No. 21-1448

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

BRIEF FOR THE RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Debtors who file for bankruptcy protection are permitted to claim certain property exempt pursuant to 11 U.S.C. § 522. In § 522(b), Congress delegated to the States virtually complete control over how to strike the appropriate balance between the interests of debtors and the rights of creditors in this arena of property rights. Most states have homestead exemptions that protect home ownership and allow a debtor to move to a new home, but are subject to common sense limitations that the exemption expires if the debtor does not reinvest the proceeds into replacement homestead. The Supreme Court has held that when a debtor claims a state-created property exemption, the exemptions scope is determined by state law. *Law v. Siegel*, 134 S. Ct. 1188 (2014) and in *Myers v. Matley*, 63 S. Ct. 780 (1943).

The question presented is:

Whether individual states can set the parameters of a homestead exemption provided to the citizens of that state or does the filing of a bankruptcy petition remove a state's ability to set conditions on the use of exempt proceeds from the sale of homestead property thus allowing individuals to use the proceeds in any manner they desire. In other words, do states really get to set the homestead exemptions that individuals that file bankruptcy are permitted or do individuals who file bankruptcy have more rights than individuals who do not seek bankruptcy relief?

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RELEVANT STATUTORY AUTHORITY

Relevant sections of 11 U.S.C. §§ 522(b)(2), 522(b)(3)(A), 522(d) and Idaho Code §§ 55-1001-1003, 55-1008 (2019) are reproduced in Petitioner's Appendix F.

INTRODUCTION

According to the Petitioner, there is a split in the circuits as to who receives the exempt proceeds of the sale of homestead property when an individual in a Chapter 13 bankruptcy proceeding sells homestead property and does not reinvest the proceeds back into homestead property within the statutory time frames. They contend that the Ninth Circuit created a split from rulings made in the Fifth and First Circuits when it held that Debtor's failure to reinvest the proceeds from the voluntary sale of his residence into new homestead property waived the homestead exemption.

The Petitioner is incorrect. The Ninth Circuit and the Fifth Circuit have both ruled consistently. In both the *Wells* case and *In re Frost*, 744 F.3d 384 (5th Cir. 2014), the Court has held that when the Chapter 13 Debtors sold their homestead property while their Chapter 13 cases were pending and failed to reinvest the proceeds into new homestead property, that the exemption was waived or "vanished," and the proceeds became property of the bankruptcy estate.

If there is a circuit split, it has only arisen in Chapter 7 cases. Petitioner attempts to compare the decision in *Wells*, which is a Chapter 13 proceeding, to the decision *In re Rockwell*, 968 F.3d 12 (1st Cir. 2020), which was a Chapter 7 proceeding, for the contention that there is a circuit split. The *Rockwell* case out of the First Circuit dealt with a homestead exemption in a case that converted to Chapter 7 and is not on point. Additionally, the Supreme Court has already ruled on this issue in *Law v. Siegel*, 134 S. Ct. 1188 (2014) and *Myers v. Matley*, 63 S. Ct. 780 (1943). The *Wells* decision is consistent with this Court's prior rulings. This Court need not address the issue again. Inapposite of what Petitioner contends, the impact of the *Wells* decision affects very few individuals and does not have nearly as broad an impact as Petitioner avers. Further review is unwarranted.

The bankruptcy code allows states to enact their own exemptions and allows states to opt out of the federal exemption scheme. 11 U.S.C. § 522(b)(2), (b)(3)(A), and (d). Idaho, like the majority of states, has opted out of the Federal exemption scheme. Most states have some type of homestead exemption. The purpose of the homestead exemption is to provide shelter, not provide a monetary windfall for the debtor. "The purpose of the homestead provisions are to allow owners to keep their homes when they are beset by financial difficulties." *In re Mulliken*, 1995 W.L. 70335 (Bankr. D. Idaho 1995).

Petitioner claims that "this issue is profoundly important." Pet. p.2. He claims that "[E]ach 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." Pet. 2-3. This statement is not supported by any facts. The truth is that most bankruptcy cases filed are Chapter 7 petitions and are typically open for approximately four months. According to the Bankruptcy Analytics provided by EPIQ as of August 10, 2022 the average duration of a Chapter 7 case from 2007 through 2022 from all reported data is 230 days. This number includes the outliers where Chapter 7 trustees are liquidating assets or adversary proceedings were commenced. Most debtors who want to sell their home but who are in Chapter 7 proceedings simply wait until the bankruptcy court enters a discharge and closes the case, and then sell their homes. Chapter 13 cases are voluntary and can be dismissed by Debtors at any time. If Mr. Wells does not like the decision of the court, he can simply voluntarily dismiss his case.

Despite Petitioner's claim that this issue impacts thousands of homeowners, it is uncommon for debtors in Chapter 13 cases to sell their homes prior to confirmation of their plan.

STATEMENT OF THE CASE

Petitioner, Dustin Jade Wells (Debtor), filed his voluntary petition for Chapter 13 relief on May 17, 2019. When Debtor initiated his case, he owned real

property situated at 582 South 100 West, Jerome, Idaho (hereinafter "the Residence") In his bankruptcy schedules, he valued at the property at $625,000 and he stated the property was subject to two mortgage liens totaling $567,322.36. Pet. App. 10a-11a.

Initially, and pursuant to Idaho Code §§ 55-1001-1003, Debtor claimed a homestead exemption in the amount of $100,000. Trustee timely objected to Debtor's $100,000 homestead exemption claim on the basis that Idaho Code § 55-1003 limits the exemption to the lesser of $100,000 or the net value of the homestead exemption and, therefore, Debtor's homestead exemption should be limited to $57,677.64. Pet. App. 10a-11a.

In response to the Trustee's objection, Debtor amended his schedules to increase the value of the Residence to $668,000 and to revise his claim of exemption. Instead of specifying a dollar value, he simply claimed "100% of fair market value, up to any applicable statutory limit" pursuant to §§ 55-1001, 55-1002, 55-1003. Pet. App. 10a-11a. Since the value of the claimed exemption was now capped at the limit set by I.C. § 55-1003, Trustee did not file an additional objection to Debtor's amended homestead exemption claim. Pet. App. 11a.

Shortly before initiating his Chapter 13 case, Debtor and his spouse, Stephanie Diane Wells, were sued by Box Canyon Dairy (hereinafter "BCD") for $742,465.61, of which, it was alleged, included

$708,944 claimed to have been embezzled by Stephanie Wells when she was employed by BCD as its comptroller. Bankr. Dkt. Nos. 25-30.

In this matter, unsecured claims total $887,124.03 (the amount in one proof of claim is unliquidated) of which $871,292.21 is owed to BCD and the remaining balance of $15,831.82 is made up by the unsecured portion of the secured claims of Icon Credit Union, Synchrony Bank, and Wilson Bates. Although BCD holds approximately 98% of the total amount of unsecured claims, it is not Debtor's only unsecured creditor.

Box Canyon Dairy filed an adversary complaint against Dustin and Stephanie Wells alleging that the debt owed to it was not dischargeable. Case No. 19-08040-JMM. BCD also filed two proofs of claim in the case. Claim No. 1 was initially $55,521.52, which BCD subsequently amended to $207,000. Claim No. 2 is in the amount of $664,292.10. Debtor filed objections to both claims. Bankr. Dkt. No. 62. Trustee subsequently filed a motion to convert this case to a Chapter 7 as BCD's two claims put Debtor over the 11 U.S.C. § 109(e) debt limits. Bankr. Dkt. No. 51.

A hearing was set for October 24, 2019 on the Debtor's two claim objections, BCD's objection to all of Debtor's exemption claims, and Debtor's motion to dismiss himself from the adversary proceeding. At the hearing, Debtor and BCD reached a tentative settlement of such matters. That agreement was ultimately reduced to writing and approved by the Court. Bankr. Dkt. No. 166. Relevant to this appeal, the agreement

provided, *inter alia*, that Debtor was to sell his home and pay Box Canyon Dairy $45,000.00 at the time of closing of the sale. Respondent was not a party to the settlement agreement.

In accordance with his agreement with BCD, Debtor filed a motion to allow him to sell the Residence to his parents for the sum of $612,000. Bankr. Dkt. No. 145. From this sale, Debtor estimated he would net $38,840.02 after payment of closing costs and satisfying the two mortgages. Though the motion requested that the net proceeds be delivered to Debtor, it was obvious from the Petitioner's motion that he intended to use the net proceeds to make a partial payment to BCD directly. At no point did the Debtor's motion state that his intended disposition of the proceeds included reinvesting the proceeds in a new homestead.

Respondent objected to Debtor's motion to the extent that it would allow the Debtor to use the sale proceeds to pay BCD directly. Bankr. Dkt. No. 150. Trustee's objection was based on the provisions of the Idaho homestead exemption statute that places restrictions on the proceeds from Debtor's voluntary sale of the Residence: that if a homestead is voluntarily liquidated, the exempt proceeds must be reinvested in another homestead within a year, otherwise the proceeds lose their exempt status.

Since Debtor's stated intention was to deliver the sale proceeds to one of his creditors, Trustee asserted that the proceeds should lose their exempt status and must be turned over to her for distribution to all the

unsecured creditors on a pro rata basis. Alternatively, Trustee offered to hold the funds for up to a year to allow Debtor to reinvest the proceeds into a new homestead, as allowed by Idaho law.

At all relevant times when Debtor's motion to sell the Residence was pending, Debtor did not have a confirmed plan and no order had been entered by the bankruptcy court abandoning property of the estate back to the Debtor. At the initial hearing on Debtor's motion, the Court permitted Debtor to sell the Residence to pay off the two mortgages but ordered the remaining proceeds be held in escrow pending the outcome of the balance of the issues.

At the next hearing on January 15, 2020, the court first found that since Trustee had not objected to Debtor's amended claim of exemption, the Residence's sale proceeds were no longer property of the bankruptcy estate. Pet. App. 58a. The Court further found that since the proceeds were not property of the bankruptcy estate, Debtor was permitted to give preferential treatment to BCD at the expense of the other unsecured creditors. The Court stated, "But the point is, is the debtor's exemption stands. And if the debtor decides to use the money and pay creditors with it, I think that's his right." Pet. App. 59a-60a. Finally, the Court held that because debtor was using exempt proceeds now excluded from the estate it was not unfair discriminatory treatment to prefer BCD over his other unsecured creditors.

The Court thereafter entered its order permitting the sale and payment of proceeds to BCD on February 5, 2020. Bankr. Dkt. No. 192. Trustee timely filed her Notice of Appeal on February 18, 2020. Bankr. Dkt. No. 197. The district court reversed the bankruptcy court's ruling on October 14, 2020 and Petitioner/Debtor appealed to the Ninth Circuit. The Ninth Circuit upheld the district court's ruling on December 3, 2021. Petitioner/Debtor filed a Petition for an *en banc* hearing which the Ninth Circuit denied on February 11, 2022.

While in his Statement the Petitioner emphasizes that BCD held most of the debt, that alone is irrelevant. Pet. 8. This case is about whether the homestead exemption is waived in a Chapter 13 proceeding when a Debtor fails to follow Idaho law and reinvest the proceeds into new homestead property within the time permitted. To be clear, had Debtor turned over the proceeds to the Chapter 13 Trustee to be distributed to the creditors in his bankruptcy proceeding, most of the funds would have been distributed to BCD on a pro rata basis, other claimants would have benefited, too.

REASONS FOR DENYING THE PETITION

I. The Court Should Deny the Petition as the Underlying Case does not Create a Circuit Split

Petitioner incorrectly claims that the underlying ruling in the *Wells* case created a split in the Circuits.

This is not correct. The *Wells* case involves a Debtor in a Chapter 13 proceeding, not a Chapter 7 proceeding.

Based on an agreement with an unsecured creditor, Dustin Wells agreed that he would sell his homestead property which at the time was property of the estate, and turn the proceeds over to this creditor. Trustee contended that by turning over the proceeds of the sale to the creditor, the Debtor waived his homestead exemption because of his express intent to not reinvest the proceeds into new homestead property, as required by the Idaho Homestead Statutes.

The Idaho Code states as follows:

> The proceeds of the voluntary sale of the homestead in good faith for the purpose of acquiring a new homestead, and proceeds from insurance covering destruction of homestead property held for use in restoring or replacing the homestead property, up to the amount specified in section 55-1003, Idaho Code, shall likewise be exempt for one (1) year from receipt, and also such new homestead acquired with such proceeds. Idaho Code § 55-1008.

The bankruptcy court found that because the Trustee did not object to the claim of exemption that the property was no longer property of the estate and the Debtor was free to do what he wanted with the proceeds.

On appeal, the District Court reversed the bankruptcy court. Debtor appealed the District Court decision and the Ninth Circuit affirmed stating "[T]he

district court correctly held that the rule we announced *In re Jacobson* remains good law. Neither *Harris v. Viegelahn*, 575 U.S. 510 (2015), nor *Law v. Siegel*, 571 U.S. 415 (2014), nor any other Supreme Court decision is 'clearly irreconcilable with our decision.'

It should also be noted that in the *Wells* case, not only was the Debtor in a Chapter 13 proceeding, but at the time of the sale of the residence he did not have a confirmed plan. Any property Debtor had an interest in on the date of filing was still property of the estate which had not yet revested in the debtor.

Petitioner claims that the Fifth Circuit has gone both ways but fails to accurately address the differences. *In re Frost*, 744 F.3d 384 (5th Cir. 2014), the court ruled similarly as in the *Wells* case. In that case the Debtor *had a confirmed* Chapter 13 plan when the Debtor elected to sell his real estate. The Court ordered him to retain the funds until they were reinvested into homestead property. The Debtor subsequently used some of the funds for other purposes and the Court found that the homestead exemption as to those funds had been lost. This ruling is completely consistent with the decision in *Wells* and does not create a circuit split.

Petitioner argues that *In re DeBerry*, 884 F.3d 526 (5th Cir. 2019) allows the Debtor to retain the proceeds from the sale of Debtor's real property without timely reinvesting the proceeds into a homestead. However, since *DeBerry* involves a Chapter 7 proceeding, the

decision is not on point with the decision in *Wells* or *Frost*. The Texas bankruptcy court explains that:

> A [Chapter 7 case] would be a different situation. In a [Chapter 7 case], the property is the debtor's, it's exempted, it's gone, and if he decides to sell it after that, it's subject to only his postpetition creditors. But in a [Chapter 13 case], it's different. And, so, I think it's still subject to the Chapter 13 estate, if it's not reinvested. *Matter of Hawk*, 871 F.3d 287 at 295 (5th Cir. 2017) citing the transcript of the *Frost* confirmation hearing.

The same can be said of the First Circuit's decision in *In re Rockwell*, 968 F.3d 12 (1st Cir. 2020). In that case, the debtor was in a Chapter 13 proceeding when he sold his home. Prior to reinvesting the proceeds of the sale of his home into new homestead property he converted his case to a Chapter 7 proceeding. Subsequently after the statutory time period for reinvesting the funds lapsed, the Chapter 7 Trustee made a demand that the debtor turn over the homestead proceeds still in the debtor's possession. The court found that the homestead proceeds maintained their exempt status despite the fact that Debtor did not reinvest the proceeds into homestead property. Again, this case is not on point since it deals with a Chapter 7 proceeding.

Consequently, Petitioner's assertion that the Ninth Circuit's decision in *Wells* created a circuit split is not correct. Of the cases cited by the Petitioner, only *In re Frost* deals with a Chapter 13 proceeding and both courts agreed that the Debtors waived their

homestead exemptions when they did not reinvest the proceeds into replacement homestead property. The Petition for Certiorari should be denied.

II. The Ninth Circuit's Decision is Correct and is not Inconsistent with prior rulings of the Supreme Court.

Petitioner further mischaracterizes this Court's decision in *Law v. Siegel*, 134 S. Ct. 1188 (2014). In *Law v. Siegel*. the Chapter 7 debtor misled the Chapter 7 trustee about the existence of liens on his real property to suggest that there was no non-exempt equity in the debtor's residence from which to pay unsecured creditors. The Chapter 7 trustee had to perform an extensive amount of work in order to be able to liquidate the real estate. When all was said and done the Chapter 7 trustee had incurred a large amount of legal fees as a result of Debtor's misrepresentations. As a sanction for the debtor's misconduct, and relying on 11 U.S.C. § 105, the bankruptcy court surcharged Debtor's state-based homestead exemption to offset the estate's administrative expenses. Ultimately, this Court held that 11 U.S.C. § 105 does not permit a bankruptcy court to supersede the scope of a *state-created* exemption; that the exemption's scope is determined by state law. *Law v. Siegel*, 134 S. Ct. 1188 at 1196-1197 (2014).

The Petitioner in this case attempts to parlay this Court's ruling into something other than what it is. It is the entire state law exemption that controls and if, like in Idaho, California, or Texas, the state created

statute requires reinvesting of the proceeds of the sale of homestead property into replacement homestead property, the filing of a Chapter 13 petition does not disrupt the statute's scope.

This Court further stated in *Law:*

> "We have recognized, however, that in crafting the provisions of § 522 'Congress balanced the difficult choices that exemption limits impose on debtors with economic harm that exemptions visit on creditors.' *Schwab v. Reilly*, 560 U.S. 770, 791 (2010). The same can be said of limits imposed on recovery of administrative expenses by trustees. For the reasons we have explained, it is not for courts to alter the balance struck by the statute." *Law* at 1197-1198.

In the beginning of the Petitioner's brief he cites *White v. Stump*, 266 U.S. 310 (1924) for the proposition that the date when a bankruptcy petition is filed is the point of time at which the status and rights of a bankrupt . . . are fixed." *White* at 313. Trustee agrees with this proposition and does not find the decision below to be in conflict with it. At the time of filing the Debtor had all the rights afforded to him pursuant to Idaho Code § 55-1001 et seq. Said statute included a reinvestment provision. That is what the Debtor got. Had Mr. Wells sold his real property to purchase something perhaps more affordable in light of his financial circumstances and reinvested the proceeds into his new real estate, the proceeds would have maintained exempt status as would any begotten equity in the new

residence. However, deciding to voluntarily sell the residence to use the proceeds to pay one of his creditors directly, resulted in the loss of the exempt status of those funds.

Petitioner argues that the *Wells* decision is inconsistent with the "snapshot" approach. Respondent disagrees. This Court's decision in *Myers v. Matley*, supra, provides a clearer interpretation of the how the Supreme Court views the "snapshot" approach. In the *Matley* bankruptcy case, the Debtor had failed to declare a homestead exemption prior to the filing of his bankruptcy proceeding. If the snapshot approach stopped there, then the Debtor would never be able to claim his homestead exemption. However, the Nevada Exemption statute permitted the exemption if it was declared at any time prior to the actual execution sale. The Supreme Court, relying on *White v. Stump*, held that:

> "In conformity to the principal announced in *White v. Stump* that the bankrupt's right to a homestead exemption becomes fixed at the date of filing of the petition in bankruptcy and cannot thereafter be enlarged or altered by anything the bankrupt may do, it remains true that, under the law of Nevada, the right to make and record the necessary declaration of homestead existed in the bankrupt at the date of filing the petition as it would have existed in case a levy had been made upon the property. The assertion of that right before actual sale in accordance with state law did not change the relative status of the claimant

and the trustee after the filing of the petition." *Myers v. Matley* at 784.

As the Ninth Circuit explained, this (the Supreme) Court looked at the whole Nevada homestead exemption, which provided that a debtor could file a homestead declaration any time before a judicial sale. *Jacobson* at 1199. It did not matter that the debtor had not declared the property exempt prior to the filing of the bankruptcy petition.

Accordingly, this Court has found that it is the *entire* state statute in effect on the date the Debtor filed the petition. Petitioner's definition of its snapshot approach is at odds with Supreme Court precedent because it would not permit the Nevada debtor to declare a homestead exemption after the filing of the petition, even though permitted by state law. The lower Courts in *Wells, Jacobson* and *Frost* have all upheld the Supreme Court's interpretation of a Debtor's homestead rights. And as the Court stated in *In re Jacobson*, 976 F.3d 1193 (9th Cir. 2012), citing *In re Zibman*, 268 F.3d 298, 304 (5th Cir. 2001). "And it is the *entire* state law applicable on the filing date that is "determinative" of whether an exemption applies." *Jacobson* at 1199.

See also *In re Zibman*, 268 F.3d 298, 305 (5th Cir. 2001), "When a debtor avails himself of the exemptions the state provides, he agrees to take the fat with the lean; he has signed on to the rights [like the post-petition right to file in *Myers*] but also the limitations [like the temporal element of the reinvestment feature

of California's homestead exemption in *Golden*] integral in those exemptions as well." *Ibid.*

In his attempt to discredit *Jacobson*, Petitioner makes numerous references in his brief to Judge Pappas' concurring opinion in *Ford v. Konnoff* (*In re Konnoff*), 356 B.R. 201 (B.A.P. 9th Cir. 2006) Pet. 13, 29, 31, and 32. In the *Konnoff* case, the Ninth Circuit bankruptcy appellate panel found that Debtors could not maintain an exemption in the proceeds from their sale of a residence since Arizona law had a reinvestment requirement that had lapsed and Debtors had not reinvested the proceeds into new homestead property. Petitioner noted that several bankruptcy Judges have disagreed with *Jacobson's* vanishing exemption rule listing Judge Pappas as one of those Judges who has criticized it. Pet. 13. However, Petitioner fails to tell this Court that this very same Judge who criticized the holding in *Jacobson* in the context of a Chapter 7 case, determined that *Chapter 13 Debtors* William and Gayle Mulliken could not avoid a judicial lien on the proceeds from the sale of their real estate as impairing their homestead exemption. This was because the Debtors stated in their motion to sell the real estate that their intention was to use the proceeds to pay off a Chapter 13 plan instead of reinvesting those proceeds into replacement real estate. As a result, the proceeds were no longer exempt so the lien on those proceeds could not impair the homestead exemption.

The Honorable Judge Jim B. Pappas stated, "The purpose of the homestead provisions are to allow owners to keep homes when they are beset with financial

difficulties." *Mulliken, supra*. In other words, the homestead exemption is to protect "the property occupied as a home by the owner thereof or his family or her family from attachment and execution." *Ibid.*

Judge Pappas went on to say:

> "In addition, the Idaho legislature has adopted a rule that allows debtors to sell a homestead and purchase a different homestead and the new homestead will also be protected by the exemption statutes. Idaho Code Section 55-1008. *However, it is clear from the plain language of Idaho Code Section 55-1008 that the proceeds from the voluntary sale of a home may only be claimed exempt if they are held for the purpose of acquiring a new homestead.* . . . If the proceeds are to be used for any other purpose they may not be validly claimed as exempt."

(Emphasis added.)

The *Mulliken* case was nearly identical to the matter before this Court wherein Debtors filed a motion to approve the sale of their homestead property to use the funds to do something other than purchase new homestead property. The only real difference in the two case is that the Mulliken's had a confirmed plan and property of the estate would have likely revested with the debtors pursuant to 11 U.S.C. § 1322(b)(9). The bankruptcy court subsequently found that the remaining proceeds from the sale of the real property were to be held by the Chapter 13 trustee and that if they were not used within a year for Debtors to acquire a new

homestead property, the proceeds would remain subject to creditors lien.

The *Konoff* case involved Chapter 7 debtors which may explain why the same Judge (Jim D. Pappas) had differing interpretations of whether the failure to invest the proceeds into homestead property invalidated the homestead exemption claimed on the funds.

While Petitioner makes much to do about the fact that the *Jacobson* opinion has been questioned by many Courts, the procedural history is clear. When the Ninth Circuit was provided an opportunity to grant an en banc hearing in *Wells* and reverse the precedent in *Jacobson*, the Ninth Circuit denied the request. *Jacobson* remains good law and is not inconsistent with this Court's ruling in *White v. Stump*, *Myers v. Matley*, or *Law v. Siegel*. When debtors elect to use state granted homestead exemptions, it is the entire exemption law which controls.

It is the entire state law statute that was in effect on the date of filing that controlled and that statute contained a reinvestment clause. Courts cannot just disregard parts of the statute. The Ninth Circuit's ruling in the *Wells* case is completely consistent with the Supreme Court's prior rulings and the Petition for Certiorari should not be granted.

III. Petitioner Mischaracterizes the Impact that this Decision has on Debtors

In order to bolster the importance of this issue, Petitioner makes numerous assertions that are unsubstantiated. Starting in their introductory paragraph of this Petition for Certiorari Petitioner states "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." Pet. 2.

The Petitioner claims that for some individuals, "[homestead sale] . . . 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." Pet. 3.

Respondent contends that this issue affects very few debtors for a myriad of reasons. First and foremost is that the overwhelming majority of bankruptcy cases are voluntary. If an individual, or in the case of a husband and wife, determine they need to sell their home for 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, it is typically done before a bankruptcy is filed or after the bankruptcy is completed.

Statistically most bankruptcy cases are Chapter 7s. The average duration a no asset Chapter 7 case remains open is around four months. Furthermore, Chapter 13 is completely voluntary. If a Debtor(s) determines he must sell his homestead property for some

"higher and better use," then that Debtor is free to dismiss his case and not risk the Court ordering him to turn over the proceeds of the sale if he fails to, or chooses not to, timely reinvest those proceeds into a replacement residence in those states that have a reinvestment requirement.

Petitioner expresses frustration that if a Debtor in bankruptcy sells their homestead property and chooses not to reinvest the proceeds into a replacement property that somehow that debtor will not get a fresh start. This frustration is misplaced. The fresh start pertains to a debtor's discharge, not the trustee's liquidation of a debtor's non-exempt equity. And in the context of a Chapter 13, Debtor's assets are not even liquidated – debtor's just need only pay the value of the non-exempt equity. 11 U.S.C. § 1325(a)(4).

As the *Jacobson* Court noted:

> "This focus on a "fresh start" tells only half the story. By giving states the opportunity to define exemptions for the purposes of federal bankruptcy law, the Bankruptcy Code demands respect for the ways in which states balance the rights of debtors and creditors. See *Owen*, 500 U.S. at 308, 111 S. Ct. 1833. California enacted the homestead exemption to ensure that debtors and their families do not become homeless. *Webb v. Trippet*, 235 Cal. App.3d 647, 650, 286 Cal. Rptr. 742 (Cal. Ct. App. 1991). To that end, it "requires reinvestment in order to prevent the Debtor from squandering the proceeds for non-exempt purposes" *Golden*, 789 F.2d 698 at 700

> (9th Cir. 1986). California has thus determined that if a debtor does not put his proceeds to proper use, they ought to be used to satisfy creditors' claims. Ignoring the reinvestment requirement would frustrate the objective of the California homestead exemption and the bankruptcy act itself, which limits exemptions to [those] provided by state or federal law." *Id.* at 700, *Jacobson* at 1200.

While Petitioners suggest the funds could be used for what they deem "a higher purpose," what of the many debtors who do not make good sound financial decisions. Allowing Debtors to disregard the state created limitations on homestead proceeds creates an arena for abuse where Debtors can avoid the reinvestment provisions.

Respondent finds it self-serving that the Petitioners should tell us that the decision in *Wells* is incorrect because of the sanctity of the home "[T]he home holds a special place in American Law." Pet. 24 and " . . . homestead exemptions protect not only the home, but also the property that enables the head of the household to support the family. They ensure that families are *not left homeless*, and they leave debtors with an asset from which they can rebuild." Pet. 25. All the whilst they tell us that the Debtor should be able to sell his homestead property and spend the proceeds as he sees fit – burn them in the street if he likes.

As Petitioner has stated in his brief, the majority of states that opt out of the federal exemption scheme have some type of homestead exemption designed to

protect a debtor's home. Some states are more generous than others but that is the prerogative of each state legislature. Petitioner is asking this Court to find that debtors should be allowed to liquidate their homestead property and be free to use the funds as they see fit; thus ignoring state's intent that the funds be used to guarantee that debtors are not homeless.

The issue raised by Petitioner is not so "profoundly important" affecting "thousands of homeowners" that it warrants review of the decision below and the Court should refrain from granting the Petition for Writ of Certiorari.

CONCLUSION

For the reasons stated above and for the reasons set out in the Ninth Circuit *Wells* opinion, the petition for writ of certiorari should be denied.

Respectfully submitted,

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