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, RESPONDENT

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

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

Despite the rhetoric, respondent's brief in opposition does not actually dispute that this case presents an important and recurring question of statutory interpretation on which the circuits are divided. Under the First Circuit's "complete snapshot" rule, exemptions are fixed "on the day [the debtor] files for bankruptcy without considering any developments after that date (as if someone took a snapshot of the situation, leaving it frozen in time)." Pet. App. 4a. The First Circuit itself recognized that its decision is "at odds" with decisions of the Fifth and Ninth Circuits, *id.* at 15a, which have held that exemptions can expire inside bankruptcy if the debtor fails to timely reinvest the proceeds. See *In re Jacobson*, 676 F.3d 1193 (9th Cir. 2012); *In re Golden*, 789 F.2d 698 (9th Cir. 1986); *In re Frost*, 744 F.3d 384 (5th

Cir. 2014); *In re Zibman*, 268 F.3d 298 (5th Cir. 2001). Certiorari is warranted to resolve the circuit conflict.

I. It is Undisputed That This Case Squarely Presents a Circuit Split on an Important Issue of Bankruptcy Law

First, respondent admits (Br. in Opp. 13) that "petitioner is correct" that a circuit conflict exists on whether a debtor can evade a state's reinvestment requirement by selling his home post-petition and simply keeping the cash rather than reinvesting it. In particular, respondent admits that the Ninth Circuit's decision in *Jacobson* conflicts with the decision below, as both involve post-petition sales and a debtor proceeding under Chapter 7.

Respondent devotes much of his brief to arguing that the First Circuit's "complete snapshot" rule is consistent with the Fifth Circuit's decisions. It is not. Under the First Circuit's approach, the status of the prepetition proceeds as exempt in *Zibman* would have been fixed "on the day [the debtor] file[d] for bankruptcy without considering any developments after that date (as if someone took a snapshot of the situation, leaving it frozen in time)." Pet. App. 4a. In *Zibman*, however, the Fifth Circuit held that the exemption was *not* fixed and instead expired due to postpetition events, namely, the debtor failed to timely reinvest the proceeds. 268 F.3d 298; see also p. 5, *infra*. The First Circuit and the Fifth Circuit thus apply a different rule of law, even in Chapter 7 cases. But even if respondent were correct, that would simply mean there is a 2-1 split rather than a 1-1-1 split. Either way, it is undisputed that the circuits have "entered" conflicting decisions "on the same important matter." S. Ct. Rule 10(a).

Second, respondent never disputes how frequently this issue arises or its practical importance to debtors and creditors across the country. At least 750,000 people

have filed for bankruptcy in each of the last 10 years. See Pet. 17. Unsurprisingly, many of those filings are in the First, Fifth, and Ninth Circuits. For example, during the 12-month period ending on March 31, 2019, there were 119,518 personal bankruptcy filings in the Ninth Circuit, 20,933 in the First Circuit, and 58,236 in the Fifth Circuit. See U.S. Courts, U.S. Bankruptcy Courts—Business and Nonbusiness Cases Commenced, by Chapter of the Bankruptcy Code—During the 12-Month Period Ending March 31, 2019.[1] Respondent also does not dispute that a substantial portion of debtors own homes, which is often their largest asset. See Pet. 17. It is thus undisputed that the question presented divides the circuits and has enormous practical significance in myriad bankruptcies each year.

Third, respondent concedes that the First Circuit squarely decided the question presented. The propriety of the "complete snapshot" rule was the *only* issue the First Circuit decided. And respondent nowhere contends that any barrier exists to this Court deciding the question presented, resolving the conflict, and either affirming or remanding, as appropriate.

The most respondent can muster is that this is an "imperfect" or "suboptimal" vehicle because respondent initially filed under Chapter 13 before converting to Chapter 7. See Br. in Opp. 1, 15-17. But respondent himself admits that conversion is irrelevant because the estate in a converted case is determined "as of the date of filing of the [initial Chapter 13] petition." 11 U.S.C. 348(f); see Br. in Opp. 19.

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[1] https://www.uscourts.gov/statistics/table/f-2/bankruptcy-filings/2019/03/31.

Respondent suggests this non-existent wrinkle might add "complexity" because petitioner has not "expressly abandoned" a contrary argument. But petitioner can do so right now: It is irrelevant that this case was converted to Chapter 7 rather than initially filed under Chapter 7.[2]

This case is accordingly simple: It is undisputed that this case presents an important and recurring question of statutory interpretation over which the circuits are squarely divided. This Court should grant certiorari to resolve the conflict.

II. Respondent's Arguments Do Not Diminish The Certworthiness of This Case

1. Having conceded all the necessary elements for certiorari, respondent instead devotes considerable energy to "explain[ing] away" the conflict between the First Circuit's "complete snapshot" rule and the Fifth Circuit's idiosyncratic precedent. Br. in Opp. 6-12; Pet. 15-16. Specifically, respondent (1) argues that an exemption can expire if it is a prepetition sale or a Chapter

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[2] Respondent's speculations about Maine law further show that he is grasping at straws. The district court correctly determined that, "contrary to the express requirements of Maine's homestead exemption, [respondent] did not spend any of the proceeds of the sale on the purchase of a new residence." Pet. App. 23a; cf. Me. Committee Amendment to H.P. 484, L.D. 664 (1989) ("Statement of Fact") (The rule "enable[s] the debtor to purchase a new home. If the proceeds are not used in that way, they are not exempt."). The premise of the First Circuit's decision was that the exemption would expire unless the "complete snapshot" rule applied. See Pet. App. 11a. And respondent nowhere claims that he spent *all* of the proceeds on improving the property in question, even if those expenses qualified. In any event, the court of appeals on remand could decide any residual state-law question, so it would not prevent this Court from resolving the circuit conflict.

13 case, but not if it is a post-petition sale *and* a Chapter 7 case; and (2) predicts the First Circuit might adopt that position in a case involving a prepetition sale or Chapter 13. Those arguments do nothing to make this case less certworthy.

First, this is a Chapter 7 case involving a post-petition sale and there is a square 2-1 split over the outcome of whether a state-law exemption can expire in such a case. That split warrants review.

Second, the First Circuit's "complete snapshot" rule and the Fifth Circuit's position are "at odds," making it a 1-1-1 split as to the applicable legal rule. Pet. App. 15a. The First Circuit's "complete snapshot" rule looks only "at the time the debtor files for bankruptcy" and ignores "*any developments* after" filing. *Id.* at 4a, 6a (emphasis added). In *Zibman*, by contrast, the Fifth Circuit held that "[w]hen a debtor elects to avail 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* [v. *Matley*, 318 U.S. 622 (1943)]) but also to the limitations (like the temporal element of the reinvestment feature of California's homestead exemption in *Golden*) integral in those exemptions as well." *Zibman*, 268 F.3d at 304.

In *DeBerry*, a Fifth Circuit panel later drew a prepetition/postpetition distinction on the theory that a homestead is "unconditionally exempted," but proceeds of a prepetition sale are "conditionally exempted." 884 F.3d 526, 529 (5th Cir. 2018). But that makes little sense, as both are equally conditional. The exemption on the debtor's prepetition interest in the home is conditional (because it disappears if the debtor sells but fails to timely use the proceeds to buy a new one), just as an

exemption on proceeds of a prepetition sale is conditional (because it disappears if they are not timely reinvested). Either way, the exemption on a prepetition property interest can cease to apply based on a condition subsequent. There is accordingly no sound basis to believe that the First Circuit would draw the same distinction. *Jacobson,* 676 F.3d at 1199 (timing of sale makes "no material difference"); *Frost*, 744 F.3d at 388 ("Th[e] temporal distinction is insufficient to escape the holding of *Zibman*.").

Respondent's arguments about Chapter 13 are similarly misplaced. Unlike in a Chapter 7 case, the estate in a Chapter 13 case includes post-petition "earnings from services performed by an individual debtor" as well as interests the debtor "acquires" post-petition. 11 U.S.C. 541(a), 1306(a)(1). But proceeds from the sale of a home are plainly not earnings from services. Nor are they a new post-petition acquisition: The debtor owned the interest in the home *before the bankruptcy*. The proceeds are simply the liquidated form ("proceeds") of that prepetition interest, which falls squarely within the definition of the estate under 11 U.S.C. 541(a)(1) and (a)(6). In any event, this case arises under Chapter 7, so this Court can resolve the circuit conflict here without even addressing Chapter 13. Cf. Pet. App. 15a n.7.

2. The First Circuit's rule is also wrong on the merits. Indeed, respondent does not even mention, let alone defend, the "complete snapshot" rule. Instead, he argues for the Fifth Circuit's position that the First Circuit appeared to reject.

At the outset, the text of Section 522 strongly supports the view that state-law exemptions expire inside bankruptcy. Section 522 provides that debtors may ex-

empt "any property that is exempt under … State or local law that is applicable on the date of the filing of the petition." 11 U.S.C. 522(b)(3)(A). Section 522(c) goes on to explain what it means for property to be exempted: "property exempted under this section is not liable during or after the case" for any prepetition debt. See also 11 U.S.C. 522(k) (exempted property is "not liable" for administrative expense claims that arise during the bankruptcy). Exempted property is thus effectively immune from creditors. But if a state-law exemption expires because the debtor fails to timely reinvest, then that immunity ceases to apply. State-law exemptions thus work the same way inside bankruptcy that they work outside bankruptcy.

Respondent does not defend the First Circuit's construction of the exceptions in Section 522(c), which is clearly wrong. See Pet. 25-26. Respondent instead tries a completely different rationale, arguing that, if an exemption applies at the outset of bankruptcy, then the property is not included in the bankruptcy estate at all, so it is irrelevant in a Chapter 7 case whether the exemption later expires. But the Bankruptcy Code elsewhere lists certain kinds of property that the estate "does not include[]," 11 U.S.C. 541(b)—and exempted property is conspicuously missing from that list. Respondent's position would render superfluous (and inexplicable) the Code's distinction between property that is "exempt" under Section 522(b) and property that is "not include[d]" in the estate under Section 541(b). Cf. *City of Chicago* v. *Fulton*, 141 S. Ct. 585 (2021) (rejecting an interpretation of the automatic stay in 11 U.S.C. 362 that would render largely superfluous the turnover provisions in 11 U.S.C. 542).

Respondent nowhere mentions the glaring federalism problem that his position would create: It would undermine *both* Congress's effort to allow state law to determine the scope of bankruptcy exemptions *and* the underlying state-law judgment that a homestead exemption should cease to apply if the debtor sells his or her home and, instead of buying a new one, simply keeps the money as cash.

And respondent has no real answer to Section 522(b)(4)(D), which provides that an IRA rollover distribution "cease[s] to qualify" for an exemption if it is not reinvested within 60 days. 11 U.S.C. 522(b)(4)(D). That provision makes sense only if exemptions can expire and thereby expose the funds to creditors as property of the estate. Under respondent's approach that exempt property is permanently removed from the estate, the 60-day reinvestment requirement would be meaningless, as the debtor would never need to reinvest the proceeds at all: The proceeds would remain permanently immune from creditors even if the debtor never reinvested them.

Respondent contends (Br. in Opp. 22) that Section 522(b)(4)(D) is limited to prepetition rollovers. But Section 522(b)(4)(D) draws no such distinction, and instead applies to *all* rollovers, as courts have recognized. *E.g.*, *In re Sullivan*, 596 B.R. 325, 333 (Bankr. N.D. Tex. 2019). And even if Section 522(b)(4)(D) applied only to prepetition rollovers, it would still demonstrate that the First Circuit was wrong to conclude that exemptions are inherently permanent: If exempt property is not included in the bankruptcy estate at all, then a prepetition rollover would remain permanently outside the estate immune from creditors, and the 60-day reinvestment requirement would be meaningless.

In any event, this Court should grant certiorari to decide for itself whether respondent's arguments are correct, as the circuits are divided over the treatment of vanishing exemptions in Chapter 7 cases and the question warrants review.

3. When respondent eventually faces up to the Ninth Circuit's contrary precedent (Br. in Opp. 13), he admits "petitioner is correct" that there is a square circuit conflict with *Jacobson*. But he advises the court that the split is "eroding" and that it should "wait[] to see" if it "might resolve itself." *Id.* at 14-15. That suggestion is poorly conceived.

First, as discussed above, this Court should grant certiorari now because the circuits are divided over a question that significantly impacts thousands of bankruptcies every year. The conflict also will not "resolve itself" because both the Ninth Circuit (in *Jacobson*) and the Fifth Circuit (in *Zibman* and *Frost*) have already rejected the "complete snapshot" rule. And the split is *expanding*, not "eroding." The decision below rejected the approaches of *both* the Ninth and Fifth Circuits, and instead charted a third approach that multiplied the dimensions of conflict.

Second, there is no sound basis to believe the Ninth Circuit will suddenly reverse *Jacobson* and *Golden*. Respondent repeats the First Circuit's banal observation that the Ninth Circuit's decisions predate *Law* v. *Siegel*, 571 U.S. 415, 417 (2014), and *Harris* v. *Veigelahn*, 135 S. Ct. 1829 (2015). But he points to nothing in those decisions that would impact the analysis. See Pet. 17 n.3. If anything, *Law* vindicates petitioner's view in recognizing that "when a debtor claims a *state-created* exemption, the exemption's scope is determined by state law." *Law*, 571 U.S. at 425 (emphasis in original). That has

been the law in the Ninth Circuit for the past 35 years. It is the First Circuit's "complete snapshot" rule that disregards *Law*'s clear instruction and breaks new ground.

4. Finally, respondent claims it would be "odd" to limit exemptions to "State or local law that is applicable on the date of the filing of the petition" but to allow for consideration of post-petition events. Br. in Opp. 20. But that is exactly what Section 522(b) says, and it is perfectly sensible because it ensures that state-law exemptions operate inside bankruptcy as they would outside bankruptcy and thus advances the federalism interests that Section 522(b) is designed to protect.

Respondent's policy arguments fare no better. Like the First Circuit, he invokes the "fresh start." Br. in Opp. 21, 23. But as petitioner has explained (Pet. 24-25), that general purpose does not answer the question presented, because the Code "does not permit anything and everything that might advance" that goal, and instead balances it against protections for creditors. *Mission Prod. Holdings, Inc.* v. *Tempnology, LLC*, 139 S. Ct. 1652, 1665 (2019).

Respondent speculates that the Ninth Circuit's rule will incentivize trustees to "keep . . . case[s] open" longer than they should. Br. in Opp. 23. But the Ninth Circuit offers a 35-year case study to the contrary, *In re Smith*, 342 B.R. 801, 808 (B.A.P. 9th Cir. 2006) (Klein, J., concurring), demonstrating that Trustees will continue to take seriously their statutory mandate to "close [the] estate . . . expeditiously," 11 U.S.C. 704. By contrast, the First Circuit's "complete snapshot" rule opens the door to gamesmanship by debtors, giving them the unilateral ability to generate cash and keep it immune from distri-

bution to creditors. States adopted reinvestment requirements precisely to prevent that from happening, and Section 522(b) gives states power to determine what property is exempted inside bankruptcy. The First Circuit's position flouts the purposes of both federal law *and* the underlying state law, and conflicts with decisions of the Fifth and Ninth Circuits. This Court should accordingly grant certiorari and reverse.

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For the foregoing reasons and those stated in the petition for a writ of certiorari, the petition should be granted.

Respectfully submitted.

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