

TITHING IN A CHAPTER 13 PLAN: THE REQUIREMENT OF REASONABLENESS UNDER THE RELIGIOUS LIBERTY AND CHARITABLE DONATION PROTECTION ACT

Abstract: A recurring dilemma faced by bankruptcy courts occurs when a debtor makes religious donations while in bankruptcy. In these instances, bankruptcy courts must determine the best allocation of the bankruptcy estate to address both the debtor's interest in making religious donations and creditors' interest in receiving payment. This conflict arises because of the Religious Liberty and Charitable Donation Protection Act, which amends § 1325 of the Bankruptcy Code to permit a Chapter 13 debtor to include religious contributions not exceeding fifteen percent of gross annual income as a reasonable expense, thereby excluding such contributions from disposable income. Judicial interpretation of this provision is split as to whether a reasonableness inquiry must be undertaken in addition to consideration of the technical requirements of § 1325. This Note argues that courts must inquire into the reasonableness of any tithe, for doing so comports with Congressional intent and best serves the needs of creditors and debtors and the policies of the Bankruptcy Code.

INTRODUCTION

A contentious and unresolved issue in bankruptcy law is the role of an individual debtor's tithes—contributions to religious organizations—during bankruptcy.¹ Bankruptcy courts often find themselves resolving disputes between creditors who want to be paid and debtors who want to exercise their religious convictions.² This is especially true because the bankruptcy process is designed in part for unsecured creditors.³ Unsecured creditors have no property interest to secure

¹ See Todd J. Zywicki, *Rewrite the Bankruptcy Laws, Not the Scriptures: Protecting a Bankruptcy Debtor's Right to Tithe*, 1998 WIS. L. REV. 1223, 1224.

² See *id.*

³ See RAYMOND T. NIMMER ET AL., *COMMERCIAL TRANSACTIONS: SECURED FINANCING CASES, MATERIALS, PROBLEMS* 277 (3d ed. 2003).

their repayment right.⁴ They are paid from the debtor's assets and thus rarely receive the full amount they are owed.⁵

The conflict between debtor and creditor interests is significant, furthermore, because the Bankruptcy Code⁶ defines certain transfers as avoidable.⁷ If a transfer meets certain requirements, the trustee can avoid the transfer and thereby augment the pool of assets available for distribution to the unsecured creditors.⁸ This ability to avoid transfers is especially important in the tithing context.⁹ Under § 548 of the Bankruptcy Code, a trustee may avoid a debtor's constructively fraudulent transfers—transfers to which the debtor received less than reasonably equivalent value in exchange.¹⁰

Before 1998, trustees used § 548 to recapture from the debtor's church tithes that the debtor made prepetition.¹¹ Then, in June of 1998, Congress enacted the Religious Liberty and Charitable Donation Protection Act ("RLCDPA") to prevent a trustee from recovering a debtor's prepetition tithes.¹² Congress enacted RLCDPA in response to pressure from concerned religious and charitable groups after the U.S. Supreme Court held in *City of Boerne v. Flores* that the Religious Freedom Restoration Act ("RFRA") was unconstitutional as applied to

⁴ *Id.* at 11.

⁵ *Id.* at 251.

⁶ The current law of bankruptcy is found in Title 11 of the U.S. Code. See 11 U.S.C. §§ 101–1527 (2000). Its foundation is the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (effective Oct. 1, 1979) (codified as amended at 11 U.S.C. §§ 101–1527 (2000)). References in this work to the "Bankruptcy Code" or "Code" are to Title 11 of the U.S. Code. References to "Chapter 7" are to 11 U.S.C. §§ 701–785 (2000). References to "Chapter 11" are to 11 U.S.C. §§ 1101–1174 (2000). References to "Chapter 13" are to 11 U.S.C. §§ 1301–1330 (2000).

⁷ See Zywicki, *supra* note 1, at 1229–30. If a transfer is avoided, the transferee must pay the trustee the total amount transferred. *Id.* at 1229.

⁸ See NIMMER ET AL., *supra* note 3, at 277.

⁹ See Zywicki, *supra* note 1, at 1230.

¹⁰ See 11 U.S.C. § 548(a)(1)(B)(i); COLLIER ON BANKRUPTCY ¶ 548.01[1] (15th ed. 2004). Section 548 provides: "the trustee may avoid any transfer . . . of an interest of the debtor in property . . . that was made . . . within 2 years before the date of the filing . . . if the debtor . . . received less than a reasonably equivalent value in exchange for such transfer." Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, § 1402, 119 Stat. 23, 214–15 [hereinafter BAPCPA] (to be codified at, and amending, 11 U.S.C. § 548(a)). BAPCPA extended the reach back period from one year to two years. *Id.*

¹¹ See 144 CONG. REC. 8941 (1998); John J. Dyer & Gregory Todd Jones, *Judicial Treatment of Charitable Donations in Bankruptcy Before and After the Religious Liberty and Charitable Contribution Protection Act of 1998*, 2 DEPAUL BUS. & COM. L.J. 265, 279, 292 (2004).

¹² See Religious Liberty and Charitable Donation Protection Act of 1998, Pub. L. No. 105-183, 112 Stat. 517 [hereinafter RLCDPA] (codified as amended at 11 U.S.C. §§ 544, 548, 707, 1325); 144 CONG. REC. 10,845 (1998); Kenneth N. Klee, *Tithing and Bankruptcy*, 75 AM. BANKR. L.J. 157, 159 (2001).

state law.¹³ The Court's decision concerned religious groups because the United States Court of Appeals for the Eighth Circuit previously held in *Christians v. Crystal Evangelical Free Church* that RFRA protected a debtor's church tithes from trustee recovery.¹⁴ Although the Supreme Court did not determine whether RFRA was unconstitutional as applied to federal law including the Bankruptcy Code, religious groups persuaded Congress that the decision would impair a debtor's right to donate money to religious organizations.¹⁵

RLCDPA also amended other provisions of the Bankruptcy Code, including § 1325, which governs confirmation of an individual debtor's Chapter 13 plan.¹⁶ Under § 1325, a trustee can object to a plan that does not apply all of the debtor's disposable income (defined as income not reasonably necessary for the maintenance or support of the debtor) to repayment.¹⁷ RLCDPA allows a debtor to include religious contributions, not exceeding fifteen percent of gross annual income, as a reasonable expense, thereby excluding such contributions from disposable income.¹⁸ In applying this provision, courts have split on whether a donation of up to fifteen percent of the

¹³ See 521 U.S. 507, 536 (1997); Dyer & Jones, *supra* note 11, at 267. RFRA prohibits the government from substantially burdening a person's exercise of religious freedom unless the burden is in furtherance of a compelling government interest and is the least restrictive means of furthering that interest. *City of Boerne*, 521 U.S. at 515-16.

¹⁴ See 82 F.3d 1407, 1417 (8th Cir. 1996). The Eighth Circuit reasoned that allowing the trustee to recover the contributions would substantially burden the debtor's free exercise of religion under RFRA. See *id.*

¹⁵ See Dyer & Jones, *supra* note 11, at 267. It should be noted that the Eighth Circuit later held that RFRA was applicable to federal law. *Christians v. Crystal Evangelical Free Church*, 141 F.3d 854, 856 (8th Cir. 1998).

¹⁶ See RLCDPA § 4, 112 Stat. at 518 (codified as amended at 11 U.S.C. § 1325(b)(2)); Dyer & Jones, *supra* note 11, at 267. An individual who files for bankruptcy usually chooses between Chapter 7 and Chapter 13. Bruce Edward Kosub & Susan K. Thompson, *The Religious Debtor's Conviction to Tithe as the Price of a Chapter 13 Discharge*, 66 Tex. L. Rev. 873, 873 (1988). Under Chapter 13, the debtor can keep all assets, nonexempt as well as exempt, in exchange for committing his or her disposable income to the payment of prepetition debt under a confirmed plan. *Id.* at 873 n.6. The debtor makes payments to the Chapter 13 trustee who then distributes those payments to the debtor's creditors according to the terms of the plan. *Id.* Under Chapter 7, the debtor surrenders all nonexempt assets to a Chapter 7 trustee who then sells the assets and distributes the proceeds to the creditors. *Id.* at 873 n.5.

¹⁷ See BAPCPA, Pub. L. No. 109-8, §§ 102(h), 318(2), 119 Stat. 23, 33-34, 93 (to be codified at, and amending, 11 U.S.C. § 1325(b)).

¹⁸ See RLCDPA, Pub. L. No. 105-183, § 4, 112 Stat. 517, 518 (codified as amended at 11 U.S.C. § 1325(b)(2)).

debtor's gross annual income is automatically allowed or whether it must also be reasonable.¹⁹

This Note examines the effect of the RLCDDPA on § 1325. Part I provides an overview of § 1325, focusing on the provision's first major revision in 1984.²⁰ Part II describes RLCDDPA's amendments to the Bankruptcy Code.²¹ Part III summarizes the impact on § 1325 of the latest overhaul to the Bankruptcy Code—the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”).²² Part IV examines caselaw interpreting the requirements of § 1325 both before and after the RLCDDPA.²³ Part V argues in favor of imposing a reasonableness standard to a debtor's tithes, reasoning that it is more consistent with the purpose and goals of RLCDDPA and the Bankruptcy Code.²⁴

I. THE BANKRUPTCY AMENDMENTS AND FEDERAL JUDGESHIP ACT OF 1984

A. Overview

The Bankruptcy Amendments and Federal Judgeship Act of 1984 (“Act” or “1984 Amendments”) substantially revised the Bankruptcy Code.²⁵ As part of these amendments, Congress first included the disposable income requirement as a condition for confirmation of a Chapter 13 plan.²⁶ The history and background of these amendments shed light on Congress's original purposes for the disposable income test and consequently on how RLCDDPA's modification to this test—allowing for tithes of up to fifteen percent of income—should be interpreted.²⁷

The 1984 Amendments was signed into law on July 10, 1984.²⁸ The Act significantly revised the Bankruptcy Reform Act of 1978 (the

¹⁹ See *In re Kirschner*, 259 B.R. 416, 422 (Bankr. M.D. Fla. 2001); Dyer & Jones, *supra* note 11, at 281–83.

²⁰ See *infra* notes 25–75 and accompanying text.

²¹ See *infra* notes 76–118 and accompanying text.

²² See *infra* notes 119–29 and accompanying text.

²³ See *infra* notes 130–68 and accompanying text.

²⁴ See *infra* notes 169–323 and accompanying text.

²⁵ Lawrence K. Snider et al., *The Bankruptcy Amendments and Federal Judgeship Act of 1984*, 63 MICH. B.J. 775, 775 (1984).

²⁶ See Kosub & Thompson, *supra* note 16, at 873–74.

²⁷ See S. REP. NO. 98-65, at 20 (1983); Kosub & Thompson, *supra* note 16, at 880; see also *infra* notes 175–99 and accompanying text.

²⁸ See generally Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333 (codified as amended in scattered sections of 11 U.S.C.).

"1978 Code"), which was itself the first major revision of bankruptcy law since the Bankruptcy Act of 1898.²⁹ One of the 1984 Amendments' many purposes was stopping consumer abuse of the Bankruptcy Code.³⁰ Critics of the 1978 Code believed that debtors abused the Code's liberal provisions to discharge payable debts.³¹

Under the 1978 Code, the interests of unsecured creditors were often neglected because § 1325(a)(4) established only a minimum standard for payment pursuant to a Chapter 13 plan that had no relationship to the debtor's income.³² The "best interests" test, used to determine that minimum, provided that the debtor pay unsecured creditors at least as much as they would have received had the debtor filed under Chapter 7.³³ Yet often the debtor had no unencumbered nonexempt assets, in which case unsecured creditors would receive nothing in Chapter 7. Thus, the Chapter 13 plan did not need to provide anything for unsecured creditors.³⁴ Before 1984, some bankruptcy courts applying the best interests test confirmed such zero-plans, whereas other bankruptcy courts avoided this result by extrapolating a feasibility test or a good faith test from §§ 1325(a)(6) and 1325(a)(3), respectively. These latter tests subjectively determined whether a plan proposed to pay enough to unsecured creditors.³⁵ These subjective tests thus resulted in inconsistency among bankruptcy courts.³⁶

²⁹ Snider et al., *supra* note 25, at 775.

³⁰ Kosub & Thompson, *supra* note 16, at 873-74.

³¹ James Rodenberg, *Reasonably Necessary Expenses or Life of Riley?: The Disposable Income Test and a Chapter 13 Debtor's Lifestyle*, 56 MO. L. REV. 617, 623 (1991).

³² See Robert G. Drummond, *Disposable Income Requirements Under Chapter 13 of the Bankruptcy Code*, 57 MONT. L. REV. 423, 425-26 (1996); Rodenberg, *supra* note 31, at 624. Section 1325(a)(4) provides, "the value . . . of property to be distributed under the plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under Chapter 7 of this title on such date." 11 U.S.C. § 1325(a)(4) (2000).

³³ Rodenberg, *supra* note 31, at 624 n.30.

³⁴ *Oversight Hearings Before the Subcommittee on Monopolies and Commercial Law of the Committee on the Judiciary*, 97th Cong. 19 (1981-1982) (statement of Vern Countryman, Vice Chairman, National Bankruptcy Conference) [hereinafter *House Hearings*].

³⁵ See 11 U.S.C. § 1325(a)(3), (6); *House Hearings*, *supra* note 34, at 19; Rodenberg, *supra* note 31, at 624 & nn.31, 33. Section 1325(a)(6) provides that a court will confirm a plan if "the debtor will be able to make all payments under the plan and to comply with the plan." 11 U.S.C. § 1325(a)(6). Section 1325(a)(3) provides that a court will confirm a plan if "the plan has been proposed in good faith and not by any means forbidden by law." *Id.* § 1325(a)(3).

³⁶ *House Hearings*, *supra* note 34, at 308 (statement of Robert B. Evans, Senior Vice President and General Counsel, National Consumer Finance Association); Rodenberg, *supra* note 31, at 624.

The most important change in the effort to curb consumer abuse was the addition of a disposable income requirement, also known as the "ability to pay" test, as a condition for confirmation of a Chapter 13 plan.³⁷ This requirement, added to § 1325(b) of the Bankruptcy Code, provided that if the trustee or an unsecured creditor objects to the debtor's Chapter 13 plan, the court must deny confirmation of the plan unless the plan provides that all of the debtor's projected disposable income will be applied for the next three years to make payments under the plan.³⁸ Furthermore, disposable income is defined as income received by the debtor that is not reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor.³⁹ This more precise definition provided a solution to the courts' various interpretations of the confirmation requirements.⁴⁰ Nevertheless, the 1984 Act and its disposable income requirement left courts, debtors, and creditors to ponder what exactly was meant by "reasonably necessary for the maintenance or support of the debtor."⁴¹

The 1984 Act also added the substantial abuse provision in Chapter 7, which complimented the disposable income requirement of Chapter 13.⁴² This provision, located at § 707(b), allowed a court to dismiss a debtor's Chapter 7 case if it found that granting relief would

³⁷ Kosub & Thompson, *supra* note 16, at 874.

³⁸ 11 U.S.C. § 1325(b)(1) (1994), amended by BAPCPA, Pub. L. No. 109-8, §§ 102(h)(1), 318(2), 119 Stat. 23, 33, 93 (to be codified at, and amending, 11 U.S.C. § 1325(b)(1)). BAPCPA amended § 1325(b)(1) by inserting "to unsecured creditors" after "to make payments" and replacing "3 year period" with "applicable commitment period."

³⁹ 11 U.S.C. § 1325(b)(2) (1994), amended by RLCDPA, Pub. L. No. 105-183, § 4, 112 Stat. 517, 518, and by BAPCPA § 102(h)(2), 119 Stat. at 33-34. See *infra* notes 119-29 for BAPCPA's changes to § 1325(b)(2).

⁴⁰ See Kosub & Thompson, *supra* note 16, at 876, 878-79.

⁴¹ See *id.* at 880.

⁴² See 11 U.S.C. § 707(b) (1994), amended by RLCDPA § 4, 112 Stat. at 518, and by BAPCPA § 102(a), 119 Stat. at 27-32; Drummond, *supra* note 32, at 429-30. After 1984, Section 707(b) provided:

After notice and a hearing, the court, on its own motion or on a motion by the United States trustee . . . may dismiss a case filed by an individual debtor under this chapter whose debts are primarily consumer debts if it finds that the granting of relief would be a substantial abuse of the provisions of this chapter.

11 U.S.C. § 707(b). BAPCPA added a rigorous means test to determine eligibility for Chapter 7 and deleted the word "substantial." BAPCPA § 102(a), 119 Stat. at 27-32 (to be codified at, and amending, 11 U.S.C. § 707(b)); George H. Singer & Michael P. Warren, *A New Playing Field: Changes in the Rules of Bankruptcy*, 62 BENCH & B. MINN., June 2005, at 20, 21. This means test is discussed *infra* notes 123-26.

be a substantial abuse of Chapter 7.⁴³ The "substantial abuse" language targeted debtors who had sufficient income to repay creditors under Chapter 13, but filed under Chapter 7 instead because they had few nonexempt assets that could be liquidated.⁴⁴ The drafters intended section 707(b) to force debtors to file under Chapter 13 and to be subject to its disposable income requirement, thereby compelling debtors to pay more than a nominal amount to unsecured creditors.⁴⁵

B. *Legislative History of the 1984 Amendments*

The legislative history for the 1984 Amendments illustrates that Congress was eager to develop a more definite standard for plan confirmation.⁴⁶ Congress proposed several standards before deciding on the disposable income test, which is also known as the "ability-to-pay" test.⁴⁷ The first bill, S. 658, would have amended § 1325(a)(3) to read: "the plan has been proposed in good faith and not by any means forbidden by law, and is the debtor's good faith effort."⁴⁸ Another bill proposed to require that a debtor's plan represented "the debtor's bona fide effort" to § 1325(a)(4).⁴⁹ H.R. 4786 and other bills expanded this bona fide effort test by including in § 1325(a)(3) that "the plan represents a bona fide effort which is consistent with the debtor's ability to repay his debts, after providing support for himself and his dependents."⁵⁰

The current disposable income test articulated in H.R. 5174 was fashioned almost word-for-word from a proposal by the National Bankruptcy Conference (the "NBC").⁵¹ Vern Countryman, Vice Chairman of the NBC, testified that the subjective language of prior tests only engendered confusion and inconsistency among the bankruptcy courts.⁵² Countryman rejected both the "good faith" and "bona fide effort" proposals because they were too vague, allowing courts to construe them to

⁴³ 11 U.S.C. § 707(b).

⁴⁴ Rodenberg, *supra* note 31, at 628.

⁴⁵ *See id.* at 628-29.

⁴⁶ *See* S. REP. NO. 98-65, at 20 (1983); Kosub & Thompson, *supra* note 16, at 876.

⁴⁷ *See, e.g.*, S. 2000, 97th Cong. § 18(a) (1981); H.R. 4786, 97th Cong. § 19(1) (1981); S. 863, 97th Cong. § 128(b) (1981); Kosub & Thompson, *supra* note 16, at 878 n.34.

⁴⁸ *See* S. 658, 96th Cong. § 128(b) (1979); Kosub & Thompson, *supra* note 16, at 878 n.34.

⁴⁹ *See* S. 863; Kosub & Thompson, *supra* note 16, at 878 n.34.

⁵⁰ *See* H.R. 4786; Kosub & Thompson, *supra* note 16, at 878 n.34.

⁵¹ COLLIER, *supra* note 10, ¶ 1325.08[1]; Kosub & Thompson *supra* note 16, at 878 n.35.

⁵² *See House Hearings, supra* note 34, at 19-20.

impose quantitative requirements on the amount of payment to unsecured creditors.⁵³ What was required, Countryman believed, was a test more tailored to the debtor's ability to satisfy claims from future income.⁵⁴ Such a test would balance the needs of both creditors and debtors because it would lessen consumer abuse while providing relief to debtors with little income unable to meet minimum payment requirements or substantial payment standards.⁵⁵

Other commentators and members of Congress expressed similar goals and concerns as Countryman and raised other considerations as well.⁵⁶ Most commentators lauded the ability-to-pay test as superior to the other proposed bills because it was more precise and consistent with the economic realities of the marketplace.⁵⁷ Commentators believed the test would likely bring uniformity to an area plagued by inconsistency because of the lack of guidance provided by other tests, including the good faith test.⁵⁸

Despite the aforementioned advances, commentators recognized that the ability-to-pay test was not wholly objective because of its definition of disposable income.⁵⁹ Unfortunately, the legislative history provides little explanation as to what is meant by "reasonably necessary" for the maintenance or support of the debtor.⁶⁰ The congressional hearings suggest that the term should encompass the needs of the debtor or living expenses such as housing, child care, medical expenses, food and clothing.⁶¹ Robert Evans, General Counsel of the National Consumer Finance Association, suggested that the Labor Department's Cost of Living Figures provide some guidance.⁶² In addition, Congress emphasized that a Chapter 13 plan should require some sacrifice on the debtor's part.⁶³ Congress believed a debtor would have to

⁵³ See *id.* at 6, 19-20, 308.

⁵⁴ *Id.* at 32.

⁵⁵ See *id.*; S. REP. NO. 97-150, at 19 (1981).

⁵⁶ See *House Hearings*, *supra* note 34, at 192, 306, 531.

⁵⁷ See *id.* at 211-12; Kosub & Thompson, *supra* note 16, at 878 n.38.

⁵⁸ See *Hearing Before the Subcommittee on Courts of the Committee on the Judiciary*, 98th Cong. 468 (1983) [hereinafter *Senate Hearings*]; Kosub & Thompson, *supra* note 16, at 878 n.38.

⁵⁹ See *House Hearings*, *supra* note 34, at 214, 749; S. REP. NO. 97-446, at 60 (1982).

⁶⁰ COLLIER, *supra* note 10, ¶ 1325.08[4][b].

⁶¹ See *House Hearings*, *supra* note 34, at 303, 448; Kosub & Thompson, *supra* note 16, at 880.

⁶² *House Hearings*, *supra* note 34, at 310. During the hearings, Phillip Shuchman, Professor of Law at Rutgers School of Law, also recommended using Labor Department statistics. *Id.* at 159.

⁶³ S. REP. NO. 98-65, at 64 (1983); S. REP. NO. 97-150, at 18-19 (1981).

make adjustments in consumption and forego luxuries.⁶⁴ Although courts should insist on debtors pursuing a more modest lifestyle, they should not require undue financial hardship.⁶⁵

Members of Congress and witnesses at the congressional hearings expressed some concern regarding bankruptcy courts' ability to make such determinations regarding a debtor's lifestyle and reasonable expenses.⁶⁶ Nevertheless, most agreed that courts could, and should, make such decisions.⁶⁷ They reasoned that courts are capable of distinguishing between those who can and those who cannot pay,⁶⁸ noting that courts made such judgments with regard to child support and alimony payments.⁶⁹ More importantly, Congress recognized that fixed, bright-line rules are not conducive to the individualized nature of Chapter 13 plans.⁷⁰ Strictly defining what is reasonable would not take into account the varied and unique familial needs of each debtor.⁷¹ In other words, bankruptcy courts played an important discretionary role that could not be achieved by exact definitions of reasonableness.⁷²

The legislative history of the 1984 Amendments also illustrates the concerns of members of Congress and experts in the bankruptcy field about debtor abuse and the risk that unsecured creditors would be cheated.⁷³ The ability-to-pay test aimed to preclude debtors who could pay from discharging their debts.⁷⁴ During Senate Hearings, Robert Evans observed that the lack of a workable standard in Chapter 13 plans resulted in one out of four bankruptcy debtors walking away from debts they could pay, thereby limiting the availability of

⁶⁴ See S. REP. NO. 97-150, at 19.

⁶⁵ *Id.*

⁶⁶ See *House Hearings*, *supra* note 34, at 347 (statement of Rep. Butler) (observing that judges might be influenced by how much their wives spend); S. REP. NO. 97-446, at 60 (1982).

⁶⁷ See *Senate Hearings*, *supra* note 58, at 119; *House Hearings*, *supra* note 34, at 532, 749.

⁶⁸ See *Senate Hearings*, *supra* note 58, at 119; *House Hearings*, *supra* note 34, at 532.

⁶⁹ See *Senate Hearings*, *supra* note 58, at 119; *House Hearings*, *supra* note 34, at 532.

⁷⁰ See S. REP. NO. 97-150, at 19 (1981).

⁷¹ See *House Hearings*, *supra* note 34, at 531, 749.

⁷² See *Senate Hearings*, *supra* note 58, at 119; *House Hearings*, *supra* note 34, at 531, 749; S. REP. NO. 97-150, at 19 (stating that no arbitrary payment levels should be required by judges because there must be room in Chapter 13 for the debtor on welfare or old age assistance who can pay only a nominal amount).

⁷³ See *Senate Hearings*, *supra* note 58, at 119; *House Hearings*, *supra* note 34, at 20; S. REP. NO. 98-65, at 20 (1983) (commenting that the absence of meaningful standards has an important impact on the ability of creditors to obtain meaningful recoveries in Chapter 13).

⁷⁴ See *Senate Hearings*, *supra* note 58, at 119; *House Hearings*, *supra* note 34, at 32.

credit and transferring \$ 1.5 billion onto other consumers in the form of higher prices and interest costs.⁷⁵

II. THE RELIGIOUS LIBERTY AND CHARITABLE DONATION PROTECTION ACT OF 1998

A. Overview

Congress passed RLCDDPA for two reasons: first, to enable debtors to make contributions to religious and charitable organizations during bankruptcy;⁷⁶ and second, to prevent bankruptcy trustees from suing religious organizations to recover a debtor's prepetition donations.⁷⁷ Pursuant to this purpose, RLCDDPA amended four provisions of the Code: sections 544, 548, 707, and 1325.⁷⁸

Section 548 allows a bankruptcy trustee to avoid a fraudulent transfer of property a debtor made within two years before filing for bankruptcy.⁷⁹ The provision recognizes both transfers that were made with actual intent to hinder, delay, or defraud creditors under § 548(a)(1)(A) and those that are constructively fraudulent under § 548(a)(1)(B).⁸⁰ Constructively fraudulent transfers are those that are made for less than reasonably equivalent value when the debtor is insolvent.⁸¹ RLCDDPA, however, excluded charitable and religious contributions from transfers that could be considered constructively fraudulent under § 548(a)(1)(B).⁸² Accordingly, a trustee cannot challenge a contribution as being constructively fraudulent that does not exceed fifteen percent of gross annual income or a contribution that exceeds fifteen percent of gross annual income but is consistent with the debtor's past practices.⁸³ Notably, RLCDDPA did not, however, protect charitable contributions from avoidance as actually fraudulent under § 548(a)(1)(A).⁸⁴

⁷⁵ *Senate Hearings, supra* note 58, at 119.

⁷⁶ See H.R. REP. NO. 105-556, at 4-5 (1998).

⁷⁷ See *id.*

⁷⁸ See generally RLCDDPA, Pub. L. No. 105-183, 112 Stat. 517 (codified as amended at 11 U.S.C. §§ 544, 548, 707, 1325).

⁷⁹ BAPCPA, Pub. L. No. 109-8, § 1402, 119 Stat. 23, 214-15 (to be codified at, and amending, 11 U.S.C. § 548(a)(1)); COLLIER, *supra* note 10, ¶ 548.01[1].

⁸⁰ See BAPCPA § 1402, 119 Stat. at 214-15 (to be codified at, and amending, 11 U.S.C. § 548(a)(1)); COLLIER, *supra* note 10, ¶ 548.01[1].

⁸¹ See COLLIER, *supra* note 10, ¶ 548.01[1].

⁸² See RLCDDPA § 3, 112 Stat. at 517-18 (codified as amended at 11 U.S.C. 548(a)(2)); see also COLLIER, *supra* note 10, ¶ 548.01[1].

⁸³ See RLCDDPA § 3, 112 Stat. at 517-18 (codified as amended at 11 U.S.C. 548(a)(2)); see also COLLIER, *supra* note 10, ¶ 548.01[1].

⁸⁴ See 11 U.S.C. § 548(a)(1)(A) (2000); Dyer & Jones, *supra* note 11, at 273.

Section 544(b) allows trustees to avoid transfers made by debtors in violation of nonbankruptcy or state law.⁸⁵ This provision grants trustees a significant power because oftentimes state law allows a trustee to recover transfers made several years before the debtor filed for bankruptcy—as opposed to the two year limit under § 548.⁸⁶ RLCDDPA prevented trustees from avoiding under state law religious and charitable contributions that were otherwise protected under § 548.⁸⁷

Section 707 concerns dismissal of a Chapter 7 case.⁸⁸ A court can dismiss a case for cause—such as unreasonable delay or nonpayment of fees—under §§ 707(a) or 707(b) if granting relief would be an abuse under Chapter 7.⁸⁹ RLCDDPA revised § 707(b) to prevent courts from considering a debtor's charitable donations when determining whether to dismiss a case for abuse.⁹⁰ Regardless of a debtor's donations, however, a court may nevertheless dismiss a case for actual cause under § 707(a).⁹¹

RLCDDPA amended § 1325 to include religious contributions as reasonably necessary expenses.⁹² After the 1984 Amendments but before RLCDDPA, § 1325(b) defined disposable income as income received by the debtor not reasonably necessary for the maintenance or support of the debtor or a dependent of the debtor.⁹³ RLCDDPA added to this definition, “including charitable contributions . . . to a qualified religious or charitable entity or organization . . . in an amount not to exceed 15 percent of the gross income of the debtor for the year in which the contributions are made.”⁹⁴ Thus, RLCDDPA enabled debtors to include certain religious contributions as reasonable expenses.⁹⁵

⁸⁵ 11 U.S.C. § 544(b); COLLIER, *supra* note 10, ¶ 544.02; Dyer & Jones, *supra* note 11, at 273.

⁸⁶ Dyer & Jones, *supra* note 11, at 273–74.

⁸⁷ See RLCDDPA, Pub. L. No. 105-183, § 3, 112 Stat. 517, 518 (codified as amended at 11 U.S.C. § 544(b)(2)).

⁸⁸ COLLIER, *supra* note 10, ¶ 707.01.

⁸⁹ 11 U.S.C. § 707(a) (2000); BAPCPA, Pub. L. No. 109-8, § 102(a), 119 Stat. 23, 27–32 (to be codified at, and amending, 11 U.S.C. § 707(b)); COLLIER, *supra* note 10, ¶ 707.01.

⁹⁰ See RLCDDPA § 4, 112 Stat. at 518 (codified as amended at 11 U.S.C. § 707(b)).

⁹¹ 11 U.S.C. § 707(a).

⁹² See RLCDDPA § 4, 112 Stat. at 518 (codified as amended at 11 U.S.C. § 1325(b)).

⁹³ See 11 U.S.C. § 1325(b)(2)(A) (1994), *amended by* RLCDDPA, Pub. L. No. 105-183, § 4, 112 Stat. 517, 518 (codified as amended at 11 U.S.C. § 1325(b)(2)(A)), *and by* BAPCPA § 102(h)(2), 119 Stat. at 33–34 (to be codified at, and amending, 11 U.S.C. § 1325(b)(2)(A)).

⁹⁴ RLCDDPA § 4, 112 Stat. at 518 (codified as amended at 11 U.S.C. § 1325(b)(2)(A)).

⁹⁵ See *id.*

RLCDPA also impacted provisions of the Bankruptcy Code that it did not amend.⁹⁶ Under § 523, some types of debt cannot be discharged even if the debtor obtains relief under one of the Bankruptcy Code chapters.⁹⁷ One such type delineated in § 523(a)(8) is student loans.⁹⁸ Nonetheless, courts can make an exception, according to § 523(a)(8), if payment of the debt would be an "undue hardship" on the debtor.⁹⁹ Debtors have attempted to use RLCDPA to protect their religious donations while also claiming that their student loans should be discharged because of undue hardship.¹⁰⁰

B. Legislative History of RLCDPA

The legislative history surrounding the passage of RLCDPA demonstrates that Congress primarily intended it to prevent the avoidance of prepetition charitable donations under § 548.¹⁰¹ Congress asserted that this was the bill's ultimate purpose and primary component.¹⁰² In fact, the amendments to § 1325 and § 707 are barely mentioned at all in the legislative history.¹⁰³ Senator Grassley, who sponsored RLCDPA in the Senate, testified that bankruptcy trustees were suing churches around the country to recover debtors' prepetition tithes as fraudu-

⁹⁶ See Dyer & Jones, *supra* note 11, at 276.

⁹⁷ BAPCPA, Pub. L. No. 109-8, § 714, 119 Stat. 23, 128-29 (to be codified at, and amending, 11 U.S.C. § 523(a)); Dyer & Jones, *supra* note 11, at 275.

⁹⁸ See BAPCPA § 220, 119 Stat. at 59 (to be codified at, and amending, 11 U.S.C. § 523(a)(8)).

⁹⁹ *Id.* To determine undue hardship, courts use the three-prong test articulated in *Brunner v. New York State Higher Education Services Corp.* which considers whether

(1) the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living . . . if forced to repay the loans; (2) [whether] additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans; and (3) [whether] the debtor has made good faith efforts to repay the loans.

831 F.2d 395, 396 (2d Cir. 1987).

¹⁰⁰ Dyer & Jones, *supra* note 11, at 276; see also *In re Allen*, 329 B.R. 544, 552 n.5 (Bankr. W.D. Pa. 2005) (noting that the debtor could continue to tithe if she reduced some of her other expenses such as her contribution to a retirement plan); *In re Perkins*, 318 B.R. 300, 309 (Bankr. M.D.N.C. 2004) (holding debtor's tithe unreasonable because there was little evidence to substantiate a current charitable contribution); *In re Meling*, 263 B.R. 275, 279 (Bankr. N. D. Iowa 2001) (finding that debtor's \$100 monthly tithe was reasonable in light of the circumstances); *In re Lynn*, 168 B.R. 693, 700 (Bankr. D. Ariz. 1994) (holding debtor's tithe was not reasonable because it was not necessary to receive church services).

¹⁰¹ See 144 CONG. REC. 10,845(1998); *id.* at 8941.

¹⁰² See *id.*

¹⁰³ See H.R. REP. NO. 105-556, at 2-5 (1998); 144 CONG. REC. 10,845 (1998).

lent transfers.¹⁰⁴ These baseless lawsuits, he further claimed, are particularly egregious in light of the charitable work churches perform with donations and their inability to repay money already spent.¹⁰⁵ Thus, the drive behind enactment of RLCDDPA was not to amend sections 1325 or 707 but to limit a bankruptcy trustee's avoidance powers against religious and charitable organizations under § 548.¹⁰⁶

The legislative history also reflects that, despite revising the Code to allow for religious donations, Congress was still wary of consumer abuse of the Code's provisions.¹⁰⁷ Representative Packard, who sponsored RLCDDPA in the House of Representatives, testified that he "tried desperately to craft language that would protect and avoid and prevent fraud."¹⁰⁸ He emphasized that he did not want the bill to encourage a debtor to use church donations fraudulently to avoid paying creditors.¹⁰⁹ Along the same lines, Senator Grassley emphasized that the bill did not amend § 548(a)(1) of the Bankruptcy Code, which allows a trustee to avoid a transfer as actually fraudulent.¹¹⁰ Transfers intended to hinder, delay or defraud, he noted, are still prohibited.¹¹¹ Congress clearly intended that § 548(a)(1) would remain a very important safeguard.¹¹²

In determining whether a tithe was actually fraudulent under § 548(a)(1), the House Judiciary Committee maintained that a court should examine the totality of the circumstances for indications of fraud.¹¹³ For example, the Committee hypothesized that a court would have reason to question a debtor who historically donated \$5 a week to the church and then suddenly before filing for bankruptcy donated fifteen percent of last year's income to the church.¹¹⁴ In that case, the Committee suggested that a court should consider the timing, the amount, the circumstances, and the change in pattern to determine if the transfer was actually fraudulent.¹¹⁵

¹⁰⁴ 144 CONG. REC. 8941 (1998).

¹⁰⁵ *See id.*

¹⁰⁶ *See id.* at 10,845.

¹⁰⁷ *See* H.R. REP. NO. 105-556, at 4-5; 144 CONG. REC. 10,845 (1998); *id.* at 8941.

¹⁰⁸ H.R. REP. NO. 105-556, at 10 n.37.

¹⁰⁹ *Id.*

¹¹⁰ 144 CONG. REC. 8941 (1998).

¹¹¹ *Id.*

¹¹² *See* H.R. REP. NO. 105-556, at 5 (1998).

¹¹³ *See id.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

Finally, the legislative history reveals Congress's frustration that the Code allowed for recreational spending but not tithing; in so noting, Congress hoped that RLCDDA would place religious contributions on equal footing with entertainment expenses.¹¹⁶ Representative Packard in particular was outraged that a Chapter 13 debtor could go to a bar, gamble, and get advice on a "1-900" psychic advice line but could not contribute to a church.¹¹⁷ Other members of Congress were appalled that some courts still did not allow debtors to tithe even after foregoing allowable entertainment expenses.¹¹⁸ Viewed in this context, RLCDDA thus served primarily to modify the perceived unfair treatment prepetition tithing could receive in bankruptcy.

III. THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005

BAPCPA was signed into law on April 20, 2005.¹¹⁹ This act made the most significant changes to the Bankruptcy Code since the Bankruptcy Reform Act of 1978.¹²⁰ For the most part, BAPCPA did not significantly impact the provisions most relevant to tithing.¹²¹

BAPCPA did not amend § 544 and only changed § 548 by increasing the reach back period from 1 year to 2 years.¹²² Congress did, however, substantially rewrite § 707(b) to include "means testing."¹²³ The means test limits judicial discretion and denies access to Chapter 7 to those individuals whose future earnings are sufficient to repay the debtor's prepetition debts.¹²⁴ If the debtor fails this test, a presumption of an abusive filing arises and the Chapter 7 case is either dismissed or

¹¹⁶ See 144 CONG. REC. 10,846 (1998); *id.* at 8941; 143 CONG. REC. 22,399 (1997); *id.* at 20,976.

¹¹⁷ 144 CONG. REC. 10,846 (1998).

¹¹⁸ See *id.* at 8942.

¹¹⁹ See generally BAPCPA, Pub. L. No. 109-8, 119 Stat. 23 (to be codified in scattered sections of 11 U.S.C., 12 U.S.C., 15 U.S.C., 18 U.S.C., and 28 U.S.C.) (enacted Apr. 20, 2005).

¹²⁰ Randall D. Crocker & Rebecca H. Simoni, *Fundamental Changes: Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, WIS. LAW., July 2005, at 14, 14.

¹²¹ See BAPCPA §§ 102(a), 102(h), 318(2), 1402, 119 Stat. at 27-32, 33-34, 93, 214-15 (to be codified at, and amending, 11 U.S.C. §§ 548(a), 707(b), 1325(b)).

¹²² See BAPCPA § 1402, 119 Stat. at 214-15 (to be codified at, and amending, 11 U.S.C. § 548(a)(1)).

¹²³ See BAPCPA § 102(a), 119 Stat. at 27-32 (to be codified at, and amending, 11 U.S.C. § 707(b)); Crocker & Simoni, *supra* note 120, at 54.

¹²⁴ Crocker & Simoni, *supra* note 120, at 54; Singer & Warren, *supra* note 42, at 20-21.

converted to Chapter 11 or 13 with the debtor's consent.¹²⁵ Nonetheless, Congress did not change those provisions of § 707(b), added by RLCDDPA, that prevented the court from considering the debtor's charitable donations in deciding whether to dismiss a Chapter 7 case.¹²⁶

Finally, BAPCPA made a minor change to § 1325(b)(2).¹²⁷ Congress placed the religious contributions exception into a separate subsection, separate from the "maintenance or support of the debtor" language.¹²⁸ Although a separate subsection, religious contributions are still modified by the "reasonably necessary to be expended" language of § 1325(b)(2).¹²⁹

IV. CASELAW REGARDING SECTION 1325

A. Before RLCDDPA

Prior to the enactment of RLCDDPA, courts generally held that religious donations were not reasonably necessary expenses under § 1325.¹³⁰ In fact, some courts found tithing per se unreasonable.¹³¹ In 1991, in *In re Packham*, the United States Bankruptcy Court for the

¹²⁵ See BAPCPA, Pub. L. No. 109-8, § 102(a), 119 Stat. 23, 27-32 (to be codified at, and amending, 11 U.S.C. § 707(b)); Joel B. Weinberg, *Debtor Beware*, L.A. LAW., Oct. 2005, at 22, 22.

¹²⁶ See BAPCPA § 102(a), 119 Stat. at 27-32 (to be codified at, and amending, 11 U.S.C. § 707(b)).

¹²⁷ See *id.* § 102(h)(2), 119 Stat. at 33-34 (to be codified at, and amending, 11 U.S.C. § 1325(b)(2)(A)).

¹²⁸ See *id.*

¹²⁹ See *id.* 11 U.S.C. § 1325(b)(2) now reads in pertinent part:

For purposes of this subsection, the term "disposable income" means current monthly income received by the debtor (other than 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) less amounts reasonably necessary to be expended—

(A) (i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

(ii) for charitable contributions (that meet the definition of "charitable contribution" under section 548(d)(3) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made

11 U.S.C. § 1325(b)(2) (2000), amended by BAPCPA, § 102(h)(2), 119 Stat. at 33-34.

¹³⁰ Dyer & Jones, *supra* note 11, at 290.

¹³¹ See *In re Lees*, 192 B.R. 756, 759 (Bankr. D. Mont. 1994); *In re Packham*, 126 B.R. 603, 608 (Bankr. D. Utah 1991).

District of Utah reasoned that church donations may be a source of inner strength, but are not necessary for the maintenance or support of the debtor or dependent of the debtor.¹³² In that case, the debtors proposed to make a monthly payment of \$285 to the bankruptcy trustee but withheld a monthly tithe of \$217, which the debtors claimed as a reasonably necessary expense.¹³³ The court denied confirmation of the plan, emphasizing that the purpose of Chapter 13 is to provide the maximum recovery to creditors and not to force creditors to be de facto donors to the debtor's church.¹³⁴ In addition, the debtors had not sufficiently demonstrated that they would be denied full participation in the church if they failed to tithe.¹³⁵

Other courts did not hold tithing per se unreasonable under § 1325(b), but instead concluded that tithing would be allowed only under certain circumstances.¹³⁶ In 1998, in *In re Reynolds*, the United States Bankruptcy Court for the Western District of Missouri denied confirmation of a debtor's plan that paid \$80 a month to his church but concluded that nominal amounts below three percent of his income would be permissible.¹³⁷ Similarly, in 1991, in *In re McDaniel*, the United States Bankruptcy Court for the District of Minnesota found the debtor's tithe of \$540 a month excessive but permitted the debtor to file an amended plan that reduced the tithing figure to a more reasonable amount.¹³⁸

A minority of courts prior to the enactment of RLCDDPA, however, concluded a debtor's tithes were reasonably necessary expenses.¹³⁹ In 1988, in *In re Navarro*, the United States Bankruptcy Court for the Eastern District of Pennsylvania confirmed the debtor's plan in which \$135 was paid to creditors and \$120 was tithed to the debtor's church.¹⁴⁰ The court reasoned that it should not order debtors to alter their lifestyle when there is "no obvious indulgence in luxuries."¹⁴¹ Instead, it should "proceed on a case by case basis, evaluating in each case the totality of

¹³² 126 B.R. at 608.

¹³³ *Id.* at 605.

¹³⁴ *Id.* at 610.

¹³⁵ *Id.* at 608.

¹³⁶ See *In re McDaniel*, 126 B.R. 782, 785 (Bankr. D. Minn. 1991); *In re Reynolds*, 83 B.R. 684, 685 (Bankr. W.D. Mo. 1988).

¹³⁷ 83 B.R. at 684-85.

¹³⁸ 126 B.R. at 783, 785.

¹³⁹ See *In re Bien*, 95 B.R. 281, 283 (Bankr. D. Conn. 1989); *In re Navarro*, 83 B.R. 348, 356 (Bankr. E.D. Pa. 1988).

¹⁴⁰ 83 B.R. at 350, 357.

¹⁴¹ *Id.* at 355.

the circumstances.”¹⁴² In this case, the court found that the debtor’s monthly tithe was not a luxury because the debtor did not receive any tangible benefit or increased standard of living in return.¹⁴³

Overall, before RLCDDA, the majority of courts held that tithes were not reasonably necessary expenses under § 1325(b).¹⁴⁴ These courts applied particularly strict scrutiny with some courts finding tithes to be per se unreasonable.¹⁴⁵

B. After RLCDDA

The enactment of RLCDDA did not resolve whether tithes were reasonably necessary expenses under § 1325(b).¹⁴⁶ Bankruptcy courts disagreed whether the religious contribution exemption that RLCDDA imposed still had to undergo reasonably necessary scrutiny.¹⁴⁷ When Congress drafted the statute, it did not place the religious contribution exemption in a stand-alone subsection; rather it placed it in § 1325(b)(2)(A), which is modified by the phrase “reasonably necessary to be expended.”¹⁴⁸ Consequently, courts differed over whether religious contributions must also be reasonably necessary.¹⁴⁹

In 2001, in *In re Kirschner*, the United States Bankruptcy Court for the Middle District of Florida joined the other courts that held that religious contributions should not be scrutinized for reasonableness.¹⁵⁰ In that case, the court confirmed a plan in which the debtors allocated \$674 a month to charitable contributions.¹⁵¹ The court reasoned that to impose a reasonableness standard would be to obstruct the purpose of RLCDDA, which protected a debtor’s ability to make

¹⁴² *Id.*

¹⁴³ *Id.* at 356.

¹⁴⁴ See e.g., *In re Lees*, 192 B.R. at 759; *In re Packham*, 126 B.R. at 608; *In re Reynolds*, 83 B.R. at 685.

¹⁴⁵ See *In re Packham*, 126 B.R. at 608.

¹⁴⁶ See *In re Kirschner*, 259 B.R. 416, 422 (Bankr. M.D. Fla. 2001); Dyer & Jones, *supra* note 11, at 281–83. This question remains even after enactment of BAPCPA because the religious contribution exception is still modified by the “reasonably necessary to be expended” language. BAPCPA, Pub. L. No. 109-8, § 102(h)(2), 119 Stat. 23, 33–34 (to be codified at, and amending, 11 U.S.C. § 1325(b)(2)). In addition, a review of caselaw after enactment of BAPCPA uncovers no resolution to this question.

¹⁴⁷ See *In re Kirschner*, 259 B.R. at 422.

¹⁴⁸ 11 U.S.C. § 1325(b)(2)(A) (2000), amended by BAPCPA § 102(h)(2), 119 Stat. at 33–34 (to be codified at, and amending, 11 U.S.C. § 1325(b)(2)(A)); see *In re Kirschner*, 259 B.R. at 422. The religious contribution exception is now located in § 1325(b)(2)(A)(ii). For the text of the current version of 11 U.S.C. § 1325(b)(2) see *supra* note 129.

¹⁴⁹ See *In re Kirschner*, 259 B.R. at 422; Dyer & Jones, *supra* note 11, at 281–83.

¹⁵⁰ *In re Kirschner*, 259 B.R. at 422.

¹⁵¹ *Id.* at 424, 426.

donations during bankruptcy.¹⁵² In addition, the Court noted that other limitations on abuse existed, including the fifteen percent statutory limit and the good faith test found in § 1325(a)(3).¹⁵³

In 2000, in *In re Cavanagh*, the Bankruptcy Appellate Panel of the Ninth Circuit followed similar reasoning when it confirmed the debtors' plan which included a \$234 tithe to their church.¹⁵⁴ The statutory language, the court reasoned, clearly and unambiguously stated that as long as a debtor's donation did not exceed fifteen percent of annual income, it was a reasonably necessary expense.¹⁵⁵ To engage in a separate analysis for reasonableness would be contrary to congressional will.¹⁵⁶ The *Cavanagh* court echoed the *Kirschner* court in finding that the good faith test of § 1325(a)(3) adequately serves to limit consumer abuse of the statute.¹⁵⁷

In contrast, in 1999, in *In re Buxton*, the United States Bankruptcy Court for the Western District of Louisiana concluded that a debtor's tithes still had to be reasonable in light of the totality of the circumstances.¹⁵⁸ In support of this view, the court noted that the definition of disposable income in the statute still contained the "reasonably necessary" restriction.¹⁵⁹ Thus, according to the court, RLCDDPA overturned those cases that totally prohibited religious donations and instead made clear that certain religious contributions may be reasonably necessary expenses.¹⁶⁰ The court also noted that if Congress intended a more expansive interpretation, it could have more forcefully pronounced such intentions as it did in revising § 707(b), which states that "the court may not take into consideration whether a debtor has made . . . charitable contributions."¹⁶¹

In 2001, in *In re Davis*, the United States Bankruptcy Court for the District of Wyoming held, similar to the *Buxton* court, that RLCDDPA did not impose a rigid rule qualifying an automatic fifteen percent allowance for religious donations, but instead intended a more fluid rule under which the donation would also have to be reasonably neces-

¹⁵² See *id.* at 422.

¹⁵³ *Id.* at 423.

¹⁵⁴ See 250 B.R. 107, 109, 113 (B.A.P. 9th Cir. 2000).

¹⁵⁵ *Id.* at 112.

¹⁵⁶ *Id.* at 113.

¹⁵⁷ See *id.* at 115; *In re Kirschner*, 259 B.R. at 423.

¹⁵⁸ 228 B.R. 606, 610 (Bankr. W.D. La. 1999).

¹⁵⁹ *Id.*

¹⁶⁰ *Id.*

¹⁶¹ *In re Buxton*, 228 B.R. at 610 (quoting 11 U.S.C. § 707(b) (2000)).

sary.¹⁶² The court also reasoned that Congress did not place the donation provision in a stand-alone subsection but rather placed it as part of the “reasonably necessary” provision.¹⁶³ Thus, for a charitable contribution to qualify as a reasonably necessary expense, it could not exceed fifteen percent of the debtor’s gross income and it had to be reasonable.¹⁶⁴ The court mentioned a few relevant factors in determining reasonableness—such as the debtor’s past donation practices and overall actions during the case.¹⁶⁵

After RLCDDPA, courts have divided over whether religious donations must also undergo a reasonableness test.¹⁶⁶ Some courts interpret the fifteen percent ceiling as an automatic exemption that is guaranteed regardless of the circumstances.¹⁶⁷ Other courts reason that the debtor’s tithes must also be reasonable.¹⁶⁸

V. ANALYSIS: A REASONABLENESS INQUIRY MUST BE INCORPORATED INTO ALL SECTION 1325 ANALYSES

Courts should not infer that Congress intended to promulgate a rigid, categorical rule that automatically allowed for tithes not exceeding fifteen percent of gross income when amending § 1325(b) through RLCDDPA.¹⁶⁹ Instead, Congress intended that such contributions must also be deemed reasonable.¹⁷⁰ For several reasons, further court review ought to be required to ensure that the tithe is reasonable in light of the circumstances.¹⁷¹ Section A of this Part illustrates how a reasonableness inquiry is more consistent with the purpose behind § 1325(b) as reflected in the legislative history of the 1984 Amendments, RLCDDPA, BAPCPA, and the caselaw.¹⁷² Section B then argues that § 1325(b) requires more flexibility when compared with courts’ and Congress’s unambiguous treatment of tithes under other Code provi-

¹⁶² See *In re Davis*, 2001 WL 1740000, at *2 (Bankr. D. Wyo. July 19, 2001).

¹⁶³ *Id.*

¹⁶⁴ *Id.*

¹⁶⁵ *Id.* at *2, *3.

¹⁶⁶ See *In re Kirschner*, 259 B.R. at 422.

¹⁶⁷ See *In re Cavanagh*, 250 B.R. at 112; *In re Kirschner*, 259 B.R. at 422.

¹⁶⁸ See *In re Davis*, 2001 WL 1740000 at *2; *In re Buxton*, 228 B.R. at 610.

¹⁶⁹ See 11 U.S.C. § 1325(b)(2)(A) (2000), amended by BAPCPA, Pub. L. No. 109-8, § 102(h)(2), 119 Stat. 23, 33–34; *In re Buxton*, 228 B.R. 606, 610 (Bankr. W.D. La. 1999).

¹⁷⁰ See 11 U.S.C. § 1325(b)(2)(A); *In re Buxton*, 228 B.R. at 610.

¹⁷¹ See 11 U.S.C. § 1325(b)(2)(A); *In re Davis*, 2001 WL 1740000 at *2 (Bankr. D. Wyo. July 19, 2001); *In re Buxton*, 228 B.R. at 610; see also *infra* notes 175–323 and accompanying text.

¹⁷² See *infra* notes 175–235 and accompanying text.

sions impacted by RLCDDPA.¹⁷³ Finally, Section C explains that without the operation of some reasonableness scrutiny, Chapter 13 plan confirmation will continue to be vulnerable to debtor abuse.¹⁷⁴

A. *The Purpose of Section 1325(b)*

1. The Reasonableness Inquiry and the Legislative History of the 1984 Amendments

Courts should engage in a separate reasonableness inquiry regarding a debtor's tithes because such an inquiry is consistent with the purpose behind § 1325(b) as reflected in the legislative history of the 1984 Amendments.¹⁷⁵ When Congress created the disposable income test as part of the 1984 Amendments, its objective was to create a more clearly defined test that would reflect the needs of each debtor and curb debtor abuse.¹⁷⁶ An additional analysis into the reasonableness of a debtor's tithes, rather than an automatic allowance for any tithe that is less than fifteen percent of income, is more conducive to achieving this objective.¹⁷⁷

The disposable income test was aimed in part at ensuring that debtors who could pay did pay.¹⁷⁸ The subjective, toothless standards in effect before the 1984 Amendments enabled many debtors to cheat their creditors out of a meaningful payment on their claims.¹⁷⁹ The vagueness of the prior tests also forced many judges to invoke minimum payment percentages, which Congress opposed.¹⁸⁰ These pre-1984 standards were ineffective because they tied confirmation of a debtor's repayment plan to criteria such as good faith, feasibility, and best interests, none of which ascertained the debtor's ability to pay.¹⁸¹ Congress regarded the disposable income test as a solution because it

¹⁷³ See *infra* notes 236-74 and accompanying text.

¹⁷⁴ See *infra* notes 275-323 and accompanying text.

¹⁷⁵ See *Senate Hearings*, *supra* note 58, at 119; *House Hearings*, *supra* note 34, at 310; S. REP. NO. 98-65, at 20 (1983); S. REP. NO. 97-150, at 19 (1981).

¹⁷⁶ See *Senate Hearings*, *supra* note 58, at 119; *House Hearings*, *supra* note 34, at 6; S. REP. NO. 98-65, at 20; S. REP. NO. 97-150, at 19; Kosub & Thompson, *supra* note 16, at 874; Rodenberg, *supra* note 31, at 624-25.

¹⁷⁷ See e.g., *Senate Hearings*, *supra* note 58, at 119; *House Hearings*, *supra* note 34, at 32; S. REP. NO. 97-150, at 19.

¹⁷⁸ See *Senate Hearings*, *supra* note 58, at 119; *House Hearings*, *supra* note 34, at 32.

¹⁷⁹ See *House Hearings*, *supra* note 34, at 306-07; Rodenberg, *supra* note 31, at 626.

¹⁸⁰ See *House Hearings*, *supra* note 34, at 308-09, 749; S. REP. NO. 97-150, at 19; Rodenberg, *supra* note 31, at 624-25.

¹⁸¹ See *House Hearings*, *supra* note 34, at 32, 211; S. REP. NO. 98-65, at 20 (1983).

pegged confirmation of a Chapter 13 plan to the debtor's income—a criterion that was more reflective of a debtor's ability to pay.¹⁸²

In essence, Congress abandoned broad, imprecise standards in favor of a more debtor-specific standard.¹⁸³ The disposable income test sought to check consumer abuse and ensure greater fairness by forcing courts to examine closely a debtor's finances.¹⁸⁴ Most members of Congress and bankruptcy experts agreed that bankruptcy courts were capable of making such determinations.¹⁸⁵

A reasonableness inquiry into a debtor's tithes is more consistent with the notion that greater judicial scrutiny is an effective means to promote fairness and curb consumer abuse.¹⁸⁶ By interpreting § 1325(b) as automatically allowing any tithe that does not exceed fifteen percent of income, a court risks using the same general standards that Congress abandoned when it created the disposable income test in 1984.¹⁸⁷ Submitting a debtor's tithes to a reasonableness inquiry enables a court to make any necessary modifications to adapt more effectively the plan to the specific needs of the debtor and creditors.¹⁸⁸

Conversely, under an automatic allowance interpretation, all debtors—including those who have never tithed in the past—can donate money to a religious institution.¹⁸⁹ Consequently, creditors' needs are not met and the plan is not adequately customized to the genuine needs of the debtor.¹⁹⁰ The potential for abuse can be substantial in light of the hundreds of dollars debtors can donate to their churches each month.¹⁹¹

¹⁸² See *House Hearings*, *supra* note 34, at 32, 211; S. REP. NO. 98-65, at 20.

¹⁸³ See *House Hearings*, *supra* note 34, at 32, 211; S. REP. NO. 98-65, at 20.

¹⁸⁴ See *Senate Hearings*, *supra* note 58, at 119; *House Hearings*, *supra* note 34, at 32, 211, 532; S. REP. NO. 98-65, at 20.

¹⁸⁵ See *Senate Hearings*, *supra* note 58, at 119 (testimony of Robert Evans) (remarking that such determinations are the function of the courts exercised every day both in the bankruptcy courts and elsewhere); *House Hearings*, *supra* note 34, at 532, 749.

¹⁸⁶ See *Senate Hearings*, *supra* note 58, at 119; *House Hearings*, *supra* note 34, at 32; H.R. REP. NO. 105-556, at 5 (1998); S. REP. NO. 98-65, at 20.

¹⁸⁷ See *House Hearings*, *supra* note 34, at 308-09; S. REP. NO. 98-65, at 20 (1983); Kosub & Thompson, *supra* note 16, at 876-77.

¹⁸⁸ See *In re Buxton*, 228 B.R. at 611; *House Hearings*, *supra* note 34, at 347, 749; S. REP. NO. 97-150, at 19 (1981).

¹⁸⁹ See BAPCPA, Pub. L. No. 109-8, § 102(h)(2), 119 Stat. 23, 33-34 (to be codified at, and amending, 11 U.S.C. § 1325(b)(2)); Klee, *supra* note 12, at 185-86.

¹⁹⁰ See *House Hearings*, *supra* note 34, at 531, 749; Klee, *supra* note 12, at 185-86.

¹⁹¹ See e.g., *In re Cavanagh*, 250 B.R. 107, 109 (B.A.P. 9th Cir. 2000) (donating \$234 a month); *In re Kirschner*, 259 B.R. 416, 420 (Bankr. M.D. Fla. 2001) (donating \$674 a month).

Furthermore, a fifteen percent automatic allowance contravenes Congress's intention to sacrifice some definiteness for flexibility.¹⁹² By injecting a quantitative standard into plan confirmation, the fifteen percent automatic allowance acts as a minimum payment percentage, which both Congress and the NBC opposed.¹⁹³ In creating the disposable income test, Congress created a single standard that was guided by objective criteria, not quantitative requirements.¹⁹⁴ Legislators and bankruptcy experts found that tailoring Chapter 13 relief to the debtor's needs and income outweighed any uniformity gained by quantitative requirements.¹⁹⁵ As a result, Congress codified the flexible disposable income test rather than any quantitative requirements imposed by bankruptcy courts pre-1984.¹⁹⁶

In implementing the disposable income test, Congress wanted courts to examine a debtor's housing costs, living expenses, taxes, medical expenses, child care expenses, and the like to ensure that such expenses were reasonable and that creditors were receiving meaningful payments.¹⁹⁷ Similarly, courts should examine the amount of a debtor's monthly tithe, the necessity of tithing for participation in church activities, and the debtor's tithing history to ensure that the monthly tithe is reasonable and that creditors will receive adequate returns on their claims.¹⁹⁸ In order to limit consumer abuse and promote fairness in the facilitation of a Chapter 13 plan, tithes must be treated like any other debtor expense—carefully scrutinized by the court for reasonableness.¹⁹⁹

2. The Reasonableness Inquiry and RLCDPA's Legislative History

A separate reasonableness inquiry, rather than an automatic fifteen percent allowance, is also more consistent with the purpose of § 1325(b) as reflected in RLCDPA's legislative history.²⁰⁰ Sponsors of

¹⁹² See BAPCPA § 102(h)(2), 119 Stat. at 33-34 (to be codified at, and amending, 11 U.S.C. § 1325(b)(2)); S. REP. NO. 98-65, at 20-22; S. REP. NO. 97-150, at 19.

¹⁹³ See *House Hearings*, *supra* note 34, at 19, 749; S. REP. NO. 97-150, at 19.

¹⁹⁴ See S. REP. NO. 98-65, at 20-22 (1983); S. REP. NO. 97-150, at 19 (1981).

¹⁹⁵ See *House Hearings*, *supra* note 34, at 32, 211; S. REP. NO. 97-150, at 19.

¹⁹⁶ See Pub. L. No. 98-353, § 317, 98 Stat. 333, 356 (1984).

¹⁹⁷ See *House Hearings*, *supra* note 34, at 531-32; Kosub & Thompson, *supra* note 16, at 880.

¹⁹⁸ See *In re Buxton*, 228 B.R. at 611; *In re Lees*, 192 B.R. 756, 759-60 (Bankr. D. Mont. 1994).

¹⁹⁹ See *In re Buxton*, 228 B.R. at 610; *Senate Hearings*, *supra* note 58, at 119; *House Hearings*, *supra* note 34, at 347, 531.

²⁰⁰ See H.R. REP. NO. 105-556, at 10 n.37 (1998); 144 CONG. REC. 10,846 (1998).

RLCDPA wanted to place religious contributions on equal footing with a debtor's secular expenses.²⁰¹ This goal of treating religious donations and secular expenses equally necessitates a reasonableness inquiry concerning a debtor's tithes under § 1325(b).²⁰²

Under § 548, a trustee may avoid any transfer made by the debtor if the debtor was insolvent and received less than a reasonably equivalent value in exchange for such transfer.²⁰³ Before RLCDPA, trustees used this provision to avoid a debtor's prepetition religious donations because the debtor did not receive reasonably equivalent value.²⁰⁴ On the other hand, an exchange of inventory for cash, money spent on expensive vacations, or gambling would be protected because the debtor received reasonably equivalent value.²⁰⁵ Giving religious donations similar treatment would require a distinct, automatic exemption.²⁰⁶ It would be nearly impossible for courts to shoehorn religious donations into the market exchange paradigm of § 548.²⁰⁷ Furthermore, a more liberal judicial interpretation of "value" would effectively gut fraudulent conveyance law.²⁰⁸ Thus, an automatic exemption was the only means by which prepetition religious donations could achieve parity with marketplace transfers.²⁰⁹

In contrast, under § 1325(b), comparable treatment for religious donations requires a reasonableness inquiry.²¹⁰ Where a court's approach under § 548 is more clear-cut—the debtor either did or did not receive reasonably equivalent value in exchange for the transfer—its approach under § 1325 is more individualized and tailored to the circumstances.²¹¹ In confirming a Chapter 13 plan, a court aims to meet the debtor's personal needs and ensure that creditors receive meaning-

²⁰¹ See 144 CONG. REC. 8941 (1998); 143 CONG. REC. 22,399 (1997).

²⁰² See BAPCPA, Pub. L. No. 109-8, § 102(h)(2), 119 Stat. 23, 33-34 (to be codified at, and amending, 11 U.S.C. § 1325(b)(2)); *In re Buxton*, 228 B.R. at 610; 144 CONG. REC. 8941 (1998).

²⁰³ 11 U.S.C. § 548(a)(1)(B)(i) (2000).

²⁰⁴ See H.R. REP. NO. 105-556, at 2; Zywicki, *supra* note 1, at 1230.

²⁰⁵ See *Allard v. Flamingo Hilton* (*In re Chomakos*), 69 F.3d 769, 772 (6th Cir. 1995); Zywicki, *supra* note 1, at 1234-35.

²⁰⁶ See 11 U.S.C. § 548(a)(2); H.R. REP. NO. 105-556, at 3 (1998); Zywicki, *supra* note 1, at 1241-43.

²⁰⁷ See 11 U.S.C. § 548(a)(1)(B)(i); Zywicki, *supra* note 1, at 1241-43.

²⁰⁸ See Zywicki, *supra* note 1, at 1238.

²⁰⁹ See H.R. REP. NO. 105-556, at 3; Zywicki, *supra* note 1, at 1238, 1241-43.

²¹⁰ See BAPCPA, Pub. L. No. 109-8, § 102(h)(2), 119 Stat. 23, 33-34 (to be codified at, and amending, 11 U.S.C. § 1325(b)(2)); *In re Buxton*, 228 B.R. at 610; 144 CONG. REC. 8941 (1998).

²¹¹ See 11 U.S.C. § 548(a)(1)(B) (2000); *House Hearings*, *supra* note 34, at 347; S. REP. NO. 97-150, at 19 (1981).

ful payments.²¹² To this end, a court must find that all of a debtor's expenses are reasonable.²¹³ Consequently, religious donations, just like any other expense, must be deemed reasonable.²¹⁴ If religious donations were automatically allowed under § 1325(b), they would not simply be on par with secular expenses, but in fact would have achieved higher status.²¹⁵ Congress intended that RLCDPA would level the playing field, not give religious donations an unfair advantage.²¹⁶

3. The Reasonableness Inquiry and BAPCPA

BAPCPA was enacted seven years after RLCDPA.²¹⁷ During those seven years, bankruptcy courts disagreed over whether religious contributions had to be reasonably necessary under § 1325.²¹⁸ When Congress revisited § 1325(b) with BAPCPA, Congress could have made its intent clear.²¹⁹ It could have amended the statute to state clearly that religious contributions were automatically exempted from disposable income so long as they constituted less than fifteen percent of annual income.²²⁰ Congress, however, simply placed the religious contribution exemption in a separate subsection still modified by the "reasonably necessary to be expended" language.²²¹ Because Congress's failure to take corrective action when a statute has been interpreted by the courts

²¹² See *In re Buxton*, 228 B.R. at 611; S. REP. NO. 98-65, at 20, 22 (1983); S. REP. NO. 97-150, at 19.

²¹³ See BAPCPA § 102(h)(2), 119 Stat. at 33-34 (to be codified at, and amending, 11 U.S.C. § 1325(b)(2)).

²¹⁴ See *id.*; *In re Buxton*, 228 B.R. at 610; *House Hearings*, *supra* note 34, at 749; 144 CONG. REC. 8941 (1998).

²¹⁵ See BAPCPA § 102(h)(2), 119 Stat. at 33-34 (to be codified at, and amending, 11 U.S.C. § 1325(b)(2)); *House Hearings*, *supra* note 34, at 749; 144 CONG. REC. 8941 (1998).

²¹⁶ See H.R. REP. NO. 105-556, at 10 n.37 (1998); 144 CONG. REC. 8941 (1998); 143 CONG. REC. 22,399 (1997); *id.* at 20,976.

²¹⁷ See generally BAPCPA, Pub. L. No. 109-8, 119 Stat. 23 (to be codified in scattered sections of 11 U.S.C., 12 U.S.C., 15 U.S.C., 18 U.S.C., and 28 U.S.C.); RLCDPA, Pub. L. No. 105-183, 112 Stat. 517 (codified as amended in 11 U.S.C. §§ 544, 548, 707, 1325).

²¹⁸ See *In re Kirschner*, 259 B.R. at 422.

²¹⁹ See *N. Haven Bd. of Educ. v. Bell*, 456 U.S. 512, 535 (1982) ("Where 'an agency's statutory construction has been 'fully brought to the attention of the public and the Congress,' and the latter has not sought to alter that interpretation although it has amended the statute in other respects, then presumably the legislative intent has been correctly discerned.") (quoting *United States v. Rutherford*, 442 U.S. 544, 554 n.10 (1979) (quoting *Apex Hosiery Co. v. Leader*, 310 U.S. 469, 489 (1940))).

²²⁰ See *id.*

²²¹ See BAPCPA § 102(h)(2), 119 Stat. at 33-34 (to be codified at, and amending, 11 U.S.C. § 1325(b)(2)).

in one fashion can indicate that it tacitly approves of that interpretation, the inclusion of a reasonableness inquiry here is sensible.²²²

4. The Reasonableness Inquiry and Section 1325(b) Caselaw

A separate reasonableness inquiry, rather than an automatic fifteen percent allowance, is also more consistent with the purpose of § 1325(b) as reflected in the caselaw.²²³ Before the enactment of RLCDDPA, bankruptcy courts imposed some reasonableness scrutiny regarding a debtor's tithes.²²⁴ The level of scrutiny regarding tithes was often more rigorous as many courts deemed them unreasonable.²²⁵ A few courts, however, held that a debtor's tithes were reasonably necessary in light of the totality of the circumstances.²²⁶ Some courts, adhering to Congress's goal that Chapter 13 plan confirmation be tailored to the debtor's needs, allowed the debtor to tithe in exchange for some modifications.²²⁷

After RLCDDPA's enactment, courts are split on whether the statute imposed a reasonableness requirement.²²⁸ Nonetheless, even those courts opposed to a reasonableness inquiry concluded that the court still needed to determine whether a plan was proposed in good faith under § 1325(a)(3).²²⁹ For example, in 2000 in *In re Cavanagh*, the United States Bankruptcy Appellate Panel of the Ninth Circuit stated that a court should consider factors such as the timing of the tithe and the amount when looking at the totality of the circumstances to determine whether the debtor has proposed a plan in good faith.²³⁰ The United States Bankruptcy Court for the Western District of Louisiana used the same factors in *In re Buxton* when determining

²²² RONALD BENTON BROWN & SHARON JACOBS BROWN, STATUTORY INTERPRETATION: THE SEARCH FOR LEGISLATIVE INTENT 155 (2002).

²²³ See *In re Buxton*, 228 B.R. at 610-11; *In re Reynolds*, 83 B.R. 684, 685 (Bankr. W.D. Mo. 1988).

²²⁴ See *In re McDaniel*, 126 B.R. 782, 785 (Bankr. D. Minn. 1991); *In re Reynolds*, 83 B.R. at 685.

²²⁵ See *In re Lees*, 192 B.R. at 759; *In re Packham*, 126 B.R. 603, 608 (Bankr. D. Utah 1991).

²²⁶ See *In re Bien*, 95 B.R. 281, 283 (Bankr. D. Conn. 1989); *In re Navarro*, 83 B.R. 348, 356 (Bankr. E.D. Pa. 1988).

²²⁷ See *In re Ivy*, No. 88-3769, 1990 WL 198634, at *1 (9th Cir. Dec. 10, 1990) (suggesting the debtor extend the plan an additional 18 months); *In re McDaniel*, 126 B.R. at 785 (offering to confirm the plan if the debtor reduced the tithing figure).

²²⁸ Compare *In re Cavanagh*, 250 B.R. at 112, with *In re Buxton*, 228 B.R. at 610.

²²⁹ See *In re Cavanagh*, 250 B.R. at 114; *In re Kirschner*, 259 B.R. at 423.

²³⁰ 250 B.R. at 114.

whether a tithe was a reasonably necessary expense.²³¹ Similarly, in 2001 the United States Bankruptcy Court for the Middle District of Florida in *In re Kirschner*, opposed the reasonableness inquiry articulated by the *Buxton* court but nevertheless looked at the totality of the circumstances surrounding the tithe and the debtor's motivations to conclude that the debtor proposed the plan in good faith.²³²

The good faith analysis applied by those courts that support an automatic fifteen percent exemption serves the same purpose as a reasonableness inquiry.²³³ Although the scrutiny is less rigorous, the function is essentially the same—to ensure that a Chapter 13 plan adequately reflects the debtor's genuine needs and allows for meaningful payments to creditors.²³⁴ Thus, even those courts that oppose a reasonableness inquiry functionally carry out Congress's intent through the disposable income test.²³⁵

B. *The Treatment of Tithes and Other Code Provisions Impacted by RLCDDPA*

RLCDDPA amended not only § 1325, but also other provisions of the Bankruptcy Code to allow for a debtor's tithes.²³⁶ Yet unlike its drafting of § 1325, Congress's intent regarding these other provisions is unambiguous.²³⁷ The relatively unequivocal wording of these other provisions suggests that Congress intended a more flexible approach for § 1325.²³⁸ In addition, the judicial treatment of tithes in other bankruptcy contexts, notably the discharge of student loans, supports a reasonableness inquiry under § 1325(b).²³⁹

²³¹ See 228 B.R. at 611.

²³² See *In re Kirschner*, 259 B.R. at 422, 424–25.

²³³ See *In re Cavanagh*, 250 B.R. at 114; *In re Kirschner*, 259 B.R. at 424–25; *In re Buxton*, 228 B.R. at 611.

²³⁴ See *In re Cavanagh*, 250 B.R. at 114; *In re Buxton*, 228 B.R. at 611; *Senate Hearings*, *supra* note 58, at 119; *House Hearings*, *supra* note 34, at 347, 749.

²³⁵ See *In re Cavanagh*, 250 B.R. at 114; *In re Kirschner*, 259 B.R. at 424–25; *House Hearings*, *supra* note 34, at 347, 749; S. REP. NO. 98-65, at 20, 22 (1983).

²³⁶ See RLCDDPA, Pub. L. No. 105-183, 112 Stat. 517 (codified as amended in 11 U.S.C. §§ 544, 548, 707, 1325).

²³⁷ See 11 U.S.C. § 544(b)(2) (2000); 11 U.S.C. §§ 548(a)(2), 707(b), amended by BAPCPA, Pub. L. No. 109-8, §§ 102(a), 1402, 119 Stat. 23, 27–32, 214–15.

²³⁸ See 11 U.S.C. § 544(b)(2); 11 U.S.C. §§ 548(a)(2), 707(b), amended by BAPCPA §§ 102(a), 1402, 119 Stat. at 27–32, 214–15; *In re Buxton*, 228 B.R. at 610.

²³⁹ See *In re McLaney*, 314 B.R. 228, 237 (Bankr. M.D. Ala. 2004); *In re Meling*, 263 B.R. 275, 279 (Bankr. N.D. Iowa 2001); *In re McLeroy*, 250 B.R. 872, 879 (Bankr. N.D. Tex. 2000).

1. RLCDDPA's Exclusion of Tithes in Sections 544, 548, and 707

Sections 544 and 548, which concern the fraudulent transfer of funds, explicitly exclude religious donations.²⁴⁰ Section 548(a)(1) outlines the two types of transfers that a trustee may avoid as fraudulent: actually fraudulent transfers made with the actual intent to hinder or defraud creditors, and constructively fraudulent transfers in which the debtor received less than reasonably equivalent value in exchange.²⁴¹ Section 548(a)(2) states that a transfer of a charitable contribution "shall not be considered" to be a constructively fraudulent transfer if the amount of the contribution does not exceed fifteen percent of the debtor's gross annual income or if the contribution exceeds fifteen percent of gross annual income but is consistent with the debtor's past practices.²⁴² The use of the language "shall not be considered" clarifies Congress's intent that certain religious donations are not *per se* fraudulent transfers.²⁴³ Furthermore, this intention becomes all the more apparent in the placement of the exception in a stand-alone subsection.²⁴⁴

Similarly, § 544(b), which allows trustees to avoid transfers made in violation of nonbankruptcy or state law, expressly excludes religious donations as fraudulent transfers.²⁴⁵ Specifically, § 544(b)(2) states that the trustee's avoidance powers "shall not apply to a transfer of a charitable contribution."²⁴⁶ Like § 548, Congress placed the religious donation exclusion in a stand-alone subsection.²⁴⁷

Section 707(b), also amended by RLCDDPA, excludes religious donations from having any impact on a court's decision to dismiss a case for abuse.²⁴⁸ Congress explicitly excluded religious donations under § 707(b).²⁴⁹ Congress crafted the language to read: "in making a determination whether to dismiss a case under this section, the court may not take into consideration whether a debtor has made, or

²⁴⁰ See 11 U.S.C. § 544(b)(2); BAPCPA § 1402, 119 Stat. at 214–15 (to be codified at, and amending, 11 U.S.C. § 548(a)(1)).

²⁴¹ See 11 U.S.C. § 548(a)(1)(A), (a)(1)(B)(i); COLLIER, *supra* note 10, ¶ 548.01[1].

²⁴² 11 U.S.C. § 548(a)(2).

²⁴³ See *id.*

²⁴⁴ See *id.*

²⁴⁵ See 11 U.S.C. § 544(b)(2) (2000); COLLIER, *supra* note 10, ¶ 544.02.

²⁴⁶ 11 U.S.C. § 544(b)(2).

²⁴⁷ See *id.*

²⁴⁸ See BAPCPA, Pub. L. No. 109-8, § 102(a), 119 Stat. 23, 27–32 (to be codified at, and amending, 11 U.S.C. § 707(b)).

²⁴⁹ See RLCDDPA, Pub. L. No. 105-183, § 4, 112 Stat. 517, 518 (codified as amended in 11 U.S.C. § 707(b)).

continues to make, charitable contributions . . . to any qualified religious or charitable entity."²⁵⁰ Like the words "shall not" in sections 544 and 548, the use of the language "may not take into consideration" establishes an unambiguous, automatic exclusion for religious donations.²⁵¹

Section 1325(b) is thus the only provision amended by RLCDDPA that does not contain strong, unambiguous language concerning religious donations.²⁵² Section 1325(b)(2)(A) states that disposable income is "income received by the debtor . . . less amounts reasonably necessary to be expended for the maintenance or support of the debtor or a dependent of the debtor . . . and for charitable contributions . . . to a qualified religious or charitable entity . . . in an amount not to exceed 15 percent of gross income of the debtor."²⁵³ Similar to the other provisions amended by RLCDDPA, Congress could have drafted a stand-alone subsection that stated that charitable contributions to a qualified religious or charitable entity not exceeding fifteen percent of income shall not be considered to be disposable income.²⁵⁴ Instead, Congress placed the tithing exclusion in subsection (b)(2)(A), ensuring that it could be qualified by the phrase "reasonably necessary to be expended."²⁵⁵

This absence of forceful language in the tithing exception as compared with the other provisions suggests that Congress intended a different treatment for religious donations under § 1325(b).²⁵⁶ This difference was even noted by the court in *Buxton* when it applied a reasonableness scrutiny to the debtor's tithes.²⁵⁷ The court there noted that, had Congress wanted an automatic exclusion for religious donations, surely it would have stated so with the same force in which it restricted other Bankruptcy Code provisions affected by RLCDDPA.²⁵⁸

²⁵⁰ *Id.*

²⁵¹ See 11 U.S.C. §§ 544(b)(2), 548(a)(2) (2000); RLCDDPA § 4, 112 Stat. at 518 (codified as amended in 11 U.S.C. § 707(b)); *In re Buxton*, 228 B.R. at 610.

²⁵² See BAPCPA § 102(h)(2), 119 Stat. at 33-34 (to be codified at, and amending, 11 U.S.C. § 1325(b)(2)).

²⁵³ *Id.* This wording reflects § 1325(b)(2) after it was slightly rewritten by BAPCPA.

²⁵⁴ See 11 U.S.C. §§ 544(b)(2), 548(a)(2); BAPCPA, Pub. L. No. 109-8, § 102(h)(2), 119 Stat. 23, 33-34 (to be codified at, and amending, 11 U.S.C. § 1325(b)(2)); RLCDDPA § 4, 112 Stat. at 518 (codified as amended in 11 U.S.C. § 1325(b)(2)); *In re Buxton*, 228 B.R. at 610.

²⁵⁵ See RLCDDPA, Pub. L. No. 105-183, § 4, 112 Stat. 517, 518 (codified as amended in 11 U.S.C. § 1325(b)(2)); *In re Davis*, 2001 WL 1740000 at *2.

²⁵⁶ See 11 U.S.C. §§ 544(b)(2), 548(a)(2); 11 U.S.C. §§ 707(b), 1325(b)(2), amended by BAPCPA §§ 102(a), (h)(2), 119 Stat. at 27-32, 33-34; *In re Buxton*, 228 B.R. at 610.

²⁵⁷ See *In re Buxton*, 228 B.R. at 610.

²⁵⁸ See *id.*

2. An Analogy to Section 523(a)(8)

RLCDPA also impacted § 523(a)(8) even though RLCDPA did not specifically amend that provision.²⁵⁹ As mentioned previously, debtors have attempted to use RLCDPA to protect their religious donations while also claiming that their student loans should be discharged because of undue hardship under § 523(a)(8).²⁶⁰ It is the courts' handling of such cases that further supports the contention that courts should apply a reasonableness scrutiny to tithes under § 1325(b).²⁶¹

The most widely used test to determine if a debtor meets the undue hardship exception was first set forth in 1982 by the Second Circuit Court of Appeals in *Brunner v. New York State Higher Education Services Corp.*²⁶² Under the *Brunner* test, the court considers three factors:

- (1) [whether] the debtor cannot maintain, based on current income and expenses, a "minimal" standard of living . . . if forced to repay the loans;
- (2) [whether] additional circumstances exist indicating that this state of affairs is likely to persist for a significant portion of the repayment period of the student loans;
- and (3) [whether] the debtor has made good faith efforts to repay the loans.²⁶³

The first prong implicates § 1325(b).²⁶⁴ Most courts use the same disposable income test that is used in Chapter 13 in order to analyze this first prong.²⁶⁵ In other words, courts scrutinize a debtor's monthly income and reasonably necessary expenses to determine if the remaining disposable income is sufficient to make loan payments.²⁶⁶

In applying the disposable income test in the student loan context, the vast majority of courts adopt a reasonableness inquiry regarding a debtor's tithes.²⁶⁷ Both before and after RLCDPA, these courts exam-

²⁵⁹ See Dyer & Jones, *supra* note 11, at 276.

²⁶⁰ *Id.*

²⁶¹ See *In re McLaney*, 314 B.R. at 237; *In re Meling*, 263 B.R. at 279; *In re McLeroy*, 250 B.R. at 879.

²⁶² See 831 F.2d 395, 396 (2d Cir. 1987); COLLIER, *supra* note 10, ¶ 523.14[2].

²⁶³ 831 F.2d at 396; COLLIER, *supra* note 10, ¶ 523.14[2].

²⁶⁴ See *In re Lynn*, 168 B.R. 693, 697 (Bankr. D. Ariz. 1994); COLLIER, *supra* note 10, ¶ 523.14[2]; Dyer & Jones, *supra* note 11, at 280 & n.120, 291.

²⁶⁵ See *In re Perkins*, 318 B.R. 300, 305 (Bankr. M.D.N.C. 2004); *In re McLaney*, 314 B.R. at 237; *In re Lebovits*, 223 B.R. 265, 270 (Bankr. E.D.N.Y. 1998).

²⁶⁶ See COLLIER, *supra* note 10, ¶ 523.14[2].

²⁶⁷ See *In re McLaney*, 314 B.R. at 237; *In re Meling*, 263 B.R. at 279; *In re McLeroy*, 250 B.R. at 879. One court has adopted a per se rule holding that the RLCDPA's failure to amend § 523(a)(8) means that charitable contributions are never an allowable expense in

ined the same reasonableness factors courts used under § 1325(b).²⁶⁸ In 1994, the United States Bankruptcy Court for the District of Arizona, in *In re Lynn*, held that the debtor's tithes were not a reasonably necessary expense because failure to tithe did not preclude the debtor from engaging in church activities.²⁶⁹ In 2001, the United States Bankruptcy Court for the Northern District of Iowa in *In re Meling* reasoned that the amount and timing of the tithe were important factors in determining a debtor's ability to repay student loans.²⁷⁰ Finally, in 2004, the United States Bankruptcy Court for the Middle District of North Carolina in *In re Perkins* found that the debtor's past tithing practice was an important factor in the undue hardship analysis.²⁷¹

If courts use a reasonableness approach as part of a disposable income test under one Code provision, they should use the same approach for another Code provision involving the same disposable income test.²⁷² Given that an important goal of American bankruptcy law is uniform application of its provisions,²⁷³ courts should subject a debtor's tithes under § 1325(b) to a reasonableness inquiry as they do under § 523(a)(8).²⁷⁴

C. *The Necessity of the Reasonableness Inquiry for Adequate Abuse Protections*

Creditors are not protected from debtor abuse if § 1325(b) does not involve a reasonableness inquiry.²⁷⁵ When Congress enacted RLCDPA, it ensured that adequate abuse protections remained under other amended provisions.²⁷⁶ Similarly, a reasonableness inquiry should remain as part of § 1325(b) to adequately curb abuse.²⁷⁷ The only re-

determining a debtor's ability to repay a student loan. *In re Ritchie*, 254 B.R. 913, 921 (Bankr. D. Idaho 2000).

²⁶⁸ Compare *In re Meling*, 263 B.R. at 279 (taking into consideration debtor's past tithing practice), and *In re Lynn*, 168 B.R. at 700 (noting that debtor's tithes were not necessary to receipt of church services), with *In re Buxton*, 228 B.R. at 611 (looking at the tithe amount and the debtor's past tithing practices).

²⁶⁹ *In re Lynn*, 168 B.R. at 700.

²⁷⁰ See 263 B.R. at 279.

²⁷¹ See 318 B.R. at 309.

²⁷² See *In re McLeroy*, 250 B.R. at 879; *In re Buxton*, 228 B.R. at 610; COLLIER, *supra* note 10, ¶ 523.14[2].

²⁷³ See U.S. CONST. art. I, § 8, cl. 4; *House Hearings*, *supra* note 34, at 183.

²⁷⁴ See *In re Meling*, 263 B.R. at 279; *In re McLeroy*, 250 B.R. at 879; *In re Buxton*, 228 B.R. at 610; *Lynn*, 168 B.R. at 697.

²⁷⁵ See 11 U.S.C. § 1325(a)(3)(2000); S. REP. NO. 98-65, at 21 (1983); COLLIER, *supra* note 10, ¶ 1325.04[1].

²⁷⁶ See 11 U.S.C. §§ 548(a)(1)(A), 707(a); 144 CONG. REC. 8941 (1998).

²⁷⁷ See *House Hearings*, *supra* note 34, at 192-93; 144 CONG. REC. 8941 (1998); COLLIER, *supra* note 10, ¶ 1325.04[1].

maintaining protection under § 1325 would be the good faith requirement articulated in § 1325(a)(3).²⁷⁸ The good faith clause alone is insufficient to prevent consumer abuse of tithing exemptions.²⁷⁹

1. Other Code Provisions Amended by RLCDDPA Retained Specific Abuse Protections

Other Code provisions, despite being amended by RLCDDPA, still contain specific prohibitions against abuse.²⁸⁰ Section 548(a)(1)(A) allows a trustee to avoid any transfer made with actual intent to hinder, delay, or defraud any entity.²⁸¹ Senator Grassley, sponsor of RLCDDPA, emphasized that by not amending § 548(a)(1)(A), the bill only protected genuine tithes.²⁸² Professor Douglas Laycock, from the University of Texas Law School, asserted during congressional hearings that leaving § 548(a)(1)(A) untouched was a very important safeguard of the bill.²⁸³ In fact, he recommended that courts consider the timing, the amount, and the change in pattern to determine if the transfer was actually fraudulent.²⁸⁴ Such factors are similar to those used by courts in a reasonableness inquiry under § 1325(b).²⁸⁵

Similarly, RLCDDPA did not amend § 707(a), which still allows a court to dismiss a case for cause including unreasonable debtor delay and nonpayment of fees.²⁸⁶ In addition, if a transfer is actually fraudulent under § 548(a)(1)(A), a court may consider that transfer as part of its ability-to-pay analysis under § 707(b).²⁸⁷ For example, if a religious donation constitutes an actually fraudulent transfer, it becomes part of the debtor's disposable income that the court may consider under § 707(b).²⁸⁸ Consequently, if the debtor's disposable income is sufficient enough to pay creditors under Chapter 13, the court may

²⁷⁸ See 11 U.S.C. § 1325(a)(3).

²⁷⁹ See *Senate Hearings*, *supra* note 58, at 468; *House Hearings*, *supra* note 34, at 409; COLLIER, *supra* note 10, ¶ 1325.04[1].

²⁸⁰ See 11 U.S.C. §§ 548(a)(1)(A), 707(a).

²⁸¹ 11 U.S.C. § 548(a)(1)(A) (2000).

²⁸² 144 CONG. REG. 8941 (1998).

²⁸³ H.R. REP. NO. 105-556, at 5 (1998).

²⁸⁴ See *id.*

²⁸⁵ See *In re Davis*, 2001 WL 1740000 at *2; *In re Buxton*, 228 B.R. at 611.

²⁸⁶ See 11 U.S.C. § 707(a).

²⁸⁷ See *In re Smihula*, 234 B.R. 240, 243 (Bankr. D.R.I. 1999); Dyer & Jones, *supra* note 11, at 284.

²⁸⁸ See *In re Smihula*, 234 B.R. at 243; Dyer & Jones, *supra* note 11, at 284.

dismiss the case under § 707(b) because granting relief would be a substantial abuse of the Bankruptcy Code.²⁸⁹

Congress thus ensured that certain abuse protections would remain despite RLCDA's amendments.²⁹⁰ In this sense, § 1325(b) should be treated no differently than the other amended provisions.²⁹¹ Congress intended that a reasonableness inquiry would be an analogous, adequate safeguard against consumer abuse.²⁹²

2. The Good Faith Provision Alone Does Not Adequately Curb Debtor Abuse

Section 1325(b) contains no adequate safeguard against abuse in the absence of a reasonableness inquiry.²⁹³ Even the good faith provision of § 1325(a)(3) offers little defense.²⁹⁴ For one, after enactment of the disposable income test as part of the 1984 Amendments, Congress intended that the good faith provision would play a smaller role in the confirmation of Chapter 13 plans.²⁹⁵ Before 1984, courts used the good faith clause to establish minimum repayment percentages.²⁹⁶ During congressional hearings for the 1984 Amendments, members of Congress and bankruptcy experts emphasized that the disposable income test should return the good faith clause back to its historical meaning.²⁹⁷ In other words, good faith merely meant that the plan conformed to the provisions, purposes, and spirit of Chapter 13.²⁹⁸

If the good faith provision functions as the only check on tithes, it risks acquiring the same broad meaning and application that was so objectionable pre-1984.²⁹⁹ Furthermore, neither the Act itself nor its legislative history suggests that the amendment expanded the narrow

²⁸⁹ See *In re Smihula*, 234 B.R. at 243; Dyer & Jones, *supra* note 11, at 284.

²⁹⁰ See 11 U.S.C. §§ 548(a)(1)(A), 707(a) (2000); 144 CONG. REC. 8941 (1998).

²⁹¹ See 11 U.S.C. § 1325(b)(2), amended by BAPCPA, Pub. L. No. 109-8, § 102(h)(2), 119 Stat. 23, 33-34; H.R. REP. NO. 105-556, at 10 n.37 (1998); S. REP. NO. 98-65, at 21 (1983).

²⁹² See *Senate Hearings*, *supra* note 58, at 468; S. REP. NO. 98-65, at 21; 144 CONG. REC. 8941 (1998).

²⁹³ See *Senate Hearings*, *supra* note 58, at 468; *House Hearings*, *supra* note 34, at 408-09; S. REP. NO. 98-65, at 21.

²⁹⁴ See *Senate Hearings*, *supra* note 58, at 468; S. REP. NO. 98-65, at 21; COLLIER, *supra* note 10, ¶ 1325.04[1].

²⁹⁵ See *House Hearings*, *supra* note 34, at 32, 192-93; COLLIER, *supra* note 10, ¶ 1325.04[1].

²⁹⁶ See *House Hearings*, *supra* note 34, at 308-09; Rodenberg, *supra* note 31, at 624-25.

²⁹⁷ See *House Hearings*, *supra* note 34, at 32; COLLIER, *supra* note 10, ¶ 1325.04[1].

²⁹⁸ See *House Hearings*, *supra* note 34, at 32.

²⁹⁹ See *House Hearings*, *supra* note 34, at 192-93, 308-09, 408-09; COLLIER, *supra* note 10, ¶ 1325.08[1]; Kosub & Thompson, *supra* note 16, at 877.

meaning that Congress intended for good faith in 1984.³⁰⁰ In fact, the legislative history of RLCDDPA illustrates that Congress was concerned about maintaining defined Code provisions that curbed abuse.³⁰¹

Second, a good faith test is insufficient to restrain consumer abuse because it is too vague.³⁰² Before the 1984 Amendments, bankruptcy experts criticized the good faith clause as a vague and ineffective standard.³⁰³ RLCDDPA did little to clarify the good faith test.³⁰⁴ If the good faith clause was too vague to provide meaningful guidance to courts and adequate recoveries to creditors pre-1984, it alone should not regulate tithes today.³⁰⁵

Furthermore, even though courts have identified factors to consider in deciding whether to dismiss a case because of a lack of good faith, these factors differ across circuits and courts.³⁰⁶ Some courts analyze a laundry list of eleven to twelve factors, although no list is prescriptive or exclusive.³⁰⁷ Other courts conduct a more narrow focus and examine only a few elements.³⁰⁸ There are also courts that do not depend on a list of factors but instead look at whether the plan was proposed with honest intentions.³⁰⁹ Finally, there are courts that simply determine whether under the circumstances there has been an abuse of the provisions, purpose, or spirit of Chapter 13.³¹⁰

As a result of these inconsistent standards, the good faith provision is not an adequate safeguard against consumer abuse of tithing exemptions.³¹¹ The subjective and discretionary nature of the good faith clause undermines the ability of creditors to obtain meaningful

³⁰⁰ See H.R. REP. NO. 105-556, at 4-5, 10 n.37 (1998). See generally RLCDDPA, Pub. L. No. 105-183, 112 Stat. 517.

³⁰¹ See H.R. REP. NO. 105-556, at 5; 144 CONG. REC. 8941 (1998).

³⁰² See *Senate Hearings*, *supra* note 58, at 468; S. REP. NO. 98-65, at 21 (1983).

³⁰³ See *Senate Hearings*, *supra* note 58, at 468; *House Hearings*, *supra* note 34, at 19, 186, 306-08.

³⁰⁴ See generally RLCDDPA, 112 Stat. 517.

³⁰⁵ See *Senate Hearings*, *supra* note 58, at 468; S. REP. NO. 98-65, at 21.

³⁰⁶ See Bradley M. Elbein, *The Hole in the Code: Good Faith and Morality in Chapter 13*, 34 SAN DIEGO L. REV. 439, 453-54 (1997). Compare *In re Cavanagh*, 250 B.R. at 114 (considering 4 factors), and *In re Kirschner*, 259 B.R. at 425 (considering 11 factors), with *In re Kourtakis*, 75 B.R. 183, 187 (Bankr. E.D. Mich. 1987) (looking at the debtor's honesty of intention).

³⁰⁷ Elbein, *supra* note 306, at 454. Such factors include attorney's fees, duration of the plan, sincerity of the debtor, degree of effort, and debtor's ability to earn income. *Id.*

³⁰⁸ See *In re Cavanagh*, 250 B.R. at 114; *In re Goddard*, 212 B.R. 233, 240 (D.N.J. 1997).

³⁰⁹ See *In re Johnson*, 708 F.2d 865, 868 (2d Cir. 1983); *In re Kourtakis*, 75 B.R. at 187.

³¹⁰ See *In re Thomas*, 118 B.R. 421, 423 (Bankr. D.S.C. 1990).

³¹¹ See *Senate Hearings*, *supra* note 58, at 468; Elbein, *supra* note 306, at 454-55; Kosub & Thompson, *supra* note 16, at 877.

recoveries in Chapter 13.³¹² Although some judges may use the good faith clause to modify or exclude unreasonable tithes, many will not.³¹³ Instead, a reasonableness inquiry must remain a part of the § 1325(b) analysis to prevent abuse.³¹⁴ The good faith clause was not a sufficient check on abuse before the 1984 Amendments and it remains inadequate today.³¹⁵

Finally, the good faith provision is not adequately rigorous to check consumer abuse of the Code's titling provisions.³¹⁶ Only if there is serious debtor misconduct should courts find a Chapter 13 plan to be lacking in good faith.³¹⁷ In the case of titling, the debtor's conduct may not be egregious but could still constitute an abuse of the Bankruptcy Code.³¹⁸

The factors that courts consider as part of their good faith analysis are too broad to target religious donations adequately.³¹⁹ Such factors include the debtor's sincerity in seeking relief, degree of effort, attorney's fees, history of filings, and manipulation of the Code.³²⁰ These factors oftentimes will not implicate a debtor's tithes, especially if the debtor's conduct is not particularly egregious.³²¹ In contrast, a reasonableness inquiry applied uniformly to all of a debtor's expenses, including tithes, is more precise in preventing abuse.³²² This more definite standard compels courts to scrutinize religious donations, making certain that they are necessary, reasonable, and consistent with a debtor's past practices.³²³

³¹² See *House Hearings*, *supra* note 34, at 306-07; Elbein, *supra* note 306, at 454-55; Kosub & Thompson, *supra* note 16, at 877.

³¹³ See *Senate Hearings*, *supra* note 58, at 468; Elbein, *supra* note 306, at 454-55.

³¹⁴ See *Senate Hearings*, *supra* note 58, at 468; *House Hearings*, *supra* note 34, at 306-07, 347.

³¹⁵ See *House Hearings*, *supra* note 34, at 308; S. REP. NO. 98-65, at 21 (1983); Kosub & Thompson, *supra* note 16, at 877.

³¹⁶ See COLLIER, *supra* note 10, ¶ 1325.04[1]; see also *In re Cavanagh*, 250 B.R. at 114; *In re Kirschner*, 259 B.R. at 425; *In re Thomas*, 118 B.R. at 423.

³¹⁷ COLLIER, *supra* note 10, ¶ 1325.04[1].

³¹⁸ See *In re Cavanagh*, 250 B.R. at 110, 114 (finding that the debtor's plan was proposed in good faith despite a lack of titling in the year preceding the bankruptcy filing); *In re Kirschner*, 259 B.R. at 420, 426 (finding that the debtor's large tithe of \$674 did not justify a finding of lack of good faith); COLLIER, *supra* note 10, ¶ 1325.04[1].

³¹⁹ See *In re Cavanagh*, 250 B.R. at 114; *In re Thomas*, 118 B.R. at 423; COLLIER, *supra* note 10, ¶ 1325.04[1]; Elbein, *supra* note 306, at 454.

³²⁰ See Elbein, *supra* note 306, at 454.

³²¹ See COLLIER, *supra* note 10, ¶ 1325.04[1]; Elbein, *supra* note 306, at 454.

³²² See *In re Buxton*, 228 B.R. at 611; *Senate Hearings*, *supra* note 58, at 468; *House Hearings*, *supra* note 34, at 347.

³²³ See *In re Davis*, 2001 WL 1740000 at *2, *3; *In re Buxton*, 228 B.R. at 611; *House Hearings*, *supra* note 34, at 310.

CONCLUSION

The Bankruptcy Code can accommodate the religious interests of debtors and ensure fairness for creditors. To achieve this objective, courts must interpret the Code in harmony with the goals and purposes of bankruptcy law. To this end, a debtor's tithes under § 1325(b) must be less than fifteen percent of the debtor's income *and* be reasonable, a standard which is more consistent with the purpose of § 1325(b), the interpretation of other provisions of the Code, and the goal of restraining consumer abuse. By employing a reasonableness inquiry, courts will more effectively tailor a Chapter 13 plan to the genuine needs of the debtor and enable greater fairness to creditors.

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