APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-2240

In re: CIRCUIT CITY STORES, INCORPORATED; CIRCUIT CITY STORES WEST COAST, INCORPORATED; INTERTAN, INC.; VENTOUX INTERNATIONAL, INC.; CIRCUIT CITY PURCHASING COMPANY, LLC; CC AVIATION, LLC; CC DISTRIBUTION COMPANY OF VIRGINIA, INC.; CIRCUIT CITY PROPERTIES, LLC; KINZER TECHNOLOGY, LLC; ABBOTT ADVERTISING AGENCY, INCORPORATED; PATAPSCO DESIGNS, INC.; SKY VENTURE CORP.; PRAHS, INC. (N/A); XSSTUFF, LLC; MAYLAND MN, LLC; COURCHEVEL, LLC; ORBYX ELECTRONICS, LLC; CIRCUIT CITY STORES PR, LLC,
Debtors.

ALFRED H. SIEGEL, Trustee of the Circuit City Stores, Inc. Liquidating Trust,
Plaintiff-Appellee,

v.

JOHN P. FITZGERALD, III, Acting United States Trustee for Region 4,
Defendant-Appellant.

ACADIANA MANAGEMENT GROUP, LLC; ALBUQUERQUE-AMG SPECIALTY HOSPITAL, LLC; CENTRAL INDIANA-AMG SPECIALTY HOSPITAL, LLC; LTAC HOSPITAL OF EDMOND, LLC; HOUMA-AMG SPECIALTY HOSPITAL, LLC; LTAC OF LOUISIANA, LLC; LAS VEGAS-AMG SPECIALTY HOSPITAL, LLC; WARREN BOEGEL; BOEGEL FARMS, LLC; THREE BO'S, INC.,
Amici Supporting Appellee.

No. 19-2255

In re: CIRCUIT CITY STORES, INCORPORATED; CIRCUIT CITY STORES WEST COAST, INCORPORATED; INTERTAN, INC.; VENTOUX INTERNATIONAL, INC.; CIRCUIT CITY PURCHASING COMPANY, LLC; CC AVIATION, LLC; CC DISTRIBUTION COMPANY OF VIRGINIA, INC.; CIRCUIT CITY PROPERTIES, LLC; KINZER TECHNOLOGY, LLC; ABBOTT ADVERTISING AGENCY, INCORPORATED; PATAPSCO DESIGNS, INC.; SKY VENTURE CORP.; PRAHS, INC. (N/A); XSSTUFF, LLC; MAYLAND MN, LLC; COURCHEVEL, LLC; ORBYX ELECTRONICS, LLC; CIRCUIT CITY STORES PR, LLC,
Debtors.

ALFRED H. SIEGEL, Trustee of the Circuit City Stores, Inc. Liquidating Trust,
Plaintiff-Appellant,

v.

JOHN P. FITZGERALD, III, Acting United States Trustee for Region 4,
Defendant-Appellee.

ACADIANA MANAGEMENT GROUP, LLC; ALBUQUERQUE-AMG SPECIALTY HOSPITAL, LLC; CENTRAL INDIANA-AMG SPECIALTY HOSPITAL, LLC; LTAC HOSPITAL OF EDMOND, LLC; HOUMA-AMG SPECIALTY HOSPITAL, LLC; LTAC OF LOUISIANA, LLC; LAS VEGAS-AMG SPECIALTY HOSPITAL, LLC; WARREN BOEGEL; BOEGEL FARMS, LLC; THREE BO'S, INC.,
Amici Supporting Appellant.

Appeals from the United States Bankruptcy Court for the Eastern District of Virginia, at Richmond.
Kevin R. Huennekens, Bankruptcy Judge.
(3:08-bk-35653)

Filed: April 29, 2021

Before KING and QUATTLEBAUM, Circuit Judges, and TRAXLER, Senior Circuit Judge.

OPINION

KING, Circuit Judge:

These consolidated appeals present two constitutional issues concerning changes made to the bankruptcy laws nearly four years ago. Alfred H. Siegel, Trustee of the Circuit City Stores, Inc., Liquidating Trust (the "Circuit City Trustee"), sought a ruling in 2019 on his liability for quarterly fees assessed under a 2017 Amendment to the bankruptcy fees provisions of the United States Code (the "2017 Amendment"). In response, the Bankruptcy Court for the Eastern District of Virginia ruled that the fees aspect of the 2017 Amendment is unconstitutional. *See In re Circuit City Stores, Inc.*, 606 B.R. 260 (Bankr. E.D. Va. 2019), ECF No. 2 (the "Bankruptcy Opinion"). That ruling was based on a perceived lack of uniformity between quarterly fees in the two types of bankruptcy court districts, that is, U.S. Trustee districts and Bankruptcy Administrator districts.

John P. Fitzgerald, III, the Acting U.S. Trustee for Region 4 (the "U.S. Trustee"), maintains that the Bankruptcy Opinion erred in its uniformity ruling and has appealed. The Circuit City Trustee, on the other hand, has cross-appealed a separate aspect of the Opinion that rejected his claim concerning retroactive application of the 2017 Amendment. In November 2019, the Circuit City Trustee and the U.S. Trustee jointly certified these appeals to this Court.[1] We granted their joint petition for permission to appeal and consolidated the appeals. The

[1] The U.S. Trustee and the Circuit City Trustee jointly sought permission to appeal from this court, pursuant to 28 U.S.C. § 158(d)(2)(A). That provision confers jurisdiction on a court of appeals to consider a direct appeal from a bankruptcy court, bypassing the district court, if the statutory conditions are satisfied.

U.S. Trustee's appeal is designated as No. 19-2240, and the Circuit City Trustee's cross-appeal is designated as No. 19-2255.

As explained below, we rule in favor of the U.S. Trustee in each appeal. That is, we reverse the Bankruptcy Opinion's uniformity decision challenged by the U.S. Trustee, and we affirm the Opinion's retroactivity decision challenged by the Circuit City Trustee. As a result, we remand to the bankruptcy court for such other and further proceedings as may be appropriate.

I.

A review of the pertinent background and operations of the bankruptcy courts is essential to an understanding of these proceedings. Before addressing the legal issues presented, we will discuss some historical context of those courts, as well as the factual background of these proceedings.

A.

The bankruptcy courts operate under two distinct programs for the handling of their proceedings—the Trustee program and the Bankruptcy Administrator program. Congress initiated this two-program system in 1978 when it launched the Trustee pilot program within the Department of Justice. The Trustee pilot program was successful and became a permanent fixture in 1986. Eighty-eight of the 94 judicial districts operate with U.S. Trustees. The other districts—in Alabama and North

Carolina—utilize the Bankruptcy Administrator program, which is overseen by the Judicial Conference of the United States.[2]

These bankruptcy court programs utilize distinct funding sources. The judiciary's general budget, overseen by the Judicial Conference, funds the Bankruptcy Administrator program. On the other hand, the bankruptcy debtors in Trustee districts primarily fund the Trustee program. Although annual congressional appropriations provide support for the Trustee program, Congress anticipated that debtor-paid fees would completely offset the program's cost. Debtor fees include Chapter 11 quarterly fees, which are based on quarterly "disbursements" that debtors make to their creditors until the cases are "converted or dismissed." *See* 28 U.S.C. § 1930(a)(6)(A).

At their inception, the Bankruptcy Administrator districts were not required to pay quarterly fees. In 1994, however, the Ninth Circuit ruled this distinction unconstitutional, explaining that the statutory imposition of such quarterly fees in certain districts but not in others was without justification and thus contravened the Bankruptcy Clause of the Constitution. *See St. Angelo v. Victoria Farms, Inc.*, 38 F.3d 1525, 1529, 1531-32 (9th Cir. 1994), *amended by* 46 F.3d 969 (9th Cir. 1995). In reaction to that decision, Congress empowered the Judicial Conference to fix and assess quarterly fees in the Bankruptcy

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[2] The exclusion of Alabama and North Carolina from the Trustee program was intended to be temporary. More than twenty years later, however, Congress confirmed the special status of the six judicial districts in those two states as Bankruptcy Administrator districts. *See* Federal Courts Improvement Act of 2000, Pub. L. No. 106-518 § 501, 114 Stat. 2410, 2421-22 (2000).

Administrator districts that were "equal to those imposed" in the Trustee districts. *See* 28 U.S.C. § 1930(a)(7) ("In districts that are not part of a United States trustee region . . . , the Judicial Conference may require the debtor in a case under chapter 11 of title 11 to pay fees equal to those imposed by paragraph (6) of this subsection.").[3] In 2002, the Judicial Conference began to impose quarterly fees in the Administrator districts that were consistent with the fees specified for the Trustee districts. The Administrator districts' quarterly fees are then deposited into a fund that offsets the general judicial branch appropriations rather than Trustee operations. *Id.* Until January 1, 2018, all Chapter 11 debtors, regardless of district, paid quarterly fees consistent with the same disbursement formula. At that point in time, a funding deficit in the Trustee program disrupted the status quo.

For several decades, Congress's annual appropriations to the Trustee program were entirely offset by the quarterly fees. The mid-2010s witnessed a decline in bankruptcy filings, however, and the Trustee program was no longer self-sustaining. Fueled by concerns that the financial burden might shift to taxpayers, Congress enacted the 2017 Amendment.[4] That Amendment altered

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[3] As discussed further in footnote 10, in January 2021—after this appeal was argued—Congress amended § 1930(a)(7) of Title 28, replacing the word "may" with the word "shall." *See infra* note 10.

[4] The 2017 Amendment provision at issue in these appeals is codified in § 1930(a)(6)(B) of Title 28 and provides in pertinent part as follows:

> During each of fiscal years 2018 through 2022, if the balance in the United States Trustee System Fund as of September 30 of the most recent full fiscal year is less than $200,000,000, the quarterly fee payable for a quarter in which disbursements equal or

the quarterly fees formula and increased the fees due in large Chapter 11 bankruptcy cases, on a temporary basis, during fiscal years 2018 through 2022. This fee increase is conditional, and it is only applicable if the Trustee Fund contains a balance of less than $200 million as of September 30 of the most recent fiscal year. The quarterly fee increase only applies to those bankruptcy debtors with disbursements of $1,000,000 or more in any quarter. If those criteria are satisfied, the quarterly fee is then the lesser of 1 percent of such disbursements, or $250,000. This potential fee is a substantial increase from the previous maximum fee of $30,000.

Initially, only those bankruptcy debtors in the Trustee districts incurred fee increases as a result of the 2017 Amendment. Several Trustee district bankruptcy courts applied the increased fees to quarterly disbursements that postdated the Amendment. As a result, large Chapter 11 debtors with bankruptcy cases pending on January 1, 2018, incurred increased fees for disbursements beginning in the first quarter of 2018. The bankruptcy debtors in the Administrator districts, however, were not subjected to increased quarterly fees. The Judicial Conference adopted an amended fee schedule in September 2018 and applied the increased fees to those bankruptcy cases filed in the six Bankruptcy Administrator districts on or after October 1, 2018. Consequently, any debtor in

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exceed $1,000,000 shall be the lesser of 1 percent of such disbursements or $250,000.

See 28 U.S.C. § 1930(a)(6)(B). Congress specified that the 2017 Amendment "shall apply to quarterly fees payable under section 1930(a)(6) . . . for disbursements made in any calendar quarter that begins on or after the date of enactment." *See* Bankruptcy Judgeship Act of 2017, Pub. L. No. 115-72, § 1004, 131 Stat. 1224, 1232 (2017).

an Administrator district that filed for bankruptcy prior to October 1, 2018, does not owe increased quarterly fees, regardless of how long the bankruptcy case remains pending.

B.

1.

Circuit City Stores, Inc., and its affiliates (collectively "Circuit City") operated a chain of consumer electronic retail stores throughout the United States. In 2008, Circuit City filed for Chapter 11 bankruptcy protection in the Eastern District of Virginia, which is a Trustee district. In 2010, the bankruptcy court in eastern Virginia confirmed Circuit City's Chapter 11 liquidation plan. That plan provides, with respect to "fees that become due and payable" under 28 U.S.C. § 1930, that the Circuit City Trustee "shall pay [those] fees to the U.S. Trustee until the Chapter 11 Cases are closed or converted and/or the entry of the final decrees." *See* J.A. 110.[5] Circuit City's bankruptcy proceedings remained pending on January 2018, after the 2017 Amendment went into effect.

The Circuit City Trustee initially paid the increased quarterly fees. His willingness to pay those fees diminished, however, when the bankruptcy court in the Western District of Texas ruled in February 2019 that the 2017 Amendment is unconstitutional because it creates nonuniform bankruptcy laws in contravention of the Bankruptcy Clause, and also because it is unconstitutionally retroactive. *See In re Buffets, LLC*, 597 B.R. 588 (Bankr.

[5] Citations herein to "J.A. ___" refer to the contents of the Joint Appendix filed by the parties in this appeal.

W.D. Tex. 2019).[6] On March 28, 2019, the Circuit City Trustee filed for similar relief in the Eastern District of Virginia, seeking to limit his liability for quarterly fees assessed under 28 U.S.C. § 1930(a)(6). *See generally* J.A. 348-63. The Circuit City Trustee maintained that he was excused from complying with the revised quarterly fee schedule for the reasons adopted by the *Buffets* bankruptcy court decision in Texas—that is, the 2017 Amendment impermissibly created nonuniform bankruptcy laws that are unconstitutionally retroactive.[7] The U.S. Trustee opposed Circuit City's requests, maintaining that Congress's temporary, prospective increase in quarterly fees for a subset of Chapter 11 cases is not retroactive and does not implicate any constitutional uniformity issues.

2.

a.

By its Bankruptcy Opinion of July 15, 2019, the bankruptcy court in eastern Virginia granted Circuit City's request for relief. The court ruled that the quarterly fees imposed could be classified either as a tax or as a user fee under the Bankruptcy Code and, under either designation, the 2017 Amendment contravenes both the Bank-

[6] As explained more fully below, in November 2020, the Fifth Circuit reversed the February 2019 *Buffets* decision of the bankruptcy court. *See Matter of Buffets, L.L.C.*, 979 F.3d 366 (5th Cir. 2020).

[7] In explaining his retroactivity contention, the Circuit City Trustee asserts, *inter alia*, that the 2017 Amendment's application to pending cases contravenes the Due Process Clause of the Fifth Amendment, in that it deprived bankruptcy debtors of fair notice.

ruptcy Clause and the Uniformity Clause of the Constitution. *See* Bankruptcy Opinion 14.[8] If the quarterly fees are a tax, according to the Opinion, the 2017 Amendment contravenes the Uniformity Clause because such fees are not applied in a geographically uniform manner. *Id.* Alternatively, if the quarterly fees are Chapter 11 user fees, the Opinion ruled that the 2017 Amendment is yet unconstitutional because it violates the Bankruptcy Clause, which empowers Congress to establish uniform laws for bankruptcy in the United States. *Id.* For support, the Opinion relied on the fact that, for the first three quarters of 2018, the Judicial Conference did not increase quarterly fees in the Bankruptcy Administrator districts. *Id.* at 12. As the Opinion explained, the Bankruptcy Administrator districts imposed the amended quarterly fee schedule for bankruptcy cases filed after on or October 1, 2018. With these underpinnings, the Opinion ruled that the quarterly fees owed by the Circuit City Trustee under the 2017 Amendment "since January 1, 2018, [are unconstitutional and] must be determined based on the prior version of the statute." *Id.* at 14.

b.

The Bankruptcy Opinion also addressed Circuit City's retroactivity contention. As the Opinion explained, Congress had not explicitly defined the 2017 Amendment's temporal reach. *See* Bankruptcy Opinion 10. It was thus

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[8] The Bankruptcy Clause of the Constitution provides, in pertinent part, that Congress may "establish . . . uniform Laws on the subject of Bankruptcies throughout the United States." *See* U.S. Const. art. I, § 8, cl. 4. The Uniformity Clause, on the other hand, relates only to taxation and empowers Congress to "lay and collect [t]axes . . . ; but all Duties, Imposts, and Excises shall be uniform throughout the United States." *See id.* at cl. 1.

for the courts to decide whether the 2017 Amendment applied to bankruptcy cases pending when the Amendment became effective. The Opinion then ruled that the increased quarterly fees in Trustee districts do not contravene any anti-retroactivity principles of the Constitution because, despite the variance in expectations, the 2017 Amendment is "substantively prospective" rather than retroactive. *Id.* at 11 (citing *Landgraf v. USI Film Prods.*, 511 U.S. 244, 269 n.24 (1994) ("Even uncontroversially prospective statutes may unsettle expectations and impose burdens on past conduct: a new property tax or zoning regulation may upset the reasonable expectations that prompted those affected to acquire property.")).

c.

In August 2019, the U.S. Trustee appealed to the district court, challenging the Bankruptcy Opinion's ruling that the 2017 Amendment is unconstitutional due to a lack of uniformity. The Circuit City Trustee then cross-appealed the Opinion's ruling on retroactivity. The parties jointly sought permission for direct appeals, bypassing the district court and urging that the constitutional issues relating to the 2017 Amendment present questions of law "as to which there [are] no controlling decision[s] of [this Court] or of the Supreme Court" and involve matters of "public importance." *See* J.A. 413-16 (citing 28 U.S.C. § 158(d)(2)(A)(i) (authorizing certification to court of appeals by "all the appellants and appellees . . . acting jointly")). By Order of November 6, 2019, we granted the joint petition for these appeals, and we possess jurisdiction pursuant to that Order.

II.

We generally review a bankruptcy court's factual findings for clear error and its legal rulings de novo. *See In re Birmingham*, 846 F.3d 88, 92 (4th Cir. 2017). Because the relevant facts underlying these appeals are undisputed, the applicable standard of review is de novo.

III.

In his appeal, the U.S. Trustee maintains that the 2017 Amendment is constitutional and lawful in all respects. He thus challenges the Bankruptcy Opinion's ruling that the 2017 Amendment is unconstitutionally nonuniform and contravenes the Bankruptcy Clause and the Uniformity Clause. The Circuit City Trustee, on the other hand, maintains that the bankruptcy court ruled correctly on the uniformity issue being challenged by the U.S. Trustee. The Circuit City Trustee urges in his cross-appeal, however, that the 2017 Amendment's increased fee schedule constitutes an unconstitutional retroactive imposition of quarterly fees. We will assess these appeals in turn.

A.

The U.S. Trustee maintains that the bankruptcy court in eastern Virginia erroneously ruled that that 2017 Amendment's fee increase is unconstitutional. In making that ruling, the Bankruptcy Opinion relied on both the Bankruptcy Clause and the Uniformity Clause. With respect to his Uniformity Clause challenge, the U.S. Trustee finds support in the Fifth Circuit's ruling last year—reversing the decision of the Texas bankruptcy court relied on in the Bankruptcy Opinion—that Chapter 11 quarterly fees are user fees. *See Matter of Buffets, L.L.C.*,

979 F.3d 366, 376 n.7 (5th Cir. 2020). Put succinctly, because the Uniformity Clause only applies to taxes, as the U.S. Trustee maintains and as the Fifth Circuit correctly ruled, that Clause is inapplicable here. *Id.* (citing U.S. Const. art. I, § 8, cl. 1 ("Congress may 'lay and collect [t]axes . . . ; but all Duties, Imposts, and Excises shall be uniform throughout the United States.'")).

Because the Bankruptcy Opinion incorrectly relied on the Uniformity Clause, the uniformity ruling is left with only one other basis—that the 2017 Amendment violates the Bankruptcy Clause. The Bankruptcy Clause relates to the uniformity issue because Congress is empowered therein to establish uniform bankruptcy laws throughout the United States. The Bankruptcy Opinion, relying on that Clause and the Uniformity Clause, and drawing support from the now reversed decision of the Texas bankruptcy court, ruled that the 2017 Amendment is constitutionally flawed.

The U.S. Trustee contends that the quarterly fees being challenged here fail to implicate either the Uniformity Clause or the Bankruptcy Clause, because the 2017 Amendment is not a substantive bankruptcy law. Accordingly, he maintains that the 2017 Amendment is not subject to either of the uniformity requirements. Of importance, the Fifth Circuit has reversed the Texas bankruptcy court decision on which the Bankruptcy Opinion relied, stating that "every bankruptcy court dealing with a challenge to the 2017 Amendment" has rejected the contention that the Amendment is not a law "on the subject of Bankruptcies." *See Buffets*, 979 F.3d at 377. We are persuaded to the Fifth Circuit's view, in that—as explained further below—there is no constitutional uniformity problem posed by the 2017 Amendment.

To be constitutionally uniform, "[a] law enacted pursuant to the Bankruptcy Clause must: (1) apply uniformly to a defined class of debtors; and (2) be geographically uniform." *See In re SCI Direct, LLC*, No. 17-61735, 2020 WL 5929612, at *10 (Bankr. N.D. Ohio Sept. 22, 2020) (citing *Ry. Labor Execs.' Ass'n v. Gibbons*, 455 U.S. 457, 473 (1982)). The Bankruptcy Clause, however, "is not a straitjacket that forbids Congress to distinguish among classes of debtors." *See Gibbons*, 455 U.S. at 469. In fact, as the Supreme Court has emphasized, "[a] bankruptcy law may be uniform and yet may recognize the laws of the State in certain particulars, although such recognition may lead to different results in different States." *Id.* (internal quotation marks omitted). In the proper circumstances, Congress may "take into account differences that exist between different parts of the country, and . . . fashion legislation to resolve geographically isolated problems." *Id.*; *see also Reg'l R.R. Reorganization Cases*, 419 U.S. 102, 159-61 (1974) (recognizing that Act of Congress applicable only to rail carriers in certain regions and to carriers reorganizing within certain time period was uniform under the Bankruptcy Clause, in that it was designed to solve specific regional problem).

Several bankruptcy courts have recently addressed similar constitutional challenges to the 2017 Amendment, and most of those courts have ruled that the Amendment does not present a constitutional uniformity problem.[9] As

[9] At least ten bankruptcy courts have addressed the uniformity question that we assess today, and six of those courts have ruled in favor of constitutionality. *See In re John Q. Hammons Fall 2006, LLC*, 618 B.R. 519, 524-26 (Bankr. D. Kan. 2020) (reviewing uniformity question that we assess with respect to 2017 Amendment and ruling—as we do today—in favor of constitutionality); *In re MF Glob. Holdings Ltd.*, 615 B.R. 415, 446-48 (Bankr. S.D.N.Y. 2020) (same); *Point.360*

explained below, the Fifth Circuit's *Buffets* decision correctly resolved the uniformity issue concerning the 2017 Amendment's quarterly fee increase and its application to debtors in the Trustee and Administrator districts. *See Buffets*, 979 F.3d 366.

The *Buffets* debtors filed their bankruptcy proceedings in the Western District of Texas in 2016. Those proceedings were pending in 2018 when the increased quarterly fees required by the 2017 Amendment went into effect. After the *Buffets* debtors declined to pay the increased fees and challenged the constitutionality of the 2017 Amendment on uniformity grounds, the bankruptcy court agreed with the debtors and ruled that the Amendment was not uniform and thus unconstitutional. The U.S. Trustee in Texas appealed, and—as in these appeals—the uniformity issue was certified to the court of appeals.

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v. Office of the U.S. Trustee, No. 2:19-ap-01442 (Bankr. C.D. Cal. Mar. 31, 2021) (same); *In re Mosaic Mgmt. Grp., Inc.*, 614 B.R. 615, 623-25 (Bankr. S.D. Fla. 2020) (same); *In re Clayton Gen., Inc.*, No. 15-64266, 2020 Bankr. LEXIS 842 at *27 (Bankr. N.D. Ga. Mar. 30, 2020) (same); *In re Exide Techs.*, 611 B.R. 21, 36-38 (Bankr. D. Del. 2020) (same).

On the other hand, four bankruptcy courts have addressed the same uniformity question that we assess and ruled—as did the Bankruptcy Court in eastern Virginia—that the challenged 2017 Amendment is unconstitutional. *See In re Circuit City Stores, Inc.*, 606 B.R. 260, 269-70 (Bankr. E.D. Va. 2019) (addressing uniformity question and ruling that challenged 2017 Amendment is unconstitutional); *In re Life Partners Holdings, Inc.*, 606 B.R. 277, 286-88 (Bankr. N.D. Tex. 2019) (same); *In re Buffets, LLC*, 597 B.R. 588, 594-95 (Bankr. W.D. Tex. 2019) (same), *rev'd*, 979 F.3d 366 (5th Cir. 2020); *USA Sales, Inc. v. Office of the U.S. Trustee*, 2021 WL 1226369, at *17-18 (C.D. Cal. Apr. 1, 2021) (same).

After concluding that the uniformity requirement of the Bankruptcy Clause is likely applicable to the 2017 Amendment, the Fifth Circuit decided that there is "no uniformity problem" with the Amendment. *See Buffets*, 979 F.3d at 377. That decision was made after a careful assessment of the applicable authorities, and the court of appeals recognized that "the uniformity requirement forbids only arbitrary regional differences in the provisions of the Bankruptcy Code." *Id.* at 378 (internal quotation marks omitted). As the court explained, however, the uniformity requirement does not deny Congress the power to enact legislation that resolves regionally isolated problems. *Id.* According to the Fifth Circuit, when Congress determined that it needed to remedy a shortfall in funding for the Trustee districts, it was entitled to "solve the evil to be remedied with a fee increase in just the underfunded districts." *Id.* (internal quotation marks omitted). Thus, the court of appeals explained, "[i]t is reasonable for Congress to have those who benefit from the Trustee program fill the hole in its finances." *Id.* at 380.

As emphasized by the Fifth Circuit, the Bankruptcy Clause forbids only "arbitrary" geographic differences. And the Supreme Court has never held that a statute contravened the Bankruptcy Clause because of arbitrary geographic distinctions. For example, in the railroad setting, the Court allowed Congress to establish a special court and enact statutes to benefit bankrupt rail carriers in the northeast and midwest, as those were the only railroads facing the problem. *See Reg'l R.R. Reorganization Cases*, 419 U.S. at 159-61.

Just as it had successfully addressed the failure of certain railroads, Congress was confronted here with a U.S. Trustee problem. The 2017 Amendment drew a program-

specific distinction that only indirectly has a geographic impact. *See Buffets*, 979 F.3d at 378. Although the Amendment may render it more expensive for some debtors in Virginia—as opposed to North Carolina or Alabama—to go through Chapter 11 proceedings, the 2017 Amendment does not draw an arbitrary distinction based on the residence of the debtors or creditors. Instead, the distinction is simply a byproduct of Virginia's use of the Trustee program. By increasing quarterly fees for large Chapter 11 bankruptcies in Trustee districts, Congress solved the shortfall in the program's funding. The Administrator districts, which are funded by the judiciary's general budget, did not face a similar financial issue. Because only those debtors in Trustee districts use the U.S. Trustees, Congress reasonably solved the shortfall problem with fee increases in the underfunded districts. *Id.*

As recognized by the Fifth Circuit, the Ninth Circuit had observed in 1995 that the establishment of separate Trustee and Administrator districts was an "irrational and arbitrary" distinction for which Congress had given "no justification." *See St. Angelo*, 38 F.3d at 1532. The 2017 Amendment, however, does not suffer from any such shortcoming. Congress has provided a solid fiscal justification for its challenged action: to ensure that the U.S. Trustee program is sufficiently funded by its debtors rather than by the taxpayers. Because the 2017 Amendment does not contravene the uniformity mandate of either the Uniformity Clause or the Bankruptcy Clause, we are constrained to reverse the bankruptcy court and resolve appeal No. 19-2240 in favor of the U.S. Trustee.[10]

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[10] The U.S. Trustee also contends on appeal that the combined application of § 1930(a)(6)(B) and 1930(a)(7) of Title 28 ensure that any quarterly fee increases would apply equally to all judicial districts.

B.

Turning to the cross-appeal pursued by the Circuit City Trustee, we must decide whether the 2017 Amendment impermissibly applies to bankruptcy cases that were pending when the Amendment took effect. As explained heretofore, the bankruptcy court in Virginia characterized the 2017 Amendment as substantively prospective, and thus not in violation of any anti-retroactivity constitutional principles. On appeal, the Circuit City Trustee contends that, regardless of the statutory language, applying the new quarterly fees to pending bankruptcy cases is unconstitutionally retroactive. The Circuit City Trustee thus contends that the "exponential statutory increase" in quarterly fees could not have been anticipated when Circuit City's bankruptcy reorganization plan was confirmed. *See* Br. of Appellee 6.

See Br. of Appellant 29-32. As such, the Trustee maintains, any discrepancy in impact would be merely a byproduct of implementation efforts, rather than unlawful congressional action. *Id.* Of possible relevance to this proposition, Congress amended § 1930(a)(7) of Title 28 and replaced the word "may" with the word "shall." Subsection (a)(7) now reads: "In districts that are not part of a United States trustee region . . . the Judicial Conference of the United States shall require the debtor in a case under chapter 11 of title 11 to pay fees equal to those imposed by paragraph (6) of this subsection."

The U.S. Trustee promptly submitted to our panel a post-argument Local Rule 28(j) letter, pointing out this amendment but positing that it is merely a clarifying amendment that further confirms that Congress never gave the Judicial Conference discretion to charge unequal fees. The Liquidating Trustee failed to respond to the U.S. Trustee's Rule 28(j) letter and has not contested the proposition it espouses. Because we rule that the 2017 Amendment is constitutional, we need not further address this additional argument of the U.S. Trustee.

Applying a statute to events occurring before it was enacted gives rise to Fifth Amendment due process concerns. *See Landgraf v. USI Film Prods.*, 511 U.S. 244, 266 (1994). Indeed, such a retroactive application may deprive a party of adequate notice and undermine "settled expectations." *Id.* at 265. In assessing the retroactive impact of legislation, the courts have utilized a two-step analysis. *Id.* at 280. First, applying ordinary tools of statutory construction, we ask whether Congress "has expressly prescribed the statute's proper reach." *Id.*; *see also Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 37 (2006). And, if Congress did so, "this is the end of the analysis." *See Appiah v. INS*, 202 F.3d 704, 708 (4th Cir. 2000). Only if that effort fails do the courts proceed to the second step. At step two, a reviewing court must determine whether applying the new provision results in an impermissible retroactive consequence by "affecting substantive rights, liabilities, or duties on the basis of conduct arising before its enactment." *See Fernandez-Vargas*, 548 U.S. at 37 (quoting *Landgraf*, 511 U.S. at 278). The question for the cross-appeal is thus whether the 2017 Amendment, by its terms, applies to bankruptcy cases that were pending prior to January 1, 2018. If Congress was not clear, we must then decide whether an application of the Amendment to those pending bankruptcy cases will lead to impermissibly retroactive consequences.

As the text of the 2017 Amendment indicates, Congress intended for the increased quarterly fees to apply to all Chapter 11 cases. The bankruptcy fees provision mandates that quarterly fees be paid "in each case" and "for each quarter . . . until the case is converted or dismissed," without limitation based on when the case was

filed. *See* 28 U.S.C. § 1930(a)(6)(A). In the 2017 Amendment, Congress directed that "[t]he amendments made by this section"—i.e., the increase in quarterly fees for the larger Chapter 11 cases—"shall apply to quarterly fees payable under section 1930(a)(6) . . . for disbursements made in any calendar quarter that begins on or after the date of enactment." *See* Bankruptcy Judgeship Act of 2017, Pub. L. No. 115-72, § 1004, 131 Stat. 1224, 1232 (2017). The Amendment thus makes clear that Congress intended for the increase to apply to all Chapter 11 quarterly fees due in January 2018 or thereafter, without regard to the case's filing date.

Notwithstanding the statutory provision, the Circuit City Trustee contends that Congress never intended for the 2017 Amendment to apply to bankruptcy cases that were pending prior to January 1, 2018. The Circuit City Trustee relies on a 1996 amendment of the same statute and argues that Congress was "crystal clear" in 1996 that the amendment was intended to apply to current cases. *See* Br. of Appellee 22-23. That contention reflects a critical misunderstanding of the 1996 amendment. It was only after several courts reached divergent conclusions about whether Congress intended for the 1996 amendment to apply to ongoing bankruptcy cases that Congress enacted "clarifying legislation," making it explicit that pending cases were covered. *Cf. Brown v. Thompson*, 374 F.3d 253, 259 & n.2 (4th Cir. 2004). Unlike the 1996 amendment, the 2017 Amendment plainly applies to all disbursements made after its effective date.

Even if its terms were somehow ambiguous, however, the 2017 Amendment would have no "retroactive effect" because—consistent with Supreme Court precedent—it does not "impair rights a party possessed when he acted,

increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *See Landgraf*, 511 U.S. at 280. Although there is a presumption against the retroactive application of statutes, that presumption only applies if there is a possibility that a statute "attaches new legal consequences to events completed before its enactment." *Id.* at 270. The 2017 Amendment plainly applies only to *future* disbursements, which are triggered by a debtor's conduct occurring after the law's effective date. *See F.D.I.C. v. Faulkner*, 991 F.2d 262, 266 (1993) ("A statute's application is usually deemed prospective when it implicates conduct occurring on or after the statute's effective date." (citations omitted)).

Of importance here, the Fifth Circuit's *Buffets* decision correctly resolved the retroactivity challenge to the 2017 Amendment. *See* 979 F.3d at 374-76. The court of appeals applied the Amendment only to disbursements made after its effective date. *Id.* at 374. After evaluating the congressional history for applying fee increases to disbursements made after an effective date, the court concluded that Congress had always made fee increases so applicable. *Id.* Its decision compared the increased quarterly fees to property taxes that increase after the purchase of a home. And the Fifth Circuit ruled that the challenged fee increase is not impermissibly retroactive because it does not impair rights that debtors possessed when they filed for bankruptcy protection, nor does it increase liability for conduct that had already occurred. *Id.* at 375-76. Instead, this quarterly fee increase merely upsets debtors' "expectations as to amounts owed based on future distributions." *Id.* at 375.

In these circumstances, Congress clearly intended for the 2017 Amendment to apply to all disbursements made after its effective date, and it intended for the Amendment to be prospective. It does not increase a debtor's "liability for past conduct, or impose new duties with respect to transactions already completed." *See Landgraf*, 511 U.S. at 280. Although the Circuit City Trustee correctly posits that the Amendment increases the quarterly fees that large Chapter 11 debtors will pay, such debtors were reasonably expected to pay fees pursuant to some formula. Accordingly, we are also constrained to reject the Circuit City Trustee's challenge to the Bankruptcy Opinion's retroactivity ruling and resolve appeal No. 19-2255 in favor of the U.S. Trustee.

IV.

Pursuant to the foregoing, we resolve appeal No. 19-2240 by reversing the bankruptcy court's ruling that the 2017 Amendment is unconstitutionally nonuniform. In appeal No. 19-2255, we affirm the bankruptcy court's decision that the 2017 Amendment is not unconstitutionally retroactive. Finally, we remand for such other and further proceedings as may be appropriate.

AFFIRMED IN PART, REVERSED IN PART, AND REMANDED

QUATTLEBAUM, Circuit Judge, concurring in part and dissenting in part:

Make no mistake about it. We have two types of bankruptcy courts in the United States. Forty-eight states operate as part of the United States Trustee Program under which Unites States Trustees aid the courts in the administration and management of bankruptcy cases. But

two states—Alabama and North Carolina—operate under a different system. They use Bankruptcy Administrators rather than United States Trustees. And the differences extend beyond titles. Some Chapter 11 debtors in districts that employ the United States Trustees pay materially more in quarterly fees than similarly situated debtors in districts that employ Bankruptcy Administrators. Those fee differences, in turn, trickle down and reduce the amounts unsecured creditors receive. Therefore, many unsecured creditors in the forty-eight states operating under the United States Trustee Program are receiving less of the amounts owed to them than similarly situated unsecured creditors in Alabama and North Carolina.

The Constitution prohibits this lack of uniformity. Article I, Section 8, Clause 4 of the Constitution, known as the Bankruptcy Clause, grants Congress the power to establish "uniform Laws on the subject of Bankruptcies throughout the United States." Because I believe a faithful application of the Constitution's Bankruptcy Clause renders the statutory scheme permitting these different quarterly fees unconstitutional, I respectfully dissent from the portion of Section III-A of the majority's opinion that finds to the contrary. I concur as to the remainder of the majority's well-reasoned opinion.

I.

To understand how we arrived at the point where we have two types of bankruptcy courts, I begin with some background. "Before 1978, bankruptcy judges were responsible for the administration of individual bankruptcy cases, including such tasks as appointing trustees to cases and monitoring individual cases." U.S. GOV'T ACCOUNTABILITY OFF., GAO-GGD-92-133, BANKRUPTCY

ADMINISTRATION: JUSTIFICATION LACKING FOR CONTINUING TWO PARALLEL PROGRAMS 3 (1992) [hereinafter GAO Report]. "This responsibility placed administrative, supervisory, and clerical functions on judges in addition to their judicial duties." *Id.* at 3–4.

In an attempt to lessen these functions, in 1978, Congress "launched a trustee pilot program within the Department of Justice." *Matter of Buffets, L.L.C.*, 979 F.3d 366, 370 (5th Cir. 2020) (citing Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549, 2662–65 (1978)). The program successfully reduced the administrative duties of bankruptcy judges and increased oversight of the bankruptcy system. Thus, in 1986, Congress permanently created the United States Trustee Program. The Trustee Program is overseen by the Department of Justice's Executive Office for United States Trustees ("EOUST"), which "provide[s] legal, administrative, and management support to the individual [United States Trustee] districts." GAO Report at 4.

But the Trustee Program only operates in forty-eight states, as "[t]he six districts in Alabama and North Carolina fall under the Bankruptcy Administrator program, which the Judicial Conference oversees." *Buffets*, 979 F.3d at 370. Bankruptcy Administrator districts do not benefit from "[t]he centralized support and oversight that the EOUST and its regional offices provide . . . ." GAO Report at 4. Instead, "[e]ach of the six [Bankruptcy Administrator] districts is independent, operating as a separate entity." *Id.* The Bankruptcy Administrator program "in each district is headed by a Bankruptcy Administrator who is selected by the U.S. Court of Appeals for a term of 5 years." *Id.* at 4–5. "It was originally thought that the exclusion of Alabama and North Carolina would

last only a few years, but a later law enshrined their special status." *Buffets*, 979 F.3d at 370 n.1 (citing Federal Courts Improvement Act of 2000, Pub. L. No. 106-518, § 501, 114 Stat. 2410, 2421–22 (2000)). As the Acting United States Trustee ("U.S. Trustee") conceded at oral argument, Alabama and North Carolina's refusal to participate in the Trustee Program is not based on any unique attributes of those states. They simply prefer to use Bankruptcy Administrators rather than Trustees. The two systems are, therefore, candidly and unapologetically nonuniform. And the quarterly fees that Chapter 11 debtors pay in the Trustee Program and the Bankruptcy Administrator system are also non-uniform.

The way in which the two systems impose quarterly fees relates to the ways the two systems are funded. The Trustee Program is funded primarily by fees from debtors. *Id.* at 371. Debtors in Chapter 11 cases pay fees based on quarterly "disbursements" that are made until their cases are "converted or dismissed."[1] 28 U.S.C. § 1930(a)(6). Initially, Chapter 11 debtors in Bankruptcy Administrator districts were not required to pay these substantial quarterly fees. *Buffets*, 979 F.3d at 371. Instead, the Bankruptcy Administrator system was funded by the judiciary's general budget. *Id.* at 371. That meant that, in Bankruptcy Administrator districts, funding from United States taxpayers was not offset by Chapter 11 quarterly fees. *See id.*

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[1] Logistically, the Trustee Program is funded by congressional appropriations; however, the appropriation is offset by fees paid into the United States Trustee System Fund. *See* 28 U.S.C. § 589a(b) (directing that various fees should be deposited into the United States Trustee System Fund to offset the congressional appropriation).

In 1994, the United States Court of Appeals for the Ninth Circuit, facing arguments much like those presented to us, ruled that the lack of quarterly fees in Bankruptcy Administrator districts violated the United States Constitution's Bankruptcy Clause, which "empowers Congress to enact 'uniform Laws on the subject of Bankruptcies throughout the United States.'" *See St. Angelo v. Victoria Farms, Inc.*, 38 F.3d 1525, 1529 (9th Cir. 1994) (quoting U.S. Const. art. I, § 8, cl. 4). The Court noted that "bankruptcy law[s] may have different effects in various states due to dissimilarities in state law as long as the federal law itself treats creditors and debtors alike." *Id.* at 1531. Because Chapter 11 debtors were only required to pay quarterly fees in districts participating in the Trustee Program, unsecured creditors in those districts received less money from debtors than they would have if the cases were filed in Alabama or North Carolina. *See id.* at 1531–32. Absent a justification for treating these debtors and creditors differently based solely on their geographic location, the Court ruled that the quarterly fee statute did "not apply uniformly to a defined class of debtors." *Id.* at 1532.

After the *St. Angelo* decision, Congress enacted 28 U.S.C. § 1930(a)(7) which empowered "the Judicial Conference to set fees in [Bankruptcy] Administrator districts that were 'equal to those imposed' in Trustee districts." *Buffets*, 979 F.3d at 371. Critically, however, the amended quarterly fee statute was permissive as to Bankruptcy Administrator districts. It did not *require* equivalent fees. It merely allowed them. *See* 28 U.S.C. § 1930(a)(7) (2018) ("In districts that are not part of a United States trustee region . . . the Judicial Conference of the United States *may require* the debtor in a [Chapter

11 case] to pay fees equal to those imposed [in Trustee Program districts] . . . ." (emphasis added)).[2] If the Judicial Conference elected to impose quarterly fees, those funds were required to be deposited into a fund to offset appropriations from the federal judiciary's general budget. *See Buffets*, 979 F.3d at 371 (citing 28 U.S.C. § 1931).

"The Judicial Conference soon exercised the authority Congress gave it, charging quarterly fees in Administrator districts in the amounts specified in 28 U.S.C. § 1930 . . . ." *Id.* (internal quotation marks omitted). This seemingly—at least in practice—eliminated the specific uniformity problem. That changed a few years ago, however, when bankruptcy filings declined and revenue from quarterly fees decreased. *Id.* With reduced fees, the Trustee Program was unable to make ends meet. *Id.* Thus, in response to its budgetary shortfall, Congress amended 28 U.S.C. § 1930(a)(6) to increase the quarterly fees in Chapter 11 cases. *Id.* Specifically, beginning January 1, 2018, Congress temporarily increased the quarterly fees for the largest Chapter 11 debtors, requiring debtors with quarterly disbursements "equal or exceed[ing] $1,000,000" to pay "the lesser of 1 percent of such disbursements or $250,000." 28 U.S.C. § 1930(a)(6)(B) (2018). This increase in quarterly fees applies "[d]uring each of fiscal years 2018 through 2022, if the balance in the United States Trustee System Fund as

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[2] As noted below, Congress recently amended the language of 28 U.S.C. § 1930(a)(7) to require Bankruptcy Administrator districts to impose equivalent fees. Therefore, because this case involves a challenge to the imposition of quarterly fees prior to the recent amendment, all citations to § 1930(a)(7) refer to the version of the statute in effect prior to the amendment unless otherwise specified.

of September 30 of the most recent full fiscal year is less than $200,000,000 . . . .” *Id.*

Important here, “[m]any courts in Trustee districts applied the new fees to any quarterly disbursements that postdated the effective date of the 2017 Amendment, even if the bankruptcy case had been pending before the fee increase.” *Buffets*, 979 F.3d at 372. This was a dramatic increase for large debtors. Prior to the amendment, debtors whose quarterly disbursements exceeded $30,000,000 were required to pay a $30,000 fee. 28 U.S.C. § 1930(a)(6) (2012). After the amendment, however, those debtors were required to pay a $250,000 fee—an increase of more than 800%. *See* 28 U.S.C. § 1930(a)(6)(B) (2018).

The Bankruptcy Administrator districts did not immediately follow suit and increase their fees. *Buffets*, 979 F.3d at 372. “The Judicial Conference waited until September 2018 to adopt the increased fee schedule.” *Id.* But the nine-month delay was not the only difference under the two systems. In Bankruptcy Administrator districts, the significantly increased quarterly fees applied only in cases “filed on or after October 1, 2018.” *Id.* (internal quotation marks omitted). This led to vastly disparate fees paid by similarly situated debtors in different districts.

II.

With that background in mind, I turn now to the facts here. In 2008, Circuit City Stores, Inc. and its affiliates (“Circuit City”) filed for Chapter 11 bankruptcy protection in the Eastern District of Virginia, which participates in the United States Trustee Program. In September 2010, the bankruptcy court confirmed Circuit City’s proposed liquidation plan (the “Liquidating Plan”). “The Liq-

uidating Plan provided for the formation of the Liquidating Trust, overseen by the Liquidating Trustee, to collect, administer, distribute, and liquidate all of [Circuit City's] remaining assets." J.A. 365 (footnote omitted). The Liquidating Plan further required the Liquidating Trustee to "pay quarterly fees to the U.S. Trustee until the Chapter 11 Cases are closed or converted and/or the entry of final decrees." J.A. 110.

Circuit City's bankruptcy cases were pending as of January 1, 2018, when the increased quarterly fee schedule took effect. It was, therefore, required to pay the increased fees. And the increased fees were far from nominal. "In the seven years between entry of the order confirming the Liquidating Plan and the effective date of section 1930(a)(6)(B), the Liquidating Trust paid approximately $833,000 in quarterly fees." J.A. 371 (footnote omitted). "In the first three quarters of 2018 alone, the Liquidating Trust paid approximately $632,000." J.A. 371. Without the increased quarterly fees, Circuit City would have paid $56,400—a difference of approximately $575,600.[3]

Recognizing the potential uniformity issues, the Liquidating Trustee moved to determine the extent of its liability for post-confirmation quarterly fees. The Liquidating Trust raised three arguments: (1) the amended quarterly fee statute was impermissibly applied to cases pending prior to its enactment; (2) the amended quarterly

[3] The quarterly fee figures offered by the United States Trustee appear to differ from the amounts referenced by the Liquidating Trustee and the bankruptcy court. Regardless of the specific amount, it is undisputed that the Liquidating Trustee paid exponentially higher quarterly fees in 2018 than it would have in a Bankruptcy Administrator district.

fee statute was non-uniform in violation of the Bankruptcy Clause of the United States Constitution; and (3) the amended quarterly fee statute was non-uniform in violation of the uniformity requirement in the Taxing and Spending Clause of the United States Constitution.[4] The bankruptcy court rejected the Liquidating Trustee's retroactivity argument. However, it found that § 1930(a)(6)(B) violated both the Bankruptcy Clause and the uniformity provision of the Taxing and Spending Clause. I agree with the majority's decision on retroactivity and the uniformity provision of the Taxing and Spending Clause. But I would affirm the bankruptcy court's holding that § 1930(a)(6)(B) violates the Bankruptcy Clause.

Simply put, the imposition of quarterly fees in the two bankruptcy systems is not uniform. Many Chapter 11 debtors in Trustee Program districts pay more than similarly situated debtors in Bankruptcy Administrator districts. As a consequence, similarly situated creditors receive less in Trustee Program districts than in Bankruptcy Administrator districts. How then does the U.S. Trustee justify this obvious lack of uniformity? He offers three reasons that I address in turn.

A.

First, the U.S. Trustee argues that the Constitution's uniformity requirement only applies to substantive bank-

[4] "The Congress shall have Power To lay and collect Taxes, Duties, Imposts, and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States." U.S. Const. art. I, § 8, cl. 1.

ruptcy laws. To illustrate his point, the U.S. Trustee refers to 28 U.S.C. § 158(b)(1), which authorizes each circuit court to determine whether to establish a bankruptcy appellate panel, as a non-substantive bankruptcy law that is not uniformly implemented. Moreover, the U.S. Trustee argues that important aspects of bankruptcy practice—such as prescribing fees that an attorney or private trustee may charge and the waiver of certain fees for debtors or creditors—vary at the district level. He contends that those provisions are not substantive and, as a result, do not violate Article I, Section 8, Clause 4 of the Constitution. And he then argues that § 1930(a)(6)(B) likewise is not a substantive bankruptcy law and, thus, not constitutionally infirm.

However, there are several problems with this argument. Initially, the U.S. Trustee offers no precedent in support of his substantive versus non-substantive distinction. In fact, as the Fifth Circuit recognized, every bankruptcy court that has addressed this argument has rejected it. *See Buffets*, 979 F.3d at 377. This is hardly surprising since the Supreme Court has "defined 'bankruptcy' as the 'subject of the relations between an insolvent or nonpaying or fraudulent debtor and his creditors, extending to his and their relief.' " *Ry. Labor Execs. Ass'n v. Gibbons*, 455 U.S. 457, 466 (1982) (quoting *Wright v. Union Central Life Ins. Co.*, 304 U.S. 502, 513–14 (1938)). The differences in § 1930(a)(6) and (a)(7) fit squarely within this definition.

What's more, there is a world of difference between the provisions cited by the U.S. Trustee and those at issue here. Of course, certain bankruptcy practices will vary at the local level. Bankruptcy courts must have the flexibil-

ity to operate in the most appropriate and efficient manner possible given their locality and staffing. But unlike various local rules or the existence of bankruptcy appellate panels, the disparate application of § 1930(a)(6)(B) regularly leads to similarly situated debtors paying *more* in fees and *less* to creditors in Trustee Program districts than they would in Bankruptcy Administrator districts. The bankruptcy court below provided a succinct example: "Had the Debtors filed their chapter 11 bankruptcy petitions a mere 140 miles south in Raleigh, North Carolina, the Debtors would be paying substantially lower quarterly fees than they are paying now." J.A. 376 (footnote omitted). Certainly, statutes that alter the amounts similarly situated creditors receive based on geography are sufficiently substantive to implicate the Bankruptcy Clause.

B.

The U.S. Trustee next argues that § 1930(a)(6)(B) is, in any event, uniform. He insists that § 1930(a)(7) "mandates that quarterly fees in bankruptcy-administrator districts be 'equal to those imposed by [section 1930(a)(6)].'" Appellant's Br. at 28 (quoting 28 § 1930(a)(7)). Not so. Section 1930(a)(7) states that, in Bankruptcy Administrator districts, "the Judicial Conference of the United States *may require* the debtor in a [Chapter 11 case] to pay fees equal to those imposed by [§ 1930(a)(6)]." 28 U.S.C. § 1930(a)(7) (2018) (emphasis added). If the operative version of § 1930(a)(7) used the word "shall" rather than "may," this would be an entirely different case.

Illustrating this point, on January 12, 2021, during the pendency of this appeal, President Donald J. Trump signed the Bankruptcy Administration Improvement Act

of 2020, Pub. L. 116-325, 134 Stat. 5085 (2021). The Act fixed the uniformity problem by striking the word "may" from § 1930(a)(7) and inserting the word "shall." Pub. L. 116-325, 134 Stat. at 5088. The Act further noted that its purpose was to "confirm the longstanding intention of Congress that quarterly fee requirements remain consistent across all Federal judicial districts." *Id.* at 5086. The U.S. Trustee submitted a Rule 28(j) letter alerting the Court to this legislative change and arguing that the Act merely clarified, rather than changed § 1930(a)(7). I disagree. As is evident from the nine-month delay in implementing the increased quarterly fees, the unambiguous language of § 1930(a)(7) prior to the Act vested the Judicial Conference with discretion to assess increased quarterly fees. The Act constitutes a commendable congressional effort to remedy an unconstitutional statute. While that likely ameliorates the uniformity issue going forward, it does not eliminate the problem in the as-applied challenge before us.

That is so because the Act does not address the other critical difference between § 1930(a)(6) and (a)(7). Remember, in Bankruptcy Administrator districts, the increased quarterly fees only applied to cases filed after October 1, 2018. But in Trustee Program districts, the increased quarterly fees not only applied to disbursements in all cases filed after January 1, 2018, but also to all cases *pending* as of January 1, 2018. Therefore, because the increased quarterly fees in Trustee Program districts capture cases like this one—that was pending as of January 1, 2018—and the language of § 1930(a)(7) prior to enactment of the Act was discretionary as to Bankruptcy Administrator districts, the U.S. Trustee's argument that

§ 1930(a)(6)(B) and (a)(7) are actually uniform is at odds with reality.

C.

Finally, the U.S. Trustee claims that the differences in the Trustee Program and the Bankruptcy Administrator system are not geographically based. Instead, they are based on the unique budgetary challenges confronting Trustee Program districts. All Trustee Program districts, according to the U.S. Trustee, are treated uniformly, and, therefore, we should only inquire whether the increased fees apply with the same force and effect in the Trustee Program districts.

But this argument misses the forest for the trees. Justifying the differences here on the fact that the Trustee Program districts face the budgetary problems—the trees—ignores the fact that those districts only face the budgetary problems because Congress treated them differently in the first place—the forest. And Congress did that purely based on geography.

To be fair, statutes accounting for geographic differences are not automatically a problem. *See Blanchette v. Conn. Gen. Ins. Corps.*, 419 U.S. 102, 159 (1974) ("The uniformity provision does not deny Congress power to take into account differences that exist between different parts of the country, and to fashion legislation to resolve *geographically isolated* problems." (emphasis added)). But they are a problem if not aimed at addressing issues that are geographical in nature. Here, the quarterly fee statute does not "account [for] differences that exist between different parts of the country . . . ." *See id.* at 159. It is not a congressional attempt "to resolve geographically isolated problems." *See id.* Indeed, the difference in

bankruptcy systems is arbitrary and financially damages unsecured creditors in every state other than Alabama and North Carolina.

In fact, a September 1992 report by the United States Government Accountability Office found no justification for having both the Bankruptcy Administrator and Trustee Programs. GAO Report at 16 ("We could not find any justification for continuing two separate programs."). Consistent with that, when faced with the question at oral argument whether there was anything geographically distinct about Alabama or North Carolina that justified a different approach in those states, the U.S. Trustee, to his credit, conceded there was not. While the uniformity provision of the Bankruptcy Clause "was not intended to hobble Congress by forcing it into nationwide enactments to deal with conditions calling for remedy only in certain regions," *Blanchette*, 419 U.S. at 159 (internal quotation marks omitted), it is a necessary safeguard to prevent laws from arbitrarily damaging creditors and debtors as a result of regionalism. Accordingly, while the constitutionality of the two types of bankruptcy systems is not before the court, I would nonetheless hold that the amended quarterly fee statute, as applied to the Liquidating Trustee, violates the Bankruptcy Clause.

III.

Words have meaning, and the words of the Bankruptcy Clause are clear. I do not reach my conclusion lightly, as I recognize that, "[i]n considering any constitutional attack on a federal statute, a court presumes that Congress has complied with the Constitution." *United States v. Comstock*, 627 F.3d 513, 518 (4th Cir. 2010). However, no matter how you slice it, uniform means not different. That was true when the Constitution was

drafted, and it is still true today. Thus, for the reasons stated above, I would find that the amended quarterly fee statute is unconstitutionally non-uniform.

APPENDIX B

UNITED STATES BANKRUPTCY COURT
THE EASTERN DISTRICT OF VIRGINA
RICHMOND DIVISION

Case No. 08-35653-KRH
Chapter 11
(Jointly Administered)

IN RE: CIRCUIT CITY STORES, INC., ET AL.,
Debtors.

Filed: July 15, 2019

MEMORANDUM OPINION

Before KEVIN R. HUENNEKENS, United States Bankruptcy Judge.

This matter comes before the Court upon the *Motion of the Liquidating Trustee to Determine Extent of Liability for Post-Confirmation Quarterly Fees Payable to the United States Trustee Pursuant to 28 U.S.C. § 1930(a)(6) and Memorandum in Support* [ECF No. 14197] (the "Motion to Determine") filed by Alfred H. Siegel (the "Liquidating Trustee"), Trustee of the Circuit City Stores, Inc. Liquidating Trust (the "Liquidating Trust") and upon the *United States Trustee's Motion for Summary Judgment on the Motion of the Liquidating Trustee to Determine Extent of Liability for Post-Confirmation Quarterly Fees Payable to the United States Trustee Pursuant to 28 U.S.C. § 1930(a)(6) and Memorandum in Support* [ECF No. 14202] (the "Motion for

Summary Judgment") filed by the Office of the United States Trustee (the "U.S. Trustee" and, together with the Liquidating Trustee, the "Parties"). At issue is the proper amount of quarterly fees assessable against the Liquidating Trust due to the recent amendment of section 1930 of title 28 of the United States Code. The Court has subject-matter jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the General Order of Reference from the United States District Court for the Eastern District of Virginia dated August 15, 1984. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A). Venue is appropriate in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. After considering the applicable statutory authority, the case law, the pleadings, and the arguments of counsel, the Court denies the relief requested in Motion for Summary Judgment and grants the relief requested in the Motion to Determine for the reasons set forth below.[1]

On November 10, 2008 (the "Petition Date"), Circuit City Stores, Inc. ("Circuit City") and certain affiliates (collectively, the "Debtors") filed voluntary petitions under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). On September 14, 2010, the Court confirmed the Debtors' *Modified Second Amended Joint Plan of Liquidation of Circuit City Stores, Inc. and Its Affiliated Debtors and Debtors in Possession and Its Official Committee of Creditors Holding General Unsecured Claims* [ECF No. 8555, Ex. A] (the "Liquidating

[1] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See*Fed. R. Bankr. P. 7052.

Plan").[2] The Liquidating Plan provided for the formation of the Liquidating Trust, overseen by the Liquidating Trustee, to collect, administer, distribute, and liquidate all of the Debtors' remaining assets.[3] Under the terms of the Liquidating Plan,

> [a]ll fees then due and payable pursuant to 28 U.S.C. § 1930, as determined by the Court at the Confirmation Hearing, shall be paid on or before the Effective Date by the Debtors. All such fees that become due and payable thereafter by a Debtor shall be paid by the Liquidating Trustee. The Liquidating Trustee shall pay quarterly fees to the U.S. Trustee until the Chapter 11 Cases are closed or converted and/or the entry of final decrees.[4]

At the time the Liquidating Plan was confirmed in 2010, section 1930 of title 28 provided that the payment of quarterly fees to the U.S. Trustee would range between $6,500 and $30,000.[5] In no event would the quarterly fee ever exceed $30,000 regardless of the amount of the disbursements for any given calendar quarter.

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[2] Finds. Fact, Concls. Law & Order Confirming Mod. Second Am. Joint Plan Liquid., ECF No. 8555.

[3] *Id.* Ex. A, at 1.

[4] *Id.* Ex. A, at 46.

[5] The statute provided:

> $6,500 for each quarter in which disbursements total $1,000,000 or more but less than $2,000,000; $9,750 for each quarter in which disbursements total $2,000,000 or more but less than $3,000,000; $10,400 for each quarter in which disbursements total $3,000,000 or more but less than $5,000,000; $13,000 for each quarter in which disbursements total $5,000,000 or more but less than

In October 2017, Congress amended section 1930 of title 28 of the United States Code to provide:

> During each of fiscal years 2018 through 2022, if the balance in the United States Trustee System Fund as of September 30 of the most recent full fiscal year is less than $200,000,000, the quarterly fee payable for a quarter in which disbursements equal or exceed $1,000,000 shall be the lesser of 1 percent of such disbursements or $250,000.

Bankruptcy Judgeship Act of 2017, Pub. L. No. 115-72, § 1004, 131 Stat. 1224, 1232 (codified as amended at 28 U.S.C. § 1930(a)(6)(B) (2018)) (the "Bankruptcy Judgeship Act").[6] The amendment increased the amount of the quarterly fees payable to the U.S. Trustee System from a minimum of $10,000 to a maximum of $250,000 for quarters where disbursements met or exceeded $1 million. *Id.* From January 1, 2018, onward, the U.S. Trustee program has assessed and continues to assess fees based upon the increased fee schedule for all pending chapter 11 cases.[7]

But the increase in quarterly fees does not apply to all debtors in all chapter 11 cases throughout the country. Unlike chapter 11 debtors in areas that are part of the

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> $15,000,000; $20,000 for each quarter in which disbursements total $15,000,000 or more but less than $30,000,000; $30,000 for each quarter in which disbursements total more than $30,000,000.

28 U.S.C. § 1930 (2008) (amended 2018).

[6] The balance of the U.S. Trustee System Fund is less than $200,000,000.

[7] *Chapter 11 Quarterly Fees*, U.S. Dep't Justice, https://www.justice.gov/ust/chapter-11-quarterly-fees (last visited July 11, 2019) (making no distinction between cases pending before and cases filed after the amendment's effective date).

U.S. Trustee program, chapter 11 debtors in the six federal judicial districts in Alabama and North Carolina that operate under the Bankruptcy Administrator Program (the "BA Districts") may only now be subject to the increased fees, but only under certain circumstances.[8] The statute governing quarterly fees provides that "the Judicial Conference of the United States *may require* the debtor in a case under chapter 11 of title 11 [in the BA Districts] to pay fees equal to those imposed by paragraph (6) of this subsection." 28 U.S.C. § 1930(a)(7) (emphasis added). In 2001, the Judicial Conference of the United States (the "JCUS"), acting according to this statutory authorization, approved a recommendation from its Bankruptcy Committee that quarterly fees be imposed in BA districts in the amounts specified in section 1930(a)(6).[9] But after Congress amended section 1930(a)(6) in October 2017, the BA Districts did not simultaneously increase the quarterly fees payable under section 1930(a)(7).[10] It was not until almost a year after Congress amended section 1930(a)(6), on September 13, 2018, that the JCUS Executive Committee approved imposing the increased quarterly fees in BA Districts "in

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[8] While the U.S. Trustee program is part of the executive branch, the Bankruptcy Administrator ("BA") program is part of the judicial branch and is overseen by the Administrative Office of the United States. *In re Buffets, LLC*, 597 B.R. 588, 592-93 (Bankr. W.D. Tex. 2019). Although Congress initially intended the U.S. Trustee program to operate nationwide, the BA Districts continue to function separately within the BA program. *Id.* at 593.

[9] Sept./Oct. 2001 Jud. Conf. U.S. Rep. 45-46, http://www.uscourts.gov/sites/default/files/2001-09_0.pdf.

[10] *In re Buffets*, 597 B.R. at 594; *see also* Obj. U.S. Tr. to Mot. Determ. ¶ 68, ECF No. 14203 (the "Response").

the amounts specified in 28 U.S.C. § 1930(a)(6)(B) for cases filed on or after October 1, 2018."[11] The resulting increase in quarterly fees payable in BA Districts "does not have retroactive application to pending cases."[12] Debtors that filed chapter 11 petitions prior to October 2018 do not have to pay the increased amount of the quarterly fees.

The Liquidating Trust's quarterly disbursements exceeded $1 million for every quarter of 2018. The U.S. Trustee program assessed and the Liquidating Trust paid the increased amount of the quarterly fees for each of those quarters in accordance with section 1930(a)(6)(B).[13] On March 28, 2019, the Liquidating Trustee filed the Motion to Determine, asking the Court to order "the actual amount of UST Fees due since January 1, 2018 . . . be determined based on the statutory rates in effect as of the Petition Date in this Case."[14] The Motion to Determine advanced two primary arguments in support

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[11] Sept. 2018 Jud. Conf. U.S. Rep. 11-12, http://www.uscourts.gov/sites/default/files/2018-09_proceedings.pdf [hereinafter 2018 JCUS Report].

[12] Bankr. Adm'r N. Dist. Ala., *Chap. 11 Quarterly Fee Forms – with Instrs.* 1 n.1, http://www.alnba.uscourts.gov/sites/alnba/files/forms/webqtrfees2019.pdf (last updated Jan. 30, 2019) [hereinafter *N.D. Ala. Fee Notice*]; *see also* Bankr. Adm'r W. Dist. N.C., *Notice Incr. Chap. 11 Quarterly Fees* 1, http://www.ncwba.uscourts.gov/sites/ncwba/files/Notice%20of%20Increased%20Chapter%2011%20Quarterly%20Fees%20effective%20for%20cases%20filed%20on%20or%20after%20October%201.pdf (Sept. 20, 2018) [hereinafter *W.D.N.C. Fee Notice*].

[13] *See* Resp. ¶¶ 11-12.

[14] Mot. Determine 14.

of its contention: (i) section 1930(a)(6)(B) "is unconstitutional as applied to this Case due to its lack of uniformity for the first three quarters of 2018"; and (ii) section 1930(a)(6)(B) "cannot be retroactively applied to the Trust for any relevant years."[15] On May 9, 2019, the U.S. Trustee filed the Motion for Summary Judgment and its Response. The Motion for Summary Judgment asked the Court to dismiss the Motion to Determine because "the Motion [to Determine] seeks relief that can only be sought through an adversary complaint under Rule 7001" of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").[16] On June 5, 2019, the Liquidating Trustee filed the *Liquidating Trust's Response to United States Trustee's Motion for Summary Judgment* [ECF No. 14209]. On June 12, 2019, the Court conducted a hearing (the "Hearing") on the foregoing matters, at which time the Court denied the relief requested in the Motion for Summary Judgment and took the Motion to Determine under advisement.[17]

The Motion for Summary Judgment arguing for dismissal of the Motion to Determine on the grounds that it seeks "relief that can only be pursued through an adversary proceeding" exalts form over substance. Mot. Summ. J. ¶ 16. Bankruptcy Rule 2020, which provides for a proceeding against the U.S. Trustee to be brought as a

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[15] *Id.*

[16] Mot. Summ. J. 2.

[17] The Parties, without leave of the Court, submitted post-Hearing briefs. *See* Suppl. Resp. Mot. Determine [ECF No. 14213]; Liquid. Tr. Resp. to Suppl. Resp. Mot. Determine [ECF No. 14217]. The Court has fully considered the arguments and authorities set forth in the supplemental pleadings.

contested matter, most likely applies to the Motion to Determine.[18] Furthermore, Bankruptcy Rule 9014, which governs contested matters, makes most of the procedural rules included in Part VII of the Bankruptcy Rules, which governs adversary proceedings, applicable to contested matters. Fed. R. Bankr. P. 9014(c). That list is not exhaustive. The Court is authorized to "direct that one or more of the other rules in Part VII shall apply" in any particular contested matter. *Id.* No lack of formality need be suffered by any party in any contested matter.

On the other hand, the Motion to Determine does seek the type of relief included in Bankruptcy Rule 7001, which must ordinarily be brought by complaint. The Motion to Determine requests a determination about the amount of quarterly fees due, a holding that section 1930(a)(6)(B) is unconstitutionally non-uniform, and a holding that section 1930(a)(6)(B) cannot not be retroactively applied to these cases. Mot. Summ. J. ¶¶ 1-2. The first form of relief

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[18] Bankruptcy Rule 2020 states that "[a] proceeding to contest any act or failure to act by the United States trustee is governed by Rule 9014." Fed. R. Bankr. P. 2020. As Bankruptcy Rule 2020 specifically provides that any such proceeding against the U.S. Trustee is a contested matter, it would control over the more general provisions of Bankruptcy Rule 7001. *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("[I]t is a commonplace of statutory construction that the specific governs the general." (alteration in original) (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992))); *Standard Indus., Inc. v. Aquila, Inc.* (*In re C.W. Mining Co.*), 431 B.R. 307, 2009 WL 4894278, at *5 (B.A.P. 10th Cir. 2009) (unpublished table decision) ("[W]hen the plain language of one bankruptcy rule specifically authorizes a party to proceed on motion, the general language of another rule should not be interpreted so broadly as to negate the more specific." (citing *State Bank of S. Utah v. Gledhill* (*In re Gledhill*), 76 F.3d 1070, 1078 (10th Cir. 1996))), *aff'd*, 625 F.3d 1240 (10th Cir. 2010).

is an attempt to "determine the validity of the government's 'interest in property,' " which falls within the gambit of Bankruptcy Rule 7001(2). Mot. Summ. J. ¶ 15 (quoting Fed. R. Bankr. P. 7001(2)). The two other two requests seek "declaratory relief relating to [the Liquidating Trustee's] upcoming proceeding to 'recover money or property'" and are covered by Bankruptcy Rules 7001(1) and 7001(9). *Id.* ¶ 14 (quoting Fed. R. Bankr. P. 7001(1)).

But notwithstanding the U.S. Trustee's assertions to the contrary, this procedural conundrum does not warrant dismissal of the Motion to Determine in any event. Rather, the Court can simply convert the contested matter to an adversary proceeding. *SeePhillips v. Lehman Bros. Holdings, Inc.* (*In re Fas Mart Convenience Stores, Inc.*), 318 B.R. 370 (Bankr. E.D. Va. 2004) (denying motion to dismiss and ordering underlying motion converted to a complaint). Section 105(a) of the Bankruptcy Code permits the court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Bankruptcy Code. 11 U.S.C. § 105(a); *see also Arrowsmith v. Lemberg Law, LLC* (*In re Health Diagnostics Lab., Inc.*), 571 B.R. 182, 192 (Bankr. E.D. Va. 2017) (stating that section 105(a) is a "broad grant of power" (quoting *Caesars Entm't Operating Co. v. BOKF, N.A.* (*In re Caesars Entm't Operating Co.*), 808 F.3d 1186, 1188 (7th Cir. 2015))). This grant of power is broad enough to permit a court to "convert a contested matter to an adversary proceeding on its own motion." *Wilborn v. Wells Fargo Bank, N.A.* (*In re Wilborn*), 401 B.R. 872, 892 (Bankr. S.D. Tex. 2009) (citing *Costa v. Marotta, Gund, Budd & Dzera, LLC*, 281 F. App'x 5, 6 (1st Cir. 2008) (per curiam); *Johnson v. Stemple* (*In re Stemple*), 361 B.R. 778, 784 (Bankr. E.D. Va. 2007)). Accordingly,

the Court will deny the relief requested in the Motion for Summary Judgment seeking dismissal of Motion to Determine, and it will instead convert this contested matter to an adversary proceeding.[19]

The Court turns next to the merits of the Motion to Determine and to the constitutionality of section 1930(a)(6)(B). The Liquidating Trustee first challenges the constitutionality of the amendment to section 1930(a)(6) on account of its retroactive application to cases pending prior to enactment. Without question, the amendment to section 1930(a)(6) dramatically increased the quarterly fees payable by the Liquidating Trust.[20] In the seven years between entry of the order confirming the Liquidating Plan[21] and the effective date of section 1930(a)(6)(B), the Liquidating Trust paid approximately

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[19] Hr'g Tr. 10:14, June 12, 2019, ECF No. 14214. Neither of the Parties opposed conversion at the Hearing. *Id.* at 8:7-8, 10:12-13. Furthermore, both Parties requested that the Court proceed at the Hearing to hear argument pertaining to the merits of the Motion to Determine and the Response thereto (collectively, the "Pleadings"). *Id.* at 8:3-4; 10:9-10. As the Parties represented that there were no material facts in dispute and that the matters raised in the Pleadings were purely dispositive questions of law, the Court entertained the Pleadings as cross-motions for summary judgment under Bankruptcy Rule 7056 and proceeded thereon. *Id.* at 8:22-9:14; 10:5-25.

[20] The U.S. Trustee states that "the fees [paid by the Liquidating Trustee since the enactment of section 1930(a)(6)(B)] ranged from $30,777 in the fourth quarter of 2018 to $232,843 in the first quarter of 2018." Resp. ¶ 12. The Liquidating Trustee confirms that the Liquidating Trust paid $632,542 in quarterly fees through the first three quarters of the 2018 calendar year, "a $576,142 difference" between the $56,400 it would have paid absent the enactment of section 1930(a)(6)(B). Mot. Determine ¶ 12.

[21] *See supra* note 2.

$833,000 in quarterly fees. Hr'g Tr. 13:1-9, June 12, 2019, ECF No. 14214. In the first three quarters of 2018 alone, the Liquidating Trust paid approximately $632,000. *Id.* The Liquidating Trustee complains that this "exponential statutory increase" was not something he could have anticipated when the Liquidating Plan was confirmed over eight years ago. Mot. Determine. ¶ 12. If the Liquidating Trustee had been able to anticipate such a significant step-up in quarterly fees at the time of plan confirmation, "there might have been different decisions made in confirmation and how the case was going to proceed thereafter." Hr'g Tr. 13:24-14:5, June 12, 2019, ECF No. 14214. The Liquidating Plan fixed the rights of the Liquidating Trustee, the rights of the creditors, and the rights of all other parties, and the substantial increase in quarterly fees harms the holders of allowed general unsecured claims because "fewer assets will be available for distribution to the [Liquidating Trust's] beneficiaries." Mot. Determine ¶ 25.

Congress may give a law retroactive effect by "expressly prescrib[ing] the statute's proper reach." *Landgraf v. USI Film Prods.*, 511 U.S. 244, 280 (1994). When Congress does so, "this is the end of the analysis." *Appiah v. INS*, 202 F.3d 704, 708 (4th Cir. 2000). If Congress does not define a statute's temporal reach, "the court must determine whether the new statute would have retroactive effect, *i.e.*, whether it would impair rights a party possessed when he acted, increase a party's liability for past conduct, or impose new duties with respect to transactions already completed." *Landgraf*, 511 U.S. at 280 (emphasis in original). Making this determination "is not always a simple or mechanical task." *Id.* at 268. The deci-

sion "comes at the end of a process of judgment concerning the nature and extent of the change in the law and the degree of connection between the operation of the new rule and a relevant past event." *Id.* at 270.

The Court's analysis is controlled by a prior decision of this Court in *In re AH. Robins Co.*, 219 B.R. 145 (Bankr. E.D. Va. 1998). In that case, the Bankruptcy Court and the District Court, sitting together, examined whether a 1996 amendment to section 1930(a)(6), which required chapter 11 debtors to pay quarterly fees post-confirmation, operated retroactively. *Id.* at 146. Prior to enactment of the 1996 amendment, chapter 11 debtors only paid quarterly fees up until the time of plan confirmation. *Id.* at 146-47. The 1996 amendment provided that quarterly fees would continue to accrue post-confirmation. *Id.* Initially, it was not clear whether the 1996 amendment only applied to cases filed after the amendment's effective date or whether it applied to all cases pending on the amendment's effective date. *Id.* To deal with the "staggering amount of litigation" and "widespread disparity among the courts in their attempts to apply" the 1996 amendment, Congress intervened. *Id.* at 147. "[T]hrough clarifying legislation [adopted on September 30, 1996, Congress] . . . made it known that the Amendment [was] to apply to *all* cases." *Id.* (emphasis in original).

Similar to the case at bar, the debtors in *In re A.H. Robins Co.* had been operating under a confirmed plan for many years at the time of the 1996 amendment and challenged the amendment's constitutionality based on its retroactive application. Judge Shelley of this Court, with Judge Merhige of the District Court concurring, determined that the 1996 amendment was supported by a

rational legislative purpose and was "substantively prospective in nature," in that it "only require[d] the payment of fees from the date of the Amendment forward."[22] *Id.* at 148. The Court compared post-confirmation quarterly fees to "taxes arising post confirmation, or any similar post-confirmation expenses." *Id.* (citing *In re Maruko, Inc.*, 206 B.R. 225, 229 (Bankr. S.D. Cal. 1997)). The quarterly fee was no more than an "administrative expense attendant to an open case." *Id.* (quoting *In re McLean Square Assocs.*, 201 B.R. 436, 441 (Bankr. E.D. Va. 1996)).

Like the 1996 amendment, the 2018 amendment to section 1930(a)(6) imposed an increase in the quarterly fees to be paid in chapter 11 cases. The Court finds that Congress did not expressly prescribe the reach of the 2018 amendment to section 1930(a)(6), nor did it indicate its intent for the 2018 amendment to section 1930(a)(6) to apply retroactively through other means. Accordingly, it is left to the Court to determine whether the statute's application to cases pending on its effective date is impermissibly retroactive. The holding in *In re A.H. Robins Co.* mandates it is not. A mere increase in the quarterly U.S. Trustee fee is not substantively retroactive. It is more akin to "taxes arising post confirmation, or any similar post-confirmation expenses." *Id.* (citing *In re Maruko*, 206 B.R. at 229)); *see also Landgraf*, 511 U.S. at 269 n.24 ("Even uncontroversially prospective statutes may unsettle expectations and impose burdens on past conduct: a new property tax or zoning regulation may upset the

[22] The debtor's plan, confirmed eight years prior to the 1996 amendment, was silent on quarterly fees, but the amendment "d[id] not impermissibly modify the Plan in the case at bar . . . since such fees are attendant to [the debtor's] still-pending bankruptcy case." *Id.*

reasonable expectations that prompted those affected to acquire property . . . .”). Based upon its prior precedent, the Court holds that section 1930(a)(6)(B) does not violate the antiretroactivity principle as the law is substantively prospective.

The Court turns next to whether the amendment to section 1930(a)(6) is unconstitutional based on non-uniformity. The fees assessed under section 1930(a)(6)(B) may be classified either as a tax or as a user fee for chapter 11 of the Bankruptcy Code. Under either form of classification, the quarterly fees must be applied uniformly.

As a tax, Congress may “lay and collect Taxes, Duties, Imposts and Excises . . . but all Duties, Imposts and Excises shall be uniform throughout the United States.” U.S. Const. art. I, § 8, cl. 1. The proviso to this constitutional grant of authority to Congress is known as the “Uniformity Clause.” The Uniformity Clause was intended to prevent the federal government from “us[ing] its power over commerce to the disadvantage of particular States” and engaging in “the regionalism that had marked the Confederation.” *United States v. Ptasynski*, 462 U.S. 74, 81 (1983). The Supreme Court has developed a two-part test when any law is challenged under the Uniformity Clause. Where Congress elects to define the subject of a tax or duty in non-geographic terms, “the Uniformity Clause is satisfied,” but where Congress frames its tax or duty in geographic terms, a court must “examine the classification closely to see if there is actual geographic discrimination.” *Id.* at 84-85.

The Bankruptcy Clause of the Constitution endows Congress with the power to establish “uniform Laws on the subject of Bankruptcies throughout the United States.” U.S. Const. art. I, § 8, cl. 4. Accordingly, if the

quarterly fee is characterized as a user fee attendant to chapter 11 of the Bankruptcy Code, it must still be applied uniformly under the Bankruptcy Clause. The uniformity mandated by the Bankruptcy Clause "is geographical, and not personal." *Hanover Nat'l Bank v. Moyses*, 186 U.S. 181, 188 (1902). While the Bankruptcy Clause "is not an Equal Protection Clause for bankrupts," "[t]o survive scrutiny under the Bankruptcy Clause, a law must at least apply uniformly to a defined class of debtors." *Ry. Labor Execs.' Ass'n v. Gibbons*, 455 U.S. 457, 470 n.11, 473 (1982).

For the first three quarters of 2018, newly adopted section 1930(a)(6)(B) increased quarterly fees assessed against chapter 11 debtors in only 88 of the 94 federal judicial districts throughout the country. It was not until October 1, 2018, that the JCUS approved the imposition of quarterly fees on chapter 11 debtors in the BA Districts "in the amounts specified in 28 U.S.C. § 1930(a)(6)(B)." 2018 JCUS Report, *supra* note 11, at 11-12. The Bankruptcy Judgeship Act offered no justification for excluding the BA Districts from the fee step-up. "Under any standard of review, when Congress provides no justification for enacting a non-uniform law, its decision can only be considered to be irrational and arbitrary." *In re Buffets*, 597 B.R. at 595 (quoting *St. Angelo v. Victoria Farms, Inc.*, 38 F.3d 1525, 1532 (9th Cir. 1994), *amended by* 46 F.3d 969 (9th Cir. 1995)). Section 1930(a)(6)(B) contravened the Uniformity Clause through "actual geographic discrimination" for the first three quarters of 2018. *Ptasynski*, 462 U.S. at 85.

Although the increased fees are now uniformly charged nationwide for debtors filing chapter 11 cases on or after October 1, 2018, debtors in pending cases filed

before October 1, 2018 are still experiencing geographic discrimination without a discernable explanation. JCUS determined that "the quarterly fee calculation changes in 28 U.S.C. § 1930(a)(6)(B) should apply in BA districts beginning in the first quarter of the fiscal year 2019 (that is, for any chapter 11 case filed on or after October 1, 2018, and *not for cases then pending*)." Resp. Ex. C, at 20 (emphasis added). The fee increase "does not have retroactive application to pending cases" in BA Districts. *N.D. Ala. Fee Notice*, *supra* note 12, 1 n.1.[23]

The geographic discrimination that remains ongoing is particularly apparent in the case at bar. Had the Debtors filed their chapter 11 bankruptcy petitions a mere 140 miles south in Raleigh, North Carolina,[24] the Debtors would be paying substantially lower quarterly fees than they are paying now. This is the type of "regionalism" the Uniformity Clause was intended to prevent. *Ptasynski*, 462 U.S. at 81. As the BA Districts do not apply section 1930(a)(6)(B)'s fee increase to pending cases, the fee increase cannot constitutionally be applied to pending cases outside of the BA Districts. The Court holds that section 1930(a)(6)(B) remains unconstitutionally non-uniform as applied to pending cases.

The court in *In re Buffets* confined its analysis to whether section 1930(a)(6)(B) violated the Constitution's

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[23] *See also W.D.N.C. Fee Notice*, *supra* note 12, at 1; Hr'g Tr. 17:17-24, June 12, 2019, ECF No. 14214 ("If you file a case now in Northern District of Alabama or Western District of North Carolina, you are subject to the new fee schedule, but if you filed a case prior to October 1, 2018, you're on the old schedule. So it is not uniform . . . .").

[24] Both North Carolina and Virginia lie within the Fourth Circuit. But unlike Virginia, North Carolina is a BA District.

Uniformity Clause. This Court holds that section 1930(a)(6)(B) also violates the Constitution's Bankruptcy Clause. The Bankruptcy Clause requires bankruptcy laws to be geographically uniform. *Moyses*, 186 U.S. at 188. Section 1930(a)(6)(B) is not geographically uniform because qualifying chapter 11 debtors with cases pending prior to October of 2018 have been and continue to be assessed lower quarterly fees in two regions of the country (Alabama and North Carolina) than have similarly situated debtors throughout the rest of the country. Although the Bankruptcy Clause "is not an Equal Protection Clause," *Gibbons*, 455 U.S. at 470 n.11, it does require bankruptcy laws to "at least apply uniformly to a defined class of debtors," *id.* at 473. As the amendment to section 1930(a)(6) does not apply uniformly both to chapter 11 debtors with pending cases in BA districts and to chapter 11 debtors with pending cases in U.S. Trustee districts, it is unconstitutional under the Bankruptcy Clause.

Regardless of whether the quarterly fees are classified as a tax or as a user fee for bankruptcy, the amendment to section 1930(a)(6) is unconstitutional. If the quarterly fees are treated as a tax, the amendment violates the Uniformity Clause. If the quarterly fees are considered as a bankruptcy user fee, the amendment violates the Bankruptcy Clause. The cost of a given bankruptcy proceeding for similarly situated debtors must be consistent in every judicial district throughout the country. Therefore, the Court will grant the Motion to Determine. The quarterly fees due and payable by the Liquidating Trust since January 1, 2018, must be determined based on the prior version of the statute.[25] The Court makes no

[25] *See* 28 U.S.C. § 1930(a)(6) (2008).

finding as to the Liquidating Trustee's ability to recover any overpayments based upon the Courts ruling but acknowledges that rights and defenses of both Parties are reserved.

Conclusion

For the foregoing reasons, the amendment to section 1930(a)(6), while prospective in nature, is unconstitutional as applied to this case due to its lack of uniformity with respect to chapter 11 bankruptcy cases pending prior to October of 2018. The Court will issue a separate order denying the Motion for Summary Judgment, converting this contested matter to an adversary proceeding, and granting the Motion to Determine.

DATED: July 15, 2019

/s/ Kevin R. Huennekens
UNITED STATES
BANKRUPTCY JUDGE

ENTERED ON DOCKET:
July 15, 2019

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 19-405
(3:08-bk-35653)
(19-03060)

In re: CIRCUIT CITY STORES, INC.; CIRCUIT CITY STORES WEST COAST, INC.; INTERTAN, INC.; VENTOUX INTERNATIONAL, INC.; CIRCUIT CITY PURCHASING COMPANY, LLC; CC AVIATION, LLC; CC DISTRIBUTION COMPANY OF VIRGINIA, INC.; CIRCUIT CITY PROPERTIES, LLC; KINZER TECHNOLOGY, LLC; ABBOTT ADVERTISING AGENCY, INC.; PATAPSCO DESIGNS, INC.; SKY VENTURE CORP.; PRAHS, INC. (N/A); XSSTUFF, LLC; MAYLAND MN, LLC; COURCHEVEL, LLC (N/A); ORBYX ELECTRONICS, LLC; CIRCUIT CITY STORES PR, LLC,
Debtors.

JOHN P. FITZGERALD, III, Acting United States Trustee for Region 4,
Petitioner,

v.

ALFRED H. SIEGEL, Trustee of the Circuit City Stores, Inc. Liquidating Trust,
Respondent.

Filed: November 6, 2019

ORDER

Upon consideration of submissions relative to the petition for permission to appeal, the court grants the petition. This case is transferred to the regular docket and assigned docket number 19-2240. The record shall be retained in the court below unless requested by this court.

A copy of this order shall be sent to the clerk of the bankruptcy court.

For the Court

/s/Patricia S. Connor, Clerk

APPENDIX D

Official Form 424 (12/15)

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

No. 3:19-cv-00536-MHL

JOHN P. FITZGERALD, III, Acting United States Trustee,
Appellant/Cross-Appellee,

v.

ALFRED H. SIEGEL, Trustee of the Circuit City Stores, Inc. Liquidating Trust,
Appellee/Cross-Appellant.

On Appeal from the United States Bankruptcy Court
for the Eastern District of Virginia

Filed: September 13, 2019

Certification to Court of Appeals by All Parties

A notice of appeal having been filed in the above-styled matter on July 26, 2019, and a cross-appeal having been filed on August 9, 2019, John P. Fitzgerald, III, Acting United States Trustee ("United States Trustee"), and Alfred H. Siegel, Trustee of the Circuit City Stores, Inc. Liquidating Trust ("Liquidating Trustee") hereby certify

to the court under 28 U.S.C. § 158(d)(2)(A) that a circumstance specified in 28 U.S.C. § 158(d)(2) exists as stated below.

Leave to appeal in this matter:

❑ is required under 28 U.S.C. § 158(a)

X is not required under 28 U.S.C. § 158(a).

This certification arises in an appeal from a final judgment, order, or decree of the United States Bankruptcy Court for the Eastern District of Virginia entered on July 15, 2019.

The judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for this circuit or of the Supreme Court of the United States or involves a matter of public importance.

[The parties may include or attach the information specified in Rule 8006.]

This appeal arises out of the chapter 11 bankruptcy cases filed in November 2008 by Circuit City Stores, Inc. and certain of its subsidiaries and affiliates (collectively, "Circuit City"). Under sections 589a and 1930(a)(6) of title 28, for every quarter that a chapter 11 case is open, statutory fees must be deposited into the United States Trustee System Fund ("Fund") within the United States Treasury. 28 U.S.C. §§ 1930(a)(6), 589a. These quarterly fees are calculated on a sliding scale based on the amount of disbursements during the calendar quarter. 28 U.S.C. § 1930(a)(6). In 2017, Congress amended the statute to temporarily increase the quarterly fee payable in the

largest chapter 11 cases for quarters beginning on or after January 1, 2018. This amendment is codified in 28 U.S.C. § 1930(a)(6)(B).

As part of the plan of reorganization, the bankruptcy court approved the formation of the Circuit City Stores, Inc. Liquidating Trust (the "Trust") and required that the Liquidating Trustee remit quarterly fees to the Office of the United States Trustee. On March 28, 2019, the Liquidating Trustee filed a motion asking the bankruptcy court to hold that (1) the 2017 amendment does not apply to this case because such application would be unconstitutionally retroactive, and (2) the 2017 amendment is unconstitutional as applied to this case because it violates the uniformity provision of the Bankruptcy Clause of the Constitution, U.S. Const. Art. I, § 8, cl. 4, because bankruptcy administrator districts (six districts in Alabama and North Carolina that do not participate in the United States Trustee Program and instead are administered by judicial branch employees) are collecting the increased fees only for cases filed on or after October 1, 2018.

The bankruptcy court held that the 2017 amendment's application to all open chapter 11 cases with qualifying disbursements after January 1, 2018, is prospective, not retroactive. *The* court ruled, however, that the fee increase is unconstitutionally non-uniform under the Bankruptcy Clause for cases filed before October 1, 2018. The court thus issued an order permitting the Liquidating Trustee to pay fees at the old, lesser rate instead of the amended rate.

Neither the Fourth Circuit nor the Supreme Court has addressed the constitutionality of the 2017 amendment. These questions present "matters of public im-

portance" because they could affect the fees paid or payable in other cases and significantly impact the Fund and the public fisc. Accordingly, the United States Trustee and the Liquidating Trustee (all appellants and appellees) jointly certify that the bankruptcy court's order "involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States" and it "involves a matter of public importance." 28 U.S.C. § 158(d)(2).

Respectfully submitted,

September 13, 2019

By: ***/s/ Robert B. Van Arsdale*** Robert B. Van Arsdale (Va. Bar No. 17483) JOHN P. FITZGERALD, III Acting United States Trustee, Region 4 ROBERT B. VAN ARSDALE (Va. Bar No. 17483) Department of Justice Office of the United States Trustee 701 East Broad Street, Suite 4303 Richmond, Virginia 23219 (804) 771-2310 Fax: (804) 771-2330 RAMONA D. ELLIOTT Deputy Director/General Counsel P. MATTHEW SUTKO Associate General Counsel BETH A. LEVENE Trial Attorney	***ALFRED H. SIEGEL, SOLELY AS TRUSTEE OF THE CIRCUIT CITY STORES, INC. LIQUIDATING TRUST*** ***/s/ Lynn L. Tavenner*** Lynn L. Tavenner (VA Bar No. 30083) Paula S. Beran (VA Bar No. 34679) 20 North Eighth Street, 2nd Floor Richmond, Virginia 23219 Telephone: 804-783-8300 Facsimile: 804-783-0178 Email: ltavenner@tb-lawfirm.com pberan@tb-lawfirm.com -and-

Department of Justice Executive Office for the U.S. Trustees 441 G Street, N.W., Suite 6150 Washington, DC 20530 (202) 307-1399 (202) 307-2397 Fax	Richard M. Pachulski Andrew W. Caine (*pro hac vice* request pending) PACHULSKI STANG ZIEHL & JONES LLP 10100 Santa Monica Blvd., 11th Floor Los Angeles, California 90067-4100 Telephone: 310-277-6910 Facsimile: 310-201-0760 E-mail: rpachulski@pszjlaw.com acaine@pszjlaw.com *Counsel to Alfred H. Siegel, as Trustee of the Circuit City Stores, Inc. Liquidating Trust*

APPENDIX E

1. Section 1004 of the Bankruptcy Judgeship Act of 2017, Pub. L. No. 115-72, Div. B, § 1004, 131 Stat. 1232 (2017 Act), provides:

BANKRUPTCY FEES

(a) AMENDMENTS TO TITLE 28 OF THE UNITED STATES CODE.—Section 1930(a)(6) of title 28, United States Code, is amended—

(1) by striking "(6) In" and inserting "(6)(A) Except as provided in subparagraph (B), in"; and

(2) by adding at the end the following:

"(B) During each of fiscal years 2018 through 2022, if the balance in the United States Trustee System Fund as of September 30 of the most recent full fiscal year is less than $200,000,000, the quarterly fee payable for a quarter in which disbursements equal or exceed $1,000,000 shall be the lesser of 1 percent of such disbursements or $250,000.".

(b) DEPOSITS OF CERTAIN FEES FOR FISCAL YEARS 2018 THROUGH 2022.—Notwithstanding section 589a(b) of title 28, United States Code, for each of fiscal years 2018 through 2022—

(1) 98 percent of the fees collected under section 1930(a)(6) of such title shall be deposited as offsetting collections to the appropriation "United States Trustee System Fund", to remain available until expended; and

(2) 2 percent of the fees collected under section 1930(a)(6) of such title shall be deposited in the general fund of the Treasury.

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall apply to quarterly fees payable under section 1930(a)(6) of title 28, United States Code, as amended by this section, for disbursements made in any calendar quarter that begins on or after the date of enactment of this Act.

2. 28 U.S.C. 1930 (2018) provides in relevant part:

Bankruptcy fees

(a) The parties commencing a case under title 11 shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, the following filing fees:

(1) For a case commenced under—

(A) chapter 7 of title 11, $245, and

(B) chapter 13 of title 11, $235.

(2) For a case commenced under chapter 9 of title 11, equal to the fee specified in paragraph (3) for filing a case under chapter 11 of title 11. The amount by which the fee payable under this paragraph exceeds $300 shall be deposited in the fund established under section 1931 of this title.

(3) For a case commenced under chapter 11 of title 11 that does not concern a railroad, as defined in section 101 of title 11, $1,167.

(4) For a case commenced under chapter 11 of title 11 concerning a railroad, as so defined, $1,000.

(5) For a case commenced under chapter 12 of title 11, $200.

(6)(A) Except as provided in subparagraph (B), in addition to the filing fee paid to the clerk, a quarterly fee shall be paid to the United States trustee, for deposit in the Treasury, in each case under chapter 11 of title 11 for each quarter (including any fraction thereof) until the case is converted or dismissed, whichever occurs first. The fee shall be $325 for each quarter in which disbursements total less than $15,000; $650 for each quarter in which disbursements total $15,000 or more but less than $75,000; $975 for each quarter in which disbursements total $75,000 or more but less than $150,000; $1,625 for each quarter in which disbursements total $150,000 or more but less than $225,000; $1,950 for each quarter in which disbursements total $225,000 or more but less than $300,000; $4,875 for each quarter in which disbursements total $300,000 or more but less than $1,000,000; $6,500 for each quarter in which disbursements total $1,000,000 or more but less than $2,000,000; $9,750 for each quarter in which disbursements total $2,000,000 or more but less than $3,000,000; $10,400 for each quarter in which disbursements total $3,000,000 or more but less than $5,000,000; $13,000 for each quarter in which disbursements total $5,000,000 or more but less than $15,000,000; $20,000 for each quarter in which disbursements total $15,000,000 or more but less than $30,000,000; $30,000 for each quarter in which disbursements total more than $30,000,000. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.

(B) During each of fiscal years 2018 through 2022, if the balance in the United States Trustee System

Fund as of September 30 of the most recent full fiscal year is less than $200,000,000, the quarterly fee payable for a quarter in which disbursements equal or exceed $1,000,000 shall be the lesser of 1 percent of such disbursements or $250,000.

(7) In districts that are not part of a United States trustee region as defined in section 581 of this title, the Judicial Conference of the United States may require the debtor in a case under chapter 11 of title 11 to pay fees equal to those imposed by paragraph (6) of this subsection. Such fees shall be deposited as offsetting receipts to the fund established under section 1931 of this title and shall remain available until expended.

An individual commencing a voluntary case or a joint case under title 11 may pay such fee in installments. For converting, on request of the debtor, a case under chapter 7, or 13 of title 11, to a case under chapter 11 of title 11, the debtor shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, a fee of the amount equal to the difference between the fee specified in paragraph (3) and the fee specified in paragraph (1).

* * * * *

3. 28 U.S.C. 1930 (2016) provides in relevant part:

Bankruptcy fees

(a) The parties commencing a case under title 11 shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, the following filing fees:

(1) For a case commenced under—

(A) chapter 7 of title 11, $245, and

(B) chapter 13 of title 11, $235.

(2) For a case commenced under chapter 9 of title 11, equal to the fee specified in paragraph (3) for filing a case under chapter 11 of title 11. The amount by which the fee payable under this paragraph exceeds $300 shall be deposited in the fund established under section 1931 of this title.

(3) For a case commenced under chapter 11 of title 11 that does not concern a railroad, as defined in section 101 of title 11, $1,167.

(4) For a case commenced under chapter 11 of title 11 concerning a railroad, as so defined, $1,000.

(5) For a case commenced under chapter 12 of title 11, $200.

(6) In addition to the filing fee paid to the clerk, a quarterly fee shall be paid to the United States trustee, for deposit in the Treasury, in each case under chapter 11 of title 11 for each quarter (including any fraction thereof) until the case is converted or dismissed, whichever occurs first. The fee shall be $325 for each quarter in which disbursements total less than $15,000; $650 for each quarter in which disbursements total $15,000 or more but less than $75,000; $975 for each quarter in which disbursements total $75,000 or more but less than $150,000; $1,625 for each quarter in which disbursements total $150,000 or more but less than $225,000; $1,950 for each quarter in which disbursements total $225,000 or more but less than $300,000; $4,875 for each quarter in which

disbursements total $300,000 or more but less than $1,000,000; $6,500 for each quarter in which disbursements total $1,000,000 or more but less than $2,000,000; $9,750 for each quarter in which disbursements total $2,000,000 or more but less than $3,000,000; $10,400 for each quarter in which disbursements total $3,000,000 or more but less than $5,000,000; $13,000 for each quarter in which disbursements total $5,000,000 or more but less than $15,000,000; $20,000 for each quarter in which disbursements total $15,000,000 or more but less than $30,000,000; $30,000 for each quarter in which disbursements total more than $30,000,000. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.

(7) In districts that are not part of a United States trustee region as defined in section 581 of this title, the Judicial Conference of the United States may require the debtor in a case under chapter 11 of title 11 to pay fees equal to those imposed by paragraph (6) of this subsection. Such fees shall be deposited as offsetting receipts to the fund established under section 1931 of this title and shall remain available until expended.

An individual commencing a voluntary case or a joint case under title 11 may pay such fee in installments. For converting, on request of the debtor, a case under chapter 7, or 13 of title 11, to a case under chapter 11 of title 11, the debtor shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, a fee of the amount

equal to the difference between the fee specified in paragraph (3) and the fee specified in paragraph (1).

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