No. _____

In the
Supreme Court of the United States

ADAM M. GOODMAN, CHAPTER 13 TRUSTEE,

Petitioner,

v.

DANIEL RICHARD DOLL,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Standing trustees ensure the impartial, efficient administration of cases arising under Chapter 13 of the Bankruptcy Code. Such administration includes reviewing debtors' proposed debt-repayment plans and advising courts on whether to confirm (approve) these plans. Standing trustees perform this quasi-judicial work (and more) in hundreds of Chapter 13 cases at a time. Doing this work requires trustees to maintain a staff and incur hundreds of thousands of dollars in yearly administrative expenses.

The Bankruptcy Code funds these costs through a debtor-paid user fee. Before and after confirmation of their plans, Chapter 13 debtors must make regular monthly payments under their plans to the trustee for eventual disbursal by the trustee to the debtor's creditors. 11 U.S.C. §1326(a)(1)(A). The Code dictates that standing trustees "shall collect" a percentage-based user fee "from all payments" that the trustee "receive[s] . . . under plans." 28 U.S.C. §586(e)(2). If "a plan is not confirmed," trustees "shall return" to the debtor any payments "not previously paid" and "not yet due and owing to creditors" minus unpaid administrative claims. 11 U.S.C. §1326(a)(2).

The question presented is:

Whether the Bankruptcy Code directs standing trustees to collect a user fee from debtors in every Chapter 13 case the trustee administers, including cases in which a debtor's plan is not confirmed.

PARTIES TO THE PROCEEDING

All the parties to this proceeding are identified in this petition's case caption.

DIRECTLY RELATED PROCEEDINGS

- ***In re: Daniel Richard Doll***—U.S. Bankruptcy Court for the District of Colorado; Docket No. 17-20831-MER; Final Order Authorizing Chapter 13 Trustee to Retain Debtor's §586(e)(2) Percentage User Fee Entered Feb. 19, 2021 (Dkt. 185).

- ***Doll v. Goodman***—U.S. District Court for the District of Colorado; Docket No. 1:21-cv-00731-RBJ; Final Decision on Debtor's Appeal (Holding in Debtor's Favor) Entered Dec. 6, 2021 (Dkt. 26); Judgment Entered Dec. 6, 2021 (Dkt. 27).

- ***Goodman v. Doll***—U.S. Court of Appeals for the Tenth Circuit; Docket No. 22-1004; Final Opinion & Judgment Entered Jan. 18, 2023; Final Order Denying Rehearing Entered Apr. 27, 2023.

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Adam M. Goodman respectfully petitions for a writ of certiorari to review the judgment of the U.S. Court of Appeals for Tenth Circuit in this case.

OPINION & ORDERS BELOW

The Tenth Circuit's January 18, 2023 opinion is published at 57 F.4th 1129 and reproduced at 1a-33a. The Tenth Circuit's April 27, 2023 denial of en banc rehearing is reproduced at 65a-66a.

The district court's December 6, 2021 final decision (unpublished) is reproduced at 34a-40a.

The bankruptcy court's February 19, 2021 final order (unpublished) is reproduced at 41a-64a.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. §1254(1) based on: (1) the Tenth Circuit's January 18, 2023 final judgment (1a-33a); and (2) the Tenth Circuit's April 27, 2023 order denying Goodman's timely en banc rehearing petition (65a-66a).

On July 15, 2023, Justice Gorsuch extended the time to file a certiorari petition to and including August 25, 2023 (No. 23A45). On August 15, 2023, Justice Gorsuch granted a further filing extension to and including September 4, 2023—a federal holiday (Labor Day), extending Petitioner's time to file to September 5, 2023 (No. 23A45). S. Ct. R. 30.1.

STATUTORY PROVISIONS INVOLVED

The relevant portions of the Bankruptcy Code are reproduced in this petition's appendix. 67a-80a (reproducing 28 U.S.C. §586 & 11 U.S.C. §1326).

STATEMENT

Federal courts are intractably divided on when standing trustees may collect the user fees that allow these officials to administer over 500,000 cases every year under Chapter 13 of the Bankruptcy Code. Chapter 13 allows debtors with regular income to discharge their debts upon "successful completion of a payment plan approved by the bankruptcy court." *Marrama v. Citizens Bank*, 549 U.S. 365, 367 (2007). Standing trustees handle practically all problems in Chapter 13 cases, including advising the bankruptcy court on whether a plan merits confirmation.

The Tenth Circuit here—in conflict with various bankruptcy courts and district courts—holds that trustees may not collect the fees that subsidize their offices unless a debtor achieves plan confirmation. But plain statutory text directs trustees to collect fees in *all* cases, regardless of plan confirmation. This reality aligns with due process and other norms that require trustees to be disinterested officials. The Tenth Circuit's decision upsets this legislative plan to the detriment of trustees, debtors, creditors, and bankruptcy courts alike. For all these reasons (and more), the Court should grant review here.

A. Background

1. The Constitution empowers Congress to pass "uniform Laws on the subject of Bankruptcies." U.S. CONST. art. I, §8. Under this authority, Congress has established a bankruptcy system comprising of a bankruptcy court in each of the nation's 94 federal judicial districts. *See* 28 U.S.C. §151. In 2022, these courts saw the filing of 383,810 new cases and were responsible for over 677,000 pending cases.[1]

Bankruptcy cases feature several key players.[2] **Debtors** seek "relief from financial obligations" that "the debtor cannot satisfy."[3] **Creditors** strive "to promptly and efficiently collect as much of the money they are owed by the debtor."[4] **Bankruptcy judges** rule on bankruptcy filings and resolve "certain types of disputes."[5] *See Stern v. Marshall*, 564 U.S. 462 (2011). Finally, **trustees** handle the "administrative tasks" that accompany bankruptcy cases—tasks that are often integral to the judicial process.[6] *Siegel v. Fitzgerald*, 142 S. Ct. 1770, 1775-76 (2022).

Among these players, bankruptcy cases usually start with the debtor's voluntary filing of a **petition** with the bankruptcy court. *See* 11 U.S.C. §301. This

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1 ADMIN. OFFICE OF U.S. COURTS, *U.S. Bankruptcy Courts—Judicial Business* (2022), https://tinyurl.com/3a4vjv2d.

2 CONG. RESEARCH SERV. (CRS), BANKRUPTCY BASICS: A PRIMER 4–6 (2022), https://tinyurl.com/38ypjj5m.

3 *Id.* at 4.

4 *Id.*

5 *Id.*

6 *Id.* at 5–6.

filing then "creates a **bankruptcy estate**" that, with certain exceptions, consists of "the debtor's property as of the commencement of the case."[7] "The assets in the bankruptcy estate are generally used to satisfy claims of creditors and costs of the proceedings."[8] By law, the trustee is the "representative of the estate" — a "fiduciary" responsible for sound management of the estate's assets who "has capacity to sue" on the estate's behalf. 11 U.S.C. §323; *In re Barkany*, 542 B.R. 699, 711-12 (Bankr. E.D.N.Y 2015).

Different kinds of bankruptcy cases spring from these basics.[9] In **Chapter 7** cases, individuals and businesses liquidate their assets to repay their creditors.[10] *See* 11 U.S.C. ch. 7. In **Chapter 11** cases, businesses reorganize their "debt structure" to stay in operation.[11] *See id.* ch. 11. In **Chapter 13** cases—also known as consumer cases or wage-earner cases — individuals devote part of their regular income to repaying some of their debts over a three-to-five year period.[12] *See id.* ch. 13. In **Chapter 12** cases, family farmers and family fisherman reorganize and repay their debts using their regular income in a manner similar to a Chapter 13 case.[13] *See id.* ch. 12.

2. The main object of the nation's bankruptcy system "is to grant a 'fresh start' to the 'honest but unfortunate debtor.'" *Marrama*, 549 U.S. at 367. But

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7 CRS, *supra* note 2, at 7 (bold added) (cleaned up).
8 *Id.* (cleaned up).
9 *Id.* at Summary.
10 *See id.* at 11.
11 *Id.* at 14.
12 *See id.* at 22.
13 *See id.* at 26.

the system does not enact "the unadulterated pursuit of the debtor's interest." *Bartenwerfer v. Buckley*, 143 S. Ct. 665, 675 (2023). The system rather "balances multiple, often competing interests." *Id.* For example, the system seeks to protect creditors by limiting the various kinds of debts that a debtor may overcome in bankruptcy (e.g., student loans). *See* 11 U.S.C. §523. The system also generally seeks the prompt, effective "administration and settlement" of a debtor's estate. *Katchen v. Landy*, 382 U.S. 323, 328 (1966).

3. At the center of these competing interests stands the trustee. The trustee's traditional role has been "collecting, liquidating, and distributing the debtor's property to creditors."[14] With the advent of new forms of bankruptcy not based on liquidation of a debtor's assets—for example, Chapter 11 cases involving the reorganization of corporate debts—the trustee's role has greatly evolved over time.[15]

Some trustee duties, however, never change. Trustees must "be disinterested." *In re Quick*, 43 F. Supp. 489, 490 (E.D. Ill. 1942). "[S]election of a proper man as trustee cannot be overemphasized for in him all administrative power of the court is centered." *Id.* Trustees "should have no affiliation" with debtors, especially since trustees have a duty to take legal action against debtors when needed to protect the estate. *Id.* Creditors in turn are "entitled to have their interests in the hands" of a trustee "whose impartiality is beyond question." *Id.*

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[14] Charles J. Tabb, *History of the Bankruptcy Laws in the United States*, 3 AM. BANKR. INST. L. REV. 5, 8 (1995).

[15] *See, e.g.*, Gregory Tselikis, *Chapter XIII Trustee: "Trustee" or Disbursing Agent*, 21 ME. L. REV. 53, 56–57 (1969).

The Court has strictly enforced these tenets, holding that trustees must forbear "all opportunities" that "might bring" the trustee's "disinterestedness" into question. *Mosser v. Darrow*, 341 U.S. 267, 271 (1951). The Court has further declared that trustees should be "denied compensation" entirely upon proof that a given trustee's administration is "subject to conflicting interests." *Woods v. City Nat'l Bank & Tr. Co.*, 312 U.S. 262, 268 (1941). This rule applies even if no "fraud or unfairness" stemmed from the conflict in question. *Id.* Congress took these rules to heart in devising and adopting the present system of laws that govern the nation's bankruptcy system—laws meant to repair a growing loss of public confidence in the impartiality and integrity of trustees.

4. In 1978, Congress enacted the Bankruptcy Reform Act, now generally known as the Bankruptcy Code. *See* Pub. L. No. 95-598, 92 Stat. 2549 (Nov. 6, 1978). Situated under Title 11 of the U.S. Code (but also revising other titles), the Bankruptcy Code was "a comprehensive overhaul and modernization of the bankruptcy system." *In re Vickers*, 116 B.R. 149, 152 (Bankr. W.D. Mo. 1990); *see also N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 52-53 (1982). Part of this comprehensive overhaul was the United States Trustee Program—an experiment that Congress decided to debut within 18 federal judicial districts. *See Siegel* 142 S. Ct. at 1776.

The Trustee Program's objective was to restore "public confidence in the bankruptcy system" against widespread concern that trustees were failing to be "impartial administrators." *In re Plaza de Diego Shopping Ctr.*, 911 F.2d 820, 829-30 n.16 (1st Cir.

1990). Under the preexisting bankruptcy system, the nation's bankruptcy judges appointed the trustee in each bankruptcy case. *See id.* This arrangement gave trustees a strong financial interest to avoid taking positions contrary to the judges who appointed them, lest a trustee antagonize his *de facto* employer and lose out on future trustee appointments. *Id.*

The Trustee Program addressed this problem by making the Department of Justice responsible for the appointment of trustees. 92 Stat. 2662 (codified at 28 U.S.C. §§581 *et seq.*). The Program authorized the Attorney General (AG) to appoint U.S. Trustees to oversee bankruptcy cases in the pilot districts. *Id.* at 2662-63. Each U.S. Trustee then had to "establish, maintain, and supervise a panel of private trustees" to serve in Chapter 7 (asset liquidation) cases. *See id.* at 2663 (codified at 28 U.S.C. §586(a)(1)).

The Trustee Program additionally enabled U.S. Trustees to "appoint one or more individuals to serve as standing trustee" for Chapter 13 (wage earner) cases. *See id.* at 2663 (codified at 28 U.S.C. §586(b)). Standing trustees are thus "private individual[s] appointed by the Executive . . . to perform a public office under the Bankruptcy Code." *In re Brookover*, 352 F.3d 1083, 1088-89 (6th Cir. 2003); *see also Bell v. Thornburg*, 743 F.3d 84, 89 (5th Cir. 2014).

Besides ending court appointment of trustees, the Bankruptcy Reform Act implemented a host of provisions to bolster trustee independence and root out conflicts. The Act established that the trustee in a case is a "representative of the estate"—i.e., a fiduciary role. 92 Stat. 2562 (codified at 11 U.S.C.

§323(a)). The Act defined "disinterested person" in strict terms that included "not hav[ing] an interest materially adverse to the interest of the estate" by reason of "any interest" in "the debtor." 92 Stat. 2551 (codified at 11 U.S.C. §101(13)(E); later codified at *id.* §101(14)). Finally, the Act permitted trustees to hire only disinterested assistants or risk a total loss of compensation and reimbursement. 92 Stat. 2562-64 (codified at 11 U.S.C. §§326(d), 327(a), 328(c)).

The Bankruptcy Reform Act finally secured the impartial financing of the trustees employed by the Act. The Act directed the AG to "fix" annual salaries for the U.S. Trustees and pay the Trustees' necessary office expenses. 92 Stat. 2664 (codified at 28 U.S.C. §§587, 588). For trustees in Chapter 7 cases, the Act enabled bankruptcy courts to award (out of the debtor's estate) "reasonable compensation for actual, necessary" Chapter 7 trustee "services rendered" and "reimbursement for actual, necessary expenses." *Id.* at 2564 (codified at 11 U.S.C. §330(a)). The Act also guaranteed that in every Chapter 7 case, the trustee would get $20 (now $45) of the debtor's Chapter 7 filing fee. *Id.* (codified at 11 U.S.C. §330(b)).

For standing trustees in Chapter 13 cases, the Bankruptcy Reform Act enacted a user-fee system. *See In re Turner,* 168 B.R. 882, 887-88 (Bankr. W.D. Tex. 1994). The Act required the AG to "fix": (1) a "maximum annual compensation" for each standing trustee; and (2) "a percentage fee, not to exceed ten percent," based on the trustee's "maximum annual compensation" and the trustee's "actual, necessary expenses." 92 Stat. 2664 (codified at 28 U.S.C. §586(e)(1)). The Act next required standing trustees to

"collect such percentage fee from all payments under plans in the cases" managed by the trustee. *Id.* (codified at 28 U.S.C. §586(e)(2)). The Act finally required standing trustees to pay to the U.S. Trustee (for deposit into the Treasury) any percentage fees collected in excess of either the trustee's expenses or the Act's limits on the trustee's compensation. *See id.* (codified at 28 U.S.C. §586(e)(2)(A), (e)(2)(B)).

The Bankruptcy Reform Act thus created an "integrated administrative process" for compensating and reimbursing standing trustees—one not open to "piecemeal judicial alteration." *In re Savage*, 67 B.R. 700, 707 (D.R.I. 1986). This process guaranteed the financial independence of trustees from the Chapter 13 cases they administered by "spread[ing] the costs of trusteeship pro rata over *all* Chapter 13 debtors within the court's jurisdiction." *Id.* (emphasis-in-original). Standing trustees could now handle all Chapter 13 cases with equal professionalism. *Id.* at 706. And this was only the start of the Bankruptcy Reform Act's reforms to improve wage-earner cases and the trustee's indispensable role in them.

5. Before the Bankruptcy Reform Act of 1978, wage-earner cases "required substantial legislative attention." *In re Maddox*, 15 F.3d 1347, 1354 (5th Cir. 1994). The forerunner of Chapter 13—Chapter XIII, enacted in 1938—had "failed to keep pace with the exponential growth in consumer credit." *Id.; see* 52 Stat. 930 (1938). Among the defects in Chapter XIII that Congress sought to overcome through the Bankruptcy Reform Act was the trustee's "uncertain role." *Maddox*, 15 F.3d at 1354; *see* S. REP. NO. 95-989 at 139, 95th Cong. (2d Sess.) (1978).

To understand the problem here that Congress aimed to fix, an overview of Chapter 13 is necessary. In a Chapter 13 case, debtors with regular income "propose a plan to use future income" to partially repay their debts over the next 3 to 5 years. *Bullard v. Blue Hills Bank*, 575 U.S. 496, 498 (2015). The plan itself consists of the debtor making "monthly payments to a trustee from their future income," which the trustee then distributes to pay creditors' claims in part or full. *In re Escarcega*, 573 B.R. 219, (B.A.P. 9th Cir. 2017); *see* 11 U.S.C. §1326(a)(1)(A). If the bankruptcy court "confirms the plan and the debtor successfully carries it out," then the debtor "receives a discharge of his debts" in accordance with the plan's terms. *Bullard*, 575 U.S. at 498.

Simply put, in Chapter 13 cases, the plan is the thing. The Bankruptcy Code lists provisions that every Chapter 13 plan must contain. *See* 11 U.S.C. §1322(a). The Code forbids the inclusion any plan provision that is inconsistent with the Code. *See id.* §1322(b)(11). Plan confirmation subsequently "fixes a matrix of interdependent rights" that are difficult to alter without a domino-chain of problems. *Hope v. Acorn Fin., Inc.,* 731 F.3d 1189, 1195 (11th Cir. 2013). Confirmed-but-erroneous plans thus "remain[] enforceable" so long as affected parties had "notice of the error and failed to object." *United Student Aid Funds v. Espinosa*, 559 U.S. 260, 275 (2010).

Against this backdrop, in 1978, Congress sought to clarify the trustee's role in a wage-earner case. Courts appointed trustees in Chapter XIII cases *after* plan confirmation "to receive and distribute, subject to the control of the court, all moneys to be paid under

the plan."[16] *See Perry v. Commerce Loan Co.*, 383 U.S. 392, 398 (1966). This reality led certain bankruptcy authorities to conclude that trustees in wage-earner cases were nothing more than mere disbursing agents, "receiv[ing] and distribut[ing] all moneys to be paid under the [debtor's] plan."[17]

Chapter XIII trustees vigorously contested this notion. As one trustee explained, "[a] trustee under a Chapter XIII proceeding is a combination receiver for the protection of creditors, a financial guardian for the debtor, a legal aid counsellor to all parties, a collection agent, an accountant, and his [or her] own lawyer."[18] The same person also noted the trustee's duty "to assist the court": "[t]he trustee must protect the debtor and creditors from abuses . . . . The trustee must assist the court in keeping the debtor on the ball with his proposed payments."[19]

Congress settled this debate by establishing "a broad role for trustees under Chapter 13." *Maddox*, 15 F.3d at 1355 & n.47. "Experience" had shown Congress that "the more efficient and effective wage earner programs have been conducted by . . . trustees who exercise a broad range of responsibilities in both the design and [the] effectuation of debtor plans." *Id.* (quoting S. REP. NO. 95-989 at 139).

So, under the Bankruptcy Reform Act, Congress required trustees in Chapter 13 cases to "advise, other

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16 Tselikis, *supra* note 15, at 56.

17 *Id.*

18 Claude Rice, *The Trustee Under Chapter XIII*, 30 J. OF NAT'L ASS'N OF REFEREES IN BANKR. 102, 103 (1956).

19 *Id.*

than on legal matters, and assist the debtor in performance under the plan." 92 Stat. 2646 (codified at 11 U.S.C. §1302(b)(4)). Congress also reinforced the trustee's close relationship with the court in this context, requiring trustees to "appear and be heard at any hearing that concerns . . . confirmation of a plan; or modification of the plan after confirmation." *Id.* (codified at 11 U.S.C. §1302(b)(2)). Through these provisions (and more), Congress made it "clear" that "the chapter 13 trustee is no mere disbursing agent." *Maddox*, 15 F.3d at 1355 & n.52 (quoting S. REP. NO. 95-989); *see also In re Gorski*, 766 F.2d 723, 726 n.3 (2d Cir. 1985) (seconding this observation).

6. In 1984, Congress enacted the Bankruptcy Amendments and Federal Judgeship Act. *See* Pub. L. No. 98-353, 98 Stat. 333 (July 10, 1984). The 1984 Act made two key changes in Chapter 13 cases. The Bankruptcy Reform Act generally left debtors free to start making plan payments to the trustee after plan confirmation. 92 Stat. 2650 (codified at 11 U.S.C. §1326). The 1984 Act imposed a new rule compelling payments to the trustee *before* plan confirmation: "[u]nless the court orders otherwise, the debtor shall commence making the payments proposed by a plan within 30 days after the plan is filed." 98 Stat. 357 at §318 (codified at 11 U.S.C. §1326(a)(1)).

The 1984 Act next required the trustee to retain these pre-confirmation payments "until confirmation or denial of confirmation of a plan." 98 Stat. 357 at §318 (codified at 11 U.S.C. §1326(a)(2)). Upon plan confirmation, the trustee was to "distribute any such payment in accordance with the plan." *Id.* And if a plan was "not confirmed," the trustee was to "return

any such payments to the debtor, after deducting any unpaid claim allowed under section 503(b)" (i.e., certain administrative claims). *Id.* The Act did not speak to—or direct any refund of—the percentage fee that the Bankruptcy Reform Act required the trustee to take "from all payments under plans in the cases" administered by the trustee. 92 Stat. 2664.

7. In 1986, Congress enacted the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act. *See* Pub. L. No. 99-554, 100 Stat. 3088 (Oct. 27, 1986). The 1986 Act "sought to make the pilot Trustee Program permanent," expanding the program "to all federal judicial districts except for . . . six judicial districts in North Carolina and Alabama." *Siegel*, 142 S. Ct. at 1776. To fund the Program on a permanent basis, the Act established the United States Trustee System Fund (UST Fund) to pay the salaries and operational expenses of U.S. Trustees. *See* 100 Stat. 3094 (codified at 28 U.S.C. §589a). The Act required any excess trustee-collected percentage fees be paid into the UST Fund. *See* 100 Stat. 3093 (codified at 28 U.S.C. §586(e)(2))

The 1986 Act established that standing trustees appointed by the U.S. Trustee were the presumptive administrator of any given Chapter 13 case. *Id.* at 3103 (codified at 11 U.S.C. §1302(a)). But the U.S. Trustee was free to depart from this default rule and "appoint" either themselves or "one disinterested person to serve as trustee." *Id.* The Act paid for these latter trustees' time in a disinterested manner. The Act enabled bankruptcy courts to "allow reasonable compensation" for "the trustee's services, payable after the trustee renders such services, not to exceed

five percent upon all payments under the plan." *Id.* at 3098-99 (codified at 11 U.S.C. §326(b)).

The 1986 Act made two significant changes to the compensation and reimbursement of standing trustees in Chapter 13 cases. Respecting the user-fee system codified by the Bankruptcy Reform Act under 28 U.S.C. §586(e), the 1986 Act affirmed that §586(e) "governed" the "[a]ppointment and compensation of a standing trustee," eliminating all judicial control over the trustee's fee. H.R. Rep. No. 99-764, at 29, 99th Cong. (1986), *reprinted in* 1986 U.S.C.C.A.N. 5227, 5247. The 1986 Act codified this point under 11 U.S.C. §1326(b), establishing that "[b]efore or at the time of each payment to creditors under the plan, there shall be paid . . . the percentage fee fixed . . . under section 586(e)(1)(B)." 100 Stat. 3103.

The second change was to §586(e)'s fee-collection mandate. The Bankruptcy Reform Act's original wording of the mandate directed Chapter 13 trustees to collect user fees from "all payments under plans." 92 Stat. 2664. A series of legal disputes emerged over whether "all payments" included payments made by a debtor directly to creditors, bypassing the trustee. *In re Wagner*, 36 F.3d 723, 727-28 (8th Cir. 1994). The 1986 Act amended §586(e) to mandate trustee collection of fees from "all payments **received by such individual** under plans." 100 Stat. 3092-93. These four new words clarified that trustee collection of fees turned on the amounts that the debtor was paying into the trustee—not on whatever the debtor (or the trustee) was paying out to creditors.

The 1986 Act reaffirmed the Bankruptcy Reform Act's commitment to protecting trustee impartiality. The Bankruptcy Reform Act permitted bankruptcy courts to "remove a trustee" for "cause." 92 Stat. 2562 (codified at 11 U.S.C. §324). "Causes for removal include . . . the trustee is not disinterested." *In re Morgan*, 375 B.R. 838, 848 (B.A.P. 8th Cir. 2007). In making permanent the U.S. Trustee Program, the 1986 Act revisited the question of trustee removal. Congress reaffirmed the power of courts to "remove a trustee" for "cause," exempting only the U.S. Trustee from this rule. 100 Stat. 3098 (amending 11 U.S.C. §324). Congress also took this power one step further under the 1986 Act, dictating that "[w]henever the court removes a trustee or examiner . . . such trustee . . . shall thereby be removed in all other cases under this title in which such trustee or examiner is then serving unless the court orders otherwise." *Id.*

Finally, the 1986 Act inaugurated a new form of bankruptcy to help family farms: Chapter 12. *See* 100 Stat. 3105 at §255. In many notable ways, Congress built Chapter 12 like Chapter 13—e.g., setting up a comparable standing-trustee system. But there were also key differences. Under the 1984 Act, Congress required Chapter 13 debtors to start making plan payments to the trustee "within 30 days after the plan is filed." 98 Stat. 357 at §318. Congress required trustees to monitor debtor compliance with this rule and made debtor non-compliance a ground for case dismissal. *See* 98 Stat. 356 at §§314 & 315 (amending 11 U.S.C. §§1302(b), 1307(c)).

Congress did not require Chapter 12 debtors to make pre-confirmation plan payments like Chapter

13 debtors. The 1986 Act instead simply provided that "[p]ayments and funds received by the trustee shall be retained by the trustee until confirmation or denial of confirmation." 100 Stat. 3111 (codified at 11 U.S.C. §1226(a)(1)). The Act also allowed Chapter 12 debtors to delay filing a plan for up to 90 days. *See id.* at 3109 (codified at 11 U.S.C. §1221). And the Act carried a sunset provision, ending Chapter 12 "on October 1, 1993."[20] *Id.* at 3124 (§302(f)). With all of these factors in play, the Act provided that if a plan was "not confirmed," the standing trustee was to "return" the debtor's payments "after deducting . . . the percentage fee fixed for [the] standing trustee." *Id.* at 3111 (codified at 11 U.S.C. §1226(a)(2)).

8. In 2005, Congress enacted the Bankruptcy Abuse Prevention & Consumer Protection Act (or BAPCPA), Pub. L. No. 109-8, 119 Stat. 23 (Apr. 20, 2005). Congress wrote BAPCPA "to correct perceived abuses of the bankruptcy system." *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 231-232 (2010). BAPCPA amended large portions of the Bankruptcy Code in order "to improve bankruptcy law and practice by restoring personal responsibility and integrity in the bankruptcy system." H.R. REP. NO. 109-31, pt. 1 at 2, 109th Cong. (2005).

One of BAPCPA's key reforms was a heightened emphasis on adequate protection payments for the benefit of creditors. *See* 119 Stat. 83 (amending 11 U.S.C. §1326). Typically, adequate protection means

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[20] In 2005, Congress made Chapter 12 a permanent part of the Bankruptcy Code after a series of provisional reenactments upon the expiration of the October 1993 deadline. *See* Pub. L. No. 109-8, §1001, 119 Stat. 23, 185–86 (Apr. 20, 2005).

that a debtor is "required to make pre-confirmation payments to the trustee" to "protect" creditors from "depreciation" while plan confirmation is pending. *In re Moses*, 293 B.R. 711, 715 (Bankr. E.D. Mich. 2003). The Bankruptcy Code generally allows for adequate protection by "requiring the trustee to make a cash payment or periodic cash payments" to a creditor insofar as a debtor's "use, sale, or lease" of property (e.g., a car) from a creditor "results in a decrease" of the creditor's financial interest in the property. 11 U.S.C. §361(1); *see, e.g.*, *In re Paschal*, 619 B.R. 278 (M.D. Ga. 2020) (adequate protection for car).

BAPCPA added new adequate-protection rules to Chapter 13's provisions requiring debtors to start making payments to the trustee within 30 days of filing a plan. *See* 119 Stat. 83 (amending 11 U.S.C. §1326(a)). BAPCPA required debtors to make pre-confirmation payments not only "to the trustee," but also pre-confirmation payments as "scheduled in a lease of personal property directly to the lessor" and as constituted "adequate protection directly to a creditor" with "an allowed claim secured by personal property." *Id.* BAPCPA then provided: "[i]f a plan is not confirmed, the trustee shall return any such payments not previously paid and not yet due and owing to creditors . . . after deducting any unpaid claim allowed under section 503(b)." *Id.*

BAPCPA also imposed tough new disclosure and reporting obligations on debtors. BAPCPA required Chapter 13 debtors to provide the trustee "a copy of the [debtor's] Federal income tax return . . . for the most recent tax year" before the debtor filed his case. *See* 119 Stat. 90 at §315(b) (codified at 11 U.S.C.

§521(e)(2)(A)(i)). Debtors had to complete this task "not later than 7 days before the date first set for the first meeting of creditors." *Id.* And if a debtor missed this deadline, the Act required courts to "dismiss the case unless the debtor demonstrates" that his failure to comply with the 7-day production deadline was for reasons "beyond" the debtor's "control." *Id.* Through this rule—and others like it—BAPCA "substantially increase[d]" the trustee's "workload, responsibilities, and costs of [Chapter 13] administration."[21]

9. The collective thrust of the preceding laws—from the original 1978 Bankruptcy Reform Act to the 2005 BAPCPA—is that Chapter 13 standing trustees are "a vital component to the success" of Chapter 13. *In re Perez*, 339 B.R. 385, 416-17 (Bankr. S.D. Tex. 2006). Far from being "glorified check-writer[s]," *id.*, Chapter 13 trustees perform a wide array of "legal, adjudicative, clerical, financial, administrative, and business functions" that parallel the "common-law bankruptcy judicial officers" of yesteryear. *See In re Castillo*, 297 F.3d 940, 951 (9th Cir. 2002).

When a Chapter 13 case arrives in a standing trustee's office, the trustee must process the debtor's petition; the debtor's proposed repayment plan; and the debtor's relevant financials and tax returns. In this regard, the trustee must conduct a thorough investigation of the debtor's financial affairs. *See* 11 U.S.C. §1302(b)(1) (incorporating by reference 11 U.S.C. §704(a)(4)). While some Chapter 13 cases are

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[21] Henry E. Hilderbrand, *Impact of the Bankruptcy Abuse Prevention & Consumer Protection Act of 2005 on Chapter 13 Trustees*, 79 AM. BANKR. L.J. 373, 373–74 (2005).

easy to investigate, many others are not. "Business cases, for example, usually require the trustee to spend considerable time and resources becoming acquainted with the debtor's business, determining the validity of liens on collateral, [and] reviewing tax returns and [business] operating reports."[22]

After sorting out a Chapter 13 debtor's initial filings and financial affairs, the trustee is "involved in every phase" of the case that follows. *See Perez*, 339 B.R. at 389. Congress expects trustees to actively oversee bankruptcy cases and to intervene whenever "particular actions threaten[] an abuse." *In re A-1 Trash Pickup*, 802 F.2d 774, 775-76 (4th Cir. 1986). In Chapter 13 cases, the trustee must examine a creditor's claims and object to any improper claims. *See* 11 U.S.C. §1302(b)(1) (incorporating 11 U.S.C. §704(a)(5)). The trustee also often manages a debtor's home mortgage, making "pre-confirmation conduit payments" to lenders while ensuring these creditors do not exploit the situation by charging abusive fees or other amounts. *Perez v. Peake*, 373 B.R. 468, 486 (S.D. Tex. 2007); *see* Fed. Bankr. R. 3002.1.

The trustee must also monitor the Chapter 13 debtor, exercising "prosecutorial discretion" in many ways. *In re Duffus*, 339 B.R. 746, 748 (Bankr. D. Or. 2006). When debtors fail to produce their tax returns (as BAPCPA requires), "[t]he trustee has discretion to pursue dismissal, excuse noncompliance, or accept tardy compliance." *In re Ring*, 341 B.R. 387, 390 (Bankr. D. Me. 2006). Trustee discretion similarly

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[22] Jan Sensenich, et al., *Standing Trustee Fees on Dismissed Cases Under 28 U.S.C. §586 & 11 U.S.C. §1326*, NACTT QUARTERLY, July-August-September 2020, at 13, 16.

governs whether to invalidate a Chapter 13 debtor's transfer of property as fraud. *See In re Johnson*, 26 B.R. 381, 383 (Bankr. D. Colo. 1982). And the trustee must decide the "appropriate action" to take when a debtor fails to make the pre-confirmation payments that Chapter 13 requires—action that may include filing a "motion to dismiss" the case. *Gorski*, 766 F.2d at 726-27; *see also* 11 U.S.C. §1307(c)(4).

Then comes plan confirmation, which requires the trustee to perform a quasi-judicial role, meaning a role "essential to the authoritative adjudication of private rights to the bankruptcy estate." *Castillo*, 297 F.3d at 951. Bankruptcy courts have an independent "obligation" to ensure that a debtor's plan "complies with" the Bankruptcy Code. *United Student*, 559 U.S. at 277. But bankruptcy courts "do not have time to vigorously review all Chapter 13 plans for defects." *In re Fricker*, 116 B.R. 431, 437 (Bankr. E.D. Pa. 1990). As a result, most bankruptcy courts "confirm a plan upon recommendation of the standing trustee." *In re Lundy*, No. 15-32271, 2016 Bankr. LEXIS 3771, at *26 (Bankr. N.D. Ohio Oct. 19, 2016).

The Bankruptcy Code requires the trustee in a Chapter 13 case "to appear and be heard at any hearing that concerns . . . confirmation of a plan." 11 U.S.C. §1302(b)(2)(B). Performing this duty requires the trustee to "scrutinize a debtor's schedules and financial wherewithal." *In re Greene*, 359 B.R. 262, 264 (Bankr. D. Ariz. 2007). After looking into these facts, trustees exercise discretion: "[the] trustee may object if the [debtor's proposed] plan fails to conform to all requirements in the Bankruptcy Code." *In re Andrews*, 49 F.3d 1404, 1408 (9th Cir. 1995).

Such objections—or, conversely, trustee support for a plan—carry tremendous weight in the judicial process. The "general procedure" of many bankruptcy courts "in determining whether to confirm the vast majority of Chapter 13 plans" is to "rely upon the reports of the trustee." *Fricker*, 116 B.R. at 437. Such reliance means that when no creditor has objected to confirmation and the trustee advises confirmation, the court will "typically confirm the plan." *Id.*

Two other facts reinforce the judicial impact of a Chapter 13 trustee's advice on plan confirmation. First, when a trustee recommends plan confirmation, this recommendation satisfies the debtor's burden to show her plan is "proposed in good faith." 11 U.S.C. §1325(a)(3); *see In re Hines*, 723 F.2d 333, 333-34 (3d Cir. 1983). Second, when a trustee objects to a plan, the Bankruptcy Code dictates that courts "may not approve the plan" unless the plan meets strict debt-repayment requirements. *Hamilton v. Lanning*, 560 U.S. 505, 509 (2010); *see* 11 U.S.C. §1325(b).

In sum, a trustee's report and recommendation (R&R) on plan confirmation in a Chapter 13 case is judicial in nature—no different from a magistrate judge's R&R on a civil plaintiff's summary-judgment motion. Or as the Department of Justice puts it, in Chapter 13 cases, "the trustee does not liquidate the debtor's assets, but instead evaluates the debtor's financial affairs and makes recommendations to the court regarding the debtor's proposed repayment

plan."[23] To "properly and promptly perform" these duties, "trustees need qualified personnel . . . and updated technology." *Perez*, 339 B.R. at 416.

This makes the user fees that standing trustees collect from debtors in Chapter 13 cases the lifeblood of the Chapter 13 system. "A trustee must pay all expenses before a trustee can receive compensation, and while unpaid expenses may be carried over to the next year, unpaid compensation cannot . . . ." *In re Dengel*, 340 F.3d 300, 306 n.2 (5th Cir. 2007). The question then becomes: what restrictions govern the trustee's collection of user fees in Chapter 13 cases? How courts answer this question has the potential to "capsize the entire system," especially in light of the system's mandate that trustees must be financially disinterested officials. *Savage*, 67 B.R. at 708.

10. "[M]uch local variation" exists today among courts regarding when standing trustees may collect user fees in Chapter 13 cases. *In re Ward*, 132 B.R. 417, 418 (Bankr. D. Neb. 1991). This variation stems from efforts to harmonize the Bankruptcy Code's fee-collection mandate with the Code's payment-return directive. Under 28 U.S.C. §586(e)(2), the Code states that standing trustees "shall collect" a user fee "from all payments received by" the trustee "under plans" in the Chapter 13 cases served by the trustee. Under 11 U.S.C. §1326(a)(2), the Code provides that when "a plan is not confirmed" in a Chapter 13 case, the trustee "shall return" the debtor's pre-confirmation plan "payments" subject to certain exceptions.

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[23] U.S. DEP'T OF JUSTICE, U.S. TRUSTEE PROGRAM, *The U.S. Trustee's Role in Consumer Bankruptcy Cases (Fact Sheet)*, http://tinyurl.com/abepsx28 (last accessed Sept. 3, 2023).

Intense judicial disagreement exists regarding whether §586(e)(2) and §1326(a)(2) allow trustees in Chapter 13 cases to collect a debtor's user fee from the debtor's pre-confirmation plan payments if no plan is confirmed. Some courts have answered 'no': "[when] a plan has not been confirmed, the trustee is not entitled to the . . . fee." *Ward*, 132 B.R. at 418. Other courts have answered 'yes': "[§586(e)(2)] only directs the Trustee to collect the fee—not to hold it and then return it if the plan is not confirmed." *McCallister v. Evan*s, 637 B.R. 144, 149 (D. Idaho 2020), *rev'd,* 69 F.4th 1101 (9th Cir. 2023).

Over the last few years, this debate has only intensified. *See, e.g., In re Harmon*, No. ID-20-1168-LSG, 2021 Bankr. LEXIS 1960 (BAP 9th Cir. July 20, 2021) (containing separate majority, concurring, and dissenting opinions on the fee-collection issue). But it was not until Petitioner's case that a federal court of appeals decided whether the user fees that sustain the offices of Chapter 13 standing trustees depend on court approval of a debtor's plan.

B. Facts & Procedural History

1. Adam M. Goodman (Petitioner or Trustee) is a Chapter 13 standing trustee for the Districts of Colorado and Wyoming. Every year, he administers hundreds of cases and processes dozens of new ones. At the beginning of FY-2022, the Trustee had 2,891 pending cases and processed 692 new cases over the

course of the year.[24] That same year, the Trustee's office incurred $1.75 million in expenses, including employee salaries, rent, utilities, and taxes.[25]

2. In November 2017, Daniel Richard Doll filed a petition for Chapter 13 bankruptcy in the District of Colorado—a case that included Doll's business (a sole proprietorship). *See* 14a, 42a. Over the next two years, Doll attempted four separate times to obtain court approval of a proposed debt repayment plan. *See* No. 17-20831 (Bankr. D. Colo.), Docs. 2, 26, 42, 69. Two of these attempts led to evidentiary hearings (confirmation trials). *See id.*, Docs. 60, 132.

Across these numerous confirmation attempts, Doll consumed an inordinate amount of the Trustee's limited time and resources. The bankruptcy court observed that Doll's case presented "the outer limits" of what was "reasonable." No. 17-20831 (Bankr. D. Colo.), Doc. 139 at 7. Doll's financial disclosures contained "inaccuracies" that Doll "should have . . . corrected." *Id.* Doll "understated" his "net monthly income" by "at least $1,881"—a "significant figure" that the court could not "brush aside." *Id.* at 10. And Doll belatedly disclosed his transfer to his wife of a key asset (a 25% stake in his business). *Id.*

3. In February 2020, Doll announced he would "not be filing . . . another plan" following the bankruptcy court's rejection of Doll's fourth plan. No. 17-20831 (Bankr. D. Colo.), Doc. 145 at 1.

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[24] U.S. DEP'T OF JUSTICE, *FY-2022 Ch. 13 Trustee Audited Annual Reports* (Mar. 17, 2023) (Row 151, Cols. BL, BM), *available at* http://tinyurl.com/ymayxva2.

[25] *See id.* (Row 151, Cols. AG through AW).

4. In March 2020, the bankruptcy court ordered the dismissal of Doll's case. *See id.*, Doc. 146. At the time of the dismissal, the Trustee had received a total of $29,900 in pre-confirmation plan payments from Doll since November 2017. 42a. From this amount, the Trustee collected $2,596.70 in user fees, as authorized by 28 U.S.C. §586(e)(2). 42a.

The Trustee next deducted $19,800 in attorney fees for dispersal to Doll's attorney—an "unpaid claim allowed under section 503(b)." 42a; 11 U.S.C. §1326(a)(2) (requiring such deductions); *see also id.* §330(a)(4)(B); §503(b)(1)(A) (provisions establishing "reasonable compensation to the debtor's attorney" is an unpaid claim allowed under §503(b)). Finally, "with Doll's consent," the Trustee used what was left of Doll's pre-confirmation payments ($7503.30) to pay down Doll's Colorado tax bill. 15a, 42a.

5. Doll filed a "Motion to Disgorge Trustee's Fees" with the bankruptcy court. 43a. Doll argued the Bankruptcy Code did not allow trustees to collect user fees in Chapter 13 cases before confirmation. *Id.* Doll sought a court order directing the Trustee to "disgorge the fees" that the Trustee had already paid to himself from each pre-confirmation plan payment upon receipt of the payment. *See* 42a-43a.

6. The bankruptcy court denied Doll's motion. 63a-64a. The bankruptcy court found Tenth Circuit precedent mandated deference to the Department of Justice's 2012 Handbook for Chapter 13 Standing Trustees. *Id.* The Handbook's "default position" on fee collection was that trustees were "to collect the

percentage fee at the time" they received a debtor payment, regardless of plan confirmation. 62a.

7. The district court, on Doll's appeal, reversed the bankruptcy court. *See* 34a-40a. The district court admitted §586(e)(2)'s sweeping text "could be read as implying that the collected fee may be retained" regardless of plan confirmation. 39a. But the court rejected this reading because §586(e)(2) "[did] not expressly address" plan confirmation. *Id.* The court found §1326(a)(2) solved the issue: "[i]f the payments must be returned . . . it follows that fees collected from such payments must be returned." *Id.*

8. The Tenth Circuit, on the Trustee's appeal, affirmed the district court. 1a-33a. The panel held: "[r]ead together, 28 U.S.C. §586(e)(2) and 11 U.S.C. §1326(a) unambiguously provide that a . . . trustee must return pre-confirmation payments to the debtor without deducting the trustee's fee, when a proposed Chapter 13 plan is not confirmed." 33a.

9. The Tenth Circuit denied rehearing. 66a.

10. This certiorari petition follows.

REASONS TO GRANT THE PETITION

I. Federal courts are divided.

A deep, persistent divide exists among federal courts about trustee collection of user fees in Chapter 13 cases. According to the Tenth Circuit, unless the

bankruptcy court approves a plan in a Chapter 13 case—a decision that often turns on the trustee's recommendation—standing trustees may not collect the debtor's user fee. 33a. The Ninth Circuit has joined the Tenth Circuit's position on this point. *See In re Evans*, 69 F.4th 1101, 1108 (9th Cir. 2023) (citing *Doll*) ("Like our sister circuit, we conclude that a [standing] trustee is not paid her percentage fee if a [debtor's] plan is not confirmed.").

The Tenth Circuit recognizes, however, that the "[b]ankruptcy and district courts are divided"[26] on "whether a Chapter 13 standing trustee can keep his fee if no plan is confirmed." 15a n.7. Cases holding trustee collection of user fees ***does not*** **require plan confirmation** include: *In re Modikahn*, 639 B.R. 792 (Bankr. E.D.N.Y. 2022); *In re Harmon*, No. ID-20-1168-LSG, 2021 Bankr. LEXIS 1960 (BAP 9th Cir. July 20, 2021). *In re Soussis*, 624 B.R. 559 (Bankr. E.D.N.Y. 2020), *aff'd sub nom. Soussis v. Macco*, No. 20-cv-05673, 2022 U.S. Dist. LEXIS 12386 (E.D.N.Y. Jan. 24, 2022), *appeal pending final decision,* No. 22-155 (2d Cir.); *In re Nardello*, 514 B.R. 105 (D.N.J. 2014); *In re Antonacci*, No. BK-S-08-23349, 2011 Bankr. LEXIS 5819 (Bankr. D. Nev. 2011).

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[26] The following bankruptcy courts and district courts share the Tenth Circuit's view that trustee collection of user fees requires plan confirmation: *In re Lundy*, No. 15-32271, 2017 Bankr. LEXIS 3317 (Bankr. N.D. Ohio Sept. 29, 2017); *In re Acevedo*, 497 B.R. 112 (Bankr. D.N.M. 2013); *In re Rivera*, 268 B.R. 292 (Bankr. D.N.M. 2001), *aff'd sub nom. In re Miranda*, Nos. NM-01-044, et al., 2001 Bankr. LEXIS 1549 (BAP 10th Cir. 2001); *In re Ward*, 132 B.R. 417 (Bankr. D. Neb. 1991).

This judicial division has persisted despite the Tenth Circuit's opinion. Consider the following two bankruptcy cases: *In re Baum*, 650 B.R. 852 (Bankr. E.D. Mich. 2023) and *In re Johnson*, 650 B.R. 904 (Bankr. N.D. Ill. 2023). After "carefully consider[ing] the conflicting cases," the *Baum* court rejected the Tenth Circuit's view and sided with those courts that have upheld trustee collection of user fees in all cases regardless of plan confirmation. 650 B.R. at 860. The *Johnson* court, by contrast, found the Tenth Circuit's "reasoning . . . persuasive." 650 B.R. at 911.

Judicial disagreement over trustee collection of user fees absent plan confirmation is not only broad but intense. A good example of this is *In re Harmon*, No. ID-20-1168-LSG, 2021 Bankr. LEXIS 1960 (BAP 9th Cir. July 20, 2021). Decided by a three-judge bankruptcy appellate panel, *Harmon* features three separate opinions on the fee-collection issue. First there is Judge Gan's majority opinion holding that §586(e)(2) requires trustees to collect user fees in all Chapter 13 cases, even when no plan is confirmed. *Id.* at *6-26. Next up is Judge Spraker's concurrence, which "emphasiz[es] the significance of the fees the standing trustee is statutorily obligated to collect." *Id.* at *217. Finally, there is Judge Lafferty's dissent, which (wrongly) accuses the majority of "strained readings" and "faulty analogies." *Id.* at *58.

The judicial divide over the fee-collection issue also extends beyond dueling court decisions to local rules. For example, the bankruptcy court for the Northern District of Texas has adopted a standing order for Chapter 13 cases which establishes: (1) a debtor's pre-confirmation payments are "deemed

payments received under plans"; and (2) the "trustee is authorized to collect the trustee's percentage fee at the time of the receipt of any funds paid by . . . the debtor to the trustee."[27] Such rules only underscore that the fee-collection issue cuts to the heart of the Chapter 13 system, requiring every bankruptcy court to take a side in one way or another. The resulting cacophony now warrants the Court's review.

II. The question presented is critical.

The Trustee's fee-collection question is of critical importance for the following three reasons:

1. *Constitutional Integrity*. Courts have noted that if trustee collection of user fees in Chapter 13 cases requires plan confirmation, then "a standing trustee might be less likely to vigorously pursue objections to confirmation . . . when doing so would jeopardize her compensation." *Harmon,* 2021 Bankr. LEXIS 1960, at *18. This is more than a public policy quibble—it is a major constitutional problem.

As explained above (Pet. 20-22), when it comes to plan confirmation, standing trustees assume a quasi-judicial role. The Bankruptcy Code requires trustees to "appear and be heard" on "confirmation." 11 U.S.C. §1302(b)(2). Bankruptcy courts in turn rely on the trustee's plan-confirmation recommendation for the court to "do its job." *Escarcega*, 573 B.R. at 234. Bankruptcy courts have accordingly determined that trustees "may not equivocate about [plan]

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[27] *In re: Standing Order Concerning All Chapter 13 Cases,* Gen. Order 2023-04, at 5, 11 (Bankr. N.D. Tex. June 21, 2023), *available at* http://tinyurl.com/bdd5ca77.

confirmation." *Id.* Trustees "must either recommend confirmation or object to confirmation." *Id.*

The trustee's execution of this function must then comply with due process, which dictates that no person may carry out a judicial or quasi-judicial function "whe[n] he has an interest in the outcome." *In re Murchison*, 349 U.S. 133, 136 (1955). This rule is "stringent," applying even to persons "who have no actual bias and who would do their very best to weigh the scales of justice equally." *Id.* "[J]ustice must satisfy the appearance of justice." *Id.*

This due-process rule invalidates legislative schemes giving judicial or quasi-judicial actors a direct pecuniary interest to decide a matter one way over another. In *Connally v. Georgia*, 429 U.S. 245 (1977), the Court struck down a Georgia system for search warrants issued by justices-of-the-peace (JPs) that authorized JPs to collect a $5 fee if the JP granted a search-warrant application. *Id.* at 246. JPs "collect[ed] no fee for reviewing and denying" a warrant application. *Id.* JPs otherwise "received no salary"—their "compensation was 'directly dependent on how many warrants' [they] issued." *Id.*

The Court determined this system violated due process because of the "direct, personal, substantial, pecuniary interest" that the system gave JPs in whether "to issue or to deny [a] warrant." *Id.* at 250. A JP received "the fee prescribed by statute for his *issuance* of the warrant, and he receive[d] nothing for his *denial* of the warrant." *Id.* (italics-in-original). By making the "financial welfare" of JPs depend on the "positive action" of granting warrants, the Georgia

legislature denied the impartiality that due process requires of judicial/quasi-judicial actors. *Id.*

The Tenth Circuit construes the Bankruptcy Code to do what due process says a law cannot do: make the "financial welfare" of quasi-judicial actors (trustees) depend on "positive action" (eliciting plan confirmation). *Id.* The Tenth Circuit's decision thus jeopardizes the constitutional integrity of the Code's user-fee system under §586(e)(2). The decision also renders trustee plan-confirmation recommendations constitutionally suspect. Under these circumstances, review by this Court is of grave importance.

2. *Uniformity.* The Constitution requires that bankruptcy laws be "uniform" in nature. U.S. CONST. art. I, §8. The Tenth Circuit's decision necessarily compromises this value. The decision means that Chapter 13 debtors living within the six states that comprise the Tenth Circuit do not have pay user fees required by §586(e)(2) if the bankruptcy court denies plan confirmation. Meanwhile, Chapter 13 debtors in other states (New York, Texas, etc.) must pay these user fees regardless of plan confirmation.

In *Siegel v. Fitzgerald*, the Court struck down a law subjecting "one set of debtors" to "a more onerous [bankruptcy] funding mechanism" than "applie[d] to debtors in other States." 142 S. Ct. at 1782-83. Left standing, the Tenth Circuit's decision produces the same harm. The decision allows plan-rejected debtors in the Tenth Circuit to escape fees that plan-rejected debtors in other states must pay. The decision also forces debtors within the Tenth Circuit who achieve plan confirmation to suffer higher user fees.

The percentage user fee prescribed by §586(e)(2) exists to "spread the costs of trusteeship pro rata over all Chapter 13 debtors." *Savage*, 67 B.R. at 708. "By allowing debtors who fail to confirm plans to receive a [fee] refund," the Tenth Circuit's decision forces "the remaining debtors" to "pay a higher fee to cover the trustee's . . . expenses."[28] And with plan-confirmed debtors inside the Tenth Circuit paying much more in user fees than plan-confirmed debtors outside the Circuit, uniformity evaporates.

3. *Vitality*. The Tenth Circuit's decision makes impossible the creation of brand-new Chapter 13 trusteeships. New trusteeships come with monthly office expenses (staff, rent, etc.). New trusteeships also lack a preexisting body of plan-confirmed, fee-generating cases. New trustees thus depend on fees from every new case (and pre-confirmation payment) that walks in the door. The Tenth Circuit's decision forecloses such fee collection, requiring new trustees to absorb losses for months or years until they have enough plan-confirmed cases to break even.

As for existing Chapter 13 standing trustees, the Tenth Circuit's decision exposes them to broad new liability. No longer able to keep the debtor's user fees in cases dismissed before confirmation, trustees must now account for and be prepared to refund collected, already-spent fees in thousands of past cases that were dismissed before confirmation. The debtors who opened these cases may file actions seeking fee refunds. Trustees will then have to split their already

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[28] Rebecca Garcia, *When Are Standing Trustees Paid on Unconfirmed Cases?*, 41-3 AM. BANKR. INST. J. 30, 31 (2022).

limited time and resources between litigating these suits and performing their normal administrative duties in hundreds of cases.

Finally, there is the plain loss of funds entailed by the Tenth Circuit's decision. A recent bankruptcy case siding with the Tenth Circuit admits this point. Observing a local failure of "25% of chapter 13 cases" to win plan confirmation, the court states: "[s]hould trustees in this District lose compensation on such a large percentage of their cases . . . the result will be momentous." *In re Johnson*, 650 B.R. at 912. The Trustee's fee-collection question is thus critical to the ongoing vitality of the U.S. Trustee Program.

III. This case is the right vehicle.

For three reasons, this case is the right vehicle to settle the Trustee's fee-collection question:

1. *Pure issue.* This case allows for resolution of the question presented without any difficulty. The question is a pure legal issue—a matter of statutory construction—and "[t]he facts are not disputed." 35a. For example, there is no dispute over the amount of the user fee ($2,596.70) that the Trustee collected from Doll's pre-confirmation plan payments. *Id.* The Court may thus grant review without fear of some factual dispute ultimately complicating the Court's ability to reach the question presented.

2. *Compelling Facts.* While there is no dispute over the facts here, the facts do provide a compelling basis to engage the fee-collection issue. The facts show: (1) the standing trustee's central role in the

Chapter 13 plan-confirmation process; and (2) just how long a Chapter 13 case may persist without a confirmed plan while still consuming the trustee's time and resources, making trustee collection of user fees in every case all the more important.

3. *Full ventilation*. For three years—since Doll filed his fee-disgorgement motion in June 2020—the fee-collection question has been exhaustively briefed, argued, and reviewed in this case. The bankruptcy court, the district court, and the Tenth Circuit have all weighed in. So have other bankruptcy courts in deciding whether to join the Tenth Circuit's position (e.g., *Baum* and *Johnson*). The fee-collection question does not require any further percolation.

IV. The Tenth Circuit's decision is wrong.

1. *Text*. Section 586(e)(2) states that a standing trustee "shall collect" a "percentage fee from all payments received by" the trustee "under plans in the cases" that the trustee administers. The ordinary public meaning of "collect" (both in 1978 and today) is: "to receive payment." BLACK'S LAW DICTIONARY 238 (5th ed. 1979). Section 586(e)(2) dictates that upon receiving a plan payment from a debtor—before or after plan confirmation—trustees must ("shall") take payment of ("collect") the debtor's user fee. Collection "sever[s]" the fee from the debtor's plan payment, giving the fee its own existence. *Soussis*, 624 B.R. at 564. At this point, §1326(a)(2) becomes irrelevant, as this provision directs the return of "payments" to the debtor—not any "fees."

The Tenth Circuit declares that §586(e)(2) "only addresses the source of funds that may be accessed to pay standing trustee fees." 17a. But that analysis elides §586(e)(2)'s broad text, especially the phrase "from all payments received." The following cases get the plain text of §586(e)(2) and §1326(a)(2) right. *See Harmon*, 2021 Bankr. LEXIS 1960, *9-26; *Soussis*, 624 B.R. at 570-74; *McCallister*, 637 B.R. at 147-50 (phrase-by-phrase breakdown of §586(e)(2)).

2. *Structure*. The Bankruptcy Code mandates the financial disinterestedness of all trustees and their staff. *See Barkany*, 542 B.R. at 713-14. And in the event that the U.S. Trustee appoints herself or a "disinterested person" to be trustee in a Chapter 13 case, the Code affords impartial compensation for all services provided. 11 U.S.C. §§326(b), 1302(a).

The Tenth Circuit abridges this structure by interpreting the Code to give Chapter 13 standing trustees a direct financial stake in plan confirmation. Indeed, the Tenth Circuit makes standing trustees an inexplicable, destructive exception to the Code's effort to keep the "professional judgment" of trustees "free from compromising influences." *In re Phila. Athletic Club*, 20 B.R. 328, 334 (E.D. Pa. 1982).

3. *History*. Congress enacted the U.S. Trustee Program and §586(e)(2)'s user-fee system to restore public trust in bankruptcy trustees and to put the Executive Branch in charge of appointing and paying Chapter 13 trustees. *See* Pet. 6-9. The Tenth Circuit subverts both of these goals in holding that trustee collection of user fees requires plan confirmation. This holding compromises public trust by biasing standing

trustees in favor of plan confirmation (or else the trustee does not get paid). And this holding restores judicial control over trustee compensation via the court's plan-confirmation decisions.

4. *Constitutional Avoidance.* As detailed above, the Tenth Circuit's interpretation of §586(e)(2) and §1326(a)(2) abridges due process by giving trustees (quasi-judicial officers) a pecuniary interest in plan confirmation. Pet. 29-30. The Trustee's reading—fee collection in all cases—entirely avoids this problem. *See Clark v. Martinez*, 543 U.S. 371, 380-81 (2005) (courts avoid reading statutes in ways that "raise a multitude of constitutional problems").

CONCLUSION

The Court should grant the Trustee's petition.

Respectfully submitted,

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