No. 20-499

In the Supreme Court of the United States

NATHANIEL RICHARD HULL, IN HIS CAPACITY AS CHAPTER 7 TRUSTEE FOR THE BANKRUPTCY ESTATE OF JEFFREY J. ROCKWELL, PETITIONER

v.

JEFFREY J. ROCKWELL

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

CHRISTOPHER J. KEACH
MOLLEUR LAW OFFICE
190 Main Street, 3d Floor
Saco, ME 04072

DANIEL L. GEYSER
Counsel of Record
ALEXANDER DUBOSE & JEFFERSON LLP
Walnut Glen Tower
8144 Walnut Hill Lane, Ste. 1000
Dallas, TX 75231
(214) 396-0441
dgeyser@adjtlaw.com

QUESTION PRESENTED

For nearly a century, Congress has followed a consistent rule for determining a debtor's exempt assets in what is now a Chapter 7 bankruptcy: "the bankrupt's right to a homestead exemption becomes fixed at the date of the filing of the petition in bankruptcy and cannot thereafter be enlarged or altered by anything the bankrupt may do." *Myers* v. *Matley*, 318 U.S. 622, 628 (1943); see also *White* v. *Stump*, 266 U.S. 310, 313 (1924) ("the point of time which is to separate the old situation from the new in the bankrupt's affairs is the date when the petition is filed").

The question presented is:

Whether, in a converted Chapter 7 case, a homestead exemption unconditionally fixed on the filing date is nevertheless lost if the debtor later sells his home postpetition but does not reinvest his postpetition proceeds in a manner directed by state law.

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INTRODUCTION

According to petitioner, the First Circuit split from two circuits (the Ninth and Fifth) in holding that, "inside bankruptcy, a homestead exemption can never expire even if it would have expired under applicable state law outside bankruptcy." Pet. I. Petitioner is wrong. He both overstates the conflict and mischaracterizes the First Circuit's holding. The case's procedural posture makes it an imperfect vehicle for deciding the question presented, and petitioner's views on the merits are plainly unsound—which is yet another reason why this shallow split will almost certainly resolve itself. Further review is unwarranted.

Petitioner cannot cobble together a broader split by expanding the scope of the First Circuit's decision. The courts below addressed only the "narrow" question presented by this case: whether a postpetition sale in a converted Chapter 7 proceeding eliminates an exemption properly claimed on the filing date. The First Circuit did not say that exemptions can "never" expire; it did not address the rule for *prepetition* sales or *Chapter 13* cases, which implicate different factual questions under different legal frameworks. Its holding was limited to the case-specific record below—finding, correctly, that the Code "dictates" that a debtor's "homestead exemption maintains the status it held on the day [he] filed his bankruptcy petition." Pet. App. 2a.

Once the decision is properly framed, petitioner's case for review is substantially diminished. There is no conflict with the Fifth Circuit; indeed, the two courts reached the identical resolution of the same issue. "As it now stands, only the Ninth Circuit" has contrary authority, and its decisions were "written before the Supreme Court made important pronouncements about the inviolability of exemptions and a debtor's property in *Harris* v. *Viegelahn*, 135 S. Ct. 1829 (2015), and *Law* v. *Siegel*, 571 U.S. 415 (2014)." Bill Rochelle, *Asset Exempt in Chapter 13 Retains the Exemption After Conversion, First Circuit Says*, ABI (Aug. 4, 2020) <https://tinyurl.com/rochelle-rockwell>. And the Ninth Circuit, of course, has also not yet had an opportunity to revisit its views in light of the contrary decisions of the First and Fifth Circuits. There is a reason that experts label the split as "eroding" (Rochelle, *supra*), and there is every reason to believe the Ninth Circuit will eventually eliminate the conflict on its own.

Aside from those flaws, the case suffers from a serious vehicle problem. Unlike every other case comprising the

alleged conflict, respondent's case was filed under Chapter 13; he sold his homestead while the Chapter 13 proceeding was still pending, and only later converted his case to Chapter 7. While the First Circuit (correctly) concluded that the case should be treated like any other Chapter 7 case, petitioner took exactly the opposite position below—insisting that the issue was limited to Chapter 13 and must be viewed through that prism. While petitioner has not expressly renewed that argument in his petition, he has not yet abandoned the position either. This adds a layer of complexity to the case and may lead to the Court grappling with a question that only a single circuit (the one below) has squarely addressed.

In the end, the proper disposition of this case is straightforward: Chapter 7 fixes the parties' rights on the filing date, and respondent properly claimed an unconditional homestead exemption on that date. There is no basis in the Code for declaring that a postpetition sale voids a proper exemption and revests the debtor's exempt property with the estate. Petitioner's contrary position is incorrect, and the petition should be denied.

STATUTORY PROVISIONS INVOLVED

Section 541 of the Bankruptcy Code, 11 U.S.C. 541, provides in pertinent part:

> (a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:
>
> (1) * * * [A]ll legal or equitable interests of the debtor in property as of the commencement of the case.

* * * * *

> (5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—
>
> (A) by bequest, devise, or inheritance;
>
> (B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or
>
> (C) as a beneficiary of a life insurance policy or of a death benefit plan.

Section 522 of the Bankruptcy Code, 11 U.S.C. 522, provides in pertinent part:

> (b)(1) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in * * * paragraph (3) of this subsection * * * .
>
> * * * * *
>
> (3) Property listed in this paragraph is—
>
> (A) * * * any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition * * * .
>
> * * * * *
>
> (c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case * * * .
>
> * * * * *

(k) Property that the debtor exempts under this section is not liable for payment of any administrative expense * * * .

Section 348 of the Bankruptcy Code, 11 U.S.C. 348, provides in pertinent part:

(a) Conversion of a case from a case under one chapter of this title to a case under another chapter of this title constitutes an order for relief under the chapter to which the case is converted, but, except as provided in subsections (b) and (c) of this section, does not effect a change in the date of the filing of the petition, the commencement of the case, or the order for relief.

* * * * *

(f)(1) Except as provided in paragraph (2), when a case under chapter 13 of this title is converted to a case under another chapter under this title—

(A) property of the estate in the converted case shall consist of property of the estate, as of the date of filing of the petition, that remains in the possession of or is under the control of the debtor on the date of conversion * * * .

* * * * *

(2) If the debtor converts a case under chapter 13 of this title to a case under another chapter under this title in bad faith, the property of the estate in the converted case shall consist of the property of the estate as of the date of conversion.

ARGUMENT

A. The Petition Presents A Weak and Eroding Conflict That Will Eventually Resolve Itself

Petitioner claims there is a "three-way split" over the question presented. Pet. 13. That is wrong. At best, it is a weak 2-1 split favoring the decision below. The Ninth Circuit alone is in the minority, and it announced its outlier position before the First and Fifth Circuits adopted the opposite approach. The Ninth Circuit also adopted its position before this Court's *Harris* decision (see Pet. App. 16a-17a), which underscored the critical differences between Chapter 7 and Chapter 13 cases.

Once those differences are properly taken into account, petitioner's alleged "confus[ion]" quickly dissipates. Pet. 3. The Fifth Circuit walked back its position in light of *Harris*, and there is every reason to think the Ninth Circuit will follow suit at its next available opportunity—especially with the First Circuit now joining the Fifth Circuit's side of the split. This "eroding" conflict (Rochelle, *supra*) does not warrant the Court's attention at this time.

1. Petitioner's assertion of a broad, three-way split is based on a clear misunderstanding of key aspects of bankruptcy law.

As has been the rule for nearly a century, the parties' rights in Chapter 7 are "fixed" on "the date when the petition is filed." *White* v. *Stump*, 266 U.S. 310, 313 (1924). Unlike in Chapter 13, a Chapter 7 estate does *not* include the debtor's "postpetition earnings and acquisitions." *Harris*, 135 S. Ct. at 1835. The debtor is allowed a "clean break from his financial past," rendering his transactions off-limits "*after* the bankruptcy filing." *Ibid.* (citing 11 U.S.C. 541(a)). That makes a Chapter 7 debtor's *postpetition* decision to sell his or her home irrelevant: "the bankrupt's right to a homestead exemption becomes fixed at

the date of the filing of the petition in bankruptcy and cannot thereafter be enlarged or altered by anything the bankrupt may do." *Myers* v. *Matley*, 318 U.S. 622, 628 (1943); see *Harris*, 135 S. Ct. at 1835 ("while a Chapter 7 debtor must forfeit virtually all his prepetition property, he is able to make a 'fresh start' by shielding from creditors his postpetition earnings and acquisitions").

These rules establish a clear line at the filing date for determining the debtor's rights. 11 U.S.C. 541(a). If a homestead is exempt on that date, then Chapter 7 debtors have the right to use any exempt property for their fresh start—just as they are entitled to retain future wages or profits from any other postpetition transactions. *Harris*, 135 S. Ct. at 1835. This line creates an obvious distinction between both *pre-* and *post*petition sales and Chapter 7 and Chapter 13 cases. A decision asking how to treat proceeds from a *prepetition* sale says little about how to treat proceeds from a *postpetition* transaction. And a decision asking how to treat postpetition proceeds under Chapter 13 (where the estate *includes* "wages and property acquired after filing," *ibid.* (citing 11 U.S.C. 1306(a))) says little about how to treat postpetition proceeds under Chapter 7, where debtors retain their "postpetition earnings and acquisitions" (*ibid.*).

Notwithstanding these clear rules, petitioner jumbles together decisions addressing prepetition and postpetition sales and Chapter 7 and Chapter 13 cases. See Pet. 13-16, 18-19. Courts are not "confus[ed]" (contra Pet. 3) when they adopt different rules in these different settings—they are merely respecting the critical factual and legal distinctions underlying each issue. Those fundamental distinctions drive the different results in the majority of these cases, and they readily explain away a significant part of petitioner's alleged conflict.

2. Contrary to petitioner's contention, there is no conflict between the decision below and settled law in the Fifth Circuit. Indeed, the Fifth Circuit adopted the same holding in the same legal setting as the First Circuit below: even where a debtor sold his homestead during a Chapter 7 proceeding, "the homestead [is] exempt because it was owned at the commencement of [the debtor's] bankruptcy." *In re DeBerry*, 884 F.3d 526, 530 (5th Cir. 2018); see also *In re Hawk*, 871 F.3d 287, 294 (5th Cir. 2017) ("a new property interest the debtor acquires after filing for bankruptcy * * * does not become part of the estate in a Chapter 7 case, even if the debtor acquires the new property interest by *transforming a previously exempted asset into a nonexempt one*") (emphasis added).

a. In *DeBerry*, the Fifth Circuit confronted the same legal question presented here: "whether the proceeds of a homestead sold after the filing of a petition for Chapter 7 bankruptcy remain exempt from the debtor's estate if they are not reinvested within the time frame required to invoke the proceeds rule of Texas homestead law." 884 F.3d at 527.[1] As the court explained, under "bankruptcy's snapshot rule," the debtor is protected because his homestead was "'unconditionally exempted' at the time the Chapter 7 petition [was] filed." *Id.* at 529. Thus, unlike situations where "the homestead is sold before bankruptcy,

[1] Actually, it is *nearly* the same legal question presented here: while *DeBerry* involved an original Chapter 7 proceeding (884 F.3d at 527), respondent's case involves a *converted* Chapter 7 proceeding (Pet. App. 2a). While the First Circuit correctly held that the same rules apply (Pet. App. 10a), petitioner took the opposite stance below (*id.* at 13a). If petitioner had been right, this case would present an entirely different legal question than those presented in any of the other circuit-level decisions. See also Part B.1, *infra* (explaining why this case is an imperfect vehicle).

th[e] debtor d[id] not need to invoke the proceeds rule because he owned the homestead at the time of filing." *Id.* at 528-529.

The Fifth Circuit further rejected petitioner's contrary rule as inviting "a 'system of quasi-exempt property [in which] property would never be fully exempt until a case was either closed or converted [to Chapter 13].'" 884 F.3d at 529. As the court explained, such a rule would wrongly "inject" "uncertainty" into a "large number of Chapter 7 cases": whenever a debtor's home is sold "months into the bankruptcy," petitioner's rule would make it impossible to determine "the status of the exemption" until "the reinvestment period expires"—on *DeBerry*'s facts, *thirteen months* after the bankruptcy's filing. *Ibid.*[2] In addition to frustrating Chapter 7's efficient administration, such a rule would "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." *Ibid.*

The panel finally noted that the Fifth Circuit in *Hawk* had already "persuasively distinguished" the same "two homestead cases" that petitioner invokes here. 884 F.3d at 529 (recapping *Hawk*, *supra*); compare Pet. 15-16 (discussing *In re Zibman*, 268 F.3d 298 (5th Cir. 2001), and *In re Frost*, 744 F.3d 384 (5th Cir. 2014)). First, in *Zibman*, the debtor failed to reinvest the "proceeds of a homestead

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[2] For context: In 2019, the average length of an individual consumer's Chapter 7 case (from filing to disposition) was 186 days (mean) or 114 days (median). See Director of the Administrative Office of the United States Courts, *2019 Report of Statistics Required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005*, Tbl. 3 at 1 <https://tinyurl.com/2019-BAPCPA-Table3> (2019 BAPCPA Report). Petitioner's theory would often double or triple that time.

sold *before* the filing of a Chapter 7 bankruptcy." *Ibid.* Because that homestead was sold "prepetition," the proceeds "were only *conditionally* exempt" on the filing date; "[i]n contrast," the panel explained, the *DeBerry* "homestead was owned on the date of [the debtor's] filing and thus was 'subject to an unconditional exemption under Texas law.'" *Ibid.* (emphasis added).

Second, in *Frost*, the court "at least" confronted a postpetition sale during bankruptcy. *DeBerry*, 884 F.3d at 529-530. But as the panel explained, "*Frost* was a Chapter 13 case, which turns out to be a key distinction." *Id.* at 530. The "two chapters treat postpetition transactions differently": In Chapter 13, "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"; "Chapter 7," by contrast, "contains no similar provision." *Ibid.* (citing *Hawk*, 871 F.3d at 295-296).

b. This is precisely the same result the Fifth Circuit reached in *Hawk* in examining exemptions for retirement accounts. See 871 F.3d at 289. Similar to *DeBerry*, the Chapter 7 debtors "claimed an exemption for [IRA] funds" after filing for bankruptcy, but later "withdrew the funds from the IRA." *Ibid.* To remain exempt, Texas law required any distributions to be "rolled over into another retirement account within sixty days," but the debtors failed to reinvest. *Ibid.* The Fifth Circuit still held the funds were exempt: "an unconditionally exempted property interest that is subsequently transformed into a new nonexempt property interest remains excluded from a Chapter 7 bankruptcy." *Id.* at 294.

As the court reasoned, this result followed from the "snapshot rule" and the basic requirements of Chapter 7. 871 F.3d at 293-296. First, "the date of filing is the point

at which 'the status and rights of the bankrupt, the creditors and the trustee * * * are fixed.'" *Id.* at 291. As the court explained, once the debtors "filed for Chapter 7 bankruptcy" and "claimed an exemption for funds held in an IRA," the "funds were unconditionally exempted." *Id.* at 295. At that point, "'Chapter 7 allows a debtor to make a clean break from his financial past.'" *Id.* at 295-296 (quoting *Harris*, 135 S. Ct. at 1835). "The property interest was 'withdrawn from the estate' when the exemptions were allowed, and there was no provision under which the [debtors'] subsequently acquired interests in amounts distributed from the IRA could become part of the estate." *Id.* at 296 (quoting *Owen* v. *Owen*, 500 U.S. 305, 308 (1991)).

Accordingly, the court concluded, while "a new property interest the debtor acquires after filing for bankruptcy becomes part of the estate in a Chapter 13 case," it "does not become part of the estate in a Chapter 7 case, even if the debtor acquires the new property interest by transforming a previously exempted asset into a nonexempt one." 871 F.3d at 296.

In so holding, the Fifth Circuit effectively walked back its more aggressive language in *Frost*, which declared that "a change in the character of the property that eliminates an element required for the exemption [like a reinvestment requirement] voids the exemption, even if the bankruptcy proceedings have already begun." 744 F.3d at 387-388 (further rejecting the debtor's "argument that exemptions are fixed as they appear on the date of the bankruptcy filing"—"an 'essential element of the exemption must continue in effect even during the pendency of the bankruptcy case'"). As *Hawk* explained, *Frost*'s language is "somewhat difficult to understand" if applied generally, but it made "sense in the context of a Chapter 13 case":

"*Frost* effectively brought 'proceeds that became nonexempt after the expiration of the time-limited exemption back into the estate,' which was permissible under § 1306(a)(1) because the proceeds constituted a new property interest Frost acquired after the [case's] commencement." 871 F.3d at 293-294.

"Because Chapter 7 does not contain a provision like § 1306(a)(1)," *Hawk* refused to apply *Frost* in a Chapter 7 proceeding. *Id.* at 294. The panel summed up the controlling distinction by quoting the bankruptcy court in *Frost* itself: "'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.'" *Id.* at 295.

c. As these decisions make clear, the Fifth Circuit does not have an "intermediary" rule. Contra Pet. 12. It recognizes that different rules apply in different settings—which is unsurprising since each Chapter has different legal requirements. Those different requirements were underscored by this Court in *Harris*; the Fifth Circuit subsequently cabined its earlier precedent, and its analysis is now functionally identical to the First Circuit's below. Compare Pet. App. 8a-13a. Petitioner is simply wrong (Pet. 15-16) that there is any conceivable split between the First and Fifth Circuits.[3]

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[3] Petitioner baldly asserts that the First Circuit adopted a categorical rule, holding that "state-law exemptions *never* expire inside bankruptcy." Pet. 13. This is bizarre: the First Circuit's holding was necessarily limited to the distinct question before it—the effect of a postpetition sale on a vested homestead exemption in a converted Chapter 7 bankruptcy. The court had no occasion to analyze a *prepetition* sale (see Pet. App. 10a), and it expressly *refused* to "decide whether sale

3. While petitioner is correct that the Ninth Circuit adopted the opposite conclusion (Pet. 13-15), petitioner overstates the extent and strength of the split.

First, petitioner argues (Pet. 13-14) that the First Circuit's decision conflicts with *In re Golden*, 789 F.2d 698 (1986). But *Golden* is irrelevant here: the issue involved a *pre-petition sale* where the debtor "claim[ed] a homestead exemption under California law *for the proceeds*." 789 F.2d at 699 (emphasis added). The Fifth Circuit (in distinguishing *Zibman*) already explained why that question is distinct: "in that case, the debtors already held *proceeds* when they filed for bankruptcy, and state law provided only a conditional exemption for those proceeds. If the debtors had still owned the *homestead* at the time of filing, their homestead would have been subject to an unconditional exemption * * * ." *Hawk*, 871 F.3d at 296.

The First Circuit, like the Fifth Circuit, correctly focused on the petition date as the critical benchmark, and respondent properly claimed an unconditional "homestead exemption" on that date. Pet. App. 10a-11a. The Ninth Circuit's views regarding a conditional exemption for prepetition proceeds says little about the operative question here.

Second, petitioner also asserts a "square[]" conflict with *In re Jacobson*, 676 F.3d 1193 (9th Cir. 2012), but the conflict is underwhelming. The Ninth Circuit issued its opinion "approximately two years before having the benefit of the Supreme Court's guidance in *Law* [v. *Siegel*, 571 U.S. 415 (2014)] and three years before *Harris*." Pet. App. 16a. It relied partly on the Fifth Circuit's *Zibman* decision

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proceeds continue to be exempted * * * in a Chapter 13 case" (*id.* at 15a). There is no hint anywhere in the decision below that the First Circuit decided anything beyond the "narrow" question presented (*id.* at 19a).

(see 676 F.3d at 1199), which the Fifth Circuit itself has deemed irrelevant in this context. And the Ninth Circuit acted without the benefit of the First and Fifth Circuit's exhaustive views, each reaching the opposite conclusion after extended analysis.[4]

The Ninth Circuit's early position is incompatible with the Code and this Court's decisions, and it now stands alone in getting this issue wrong. The decision below simply marks "the latest evidence of an eroding circuit split." Rochelle, *supra*. There is every reason to believe that the Ninth Circuit, once presented with a proper opportunity, will revisit its position and align its views with the majority approach.

4. While district and bankruptcy courts have divided on this question (Pet. 18-19), petitioner again overstates the relevance of any division. He cites a series of decisions *within the Ninth Circuit* as examples of courts going his way—without mentioning that those courts are bound by (outdated) circuit precedent. *Id.* at 18 (citing decisions from California, Arizona, Idaho, Oregon, and the Ninth

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[4] Both petitioner and *Jacobson* suggest their position is consistent with this Court's *Myers* decision (Pet. 14-15; 676 F.3d at 1199), but they are wrong. The rights in *Myers* were *not* conditional on the filing date; the debtors' rights were vested, including "[t]he right to make and record the necessary declaration of homestead." 318 U.S. at 628. That ministerial act did not constitute a new transaction or acquisition, and it did not "enlarge[] or alter[]" anyone's rights. *Ibid.* ("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 subsequent to the filing of the petition."). Here, by contrast, a postpetition sale assuredly *does* alter a debtor's rights—it liquidates an asset, generates proceeds, and alters the debtor's relationship with any party in the transaction. Indeed, it even shifts the debtor's rights under Maine law to a different subsection of Maine's homestead statute. Compare 14 Me. Rev. Stat. 4422(1)(A), with 14 Me. Rev. Stat. 4422(1)(C). The Ninth Circuit identified the relevant language in *Myers*, but it flipped its meaning on its head.

Circuit's bankruptcy appellate panel). Those decisions will presumably fall in line once the Ninth Circuit corrects its position. And petitioner again throws in cases involving prepetition sales (*id.* at 18-19)—despite that category not bearing directly on the *actual* question presented. See, *e.g.*, *In re Thomas*, No. 17-43661, 2018 WL 3655654, at *1 (Bankr. D. Minn. July 31, 2018) ("[t]he sale of the debtor's homestead occurred pre-petition"); *In re Williams*, 515 B.R. 395, 397, 404 (Bankr. D. Mass. 2014) (distinguishing contrary authority as "not extend[ing] to cases" where, as there, "the sale of the homestead occurred prepetition"); *In re Stewart*, 452 B.R. 726, 730 (Bankr. C.D. Ill. 2011) (debtors "filed a Chapter 7 petition, properly disclosing the prepetition sale of the house and the two uncashed checks").

Petitioner finally promotes the idea that the same "interpretive" issue could arise regarding other exemptions. Pet. 19-20. Yet petitioner fails to identify a circuit conflict over any of those other exemptions (*id.* at 19 (so conceding))—or why the Court would have occasion to address any issue besides the "narrow" question framed by the case-specific facts of this particular record. Pet. App. 19a.

In the end, contrary to petitioner's bold claim of a "three-way" split, there is no conflict with the Fifth Circuit, a questionable conflict with the Ninth Circuit, and no immediate need for this Court to intervene without waiting to see if the "eroding" split might resolve itself. The petition accordingly should be denied.

B. This Case Is A Suboptimal Vehicle For Deciding The Question Presented

Even were this issue appropriate for the Court's review, this case is an inadequate vehicle for resolving it.

1. First and foremost, petitioner barely even acknowledges that respondent's bankruptcy case was originally

filed under Chapter 13 and only later converted to Chapter 7. None of petitioner's other circuit-level decisions confronted a case in this posture—where a debtor owned a residence on the Chapter 13 filing date, sold the house while in Chapter 13, and only later converted the case to Chapter 7. See Pet. App. 2a-4a; compare Part A, *supra* (discussing cases filed, without conversion, under Chapter 7 and Chapter 13).

Unlike his current briefing, petitioner argued below that this posture was essential to the outcome: he "place[d] great emphasis" on the fact that the case was originally a Chapter 13 case (Pet. App. 39a n.1); he argued that the case presented "a distinct Chapter 13 issue" (Pet. App. 13a); and he insisted that "'[t]he differences between a [C]hapter 7 and a [C]hapter 13 case bear on the outcome of this appeal'"—precisely because respondent's exemption rights (as a Chapter 13 participant) should "include changes based on post-petition activity" (*ibid.*).

Although the First Circuit (properly) rejected petitioner's argument,[5] it adds unnecessary complexity to the analysis. If petitioner were actually correct below, then this case is decidedly the wrong vehicle for deciding how

[5] As the court explained, "[a]bsent a bad-faith conversion, § 348(f) limits a converted Chapter 7 estate to property belonging to the debtor 'as of the date' the original Chapter 13 petition was filed.'" Pet. App. 8a (quoting *Harris*, 135 S. Ct. at 1837). Because "'[n]othing in the Code den[ies] debtors funds that would have been theirs had the case proceeded under Chapter 7 from the start,'" the court "examine[d] [respondent's] claim of a homestead exemption on the date he filed for his Chapter 13 bankruptcy." *Id.* at 10a (quoting *Harris*, 135 S. Ct. at 1838). "The Code," in short, "does not contain any other provisions (and [petitioner] does not cite any) that instruct the bankruptcy court to treat a Chapter 7 debtor differently if he converted his case from Chapter 13." *Id.* at 14a; see also *id.* at 15a ("we must view this as what it is: a Chapter 7 case").

to treat postpetition sales of exempt homesteads in Chapter 7. Nor has petitioner expressly abandoned his earlier argument; if petitioner were to trot it back out on plenary review, this Court would be forced to grapple with the issue without the benefit of adequate percolation or the contrasting views of any circuit-level authority.

If the question presented is as "important and recurring" as petitioner suggests (Pet. 26), surely the Court will have another opportunity to resolve it in a pure Chapter 7 case.

2. The vehicle also suffers because the Maine courts have yet to issue a definitive ruling on the precise scope or purpose of Maine's homestead law. See Pet. App. 27a-28a (petitioner so conceding); see also *id.* at 35a ("the Maine Supreme Judicial Court has not provided insight into the intended effect of the state law exemption in chapter 7 cases").

This state-law issue has little bearing under the First Circuit's rationale, since everyone agrees that respondent properly claimed a homestead on the original filing date. But if petitioner is right that postpetition transactions can void an existing homestead, then it becomes essential to decide whether Maine would intend for the debtor's equity to vanish in these circumstances—or whether it would prefer to preserve the debtor's equity as a means to advance the debtor's fresh start. It does not advance "federalism" interests (contra Pet. 20-21) to enforce state law in a way that flouts its intended purpose.

This Court would be reviewing the case on an incomplete picture of the key state exemption until Maine courts weigh in on this issue.

3. Petitioner argues this is a clean vehicle because "[t]he courts below also found that respondent failed to comply with Maine's reinvestment requirement." Pet. 26.

Petitioner is mistaken: although respondent did not purchase a new home, he invested substantial funds on his new residence—using a significant portion of "his homestead exemption" on "paint, tile, fuel oil, carpet, plumbing, tree-cutting services, and other miscellaneous repairs and supplies," and "moving expenses to move his own belongings" from his prior homestead to his new home. Pet. App. 3a-4a (respondent "moved into the Bancroft Court property in September 2017 and continued to spend the money from his homestead exemption on repairs and improvements"); contrast Pet. 9 (stating that respondent "spent a substantial portion of the proceeds" without disclosing that those funds were spent on his new residence).

In proceedings below, respondent specifically argued that these expenses "qualif[y] as investing in a homestead under Maine law, so that money is still exempt from the estate," but the courts did not address the issue because respondent prevailed on other grounds. Pet. App. 8a n.4; see also *id.* at 63a n.18 ("Given this holding, the court does not need to address [respondent's] other arguments, including whether 14 M.R.S.A. § 4422(c)(1) permits a debtor to invest in property in which he has no ownership interest or whether moving expenses or tree removal expenditures constitute 'reinvestment' in a residence.").

Respondent's expenses are exactly in line with the animating purpose of many homestead exemptions: ensuring that debtors have a place to live after being forced to sell their residence. It is therefore entirely possible that respondent could exempt some (if not all) of the proceeds even under petitioner's view of the Code. The Court should await a vehicle where these critical questions do not remain unanswered under the operative state law.

C. The Decision Below Is Correct

Review is also unwarranted because the decision below is correct. As the First and Fifth Circuits have established, the holding below follows inexorably from the Code's plain text, structure, and purpose. Petitioner's contrary contention is wrong (Pet. 21-26), and respondent offers this brief response to correct petitioner's errors.

1. Petitioner argues that Section 522(b) authorizes a "fluid" analysis: it limits exemptions to property that "is exempt" under state law, and "[n]othing in the Code creates blinders that prevent courts from looking at anything other than the facts at the moment of filing." Pet. 21-23. Thus, according to petitioner, "[w]hen a debtor sells a home and the reinvestment window expires, that property no longer 'is exempt' under state law, and the debtor may no longer 'exempt it from property of the estate.'" Pet. 22. This is wrong on every level.

a. Petitioner initially ignores the Code's directive that estate property is determined "*as of the commencement of the case*." 11 U.S.C. 541(a)(1) (emphasis added). That clear line does not permit a "fluid" analysis; it sets the filing date as the operative benchmark, and it protects the debtors' "postpetition earnings and acquisitions." *Harris*, 135 S. Ct. at 1835. Congress even repeated that line, explicitly, for cases converted from Chapter 13: "property of the estate in the converted case shall consist of property of the estate[] *as of the date of filing of the petition*." 11 U.S.C. 348(f)(1)(A) (emphasis added). This unambiguous language indeed *does* "prevent courts" from looking past "the moment of filing" (Pet. 22)—it sets the filing date as the traditional line "separat[ing] the old situation from the new in the bankrupt's affairs." *White*, 266 U.S. at 313; see also *Harris*, 135 S. Ct. at 1835.

Nor is there any basis for adopting a different line for exemptions under Section 522(b). Congress textually

linked Section 522(b)(1) with Section 541, reinforcing a parallel focus on the filing date: it makes little sense to say that Section 522(b)'s exemptions apply "[n]otwithstanding section 541 of this title," if Congress intended each section to look to different facts at different points in time. The more natural reading is that Congress set out estate property *as of the filing date*, but exempted certain property (*notwithstanding Section 541*) from that collection. There is no license (outside explicit directives, *e.g.*, 11 U.S.C. 1306) to add the debtor's postpetition property to the estate.

Petitioner's reading also invites an obvious disconnect within Section 522(b)(3)(A) itself: it is odd to limit exemptions to "State or local law that is applicable on the date of the filing of the petition" if trustees can also target transactions *after* that date. The natural inference, again, is that Congress fixed the parties' respective rights on the petition date—both as to the applicable state law and the facts in existence.

Moreover, when Congress wished to create exceptions to that rule, it did so expressly—and yet it did *not* include postpetition transactions involving exempt property in any exceptions. Congress, for example, included in the estate certain property (like "inheritance[s]") that a debtor acquires "within 180 days" of the filing date (11 U.S.C. 541(a)(5))—and yet did not include any exceptions for selling exempt property. And Congress expanded "property of the estate" to include any property "as of the date of conversion" if a debtor converts a Chapter 13 case in bad faith (11 U.S.C. 348(f)(2))—but again did not include any proceeds from exempt property.[6]

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[6] Congress even confirmed that "property exempted under [Section 522]" is protected "*during or after the [bankruptcy] case*" except

Petitioner's argument would also undermine the fundamental bargain of Chapter 7 bankruptcy. "Chapter 7 allows a debtor to make a clean break" on the petition date; the debtor pays the "steep price" of liquidating all nonexempt assets, but receives the benefit of any postpetition "earnings and acquisitions." *Harris*, 135 S. Ct. at 1835. It makes little sense to say that a debtor's postpetition acquisitions are off-limits unless those acquisitions involve exempt property.

b. Petitioner's attempt to justify a "fluid" exemption scheme falls short.

First, petitioner notes that the estate can expand postpetition, including both "'[p]roceeds' of property of the estate" and "'[a]ny interest in property that the estate acquires after the commencement of the case.'" Pet. 23 (citing 11 U.S.C. 541(a)(6)-(7)). But those sections cut exactly the *opposite* way: the estate is defined at the petition date—so any proceeds *from estate assets* rightly belong to the estate. That reinforces the Code's treatment of the filing date as the critical line dictating the parties' rights; it does not suggest that a debtor's vested assets can be unwound postpetition.

Indeed, petitioner elides the remainder of Section 541(a)(6) that underscores this point: "[p]roceeds" from estate property are *not* estate assets if they represent "earnings from services performed by an individual debtor *after the commencement of the case*" (emphasis

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in limited circumstances, none of which include the sale or disposition of exempt assets. 11 U.S.C. 522(c) (emphasis added). In response, petitioner says that Congress had no reason to exclude property that is not "exempt in the first place" (Pet. 25-26), but that ignores Section 522(c)'s plain text: it focuses on "property *exempted* under this section"—which necessarily includes homesteads already "*exempted*" on the filing date. The deliberate effort to protect exemptions "during or after the case" reinforces the static nature of those exemptions.

added). This illustrates, again, that Congress intended debtors to retain the proceeds from their own postpetition transactions.

Second, petitioner argues that exemptions are fluid because "a debtor can amend his schedule of property claimed as exempt 'as a matter of course at any time before the case is closed.'" Pet. 23 (citing Fed. R. Bankr. P. 1009(a)). Petitioner is confused: Rule 1009(a) does not say that the *exemption itself* changes—it allows a new claim of a *pre-existing* exemption. That, again, proves *respondent's* point.

Finally, petitioner points to the federal exemption for IRAs, which includes a 60-day reinvestment window, and merely presumes that the 60-day period applies to all postpetition transactions. Pet. 22-23 (citing 11 U.S.C. 522(b)(4)(D)). This is entirely question-begging: nothing in Section 522(b)(4)(D) says whether the reinvestment period applies to postpetition distributions in Chapter 7. And petitioner's sole supporting authority involved a *prepetition* distribution—exactly the kind of distribution Section 522(b)(4)(D) would sensibly address without upsetting the usual line between pre- and postpetition transactions. See *In re Brown*, 614 B.R. 416, 426 (B.A.P. 1st Cir. 2020).[7]

[7] Petitioner also notes that, "in law and in life, exemptions are often subject to conditions subsequent." Pet. 23 (citing, for example, a charity that loses its tax-exempt status after abandoning its charitable purpose). This is puzzling: The fact that certain *ongoing* exemptions or defenses can change in light of new circumstances does not mean that *all* legal requirements operate the same way. The Code selects a specific point in time—the filing date—to measure the debtor's assets and liabilities. The fact that exemptions under other legal schemes can be framed differently (for obvious reasons) says nothing about the proper way to read the "snapshot" rule under the Code.

2. Petitioner also maintains that his views would not frustrate the Code's "fresh start." Pet. 24-25. Yet that is precisely what it would do: petitioner's theory permits States to control and limit the debtor's postpetition activities and conduct. Rather than opening "'a new opportunity in life and a clear field of future effort'" (*Grogan* v. *Garner*, 498 U.S. 279, 286 (1991)), debtors would be constrained in their choices—all to avoid forfeiting postpetition funds toward prepetition debts. That is not the "clean break" reflected in Chapter 7's design. *Harris*, 135 S. Ct. at 1835.

Petitioner's view would also interfere with the efficient and expeditious administration of bankruptcy cases. The reinvestment period can run for a year or more (see, *e.g.*, Pet. 6 n.1), and the average Chapter 7 consumer bankruptcy is resolved today (from start to finish) in a fraction of that time. See 2019 BAPCPA Report, *supra*. Yet any trustee facing a significant exemption would be keep the case open and monitor the debtor's conduct to see if any postpetition transactions forfeit vested exemptions. This would distort the ordinary Chapter 7 process, delay the case's disposition, frustrate the debtor's fresh start, and extend the average Chapter 7 proceeding well beyond its current timeframe.

Nor, finally, is petitioner's theory necessary to avoid interfering with the States' ability to define their own exemptions. Pet. 20-21, 24-25. Congress did indeed afford States substantial deference in "deciding which property to exempt," but *not* in rewriting the Code itself. Congress dictates the rules for Chapter 7, including the foundational principle that a debtor's postpetition transactions

are exempt from prepetition debts. States cannot rewrite the Code's line between pre- and postpetition conduct.[8]

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

CHRISTOPHER J. KEACH
MOLLEUR LAW OFFICE
190 Main Street, 3d Floor
Saco, ME 04072

DANIEL L. GEYSER
Counsel of Record
ALEXANDER DUBOSE &
JEFFERSON LLP
Walnut Glen Tower
8144 Walnut Hill Lane, Ste. 1000
Dallas, TX 75231
(214) 396-0441
dgeyser@adjtlaw.com

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[8] In any event, state law is not eliminated entirely: it still applies in Chapter 13 cases; it potentially applies to proceeds from prepetition sales (a question not presented here); and it applies to the debtor's postpetition creditors. That preserves substantial room for state law without interfering with the Code's critical balance for Chapter 7.