No. _____

In The

Supreme Court of the United States

JESUS VASQUEZ, JR. AND
PENNEY LEIGH VASQUEZ,

Petitioners,

v.

WILMINGTON SAVINGS FUND SOCIETY, FSB,
AS TRUSTEE OF STANWICH MORTGAGE TRUST F,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Section 506(a)(1) of the Bankruptcy Code states that "[a]n allowed claim of a creditor secured by a lien * * * is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, * * * and is an unsecured claim to the extent that the value of such creditor's interest * * * is less than the amount of such allowed claim."

Section 506(d) states, in relevant part, "To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void."

Under a plain reading of Sections 506(a)(1) and 506(d), the amount of a lien that exceeds the value of a debtor's property is not an allowed secured claim, and is, therefore, void. However, this natural reading of Section 506(d) has been foreclosed by *Dewsnup v. Timm*, 502 U.S. 410 (1992). *See Bank of America, N.A. v. Caulkett*, 575 U.S. 790, 794 (2015).

The sole question presented is whether *Dewsnup v. Timm*, 502 U.S. 410 (1992), should be overruled.

RELATED PROCEEDINGS

Jesus Vasquez, Jr. and Penney Leigh Vasquez v. Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Trust F, No. 20-1914 (4th Cir. judgment entered April 30, 2021)

Jesus Vasquez, Jr. and Penney Leigh Vasquez v. Wilmington Savings Fund Society, FSB, as Trustee of Stanwich Mortgage Trust F, No. 7:20-cv-62-D (E.D.N.C. judgment entered August 27, 2020)

Jesus Vasquez, Jr. and Penney Leigh Vasquez v. JPMorgan Chase Bank, N.A., No. 19-00100-5-SWH (Bankr. E.D.N.C. judgment entered March 25, 2020)

In re Jesus Vasquez, Jr. and Penney Leigh Vasquez, No. 19-01841-5-SWH (Bankr. E.D.N.C. order of discharge entered August 7, 2019)

TABLE OF CONTENTS

TABLE OF CONTENTS—Continued

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

OTHER AUTHORITIES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

Page

OPINIONS AND ORDERS BELOW

The opinion of the United States Court of Appeals for the Fourth Circuit (Pet. App. 1a) is unpublished and available at 845 Fed. App'x 273 (Mem.). The opinion of the United States District Court for the Eastern District of North Carolina (Pet. App. 3a) is unpublished and available at 2020 WL 5246681. The order of the United States Bankruptcy Court for the Eastern District of North Carolina (Pet. App. 7a-21a) is unpublished.

JURISDICTION

The Fourth Circuit entered judgment on April 30, 2021, Pet. App. 1a-2a. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Section 506 of the Bankruptcy Code, 11 U.S.C. § 506, entitled "Determination of secured status," provides in relevant part:

> (a)(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an

> unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.
>
> . . .
>
> (d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless—
>
> (1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or (2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.

STATEMENT OF THE CASE

The facts of this case are not in dispute. Mr. and Mrs. Vasquez purchased their residence in Rocky Point, NC in 2013 with the help a U.S. Department of Veterans Affairs guaranteed mortgage. [ROA[1]. 105]. They qualified for the VA backed mortgage as Mr. Vasquez faithfully served his country for over a decade in the U.S. Marine Corps from March 20, 2001 through

[1] Citations to "ROA" refer to the Record on Appeal in the Fourth Circuit.

medically retiring on February 28, 2012. [ROA. 99]. Mr. Vasquez served as part of Operation Iraqi Freedom and received numerous commendations, letters of appreciation, and medals during his service. *Id*. The Department of Veterans Affairs rates Mr. Vasquez as 100% disabled for his service-connected disabilities, he additionally receives Combat Related Special Compensation (CRSC) as he was injured in combat and Social Security Disability Benefits. [ROA. 100]. Mrs. Vasquez is the caregiver for her husband and their four minor daughters; she is compensated by the Department of Veterans Affairs as part of the Caregiver Stipend Program. *Id*.

After Hurricane Florence ravaged eastern North Carolina, Mr. and Mrs. Vasquez fell behind on their credit card payments and ultimately filed a petition under Chapter 7 of the Bankruptcy Code on April 22, 2019 ("*Petition Date*") to stay pending collection activities and lawsuits filed by their creditors, and to discharge their unsecured debts. [ROA. 9]. On June 12, 2019, the Chapter 7 Trustee designated their case as a "no asset" case (meaning no assets were to be distributed to creditors), and on August 7, 2019, Mr. and Mrs. Vasquez received their Chapter 7 discharge [ROA. 95].

On the Petition Date, the fair market value of their residence was $219,705.00. Pet. App. 4a. When the Chapter 7 case was filed, the home needed repairs to the roof and attic, along with mold remediation as a result of damage from Hurricane Florence. [ROA. 100]. Based upon comparable sales, necessary repairs

and maintenance, along with the Pender County tax valuation of $219,705, the Debtors believe their residence is worth no more than $220,000. *Id*.

On the Petition Date, $240,464.48 was owed on the mortgage now held by Respondent.[2] Pet. App. 4a.

The Vasquezes filed the adversary proceeding, *sub judice*, so that they can strip down the mortgage on their home to the amount of its "allowed secured claim" under Section 506(a) of the Bankruptcy Code (thus reducing the lien from $240,464.48 to $219,705.00); a process that should be allowed by Section 506(d) of the Code; but for *Dewsnup v. Timm*, 502 U.S. 410 (1992). According to the Vasquezes' adversary proceeding, "this Complaint seeks to overrule the U.S. Supreme Court's holdings in *Dewsnup v. Timm*, 502 U.S. 410 (1992), and *Bank of America, N.A. v. Caulkett*, 575 U.S. 790 (2015) as those rulings are erroneous." [ROA. 98]. The bankruptcy court exercised jurisdiction of the Adversary Proceeding as it is a "core" proceeding under 28 U.S.C. § 157(b)(2).

Chase moved to dismiss the complaint by asserting that Mr. and Mrs. Vasquez cannot strip down or void any portion of its lien under Section 506(d) as *Dewsnup v. Timm* prevents such an action. [ROA. 129].

Mr. and Mrs. Vasquez responded by arguing that while the bankruptcy court was bound by *Dewsnup*,

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[2] The mortgage against the Vasquezes' residence was assigned from JP Morgan Chase Bank, N.A. ("*Chase*") to Respondent during the pendency of this appeal.

"The Plaintiffs intend to appeal this Adversary Proceeding to the United States Supreme Court and file a petition for *certiorari* in order to overturn *Dewsnup*, and by extension, *Bank of America, N.A. v. Caulkett*, 575 U.S. [790], 135 S. Ct. 1995 (2015)." [ROA. 139, n.1].

The bankruptcy court dismissed the adversary proceeding as it was bound by the holding of *Dewsnup*. Pet. App. 20a ("So, in this matter, although plaintiffs have put forth several compelling and legally sound reasons for why *Dewsnup* should be overturned, the court must conclude that *Dewsnup* remains well-settled albeit controversial precedent. It is up to the Supreme Court to reverse its decision."). The bankruptcy court additionally stated, "The precedent set by *Dewsnup* has indeed led to inconsistent interpretation and, in fact, misapplication of both its holding and of the Bankruptcy Code." Pet. App. 16a.

Exercising jurisdiction under 28 U.S.C. § 158(a), the district court affirmed the bankruptcy court. Pet. App. 3a. In its opinion, like the bankruptcy court, the district court noted that only the Supreme Court could overturn *Dewsnup*. Pet. App. 6a.

Exercising jurisdiction under 28 U.S.C. §§ 158(d)(1), and 1291, the Fourth Circuit summarily affirmed the District Court in an unpublished, per curiam opinion that cited *Dewsnup*. Pet. App. 2a. This appeal followed.

INTRODUCTION

1. Jesus and Penney Vasquez are seeking to strip down the under-secured lien of Respondent to the value of their residence, a process allowed under a plain reading of Sections 506(a) and 506(d) of the Bankruptcy Code. Notwithstanding the text of Sections 506(a) and 506(d), this Court in *Dewsnup v. Timm*, 502 U.S. 410 (1992) held that a Chapter 7 debtor cannot void any portion of a lien which has not been previously disallowed. To reach this holding, the Court in *Dewsnup* interpreted the term "allowed secured claim" differently in Sections 506(a) and 506(d). *Dewsnup*, at 417, n.3. Instead of "allowed secured claim" meaning the value of collateral to which a lien attaches—as defined in Section 506(a)—the Supreme Court decided in Section 506(d), "allowed secured claim" meant a claim which "is secured by a lien and has been fully allowed pursuant to § 502." *Dewsnup*, at 417. According to the *Dewsnup* Court, this interpretation of "allowed secured claim" was bolstered by the (erroneous) mantra "liens pass through bankruptcy unaffected." *Id*. at 417, 419.

2. This interpretation of "allowed secured claim" in Section 506(d) is not supported by the legislative history of Section 506(d), is not supported by the case law on Section 506(d) prior to *Dewsnup* and has not been defended by any court (including this Court) since *Dewsnup*. The criticism of *Dewsnup* has been unanimous. The effect of *Dewsnup* has been to write Section 506(d) out of the Bankruptcy Code. Its erroneous *dictum*, "liens pass through bankruptcy

unaffected," has led to more courts, including circuit courts, to ignore the actual holding in *Dewsnup* and to misapply the Bankruptcy Code creating more bad law.

3. While this Court passed up a challenge to *Dewsnup* in 2019, *Ritter v. Brady*, 139 S. Ct. 1186 (Mem.) (2019), this case is the right case to challenge *Dewsnup*. *Ritter v. Brady* involved a *pro se* debtor moving to reopen her case under Section 350(b) of the Bankruptcy Code—which is governed by an abuse of discretion standard. It did not involve an adversary proceeding under Section 506(d) against the lien creditor, and no argument to overturn *Dewsnup* was made until the petition for *certiorari*. This appeal is the proper vehicle for overruling *Dewsnup*.

REASONS FOR GRANTING THE WRIT

I. *Dewsnup v. Timm*, 502 U.S. 410 (1992), Erroneously Interprets Section 506(d) Of The Bankruptcy Code And Must Be Overruled

Section 506(a)(1) of the Bankruptcy Code states, in pertinent part,

> An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value

> of such creditor's interest . . . is less than the amount of such allowed claim.

11 U.S.C. § 506(a)(1).

"A claim, even if secured by a valid state law lien on property, qualifies as 'secured' for purposes § 506(a) and federal bankruptcy law only to the extent it is supported by value in the collateral." *Woolsey v. Citibank, N.A.* (*In re Woolsey*), 696 F.3d 1266 (10th Cir. 2012) (citing *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 239 (1989)).

Just three subsections later, Section 506(d) of the Bankruptcy Code states, in pertinent part, "To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void. . . ." 11 U.S.C. § 506(d).

Under a plain reading, "allowed secured claim" in Section 506(a) should have the same meaning in Section 506(d). However, this is not the case. "Were we writing on a clean slate, we might be inclined to agree with petitioner that the words 'allowed secured claim' must take the same meaning in § 506(d) as in § 506(a)." *Dewsnup v. Timm*, 502 U.S. 410, 417 (1992). Rather, the majority in *Dewsnup* found "allowed secured claim" in Section 506(d) to mean, "[W]e hold that § 506(d) does not allow petitioner to 'strip down' respondents' lien, because respondents' claim is secured by a lien and has been fully allowed pursuant to § 502." *Id*. This departure from traditional notions of statutory interpretation was radical, continues to create confusion, and is wrong. "*Dewsnup* has created

more than a little methodological confusion, confusion enshrouding both the Courts of Appeals and, even more tellingly, Bankruptcy Courts, which must interpret the Code on a daily basis." *Woolsey* at 1274 (citing *Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 North LaSalle Street P'ship*, 526 U.S. 434, 463 (1999) (Thomas, J., concurring in the judgment)) (quotations omitted).

A. The Legislative History Of Section 506 Of The Bankruptcy Code Shows *Dewsnup* Was Wrongly Decided

It took Congress a decade to formulate the Bankruptcy Code which was passed into law in 1978. *United States v. Ron Pair Enterprises, Inc.*, 489 U.S. 235, 240 (1989). The Code modernized bankruptcy laws and procedure and replaced the former Bankruptcy Act that initially became law in 1898. *Id*. *See also* Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (November 6, 1978). *Dewsnup* relied upon pre-code (Bankruptcy Act) practice in its holding as it believed the legislative history was sparse. *Dewsnup*, at 418-419. However, what the majority in *Dewsnup* failed to realize was there was no pre-code practice with regards to Section 506(d) as the Bankruptcy Code was a *complete overhaul* of existing bankruptcy laws.

> "In particular, Congress intended significant – changes from current law in the treatment of secured creditors and secured claims. In such a substantial overhaul of the system, it is not appropriate or realistic to expect Congress to

> have explained with particularity each step it took. Rather, as long as the statutory scheme is coherent and consistent, there generally is no need for a court to inquire beyond the plain language of the statute."

Ron Pair at 240-241 (citation and quotations omitted).

Indeed, when printing the new Title 11 to reflect the newly enacted Bankruptcy Code, Congress created a table to cross-reference old provisions in the Bankruptcy Act. In this table, the new Section 506(d) of the Bankruptcy Code has no cross-reference—it is an entirely new statute with no predecessor. *See* Title 11, Government Publishing Office, https://www.govinfo.gov/content/pkg/USCODE-2011-title11/pdf/USCODE-2011-title11.pdf, p. 5 (last visited June 3, 2021).

As to the legislative history of Section 506, both the Senate and House reports state, "***Throughout the bill***, references to secured claims are only to the claim determined to be secured under this subsection, and not to the full amount of the creditor's claim." S. Rep. No. 95-989, 95th Cong., 2d Sess. 68 (1978) (emphasis added); H.R. Rep. No. 95-595, 95th Cong. 1st Sess. 356 (1978) (emphasis added). It is clear from the legislative history that the term "secured claim" in Section 506(a) should have the same meaning in Section 506(d). This interpretation of "secured claim" only representing the amount that is secured by value is also shown in the House Report's discussion of Section 502(b)(7) (now found at 11 U.S.C. § 502(b)(6)) which addresses the claims of landlords: "By virtue of proposed 11 U.S.C. 506(a) and 506(d), the claim will be divided into a

secured portion and an unsecured portion in those cases in which the deposit the landlord holds is less than his damages." H.R. Rep. No. 95-595, at 354.

Another example of Congress wanting the term "allowed secured claim" to have the same meaning throughout the Code is fact that this *exact* term is used in nearly every Chapter of the Bankruptcy Code. *See* 11 U.S.C. §§ 348, 506, 524, 722, 724, 1222, 1225, 1325. *See also Sullivan v. Stroop*, 496 U.S. 478, 484 (1990) ("[T]he normal rule of statutory construction is that identical words used in different parts of the same act are intended to have the same meaning.") (citations and quotations omitted). As Section 103(a) explains, Chapter 5 of the Bankruptcy Code (which includes Section 506) is to be applicable in all cases under Chapter 7, 11, 12, and 13. 11 U.S.C. § 103(a). However, *Dewsnup*'s interpretation of "allowed secured claim" has been limited by other courts to just Section 506(d)—it has not been extended to the other sections of the Bankruptcy Code where it appears. *See Woolsey v. Citibank, N.A.* (*In re Woolsey*), 696 F.3d 1266 (10th Cir. 2012) ("So it is that *Dewsnup* has lost every away game it has played: its definition of 'secured claim' has been rejected time after time elsewhere in the code and seems to hold sway only in § 506(d).").

Moreover, *Dewsnup*'s holding—disallowed claims are the only claims void under Section 506(d)—is superfluous. For a lien to be enforceable, under state law, there must also be a valid, enforceable debt. *See, e.g.*, N.C. Gen. Stat. § 45-21.16(d)(i) (Foreclosure under a deed of trust requires a "valid debt"). Section

502(b)(1) is what disallows the claim and the lien in such a situation. 11 U.S.C. § 502(b)(1) ("such claim is unenforceable against the debtor and *property of the debtor*, under . . . applicable law.") (emphasis added). With a bankruptcy court being able to disallow a claim under Section 502(b)(1) against property of the debtor (a lien), this would mean that the lien would already have been declared invalid and Section 506(d) would not be necessary. However, this is not the case as Congress does not write superfluous laws. *See, e.g.*, *Knight v. C.I.R.*, 552 U.S. 181, 190 (2008).

Additionally, if the voiding mechanism of Section 506(d) were to only apply to disallowed claims, Congress would have said as much. Numerous times in the Bankruptcy Code Congress specifies a "disallowed" claim. *See, e.g.*, 11 U.S.C. §§ 502, 509, 553(a), 1305, 1328. This choice by Congress to not include the term "disallowed" in Section 506(d) would then—following the plain language of the statute—encompass both an unsecured claim (because under Section 506(a) an unsecured claim is not an "allowed secured claim") and also a disallowed claim as it would not be an "allowed secured claim." Indeed, a natural reading of the original language of Section 506(d) (it was later modified at Pub. L. No. 98-353, 98 Stat. 374 (July 10, 1984) to its current form) supported the voiding of either allowed or disallowed claims. When enacted in 1978, Section 506(d) read, "To the extent a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless (1) a party in interest has not requested that the court determine

and ***allow or disallow*** such claim under Section 502 of this title; or (2) such claim was disallowed only under section 502(e) of this title." Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 506(d), 92 Stat. 2549, 2583 (emphasis added). Provided a pleading was filed and notice was given to the holder of the secured claim, then under the original statute an allowed or disallowed claim could be voided. *See, e.g.*, *In re Everett*, 48 B.R. 618, 620 (Bankr. E.D. Pa. 1985). The current version of Section 506(d) does not alter this analysis. *Id*. at 619-620 (The 1984 amendment to Section 506(d) was a "clarifying" amendment). *Dewsnup*'s holding runs contrary to the legislative history and language of the Bankruptcy Code, it must be overruled.

B. Case Law Prior To *Dewsnup* Shows It Was Wrongly Decided

When *Dewsnup v. Timm* reached the Supreme Court for oral argument in October 1991, only four circuits had touched on Section 506(d). *See Dewsnup v. Timm* (*In re Dewsnup*), 908 F.2d 588 (10th Cir. 1990); *In re Gaglia*, 889 F.2d 1304 (3d Cir. 1990); *In re Folendore*, 862 F.2d 1537 (11th Cir. 1989); *In re Lindsey*, 823 F.2d 189 (7th Cir. 1987). As recognized by the Circuit Courts in *Dewsnup*, *Gaglia*, and *Folendore*, the majority view of courts across the country was that Section 506(d) could be utilized by a debtor to strip down (reduce) the amount of a lien to the value of the collateral that supported the lien. *See Dewsnup*, 908 F.2d at 589 ("Although courts are clearly divided on this issue, a majority have adopted the position which

[the] debtors urge.") (citing *Gaglia*); *see also Gaglia* at 1306 ("The majority of the bankruptcy and district courts that have considered this issue agree that the language of Sec. 506 allows a Chapter 7 debtor to void liens. . . ."); *Folendore* at 1539 ("The majority view of the bankruptcy courts is that section 506(d) may be used to void a lien if the proper request is made under Section 502, even if the claim is not disallowed."). Prior to *Dewsnup*, the leading treatises on bankruptcy recognized that Section 506(d) did not apply only to disallowed claims and documented the majority of cases supporting this view. *See* 3 L. King, Collier on Bankruptcy P506.07, at 506-574. *See also* 1 W. Norton, Norton Bankr. L. & Practice § 28.27, at 222 (Supp. 1990); Margaret Howard, *Stripping Down Liens: Section 506(d) and the Theory of Bankruptcy*, 65 Am. Bankr. L. J. 373, 374, n.2 (1991).

The position adopted by the Supreme Court in *Dewsnup*—if a claim is not disallowed, it cannot be voided—was never raised in the lower courts or by the creditor in the actual appeal in *Dewsnup*. It was the Solicitor General who advanced a "novel" argument that was adopted by the lender at oral argument. *See* Ronald J. Mann, *Bankruptcy and the U.S. Supreme Court*, p. 215 (2017). As pointed out by the debtors' brief in *Dewsnup*, "The government does not cite a single case in support of its view that Section 506(d) applies only to disallowed claims, an apparent concession that the courts have not adopted its interpretation." *Reply Brief for the Petitioner*, 1991 U.S. S. Ct. Briefs LEXIS 237, *15.

This novel argument by the government had been completely overruled and disregarded by the Eleventh Circuit in *Folendore*:

> The plain language of the statute, supported by the decisions of a majority of the bankruptcy courts, inferences drawn from the 1984 amendments, and common sense, requires the SBA's lien to be voidable whether or not its claim has been disallowed under Section 502. Consequently, we adopt the majority view that section 506(d) allows the voiding of a lien when a court has not disallowed the claim.

Folendore at 1539. "Whether the claim is allowed or disallowed is irrelevant." *Id*. at 1541. *See also Gaglia*, 889 F.2d at 1309, n.7. By adopting a last-minute position, this Court completely disregarded its own precedent on arguments being raised for the first time before it. *See, e.g*., *Electrical Workers v. Hechler*, 481 U.S. 851, 862 n.5 (1987) ("we conclude that it is too late in the day for respondent to present to the Court this newfound legal theory. We decline to rule on the impact of hypothetical state law when the relevance of such law was neither presented to or passed on by the courts below, nor presented to us in the response to the petition for certiorari.").

The majority in *Dewsnup* made a serious error—one that the dissent in *Dewsnup*, and all other courts and commentators have continued to emphasize to this day.

C. The Opinions In *Dewsnup* Show It Was Wrongly Decided

The Majority Opinion in *Dewsnup*

Dewsnup held that, "§ 506(d) does not allow petitioner to 'strip down' respondents' lien, because respondents' claim is secured by a lien and has been fully allowed pursuant to § 502." *Id*. at 417. In support of its holding, the majority listed four reasons: (1) in voiding the lien, as called for by the debtor, the debtor would receive a "windfall" as they would be the only party benefiting from the increased value of the collateral. *Id*. (2) pre-Bankruptcy Code practice dictated that liens passed through bankruptcy unaffected. *Id*. at 418. (3) prior to the Bankruptcy Code, only through reorganization proceedings (i.e., cases under Chapters 11, 12, and 13) could liens be reduced to the value of the collateral; Congress understood this limitation when enacting Section 506(d). *Id.* at 418-419. (4) When Congress amends the bankruptcy laws, it does not do so on a "clean slate." Barring a clear intention in the legislative history, statutes under the Bankruptcy Code will not be interpreted in conflict their pre-Code counterparts, unless the language of the statute is unambiguous. *Id*. at 419-420. Each of these arguments have not stood the test of time.

1. Starting with the first argument in support of *Dewsnup* (debtors would receive a "windfall" by voiding underwater liens), the Bankruptcy Code itself quickly dispels this as nonsense. Section 551 of the Bankruptcy Code ("Automatic preservation of avoided

transfer") clearly states, in pertinent part, "any lien void under section 506(d) of this title, is preserved for the benefit of the estate. . . ." 11 U.S.C. § 551. The majority in *Dewsnup* makes no mention of Section 551; however, the dissent is quick to point out this statute. *See Dewsnup*, at 422, n.1 (Scalia, J., dissenting).

Additionally, there is no evidence that voiding underwater liens provides a "windfall" to a bankruptcy debtor. In fact, legal scholars have found that bankruptcy debtors reducing (cramming down) the mortgage balances on their homes to the value of their homes reduces foreclosure rates by nearly 30%. Cespedes, Jacelly and Parra, Carlos and Sialm, Clemens, *The Effect of Principal Reduction on Household Distress: Evidence from Mortgage Cramdown* (May 31, 2021). Available at SSRN: https://ssrn.com/abstract=3700190. A homeowner having a better opportunity to keep their residence can hardly be said to be a "windfall."

2. The majority believed that "liens pass through bankruptcy unaffected." Such a statement has never been true. Liens have never wholesale passed through bankruptcy unaffected. The Bankruptcy Act of 1898 directly allowed for the avoidance of liens that were unperfected (11 U.S.C. § 67a (1898)); that were preferential or fraudulent (11 U.S.C. § 67c (1898)); judicial liens (11 U.S.C. § 67f (1898)), and liens that were secured by disallowed claims (11 U.S.C. § 57j (1898)), *see also Simonson v. Granquist*, 369 U.S. 38, 40-41 (1962). As discussed in greater detail in Section II, *infra*, prior to *Dewsnup*, this belief "liens pass through

bankruptcy unaffected" was shown to be not true. *See, e.g.*, *In re Lindsey*, 823 F.2d 189, 190 (7th Cir. 1987) ("The presence of the mortgagees in the bankruptcy proceeding requires comment, in view of the old saw (which, as this case shows, is no better than a half-truth) that liens pass through bankruptcy unaffected.").

3. Allowing the voiding of liens only in the reorganization Chapters of 11, 12, and 13, would directly conflict with Section 103(a) which specifies Section 506(d) is to also be applicable in all Chapter 7 cases. Once again, the majority fails to address this statute; however, the dissent, once again, does not. *Dewsnup*, at 430 (Scalia, J., dissenting).

4. Somehow, the majority in *Dewsnup* found the term "allowed secured claim" in Section 506(d) to be ambiguous. *Id*. at 410; notwithstanding the fact that "allowed secured claim" was defined just three subsections earlier in Section 506(a), *see Ron Pair*, 489 U.S. at 239, and that courts are to interpret the same language in the same act as having the same meaning, *see Sullivan* 496 U.S. at 484. "Allowed secured claim" is not ambiguous. Just because two self-interested litigants cannot agree on the meaning of a statute, it does not mean the statute is ambiguous, it generally means one of the litigants is wrong. *Bank of America Nat'l Trust v. 203 N. Lasalle St. P'ship*, 526 U.S. 434, 461 (1999) (Thomas, J., concurring).

The flaws of the majority opinion also extend beyond its reasoning. As pointed out by the bankruptcy

court below, the majority opinion is "reluctant and almost apologetic in tone" and "a mere four pages long." Pet. App. 14a. The majority attempted to limit its holding by "focus[ing] upon the case before us and allow other facts to await their legal resolution for another day." *Dewsnup*, at 416-417. This abdication in interpreting "allowed secured claim" throughout the Bankruptcy Code, *id*. at 417, n.3 ("we express no opinion as to whether the words 'allowed secured claim' have different meaning in other provisions of the Bankruptcy Code"), violated both the Supreme Court's own precedent, *see supra*, *Sullivan v. Stroop*, 496 U.S. at 484; but also directly conflicted with Section 103(a) of the Bankruptcy Code (Section 506(d) is applicable in all Chapter 7, 11, 12, and 13 cases). It is precisely the confusion around this limiting language that led to *Bank of America, N.A. v. Caulkett*, 575 U.S. 790, 135 S. Ct. 1995 (2015). While the Court in *Dewsnup* did not extend its holding to entirely underwater mortgages, the Supreme Court in *Caulkett* did just that.

Precious judicial resources across thousands of cases across the Eleventh Circuit were spent and wasted arguing over the reach of *Dewsnup* to fully underwater mortgages. *See* Petition for a Writ of *Certiorari*, *Bank of America v. Caulkett*, case no. 13-1421, p. 11 (May 23, 2014). In *Folendore*, *supra*, the Eleventh Circuit held that Section 506(d) allowed for the voiding of an entirely unsecured lien against a debtor's residence. This precedent was followed, post-*Dewsnup*, in *McNeal v. GMAC Mortg., LLC* (*In re*

McNeal), 735 F.3d 1263 (11th Cir. 2012), *rehearing en banc denied*, May 20, 2014. The court in *McNeal* distinguished *Dewsnup* as, "*Dewsnup* disallowed only a 'strip down' of a partially secured mortgage lien and did not address a 'strip off' of a wholly unsecured lien, it is not 'clearly on point' with the facts in *Folendore* or with the facts at issue in this appeal." *Id*. at 1265. Believing this distinction to have significance, the court in *McNeal* turned to the limiting language of *Dewsnup*, "the Supreme Court—noting the ambiguities in the bankruptcy code and the 'the difficulty of interpreting the statute in a single opinion that would apply to all possible fact situations'—limited its Dewsnup decision expressly to the precise issue raised by the facts of the case." *Id*. at 1266. It is this precedent in *McNeal* that formed the basis of the *per curiam* decision by the Eleventh Circuit in *Bank of America v. Caulkett* (*In re Caulkett*), 566 Fed. App'x 879 (11th Cir. 2014) that was ultimately overturned by this Court.

The timidity of this limiting language in *Dewsnup* led the respondent-debtor in *Caulkett* to not seek an overruling of *Dewsnup*. *See Caulkett*, 135 S. Ct. at 1999-2000. This attempt to distinguish *Dewsnup* from the fully underwater mortgage in *Caulkett* (a position invited by the weak holding in *Dewsnup*) was met with serious criticism at oral argument by Justice Kagan, "these distinctions that you are drawing between partially underwater and fully underwater are not terribly persuasive. But the only thing that may be less persuasive is *Dewsnup* itself." Official Oral Argument Transcript, *Bank of America v. Caulkett*,

case no. 13-1421, p. 45 (March 24, 2015). A majority of the Court joined in emphasizing the debtor's failure to seek an overturning of *Dewsnup*. *See Caulkett*, 135 S. Ct. 2000, n.† ("Despite this criticism, the debtors have repeatedly insisted that they are not asking us to overrule Dewsnup."). This invitation by the Supreme Court in n.† of *Caulkett* helps to form the basis of this appeal to overturn *Dewsnup* and by extension, *Caulkett*.

The Dissenting Opinion in *Dewsnup*

Justice Scalia, joined by Justice Souter, begins his dissent by stating, "the Court replaces what Congress said with what it thinks Congress ought to have said—and in the process disregards, and hence impairs for future use, well-established principals of statutory construction." *Dewsnup*, at 420 (Scalia, J., dissenting). This "impair[ing]" of the principals of statutory construction is further pointed out just a few years later by Justice Thomas in *Bank of America Nat'l Trust v. 203 N. Lasalle St. P'ship*, 526 U.S. 434, 461 (1999) ("This sort of approach to interpretation of the Bankruptcy Code repeats a methodological error committed by this Court in *Dewsnup v. Timm*, 502 U.S. 410 (1992)." (Thomas, J., concurring). Justice Thomas additionally cites the many cases where *Dewsnup* has, "enshrouded both the Courts of Appeals and, even more tellingly, Bankruptcy Courts, which must interpret the Code on a daily basis." *Bank of America Nat'l Trust*, at 463, n.3.

The dissent in *Dewsnup* also did not find the term "allowed secured claim" to be ambiguous. *Dewsnup*, at 421 ("When § 506(d) refers to an 'allowed secured claim,' it can only be referring to that allowed 'secured claim' so carefully described two brief subsections earlier.") (Scalia, J., dissenting).

Justice Scalia also finds the holding of the majority to render some of the language in Section 506(d) as surplusage. Under the interpretation of the majority, the statute should actually read, "To the extent that a lien secures a claim against the debtor that is not allowed," as opposed to the actual text which is "not an allowed secured claim." *Id*. at 425.

It is the plain meaning of Section 506(d), according to Scalia, that should have decided *Dewsnup*, "Congress's careful reexamination *and entire rewriting* of [the bankruptcy laws] supports the conclusion that, regardless of whether pre-Code practice is retained or abandoned, the text means precisely what it says." *Id*. at 434 (emphasis in original).

The dissent concludes with an ominous note, "Having taken this case to resolve uncertainty regarding one provision, we end by spawning confusion regarding scores of others. I respectfully dissent." *Id*. at 436.

D. Criticism Of *Dewsnup* Has Been Universal

The majority opinion in *Dewsnup* has been subject to substantial criticism—criticism that was duly noted by the bankruptcy court below. Pet. App. 14a-16a. *See, e.g.*, Lawrence Ponoroff & F. Stephen Knippenberg, *The Immovable Object Versus the Irresistible Force: Rethinking the Relationship Between Secured Credit and Bankruptcy Policy*, 95 Mich. L. Rev. 2234, 2305 (1997) ("The Supreme Court's holding in *Dewsnup* transgresses most of the traditional principles of statutory construction."); David Gray Carlson, *Bifurcation of Undersecured Claims in Bankruptcy*, 70 Am. Bankr. L. J. 1, 12-20 (1996); Barry E. Adler, *Creditor Rights After Johnson and Dewsnup*, 10 Bankr. Dev. J. 1, 10-12 (1993); Mary Josephine Newborn, *Undersecured Creditors in Bankruptcy: Dewsnup, Nobelman, and the Decline of Priority*, 25 Ariz. St. L.J. 547 (1993); Margaret Howard, *Dewsnupping the Bankruptcy Code*, 1 J. Bankr. L. & Prac. 513, 530 (1992) ("the Court adopted reasoning that no bankruptcy court or scholar has ever advanced in the strip down context and concluded that 'allowed secured claim' does not carry its section 506(a) meaning throughout the Code.").

Other bankruptcy courts have also panned the opinion. *See, e.g.*, *Cunningham v. Homecomings Fin. Network* (*In re Cunningham*), 246 B.R. 241, 245-246 (Bankr. D. Md. 2000); *Dever v. IRS* (*In re Dever*), 164 B.R. 132, 138 (Bankr. C.D. Cal. 1994) ("The basic premises of the *Dewsnup* opinion are faulty."). Circuit courts have also joined the chorus. *See, e.g.*, *Woolsey*, 696

F.3d at 1274 ("Right or wrong, the Dewsnuppian departure from the statute's plain language is the law. It may have warped the bankruptcy code's seemingly straight path into a crooked one. It may not be infallible. But until and unless the Court chooses to revisit it, it *is* final."), *see also In re Coltex Loop Central Three Partners, L.P.*, 138 F.3d 39, 43 (2d Cir. 1998) ("The *Dewsnup* approach is not viable here.").

Indeed, this Court has not defended *Dewsnup*. *See, supra*, *Bank of America Nat'l Trust v. 203 N. Lasalle St. P'ship*, 526 U.S. 434, 461-463 (1999) (Thomas, J., concurring); *see also Caulkett*, 135 S. Ct. 1999,

> And given that these identical words are later used in the same section of the same Act—§ 506(d)—one would think this "presents a classic case for application of the normal rule of statutory construction that identical words used in different parts of the same act are intended to have the same meaning." Under that straightforward reading of the statute, the debtors would be able to void the Bank's claims. Unfortunately for the debtors, this Court has already adopted a construction of the term "secured claim" in § 506(d) that forecloses this textual analysis.

No court has agreed that *Dewsnup* was decided properly. In fact, the Tenth Circuit in *Woolsey* pointed out that because of *Dewsnup*, Section 506(d) has essentially been written out of the Bankruptcy Code despite being appliable in all bankruptcy cases through Section 103(a). *Woolsey*, at 1278 ("Given all

this, it's perhaps no surprise that of all the circuit courts approving of lien stripping in reorganization cases, not a single one has taken up the [debtors'] invitation to do so using § 506(d). Instead, they have relied exclusively on other statutory provisions particular to those chapters.").

The faulty reasoning of *Dewsnup* has also been uniformly disavowed by the circuit courts in cases under Chapters 11, 12 and 13. *See, e.g.*, *In re Heritage Highgate, Inc.*, 679 F.3d 132, 144 (3d Cir. 2012) ("We therefore agree with the majority of courts that *Dewsnup*'s holding should not be imported into Chapter 11 cases."); *see also Okla. ex rel. Comm'rs of the Land Office v. Crook* (*In re Crook*), 966 F.2d 539, 539 n.1 (10th Cir. 1992) (*Dewsnup* does not apply in Chapter 12); *Haberman v. St. John Nat'l Bank* (*In re Haberman*), 516 F.3d 1207, 1213 (10th Cir. 2008) (*Dewsnup* does not apply in Chapter 13). As was so succinctly stated by the Court in *Woolsey*, "So it is that *Dewsnup* has lost every away game it has played: its definition of 'secured claim' has been rejected time after time elsewhere in the code and seems to hold sway only in § 506(d)." *Woolsey* at 1276. *See also* Howard, *Dewsnupping the Bankruptcy Code* at 522 ("The only way to avoid wreaking havoc on these reorganization provisions is to assume that *Dewsnup* does not exist."). Unfortunately, *Dewsnup* does exist at the present time. It must, however, be overruled to create uniformity in the definition of "allowed secured claim"—a uniformity demanded by the Constitution itself. *See* Article I, § 8, cl. 4 (Congress shall have the

power to establish "uniform Laws on the subject of Bankruptcies throughout the United States.").

II. *Dewsnup*'s Erroneous *Dicta* Has Led To More Bad Law

The *dictum*, "liens pass through bankruptcy unaffected," has infected other circuit courts. While certain circuits have recognized this mantra as being a falsehood, others have taken it to further eviscerate Section 506(d).

Many circuit courts have found that liens do not uniformly pass through bankruptcy unaffected. As pointed out by Judge Posner in *In re Penrod*, 50 F.3d 459 (7th Cir. 1995), liens do pass through bankruptcy unaffected "unless they are brought into the bankruptcy proceeding and dealt with there." *Id*. at 463. *See also Woolsey* at 1274 ("Chapter 7 indubitably permits liens to be removed in many situations."), *Harmon v. U.S. Through Farmers Home Admin.*, 101 F.3d 574, 581 (8th Cir. 1996) ("it is not even accurate to say that liens pass through Chapter 7 unaffected."). Despite the fact that the Bankruptcy Code offers numerous ways to avoid a lien, certain circuit courts have used the "old saw" to ignore applying the actual holding in *Dewsnup* and to prevent any use of Section 506(d) by a debtor.

a. The holding in *Dewsnup* was that if a claim was allowed, then any lien associated with that claim was also allowed and could not be voided under Section 506(d). Section 506(d)(1) additionally states, if a claim

is disallowed under either Section 502(b)(5) or 502(e), then the lien supporting that claim also cannot be voided. Under *Dewsnup* and Section 506(d), this would mean that if a claim is disallowed for any other reason (other than those listed under Sections 506(d)(1) and (d)(2)), then the lien supporting that disallowed claim would then be void. However, the erroneous *dictum* set forth in *Dewsnup*, "liens pass through bankruptcy unaffected," *Dewsnup*, at 417, has been relied upon by certain circuit courts to expand the types of the liens that are not voided under Section 506(d), even though the underlying claim is disallowed.

Claims that are disallowed under Section 502(b)(9) (not timely filed), while not appearing in the exception to avoidance under Section 506(d)(1) or 506(d)(2), do not have their corresponding lien voided as a result of *Dewsnup*. According to the Fourth Circuit, *In re Hamlett*, 322 F.3d 342, 347 (4th Cir. 2003), and the Eight Circuit, *Shelton v. CitiMortgage, Inc*. (*In re Shelton*), 735 F.3d 747, 748-749 (8th Cir. 2013), the plain language of Section 506(d) allows for the avoidance of a lien on a claim disallowed under Section 502(b)(9). However, both courts ignored the holding of *Dewsnup* (if a claim is disallowed, then the corresponding lien is now void under Section 506(d)), and the text of Section 506(d), and instead relied upon the *dictum* of *Dewsnup*, "liens pass through bankruptcy unaffected," and prevented lien avoidance. *Hamlett*, 322 F.3d at 350, *Shelton*, 735 F.3d at 748-749. However, if either court had followed *Dewsnup*—if a claim is disallowed, then its lien is void—the opposite result would have occurred in both cases.

As noted by the bankruptcy court below, the holding in *Dewsnup* was ignored by the circuit courts, "Interestingly, neither [*Shelton* or *Hamlett*] discussed *Dewsnup*'s core holding—the two step analysis, which depends on an allowed claim to survive avoidance." Pet. App. 16a. This reliance upon *dicta*, and not the actual holding of *Dewsnup*, or the plain text of Section 506(d), is cause for concern and emphasizes the perniciousness of *Dewsnup*.

b. Circuit courts have additionally used *Dewsnup*'s "liens pass through bankruptcy unaffected" in order to hold that a debtor has no standing to bring a Section 506(d) action, *see In re Talbert*, 344 F.3d 555, 561 (6th Cir. 2003) ("Section 506 was intended to facilitate valuation and disposition of property in the reorganization chapters of the Code, not to confer an additional avoiding power on a Chapter 7 debtor."); *see also Ryan v. Homecomings Financial Network*, 253 F.3d 778, 783 (4th Cir. 2001); *In re Lashkin*, 222 B.R. 872, 876 (B.A.P. 9th Cir. 1998).

These findings of a lack of standing were despite pre-*Dewsnup* cases to the contrary, *see, e.g.*, *Gaglia*, *supra*; *In re Kostecky*, 111 B.R. 823 (Bankr. Minn. 1990); *In re Haughland*, 83 B.R. 648 (Bankr. Minn. 1988). Prior to *Dewsnup*, the Third Circuit in *Gaglia* specifically recognized, "The majority of bankruptcy and district courts that have considered this issue agree that the language of Sec. 506 allows a Chapter 7 debtor to void liens secured by property that is not administered." *Gaglia*, 889 F.2d at 1306. In just a single paragraph, the Court in *Gaglia* dismissed the

erroneous argument by the Small Business Administration that a debtor could not be the party to use Section 506(d). *Id*. at 1309.

Moreover, the Bankruptcy Code itself shows why a debtor has standing to use Section 506(d). Looking to Section 522(c)(2)(A)(ii), property exempted by the debtor is not subject to liens voided under Section 506(d). 11 U.S.C. § 522(c)(2)(A)(ii). Only the debtor is entitled to property claimed as exempt, *see* Section 522(b)(1) (property that is exempt is not property of the estate), *see also* Section 522(c) ("property exempted . . . is not liable during or after the case for any debt of the debtor that arose . . . before the commencement of the case."), *see also* Section 704(a)(1) (Chapter 7 trustee only administers property of the estate). Common sense tells us that if exempt property is not subject to liens voided under Section 506(d), and only the debtor is entitled to the exempt property, then who else but the debtor would be using 506(d) to void a lien in such a circumstance?

c. *Dewsnup* was one of the foundational authorities used by two different circuit courts in holdings that were later overturned. In *Richlin Sec. Service Co. v. Chertoff*, 472 F.3d 1370 (Fed. Cir. 2006), *reh'g denied*, 482 F.3d 1358 (Fed. Cir. 2007), *rev'd*, 553 U.S. 571 (2008), the Federal Circuit Court of Appeals used *Dewsnup* to interpret two statutes with near identical language differently. According to the Circuit Court in *Richlin*, "The Supreme Court has held that even identical language in the same statute may be interpreted differently. *See SKF USA Inc. v. United*

States, 263 F.3d 1369, 1383 (Fed. Cir. 2001) ('there have been rare occasions when the Supreme Court itself has construed the same term differently in different sections of the same statute') (citing *Dewsnup v. Timm*, 502 U.S. 410, 417, 112 S. Ct. 773, 116 L.Ed.2d 903 (1992))." *Id*. at 1378, n.8.

The *Dewsnup* approach taken by the Court in *Richlin* was not embraced by this Court. *See Richlin* 553 U.S. at 577 ("We find the Government's fractured interpretation of the statute unpersuasive.").

The Fourth Circuit has also erroneously relied upon *Dewsnup* in a case that was later overturned. In *Witt v. United Companies Lending Corp.* (*In re Witt*), 113 F.3d 508 (4th Cir. 1997), *Dewsnup* was one of the authorities used by the Court to prevent a debtor from cramming down a second mortgage on their residence. *See Witt*, at 513. Twenty-two years later, the Fourth Circuit sitting *en banc* reversed the erroneous holding of *Witt*. *Hurlburt v. Black* (*In re Hurlburt*), 925 F.3d 154, 156 (4th Cir. 2019) (*en banc*) ("we now align our circuit with every other court that has considered this issue.").

d. *Dewsnup* has also led to confusion for courts handling "Chapter 20" bankruptcies (where a debtor files a case under Chapter 13 within four years after filing under Chapter 7), *see, e.g*., 8 Collier on Bankruptcy ¶ 1328.06[1] (16th ed. 2018). In a Chapter 13 case filed after a Chapter 7 discharge, the debtor receives the benefits of Chapter 13 (the automatic stay and curing of defaults, for example) during the

pendency of the case. But because the Code prohibits a Chapter 13 discharge in the Chapter 20 context[3], the case is simply closed without a discharge when the Chapter 13 plan is completed. This lack of a discharge has led to confusion. "Bankruptcy courts are split on whether a debtor may strip off liens in a Chapter 20 case." *In re Davis*, 716 F.3d 331, 336 (4th Cir. 2013) (collecting cases). *See also In re Dolinak*, 497 B.R. 15, 20-23 (Bankr. D. N.H. 2013).

Bankruptcy courts have resolved the problem in different ways: (1) refusing to strip the lien following *Dewsnup*'s holding; (2) following a middle ground by stripping the lien while the Chapter 13 plan is pending and then reinstating the lien after the plan has been completed and the Chapter 20 bankruptcy is closed; (3) stripping the lien off because nothing in the Code explicitly prohibits it. *Id*. It also appears that a "fourth option" has attempted to be developed where the portion of the lien that is avoided becomes an unsecured claim in the Chapter 13, even though any and all *in personam* liability was discharged in the prior Chapter 7. *See In re Washington*, 587 B.R. 349, 355 (Bankr. C.D. Cal. 2018), *rev'd*, *In re Washington*, 602 B.R. 710 (9th Cir. B.A.P. 2019).

If Section 506(d) were interpreted as written, there would be no confusion in how to handle an undersecured lien (a claim that is not an "allowed secured claim") in a Chapter 20 case—that lien would be voided in the Chapter 7 pursuant to Section 506(d), and due to the prior Chapter 7 discharge, there would be no

[3] *See* 11 U.S.C. § 1328(f)(1).

resulting general unsecured (*in personam*) claim in the current Chapter 13 case.

The spreading of the travesty that is *Dewsnup* to other cases not addressed by the facts, holding, or *dicta* in *Dewsnup* shows why the high burden that is *stare decisis* has been overcome and why *Dewsnup* must be overruled. *See, e.g.*, *Monell v. Department of Soc. Svcs.*, 436 U.S. 658, 695 (1978) ("Although we have stated that *stare decisis* has more force in statutory analysis than in constitutional adjudication because, in the former situation, Congress can correct our mistakes through legislation, [] we have never applied *stare decisis* mechanically to prohibit overruling our earlier decisions determining the meaning of statutes.") (citations omitted).

III. This Case Is The Proper Vehicle To Overturn *Dewsnup*

As pointed out by the bankruptcy court below (Pet. App. 20a), this Court passed on an invitation to overturn *Dewsnup* in 2019 with a petition for *certiorari* in *Ritter v. Brady*, 139 S. Ct. 1186 (Mem.) (2019). However, *Ritter* was not an appropriate vehicle for challenging *Dewsnup*. The debtor Sonja Ritter, *pro se*, moved the bankruptcy court under Section 350(b)[4] to reopen her Chapter 7 case to strip off a wholly unsecured mortgage lien against her residence. *See Ritter v. Brady* (*In re Ritter*), Case No. 17-1001 (B.A.P.

[4] 11 U.S.C. § 350(b) states, "A case may be reopened in the court in which such case closed to administer assets, to accord relief to the debtor, or for other cause."

9th Cir., July 13, 2018). The bankruptcy court denied her motion as doing so would have been futile because *Bank of America v. Caulkett* precluded such relief. *Id*. Ms. Ritter, again *pro se*, appealed the bankruptcy court. *Id*. Utilizing an abuse of discretion standard, the Ninth Circuit Bankruptcy Appellate Panel affirmed the bankruptcy court, *Id*. *Pro se*, Ms. Ritter appealed to the Ninth Circuit and in an unpublished opinion, the B.A.P. was affirmed. *In re Ritter*, 730 Fed. App'x 529 (Mem.) (9th Cir. 2018).

At no time did Ms. Ritter argue to any court, prior to her petition for *certiorari*, that *Dewsnup* should be overturned. It does not even appear from the record that Ms. Ritter would have sought relief under Section 506(d) if her case were reopened. The lien creditor was never a party to any proceeding; rather, the Chapter 7 trustee (Brady) was named as the opposing party by default. No brief was ever filed by any party, other than Ms. Ritter, with the B.A.P., the Ninth Circuit, or this Court.

The case, *sub judice*, stands in stark contrast to *Ritter*. Here, the Vasquezes, while their Chapter 7 is open, filed an adversary proceeding directly against the lien creditor whose lien they are seeking to void under Section 506(d). The lien creditor is an active participant in these proceedings and the facts of this case are not in dispute. From the start of their adversary proceeding, in their prayer for relief, the Vasquezes have sought to overturn *Dewsnup*. [ROA. 103]. This case is the ideal vehicle to reexamine *Dewsnup*.

CONCLUSION

The Court should grant the petition for a writ of certiorari.

Respectfully submitted,

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