No. 21-___

IN THE

Supreme Court of the United States

DUSTIN JADE WELLS,

Petitioner,

v.

KATHLEEN A. MCCALLISTER,

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

This Court has long held that "the date when [a bankruptcy] petition is filed" is the "point of time" at which "the status and rights of the bankrupt . . . are fixed." *White v. Stump*, 266 U.S. 310, 313 (1924).

The question presented is whether a homestead exemption to which a debtor is entitled on the date he files for bankruptcy can vanish if the debtor sells his homestead during the pendency of bankruptcy proceedings and does not reinvest the proceeds in another homestead.

PARTIES TO THE PROCEEDING AND RULE 29.6 DISCLOSURE STATEMENT

Petitioner is Dustin Jade Wells.

Respondent is Kathleen A. McCallister.

There are no publicly held corporations involved in this proceeding.

RELATED PROCEEDINGS

In re Wells, No. 19-40478-JMM, U.S. Bankruptcy Court for the District of Idaho. Order entered Feb. 5, 2020.

In re Wells, No. 20-cv-00086-BLW, U.S. District Court for the District of Idaho. Judgment entered Oct. 14, 2020.

In re Wells, No. 20-35984, U.S. Court of Appeals for the Ninth Circuit. Judgment entered Dec. 3, 2021; order denying petition for rehearing en banc entered Feb. 11, 2022.

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INTRODUCTION

Every bankruptcy proceeding begins with the filing of a bankruptcy petition. That filing—*i.e.*, "[t]he commencement of a case"—"creates" the bankruptcy estate. 11 U.S.C. § 541(a). The bankruptcy estate generally includes all of the debtor's property "as of the commencement of the case." *Id.* § 541(a)(1). But some kinds of property can be carved out—or, in bankruptcy parlance, "exempt[ed]"—from the estate and thus protected from pre-petition creditors. *See Law v. Siegel*, 571 U.S. 415, 417–18 (2014) (quoting 11 U.S.C. § 522(c), (k)). The Bankruptcy Code identifies several default categories of property that a debtor may exempt; it also allows States to enact their own exemptions. 11 U.S.C. § 522(b)(2), (b)(3)(A), (d).

This case is about the homestead exemption. "[N]early every State provides some type of homestead exemption," which protects (often up to a specified dollar amount) a homeowner's equity in his primary residence. *Law*, 571 U.S. at 418; *see, e.g.*, 11 U.S.C. § 522(d)(1); Idaho Code § 55-1008. Many States also exempt the proceeds of a homestead sale, so long as those proceeds are reinvested in another homestead within a certain time period. *See, e.g.*, Idaho Code § 55-1008(1); *infra* at 7–8 & n.2 (collecting other States' laws).

In some cases, the application of these exemptions is simple enough: A debtor who retains his homestead throughout bankruptcy proceedings benefits from the homestead exemption. And a debtor who sells his homestead just before filing for bankruptcy but quickly reinvests the proceeds in a new one benefits from the proceeds exemption. But a recurring fact

pattern has divided the federal courts. The difficulty is this: Where a debtor is entitled to a homestead exemption when he files for bankruptcy, but then sells his homestead during the pendency of bankruptcy proceedings and does not reinvest the proceeds within the statutory window, do those proceeds remain exempt?

The Ninth Circuit says no, the First Circuit says yes, and the Fifth Circuit says sometimes. In *In re Jacobson*, 676 F.3d 1193 (9th Cir. 2012), the Ninth Circuit adopted the "vanishing exemption" rule, whereby a debtor who is entitled to claim a homestead exemption at the time of his filing nevertheless "forfeit[s] the exemption" if he sells the homestead and fails to reinvest the proceeds during the pendency of bankruptcy proceedings. *Id.* at 1199. The Ninth Circuit applied that rule in the decision below. *See* Pet.App.3a–4a ("[T]he rule that we announced in *In re Jacobson* remains good law" and "control[s]" in this case.). The First Circuit, however, has expressly rejected *Jacobson* as "unpersuasive." *In re Rockwell*, 968 F.3d 12, 23 (1st Cir. 2020). In that court's view, the text and purpose of the Bankruptcy Code, together with this Court's precedents, compel the conclusion that a "homestead exemption taken on the day [the debtor] filed for bankruptcy must be viewed as unchanging, even in the face of his later sale of the property." *Id.* at 20. And the Fifth Circuit has split the baby, applying the "vanishing exemption" rule in Chapter 13 cases, *see In re Frost*, 744 F.3d 384 (5th Cir. 2014), but rejecting it in Chapter 7 cases, *see In re DeBerry*, 884 F.3d 526 (5th Cir. 2018).

This issue is profoundly important. Each year, thousands of homeowners face difficult decisions

about whether to sell their homes during the pendency of their bankruptcies and what to do with the proceeds. For some, purchasing a new home while a bankruptcy is pending may prove practically impossible. For others, those proceeds may have a higher and better use—be it a settlement with a creditor, an unplanned medical expense, or a more cost-effective vehicle or housing solution. In the First Circuit, debtors can make "healthy financial choices moving forward, knowing what property is out of the reach of the pre-petition creditors." *In re Rockwell*, 968 F.3d at 20. But in the Ninth, debtors must hold on to their homesteads until proceedings conclude—or else risk losing their exemption altogether. In the Fifth, debtors must choose between the benefits of proceeding under Chapter 13 and the drawbacks of the "vanishing exemption" rule. And in jurisdictions that have yet to adopt a definitive rule, uncertainty abounds.

There is no good reason for debtors to confront these difficult choices, because the "vanishing exemption" rule is wrong. The text of the Bankruptcy Code makes clear that "the commencement of the case" is the moment at which an exemption is adjudged. 11 U.S.C. § 541(a)(1); *see id.* § 522(c) (with limited exceptions, exempt property "is not liable" for any debt that arose "before the commencement of the case"). Moreover, the "vanishing exemption" rule undermines "[t]he principal purpose of the Bankruptcy Code," which is to provide debtors a path to a "fresh start." *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007) (quotation marks omitted). It also yields "peculiar" results, including that debtors in jurisdictions that protect homestead sale proceeds

are worse off than those in jurisdictions that do not. *See* Pet.App.7a.

In the decision below, the Ninth Circuit acknowledged most of this. The panel recognized that *Jacobson*'s "vanishing exemption" rule is an "outlier." *Id.* at 6a (quoting *In re Anderson*, 988 F.3d 1210, 1214 n.4 (9th Cir. 2021) (per curiam)). It identified contrary rulings by the First and Fifth Circuits. *Id.* ("The First Circuit recently rejected our rule."); *id.* at 7a ("[T]he Fifth Circuit's reasoning appears to contradict our rule in *In re Jacobson*."). It acknowledged that the *Jacobson* rule has "been criticized, questioned, and rejected by many"—including a number of "bankruptcy judges" and "[a] prominent bankruptcy practice guide." *Id.* at 5a–6a. And it found "no justification in federal law, state law, or logic" for the rule's "peculiar" results. *Id.* at 7a. Nevertheless, the Ninth Circuit considered itself bound by *Jacobson* and refused to reconsider the "vanishing exemption" rule en banc. Only this Court, accordingly, can resolve this entrenched circuit split. The Court should grant the petition for a writ of certiorari.

OPINIONS BELOW

The Ninth Circuit's opinion is not reported but is available at 2021 WL 5755086 and reproduced in Appendix A. The district court's opinion is reported at 494 F. Supp. 3d 804 and reproduced in Appendix B. The bankruptcy court's February 5, 2020, order and January 15, 2020, oral ruling are not reported but are reproduced in Appendices C and D, respectively.

JURISDICTION

The Ninth Circuit entered judgment on December 3, 2021, App.A, and denied Wells' timely petition for rehearing on February 11, 2022, App.E. This petition was timely filed within 90 days of the order denying rehearing. S.Ct. R. 13.3. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant parts of 11 U.S.C. §§ 522, 541, and Idaho Code §§ 55-1003, 55-1008 (2019) are reproduced at App.F.

STATEMENT

1. "The principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the 'honest but unfortunate debtor.'" *Marrama*, 549 U.S. at 367 (quotation marks omitted). Consistent with that purpose, the Code sets forth various mechanisms by which individuals who have become overwhelmed by debt "can reorder their affairs, make peace with their creditors, and enjoy 'a new opportunity in life.'" *Grogan v. Garner*, 498 U.S. 279, 286 (1991) (quoting *Loc. Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934)). Under Chapter 7, for example, a debtor may "forfeit" virtually all of his property, obtain a bankruptcy discharge, and then begin anew. *Harris v. Viegelahn*, 575 U.S. 510, 514 (2015). Or under Chapter 13, a debtor may retain his property but undertake to "repay his debts" (usually from his future earnings) pursuant to a court-confirmed plan. *Id.*

All roads, however, begin with the filing of a bankruptcy petition. *See* 11 U.S.C. §§ 301, 302, 303. Once a petition is filed, the bankruptcy estate—*i.e.*, the pool of funds from which "creditors may be paid"—

is deemed created. *Harris*, 575 U.S. at 514; 11 U.S.C. § 541(a). The estate generally includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). But certain kinds of property may be exempted from the estate. *Id.* § 522(b)(1). The Bankruptcy Code includes a default list of exemptions, but States may opt out in favor of their own list. *See id.* § 522(b)(2), (b)(3)(A), (d); *see also Owen v. Owen*, 500 U.S. 305, 308 (1991). These exemptions apply in Chapter 7 and Chapter 13 cases alike. *See, e.g.*, *In re Gamble*, 168 F.3d 442, 445 (11th Cir. 1999) ("[C]hapter 13 uses the same exemptions under section 522 as chapter 7."). "Except in particular situations specified in the Code, exempt property 'is not liable' for the payment of 'any [prepetition] debt' or 'any administrative expense.'" *Law*, 571 U.S. at 417–18 (quoting 11 U.S.C. § 522(c), (k)).

This case is about the "homestead exemption," which "protects" a portion of the "equity in the debtor's residence," *id.* at 418, so that he retains "an asset . . . to aid in [his] postbankruptcy rehabilitation." Ryan P. Rivera, *State Homestead Exemptions and Their Effect on Federal Bankruptcy Laws*, 39 REAL PROP. PROB. & TR. J. 71, 73 (2004). The Bankruptcy Code's default list of exemptions includes a homestead exemption that protects up to $27,900 of a debtor's home equity. 11 U.S.C. § 522(d)(1) & n.1. And "nearly every" opt-out State "provides . . . [a] homestead exemption" in some form or another. *Law*, 571 U.S. at 418 (citing Victor D. López, *State Homestead Exemptions and Bankruptcy Law: Is It Time for Congress To Close the Loophole?*, 7 RUTGERS BUS. L.J. 143, 149–65 (2010) (listing state exemptions)).

Idaho is one such opt-out State. *See* Idaho Code §§ 11-609, 55-1008. Its homestead exemption—which applies in bankruptcy and non-bankruptcy proceedings alike—protects the homestead "from attachment and from execution or forced sale for the debts of the owner." *Id.* § 55-1008(1). During the period of time relevant here, Idaho's "homestead exemption amount" was $100,000. *See id.* § 55-1003 (2019).[1] Idaho law also exempts up to the same dollar amount "[t]he proceeds of the voluntary sale of the homestead in good faith for the purpose of acquiring a new homestead" within one year of the sale. *Id.* § 55-1008(1) (2019).

With respect to sale proceeds, Idaho's homestead exemption is "materially indistinguishable" from many others. Pet.App.3a (discussing Cal. Civ. Proc. Code § 704.270). California, for example, provides that, "exempt proceeds from the sale . . . of a homestead" remain exempt when they "are used toward the acquisition of a dwelling within [a] six-month period" following the sale. Cal. Civ. Proc. Code §§ 704.710(c), 704.270(b). Similarly, Texas provides that the "proceeds of a sale of a homestead are not subject to seizure for a creditor's claim for six months after the date of sale" so that they may be reinvested in another homestead. *See In re DeBerry*, 884 F.3d at 528 (quoting Tex. Prop. Code § 41.001(a), (c)). Maine's

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[1] Idaho recently expanded its exemption to cover up to $175,000 in homestead equity. Pet.App.2a n.1 (citing Idaho Code § 55-1003 (2021)). But that change has no bearing on this case, both because courts must apply "State or local law that is applicable on the date of the filing of the petition," 11 U.S.C. § 522(b)(3)(A), and because the amount in dispute is less than $100,000. Pet.App.2a n.1.

homestead exemption works the same way. *See* Me. Rev. Stat. § 4422(1)(A), (C) (providing that the "portion of the proceeds from any sale of property that is exempt under this section . . . for a period of 12 months from the date of receipt of such proceeds for purposes of reinvesting in a residence within that period"). And the list goes on.[2]

2. Seeking the "fresh start" the Bankruptcy Code promises, Petitioner Dustin Jade Wells filed a Chapter 13 bankruptcy petition on May 17, 2019. CA Dkt. 12 at 78. In an amended filing, he valued his home in Jerome, Idaho, at $668,000 and claimed the homestead exemption up to the "statutory limit" under Idaho law. Pet.App.78a. The trustee, Respondent Kathleen A. McCallister, did not object to that exemption. *Id.* at 11a, 21a. As a result, the equity in Wells' homestead (up to the statutory limit) was excluded from the bankruptcy estate.

Wells later entered into a settlement agreement with Box Canyon Dairy—a creditor that held 98% of

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[2] *See, e.g.*, Colo. Rev. Stat. § 38-41-207 (three-year window); Wis. Stat. § 815.20(1) (two-year window); Mont. Code Ann. § 70-32-213 (18-month window); Ariz. Rev. Stat. § 33-1101(C) (same); 735 Ill. Comp. Stat. 5/12-906 (one-year window); Mass. Gen. Laws ch. 188, § 11(a)(1) (same); N.Y. C.P.L.R. § 5206(e) (same); Or. Rev. Stat. § 18.395(2) (same); Wash. Rev. Code § 6.13.070(3) (same); Haw. Rev. Stat. § 651-96 (six-month window); Nev. Rev. Stat. § 115.055(b) (180-day window); *JBK Assocs., Inc. v. Sill Bros., Inc.*, 191 So. 3d 879, 881 (Fla. 2016) (reinvestment "within a reasonable period of time"); *Bowles v. Goss*, 309 P.3d 150, 156–57 (Okla. Ct. App. 2013) (reinvestment "within a reasonable time").

the allowed unsecured claims against his estate.[3] *Id.* at 59a. The agreement provided that Wells would sell his home and use the exempt proceeds—after disbursements to his mortgage creditors—to pay Box Canyon Dairy directly. *Id.* So Wells sought the bankruptcy court's authorization to do exactly that. *Id.*

Respondent objected to the sale. She argued that Idaho law requires that proceeds from Wells' homestead sale "be reinvested into homestead property to retain exempt status." CA Dkt. 12 at 82 (capitalization altered). Because "it [was] clear" that those proceeds would go to Box Canyon Dairy rather than be reinvested in a new homestead, Respondent reasoned, those proceeds "lose their exempted status" and revert to the estate. *Id.* at 83–84.

Over Respondent's objection, the bankruptcy court authorized the sale but reserved the question of how any proceeds should be disbursed "for a later hearing." Pet.App.25a. After the home was sold and Wells' mortgage creditors, property taxes, and irrigation liens had been paid, the remaining proceeds amounted to $15,751.61. *Id.* at 24a, 26a.

3. a. In an oral ruling on January 15, 2020 and a subsequent order on February 5, 2020, the bankruptcy court directed those proceeds to be disbursed to Wells and "paid in accordance with the settlement stipulation with Box Canyon." *Id.* at 26a. In so doing, the bankruptcy court confirmed that the

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[3] An "allowed unsecured claim" generally refers to a creditor's "claim [that] has been allowed [by the Bankruptcy Court], and . . . is not secured by a lien on property of the estate." *In re Hopson*, 324 B.R. 284, 288–89 (Bankr. S.D. Tex. 2005).

homestead exemption undisputedly applied to Wells' property "on the day the bankruptcy petition was filed." *Id.* at 55a. And the bankruptcy court rejected Respondent's theory that "this valid exemption somehow comes back into the estate because of what's occurred post-petition." *Id.* at 58a. "[O]nce the exemption is claimed and not validly disputed," the bankruptcy court held, the "homestead is [not] property of the estate." *Id.*

The court emphasized, moreover, that Wells was "not attempting to simply burn this property on the street or go to Jackpot[, Nevada,] and gamble it." *Id.* at 59a. Instead, he wanted to use the proceeds "to facilitate his attempt to reach a resolution with" his largest creditor. *Id.*; *see also id.* at 60a ("[T]he debtor is not trying to protect that money from creditors, rather he's trying to use it to pay a creditor."). The court recognized that such a resolution might, in turn, "facilitate" the establishment of "a 60 month [Chapter 13 reorganization] plan" and successful completion of the bankruptcy proceedings. *Id.* at 59a.

b. The district court reversed. In its view, two Ninth Circuit cases—*In re Jacobson*, 676 F.3d 1193 (9th Cir. 2012), and *In re Golden*, 789 F.2d 698 (9th Cir. 1986)—"ultimately control[led]." Pet.App.15a. Under those decisions, the district court stated, "if [a] debtor[] exempt[s] a homestead under a state statute, [he] must comply with the entire statute; [he] cannot choose favorable provisions and discard unfavorable ones." *Id.* Thus, where state law provides that the right to proceeds from a homestead sale is "contingent on [a debtor's] reinvesting the proceeds in a new homestead," the debtor "forfeit[s] the exemption" if he

fails to reinvest the proceeds. *Id.* at 17a–18a (quoting *In re Jacobson*, 676 F.3d at 1199).

Indeed, the district court found this case indistinguishable from *Jacobson*, which also addressed "a post-petition sale of a homestead." *Id.* at 17a. Like the debtor in *Jacobson*, Wells "claimed a state homestead exemption and then later, post-petition, sold the home" and "did not reinvest the proceeds." *Id.* So like the debtor in *Jacobson*, the court reasoned, "Wells is foreclosed from arguing that the proceeds from his homestead sale were exempt." *Id.* at 19a. "The only notable difference" between the two cases, the court observed, "is that Wells is a chapter 13 debtor whereas the Jacobsons filed a chapter 7 petition." *Id.* at 18a. "But that distinction does not help Wells," the court concluded, as the case for allowing debtors to retain post-petition sale proceeds is, if anything, "potentially" weaker in Chapter 13 cases than in Chapter 7 ones. *See id.* So "under *Jacobson* and *Golden*, Wells is foreclosed from arguing that the proceeds from his homestead sale were exempt." *Id.* at 19a.

Although the district court adhered to those precedents, it did not endorse them. To the contrary, the district court recognized that *Golden* and *Jacobson* have been roundly criticized by academics and jurists alike. *Id.* at 22a (citing authorities). "[D]espite these criticisms," however, those cases have never been overruled. *Id.* So the court believed itself "bound to follow them." *Id.*

c. The Ninth Circuit affirmed on the same ground—*i.e.*, that its prior decisions in *Golden* and *Jacobson* "control[led]." *Id.* at 3a. Under *Golden* and

Jacobson, the court reasoned, a "debtor must comply with the State's time limit for reinvesting the sales proceeds in a new homestead" "in order to retain the homestead exemption." *Id.* And "[a]lthough those cases arose in California, California's homestead exemption is materially indistinguishable from Idaho's homestead exemption." *Id.*

The court then applied the rule from *Golden* and *Jacobson* to Wells' case. "Throughout [Wells'] bankruptcy," it reasoned, "'the estate held a contingent, reversionary interest' in any eventual proceeds resulting from a sale of the homestead." *Id.* (quoting *In re Smith*, 342 B.R. 801, 808 (B.A.P. 9th Cir. 2006)). "When [Wells] sold the homestead and failed to reinvest the proceeds within the period allowed by statute, 'the proceeds, stripped of their exempt status, transformed into *nonexempt* property . . . by operation of law.'" *Id.* at 3a–4a (quoting *In re Smith*, 342 B.R. at 808). So those proceeds should have gone into the bankruptcy estate, rather than to Wells.

In reaching that result, the Ninth Circuit addressed Wells' argument that *Golden* and *Jacobson* are no longer good law in light of this Court's recent decisions in *Harris v. Viegelahn*, 575 U.S. 510 (2015), and *Law v. Siegel*, 571 U.S. 415 (2014). Pet.App.4a. *Harris*, the court said, had emphasized "the general 'fresh start' principle of bankruptcy law." *Id.* But that case hinged on "particular statutory provisions" inapplicable to this one. *Id.* In any event, *Jacobson* had addressed the "fresh start" principle, too. *Id.* *Jacobson*'s holding, the court continued, was not "clearly irreconcilable" with *Law*, either. *Id.* at 5a. To the contrary, *Jacobson*'s application of "a state-

created exemption" was consistent with *Law*'s recognition "that States could create their own regimes of exemptions and exceptions." *Id.*

Notwithstanding its conclusion that *Jacobson* remains good law, the Ninth Circuit expressed extraordinary doubt about whether *Jacobson* had been correctly decided. That ruling, the panel observed, has "been criticized, questioned, and rejected by many." *Id.* In particular, several bankruptcy judges have disagreed with *Jacobson*'s "vanishing exemption" rule. *See id.* at 5a–6a (citing *In re Konnoff*, 356 B.R. 201, 208 (B.A.P. 9th Cir. 2006) (Pappas, Bankr. J., concurring); *In re Smith*, 342 B.R. at 809 (Klein, Bankr. J., concurring); Hon. Alan M. Ahart, In re Jacobson*: The Ninth Circuit Court of Appeals Erred By Holding the Debtor Liable for Her Exempt Homestead Sale Proceeds*, 32 Cal. Bankr. J. 409 (2013) ("*The Ninth Circuit Court of Appeals Erred*")). And prominent bankruptcy treatises have taken the same dim view. *See id.* at 6a (citing 3 Norton Bankr. L. & Prac. 3d § 56:9 n.6 (Oct. 2021); 13 Collier on Bankruptcy ch. 02.[5] (Richard Levin & Henry J. Sommer eds., 16th ed. 2021)).

Other Courts of Appeals, the Ninth Circuit further acknowledged, have agreed with that critical consensus and rejected *Jacobson*'s approach. The First Circuit "recently rejected our rule, expressly disagreeing with [*Jacobson*] and labeling it 'unpersuasive.'" *Id.* (quoting *In re Rockwell*, 968 F.3d at 23). And the Fifth Circuit's "reasoning appears to contradict" *Jacobson*, too. *Id.* at 6a–7a (citing *In re Frost*, 744 F.3d 384). Indeed, as another Ninth Circuit panel recently recognized, "*Jacobson* appears to be an outlier in holding that post-petition events may

impact a debtor's right to an exemption." *In re Anderson*, 988 F.3d at 1214 n.4.

The panel observed, moreover, that applying *Jacobson* "in a case like this one leads to arguably peculiar results." Pet.App.7a. Consider a debtor who claims a homestead exemption under federal law or in a state that provides "no exemption whatsoever in sales proceeds." *Id.* That debtor, the court recognized, "may claim the full homestead exemption and, once the period for objecting to exemptions expires, the debtor may sell the homestead and retain all proceeds." *Id.* Now consider a debtor like Wells, who is the supposed beneficiary of a "*more generous* exemption" that also covers sale proceeds. *Id.* Under *Jacobson*, such a debtor has "only a contingent homestead exemption such that, practically, [he] ha[s] *fewer rights* during bankruptcy than debtors in . . . jurisdictions" with *less generous* exemptions. *Id.* The Ninth Circuit saw "no justification in federal law, state law, or logic" for that "perverse result." *Id.*

d. Wells petitioned for rehearing en banc, asking the Ninth Circuit to reconsider the *Jacobson* rule on which the panel relied. *See* CA Dkt. 43. The court denied Wells' petition without a vote from the full court. Pet.App.65a. In the face of the Ninth Circuit's continued adherence to its erroneous rule, Wells now seeks recourse in this Court.

REASONS FOR GRANTING THE WRIT

The decision below cries out for Supreme Court review. It recognizes an entrenched division of authority about whether the proceeds of a post-petition homestead sale belong to the debtor or the estate. That question is both recurring and important. And as myriad courts and commentators have recognized, the Ninth Circuit's rule is simply wrong. Certiorari should be granted.

I. THE COURTS OF APPEALS ARE DIVIDED.

The Ninth Circuit's "vanishing exemption" rule—which it applies to both Chapter 7 and Chapter 13 cases—is an "outlier." *In re Anderson*, 988 F.3d at 1214 n.4. Only the Fifth Circuit applies a similar rule—and even then, it does so only in Chapter 13 cases. And the First Circuit has rejected the "vanishing exemption" rule, including by identifying the Fifth and Ninth Circuit's cases by name and deeming them "unpersuasive." *In re Rockwell*, 968 F.3d at 23. Moreover, this acknowledged split is now deeply entrenched, with the Ninth Circuit holding fast to its much-criticized position.

A. Under the Ninth Circuit's "vanishing exemption" rule, homestead sale proceeds "lose their exempt status" if they are not reinvested in a new homestead within the applicable statutory window. *Jacobson*, 676 F.3d at 1198. The Ninth Circuit applies that rule to Chapter 7 and Chapter 13 cases alike.

Jacobson involved a Chapter 7 debtor who claimed a homestead exemption when she filed her petition. *Id.* at 1197. The homestead was then subject to a judicial sale during the pendency of bankruptcy proceedings. *Id.* California's homestead exemption,

much like Idaho's, provides that "exempt proceeds from the sale . . . of a homestead" remain exempt if they "are used toward the acquisition of a dwelling within [a] six-month period." Cal. Civ. Proc. Code §§ 704.710(c), 704.270(b). But the debtor did not reinvest the sale proceeds in another dwelling within six months. *In re Jacobson*, 676 F.3d at 1198.

In holding that those proceeds reverted to the estate, *Jacobson* relied primarily on the Bankruptcy Code's statement that "exemptions must be determined in accordance with the state law 'applicable on the date of filing.'" *Id.* at 1199 (quoting 11 U.S.C. § 522(b)(3)(a)). In *Jacobson*'s view, "'it is the *entire* state law applicable on the filing date that is determinative' of whether an exemption applies." *Id.* (quoting *In re Zibman*, 268 F.3d 298, 304 (5th Cir. 2001) (emphasis in original)). And "the entire state law includes a reinvestment requirement for the debtor's share of the homestead sale proceeds." *Id.* Because the debtor's right to retain those proceeds was thus "contingent" on their reinvestment, the debtor "forfeited the exemption" by failing to buy another home within the statutory window. *Id.*

That result, the Ninth Circuit explained, was consistent with its prior ruling in *Golden*. *See id.* at 1199–1200. In that case, "the debtor had filed for bankruptcy *after* selling his California homestead" but then failed to reinvest those proceeds before the statutory deadline. *Id.* at 1199 (emphasis added) (citing *In re Golden*, 789 F.2d at 699). *Golden* rejected the debtor's argument that "the proceeds were nonetheless exempt because they had been exempt when he filed for bankruptcy." *Id.* (citing *In re Golden*, 789 F.2d at 700). There was "no material difference,"

the court reasoned, between the pre-petition sale in *Golden* and the post-petition sale in *Jacobson*.

In the decision below, the Ninth Circuit reaffirmed *Jacobson*'s "vanishing exemption" rule and applied it in the Chapter 13 context. Just as in *Jacobson*, the court reasoned, Wells "owned a homestead, filed for bankruptcy in a State that imposes a time-limited exemption on proceeds from a sale, and then sold the homestead during bankruptcy." Pet.App.3a. So the court simply applied "the rule that [it had] announced in [*Jacobson*]." *Id.* at 4a. When a debtor sells his "homestead and fail[s] to reinvest the proceeds within the period allowed by statute," the court again held, "'the proceeds, stripped of their exempt status, transform[] into nonexempt property, *i.e.*, property of the bankruptcy estate, by operation of law.'" *Id.* (quoting *In re Smith*, 342 B.R. at 808).

B. The Fifth Circuit applies the "vanishing exemption" rule in Chapter 13 cases, but allows debtors to retain post-petition sale proceeds in Chapter 7 cases.

In *Frost*, 744 F.3d 384, the Fifth Circuit considered facts almost identical to the facts in this case. The debtor claimed a homestead exemption under Texas law when he filed his Chapter 13 bankruptcy petition. *Id.* at 386. The debtor then sold his home but "did not reinvest the proceeds in a new homestead" within the statutory window applicable under Texas law. *Id.* at 385; *see* Tex. Prop. Code § 41.001(a), (c). The Fifth Circuit held that those proceeds reverted to the estate. At the time of filing, the court reasoned, the debtor had "an

unconditionally exempted interest in the real property itself." 744 F.3d at 389. But at the time of sale, that interest transformed into "a conditionally exempted interest in the monetized proceeds from the sale of that property." *Id.* And "[o]nce the conditional exemption expired," the debtor "lost his right to withhold the sale proceeds from the estate." *Id.*

In *DeBerry*, however, the Fifth Circuit reached the opposite result in the Chapter 7 context. In so doing, the court recognized "confusion about how [homestead sale] proceeds . . . work[] in the bankruptcy realm." 884 F.3d at 528. And it expressed concerns about the "arbitrary" nature of a "vanishing exemption" rule, which "creat[es] . . . a 'system of quasi-exempt property [in which] property [is] never . . . fully exempt until a case [is] either closed or converted.'" *Id.* at 529 (quoting *In re Fonke*, 321 B.R. 199, 208 n.11 (Bankr. S.D. Tex. 2005)). Such a rule, the court reasoned, would "transform" the proceeds exemption from a provision "that extends the homestead exemption to some situations when the home is not owned on the filing date into one that limits the homestead exemption even when the debtor owns the home on the filing date." *Id.*

Of course, that is all equally true in both Chapter 7 and Chapter 13 cases. But with *Frost* already binding precedent in the Chapter 13 context, the Fifth Circuit latched onto that "distinction" to justify reaching a different result in the Chapter 7 context. *Id.* at 530. "Chapter 13," it observed, "contains a provision mandating that all property the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted becomes part of the Chapter 13 estate." *Id.* (quoting

11 U.S.C. § 1306(a)(1)) (quotation marks omitted); *see also In re Hawk*, 871 F.3d 287, 295 (5th Cir. 2017) (same). Noting that Chapter 7 contains "no similar provision," the court rejected the "vanishing exemption" rule for Chapter 7 cases. *See In re DeBerry*, 884 F.3d at 530.

There are obvious problems with that reasoning, not least that the Chapter 13 provision on which the *DeBerry* court relied was never mentioned in *Frost*. That was for good reason: Proceeds from the post-petition sale of an exempt homestead are not "property . . . acquire[d] after the commencement of the case," 11 U.S.C. § 1306(a)(1); they are property a debtor *already had*, albeit now in liquidated form. *See In re Kerr*, 199 B.R. 370, 374 & n.12 (Bankr. N.D. Ill. 1996) (Section 1306 does not apply to "proceeds derived from the sale of a claimed homestead exemption" because "the property was not acquired after the commencement of the case."). But the key point for present purposes is that the Fifth Circuit follows the Ninth Circuit's "vanishing exemption" rule in Chapter 13 cases (*Frost*) but has rejected that rule in Chapter 7 cases (*DeBerry*).

C. The First Circuit has simply rejected the "vanishing exemption" rule. In its view, a homestead exemption is fixed when the bankruptcy petition is filed, notwithstanding any subsequent homestead sale and regardless whether the proceeds are reinvested. *See In re Rockwell*, 968 F.3d at 20.

Rockwell began as a Chapter 13 case, but was later converted into a Chapter 7 case. *See id.* at 16–17. The debtor claimed a homestead exemption when he filed his petition. *Id.* at 19. And while his

bankruptcy was pending, the debtor "sold the property and pocketed the [proceeds] without spending [them] on a new Maine homestead within six months of the sale." *Id.* So the First Circuit was presented with the same question the Ninth Circuit faced here and in *Jacobson*, and the Fifth Circuit faced in *Frost* and *DeBerry*: Were the proceeds from the debtor's post-petition homestead sale exempt? Or did they revert to the estate?

In the First Circuit's view, "the Code answers this question." *Id.* at 20. "Property that is properly exempted under § 522," the court reasoned, "is immunized against liability for prebankruptcy debts, subject only to a few exceptions"—such as certain specified liens and debt related to domestic support obligations. *Id.* (quoting *In re Cunningham*, 513 F.3d 318, 323 (1st Cir. 2008), and citing 11 U.S.C. § 522(c)). With respect to those exceptions (and those exceptions only), "property that is properly exempt on the day of filing" can "be later incorporated into the estate." *Id.* But "where none of the statute's enumerated exceptions applies," the court continued, a "homestead exemption taken on the day [the debtor] filed for bankruptcy must be viewed as unchanging, even in the face of his later sale of the property." *Id.*

That result, the court continued, is consistent "with the Code's priority of providing a 'fresh start' for debtors." *Id.* As this Court has recognized, "exemptions in bankruptcy cases are part and parcel of the fundamental bankruptcy concept of a fresh start." *Id.* (quoting *Schwab v. Reilly*, 560 U.S. 770, 791 (2010)). And interpreting Section 522 "as conferring merely an ephemeral exemption, subject to post-termination events, would undermine . . . the

fresh start policy of the Bankruptcy Code." *Id.* at 22 (quoting *In re Cunningham*, 513 F.3d at 324). After all, "[d]ebtors can best make a fresh start where they can make healthy financial choices moving forward, knowing what property is out of the reach of the pre-petition creditors." *Id.* at 20. "By protecting [a debtor's] exempt property . . . from later being made available to creditors," courts help debtors "achiev[e] the 'fresh start' that the Code prizes." *Id.* at 21.

The fact that the debtor's initial petition was filed under Chapter 13, the court reasoned, was irrelevant. "Many debtors . . . fail to complete a Chapter 13 plan successfully" and ultimately convert to Chapter 7. *Id.* at 22 (quoting *Harris*, 135 S. Ct. at 1835). And the Code provides that "the estate does not begin anew" when such a conversion occurs. *Id.* at 20 (citing 11 U.S.C. § 348(a)). So the court treated the debtor no differently than it would have if he had proceeded under Chapter 7 all along, and "examine[d] [his] claim of a homestead exemption on the date he filed for his Chapter 13 bankruptcy." *Id.* Accordingly, it did not need to determine what would have happened had the debtor never undertaken a conversion. *See id.* at 22 n.7.

The court also rejected the out-of-circuit authority on which the trustee relied. It acknowledged that both *Jacobson* (the Ninth Circuit's Chapter 7 case) and *Frost* (the Fifth Circuit's Chapter 13 case) "addressed similar questions" but "reached a result that is (or seems) at odds with the result we reach here." *Id.* at 23. But it dismissed both cases as "unpersuasive." *Id.* "Neither . . . address[ed] the Code's valued 'fresh start' principles as articulated in *Harris*, or the Supreme Court's admonishments in

Law that courts reach the result required by the text of the Bankruptcy Code." *Id.* (citations omitted). Indeed, the First Circuit observed that both *Jacobson* and *Frost* had been decided before (or, as to one case, just one day after) this Court's rulings in *Harris* and *Law*. *See id.* So the First Circuit broke from its sisters. *See id.*[4]

D. As the decision below makes clear, this division of authority will persist until this Court intervenes. In 2021, this Court denied a petition for a writ of certiorari arising from the First Circuit's decision in *Rockwell*. The overarching theme of the brief in opposition was that this Court's review was unnecessary because the petition implicated "a weak and eroding conflict that will eventually resolve itself." Br. in Opp. 6, *Hull v. Rockwell*, 141 S. Ct. 1372 (2021) (No. 20-499) ("*Rockwell* BIO") (capitalization altered). That is because—according to the brief in opposition—"there [was] every reason to believe the Ninth Circuit [would] eventually eliminate the conflict on its own," given that *Jacobson* predated *Harris* and *Law*, as well as the Fifth and First Circuits' decisions in *DeBerry* and *Rockwell*. *Id.* at 2.

That prediction has been proven wrong. Since the denial of certiorari in *Rockwell*, the Ninth Circuit has doubled down on *Jacobson* while acknowledging its

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[4] Bankruptcy courts in other circuits have weighed in on both sides of this split. A few have applied the "vanishing exemption" rule. *See,* e.*g., In re Stewart*, 452 B.R. 726, 742–43 (Bankr. C.D. Ill. 2011). But most have rejected it. *See, e.g.*, *In re Montanez*, No. 18bk24734, 2020 WL 1644286, at *6 (Bankr. N.D. Ill. Apr. 1, 2020); *In re Hampton*, 616 B.R. 917, 921, 922 (Bankr. S.D. Fla. 2020); *In re Thomas*, No. 17-43661-MER, 2018 WL 3655654, at *3 (Bankr. D. Minn. July 31, 2018).

"outlier" status. Pet.App.6a (quoting *In re Anderson*, 988 F.3d at 1214 n.4). It has declined to reconsider *Jacobson* in light of *Harris* and *Law*. *Id.* at 4a–5a ("Neither *Harris* . . . nor *Law* . . ., nor any other Supreme Court decision is 'clearly irreconcilable' with [*Jacobson*]."). It has acknowledged contrary rulings from the Fifth and First Circuits. *Id.* at 6a–7a. And it has declined to reconsider the *Jacobson* rule en banc. *Id.* at 65a.

So if there were any doubt about the persistence of this split when this Court took up the petition in *Rockwell*, none remains. Rather than "eliminate the conflict on its own," as the *Rockwell* opposition predicted, *Rockwell* BIO 2, the Ninth Circuit has dug in its heels. The split is thus entrenched, and this Court's intervention is necessary.

II. THIS ISSUE IS RECURRING AND IMPORTANT.

The homestead exemption—and the question whether it vanishes if a debtor sells his home during the pendency of bankruptcy proceedings—is profoundly important to debtors across the country.

Begin with the raw numbers. As the bankruptcy professors' amicus brief explained below, in the Ninth Circuit alone nearly 500,000 individuals in States with similar homestead exemptions filed bankruptcy petitions between 2015 and 2020. Profs. Amicus Br., CA Dkt. 44-2 at 4. Of those individuals, approximately 200,000 were homeowners—and thus, potentially subject to *Jacobson*'s "vanishing exemption" rule. *See id.*

And that is just the Ninth Circuit. Many jurisdictions across the country treat homestead-sale proceeds the same way Idaho and California do. *See*

supra at 7–8 & n.2. Debtors in the First Circuit are protected by *Rockwell*. *See supra* at 19–22. But debtors in the Fifth Circuit can maintain their homestead exemptions only by proceeding under Chapter 7. *See supra* at 17–19 (discussing *In re Frost*, 744 F.3d at 387, and *In re DeBerry*, 884 F.3d at 530). Indeed, debtors who initially file under Chapter 13 but need to sell their homes during the pendency of bankruptcy proceedings have every incentive to convert to Chapter 7—just as the debtor in *Rockwell* did, *see* 968 F.3d at 16—so that *DeBerry*, rather than *Frost*, controls. (A perverse result, given that "[p]roceedings under Chapter 13 can benefit debtors and creditors alike." *Harris*, 575 U.S. at 514.) And in circuits that have not yet definitively weighed in, debtors face uncertainty—and must grapple with the risk that their homestead exemptions will disappear if they sell their homes while their bankruptcies are pending.

That really matters. The home holds a special place in American law. *See, e.g.*, *Lange v. California*, 141 S. Ct. 2011, 2018 (2021) (Fourth Amendment case reaffirming "the 'centuries-old principle' that the 'home is entitled to special protection'"); *McDonald v. City of Chicago*, 561 U.S. 742, 780 (2010) (plurality op.) (Second Amendment case reaffirming "a personal right to keep and bear arms for lawful purposes, most notably for self-defense within the home"); *Hill v. Colorado*, 530 U.S. 703, 717 (2000) (First Amendment case noting that "[t]he right to avoid unwelcome speech has special force in the privacy of the home"). Exempting homesteads in bankruptcy is part of that tradition. *See, e.g.*, *In re Perry*, 345 F.3d 303, 316 (5th Cir. 2003) ("Homesteads are favorites of the law[.]").

And homestead exemptions "protect not only the home, but also the property that enables the head of the household to support the family." *Id.* at 317. They ensure that families are not left homeless, and they leave debtors with an asset from which they can rebuild. *See CFCU Cmty. Credit Union v. Hayward*, 552 F.3d 253, 260 (2d Cir. 2009).

Jacobson's "vanishing exemption" rule effectively imposes a restrictive covenant on the homestead, undermining the animating purposes of homestead exemptions—and forcing debtors to avoid decisions that may lead to homestead sales. *Cf. In re Rockwell*, 968 F.3d at 22–23 ("[A] debtor is not required to maintain exempt property in its exempt state indefinitely after filing in order to avoid a retroactive loss of the exemption."); *In re Reed*, 184 B.R. 733, 738 (Bankr. W.D. Tex. 1995) ("Nothing in section 522(c) even vaguely suggests that, as a precondition to enjoying the protections of that provision, the debtor must maintain the exempt character of the property."). If they must sell, the status of their exemption may hinge on the happenstance of bankruptcy court proceedings: If bankruptcy proceedings conclude within the statutory reinvestment window, the debtor presumably may keep the proceeds regardless whether he reinvests them. But if proceedings drag on and that window expires—or if, as here, the debtor is candid about his plans from the outset—he forfeits the exemption entirely.

That is apparently true no matter how high a use a debtor makes of the proceeds. Wells, for example, sold his home with the bankruptcy court's authorization, and he planned to use the proceeds—

again with the bankruptcy court's authorization—to settle a debt with his estate's largest creditor and facilitate the establishment of a Chapter 13 reorganization plan. *See* Pet.App.11a, 59a; *cf. In re Bergolla*, 232 B.R. 515, 516 (Bankr. S.D. Fla. 1999) ("Debtors should receive a discharge when, in good faith, the balance of a confirmed Chapter 13 Plan is paid early using proceeds from the sale of exempt property, in this case homestead property."). And there are plenty of other good reasons why a debtor might choose not to buy another home with the proceeds of his homestead sale. A debtor may need those funds to pay for a child's schooling or a necessary medical procedure. He may wish to change his lifestyle—for example, by buying a more fuel-efficient car, going to live with friends or family, or moving into "a Winnebago," *In re Reed*, 184 B.R. at 738—in ways that will save him money in the long run. Or he may find that, in the midst of his bankruptcy, buying a new home is effectively impossible. *Cf. In re Smith*, 342 B.R. at 809 (Klein, Bankr. J., concurring) ("[T]he debtor could be in the difficult and disadvantageous position of needing to purchase a homestead property during the bankruptcy, notwithstanding the general reluctance of mortgage lenders to deal with consumers until after a bankruptcy is finished."); Ahart, *The Ninth Circuit Court of Appeals Erred*, *supra*, at 425 ("[A] bankrupt debtor who receives exempt sale proceeds likely will not have sufficient monies to purchase another homestead[.]").

All this assumes, moreover, that the debtor is free to decide whether to sell his homestead in the first place. But some States' homestead exemptions permit

forced sales. *See, e.g., Jacobson*, 676 F.3d at 1199 (noting that "[t]he California homestead exemption does not . . . prevent a judgment creditor from forcing a judicial sale of the homestead"). As *Jacobson* illustrates, debtors in those States may find themselves at the mercy of the "vanishing exemption" rule even if they never would have chosen to sell their homes. *Id.* at 1198 (applying that rule where homestead had been subject to a "judicial sale").

III. THE NINTH CIRCUIT'S RULE IS WRONG.

Jacobson's "vanishing exemption" rule—which has been "criticized, questioned, and rejected by many," Pet.App.5a—is also simply wrong. It conflicts with the text of Bankruptcy Code, ignores relevant statutory context, undermines the "fresh start" ideal, and yields arbitrary results.

A. Start with the statutory text. The Bankruptcy Code states that the property of the estate is determined "as of the commencement of the case." 11 U.S.C. § 541(a)(1). As that language makes clear—and as this Court has long recognized—the petition filing date is critical: It is "the point of time" at which the estate is established and a debtor's status and rights become "fixed." *White v. Stump*, 266 U.S. 310, 313 (1924).

Just as the property *of* the estate is fixed when the bankruptcy petition is filed, so too are exemptions *from* the estate. Indeed, Section 522 provides that a debtor "may exempt" certain property from the estate "[n]otwithstanding section 541 of this title." 11 U.S.C. § 522(b)(1). That textual link to Section 541 is important. Given Section 541's express focus on "the commencement of the case" in fixing the property of

the estate, *id.* § 541(a)(1), it would make no sense to focus on any other moment in time when determining whether an exemption applies. *See also id.* § 522(b)(3)(B), (c) (referencing "the commencement of the case"); *In re Hampton*, 616 B.R. at 922 ("[U]nder a plain reading of Section 522[,] . . . if property was exempt as of the petition date, it is exempt, period.").

Indeed, that is the lesson of this Court's ruling in *White*, which also addressed Idaho's homestead exemption. 266 U.S. at 311. There, the applicability of the exemption turned on whether the debtor had filed a declaration attesting "that the land [was] both occupied and claimed as a homestead." *Id.* The debtor, however, did not file such a declaration or otherwise seek to claim a homestead exemption when his petition was filed. *See id.* And when he sought to do so later on, this Court held that the debtor had acted too late. "[T]he point of time which is to separate the old situation from the new in the bankrupt's affairs," the Court reasoned, "is the date when the petition is filed." *Id.* at 313. Because the debtor did not claim the homestead exemption on time, the property's non-exempt status became "fixed"—notwithstanding his belated attempt to satisfy the exemption's preconditions. *Id.* at 313–14.

Just as an exemption that is *inapplicable* at the time of filing cannot spring into effect post-petition, neither can an exemption that is *applicable* at the time of filing vanish because of post-petition developments. When Congress directed courts to focus on "the commencement of the case," 11 U.S.C. § 541(a)(1), it meant exactly that: The parties' rights—including the debtor's right to a homestead exemption—become fixed on the date the petition is

filed. As the bankruptcy judge reasoned below, exempt property cannot "somehow come[] back into the estate because of what's occurred post-petition." Pet.App.58a; *see In re Hyde*, 334 B.R. 506, 515 (Bankr. D. Mass. 2005) ("[O]nce property is exempted from property of the estate, it does not come back into the estate if it is no longer exempt under state law.").

B. Statutory context confirms the point. Take, for example, the very provision on which *Jacobson* relied: Section 522(b)(3)(A)'s reference to "State or local law that is applicable on the date of the filing of the petition." 11 U.S.C. § 522(b)(3)(A). That language only further reinforces Congress's intent for courts to focus on "the date of the filing" and disregard post-petition developments. *Id.* To be sure, state law may include a provision addressing homestead-sale proceeds. But a proceeds provision is not "applicable on the date of the filing" where the debtor has not yet sold his homestead. It is the homestead exemption, not any exemption for sale proceeds, that controls in such cases. *See In re Konnoff*, 356 B.R. at 209 (Pappas, Bankr. J., concurring) (Section 522(b)(2)(A)'s reference to "applicable" state law "instructs that the extent of exempt property is to be determined with reference to the facts as they exist on the date of the bankruptcy filing, not some later, unspecified date").

Consider also Section 522(c), which the First Circuit highlighted in *Rockwell*. That provision states that, with certain enumerated exceptions (and unless the case is dismissed), "property exempted under this section is not liable during or after the case for any debt . . . that arose . . . before the commencement of the case." 11 U.S.C. § 522(c). The enumerated exceptions to that principle are important for what

they do not say. *Cf., e.g.*, *Hillman v. Maretta*, 569 U.S. 483, 496 (2013) ("Where Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent." (alteration omitted)). If a homestead is exempt under Section 522 and none of the exceptions apply, it cannot be incorporated into the estate for payment of pre-petition debts. *See In re Rockwell*, 968 F.3d at 20; *see also* Ahart, *The Ninth Circuit Court of Appeals Erred*, *supra*, at 422 ("Surely Congress intended that not only exempt property, but also the proceeds thereof, ordinarily would *not* be used to pay administrative expenses or prepetition claims."). Accordingly, a "homestead exemption taken on the day [the debtor] filed for bankruptcy must be viewed as unchanging, even in the face of his later sale of the property." *In re Rockwell*, 968 F.3d at 20.

C. The Bankruptcy Code's overarching purpose reinforces that result. As this Court has repeatedly emphasized, "[t]he principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the 'honest but unfortunate debtor.'" *Marrama*, 549 U.S. at 367 (quotation marks omitted); *see also Harris*, 575 U.S. at 513. And "exemptions in bankruptcy cases are part and parcel of the fundamental bankruptcy concept of a 'fresh start.'" *Schwab*, 560 U.S. at 791.

Jacobson's "vanishing exemption" rule directly undermines that "fresh start" goal. The "best" way to gain a fresh start is through "healthy financial choices" made with a clear understanding of which assets belong to the estate and which belong to the debtor. *In re Rockwell*, 968 F.3d at 20. But *Jacobson* strips debtors of that much-needed certainty, offering

them only "an ephemeral exemption" in their homesteads. *Id.* at 22 (quoting *In re Cunningham*, 513 F.3d at 324); *see In re Konnoff*, 356 B.R. at 209 (Pappas, Bankr. J., concurring) ("It seems inconsistent with the debtor's entitlement to a fresh start that, as here, the debtors must wait over a year after filing for bankruptcy relief to know the extent of their exempt property."). The upshot is not a fresh start at all, but rather a renewed "fear of lingering creditors." *In re Cunningham*, 513 F.3d at 324.

The First Circuit's rule, by contrast, serves the "fresh start" ideal. "By protecting [a debtor's] exempt property, which was properly exempted on the day of filing, from later being made available to creditors," courts help debtors "achiev[e] the 'fresh start' that the Code prizes." *In re Rockwell*, 968 F.3d at 21.

D. The anomalous results of the "vanishing exemption" rule ought be the final nails in its coffin. As even the Ninth Circuit recognized, it is "arguably peculiar," Pet.App.7a—and indeed, bizarre—that Wells is worse off under an Idaho law that *protects* homestead sale proceeds than he would have been under a regime that *does not protect* homestead sale proceeds. Under the more protective regime, Wells lost his homestead exemption because his post-petition actions supposedly extinguished that exemption and rendered him subject to the reinvestment requirement for proceeds. Under the less protective one, he would have retained the homestead exemption because sale proceeds have no freestanding protection at all. That gets the clear intent of *more generous* state laws exactly backwards. As the Ninth Circuit recognized, there is "no

justification in federal law, state law, or logic for that result." *Id.*

The anomaly is not just hypothetical, either. Courts applying exemption regimes that do not include proceeds provisions hold that the proceeds of post-petition homestead sales are "exempt property" that must be "turn[ed] over" to the debtor. *In re Gamble*, 168 F.3d at 445. And they reject trustees' attempts to seize those proceeds as "disposable income." *See, e.g.*, *In re Kerr*, 199 B.R. at 374 (holding that "proceeds derived from the sale of a claimed homestead exemption are not liable for pre-petition debts"); *In re Ash'shadi*, No. 04-55924, 2005 WL 1105039, at *3 (Bankr. E.D. Mich. May 6, 2005) ("[T]he proceeds from the [post-petition] sale of a prepetition asset do not become property of the chapter 13 estate[.]"). Accordingly, if Wells had resided in a jurisdiction without a proceeds provision, he would have been entitled to retain to the proceeds of his post-petition homestead sale. Because he resides in a jurisdiction that aims to provide debtors with additional protections, however, he apparently is not.

If that were not enough, the Ninth Circuit's rule also means that "the debtor's rights in a bankruptcy case are necessarily in limbo until that case concludes." *In re Konnoff*, 356 B.R. at 208–09 (Pappas, Bankr. J., concurring). In *DeBerry*, for example, "[t]he home was not sold until seven months into the bankruptcy." 884 F.3d at 529. Under the "vanishing exemption" rule, accordingly, "the status of the exemption [would] not [have been] determined until the thirteenth month when the reinvestment period expire[d]." *Id.*

The rule's application can also turn on how long bankruptcy proceedings continue—an issue over which the debtor may have little control. If the bankruptcy in *Jacobson* had proceeded more quickly, for instance, it could conceivably have been resolved before the debtor's home was ever sold. *See* 676 F.3d at 1197–98. Perverse incentives thus abound: Aggressive trustees can attempt to prolong bankruptcy proceedings on a hunch that the debtor will sell his homestead, while debtors facing less aggressive trustees may get in and out of bankruptcy without a hitch. *See In re DeBerry*, 884 F.3d at 529 ("The trustee's position would also lead to 'arbitrary' results as protection for the proceeds of postpetition homestead sales would depend on the aggressiveness of the trustee in closing a case."); Ahart, *The Ninth Circuit Court of Appeals Erred*, *supra*, at 424 ("After *Jacobson*, trustees will delay closing cases if they *believe* debtors' homesteads will have equity in the future sufficient to pay the debtors *some* exempt proceeds and that debtors will have only a finite period to purchase another homestead[.]").

None of this is how bankruptcy is supposed to work or what a "fresh start" is supposed to look like.

CONCLUSION

The petition for a writ of certiorari should be granted.

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