

Hamilton Vs. Lanning

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SooperKanoon Citation : sooperkanoon.com/108731

Court : US Supreme Court

Decided On : Jun-07-2010

Appeal No. : 08-998

Appellant : Hamilton

Respondent : Lanning

Judgement :

Hamilton v. Lanning - 08-998 (2010)

SYLLABUS

OCTOBER TERM, 2009

HAMILTON V. LANNING

SUPREME COURT OF THE UNITED STATES

HAMILTON, CHAPTER 13 TRUSTEE v . LANNING

certiorari to the united states court of appeals for the tenth circuit

No. 08998. Argued March 22, 2010- Decided June 7, 2010

Debtors filing for protection under Chapter 13 of the Bankruptcy Code must agree to a court-approved plan under which they pay creditors out of their future income.

If the bankruptcy trustee or an unsecured creditor objects, a bankruptcy court may not approve the plan unless it provides for the full repayment of unsecured claims or provides that all of the debtors projected disposable income to be received over the plan's duration will be applied to make payments in accordance with plan terms. 11 U.S.C. 1325(b)(1). Before enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), the Code loosely defined disposable income. Though it did not define projected disposable income, most bankruptcy courts calculated it using a mechanical approach, multiplying monthly income by the number of months in the plan and then determining the disposable portion of the result. In exceptional cases, those courts also took into account foreseeable changes in a debtor's income or expenses. BAPCPA defines disposable income as current monthly income received by the debtor less amounts reasonably necessary to be expended for, e.g., the debtor's maintenance and support. 1325(b)(2)(A)(i). Current monthly income, in turn, is calculated by averaging the debtor's monthly income during a 6-month look-back period preceding the petition's filing. See 101(10A)(A)(i). If a debtor's income is below the median for his or her State, amounts reasonably necessary include the full amount needed for maintenance or support, see 1325(b)(2)(A)(i), but if the debtor's income exceeds the state median, only certain specified expenses are included, see 707(b)(2), 1325(b)(3)(A).

A one-time buyout from respondent's former employer caused her current monthly income for the six months preceding her Chapter 13 petition to exceed her State's median income. However, based on the income from her new job, which was below the state median, and her expenses, she reported a monthly disposable income of \$149.03. She thus filed a plan that would have required her to pay \$144 per month for 36 months. Petitioner, the Chapter 13 trustee, objected to confirmation of the plan because the proposed payment amount was less than the full amount of the claims against respondent, and because she had not committed all of her projected disposable income to repaying creditors. Petitioner claimed that the mechanical approach was the proper way to calculate projected disposable income, and that using that approach, respondent should pay \$756 per month for 60 months. Her actual income was insufficient to make such payments.

The Bankruptcy Court endorsed a \$144 payment over a 60-month period, concluding that projected requires courts to consider the debtors actual income. The Tenth Circuit Bankruptcy Appellate Panel affirmed, as did the Tenth Circuit, which held that a court calculating projected disposable income should begin with the presumption that the figure yielded by the mechanical approach is correct, but that this figure may be rebutted by evidence of a substantial change in the debtors circumstances.

Held: When a bankruptcy court calculates a debtors projected disposable income, the court may account for changes in the debtors income or expenses that are known or virtually certain at the time of confirmation. Pp.618.

(a) Respondent has the better interpretation of projected disposable income. First, such a forward-looking approach is supported by the ordinary meaning of projected. See *Asgrow Seed Co. v. Winterboer* , [513 U. S. 179](#) , 187. In ordinary usage future occurrences are not projected based on the assumption that the past will necessarily repeat itself. While a projection takes past events into account, adjustments are often made based on other factors that may affect the outcome. Second, projected appears in many federal statutes, yet Congress rarely uses it to mean simple multiplication. See, e.g., 7 U. S.C. 1301(b)(8)(B). By contrast, as the Bankruptcy Code shows, Congress can make its mandate of simple multiplication unambiguous-commonly using the term multiplied. See, e.g. , 11 U. S.C. 1325(b)(3). Third, under pre-BAPCPA case law, the general rule was that courts would multiply a debtors current monthly income by the number of months in the commitment period as the first step in determining projected disposable income, but would also have discretion to account for known or virtually certain changes in the debtors income. This is significant, since the Court will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure, *Travelers Casualty & Surety Co. of America v. Pacific Gas & Elec. Co.* , 549 U. S. 443 , 454, and Congress did not amend the term projected disposable income in 2005. Pp.610.

(b) The mechanical approach also clashes with 1325s terms. First, 1325(b)(1)(B)s reference to projected disposable income to be received in the applicable

commitment period strongly favors the forward-looking approach. Because respondent would have far less than \$756 per month in disposable income during the plan period, petitioners projection does not accurately reflect disposable income to be received. In such circumstances, the mechanical approach effectively reads that phrase out of the statute. Second, 1325(b)(1)s direction to courts to determine projected disposable income as of the effective date of the plan,- *i.e.*, the confirmation date-is more consistent with the view that they are to consider postfiling information about a debtors financial situation. Had Congress intended for projected disposable income to be no more than a multiple of disposable income, it could have specified the plans *filing* date as the effective date. Third, 1325(b)(1)(B)s requirement that projected disposable income will be applied to make payments is rendered a hollow command if, as of the plans effective date, the debtor lacks the means to pay creditors in the calculated monthly amounts. Pp.1112.

(c)The arguments supporting the mechanical approach are unpersuasive. The claim that the Codes detailed and precise disposable income definition would have no purpose without the mechanical approach overlooks the important role that this statutory formula plays under the forward-looking approach, which begins with a disposable income calculation. The Tenth Circuits rebuttable presumption analysis simply heeds the ordinary meaning of projected. This Court rejects petitioners argument that only the mechanical approach is consistent with 1129(a)(15)(B), which refers to projected disposable income of the debtor (as defined in section 1325(b)(2)). And the Court declines to infer from the fact that 1325(b)(3) incorporates 707-which allows courts to consider special circumstances, but only with respect to calculating expenses-that Congress intended to eliminate, *sub silentio* , the discretion that courts previously exercised to account for known or virtually certain changes. Pp.1214.

(d)Petitioners proposed strategies for avoiding or mitigating the harsh results that the mechanical approach may produce for debtors-a debtor could delay filing a petition so as to place any extraordinary income outside the 6-month period; a debtor with unusually high income during that period could seek leave to delay filing a schedule of current income and ask the bankruptcy court to select a 6-

month period more representative of the debtors future disposable income; a debtor could dismiss the petition and refile at a later, more favorable date; and respondent might have been able to obtain relief by filing under Chapter 7 or converting her Chapter 13 petition to one under Chapter 7-are all flawed. Pp.1418.

545 F.3d 1269, affirmed.

Alito, J., delivered the opinion of the Court, in which Roberts, C.J., and Stevens, Kennedy, Thomas, Ginsburg, Breyer, and Sotomayor, JJ., joined. Scalia, J., filed a dissenting opinion.

Hamilton v. Lanning - 08-998 (2010)

OPINION OF THE COURT

HAMILTON V. LANNING

560 U. S. ____ (2010)

SUPREME COURT OF THE UNITED STATES

NO. 08-998

JAN HAMILTON, CHAPTER 13 TRUSTEE,PETITIONER v. STEPHANIE
KAYLANNING

on writ of certiorari to the united states court of appeals for the tenth circuit

[June 7, 2010]

Justice Alito delivered the opinion of the Court.

Chapter 13 of the Bankruptcy Code provides bankruptcy protection to individual[s] with regular income whose debts fall within statutory limits. 11 U. S.C. 101(30), 109(e). Unlike debtors who file under Chapter 7 and must liquidate their nonexempt assets in order to pay creditors, see 704(a)(1), 726, Chapter 13

debtors are permitted to keep their property, but they must agree to a court-approved plan under which they pay creditors out of their future income, see 1306(b), 1321, 1322(a)(1), 1328(a). A bankruptcy trustee oversees the filing and execution of a Chapter 13 debtors plan. 1322(a)(1); see also 28 U. S.C. 586(a)(3).

Section 1325 of Title 11 specifies circumstances under which a bankruptcy court shall and may not confirm a plan. 1325(a),(b). If an unsecured creditor or the bankruptcy trustee objects to confirmation, 1325(b)(1) requires the debtor either to pay unsecured creditors in full or to pay all projected disposable income to be received by the debtor over the duration of the plan.

We granted certiorari to decide how a bankruptcy court should calculate a debtors projected disposable income. Some lower courts have taken what the parties term the mechanical approach, while most have adopted what has been called the forward-looking approach. We hold that the forward-looking approach is correct.

I

As previously noted, 1325 provides that if a trustee or an unsecured creditor objects to a Chapter 13 debtors plan, a bankruptcy court may not approve the plan unless it provides for the full repayment of unsecured claims or provides that all of the debtors projected disposable income to be received over the duration of the plan will be applied to make payments in accordance with the terms of the plan. 11 U. S.C. 1325(b)(1); see also 1325(b)(1) (2000 ed.). Before the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), 119 Stat. 23, the Bankruptcy Code (Code) loosely defined disposable income as income which is received by the debtor and which is not reasonably necessary to be expended for the maintenance or support of the debtor, for qualifying charitable contributions, or for business expenditures. 1325(b)(2)(A), (B).

The Code did not define the term projected disposable income, and in most cases, bankruptcy courts used a mechanical approach in calculating projected disposable income. That is, they first multiplied monthly income by the number of months in the plan and then determined what portion of the result was excess or disposable. See 2 K. Lundin, Chapter 13 Bankruptcy 164.1, p. 1641, and n.4 (3d ed. 2000)

(hereinafter Lundin (2000 ed.)) (citing cases).

In exceptional cases, however, bankruptcy courts took into account foreseeable changes in a debtors income or expenses. See *Inre Heath* , 182 B.R. 557, 559561 (Bkrtcy. App. Panel CA9 1995); *Inre Richardson* , 283 B.R. 783, 799 (Bkrtcy. Ct. Kan. 2002); Tr. of Oral Arg. 7. Accord, 1 Lundin 35.10, at 3514 (2000 ed.) (The debtor should take some care to project estimated future income on Schedule I to include anticipated increases or decreases [in income] so that the schedule will be consistent with any evidence of income the debtor would offer at a contested confirmation hearing).

BAPCPA left the term projected disposable income undefined but specified in some detail how disposable income is to be calculated. Disposable income is now defined as current monthly income received by the debtor less amounts reasonably necessary to be expended for the debtors maintenance and support, for qualifying charitable contributions, and for business expenditures. 1325(b)(2)(A)(i) and (ii) (2006 ed.). Current monthly income, in turn, is calculated by averaging the debtors monthly income during what the parties refer to as the 6-month look-back period, which generally consists of the six full months preceding the filing of the bankruptcy petition. See 101(10A)(A)(i).[[Footnote 1](#)] The phrase amounts reasonably necessary to be expended in 1325(b)(2) is also newly defined. For a debtor whose income is below the median for his or her State, the phrase includes the full amount needed for maintenance or support, see 1325(b)(2)(A)(i), but for a debtor with income that exceeds the state median, only certain specified expenses are included,[[Footnote 2](#)] see 707(b)(2), 1325(b)(3)(A).

II

A

Respondent had \$36,793.36 in unsecured debt when she filed for Chapter 13 bankruptcy protection in October 2006. In the six months before her filing, she received a one-time buyout from her former employer, and this payment greatly inflated her gross income for April 2006 (to \$11,990.03) and for May 2006 (to

\$15,356.42). App. 84, 107. As a result of these payments, respondents current monthly income, as averaged from April through October 2006, was \$5,343.70-a figure that exceeds the median income for a family of one in Kansas. See *id.*, at 78. Respondents monthly expenses, calculated pursuant to 707(b)(2), were \$4,228.71. *Id.*, at 83. She reported a monthly disposable income of \$1,114.98 on Form 22C. *Ibid.*

On the form used for reporting monthly income (Schedule I), she reported income from her new job of \$1,922 per month-which is below the state median. *Id.*, at 66; see also *id.*, at 78. On the form used for reporting monthly expenses (Schedule J), she reported actual monthly expenses of \$1,772.97. *Id.*, at 68. Subtracting the Schedule J figure from the Schedule I figure resulted in monthly disposable income of \$149.03.

Respondent filed a plan that would have required her to pay \$144 per month for 36 months. See *id.*, at 93. Petitioner, a private Chapter 13 trustee, objected to confirmation of the plan because the amount respondent proposed to pay was less than the full amount of the claims against her, see 1325(b)(1)(A), and because, in petitioners view, respondent was not committing all of her projected disposable income to the repayment of creditors, see 1325(b)(1)(B). According to petitioner, the proper way to calculate projected disposable income was simply to multiply disposable income, as calculated on Form 22C, by the number of months in the commitment period. Employing this mechanical approach, petitioner calculated that creditors would be paid in full if respondent made monthly payments of \$756 for a period of 60 months. *Id.*, at 108. There is no dispute that respondents actual income was insufficient to make payments in that amount. Tr. of Oral Arg. 34.

B

The Bankruptcy Court endorsed respondents proposed monthly payment of \$144 but required a 60-month plan period. No. 0641037 etc., 2007 WL 1451999, *8 (Bkrcty. Ct. Kan. 2007). The court agreed with the majority view that the word projected in 1325(b)(1)(B) requires courts to consider at confirmation the debtors *actual* income as it was reported on Schedule I. *Id.*, at *5 (emphasis added).

This conclusion was warranted by the text of 1325(b)(1), the Bankruptcy Court reasoned, and was necessary to avoid the absurd result of denying bankruptcy protection to individuals with deteriorating finances in the six months before filing. *Ibid* .

Petitioner appealed to the Tenth Circuit Bankruptcy Appellate Panel, which affirmed. 380 B.R. 17, 19 (2007). The Panel noted that, although Congress redefined disposable income in 2005, it chose not to alter the pre-existing term projected disposable income. *Id.* , at 24. Thus, the Panel concluded, there was no reason to believe that Congress intended to alter the pre-BAPCPA practice under which bankruptcy courts determined projected disposable income by reference to Schedules I and J but considered other evidence when there was reason to believe that the schedules did not reflect a debtors actual ability to pay. *Ibid* .

The Tenth Circuit affirmed. 545 F.3d 1269, 1270 (2008). According to the Tenth Circuit, a court, in calculating projected disposable income, should begin with the presumption that the figure yielded by the mechanical approach is correct, but the Court concluded that this figure may be rebutted by evidence of a substantial change in the debtors circumstances. *Id.* , at 12781279.

This petition followed, and we granted certiorari. 558 U. S. ____ (2009).

III

A

The parties differ sharply in their interpretation of 1325s reference to projected disposable income. Petitioner, advocating the mechanical approach, contends that projected disposable income means past average monthly disposable income multiplied by the number of months in a debtors plan. Respondent, who favors the forward-looking approach, agrees that the method outlined by petitioner should be determinative in most cases, but she argues that in exceptional cases, where significant changes in a debtors financial circumstances are known or virtually certain, a bankruptcy court has discretion to make an appropriate adjustment.

Respondent has the stronger argument.

First, respondents argument is supported by the ordinary meaning of the term projected. When terms used in a statute are undefined, we give them their ordinary meaning. *Asgrow Seed Co. v. Winterboer* , [513 U. S. 179](#) , 187 (1995). Here, the term projected is not defined, and in ordinary usage future occurrences are not projected based on the assumption that the past will necessarily repeat itself. For example, projections concerning a companys future sales or the future cash flow from a license take into account anticipated events that may change past trends. See, *e.g.* , *Tellabs, Inc. v. Makor Issues & Rights, Ltd.* , 551 U. S. 308 , 316 (2007) (describing adjustments to projected sales in light of falling demand); *Innovair Aviation, Ltd. v. United States* , 83 Fed. Cl. 498, 502, 504506 (2008) (calculating projected cash flow and noting that past sales are not necessarily the number of sales that will be made in the future). On the night of an election, experts do not project the percentage of the votes that a candidate will receive by simply assuming that the candidate will get the same percentage as he or she won in the first few reporting precincts. And sports analysts do not project that a teams winning percentage at the end of a new season will be the same as the teams winning percentage last year or the teams winning percentage at the end of the first month of competition. While a projection takes past events into account, adjustments are often made based on other factors that may affect the final outcome. See *In re Kibbe* , 361 B.R. 302, 312, n.9 (Bkrcty. App. Panel CA1 2007) (contrasting multiplied, which requires only mathematical acumen, with projected, which requires mathematic acumen adjusted by deliberation and discretion).

Second, the word projected appears in many federal statutes, yet Congress rarely has used it to mean simple multiplication. For example, the Agricultural Adjustment Act of 1938 defined projected national yield, projected county yield, and projected farm yield as entailing historical averages adjusted for abnormal weather conditions, trends in yields, and any significant changes in production practices. 7 U. S.C. 1301(b)(8)(B), (13)(J), (K).[[Footnote 3](#)]

By contrast, we need look no further than the Bankruptcy Code to see that when Congress wishes to mandate simple multiplication, it does so unambiguously—most commonly by using the term multiplied. See, e.g., 11 U.S.C. 1325(b)(3) (current monthly income, when multiplied by 12); 704(b)(2), 707(b)(6), (7)(A) (same); 707(b)(2)(A)(i), (B)(iv) (multiplied by 60). Accord, 2 U.S.C. 58(b)(1)(B) (multiplied by the number of months in such year); 5 U.S.C. 8415(a) (multiplied by such individuals total service); 42 U.S.C. 403(f)(3) (multiplied by the number of months in such year).

Third, pre-BAPCPA case law points in favor of the forward-looking approach. Prior to BAPCPA, the general rule was that courts would multiply a debtors current monthly income by the number of months in the commitment period as the first step in determining projected disposable income. See, e.g., *In re Killough*, 900 F.2d 61, 6263 (CA5 1990) (*per curiam*); *In re Anderson*, 21 F.3d 355, 357 (CA9 1994); *In re Solomon*, 67 F.3d 1128, 1132 (CA4 1995). See 2 Lundin 164.1, at 1641 (2000 ed.) (Most courts focus on the debtors current income and extend current income (and expenditures) over the life of the plan to calculate projected disposable income). But courts also had discretion to account for known or virtually certain changes in the debtors income. See *Heath*, 182 B.R., at 559561; *Richardson*, 283 B.R., at 799; *Inre James*, 260 B.R. 498, 514515 (Bkrtcy. Ct. Idaho 2001); *Inre Jobe*, 197 B.R. 823, 826827 (Bkrtcy. Ct. WD Tex. 1996); *Inre Crompton*, 73 B.R. 800, 808 (Bkrtcy. Ct. ED Pa. 1987); see also *In re Schyma*, 68 B. R. 52, 63 (Bkrtcy. Ct. Minn. 1985) ([T]he prospect of dividends . . . is not so certain as to require Debtors or the Court to consider them as regular or disposable income); *Inre Krull*, 54 B.R. 375, 378 (Bkrtcy. Ct. Colo. 1985) (Since there are no changes in income which can be clearly foreseen, the Court must simply multiply the debtors current disposable income by 36 in order to determine his projected income).[[Footnote 4](#)] This judicial discretion was well documented in contemporary bankruptcy treatises. See 8 Collier on Bankruptcy 1325.08[4][a], p. 132550 (15th ed. rev. 2004) (hereinafter Collier) (As a practical matter, *unless there are changes which can be clearly foreseen*, the court must simply multiply the debtors known monthly income by 36 and determine whether the amount to be paid under the plan equals or exceeds that amount (emphasis added)); 3 W. Norton, Bankruptcy Law and Practice 75.10, p. 64 (1991) (It has

been held that the court should focus upon present monthly income and expenditures and, *absent extraordinary circumstances* , project these current amounts over the life of the plan to determine projected disposable income (emphasis added)); 2 Lundin 164.1, at 16428 to 16431 (2000 ed.) (describing how reported decisions treated anticipated changes in income, particularly where such changes were too speculative to be projected); see also *In re Greer* , 388 B.R. 889, 892 (Bkrtcy. Ct. CD Ill. 2008) (As a practical matter, unless there are changes which can be clearly foreseen, the court must simply multiply the debtors current monthly income by thirty-six (quoting 5 Collier 1325.08[4][a] (15th ed. rev. 1995))); *James* , *supra* , at 514 (same) (quoting 8 Collier 1325.08[4][a] (15th ed. rev. 2000)); *Crompton* , *supra* , at 808 (same) (citing 5 Collier 1325.08[4][a], [b], at 132547 to 132548 (15th ed. 1986)). Accord, 8 Collier 1325.08[4][b], at 132560 (15th ed. rev. 2007) (As with the income side of the budget, the court must simply use the debtors current expenses, *unless a change in them is virtually certain* (emphasis added)). Indeed, petitioner concedes that courts possessed this discretion prior to BAPCPA. Tr. of Oral Arg. 7.

Pre-BAPCPA bankruptcy practice is telling because we will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure. *Travelers Casualty & Surety Co. of America v. Pacific Gas & Elec. Co.* , 549 U. S. 443 , 454 (2007); *Lamie v. United States Trustee* , 540 U. S. 526 , 539 (2004); *Cohen v. de la Cruz* , [523 U. S. 213](#) , 221 (1998); see also *Grogan v. Garner* , [498 U. S. 279](#) , 290 (1991); *Kelly v. Robinson* , [479 U. S. 36](#) , 47 (1986). Congress did not amend the term projected disposable income in 2005, and pre-BAPCPA bankruptcy practice reflected a widely acknowledged and well-documented view that courts may take into account known or virtually certain changes to debtors income or expenses when projecting disposable income. In light of this historical practice, we would expect that, had Congress intended for projected to carry a specialized-and indeed, unusual-meaning in Chapter 13, Congress would have said so expressly. Cf., e.g. , 26 U. S.C. 279(c)(3)(A), (B) (expressly defining projected earnings as reflecting a 3-year historical average).

B

The mechanical approach also clashes repeatedly with the terms of 11 U. S.C. 1325.

First, 1325(b)(1)(B)s reference to projected disposable income to be received in the applicable commitment period strongly favors the forward-looking approach. There is no dispute that respondent would in fact receive far less than \$756 per month in disposable income during the plan period, so petitioners projection does not accurately reflect income to be received during that period. See *In re Nowlin* , 576 F. 3d 258, 263 (CA5 2009). The mechanical approach effectively reads this phrase out of the statute when a debtors current disposable income is substantially higher than the income that the debtor predictably will receive during the plan period. See *Kawaauhau v. Geiger* , [523 U. S. 57](#) , 62 (1998) ([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)).

Second, 1325(b)(1) directs courts to determine projected disposable income as of the effective date of the plan, which is the date on which the plan is confirmed and becomes binding, see 1327(a). Had Congress intended for projected disposable income to be nothing more than a multiple of disposable income in all cases, we see no reason why Congress would not have required courts to determine that value as of the *filing* date of the plan. See Fed. Rule Bkrcty. Proc. 3015(b) (requiring that a plan be filed within 14 days of the filing of a petition), online at <http://www.uscourts.gov/RulesAndPolicies/FederalRulemaking/Overview/BankruptcyRule> (all Internet materials as visited June 3, 2010, and available in Clerk of Courts case file) . In th e very next section of the Code, for example, Congress specified that a debtor shall commence payments not later than 30 days after the *date of the filing of the plan* . 1326(a)(1) (emphasis added). Congress decision to require courts to measure projected disposable income as of the *effective* date of the plan is more consistent with the view that Congress expected courts to consider postfiling information about the debtors financial circumstances. See 545 F.3d, at 1279 ([D]etermining whether or not a debtor has committed all projected disposable income to repayment of the unsecured creditors as of the effective date of the plan suggests consideration of the debtors actual financial circumstances as of the effective date of the plan).

Third, the requirement that projected disposable income will be applied to make payments is most naturally read to contemplate that the debtor will actually pay creditors in the calculated monthly amounts. 1325(b)(1)(B). But when, as of the effective date of a plan, the debtor lacks the means to do so, this language is rendered a hollow command.

C

The arguments advanced in favor of the mechanical approach are unpersuasive. Noting that the Code now provides a detailed and precise definition of disposable income, proponents of the mechanical approach maintain that any departure from this method leaves that definition with no apparent purpose. *Inre Kagenveama* , 541 F. 3d 868, 873 (CA9 2008). This argument overlooks the important role that the statutory formula for calculating disposable income plays under the forward-looking approach. As the Tenth Circuit recognized in this case, a court taking the forward-looking approach should begin by calculating disposable income, and in most cases, nothing more is required. It is only in unusual cases that a court may go further and take into account other known or virtually certain information about the debtors future income or expenses.[[Footnote 5](#)]

Petitioner faults the Tenth Circuit for referring to a rebuttable presumption that the figure produced by the mechanical approach accurately represents a debtors projected disposable income. See 545 F.3d, at 12781279. Petitioner notes that the Code makes no reference to any such presumption but that related Code provisions expressly create other rebuttable presumptions. See 707(b)(2)(A)(i) and (B)(i). He thus suggests that the Tenth Circuit improperly supplemented the text of the Code.

The Tenth Circuits analysis, however, simply heeds the ordinary meaning of the term projected. As noted, a person making a projection uses past occurrences as a starting point, and that is precisely what the Tenth Circuit prescribed. See, e.g. , *Nowlin* , *supra* , at 260, 263.

Petitioner argues that only the mechanical approach is consistent with 1129(a)(15)(B), which refers to projected disposable income of the debtor (as

defined in section 1325(b)(2)). This cross-reference, petitioner argues, shows that Congress intended for the term projected disposable income to incorporate, presumably in all contexts, the defined term disposable income. It is evident that 1129(a)(15)(B) refers to the defined term disposable income, see 1325(b)(2), but that fact offers no insight into the meaning of the word projected in 1129(a)(15)(B) and 1325(b)(1)(B). We fail to see how that word acquires a specialized meaning as a result of this cross-reference—particularly where both 1129(a)(15)(B) and 1325(b)(1)(B) refer to projected disposable income to be received during the relevant period. See *supra*, at 11.

Petitioner also notes that 707 allows courts to take special circumstances into consideration, but that 1325(b)(3) incorporates 707 only with respect to calculating expenses. See *In re Wilson*, 397 B.R. 299, 314-315 (Bkrcty. Ct. MDNC 2008). Thus, he argues, a special circumstances exception should not be inferred with respect to the debtors income. We decline to infer from 1325's incorporation of 707 that Congress intended to eliminate, *sub silentio*, the discretion that courts previously exercised when projecting disposable income to account for known or virtually certain changes. Accord, *In re Liverman*, 383 B. R. 604, 613, and n.15 (Bkrcty. Ct. NJ 2008).

D

In cases in which a debtors disposable income during the 6-month look-back period is either substantially lower or higher than the debtors disposable income during the plan period, the mechanical approach would produce senseless results that we do not think Congress intended. In cases in which the debtors disposable income is higher during the plan period, the mechanical approach would deny creditors payments that the debtor could easily make. And where, as in the present case, the debtors disposable income during the plan period is substantially lower, the mechanical approach would deny the protection of Chapter 13 to debtors who meet the chapters main eligibility requirements. Here, for example, respondent is an individual whose income is sufficiently stable and regular to allow her to make payments under a plan, 101(30), and her debts fall below the limits set out in 109(e). But if the mechanical approach were used, she could not file a

confirmable plan. Under 1325(a)(6), a plan cannot be confirmed unless the debtor will be able to make all payments under the plan and comply with the plan. And as petitioner concedes, respondent could not possibly make the payments that the mechanical approach prescribes.

In order to avoid or at least to mitigate the harsh results that the mechanical approach may produce for debtors, petitioner advances several possible escape strategies. He proposes no comparable strategies for creditors harmed by the mechanical approach, and in any event none of the maneuvers that he proposes for debtors is satisfactory.

1

Petitioner first suggests that a debtor may delay filing a petition so as to place any extraordinary income outside the 6-month look-back period. We see at least two problems with this proposal.

First, delay is often not a viable option for a debtor sliding into bankruptcy.

Potential Chapter 13 debtors typically find a lawyers office when they are one step from financialArmageddon: There is a foreclosure sale of the debtors home the next day; the debtors only carwas mysteriously repossessed in the dark of last night; a garnishment has reduced the debtorstake-home pay below the ordinary requirements of food and rent. Instantaneous relief is ex-pected, if not necessary. K. Lundin & W. Brown,Chapter 13 Bankruptcy 3.1[2] (4th ed. rev.2009), http://www.ch13online.com/Subscriber/Chapter_13_Bankruptcy_4th_Lundin_Brown.htm

See also *id.* , 38.1 (Debtors counsel often has little discretion when to file the Chapter 13 case).

Second, even when a debtor is able to delay filing a petition, such delay could be risky if it gives the appearance of bad faith. See 11 U. S. C. 1325(a)(7) (requiring, as a condition of confirmation, that the action of the debtor in filing the petition was in good faith); see also, *e.g.* , *Inre Myers* , 491 F.3d 120, 125 (CA3 2007) (citing the timing of the petition as a factor to be considered in assessing a debtors compliance with the good-faith requirement). Accord, *Neufeld v. Freeman* , 794

F. 2d 149, 153 (CA4 1986) (a debtors prepetition conduct may inform the courts good-faith inquiry).

2

Petitioner next argues that a debtor with unusually high income during the 6 months prior to the filing of a petition, could seek leave to delay filing a schedule of current income (Schedule I) and then ask the bankruptcy court to exercise its authority under 101(10A)(A)(ii) to select a 6-month period that is more representative of the debtors future disposable income. We see little merit in this convoluted strategy. If the Code required the use of the mechanical approach in all cases, this strategy would improperly undermine what the Code demands. And if, as we believe, the Code does not insist upon rigid adherence to the mechanical approach in all cases, this strategy is not needed. In any event, even if this strategy were allowed, it would not help all debtors whose disposable income during the plan period is sharply lower than their previous disposable income.[
[Footnote 6](#)]

3

Petitioner suggests that a debtor can dismiss the petition and refile at a later, more favorable date. But petitioner offers only the tepid assurance that courts generally do not find this practice to be abusive. Brief for Petitioner 53. This questionable stratagem plainly circumvents the statutory limits on a courts ability to shift the look-back period, see *supra* , at 16, and n.6, and should give debtors pause.[
[Footnote 7](#)] Cf. *Inre Glenn* , 288 B.R. 516, 520 (Bkrctcy. Ct. ED Tenn. 2002) (noting that courts should consider, among other factors, whether this is the first or [a] subsequent filin[g] when assessing a debtors compliance with the good-faith requirement).

4

Petitioner argues that respondent might have been able to obtain relief by filing under Chapter 7 or by converting her Chapter 13 petition to one under Chapter 7. The availability of Chapter 7 to debtors like respondent who have above-median

incomes is limited. In respondents case, a presumption of abuse would attach under 707(b)(2)(A)(i) because her disposable income, multiplied by 60, exceeds the amounts specified in subclauses (I) and (II). See also 707(b)(1) (allowing a court to dismiss a petition filed by a debtor whose debts are primarily consumer debts . . . if it finds that the granting of relief would be an abuse of the provisions of this chapter); App. 8688 (Notice to Individual Consumer Debtor under 342(b) of the Bankruptcy Code) (If your income is greater than the median income for your state of residence and family size, in some cases, creditors have the right to file a motion requesting that the court dismiss your case under 707(b) of the Code). Nevertheless, petitioner argues, respondent might have been able to overcome this presumption by claiming that her case involves special circumstances within the meaning of 707(b)(2)(B)(i). Section 707 identifies as examples of special circumstances a serious medical condition or a call or order to active duty in the Armed Forces, *ibid.* , and petitioner directs us to no authority for the proposition that a prepetition decline in income would qualify as a special circumstance. In any event, the special circumstances exception is available only to the extent that there is no reasonable alternative, *ibid.* ., a proposition we reject with our interpretation of 1325(b)(1) today.[[Footnote 8](#)]

In sum, each of the strategies that petitioner identifies for mitigating the anomalous effects of the mechanical approach is flawed. There is no reason to think that Congress meant for any of these strategies to operate as a safety valve for the mechanical approach.

IV

We find petitioners remaining arguments unpersuasive. Consistent with the text of 1325 and pre-BAPCPA practice, we hold that when a bankruptcy court calculates a debtors projected disposable income, the court may account for changes in the debtors income or expenses that are known or virtually certain at the time of confirmation. We therefore affirm the decision of the Court of Appeals.

It is so ordered.

[Footnote 1](#)

However, if a debtor does not file the required schedule (Schedule I), the bankruptcy court may select a different 6-month period. See 101(10A)(A)(ii).

[Footnote 2](#)

The formula for above-median-income debtors is known as the means test and is reflected in a schedule (Form 22C) that a Chapter 13 debtor must file. See Fed. Rule Bkrcty. Proc. Official Form 22C (2009); *Inre Liverman* , 383 B.R. 604, 606, n.1, 608609 (Bkrcty. Ct. NJ 2008).

[Footnote 3](#)

See also, e.g. , 8 U. S.C. 1364(a), (c)(2) (requiring the triennial immigration-impact report to include information projected for the succeeding five-year period, based on reasonable estimates substantiated by the best available evidence); 10 U. S.C.A. 2433a(a)(2)(B) (2010 Cum. Supp.) (projected cost of completing the [defense acquisition] program based on reasonable modification of [current] requirements); 15 U. S.C. 719c(c)(2) (2006 ed.) (projected natural gas supply and demand); 25 U. S.C. 2009(c)(1), (2) (requiring the Director of the Office of Indian Education Programs to submit an annual report containing certain projections and a description of the methods and formulas used to calculate the amounts projected).

[Footnote 4](#)

When pre-BAPCPA courts declined to make adjustments based on possible changes in a debtors future income or expenses, they did so because the changes were not sufficiently foreseeable, not because they concluded that they lacked discretion to depart from a strictly mechanical approach. In *Inre Solomon* , 67 F.3d 1128 (1995), for example, the Fourth Circuit refused to make such an adjustment because it deemed disbursements from an individual retirement account during the plan period to be speculative and hypothetical. *Id.* , at 1132. There is no reason to assume that the result would have been the same if future disbursements had been more assured. That was certainly true of *Inre Killough* , 900 F.2d 61 (1990), in which the Fifth Circuit declined to require inclusion of overtime pay in projected disposable income because it was not definite enough. *Id.* , at 65; see also *id.* , at 66 ([T]here may be instances where income obtained

through working overtime can and should appropriately be included in a debtors projected disposable income). See also *Education Assistance Corp. v. Zellner*, 827 F.2d 1222, 1226 (CA8 1987) (affirming bankruptcy courts exclusion of future tax returns and salary increases from debtors projected disposable income because they were speculative).

[Footnote 5](#)

For the same reason, the phrase [f]or purposes of this subsection in 1325(b)(2) is not rendered superfluous by the forward-looking approach.

[Footnote 6](#)

Under 11 U. S. C. 521(i)(3), a debtor seeking additional time to file a schedule of income must submit the request within 45 days after filing the petition, and the court may not grant an extension of more than 45 days.

[Footnote 7](#)

For example, a debtor otherwise eligible for Chapter 13 protection may become ineligible if at any time in the preceding 180 days the case was dismissed by the court for willful failure of the debtor to abide by orders of the court, or to appear before the court in proper prosecution of the case, or the debtor requested and obtained the voluntary dismissal of the case following the filing of a request for relief from the automatic stay provided by section 362 of this title. 109(g).

[Footnote 8](#)

Petitioner also suggests that some Chapter 13 debtors may be able to plead special circumstances on the expense side of the calculation by virtue of BAPCPAs incorporation of the Chapter 7 means test into Chapter 13. See 707(b)(2)(B)(i), (ii). This is no help to debtors like respondent, whose income has changed but whose expenses are constant.

Hamilton v. Lanning - 08-998 (2010)

SCALIA, J., DISSENTING

HAMILTON V. LANNING
560 U. S. ____ (2010)
SUPREME COURT OF THE UNITED STATES
NO. 08-998

JAN HAMILTON, CHAPTER 13 TRUSTEE, PETITIONER v. STEPHANIE
KAYLANNING

on writ of certiorari to the united states court of appeals for the tenth circuit

[June 7, 2010]

Justice Scalia, dissenting.

The Bankruptcy Code requires a debtor seeking relief under Chapter 13, unless he will repay his unsecured creditors in full, to pay them all of his projected disposable income over the life of his repayment plan. 11 U. S.C. 1325(b)(1)(B). The Code provides a formula for project[ing] what a debtors disposable income will be, which so far as his earnings are concerned turns only on his past income. The Court concludes that this formula should not apply in exceptional cases where known or virtually certain changes in the debtors circumstances make it a poor predictor. *Ante* , at 6. Because that conclusion is contrary to the Codes text, I respectfully dissent.

I

A

A bankruptcy court cannot confirm a Chapter 13 plan over the objection of the trustee unless, as of the plans effective date, either (A) the property to be distributed on account of the unsecured claim at issue exceeds its amount or (B) the the plan provides that all of the debtors 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. 1325(b)(1)(B). The Code does not define projected

disposable income, but it does define disposable income. The next paragraph of 1325(b) provides that [f]or purposes of this subsection, the term disposable income means current monthly income received by the debtor, excluding certain payments received for child support, less amounts reasonably necessary to be expended on three categories of expenses. 1325(b)(2). The Code in turn defines current monthly income as the average monthly income from all sources that the debtor receives derived during the 6-month period ending on one of two dates. [[Footnote 1](#)] 101(10A)(A). Whichever date applies, a debtors current monthly income, and thus the income component of his disposable income, is a sum certain, a rate fixed once for all based on historical figures.

This definition of disposable income applies to the use of that term in the longer phrase projected disposable income in 1325(b)(1)(B), since the definition says that it applies to subsection (b). Cf. 1129(a)(15)(B) (referring to the projected disposable income of the debtor (as defined in section 1325(b)(2))). The puzzle is what to make of the word projected.

In the Courts view, this modifier makes all the difference. Projections, it explains, ordinarily account for later developments, not just past data. *Ante* , at 67. Thus, the Court concludes, in determining projected disposable income a bankruptcy court may depart from 1325(b)(2)s inflexible formula, at least in exceptional cases, to account for significant changes in the debtors circumstances, either actual or anticipated. *Ante* , at 6.

That interpretation runs aground because it either renders superfluous text Congress included or requires adding text Congress did not. It would be pointless to define disposable income in such detail, based on data during a specific 6-month period, if a court were free to set the resulting figure aside whenever it appears to be a poor predictor. And since disposable income appears nowhere else in 1325(b), then unless 1325(b)(2)s definition applies to projected disposable income in 1325(b)(1)(B), it does not apply at all.

The Court insists its interpretation does not render 1325(b)(2)s incorporation of current monthly income a nullity: A bankruptcy court must still *begin* with that

figure, but is simply free to fiddle with it if a significant change in the debtors circumstances is known or virtually certain. *Ante* , at 6, 12. That construction conveniently avoids superfluity, but only by utterly abandoning the text the Court purports to construe. Nothing in the text supports treating the definition of disposable income Congress supplied as a suggestion. And even if the word projected did allow (or direct) a court to disregard 1325(b)(2)s fixed formula and to consider other data, there would be no basis in the text for the restrictions the Court reads in, regarding when and to what extent a court may (or must) do so. If the statute authorizes estimations, it authorizes them in *every* case, not just those where changes to the debtors income are both significant and either known or virtually certain. *Ibid.* If the evidence indicates it is merely more likely than not that the debtors income will increase by some minimal amount, there is no reading of the word projected that permits (or requires) a court to ignore that change. The Court, in short, can arrive at its compromise construction only by rewriting the statute.

B

The only reasonable reading that avoids deleting words Congress enacted, or adding others it did not, is this: Setting aside expenses excludable under 1325(b)(2)(A) and (B), which are not at issue here, a court must calculate the debtors projected disposable income by multiplying his current monthly income by the number of months in the applicable commitment period. The word projected in this context, I agree, most sensibly refers to a calculation, prediction, or estimation of future events, see Brief for United States as *Amicus Curiae* 1213 (collecting dictionary definitions); see also *Websters New International Dictionary* 1978 (2d ed. 1957). But one assuredly can calculate, predict, or estimate future figures based on the past. And here Congress has commanded that a specific historical figure shall be the basis for the projection.

The Court rejects this reading as unrealistic. A projection, the Court explains, may be based in *part* on past data, but adjustments are often made based on other factors that may affect the final outcome. *Ante* , at 7. Past performance is no guarantee of future results. No gambler would bet the farm using project[ions] that

are based only on a football teams play *before* its star quarterback was injured. And no pundit would keep his post if he projected election results relying only on prior cycles, ignoring recent polls. So too, the Court appears to reason, it makes no sense to say a court project[s] a debtors disposable income when it considers only what he earned in a specific 6-month period in the past. *Ante* , at 67.

Such analogies do not establish that carrying current monthly income forward to determine a debtors future ability to pay is not a projection. They show only that relying exclusively on past data for the projection may be a bad idea. One who is asked to predict future results, but is armed with no other information than prior performance, can still make a projection; it may simply be off the mark. Congress, of course, could have tried to prevent that possibility by prescribing, as it has done in other contexts, that a debtors projected disposable income be determined based on the best available evidence, 8 U. S.C. 1364(c)(2), or anyrelevant information, 25 U. S.C. 2009(c)(1). But it included no such prescription here, and instead identified the data a court should consider. Perhaps Congress concluded that other information a bankruptcy court might consider is too uncertain or too easily manipulated. Or perhaps it thought the cost of considering such information outweighed the benefits. Cf. 7 U. S.C. 1301(b)(13)(J)(M) (requiring national and local projected yields of various crops to be adjusted only for abnormal weather, trends in yields, and production practices, apparently to the exclusion of other presumably relevant variables such as a sudden increase or decrease in the number of producers, farm subsidies, etc.). In all events, neither the reasons for nor the wisdom of the projection method Congress chose has any bearing on what the statute means.

The Court contends that if Congress really meant courts to multiply a static figure by a set number of months, it would have used the word multiplied, as it has done elsewhere-indeed, elsewhere in the same subsection, see, *e.g.* , 11 U. S.C. 1325(b)(3)-instead of the word projected.[[Footnote 2](#)] *Ante* , at 8. I do not dispute that, as a general matter, we should presume that Congress does not ordinarily use two words in the same context to denote the same thing. But if forced to choose between (A) assuming Congress enacted text that serves no

purpose at all, (B) ascribing an unheard-of meaning to the word projected (loaded with made-to-order restrictions) simply to avoid undesirable results, or (C) assuming Congress employed synonyms to express a single idea, the last is obviously the least evil.

In any event, we are not put to that choice here. While under my reading a court must determine the *income* half of the projected disposable income equation by multiplying a fixed number, that is not necessarily true of the *expenses* excludable under 1325(b)(2)(A) and (B). Unlike the debtors current monthly income, none of the three types of expenses-payments for the support of the debtor and his dependents, charitable contributions, and expenses to keep an existing business above water-is explicitly defined in terms of historical figures (at least for debtors with incomes below the state median). The first of those cannot possibly (in many cases) be determined based on the same 6-month period from which current monthly income is derived,[[Footnote 3](#)] and the texts of the other two are consistent with determining expenses based on expectations. See 1325(b)(2)(A)(ii) (charitable expenses to qualified entities limited to 15 percent of gross income of the debtor for the year in which the contributions are made); 1325(b)(2)(B) (expenditures necessary for the continuation, preservation, and operation of a business in which the debtor is engaged).

In short, a debtors projected disposable income consists of two parts: one (current monthly income) that is fixed once for all based on historical data, and another (the enumerated expenses) that at least arguably depends on estimations of the debtors future circumstances. The statute thus requires the court to predict the difference between two figures, each of which depends on the duration of the commitment period, and one of which also turns partly on facts besides historical data. In light of all this, it seems to me not at all unusual to describe this process as projection, not merely multiplication.

C

The Courts remaining arguments about the statutes meaning are easily dispatched. A mechanical reading of projected disposable income, it contends,

renders superfluous the phrase to be received in the applicable commitment period in 1325(b)(1)(B). *Ante* , at 11. Not at all. That phrase defines the period for which a debtors disposable income must be calculated (*i.e.* , the period over which the projection extends), and thus the amount the debtor must ultimately pay his unsecured creditors.

Similarly insubstantial is the Courts claim regarding the requirement that the plan provide that the debtors projected disposable income will be applied to make payments toward unsecured creditors claims, 1325(b)(1)(B). The Court says this requirement makes no sense unless the debtor is actually able to pay an amount equal to his projected disposable income. *Ante* , at 12. But it makes no sense only if one assumes that the debtor is entitled to confirmation in the first place; and that assumption is wrong. The requirement that the debtor pay at least his projected disposable income is a *prerequisite* to confirmation. The will be applied proviso does not require a debtor to pay what he cannot; it simply withholds Chapter 13 relief when he cannot pay.

The Court also argues that 1325(b)(1)s directive to determine projected disposable income as of the effective date of the plan makes no sense if mere multiplication of existing numbers is required. *Ante* , at 1112. As I have explained, however, projected disposable income may in some cases require more than multiplication (as to expenses), and the estimations involved may vary from the date of the plans filing until the date it takes effect. Moreover, the provision also applies to the alternative avenue to confirmation in 1325(b)(1)(A), which requires that the value of the property to be distributed under the plan to an unsecured creditor equals or exceeds the creditors claim. As to that requirement, the effective-date requirement makes perfect sense.

Text aside, the Court also observes that Circuit practice prior to the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), 119 Stat. 23, aligns with the atextual approach the Court adopts today. *Ante* , at 810. That is unsurprising, since the prior version of the relevant provisions was completely consistent with that approach. The Court is correct that BAPCPA did not amend the term projected disposable income, *ante* , at 10. But it *did* amend the

definition of that term. Before 2005, 1325(b)(2) defined disposable income simply as income which is received by the debtor and which is not reasonably necessary to be expended on the same basic types of expenses excluded by the current statute. 1325(b)(2) (2000 ed.). Nothing in that terse definition compelled a court to rely exclusively on past data, let alone a specific 6-month period. But in BAPCPA—the same Act in which Congress defined current monthly income in 101(10A)(A)—Congress redefined disposable income in 1325(b)(2) to incorporate that backward-looking definition. See Pub. L. 1098, 102(b), (h), 119 Stat. 3234. Given these significant changes, the fact that the Courts approach conforms with pre-BAPCPA practice not only does not recommend it, see *e.g.*, *Pennsylvania Dept. of Public Welfare v. Davenport*, [495 U. S. 552](#), 563564 (1990), but renders it suspect.

II

Unable to assemble a compelling case based on what the statute says, the Court falls back on the senseless results it would produce—results the Court do[es] not think Congress intended. *Ante*, at 14. Even if it were true that a mechanical reading resulted in undesirable outcomes, that would make no difference. *Lewis v. Chicago*, 560 U. S. ___, ___ (2010) (slip op., at 11). For even assuming (though I do not believe it) that we could know which results Congress thought it was achieving (or avoiding) apart from the only congressional expression of its thoughts, the text, those results would be entirely irrelevant to what the statute means.

In any event, the effects the Court fears are neither as inevitable nor as senseless as the Court portrays. The Courts first concern is that if actual or anticipated changes in the debtors earnings are ignored, then a debtor whose income increases after the critical 6-month window will not be required to pay all he can afford. *Ante*, at 14. But as Lanning points out, Brief for Respondent 2223, Chapter 13 authorizes the Bankruptcy Court, at the request of unsecured creditors, to modify the plan [a]t any time after confirmation to increase the amount of payments on a class of claims or reduce the time for such payments. 1329(a)(1)(2) (2006 ed.). The Court offers no explanation of why modification would not be available in such instances, and sufficient to resolve the concern.

The Court also cringes at the prospect that a debtor whose income suddenly *declines* after the 6-month window or who, as in this case, receives a one-off windfall during that window, will be barred from Chapter 13 relief because he will be unable to devote his disposable income (which turns on his prior earnings) to paying his unsecured creditors going forward. *Ante* , at 1415. At least for debtors whose circumstances deteriorate *after* confirmation, however, the Code already provides an answer. Just as a creditor can request an upward modification in light of postconfirmation developments, so too can a debtor ask for a downward adjustment. 1329(a). Cf. 1329(b)(1) (requiring that modifications meet requirements of 1322(a)(b), 1323(c), and 1325(a), but not 1325(b)).

Moreover, even apart from the availability of modification it requires little imagination to see why Congress might want to withhold relief from debtors whose situations have suddenly deteriorated (after or even toward the end of the 6-month window), or who in the midst of dire straits have been blessed (within the 6-month window) by an influx of unusually high income. Bankruptcy protection is not a birthright, and Congress could reasonably conclude that those who have just hit the skids do not yet need a reprieve from repaying their debts; perhaps they will recover. And perhaps the debtor who has received a one-time bonus will thereby be enabled to stay afloat. How long to wait before throwing the debtor a lifeline is inherently a policy choice. Congress confined the calculation of current monthly income to a 6-month period (ordinarily ending before the case is commenced), but it could have picked 2 or 12 months (or a different end date) instead. Whatever the wisdom of the window it chose, we should not assume it did not know what it was doing and accordingly refuse to give effect to its words.

Even if one insists on making provision for such debtors, the Court is wrong to write off four alternative strategies the trustee suggests, Brief for Petitioner 5054:

Presumably some debtors whose income has only recently been reduced, or who have just received a jolt that causes a temporary uptick in their average income, can delay filing a Chapter 13 petition until their current monthly income catches up with their present circumstances. The Court speculates that delay might giv[e] the appearance of bad faith, *ante* , at 15 (citing 1325(a)(7)), but it offers no

explanation of why that is so, and no authority supporting it.[[Footnote 4](#)]

Even if bad faith were a real worry, or if it were essential to a debtors prospects that he invoke 362s automatic stay immediately, the debtor might ask the bankruptcy court to excuse him from filing a statement of current income, so that it determines his currently monthly income at a later date. See 101(10A)(A)(ii). The Court dismisses this alternative, explaining that if the Code requires a mechanical approach this solution would improperly undermine it, and if the Code allows exceptions for changed circumstances the solution is unnecessary. *Ante* , at 16. The second premise is correct, but the first is not. Congress does not pursue its purposes at all costs. *Rodriguez v. United States* , [480 U. S. 522](#) , 525526 (1987) (*per curiam*) . Here it may have struck the very balance the Court thinks critical by creating a fixed formula but leaving leeway as to the time to which it applies.[[Footnote 5](#)]

A debtor who learns after filing that he will be unable to repay his full projected disposable income might also be able to dismiss his case and refile it later. 1307(b). The Court worries that this alternative also might be deemed abusive, again with no pertinent authority for the speculation.[[Footnote 6](#)] Its concern is based primarily on its belief that this circumvents the statutory limits on a courts ability to shift the look-back period. *Ante* , at 1617. That belief is mistaken, both because the Court exaggerates the statutory limitations on adjusting the look-back period, and because, just as it does not defeat the disposable-income formulas rigidity to allow adjustments regarding the time of determining that figure, it would not undermine the limitations on adjustment applicable in a pending case to allow the debtor to dismiss and refile.[[Footnote 7](#)]

A debtor unable to pursue any of these avenues to Chapter 13 might still seek relief under Chapter 7. The Court declares this cold comfort, noting that some debtors-including Lanning-will have incomes *too high* to qualify for Chapter 7. *Ante* , at 1718. Some such debtors, however, may be able to show special circumstances, 707(b)(2)(B), and still take advantage of Chapter 7. Aside from noting the absence of authority on the issue, the Courts answer is unsatisfyingly circular: It notes that the special-circumstances exception is available only if the

debtor has no reasonable alternative, 707(b)(2)(B)(i), which will not be true after today given the Courts holding that bankruptcy courts can consider changes in a debtors income. As for those who cannot establish special circumstances, it is hard to understand why there is cause for concern. Congress has evidently concluded that such debtors do not need the last-ditch relief of liquidation, and that they are not suitable candidates for repaying their debts (at least in part) under Chapter 13s protective umbrella. We have neither reason nor warrant to second-guess either determination.

* * *

Underlying the Courts interpretation is an understandable urge: Sometimes the best reading of a text yields results that one thinks must be a mistake, and bending that reading just a little bit will allow all the pieces to fit together. But taking liberties with text in light of outcome makes sense only if we assume that we know better than Congress which outcomes are mistaken. And by refusing to hold that Congress meant what it said, but see *Connecticut Nat. Bank v. Germain* , [503 U. S. 249](#) , 253254 (1992), we deprive it of the ability to say what it means in the future. It may be that no interpretation of 1325(b)(1)(B) is entirely satisfying. But it is in the hard cases, even more than the easy ones, that we should faithfully apply our settled interpretive principles, and trust that Congress will correct the law if what it previously prescribed is wrong.

I respectfully dissent.

[Footnote 1](#)

If the debtor files a schedule of current income, as ordinarily required by 521(a)(1)(B)(ii), then the 6-month period ends on the last day of the month preceding the date the case is commenced, 101(10A)(A)(i)-that is, when the petition is filed, 301(a), 302(a), 303(b). If the debtor does not file such a schedule on time-which the bankruptcy court apparently may excuse him from doing, 521(a)(1)(B)(ii)-the 6-month period ends on the date the bankruptcy court determines the debtors current income. 101(10A)(A)(ii).

[Footnote 2](#)

Of course, since the number of months in the commitment period may vary, Congress could not simply have substituted a single word, but would have had to write disposable income multiplied by the number of months in the applicable commitment period or some such phrase.

[Footnote 3](#)

For a debtor whose income is below the state median, excludable expenses include domestic-support obligations that first becom[e] payable after the date the petition is filed, 1325(b)(2)(A)(i)-that is, *after* the six-month window relevant to the debtors current monthly income has closed (unless the debtor does not file a current-income schedule), see 101(10A)(A)(i).

[Footnote 4](#)

Neither of the two Court of Appeals cases the Court cites- *Inre Myers* , 491 F.3d 120, 125 (CA3 2007), and *Neufeld v. Freeman* , 794 F.2d 149, 153 (CA4 1986)- involved a debtors delaying his petition until his circumstances would permit the court to confirm a repayment plan.

[Footnote 5](#)

The Court observes that not every debtor will benefit from this exception, *ante* , at 16, and n.6, since 521(i)(3) provides that a bankruptcy court may not grant a request (which may be made *after* the deadline for filing the current-income schedule) for an extension of more than 45 days to file such a schedule. But the statute appears to assume that a court may excuse the filing of such a schedule altogether: A debtor is required to file a schedule in the first instance *unless* the court orders otherwise, 521(a)(1)(B) (emphasis added). And 101(10A)(A)(ii)s provision of a method for calculating current monthly income if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii) makes little sense unless a court can excuse the failure to do so, since an *unexcused* failure to do so would be a basis for dismissing the case, see 521(i). Allowing courts to excuse such schedules does not render superfluous 521(i)(3)s authorization for limited extensions, since that applies to extensions sought up to 45 days *after* the filing deadline, whereas 521(a)(1)(B) seems to apply only *before* the deadline.

[Footnote 6](#)

The sole authority the Court supplies—a single Bankruptcy Court decision predating BAPCPA—provides no support. See *In re Glenn*, 288 B.R. 516, 519–521 (Bkrcty. Ct. ED Tenn. 2002). Although acknowledging that [m]ultiple filings by a debtor are not, in and of themselves, improper, the court did note that whether this is the first or subsequent filin[g] by the debtor is one among the totality of the circumstances to be considered in a good-faith analysis. *Id.*, at 520 (internal quotation marks omitted). The debtor in the case at hand had filed three previous Chapter 13 petitions, each on the eve of a scheduled foreclosure, and according to the court never had any intention of following through with any of the Chapter 13 cases, but had used the bankruptcy process to hold [his creditor] hostage, while remaining in his residence without paying for it. *Id.*, at 520–521.

[Footnote 7](#)

The Court also notes that the Code precludes a debtor who has had a case pending in the last 180 days from refiling if his prior case was dismissed because he willfully failed to obey the courts orders or to appear before the court, 109(g)(1), or if he voluntarily dismissed the prior suit following the filing of a request for relief from the automatic stay under 362, 109(g)(2). *Ante*, at 17, n.7. But the Court does not explain why these barriers have any bearing on whether refiling for bankruptcy would be abusive when the barriers *do not apply*.