

SCHWAB V. REILLY: NO OBJECTION REQUIRED

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Introduction

“Deadlines may lead to unwelcome results, but they prompt parties to act and they produce finality.”¹

In June of 2010, the Supreme Court determined a procedural point of the U.S. Bankruptcy Code that will affect over one million Chapter 7 bankruptcy debtors each year.² In *Schwab v. Reilly*, the Court held that when a debtor wishes to exempt his property from his bankruptcy and ascribes the property a dollar value, the debtor may only claim an *interest* in the property up to that dollar amount — *not* in the actual property itself.³ The Court also ruled that when a debtor claims a statutorily permissible dollar value interest in his exempt property, the trustee has no duty to object to the property exemption within the 30-day objection deadline as prescribed by Federal Bankruptcy Rule 4003(b).⁴ In effect, the Court empowered Chapter 7 bankruptcy trustees to object to the value of a debtor’s claimed property exemption at *any point* during a bankruptcy proceeding when the claimed dollar value is unobjectionable on its face.⁵

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¹ Taylor v. Freeland & Kronz, 503 U.S. 638, 644 (1992).

² The Administration of the United States Courts, *2009 Report of Statistics Required by BAPCPA*, 5, <http://www.uscourts.gov/uscourts/Statistics/BankruptcyStatistics/BAPCPA/2009/2009BAPCPA.pdf> (last visited Nov. 5, 2010). Nearly 1.4 million people filed for bankruptcy in 2009, an increase of 32% from 2008. *Id.* Approximately 71% of these cases, up from 66% in 2008, were filed under Chapter 7. *Id.*

³ Schwab v. Reilly, 130 S. Ct. 2652, 2669 (2010); *see infra* Part III.E.1.

⁴ Schwab, 130 S. Ct. at 2667

⁵ *Id.*; *see also* Brief for National Association of Consumer Bankruptcy Attorneys et al. as Amici Curiae supporting Respondent at 22, Schwab v. Reilly, 130 S. Ct. 2652 (2010) (No. 08-538) [hereinafter Brief for Consumer

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The *Schwab* decision is significant to any debtor, debtor's attorney, trustee, or creditor claiming an interest in exempt property listed on a Chapter 7 bankruptcy petition.⁶ The *Schwab* holding is also consequential to any debtor whose exempt property value may appreciate during the course of their bankruptcy.⁷ Moreover, this decision leaves Chapter 7 debtors without knowledge of whether they can keep their exempt property for months — even years — after they file a petition, and ultimately frustrates the primary purpose of the Bankruptcy Code, namely to provide a “fresh start”⁸ for honest debtors.⁹

A general background of the Bankruptcy Code is necessary to put the *Schwab* decision into context and to demonstrate why the *Schwab* holding does not accord with the pro-debtor laws promulgated by the Bankruptcy Code.¹⁰ Thus, Part I of this Note provides a brief history of bankruptcy law and describes its historical progression from the early English common law to the enactment of the current U.S. Bankruptcy

Bankruptcy Attorneys] (discussing this logical conclusion by stressing that the Court's reasoning places “*absolutely no time limitation* upon the time within which a trustee can challenge the debtor's valuation of the exempt property by selling it and, by extension, challenge the exemption itself” (emphasis added)).

⁶ See Kenneth N. Klee, *The Supreme Court's Holding in Schwab v. Reilly*, 2010 U.S. LEXIS 4974 1, 5 (2010) (discussing the effects of the *Schwab* decision to all parties in a Chapter 7 bankruptcy case).

⁷ See *infra* Part V.B. Although the *Schwab* holding did not explicitly allow trustees to claim an interest in post-filing property value appreciation, a recent Ninth Circuit decision interpreted the holding to mean that trustees are permitted to object to a debtor's exemption valuation — and seek to reclaim that property — if the exempt property appreciates in value and the bankruptcy case is not yet closed. See *In re Gebhart*, 621 F.3d 1206, 1211 (9th Cir. 2010) (holding that a bankruptcy trustee was entitled to reap the benefits of post-petition appreciation in the debtor's homestead).

⁸ See Margaret Howard, *A Theory of Discharge in American Bankruptcy*, 48 OHIO ST. L.J. 1047, 1047 (1987) (describing the “fresh start” as a fundamental principle of the Bankruptcy Code). Courts have long held that the main purpose of bankruptcy is to give debtors a “fresh start.” See, e.g., *Grogan v. Garner*, 498 U.S. 279, 286 (1991) (“[A] central purpose of the [Bankruptcy] Code is to provide a procedure by which certain insolvent debtors can reorder their affairs, make peace with their creditors, and enjoy a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt.”) (quoting *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934)); *Stellwagen v. Clum*, 245 U.S. 605, 617 (1918) (“[A] main purpose of [bankruptcy] intends to aid the unfortunate debtor by giving him a fresh start in life.”).

⁹ See *infra* Part IV.B-C.

¹⁰ See *infra* Part I.A.

Code.¹¹ Part II then discusses Chapter 7 bankruptcy proceedings and the role of exemptions in bankruptcy law.¹² Part II also discusses the factual history of the *Schwab* case and provides an in-depth account of the lower court decisions.¹³ Next, this Note examines why Justice Ginsburg dissented and advocated the judgment of the lower court.¹⁴ Part III argues that the *Schwab* ruling rests on an improper reading of section 522(l), raises concerns about trustee abuse, and ultimately undermines the “fresh start” principle.¹⁵ In light of this analysis, Part III argues that the Court should have affirmed the Third Circuit’s judgment.¹⁶

Part IV examines the impact of the *Schwab* decision and discusses the new filing standards imposed upon Chapter 7 debtors as well as the modified duties for trustees.¹⁷ Part IV also examines how the *Schwab* decision is evolving, and discusses how a recent Ninth Circuit decision interpreted the *Schwab* holding.¹⁸ Part V concludes that *Schwab*, while clarifying what constitutes an exemption claim to which an interested party must object under section 522(l), ignores a plain reading of the Bankruptcy Code and, in doing so, unduly vests trustees with the power to object to a debtor’s exemption valuations at any point prior to debt discharge.¹⁹

I. Background

To understand the *Schwab* decision, it is useful to analyze the origins and evolution of bankruptcy law in the United States.²⁰ Accordingly, this Part introduces U.S. bankruptcy law and describes its historic transformation from a creditor’s collection remedy to a system of laws designed to be mutually beneficial to both creditors and debtors.²¹ Next, this Part focuses on the current United States Bankruptcy Code,²² followed by a

¹¹ See *infra* Part I.B.

¹² See *infra* Part II.

¹³ See *infra*, Part III.A.1-3.

¹⁴ See *infra* Part III.D.4.

¹⁵ See *infra* Part IV.A.

¹⁶ See *infra* Part IV.

¹⁷ See *infra* Part V.A.

¹⁸ See *infra* Part V.B.

¹⁹ See *infra* Part VI.

²⁰ *Schwab v. Reilly*, 130 S. Ct. 2652, 2664 (2010).

²¹ See *infra* Part I.A.

²² See *infra* Part I.B.

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discussion of Chapter 7 bankruptcies and the role of property exemptions in a bankruptcy proceeding.²³ In addition, to provide a background of the statutes relevant to the remainder of this Note, this Part discusses the plain language of Bankruptcy Code section 522(l) and analyzes how the United States Supreme Court interpreted this language in *Taylor v. Freeland & Kronz*.²⁴

A. The Historical Development of the United States Bankruptcy Code

The original U.S. bankruptcy laws were derived primarily from early English common law, when bankruptcy was merely a creditor's collection remedy.²⁵ The word "bankruptcy" comes from the Italian phrase "banca rotta,"²⁶ or broken bench, which referred to the medieval practice of breaking the benches of a banker or merchant who left his creditors unpaid.²⁷ As the roots of the word suggest, the first English bankruptcy statutes were directed at merchant debtors and were viciously punitive.²⁸ As commerce expanded, however, the need for a more formal and humane procedure to collect debts became evident.²⁹ Existing

²³ See *infra* Part I.B.

²⁴ See *infra* Part I.B.2.

²⁵ Charles Jordan Tabb, *The History of Bankruptcy Laws in the United States*, 3 AM. BANKR. INST. L. REV. 5, 7 (1995) [hereinafter Tabb, *History of Bankruptcy Laws*].

²⁶ Sandor E. Schick, *Globalization, Bankruptcy and the Myth of the Broken Bench*, 80 AM. BANKR. L.J. 219, 221 (2006). The Latin term was "bancus ructus." *Id.*

²⁷ *Id.* Other scholars suggest that "bankruptcy" is rooted in the French words "banque," a bench, and "route," a trace, implying that the removal of a banker's bench leaves behind only a trace. F. REGIS NOEL, A HISTORY OF BANKRUPTCY LAW 11 (William S. Hein & Co., Inc. 2002) (1919). It has also been noted that the word bankruptcy may relate to the German word *bank*, which refers to a joint stock fund. *Id.*

²⁸ DOUGLAS G. BAIRD, ELEMENTS OF BANKRUPTCY 4 (4th ed. 2006). During this time, a bankrupt individual was considered a criminal and, as such, subject to criminal punishment ranging from incarceration in debtors' prison all the way to the extreme sentence of death. *Id.*; see Roger Evans, *Bankruptcy the American Way*, 11 JUTA'S BUS. L. 173, 178 (2003) (noting that the earliest American bankruptcy procedures originated in English practices of debt slavery and imprisonment). English law was not unique in its lack of empathy for debtors. Tabb, *History of Bankruptcy Laws*, *supra* note 25, at 7. In Rome, creditors were apparently authorized to carve up the body of a debtor, although scholars debate the extent to which this law was actually enforced. *Id.*

²⁹ Tabb, *History of Bankruptcy Laws*, *supra* note 25, at 7.

collection remedies such as execution writs to authorize judicial seizure of a debtor's property,³⁰ appraise a debtor's goods,³¹ or order a judicial sale of a debtor's land,³² did not address the distinct problems presented by a debtor's multiple defaults.³³ Creditors needed adequate protection against defaulting debtors and from other creditors as well.³⁴

Thus, the first English bankruptcy law was passed in 1542 providing a "collective remedy to deal fairly with a multiplicity of creditors."³⁵ This law, entitled "[A]n act against such persons as do make bankrupts,"³⁶ viewed debtors as quasi-criminals and placed additional remedies in the hands of creditors.³⁷ The distinctly pro-creditor orientation of English law continued until 1705 with the passage of the Statute of Anne,³⁸ which permitted the discharge of debts for a cooperative debtor³⁹ and authorized debtors to keep their clothing, along with 5% of their remaining property as exempt from creditors.⁴⁰ Notably, although this statute is historically viewed as a humane turning point in the

³⁰ BLACK'S LAW DICTIONARY 659 (8th ed. 2004) (a writ of *fiery facias* authorized the judicial sale of a debtor's property to satisfy a money judgment).

³¹ *Id.* at 559 (a writ of *elegit* caused a debtor's goods and chattels to be appraised).

³² *Id.* at 925-26 (a writ of *levari facias* authorized judicial seizure and sale of a debtor's land).

³³ Tabb, *History of Bankruptcy Laws*, *supra* note 25, at 7.

³⁴ *Id.*

³⁵ CHARLES J. TABB & RALPH BRUBAKER, BANKRUPTCY LAW: PRINCIPLES, POLICIES & PRACTICE 57 (2003).

³⁶ 34 & 35 Hen. 8, ch. 4 (1542-43).

³⁷ Tabb, *History of Bankruptcy Laws*, *supra* note 25, at 7.

³⁸ 4 Anne, ch. 17 (1705).

³⁹ Tabb, *History of Bankruptcy Laws*, *supra* note 25, at 10 (citing 4 Anne, ch. 17 (1705)). Under the Statute of Anne, a cooperative debtor was granted a monetary allowance out of the bankruptcy estate, the amount of which was dependent upon the percentage dividend that was paid to the creditors. *Id.* At the same time, however, the Statute of Anne raised the stakes even higher for uncooperative debtors by permitting the death penalty as a means to punish fraudulent debtors. *Id.*

⁴⁰ Richard E. Mendales, *Rethinking Bankruptcy Exemptions*, 40 B.C. L. REV. 851, 854 (1999) (citing 4 Anne, ch. 17 (1705)). Under this statute, debtors could exempt to a maximum of £200 if creditors received a dividend of at least eight shillings on the pound (40%) of their claims from the sale of debtor's property. *Id.* at 851 n.18. If the creditors received less, an estate commissioner could determine how much, if any, property the debtor would be permitted to keep beyond his clothing. *Id.*

evolution of bankruptcy law,⁴¹ its original intention was to facilitate creditors' abilities to collect by requiring debtors to voluntarily surrender their assets and give full financial disclosures.⁴² Although the Statute of Anne was relatively progressive, it had severe limitations: eligibility was restricted to traders and only creditors could file a bankruptcy petition.⁴³

1. Bankruptcy Laws Come to America

The framers of the U.S. Constitution clearly had the English bankruptcy system in mind when they included the power to enact uniform bankruptcy laws into the Constitution.⁴⁴ James Madison described the underlying purpose and necessity for federal bankruptcy legislation as "intimately connected with the regulation of commerce," and necessary to prevent debtors from fleeing to other states to evade local enforcement of their obligations.⁴⁵ Madison's statement shows that, even in the infancy of American commerce, bankruptcy laws were considered necessary and prudent.⁴⁶

The progression of U.S. bankruptcy law was slow, and the first glimpse of permanent bankruptcy laws was not enacted until 1898.⁴⁷ Prior to this permanent law, the nineteenth century

⁴¹ Tabb, *History of Bankruptcy Laws*, *supra* note at 25, at 10 ("[T]he Statute of Anne first established the roots of a more humanitarian legislative treatment of honest but unfortunate debtors."); *see also* Charles J. Tabb, *The Historical Evolution of the Bankruptcy Discharge*, 65 AM. BANKR. L.J. 325, 333 (1991) ("Paradoxically, given its historical importance in the evolution of a more humane treatment of distressed debtors, the statute probably was motivated largely by concerns for creditors welfare, and may have had only a limited beneficial effect for most debtors.") [hereinafter Tabb, *The Historical Evolution*].

⁴² Tabb, *History of Bankruptcy Laws*, *supra* note 25, at 10-11.

⁴³ *Id.* at 11.

⁴⁴ *Id.* at 5. The United States Constitution states, "The Congress shall have power . . . to establish . . . uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const. art. I, § 8 cl. 4. *See also* O. O. Vrooman, *Origin and History of the Bankruptcy Law*, 37 COM. L.J. 127, 128 (1932) (noting that the first United States Bankruptcy law followed the English Bankruptcy law in its main features — and even its wording).

⁴⁵ DAVID A. SKEEL, *DEBT'S DOMINION: A HISTORY OF BANKRUPTCY LAW IN AMERICA* 23 (1961); CHARLES WARREN, *BANKRUPTCY IN THE UNITED STATES* 7 (William S. Hein & Co. Reprinted 1994) (Harv. Univ. Press, 1935) (quoting THE FEDERALIST No. 42).

⁴⁶ F. REGIS NOEL, *A HISTORY OF BANKRUPTCY LAW* 6 (William S. Hein & Co., 2002) (1919).

⁴⁷ The Bankruptcy Act of 1898, ch. 541, 30 Stat. 544 (repealed 1978).

marked a period of scattered, impermanent federal bankruptcy legislation.⁴⁸ During this period, Congress enacted three bankruptcy laws — the Bankruptcy Act of 1800,⁴⁹ the Bankruptcy Act of 1841,⁵⁰ and the Bankruptcy Act of 1867.⁵¹ Each of these Acts was passed during a time of economic distress, but was repealed once the immediate crisis was over.⁵² Federal bankruptcy legislation was viewed merely as a temporary and emergency measure, necessary when dealing with the aftermath of economic depression.⁵³

The Bankruptcy Act of 1800 allowed a debtor to discharge his debts, but was solely available to merchants and was contingent on the approval of at least two-thirds of creditors.⁵⁴ Significantly, this first bankruptcy law permitted a debtor to keep “necessary wearing apparel” and “necessary bed and bedding” from the hands of creditors.⁵⁵ The Bankruptcy Act of 1841 went a step further and allowed permitted debtors to file for bankruptcy voluntarily.⁵⁶ This Act, like the Act of 1800, also permitted exemptions for clothing but added an exemption for “necessary household and kitchen furniture” to not exceed \$300.⁵⁷

⁴⁸ See JEFF FERRIELL & EDWARD J. JANGER, UNDERSTANDING BANKRUPTCY 415 (2d ed. 2007) (stating that bankruptcy power was “largely dormant through[out] much of the nineteenth century”).

⁴⁹ Bankruptcy Act of 1800, ch. 19, 2 Stat. 19, *repealed by* Act of Dec. 19, 1803, ch. 6, 2 Stat. 248. The Bankruptcy Act was almost identical to the English law, with its primary purpose to address the attempts to defraud creditors. Tabb, *History of Bankruptcy Laws*, *supra* note 25, at 11. However, the law was highly unpopular among creditors, and by November 1803, Congress repealed the Act by a vast majority. C. WARREN, BANKRUPTCY IN THE UNITED STATES HISTORY 19 (1935).

⁵⁰ Bankruptcy Act of 1841, ch. 19, 5 Stat. 440, *repealed by* Act of Mar. 3, 1843, ch. 82, 5 Stat. 614.

⁵¹ Bankruptcy Act of 1867, ch. 176, 14 Stat. 517, *repealed by* Act of June 7, 1878, ch. 160, 20 Stat. 99.

⁵² David A. Skeel, Jr., *Bankruptcy Lawyers and the Shape of American Bankruptcy Law*, 67 *FORDHAM L. REV.* 497, 500 (1998-1999).

⁵³ FERRIELL & JANGER, *supra* note 48, at 135-36.

⁵⁴ Bankruptcy Act of 1800, ch. 19, 2 Stat. 19, 31, *repealed by* Act of Dec. 19, 1803, ch. 6, 2 Stat. 248.

⁵⁵ *Id.*

⁵⁶ Bankruptcy Act of 1841, ch. 19, 5 Stat. 440, 441 *repealed by* Act of Mar. 3, 1843, ch. 82, 5 Stat. 614. The Bankruptcy Act of 1841 was the first pro-debtor bankruptcy law. See Tabb, *History of Bankruptcy Laws*, *supra* note 25, at 18 (noting that the Act of 1841 permitted voluntary bankruptcy for debtors, which has been a feature of all subsequent bankruptcy laws).

⁵⁷ Brief for Respondent at 57-59, *Schwab v. Reilly*, 130 S. Ct. 2652 (2010) (No. 08-538) (citing the Bankruptcy Act of 1841, ch. 9 § 3, 5 Stat. 440).

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However, the law fell into disfavor as creditors saw debtors disavow legitimate debts without contemplating restitution, and it was repealed after just two years.⁵⁸

The Bankruptcy Act of 1867 added an additional pro-debtor component when it allowed debtors to propose a payment plan to keep their property.⁵⁹ However, the law also required a creditor's consent to discharge a debt — which ultimately led to collusion between debtors and creditors as well as illegal payoffs made to creditors by debtors that ensured a creditor's approval.⁶⁰ By 1873, Congress was unhappy with the corruption surrounding the Act of 1867 — so much that the House passed a bill for its repeal without debate.⁶¹

Unlike its short-lived predecessors, the Bankruptcy Act of 1898⁶² remained in effect until 1979.⁶³ In the Act of 1898, Congress tried to make it easier for a debtor to discharge debt by eliminating the requirement for a creditor's consent to discharge.⁶⁴ Moreover, voluntary bankruptcy was made available to any individual owing debts.⁶⁵ The Bankruptcy Act of 1898 was also the first bankruptcy law to formally recognize a *public interest* in granting a discharge to “honest but unfortunate debtors.”⁶⁶ Lawmakers acknowledged that society as a whole benefited when unburdened debtors were freed from the oppressive weight of debt,⁶⁷ as they became more productive members of society.⁶⁸ In effect, the Bankruptcy Act of 1898 marked the beginning of the modern era of pro-debtor bankruptcy laws⁶⁹ and transformed the principle theory of

⁵⁸ FRANK OLDS LOVELAND, A TREATISE ON THE LAW AND PROCEEDINGS IN BANKRUPTCY 9 (1899).

⁵⁹ Tabb, *History of Bankruptcy Laws*, *supra* note 25, at 21.

⁶⁰ WARREN, *supra* note 45, at 113.

⁶¹ *Id.* at 114.

⁶² The Bankruptcy Act of 1898, ch. 541, 30 Stat. 544 (repealed 1978).

⁶³ The Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, tit. IV, § 401(a), 92 Stat. 2549.

⁶⁴ Tabb, *History of Bankruptcy Laws*, *supra* note 25, at 24.

⁶⁵ The Bankruptcy Act of 1898, ch. 541, § 4a, 30 Stat. 544, 547 (repealed 1978).

⁶⁶ Stefan A. Riesenfeld, *The Evolution of Modern Bankruptcy Laws*, 31 MINN. L. REV. 401, 406 (1947).

⁶⁷ Charles J. Tabb, *The Scope of the Fresh Start in Bankruptcy: Collateral Conversions and the Dischargeability Debate*, 59 GEO. WASH. L. REV. 56, 94-95 (1990).

⁶⁸ Tabb, *The Historical Evolution*, *supra* note 41, at 364-65.

⁶⁹ Tabb, *History of Bankruptcy Laws*, *supra* note 25, at 24 (“[T]he 1898 Act ushered in the modern era of liberal debtor treatment in the United States

consumer bankruptcy laws — from a creditor’s collection remedy into a system of laws designed to provide a “fresh start” for debtors.⁷⁰

B. The Current United States Bankruptcy Code

The current United States Bankruptcy Code was enacted in 1978, effectively replacing the Act of 1898.⁷¹ In response to laws that were far removed from the pro-debtor ideology of the contemporary United States, the Bankruptcy Code legislated a sweeping reform.⁷² First, it altered the structure of individual debtor relief available under Chapters 7 (liquidation),⁷³ 11 (reorganization),⁷⁴ and 13 (debt adjustment).⁷⁵ In response to

bankruptcy laws.”).

⁷⁰ Katherine Porter & Dr. Debora Thorne, *The Failure of Bankruptcy’s Fresh Start*, 92 CORNELL L. REV. 67, 68 (2006-2007) (noting that Courts, Congress and scholars repeatedly cite the fresh start as the justification for a particular interpretation for the American consumer bankruptcy system); *see, e.g.*, *Local Loan Co. v Hunt*, 292 U.S. 234, 244 (1934) (“One of the primary purposes of the Bankruptcy Act is to relieve the honest debtor from the weight of oppressive indebtedness, and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes.”); *see also* REPORT OF THE COMMISSION ON THE BANKRUPTCY LAWS OF THE UNITED STATES, H.R. DOC. NO. 93-197, 93 Cong., 1st Sess. (1973) (underscoring the fresh start when recommending changes to consumer bankruptcy proceedings and administrative structure).

⁷¹ Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, tit. IV, § 402(a), 92 Stat. 2549 (1978).

⁷² Eric A. Posner, *The Political Economy of the Bankruptcy Reform Act of 1978*, 96 MICH. L. REV. 47, 121 (1997) (stating that the reformed Bankruptcy Code is an “elegant and sophisticated piece of legislation” that “swept away the years of doctrinal cobwebs and incrustations, replacing them with a lucid, simple, and apparently humane system for dealing with overburdened debtors and helpless corporations.”).

⁷³ 11 U.S.C. §§ 701-784 (2010); *see infra* Part II.A.1.

⁷⁴ *Id.* §§ 1101-1174. The modified version of Chapter 11 bankruptcy, entitled Reorganization, is used by commercial enterprises that desire to continue operating a business and repay concurrently through a court-approved plan or reorganization. Administrative Office of the United States Courts, *Bankruptcy Basics: Chapter 11*, 5, <http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Chapter11.aspx> (last visited Nov. 5, 2010).

⁷⁵ 11 U.S.C. §§ 1301-1330. A Chapter 13 bankruptcy enables individuals with regular income to develop a plan to repay all or part of their debts over a three-to-five year plan depending on income level. Administrative Office of the United States Courts, *Bankruptcy Basics: Chapter 13*, 5, <http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Chapter13.a>

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complaints that bankruptcy judges were bogged down with administrative duties, the Bankruptcy Code also created the United States Trustee,⁷⁶ an agency that appoints private trustees to oversee the administration of bankruptcy cases.⁷⁷ Finally, the modified Bankruptcy Code enumerated a set of federal exemptions⁷⁸ and delineated the interconnection of state and federal laws.⁷⁹

The Bankruptcy Code has been amended several times since 1978⁸⁰ — most recently in 2005 through the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (“BAPCPA”).⁸¹ Addressing creditor complaints that filing for bankruptcy had become too easy and that debtors were abusing the system,⁸² BAPCPA was enacted to reduce the number of “abusive”⁸³ filings.⁸⁴ To this end, BAPCPA added income

spx (last visited Nov. 5, 2010). Under this Chapter, debtors propose a repayment plan to make installments to creditors over three to five years. *Id.* If the debtor’s current monthly income is less than the applicable state median, the plan will be for three years unless the court approves a longer period “for cause.” *Id.* For an alternative interpretation of Chapter 13 bankruptcies, see David Gray Carlson, *The Chapter 13 Estate and Its Discontents*, 17 AM. BANKR. INST. L. REV. 233, 290 (2009) (arguing that the most coherent interpretation of Chapter 13 bankruptcies is the “Divestment Theory,” or the theory that a Chapter 13 estate terminates when a debtor confirms a Chapter 13 repayment plan).

⁷⁶ 28 U.S.C. § 586 (2010).

⁷⁷ H.R. REP. NO. 989, 95th Cong., 2d Sess. at 88 (reprinted in 1978 U.S. Code Congressional & Admin. News at 5787, 5963, 6049).

⁷⁸ 11 U.S.C. § 522(b) as amended by the Bankruptcy Reform Act of 1994, 11 U.S.C. § 522(b) (1995).

⁷⁹ See, e.g., 11 U.S.C. § 522(b)(3)(A) (delineating the interplay of bankruptcy exemptions between state and federal law). While bankruptcy cases are filed in United States Bankruptcy Court (units of the United States District Courts), and federal law governs procedure in bankruptcy cases, state laws are often applied when determining property rights. See Tabb, *History of Bankruptcy Laws*, *supra* note 25, at 36-37.

⁸⁰ Tabb, *History of Bankruptcy Laws*, *supra* note 25, at 42. Although there have been many changes to bankruptcy law since 1978, the Bankruptcy Reform Act of 1994 is cited as the most significant for the creation of the National Bankruptcy Review Commission and the unprecedented number of substantive amendments to the Code. *Id.* For a comprehensive look at Bankruptcy Legislation since 1978, see *id.* at 37-51.

⁸¹ Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. 109-8, 119 Stat. 23 (codified as amended in scattered sections of 11 U.S.C. (2005)).

⁸² See H.R. REP. NO. 109-31, at 15-16 (2005) (discussing closing loopholes in the bankruptcy laws to deter “easy” and abusive bankruptcies).

⁸³ 11 U.S.C. § 707(b)(2)(A) (2010). Abuse is presumed if the debtor’s

restrictions,⁸⁵ implemented mandatory credit counseling,⁸⁶ and placed limitations on bankruptcy lawyers.⁸⁷ With these additional barriers, personal bankruptcy filings were expected to drop dramatically.⁸⁸

1. Chapter 7: The Most Common Form of Bankruptcy in America

Even with BAPCPA's additional restrictions (intended to

aggregate current monthly income over 5 years, net of certain statutorily allowed expenses, is more than (i) \$11,725, or (ii) 25% of the debtor's non-priority unsecured debt, as long as that amount is at least \$7,025. The debtor may rebut a presumption of abuse only by a showing of special circumstances that justify additional expenses or adjustments of current monthly income. 11 U.S.C. § 707(b)(2)(B) (2010). Unless the debtor overcomes the presumption of abuse, the case will generally be converted to Chapter 13 (with the debtor's consent) or will be dismissed. 11 U.S.C. § 707(b)(1) (2010).

⁸⁴ SHEILA M. WILLIAMS & GEORGE M. BASHARIS, BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005: LAW AND EXPLANATION 53-54 (2005). As he signed BAPCPA into law, President Bush underscored BAPCPA's purpose when he declared: "If someone does not pay his debts, the rest of society ends up paying them. In recent years, too many people have abused the bankruptcy laws. They've walked away from debts even when they had the ability to repay them . . . Under the new law, Americans who have the ability to pay will be required to pay back at least a portion of their debts. Those who fall behind their state's median income will not be required to pay back their debts. The new law will also make it more difficult for serial filers to abuse the most generous bankruptcy protections." Press Release, The White House, *President Signs Bankruptcy Abuse Prevention, Consumer Protection Act*, <http://georgewbush-whitehouse.archives.gov/news/releases/2005/04/20050420-5.html> (last visited Nov. 5, 2010).

⁸⁵ 11 U.S.C. § 707(b) (2010). Courts use an income-based formula called the "means test" to assess a debtor's financial situation. *Id.* If the means test reveals that, based on a debtor's income and expenses, a debtor can afford to repay his debts, a debtor's Chapter 7 filing may be considered "presumptively abusive," and thus preclude the debtor from filing. *Id.* For further information about means test calculations, see U.S. Trustee Program, *Census Bureau, IRS Data and Administrative Expense Multipliers*, <http://www.justice.gov/ust/eo/bapcpa/meanstesting.htm> (last updated Oct. 1, 2010).

⁸⁶ *Id.* §§ 109, 111. No individual may be a debtor under Chapter 7 or any Chapter of the Bankruptcy Code unless he has, within 180 days before filing, received credit counseling from an approved credit counseling agency either in an individual or group briefing. *Id.*

⁸⁷ *Id.* § 526(a) (listing what a debt relief agency shall not do).

⁸⁸ See Bruce M. Price & Terry Dalton, *From Downhill to Slalom: An Empirical Analysis of the Effectiveness of BAPCPA (and Some Unintended Consequences)*, 26 YALE L. & POL'Y REV. 135, 165 (2008) (discussing Congress' expectations to reduce Chapter 7 filings).

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specifically decrease abusive bankruptcy filings), personal bankruptcy rates have continued to increase.⁸⁹ In 2009, debtors filed 1.4 million bankruptcies in the United States, a 32% increase from 2008.⁹⁰ Notably, approximately 71% of these cases — up from 66% in 2008 — were filed under Chapter 7, where a debtor's assets are liquidated and the nonexempt assets are distributed to creditors.⁹¹ Chapter 7 is popular because it involves a fairly short process — on average a Chapter 7 bankruptcy is completed in approximately 120 days⁹² — and does not affect a debtor's future income.⁹³ Moreover, many Chapter 7 debtors are unrepresented by legal counsel.⁹⁴

In accordance with the Bankruptcy Code's purpose, Chapter 7 bankruptcies are rooted in the interest of giving debtors a “fresh start.”⁹⁵ After a debtor files a Chapter 7

⁸⁹ See *id.* at 179; see generally Robert M. Lawless, et. al., *Did Bankruptcy Reform Fail? An Empirical Study of Consumer Debtors*, 82 AM. BANKR. L.J. 349, 354 (discussing empirical trends since the passage of BAPCPA).

⁹⁰ The Administration of the United States Courts, *2009 Report of Statistics Required by BAPCPA*, 5, <http://www.uscourts.gov/uscourts/Statistics/BankruptcyStatistics/BAPCPA/2009/2009BAPCPA.pdf> (last visited Nov. 5, 2010).

⁹¹ *Id.* Pursuant to 28 U.S.C. § 159(b), enacted as part of the BAPCPA, the Director of the Administrative Office of the United States Courts is required to submit an annual report to Congress on certain bankruptcy statistics detailed in 28 U.S.C. § 159(c). *Id.*

⁹² *Id.* at 6. Of the 880,654 Chapter 7 consumer cases closed in 2009, the mean time interval from filing to disposition was 168 days, and the median time interval was 120 days. See also Brief for Consumer Bankruptcy Attorneys, *supra* note 5, at 22 (offering 120 days as the average lifespan of a Chapter 7 proceeding based on deadlines imposed by the Bankruptcy Code and the Federal Rules of Bankruptcy).

⁹³ See Elijah M. Alper, *Opportunistic Informal Bankruptcy*, 110 COLUM. L. REV. 1908, 1914 (2010) (discussing why debtors tend to prefer Chapter 7 bankruptcies to Chapter 13, which requires payments to creditors from a debtor's future income, a process that can span several years).

⁹⁴ Ed Flynn & Phil Crewson, *Data Show Trends in Post-BAPCPA Bankruptcy Filings*, 27 AM. BANKR. INST. J. 14, 17 (2008), available at www.justice.gov/ust/eo/public_affairs/articles/docs/2008/abi_200808.pdf (last visited Nov. 5, 2010) (in 2008, roughly 70,000 bankruptcies were filed without legal assistance). See Brief for Consumer Bankruptcy Attorneys, *supra* note 5, at 37 (reminding the Supreme Court that many Chapter 7 debtors file on a *pro se* basis).

⁹⁵ TABB & BRUBAKER, *supra* note 35, at 66. The concept of the “fresh start,” offering debtors relief from a potential lifetime of debt and giving them a new chance for success, dates back to biblical times. See *Deuteronomy* 15:1-2 (“At the end of every seven years you must cancel debts. This is how it is to be done: Every creditor shall cancel the loan he has made to his fellow Israelite.

bankruptcy petition, the debtor receives an “automatic stay,” which stops creditors from all current and future collection efforts.⁹⁶ Bankruptcy ends when the debtor receives a discharge, by which all outstanding debts are forgiven.⁹⁷ The discharge, in effect, serves as the debtor’s “fresh start.”⁹⁸

When a debtor files for bankruptcy, a trustee is assigned to his case.⁹⁹ The trustee, also known as the bankruptcy administrator, follows the Bankruptcy Code when making decisions about the administrative aspects of a bankruptcy case.¹⁰⁰ In general, the trustee will collect the debtor’s property

He shall not require payment from his fellow Israelite brother”). Courts consistently reaffirm this principle in bankruptcy cases. *See, e.g.*, *Gronan v. Garner*, 498 U.S. 279, 286 (1991) (stating that the purpose of bankruptcy is to give debtors a “new opportunity in life and a clear field for a future effort, unhampered by the pressure and discouragement of preexisting debt.”). However, many scholars criticize the truth behind this widely used maxim. *See, e.g.*, Katherine Porter and Dr. Debora Thorne, *The Failure of Bankruptcy’s Fresh Start*, 92 CORNELL L. REV 67, 68-70 (2006-2007) (arguing that the phrase “fresh start” is misleading and that bankruptcy is an incomplete tool to rehabilitate debtors).

⁹⁶ TABB & BRUBAKER *supra* note 35, at 66. As long as the stay remains in effect, creditors cannot bring or continue lawsuits, make wage garnishments, or even make telephone calls demanding payment. *Id.* Creditors receive notice from the clerk of court that the debtor has filed a bankruptcy petition. *Id.*

⁹⁷ *Id.*

⁹⁸ *See* Alper, *supra* note 93, at 1915.

⁹⁹ The U.S. Attorney General appoints a separate Trustee for each of twenty-one geographical regions for a five-year term. 28 U.S.C. § 581. Each Trustee works under the general supervision of the Attorney General, and can be removed from office thereby. *Id.* The U.S. Trustees maintain regional offices that correspond with federal judicial districts and are administratively overseen by the Executive Office for United States Trustees in Washington, D.C. *Id.* Each United States Trustee, an officer of the U.S. Department of Justice, is responsible for maintaining and supervising a panel of private Trustees for Chapter 7 bankruptcy cases. 28 U.S.C. § 586. Under section 307 of Title 11, a U.S. Trustee “may raise and may appear and be heard on any issue in any case or proceeding” in bankruptcy except for filing a plan of reorganization in a Chapter 11 case. 11 U.S.C. § 307.

¹⁰⁰ ROBERT E. GINSBURG, ROBERT D. MARTIN & SUSAN V. KELLEY, GINSBERG & MARTIN ON BANKRUPTCY 4.01, 4-7 (4th ed. 2007); *see In re Benny*, 29 B.R. 754, 760 (N.D. Cal. 1983) (“The trustee is a creature of statute and has only those powers conferred thereby.”). “The trustee is a party with equal status to other persons interested in the outcome of the case.” HENRY J. SOMMER, CONSUMER BANKRUPTCY LAW AND PRACTICE 28 (John Rao ed., Nat’l Consumer Law Center, 7th ed. 2004). Accordingly, the trustee may sue or be sued as the representative of the debtor’s bankruptcy estate. *See, e.g.*, *Wieburg v. GTE Southwest, Inc.*, 272 F.3d 302, 308-09 (5th Cir. 2001) (holding that trustee should have been allowed to join or ratify debtor’s employment

and put it into a bankruptcy estate,¹⁰¹ liquidate the nonexempt property as quickly as possible,¹⁰² acquire other assets for the bankruptcy estate,¹⁰³ and arrange for the distribution of the bankruptcy estate proceeds to either the debtor or his creditors in accordance with the Bankruptcy Code.¹⁰⁴ Moreover, the trustee must investigate the debtor's financial affairs¹⁰⁵ and, if the trustee suspects misrepresentation, fraud, or abuse, they must oppose the debtor's discharge.¹⁰⁶ Significantly, the trustee also has the burden of proving that any exemptions are not properly claimed.¹⁰⁷

2. Exemptions in Chapter 7

When a debtor files a Chapter 7 bankruptcy petition, his assets become property of the bankruptcy estate,¹⁰⁸ subject to his right to reclaim certain property as "exempt."¹⁰⁹ Exemptions

discrimination case).

¹⁰¹ 11 U.S.C. § 704 (2010) (enumerating trustee duties during the liquidation of the bankruptcy estate). The term "bankruptcy estate" describes the aggregation of property rights that can be administered by the court in a bankruptcy case. SOMMER, *supra* note 100, at 20. The estate is created when a debtor files a bankruptcy petition and it generally consists of all the debtor's interests in any property as of that time. *Id.*

¹⁰² *Id.* § 704(a)(1) ("The trustee shall . . . collect and reduce to money the property of the estate for which such trustee serves, and close such estate as expeditiously as is compatible with the best interests of parties in interest").

¹⁰³ *Id.* ("The trustee shall . . . collect and reduce to money the property of the estate for which such trustee serves").

¹⁰⁴ *Id.* § 704(a)(9) ("The trustee shall . . . make a final report and file a final account of the administration of the estate with the court and with the United States trustee").

¹⁰⁵ *Id.* § 704(a)(4) ("The trustee shall . . . investigate the financial affairs of the debtor").

¹⁰⁶ *Id.* § 704(a)(6) ("The trustee shall . . . if advisable, oppose the discharge of the debtor").

¹⁰⁷ FED. R. BANKR. P. 4003(c) ("the objecting party has the burden of proving that the exemptions are not properly claimed").

¹⁰⁸ 11 U.S.C. § 541 (2010).

¹⁰⁹ *Id.* § 522. While the Act of 1898 left exemption laws up to the states, the 1978 reform enacted its own set of federal exemptions because of concerns that the laws were out of date. David E. Skeel, Jr., *Vern, Countryman and the Path of Progressive (and Populist) Bankruptcy Scholarship*, 113 HARV. L. REV. 1075, 1082 (2000). Under the U.S. bankruptcy system, there are federal exemptions as well as state exemptions, and states have the option to opt out of federal exemptions. FERRIELL & JANGER, *supra* note 47, at 149. In fact, the vast majority have opted out, and only a few allow a debtor to choose between federal and state exemptions. Alper, *supra* note 93, at 1916. Thus, bankruptcy,

reflect what society views as property that is integral to a person's livelihood, which should be protected from creditors' claims.¹¹⁰ To this end, the Bankruptcy Code permits a debtor to exempt property such as clothing,¹¹¹ professional tools,¹¹² or an automobile,¹¹³ up to a certain dollar amount.¹¹⁴ Permitting a debtor to retain certain assets serves the "fresh start" policy on which the Bankruptcy Code is based.¹¹⁵ To the extent that exemptions allow a debtor to continue working and commence his financial rehabilitation, exemptions serve the best interests of the debtor, the debtor's dependents, and society as a whole.¹¹⁶

To ensure that a debtor will know whether his claimed

in large part, applies federal procedure to substantive state laws. *Id.* In other words, the state law furnishes only the type of exemption and its monetary limits, while the Bankruptcy Code governs the application of those exemptions. *Id.* (citing Richard H.W. Maloy, "She'll Be Able to Keep Her Home Won't She?" — *The Plight of a Homeowner in Bankruptcy*, 2003 MICH. ST. L. REV. 315, 326 (2003)).

¹¹⁰ KAREN GROSS, FAILURE AND FORGIVENESS 46 (1997); see 1-13 COLLIER CONSUMER BANKRUPTCY GUIDE ¶ 13.08 (2009) ("The purpose of exemption laws has always been to allow debtors to keep those items of property deemed essential to daily life.").

¹¹¹ 11 U.S.C. § 522(d)(3) (2010) ("The debtor's interest, not to exceed \$400 in value in any particular item or \$8000 in aggregate value, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor").

¹¹² *Id.* § 522(d)(6) ("The debtor's aggregate interest, not to exceed \$1500 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor").

¹¹³ *Id.* § 522(d)(2) ("The debtor's interest, not to exceed \$2400 in value, in one motor vehicle").

¹¹⁴ *Id.* § 522(d). States that opt out of federal bankruptcy exemptions are free to set different monetary limits. See Ronel Elul & Narayann Subramanian, *Forum-Shopping and Personal Bankruptcy*, 21 J. FIN. SERVICES RES. 233, 233 (2002) (stating that, in practice, all states have set their own monetary caps for exemptions).

¹¹⁵ CHARLES JORDAN TABB, THE LAW OF BANKRUPTCY 640 (1997). The legislative history behind bankruptcy exemption statutes indicates that the purpose of the exemption laws has been "to protect a debtor from his creditors, [and] to provide him with the basic necessities of life so that even if his creditors levy on all of his nonempty property, the debtor will not be left destitute and a public charge." H.R. REP. NO. 95-595, at 126 (1977). Courts often reaffirm this principle. See, e.g., *United States v. Sec. Indus. Bank*, 459 U.S. 70, 72 (1982) ("[Bankruptcy] exemptions were designed to permit individual debtors to retain exempt property so that they will be able to enjoy a 'fresh start' after bankruptcy.").

¹¹⁶ TABB, *supra* note 115, at 640.

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exemptions are exempt in a timely manner, Federal Bankruptcy Rule 4003(b) requires that a “party in interest”¹¹⁷ file an objection within 30 days of the initial meeting of the creditors.¹¹⁸ If an interested party fails to object within the designated 30-day timeframe, section 522(l) of Bankruptcy Code prescribes that “unless a party in interest objects . . . the property claimed as exempt . . . is exempt.”¹¹⁹ In effect, Rule 4003(b) works in tandem with section 522(l) to enable a debtor to know whether he will be able to keep his claimed exemptions within 30 days of filing for bankruptcy.¹²⁰ Once the objection period has passed, the debtor is secure in the fact that he will reclaim the exempt property, and

¹¹⁷ FED. R. BANKR. P. 4003(b). Under Rule 4003(b), objections to exemptions must be filed and must therefore be in writing. *Id.* The phrase “party of interest” includes a trustee. *See* Edmonston v. Murphy (*In re* Edmonston), 107 F.3d 74, 77 (1st Cir. 1997) (holding that a trustee is a party in interest entitled to oppose a claim of exemption); Taylor v. Freeland & Kronz, 938 F.2d 421, 425 (1991) (noting that a trustee or other party in interest may file an objection to a claim of exemption), *aff’d*, 503 U.S. 638 (1992). Although creditors can object to debtor’s exemptions, they often do not object, instead letting the trustee shoulder the expense and burden of litigation. 1-13 COLLIER CONSUMER BANKRUPTCY PRACTICE GUIDE ¶13.08 (2009).

¹¹⁸ Fed. R. BANKR. P. 4003(b) (“A party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later.”). The initial creditors meeting is the initial fact-finding meeting between the debtor and the trustee that “starts the clock” for subsequent deadlines in the case. *See* Schwab v. Reilly, 130 S. Ct. 2652, 2671 (2010) (Ginsburg, J., dissenting) (referring to the creditors meeting as the point where the “30-day clock on filing objections had begun to run.”). However, if a debtor amends his schedule of claimed exemptions, the time for objections starts anew. FED. R. BANKR. P. 4003(b)(1). The only exceptions to the 30-day rule for filing objections to exemptions are contained in Rule 4003(b)(2)-(3). FED. R. BANKR. P. 4003(b)(2)-(3). Rule 4003(b)(2) permits the trustee, and only the trustee, to object to a fraudulently asserted exemption within one year after the case is closed. 1-13 COLLIER CONSUMER BANKRUPTCY PRACTICE GUIDE ¶ 13.08 (2009). This exception is unlikely to be utilized often, because a trustee seldom devotes any attention to a case after it is closed. *Id.* It would probably come into play only if some third party alerted the trustee to an alleged fraudulent exemption claim. *Id.* Rule 4003(b)(3) governs exceptions under section 522(q), which limits a state homestead exemption to \$136,875 for debtors who have been convicted of certain crimes or are liable for certain bad acts. *Id.*

¹¹⁹ 11 U.S.C. § 522(l) (2010).

¹²⁰ *See* Schwab, 130 S. Ct. at 2658 (2010) (“The Federal Rules of Bankruptcy require interested parties to file within 30 days after the conclusion of the creditors meeting . . . If an interest party fails to object in the time allowed, a claimed exemption will exclude the subject property from the estate”).

the trustee loses the right to preserve that property for the bankruptcy estate.¹²¹

3. Interpreting Section 522(l) and Rule 4003(b): *Taylor v. Freeland & Kronz*

Although Rule 4003(b) and section 522(l) unambiguously state that a party in interest must object to a claimed exemption within 30 days of the initial creditors' meeting,¹²² problems arise in cases where the value of a claimed exemption is not clearly or properly stated and a trustee fails to object.¹²³ In *Taylor v. Freeland & Kronz*,¹²⁴ the Supreme Court considered a case in which a debtor improperly claimed the proceeds of a pending lawsuit as exempt, and listed the value of the proceeds as "unknown."¹²⁵ In *Taylor*, debtor Davis claimed an exemption in the expected proceeds from her pending employment discrimination suit.¹²⁶ Petitioner Taylor, the trustee of Davis' bankruptcy estate, did not object to the claimed exemption within the 30-day period prescribed by Rule 4003(b).¹²⁷ The employment discrimination lawsuit was eventually settled for \$110,000.¹²⁸ Upon learning about the settlement, Taylor filed a complaint in bankruptcy court against both Davis and her attorneys in the

¹²¹ 1-13 COLLIER CONSUMER BANKRUPTCY PRACTICE GUIDE ¶ 13.08 (2009).

¹²² 11 U.S.C. § 341 (2010) (governing initial creditors meeting procedures). The debtor's first, and often only, appearance at any kind of hearing usually occurs at the debtor's section 341(a) meeting, known as the "meeting of the creditors." SOMMER, *supra* note 100, at 35. This proceeding gives the various parties a chance to examine the debtor and his affairs. *See id.*

¹²³ *See, e.g., Olson v. Anderson* (In re Anderson), 377 B.R. 865, 870 (B.A.P. 6th Cir. 2007) (examining a case where debtors scheduled property that they jointly owned with non-debtor co-owners as having "total value of about \$30,000," and claiming \$15,000 exemption for their one-half interest in property; and where trustee failed to timely object); *Hyman v. Plotkin* (In re Hyman), 967 F.2d 1316, 1321 (9th Cir. 1992) (reviewing a case where a debtor listed "homestead" instead of "homestead exemption" on her schedules and trustee failed to timely object).

¹²⁴ 503 U.S. 638, 646 (1992).

¹²⁵ *Id.* at 640 (stating that debtor described her exempt property as "Proceeds from lawsuit — [Davis] v. TWA" and "Claim for lost wages" and listed its value as "unknown.").

¹²⁶ *Id.* ("[debtor] declared bankruptcy while she was pursuing an employment discrimination claim in the state courts.").

¹²⁷ *Id.* at 641 ("Taylor decided not to object to the claimed exemption. The record reveals that Taylor doubted that the lawsuit had any value.").

¹²⁸ *Id.* ("TWA agreed to pay Davis a total of \$110,000.").

employment lawsuit, demanding that they turn over settlement proceeds as property of Davis' bankruptcy estate.¹²⁹

The bankruptcy court ruled in favor of Taylor, finding that, although he was a "party in interest" pursuant to Bankruptcy Code section 522(l) — and though he had failed to object to the debtor's claimed exemption within 30 days as required by Rule 4003(b) — the obligation to object did not arise, and therefore, he preserved for the bankruptcy estate the value of the lawsuit settlement.¹³⁰ The United States District Court for the Western District of Pennsylvania affirmed and ordered Davis and her lawyers to return a sum sufficient to pay off all of Davis' unpaid creditors.¹³¹ However, the Third Circuit reversed the district court's decision, holding that section 522(l) — which expressly states that unless a party in interest objects, the property claimed as exempt is exempt — must be interpreted literally.¹³²

On certiorari, the United States Supreme Court affirmed the Third Circuit's judgment.¹³³ Justice Thomas, writing for the Court, explained that Davis did not have a right to exempt more than a small portion of the proceeds from the lawsuit on her Schedule C, but she nevertheless claimed the full amount as exempt when she listed the value of the lawsuit as "unknown" and the value of her exemption as "unknown."¹³⁴ The Court held

¹²⁹ *Id.* ("Upon learning of the settlement, Taylor filed a complaint against respondents in the Bankruptcy Court. He demanded that respondents turn over the money that they had received from Davis because he considered it property of Davis' bankruptcy estate.")

¹³⁰ *In re Davis*, 105 B.R. 288, 294 (Bankr. W.D. Pa. 1989) (noting, however that "Had the Trustee acted with knowledge and/or diligence, the present action, in all likelihood, never would have arisen.")

¹³¹ *In re Davis*, 118 B.R. 272, 276 (W.D. Pa. 1990) (concluding, "the bankruptcy court did not commit reversible error in valuing the lawsuit at \$110,000").

¹³² *Taylor v. Freeland & Kronz*, 938 F.2d 420, 426 (7th Cir. 1991) ("A strong policy rationale supports the literal approach. The time limits and obligations established by section 522(l) and Rule 4003(b) serve the dual purposes of finality and security.")

¹³³ *Taylor v. Freeland & Kronz*, 503 U.S. 638, 646 (1992).

¹³⁴ *Id.* at 642. The Court further concluded: "In this case, as noted, Davis claimed the proceeds from her employment discrimination lawsuit as exempt by listing them in the schedule that she filed under § 522(l). The parties agree that Davis did not have a right to exempt more than a small portion of these proceeds either under state law or under the federal exemptions specified in § 522(d). Davis in fact claimed the full amount as exempt. Taylor, as a result, apparently could have made a valid objection under § 522(l) and Rule 4003 if

that Taylor could have objected to the exemption under Rule 4003(b) within the 30-day period.¹³⁵ His failure to do so thereby excluded the proceeds from the lawsuit from the bankruptcy estate.¹³⁶

Aside from underscoring the importance of deadlines in a Chapter 7 bankruptcy proceeding, the Court noted that the trustee could have pursued other remedies if there was a question of valuation; he could have sought a hearing on the issue, or asked the bankruptcy court for an extension of time to object.¹³⁷ To the extent that existing penalties for improper conduct in bankruptcy proceedings did not limit bad-faith claims of exemptions by debtors, the Court reasoned that it had no authority to limit the application of section 522(l) to Davis' exemption, which was claimed in good faith.¹³⁸ In sum, the court held that section 522(l) and Rule 4003(b) should be read plainly:¹³⁹ if a trustee does not object to a claimed exemption within 30 days, a debtor keeps his claimed property.¹⁴⁰

II. Discussion

Despite the Court's holding in *Taylor*, in *Schwab v. Reilly*, the Court held that section 522(l) and Rule 4003(b) should not be interpreted literally in cases where a debtor undervalues her claimed exemption and a trustee fails to object within the

he had acted promptly. We hold, however, that his failure to do so prevents him from challenging the validity of the exemption now." *Id.*

¹³⁵ *Id.*

¹³⁶ *Id.* The Court reasoned that if Taylor did not know the value of the potential proceeds of the lawsuit, he "could have sought a hearing on the issue, or he could have asked the Bankruptcy Court for an extension of time to object." *Id.* at 644. Having done neither, the Court found that Taylor could not seek to deprive Davis of the exemption by objection after the designated 30-day timeframe had elapsed. *Id.*

¹³⁷ *Id.* Importantly, the Court stressed that Taylor sat on his rights and thus, did not preserve his right to object to Davis' claimed exemption after the 30-day period had expired. *See id.* The Court underscored the importance of timeliness in bankruptcy proceedings when it stated, "[d]eadlines may lead to unwelcome results, they prompt parties to act and they produce finality." *Id.*

¹³⁸ *Id.* at 644-45 (noting that although Congress may enact provisions to bad faith claims under section 522(l), "We have no authority to limit the application of § 522(l) to exemptions claimed in good faith.").

¹³⁹ *See* Brief for Respondent, *supra* note 57, at 35-37 (summarizing the implications of the Court's holding in *Taylor*).

¹⁴⁰ *Id.*

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designated 30-day period.¹⁴¹ This Part begins with the factual background of the case¹⁴² and then discusses the *Schwab* decision, including the decision of the bankruptcy court,¹⁴³ district court,¹⁴⁴ and the Third Circuit.¹⁴⁵ Finally, this Part explains how the Supreme Court ultimately resolved the circuit split.¹⁴⁶

A. Factual Background

Debtor Nadejda Reilly, who owned and operated a small catering business, filed for Chapter 7 bankruptcy.¹⁴⁷ Reilly wished to claim some catering equipment as exempt.¹⁴⁸ To exempt particular items of property from her bankruptcy estate, section 522(l) of the Bankruptcy Code required Reilly to “file a list of property that [she] claim[ed] as exempt.”¹⁴⁹ Rule 4003(a)¹⁵⁰ further instructed Reilly to list her claimed exemptions on a schedule of assets required by Rule 1007.¹⁵¹ In relevant part, Rule 1007 directs the filing of various schedules of assets through the use of the appropriate official forms — in this case Official Form 6.¹⁵² Form 6 includes a Schedule B,¹⁵³ which requires a debtor to list all of his personal property, and also a Schedule C,¹⁵⁴ which

¹⁴¹ *Schwab v. Reilly*, 130 S. Ct. 2652, 2669 (2010).

¹⁴² See *infra* Part II.A.

¹⁴³ See *infra* Part II.A.

¹⁴⁴ See *infra* Part II.B.

¹⁴⁵ See *infra* Part II.C.

¹⁴⁶ See *infra* Part II.D.

¹⁴⁷ *Schwab*, 130 S. Ct. at 2657.

¹⁴⁸ Brief for Respondent, *supra* note 57. Because Reilly was an individual, she was entitled to claim property as exempt from the bankruptcy estate. See *Rousey v. Jocaway*, 544 U.S. 320, 325 (2005) (“To help the debtor obtain a fresh start, the Bankruptcy Code permits him to withdraw from the estate certain interests in property, such as his car or home, up to certain values.”); *Owen v. Owen*, 500 U.S. 305, 308 (1991) (“An exemption is an interest withdrawn from the estate (and hence from the creditors) for the benefit of the debtor . . . Property that is properly exempted under § 522 is (with some exceptions) immunized against liability for pre-bankruptcy debts.”).

¹⁴⁹ *Schwab*, 130 S. Ct. at 2660.

¹⁵⁰ FED. R. BANKR. P. 4003(a).

¹⁵¹ FED. R. BANKR. P. 1007.

¹⁵² FED. R. BANKR. P. 1007(b)(1)(A); FED. R. BANKR. P. Form 6 (2005).

¹⁵³ FED. R. BANKR. P. Form 6, Schedule B (2005). The Official Form entitled “Schedule B – Personal Property Instructions” is the list requiring debtors to list their assets. *Id.* This form requires a debtor to make three specific entries for each asset: (i) type of property; (ii) description of the property and its location; and (iii) state the value of the property. *Id.*

¹⁵⁴ *Schwab*, 130 C. Ct. at 2657. The Official Form entitled “Schedule C –

further requires a debtor to list personal property he wishes to claim as exempt.¹⁵⁵

On her Schedule B list of personal property, Reilly included an itemized list of catering equipment — describing it as “business equipment” — and estimated its market value at \$10,718.¹⁵⁶ On her Schedule C list of exemptions, she claimed two exemptions in the business equipment: 1) an exemption for \$1,850 under the “tools of the trade” exemption of section 522(d)(6),¹⁵⁷ which permitted a debtor to exempt an aggregate interest up to \$1,850 in value; and 2) an exemption for \$8,658 under the “wild-card” exemption of section 522(d)(5),¹⁵⁸ which allowed her to exempt an aggregate interest in any property up to \$10,225.¹⁵⁹ Thus, Reilly listed identical amounts of \$10,718 on both her Schedule B list of assets and her Schedule C list of claimed exemptions for the same “business equipment.”¹⁶⁰

William Schwab was appointed as the Chapter 7 trustee in Reilly’s bankruptcy.¹⁶¹ Prior to the initial meeting of creditors¹⁶² — the event that “starts the clock”¹⁶³ for subsequent bankruptcy

Property Claimed As Exempt” is the “list of property claimed as exempt.” *Schwab*, 130 S. Ct. at 2658. This form requires a debtor to make four specific entries for each asset claimed as exempt: (i) describe the property claimed as exempt; (ii) specify the law which serves as the basis for the exemption; (iii) state the value of the claimed exemption; and (iv) state the “current value of property without deducting [the] exemption.” FED. R. BANKR. P. Form 6, Schedule C (2005).

¹⁵⁵ Brief for Respondent, *supra* note 57, at 7 (citing FED. R. BANKR. P. Form 6, Schedules B, C (2005)).

¹⁵⁶ *Schwab*, 130 S. Ct. at 2658.

¹⁵⁷ 11 U.S.C. § 522(d)(6) (2005).

¹⁵⁸ *Id.* § 522(d)(5) (providing for an exemption in a debtor’s aggregate interest in any property not covered by any other category).

¹⁵⁹ *Schwab*, 130 S. Ct. at 2657.

¹⁶⁰ *Id.* In this case, between § 522(d)(6) and §522(d)(5), Reilly had a total of \$11,195 in exemptions available to her, which she applied on her schedules to cooking equipment she valued at \$10,718. Brief for Respondent, *supra* note 57, at 8. In other words, in claiming her cooking equipment as exempt, Reilly did not exhaust the entire amount of her available exemptions under these two provisions. *Id.* Instead, she placed values on the cooking equipment she claimed as exempt and took her exemptions accordingly, listing as exempt the full value of her equipment. *Id.* at 9.

¹⁶¹ *See Schwab*, 130 S. Ct. at 2657.

¹⁶² 11 U.S.C. § 341(a) (Within a reasonable time after the order for relief in a case under this title, the United States trustee shall convene and preside at a meeting of creditors).

¹⁶³ *Schwab*, 130 S. Ct. at 2671 (Ginsburg, J., dissenting) (noting that Schwab had his meeting of creditors “[b]efore the 30-day clock on objections

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deadlines — Schwab sought an appraisal of the equipment.¹⁶⁴ The appraisal revealed that the equipment could be worth as much as \$17,000 — approximately \$6,500 more than Reilly listed on her Schedule B.¹⁶⁵ According to Rule 4003(b) of the Federal Rules of Bankruptcy Procedure,¹⁶⁶ Schwab was required to object to Reilly’s claimed exemptions within 30 days following the initial creditors’ meeting or he would be precluded from challenging the claimed exemption, even if the amount of the claimed exemption exceeded statutory limits.¹⁶⁷ However, Schwab did not object.¹⁶⁸ Instead, he moved the bankruptcy court for permission to auction Reilly’s business equipment, give the exempt amount of \$10,718 to Reilly, and distribute the remainder of the money to Reilly’s creditors.¹⁶⁹

In his motion to auction the equipment, Schwab argued that he was not obligated to object to Reilly’s claimed exemptions for two main reasons.¹⁷⁰ First, he argued that he had no duty to object because Reilly’s claimed exemptions were facially valid — the dollar value Reilly assigned each exemption fell within the

had begun to run”).

¹⁶⁴ *Id.* at 2658; see Brief for Petitioner at 20-26, *Schwab v. Reilly*, 130 S. Ct. 2652 (2010) (No. 08-538) (stating Schwab “suspected, but did not know, that Reilly’s kitchen equipment might be worth more than \$10,718.”).

¹⁶⁵ Brief for Petitioner, *supra* note 164, at 20-26 (noting that the auctioneer stated that the equipment was worth \$17,000, and maybe even more).

¹⁶⁶ The Federal Rules Of Bankruptcy Procedure provides: “[A] party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.” FED. R. BANKR. P. 4003(b)(1).

¹⁶⁷ See *Taylor v. Freeland & Kronz*, 503 U.S. 638, 642-43 (1992) (interpreting FED. R. BANKR. P. 4003(b) and 11 U.S.C. § 522(l) to mean that a trustee’s failure to make a timely objection to a claimed exemption precludes a challenge, even if there is no colorable basis for the exemption).

¹⁶⁸ *Schwab*, 130 S. Ct. at 2658; see Brief for Petitioner, *supra* note 164, at 20-26 (discussing that Schwab held a meeting of creditors on June 22, 2005, and indicated that there might be value in Reilly’s kitchen equipment, but did not raise an objection).

¹⁶⁹ See Brief for Petitioner, *supra* note 164, at 26 (“On August 10, 2005, Schwab filed a motion with the bankruptcy court seeking permission to auction Reilly’s kitchen equipment so that he could turn over the \$10,718 in exempt value to Reilly and distribute the excess value, less costs, to her creditors.”).

¹⁷⁰ *Schwab*, 130 S. Ct. at 2658.

limits assigned by sections 522(d)(5) and (6).¹⁷¹ Accordingly, Schwab believed that he had no obligation to object to any value that exceeded this amount.¹⁷²

Schwab also contended that when Reilly listed identical amounts of \$10,718 on both her Schedule B list of assets and her Schedule C list of claimed exemptions, she did not demonstrate her intent to fully exempt the property, but rather claimed only a dollar value interest in the property.¹⁷³ Schwab pointed to the statutory language of section 522(l), which provides that “property claimed as exempt . . . is exempt”¹⁷⁴ and argued that “property claimed as exempt” should be defined as an “interest” up to a certain dollar amount, and not the property itself.¹⁷⁵ Accordingly, he asserted that the value of kitchen equipment should be judged solely on the value Reilly assigned to the *interest* (\$10,718) of the kitchen equipment.¹⁷⁶ To the extent that Rule 4003(b) only functions to compel opposition to the *list of property* claimed as exempt within 30 days (not the list of interests), Schwab argued that he was not required to object to Reilly’s claimed exemption within 30 days of the creditor’s meeting.¹⁷⁷

Reilly opposed Schwab’s motion, arguing that because the amount of the exemption she claimed in the cooking equipment

¹⁷¹ Brief for Petitioner, *supra* note 164, at 32 (“The text of the Bankruptcy Code and Rules themselves make clear that Schwab was not required to object to Reilly’s facially valid exemption in order to liquidate property worth more than the claimed exemption.”).

¹⁷² *Schwab*, 130 S. Ct. at 2661. In a subsequent Brief to the Supreme Court, Schwab explained this argument in the following way:

Here, all parties agree that no objection was filed. Any property claimed as exempt on Schedule C, therefore, is exempt. The only question, then, is the extent of Reilly’s claimed exemption on Schedule C. And the answer to that appears on the face of Reilly’s Schedule C itself: Reilly ‘claimed as exempt’ a \$10,718 interest in her kitchen equipment.

Brief for Petitioner, *supra* note 164, at 32.

¹⁷³ Brief for Petitioner, *supra* note 164, at 20-26 (arguing that Reilly claimed only an interest of \$10,718 in her kitchen—*not* the kitchen equipment itself).

¹⁷⁴ 11 U.S.C. § 522(l) (2005) (“unless a party in interest objects, the property claimed as exempt . . . is exempt”).

¹⁷⁵ *Schwab*, 130 S. Ct. at 2661.

¹⁷⁶ Brief for Petitioner, *supra* note 164, at 20-26.

¹⁷⁷ *Schwab*, 130 S. Ct. at 2658.

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was equal to her valuation of the equipment, she had put Schwab and her creditors on notice that she intended to exempt the equipment's full value, even if that amount turned out to be more than the dollar amount she declared (and more than the Bankruptcy Code allowed).¹⁷⁸ Reilly asserted that because her Schedule C list of claimed exemptions notified Schwab of her intent to exempt the full value of her business equipment, he was obligated to object if he wished to preserve the estate's right to retain any value in the equipment in excess of her \$10,718 estimation.¹⁷⁹ Because Schwab did not object within the time prescribed by Rule 4003(b), Reilly asserted that the estate forfeited its claim and interest in her business equipment.¹⁸⁰

In addition to opposing Schwab's motion, Reilly submitted a conditional motion to dismiss if the bankruptcy court ruled in Schwab's favor.¹⁸¹ Reilly claimed that she attached "extraordinary sentimental value" to the catering equipment because it had been a gift from her parents, who had purchased it for her despite their own financial difficulties.¹⁸² Reilly informed the bankruptcy court that she would rather dismiss her bankruptcy case than have the equipment sold at auction.¹⁸³

B. The Bankruptcy Court Decision: Trustee's Failure to Object Means the Debtor Keeps Her Property

The United States Bankruptcy Court for the Middle District of Pennsylvania denied both Reilly's motion to dismiss her case and Schwab's motion to auction the equipment.¹⁸⁴ From Reilly's filings, the bankruptcy judge found it evident that Reilly had claimed the property itself, not its dollar value as exempt.¹⁸⁵

¹⁷⁸ Brief for Petitioner *supra* note 164, at 15.

¹⁷⁹ *Schwab*, 130 S. Ct. at 2661. It should be noted that had Schwab informed Reilly that her business equipment was in jeopardy, she could have amended her Schedule C accordingly. *See* SOMMER, *supra* note 100, at 82 (stating that Schedule C may be amended as of right at any time before the close of the case so that mistakes and oversights are easily corrected).

¹⁸⁰ *Schwab*, 130 S. Ct. at 2661.

¹⁸¹ Brief for Respondent, *supra* note 57, at 11-12.

¹⁸² *Id.*

¹⁸³ *Id.*

¹⁸⁴ *In re Reilly*, 403 B.R. 336, 339 (Bankr. M.D. Pa. 2006) (discussing the bankruptcy court's holding). After 1984, all matters arising under the Bankruptcy Code, or arising in or related to cases under the Bankruptcy Code, are initially referred by the district court to the bankruptcy court, subject to certain restrictions. 28 U.S.C. § 157(a) (2010).

¹⁸⁵ *Id.* at 337.

Additionally, the Court found that Schwab waived his right to challenge the valuation of the property by failing to object to Reilly's exemptions in the 30-day period permitted by Rule 4003(b).¹⁸⁶ Thus, the bankruptcy court blocked the sale of Reilly's business equipment.¹⁸⁷

C. The District Court Decision: Affirming the Bankruptcy Court's Decision

Schwab appealed the decision to the United States District Court for the Middle District of Pennsylvania, which affirmed the decision of the bankruptcy court.¹⁸⁸ Like the bankruptcy court, the district court concluded that by listing the identical amount of \$10,718 as both the property's market value and the value of the claimed exemptions, Reilly had signaled her intention to safeguard all of her catering equipment from inclusion in the bankruptcy estate.¹⁸⁹

The district court held that the case was governed by *Taylor v. Freeland & Kronz*,¹⁹⁰ and therefore interpreted Rule 4003(b) and section 522(l) to mean that Schwab's failure to make a timely objection precluded his later challenge.¹⁹¹ The district court found the case to be factually analogous to *Allen v. Green*,¹⁹² an Eleventh Circuit case whereby a debtor claimed a \$1 exemption in a pending lawsuit, the trustee failed to object, and the lawsuit settled for \$15,000.¹⁹³ Like the *Allen* court, which relied on the *Taylor* holding to rule in favor of the debtor, the district court held that *Taylor* also controlled this case.¹⁹⁴ Therefore, because Schwab failed to challenge the entire reported value of \$10,718 in a timely manner, the district court held that

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ *Id.* at 339.

¹⁸⁹ *Id.*

¹⁹⁰ *Taylor v. Freeland & Kronz*, 503 U.S. 638, 643 (1992); *see supra* Part I.B.3 (discussing *Taylor v. Freeland & Kronz*).

¹⁹¹ *In re Reilly*, 403 B.R. at 337.

¹⁹² 31 F.3d 1098, 1101 (11th Cir. 1994).

¹⁹³ *Id.* The *Allen* trustee argued that because the debtor exempted only one dollar of the personal injury lawsuit, all but one dollar of the personal injury lawsuit settlement belonged to the bankruptcy estate. *Id.* This was precisely the trustee's argument in *Schwab*. *Schwab v. Reilly*, 130 S. Ct. 2652, 2669 (2010). In *Schwab*, the trustee argued that Reilly was only entitled to a \$10,718 interest in the property she listed on her Schedule C. *Id.*

¹⁹⁴ *In re Reilly*, 403 B.R. at 339.

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Reilly was entitled to the entire value of her business equipment, even if the trustee valued it as more than she estimated.¹⁹⁵ Consequently, the district court denied Schwab's appeal and affirmed the bankruptcy court's ruling.¹⁹⁶

D. The Appellate Court Decision: Affirming the District Court's Judgment

Schwab then appealed to the Third Circuit.¹⁹⁷ The Third Circuit affirmed the district court's decision finding that when a debtor indicated intent to exempt his entire interest in a property by claiming an exemption of the full value, and the trustee did not object within the 30-day timeframe, the debtor was entitled to the property in its entirety.¹⁹⁸

The Third Circuit rejected the argument by Schwab and *amicus* National Association of Bankruptcy Trustees that *Taylor* was not applicable in this case because Reilly's exemption was not *prima facie* objectionable.¹⁹⁹ According to Schwab, the amount of the exemption that Reilly claimed was proper, which distinguished this case from *Taylor* because "as opposed to trustee Taylor, the trustee here could not have made a valid objection under section 522(l) to this exemption."²⁰⁰ Thus, Schwab argued, *Taylor* did not address whether a debtor's valuation of property becomes conclusive in the absence of a timely objection pursuant to section 522(l) and Rule 4003(b).²⁰¹

The Third Circuit disagreed with Schwab's argument and found that *Taylor* controlled the case.²⁰² Just as it perceived that it was important to the *Taylor* Court that the debtor meant to exempt the full amount of property by listing "unknown" as both the value of the property and the value of the exemption, the Third Circuit held that it was important that Reilly valued the business equipment at \$10,718 and claimed an exemption in the same amount.²⁰³ The Third Circuit reasoned that such an identical listing clearly put Schwab on notice that Reilly intended

¹⁹⁵ *Id.*

¹⁹⁶ *In re Reilly*, 534 F.3d 173, 175 (3d Cir. 2008).

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 179.

¹⁹⁹ *Id.* at 177.

²⁰⁰ *Id.* at 177-78; *see* Brief for Petitioner, *supra* note 164, at 15-18.

²⁰¹ *In re Reilly*, 534 F.3d at 177.

²⁰² *Id.* at 178.

²⁰³ *Id.*

to fully exempt the property.²⁰⁴ Furthermore, the Third Circuit held that an unstated premise of *Taylor* was “that a debtor who exempts the entire reported value of an asset is claiming that ‘full amount,’ whatever it turns out to be.”²⁰⁵ In other words, when a debtor equates the total value of an exemption with its estimated market value, the debtor demonstrates the intention to exempt the entirety of the property he claims as exempt.²⁰⁶

In reaching its conclusion, the Third Circuit admitted that there was a circuit split on the issue of whether section 522(l) and Rule 4003(b) required a trustee to object to claimed exemptions when a debtor signaled his intention to exempt the entire value of the property but did not list the true market value.²⁰⁷ In reaching its conclusion, the Third Circuit distinguished the Ninth Circuit’s analysis in *Hyman v. Plotkin*,²⁰⁸ noting that the debtors in *Hyman* — who listed “homestead” as an exemption and attempted to claim an exemption in their entire house — did not signal their intent to exempt the entire property in question, whereas Reilly and the debtor in *Taylor* did.²⁰⁹ The Third Circuit further disagreed with the Eighth Circuit’s holding in *Stoebner v. Wick*,²¹⁰ — a case where a debtor claimed an exemption in stocks and listed their value as “unknown” — criticizing it as inconsistent with *Taylor*.²¹¹ Instead, the Third Circuit sided with holdings in the Sixth²¹² and Eleventh Circuits,²¹³ which both ruled

²⁰⁴ *Id.*

²⁰⁵ *Id.* at 178-79; *but see* Schwab v. Reilly, 130 S. Ct. 2652, 2667 (2010) (clarifying that *Taylor* does not, in fact, rest on this premise).

²⁰⁶ *In re Reilly*, 534 F.3d at 179.

²⁰⁷ *Id.* at 173.

²⁰⁸ 967 F.2d 1316, 1321 (9th Cir. 1992) (holding that: (1) by listing “homestead” instead of “homestead exemption” on schedules, debtors did not claim as exempt entire homestead, rather than just \$45,000 limit allowable under California law, and thus, entire property was not automatically exempt due to trustee’s failure to object to schedules; (2) there was no statutory requirement under California law that sale price of homestead also account for selling costs; (3) trustee was not required to demonstrate in advance of attempting sale that market price would exceed all costs and encumbrances; and (4) debtors were not entitled to post-filing appreciation).

²⁰⁹ *In re Reilly*, 534 F.3d at 172.

²¹⁰ 276 F.3d 412, 418 (8th Cir. 2002) (holding that a lack of objection by a trustee to a debtor’s claim of exemption in her stock option of “unknown” value did not transform debtor’s exemption from one for specific dollar amount to one for entire asset).

²¹¹ *In re Reilly*, 534 F.3d at 173.

²¹² *Olson v. Anderson*, 377 B.R. 865, 370 (B.A.P. 6th Cir. 2007) (holding that by scheduling property that they jointly owned with non-debtor co-

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that a debtor was entitled to keep his property if a trustee failed to object to the debtor's estimation of that property value within the designated 30-day timeframe.²¹⁴

E. The Justices Weigh In: Reversing the Third Circuit's Decision

The Supreme Court granted certiorari to resolve the federal circuit split of: 1) whether a debtor gets to keep the full value of property when he undervalues the monetary value (and the true value exceeds statutory limits); and 2) whether the trustee is required to object to such a valuation within 30 days to retain the excess value for creditors.²¹⁵ The Court rejected the Third Circuit's reasoning and found that Schwab was not required to object to Reilly's claimed exemptions within 30 days in order to preserve for the bankruptcy estate any value in the equipment beyond the value she claimed as exempt.²¹⁶ The Court's decision has three main components.²¹⁷ First, the Court evaluated Reilly's Schedule C and clarified the meaning of section 522(l).²¹⁸ Second, the Court distinguished *Schwab* from *Taylor* and clarified its holding in *Taylor*.²¹⁹ Third, the Court quelled concerns about trustee power and suggested ways a debtor could clearly signify his intention to fully exempt his property on a bankruptcy

owners as having "total value of about \$30,000," and by claiming \$15,000 exemption for their one-half interest in property, debtors sufficiently manifested their intent to exempt their full interest in property, so that where trustee failed to timely object, debtors' interest in property was removed from estate, and trustee, upon belatedly discovering that property had value of \$60,000, had no interest in property that she could sell).

²¹³ *Allen v. Green*, 31 F.3d 1098, 1101 (11th Cir. 1994) (holding that when a trustee failed to timely challenge debtor's valuation of personal injury lawsuit or debtor's exemption claim, debtor was entitled to entire value of lawsuit, whatever it turned out to be).

²¹⁴ *In re Reilly*, 534 F.3d at 173.

²¹⁵ *Schwab v. Reilly*, 130 S. Ct. 2652 (2010). Justice Thomas delivered the opinion of the Court in a 6-3 decision, in which Justice Stevens, Justice Scalia, Justice Kennedy, Justice Alito, and Justice Sotomayor joined. Justice Ginsburg filed a dissenting opinion, which Chief Justice Roberts and Justice Breyer joined. *Id.* The Court granted review of those two issues, but declined to hear a claim that the Third Circuit Court acted unconstitutionally in supposedly creating "new trustee duties" and authorizing "unlimited in-kind exemptions" of a debtor's property. *Id.*

²¹⁶ *Id.* at 2667.

²¹⁷ *Id.* at 2660-69; see also *infra* Part III.D.1-3.

²¹⁸ See *infra* Part II.D.1.

²¹⁹ See *infra* Part II.D.2.

petition.²²⁰

1. Interpreting Section 522(l)

Because all parties agreed that section 522(l) governed the case, the Court initiated its analysis by interpreting section 522(l).²²¹ In relevant part, section 522(l) required that the debtor file “a list of property that the debtor claim[ed] as exempt under subsection (b),” and that “unless a party in interest object[ed] . . . property claimed as exempt . . . [was] exempt.”²²² The contested statutory language, and what the Court set out to clarify, was how to define “property claimed as exempt.”²²³ While Reilly favored a literal interpretation of the statute — exempt property claims were exempt when not objected to — Schwab argued that property should be defined as an “interest” in property not to exceed a certain dollar amount, and any value beyond that interest was not within the statutory scope.²²⁴

The Court ultimately agreed with Schwab that “property claimed as exempt” was defined as an “interest” in exempt property up to a certain dollar amount.²²⁵ To support this conclusion, the Court pointed to language in other sections of the Bankruptcy Code — specifically, section 522(d).²²⁶ Section 522(d) provides twelve categories of property exemptions;²²⁷ the majority

²²⁰ See *infra* Part II.D.3.

²²¹ Schwab, 130 S. Ct. at 2659-60.

²²² *Id.* at 2660 (citing 11 U.S.C. 522(l) (2005)).

²²³ *Id.* (stating that while the parties agreed that this case was governed by § 522(l), and that § 522(l) refers to Schedule C, the parties disagreed about what information on Schedule C defines “property claimed as exempt” for purposes of evaluating an exemption’s propriety under § 522(l)).

²²⁴ *Id.* at 2661. According to Reilly, Schwab was required to treat the estimate of market value she entered in column four of her Schedule C as part of her claimed exemption in identifying the “property claimed as exempt” under § 522(l). *Id.* Relying on this premise, Reilly argued that when she equated the total value of her claimed exemptions in her kitchen equipment with the equipment’s current market value, she clearly demonstrated that the “property claimed as exempt” included this full market value estimation, whatever the true market value turned out to be. *Id.*

²²⁵ *Id.*

²²⁶ *Id.* To get to § 522(d), the Court examined the language in § 522(l) that targeted the “list of property that the debtors claims as exempt under subsection (b).” *Id.* Section 522(b) did not further define the “property claimed as exempt,” but it did refer only to property in yet another subsection — subsection (d). *Id.* Thus, the Court turned its attention to § 522(d). *Id.*

²²⁷ 11 U.S.C. § 522(d) (2010). Section 522(d) catalogs exemptions of two types. *Id.* Most exemptions place a monetary limit on the value of the property

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of these categories define exemptible property as the debtor's "interest" in that property up to a specified dollar amount.²²⁸ In light of this statutory language, the Court held that the Bankruptcy Code's definition of "property claimed as exempt" was clearly defined as an interest.²²⁹ Given this definition, the Court agreed with Schwab that he had no duty to object to Reilly's business equipment exemption because the stated value of the "interest" was within Bankruptcy Code limits.²³⁰

The Court rejected Reilly's contention that the plain language of section 522(l) and dictionary entries of "property," defined the phrase "property claimed as exempt" as property *per se*.²³¹ The Court stated that although it looked to dictionaries and the Bankruptcy Rules to determine the meaning of words the Bankruptcy Code did not define, in this instance the Bankruptcy Code clearly defined "property" as an "interest" in section 522(d).²³² Because this definition was unambiguous, the Court found Reilly's plain language argument to be unpersuasive.²³³

In light of the Court's interpretation of section 552(l), the Court further held that Schwab was not required to evaluate the propriety of Reilly's current market value estimation.²³⁴ The Court found that Schwab was only required to object to exemptions based on three (of a possible four) entries on Reilly's

the debtor may reclaim. *See, e.g., id.* § 522(d)(2) ("motor vehicle"); § 522(d)(3) ("household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments"); *id.* § 522(d)(4) ("jewelry"). For certain exemptions not at issue here, the Bankruptcy Code authorizes reclamation of the property in full without any cap on value. *See, e.g., id.* § 522(d)(7) ("unmatured life insurance contract"); §522(d)(9) ("[p]rofessionally prescribed health aids"); *id.* § 522(d)(11)(A) ("award under a crime victim's reparation law").

²²⁸ Schwab v. Reilly, 130 S. Ct. 2652, 2663 (2010).

²²⁹ *Id.*

²³⁰ *Id.* (noting that Schwab's statutory duty to object to the exemptions in this cases turned solely on whether the value of the property claimed as exempt exceeded statutory limits because the parties agreed that Schwab had no cause to object to Reilly's attempt to claim exemptions in the equipment at issue, or to the applicability of the Code provisions Reilly cited in support of her exemptions).

²³¹ *Id.* at 2662.

²³² *Id.*

²³³ *Id.*

²³⁴ *Id.* at 2665. In 1991, Schedule C was amended to include require debtors to list the current market value of the exempt property. *Id.* at 2664. The Court noted that the precise reason for the amendment was unclear. *Id.* at 2665 n.14. Whatever the case, the Court argued, it did not result from statutory changes in the Bankruptcy Code provisions that governed this dispute. *Id.*

Schedule C: 1) the description of the business equipment Reilly claimed as exempt; 2) the Bankruptcy Code provisions governing these exemptions; and 3) the value of the claimed exemption.²³⁵ Although Schedule C also required debtors to list a “market value estimate,” the Court held that Schwab was not entitled to evaluate this category.²³⁶ Instead, the Court contended that this category should be confined to its proper role: aiding the trustee by helping him identify assets that may have value beyond the dollar amount claimed as exempt.²³⁷ In effect, the Court held that when Reilly listed that her business equipment had a market value of \$10,718, Schwab had no legal duty to object because he was not required to consider this information.²³⁸

2. Distinguishing *Taylor v. Freeland & Kronz*

After the Court determined that Schwab had no legal duty to object to Reilly’s valuation of her claimed exemptions, it clarified its holding in *Taylor v. Freeland & Kronz*.²³⁹ First, the Court asserted that *Taylor* did not rest on what the debtor “meant” to exempt, but instead, the case rested on the face of a debtor’s claimed exemption.²⁴⁰ In *Taylor*, the face of the debtor’s exemption was not valid because she listed the value as “unknown.”²⁴¹ In this case, the face of Reilly’s claimed exemption was valid, as \$10,718 was within statutory limits.²⁴² Thus, the Court argued that Reilly, unlike the *Taylor* debtor, raised no “warning flag” warranting a trustee objection.²⁴³

²³⁵ *Id.* at 2663.

²³⁶ *Id.*

²³⁷ *Id.*

²³⁸ *Id.* However, the Court did not render his information entirely superfluous. *Id.* at 2663. By confining the “full market value” category of Schedule C to the role of aiding trustees, the Court claimed that trustees could still use this information for their own knowledge. *Id.* at 2664. This interpretation, the Court argued, was consistent with the historical treatment of bankruptcy exemptions. *Id.*

²³⁹ *Id.* at 2665-67.

²⁴⁰ *Id.* at 2665.

²⁴¹ *Id.*

²⁴² *Id.*

²⁴³ *Id.* at 2666 n. 16. *See, e.g., In re Barroso-Herrans*, 524 F.3d 341, 345 (1st Cir. P.R. 2008) (explaining that Schedule C entries listing the value of a claimed exemption as “unknown” “to be determined” or “100%” are “red flags to trustees to trustees and creditors,” and therefore put them on notice that if they do not object, the whole value of the asset — whatever it might later turn out to be — will be exempt.”).

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Furthermore, the Court rejected the Third Circuit's contention that an "unstated premise" of *Taylor* was that "a debtor who exempt[ed] the entire reported value of an asset claim[ed] the 'full amount,' whatever it turns out to be."²⁴⁴ The Court held that *Taylor* did not rest on this premise; rather, it established and applied the straightforward proposition that an interested party must object to a claimed exemption if the value of a claimed exemption is not within statutory limits.²⁴⁵ In accordance with this distinction, the Court ruled that *Taylor* remained good law when the debtor exempts the full amount of the property or lists the property value as "unknown," but it did not extend to cases in which a debtor claimed exemptions and assigned them values that fell within the limits permitted by the Bankruptcy Code.²⁴⁶

3. Not Requiring a Trustee to Object Does Not Undermine the "Fresh Start" or Create Incentives for Trustees to Sleep on Their Rights

Next, the Court addressed Reilly's concern that Schwab's argument was inconsistent with the Bankruptcy Code's "fresh start" principle.²⁴⁷ Addressing Reilly's argument that her approach to section 522(l) was necessary to ensure the Code's goal of giving debtors a fresh start, the Court stated that its decision fully accorded with the fresh start policy.²⁴⁸ Though the Court agreed that exemptions in bankruptcy cases are part of the fresh start concept,²⁴⁹ it disagreed that this policy required Schwab to object to a facially valid claim of exemption, stating that such an approach would "threaten to convert a fresh start into a free pass."²⁵⁰

²⁴⁴ *Schwab*, 130 S. Ct. at 2666. (citing *In re Reilly*, 534 F.3d at 179).

²⁴⁵ *Id.*

²⁴⁶ *Id.*

²⁴⁷ *Id.* at 2667-69.

²⁴⁸ *Id.* at 2667.

²⁴⁹ *Id.* (citing Brief for Respondent, *supra* note 57, at 21).

²⁵⁰ *Id.* at 2667. To further support its claim, the Court emphasized its holding in *Rousey v. Jacoway*, 544 U.S. 320 (2005). In *Rousey*, the Court emphasized "[t]o help the debtor obtain a fresh start the Bankruptcy Court permits him to *withdraw from the estate certain interests in property*, such as his car or home, *up to certain values.*" *Schwab*, 130 S. Ct. at 2667 (citing *Rousey*, 544 U.S. at 325 (emphasis added)). The Court argued that Congress imposed exemption limits, and it was not up to the Court alter this balance by requiring trustees to object to claimed exemptions based on form entries

The Court also addressed Reilly's contention that Schwab's approach created perverse incentives for trustees and creditors to sleep on their rights and object when property values appreciated.²⁵¹ The Court argued its holding did not create this effect, but instead provided a clear and effective resolution for debtors wishing to claim nothing more than a dollar-amount interest in a claimed exemption.²⁵² Indeed, the Court held that the rule was simple: if a debtor claimed an interest up to a certain dollar amount and a trustee failed to object to that claimed exemption, the debtor would be guaranteed payment in the dollar amount of the exemption.²⁵³ If the trustee objected in a timely manner, the court would rule on the objection and, if improper, allow the debtor to adjust accordingly.²⁵⁴

To further clarify its holding, the Court offered several ways a debtor may signal his intention to fully exempt an asset without risking trustee confusion.²⁵⁵ For example, by listing "full market value (FMV)" or "100% of FMV," in the fourth column of a debtor's Schedule C, a debtor could clearly indicate his wish to exempt the full value of his property.²⁵⁶ The Court contended that such a clear declaration would encourage trustees to object promptly to the exemption if he wished to challenge its true market value.²⁵⁷ The Court concluded that using "FMV" or "100% of FMV" facilitated the expeditious and final disposition of assets and thus, enabled debtors to achieve a fresh start free of the concerns Reilly expressed.²⁵⁸

beyond those that govern an exemption's validity under the Bankruptcy Code.

²⁵¹ *Schwab*, 130 S. Ct. at 2667 (citing Brief for Respondent, *supra* note 57, at 64).

²⁵² Brief for Respondent, *supra* note 57, at 5.

²⁵³ *Schwab*, 130 S. Ct. at 2667.

²⁵⁴ *Id.* at 2667-68. The Court also disagreed that Reilly's approach to exemptions would more efficiently dispose of competing claims to the asset, and held that it would engender needless objections and litigation. *Id.* at 2668 n.18.

²⁵⁵ *Id.* at 2668.

²⁵⁶ *Id.*

²⁵⁷ *Id.* The Court noted that trustees would not always file an objection to questionable valuations, especially with respect to assets that cannot be readily sold. *Id.* 2668 at n.20.

²⁵⁸ *Id.* at 2668 (citing Brief for Respondent, *supra* note 57, at 57-59).

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4. Justice Ginsburg's Dissent: Advocating the Third Circuit's Approach

Justice Ginsburg, joined by Chief Justice Roberts and Justice Breyer, wrote a dissenting opinion.²⁵⁹ She argued that the majority decision drastically reduced Rule 4003's governance and exposed debtors to protracted uncertainty concerning their right to retain exempt property, thereby impeding the "fresh start" that exemptions were designed to foster.²⁶⁰ She noted that the bankruptcy court, the district court, the Third Circuit, and the leading treatise on bankruptcy were all in accord with her view.²⁶¹

Justice Ginsburg held that Reilly, by her precise specification of \$10,718 as both the current market value of her kitchen equipment and the value of the claimed exemptions, had made her position plain: She claimed as exempt the listed property itself—not the dollar amount, up to \$10,718, that sale of the property by Schwab might yield.²⁶² Because neither Schwab nor any creditor lodged a timely objection, Reilly's kitchen equipment became exempt, and was therefore, outside the

²⁵⁹ *Id.* at 2669.

²⁶⁰ *Id.* at 2670 (Ginsburg, J. dissenting). The Court rejected Justice Ginsburg's assertion that its holding "drastically reduce[d] Rule 4003's governance." *Id.* at 2663 n.8 (majority opinion). The Court argued that Rule 4003(b) never governed challenged the valuation of "exemptible assets" in the first place. *Id.* Instead, the Court found that Rule 4003(b) governed objections to "property claimed as exempt" only to the extent that such property is, in fact, objectionable. *Id.*

²⁶¹ *Id.* at 2672 (Ginsburg J. dissenting). To support her assertion that her views are in accord with the leading treatise on bankruptcy, Justice Ginsburg cited the following excerpt from COLLIER ON BANKRUPTCY:

Normally, if the debtor lists property as exempt, that listing is interpreted as a claim for exemption of the debtor's entire interest in the property, and the debtor's valuation of that interest is treated as the amount of the exemption claimed. Were it otherwise — that is, if the listing were construed to claim as exempt only that portion of the property having the value stated — the provisions finalizing exemptions if no objections are filed would be rendered meaningless. The trustee or creditors could [anytime] claim that the debtor's interest in the property was greater than the value claimed as exempt and [then] object to the debtor exempting his entire interest in the property after the deadline for objections had passed.

9 COLLIER ON BANKRUPTCY ¶ 4003.02 pp. 4004-05 (15th ed. 1996).

²⁶² *Schwab*, 130 S. Ct. at 2670 (2010) (Ginsburg, J. dissenting).

bankruptcy estate.²⁶³

Justice Ginsburg argued that the majority's view—that the market value of a claimed exemption is not relevant in determining the “property claimed as exempt” for purposes of Rule 4003(b)'s designated 30-day objection timeframe—ignored the important role played by the exemption's market value in determining the debtor's intentions.²⁶⁴ Justice Ginsburg contended that a debtor who estimates a market value *below* the statutory limit and lists an identical amount as the value of his claimed exemption, thereby signals an intention to keep the property in his possession.²⁶⁵ Alternatively, Justice Ginsburg noted that a debtor who estimates a value *above* the statutory limit and above the value of his claimed exemption, thereby recognizes that he cannot shelter the property, and that the trustee may seek to sell it for whatever it is worth.²⁶⁶ Here, the market value was thus significant because it alerted the trustee as to whether the debtor was claiming a right to retain the listed property, or the debtor knew he was at risk of losing it to the bankruptcy estate if a trustee objected in a timely manner.²⁶⁷

Justice Ginsburg also argued that the majority's holding undermined the debtor's fresh start and casted a “cloud of uncertainty” around what assets the debtor would ultimately be allowed to keep.²⁶⁸ By permitting trustees to challenge a debtor's valuation of exempted property anytime before discharge, Justice Ginsburg reasoned that the debtor was denied the benefit of closure and therefore, left with a looming fear that a trustee may seek to repossess the asset or auction it off and then hand the

²⁶³ *Id.*

²⁶⁴ *Id.* at 2673 n.6.

²⁶⁵ *Id.* at 2673.

²⁶⁶ *Id.*

²⁶⁷ *Id.* The Court held that this assertion lacked statutory support because the governing Bankruptcy Code provisions phrased the exemption limit as a simple dollar amount. *See id.* at n.11.

²⁶⁸ *Id.* at 2674. (Ginsburg, J., dissenting). The Court responded to the dissent's “clouded-title” argument by reiterating that it only arose if one accepted Reilly's “flawed conception of the exemptions in this case.” *Id.* at n.21 (majority opinion). The Court took issue with the Reilly's assertion that she was “entitled to know that she would emerge from bankruptcy with her cooking equipment intact.” *Id.* (citing Brief for Respondent, *supra* note 57, at 57). In contrast, the Court argued that Reilly was not “entitled” to her equipment, but was only entitled to a payment equal to the equipment's claimed value. *Id.* at n.21. The Court acknowledged that trustees often pass title in exempted property to debtors, but the Court underscored that such a practice does not establish the statutory entitlement Reilly claimed. *Id.*

debtor a check for a dollar amount of the claimed exemption.²⁶⁹

Justice Ginsburg addressed the majority's suggestion that requiring timely objections to a debtor's valuation would saddle the trustees with an unmanageable load.²⁷⁰ She noted that trustees sooner or later must attempt to ascertain the market value of exempted assets.²⁷¹ Thus, Justice Ginsburg argued that removing valuation from the Rule 4003(b) 30-day timeframe did not substantially reduce the trustee's duties, nor did it impose additional duties.²⁷² Moreover, Justice Ginsburg pointed out that if the debtor's estimate significantly undervalued his claimed exemption, trustees were well situated to recognize and dispute a claimed exemption as procedures were already in place to handle valuation problems.²⁷³ Furthermore, she noted that debtors were already deterred from intentionally undervaluing their exempted assets because doing so would expose them to judicial sanction and liability for perjury or fraud.²⁷⁴

Finally, Justice Ginsburg criticized the majority's suggestion that a debtor could make her intention to claim the full amount of an exemption clear by writing "full fair market value (FMV)" or "100% of FMV" in Schedule C's value-of-claimed-exemption column.²⁷⁵ She articulated that although a debtor's schedules must sufficiently alert the trustee that an objection may be in order, the means to this end could vary.²⁷⁶ To Justice Ginsburg, the majority was misguided in its assertion that Reilly did not sufficiently demonstrate an intention to exempt her entire property by listing identical amounts of \$10,718 as both the current market value and the value of her claimed exemptions.²⁷⁷ Surely, Justice Ginsburg argued, listing identical

²⁶⁹ *Id.* at 2674-75 (Ginsburg, J. dissenting). To illustrate this point, Justice Ginsburg offered the example of a debtor who believes her car is exempt, and thus accepts a job not within walking distance. *Id.* at 2674.

²⁷⁰ *Id.* at 2675.

²⁷¹ *Id.*

²⁷² *Id.* Like other claims-processing rules, the objections it regulates "can ... be forfeited if the party asserting the rule waits too long to raise the point." *Kontrick v. Ryan*, 540 U.S. 443, 456 (2004).

²⁷³ *Schwab*, 130 S. Ct. at 2675-76 (Ginsburg, J. dissenting) (noting that if the trustee entertains any doubt about the accuracy of a debtor's estimation of market value, the procedure for interposing objections was hardly arduous — the trustee need only file with the court a simple declaration stating that an item's value exceeds the amount listed by the debtor).

²⁷⁴ *Id.* at 2677.

²⁷⁵ *Id.* at 2676.

²⁷⁶ *Id.*

²⁷⁷ *Id.* at 2677.

amounts was the logical equivalent of writing \$10,718 as the current market value of an asset and then writing “100% of FMV” as the market value of that claimed exemption.²⁷⁸ The majority’s suggestion was nonsensical given the wording of Schedule C, which instructed debtors to “state the *dollar value* of the claimed exemption in the space provided.”²⁷⁹ Given the fact that Chapter 7 debtors are often unrepresented, Justice Ginsburg questioned how debtors would know to ignore Schedule C’s instructions to list the *dollar value* and instead list “FMV” or “100% of FMV” if they wished to trigger the trustee’s obligation to object to their market valuation in a timely fashion.²⁸⁰ Justice Ginsburg further argued that such a requirement did not align with the plain wording of Schedule C’s instructions.²⁸¹

III. Analysis

Undoubtedly, the *Schwab* holding clarified the trustee’s duty in cases where a debtor’s claimed exemption value is identical to his valuation of a particular asset.²⁸² The Court’s holding also suggested clear language that a debtor can use to signal his intentions to fully exempt an asset without risking trustee confusion.²⁸³ However, this Part argues that the Court’s decision has certain negative consequences.²⁸⁴ First, this Part

²⁷⁸ *Id.* The Court responded to the dissent’s contention that Reilly clearly intended to exempt the full amount by stating that just because the evidence demonstrated that Reilly would have chosen this course, her true intentions were external to her exemption schedule. *Id.* at n.11 (majority opinion).

²⁷⁹ *Id.* at 2677 (Ginsburg, J. dissenting) (citing FED. R. BKRCY. PROC. Official Form 6, Schedule C, Instruction 5 (1991)).

²⁸⁰ *Id.*

²⁸¹ *Id.* (Ginsburg, J. dissenting). The Court responded to Justice Ginsburg’s observations about the poor fit between the Court’s holding and a form calling for a dollar amount. *Id.* at 2668, n.19 (majority opinion). The Court asserted that this tension only further reflected the tension between the Bankruptcy Code’s definition of “property claimed as exempt” and Reilly’s attempt to convert into a dollar value an improper claim to exempt the equipment itself. *Id.* (majority opinion).

²⁸² *Id.* at 2669 (“Where, as here, a debtor accurately describes an asset subject to an exempt interest and on Schedule C declares the “value of [the] claimed exemption” as a dollar amount within the range the Code allows, interested parties are entitled to rely upon that value as evidence of the claim’s validity.”).

²⁸³ *Id.* at 2668 (suggesting that a debtor can make her intentions to exempt the full market value of the asset or the asset itself known by listing “full fair market value (FMV)” or “100% of FMV.”).

²⁸⁴ See *infra* Part III.A-D.

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argues that the Court’s definition of “property” in section 522(l) ignored the plain meaning of the statute and disregarded a common sense reading of Schedule C that will likely leave debtors unsecure about their claimed assets.²⁸⁵ This Part then argues that the *Schwab* standard will lead to trustee abuse and valuation problems.²⁸⁶ Finally, this Part asserts that the *Schwab* decision raises policy concerns,²⁸⁷ and that the Supreme Court should have affirmed the Third Circuit’s judgment.²⁸⁸

A. The *Schwab* Court Ignored a Plain Reading of Section 522(l) and Schedule C

First, by relying on the language of other sections of the Bankruptcy Code to define “property” in section 522(l), the Supreme Court ignored the statute’s plain meaning and thus, incorrectly held that Reilly did not claim an exemption in the full market value of her business equipment.²⁸⁹ By interpreting the word “property” to mean “interest” in section 522(l), the Court reasoned that the 4003(b) timeframe did not apply to Schwab — a trustee, after all, is only required to object to *property* claimed as exempt, *not* to a facially valid dollar value interest in that property.²⁹⁰ Had Reilly made her intentions clear, for example, by writing “Full Market Value” or “100% of Full Market Value,” the Court held that Schwab would have known to object within 30 days.²⁹¹ By equating the value of her asset and her claimed exemption, however, the Court argued that Reilly only signaled an intention to retain a \$10,718 *interest* in her kitchen equipment, and thus Schwab was not required to object to preserve the estate’s right to retain any value on the equipment beyond that dollar value interest.²⁹²

The Court’s entire analysis hinges on an improper

²⁸⁵ See *infra* Part III.A.

²⁸⁶ See *infra* Part III.B.

²⁸⁷ See *infra* Part III.C.

²⁸⁸ See *infra* Part III.D.

²⁸⁹ See Brief for Consumer Bankruptcy Attorneys, *supra* note 5, at 5 (arguing that Schwab’s argument should be rejected based on a common-sense interpretation of § 522(l)); see also *Schwab*, 130 S. Ct. at 2672 (Ginsburg, J., dissenting) (asserting that the language of section 522(l) “should [have been] dispositive of this case.”).

²⁹⁰ *Schwab*, 130 S. Ct. at 2669 (2010).

²⁹¹ *Id.* at 2668.

²⁹² *Id.* at 2668 n.19.

interpretation of the word “property” in section 522(l).²⁹³ Instead of accepting a literal reading of 522(l), which unambiguously states “property claimed as exempt on [Schedule C] is exempt,” the Court reasoned that the constructive (and true) definition of “property” under the Bankruptcy Code was found in subsection (d).²⁹⁴ Subsection (d), which lists twelve categories of exemptions, defines some of these categories as a debtor’s “aggregate interest” not to exceed a certain dollar amount in certain types of property.²⁹⁵ The Court held that, because subsection (d) so clearly defined property as an “interest,” and *not* as property itself, the Bankruptcy Code’s definition of “property” in this case was sufficiently clear.²⁹⁶

However, by using the language of section 522(d) to define “property” in section 522(l), the Court ignored the plain meaning of the statute and disregarded its own existing definitions of the word “property.”²⁹⁷ Normally, when a court construes or applies the Bankruptcy Code, the plain language of the text is the starting point.²⁹⁸ If the language is plain, a court’s sole function is to enforce the language according to its terms.²⁹⁹ If the plain meaning of a word comports with the common dictionary definition of that word, and the statute’s context does not suggest another meaning, the plain meaning should stand.³⁰⁰

²⁹³ Brief for Respondent, *supra* note 57, at 21-31 (arguing that Schwab presented a “manifestly implausible” reading of § 522(l)).

²⁹⁴ See *infra* Part III.D.1.

²⁹⁵ See, e.g., 11 U.S.C. § 522(d)(2) (2010) (“The following property may be exempted . . . The debtor’s interest, not to exceed \$3450 in value, in one motor vehicle).

²⁹⁶ *Schwab*, 130 S. Ct. at 2661.

²⁹⁷ See Brief for Respondent, *supra* note 57, at 21-31 (citing cases where the Court has defined property as an entity onto itself). See, e.g., *Dickman v. C.I.R.*, 465 U.S. 330, 336 (1984) (“Property” is more than just the physical thing. . . It is the tangible and the intangible.”).

²⁹⁸ See *Lamie v. United States Trustee*, 540 U.S. 526, 534 (2004) (“The starting point . . . is the existing statutory text.”).

²⁹⁹ See *Pennsylvania Dept. of Public Welfare v. Davenport*, 495 U.S. 522, 563 (1990) (“We will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure); see also *Connecticut Nat’l Bank v. Germain*, 503 U.S. 249, 254 (1992) (noting that, when a court interprets a statute, a cardinal presumption is that Congress “says in a statute what it means and means in a statute what it says there.”).

³⁰⁰ See, e.g., *Rousey v. Jacoway*, 544 U.S. 320, 325 (2005) (interpreting the phrase “on account of” to mean “because of” in a Chapter 7 bankruptcy manner because it was found elsewhere in the Bankruptcy Code *and* it comported the common understanding of the phrase, as supported by its dictionary definition). In *Schwab*, the Court noted that although it may look to

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In this case, the plain meaning of the term “property” is the property itself — not an “interest” in the property.³⁰¹ This definition is in accord with the dictionary definition, which defines property as “something owned or possessed” or “something to which a person has legal title,”³⁰² and is consistent with previous Supreme Court holdings.³⁰³ In *Dickman v. C.I.R.*, for example, the Court rejected the theory that a money interest in property is a separate interest from tangible property itself and held that “property” meant both the thing itself *and* all of the “intangible elements” that go along with it.³⁰⁴ Using the Court’s own definition, the plain meaning of “property claimed as exempt in [Schedule C] is exempt” is clear: property includes the exempt property *itself*.³⁰⁵ In her dissent, Justice Ginsburg supported this common sense, literal reading, and argued that the plain meaning of the section 522(l) should have been dispositive of this case.³⁰⁶

Aside from ignoring the plain meaning of the statute, the *Schwab* holding also disregarded a common sense reading of

dictionaries and the Bankruptcy Rules to determine the meaning of words the Bankruptcy Code does not define, the Bankruptcy Code’s definition in this case was clear because § 522(d) defined “property” as an “interest.” *Schwab*, 130 S. Ct. at 2662.

³⁰¹ Brief for Consumer Bankruptcy Attorneys, *supra* note 5, at 5 (arguing that Schwab’s argument should be rejected based on a common-sense interpretation of § 522(l)).

³⁰² WEBSTER’S NINTH NEW COLLEGIATE DICTIONARY 943 (9th ed. 1984).

³⁰³ See, e.g., *Dickman v. C.I.R.*, 465 U.S. 330, 336 (1984) (defining property to mean both the property itself and the money interest in the property); *United States v. Craft*, 535 U.S. 274, 278 (2002) (Describing property as a ‘bundle of sticks’ — a collection of individual rights which, in certain combinations, constitute property).

³⁰⁴ The Court stated:

Property is more than just the physical thing—the land, the bricks, the mortar — it is also the sum of all the rights and powers incident to ownership of the physical thing. It is the tangible and the intangible. Property is composed of constituent elements and of these elements the right to use the physical thing to the exclusion of others is the most essential and beneficial. Without this right all other elements would be of little value.

Dickman, 465 U.S. at 336 (1984) (quoting *Passailaigue v. United States*, 224 F. Supp. 682, 686 (MD Ga. 1963)).

³⁰⁵ *Schwab v. Reilly*, 130 S. Ct. 2652, 2672 (2010) (Ginsburg, J., dissenting).

³⁰⁶ *Id.*

Schedule C.³⁰⁷ When a debtor fills out his Schedule C list of claimed exemptions, there are four columns to fill out: 1) a description of the property claimed as exempt; 2) the law governing the claimed exemption; 3) the value of the current exemption; and 4) the current market value of the property.³⁰⁸ Though Schedule C clearly lists four columns, the Court held that Schwab was only obligated to inspect categories one through three when he determined the propriety of Reilly's claimed exemption.³⁰⁹ The fourth category, the Court prescribed, should be confined to its proper role: aiding the trustee in administering the bankruptcy estate by helping him or her identify assets that may have value beyond the dollar amount the debtor has claimed as exempt.³¹⁰

By demoting Schedule C's "current market value" column from a legally enforceable portion of a debtor's Schedule C to a useful tool for trustees with minimal legal significance, the Court undermined its integral role in making a debtor's intentions known to a trustee.³¹¹ For example, if a statute permits a debtor

³⁰⁷ Brief for Consumer Bankruptcy Attorneys, *supra* note 5, at 10-11 (contending that Schedule C requires a statement of the asset's current *total value* — not "the portion of the exempt asset claimed as exempt.").

³⁰⁸ FED. R. BANKR. P. Form 6, Schedule C (2005). The Official Form entitled "Schedule C – Property Claimed As Exempt" is the "list of property claimed as exempt." *Id.* This form requires a debtor to make four specific entries for each asset claimed as exempt: (i) describe the property claimed as exempt, (ii) specify the law which serves as the basis for the exemption, (iii) state the value of the claimed exemption and (iv) state the current value of property without deducting [the] exemption. *Id.*

³⁰⁹ *Schwab*, 130 S. Ct. at 2663.

³¹⁰ *Id.* at 2663. (citing Brief for the U.S. Trustees as Amicus Curiae supporting Petitioner at 16, *Schwab v. Reilly*, 130 S. Ct. 2652 (2010) (No. 08-538). In support of its view that market value is not relevant to determining the "property claimed as exempt" for purposes of Rule 4003(b)'s timely objection mandate, the Court noted that Schedule C did not require the debtor to list its current market value until 1991. *Id.* at 2664-65. In her dissent, however, Justice Ginsburg noted that debtors *did* have to record market value prior to 1991, just on a different schedule. *Id.* at 2673 n.6 (Ginsburg, J., dissenting). Therefore, she argued, trustees have always been faced with the task of comparing the value of a claimed exemption to a property's declared market value. *Id.* at n.6 (Ginsburg, J., dissenting).

³¹¹ *See id.* at 2673-75 (Ginsburg, J., dissenting) ("The Court's account . . . shuts from sight the vital part played by the fourth entry on Schedule C — current market value — when a capped exemption is claimed."); *see also* 4 COLLIER ON BANKRUPTCY ¶ 522.05 p. 522-33 (15 ed. 2005) ("[T]o evaluate the propriety of the debtor's claim of exemptions, trustees need the information on all four columns of Schedule C . . . market value is essential to judging whether

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to exempt \$2,400 in the value of her car, and the debtor estimates the current market value to be \$2,000, the debtor thereby signals her intention to keep her car if a trustee does not file a timely objection.³¹² In contrast, if that same debtor estimates her car to be worth \$5,000, she would thereby signal her knowledge that she cannot keep the car as well as her recognition that the trustee may seek to sell the car for whatever it is worth.³¹³ In other words, the fourth column alerts the trustee to whether the debtor is claiming a right to retain a claimed exemption if no objection is filed.³¹⁴

The Court's interpretation of Schedule C not only disregards its intended purpose, but it also falsely assumes that Schedule C requires a debtor to state what *portion* of an asset's total value a debtor wishes to claim as exempt, when the plain language unambiguously requires a debtor to state the *total* value of the asset he wished to claim as exempt.³¹⁵ The Court held that Schwab had no reason to object to Reilly's Schedule C because the exemption amount was within statutory limits.³¹⁶ As such, the fact that the kitchen equipment's actual value was higher than what Reilly listed was inconsequential because Reilly was only required to list the value of the exemption, not the asset.³¹⁷ However, such an interpretation ignores what the plain language

the claim is proper because exemption provisions often are limited according to . . . [the property's] value.”).

³¹² See *Schwab*, 130 S. Ct. at 2673 (Ginsburg, J. dissenting) (citing *In re Price*, 370 F.3d 362, 378 (3d Cir. 2004)).

³¹³ See *id.* (Ginsburg, J., dissenting); see, e.g., 11 U.S.C. §522(d)(9) (2010) (not limiting a debtor's right to fully exempt any health aids).

³¹⁴ *Schwab*, 130 S. Ct. at 2673. (Ginsburg, J., dissenting).

³¹⁵ Brief for Consumer Bankruptcy Attorneys, *supra* note 5, at 11 (contending that Schedule C requires a statement of the asset's current *total value*—not “the portion of the exempt asset claimed as exempt.”). A leading treatise on bankruptcy law identifies this problem:

[I]f the listing were construed to claim as exempt only that portion of the property having the value stated—the provisions finalizing exemptions if no objections are filed would be rendered meaningless. The Trustee or creditors could always claim that the debtor's interest in the property was greater than the value claimed as exempt and effectively still object to the debtor exempting his or her entire interest in the property after the deadline for objections had passed.

9 COLLIER ON BANKRUPTCY ¶ 4003.02[1] (15th ed. 1996).

³¹⁶ *Schwab*, 130 S. Ct. at 2664.

³¹⁷ *Id.*

of Schedule C clearly requires: a statement of the asset's current *total value* without deducting the exemption amount — and *not* “the portion of the exempt asset claimed as exempt.”³¹⁸ Thus, by construing Schedule C to mean that a debtor only claims an exemption in a portion of his claimed exemption (instead of the entire asset), the Court effectively eliminated a trustee's deadline for challenging exemptions.³¹⁹ Framed this way, a trustee or creditor can always claim that the debtor's interest in the property is greater than the value claimed as exempt and thus, under the new *Schwab* standard, object to the value of an exemption at any point during a bankruptcy proceeding.³²⁰

B. Potential for Abuse

After *Schwab*, valuation problems are likely to arise in a large number of Chapter 7 bankruptcy cases.³²¹ Trustees are newly empowered to challenge a debtor's exemption valuations *at any point* during a bankruptcy proceeding.³²² This issue is problematic in light of the fact that a debtor must list the current market value of a claimed exemption *the day* he files for bankruptcy, and objections to value are the most common type of trustee objection.³²³ To the extent that Chapter 7 cases can take months, even years, property values will inevitably be subject to changes caused by market fluctuations, inflated interest rates, and general economic factors.³²⁴ After *Schwab*, a trustee has an

³¹⁸ See SOMMER, *supra* note 100, at 82 (“a fair reading of other schedules listing the same amount as the total value of the debtor's interest in the property makes clear that the debtor indeed does intend to claim as exempt the total value of the interest”).

³¹⁹ 9 COLLIER ON BANKRUPTCY ¶ 4003.03[1][a] (15th ed. 1996).

³²⁰ See *In re Gebhart*, 621 F.3d 1206, 1212 (9th Cir. 2010) (court refusing to rule on whether equitable estoppel was a permissible remedy if a trustee left a case open longer than necessary to reclaim a higher value on the debtor's property exemption).

³²¹ See *In re Crump*, 2 B.R. 222, 224 (Bankr. S.D. Fla. 1980) (holding that that value and the status of exempt property was determined on the date the petition was filed).

³²² See Brief for Petitioner, *supra* note 164, at 32 (noting that although Chapter 7 cases generally move quickly, cases in which there are assets to administer can take one to four years to complete).

³²³ 11 U.S.C. § 522(a)(2) (2010). SOMMER, *supra* note 100, at 76 (“The value [of a claimed exemption] should be determined the date the petition was filed”); 1-13 COLLIER CONSUMER BANKRUPTCY PRACTICE GUIDE ¶ 13.08[4] (16th ed. 2009) (stating that valuation issues are prominent in hearings on objections).

³²⁴ *In re Gebhart*, 621 F.3d at 1212.

incentive to sit on his rights, wait to see if property values to appreciate, and then object at a later point in the bankruptcy proceeding.³²⁵ This new trustee advantage promulgated by the *Schwab* holding contradicts with commonly held bankruptcy principles³²⁶ and overrules decades of case law.³²⁷

In response to these concerns, the Court suggested that a debtor could write “full market value (FMV)” or “100% of FMV” to make the scope of his exemption clear and thus, avoid the risk of losing his property at a later point in the bankruptcy proceedings.³²⁸ Such a signal, the Court reasoned, raised the necessary “warning flag” to a trustee that a debtor intended to exempt his property entirely.³²⁹ By creating this new standard, however, the Court ignored the reality that debtors make their intentions known in different ways and that listing identical values for the same property on Schedule B and C is common.³³⁰ If a debtor wished to fully exempt her car — worth \$2,000, for example — writing “100% of full market value” is the logical equivalent of simply writing \$2,000 because, to the debtor, \$2,000 is 100% of the full market value.³³¹ The *Schwab* court, in

³²⁵ See 1-13 COLLIER CONSUMER BANKRUPTCY PRACTICE GUIDE ¶ 13.08 (16th ed. 2009) (stating that valuation issues will be prominent in hearings on objections).

³²⁶ See SOMMER, *supra* note 100, at 82 (explaining the old standard by stating, “any appreciation since [the date of filing] should be considered property acquired post-petition that is *not a part* of the [bankruptcy] estate.” (emphasis added)).

³²⁷ See, e.g., *In re Rappaport* 19 B.R. 971, 973 (Bankr. E.D. Pa. 1982) (debtors were entitled to benefit from any appreciation in property value after filing of their Chapter 7 petition); *In re Finn*, 151 B.R. 25, 27 (Bankr. N.D.N.Y. 1990) (property valued as of filing date for lien avoidance purposes); *but see* *In re Hyman*, 967 F.2d 1316, 1321 (9th Cir. 1992) (when debtor’s interest was not totally exempt at time of petition, appreciation could not be exempted).

³²⁸ *Schwab v. Reilly*, 130 S. Ct. 2652, 2668 (2010).

³²⁹ *Id.*; see also *In re Barroso-Herrans*, 524 F.3d 341, 345 (1st Cir. 2008) (explaining that Schedule C entries listing the value of a claimed exemption as “unknown,” “to be determined,” or “100%” are “red flags to trustees and creditors,” (citation omitted) and therefore put them on notice that if they do not object, the whole value of the asset—whatever it might later turn out to be—will be exempt” (quoting 1 COLLIER ON BANKRUPTCY ¶ 8.06(1)(c)(ii) (15th ed. rev. 2007)).

³³⁰ See SOMMER, *supra* note 100, at 81 (“Most often, the value given in Schedule C for the exemption equals the value given in Schedules A and B, except the lien amounts can and should be deducted.”).

³³¹ See 9 COLLIER ON BANKRUPTCY ¶ 4003.03[3] (15th ed. 1996) (“Only when a debtor’s schedules specifically value the debtor’s interest in the

creating an artificial legal distinction between two facially equivalent manners of claiming an exemption, unduly vests the trustee with objection powers beyond the designated 30-day objection period.³³²

Moreover, in prescribing debtors to write “100% of FMV,” the Court overlooks the debtor’s plight to claim exemptions.³³³ As noted above, Schedule C directs debtors to “state the *dollar value* of the claimed exemption in the space provided.”³³⁴ In Justice Ginsburg’s dissent, she aptly stated how it was nonsensical for debtors to list “100% of FMV” when they are plainly asked to state the *dollar value* of the claimed exemption.³³⁵ Such a counterintuitive requirement, Justice Ginsburg reasoned, was particularly unfair to the large number of Chapter 7 debtors that filed without legal representation.³³⁶ Justice Ginsburg argued that asking unrepresented debtors to ignore Schedule C’s plain instructions and employ the new *Schwab* rule unduly favors the trustee.³³⁷

C. Policy Concerns: Undermining Chapter 7 Deadlines and the Debtor’s “Fresh Start”

After *Schwab*, there is no time limit in which a trustee can challenge a debtor’s valuation of his exempt property.³³⁸ This open-ended trustee timeframe is inconsistent with the basic structure and purpose of Chapter 7.³³⁹ Chapter 7 cases, by statutory design, move quickly;³⁴⁰ because Chapter 7 cases are by far the most common form of individual bankruptcy, Congress created deadlines to promote efficiency, prompt party action, and

property at an amount *higher* than the amount claimed as exempt can it be argued that a part of the debtor’s interest in property has not been exempted.” (emphasis added)).

³³² See Transcript of Oral Argument at 6, *Schwab v. Reilly*, 130 S. Ct. 2652 (2010) (No. 08-538).

³³³ *Schwab*, 130 S. Ct. at 2677 (2010) (Ginsburg, J., dissenting).

³³⁴ *Id.*

³³⁵ *Id.*

³³⁶ *Id.*

³³⁷ *Id.*

³³⁸ See Tamara Miles Ogier, *Trustee Talk: Schwab v. Reilly, A Win-Win Decision*, 68 AM. BANKR. INST. J. 38, 39-40, 68 (Sept. 2010) (discussing why the open-ended objection deadline is a “win” for trustees).

³³⁹ FED. R. BANKR. P. 1001. These rules “shall be construed to secure the just, speedy, and inexpensive determination of every case and proceeding.”

³⁴⁰ Brief for Consumer Bankruptcy Attorneys, *supra* note 5, at 24.

produce finality.³⁴¹ Due to these strict deadlines, most individual bankruptcies are concluded within just 120 days.³⁴² After *Schwab*, however, unnecessary litigation and delay are likely to occur because the number of valuation objections will increase and motions to extend the time for objecting to exemptions will become standard practice.³⁴³ To the extent that Chapter 7 cases are designed to move rapidly, the *Schwab* holding thwarts the Bankruptcy Code's statutory framework by delaying the closure and resolution of cases.³⁴⁴

As the Court has long recognized, the policy of affording the "honest but unfortunate" debtor a "fresh start" is one of the Bankruptcy Code's most fundamental themes.³⁴⁵ The *Schwab* holding, by permitting an open-ended timeframe for trustees to challenge a debtor's valuation of exempt property, leaves debtors insecure about which assets they will keep after bankruptcy and thus, undermines the fresh start policy.³⁴⁶ If a trustee is able to attack exemptions for an extended period of time, the Court casts a "cloud of uncertainty" over the debtor's use of assets reclaimed in full.³⁴⁷ If the trustee gains a different opinion of an item's value at any point during the course of a debtor's bankruptcy, the *Schwab* holding permits a trustee to repossess the asset, auction it off, and give the debtor the money value of his claimed exemption instead of the exempt property itself.³⁴⁸ With this threat looming

³⁴¹ See *Taylor v. Freeland & Kronz*, 503 U.S. 638, 644 (1992).

³⁴² The Administration of the United States Courts, *2009 Report of Statistics Required by BAPCPA*, 6, <http://www.uscourts.gov/uscourts/Statistics/BankruptcyStatistics/BAPCPA/2009/2009BAPCPA.pdf> (last visited Nov. 5, 2010). Of the 880,654 Chapter 7 consumer cases closed in 2009, the mean time interval from filing to disposition was 168 days, and the median time interval was 120 days. *Id.*; see also Brief for Consumer Bankruptcy Attorneys, *supra* note 5, at 22 (offering 120 days as the average lifespan of a Chapter 7 proceeding based on deadlines imposed by the Bankruptcy Code and the Federal Rules of Bankruptcy).

³⁴³ See Brief for Consumer Bankruptcy Attorneys, *supra* note 5, at 37.

³⁴⁴ See *id.* at 24.

³⁴⁵ See *In re Reilly*, F.3d at 180 (noting that once the objection period lapses, "all parties involved know what property belongs to the bankruptcy estate and what remains with the debtor."); *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007) ("The principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the 'honest but unfortunate debtor.'"); *Burlingham v. Crouse*, 228 U.S. 459, 473 (1913) (Bankruptcy provisions "must be construed" in light of policy "to give the bankrupt" a fresh start.).

³⁴⁶ See 9 COLLIER ON BANKRUPTCY ¶ 4003-9 (15th ed. 1996).

³⁴⁷ *Schwab v. Reilly*, 130 S. Ct. 2652, 2674 (2010) (Ginsburg, J., dissenting).

³⁴⁸ *Id.* Although Chapter 7 cases generally move quickly, cases in which

until a case is closed, the Court's open-ended construction of section 522(l) and Rule 4003(b) hinders a debtor's ability to restructure his affairs.³⁴⁹

D. The Supreme Court Should Have Adopted the Third Circuit's Judgment

The Court's decision should have achieved two main goals: (1) adopt a known and workable standard; and (2) facilitate a debtor's fresh start.³⁵⁰ The Third Circuit's judgment, reinforced by Justice Ginsburg's dissent in *Schwab*, achieves these two aims.³⁵¹ First, the Third Circuit ruled in a manner that accorded with the common sense reading of section 522(l), Rule 4003(b), and Schedule C.³⁵² At oral argument, Justice Ginsburg expressed that the Third Circuit's literal interpretation — namely that when a trustee questions the value of a claimed exemption, he must object within 30 days or the debtor keeps the property — served as a clear, workable standard to both debtors and creditors alike.³⁵³ Such a comprehensible rule serves as an unambiguous guideline for all parties, and aligns with the fast-paced nature of Chapter 7 cases.³⁵⁴

Second, the Third Circuit ruled in way that facilitated a fresh start for the debtor.³⁵⁵ In interpreting laws involving consumer debtors, the fresh start is "by far" the most significant consideration because there are typically few assets to be distributed to the creditors involved.³⁵⁶

In accordance with this policy consideration, courts should

there are assets to administer can take one to four years to complete. Brief for Petitioner, *supra* note 164 at 32.

³⁴⁹ *Schwab*, S. Ct. at 2674 (Ginsburg, J., dissenting) (citing Brief for Consumer Bankruptcy Attorneys, *supra* note 5, at 2-3). See *In re Polis*, 217 F.3d 899, 903 (7th Cir. 2000).

³⁵⁰ See SOMMER, *supra* note 100, at 82 (describing the dual aims of any new bankruptcy standard).

³⁵¹ See *In re Reilly*, 534 F.3d at 180.

³⁵² See *Schwab*, 130 S. Ct. at 2677 (Ginsburg, J., dissenting).

³⁵³ See Transcript of Oral Argument at 5, *supra* note 332, at 5.

³⁵⁴ See SOMMER, *supra* note 100, at 82 (discussing the importance of careful attention to Schedule C, underscored by 11 U.S.C. §522(l) and stating "As there is a strictly enforced deadline for objecting to exemptions, it is to the debtor's advantage to be certain that all good faith exemptions. Such listing shifts the burden to the trustee and creditors to raise timely objections if any are available.").

³⁵⁵ *In re Reilly*, 534 F. 3d at 180.

³⁵⁶ See SOMMER, *supra* note 100, at 82.

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adopt standards that will offer debtors “a new opportunity in life, unhampered by the pressure and discouragement of pre-existing debt.”³⁵⁷ By construing Rule 4003(b)’s 30-day objection period literally, the Third Circuit’s approach provides debtors with the security and assurance that they will keep certain property after a bankruptcy.³⁵⁸ By adhering to a strict construction of Rule 4003(b)’s 30-day timeframe, the Third Circuit accords with the fresh start policy.³⁵⁹

IV. Impact

The Supreme Court’s ruling in *Schwab* determined a procedural point of the Bankruptcy Code, which will affect over one million Chapter 7 bankruptcy debtors each year.³⁶⁰ As the importance of bankruptcy increases, so does the need for clear and practical laws.³⁶¹ Thus, attention must now turn to how the majority’s rule will affect Chapter 7 debtors.³⁶² First, this Part explores strategic debtor strategies in the wake of the *Schwab* decision.³⁶³ Then it examines a recent Ninth Circuit decision that illustrates the ramifications of the *Schwab* holding.³⁶⁴ Overall, this Part will demonstrate that by not requiring trustees to object to the value of exemptions within the designated 30-day timeframe, the *Schwab* decision is significant for any party with an interest in a Chapter 7 debtor’s claimed exemption.³⁶⁵

A. Debtor Strategies After *Schwab*

Despite the more debtor-conscious approach advocated by Justice Ginsburg, the majority set forth a different standard.³⁶⁶ The Court held that the 30-day objection rule would only apply

³⁵⁷ *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934); *see also* H.R. REP. NO. 95-595, at 117 (1977) (holding that the debtor’s fresh start is the “essence of modern bankruptcy law”).

³⁵⁸ *See Schwab*, 130 S. Ct. at 2674 (2010) (Ginsburg, J., dissenting).

³⁵⁹ *See SOMMER*, *supra* note 100, at 158.

³⁶⁰ The Administration of the United States Courts, *2009 Report of Statistics Required by BAPCPA*, 5, <http://www.uscourts.gov/uscourts/Statistics/BankruptcyStatistics/BAPCPA/2009/2009BAPCPA.pdf> (last visited Nov. 5, 2010).

³⁶¹ *See SOMMER*, *supra* note 100, at 1.

³⁶² *See infra* Part IV.A & V.B.

³⁶³ *See infra* Part IV.A.

³⁶⁴ *See infra* Part IV.B.

³⁶⁵ *See infra* Part IV.A & IV.B.

³⁶⁶ *Schwab v. Reilly*, 130 S. Ct. 2652, 2669 (2010).

to the dollar amount that a debtor claims for exempt property and that debtors should use the language “Full Market Value (FMV)” of “100% of FMV” to exempt an asset in its entirety.³⁶⁷ Likewise, if a trustee sees any “full market value” language, the word “unknown,” or anything else that is not a dollar amount within the statutory limits, he will know that he is required to object within 30 days or lose the asset from the bankruptcy estate.³⁶⁸

For individuals contemplating Chapter 7 bankruptcy, the lesson of *Schwab* is two-fold. First, even if debtors accurately report an asset’s value and claim a valid exemption equal to that value, he cannot later capture any increase in value beyond the limits imposed by the rules.³⁶⁹ Second, if it is important to exempt the full market value of an asset or the asset itself rather than a particular monetized interest in the asset, *Schwab* suggests one must claim an exemption for “full fair market value (FMV)” or “100% of FMV.”³⁷⁰

Because the Court reaffirmed its holding in *Taylor*, debtors may also list the value of exempt property as “unknown” to trigger a trustee’s duty to object within the designated 30-day timeframe.³⁷¹ In other words, a debtor can validly list property as “unknown” unless the current market valuation has a publically knowable determinable value; therefore, a debtor should not employ this strategy for estimating the market value of items — such as deposit accounts, publicly traded stocks and bonds, and motor vehicles.³⁷² However, if the value is not readily knowable, a debtor can safely list the value as “unknown.”³⁷³ So as not to

³⁶⁷ Ogier, *supra* note 338, at 68.

³⁶⁸ See, e.g., *In re Barroso-Herrans*, 524 F.3d 341, 345 (1st Cir. P.R. 2008) (explaining that Schedule C entries listing the value of a claimed exemption as “unknown,” “to be determined,” or “100%” are “red flags to trustees and creditors,” and therefore put them on notice that if they do not object, the whole value of the asset — whatever it might later turn out to be — will be exempt (quoting 1 COLLIER ON BANKRUPTCY ¶ 8.06(1)(c)(ii) (15th ed. rev. 2007)).

³⁶⁹ See, e.g., *In re Gebhart*, 621 F.3d 1206, 1212 (9th Cir. 2010) (holding that post-petition appreciation in a debtor’s home could be preserved for the bankruptcy estate).

³⁷⁰ *Schwab v. Reilly*, 130 S. Ct. 2652, 2668 (2010).

³⁷¹ Professor Kenneth N. Klee, *The Supreme Court’s Holding in Schwab v. Reilly*, 2010 U.S. LEXIS 4974 1, 3 (2010).

³⁷² *Id.*

³⁷³ Brief for Consumer Bankruptcy Attorneys, *supra* note 5, at 36. Amicus National Association of Consumer Bankruptcy Attorneys pointed out why this strategy should not be encouraged. *Id.* First, it ignores the fact that Schedule C

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unduly provoke the trustee into objecting to exemptions, debtors should be advised to employ this strategy selectively.³⁷⁴

However, this selective strategy could lead to unnecessary litigation and delay.³⁷⁵ Trustees may see a valuation of “unknown” and start to adjourn section 341 creditor meetings as a matter of course to preserve their right to object after 30-days.³⁷⁶ Moreover, motions to extend the time for objection to exemptions may become common practice as valuation issues become more prevalent.³⁷⁷ After *Schwab*, debtors face greater uncertainty regarding whether their assets are “fully exempt” or whether they will still be the subject of a trustee’s auction.³⁷⁸ Unrepresented debtors and other debtors not privy to the new “100% of FMV” listing standard may continue to list the full dollar value of an asset without realizing that their property remains in jeopardy throughout the course of their bankruptcy.³⁷⁹

B. The Evolution of the *Schwab* Decision

An opinion from the Ninth Circuit illustrates the practical implications of *Schwab v. Reilly*.³⁸⁰ In *In re Gebhart*, the Court held that a trustee was entitled to reap the benefits of post-petition appreciation in the debtor’s homestead.³⁸¹ In two

affirmatively requires that debtors state the value of property claim as exempt. *Id.* Thus, if a debtor knows or has a reasonable basis for estimating an item’s value, the form obligates him or her to state it. *Id.* Second, if debtors begin to use “unknown” as a matter of course to claim as assets as exempt, it will lead to unnecessary litigation and delay. *Id.*

³⁷⁴ See Ogier, *supra* note 338, at 38-39 (stating that trustees often object to Schedule listings of “unknown” or “\$1” as a matter of course).

³⁷⁵ See SOMMER, *supra* note 100, at 177.

³⁷⁶ See *id.*

³⁷⁷ *Id.* (discussing delay tactics employed by trustees).

³⁷⁸ Rebecca L. Saitta & P. Vicky K. Chatha, *Supreme Court Holds Oral Argument in Schwab v. Reilly: Analyzing a Trustee’s Duty to Object to a Facially Valid Exemption*, AM. BANKR. INST. (Nov. 3, 2009), www.abiworld.org/pdfs/SchwabvReilly11-03-09.pdf.

³⁷⁹ See, e.g., *In re Gebhart*, 621 F.3d 1206, 1211 (9th Cir. 2010) (holding debtor responsible for post-petition appreciation in value of his home after he remained in his home five years after filing for bankruptcy, paying his mortgage, and believing that his debts were discharged).

³⁸⁰ *Id.* at 1206.

³⁸¹ *Id.* Gebhart involved two consolidated appeals. *Id.* at 1208. In the first case, the Debtors filed Chapter 7 in August 2003 and claimed the Arizona homestead exemption. *Id.* On the petition date, the Debtor’s equity was less than the \$100,000 exemption. *Id.* The Trustee did not object. *Id.* In November 2006, the Trustee sought to employ a broker to sell the home, contending that

consolidated appeals, the trustee sought to sell the home two years after the bankruptcy was filed—after the homes had appreciated in value.³⁸² The Ninth Circuit acknowledged that “[q]uite simply, property that has been exempted belongs to the debtor.”³⁸³ However, following the *Schwab* decision, the Court held that the homestead exemptions at issue did not permit exemption of entire properties, but only specific dollar amounts.³⁸⁴ The Court reasoned that any additional value in the property remained the property of the bankruptcy estate, regardless of whether the extra value existed at the time of filing or whether the value increased after filing.³⁸⁵ Thus, the Court ruled that the estate was entitled to any post-petition appreciation in the value of the property.³⁸⁶

This case illustrates the ramifications of the *Schwab* decision.³⁸⁷ Debtors’ attorneys can no longer assume that, absent an objection to an exemption, debtors will be entitled to keep their property.³⁸⁸ Debtors will face greater uncertainty regarding whether their assets are fully exempt or whether they still may be subject to a trustee’s sale motion.³⁸⁹ Finally, the *Schwab* holding will likely result in increased litigation and delay because trustees have a new incentive to intentionally prolong Chapter 7 cases.³⁹⁰

its value had appreciated beyond the exemption amount. *Id.* In the second case, the Debtor filed bankruptcy in June 2004 and claimed the Washington homestead exemption. *Id.* at 1209.

³⁸² *Id.*

³⁸³ *Id.* at 1210 (quoting *Bell v. Bell*, 225 F.3d 203, 216 (2d Cir. 2000)).

³⁸⁴ *Id.*

³⁸⁵ *Id.*

³⁸⁶ *Id.* The court acknowledged that *Schwab* did not address instances in which the full value of property at the time of filing is in fact equal to or less than the monetary limit provided for by the relevant bankruptcy exemption. *Id.* Although the Court expressed skepticism about the issue, the Ninth Circuit stated that the Court left open whether such a claim would entitle a debtor to the property itself as opposed to a payment equal to the property’s full value. *Id.*

³⁸⁷ *Id.* at 1211.

³⁸⁸ *Id.* at 1211-12.

³⁸⁹ *Id.* The Ninth Circuit recognized that these concerns were legitimate. *Id.* After all, the debtor remained in his home for five years after filing for bankruptcy, paying his mortgage and believing that his bankruptcy was finished when he received his discharge. *Id.* See Saitta & Chatha *supra* note 378, at 2 (discussing concerns about greater debtor uncertainty after *Schwab*).

³⁹⁰ *Id.* at 1212 (“A Chapter 7 debtor will not be certain about the status of a homestead property until the case is closed (something that may not happen for several years after bankruptcy filing) or the trustee abandons the property.”).

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V. Conclusion

The *Schwab* decision resolves an important question concerning the duty of a trustee to object when a debtor values an asset and a claimed exemption at an identical amount. The Supreme Court held that trustees have no duty to object if the claimed exemption is within statutory limits, and further suggested that debtors may safely signal their intention to claim an exemption in the entirety of an asset by writing “100% of Full Market Value (FMV)” in their lists of claimed exemptions.

While the Court’s standard undoubtedly resolves the circuit split concerning a trustee’s objection duty when valuation issues arise, it has many negative ramifications. First, the Court’s ruling misconstrued the Bankruptcy Code and the Rules. Considered in the context of instructions provided on official bankruptcy form Schedule C, the Court’s holding cannot be reconciled with a plain reading of section 522(l) and Rule 4003(b). The *Schwab* decision, by permitting trustees to challenge a debtor’s valuation of his exempt property at any point during the bankruptcy proceedings, also leaves debtors uncertain about their assets and denies them the benefit of closure. Finally, the Court’s decision is inconsistent with the fundamental purpose of the Bankruptcy Code: to give debtors a new beginning. After *Schwab*, this new beginning will have to wait.