No. 14-2856

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

Michael D. Clark, Chapter 13 Trustee-Appellant, v. Stephanie A. Brooks, Debtor-Appellee.	)))))))))	Appeal from the U.S. District Court for the Central District of Illinois District Court No. 1:14-cv-01031 The Honorable Michael M. Mihm, Judge Presiding.

BRIEF AND ARGUMENT OF AMICI CURIAE NACBA and LAF

IN SUPPORT OF STEPHANIE A. BROOKS, DEBTOR-APPELLEE, AND IN SUPPORT OF AFFIRMANCE.

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CIRCUIT RULE 26.1
DISCLOSURE STATEMENT

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

N/A (amicus for Stephanie A. Brooks)

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

LAF

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

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

N/A

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

N/A

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National Association of Consumer Bankruptcy Attorneys

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

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

N/A

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

N/A

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STATEMENT OF IDENTITY AND INTEREST OF AMICI CURIAE

The National Association of Consumer Bankruptcy Attorneys, or NACBA, is a non-profit organization of more than 3000 consumer bankruptcy attorneys practicing throughout the country. Incorporated in 1992, NACBA is the only nationwide association of attorneys organized specifically to protect the rights of consumer bankruptcy debtors. Among other initiatives and directives, NACBA works to educate the bankruptcy bar and the community at large on the uses and misuses of the consumer bankruptcy process. NACBA also advocates for consumer debtors on issues that cannot be addressed adequately by individual member attorneys. NACBA has filed numerous amicus briefs in cases involving the rights of consumer debtors. *See, e.g.*, *Schwab v. Reilly*, 560 U.S. 770 (2010); *United States Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010).

The Trustee's position in this case would harm thousands of clients of NACBA members by diverting child support payments meant to ameliorate the financial hardships of their children to pay the parent's creditors, contrary to the intent of Congress. Adopting the Trustee's position would also be detrimental to the efficient administration of Chapter 13 cases, as it would lead to fact intensive hearings about the minutiae of Chapter 13 debtor's expenses, in search of the rare case of the custodial parent who is receiving excessive amounts of child support or foster care.

LAF is a not-for-profit organization that provides free legal representation and counsel in civil cases to disadvantaged people and communities throughout

Cook County. Each year LAF's advocates represent thousands of clients who are living in poverty, or otherwise vulnerable, in a wide range of civil legal matters. LAF's areas of practice include bankruptcy, child custody, parentage, child welfare, orders of protection, education, employment, housing, immigration, and public benefits.

LAF practices extensively in the areas of both bankruptcy and family law, and a substantial percentage of the population LAF serves live in single-parent families (as do more one-third of all children in the United States). Such families frequently depend on child support. LAF's breadth of experience will assist this Court in understanding important background principles and polices governing child support. These principles and policies would be undermined by the Trustee's interpretation of the statute, which would make more child support available to creditors, at the expense of the child for whom the order was exclusively directed. In addition, LAF seeks to call this Court's attention to the disadvantages faced by those who depend upon child support, which could only be exacerbated by permitting awards to be available to creditors. Both the statute's plain language and sound public policy require that child support should be beyond the reach of custodial parents' creditors.

Both NACBA and LAF thus submit this brief to support the position of the debtor-appellee, Stephanie A. Brooks, that the Bankruptcy Code excludes child support income from the definition of "disposable income" without requiring the debtor to establish that the support is "reasonably necessary" to be expended.

No counsel for a party authored this brief in whole or in part, and no person or entity other than NACBA or LAF, its members, and its counsel made any monetary contribution toward the preparation or submission of this brief.

ARGUMENT

The lower courts' holding that § 1325(b)(2) of the Bankruptcy Code requires the exclusion of the full amount of the debtor Stephanie Brooks's child support from calculation of her "disposable income" comports with important principles and policies underlying the award of child support by family law judges. Child support belongs to children and is intended to protect children with unmarried parents from a significant diminution of their living standard. The Trustee's position undermines that policy, treating child support payments as another resource theoretically available to the custodial parent, and therefore to her creditors. Furthermore, the Trustee's position is simply inconsistent with the economic reality of child support inadequacy, which hardly creates any danger of "windfall" to single-parent families or of "staggering" losses to creditors. (Trustee Br. 16.) Amici note, as well, that the Trustee's position is inconsistent with the plain language of the statute; under the "rule of the last antecedent," the language the Trustee relies upon does not even modify "child support" in § 1325(b)(2).[1] For all of these reasons, Amici urge this Court to affirm the decision of the bankruptcy court.

I. Both Federal and State Law and Policy Support Categorical Exclusion of Child Support When Calculating "Disposable Income."

The Bankruptcy Court correctly held in this case that in crafting a categorical exclusion from income for child support, "Congress intended to protect those funds

[1] Amici will not repeat the arguments made by Ms. Brooks in her Appellee's Brief. However, Amici makes an additional argument of statutory interpretation that the parties have not addressed.

for their dedicated purpose by removing them from the disposable income equation." *In re Brooks*, 498 B.R. 856, 863 (Bankr. C.D. Ill. 2013). This treatment of child support is consistent with federal and state law and policy governing child support, which recognize in numerous ways that child support is dedicated to and belongs to children—not their parents' creditors.

Illinois law repeatedly recognizes financial support as a right belonging to the child. "Illinois recognizes the right of every child to the physical, mental, emotional and monetary support of his or her parents . . . ." 750 Ill. Comp. Stat. Ann. 45/1.1. Illinois courts have recognized, therefore, that children have standing to pursue their own claims for child support, when their custodial parents fail to do so. *See Dep't of Pub. Aid ex rel. Cox v. Miller*, 586 N.E.2d 1251, 1257 (Ill. 1992) (recognizing Parentage Act of 1984 permits "child to bring an action seeking support from his or her parent"). The right to support belongs to the child. Several bankruptcy courts have recognized this principle nationally. *See In re Poffenbarger*, 281 B.R. 379, 386 (Bankr. S.D. Ala. 2002) ("[C]hild support is a fundamental right for the benefit of the minor child, and not for the benefit or support of the custodial parent."); *In re Welch*, 31 B.R. 537, 540 (Bankr. D. Kan. 1983) ("[C]hild support is not a property interest belonging to the custodial parent. The interest is not within the reach of the custodial parent's creditors outside of bankruptcy and thus, should not be within their reach in bankruptcy."); *see also In re Hambright*, 762 N.E.2d 98, 104 (Ind. 2002) (affirming denial of intervention of bankruptcy trustee in child support

proceeding, because "child support arrearages are not property of the custodial parent, and a trustee in bankruptcy has no interest in them").

Illinois courts ultimately base child support awards upon the court's judgment of the child's best interest. *See* 750 Ill. Comp. Stat. Ann. 5/505(a); *Cox*, 586 N.E.2d at 1257; *Blisset v. Blisset*, 526 N.E.2d 125, 128 (Ill. 1988). The court must make this determination independently, without regard to the parents' agreement. *See Blisset*, 526 N.E.2d at 128. Former spouses may not modify court-ordered child support by their own agreement and without leave of court, as doing so "would circumvent judicial protection" of the children. *Id.* "Parents may not bargain away their children's interests." *Id.* Similarly, children are not bound by the agreements of their never-married parents, and have standing to seek support regardless of such agreements. *See Cox*, 586 N.E.2d at 1253. These features of the governing law emphatically reserve child support as a right and resource dedicated and belonging to the child.

The considerations courts use to set child support awards also illustrate this underlying policy. In Illinois, courts rely on statutory guidelines, from which they may depart based upon the child's best interests, including consideration of the standard of living the child would have enjoyed had the marriage not been dissolved or the parents remained unmarried. *See* 750 Ill. Comp. Stat. Ann. 5/505(a); 89 Ill. Admin. Code § 160.60(c)(2)(C) (listing factors used by the Illinois Department of Health Care and Family Services in establishing support obligations, including "the standard of living the child would have enjoyed had the marriage not been

dissolved, the separation not occurred or the parties married"). While not all states use numerical guidelines, courts in other jurisdictions generally take the approach "that the best interests or needs of the child, coupled with the parent's ability to pay, based on his or her income and assets, will determine the level of support." Donald T. Kramer, *Child Support*, 1 Leg. Rts. Child. Rev. 2D § 4:6 (2d ed. 2014). Because this general rule prevails nationally, it supports the conclusion that Congress intended to exclude child support payments from disposable income in all cases.

In 1984, Congress required states to adopt guidelines for establishing child-support obligations, and in 1988, required that they be given presumptive effect. *See* 42 U.S.C. § 667. While using different formulas, every state now calculates child-support obligations according to such guidelines. *See* Kramer, 1 Leg. Rts. Child. Rev. 2D § 4:6 (noting guidelines "are typically based upon obligor's income and number of children"). The child support guidelines enacted in Illinois as Public Act 83-1404 were intended as a "salutary" measure for "fair provision of support for dependent children in broken marriages," whom the bill's sponsor identified as a "class of individuals" facing an "uncertain and unfair future" in cases where the support is unpaid or inadequate. *See* State of Illinois, 83rd Gen. Ass'y, House of Representatives, Transcription Debate (May 17, 1984) (statement of Rep. Vinson). While inevitably imperfect, the law governing child support awards reflects an effort to avoid punishing children for the choices made by their parents. *See, e.g.*, *Dep't of Pub. Aid ex rel. Nale v. Nale*, 690 N.E.2d 1052, 1057 (Ill. App. 1998)

(reversing downward adjustment of child support guidelines based upon mother's cohabitation, stating doing so "effectively punishes the children for living arrangements over which they have no control"). This general aspiration prevails in other states as well. *See* Kramer, 1 Leg. Rts. Child. Rev. 2D § 4:6 ("[M]ost courts, in theory, base [the child support] level upon the proposition that children should not suffer economically because of their parents' divorce."). The Trustee's position that child support ought to be available to the custodial parent's creditors to the extent it is not shown to be "reasonable and necessary" undermines the principles of state law designating and reserving child support as a child's right that should, to the extent possible, compensate the child for the disadvantage posed by his or her parents' unmarried status. It also undermines the principle that children should not be punished children for a parent's conduct.

Finally, both federal and state law reflect policies that privilege payment of child support above the claims of other creditors. In the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA"), Congress introduced the "means test," but that was not all it did. One group of consumer protections provides *increased* protection for payees of support obligations.[2] Sections 212 to 219 of BAPCPA expanded rights for beneficiaries of domestic support obligations. *See* Pub. L. 109-8, §§ 212-219, 119 Stat. 23 (2005). While such obligations have long been included in the category of priority claims, BAPCPA moved them from seventh to *first* in the hierarchy of unsecured priority claims. *See id.*, § 212(9) (codified at 11

[2] It bears emphasis that the "CP" in BAPCPA stands for "Consumer Protection."

U.S.C. § 507(a)(1)). BAPCPA also enlarged the exceptions to the automatic stay for creditors seeking to collect domestic support obligations. *See* Pub. L. 109-8, § 214, 119 Stat. 23 (codified at 11 U.S.C. § 362(b)(2)).[3]

The Trustee relies on *Ransom v. FIA Card Services, N.A.*, for the proposition that BAPCPA's sole purpose was to maximize payments to creditors. (Trustee Br. 13-14, *citing Ransom*, 562 U.S. 61 (2011).) This argument overemphasizes Congress's general goal of increasing payment available to creditors, ignoring Congress's solicitude for children in need of support also apparent in BAPCPA. Congress expressed its concern for such children by giving top priority to child support creditors and thwarting attempts by delinquent child support obligors to use bankruptcy to evade their support obligations. It would be anomalous, indeed, for Congress to act to protect children who are owed child support by categorically giving them the first place in line before all other creditors of the non-custodial parent, while at the same time making those payments potentially available to creditors of the child's custodial parent.

Congress's concern in protecting child support from the child's parents' creditors is mirrored by a similar concern of the Illinois General Assembly in enacting the child support guidelines. Under Illinois law, when determining an obligor's net income for purposes of determining child support, the obligor's debt

[3] Other provisions similarly demonstrate Congress's concern that child support remain available to those for whom it was intended. One change made failure to pay a domestic support obligation cause for dismissal or denial of a Chapter 13 discharge. *See* Pub. L. 109-8, §§ 213(7), (11), 119 Stat. 23 (codified at 11 U.S.C. §§ 1328(a), 1307(c)(11)).

payments are (with very limited exceptions[4]) not deducted. *See* 750 Ill. Comp. Stat. Ann. § 5/505(h). This reflects the priority placed on the support obligation over any owed to private creditors. The general policy reflected in lawmakers' refusal to deduct debt service from amounts presumed available to a non-custodial parent for payment of child support would be undermined if bankruptcy law allowed re-examination of the support award to determine if part of it should be available to creditors of the custodial parent. The Trustee nevertheless urges such a reading of § 1325(b)(2), and this Court should reject it.

II. The Economic Realities of Single-Parent Families Support the Lower Courts' Judgment Regarding Congress's Determination That Excluding Child Support Entirely From Disposable Income Did Not Pose a Significant Risk of Windfalls to Children or Unfairness to Creditors.

The Trustee's position that categorically excluding child support from disposable income results in "duplicate" counting of expenses, because some child-related expenses are permitted to be deducted as well, simply ignores economic realities of raising a child as a single parent. Section 1325 permits an above-median debtor like Ms. Brooks to deduct expenses from current monthly income according to a formula, commonly known as the "means test." *See* 11 U.S.C. § 1325(b)(3). Section 1325(b)(3) incorporates the Chapter 7 means test found in § 707(b)(2), and

[4] The only debt service that may be deducted in determining an obligor's net income for purposes of calculating his child support obligation include those debts necessary "for the production of income." 750 Ill. Comp. Stat. Ann. 5/505(h). Presumably, the General Assembly added this provision so as not to discourage the incurring of debt by, or extending of credit to, an obligor that would have the counter-productive effect of thwarting the obligor's ability to earn income.

refers to national and local standards issued by the Internal Revenue Service ("IRS"). *See* 11 U.S.C. § 707(b)(2). One part of the formula, the national standards, uses fixed allowances for categories of necessities based solely on household size. 11 U.S.C. § 707(b)(2)(A)(ii)(I); IRS, "Allowable Living Expense National Standards," www.irs.gov/pub/irs-utl/national_standards.pdf (last visited December 11, 2014). This standard includes the categories of "Food, Housekeeping supplies, Apparel & services, Personal care products & services, [and] Miscellaneous." *See id.* Another part of the formula, the local standards, uses fixed allowances based on a combination of household size and location. 11 U.S.C. § 707(b)(2)(A)(ii)(I); U.S. Dep't of Justice, Means Testing, www.justice.gov/ust/eo/bapcpa/meanstesting.htm (last visited December 11, 2014). There are local standards for two categories: housing and utilities, and transportation. *See id.* The disposable income calculation remains the same even if the debtor's actual expenses are higher or lower than the standards.

Many expenses that are considered to be reasonable and necessary by parents and state court judges fall outside the standardized deductions—the cost of school activities, music lessons and instruments, toys, summer camps, fees for sports teams and equipment, and tutoring being only a few examples. These costs are not represented in the deductions permitted, and categorically excluding child support therefore does not "duplicate" the exclusion of these expenses.[5] Further,

[5] The national standard does include a "miscellaneous" category, which is available for any household member, whether adult or child. The miscellaneous allowance for a household of three is $251. *See* www.irs.gov/pub/irs-utl/national_standards.pdf.

expenses for children may exceed standard allowances. Transportation expenses, for example, may be higher where a child needs or wants to visit the noncustodial parent or other family members, or as a result of participation in academic, sports or musical competitions. The allowance for education expenses to attend a public or private elementary school is limited to $156.25 per month per child. 11 U.S.C. § 707(b)(2)(A)(ii)(IV). Many schools charge more than that.

Generally, the United States Department of Agriculture ("USDA") estimates that it costs $35,485 annually for a single parent to raise two children, aged two and five—nearly $3000 monthly. *See* USDA, Cost of Raising a Child Calculator, http://www.cnpp.usda.gov/tools/CRC_Calculator/default.aspx (last visited December 11, 2014). Ms. Brooks receives child support in the amount of $400 monthly, which would cover only a small fraction of the total costs she incurs to raise her children.

Modest awards of child support that, at best, barely meet children's needs are prevalent. It is well-recognized that children of single parents suffer economic disadvantage compared to their counterparts in "intact" families, only partially alleviated by payment of support. *See* Marian F. Dobbs, *Child Support*, Determining Child & Spousal Support, § 4:13 (2014) ("Inadequate child support awards leave children vulnerable to emotional stress even when the noncustodial parent complies fully with the child support order."). In fact, child support has long been recognized as generally inadequate. *See Kramer*, 1 Leg. Rts. Child. Rev. 2D § 4:6 (noting "criticism abounds that general support levels are grossly inadequate" and that "[s]tudies have indicated that support awards are insufficient to pay for even half

the costs of child rearing"); *see also* Elaine Sorensen & Chava Zibman, Urban Institute, Child Support Offers Some Protection Against Poverty (2000), http://www.urban.org/publications/309440.html (last visited December 11, 2014).

While federal law mandating the promulgation of child support guidelines has had some positive impact, bringing awards closer to levels required to meet expenses, "[i]n application, child support guidelines in most states have not increased the size of child support awards as much as expected and so have not contributed as much as hoped to the reduction of poverty among children." Leslie Joan Harris, *The ALI Child Support Principles: Incremental Changes to Improve the Lot of Children and Residential Parents*, 8 Duke J. Gender L. & Pol'y 245, 247 (2001) (citation omitted). "[T]he resources available for child-rearing remain seriously deficient." Jessica Pearson, *et al.*, *Legislating Adequacy: The Impact of Child Support Guidelines*, 23 Law & Soc'y Rev. 569, 583 (1989).

While Ms. Brooks earns income over the median, the Trustee's position applies to both above- and below-median income debtors. The Trustee's position would make child support payments available to creditors even in the case of low-income families. The bankruptcy court correctly held that the statute's plain terms categorically excluding child support must prevail over the Trustee's concerns about the possibility that some debtors might "live a better lifestyle in chapter 13 than creditors might prefer," noting that Congress probably considered this a "lesser evil" than "depriving dependent children of the benefit of funds intended solely for their care." *In re Brooks*, 498 B.R. at 863. For all of the reasons set forth above, the actual

unlikelihood that children of single parents may receive child support in amounts that exceed their reasonable needs lends considerable support to this inference.

III. The Plain Language of § 1325(b)(2), Interpreted According to the Well-Established "Rule of the Last Antecedent," Requires That Child Support Payments Be Excluded Entirely From The Calculation Of Disposable Income.

Section 1325(b)(2) excludes from income "child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child." 11 U.S.C. § 1325. The bankruptcy court and district court each correctly held that the phrase "to the extent reasonably necessary to be expended for such child" does not require the court to engage in an independent analysis of whether the child support is reasonably necessary—in part, because the court ordering such support has necessarily done so. *In re Brooks*, 498 B.R. at 862-63, *citing* 750 ILCS 5/505(a). This reasoning soundly disposes of the Trustee's argument that the statute requires an independent determination that child support is "reasonably necessary to be expended." Moreover, the statute plainly requires no such determination for a different reason, as well: that the phrase "made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child" does not even modify "child support payments." Well-established rules of grammar dictate that the entire phrase *only* modifies "disability payments made for a dependent child." *See* 11 U.S.C. § 1325. The statute thus excludes child support *categorically*, without qualification. For this reason, the Trustee's arguments that

the child support exclusion is "subject to a standard of reasonable necessity" and was not intended to be "fully excluded" must be rejected outright.

Under the well-established "rule of the last antecedent," a limiting or qualifying phrase at the end of a statutory list only modifies the last item on the list. *See Barnhart v. Thomas*, 540 U.S. 20, 26 (2003). In *Barnhart*, the Supreme Court explained that the grammatical rule requires that "a limiting clause or phrase . . . be read as modifying only the noun or phrase that it immediately follows." *Id.*, *citing* 2A N. Singer, Sutherland on Statutory Construction § 47.33, p. 369 (6th rev. ed. 2000) ("Referential and qualifying words and phrases, where no contrary intention appears, refer solely to the last antecedent."). The phrase "made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child" constitutes such a limiting or qualifying phrase placed at the end of the list of three exclusions: "child support payments, foster care payments, or disability payments for a dependent child." 11 U.S.C. § 1325. Under the rule, therefore, the language, "for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child" would *only* apply to the last item on the list: disability payments. Thus, without reaching a "reasonably necessary" qualification, child support payments and foster care payments would be categorically excluded from disposable income for purposes of subsection 1325(b)(2). The "rule of the last antecedent" has been recognized in the bankruptcy context as a "default rule of interpretation." *In re Sanders*, 551 F.3d 397, 399-400 (6th Cir. 2008) ("[W]e start

with a point of grammar—that '[w]hen a word such as a pronoun points back to an antecedent or some other referent, the true reference should generally be the closest appropriate word,'" *quoting* Bryan A. Garner, *Garner's Modern American Usage* 523-24 (2003) (additional citations omitted)).

The "last antecedent" rule is not absolute, and can "be overcome by other indicia of meaning." *Barnhart*, 540 U.S. at 26. However, § 1325(b)(2) contains no such other indicia of meaning. For example, placement of a comma between the last item on the list and the modifying phrase can overcome the rule, so that the modifying phrase applies to all the items on the list. *See, e.g.*, *Am. Int'l Grp., Inc. v. Bank of Am. Corp.*, 712 F.3d 775, 781-82 (2d Cir. 2013) (""One of the methods by which a writer indicates whether a modifier that follows a list of nouns or phrases is intended to modify the entire list, or only the immediate antecedent, is by punctuation—specifically by whether the list is separated from the subsequent modifier by a comma."); *Sobranes Recovery Pool I, LLC v. Todd & Hughes Const. Corp.*, 509 F.3d 216, 223 (5th Cir. 2007). Section 1325(b)(2) lacks a comma after either "disability payments" or "for a dependent child." The absence of a comma signals no intention to apply the modification to the entire list; instead, the phrase modifies just the last item.

The last antecedent rule has also given way where the last item of a list is intended as a "catchall," preceded by the word "other," which can indicate that the immediately following modifying language is meant to apply to all items on the list. *See, e.g., Paroline v. United States*, 134 S. Ct. 1710, 1721 (2014) (where final item in

a list of types of losses for which crime victim could obtain restitution was "any *other* losses suffered by victim as a proximate result of the offense," this phrasing revealed an intent that every item in the list also be a "proximate result of the offense" (emphasis added)). Unlike in *Paroline*, there is no such catchall language in § 1325(b)(2) that would reveal an intention contrary to the last antecedent rule.

Other aspects of the plain language in the statute provide additional support to reading the modifying phrase to apply only to the last item, "disability payments." First, the phrase "for a dependent child" immediately following "disability payments" must only refer to "disability payments." It would be redundant for the statute to refer to "child support . . . for a dependent child." No person could receive child support for a non-dependent, non-child. Conversely, it would be odd and arbitrary for Congress to limit "foster care payments" to those made for a dependent child and exclude foster care payments made on behalf of dependent adults.[6]

Second, the phrase "for such child," the final modifying phrase of the parenthetical, could only refer to "disability payments made for a dependent child" and not to "foster care payments," or "child support." "'[W]hen "such" precedes a noun it is assumed to refer to a particular *antecedent noun and any dependent adjective or adjectival clauses modifying that noun*, but not to any other part of the

[6] *See* U.S. Department of Health and Human Services, http://aspe.hhs.gov/daltcp/reports/fosteres.htm#chapIII (*see* Tables 11, 14) (providing information on adult foster care programs in the United States) (last visited December 11, 2014).

preceding clause or sentence.'" *In re Auto. Refinishing Paint Antitrust Litig.*, 358 F.3d 288, 295 (3d Cir. 2004) (emphasis added), *quoting Gen. Elec. Co. v. Bucyrus-Erie Co.*, 550 F. Supp. 1037, 1042 (S.D.N.Y. 1982) ("[t]he word 'such' means 'the aforementioned'"). Given the meaning of "such," the phrase "such child" must refer to an antecedent *noun* that is the same child. In the phrase "child support payments," "child" is an *adjective*, not a noun, so "such child" cannot refer to the "child" in "child support payments." More obviously, "such" in "such child" cannot refer to "foster care payments," which does not even refer to a "child."

Finally, it simply makes sense that Congress intended to apply the limiting phrase only to "disability payments for a dependent child." Unlike child support and foster care payments, whose amounts are set according to the recipient's needs, disability payments can be tied to a parent's lost income without regard to the needs of the dependent child. It is thus possible that unlike with child support and foster care payments, disability payments might exceed what is reasonable and necessary for the child.

In short, the statute's plain language, read sensibly and grammatically, dictates that child support be excluded categorically and without limitation from disposable income.

CONCLUSION

For all the above reasons, the Amici pray that this Court affirm the decision of the bankruptcy court and the district court in this case.

Respectfully submitted,

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RULE 32(A)(7) CERTIFICATION

This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 4732 words, excluding the parts of the brief exempted by Federal Rule of Appellate Procedure 32(A)(7)(B)(iii).

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PROOF OF SERVICE

I hereby certify that on December 11, 2014, I electronically filed the foregoing with the Clerk of the Court for the U.S Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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