No. 08-538

IN THE
Supreme Court of the United States

WILLIAM G. SCHWAB,

Petitioner,

v.

NADEJDA REILLY,

Respondent.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

BRIEF FOR RESPONDENT

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QUESTION PRESENTED

Where a debtor in bankruptcy exempts her "tools of the trade" in full, and the trustee fails to object to the debtor's claim of exemption, may the trustee nonetheless deny the debtor the benefit of her exempt property by selling it?

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PRELIMINARY STATEMENT

This matter arises out of the chapter 7 bankruptcy case of respondent Nadejda Reilly ("Reilly"). Petitioner is William G. Schwab, the trustee in Reilly's bankruptcy case ("Trustee").

At the time Reilly commenced her bankruptcy proceeding, she filed with the bankruptcy court a schedule of "exempt" property that she intended to retain as part of her "fresh start" in bankruptcy free from the claims of creditors. *See* 11 U.S.C. § 522(*l*) (providing that a debtor "shall file a list of property that the debtor claims as exempt"). Reilly included among her exempt assets various "tools of the trade" that she uses to earn a living, namely cooking equipment that she uses to prepare the food items that she sells. Reilly stated the value of her equipment at $10,718, and claimed the entire value as exempt, thus unequivocally indicating her desire to exempt the entirety of this property.

Section 522(*l*) of the Bankruptcy Code provides that, "[u]nless a party in interest objects, the property claimed on [the debtor's schedule] is exempt." In addition, Rule 4003(b) of the Federal Rules of Bankruptcy Procedure provides that a trustee has thirty days after the conclusion of the meeting of creditors to file an objection, unless the trustee seeks an extension before the expiration of the 30-day period. In this case, the Trustee did not seek an extension, nor did he

timely file an objection to Reilly's claim of exemption. The issue before the Court is whether the Trustee may nonetheless deprive Reilly of her exempt property–the tools that she uses to earn her livelihood–by selling them out from under her at some subsequent date with the hope (but no guarantee) that they might fetch more than the $10,718 value Reilly stated on her schedule.

In *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992), this Court considered a virtually identical issue. In that case, the debtor (Davis) indicated her intent to exempt the proceeds of a civil rights lawsuit by listing the lawsuit in her schedule of exempt property and stating the exempt value of the suit as "unknown." The trustee failed to object timely to her exemption. Subsequently, after further litigation, it turned out that the lawsuit had a value ($110,000) that vastly exceeded the amount the debtor could have claimed legitimately as exempt, and the trustee sought to recover most of the proceeds. *See id*. at 642 ("[t]he parties agree that Davis did not have a right to exempt more than a small portion of these proceeds"). The Court concluded that, under section 522(*l*) and Rule 4003(b), the trustee's failure to object to the debtor's listing barred him from seeking to deprive her of the exemption regardless of the value the lawsuit turned out to have. The Court reasoned that whatever right the trustee may have had to

reach the proceeds expired after he failed to timely interpose an objection.

This case presents an even more compelling candidate for the same result. First, Reilly's listing of her exempt property even more plainly triggered the Trustee's obligation to interpose a timely objection than the debtor's listing in *Taylor*. In *Taylor*, the debtor claimed her exemption by listing her lawsuit on her schedule and stating its exempt value as "unknown"–a relatively ambiguous statement, yet sufficient to compel the conclusion that the debtor intended to exempt the entire lawsuit, thus triggering the trustee's obligation to object if he wished to deprive the debtor of any part of the exempt property. In this case, Reilly itemized her cooking equipment, valued it at $10,718, and then claimed *the full $10,718 as exempt*. Because Reilly stated a precise value for the equipment, and then stated that she claimed the full value as exempt, there can be no doubt that she intended to exempt the property in its entirety–particularly since Reilly did not use up all of her available exemption allocations on the equipment, and applied some to other assets (*e.g.*, perishable foods). Under the circumstances, the Trustee cannot claim credibly that Reilly's straightforward indication of her intention was somehow *less* sufficient than the debtor's statement in *Taylor* to trigger the Trustee's obligation to object if he wished to deprive Reilly of any portion of her exempt assets. If

anything, Reilly's listing was more clearly sufficient, and the Trustee's failure to object is fatal to his position.

Second, the Trustee's explanation for failing to object in this case is far less plausible than the trustee's explanation in *Taylor*. In *Taylor*, the trustee explained that he did not object to the debtor's exemption because he doubted the debtor's lawsuit had any significant value–a plausible explanation given the trustee's stated experience, yet insufficient to excuse his failure to object. In this case, the Trustee harbored no similar, plausible doubt. Well before the relevant objection deadline, the Trustee contends that he obtained an appraisal of Reilly's cooking equipment suggesting that the equipment might be worth more than $10,718. The Trustee's failure to object thus lacks even the patina of plausibility present in *Taylor*. Just as the trustee in *Taylor* was barred from recovering the value of the exemption in excess of any amount the debtor could legitimately have claimed, the Trustee in this case is likewise barred, and certainly is not entitled to sell Reilly's equipment with simply the hope of recovering more than the value Reilly stated in her schedule.

This conclusion follows not only from the premises of *Taylor*, but also from the command of section 522(*l*) and Rule 4003(b), and likewise their logic, history, and policy. Further, the con-

sequences of the Trustee's preferred outcome are dire. Among other things, under the Trustee's approach, every debtor would hereafter hold title to his or her exempt property clouded by the trustee's right to sell the property at some point in the future without any obligation to interpose a timely objection. This is contrary to the whole point of the exemption procedure, which is to settle the status of the debtor's exempt property expeditiously in order to facilitate the debtor's "fresh start." The decision of the court of appeals should be affirmed.

STATEMENT

A. Background

Reilly earns her living as a cook, operating a small, one-person catering business. Well before she commenced her bankruptcy case, Reilly was able to start her business because her parents, in spite of their own financial burdens, bought her the equipment she uses to earn a living. Joint Appendix ("JA") 138a, 153a. Because of her parents' sacrifice, Reilly attaches "extraordinary sentimental value" to the equipment. JA 152a-153a.

Beset with financial difficulty, Reilly commenced her chapter 7 bankruptcy case on April 21, 2005. JA 9a, 26a. By operation of law, when Reilly commenced her case, a bankruptcy estate was created consisting of all of her property. 11

U.S.C. § 541. In addition, immediately following the commencement of her case, the office of the United States Trustee–a division of the Department of Justice with oversight authority in bankruptcy cases–appointed the Trustee to preside over her bankruptcy proceeding, take possession of her estate, and generally liquidate the assets in her estate for the benefit of creditors. *Id.* § 701(a)(1) (providing for the appointment of a trustee in every chapter 7 case); § 704(a)(1) (providing that the duties of a chapter 7 trustee include "collect[ing] and reduc[ing] to money the property of the estate"); § 726 (providing distribution procedures in a chapter 7 proceeding).

Because Reilly is an individual, she was entitled to claim certain property as "exempt" from her bankruptcy estate, and therefore free from the Trustee's (and creditors') reach. *Id.* § 522; *see Rousey v. Jocaway*, 544 U.S. 320, 325 (2005) ("To help the debtor obtain a fresh start, the Bankruptcy Code permits him to withdraw from the estate certain interests in property, such as his car or home, up to certain values."); *Owen v. Owen*, 500 U.S. 305, 308 (1991) ("An exemption is an interest withdrawn from the estate (and hence from the creditors) for the benefit of the debtor…Property that is properly exempted under § 522 is (with some exceptions) immunized against liability for prebankruptcy debts."); *see also generally Lockwood v. Exchange Bank*, 190 U.S. 294 (1903) (property set apart as exempt

forms no part of the estate in bankruptcy). Pursuant to section 522(b), Reilly elected to take the exemptions permitted under federal law, rather than those of the state where she resides. *See* JA 56a; 11 U.S.C. § 522(b)(2).

In order to exempt particular items of property from her estate, section 522(*l*) required Reilly to "file a list of property that [she] claims as exempt." *Id.* § 522(*l*). Rule 4003(a) further instructed Reilly to "list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007." Fed. R. Bankr. P. 4003(a); *see also* 11 U.S.C. § 522(*l*). In relevant part, Rule 1007 directs the filing of various schedules of assets through the use of the appropriate official forms–in this case Official Form 6. Fed. R. Bankr. P. 1007(b)(1)(a), Form 6. Form 6 includes a Schedule B that the debtor must use to list all personal property, and a Schedule C to list all property claimed as exempt. *See id.*; Fed. R. Bankr. P. Form 6, Schedules B, C (2005).

Reilly complied with these requirements. On her Schedule B, she included among her personal property an itemized list of her cooking equipment, which she valued at $10,718 as the form directs. JA 49a. On her Schedule C, she listed the same cooking equipment as exempt as the form directs, and estimated that the equipment had a current market value of $10,718 as

the form directs. JA 58a. She also claimed the full value of these items as exempt, and identified sections 522(d)(5) and 522(d)(6) of the Code as the statutory bases for her exemptions, all as the form directs. *Id*.

In relevant part, section 522(d)(6) permits a debtor to exempt "tools of the trade" up to a certain value ($1,850 at the time Reilly commenced her bankruptcy case; $2,025 currently). 11 U.S.C. § 522(d)(6). In addition, section 522(d)(5)–the so-called "wild card" provision–permits a debtor to exempt *any* property subject to two separate value limits: a specific amount stated in the section ($975 at the time Reilly commenced her bankruptcy case; $1,075 currently), *plus* the unused portion of the homestead and burial plot exemption permitted in section 522(d)(1) up to a stated amount ($9,250 at the time of Reilly's bankruptcy filing; $10,125 currently).

In this case, between sections 522(d)(6) and 522(d)(5), Reilly had available to her a total of $11,195 in exemptions, which she applied on her schedules to cooking equipment she valued at $10,718. JA 57a-58a. In other words, in claiming her cooking equipment as exempt, Reilly did not exhaust the entire amount of her available exemptions under these two provisions. Instead, she placed what she believed were realistic values on the cooking equipment she

claimed as exempt and took her exemptions accordingly, listing as exempt the full value of her equipment. *See also* Resp. App. 9a (counsel stating that Reilly "claimed all of the property").[1]

After a debtor commences a chapter 7 case, the United States Trustee is required to call a meeting of the debtor's creditors "[w]ithin a reasonable time after the order for relief." 11 U.S.C.

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[1] Likewise, Reilly did not use the full amount of her available exemptions for household items under section 522(d)(3) ($475 per item, with an aggregate total of $9,850 for all household items, at the time of Reillly's bankruptcy filing; $525 and $10,775 currently). *See* JA 57a-58a (using $2,000 of the $9,850 allowed under section 522(d)(3)). Reilly did use the maximum exemption of $2,950 for her automobile ($3,225 currently). *Id.* at 58a. The automobile is subject to a security interest in favor of a lender securing a debt of $11,000, leaving no value in the car for Reilly's bankruptcy estate after taking into account the interest of the secured lender and Reilly's exemption. *See* JA 60a. Reilly also more than exhausted the remainder of her "wild card" exemption on perishable food items. *See* JA 58a. Because these items are perishable and generally of no value to a trustee or creditors, but should nonetheless be disclosed, Reilly's only realistic choice in dealing with these items was to list them as exempt. Because of the nature of this kind of property as perishable and valueless to trustees and creditors, trustees rarely object to exemptions of this type. *See* Pet. Br. 15 n. 8; Gov. Am. Br. 28 n.7.

§ 341.[2] Rule 2003 clarifies that a "reasonable time" means "no fewer than 20 and no more than 40 days after the order for relief." Fed. R. Bankr. P. 2003(a). At the meeting of creditors, the chapter 7 trustee presides and questions the debtor regarding the debtor's schedules and assets. *See* Fed R. Bankr. P. 2002(a)(1), 2003(b)(1).

In this case, the Trustee conducted the meeting of creditors on June 22, 2005. Resp. App. 2a. Prior to the meeting, the Trustee arranged for some form of appraisal of the cooking equipment. At the meeting, the Trustee stated to Reilly that he believed that the appraised value of the equipment was approximately $7,200 more than the $10,718 value listed on Reilly's schedules. Resp. App. 2a. Despite Reilly's request for written documentation of the appraisal, however, the Trustee has not submitted any documentation to Reilly or the bankruptcy court. Resp. App. 2a. The appraisal information thus remains unsubstantiated, in contrast to Reilly's sworn statement valuing her cooking equipment at $10,718.

At the meeting, the Trustee also stated that "he desired to have an auction [of the equipment] to generate funds for unsecured

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[2] In a voluntary chapter 7 case, the order for relief enters automatically upon the filing of the debtor's petition. 11 U.S.C. § 301(b).

creditors in the case." Resp. App. 2a-3a, 5a-6a. Notably, if the cooking equipment were demonstrated to be worth more than the $10,718 value Reilly placed on these items in her schedules, Reilly would still have been able to exempt a somewhat higher amount than the $10,718 she claimed the equipment was worth because she would be entitled to amend her exemptions to reallocate some of her exemptions to apply them to the equipment.[3] In addition, because the equipment consists of multiple items, Reilly might elect to exempt some items and not others.

When Reilly learned that the Trustee wished to auction her cooking equipment, she insisted that she could not "stand the thought or go through this, I want to get out of bankruptcy, I'll find a way to pay the creditors, and I will pay them back the money." JA 153a. Accordingly, on June 29, 2005, Reilly filed a motion to dismiss her case, stating that "[t]he business equipment

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[3] A debtor may amend his or her schedules to claim a greater portion of available exemptions. *See* Fed. R. Bankr. P. 1009(a) (providing that a voluntary schedule "may be amended by the debtor as a matter of course at any time before the case is closed."); *Martinson v. Michael (In re Michael)*, 163 F.3d 526, 529 (9th Cir. 1998) (debtors permitted to amend schedules to add homestead exemption); *In re Henry*, 183 B.R. 748, 750 (Bankr. N.D. Tex. 1995) (when testimony indicated tools of trade might have a higher value than debtors claimed, debtors were permitted to amend schedules to claim higher value as exempt).

and inventory of the debtor is necessary to her livelihood and art, and was a gift to her from her parents. The debtor does not desire to continue with the bankruptcy since she wishes to continue in restaurant and catering as her occupation." JA 138a. As discussed more fully below, the bankruptcy court denied Reilly's motion to dismiss in conjunction with its determination that the Trustee could not sell her cooking equipment.

Pursuant to Rule 4003(b), the Trustee had thirty days after the conclusion of the meeting of creditors to object to Reilly's claim of exemptions, or seek an extension of time to do so. Fed. R. Bankr. P. 4003(b).[4] The Trustee did neither. *See* JA 168a (counsel for the Trustee conceding that there had been no objection); Pet. Br. 22 (same). Instead, on August 10, 2005, he filed an application to employ an auctioneer and, further, a motion to sell Reilly's cooking equipment through a public sale. JA 141a-142a. Reilly ob-

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[4] Both Rule 4003(b) and section 522(*l*) permit a "party in interest" to file an objection to a claim of exemption. The phrase "party in interest" includes a chapter 7 trustee. *See* Fed. R. Bankr. P. 4003(b); *Edmonston v. Murphy (In re Edmonston)*, 107 F.3d 74, 77 (1st Cir. 1997) (holding that a trustee is a party in interest entitled to oppose a claim of exemption); *Taylor v. Freeland & Kronz*, 938 F.2d 420, 421 (3d Cir. 1991) (noting that a trustee or other party in interest may file an objection to a claim of exemption), *aff'd,* 503 U.S. 638 (1992).

jected to the motion, arguing that the property was exempt, that no timely objection to the exemption had been filed, and, therefore, that the property was outside the scope of the Trustee's authority to sell. JA 146a.

B. Dispositions in the Courts Below

On October 20, 2005, the bankruptcy court held a hearing on Reilly's motion to dismiss her case, together with the Trustee's motion to sell her cooking equipment. Resp. App. 4a. At the hearing, counsel for the Trustee stated that Reilly's cooking equipment had been purchased several years prior to her bankruptcy filing for approximately $20,000. *Id.* at 5a. He likewise stated that, if permitted to be sold, "the auctioneer would not be able to guarantee a $20,000 sale price of the property," and that his "expectations are actually in the neighborhood of around…$17,200." *Id.* at 5a-6a. In response, counsel for Reilly argued that a sale was not permissible because Reilly had claimed the entire property as exempt, and the Trustee had failed to object. *Id.* at 8a-9a. After the hearing, the bankruptcy court denied Reilly's motion to dismiss her case, and also denied the Trustee's motion to sell her cooking equipment, reasoning that the cooking equipment was fully exempt due to the Trustee's failure to interpose a timely objection. Pet. App. 27a-28a; JA 162a, 169a.

On appeal, the district court affirmed. Pet App. 25a-26a. The district court concluded that the case was properly governed by this Court's decision in *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992). The court rejected the Trustee's assertion that *Taylor* was distinguishable on the theory that he did not challenge whether the property was exempt, but simply the valuation of the property. Pet. App. 23a. Noting that valuation was an issue addressed in *Taylor*, Pet. App. 23a, the district court observed that Reilly properly exempted the entirety of her cooking equipment by listing the equipment, stating its value, and then claiming the full amount as exempt, thus "totally exempting the property." Pet. App. 25a. In particular, the court found that "[n]o question exists regarding whether the plaintiff sought to exempt the full value of the property." Pet. App. 25a. The court concluded that, because Reilly exempted the entire value, and the Trustee failed to object, Reilly "is entitled to the entire value, even if the trustee asserts it is worth more than she estimated." Pet. App. 25a.

On further appeal, the Third Circuit likewise affirmed, holding that "[w]here, as here, the debtor indicates the intent to exempt her entire interest in a given property by claiming an exemption of its full value and the trustee does not object in a timely manner,…the debtor is entitled to the property in its entirety." Pet. App. 1a-2a. Citing *Taylor* as the "starting point" for its

analysis, Pet. App. 7a, the court rejected the Trustee's contention that Rule 4003 governs only inquiries into the validity of an exemption and "does not preclude judicial inquiry into valuation," reasoning that, in *Taylor*, this Court had been "unpersuaded" by the same argument. Pet. App. 9a. Addressing the trustee's assertion that he should be free to challenge the amount of a claimed exemption without interposing a timely objection as a necessary way to counter improper exemption claims, the court below reasoned that this argument had also been rejected in *Taylor*, observing that "trustees are already safeguarded from such risks by various provisions of the Bankruptcy Code that penalize debtors for engaging in improper conduct in the course of a bankruptcy." Pet. App. 10a.

The court of appeals stated that Reilly's valuation of the cooking equipment at $10,718 and her claim of an exemption in the same amount "put Schwab on notice that Reilly intended to exempt the property fully." Pet. App. 11a. The court continued that, "once Rule 4003's 30-day period elapsed without Schwab filing an objection or a request for an extension, the property became fully exempt from the bankruptcy estate regardless of its ultimate market value." Pet. App. 12a. In reaching its conclusion, the court below distinguished the Ninth Circuit's analysis in *Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316 (9th Cir. 1992), noting that the debt-

ors in *Hyman* did not signal their intent to exempt the entire property in question, whereas Reilly and the debtor in *Taylor* did. Pet. App. 12a. The court below further disagreed with the Eighth Circuit's analysis in *Stoebner v. Wick (In re Wick),* 276 F.3d 412 (8th Cir. 2002), criticizing it as inconsistent with *Taylor*. Pet. App. 13a-14a.

Finally, the Third Circuit noted that its conclusion was fully consistent with the policy of the "fresh start" underlying the bankruptcy process, as well as concepts of finality: "Once the period for objection lapses, all parties involved know what property belongs to the bankruptcy estate and what remains with the debtor." Pet. App. 16a. In sum, the Third Circuit held that "where the debtor lists a value for the property and claims an exemption in the same amount, the trustee is on notice of the debtor's valuation and has ample time to seek confirmation that the debtor's claimed value represents the true worth of the asset." Pet. App. 17a.

SUMMARY OF ARGUMENT

Reilly complied fully with the applicable forms and their requirements when she listed her cooking equipment on her schedule B (personal property schedule) and stated its value at $10,718. JA 49a. She likewise complied fully with the applicable forms and their require-

ments when she again listed her cooking equipment on her schedule C (exempt assets schedule), stated the value of the equipment at $10,718, stated the value of her claimed exemption at $10,718, and also specified the law providing the sources for her exemption. There was nothing more that the forms required her to say, and nothing ambiguous about what she said. By listing the value of her equipment at $10,718, and then claiming this entire value as exempt (as the form directs), Reilly likewise unambiguously indicated her intent to claim the equipment as exempt in its entirety. Under the circumstances, if the Trustee wished to challenge her full exemption of the equipment itself, the Trustee was obligated to file an objection. Because he failed to do so, section 522(*l*) provides that "the property claimed as exempt…is exempt." 11 U.S.C. § 522(*l*).

The plain meaning of section 522(*l*) properly controls the construction of this statutory provision. Likewise, to the extent of any doubt, the Court should interpret the provision narrowly to permit Reilly's full exemption through application of the canon that statutory restrictions in derogation of the "fresh start" policy of the Bankruptcy Code must be tightly construed.

There is no merit to the contention that something less than the cooking equipment itself is somehow fully exempt. As this court ex-

plained in *Taylor*, where a debtor complies with the forms and lists the value of an asset as "unknown," and the trustee fails to object, the asset is not exempt in some limited or restricted amount. The asset is exempt in full and properly belongs to the debtor. So, too, in this case, where Reilly listed her equipment, stated its value, and then claimed the full value as exempt, the asset is exempt in full where the Trustee failed to interpose an objection.

Taylor is indistinguishable from this case. There, as here, the trustee challenged the debtor's valuation of the debtor's asset, claiming that it was insufficient to exempt the asset in full because it was inaccurate. Likewise, there is no merit to the Trustee's assertion in this case that the exemption in *Taylor* was objectionable on its face, whereas Reilly's is not. For purposes of section 522(*l*), an objection was required in both instances to prevent the property from becoming fully exempt.

Construed in the larger context of the Code, section 522(*l*) and Rule 4003(b) unequivocally provide that Reilly is entitled to her exempt cooking equipment in its entirety. Section 522(*l*) provides that "[u]nless a party in interest objects, the property claimed as exempt on [Reilly's schedule] is exempt," and it bears no qualifying or limiting gloss. Likewise, Rule 4003(b) provides that a party in interest is required to object

to a claim of exemption within thirty days of the meeting of creditors. Where, as here, the Trustee failed to make any objection, nothing stands in the way of the plain operation of these provisions.

The Trustee contends that the Code draws a distinction between so called "in-kind" exemptions and those that are "unlimited" in the sense that they have no monetary cap. This distinction is artificial as the Trustee attempts to use it in this context. While relevant to establishing whether a trustee has grounds for objection (*e.g.*, because a debtor claims an exemption in excess of the monetary limit), the distinction is irrelevant for purposes of applying section 522(*l*), because section 522(*l*) is not limited in its application to restricting a claim of exemption to its capped amount. For example, in *Taylor*, the Court did not restrict application of section 522(*l*) to allowing the debtor to keep her exempt asset subject to any otherwise applicable monetary cap. On the contrary, the Court directed that, in the absence of an objection, the debtor was entitled to keep the entire unrestricted amount. Limiting a claim of exemption to a particular monetary cap is the reward afforded a properly interposed objection. It is not bestowed upon a forfeited objection of the kind at issue here.

The history of the treatment of exemptions in bankruptcy reinforces the principle that the consideration and allowance of exemptions is intended to be expeditious. A trustee may not sleep on his or her rights, and thereafter claim that an exemption was improperly taken. Objections must be asserted promptly for any kind of challenge to an exemption, including challenges based on allegedly improper valuations of the asset claimed as exempt.

The Trustee's argument is contrary to the policy of finality underlying section 522(*l*) and Rule 4003(b). Finality serves vitally important purposes under the Bankruptcy Code, and where the Trustee failed to interpose any objection, Reilly is entitled to the benefit of her exemption.

There is nothing unsound or unworkable about the decision of the court of appeals in this case. In contrast, the consequences of the Trustee's position, if adopted, are dire. Relieving trustees from their obligation to object to claims of exemption if the objection is based on the valuation of the claim would place a cloud over the title of a multitude of debtors claiming property as exempt. There is no warrant for this uncertainty, particularly where, as here, Rule 4003(b) so clearly specifies an unambiguous deadline for objections.

Finally, the Trustee's position is unfair. There is no legitimate reason to deprive Reilly of the full benefit of her exemption in this case. Accordingly, the decision of the court of appeals should be affirmed.

ARGUMENT

I. Reilly's Equipment Is Exempt under the Plain Meaning of Section 522(*l*) and Rule 4003(b).

In construing and applying the Bankruptcy Code, analysis begins with the statutory text. *Lamie v. United States Trustee*, 540 U.S. 526, 534 (2004) ("The starting point…is the existing statutory text."). Further, "when the statute's language is plain, the sole function of the courts–at least where the disposition required by the text is not absurd–is to enforce it according to its terms." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000) (quotations omitted); *see also Rake v. Wade*, 508 U.S. 464, 471 (1993); *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992).

In addition, exemptions in bankruptcy cases are part and parcel of the fundamental bankruptcy concept of a "fresh start." *Rousey*, 544 U.S. at 325 ("To help the debtor obtain a fresh start, the Bankruptcy Code permits him to withdraw from the estate certain interests in property, such as his car or home, up to certain

values."); Pet. Br. 7 (citing *Rousey*); *see also Marrama v. Citizens Bank*, 549 U.S. 365, 367 (2007) ("The principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the 'honest but unfortunate debtor.'"); *Perez v. Campbell*, 402 U.S. 637, 649 (1971); *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934); *Stellwagen v. Clum*, 245 U.S. 605, 617 (1918). Because of the paramount significance of the "fresh start" policy, limitations that impair its effectiveness are tightly construed. *See Kawaauhau v. Geiger*, 523 U.S. 57, 62 (1998) (noting "'well-known' guide" that "exceptions to discharge 'should be confined to those plainly expressed'") (quoting *Gleason v. Thaw*, 236 U.S. 558, 562 (1915)); *United States v. Sotelo*, 436 U.S. 268, 286 (1978) (Rehnquist, J., dissenting) (citing general rule "to construe narrowly any exceptions to the general discharge provisions"); *cf Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 667 (2006) (because they run counter to the fundamental bankruptcy policy of equality of distribution among creditors, "provisions allowing preferences must be tightly construed").

As is relevant here, section 522(*l*) unambiguously provides that "[t]he debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section…Unless a party in interest objects, the property claimed as exempt on such list is exempt." 11 U.S.C. § 522(*l*). Likewise, Rule 4003(b) establishes an

unambiguous deadline for the filing of objections under the section: "[a] party in interest may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later." Fed. R. Bankr. P. 4003(b).

In this case, the Trustee unmistakably challenges Reilly's claim of exemption. Specifically, he contends that the value Reilly placed on her cooking equipment may be too low, and he wishes to sell the equipment to see if his theory is correct. Of course, if the equipment itself is exempt, he has no right to sell it. *See Owen*, 500 U.S. at 308 ("Property that is properly exempted under § 522 is (with some exceptions) immunized against liability for prebankruptcy debts."). And as section 522(*l*) plainly states, unless a timely objection to a claim of exemption is interposed, "property" claimed as exempt "is exempt." 11 U.S.C. § 522(*l*). In this case, because the Trustee failed to object to Reilly's claim of exemption, the equipment is now beyond his reach.

By its plain terms, section 522(*l*) states a single restriction on the statutory command that property claimed as exempt is automatically exempt: a party in interest, including a trustee, must file an "objection." The ordinary meaning of the term "objection" is "a reason or argument

presented in opposition." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY, 814 (1984). The Trustee clearly "opposes" Reilly's claim of exemption. Specifically, he opposes Reilly's valuation of her equipment and, more generally, her indication on her schedule C that the entire value of the equipment is exempt. He "argues" that she is not entitled to retain her equipment in full on the theory that it may be worth more than she stated it is worth in her schedules. His opposition thus properly constitutes an "objection" within the plain meaning of the statute. Significantly, the statute does not distinguish between different kinds of objections. On the contrary, it naturally applies to *all* objections to a claim of exemption filed with the court, and a party in interest with *any* "reason or argument" that property listed should not be exempt must step forward and present the objection in a timely manner. Otherwise, the property is exempt.

In turn, the ordinary meaning of the term "property" is "something owned or possessed" or "something to which a person has legal title." WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY, 943 (1984). The term naturally connotes not only the tangible item itself, but also the bundle of rights that go along with it, and not simply the item's monetary value. As the Court has explained:

> "Property" is more than just the physical thing…It is the tangible and the intangible. Property is composed of constituent elements and of these elements the right to *use* the physical thing to the exclusion of others is the most essential and beneficial. Without this right all other elements would be of little value.

Dickman v. Comm'r, 465 U.S. 330, 336 (1984) (citation and marks omitted) (emphasis in original); *see also United States v. Craft*, 535 U.S. 274, 278 (2002) ("A common idiom describes property as a 'bundle of sticks'–a collection of individual rights which, in certain combinations, constitute property."). Where, as here, a trustee fails to object to an exemption claim, the "property" claimed as exempt is, under the statute, exempt in its entirety.

By its terms, Rule 4003(b) likewise requires that any and all objections to the debtor's retention of an exempt asset must be presented in a timely fashion or be forfeited. The point of the Rule is to set a deadline, and, like the statute it supports, the Rule does not distinguish between different types of objections, or supply different procedural paths depending on the nature of the

objection a trustee may have.[5] Under the plain terms of both the Rule and the statute, the Trustee's failure to interpose a timely objection means that Reilly's cooking equipment is now exempt and not subject to sale.

A remarkable aspect of this case is that the Trustee appears to believe that there is no sanction for his failure to timely interpose an objection, notwithstanding that he understood the alleged grounds for his objection within the time limit set by Rule 4003(b). The Trustee argues in essence that, notwithstanding his failure to interpose an objection, Reilly somehow cannot claim the benefit of section 552(*l*) and enjoy full ownership of her equipment. Instead, he asserts, her interest is limited to the monetary amount stated in her schedules (or prescribed by statutory limit), and the Trustee may sell her property at the time of his choosing.

The Trustee has it backwards. The ability to deny a debtor his or her rights in property claimed as exempt is the privilege that arises from a timely and successful objection. It is not

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[5] Recently, the Rule was amended to provide an exception to the deadline it prescribes in cases involving fraudulent exemptions and those based on section 522(q). If anything, the expression of these limited, specific exceptions suggests strongly that no other exceptions exist. *See infra* Part VI.

granted to a forfeited objection that the Trustee never bothered to file. This is all the more so in this case, given that the Trustee has never actually demonstrated in any way that there is any merit to his contention that Reilly's cooking equipment has a value greater than that stated in Reilly's sworn schedules.

The Trustee argues that, in spite of what section 522(*l*) says, it actually means something else. Specifically, the Trustee argues that, when property is rendered "exempt" under section 522(*l*), it is "exempt" only to the extent of the value limit set forth on the schedule or elsewhere in the statute. Pet. Br. 22. Thus, he contends, where a trustee disagrees with a debtor's statement of value associated with a claim of exemption, he need not object to the exemption, but may simply proceed to sell the property in question without the need to object. Among the myriad flaws that doom this assertion, the trustee's reading of the statute is initially untenable because it is contrary to what the statute actually provides and, if accepted, would significantly gut both the statute and the Rule.

A cardinal presumption is that Congress "says in a statute what it means and means in a statute what it says there." *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992). Consistent with this proposition, courts must generally refrain from engrafting limitations on

provisions of the Code that do not appear in its text. *E.g., Lamie*, 540 U.S. at 537-38; *United States v. Locke*, 471 U.S. 84, 95 (1985) (courts do not have "carte blanche to redraft statutes in an effort to achieve that which Congress is perceived to have failed to do"). Section 522(*l*) provides that, "[u]nless a party in interest objects, the property claimed as exempt on such list is exempt." 11 U.S.C. § 522(*l*). Period. The Trustee's effort to interlineate qualifications into the provision that would excuse his failure to file an objection is entirely improper where the statute itself reveals no legitimate ground for the alteration.

Likewise, the Trustee's argument would create a serious and unwarranted gap in the Rule. Under the Trustee's theory, any time a party in interest has an objection to a debtor's statement regarding the value of an exempt asset, the party need say nothing. Having said nothing, the party may then seek to sell the asset at some later point in time. This result, of course, would render Rule 4003(b)'s thirty day deadline meaningless for a very large class of exemption objections. Once again, there is no basis for creating this gap, or for defeating the deadline that the Rule so clearly delineates.

The Trustee argues that, although Reilly was entitled to know she was entitled to keep her $10,718 interest in the equipment upon expi-

ration of the objection deadline, she was not entitled to know whether she could keep the equipment itself. Pet. Br. 25. But there is nothing in Rule 4003(b) that supports this distinction. Rule 4003(b) is a "claims-processing" rule that establishes a deadline for all objections to a claim of exemption. Like other claims-processing rules, the objections it regulates "can…be forfeited if the party asserting the rule waits too long to raise the point." *Kontrick v. Ryan*, 540 U.S. 443, 456 (2004). Reilly was entitled to know by the Rule's stated deadline if the Trustee had any objections to her claim. When the deadline passed without any objection being filed, the Trustee forfeited any right to treat the property listed on her schedule as anything other than exempt.

The Trustee's argument in this case is all the more tenuous because, even if the cooking equipment were worth more than the $10,718 Reilly stated it is worth in her schedules, Reilly may amend her schedules to capture at least a part of any increase in value by reallocating her exemptions. In addition, because the cooking equipment consists of numerous items, she might exempt some of them in full, sacrificing others to the extent necessary. All this assumes, however, that the equipment is actually worth what the Trustee suggests it is worth–a point the Trustee has never, in fact, substantiated. Under the circumstances, the Trustee's argument amounts to little more than the contention that,

regardless of whether a sale is likely to generate more value than a debtor's exemption limits, a trustee who fails to object to the debtor's claim may nevertheless deprive the debtor of the tools of her trade for the sake of gambling that a sale might generate more than the debtor's exemption entitlement. This position is impossible to square with the statute and Rule.

It is true, of course, that in some instances a debtor will list as exempt only a portion of the stated value of an asset. For example, suppose a bankrupt debtor owns a mobile home worth $40,000 free and clear of any liens. Suppose further that the debtor elects to take the federal exemptions allowed under section 522(d). Under section 522(d)(1), a debtor is currently permitted to exempt no more than $20,200 of homestead value (plus up to an additional $1,075 of unused exemption under section 522(d)(5)). Accordingly, the debtor in the hypothetical might list the home on his schedule C, state the value of the home at $40,000, and claim the value of the exemption as $20,200 under section 522(d)(1) (plus up to an additional $1,075 under section 522(d)(5)). Under these circumstances, where the debtor clearly indicated that he was *not* claiming the entire value of the home as exempt, the trustee might arguably be able to move to sell the home without interposing an objection. This might arguably be so because, where the debtor effectively *concedes* that he is not entitled

to the full value of the asset, there is perhaps no reason, and thus no basis, for the trustee to "object."

On the other hand, if the debtor in the hypothetical listed the value of the mobile home as worth $20,200 (*e.g.*, because the debtor believed that this was what it was truly worth), and then claimed the full $20,200 value as exempt, the trustee would have to object to the exemption if the trustee believed the home was worth more than the stated value and the trustee wished to sell the residence. Under this variation of the hypothetical, the trustee would be required to object because, by listing the full value as exempt, the debtor clearly signaled his intent to exempt the property in its entirety and did *not* concede that he was not entitled to the full value of the asset. In this case, Reilly plainly did not concede that any portion of the value of her cooking equipment was beyond the scope of her exemption. Accordingly, in order to preserve any right to reach the equipment, the Trustee was required to object.

The Trustee in this case presents a manifestly implausible reading of section 522(*l*) and Rule 4003(b). But even if there were some merit to the Trustee's presentation, any doubt should be resolved against him because his interpretation lies in derogation of the Bankruptcy Code's fundamental "fresh start" policy.

As the Court has long recognized, the policy of affording the "honest but unfortunate" debtor a "fresh start" is one of the Code's most essential themes. *See Marrama*, 549 U.S. at 367 ("The principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the 'honest but unfortunate debtor.'"); *Perez*, 402 U.S. at 649; *Louisville Joint Stock Land Bank v. Radford*, 295 U.S. 555, 588 (1935); *Local Loan Co.,* 292 U.S. at 244; *Stellwagen,* 245 U.S. at 617. As the Court has also recognized, a debtor's right to exempt property from the reach of creditors–essentially, to discharge the property from the burden of preexisting debt–is a key component of the "fresh start" concept. *See Rousey*, 544 U.S. at 325. As explained in the House Report accompanying section 522 of the Code:

> The historic purpose of these exemption laws have [sic] been to protect the debtor from his creditors, to provide him with the basic necessities of life so even if creditors levy on all of his non-exempt property, the debtor will not be left destitute and a public charge… [T]he bill continues to recognize the state's interest in regulating credit within the states, but enunciates a bankruptcy policy favoring a fresh start…Bankruptcy exists to pro-

> vide relief for an overburdened debtor.

H.R. Rep. No. 595, 95th Cong. 126 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6087. Because this fresh start value is fundamental to the administration of bankruptcy, procedures that burden the debtor's exemption entitlements, like those that impair a debtor's discharge generally, are to be construed narrowly. *See Kawaauhau*, 523 U.S. at 62.

In this case, the Trustee seeks an open-ended construction of section 522(*l*) and Rule 4003(b) that would plainly burden a debtor's ability to exempt "tools of the trade" vital to his or her earning a living. Because the Trustee's interpretation plainly impairs the fresh start concept, it is to be avoided. For this reason as well, the Court should reject the Trustee's interpretation of the section and Rule.

The Trustee contends that Reilly's interest in her cooking equipment is not threatened because, whatever value it may fetch at auction, she is assured of receiving a share of the proceeds up to the amount of her exemption entitlement. Pet. Br. 25. The Trustee, however, is wrong, and the facts of this case exemplify why exempted property itself is often worth more than its liquidation value. Reilly is a caterer who relies on her kitchen equipment to make her

living. Because her parents sacrificed to purchase the equipment for her, it further holds for her a great sentimental value. To achieve her "fresh start" in the manner Congress intended, she needs the equipment, not her share of its liquidation value (perhaps after deduction is taken for the expenses of the auctioneer).

Further, there is no guarantee that an auction would realize anything near what the Trustee hopes to realize. Among other factors, Reilly's equipment is used, not new. Of course, the only downside for the Trustee is that the auction may not (indeed almost certainly will not) realize anything for creditors after taking into account Reilly's exemption entitlement and the expenses incurred in conducting the auction. In contrast, the almost certain downside for Reilly is the devastating loss of her property and the prospect of recovering from the auction a woefully inadequate means to replace even part of her "tools of the trade."

Moreover, as noted, there is no warrant for the Trustee's assumption that he is entitled to auction off each item of Reilly's equipment. Had the Trustee timely objected to Reilly's claim of exemption with a meritorious argument, Reilly might have responded by apportioning her equipment, choosing to sacrifice one or two items to save the rest. Alternatively or in addition, she might have reallocated and relied upon other

available exemptions.[6] There is no reason why the Trustee is entitled to deny her this recourse.

II. The Court Below Properly Followed *Taylor*.

The court of appeals properly concluded that the outcome of this case is readily resolved under the Court's analysis in *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992). As noted, the debtor in *Taylor* (Davis) sought to exempt an asset–a lawsuit–by listing the suit in her schedules and claiming its value as "unknown." *Id.* at 640; *Taylor v. Freeland & Kroonz*, 938 F.2d 420, 421 (3d Cir. 1991). After reviewing the debtor's schedules and inquiring further about the suit, the trustee in *Taylor* decided not to object. *Taylor*, 503 U.S. at 641. The trustee explained that, based on his experience, he thought it unlikely that the suit would generate funds in excess of the debtor's exemption limit. After the suit yielded a settlement of $110,000, however, the trustee demanded the money be turned over as an asset of the debtor's bankruptcy estate. *Id.* The Court rejected the trustee's claim, and its reasoning applies with even greater persuasive force to the present controversy.

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[6] Reilly could perhaps have re-characterized her coffee maker or microwave oven as personal property, for example. JA 51a-52a.

In *Taylor*, the Court observed that it was undisputed that "Davis did not have a right to exempt more than a small portion of [the $110,000 proceeds from her suit] either under state law or under the federal exemptions..." *Id.* at 642. Nevertheless, by listing the lawsuit in her schedules and claiming the *exemption value* as unknown, "Davis in fact claimed the full amount as exempt." *Id.* The Court then observed that, "as a result, [the trustee] apparently could have made a valid objection under § 522(*l*) and Rule 4003 if he had acted promptly." *Id.* In other words, the trustee could have challenged Davis' valuation. Because he failed to do so, the entire lawsuit became exempt.

If listing an asset and stating its exempt value as "unknown" is sufficient to trigger a trustee's duty to object to the claim of exemption or forever lose the right to reach the asset, then certainly Reilly's actions in this case are at least as sufficient. Where a debtor states the exempt value of an asset as "unknown," it is at least arguable that the debtor is not taking a position on how much of the asset he or she is exempting. On the other hand, where, as here, the debtor states the value of an asset and then claims the full value as exempt, the debtor's intention to claim the entire asset as exempt is perfectly clear, and the trustee's duty to object unarguably arises if the trustee wishes to preserve any right to reach the asset.

The Trustee in this case argues that *Taylor* is distinguishable on the theory that it "stand[s] for the unremarkable proposition that a trustee is required to file a timely objection in circumstances in which the debtor's claimed exemption is *improper*." Pet. Br. 26 (emphasis in original). But this characterization begs the question of what constitutes an "improper" exemption claim sufficient to trigger a trustee's duty to object. In this respect, Reilly's exemption is indistinguishable from the debtor's claim in *Taylor*.

In *Taylor*, the Court concluded that, from the trustee's perspective, Davis had made a potentially "improper" claim by asserting the entire value of her lawsuit as exempt regardless of whether the suit's value exceeded her applicable exemption limit. By the same token, Reilly's claim was no less potentially "improper" to the extent the Trustee believes the value of her equipment may also exceed her exemption limit. At the time objections were due in both *Taylor* and in this case, neither the trustee in *Taylor* nor the Trustee here could be certain that the claimed exemption was *actually* improper. For example, if the settlement in *Taylor* had generated a mere $1,000, it would have been properly exempt in its entirety under any analysis. Likewise, if any sale of Reilly's equipment realized less than her exemption availability, the Trustee

would similarly recover nothing. Thus, in both cases, at the time objections were due, the actual propriety of the exemption turned on future contingent events (the subsequent settlement in *Taylor*, and a potential sale here).

Just as uncertainty over the value of the lawsuit in *Taylor* did not excuse the trustee from objecting, it also does not excuse the Trustee in this case. A trustee who wishes to preserve any potential right to deprive a debtor of an asset claimed as exempt must object where, as here, the debtor does not concede in his or her schedules that the value of the relevant asset exceeds the amount claimed as exempt.

III. Construed in Context, the Trustee's Interpretations of Section 522(*l*) and Rule 4003(b) Are Without Merit.

As the Court has explained, the provisions of the Bankruptcy Code are properly construed "holistically," taking into account the structure of the Code as a whole, the relationship between its various provisions, and Congress' collective and systematic choice of words. *See United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 369-71 (1988) (construing several sections of the Bankruptcy Code together and observing that "[s]tatutory construction…is a holistic endeavor."); *Kelly v. Robinson*, 479 U.S. 36, 43 (1986) ("In expounding a statute, we must not be guided by a single sentence or member of a

sentence, but look to the provisions of the whole law") (citations omitted). In this case, reference to the relevant text and structure of the Code and Rules as a whole demonstrates that the Trustee's failure to object to Reilly's claim of exemption means that her cooking equipment is properly exempt in its entirety.

If Congress had intended to limit the effect of section 522(*l*) to "exempt" property only to the extent of any value limit set forth on the debtor's schedule or elsewhere in the statute, Congress easily could have said so. Yet, in drafting section 522(*l*), Congress did not limit the effect of this particular provision to any actual or stated values. It simply provided that "[u]nless a party in interest objects, the property claimed as exempt on [the debtor's schedule] is exempt." 11 U.S.C. § 522(*l*).

As this Court has explained, "[w]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion." *Russello v. United States*, 464 U.S. 16, 23 (1983) (citations and marks omitted). Whenever Congress intends to limit the availability of bankruptcy relief based on the stated monetary amounts, it generally does so expressly. For example, section 109(e) renders debtors whose debts exceed certain lim-

its to be ineligible for relief under chapter 13. *See* 11 U.S.C. § 109(e). Because Congress has not included a similar limit in section 522(*l*), the Court should not infer that one exists there. *See Toibb v. Radloff*, 501 U.S. 157, 161 (1991) (refusing to infer exception to section 109 of the Bankruptcy Code, stating "Congress knew how to restrict recourse to the avenues of bankruptcy relief"); *see also FCC v. NextWave Personal Commc'ns, Inc.*, 537 U.S. 293, 302 (2003) ("[W]here Congress has intended to provide…exceptions to provisions of the Bankruptcy Code, it has done so clearly and expressly").

Likewise, the Trustee's effort to limit the scope of Rule 4003(b) does not withstand contextual scrutiny. The Trustee contends that the Rule's thirty-day deadline applies only to objections "to a debtor's claim of exemption–not her asserted valuation." Pet. Br. 24. This argument is fundamentally unsound.

First, the Trustee's argument is belied by reference to Rule 4003(a), which requires that the debtor supply a valuation of claimed exemption. As noted, Rule 4003(a) requires a debtor to list the property claimed as exempt on "the schedule of assets required to be filed by Rule 1007." Fed. R. Bankr. P. 4003(a). In turn, Rule 1007(b)(1) requires a debtor to use the designated Official Forms, including Official Form 6. Schedule C attached to Form 6 requires the

debtor to list the property claimed as exempt, state the value of the exempt property, and also state the value of the claimed exemption. It is implausible for the Trustee to suggest that the very Rule that requires the debtor to state the value of an asset claimed exempt does not apply to objections to that same value. If Rule 4003(b) were limited in this odd way, one would expect the Rule to say so explicitly.

Second, the Trustee's argument is also inconsistent with Rule 4003(c). Rule 4003(c) squarely fixes on the Trustee the burden of proving that Reilly's exemptions "are not properly claimed." Fed. R. Bankr. P. 4003(c). By arguing that Rule 4003(b) does not apply to exemption valuation objections, the Trustee effectively seeks to avoid Rule 4003(c)'s burden of proof allocation. But there is no reason to believe that the Rule can be bifurcated in this strange manner. Section 522(*l*) and Rule 4003(b) properly apply to the Trustee's valuation objection.

The Trustee argues that a distinction in treatment should be drawn between so-called "in-kind" exemptions that are not subject to a monetary limit, and those that are subject to a monetary cap. There is no basis, however, in either section 522(*l*) or Rule 4003(b) for this distinction. Certainly the distinction between "in-kind" and unlimited exemptions does not appear expressly in the statutory text, and this termi-

nology is thus alien to it. More generally, neither the section nor the Rule otherwise adjust their requirements based on this dichotomy, nor do they lend it any meaning. Once again, the Trustee seeks improperly to import a qualification that the text does not condone, and have the benefit of an objection he never filed.

IV. The Trustee's Contentions Are Inconsistent with the Historical Treatment of Exemptions in Bankruptcy.

The Court has explained that, "[w]hen Congress amends the bankruptcy law, it does not write on a clean slate." *Dewsnup v. Timm*, 502 U.S. 410, 419 (1992) (citation and marks omitted). Further, this Court "will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure." *Cohen v. De La Cruz*, 523 U.S. 213, 221 (1998) (citations and marks omitted); *see also Duparquet Huot & Moneuse Co. v. Evans*, 297 U.S. 216, 218 (1936) ("To fix the meaning of these provisions [of the Bankruptcy Act] there is need to keep in view the background of their history."). In this case, the relevant history further belies the Trustee's contention that he need not have objected to Reilly's valuation in order to sell her cooking equipment.

The history of exemptions in bankruptcy is one of an expanding concept that has evolved to ensure that the debtor receives a prompt and

comprehensive determination of any exemption entitlement, including the expeditious resolution of any and all objections to that entitlement. The law has also evolved to rely on the debtor to create a presumptively valid list of exemptions, placing the burden on the trustee to demonstrate the invalidity of any aspect of a particular exemption claim. Consistent with this history, section 522(*l*) and Rule 4003(b) are both geared, and best read, to cover and circumscribe every kind of objection a trustee may have to a debtor's claim of exemption, including objections based on valuation.

The first federal bankruptcy statute, the short-lived Act of 1800, prescribed a modest set of exemptions for the debtor and his or her dependents. Specifically, section 5 of the Act permitted the debtor initially to set aside necessary wearing apparel and bed linens. Act of Apr. 4, 1800, ch. 19, § 5, 2 Stat. 19 (repealed 1803). Thereafter, the "commissioners" responsible for certain aspects of the proceedings, and the "assignees" (trustees) responsible for other aspects, were granted discretion to make allowance from the assets of the estate for the support of the debtor and the debtor's family. *Id*. § 53; *see also id*. § 34 (permitting the debtor to keep a portion of the non-exempt assets of the estate).

Following this theme, the second federal bankruptcy statute, the equally short-lived Act

of 1841, required the assignees (trustees) overseeing the bankruptcy case to "designate and set apart" at the outset various items of property for the debtor and his or her dependents, including "necessary household and kitchen furniture" not exceeding $300 in value, and "wearing apparel." Act of Aug. 19, 1841, ch. 9, § 3, 5 Stat. 440 (repealed 1843).

Building on these procedures, the third federal bankruptcy statute, the Act of 1867, provided for a similar exemption process, and added the requirement that the debtor "annex to his petition an accurate inventory and valuation, verified in like manner, of all his estate, both real and personal." Act of Mar. 2, 1867, ch. 176, § 11, 14 Stat. 517, *amended by* Act of June 22, 1874, 18 Stat. 182 (repealed 1878). The Act allowed exemptions for "the necessary household and kitchen furniture, and such other articles and necessaries of such bankrupt as the said assignee shall designate and set apart, having reference in the amount to the family, condition, and circumstances of the bankrupt, but altogether not to exceed in value, in any case, the sum of five hundred dollars." *Id.* The Act further provided for the exemption of other items, including wearing apparel, military equipment, and items that were exempted under the laws of the state of the bankrupt's domicile. *Id.*

The Act of 1867 further authorized the promulgation of various rules of bankruptcy procedure (termed "General Orders") governing the exemption process and other matters. *Id.* § 10. General Order 19, promulgated under the Act of 1867, prescribed that, after the debtor filed his schedules, the assignee (trustee) overseeing the case had the duty to:

> make report to the Court, *within twenty days* after receiving the deed of assignment, of the articles set off [exempted] to the bankrupt by him, according to the provisions of the fourteenth section of the Act, *with the estimated value of each article*, and any creditor may take exceptions to the determination of the assignee *within twenty days* after the filing of the report.

SUP. CT. GEN. ORD. XIX (1867) (emphasis added).[7] The Act further provided that "the de-

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[7] Official Form 20, promulgated under the Act of 1867, titled "Exempted Property," provided assignees under the 1867 Act with a template for his or her report to the court regarding the property of the debtor to be designated and set apart from the general assets of the bankruptcy estate. The form provided three columns: one general heading column that was pre-filled to indicate the various categories of exemptions available, one "Particular De-

termination of the assignee [with respect to the debtor's exemptions] shall, on exception taken, be subject to the final decision of the said court." Act of Mar. 2, 1867, ch. 176, § 14, 14 Stat. 517 (repealed 1878).

The Act of 1867 thus established two relevant, and ultimately enduring, themes. First, the assignee was required within a very short time to determine the debtor's exemptions and *set forth their estimated value.* Second, any objection to the debtor's exemptions was also required to be submitted expeditiously to the court for resolution. Under this system, the assignee alone did not serve as the ultimate arbiter of any dispute over the debtor's exemptions. Further, the deadlines imposed for resolving any exemption challenge were tightly drawn.

Expanding on these provisions, the fourth federal bankruptcy statute, the Act of 1898, provided that the duties of the bankrupt debtor included:

> [to] prepare, make oath to, and file in court…*within ten days* after the filing of a petition…(unless…further time is granted), a schedule of his property

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scription" column, and a final column for "Value." Sup. Ct. Bankr. Form 20 (1877).

> showing…[*inter alia*] a claim for such exemptions, as he may be entitled to…

Act of July 1, 1898, ch. 541, § 7, 30 Stat. 544, *amended by* Act of May 27, 1926, 44 Stat. 662 (repealed 1979) (emphasis added). Thereafter, the trustee was obligated to "set apart the bankrupt's exemptions and report the items and estimated value thereof to the court as soon as practicable after [the trustee's] appointment." *Id.* § 47.

In contrast to the Act of 1867, the Act of 1898 did not prescribe its own exemption entitlements. Rather, it incorporated and deferred to the exemption of property sheltered from execution under otherwise applicable state or federal law. Act of July 1, 1898, ch. 541, § 6, 30 Stat. 544, 11 U.S.C. 24, *amended by* Chandler Act, 52 Stat. 840 (1938) (repealed 1979) ("This Act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the laws of the United States or by the State laws in force at the time of the filing of the [bankrupt's] petition").

As with the Act of 1867, the Act of 1898 authorized the promulgation of various rules of procedure. *Id.* § 30. In particular, General Order 17, promulgated under the Act of 1898, provided that:

> The trustee shall make report to the court, *within five days* after receiving the notice of his appointment, unless further time is granted by the court, of the articles set off to the bankrupt or debtor by him, according to the provisions of section 47 of the Act, *with the estimated value of each article*; and any creditor or the bankrupt or debtor may file objections to the determination of the trustee *within ten days* after the filing of the report, unless further time is granted by the court.

SUP. CT. GEN. ORD. 17(2) (1958) (emphasis added). Continuing the trend established under the Act of 1867, General Order 17 thus tightened further the deadlines governing the trustee's determination, valuation, and distribution to the debtor of his or her exempt property. It likewise tightened the deadlines governing the submission to the court of any objection to these exemptions. It is noteworthy that the trustee was responsible for supplying the estimated value of each exempt item–a duty trustees carried for over a century. *See In re Manning*, 112 F. 948, 950 (E.D. Pa. 1902) ("The order requires that each article shall have an estimated value placed

upon it, and thus requires a specification of items, and a separate appraisal.").[8]

Subsequently, Rule 403, the predecessor to current Rule 4003, was promulgated to supersede General Order 17. Rule 403 provided that "[a] bankrupt shall claim his exemptions in the schedule of his property required to be filed by Rule 108." Fed. R. Bankr. P. 403(a) (1975). Rule 403 further provided that:

> The trustee shall examine the bankrupt's claim for exemptions, set apart [for the debtor] such as are lawfully claimed and allowable, and report to the court the items set apart, *the amount or estimated value of each*, and the exemptions claimed that are not allowable. The report shall be filed with the court *no later than 15 days* after the trustee qualifies. If the trustee reports that any exemption claimed is not allowable, he shall forthwith mail or

[8] Official Form 47 provided trustees under the 1898 Act with a template for their reports, listing "a schedule of property designated and set apart to be retained by the bankrupt aforesaid, as his own property." Sup. Ct. Bankr. Form 47 (1899). As with Form 20 under the 1867 Act, form 47 specifically required the trustee to list the "particular description" and the estimated "value" of the property set aside. *Id.*

> deliver copies of the report to the bankrupt and his attorney.

Fed. R. Bankr. P. 403(b) (1975) (emphasis added).[9] With respect to objections to the trustee's report, Rule 403 provided:

> Any creditor or the bankrupt may file objections to the report *within 15 days* after its filing, unless further time is granted by the court *within such 15-day period*… The burden of proof shall be on the objector.

Fed. R. Bankr. P. 403(c) (1975) (emphasis added). Further, Rule 403(e) provided that "[i]f no objections are filed within the time provided by this rule, the report shall be deemed approved by the court." Fed. R. Bankr. P. 403(e) (1975). Rule 403(e) thus introduced the concept of the automatic allowance of an exemption in the absence of objection, further expediting the process of resolving a debtor's exemption entitlement.

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[9] The advisory committee note to Rule 403(b) stated that "[t]he time allowed the trustee for filing the report…[was] extended to 15 days following the trustee's qualification in recognition of the fact that the 5-day period prescribed by the general order generates an excessive number of requests for extension." Fed. R. Bankr. P. 403(b) (1975) adv. note.

The Bankruptcy Reform Act of 1978 (Bankruptcy Code) streamlined the exemption process further by, among other things, eliminating the requirement of the trustee's report and providing instead that any party in interest, including a trustee, could object to the debtor's list. As noted, section 522(*l*) provides that:

> The debtor shall file a list of property that the debtor claims as exempt… Unless a party in interest objects, the property claimed as exempt on such list is exempt.

11 U.S.C. § 522(*l*). In contrast to its statutory predecessor, section 522(*l*) not only relies on the debtor to create a list of exemptions, it also establishes that, in the absence of objection, the list is presumptively valid. Section 522(*l*) has not been altered or amended since its original enactment in 1978.

After the passage of the Bankruptcy Code, Rule 4003 was promulgated, requiring the debtor to "list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007." Fed. R. Bankr. P. 4003(a). As noted, Rule 1007 requires that the debtor file a schedule of assets using the appropriate form. Fed. R. Bankr. P. 1007(b)(1). In addition, the version of Rule 4003(b) in effect at

the time Reilly filed her bankruptcy petition, provided that:

> a party in interest may file an objection to the list of property claimed as exempt *within 30 days* after the meeting of creditors…is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

Fed. R. Bankr. P. 4003(b) (2000) (emphasis added).

In conjunction with eliminating reliance on the trustee to prepare a report detailing and valuing the debtor's exemptions, the current Code and Rules allow the trustee *more* time to examine and object to the debtor's presumptively valid list. On the other hand, there is no indication that section 522, or the provisions in the Rules that implement it, were intended to excuse the trustee from having to object to a debtor's exemption valuation in order to preserve any ability the trustee might have to reach assets claimed as exempt. On the contrary, the thrust of the relevant history points in the other direction, and the statutory scheme has always been

designed to require compliance with its provisions to ensure the prompt, efficient, and comprehensive determination of the debtor's exemption entitlements, including the resolution of any controversy over the debtor's entitlement based on the valuation of a claimed exemption.

The Trustee contends that he should be excused from having to object to a debtor's valuation of an exemption claim to preserve his ability to sell the asset underlying the claim because having to object on the basis of valuation is too great a burden. Yet for more than a century, trustees in bankruptcy carried *far more onerous* exemption-related duties–*e.g.*, they were required to prepare and file a report to the court of all items to be set aside for the debtor as exempt in each and every case, including an estimated valuation of each item of property. In light of this history, the Trustee's contention rings hollow.

As it has evolved, the relevant, current practice in bankruptcy is that, if a trustee has an objection to a debtor's exemption based on the debtor's valuation of the exempt asset, the trustee will assert the objection. 4 COLLIER ON BANKRUPTCY ¶ 522.05[2][b] (15th ed. rev. 2007) ("Normally, if a debtor lists an asset as having a particular value in the schedules and then exempts that value, the schedules should be read as a claim of exemption for the entire asset, to

which the trustee should object if the trustee believes the asset has been undervalued."). For example, the early suggested form for trustee objections to the debtor's claim of exemptions in the leading bankruptcy treatise provided three sample objections under section 522(*l*). *See* Form 2-202, 6 COLLIER ON BANKRUPTCY ¶ II-76.4 (15th ed. 1995). Tellingly, *all three* examples were objections as to valuation. The first sample objection stated:

> The debtor is not entitled under 11 U.S.C. § 522(d)(2) to an interest of more than $2,400 in an automobile. The automobile claimed by debtor as exempt under this section of the Code is free and clear of liens and has a value substantially greater than $2,400.

Id. Perhaps due to Form 2-202's common use, the most recent series of suggested forms specifically separate out objections as to value in Form CS17.14-1, which likewise provides three sample objections that all deal strictly with valuation. 13A COLLIER ON BANKRUPTCY ¶ Pt. CS17-22 (15th ed. rev. 2007); *see also id.* at Pt. CS17-24 (Form CS17.14-2) (form order for court use, providing, *inter alia*, sample ruling that "[t]he debtor's [vehicle] which is claimed as exempt…has a reasonable market value of…[court enters value] and is free and clear of liens…[and

therefore] exceeds debtor's permissible exemption…"). Because the Trustee in this case failed to object to Reilly's claim of exemption, he cannot now claim any right to sell Reilly's cooking equipment.

V. The Trustee's Position Is Contrary to the Policy of Finality Underlying Section 522(*l*) and Rule 4003(b).

In discerning the meaning of a statutory provision, it is helpful to look "not only to the particular statutory language, but to the design of the statute as a whole and to its object and policy." *Dada v. Mukasey*, 128 S. Ct. 2307, 2317 (2008) (quoting *Gozlon-Peretz v. United States*, 498 U.S. 395, 407 (1991)). In addition to the "fresh start" policy discussed above, reference to the policy of finality that underlies section 522(*l*) and Rule 4003(b) further supports the conclusion that, absent a timely objection, the Trustee cannot now seek to sell Reilly's exempt cooking equipment.

This Court has often held that finality is a "vitally important" consideration in the adjudication of legal rights. *Yeager v. United States*, 129 S. Ct. 2360, 2365-66 (2009); *see also Massaro v. United States*, 538 U.S. 500, 504 (2003) (the law has an "important interest in the finality of judgments."). Bankruptcy, which has been described as "an intensely practical affair," *In re Cooper Commons LLC*, 512 F.3d 533, 534 (9th Cir.

2008), demands finality all the more, as debtors and creditors both make financial decisions based on outcomes mandated by the Code. *See*, *e.g.*, *Travelers Indem. Co. v. Bailey*, 129 S. Ct. 2195, 2205-06 (2009) ("[I]t was error for the Court of Appeals to reevaluate the Bankruptcy Court's exercise of jurisdiction" years earlier, because, in part, such a review was "at odds with finality.").

In *Taylor*, this Court indicated that finality is a key rationale for the thirty-day objection period established by Rule 4003(b). *Taylor*, 503 U.S. at 644 ("Deadlines may lead to unwelcome results, but they prompt parties to act and they produce finality."). If the thirty-day deadline passes without any party in interest challenging a debtor's claimed exemptions, the debtor is entitled to know that he or she may take the exempt property out of bankruptcy.

Finality further supports the related public goal of an efficient bankruptcy process. Congress has often substantially revised the Bankruptcy Code at various times with an eye toward increasing its efficiency. *See Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 63, n.16 (1989) ("The sweeping changes Congress instituted in 1978 were clearly intended to make the reorganization process more efficient," and "enhanced efficiency was likely Congress's aim once again [in the 1984 amendments].") Finality in the exemption

process promotes efficiency by establishing a specific time-table for addressing exemptions, and mandating that a trustee may not return to the issue after the thirty-day deadline has passed without first interposing a timely objection.

Under the Trustee's suggested interpretation of Rule 4003(b), a debtor would never have the certainty of knowing whether or not he or she may keep her exempted property until the case had ended, which often happens years after the case is originally filed. Honest debtors such as Reilly need finality, not just at the end of bankruptcy when the case is closed, but at different stages throughout. Finalizing a debtor's exempted property at an early stage allows the debtor to begin post-bankruptcy planning promptly, reinforcing the fresh start policy. Certainty regarding the availability of exempted property–particularly where, as here, the relevant exempt assets are "tools of the trade"–fosters a seamless emergence from bankruptcy, improving the prospects for financial accountability and success. Here, once the thirty-day deadline passed without objection, Reilly was entitled to know that she would emerge from bankruptcy with her cooking equipment intact. The Trustee may not prefer this result, but the policy underlying Rule 4003(b) dictates that this finality be maintained.

Critically, section 522(*l*) and Rule 4003(b) work in tandem to balance the respective interests of debtors and creditors. Although any party in interest, including a trustee, may challenge a debtor's claim of exemption to ensure that it has been fairly asserted, the opportunity to do so is properly short. As the court below explained, "[o]nce the period for objection lapses [without an objecting being taken], all parties involved know what property belongs to the bankruptcy estate and what remains with the debtor. The debtor can then use that property with the knowledge that it is her own and will not be subject to later liquidation for the benefit of creditors." Pet. App. 16a-17a. Similarly, as the circuit court decision leading to *Taylor* itself explained:

> where there is a date when the parties' rights can be finally determined–in this case, thirty days after the creditors' meeting if no objection is filed–the parties can proceed from that date knowing which property is property of the estate and which property belongs to the debtor. The debtor from that day forward can treat exempted property as his or her own and is not forced to wait until some unknown future date when the trustee or another party in interest might haul the debtor into court seeking that property.

Taylor v. Freeland & Kronz, 938 F.2d 420, 425 (3d Cir. 1991); *accord Olson v. Anderson (In re Anderson)*, 377 B.R. 865, 877 (B.A.P. 6th Cir. 2007).

In this case, if successful, the Trustee's argument would plainly thwart the policy of finality by carving out from section 522(*l*) and Rule 4003(b) a broadly open-ended exception permitting a trustee who never filed a timely objection to a debtor's claim of exemption to nonetheless sell the debtor's exempt property out from under him or her. The creation of such a cloud on the title of exempt property is unwarranted, and for this reason as well the Court should reject the Trustee's position.

VI. The Decision of the Court of Appeals Is Sound and Workable, and the Consequences of the Trustee's Position, If Adopted, Would Cause Serious Difficulties.

There is no merit to the Trustee's contention, urged also by the United States, that the decision of the court below is unworkable or will generate dire or untenable consequences. For the most part, the Trustee's concerns have already been considered and rejected by this Court in *Taylor*. The Court should likewise reject them here.

In this case, the Trustee contends that the Third Circuit's holding "would give debtors a perverse incentive to game the system by undervaluing their assets, and grant dishonest (or mistaken) debtors a windfall that more honest or diligent debtors would not receive." Pet. Br. 35; *see also* Gov. Am. Br. 27 (Third Circuit's rule would "create an additional incentive to [make] undervaluations of property."). The trustee in *Taylor* made essentially the same argument, insisting that any rule that requires a party in interest to file an objection to an improper valuation of an exempt asset "will lead debtors to claim property exempt on the chance that the trustee and creditors, for whatever reason, will fail to object to the claimed exemption on time." *Taylor*, 503 U.S. at 644. Significantly, the Court responded that "[t]his concern…does not cause us to alter our interpretation of § 522(*l*)." *Id.* Specifically, the Court refused to weigh the competing incentives generated by one conclusion or the other, stressing that, to the extent change was needed to respond to any particular outcome, "Congress may enact…provisions to address the difficulties that Taylor predicts will follow our decision. We have no authority to limit the application of § 522(*l*)…." *Id.* at 644-45.

Moreover, as the Trustee concedes, the Bankruptcy Code "provides 'penalties under various provisions for engaging in improper conduct in bankruptcy proceedings.'" Pet. Br. 35

(quoting *Taylor*, 503 U.S. at 644). Indeed, in *Taylor*, the Court identified numerous provisions of the Code that discourage bad faith, including: "11 U.S.C. § 727(a)(4)(B) (authorizing denial of discharge for presenting fraudulent claims); Rule 1008 (requiring filings to 'be verified or contain an unsworn declaration' of truthfulness under penalty of perjury); Rule 9011 (authorizing sanctions for signing certain documents not 'well grounded in fact and…warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law'); [and] 18 U.S.C. § 152 (imposing criminal penalties for fraud in bankruptcy cases)." 503 U.S. at 644.

In addition, although Congress has not altered section 522(*l*) since the Court's decision in *Taylor* (in spite of multiple opportunities to do so–suggesting implicitly Congress' acquiescence in the result and the status quo), Rule 4003 has not remained static. In 2008, an amendment to the Rule took effect that creates an exception to its thirty-day deadline in cases of fraud, and, further, for matters governed by section 522(q). Specifically, Rule 4003(b)(2) now provides: "The trustee may file an objection to a claim of exemption at any time prior to one year after the closing of the case if the debtor fraudulently asserted the claim of exemption." Fed. R. Bankr. P. 4003(b)(2). Likewise, Rule 4003(b)(3) provides: "An objection to a claim of exemption based on §

522(q) shall be filed before the closing of the case." Fed. R. Bankr. P. 4003(b)(3).

These amendments are significant for two reasons. First, they add yet another deterent to wrongful conduct. Second, they suggest rather starkly that the *only* exceptions to the thirty-day deadline exist in cases of fraud or those to which section 522(q) applies as set forth in new Rules 4003(b)(2) and 4003(b)(3). With these amendments, there is now even less room in Rule 4003 for any conclusion that a Trustee who fails to file a timely objection may nonetheless undo a debtor's claim of exemption through a sale of the exempt property.

In any event, in addition to the fact that ample provisions are available to deter and remedy wrongful conduct, the court below observed that there is no indication of any wrongful behavior on Reilly's part in this case, and, accordingly, as far as the record is concerned, the Trustee's concerns remain entirely speculative. Pet. App. 17a-18a.

Further, consideration of the incentives created by different outcomes does not cut unilaterally in the Trustee's favor–far from it. Indeed, the position that the Trustee and the Government both urge would itself likely encourage bad faith in some instances. The Government suggests that the Trustee's approach "entails no

unfairness to debtors. If a debtor intends to exempt the full value of an asset, whatever that value may be, she may convey that intent by saying so explicitly or by using 'unknown' or similar language to describe the value of the claimed exemption." Gov. Am. Br. 27. But this reasoning is flawed. *See Anderson*, 377 B.R. at 875-76. Under the Government's formulation, for example, Reilly could properly value the property she wished to fully exempt as "unknown" on her Schedule C, even though she believed it to be worth $10,718. In other words, under the Government's approach, it is permissible to withhold information even though a major point of the schedules is to extract information to inform the bankruptcy administrative process.

As noted, a further flaw in the Government's and the Trustee's reasoning is their assumption that the "correct" market value of the cooking equipment is actually approximately $17,000. There is simply no substantiating evidence of this value in the record, and the assumption rests entirely on the apparent hearsay statement of what an auctioneer said to the Trustee. Given the fact that the equipment is used, and was purchased several years before Reilly commenced her bankruptcy case, her sworn statement of its value at $10,718 is probably more accurate, and is certainly more probative from a record and evidentiary perspective.

Debtors should be encouraged to be truthful and forthright in all aspects of the bankruptcy process. Indeed, debtors have a legal obligation to be truthful. When submitting their schedules, debtors must sign a "Declaration Concerning Debtor's Schedules," in which they must declare, under penalty of perjury, that they have read the summary and schedules and the documents are "true and correct to the best of [their] knowledge, information and belief." *See* Fed. R. Bankr. P. Form 6, Declaration Concerning Debtor's Schedules (2007). Under the Government's unsound interpretation of section 522, however, debtors could be encouraged to be untruthful.[10]

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[10] Rather than eliminate perverse incentives, the Government's position would actually create them. Incentivizing debtors to state "unknown," or some other contingent amount on their schedules could cause debtors to reallocate exemption amounts they would have otherwise used up on the specific item they actually sought to exempt. For example, the debtor might state "unknown" for several items, and then use the available exemption amounts to cover items the debtor otherwise would have used up for the items he or she stated as "unknown." This would result in an overall lower recovery for creditors because more items would be exempted than if debtors were incentivized to state the estimated value of their property in good faith. Alternatively, under the Trustee's approach in this case, debtors who act in good faith may end up over-allocating their available exemptions to specific property to ensure that it is saved—resulting in a debtor taking less exemptions than Congress intended him or

The Trustee's other arguments regarding the alleged unworkability of the Third Circuit's holding are also flawed. He asserts that trustees are overwhelmed with bankruptcies, and he claims that requiring trustees to object to the exemptions of debtors like Reilly would be impractical because trustees have neither the time nor the resources to perform or outsource investigatory work. Pet. Br. 32-33. And yet, in this case, the trustee arranged for an appraisal before the meeting of creditors and came to the meeting armed with his own valuation of the equipment. The record in this case thus does not support the Trustee's contention. Likewise, as noted previously, the burden on trustees in administering a debtor's exemptions entails far less work than it has historically on a per case basis. Further, examining and investigating a debtor's exemptions is part of a trustee's official duties. *See* U.S. Dep't of Justice, Executive Office for U.S. Trustees, *Handbook for Chapter 7 Trustees* 6-3, 6-5, 7-5, 8-2 (2002) (hereinafter *Trustee Handbook*). Moreover, where there is any doubt regarding a debtor's claimed exemption, the trustee may

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her to have. For example, if a debtor is worried about keeping a particular item, the debtor may overstate its value, and use up more of his or her exemption availability than necessary, simply to avoid the trustee selling the item to test its worth.

seek a hearing on the issue or request an extension of time to object. *Taylor*, 503 U.S. at 644.

As also noted previously, other consequences of the Trustee's position include casting a cloud over the title of exempt property well beyond the thirty-day deadline–indeed for the entire duration of the debtor's bankruptcy proceeding, which, by the Trustee's own reckoning, could last four years. *See* Pet. Br. 32 (citing report).

In addition, the Trustee's position might generate the unfortunate incentive of encouraging trustees to act as speculators. If a trustee may sell a debtor's exempt property notwithstanding his or her failure to object to a claimed exemption within the thirty-day period specified by Rule 4003(b), the trustee would have an incentive to do so merely where, because of market forces or fluctuations, the trustee believes the value of a particular exempt asset has risen above the limit of the debtor's exemption entitlement. This, of course, could easily become vexatious and would only further erode the paramount interest in finality that the Rule seeks to promote.

The relative incentives therefore actually cut against the Trustee's position. Indeed, overall, the likely outcome is that the Trustee's position, if adopted, would cause more harm than good. In any event, as the Court observed in

Taylor, it is properly a matter best addressed to Congress rather than the courts.

VII. The Trustee's Position Is Inequitable.

Although a chapter 7 trustee's "principal duty…is to collect and liquidate the property of the estate and to distribute the proceeds to creditors," *Trustee Handbook* 6-1, it is also recognized that a chapter 7 case should be administered to "facilitate a fresh start for the debtors entitled to a discharge." *Id.* Central to both goals is the trustee's responsibility to examine, investigate, and ultimately value the debtor's assets and exemptions. *See, e.g., id.* ("The trustee shall…investigate the financial affairs of the debtor"); *id.* at 6-3; *id.* at 7-3 (trustee must determine the existence of a debtor's "exemptions"); *id.* at 8-3 ("A trustee should abandon any estate property that is burdensome or of inconsequential value to the estate.").

In this case, the Trustee determined prior to the meeting of creditors that Reilly's cooking equipment might be worth more than she stated. Yet he never filed an objection to her exemption. Moreover, because Reilly may potentially reallocate her exemptions to capture additional value from her equipment, or select to retain some items of the equipment and sacrifice others, it is difficult to understand the fairness of the Trustee's position.

As the Trustee's Handbook provides, before attempting to sell assets (and incurring any associated cost in doing so), the trustee must determine first "whether sufficient funds will be generated to make a meaningful distribution to creditors." *Id.* at 8-1. If that is not likely, the trustee should abandon the initiative. *See, e.g., id* at 8-3 (the "trustee should abandon any estate property that is burdensome or of inconsequential value to the estate."). In other words, the "trustee should *only* sell assets that will generate sufficient proceeds to ensure a distribution to unsecured creditors." *Id.* at 8-17 (emphasis added). Likewise, "[p]roperty should be abandoned when the total amount to be realized [from its liquidation] would not result in a meaningful distribution to creditors or would redound primarily to the benefit of the trustee and professionals." *Id*. at 8-3.

Because there would likely be no benefit to creditors arising from the Trustee's pursuit of Reilly's exempt assets in this case, it is inequitable for the Trustee to pursue Reilly's exemption and attempt to deprive her of the benefit of her cooking equipment.

CONCLUSION

For the foregoing reasons, the decision of the court of appeals should be affirmed.

Respectfully submitted,

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STATUTORY APPENDIX

11 U.S.C. § 522 (2005)--Exemptions

(a) In this section –

(1) "dependent" includes spouse, whether or not actually dependent; and

(2) "value" means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such

election is permitted under the law of the jurisdiction where the case is filed. Such property is –

> (1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,
>
> (2)(A) any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place; and
>
> (B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law.

Statutory Appendix

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(d) The following property may be exempted under subsection (b)(1) of this section:

(1) The debtor's aggregate interest, not to exceed $18,450 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed $2,950 in value, in one motor vehicle.

(3) The debtor's interest, not to exceed $475 in value in any particular item or $9,850 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(4) The debtor's aggregate interest, not to exceed $1,225 in value, in jewelry held primarily for the personal, family, or

household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in any property, not to exceed in value $975 plus up to $9,250 of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed $1,850 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value $9,850 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive –

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veterans' benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless –

(i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

(ii) such payment is on account of age or length of service; and

(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.

(11) The debtor's right to receive, or property that is traceable to –

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, not to exceed $18,450, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

***

(*l*) The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

***

Federal Rule of Bankrupty Procedure 4003 (2005)–Exemptions

(a) Claim of exemptions—A debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.

(b) Objecting to a claim of exemptions—A party in interest may file an objection to the list of property claimed as exempt only within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for

cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension. Copies of the objections shall be delivered or mailed to the trustee, the person filing the list, and the attorney for that person.

(c) Burden of proof—In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.

(d) Avoidance by debtor of transfers of exempt property—A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be by motion in accordance with Rule 9014.

Federal Rule of Bankrupty Procedure 4003 (2008)–Exemptions

(a) Claim of exemptions. A debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.

(b) Objecting to a claim of exemptions.

(1) Except as provided in paragraphs (2) and (3), a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.

(2) The trustee may file an objection to a claim of exemption at any time prior to one year after the closing of the case if the debtor fraudulently asserted the claim of exemption. The trustee shall deliver or mail the objection to the debtor and the debtor's attorney, and to any person filing the list of exempt property and that person's attorney.

(3) An objection to a claim of exemption based on § 522(q) shall be filed before the closing of the case. If an exemption is first claimed after a case is reopened, an objection shall be filed before the reopened case is closed.

(4) A copy of any objection shall be delivered or mailed to the trustee, the debtor and the

debtor's attorney, and the person filing the list and that person's attorney.

(c) Burden of proof. In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.

(d) Avoidance by debtor of transfers of exempt property. A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be by motion in accordance with Rule 9014. Notwithstanding the provisions of subdivision (b), a creditor may object to a motion filed under § 522(f) by challenging the validity of the exemption asserted to be impaired by the lien.

Supreme Court General Order XIX (1867)—Duties of Assignees

The assignee shall, immediately on entering upon his duties, prepare a complete inventory of all the property of the bankrupt that comes into his possession; and all sales of the same shall be by public auction, unless otherwise ordered by the Court. Every assignee shall keep full, exact, and regular books of account of all receipts, payments, and expenditures of money by him, and shall make report to the Court, within

twenty days after receiving the deed of assignment, of the articles set off to the bankrupt by him, according to the provisions of the fourteenth section of the Act, with the estimated value of each article, and any creditor may take exceptions to the determination of the assignee within twenty days after the filing of the report.

Supreme Court General Order XIX (1877)—Duties of Assignees

The assignee shall, immediately on entering upon his duties, prepare a complete inventory of all the property of the bankrupt that comes into his possession, except where an inventory is furnished to him by the marshal; in which case, having verified the same, he shall add thereto a certificate that the same is correct, or that the same is correct as modified by a supplemental inventory, to be annexed thereto; in which supplemental inventory he shall state any deficiency of assets named in the marshal's inventory, and shall add any property or assets not contained therein.

The assignee shall make report to the court, within twenty days after receiving the deed of assignment, of the articles set off to the bankrupt by him, according to the provisions of the fourteenth section of the act, with the estimated value of each article, and any creditor

may take exceptions to the determination of the assignee within twenty days after the filing of the report. The register may require the exceptions to be argued before him, and shall certify them to the court for final determination at the request of either party. The substance of each monthly return of the assignee shall be sent by the register to any creditor who shall request it and pay the fee provided for notices to creditors. In case the assignee shall neglect to file any report or statement which it is made his duty to file or make by the bankrupt act, or any general order in bankruptcy, within five days after the same shall be due, it shall be the duty of the register to make an order requiring the assignee to show cause before the court, at a time specified in the order, why he would not be removed from office. The register shall cause a copy of the order to be served upon the assignee at least seven days before the time fixed for the hearing, and proof of the services thereof to be delivered to the clerk. All accounts of assignees are to be referred as of course to the register for audit, unless otherwise specially ordered by the court.

Supreme Court General Order 17 (1958)—Duties of Trustee

(1) The trustee shall, immediately upon entering upon his duties, prepare a complete inventory of all of the property of the bankrupt or debtor that comes into his possession unless, prior thereto, a receiver or other officer has prepared such an inventory.

(2) The trustee shall make report to the court, within five days after receiving the notice of his appointment, unless further time is granted by the court, of the articles set off to the bankrupt or debtor by him, according to the provisions of section 47 of the Act, with the estimated value of each article; and any creditor or the bankrupt or debtor may file objections to the determination of the trustee within ten days after the filing of the report, unless further time is granted by the court.

(3) In case the trustee shall neglect to file any report or statement which it is made his duty to file or make by the Act or by these general orders, within five days after the same shall be due, it shall be the duty of the court to make an order requiring the trustee to show cause, at a time specified in the order, why he should not be removed from office. The court shall cause a copy of the order to be served upon the trustee at

least three days before the time fixed for the hearing.

(4) All accounts of trustees and receivers shall be referred as of course to the referee for audit, unless otherwise specially ordered by the judge.

Fed. R. Bankr. P. 403 (1975)—Exemptions

(a) *Claim of Exemptions*. A bankrupt shall claim his exemptions in the schedule of his property required to be filed by Rule 108.

(b) *Trustee's Report*. The trustee shall examine the bankrupt's claim for exemptions, set apart such as are lawfully claimed and allowable, and report to the court the items set apart, the amount or estimated value of each, and the exemptions claimed that are not allowable. The report shall be filed with the court no later than 15 days after the trustee qualifies. If the trustee reports that any exemption claimed is not allowable, he shall forthwith mail or deliver copies of the report to the bankrupt and his attorney.

(c) *Objections to Report*. Any creditor or the bankrupt may file objections to the report within 15 days after its filing, unless further time is granted by the court within such 15-day period. Copies of the objections so filed shall be

delivered or mailed to the trustee and, if the objections are by a creditor, to the bankrupt and his attorney. After hearing upon notice the court shall determine the issues presented by the objections. The burden of proof shall be on the objector.

(d) *Procedure if No Trustee Qualified*. If no trustee has qualified, the bankruptcy judge shall file the report prescribed by subdivision (d) of this rule within 15 days after the first date set for the first meeting of creditors. If the bankrupt files objections to the report, the court shall appoint a trustee or receiver, who shall represent the estate in the hearing on the objections.

(e) *Approval of Report if No Objections*. If no objections are filed within the time provided by this rule, the report shall be deemed approved by the court. On request, the court may at any time and without reopening the case, enter an order approving the report.

(f) *Claim of Exemption by Person Other Than Bankrupt*. If the bankrupt fails to claim the exemptions to which he is entitled, or if he dies before his exemptions have been set apart to him, his spouse, dependent children, or any other persons who are entitled to claim the exemptions allowable to the bankrupt may, within

such time as the court may order, file a claim for his exemptions or object to the report.