultimate goal, proponents of this approach ignore other potential competing goals of Congress under BAPCPA, particularly the desire to eliminate judicial discretion. Id. It is clear from the Chapter 7 means test, the adoption of standardized expense calculations for above-median debtors, and the calculation methods for determining "projected disposable income" that a major goal of Congress was to replace judicial discretion with specific statutory standards and formulas.
>
> Before BAPCPA was passed, the Chapter 13 trustees warned Congress that the amended definition of disposable income in §1325(b)(2) could lead to the kind of impractical results addressed by the Fuller and Hardacre courts. *See Alexander*, 344 B.R. at 747 (citing Marianne B. Culhane & Michael M. White, Catching Can-Pay Debtors: Is The Means Test the Only Way?, [*367] 13 Am. Bankr. Inst. L. Rev. 665, 681 (2005)). n9 However, these warnings fell on deaf ears. HN9"[An] alert, followed by the Legislature's nonresponse, should support a presumption of legislative awareness and intention." Lamie vs. United States Trustee, 540 U.S. 526, 541, 124 S. Ct. 1023, 157 L. Ed. 2d 1024 (2004).

Limiting judicial discretion was one of the foremost goals in enacting BAPCPA. This was done by replacing judicial discretion with standardized expense deductions for above median-income debtors. This Court holds:

> The congressional record, while scant, reveals that two of Congress' primary objectives in enacting bankruptcy reform legislation were to (1)

> **limit judicial discretion in determining the appropriate amount to be repaid through bankruptcy** and (2) maximize recovery to unsecured creditors. H.R. Rep. No. 109-31, Pt. 1, at 2 (2005) U.S. Code Cong & Admin. News 2005, pp. 88-89. See also Nance, 371 B.R. at 366 ("it is clear from the Chapter 7 means test, **the adoption of standardized expense calculations for above-median debtors**, and the calculation methods for determining 'projected disposable income' **that a major goal of Congress was to replace judicial discretion with specific statutory standards and formulas**"). (Emphasis added.)

In re King, 439 B.R. 129, 136-137 (Bankr. S.D. Ill. 2010).

The Court also indicated that unlike below-median income debtors, the above-income debtor enjoys certain benefits while also adjusting to some limitations (they must remain in a chapter 13 bankruptcy for 60 months). The Court indicated that in exchange, above-median income debtors are allowed additional deductions not extended to below-median income debtors.

> Further, above-median income debtors are afforded certain advantages in calculating their monthly disposable income that are not extended to below-median income debtors. Above-median income debtors are permitted to take additional deductions on their Form B22C for such things as housing, transportation, and other necessary expenses. This has the effect of reducing their disposable income and, accordingly, the amount that they are required to pay to the Trustee each month. In exchange for this benefit, however, above-median income debtors are expected to remain in bankruptcy for a longer period of time.

King, 439 B.R. at 139. It is logical to assume that the Court was referring in part to the allowance of the entire Ownership Cost deduction on a vehicle rather than the actual expense. Otherwise, the above median-income debtor would effectively be in the same situation as a below-median income debtor.

V. THE LEGISLATIVE HISTORY DEMONSTRATES THAT THE DEBTORS ARE ENTITLED TO A FULL DEDUCTION FOR OWNERSHIP COSTS.

The legislative history supports Amicus's construction of section

707(b)(2)(A)(ii)(I) as well. The legislative history establishes that Congress was aware that the IRS standards were not the same as a debtor's actual expenses and that Congress did not intend to limit the bankruptcy means test expense deductions to the debtor's actual expenses. Instead, Congress adopted a uniform and readily applied formula that creates an objective test.

Congress squarely confronted the question of whether to use a debtor's actual expenses in the means test calculation, or whether to use IRS standards that might differ markedly from the debtor's actual situation. During the markup of H.R. 833 (the House legislation which ultimately became BAPCPA), Rep. Henry J. Hyde, chairman of the House Judiciary Committee, and a central figure in the enactment of BAPCPA, sought to replace the means test's IRS expense standards with "a reasonably necessary expense standard." iii Rep. Hyde explained that "a reasonably necessary standard provided more flexibility for the court's determination of a debtor's expenses" than the IRS expense standards allowed.

The House Judiciary Committee ultimately rejected Rep. Hyde's proposed approach and retained the IRS expense standards as part of the means test. In the words of the members of the House Judiciary Committee who opposed the bill that eventually became law, "[t]he bill . . . makes substantial changes to chapter 13 by substituting the IRS expense standards to calculate disposable income . . . [T]he formula remains inflexible and divorced from the debtor's actual circumstances." Report of the Committee on the Judiciary, House of Representatives, to Accompany S. 256, H. Rep. No. 109-31, Pt. 1, 109th Cong., 1st Sess. 553 (2005), reprinted in 2005 U.S. Code Cong. & Admin.

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iii Susan Jensen, *A Legislative History of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, 79 AM. BANKR. L.J. 485, 523 (2005).

News 88.

Even after the House mark-up of H.R. 833, Rep. Hyde continued to press for the deletion of the IRS expense standards and the enactment of a more flexible approach. During floor debate, Rep. Hyde criticized the expense standards as "rigid and inflexible."[iv] The Majority Leader defended them as "clear, defined standards."[v] The House shrugged off the criticism and enacted the bill, and the Senate followed suit.

As one commentator has remarked, the rejection "of a chairman's position on legislation considered by his or her own committee by members of his or her own political party is highly unusual."[vi] The decision to adopt the IRS expense standards rather than the debtor's actual expenses, in other words, was not lightly made, and this Court should not undo the congressional judgment after the fact. Congress chose a bright-line approach that did not vary according the debtor's actual expenses.

There is further relevant legislative history as well. An earlier draft of the means test component of BAPCPA required calculation of "projected monthly net income," provided for expense allowances "as determined under the Internal Revenue Service financial analysis for expenses in effect as of the date of the order for relief." H.R. Rep. 105-540 (May 18, 1998), H.R. 3150, 105th Cong. (1998). In the version that Congress passed in 2005, the reference to the IRS "financial analysis" was removed and replaced with the language referencing expense allowances under "the applicable monthly expense amounts specified under the National and Local Standards." 11 U.S.C. § 707(b)(2)(A)(ii)(I). This change evidences Congress' intent to move away from the IRS commentary contained in the IRM and confirms that courts should look only to the IRS

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iv 145 Cong. Rec. H2718 (daily ed. May 5, 1999).
v *Id.* at H2719.
vi Jensen, 79 AM. BANKR. L.J. at 524.

standards tables, which were incorporated into the statute. The Supreme Court has recognized that the legislative history of a prior bill that was not enacted can be useful to interpret language in a bill that was ultimately enacted. *See, e.g., Dawson Chemical Co. v. Rohm & Haas Co.*, 448 U.S. 176, 204 (1980); *United States v. Enmons*, 410 U.S. 396, 404 (1973); *Transcontinental & Western Air, Inc. v. Civil Aeronautics Bd.*, 336 U.S. 601, 606 (1949).

BAPCA 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. It also sought to avoid disputes about the reasonableness of particular expenses and instead create an aggregated standard budget that is presumed to represent a reasonable total level of spending for different size households in particular geographic regions of the country. Thus, "[t]he provisions of section 707(b)(2) create a bright line test to determine whether a debtor's chapter 7 case is to be presumed abusive for purposes of section 707(b)." 6 COLLIER ON BANKRUPTCY P 707.05[2][a], at 707-40 (15th ed. Rev. 2009).

The statutory interpretation advanced here is entirely consistent with that congressional purpose and with the Supreme Court's decision in *Ransom*. The transaction costs saved by reliance on standardized, uniform tables more than compensate for any perceived unfairness in allowing debtors to take an Ownership Expense for cars in which their averaged monthly payments are less than the expense. Every objective test creates questions of line-drawing and perceived fairness, and the issues with respect to transportation under the Financial Standards also extend to food, medical care, and other

matters.vii

CONCLUSION

For the foregoing reasons and rationale above, Amicus respectfully requests the Court to deny the Trustee's objections to confirmation in the instant cases.

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vii For example, debtors receive a national allowance for food even if they incur no actual food expenses because they live with relatives. *See* http://www.irs.gov/businesses/small/article/0,,id=104627,00.html. Debtors also receive an Out-of-Pocket Health Care allowance of $ 60 per month per household member ($ 144 for taxpayers 65 and older) even if they do not have any actual health care expenses or if their expenses are less than the allowance. If the Trustee's interpretation is correct, then all of these expenses would have to be reviewed to determine if the debtor actually incurs them.

NOTICE OF ELECTRONIC FILING AND CERTIFICATE OF SERVICE BY MAIL

STATE OF ILLINOIS	)	Case No.: 10-33131
	)	Case No.: 10-33300
CITY OF BELLEVILLE	)	Case No.: 10-32582
	) SS	
	)	
	)	Chapter 13

Kim Seppi, being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age, and resides in St. Clair County, Illinois.

On May 6, 2011, Deponent electronically filed with the Clerk of the U. S. Bankruptcy Court the **Consolidated Amicus Brief in Opposition to the Objection to Confirmation of the Chapter 13 Trustee**.

The Deponent served electronically the **Consolidated Amicus Brief in Opposition to the Objection to Confirmation of the Chapter 13 Trustee**.

to the following parties:

U.S. Trustee

U.S. Bankruptcy Court

Russell Simon

and served by mail to the following parties:

Mr. and Mrs. Greg C. Scott
319 Monroe
East Alton, IL 62024

Mr. and Mrs. Marcus White
2753 Lake Lucerne Drive
Belleville, IL 62221

Mr. and Mrs. James Shewmake
232 Wonderland
Alton, IL 62002

by depositing a true copy of same, enclosed in a postage paid properly addressed wrapper, in a Belleville City Branch, official depository under the exclusive care and custody of the United States Postal Service, within the State of Illinois.

By: /s/ Kim Seppi