

No. _____

In The
Supreme Court of the United States

JOHN ROBERT REICHARD,
and ERICKA RAE REICHARD,

Petitioners,

v.

RUSSELL BROWN, Chapter 13 Trustee,

Respondent.

**On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the privacy protections due Chapter 13 bankruptcy debtors' income tax returns pursuant to 11 U.S.C. §521(g)(2), and implemented by the Director of the Administrative Office of the U.S. Courts as §830 in the "Guide to Judiciary Policy," can be denied such debtors by a local rule of bankruptcy procedure.

CORPORATE DISCLOSURE STATEMENT

There is no parent corporation or publicly held company that owns 10% or more of the corporation's stock involved with this Petition.

RELATED CASES

This is an appeal from an unreported Memorandum Decision of the U.S. Ninth Circuit Court of Appeals filed November 20, 2020. *See Reichard v. Brown*, Case Number 20-15661 case docket numbers 26-1 and 29-1. *See also* Petitioners' Appendix 1, p. 1 *infra* (hereinafter "Pet.App."). In that decision, the court affirmed the decision of the U.S. Bankruptcy Court. The Mandate for this decision was issued December 14, 2020. *Id.* at case docket number 29.

This matter was appealed to the U.S. District Court District of Arizona. In an unreported order, the United States District Court District of Arizona affirmed the decision of the U.S. Bankruptcy Court March 12, 2020. *See Reichard v. Brown*, Case Number CV-19-02010-PHX, case docket number 20. Pet.App. 2, p. 5 *infra*. Judgment was entered by that court March 12, 2020. *Id.* at case docket number 21.

The Chapter 13 Confirmation Order was signed and filed by the U.S. Bankruptcy Court on March 12, 2019. *See In re Reichard*, case docket number 2-16-bk-12633-BMW at case docket number 91. *See also* Pet.App. 4, p. 38.

RELATED CASES – Continued

The issues on appeal were first heard by the Bankruptcy Court on March 13, 2018. On July 5, 2018, the U.S. Bankruptcy Judge, signed a ruling and order sustaining the case trustee's position that a new Arizona Model Chapter 13 Plan Form can require copies of all debtors' post-petition income tax returns be sent directly to him annually. This bankruptcy judge further held that secured creditors have to be paid the higher amount provided in the Chapter 13 Plan of Reorganization as opposed to the lower amount in that creditor's proof of claim. *See In re Reichard*, Case Number 2-16-bk-12633-BMW, case docket number 54; *see also* Pet.App. 3, p. 24. The signature on said order seemed to indicate that it was a final appealable order. Therefore, the aforementioned order was appealed to the U.S. Bankruptcy Appellate Panel of the Ninth Circuit with a motion to allow interlocutory appeal. *Id.* at case docket numbers 55 and 56. The Bankruptcy Appellate Panel (AZ-18-1194) ruled that the July 5, 2018 order was interlocutory and dismissed the appeal. *Id.* at case docket number 72.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners John Robert Reichard and Ericka Rae Reichard respectfully petition for a writ of certiorari to review the Memorandum Decision of the United States Court of Appeals for the Ninth Circuit below.

OPINIONS BELOW

The November 20, 2020 Memorandum Decision of the United States Court of Appeals for the Ninth

Circuit is unreported and available on that court's website at Case Number 20-15661, *John and Ericka Reichard v. Russell A. Brown*, docket numbers 26-1 and 29. *See Pet.App. 1, p. 1 infra.*

The March 12, 2020 order and judgment of the United States District Court District of Arizona is unreported and available through PACER at case number CV-19-02010-PHX, *John and Ericka Reichard v. Russell Brown*, docket numbers 20 and 21. *See also Pet.App. 2, p. 5 infra.*

The Chapter 13 Confirmation Order was signed and filed by the U.S. Bankruptcy Court on March 12, 2019. This order is available through PACER at case number 2-16-bk-12633-BMW, *In re Reichard*, docket number 91. *See also Pet.App. 4, p. 38 infra.* The Bankruptcy Court decision on the Petitioners' objection to confirmation requirements is set forth at case docket number 54. *Id.*; *see also Pet.App. 3, p. 24.*

JURISDICTION

The Memorandum Decision of the Court of Appeals was filed November 20, 2020. Pet.App. 1, p. 1. This Court has jurisdiction pursuant to 28 U.S.C. §1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Judicial Clause, U.S. Const. Art. III, §2, provides:

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority; – to all cases affecting ambassadors, other public ministers and consuls; – to all cases of admiralty and maritime jurisdiction; – to controversies to which the United States shall be a party; – to controversies between two or more states; – between a state and citizens of another state; – between citizens of different states; – between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

In all cases affecting ambassadors, other public ministers and consuls, and those in which a state shall be party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions, and under such regulations as the Congress shall make.

STATUTES AND RULES INVOLVED

The debtor shall provide –

not later than 7 days before the date first set for the first meeting of creditors, to the trustee a copy of the Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such return) for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed; and . . .

11 U.S.C. §521(e)(2)(A)(i)

* * *

At the request of the court, the United States trustee, or any party in interest in a case under chapter 7, 11, or 13, a debtor who is an individual shall file with the court –

(1) at the same time filed with the taxing authority, a copy of each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) with respect to each tax year of the debtor ending while the case is pending under such chapter;

. . .

11 U.S.C. §521(f)(1)

* * *

The tax returns, amendments, and statement of income and expenditures described in subsections (e)(2)(A) and

(f) shall be available to the United States trustee (or the bankruptcy administrator, if any), the trustee, and any party in interest for inspection and copying, subject to the requirements of section 315(c) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.

11 U.S.C. §521(g)(2)

* * *

(a) Plan Requirements. Local Form 2084-4 (Chapter 13 Plan) must be used for all original, amended, or modified plans. All sections of the plan must be completed, or if not applicable marked with N/A or NONE. The treatment of all known secured or priority creditors must be disclosed in the plan. Varying provisions must be specific and not inconsistent with the Code, FRBP or Local Rules.

Arizona Local Rule of Bankruptcy Procedure 2084-4

* * *

Form of Chapter 13 Plan. If there is an Official Form for a plan filed in a chapter 13 case, that form must be used unless a Local Form has been adopted in compliance with Rule 3015.1. With either the Official Form or a Local Form, a nonstandard provision is effective only if it is included in a section of the form designated

for nonstandard provisions and is also identified in accordance with any other requirements of the form. As used in this rule and the Official Form or a Local Form, “nonstandard provision” means a provision not otherwise included in the Official or Local Form or deviating from it.

FRBP 3015(c)

* * *

The Local Form contains a final paragraph for:

- (1) the placement of nonstandard provisions, as defined in Rule 3051(c), along with a statement that any nonstandard provision placed elsewhere in the plan is void; and
- (2) certification by the debtor’s attorney or by an unrepresented debtor that the plan contains no nonstandard provision other than those set out in the final paragraph.

FRBP 3015.1(e)

* * *

Chapter 8, §830, “Guide to Judiciary Policy”



STATEMENT

This Petition may be the last opportunity for some of the poorest participants in the Federal Court system, to have a court review the denial of the privacy protections due their Federal and state income tax

returns, in a bankruptcy proceeding. Although this appeal deals with a local rule of procedure within the Arizona Bankruptcy Court system, the statutes at issue, and the procedures set forth within the U.S. Courts’ “Guide to Judiciary Policy” on how to protect the information within those tax returns, have national application.

This appeal has already attracted national attention, and could be a model for other bankruptcy courts to use denying the financial privacy protections due Chapter 13 debtors, if the Memorandum Decision from the U.S. Ninth Circuit Court of Appeals stands as the last judicial opinion on these issues. *See Pet.App. 5, p. 46.*

The Consumer Bankruptcy Reform Act of 2020 (hereinafter “BRA”) has taken almost verbatim 11 U.S.C. §521(e)(2)(A)(i), (ii), (B) and (C) which require only one (1) Federal income tax return be provided directly to a bankruptcy trustee by debtors. *See BRA, p. 109, ¶(2)(A); see also p. 111, ¶(d)(1)(A), (B) and (2); p. 112, ¶(3). See Pet.App. 6, pp. 52-53.* The statute §521(e)(2)(A)(i) is at issue in this appeal.

The BRA has taken almost verbatim 11 U.S.C. §521(f)(1), (2), (3) and (j). The only change to the aforementioned Code sections was to replace Chapters 7 and 13 with Chapter 10 and add trustee in place of party in interest. *See BRA, p. 112, ¶(g); p. 113, ¶¶(1), (2), (3), (h)(1); p. 114, ¶(2).* The statute §521(f)(1) is at issue in this appeal. *See Pet.App. 6, p. 54.*

It is unclear if the privacy protections due Chapter 13 debtors pursuant to 11 U.S.C. §521(g)(2) would survive enactment of the BRA. However, two (2) of the central issues in this appeal would survive enactment of the BRA as it is currently written: can a local rule of procedure mandate that debtors send copies of their income tax returns directly to a case trustee when the applicable statutes require them to be filed with the bankruptcy court? Whether a local rule of procedure can mandate that debtors send copies of their state income tax returns directly to a case trustee, when the applicable statutes, only require copies of Federal income tax returns be filed with a bankruptcy court.

Please note this litigation has taken three (3) years to date. If this Court does not grant this Petition bankruptcy debtors, some of the poorest participants in the Federal Court system, may have to litigate in their bankruptcy districts if the Arizona model of denying their privacy protections are copied. If the BRA is enacted, these same financially challenged debtors would have to start litigating again, over issues that could be resolved through this appeal.

Less than three (3) years ago the Bankruptcy Appellate Panel of the Ninth Circuit ruled that another Phoenix Chapter 13 Trustee could not demand on his own, as a condition of confirmation, that debtors provide him directly copies of their state and Federal income tax returns annually. In that case the Bankruptcy Appellate Panel found it was an issue of first impression whether a case trustee could demand annual turnover of a debtor's state income tax returns.

See Romeo v. Maney (In re Romeo), BAP No. AZ-17-1215-BLKu, p. 11, lns. 15-16 (B.A.P. 9th Cir. 2018); *see also* fn 2 *infra*.

The statutes at issue were enacted in the year 2005. *See* fn 3 *infra*. Yet it took thirteen (13) years for an appellate court to review the financial privacy protections due state income tax returns of bankruptcy debtors. The reason is obvious: bankruptcy debtors do not have the financial resources to litigate for the financial privacy protections due them. If this Petition is not granted, an appellate court may never again have the opportunity to review the actions of a bankruptcy court, denying debtors the financial privacy protections due them by statute. Again, the statutes requiring debtors file just their future Federal income tax returns with a bankruptcy court, were carried over into the BRA for a reason.

The *Romeo* appeal was filed before the local rule of bankruptcy procedure at issue went into effect. So, this appeal deals with whether a local rule of bankruptcy procedure can allow a case trustee, to receive what trustees were prevented by courts from receiving previously.

Recently the U.S. Fifth Circuit Court of Appeals rendered a reported decision, that invalidated a section of a local Chapter 13 Plan form, that required debtors to automatically turnover income tax refunds in excess of \$2,000.00 to a case trustee. *See In re Annette Marie Diaz*, 972 F.3d 713, 719 (5th Cir. 2020). In reaching its decision the U.S. Fifth Circuit Court of

Appeals rejected reasoning by the bankruptcy court, and the same argument on appeal by the trustee, that judicial efficiency supported the invalidated provision of the local Chapter 13 Plan form. *See Diaz* at pp. 718-719. The bankruptcy court in this appeal used efficiency as one basis to support the local rule and plan form at issue in this appeal. *See Pet.App. 3, pp. 35-36 infra.* The Fifth Circuit Court of Appeals determined debtors were being denied substantive rights through the local Chapter 13 plan form and judicial efficiency could not be the basis of denying substantive rights. *See Diaz* at p. 719. It is respectfully submitted to this Court, that the local rule of bankruptcy procedure at issue herein, is denying debtors substantive rights greater than the turnover of tax refunds.

This action arises from a Chapter 13 proceeding filed in the U.S. Bankruptcy Court District of Arizona pursuant to 28 U.S.C. §157(a). The Petitioners John and Ericka Reichard (hereinafter the “Reichards”) are residents of the Town of Waddell, Maricopa County, Arizona. Venue was appropriate in the Phoenix division of the court. 28 U.S.C. §1408(1).

ARGUMENT

I. Chapter 13 Debtors Are Only Required To File Post-Petition Federal Income Tax Returns With The Bankruptcy Court.

The applicable statute for this appeal provides as follows:

At the request of the court, the United States trustee, or any party in interest in a case under chapter 7, 11, or 13, a debtor who is an individual shall file with the court –

(1) at the same time filed with the taxing authority, **a copy of each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) with respect to each tax year of the debtor ending while the case is pending under such chapter;**

...

[emphasis added] 11 U.S.C. §521(f)(1)

[This statute taken almost verbatim into the BRA at p. 112, ¶(g); p. 113, ¶(1).] *See* Pet.App. 6, p. 54 *infra*.

The applicable statute further provides:

The tax returns, amendments, and statement of income and expenditures described in subsections (e)(2)(A) and (f) shall be available to the United States trustee (or the bankruptcy administrator, if any), the trustee, and any party in interest for inspection and

copying, subject to the requirements of section 315(c) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005.¹

[emphasis added] 11 U.S.C. §521(g)(2)²

¹ This same protection is mandated for income tax returns provided to a case trustee or creditor before the meeting of creditors.

(5) *Confidentiality of Tax Information.* The debtor's obligation to provide tax returns under Rule 4002(b)(3) and (b)(4) is subject to procedures for safeguarding the confidentiality of tax information established by the Director of the Administrative Office of the United States Courts.

FRBP 4002(b)(5)

Please note there is no current requirement in the U.S. Bankruptcy Code or Bankruptcy Rules of Procedure for a bankruptcy debtor to produce a copy of their Federal income tax return, without the same mandated procedural safeguards in place, to protect the privacy of that information.

² Romeo does not contest that she was required to file her postpetition Federal income tax returns, or transcripts of such returns, with the court for the tax years during which her chapter 13 case was pending. See §521(f). She also does not contest that Trustee could access those Federal returns or transcripts upon the proper showing pursuant to §521(g)(2).

Section §521(g)(2) provides that “[t]he tax returns, amendments, and statement of income and expenditures described in subsections (e)(2)(A) and (f) shall be available to the United States trustee (or the bankruptcy administrator, if any), the trustee, and any party in interest for inspection and copying, subject to the requirements of section 315(c) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005” (“BAPCPA”) [emphasis added].

Section 315(c) of BAPCPA mandates that the Director of the Administrative Office of the United States Courts establish procedures for safeguarding the confidentiality of tax information required to be produced under §521. On September 20, 2005, the Judicial Conference approved interim guidance drafted to implement this statutory directive, effective October 17, 2005, the effective date of BAPCPA. In March 2015, the Director issued the Final Guidance, which established the following procedures for obtaining access to a debtor's tax information filed with the bankruptcy court:

§830.30 Tax Information Disclosure Requests

To gain access to a debtor's tax information under 11 U.S.C. §521(f), the United States trustee or bankruptcy administrator, case trustee, and any party in interest, including a creditor, must follow the procedures set forth below.

- (a) A written request that a debtor file copies of tax returns with the court under 11 U.S.C. §521(f) must be filed with the court and served on the debtor and debtor's counsel, if any.
- (b) To obtain access to debtor's tax information that is filed with the bankruptcy court, the movant must file a motion with the court, which should include:
 - (1) a description of the movant's status in the case, to allow the court to ascertain whether the movant may properly be given access to the requested tax information;
 - (2) a description of the specific tax information sought;
 - (3) a statement indicating that the information cannot be obtained by the movant from any other source; and
 - (4) a statement showing a demonstrated need for the tax information[.]
- (c) An order granting a motion for access to tax information should include language advising the movant that the tax information obtained is confidential and should condition dissemination of the tax information

as appropriate under the circumstances of a particular case.

At the discretion of the court, the order may state that sanctions may be imposed for improper use, disclosure, or dissemination of the tax information. Guide to Judiciary Policy, Vol. 4, Ch. 8, found on the public website of the Administrative Office of the United States Courts at: http://www.uscourts.gov/sites/default/files/vol04_ch08.pdf.

Thus, the safeguards set forth in the Final Guidance reflect a strong intention for the court to determine when a trustee's or creditor's need for information is outweighed by the debtor's right to keep that information confidential. *See In re Tomer*, 508 B.R. 641, 646 (Bankr. W.D. Va. 2014); *see also In re Byrne*, 2007 WL 2580834, at *2 (Bankr. D. Vt. June 15, 2007) (interpreting the interim guidance).

2. Analysis

The bankruptcy court agreed with Romeo that Trustee was subject to the Final Guidance, and that he had to show more than his general statutory duty of investigating a debtor's financial affairs to meet his burden of showing a "demonstrated need" for Romeo's Federal income tax return transcripts. That was a proper application of §521(g)(2) with respect to the Federal returns.

[emphasis added] *Romeo v. Maney (In re Romeo)*, BAP No. AZ-17-1215-BLKu, pp. 5-7 (B.A.P. 9th Cir. 2018)

* * *

Thus, Congress has been very clear as to when State income tax returns are required under the Code. If Congress intended that postpetition State income tax returns or transcripts be filed with the court under §521(f), it could have easily stated so. The omission of the word "State" in §521(f) strongly suggests that such tax returns or transcripts are not required to be filed with the court. Nor would it appear that §521(g)(2) is the proper authority under which to gain access to them.

Therefore, we believe the bankruptcy court erred in applying §521(g)(2) to order turnover of Romeo's 2015 and

Pursuant to section 315(c) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”) the Director of the Administrative Office of the United States Courts entered interim and then “Final Guidance” on access to a debtor’s post-petition income tax returns filed with bankruptcy courts. *See Romeo*, fn 2 *supra*. The Final Guidance from the Director of the Administrative Office of the United States Courts provides in pertinent part:

To gain access to a debtor’s tax information under 11 U.S.C. §521(f), the . . . **case trustee** . . . **must follow the procedures set forth below.**

. . .

(b) **To obtain access to debtor’s tax information** that is filed with the bankruptcy court, **the movant must file a motion** with the court, which should include:

. . .

2016 State income tax returns to Trustee. Perhaps another means is available for obtaining them, such as Rule 2004 or some other discovery rule. *See In re Collins*, 393 B.R. 835, 837 (Bankr. E.D. Wis. 2008); *In re Fontaine*, 397 B.R. 191, 194 (Bankr. D. Mass. 2008). However, we make no determination on that. **We do determine, however, that §521(g)(2) is not the proper means. Accordingly, we must reverse the bankruptcy court’s order to the extent it ordered turnover of the State income tax returns to Trustee.**

[emphasis added] *Id.* at p. 13.

(4) a statement showing a demonstrated need for the tax information.

...

[emphasis added] §830.30(b); *see Pet.App. 8, pp. 58-59 infra; see also Romeo fn 2 supra.*

Please note that the above citation is contained on the official website of the U.S. Bankruptcy Court District of Arizona as it is requested to be by the Director of the Administrative Office of the U.S. Courts. *Id.* at §810; *see also Pet.App. 8, p. 56 infra.* Please also note that the above privacy procedures do not allow automatic turnover of annual debtor income tax returns to anyone. *See also Romeo at fn 2 supra.*

By contrast, the U.S. Bankruptcy Court District of Arizona enacted Local Rule of Procedure 2084-4(a) which provides the following:

(b) Plan Requirements. Local Form 2084-4 (Chapter 13 Plan) must be used for all original, amended, or modified plans. All sections of the plan must be completed, or if not applicable marked with N/A or NONE. The treatment of all known secured or priority creditors must be disclosed in the plan. Varying provisions must be specific and not inconsistent with the Code, FRBP or Local Rules.

Local Form 2084-4 contains no provision for debtors to place a nonstandard provision in this model plan, allowing them to file only their Federal income tax returns with the U.S. Bankruptcy Court, pursuant

to 11 U.S.C. §521(f)(1). *see also* Pet.App. 10, pp. 95-96 *infra*. This is how the plain reading of the aforementioned statute is circumvented by the Arizona local rule of bankruptcy procedure. It also violates:

Form of Chapter 13 Plan. If there is an Official Form for a plan filed in a chapter 13 case, that form must be used unless a Local Form has been adopted in compliance with Rule 3015.1. **With either the Official Form or a Local Form**, a nonstandard provision is effective only if it is included in a section of the form designated for nonstandard provisions and is also identified in accordance with any other requirements of the form. **As used in this rule and the Official Form or a Local Form, “nonstandard provision” means a provision not otherwise included in the Official or Local Form or deviating from it.**

[emphasis added] FRBP 3015(c); *see also* Pet.App. 10, p. 100 *infra*.

The Local Form contains a final paragraph for:

- (3) the placement of nonstandard provisions, as defined in Rule 3051(c), along with a statement that any nonstandard provision placed elsewhere in the plan is void; and
- (4) certification by the debtor’s attorney or by an unrepresented debtor that the plan contains no nonstandard provision other than those set out in the final paragraph.

FRBP 3015.1(e); *see also* Pet.App. 10, p. 104.

The Code expressly allows debtors to “include any other appropriate provision not inconsistent with [Chapter 13]” in their plans, §1322(b)(11). So, barring a clear prohibition in the Code, debtors have “considerable discretion to tailor the terms of a plan to their individual circumstances.” *In re Monroy*, 650 F.3d 1300, 1301 (B.A.P. 9th Cir. 2011)

In re Sisk, 962 F.3d 1133, 1145 (9th Cir. 2020)

Through a local rule of procedure, and a local model Chapter 13 plan form implementing that rule, the U.S. Bankruptcy Court District of Arizona prevents Chapter 13 debtors from filing only their annual Federal income tax returns with a bankruptcy court. That local rule of procedure also denies Chapter 13 debtors the procedures implemented by the Director of the Administrative Office of the U.S. Courts to protect the information within those tax returns. The substance of 11 U.S.C. §521(f)(1) carries over virtually unchanged into the BRA at p. 112, ¶(g); p. 113, ¶(1). *See also* Pet.App. 6, p. 54 *infra*.

But even though the Court will not impose a new requirement on the Debtor untethered from the text of the Bankruptcy Code, the Court notes that the Chapter 13 Trustee and creditors already are “protected” in some sense by other provisions of the Bankruptcy Code. The Chapter 13 Trustee may continue to “investigate a debtor’s financial affairs” throughout a bankruptcy case. 11 U.S.C. §§704 and 1302. The Chapter 13 Trustee and

creditors may also monitor the financial condition of the Debtor by requesting annual federal income tax returns and statements of income and expenditures. 11 U.S.C. §§521(f)(1) and (f)(4) . . .

In re Styerwalt, 610 B.R. 356, 374 (Bankr. Colo. 2019)

There are only a handful of cases that cite to 11 U.S.C. §521(f)(1). The foregoing quote is the most extensive of these citations. The other cases are *In re Grutsch*, 453 B.R. 420, fns 27 and 28 (Bankr. Kan. 2011); *In re Wilhelm*, Case No. 12-11235, fn 32 (Bankr. Kan. 2016).

This section of the Petition contains all of the case law that can be found through an electronic search, not using *Westlaw*, that actually cite 11 U.S.C. §521(f)(1). Of these few cases, that actually cite to 11 U.S.C. §521(f)(1), not one referenced a local rule of procedure mandating that bankruptcy debtors provide Chapter 13 trustees directly copies of their Federal and state income tax returns on an annual basis. This issue would remain with the enactment of BRA as currently written. *See* BRA at p. 112, ¶(g); p. 113, ¶(1). *See also* Pet.App. 6, p. 54 *infra*.

A. There Is No Provision To Automatically Turnover Copies Of State Tax Returns To The Trustee.

The bankruptcy court cited the Ninth Circuit Bankruptcy Appellate Panel's decision *In re Romeo* (fn 2 *supra*) for supporting the requirement of turning

over copies of post-petition state income tax returns directly to the Trustee. *See also* Pet.App. 3, pp. 34-35 *infra*.

Therefore, we believe the bankruptcy court erred in applying §521(g)(2) to order turnover of Romeo's 2015 and 2016 State income tax returns to Trustee. **Perhaps another means is available for obtaining them**, such as Rule 2004 or some other discovery rule. *See In re Collins*, 393 B.R. 835, 837 (Bankr. E.D. Wis. 2008); *In re Fontaine*, 397 B.R. 191, 194 (Bankr. D. Mass. 2008). **However, we make no determination on that.** We do determine, however, that §521(g)(2) is not the proper means. Accordingly, we must reverse the bankruptcy court's order to the extent it ordered turnover of the State income tax returns to Trustee.

[emphasis added] *In re Romeo*, AZ-17-1215-BLKu, pp. 12-13 (B.A.P. 9th Cir. 2018); *see also* fn 2 *supra*.

“Perhaps” is not “clearly recognized that the trustee might obtain such returns by other means.” *See Pet.App. 3, p. 35 infra.* There is no Bankruptcy Code section or Federal Rule of Procedure requiring turnover of copies of a debtor’s state income tax returns directly to the Trustee annually. All three (3) levels of court below, judges held that because another method exists to view debtor’s income tax returns, the Local Rule of Procedure of the U.S. Bankruptcy Court District of Arizona at issue was upheld.

At the request of the court, the United States trustee, or any party in interest in a case under chapter 7, 11, or 13, a debtor who is an individual shall file with the court –

(1) at the same time filed with the taxing authority, a copy of each **Federal income tax** return required under applicable law (or at the election of the debtor, a transcript of such tax return) with respect to each tax year of the debtor ending **while the case is pending** under such chapter;

. . .

[emphasis added] 11 U.S.C. §521(f)(1)

[This statute taken almost verbatim into the BRA at p. 112, ¶(g); p. 113, ¶(1).] See Pet.App. 6, p. 54 *infra*.

“[S]hall file with the court” admits no other means by which Chapter 13 debtors’ Federal income tax returns can be viewed by anyone.

To gain access to a debtor’s tax information under 11 U.S.C. §521(f), the United States trustee or bankruptcy administrator, case trustee, and any party in interest, including a creditor, must follow the procedures set forth below:

(a) A written request that a debtor file copies of tax returns with the court under 11 U.S.C. §521(f) must be filed with the court and

served on the debtor and debtor's counsel, if any.

(b) To obtain access to debtor's tax information that is filed with the bankruptcy court, the movant must file a motion with the court, which should include:

- (1) a description of the movant's status in the case, to allow the court to ascertain whether the movant may properly be given access to the requested tax information;
- (2) a description of the specific tax information sought;
- (3) a statement indicating that the information cannot be obtained by the movant from any other source; and
- (4) a statement showing a demonstrated need for the tax information.

(c) An order granting a motion for access to tax information should include language advising the movant that the tax information obtained is confidential and should condition dissemination of the tax information as appropriate under the circumstances of a particular case. At the discretion of the court, the order may state that sanctions may be imposed for improper use, disclosure, or dissemination of the tax information.

[emphasis added] §830.30 Guide to Judiciary Policy, Vol. 4, Ch. 8, p. 8. *See* Pet.App. 7, pp. 58-59 *infra*.

“ . . . [M]ust follow the procedures set forth below . . . ” admits no other means by which Chapter 13 debtors’ Federal income tax returns can be viewed by anyone.

B. The Trustee Is Not Required To View Post-Petition Income Tax Returns.

The Trustee is only allowed to receive directly a copy of one (1) Federal income tax return from Chapter 13 debtors.

The debtor shall provide –

not later than 7 days before the date first set for the first meeting of creditors, to the trustee **a copy of the Federal income tax return** required under applicable law (or at the election of the debtor, a transcript of such return) **for the most recent tax year** ending immediately before the commencement of the case and for which a Federal income tax return was filed; and . . .

[emphasis added] 11 U.S.C. §521(e)(2)(A)(i)

The only copy of an income tax return, authorized to be sent directly to the Trustee, is for the most recent Federal income tax return filed prior to the Chapter 13 petition date. *Id.*

Future Federal income tax returns are to be filed with a court, a request for the debtors to do so, has to be made by a party-in-interest. 11 U.S.C. §521(f) *supra*. It is not an automatic requirement. Were the requirement to provide the Trustee copies of post-petition

income tax returns, an automatic requirement, the foregoing statute would read the same as 11 U.S.C. §521(e)(2)(A)(i) “[t]he debtor shall provide.” The applicable statute does not so read because it does not require what the Arizona LRPB 2084-4 demands from debtors.

The Bankruptcy Court incorrectly found that the Trustee has to review every post-petition income tax return from debtors in cases assigned to him.

It would be cost prohibitive to require trustees to file a motion every year that a case is pending, in order to obtain post-petition tax returns in every case, given the number of cases each trustee handles. The Local Plan Form effectively balances the debtor’s duty to file post-petition federal tax returns with the trustee’s duty to ensure that the debtor is complying with the Code. The Local Plan Form provision at issue here possibly streamlines the procedure by which a trustee obtains the debtors’ post-petition tax returns, and promotes cost efficiencies and efficient administration.

[emphasis added] *See also* Pet.App. 3, pp. 35-36 *infra*.

The answer to the Bankruptcy Court’s concern is that the Trustee is not required “ . . . to obtain post-petition tax returns in every case . . . ” *Id.* *See* 11 U.S.C. §1302(b)(1). Pursuant to this statute, these are the duties of the Chapter 13 case trustee, incorporated from 11 U.S.C. §704(a):

- “be accountable for all property received.” §704(a)(2).
- “ensure that the debtor shall perform his intention as specified in section 521(a)(2)(B).” §704(a)(3).
- “investigate the financial affairs of the debtor.” §704(a)(4).
- “if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper.” §704(a)(5).
- “if advisable, oppose the discharge of the debtor.” §704(a)(6).
- “unless the court orders otherwise, furnish such information concerning the estate and the estate’s administration as is requested by a party in interest.” §704(a)(7).
- “make a final report and file final account of the administration of the estate with the court and with the United States trustee.” §704(a)(9).

There is no statutory requirement for the Trustee to review every state and Federal income tax return filed by debtors in cases assigned to him. The Trustee duty, to “investigate the financial affairs of the debtor,” does not support the Arizona Local Rule of Procedure requiring turnover of debtor’s Federal and state income tax returns directly to a Chapter 13 trustee annually.

Third, it is a general rule of statutory interpretation that “a statutory provision containing a specific enumeration shall take precedence over another couched in more **general language.**” *People v. Valentine*, 48 Cal.App.3d 123, 121 Cal.Rptr. 438, 440 (1975); *see also Robertson v. Willis*, 77 Cal.App.3d 358, 143 Cal.Rptr. 523, 527 (1978)

(“When specific language conflicts with the general, the specific provisions will prevail.”)

...

Fourth, “[i]t is a settled principle of statutory construction, that courts should strive to give meaning to every word in a statute and to avoid constructions that render words, phrases, or clauses superfluous.”

In re C.H., 53 Cal.4th 94, 133 Cal.Rptr.3d 573, 264 P.3d 357, 362 (2011) (internal quotation marks omitted).

[emphasis added] *Edgerly v. City and Cnty. of S.F.*, 713 F.3d 976, 983-984 (9th Cir., 2013)

The foregoing principles of statutory construction apply to the statutes at issue in this matter. The Bankruptcy Court must strive “to give meaning to every word in a statute and to avoid constructions that render words, phrases, or clauses superfluous.” The Local Rule of Bankruptcy Procedure 2084-4 renders 11 U.S.C. §§521(f)(1), (g)(2), and §830 of the U.S. Court Guide to Judiciary Policy “superfluous.” *Id.* §521(f)(1)

is taken almost verbatim into the BRA. *See* BRA at p. 112, ¶(g); p. 113, ¶(1); *see also* Pet.App. 6, p. 54 *infra*.

In addition, these statutes comprise a specific statutory scheme for the turnover and handling of debtor's income tax returns. A requirement to "investigate the financial affairs of the debtor" is a general statutory requirement. The canons of statutory interpretation require the more specific statutes be followed over general statutory requirements. *Edgerly supra*. Therefore, the Trustee is not entitled to a local rule of procedure, ordering debtors to send him directly copies of their Federal and state income tax returns annually. *See Romeo*, fn 2 *supra*; *see* Pet.App. 7 *infra*.

The bankruptcy court has created a duty for the Trustee, to review every post-petition income tax return, from debtors in every case.

Although bankruptcy courts are sometimes referred to as courts of equity, the Supreme Court has reminded us that 'whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code'. *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206, 108 S.Ct. 963, 969, 99 L.Ed.2d 169 (1988). Equity may not be invoked to defeat clear statutory language, nor to reach results inconsistent with the statutory scheme established by the Code. *See In re Kelly*, 841 F.2d 908, 913 n. 4 (9th Cir. 1988); *In re Shoreline Concrete Co.*, 831 F.2d 903, 905 (9th Cir. 1987).

In re Powerine Oil Co., 59 F.3d 969, 973 (9th Cir. 1995)

Arizona Chapter 13 debtors have lost the statutory mandate to file only their Federal income tax returns with the bankruptcy court to satisfy a non-existent duty for the Trustee.

If the provision in the Arizona Model Chapter 13 plan form, barring varying provisions from the requirement to send all post-petition income tax return copies directly to the Trustee is in conformity with the U.S. Bankruptcy Code, why was that prohibition not in the last Arizona Model Chapter 13 Plan Form? *Compare* Pet.App. 9, p. 76 ¶J(8) *infra* with Pet.App. 10, pp. 95-96, ¶F *infra*. Chapter 13 of the U.S. Bankruptcy Code has not yet changed since the enactment of BAPCPA fifteen (15) years ago.³

Were BRA to be enacted as currently written, the case trustee does not acquire a duty to review the income tax returns of Chapter 13 debtors. “(b) DUTIES. – The trustee shall – “(1) perform the duties required under paragraphs (2) through (5) and (7) of section 704; *see* BRA, p. 7, §1001(b)(1); *see also* Pet.App. 6, p. 50 *infra*.

Please note that under the BRA, a case trustee does not have to perform the current duties pursuant to 11 U.S.C. §§704(a)(6) and (9) as incorporated by §1302(b)(1). This means, if the BRA were to be enacted as currently written, a case trustee has less statutory duties to perform. As such, there is even less reason for a local bankruptcy rule of procedure, requiring

³ BAPCPA became effective April 20, 2005. The full provisions of BAPCPA were not effective until October 17, 2005. *See* §1501 of BAPCPA.

Chapter 13 debtors to provide copies of their Federal and state income tax returns, directly to a case trustee annually.

“§1025. Payments under a repayment plan

“(a) DUTIES OF TRUSTEE. – The trustee shall –

“(1) collect and be accountable for any future income of the debtor that is designated for a payment to a creditor under a repayment plan;

“(2) accept and be accountable for any property of the estate tendered by the debtor pursuant to a repayment plan under section 1022(a)(1)(A)(i)(II); and

“(3) reduce to money and be accountable for any property of the estate tendered by the debtor under the repayment plan as expeditiously as is compatible with the best interests of the parties in interest.

*See BRA, p. 39, §1025(a); see also Pet.App. 6, p. 51 *infra*.*

“The duties of a case trustee under a “Repayment Plan” do not require a case trustee to review debtor’s income tax returns on an annual basis if the BRA is enacted. Under the current law, or possible future law, there is no statutory basis for a case trustee to review a debtor’s Federal and state income tax returns on an annual basis.

C. The Arizona Local Rule Of Bankruptcy Procedure Violates The Rule Of Procedure Allowing Local Courts To Make Their Own Rules.

(a) LOCAL BANKRUPTCY RULES.

(1) Each district court acting by a majority of its district judges may make and amend rules governing practice and procedure in all cases and proceedings within the district court's bankruptcy jurisdiction **which are consistent with – but not duplicative of – Acts of Congress** and these rules and which do not prohibit or limit the use of the Official Forms. Rule 83 F.R.Civ.P. governs the procedure for making local rules. A district court may authorize the bankruptcy judges of the district, subject to any limitation or condition it may prescribe and the requirements of 83 F.R.Civ.P., to make and amend rules of practice and procedure **which are consistent with – but not duplicative of – Acts of Congress** and these rules and which do not prohibit or limit the use of the Official Forms. Local rules shall conform to any uniform numbering system prescribed by the Judicial Conference of the United States.

(2) **A local rule imposing a requirement of form shall not be enforced in a manner that causes a party to lose rights** because of a nonwillful failure to comply with the requirement.

(b) PROCEDURE WHEN THERE IS NO CONTROLLING LAW.

A judge may regulate practice in any manner consistent with federal law, these rules, Official Forms, and local rules of the district. No sanction or other disadvantage may be imposed for noncompliance with any requirement not in federal law, federal rules, Official Forms, or the local rules of the district unless the alleged violator has been furnished in the particular case with actual notice of the requirement.

[emphasis added] FRBP 9029

Arizona LRBP 2084-4 is not “consistent with” an Act of Congress (11 U.S.C. §521(f)(1) and (g)(2)) and is therefore invalid. 9029(a)(1). *Id.* This Arizona local rule is also not consistent with the BRA at p. 112, ¶(g); p. 113, ¶(1); *see* Pet.App. 6, p. 54 *infra*.

Arizona Model Chapter 13 Plan Local Form 2084-4 prevents debtors from placing a nonstandard provision in that form allowing them to only file annual Federal income tax returns with the bankruptcy court. This Arizona form causes debtors to lose the right to file just such income tax returns with a bankruptcy court as required by 11 U.S.C. §521(f)(1) and lose the protection due those returns pursuant to §521(g)(2). In so doing the Arizona Model Plan form violates 9029(a)(2). *Id.* The Arizona Model Chapter 13 Plan Form also violates FRBP 3015(c) and 3015.1(e)(1) *supra*. This issue would remain with the Arizona Model Plan Form 2084-4 after the enactment of BRA

as currently written. *See* BRA at p. 112, ¶(g); p. 113, ¶(1); *see also* Pet.App. 6, p. 54 *infra*.

D. The Federal Courts Of The Ninth Circuit Are Allowing The District Of Arizona Bankruptcy Court To Deny Substantive Rights Due Some Of The Poorest Participants In The Federal Court System.

A local rule of bankruptcy procedure, that requires debtors to turnover copies of their Federal and state income tax returns to a case trustee directly on an annual basis, is contrary to current law, or possible future law.

Trustee's response, echoing the bankruptcy court, is that Section 4.1 balances the Code's "requirement of individualization . . . with the [bankruptcy court's] need for efficiency," and asserts, with a single citation, that "[m]any judicial districts have adopted a form plan requiring all or some portion of a refund to be turned over." That response is unavailing.

In re Diaz, 972 F.3d 713, 718-719 (5th Cir. 2020)

... While we recognize that the bankruptcy court has an important interest in efficiency, that interest is not grounds for abridging below-median income debtors' substantive rights to use their "excess" refund income to finance reasonably necessary expenses for their maintenance and support. At bottom, the provisions in a local chapter 13 plan must be procedural, not substantive. *See*

In re Adams, 734 F.2d at 1099; KEITH M. LUNDIN, LUNDIN ON CHAPTER 13 §72.5 ¶23, <https://lundinonchapter13.com/content/section/72.5> (last updated August 3, 2020) (observing that local chapter 13 plans that prescribe “specific treatments” for tax refunds tend to require bankruptcy courts to make “substantive decisions” under the Code). *Id.*

The U.S. Bankruptcy Court District of Arizona made a substantive decision, through the enactment of a Local Rule of Bankruptcy Procedure and Model Chapter 13 Plan Form, that Chapter 13 debtors are not entitled to the privacy protections due their income tax returns pursuant to 11 U.S.C. §§521(f)(1), (g)(2), and 830 of the Guide to Judiciary Policy for the U.S. Courts. In so doing, reversible error was committed. This would be the same result under the pending BRA, as currently written, requiring debtor’s future Federal income tax returns [https://uscode.house.gov/view.xhtml?req=\(title:11%20section:521%20edition:prelim\)%20OR%20\(granuleid:USC-prelim-title11-section521\)&f=tree&sort&edition=prelim&num=0&jumpTo=true](https://uscode.house.gov/view.xhtml?req=(title:11%20section:521%20edition:prelim)%20OR%20(granuleid:USC-prelim-title11-section521)&f=tree&sort&edition=prelim&num=0&jumpTo=true) be filed with a bankruptcy court.

We cannot deny that our decision today will have an impact on the ability of law enforcement to combat crime. Cell phones have become important tools in facilitating coordination and communication among members of criminal enterprises, and can provide

valuable incriminating information about dangerous criminals. **Privacy comes at a cost.**

[emphasis added] *Riley v. Cal. United States*, 134 S.Ct. 2473, 2493, 189 L.Ed.2d 430, ___, 82 USLW 4558, ___ (2014).

* * *

It would be cost prohibitive to require trustees to file a motion every year that a case is pending, in order to obtain post-petition tax returns in every case, given the number of cases each trustee handles. The Local Plan Form effectively balances the debtor's duty to file post-petition federal tax returns with the trustee's duty to ensure that the debtor is complying with the Code. **The Local Plan Form provision at issue here permissibly streamlines the procedure by which a trustee obtains the debtors' post-petition tax returns, and promotes cost efficiencies and efficient administration.**

[emphasis added] See Pet.App. 3, pp. 35-36 *infra*.

The Bankruptcy Court attempted to remove the cost of privacy in reviewing Chapter 13 debtor's post-petition income tax returns. In so doing reversible error was committed.



CONCLUSION

This Petition for a *Writ of Certiorari* should be granted.

Respectfully submitted,

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