
IN THE
Supreme Court of the United States

RICHARD BAUD AND MARLENE BAUD,
Petitioners,
v.

KRISPEN S. CARROLL, CHAPTER 13 TRUSTEE IN
BANKRUPTCY FOR THE EASTERN DISTRICT OF MICHIGAN,
Respondent.

**On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Sixth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

When a Chapter 13 bankruptcy plan does not propose to repay unsecured creditors in full and the bankruptcy trustee or an unsecured creditor objects, a bankruptcy court may not confirm the plan unless it “provides that all of the debtor’s projected disposable income to be received in the applicable commitment period . . . will be applied to make payments to unsecured creditors.” 11 U.S.C. § 1325(b)(1)(B). The courts of appeals and bankruptcy courts have divided into three camps in interpreting § 1325(b)(1)(B). Some courts hold that it requires the debtor to pay a minimum amount of money (i.e., projected disposable income multiplied by the applicable commitment period). Others hold that it requires the debtor to remain in bankruptcy for a minimum duration equal to the applicable commitment period. Still other courts hold that § 1325(b)(1)(B) requires a minimum duration only for debtors with positive projected disposable income.

The question presented is:

Whether § 1325(b)(1)(B) requires a Chapter 13 debtor to propose a plan with a duration at least as long as the applicable commitment period, even if the debtor has no projected disposable income.

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Richard Baud and Marlene Baud respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Sixth Circuit in this case.

INTRODUCTION

Recognizing the importance of uniformity in handling the more than 350,000 Chapter 13 bankruptcies filed in the United States each year, this Court frequently grants certiorari to resolve splits of authority over the proper interpretation of Chapter 13.¹ This petition provides an opportunity to resolve a split concerning what the court below called one of the most “vexing” problems of statutory interpretation created by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”):² whether 11 U.S.C. § 1325(b)(1)(B) requires a minimum plan length or a minimum payment amount. App. 1a.

¹ See, e.g., *Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. 716, 723 n.4 (2011) (noting split in both circuit and bankruptcy courts); *Hamilton v. Lanning*, 130 S. Ct. 2464 (2010); *Milavetz, Gallop & Milavetz, P.A. v. United States*, 130 S. Ct. 1324, 1331 & n.2 (2010) (granting certiorari to resolve split between two circuits); *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365 (2007); *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004); cf. *N.C.P. Mktg. Group, Inc. v. BG Star Prods., Inc.*, 129 S. Ct. 1577, 1578 (2009) (statement of Kennedy, J., respecting denial of certiorari) (noting that division over meaning of Bankruptcy Code provision “is an important one to resolve for Bankruptcy Courts and for businesses that seek reorganization”). Regarding the number of Chapter 13 filings, see U.S. DEP’T OF JUSTICE, U.S. TRUSTEE PROGRAM ANNUAL REPORT OF SIGNIFICANT ACCOMPLISHMENTS FISCAL YEAR 2009, at 11 (2010) (“2010 DOJ Report”).

² Pub. L. No. 109-08, §§ 102, 318, 119 Stat. 23, 33-34, 93-94 (2005).

A Chapter 13 bankruptcy plan that gives unsecured creditors less than full value for their claims may not be confirmed over objection unless it pays those creditors “all of the debtor’s projected disposable income to be received in the applicable commitment period.” 11 U.S.C. § 1325(b)(1)(B). As the Sixth Circuit explained below, whether this statutory means test “sets forth a temporal requirement or a monetary requirement has split the courts into several interpretive camps.” App. 15a. This split is well developed: the issue arises frequently and has now been decided by four circuits and by many bankruptcy appellate panels, district courts, and bankruptcy courts nationwide, producing conflicting decisions even within the same State and the same district. As one court recently put it, after reviewing “nearly two dozen cases, leading authoritative treatises, and several scholarly articles addressing this question, . . . there is little, if anything, to be added by this Court that has not already been said.”³

If petitioners had filed bankruptcy in the Ninth Circuit or in many other jurisdictions across the country, the bankruptcy court would have confirmed their 3-year plan over the trustee’s objection. The Sixth Circuit held, however, that § 1325(b) required petitioners to remain in bankruptcy for 5 years. This Court should grant certiorari to resolve this fundamental disagreement among the lower courts about a central term of a Chapter 13 bankruptcy plan: its duration.

³ *In re Eaton*, No. 08-62201, 2011 WL 1302144, at *3 (Bankr. N.D.N.Y. Apr. 5, 2011); *see also In re Meadows*, 410 B.R. 242, 244 (Bankr. N.D. Tex. 2009) (“This issue has been well-vetted in the courts.”).

OPINIONS BELOW

The court of appeals' opinion (App. 1a-58a) is reported at 634 F.3d 627. The district court's opinion (App. 59a-80a) is reported at 415 B.R. 291. The bankruptcy court's order confirming the Chapter 13 bankruptcy plan (App. 85a-87a) is not reported.

JURISDICTION

The court of appeals entered its judgment on February 4, 2011. On April 13, 2011, Justice Kagan extended the time to file a petition for certiorari to and including June 3, 2011. App. 93a. On May 22, Justice Kagan further extended the time to file a petition to and including July 1, 2011. App. 94a. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

This case involves the conditions for overcoming an objection to the confirmation of a Chapter 13 bankruptcy plan under 11 U.S.C. § 1325(b). The text of § 1325 is reproduced at App. 88a-92a.

STATEMENT

A. Statutory Background

"Chapter 13 of the Bankruptcy Code enables an individual to obtain a discharge of his debts if he pays his creditors a portion of his monthly income in accordance with a court-approved plan." *Ransom v. FIA Card Servs., N.A.*, 131 S. Ct. 716, 721 (2011). "Section 1325 of [the Code] specifies circumstances under which a bankruptcy court 'shall' and 'may not' confirm a plan." *Hamilton v. Lanning*, 130 S. Ct. 2464, 2469 (2010). In particular, § 1325(a) states that a bankruptcy court shall confirm a plan if nine conditions are satisfied. App. 88a-90a. If there is an objection to confirmation, however, § 1325(b) states

that the plan may not be confirmed unless an additional condition is satisfied. App. 90a-92a. The issue here is whether this additional condition imposes a minimum amount of money that the plan must pay or a minimum amount of time that the plan must last. Section 1325(b) provides in relevant part:

(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) [defining “disposable income” as “current monthly income . . . less amounts reasonably necessary to be expended” on certain items].

(3) [requiring that “reasonably necessary” expenses for debtors with above-median incomes be determined under the means test of § 707(b)(2)].

(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—

* * *

(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; . . . [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.

11 U.S.C. § 1325(b). Thus, § 1325(b) has two main components: (b)(1) specifies “how much income” a Chapter 13 plan must pay unsecured creditors to survive an objection, *Ransom*, 131 S. Ct. at 721, and (b)(2)-(4) define certain terms used in calculating that amount.

Determining whether a plan that does not repay unsecured creditors in full can survive objection under § 1325(b) requires five steps. After *Lanning* and *Ransom*, the calculations involved in the first four steps are now settled; the final step is the subject of this petition.

First, the bankruptcy court evaluates a debtor’s current monthly income to determine whether it qualifies him as an above-median-income debtor. Above-median-income debtors are subject to an “applicable commitment period” of 5 years, § 1325(b)(4), and their expenses are calculated using § 1325(b)(3)’s “means test.”

Second, the court makes any adjustments to the debtor’s projected disposable income warranted under *Lanning*. *Lanning* permits adjustments “for changes in the debtor’s income or expenses that are

known or virtually certain at the time of confirmation.” 130 S. Ct. at 2478.

Third, the court determines whether the expenses claimed by the debtor are consistent with the “means test.” The means test permits above-median-income debtors to claim certain monthly expenses in the amounts actually incurred (e.g., taxes, out-of-pocket healthcare costs), but restricts other monthly expenses to national and regional standards promulgated by the Internal Revenue Service (“IRS”) (e.g., food, clothing, transportation). If a debtor in fact incurs an expense in a standardized category, then he may claim the entire standardized amount regardless of his actual expense. But if the debtor does not in fact incur an expense in a standardized category, then he is not entitled to claim any expense in that category. *See Ransom*, 131 S. Ct. at 725.

Fourth, the bankruptcy court subtracts the adjusted allowable expenses from the adjusted current monthly income to arrive at projected disposable income.

Fifth, the court must determine whether “the plan provides that all of the debtor’s projected disposable income to be received in the applicable commitment period . . . will be applied to make payments to unsecured creditors under the plan.” 11 U.S.C. § 1325(b)(1)(B). This step has divided the lower courts. *See App. 15a-18a*. Courts adopting the strictly temporal approach hold that the *length* of the plan must equal the applicable commitment period under § 1325(b)(4)—i.e., 5 years for an above-median-income debtor. Courts adopting the strictly monetary approach hold that § 1325(b) does not prescribe a minimum plan length; instead, it requires that unsecured creditors be paid an *amount* equal to the

debtor's monthly projected disposable income multiplied by the number of months in the applicable commitment period. And courts recognizing an exception to the temporal approach hold that, when the debtor's projected disposable income is negative, a plan need not last for the whole applicable commitment period.

This split is a result of changes made by BAPCPA in 2005. BAPCPA significantly restricted bankruptcy courts' discretion in calculating "disposable income" to make bankruptcy proceedings more expeditious and treatment of debtors more uniform. *See In re Frederickson*, 545 F.3d 652, 658 (8th Cir. 2008). Instead of requiring fact-intensive inquiries into all potential sources of income over varying time horizons, Congress limited "current monthly income" to income actually derived during the preceding 6 months and exempted some sources of income, such as Social Security benefits. 11 U.S.C. § 101(10A). For debtors whose income is above the median for their State, Congress also established standardized amounts that can be claimed for certain expenses, such as housing, utilities, food, transportation, and clothing, as long as the debtor incurs some expense in the applicable category, regardless of the amount of the debtor's actual expense. *See Ransom*, 131 S. Ct. at 725. The use of standardized expenses "supplants the pre-BAPCPA practice of calculating debtors' reasonable expenses on a case-by-case basis." *Id.* at 722. Thus, the calculation of "disposable income" under BAPCPA is simpler, more uniform, and less subject to abuse.

This standardized definition of "disposable income" also makes it possible for some debtors to have more discretionary income available to them each month

than the standardized calculation of “disposable income” reveals. For example, this situation may arise because the debtor has exempt income (such as Social Security benefits), because the debtor chooses to incur expenses in amounts less than the standardized amounts permitted under BAPCPA, or both. In fact, some debtors, like petitioners, may have negative “disposable income” as calculated under BAPCPA but still have some discretionary income available to them. Debtors with such income may choose to use it to repay their creditors more quickly than they could using only their “disposable income.” Thus, under BAPCPA, it is “very likely that there will be no certain relationship between the amount of money that must be paid to unsecured creditors to satisfy the disposable income test and the time it will take the debtor to pay that amount of money after confirmation.” Keith M. Lundin & William H. Brown, CHAPTER 13 BANKRUPTCY § 500.1, at ¶ 10 (4th ed. 2006) (“Lundin & Brown”); *see* App. 71a-72a.

B. Factual And Procedural Background

On September 26, 2008, petitioners filed for Chapter 13 relief in the United States Bankruptcy Court for the Eastern District of Michigan. App. 59a. Petitioners’ required bankruptcy filings listed a current monthly income of \$7,086.72, which established them as above-median-income debtors with a 5-year applicable commitment period. App. 60a. After subtracting payroll deductions, reasonable living expenses according to BAPCPA’s means test, and payments on secured debt (including a mortgage payment of \$1699.93), petitioners listed a monthly “disposable income” of negative \$1,203.55. App. 31a-32a, 59a-60a. Because petitioners had exempt income (including Mr. Baud’s Social Security benefits) and their

actual expenses were lower than BAPCPA’s standardized expenses, their monthly discretionary income was much higher than their “disposable income” as calculated under BAPCPA. App. 60a.

Petitioners proposed a plan that would use discretionary income to repay their unsecured creditors \$30,321.65 over 36 months. App. 60a.⁴ Respondent objected to the plan under § 1325(b)(1) because it did not propose either to repay unsecured creditors in full or to last for 60 months, the petitioners’ applicable commitment period under § 1325(b)(4). App. 61a. Petitioners argued that § 1325(b)(4) does not impose a minimum plan-length requirement, but rather is “a multiplier in a formula [§ 1325(b)(1)(B)] used to determine the projected disposable income that Debtors must pay to unsecured creditors.” App. 66a. Alternatively, petitioners contended that the applicable commitment period “does not apply to debtors with no projected disposable income.” App. 67a. The bankruptcy court sustained respondent’s objection, but it gave petitioners the opportunity to propose an amended plan and thereby avoid the harsh consequences that would follow from dismissing their bankruptcy case. App. 81a-87a.

Petitioners filed an amended plan that provided for monthly payments over 60 months, but they also objected to the length of the plan, renewing their

⁴ Petitioners proposed to pay \$402.32 for the first 7 months of the plan, \$881.18 for the next 2 months, and \$1,178.43 for the remaining 27 months; the payments increased as Mrs. Baud’s 401(k) loan payments decreased. App. 60a. These payments totaled \$36,396.21, \$30,321.65 of which was committed to pay general unsecured creditors and \$6,074.56 to pay administrative expenses for the plan.

previous arguments. App. 61a.⁵ On February 14, 2009, the bankruptcy court issued an order confirming the amended plan over petitioners' objection. App. 61a, 85a-87a.

Petitioners appealed to the United States District Court for the Eastern District of Michigan, which reversed the confirmation order. The district court first held that petitioners' appeal was proper under the doctrine of bankruptcy standing (which is narrower than Article III or prudential standing), citing an Eighth Circuit decision holding that debtors who propose a longer and more costly plan over their own express objection may appeal an order confirming the plan.⁶

On the merits, the district court agreed with the bankruptcy court that the applicable commitment period of § 1325(b)(4) "is temporal in nature, mandating a minimum plan length for the payment of projected disposable income." App. 67a. It concluded, however, that § 1325(b)(4) is not "an independent plan-length requirement" and thus "does not apply to debtors with no projected disposable income." App. 67a-68a. It also concluded that petitioners had negative projected disposable income under § 1325(b)(2). App. 80a. Because petitioners fit within this negative-income exception, the district court held

⁵ The difference between the amount unsecured creditors would receive under the initial and amended plans (i.e., \$58,603.97 – \$30,321.65 = \$28,282.32) equals monthly payments of \$1,178.43 for an additional 24 months. App. 61a.

⁶ App. 65a; see *In re Zahn*, 526 F.3d 1140, 1142 (8th Cir. 2008) (finding standing based on principle "[t]hat a party may appeal from a judgment in his favor when there has been some error prejudicial to him, or he has not received all he is entitled to").

that they “were not required to propose a five-year plan,” and it remanded to the bankruptcy court to allow petitioners to modify the amended Chapter 13 plan. App. 70a-71a, 80a.

Respondent then appealed to the Sixth Circuit, which reversed the district court in part. App. 3a-4a. The Sixth Circuit also took a temporal view of § 1325(b), holding that a plan cannot be confirmed over objection unless it provides for “payments over a duration equal to the applicable commitment period.” App. 18a. It agreed with the district court that petitioners have negative projected disposable income, concluding that their Social Security benefits were properly excluded from projected disposable income because 11 U.S.C. § 101(10A) expressly excludes them from current monthly income, which is the starting point for calculating disposable income under § 1325(b)(2). App. 34a-36a.⁷ But the Sixth Circuit disagreed with the district court’s view that “there is an exception to the temporal requirement . . . for debtors with zero or negative projected disposable income.” App. 42a. Thus, under the Sixth Circuit’s interpretation of § 1325(b), the bankruptcy court correctly required a 5-year plan.

⁷ The Sixth Circuit also concluded that 11 U.S.C. § 707(b)(2)(A)(iii), incorporated by reference in § 1325(b)(3), permits above-median-income debtors to deduct actual mortgage payments as an allowable monthly expense. App. 38a. Only the status of the Social Security benefits, however, affected whether petitioners have negative or positive projected disposable income. App. 32a. Even if the Sixth Circuit had reduced petitioners’ allowable mortgage expense from the actual amount (\$1,699.93) to the IRS Local Standard advocated by respondent (\$791), App. 32a, the difference (\$908.93) would not have made petitioners’ projected disposable income (–\$1203.55) positive.

REASONS FOR GRANTING THE PETITION

I. THE CIRCUITS AND THE BANKRUPTCY COURTS ARE DIVIDED OVER THE FUNCTION OF THE PROJECTED DISPOSABLE INCOME TEST IN 11 U.S.C. § 1325(b)(1)(B)

The courts of appeals and bankruptcy courts are divided regarding whether BAPCPA permits a bankruptcy court to confirm, over objection, plans in which debtors propose to pay their creditors more quickly than they could using only their “disposable income.” Some courts hold that § 1325(b)(1)(B) simply establishes the amount of money a debtor must repay, and therefore debtors may repay their creditors and obtain a discharge more quickly. Other courts hold that § 1325(b)(1)(B) establishes a minimum plan duration and that debtors must remain in bankruptcy for that duration even if it means repaying their creditors more slowly. Still other courts hold that § 1325(b)(1)(B) sets a minimum plan duration in some cases but not in others. This issue is an important one that has divided the lower courts since BAPCPA was enacted, and this case presents the issue cleanly, offering this Court a rare opportunity to resolve it.

A. The Sixth And Eleventh Circuits Hold That § 1325(b)(1)(B) Sets A Minimum Plan Length

In this case, the Sixth Circuit joined the Eleventh Circuit and some lower courts in interpreting § 1325(b)(1)(B) to mean that a “plan cannot be confirmed unless its length is equal to the applicable commitment period; . . . this temporal requirement applies whether the debtor has positive, zero or negative projected disposable income.” App. 15a; *see, e.g., In re Tennyson*, 611 F.3d 873, 877-78 (11th Cir.

2010); *In re Timothy*, 442 B.R. 28, 33-37 (B.A.P. 10th Cir. 2010); *In re Moose*, 419 B.R. 632, 635-36 (Bankr. E.D. Va. 2009); *In re Meadows*, 410 B.R. 242, 245-47 (Bankr. N.D. Tex. 2009); *In re Brown*, 396 B.R. 551, 554 (Bankr. D. Colo. 2008); *In re Kidd*, 374 B.R. 277, 280 (Bankr. D. Kan. 2007); *In re Nance*, 371 B.R. 358, 369-70 (Bankr. S.D. Ill. 2007); *In re Strickland*, No. 06-81060C-13D, 2007 WL 499623, at *1-*2 (Bankr. M.D.N.C. Feb. 13, 2007).

In holding that § 1325(b)(1)(B) sets a minimum plan length rather than a minimum payment amount, the Sixth Circuit pointed out that the term “applicable commitment period” has a temporal connotation. App. 19a-20a. It reasoned that Congress did not intend for that period to serve as a multiplier in calculating a minimum payment because the statute does not use explicit multiplier language. App. 21a-24a. In addition, the court believed that the temporal approach was more consistent with pre-BAPCPA practice and with the goal of maximizing creditor recoveries. App. 24a-30a. Accordingly, the Sixth Circuit agreed with the bankruptcy court in this case that § 1325(b)(1)(B) requires above-median-income debtors like the Bauds to propose a plan lasting a minimum of 5 years. App. 31a.

B. The Ninth Circuit And The Eighth Circuit Bankruptcy Appellate Panel Hold That § 1325(b)(1)(B) Does Not Set A Minimum Plan Length For Debtors With Negative Projected Disposable Income

The Ninth Circuit and some other courts generally agree that § 1325(b) imposes a period of time over which any projected disposable income must be paid. Yet they hold that this period is not a freestanding plan-length requirement and does not apply if the

debtor has negative projected disposable income. *See, e.g., In re Kagenveama*, 541 F.3d 868, 876 (9th Cir. 2008); *In re Henderson*, No. 10-03114, 2011 WL 1467934 (Bankr. D. Idaho Apr. 18, 2011); *Musselman v. eCast Settlement Corp.*, 394 B.R. 801, 814 (E.D.N.C. 2008); *In re Davis*, 392 B.R. 132, 145-46 (E.D. Pa. 2008); *In re Green*, 378 B.R. 30, 39 (Bankr. N.D.N.Y. 2007); *In re Brady*, 361 B.R. 765, 777 (Bankr. D.N.J. 2007); *In re Lawson*, 361 B.R. 215, 220 (Bankr. D. Utah 2007).

The Eighth Circuit also has held that § 1325(b) includes a temporal requirement, though it has not decided how a lack of projected disposable income affects the requirement. *See In re Frederickson*, 545 F.3d 652, 660 & n.6 (8th Cir. 2008). The Eighth Circuit Bankruptcy Appellate Panel has decided that question, however, agreeing with the Ninth Circuit's view that the temporal requirement does not apply when the debtor's projected disposable income is negative. *See In re Zahn*, 391 B.R. 840, 844 (B.A.P. 8th Cir. 2008).

Courts adopting the Ninth Circuit's exception to the temporal requirement reason that, "[w]here there is no [projected] disposable income, there is no applicable commitment period because only the disposable income needs to be paid over the applicable commitment period. Any [other] amount . . . may be paid over less than" 5 years. *Id.* (citation omitted). The district court that heard the initial appeal in this case also took the Ninth Circuit view, explaining that the applicable commitment period is not an independent plan-length requirement because it is linked exclusively to § 1325(b)(1)(B)'s determination of how much unsecured creditors must be paid. App. 68a-69a. The court noted that 11 U.S.C. § 1322(d) sets

a *maximum* plan length of 5 years for all above-median-income debtors and that Congress easily could have amended that section if it had intended to mandate a 5-year minimum plan length. The court thus held that, “[b]ecause the Bauds have no projected disposable income, . . . they were not required to propose a five-year plan.” App. 70a-71a.

**C. Many Bankruptcy Courts Hold That
§ 1325(b)(1)(B) Sets A Minimum Payment
Amount, Not A Minimum Plan Length**

Finally, many bankruptcy courts hold that a court can confirm a plan under § 1325(b)(1)(B) if it provides for payment of at least the amount of disposable income projected to be received over the applicable commitment period. Thus, if debtors are willing to use otherwise-exempt resources like Social Security benefits to pay this amount more quickly, the plan need not last for the entire length of the applicable commitment period. *See, e.g., In re Lopatka*, 400 B.R. 433, 440 (Bankr. M.D. Pa. 2009); *In re Burrell*, No. 08-71716, 2009 WL 1851104, at *3 (Bankr. C.D. Ill. June 29, 2009); *In re Williams*, 394 B.R. 550, 573 (Bankr. D. Colo. 2008); *In re McGillis*, 370 B.R. 720, 738 (Bankr. W.D. Mich. 2007); *In re Mathis*, 367 B.R. 629, 633 (Bankr. N.D. Ill. 2007); *Brady*, 361 B.R. at 776-77; *In re Fuger*, 347 B.R. 94, 98 (Bankr. D. Utah 2006); *In re Richardson*, 283 B.R. 783, 801 (Bankr. D. Kan. 2002).

The Sixth Circuit acknowledged that the authors of “the leading treatise on Chapter 13,” Bankruptcy Judges Lundin and Brown, endorse this monetary approach. App. 18a; *see* Lundin & Brown § 500.1, at ¶ 3. As the treatise explains, “[t]he applicable commitment period does not require that the debtor actually make payments for any particular period of

time. Rather, it is the multiplier in a formula that determines the *amount* of disposable income that must be paid to unsecured creditors.” *Id.*

Courts adopting the monetary approach have pointed to § 1325(b)(1)(B)’s direction to “project[]” disposable income and to § 1322(d)’s 5-year maximum plan length, each of which would be unnecessary if Congress had intended debtors to commit all of their income for a minimum 5-year period. *McGillis*, 370 B.R. at 737-38. These courts also conclude that creditors are better off being paid more quickly under the monetary approach, and they point out that BAPCPA’s changes to the definition of disposable income are what made such accelerated plans possible. *Id.* at 739 & n.21; *In re Swan*, 368 B.R. 12, 26 (Bankr. N.D. Cal. 2007).

In this case, as discussed above, petitioners have no projected disposable income. Thus, under the monetary approach, their original proposal to pay unsecured creditors approximately \$30,000 over 3 years would satisfy § 1325(b)(1)(B). The monetary approach—like the Ninth Circuit’s approach—does not require petitioners to propose a plan lasting for the entire 5-year applicable commitment period.

**D. The Conflict Over This Central Aspect Of
Chapter 13 Bankruptcy Is Entrenched And
Will Not Be Resolved Unless This Court
Intervenes**

This multi-faceted conflict reveals fundamental uncertainty in the lower courts over § 1325(b)(1)(B)’s requirement that debtors devote all of their projected disposable income to be received in the applicable commitment period to repaying their creditors. That uncertainty shows no signs of abating. As the Sixth Circuit acknowledged, this Court’s recent decisions

in *Lanning* and *Ransom* concern other parts of § 1325(b) and do not address the conflict presented here. App. 17a n.7; *see also* App. 8a-12a. No court that took a position on this conflict prior to *Lanning* or *Ransom* has reconsidered its position or suggested that it is likely to do so.

Whereas the Sixth Circuit felt that the reasoning employed in *Lanning* and *Ransom* lent some support to its decision in this case, App. 20a-21a, a bankruptcy court in the Ninth Circuit recently disagreed. *See Henderson*, 2011 WL 1467934. As it explained, both *Lanning* and *Ransom* relied on the purpose of the means test in deciding how income can be adjusted and when standard expenses can be deducted under § 1325(b)(2) and (b)(3). *Id.* at *6. The court concluded that, “fairly analyzed, *Kagenveama* is consonant with the particular purpose of § 1325(b)(1), and the general goals of BAPCPA as a whole.” *Id.* at *10. Thus, the court held that *Lanning* and *Ransom* do not affect the Ninth Circuit’s holding in *Kagenveama* that the applicable commitment period of § 1325(b)(1) and (b)(4) is a temporal requirement with a negative-income exception. *Id.* at *3, *7. Moreover, as explained below, the Sixth Circuit’s analysis of *Lanning* and *Ransom* is incorrect.

Because lower courts are irreconcilably split on the recurring issue of the proper interpretation of § 1325(b)(1)(B), and because two of the three competing interpretations would have permitted petitioners to confirm a plan shorter than the 5 years required by the Sixth Circuit, this Court should grant certiorari to resolve the issue.

II. THE SIXTH CIRCUIT’S HOLDING THAT § 1325(b)(1)(B) IMPOSES A MINIMUM PLAN LENGTH FOR CHAPTER 13 DEBTORS IS IN ERROR

The Sixth Circuit erred in concluding that § 1325(b)(1) imposes a minimum plan length on Chapter 13 debtors. The plain text of the Bankruptcy Code creates a *maximum* Chapter 13 plan length, but it does not prescribe a minimum plan length. As the Sixth Circuit admitted, “[r]eading § 1325(b)(1) in isolation, we might find the monetary approach to be the more plausible interpretation of the statute.” App. 20a. Notwithstanding the plain meaning of the statutory text, the Sixth Circuit erroneously concluded that BAPCPA mandates a minimum plan length based on “the reasoning employed” in this Court’s decisions in *Lanning* and *Ransom*. App. 20a, 46a. This conclusion not only reflects an improper approach to statutory interpretation, but also misperceives the implications of this Court’s decisions in *Lanning* and *Ransom*.

A. Nothing In The Bankruptcy Code Specifies A Minimum Plan Length For Chapter 13 Debtors

Section 1325(b) establishes the minimum amount of money that debtors must pay in order for their plan to be confirmed over the objection of the trustee or an unsecured creditor. In particular, § 1325(b)(1) provides that, if the trustee or a holder of an allowed unsecured claim objects, a court may confirm the plan only if

(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 . . . will be applied to make payments to unsecured creditors under the plan.

11 U.S.C. § 1325(b)(1).

Both provisions state a monetary minimum, not a durational minimum. To be confirmed over objection, the plan must provide *either* for full payment of the unsecured claim or for payment of all projected disposable income to be received in a certain time frame. It patently does not mandate that those payments be made over any particular period of time or that the plan last for any particular duration. *See Mathis*, 367 B.R. at 633.

Section 1325(b) further defines key terms in these statutory minimums. “Disposable income” is defined as “current monthly income received by the debtor . . . less amounts reasonably necessary to be expended.” 11 U.S.C. § 1325(b)(2). Section 1325(b)(4) defines the “applicable commitment period” as 3 years for below-median-income debtors and 5 years for above-median-income debtors. *Id.* § 1325(b)(4). Each of these definitions is provided only “[f]or purposes of this subsection.” *Id.* § 1325(b)(2), (4). Thus, the sole purpose of the definition of the applicable commitment period is to establish the minimum amount that must be paid if a plan is to be confirmed over an objection. *See Kagenveama*, 541 F.3d at 876 (“‘[A]pplicable commitment period’ is exclusively linked to § 1325(b)(1)(B) and the ‘projected disposable income’ calculation.”); *Burrell*, 2009 WL 1851104, at *4 (“[T]here is no question but that the applicable commitment period is a temporal *reference*. But because it is used only as a multiplier in the statutory

formula, it is not a temporal *requirement*.”). Nowhere does § 1325(b)(4) indicate that a Chapter 13 plan must *last* for a minimum number of years.

Congress’s intent to omit a minimum plan-length requirement is illuminated by its unequivocal stipulation of the maximum plan length in § 1322. That provision states that for above-median-income debtors “the plan may not provide for payments over a period that is longer than 5 years,” 11 U.S.C. § 1322(d)(1), and for below-median-income debtors “the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years,” *id.* § 1322(d)(2). When Congress clearly has established maximum plan lengths by reference to a period of years in one portion of a statute, it is unlikely that it intended to establish minimum plan lengths through cryptic references to an “applicable commitment period” in an entirely different portion of the statute. *See* App. 22a (“It could be argued that, had Congress intended to impose maximum plan lengths as well as a minimum time for the payments of projected disposable income in response to an objection, addressing the two requirements in separate statutory sections . . . was an inelegant way to accomplish this goal.”); *McGillis*, 370 B.R. at 738 (“[I]t is Section 1322(d), and not Section 1325(b), that dictates the duration of a debtor’s Chapter 13 plan and that section has never set a minimum time frame within which the debtor must make the payments required of him under his plan.”). It is even more unlikely that Congress would establish the *exact same time frame* as both the maximum and the minimum plan

length in different sections of the statute using entirely different phrases.

Moreover, interpreting § 1325(b)(1) to impose a minimum plan length renders superfluous the term “projected” in the phrase “projected disposable income.” See *Lanning*, 130 S. Ct. at 2474 (“[W]e are hesitant to adopt an interpretation of a congressional enactment which renders superfluous another portion of that same law.”) (internal quotation marks omitted). As this Court held in *Lanning*, Congress’s use of the term “projected” requires bankruptcy courts to employ a non-mechanical approach to calculating a debtor’s disposable income “to be received” over the life of the plan. To “project” the appropriate disposable income amount, courts adjust current income figures to reflect known or virtually certain changes in a debtor’s future income or expenses during the applicable commitment period. If § 1325(b) were interpreted as establishing a minimum plan length, there would be no need to “project” disposable income. Rather, the plan could be confirmed using existing disposable income figures, and because it would necessarily remain in force for 5 years it could be amended during that period if income or expenses changed significantly. See 11 U.S.C. § 1329(a)(1) (permitting modification to increase or reduce the amount of payments under the plan).

Indeed, the ability of post-confirmation modification to alter the length of the plan provides further evidence that Congress did not intend to create a minimum plan length in § 1325. Under the Sixth Circuit’s interpretation of § 1322 and § 1325, 5 years is both the maximum and minimum plan length for above-median-income debtors. But § 1329(a)(2) provides that, “[a]t any time after confirmation of the

plan but before the completion of payments under such plan, the plan may be modified . . . [to] extend or reduce the time for such payments.” *Id.* § 1329(a)(2); *see also* 8 COLLIER ON BANKRUPTCY ¶ 1325.11[4][d], at 1325-70 (16th ed. 2009) (“The five-year commitment period does not apply to modification of plans.”). It makes no sense to interpret a statute to require a plan length of precisely 5 years at the time of confirmation, but to permit post-confirmation modification to extend or reduce the length of the plan. *See* David Gary Carlson, *Modified Plans of Reorganization and the Basic Chapter 13 Bargain*, 83 AM. BANKR. L.J. 585, 638 (2009) (“[T]he better view is that the applicable commitment period is a mere multiplicand used to calculate the total discharge price, not an actual temporal requirement because § 1329(a)(2) directly invites post-confirmation modification of a plan to shorten the time of payment.”); *see also* Evan J. Zucker, Note, *The Applicable Commitment Period: A Debtor’s Commitment to a Fixed Plan Length*, 15 AM. BANKR. INST. L. REV. 687, 722 (2007) (“A debtor’s ability to shorten the[] plan after confirmation . . . weakens the temporal interpretation of the applicable commitment period.”).

Finally, the affirmative provisions of § 1325(a) protect creditors from any potential problems that might arise due to the lack of a mandatory minimum plan length. Section 1325(a) specifies the requirements that a Chapter 13 plan must meet in order to be confirmed. Those requirements include that the plan was proposed in good faith, § 1325(a)(2), that the value to be distributed under the plan is in the best interests of unsecured creditors as compared to the value they would receive in a Chapter 7 liquidation, § 1325(a)(4), that the debtor will be able to make all

payments under the plan and comply with the plan, § 1325(a)(6), and that the action of the debtor in filing the petition was in good faith, § 1325(a)(7). *See, e.g., Timothy*, 442 B.R. at 32; *Williams*, 394 B.R. at 572-73. In addition, if debtors fraudulently manipulate their income to obtain a shorter plan, their discharge may be revoked. *See* 11 U.S.C. § 1328(e); FED. R. BANKR. P. 9024; *In re Cisneros*, 994 F.2d 1462 (9th Cir. 1993).

Even if § 1325(b)(1)(B) could be read to require a minimum plan length, the plain text of the statute shows that this minimum does not apply to debtors with negative projected disposable income. Under the temporal approach, the statute requires at most that the amount of the debtors' "projected disposable income" be paid over the "applicable commitment period." When there is no disposable income, however, any other amount may be paid over a shorter period. *See Zahn*, 391 B.R. at 844. Like the mechanical approach rejected in *Lanning*, a temporal requirement with no exception for debtors with negative projected disposable income "would produce senseless results" that Congress could not have intended. *Lanning*, 130 S. Ct. at 2475-76. "No purpose is served for either debtors or their creditors in requiring payments of \$0/month to general unsecured creditors for any length of time, let alone five years." *Lawson*, 361 B.R. at 220.

**B. The Sixth Circuit Erred In Looking
Beyond The Plain Meaning Of The Statute
To Conclude That § 1325(b)(1)(B) Requires
A Minimum Plan Length**

As noted above, the Sixth Circuit agreed that the plain text of § 1325(b)(1) is best read as imposing a monetary minimum that must be met in order for a

plan to be confirmed over the objection of the trustee or a secured claim holder. App. 20a. That conclusion regarding the plain meaning of the statute should have resolved the issue. See *Arthur Andersen LLP v. Carlisle*, 129 S. Ct. 1896, 1902 n.6 (2009) (“It is not our role to conform an unambiguous statute to what we think Congress probably intended.”) (internal quotation marks omitted). The Sixth Circuit erroneously overrode this plain meaning based on a misapprehension of this Court’s decisions in *Lanning* and *Ransom*. App. 20a-21a.

Relying on this Court’s decision in *Lanning*, the Sixth Circuit mistakenly concluded that, because Congress did not use the phrase “multiply,” it could not have intended § 1325(b)(1) to establish a monetary minimum. *Lanning*, however, did not create a presumption that Congress does not mean to invoke multiplication except when it uses the precise term “multiply.” In fact, *Lanning*’s analysis of the meaning of the term “projected” assumes that § 1325(b)(1)(B) is a formula for determining a monetary minimum that involves multiplying projected disposable income by the applicable commitment period.

In interpreting the term “projected,” the Court explained that, “[w]hile a projection takes past events into account, adjustments are often made based on other factors that may affect the final outcome.” *Lanning*, 130 S. Ct. at 2472. These adjustments distinguish simple multiplication, “which requires only mathematical acumen,” from projection, “which requires mathematic acumen adjusted by deliberation and discretion.” *Id.* (citation omitted). But the Court never disputed the underlying premise of the analysis: that, to determine the actual amount

of projected disposable income to be paid under the plan, the bankruptcy court must multiply some number (either mechanical or discretionary) by the applicable commitment period. That is, the importance of “deliberation and discretion” does not abrogate the need for “mathematic acumen.” The only dispute in *Lanning* concerned how the word “projected” affects the disposable income figure, which is then multiplied by the number of months in the applicable commitment period. *See id.* at 2472-73 (citing multiple sources for rule that, absent clearly foreseeable changes, courts simply “multiply the debtor’s current monthly income by the number of months in the commitment period”).

As to *Ransom*, the Sixth Circuit erroneously concluded that this Court’s decision was premised on BAPCPA’s “core purpose” of “ensuring that debtors devote their full disposable income to repaying creditors.” App. 29a. But *Ransom* was interpreting the phrase “applicable monthly expenses,” not the phrase “applicable commitment period.” “Applicable monthly expenses” is a phrase employed in the means test provision of BAPCPA, and this Court made clear that its analysis was premised, in part, on the core purpose of BAPCPA’s means test provision. *See Ransom*, 131 S. Ct. at 725 (“Congress designed the means test to measure debtors’ disposable income and, in that way, to ensure that [they] repay creditors the maximum they can afford.”) (internal quotation marks omitted). That purpose necessarily informed the *Ransom* Court’s decision that Chapter 13 debtors, when calculating their projected disposable income under the means test, may not take a standardized deduction for an expense that they will not incur. But the purpose of the means test is not

the purpose of BAPCPA as a whole. *See Henderson*, 2011 WL 1467934, at *6. Rather, the amendments enacted by Congress in BAPCPA were intended “to improve bankruptcy law and practice by restoring personal responsibility and integrity in the bankruptcy system and ensure that the system is fair for both debtors and creditors.” H.R. Rep. No. 109-31, pt. 1, at 2 (2005).

Yet even if maximizing creditor recoveries were presumed to be the core purpose of BAPCPA as a whole (rather than a sub-purpose of the means test provision), that purpose is better served by holding that § 1325(b)(1)(B) is a monetary requirement rather than a temporal requirement. A minimum monetary requirement is more likely to maximize creditor recoveries because it encourages debtors eager for a fresh start to use some of their discretionary income to fund shorter Chapter 13 plans that pay creditors sooner. Given that “unsecured creditors normally receive no interest on their claims,” the “present value of payments over three years is much greater than payment of the same amount of money spread out over five years.” *Swan*, 368 B.R. at 26. Shorter plans also reduce the risk that the debtor’s projected disposable income will fall significantly during the plan term, causing the plan to fail. Thus, “it makes little sense to hold the debtor hostage for 60 months where the debtor can satisfy the requirements of § 1325(b)(1)(B) in a shorter period.” *Fuger*, 347 B.R. at 101.

III. WHETHER § 1325(b)(1)(B) ESTABLISHES A MANDATORY MINIMUM PLAN LENGTH IS AN IMPORTANT ISSUE THAT WARRANTS THIS COURT'S REVIEW

The issue presented in this petition implicates one of the most “vexing” problems of statutory interpretation created by BAPCPA, which “ha[s] deeply divided the courts.” App. 1a, 3a. As explained above, the courts of appeals and bankruptcy courts have divided into three interpretive camps concerning the meaning of § 1325(b)(1)(B). *See supra* pp. 12-16. Debtors and creditors currently are subject to different interpretations of BAPCPA depending on where they live and which court of appeals, district court, or bankruptcy appellate panel hears their appeal. Petitioners, for example, would have been able to confirm their proposed 36-month plan if they had filed their bankruptcy petition in the Ninth Circuit or in one of many districts across the country.

Further illustrating the vexing nature of this split, even bankruptcy courts in the same district have reached conflicting results. Within a one-month span, for example, bankruptcy courts in Colorado reached conflicting results on the issue presented. *Compare Williams*, 394 B.R. at 566 (endorsing the monetary approach), *with Brown*, 396 B.R. at 554 (endorsing the temporal approach); *see also* Alane A. Becket & Thomas A. Lee III, *Applicable Commitment Period: Time or Money?*, 25 AM. BANKR. INST. J. 16, 45 (Mar. 2006) (recognizing that meaning of § 1325(b)(1)(B) is “of significant import to unsecured creditors” and predicting that courts interpreting it would reach “a diversity of results” despite Congress’s intent to create uniformity).

As discussed above, this division is entrenched and is unlikely to be resolved without this Court's intervention. *See supra* pp. 16-17; *see also* Julianne R. Frank, *Key Strategies and Considerations in Chapter 13*, in BEST PRACTICES FOR FILING CHAPTER 13, 2010 WL 3936, at *7 (Jan. 2010) ("It is likely that [the] various points of view [on this issue] will have to be reconciled by the Supreme Court or by legislative act."). Further percolation is especially unwarranted given the unique structure of the bankruptcy appellate system. Decisions of bankruptcy courts can be appealed to district courts, to bankruptcy appellate panels ("BAPs") in circuits that have created them, or to courts of appeals in the first instance in some circumstances. *See* 28 U.S.C. § 158(a), (b), (d). Decisions of BAPs are not binding on courts of appeals or district courts, and it is uncertain whether they are binding on other BAPs within the circuit. *See, e.g., In re Reinard*, No. 6:10-bk-50349-SC, 2011 WL 1760281, at *8 (Bankr. C.D. Cal. May 9, 2011) ("This Court finds that Congress determined, in 2005, that BAP decisions have no authoritative or precedential effect."); *see also In re Farmland Indus., Inc.*, 397 F.3d 647, 653 (8th Cir. 2005) (referring to the "unsettled question whether BAP decisions are binding precedent"). Similarly, as the Colorado cases cited above demonstrate, decisions of one bankruptcy or district court do not bind other courts in that district. Thus, conflicts regarding the interpretation of the Bankruptcy Code are not readily resolved through percolation in the lower courts. *See* Judith A. McKenna & Elizabeth C. Wiggins, *Alternative Structures for Bankruptcy Appeals*, 76 AM. BANKR. L.J. 625, 627-28 (2002) ("[t]he bankruptcy appellate system is not well structured to produce binding precedent," and, as a result, judges at various levels

blame their uncertainty over how to resolve critical bankruptcy questions on “the dearth of binding precedent from the courts of appeals or the Supreme Court”).

Moreover, bankruptcy debtors are, by definition, financially strapped, making them much less likely to pursue their appeals far enough to generate binding precedent. *See id.* at 630 (noting that “[o]nly 20% of bankruptcy appeals *filed* in the district courts are taken further on appeal to the courts of appeals”). Accordingly, review in this case presents the Court with an opportunity to provide valuable guidance on an important issue that arises frequently in the lower courts but rarely will be pursued all the way to this Court.

The issue that has divided the lower courts affects, potentially, hundreds of thousands of debtors each year, and that number is likely to increase over time. *See* 2010 DOJ Report at 11 (recording 1,341,185 bankruptcy filings in 2009, of which 365,254 were Chapter 13). While overall bankruptcy filings decreased in the years immediately following the enactment of BAPCPA, the numbers have risen since 2007. *See id.* (noting that total bankruptcy filings nearly doubled from 758,673 in 2007 to 1,341,185 in 2009). These cases also involve billions of dollars in the aggregate. In fiscal year 2009, Chapter 13 cases accounted for nearly 5 billion dollars of disbursements to creditors under bankruptcy plans. *See id.* at 32.

Notwithstanding those disbursements, 94% of the Chapter 13 plans that ended in 2009 were dismissed rather than completed. *See* ADMIN. OFFICE OF THE U.S. COURTS, 2009 REPORT OF STATISTICS REQUIRED BY THE BANKRUPTCY ABUSE PREVENTION AND CON-

SUMER PROTECTION ACT OF 2005, at 17 (2009). Nearly half of those dismissals were due to the debtor's failure to make payments under the plan. *See id.* at 64, tbl. 6. Interpreting § 1325(b)(1)(B) to require longer plans, as some courts have, makes failure even more likely because there will be more time "in which an unexpected drop in income or emergency expense could occur." 8 COLLIER ON BANKRUPTCY ¶ 1325.1[4][d], at 1325-69. Failure to complete a Chapter 13 plan is generally disastrous for debtors, as dismissals leave them buried under even more debt than when they filed and subject to renewed collection efforts. *See* Katherine Porter, *The Pretend Solution: An Empirical Study of Bankruptcy Outcomes*, 90 TEX. L. REV. (forthcoming 2011).

Historically, Chapter 13 was envisioned as a new alternative that would make Chapter 7 bankruptcies a last resort. *See id.* BAPCPA's goals were to foster uniformity, decrease abuse of the bankruptcy process, protect consumers, and generally balance the bankruptcy system to make it "fair for both debtors and creditors." H.R. Rep. No. 109-31, pt. 1, at 1. The current fractured, unsettled state of the law fails to advance those purposes. This Court should grant certiorari to provide a uniform interpretation of § 1325(b)(1)(B).

IV. THIS CASE PROVIDES AN IDEAL VEHICLE FOR RESOLVING THE CONFLICT AMONG THE CIRCUITS AND THE BANKRUPTCY COURTS

This case offers the Court an excellent opportunity to clarify the meaning of an often-disputed provision of the Bankruptcy Code. The facts regarding petitioners' bankruptcy are undisputed, and the case comes to this Court after a comprehensive decision

by the Sixth Circuit that squarely resolved all remaining issues. Furthermore, if this Court disagrees with the Sixth Circuit's interpretation of § 1325(b), it would afford petitioners meaningful relief.

Petitioners indisputably are aggrieved by the bankruptcy court's decisions sustaining the trustee's objection to a 3-year plan and confirming a plan that requires them to remain in bankruptcy and pay their creditors for 2 additional years. Petitioners properly brought their objections to those decisions to the attention of the bankruptcy court, the district court, and the Sixth Circuit, and each court considered and ruled on the objections. *See supra* pp. 8-11.

If those courts had followed the monetary approach to § 1325(b) adopted by many bankruptcy courts, petitioners' original 3-year plan would have been confirmed because it committed them to pay far more than 60 times any plausible measure of their monthly projected disposable income.⁸ In addition, given that petitioners' projected disposable income is negative when their Social Security benefits are excluded as required by the plain language of § 101(10A), *see supra* p. 11 & n.7, their original plan also would have been confirmed under the exception to the temporal approach adopted by the Ninth Circuit and other bankruptcy courts. Because petitioners will not complete payments under the current

⁸ That would be so even if the courts below had accepted the adjustments to projected disposable income urged by respondent instead of rejecting them. In the district court, respondent pointed to a figure of \$402.32 per month (App. 71a), but projecting that total over 5 years yields \$24,139.20, which is less than petitioners' proposal to pay unsecured creditors \$30,321.65 under their 3-year plan. *See* App. 60a.

5-year plan until February 2014, a decision by this Court adopting either the monetary approach or the temporal exception would save petitioners substantial money and time in bankruptcy.

Importantly, a case in which a debtor has negative projected disposable income, as petitioners do here, provides a better vehicle for settling the meaning of § 1325(b) than a positive-income case. This case allows the Court to choose among all three interpretations of § 1325(b) that have developed in the lower courts: the temporal approach, the monetary approach, and the negative-income exception to the temporal approach.

As discussed above, the conflicts among both the circuit and bankruptcy courts are well developed and were recognized expressly by the Sixth Circuit. App. 16a-18a. A good vehicle for this Court to resolve those conflicts is rare—not because the questions arise infrequently, but because the circumstances surrounding the bankruptcy process counsel against appeal. The parties most directly affected by the determination of plan length, the bankrupt debtors, are understandably reticent to dedicate their very limited financial resources to prolonged courtroom battles. Bankruptcy trustees also are discouraged from aggressively pursuing appeals by the unique appellate structure of the bankruptcy system, in which first-level appellate decisions by district courts and bankruptcy appellate panels do not establish binding precedent. *See* H.R. Rep. No. 109-31, pt. 1, at 148. Judges have lamented that the dearth of binding bankruptcy precedent from this Court and the circuit courts has created uncertainty and impeded the development of a consistent, intelligible

body of law. *See* McKenna & Wiggins, 76 AM. BANKR. L.J. at 628.

To help alleviate this problem, BAPCPA provided for direct appeals to circuit courts when certain criteria are met. *See* 28 U.S.C. § 158(d)(2)(A)-(B). While direct appeals are a step in the right direction, they do not solve the problem. For example, because the decision to grant a stay pending appeal is discretionary, *see id.* § 158(d)(2)(D), “the delay inherent in [the] appellate process” ultimately may render the case equitably moot on appeal. James M. Grippando, *Circuit Court Review of Orders on Stays Pending Bankruptcy Appeals to U.S. District Courts or Appellate Panels*, 62 AM. BANKR. L.J. 353, 354 (1988); *see also Nordhoff Invs., Inc. v. Zenith Elecs. Corp.*, 258 F.3d 180, 192 (3d Cir. 2001) (Alito, J., concurring) (noting that “equitable mootness doctrine can easily be used as a weapon to prevent any appellate review of bankruptcy court orders confirming reorganization plans”). Even in cases in which direct appeal is available, “the time and cost required of creditors and debtors provide[] significant disincentives to pursuing bankruptcy appeals.” Lindsey Freeman, Comment, *BAPCPA and Bankruptcy Direct Appeals: The Impact of Procedural Uncertainty on Predictable Precedent*, 159 U. PA. L. REV. 543, 551 & n.35 (2011).

For these reasons, the Court should take this opportunity to resolve the conflict in the lower courts over the meaning of § 1325(b)(1)(B) and to provide certainty and uniformity to bankruptcy courts and litigants.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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