No. 12-5196

IN THE

Supreme Court of the United States

STEPHEN LAW,
Petitioner,
v.
ALFRED H. SIEGEL, CHAPTER 7 TRUSTEE,
Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF FOR RESPONDENT

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QUESTION PRESENTED

Section 105(a) of the Bankruptcy Code authorizes bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title" and further provides that "[n]o provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate * * * to prevent an abuse of process." 11 U.S.C. § 105(a). This statutory grant of authority exists alongside the court's "inherent power[] * * * to fashion an appropriate sanction for conduct which abuses the judicial process." *Chambers* v. *NASCO, Inc.*, 501 U.S. 32, 45 (1991).

Debtors in bankruptcy are generally permitted to exempt certain assets from the bankruptcy estate. But dishonest debtors sometimes abuse that privilege by fraudulently seeking to retain non-exempt assets as well.

The question presented is whether a bankruptcy court may—under § 105(a) or its inherent sanctioning powers—order the equitable forfeiture of a claim to an exemption based on a debtor's egregious misconduct in seeking to wrongly withhold non-exempt assets from the estate.

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BRIEF FOR RESPONDENT

STATUTORY PROVISIONS INVOLVED

The version of Section 522 applicable when Petitioner Stephen Law filed his Chapter 7 bankruptcy case is reprinted as an addendum at the end of this brief. It differs from the current version of the Code, which is included as an addendum to Law's brief.

INTRODUCTION

This case concerns a bankruptcy court's power to protect the bankruptcy process from abuse. For over a century, bankruptcy courts have held that a debtor may forfeit all or part of a claim to an exemption through his egregious misconduct in seeking to withhold non-exempt assets from the estate. Courts sometimes refer to this forfeiture as "surcharge" or "disallowance," and its effect is to help restore the estate to the position it would have been in but for

the debtor's misconduct.[1] Equitable forfeiture prevents a debtor from draining the estate of value through fraud, which courts have reasoned is necessary to preserve the integrity of the bankruptcy proceedings. In this case, the bankruptcy court entered an order finding that Law had forfeited the privilege of claiming a homestead exemption due to his fraudulent attempt to retain non-exempt equity in his home. That order was entirely permissible under the Bankruptcy Code. Two governing principles established by this Court demonstrate why.

First, the privilege of exempting property under the Bankruptcy Code to pursue a "fresh start" is intended for the " 'honest but unfortunate debtor.' " *Grogan* v. *Garner*, 498 U.S. 279, 286-287 (1991) (quoting *Local Loan Co.* v. *Hunt*, 292 U.S. 234, 244 (1934)). Law qualifies as neither. In an effort to defraud the court and his creditors, Law falsely listed a second mortgage on his residence held by a non-existent "Lili Lin of China." He caused numerous false documents to be filed with the court concerning the supposed second mortgage, and he appears to have hired two different lawyers to assert the rights of this imaginary lienholder. Law's gross misconduct forced the Trustee to spend hundreds of hours—and hundreds of thousands of dollars—untangling the fraud, disproving the existence of the second mortgage, and defending against Law's numerous appeals.

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[1] The "surcharge" nomenclature is somewhat inaccurate, insofar as courts in these cases are not levying an additional amount on the debtor, but rather finding that he has forfeited the privilege of claiming particular assets as exempt. For clarity, this brief refers to this sanction as "equitable forfeiture."

At the same time as he perpetrated this fraud, violating a host of Code provisions in the process, Law attempted to claim the homestead exemption as his absolute right. But he held no such unqualified entitlement. The bankruptcy court correctly denied Law this relief because Law failed to uphold his end of the bankruptcy bargain: that he be an honest debtor who comes to the court with clean hands.

Second, bankruptcy courts have "broad authority" under Section 105(a) of the Code and their inherent powers to "take any action that is necessary or appropriate 'to prevent an abuse of process.'" *Marrama* v. *Citizens Bank of Mass.*, 549 U.S. 365, 375 (2007). The Court reaffirmed the breadth of these powers just six years ago in *Marrama*—a case that Law relegates to a single "cf." citation in his brief. Law never explains why *Marrama* does not control here; after all, he cannot dispute that he grossly abused the bankruptcy process.

In his efforts to avoid Section 105(a), Law gives this Court no reason to depart from *Marrama*. To the contrary, he gives the Court good reason *not* to: Law's interpretation strips Section 105(a) of meaning. He ignores its broad language granting bankruptcy courts the power to issue "*any* order," "necessary *or* appropriate," "to carry out the provisions of this title," "or to prevent an abuse of process." 11 U.S.C. § 105(a) (emphases added). He jettisons the long line of precedents, both pre- and post-Code, recognizing bankruptcy courts' authority to deny equitable relief due to a debtor's or creditor's bad faith—thereby violating this Court's longstanding tenet that it "will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure." *Hamilton*

v. *Lanning*, 130 S. Ct. 2464, 2473 (2010). And he does so using muddled concepts of statutory interpretation: construing grants of authority as mere rules of construction, rewriting language of permission as language of requirement, and treating the Code's protections of debtors as inviolate while wholly disregarding analogous protections for creditors, the Trustee, and the court itself. Nothing in the Code, historical bankruptcy practice, or common sense justifies this result.

Rather, as this Court has long held, "bankruptcy courts * * * are courts of equity and 'apply the principles and rules of equity jurisprudence.' " *Young* v. *United States*, 535 U.S. 43, 50 (2002) (brackets omitted) (quoting *Pepper* v. *Litton*, 308 U.S. 295, 304 (1939)). The bankruptcy court below did just that when it refused to countenance Law's gross misconduct and fraud upon the court, the consequences of which would otherwise be born entirely by the estate. In finding that Law forfeited the privilege of claiming a homestead exemption, the court acted within its statutory and inherent authority. Its ruling should be affirmed.

STATEMENT

A. Law's Bankruptcy Petition

Law filed a voluntary Chapter 7 petition for bankruptcy in January 2004. Supplemental Joint Appendix (S.A.) 1a-2a. He averred that his residence, his primary asset, was worth barely more than $350,000. S.A. 4a (Schedule A). That valuation indicated that the home was under water because Law identified five liens on his residence totaling nearly $450,000.

S.A. 9a-10a (Schedule D).[2] He also listed approximately $6,000 in unsecured debt. S.A. 12a (Schedule F).

Under the Code, Law was obligated to file a true and accurate list of his assets and liabilities, to cooperate with the trustee in the administration of the estate, and to surrender to the trustee all property of the estate—i.e., "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1); *see id.* § 521(a)(1)(B)(i), (a)(3), (a)(4). In turn, Alfred H. Siegel, the Chapter 7 Trustee, was obligated to take possession of the property of the estate, liquidate it, and distribute the proceeds to Law's creditors in accordance with the priorities established by the Bankruptcy Code. *See id.* § 704(a)(1), (a)(5), (a)(9).

The case began as a normal Chapter 7 bankruptcy does. Creditors wishing to be paid from the estate must file a proof of claim, which is "deemed allowed" unless a party in interest objects. *Id.* §§ 501, 502(a). If there is an objection, the court must determine whether to disallow the claim on grounds enumerated in the Code. *Id.* § 502(b). In Law's case, Cau-Min Li filed a proof of claim for over $180,000, which represented a tort judgment against Law. Law objected to that claim, but the court ultimately allowed it. *See* Bankr. Dkt. Nos. 59, 64.

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[2] The liens Law listed were a first mortgage held by Washington Mutual Bank for approximately $150,000, a second mortgage (and the subject of the parties' dispute) held by Lin's Mortgage & Associates for approximately $150,000, two judgment liens for approximately $130,000 held by Cau-Min Li, and another judgment lien for almost $4,000 held by Andrew Schucker. S.A. 9a-10a.

Allowed claims are paid out of the bankruptcy estate, with any surplus in estate funds returned to the debtor. 11 U.S.C. §§ 507, 726. The debtor may also seek to "exempt" specified types of property from the bankruptcy estate. *Id.* § 522(b)(1). Section 522(d) provides the federal default rules for exemptions, but states may "opt out" of the federal regime and define their own exemptions, or afford none at all. *Id.* § 522(b)(2); *Owen* v. *Owen*, 500 U.S. 305, 308 (1991). The vast majority of states have elected to opt out and preclude debtors from invoking the federal exemptions.

California, where Law resides and filed for bankruptcy, is one such state. Cal. Civ. Proc. Code § 703.130. California law provides a "homestead exemption" for debtors, which permits them to claim $75,000 in home equity as exempt from the estate. *Id.* § 704.730(a)(1). But this exemption is a contingent one; a debtor who is allowed the exemption must reinvest the money in a new homestead within six months or it is lost. *See id.* § 704.720(b).

In his initial bankruptcy filings, Law claimed this homestead exemption for his residence. S.A. 8a (Schedule C). But the bankruptcy court found that he had forfeited the privilege of claiming the exemption because of his blatant and pervasive fraud throughout the bankruptcy proceedings. Joint Appendix (J.A.) 97a. Accordingly, the court found that Law was not entitled to exempt any equity in his home. *Id.*

B. Law's Repeated Fraudulent Filings

Law's fraud began the day he filed for bankruptcy. As required under the Bankruptcy Rules, he filed his schedules of assets and liabilities under penalty of

perjury, swearing that they were "true and correct." S.A. 17a. But Law lied. He listed a debt of approximately $150,000 that he claimed was secured by a second mortgage on his home held by "Lin's Mortgage & Associates." S.A. 9a.[3] As the Trustee would eventually discover after hundreds of hours of investigation and litigation, however, that second mortgage did not exist. It "was a fiction, meant to preserve [Law's] equity in his residence beyond what he was entitled to exempt as a homeowner, and a fraud on his creditors and the court." J.A. 92a.

On the face of his schedules, Law had no equity in his residence. His secured debts (nearly $450,000, counting the fake lien) exceeded his estimated valuation of the home (just over $350,000). S.A. 4a. Assuming the accuracy of Law's valuation, there was no equity in the home to fund a homestead exemption and there would be little benefit to creditors from a sale of the residence. Thus, the Trustee was likely to abandon the home to Law pursuant to 11 U.S.C. § 554. But Law's valuation was sorely lacking. In February 2006, Law's residence sold for $680,000. J.A. 312a. That sum should have easily satisfied all of his debts, covered the Trustee's costs, and left Law with not only his full homestead exemption, but a surplus to boot. J.A. 92a-93a. Instead, Law racked up hundreds of thousands of dollars in costs to the estate by doggedly perpetuating the fraud of the phony mortgage.

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[3] This purported second "mortgage" was instead a deed of trust. *See* S.A. 52a-55a. But for the sake of consistency, this brief refers to it as a mortgage.

Law had recorded that fake lien after Cau-Min Li filed his state-court tort action against Law—apparently in anticipation of an adverse judgment in that case. J.A. 299a, 309a-310a. To create a paper trail supporting the non-existent loan, Law solicited the assistance of a woman named Lili Lin who lived in Artesia, California ("Lili Lin of Artesia"). He asked her to accept the (already recorded) promissory note for the mortgage and a check in the amount of $168,000, and further asked that she immediately endorse the check back to him. She refused to conspire with Law in this fraud. J.A. 193a.

The Trustee discovered this only after he filed an adversary proceeding against Lili Lin of Artesia to avoid the lien that she supposedly held. At that point, rather than confess that the phony mortgage did not exist, Law contended that the Trustee was proceeding against the wrong person. Law maintained that the lien was held by a *different* woman named Lili Lin, who lived in China and spoke no English ("Lili Lin of China" or "fake Lili Lin"). J.A. 89a. And he repeated these lies again and again, to his creditors, *see* J.A. 297a, 300a-304a, to the Trustee, *see* J.A. 325a-364a, and even to the court, *see, e.g.*, J.A. 156a-167a, 169a-172a, 187a-190a, 194a-208a, 210a-216a, 220a-226a, 246a-257a, 259a-266a, 286a-291a; S.A. 3a-4a, 8a-9a, 17a, 20a-33a, 46a-55a.

The fraudulent lien was only the beginning; in Law's single-minded pursuit of retaining non-exempt equity in his home, he fought every effort the Trustee made to faithfully administer the estate. When the Trustee offered a compromise settlement of $100,000 both to satisfy Law's homestead exemption and to resolve the fake Lili Lin lien, Law refused the offer.

Cert. Pet. 7. When the Trustee entered a compromise agreement with Lili Lin of Artesia to avoid the phony mortgage, Law opposed the agreement on the ground that it violated the rights of the fake Lili Lin. J.A. 162a-163a. When the Trustee moved to sell Law's residence free and clear of all encumbrances, Law several times tried to block the Trustee's action. J.A. 9a-10a, 15a (dockets 101, 108, 159). When the Trustee entered a compromise with Cau-Min Li concerning his secured claim from the tort judgment, Law objected more than once. J.A. 13a-14a (dockets 143, 152). When the Trustee sought to depose Law, he refused to submit to a deposition and fought the Trustee's efforts to compel one. J.A. 32a (docket 291). And whenever Law lost in the bankruptcy court, he sought appellate review, forcing the Trustee to defend against over a dozen different appeals "as a direct result of Debtor's false representations." J.A. 93a-94a n.31, 315a-317a.

C. The Forfeiture Of Law's Claim To A Homestead Exemption

Based on Law's misconduct, the bankruptcy court issued an order in May 2006 finding that Law had forfeited the privilege of claiming a homestead exemption. J.A. 13a (docket 120). The Bankruptcy Appellate Panel, however, reversed. J.A. 132a-152a. It held that although the "case presents instances of debtor misconduct, obstinance, blatant ignorance of court orders and directives, animosity towards the court and the trustee, and efforts to thwart administration of the case," the court could not conclude that Law was "abusing his exemptions" because the validity of the fake Lili Lin lien had "not yet been determined." J.A. 150a.

For the next year, Law continued to aggressively press the validity of that fake lien. But his litigation tactics increasingly demonstrated that the loan was a fraud. For example, one document Law filed prompted the bankruptcy court to observe that "no plausible explanation has been furnished as to how Lili Lin of China, who purportedly speaks only Chinese and is unable to travel to the United States, was able to sign this motion on the same page as Debtor." J.A. 90a (emphasis removed). The court further noted that the motion responded to a sale order that had been issued only two days prior—"very little time for Debtor to mail a signature page to China and receive a signed copy in return." *Id.* Thus, "the most plausible inference is that Debtor signed Lili Lin of China's name himself, or asked someone else to sign it for him." *Id.*

Because it had become clear that Law was perpetrating a fraud on the court by filing false documents on behalf of the fake Lili Lin, the bankruptcy court again determined that forfeiture of Law's claim to a homestead exemption was appropriate. *See* J.A. 81a-97a. In reaching that decision, the court carefully analyzed Law's fraud. The court first determined that Law had submitted false evidence to the court in the form of a fraudulent promissory note designed to convince the court that the fake Lili Lin held the phony mortgage. J.A. 91a. The court then turned to the purported "Lili Lin of China" filings and noted that "despite her inability to speak English and her frequent lack of representation, Lili Lin of China has managed to file with this court numerous motions, declarations, and appeals *in pro per*—all written in English, without record of translation." *Id.* Based on the highly dubious circumstances surrounding these

filings, the court found it probable that Law authored these documents himself and that "no person named Lili Lin ever made a loan to [Law] in exchange for the disputed [mortgage]." J.A. 92a. Therefore, the court concluded: "The preponderance of the evidence clearly shows that the loan was a fiction, meant to preserve [Law's] equity in his residence beyond what he was entitled to exempt as a homeowner, and a fraud on his creditors and the court." *Id.*

The court recognized that Law's misconduct came at great cost to the estate. As "a direct result of [Law's] active misrepresentations to [the] Trustee and the court," the Trustee spent over 1500 hours investigating, exposing, and preventing Law's fraud, which "translat[ed] to $456,112.50 in fees." J.A. 93a, 94a. The costs of unraveling Law's fraud far exceeded the non-exempt equity in Law's residence. Yet if Law were nonetheless allowed a homestead exemption, the estate would go uncompensated for the effects of his gross misconduct. Under these extraordinary circumstances, the court ruled that Law had forfeited his ability to claim a homestead exemption. J.A. 97a.

D. The Bankruptcy Appellate Panel's Affirmance

Law appealed the bankruptcy court's ruling, and the Bankruptcy Appellate Panel affirmed. The Panel explained that "exceptional circumstances justifying a surcharge exist when a debtor engages in inequitable or fraudulent conduct that, when left unchallenged, denies creditors access to property in excess of that which is properly exempted under the Bankruptcy Code." JA. 71a. And those circumstances existed in this case, where Law had "engaged in inequi-

table conduct, bad faith, and fraud on a truly egregious scale." J.A. 72a. On these facts, the court held that equitable forfeiture was justified "[t]o protect the integrity of the bankruptcy system, and to prevent Debtor from reaping a benefit from his actions to the prejudice of his creditors." J.A. 75a.

Law appealed again, and the Ninth Circuit affirmed. It identified precedent "recognizing [the] inherent power of bankruptcy courts to equitably surcharge a debtor's exemption to protect [the] integrity of the bankruptcy process and to ensure that [a] debtor does not exempt [an] amount greater than allowed under [the] Bankruptcy Code." J.A. 52a. And it determined that the bankruptcy court properly exercised that power "because the surcharge was calculated to compensate the estate for the actual monetary costs imposed by the debtor's misconduct, and was warranted to protect the integrity of the bankruptcy process." *Id.*

Law's petition for rehearing en banc was denied. J.A. 50a. This Court then granted review.

SUMMARY OF ARGUMENT

1. Bankruptcy courts are courts of equity with broad authority to address the exigencies of cases before them. *American United Mut. Life Ins. Co.* v. *City of Avon Park, Fla.*, 311 U.S. 138, 146 (1940). This includes the power to issue necessary or appropriate orders to prevent an abuse of process, codified in Section 105(a) of the Bankruptcy Code, as well as "the inherent power of every federal court to sanction 'abusive litigation practices.' " *Marrama*, 549 U.S. at 375-376 (quoting *Roadway Express, Inc.* v. *Piper*, 447 U.S. 752, 765 (1980)). Both sources of authority sup-

port the bankruptcy court's forfeiture order in this case.

First, the plain language of Section 105(a) authorizes equitable forfeiture. That provision grants courts the power to issue "any order * * * necessary or appropriate * * * to carry out the provisions of this title * * * or to prevent an abuse of process." 11 U.S.C. § 105(a). The bankruptcy court's equitable forfeiture order fits neatly within the statutory standard. It "carr[ied] out" the provisions of the Code requiring the Trustee to collect the property of the estate; the provisions requiring Law to honestly inform the Trustee of his assets and liabilities, to cooperate with the Trustee in the administration of the estate, and to surrender all property of the estate to the Trustee; and the provisions limiting the property that Law was permitted to exempt from the estate. Equitable forfeiture was "necessary," or at the very least "appropriate," here because it enforced Law's obligations as a Chapter 7 debtor and vindicated the Trustee's faithful discharge of his fiduciary duties. It also filled a gap left in the Bankruptcy Code by remedying Law's fraud and returning money to the estate, which had been substantially depleted as a direct result of Law's egregious misconduct. Indeed, as Justice Souter recently wrote when sitting by designation on the First Circuit, "[i]f § 105(a) was not meant to empower a court to issue an order like [this] one * * *, it is hard to see what use Congress had in mind for it." *Malley* v. *Agin*, 693 F.3d 28, 30 (1st Cir. 2012).

Second, the equitable forfeiture order fell within the bankruptcy court's inherent authority to sanction Law for his misconduct during the proceedings. This authority is "governed not by rule or statute but by

the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Chambers* v. *NASCO, Inc.*, 501 U.S. 32, 43 (1991) (quoting *Link* v. *Wabash R.R.*, 370 U. S. 626, 630-631 (1962)).

Third, equitable forfeiture is in keeping with historical bankruptcy practice. For over a hundred years, bankruptcy courts have denied both debtors and creditors equitable relief that they may otherwise have been permitted under bankruptcy law, but for their misconduct. And this Court has even affirmed the practice. *See Pepper*, 308 U.S. at 307-312. This history demonstrates that the bankruptcy court's equitable forfeiture order was a permissible exercise of the court's statutory and inherent powers.

2. Section 522 of the Code, which sets up the exemption scheme, does not require a contrary finding. The privilege of exempting property under Section 522(b) is one aspect of the "fresh start" the Code provides to "honest but unfortunate" debtors. *Marrama*, 549 U.S. at 374 (internal quotation marks omitted). But it is not an absolute right. Congress made exemptions conditional under the Code by providing only that the debtor "*may* exempt" certain property, rather than using stronger language mandating that the debtor *shall* be entitled to do so in all instances. Section 522(b) is not addressed to courts and contains no mandate requiring them to permit a claim to an exemption no matter the circumstances. Indeed, in *Marrama* this Court considered structurally identical language in the Code providing that a debtor "may convert" a case from Chapter 7 to Chapter 13 and concluded that nothing in that language "limits the authority of the court to take appropriate action in response to fraudulent conduct by the atypical lit-

igant who has demonstrated that he is not entitled to the relief available to the typical debtor." 549 U.S. at 374-375. Accordingly, *Marrama* held that bankruptcy courts have authority to find that a debtor has forfeited his ability to convert a case based on his misconduct. *Id.* The same result obtains here for the privilege of exempting property.

Contrary to Law's suggestion, equitable forfeiture does not conflict with Section 522(c), which protects property "exempted under this section" from being used to pay pre-petition debts, or Section 522(k), which shields exempted property from liability for the estate's administrative expenses. A debtor who forfeits the privilege of claiming an exemption based on egregious misconduct has not succeeded in exempting property "under this section" at all; thus, these provisions do not apply by their own terms.

Section 522 also cannot be read to implicitly prohibit equitable forfeiture. Law points to provisions in Section 522 that place certain restrictions on exemptions and contends that these constitute the only occasions when exemptions may be limited. But the history of these provisions—which were enacted at different points in time by different Congresses in response to discrete problems—refutes the notion that Congress intended through them to legislate globally about the exclusive universe of limitations on exemptions. And the provisions that Law relies on most heavily were enacted *after* he filed his bankruptcy petition and therefore have no bearing on this case. Because none of the specific provisions in Section 522 address how exemptions may be limited in response to a debtor's fraudulent attempt to retain non-exempt assets, bankruptcy courts may exercise

their power under Section 105(a) to order equitable forfeiture of a debtor's claim to an exemption.

3. The provisions of the Code that create punitive measures against a misbehaving debtor do not displace this power. They punish the debtor for his misconduct, but they offer no relief out of the estate to those victimized by a debtor's fraud—which is the remedy that equitable forfeiture affords. The mere existence of these other punitive measures does not usurp the court's authority to sanction the debtor in this manner. *Chambers*, 501 U.S. at 49.

For all of these reasons, the equitable forfeiture order was a lawful exercise of the bankruptcy court's authority. It should be affirmed.

ARGUMENT

I. BANKRUPTCY COURTS HAVE TWO SEPARATE SOURCES OF AUTHORITY—STATUTORY AND INHERENT—TO REMEDY FRAUD BY ORDERING EQUITABLE FORFEITURE.

Bankruptcy courts have long held general equity power to deny relief to those who seek it in bad faith. *See, e.g.*, *American United*, 311 U.S. at 145-146; *Pepper*, 308 U.S. at 311-312. The Bankruptcy Code codifies this power in several provisions. *See, e.g.*, 11 U.S.C. §§ 707(a), 707(b), 727(a); *see also id.* § 105(a). And the Federal Rules of Bankruptcy Procedure further supplement this authority. *See, e.g.*, Fed. R. Bankr. P. 9011. On top of all this, bankruptcy courts possess the inherent sanctioning power shared by all courts. *See Marrama*, 549 U.S. at 375-376.

Accordingly, when a litigant commits a fraud upon the court or abuses the very processes meant to aid that litigant, a bankruptcy court has ample authority to remedy that misconduct. Indeed, it is one of the

oldest principles in equity that "[h]e who comes into equity must come with clean hands." 2 Spencer W. Symons, *Pomeroy's Equity Jurisprudence* § 397, at 91 (Lawbook Exchange, Ltd. 2012) (5th ed. 1941). If a debtor "seeks to set the judicial machinery in motion and obtain some remedy" but "has violated conscience, or good faith, or other equitable principle," then "the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy." *Id.* at 91-92; *see also id.* §§ 385-386, 388 (explaining the maxim that he who seeks equity must do equity).

These principles justify equitable forfeiture in this case because Law came to court without so much as a clean finger, let alone clean hands. He manipulated the bankruptcy process in attempts to defraud the estate; he lied to the court; he unnecessarily multiplied the proceedings; and he depleted estate assets in bad faith. Yet he nevertheless sought relief from the court by claiming that the subject of his fraud—his homestead—qualified for exemption. The bankruptcy court had every right to deny him that relief under its broad statutory and inherent authority.

A. Section 105(a) Authorizes Equitable Forfeiture When Necessary Or Appropriate To Carry Out The Provisions Of The Code Or To Prevent An Abuse Of Process.

Section 105(a) of the Bankruptcy Code confers broad authority on bankruptcy courts. It provides:

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed

> to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process. [11 U.S.C. § 105(a).]

The bankruptcy court below acted well within its authority under Section 105(a) when it ordered that Law had forfeited the privilege of claiming a homestead exemption in light of the fraud he perpetrated on the court, the Trustee, and creditors. Rather than permit Law to withdraw the claimed $75,000 from the estate, the court deemed those funds forfeited, reimbursing the estate for a fraction of the extraordinary expenses it incurred to uncover Law's fraud. Under Section 105(a), this equitable forfeiture was necessary, or at the very least appropriate, to carry out the provisions of the Code and to prevent gross abuse of the bankruptcy proceedings.

1. a. Equitable forfeiture qualifies as "any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." *Id.* That language, unlike other parts of the Code, is remarkably broad. First, it uses the term "any," a word with "an expansive meaning." *United States* v. *Gonzales*, 520 U.S. 1, 5 (1997) (quotation marks omitted). Second, Congress required only that the order be "appropriate"; that is, "suitable or fitting for a particular purpose." *Random House Webster's Unabridged Dictionary* 103 (2d ed. 2001). Finally, Congress gave courts license to "carry out the provisions of" the Code; that is, "to put into operation; execute," or "to effect or accomplish; complete" those provisions. *Id.* at 319 (defining "carry out"). Taken together, the breadth of permissible orders is apparent: the stat-

ute permits any order that is suitable or fitting to give effect to the Code.

Further confirmation of the statute's breadth comes from Congress's decision to authorize orders that are necessary *or* appropriate. It is well established that "terms connected by a disjunctive [should] be given separate meanings." *Reiter* v. *Sonotone Corp.*, 442 U.S. 330, 339 (1979). What is "appropriate" to carry out the Code therefore must be something *different* than what is "necessary" to carry out the Code. And the definition of "necessary" offers guidance as to what the difference is: "necessary" means "essential, indispensable, or requisite." *Random House Dictionary* 1284. Applying this to Section 105(a), "necessary" suggests a narrow correlation between the permissible court action and the Code's provisions: the action must be essential to the operation of those provisions. "Appropriate," by contrast, allows for any action that is "suitable" to the task, permitting a looser correlation. By choosing this language, Congress gave bankruptcy courts broad interstitial authority to fill gaps in the Code to protect the bankruptcy process. *Cf. Varity Corp.* v. *Howe*, 516 U.S. 489, 512 (1996) (interpreting statutory phrase "appropriate equitable relief" to authorize courts to provide "relief for injuries caused by violations that [the statute] does not elsewhere adequately remedy").

The drafting history of the bankruptcy laws confirms this understanding. Section 105(a)'s predecessor did *not* include the word "appropriate." *See* Bankruptcy Act of July 1, 1898, Ch. 541, § 2(15), 30 Stat. 544, 546 (authorizing only orders "as may be necessary for the enforcement of the provisions of this act"). Congress added the phrase "or appropri-

ate" in the 1978 enactment of the modern Code. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 105(a), 92 Stat. 2549, 2555. And commentators recognize that this addition made "Section 105 * * * much broader than former Section 2a(15)." 2 *Collier on Bankruptcy* ¶ 105.LH[2] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2013).

b. Equitable forfeiture falls well within the broad language of Section 105(a). It is "necessary," or at the very least "appropriate," to "carry out" a number of Code provisions, including those that:

- require a debtor to file with the court a truthful and accurate schedule of assets and liabilities, 11 U.S.C. § 521(a)(1)(B)(i);
- require a debtor to "cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title," *id.* § 521(a)(3);
- require a debtor to "surrender to the trustee all property of the estate," *id.* § 521(a)(4);
- permit a debtor to exempt from the estate only what is defined by statute, *id.* § 522(b)(1);
- require a trustee to "collect and reduce to money property of the estate," *id.* § 704(a)(1); and
- require the trustee to ensure that the debtor follows through as he represented he would concerning property securing listed debts, *id.* § 704(a)(3).

Applied here, equitable forfeiture "carr[ies] out" the fundamental principles of equity and honesty that are vital to the bankruptcy process. The Trustee was honoring his obligation to collect estate property by seeking to invalidate the fraudulent second mortgage

on Law's residence. The residence was quite valuable to the estate, but the sale of the property was jeopardized by the fake Lili Lin lien. So it was entirely reasonable for the Trustee to spend significant resources to challenge the lien to make sure the sale was successful. The equitable forfeiture order further recognized that Law had no excuse for his total abdication of responsibility under the Code. He tried to retain equity in his home far beyond his claimed homestead exemption. He actively thwarted the Trustee's efforts to collect estate property. He attempted to defraud creditors and the court itself. And he *rejected* the Trustee's offer to pay his homestead exemption and resolve the merits of the fake Lili Lin lien. Cert. Pet. 7. Under these extraordinary circumstances, the court carried out the Code by requiring that Law bear the cost of his misconduct; otherwise, the Trustee would be left to foot the bill for fulfilling his obligation to protect a valuable estate asset from Law's egregious misconduct.

Equitable forfeiture is "necessary," or at the very least "appropriate," to carry out these Code provisions. Law's misconduct deprived creditors and the estate of some of the non-exempt equity in his homestead. But the remedies expressly provided by the Code for debtor misconduct—such as denial of discharge under 11 U.S.C. § 727(a) and criminal sanctions pursuant to 18 U.S.C. § 152—would have done nothing to offset Law's fraud. *See infra* at 52-54; *Malley*, 693 F.3d at 30. Equitable forfeiture filled this gap. It brought money back into the pot and provided an appropriate remedy for this extraordinary case of debtor fraud, which had directly resulted in the substantial depletion of non-exempt estate assets. It served to enforce Law's obligations under

the Code and to vindicate the Trustee's faithful discharge of his fiduciary duties. And it was consistent with this Court's recognition that the Code "limits the opportunity for a completely unencumbered new beginning to the 'honest but unfortunate debtor.'" *Grogan*, 498 U.S. at 286-287 (quoting *Local Loan*, 292 U.S. at 244). Indeed, "[i]f § 105(a) was not meant to empower a court to issue an order like [this] one * * *, it is hard to see what use Congress had in mind for it." *Malley*, 693 F.3d at 30.[4]

c. Law seeks to avoid this conclusion by focusing myopically upon Section 105(a)'s requirement that an order "carry out" the Code's provisions. In his view, if the Code does not expressly permit a particular action, a court is powerless to take it. *See* Pet'r Br. 16-18. That argument is flawed for at least two reasons.

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[4] The overwhelming majority of lower courts to have considered the issue agree that a debtor forfeits his ability to claim exemptions to the extent he has engaged in fraud or extreme misconduct in seeking to retain nonexempt assets. *See, e.g.*, *Malley*, 693 F.3d at 28-31; *In re Onubah*, 375 B.R. 549, 553-558 (9th Cir. B.A.P. 2007); *Latman* v. *Burdette*, 366 F.3d 774, 785-786 (9th Cir. 2004); *In re Marve*, 43 F. App'x 943, 944-946 (6th Cir. 2002); *In re Yonikus*, 996 F.2d 866, 873-874 (7th Cir. 1993); *In re Nolan*, 2013 WL 3153849, at *4-*5 (Bankr. W.D.N.C. June 19, 2013); *In re Wilson*, 2012 WL 1856587, at *1 (Bankr. D.D.C. May 21, 2012); *In re Price*, 384 B.R. 407, 410-412 (Bankr. E.D. Va. 2008); *In re Hamblen*, 354 B.R. 322, 325-326 (Bankr. N.D. Ga. 2006); *In re Koss*, 319 B.R. 317, 321-323 (Bankr. D. Mass. 2005); *In re Karl*, 313 B.R. 827, 831-832 (Bankr. W.D. Mo. 2004); *In re Bogan*, 302 B.R. 524, 529-530 (W.D. Pa. 2003); *In re Stinson*, 221 B.R. 726, 728-732 (Bankr. E.D. Mich. 1998); *In re Ward*, 210 B.R. 531, 537-538 (Bankr. E.D. Va. 1997); *In re Swanson*, 207 B.R. 76, 79-81 (Bankr. D.N.J. 1997). *But see In re Scrivner*, 535 F.3d 1258, 1262-65 (10th Cir. 2008).

First, Law's interpretation would render much of Section 105 mere surplusage, thus violating the "cardinal principle of statutory construction" that a court should "give effect, if possible, to every clause and word of a statute." *Duncan* v. *Walker*, 533 U.S. 167, 174 (2001) (internal quotation marks omitted). Law does not bother to parse the text or offer an affirmative interpretation of Section 105(a). Instead he gives two examples of when a bankruptcy court might permissibly use Section 105(a): to issue an injunction to enforce a lawfully entered order and to stay state court proceedings. Pet'r Br. 17. Law's view appears to be that Section 105(a) authorizes only those actions that are essential to the operation of other provisions; that is, Section 105(a) serves only to give bankruptcy courts the procedural power *necessary* to implement those provisions. But that interpretation is unduly narrow and fails to give effect to the broad language of the statute. For one thing, it impermissibly strikes the words "or appropriate" from the statute, which, as we have explained, confer broad interstitial authority on bankruptcy courts. *See supra* at 18-20. For another, it ignores the second sentence of Section 105(a), which permits bankruptcy courts to issue orders "to prevent an abuse of process." *See infra* at 24-27. Law's interpretation therefore cannot be reconciled with the language of Section 105(a).

Second, Law rests his argument on this Court's statement in *Norwest Bank Worthington* v. *Ahlers*, 485 U.S. 197 (1988), that "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." *Id.* at 206. But *Norwest* was not a Section 105 case. The question presented was whether a

bankruptcy court could disregard one of the Code's express requirements for a "fair and equitable" reorganization plan under 11 U.S.C. § 1129(b)(2)(B)(ii) (1982 ed., Supp. IV), and instead apply its own contrary view of what is "fair and equitable" under the circumstances. *See id.* at 205-206. Section 105 did not appear a single time in the Court's opinion; nor did it appear in the parties' briefing. *Norwest* therefore provides no insight into the meaning of Section 105(a).

In any event, Law's citation to *Norwest* assumes the very point that he is trying to prove: Section 105(a) of course falls "within the confines of the Bankruptcy Code"—but it is that provision's meaning that is in dispute. *Norwest* does nothing to explain the salient point: why equitable forfeiture of Law's exemption was not at least appropriate to carry out the Code. That is because the order meets this standard.

2. Equitable forfeiture falls within the bankruptcy court's statutory authority for a second, independent reason: under the second sentence of 11 U.S.C. § 105(a), the order was "necessary or appropriate * * * to prevent an abuse of process." As Justice Souter wrote, "[t]here could not be a clearer example of foiling abuse of process than a forfeiture order mitigating the effect of fraud." *Malley*, 693 F.3d at 30. Law hardly contends otherwise; before this Court, Law all but concedes the inequity of his conduct below. *See* Pet'r Br. 10, 13. That leaves him with the untenable argument that Section 105(a) is not "an affirmative grant of authority" at all, but only a "rule of construction" clarifying that bankruptcy courts can act sua sponte even when the Code authorizes a

party to seek relief. Pet'r Br. at 15, 38. Law is wrong.

This Court's precedent, the statutory text, and the drafting history of the provision all demonstrate that, at the very least, the second sentence of Section 105(a) enhances the first; that is, one way that a court may "carry out the provisions of the Code" is to take action that is "necessary or appropriate * * * to prevent an abuse of process." That is certainly how the Court read the statute in *Marrama*. There, the Court explained in no uncertain terms that Section 105(a) grants bankruptcy courts "the broad authority * * * to take any action that is necessary or appropriate 'to prevent an abuse of process.' " 549 U.S. at 375. *Marrama* directly forecloses Law's "rule of construction" reading.

So does the statutory language. If Congress had intended the second sentence of Section 105(a) to clarify only that courts are not barred from acting sua sponte where the Code authorizes a party to raise an issue, Pet'r Br. 38, it presumably would have drafted the second sentence to match the first. In other words, Congress would have written the statute to say that courts are not precluded "from, sua sponte, taking any action or making any determination that is necessary or appropriate *to carry out the provisions of this title*." But Congress did not so limit the scope of the second sentence. Instead, Section 105(a) authorizes courts more broadly to take any action that is "necessary or appropriate * * * *to prevent an abuse of process*." 11 U.S.C. § 105(a) (emphases added). In light of Congress's drafting choice, as Justice Souter reasoned in *Malley*, "it makes sense to read the second sentence's authority to prevent abuse of process as an example of what

the first sentence speaks of as action 'necessary or appropriate to carry out the provisions by this title.' " 693 F.3d at 30. Thus, in combination, the first and second sentences of Section 105(a) *do* affirmatively grant bankruptcy courts the authority to remedy abuses of process.[5]

The statute's drafting history also supports this view. Congress added the second sentence to Section 105(a) in 1986 to "recognize [bankruptcy] judges' inherent authority to control their dockets and manage cases pending before them." 2 *Collier on Bankruptcy* ¶ 105.LH[4] n.12 (quoting *Additional Bankruptcy Judgeships: Hearing Before the Subcommittee on Monopolies and Commercial Law of the Committee on the Judiciary, House of Representatives*, H.R. 4128 & H.R. 4140, 99th Cong., 2d Sess. 75-76 (July 23, 1986) (statement of Honorable T. Glover Roberts)). The provision accordingly "allows a bankruptcy court to take any action on its own, or to make any necessary determination to prevent an abuse of process and to help expedite a case in a proper and justified manner." 132 Cong. Rec. S15092 (1986) (statement of Sen. Hatch).[6]

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[5] To be sure, Section 105(a) speaks in terms of what a court may do sua sponte. But if a court is granted the greater authority to act sua sponte, it must also have the lesser authority to act at the behest of a party. Indeed, the "spaciousness" of Section 105(a)'s language confirms this intention. *Malley*, 693 F.3d at 30.

[6] Law cites a lower court decision that surmised that the second sentence was added only to overrule the Second Circuit's decision in *In re Gusam Restaurant Corp.*, 737 F.2d 274, 276 (2d Cir. 1984)—but he offers no textual support or citation to legislative history for this theory. Nor does he explain how it affects the statutory analysis.

This legislative purpose is entirely consistent with the traditional understanding of the inherent powers of the bankruptcy courts. In *American United Mutual Life Insurance Co.* v. *City of Avon Park, Florida*, this Court chronicled "the range and type of the power which a court of bankruptcy may exercise in these proceedings." 311 U.S. at 146. "That power is ample for the exigencies of varying situations. It is not dependent on express statutory provisions. It inheres in the jurisdiction of a court of bankruptcy." *Id.* The second sentence of Section 105(a) thus serves to codify the traditionally broad equitable powers of bankruptcy courts: they may issue any orders that are necessary or appropriate to prevent an abuse of process.

* * *

The power to order equitable forfeiture of a debtor's claim to an exemption in extreme cases of debtor misconduct falls squarely within a bankruptcy court's statutory authority. In cases such as these where the debtor's egregious fraud has severely depleted estate assets, equitable forfeiture is appropriate (not to mention necessary) both to carry out the provisions of the Code and to prevent an abuse of process.

B. Equitable Forfeiture Also Falls Within The Bankruptcy Court's Inherent Power To Sanction The Bad-Faith Misconduct Of Litigants Before It.

Even in the absence of statutory authority, a bankruptcy court could order equitable forfeiture of a deceitful debtor's claim to an exemption pursuant to

the court's inherent sanctioning powers.[7] This is a separate source of authority not dependent on any particular statute. And it is one that Law strikingly does not even bother to address in his opening brief. As the Solicitor General explained previously in his invitation brief, "[t]he bankruptcy court's inherent authority to sanction a litigant's egregious misbehavior * * * provides an independent basis for affirming the surcharge in this case." U.S. Cert. Br. 21.

All courts have the "inherent power[] * * * to fashion an appropriate sanction for conduct which abuses the judicial process." *Chambers*, 501 U.S. at 45. Indeed, this Court recently reaffirmed this point in the bankruptcy context, emphasizing "the inherent power of every federal court to sanction 'abusive litigation practices.'" *Marrama*, 549 U.S. at 375-376 (quoting *Roadway Express*, 447 U.S. at 765).

This inherent authority is "governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve

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[7] In ordering equitable forfeiture in this case, the bankruptcy court below relied on *Latman,* which found that courts have authority to issue such orders pursuant to their inherent sanctioning powers. *See* J.A. 52a, 83a. Although the Trustee's Brief in Opposition did not draw attention to this aspect of the bankruptcy court's decision, the Solicitor General's invitation brief plainly identified the inherent sanctioning power as a reason to deny Law's petition, and Law responded to that argument in full in his supplemental brief. Moreover, the issue is "'predicate to an intelligent resolution' of the question presented," *Ohio* v. *Robinette*, 519 U.S. 33, 38 (1996); namely, whether a bankruptcy court may "surcharge * * * [a] debtor's constitutionally protected homestead property," Cert. Pet. 1. Thus, this Court may properly consider the inherent sanctioning power in this case.

the orderly and expeditious disposition of cases." *Chambers*, 501 U.S. at 43 (quoting *Link*, 370 U.S. at 630-631). As part of this inherent power, a court may appropriately impose "sanctions for the fraud [a litigant] perpetrated on the court and the bad faith he displayed toward both his adversary and the court throughout the course of the litigation." *Id.* at 54. Moreover, the court may "vindicate itself and compensate [the opposing party] by requiring [the bad-faith litigant] to pay for all attorney's fees." *Id.* at 57; *see also* U.S. Cert. Br. 18-21.

In his supplemental certiorari brief, Law "d[id] not dispute" bankruptcy courts' inherent sanctioning powers. Pet'r Supp'l Cert. Br. 11. Law nonetheless argued that the lower court's order did not fall within this sanctioning power because equitable forfeiture is not a "traditional sanctions order." According to Law, a sanction imposed pursuant to the court's inherent authority can be nothing more than a fine, which is treated as a "post-petition debt that the trustee may pursue (even after discharge) in accordance with applicable collection law." *Id.* This argument has no merit.

First, Law cites no support for his contention that the bankruptcy court's inherent authority is limited to "traditional" sanctions orders. Second, he offers no definition of "traditional" sanctions orders that would exclude equitable forfeiture. Third, Law's "post-petition debt" argument fails to appreciate the practical effect of the bankruptcy court's order. The order found that Law had forfeited the privilege of claiming a homestead exemption; therefore, the $75,000 Law sought to exempt was retained as an asset of the estate. It accordingly was not a "debt" that the Trustee needs to "pursue." Instead, as es-

tate property, it may be used to compensate the Trustee for expenses incurred uncovering Law's fraud. This is an entirely appropriate sanction under the circumstances, and well within the court's inherent powers. *See, e.g.*, *In re Hecker*, 264 F. App'x 786, 791-792 (11th Cir. 2008) (affirming equitable forfeiture of a claimed exemption under the court's inherent sanctioning power). For this reason also the bankruptcy court's equitable forfeiture order should be affirmed.

C. Equitable Forfeiture Of A Claimed Exemption Is Supported By Historical Practice.

Finally, historical bankruptcy practice confirms that bankruptcy courts have both statutory and inherent authority to order equitable forfeiture of a debtor's claimed exemption. Bankruptcy courts have long denied both debtors and creditors equitable relief to which they may otherwise have been permitted under governing bankruptcy law but for their misconduct. This Court affirmed the practice in *Pepper* v. *Litton*, and should do so again here.

1. A prime example of historical practice supporting the assertion of comparable authority is the equitable disallowance of claims. Under historical and modern practice, the claims process is similar in function to the exemption process. Creditors are permitted to file claims against the bankruptcy estate, and those claims are "allowed" unless a party in interest objects for one of the reasons enumerated in the Code. *See* 11 U.S.C. § 502. Courts have long recognized, however, that bankruptcy judges may separately disallow a claim for equitable reasons in cases of extreme misconduct. *See, e.g.*, *Litzke* v. *Gregory*, 1 F.2d 112, 115-116 (8th Cir. 1924); *Adelphia Recovery Trust* v. *Bank of Am., N.A.*, 390 B.R. 64,

76 (S.D.N.Y. 2008); *Marrett* v. *Atterbury*, 16 F. Cas. 780, 781-782 (C.C.D. Minn. 1874).

This Court affirmed a bankruptcy court's authority to order equitable disallowance in *Pepper* v. *Litton*. As *Pepper* explained, "the bankruptcy court in passing on allowance of claims sits as a court of equity." 308 U.S. at 307. "[I]n the exercise of its equitable jurisdiction the bankruptcy court has the power to sift the circumstances surrounding any claim to see that injustice or unfairness is not done in administration of the bankrupt estate." *Id.* at 307-308.[8] More pointedly, when "there is added the existence of a planned and fraudulent scheme, * * *, the necessity of equitable relief against that fraud becomes insistent." *Id.* at 312 (quotation marks removed). That is just the case here. Law tried to commit a fraud against the court, the Trustee, and creditors. Under *Pepper*, "the necessity of equitable relief against that fraud bec[ame] insistent." *Id.* The bankruptcy court acted within its authority when, in effect, it equitably disallowed Law's claimed homestead exemption.

2. An equally long history establishes bankruptcy courts' practice of equitably disallowing a debtor's exemptions due to the debtor's bad faith or fraud. This practice differs from the present case only in timing: a court "disallows" an exemption when objection is made at the time the debtor first claims the exemption at the outset of the bankruptcy proceedings, whereas the court here found that Law had for-

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[8] *Cf. Wolf* v. *Weinstein*, 372 U.S. 633, 648 n.13 (1963) (in reorganization cases, "bankruptcy courts have consistently recognized the existence of inherent equity power to disallow or at least to reduce claims for compensation or reimbursement").

feited his claim to an exemption at a later stage of the proceedings once it became apparent that Law had abused the bankruptcy process. But the effect of both is the same: the claim to an exemption is denied on equitable grounds.

Equitable disallowance of exemptions most commonly occurs when the debtor attempts to claim an exemption for property that he has retained, but concealed from the trustee. Neither the present Code nor its previous iterations expressly provided for the disallowance of such an exemption. Yet there are "numerous cases in which fraudulent concealment of an asset has barred or revoked a debtor's discharge, *disallowed a debtor's exemption claim* or resulted in criminal sanctions." *Yonikus*, 996 F.2d at 873 (emphasis added). These cases were decided under the 1898 Bankruptcy Act as early as 1907 and continued after the enactment of the modern Code. *See In re Ansley Bros.*, 153 F. 983, 984 (E.D.N.C. 1907); *see also, e.g.*, *In re Doan*, 672 F.2d 831, 833 (11th Cir. 1982); *Stewart* v. *Ganey*, 116 F.2d 1010, 1011 (5th Cir. 1940); *In re Aronson*, 233 F. 1022, 1022 (N.D. Ala. 1916) (citing cases). In addition, courts sometimes achieve the same result by denying a debtor leave to amend his schedules to add an exemption, even though the debtor normally may do so at any time prior to the close of the case. Denial is appropriate "on a showing of a debtor's bad faith or of prejudice to creditors." *Doan*, 672 F.2d at 833; *see also In re Ford*, 492 F.3d 1148, 1155 (10th Cir. 2007).

Accordingly, a debtor's permissive exemption (just like a creditor's permissive claim) has historically been subject to forfeiture when the debtor acts in bad faith. And this historical practice is "telling" because this Court "will not read the Bankruptcy Code to

erode past bankruptcy practice absent a clear indication that Congress intended such a departure." *Hamilton*, 130 S. Ct. at 2473 (citing cases). Indeed, contrary to showing such any such "clear indication," Congress has chosen to *expand* bankruptcy court's powers—both by adding "or appropriate" to the first sentence of Section 105(a) in 1978 and by adding the second sentence in 1986. These amendments demonstrate congressional encouragement rather than legislative abrogation. In sum, historical practice reiterates what the statutory text confirms: a bankruptcy court may order equitable forfeiture of a debtor's claim to an exemption based on the debtor's bad faith or fraudulent misconduct during the bankruptcy proceedings.

II. NO PROVISION OF THE CODE PROHIBITS EQUITABLE FORFEITURE.

Because the bankruptcy court's order countering Law's egregious misconduct fits comfortably within the court's statutory and inherent authority, Law is left contending that other provisions of the Bankruptcy Code prohibit that sanction. But his arguments proceed from the mistaken premise that the Code establishes an absolute right to exempt property. Not so. The text and history of Section 522, as well as this Court's precedents, demonstrate that a dishonest debtor who abuses the exemption provisions may forfeit his privileges under them. Nothing in Section 522 or any other Code provision directly or implicitly forecloses an equitable forfeiture order in an extraordinary case like this one.

A. Section 522 Does Not Create An Absolute Right To Exempt Property For Debtors Who Attempt To Abuse Its Provisions.

Law's objection to equitable forfeiture rests on his erroneous assumption that Section 522 creates an unqualified right to exemptions. *See, e.g.*, Pet'r Br. 23. But Section 522 does not create unyielding protection for dishonest debtors who manipulate Congress's careful balance between exempt and non-exempt property to defraud the court and creditors. Law had no absolute right to claim exemptions under Section 522, and the court acted within its authority in deeming that he had forfeited the privilege of claiming a homestead exemption.

1. Bankruptcy relief is intended to provide "honest but unfortunate" debtors with a fresh start. *Marrama*, 549 U.S. at 374 (internal quotation marks omitted). As part of this fresh start, Section 522 permits the debtor to claim certain property or interests in property as exempt from the estate. *See* 11 U.S.C. § 522(b). But that benefit—and so the permissibility of a claim to an exemption—is premised on the corresponding obligation of the debtor to disclose and "surrender[] for distribution" all property of the estate that is *not* exempt. *Local Loan*, 292 U.S. at 244.

A debtor who does not fulfill his end of that bargain enjoys no unqualified entitlement to the benefits of bankruptcy: "[I]n the same breath that we have invoked this 'fresh start' policy, we have been careful to explain that the Act limits the opportunity for a completely unencumbered new beginning to the 'honest but unfortunate debtor.'" *Grogan*, 498 U.S. at 286-287. As this Court observed more than a century ago, the bankruptcy laws would "be defective if

[they] permitted the bankrupt to experiment with [them],—to so manage and use [their] provisions as to conceal his estate, deceive or keep his creditors in ignorance of his proceeding, without penalty to him." *Birkett* v. *Columbia Bank*, 195 U.S. 345, 350 (1904), *superseded in other part by* 11 U.S.C. § 523(a)(3). The Court has accordingly construed the Code to implement Congress's judgment that bankruptcy relief is intended for debtors who invoke those protections in good faith. *See, e.g.*, *Marrama*, 549 U.S. at 374 (interpreting Code provision to exclude a bad-faith debtor because he was "not a member of the class of honest but unfortunate debtors that the bankruptcy laws were enacted to protect" (internal quotation marks omitted)); *Grogan*, 498 U.S. at 286 (deeming it "unlikely" that Congress "would have favored the interest in giving perpetrators of fraud a fresh start over the interest in protecting victims of fraud").

2. Against this background, Section 522 should not be interpreted to create an absolute right to exempt property immune from appropriate court orders under Section 105(a); instead, bad-faith debtors such as Law who ignore exemption limits and attempt to defraud the court and creditors may forfeit that benefit. The statute provides that "an individual debtor *may* exempt" property specified under state or federal law, 11 U.S.C. § 522(b) (emphasis added), but nothing in the statute strips the court of its discretion under Section 105(a) to determine whether a debtor has forfeited that privilege by abusing the exemption process. Section 522(b) does no more than establish the procedure by which a debtor may seek to claim exemptions. The provision is not addressed to courts and contains no directive requiring them to allow a claim regardless of the circumstances.

Quite the contrary: Congress signaled that the privilege of exempting property under Section 522(b) is conditional by using the term "may exempt," rather than stronger language mandating that the debtor *shall* be entitled to do so in all instances. That drafting choice indicates that the privilege "is merely presumptive." *In re Marrama*, 430 F.3d 474, 478 (1st Cir. 2005), *aff'd*, 549 U.S. 365 (2007); *see also In re Marcakis*, 254 B.R. 77, 82 (Bankr. E.D.N.Y. 2000) ("simply put, 'shall' means 'must,' something mandatory, and 'may' connotes the permissive, the possible"). Had Congress intended to codify an absolute right to exemptions, it would have used mandatory language to confer that entitlement. *Compare* 11 U.S.C. § 503(b) ("After notice and a hearing, there *shall* be allowed administrative expenses * * * .") (emphasis added); *id.* § 506(b) ("To the extent that an allowed secured claim is secured by property the value of which * * * is greater than the amount of such claim, there *shall* be allowed to the holder of such claim, interest on such claim * * * .") (emphasis added).

In fact, Congress considered—and rejected—using mandatory language to establish an unqualified right to exemptions when it enacted Section 522. A predecessor bill drafted by the Commission on the Bankruptcy Laws to the United States directed that "[a]n individual debtor * * * *shall be allowed* exemptions of property as provided in this section." Report of the Commission on the Bankruptcy Laws of the United States, H.R. Doc. No. 93-137, pt. 11, at 125 (1973) (proposed § 4-503) (emphasis added). The Commission explained that this statute would create an "unqualified" right to exempt property that "is not forfeited by 'bad conduct' of the debtor." *Id.* at 128

(proposed § 4-503 note 2). Law prominently features this quote in his brief, Pet'r Br. 21, 34—but he does not grapple with (let alone acknowledge) that Congress *rejected* this unqualified language in favor of the conditional "may exempt" text that was actually enacted in Section 522. As the text and history of the Code demonstrate, Section 522 establishes a privilege for debtors in the ordinary case who "may exempt" property—but it does not guarantee that debtors may *always* do so, even if they abuse the exemption provisions and commit fraud upon the court.

3. The Court adopted exactly this interpretation when considering an identically structured provision of the Code in *Marrama*. Just as Section 522 states that a debtor "may exempt" property, the statute at issue in *Marrama* provides that a debtor "may convert a case" from Chapter 7 to Chapter 13 "at any time." 11 U.S.C. § 706(a). This Court held that "[n]othing in th[at] text * * * limits the authority of the court to take appropriate action in response to fraudulent conduct by the atypical litigant who has demonstrated that he is not entitled to the relief available to the typical debtor." *Marrama*, 549 U.S. at 374-375. *Marrama* accordingly held that bankruptcy courts have authority under Section 105(a) and their inherent sanctioning powers to find that bad-faith debtors forfeit their right to convert by attempting to abuse the conversion process. *Id.* at 375.

The same reasoning applies here. Bad-faith debtors like Law who claim exemptions while simultaneously abusing the bankruptcy process are not "members of the class of honest but unfortunate debtors that the bankruptcy laws were enacted to protect." *Id.* at 374. And "[n]othing in the text" of Section 522, which contemplates only that a debtor may exempt

property, and not that he shall always be permitted to do so, "limits the authority of the court to take appropriate action in response to fraudulent conduct by the atypical litigant" in "extraordinary cases." *Id.* at 374-375 & n.11. Because Section 522 does not confer an absolute right to exempt property, it does not foreclose equitable forfeiture.

B. Equitable Forfeiture Does Not Contradict Section 522's Provisions Regarding Prepetition Debts And Administrative Expenses.

Law contends that equitable forfeiture is "[d]irectly [c]ontrary [t]o" Sections 522(c) and 522(k), which "set forth a general rule that exempt property may not be used to satisfy a debtor's debts or the trustee's costs of administering the estate." Pet'r Br. 18-19. But this claim of conflict is illusory.

1. By their express terms, Sections 522(c) (for preexisting debts) and 522(k) (for administrative expenses) do not apply. They afford protection only to property that the bankruptcy court recognizes as "property exempted under [Section 522]." 11 U.S.C. § 522(c); *accord id.* § 522(k); *see also Owen*, 500 U.S. at 308. When a court issues an equitable forfeiture order based on a debtor's abuse of the bankruptcy proceedings, however, the property has *not* been exempted under Section 522—and so the necessary predicate to trigger these provisions is absent.

This conclusion flows from a straightforward application of Section 105(a) and Section 522(*l*), which specifies that "[u]nless a party in interest objects, the property claimed as exempt * * * is exempt." While Section 522(*l*) "provide[s] for the raising of an issue by a party in interest," it cannot, under Section

105(a), be "construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate * * * to prevent an abuse of process"—including rejecting a claim to an exemption to counter a debtor's extraordinary misconduct in seeking to retain non-exempt assets. *See Taylor* v. *Freeland & Kronz*, 503 U.S. 638, 645 (1992) (acknowledging, but taking no position on, bankruptcy courts' reliance on Section 105 to "permit[] [them] to disallow exemptions not claimed in good faith" even when a party in interest fails to timely object). As Justice Souter observed in *Malley*, a bankruptcy court is not obligated to "recognize[e] [property] as 'exempted under this section' when its exemption would consummate a fraud on creditors by giving the debtor a greater exemption in fact than the code entitles him to claim in law." 693 F.3d at 29. In this circumstance, an equitable forfeiture order means the property is *not* exempt under Section 522(*l*).

In short, Sections 522(c) and (k) do not conflict with an equitable forfeiture order because a bad-faith debtor who forfeits his ability to invoke Section 522's protections has not succeeded in "exempt[ing] property under th[at] section" at all.

2. Moreover, these provisions do not apply even in their particulars. Forfeited funds used to pay creditors represent only the value of *non-exempt* assets, posing no conflict with Section 522(c). And forfeited funds used to compensate the trustee for extraordinary litigation costs do not qualify as administrative expenses within the meaning of Section 522(k).

In some cases, a court issues an equitable forfeiture order because the debtor has succeeded in wrongly withholding non-exempt property. *See, e.g.*, *Latman*, 366 F.3d at 784-786. This is "tantamount to claiming

an additional and unauthorized exemption." *In re Price*, 384 B.R. at 411. Equitable forfeiture accordingly returns the value of those assets to the estate by finding that the debtor has forfeited an equal amount of property that would otherwise have qualified for exemption. Payments to creditors from these forfeited funds do not fall within Section 522(c) because the funds represent the value of—and stand in for—*non-exempt* assets. Equitable forfeiture restores all parties to the position they would have been in absent the debtor's misconduct: the debtor "retain[s] the full value, but no more than the full value, of [his] permitted exemptions," and creditors may claim "access to property in excess of that which is properly exempted under the Bankruptcy Code." *Latman*, 366 F.3d at 785, 786. Because equitable forfeiture in practical effect reimburses the estate for the wrongly withheld non-exempt assets, there is no conflict with Section 522(c).[9]

In other cases, a court issues an equitable forfeiture order because the estate has incurred substantial expenses in order to prevent the debtor from wrongly withholding non-exempt property. *See, e.g.*, *In re Onubah*, 375 B.R. at 554-556. In this situation, the order compensates the estate for the extraordi-

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[9] Section 522(c) does not preclude equitable forfeiture under any reasonable interpretation, but this Court does not have to consider that provision to uphold the forfeiture order in this case. That is because Section 522(c) shields exempt property from liability for "any debt of the debtor that arose * * * *before the commencement of the case*." 11 U.S.C. § 522(c) (emphasis added). Here, however, the funds will be used only for the extraordinary expenses incurred in exposing Law's fraudulent conduct *after* the case was filed. Section 522(c) accordingly does not apply by its terms.

nary costs occasioned by the debtor's misconduct—costs that would not have been necessary had the debtor not attempted to sabotage the operation of the Code's distribution scheme. Equitable forfeiture in this circumstance does not violate Section 522(k) because the costs incurred by the estate in exposing and stopping a debtor's fraud do not qualify as "administrative expenses" as contemplated by that provision. The Code defines "administrative expenses" as "the actual, *necessary* costs and expenses of preserving the estate," 11 U.S.C. § 503(b)(1)(A) (emphasis added)—but the expenses compensated by equitable forfeiture would have been wholly *unnecessary* but for the debtor's bad faith. *See In re Swanson*, 207 B.R. at 81; *In re Nolan*, 2013 WL 3153849. Section 522(k) protects exempted property from being used to pay ordinary administrative expenses like the routine costs of liquidating assets, but it does not immunize debtors from paying for extraordinary expenses occasioned by abusive litigation conduct that unnecessarily drains the estate of value.[10] Accord-

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[10] Once the debtor attempts to abuse the exemption provisions, the trustee is duty-bound to safeguard the estate from that misconduct, and so the expenses incurred in defending against that fraud become necessary for purposes of paying for the services rendered. But for purposes of applying Section 522(k), which is intended to protect exempt property from the unavoidable administrative expenses that accrue in each and every case, the litigation costs occasioned by the debtor's misconduct can in no sense be characterized as necessary. *See Swanson*, 207 B.R. at 81 ("The expenses [incurred to address a debtor's misconduct] may be administrative expenses as between the estate and the persons who rendered services * * * , but they are not administrative expenses as between the estate and the debtors within the meaning of § 522(k).").

ingly, an equitable forfeiture order does not violate Section 522(k).

* * *

When a debtor fraudulently attempts to retain more property than Section 522 permits and forces a trustee to incur unnecessary expenses to protect the court and creditors from that fraud, equitable forfeiture does not encroach on any interest safeguarded by Sections 522(c) and 522(k). Because Law cannot force-fit the facts of this case into these provisions, he cannot show that equitable forfeiture contravenes the Code.

C. Section 522 Does Not Implicitly Prohibit Equitable Forfeiture.

Unable to demonstrate that equitable forfeiture directly contradicts any provision in Section 522, Law resorts to negative inference: Section 522 *implicitly* strips bankruptcy courts of discretion to find forfeiture of exemptions when debtors abuse those provisions, Law contends, because Congress has over the years enacted a handful of provisions limiting exemptions in *other* circumstances. Relying on a pastiche of interpretive canons, Law maintains that the circumstances addressed by the specific provisions in Section 522 constitute the *only* occasions when exemptions may be limited. Pet'r Br. 23-28. But none of the canons Law cites properly applies here.

1. a. Law invokes the canon that "the specific governs the general" to argue that "[t]he terms of the specific" provisions in Section 522 circumscribing exemptions in certain situations "must be complied with" over the general power granted by Section 105. *RadLAX Gateway Hotel, LLC* v. *Amalgamated Bank*, 132 S. Ct. 2065, 2071 (2012). The "general/specific"

canon applies, however, when the circumstances of the case implicate *both* statutory enactments. *See id.* at 2072. In other words, it is triggered only when the case "fall[s] within the ambit of the more specific provision." *Marx* v. *General Revenue Corp.*, 133 S. Ct. 1166, 1178 (2013) (internal quotation marks and alteration omitted). In that situation, even though the general provision "in its most comprehensive sense, would include what is embraced in the [specific provision], the particular enactment must be operative." *RadLAX*, 132 S. Ct. at 2071 (quoting *United States* v. *Chase*, 135 U.S. 255, 260 (1890)).

But this case does not "fall within the ambit of [any] specific provision" in Section 522. *Marx*, 133 S. Ct. at 1178. Law himself recognizes this. *See* Pet'r Br. 25 ("[N]one of the exceptions codified by Congress in Section 522 applies in this case."). Permitting equitable forfeiture to address Law's egregious attempt to retain non-exempt equity in his home accordingly poses no risk that the specific provisions of Section 522 "will * * * be controlled or nullified by a general [enactment]." *Morton* v. *Mancari*, 417 U.S. 535, 550-551 (1974). Because there are no "specific" statutory terms to "compl[y] with" in this case, Section 105(a) continues to govern "the cases within its general language [that] are not within the provisions of the particular enactment." *RadLAX*, 132 S. Ct. at 2071 (internal quotation marks omitted); *see also United States* v. *Energy Res. Co.*, 495 U.S. 545, 549-550 (1990) (holding that a bankruptcy court had authority to issue an order under Section 105(a) because specific provisions the government pointed to "restrict[ing] [the] bankruptcy court's authority" did not address the particular circumstances at issue in the case). Given the absence of a relevant "specific" pro-

vision, the "general/specific" canon lends no support to Law's interpretation of Section 522.[11]

The statute at issue in *D. Ginsberg & Sons* v. *Popkin*, 285 U.S. 204 (1932), provides a useful contrast. *Ginsberg & Sons* concerned a "provision of the Bankruptcy Act [that] prescribed in great detail the procedures governing the arrest and detention of bankrupts about to leave the district to avoid examination." *RadLAX*, 132 S. Ct. at 2071 (describing case). It held that courts could not circumvent those carefully designed procedures by premising arrest on a general provision granting power to issue "necessary" orders. *See Ginsberg & Sons*, 285 U.S. at 206-208. That "general language" could not confer "additional authority in respect of arrests of bankrupts" because the "matter [was] *specifically dealt with* in another part of the same enactment." *Id.* at 208 (emphasis added). Permitting the court to bypass the procedures Congress had mandated "would violate the cardinal rule that, if possible, effect shall be given to every clause and part of a statute." *Id.*

Here, in contrast, no provision in Section 522 "specifically deal[s] with" a bankruptcy court's authority

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[11] That makes this case easily distinguished from *Guidry* v. *Sheet Metal Workers*, 493 U.S. 365 (1990). *Guidry* held that courts could not rely on a general power to issue "appropriate relief" to "overrid[e] an express, specific congressional directive that pension benefits not be subject to assignment or alienation." *Id.* at 376. In contrast, the Bankruptcy Code contains no "express, specific" provision directing that the privilege of exempting property cannot be forfeited; instead, Section 522 is structured just like the provision in *Marrama* that this Court held *permits* forfeiture. *See Marrama*, 549 U.S. at 374-375. Because no specific statutory enactment applies to the circumstances of this case, *Guidry*'s analysis is wholly inapplicable.

to counter a debtor's abuse of the exemption process by ordering forfeiture of the claim to an exemption. The bankruptcy court did not invoke a general power in efforts to avoid specific statutory prescriptions governing Law's misconduct because no specific provision addresses it. The bankruptcy court thus properly relied on the general provision of equitable powers in Section 105(a).[12]

b. Nor can Law establish that the use of equitable forfeiture to counter abuse of the exemption process results in "the superfluity of a specific provision that is swallowed by the general one." *RadLAX*, 132 S. Ct. at 2071. None of the specific enactments in Section 522 aim at a debtor who attempts to defraud the estate and abuse the bankruptcy proceedings by wrongly withholding non-exempt assets. Recognizing a court's authority to find forfeiture to remedy such abuse does not "swallow" statutory provisions that deal with entirely different situations; they remain fully operative as applied to the circumstances they address.

That conclusion carries even more force given that the specific provisions in Section 522 are *mandatory* limits on exemptions, whereas equitable forfeiture is a *discretionary* sanction. The specific provisions in

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[12] Law notes that the general provision at issue in *Ginsberg & Sons* was Section 105(a)'s predecessor, but he declines to mention that the modern Section 105(a) is a substantial departure from its predecessor. As previously noted, Section 105(a)'s predecessor did not refer to granting "appropriate" orders, nor did it mention "abuse[s] of process"; thus *Ginsberg & Sons* offers no guidance on how to interpret and apply Section 105's grant of authority for bankruptcy courts to "tak[e] any action * * * necessary or appropriate to * * * prevent an abuse of process."

Section 522 represent situations when Congress wanted exemptions to be limited automatically—and they have this effect notwithstanding the discretionary authority conferred by Section 105(a). For example, a bankruptcy court might not always exercise its discretion under Section 105(a) to limit exemptions in cases involving domestic support obligations, but Congress assured that result by enacting Section 522(c)(1). This provision and the others like it are not rendered superfluous by a bankruptcy court's discretionary authority to find forfeiture of exemptions because they tell a court what it *must* do in the specific circumstances they address. *Cf. Marx*, 133 S. Ct. at 1177 (noting that a provision is not redundant if Congress intended it to "remove doubt" about specific circumstances).

In enacting these provisions mandating limits on exemptions in highly specific situations, Congress gave no reason to think it intended to otherwise displace bankruptcy courts' discretion to correct abuses of process. "[W]hen two statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *J.E.M. AG Supply, Inc.* v. *Pioneer Hi-Bred Int'l, Inc.*, 534 U.S. 124, 143-144 (2001) (internal quotation marks omitted). And "the unadorned words" of a broad grant of authority should not be construed as "in some way limited by implication" based on a narrower statutory provision when "giving effect to both * * * would not render one or the other wholly superfluous." *Connecticut Nat'l Bank* v. *Germain*, 503 U.S. 249, 253-254 (1992). In sum, the mandatory limits on exemptions in Section 522 and the discretionary authority to find equitable forfeiture of claims to exemptions in Section 105(a)

play different roles in the statutory scheme—with neither substituting for or supplanting the other.

2. Law also relies on the tenet that "[w]here Congress explicitly enumerates certain exceptions to a general prohibition, additional exceptions are not to be implied, in the absence of evidence of a contrary legislative intent." *Hillman* v. *Maretta*, 133 S. Ct. 1943, 1953 (2013). But his reliance on that canon proceeds from the mistaken premise that there exists a general prohibition on a bankruptcy court's ability to order forfeiture of claims to exemptions. As already noted, Section 522 does not create an unqualified right to exempt property. *See supra*, at 34-38. Thus, the provisions that limit protection for exempted assets provide no insight into—and no restriction on—whether a court should recognize those assets as properly exempted in the first place. In short, Law's argument is "circular" because it "assumes that [a specific statutory provision] is an exception to a [general] bar," when the "question, after all, is whether [there] is in fact a bar." *Barnhart* v. *Peabody Coal Co.*, 537 U.S. 149, 167 (2003).

Law cannot escape this conclusion by emphasizing that a handful of provisions in Section 522 limiting protection for exempt assets address specific instances of debtor misconduct. Pet'r Br. 28-36. This Court does "not read the enumeration of one case to exclude another unless it is fair to suppose that Congress considered the unnamed possibility and meant to say no to it," *Barnhart*, 537 U.S. at 168—and that is not a fair inference here. Nothing in the text or history of the Code signals Congress's intent for those provisions to occupy the field of possible limitations on exemptions. The more reasonable inference is that Congress was focused on finding solutions to particu-

lar problems, with no intent to condemn a bankruptcy court's discretionary authority to issue necessary or appropriate orders addressing *different* problems.

Law spills considerable ink discussing Sections 522(*o*) and 522(q), which cap a debtor's homestead exemption based on specified pre-petition misconduct. But these provisions did not exist when Law filed for bankruptcy in January 2004—so they say nothing about the propriety of the equitable forfeiture order issued here, which must be measured against the version of the Code that governs this case. Indeed, Congress specifically declined to make Sections 522(*o*) and 522(q) applicable to pending cases. Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, § 1501(b)(2), 119 Stat. 23, 216. Thus, even if this Court indulged Law's supposition that Congress intended the misconduct provisions in BAPCPA to constitute the sole circumstances when exemptions may be restricted on the basis of fraud, that displacement of Section 105 and of the court's inherent authority would govern only post-BAPCPA cases.

But even if those provisions applied to this case, Law's argument is inherently flawed. Congress enacted Sections 522(*o*) and 522(q) along with a slate of other reforms to "restrict[] the so-called 'mansion loophole,' " under which wealthy debtors could take advantage of state laws providing for unlimited homestead exemptions to shield "virtually all of the equity in their homes." H.R. Rep. No. 109-31, at 15-16. Law rightly points out that these provisions were "delicately compromised." Pet'r Br. 32 (quoting 151 Cong. Rec. 3038 (statement of Sen. Grassley)). Some members of Congress "offered amendments that would have placed an overall limit on State

homestead exemptions, or repealed State opt-out." H.R. Rep. No. 109-31, at 591. Others "objected strenuously to a Federal ceiling preempting their States' unlimited exemptions" and "agreed to the provision only when it was modified to its current version, in which the Federal cap applies only to people engaging in fraud and people who purchase property shortly before filing for bankruptcy." *See* 151 Cong. Rec. S1892 (statement of Sen. Feingold).

What is missing entirely from the compromise, however, is any indication that Congress meant to address fraud outside the context of generous state homestead provisions or supplant a court's authority to correct abuse of the bankruptcy proceedings through equitable forfeiture. In enacting Sections 522(*o*) and 522(q), Congress was not attempting to set forth all the permissible limitations on exemptions; it was simply closing a particular loophole. There is no indication that Congress considered the propriety of forfeiture to address Law's misconduct "and meant to say no to it"; instead, this "is nothing more than a case unprovided for." *Barnhart*, 537 U.S. at 169.

3. In any event, the canons Law invokes are simply "indication[s] of statutory meaning that can be overcome by textual indications that point in the other direction," *RadLAX*, 132 S. Ct. at 2072—and there is ample indication that Congress did not intend the specific provisions in Section 522 to constitute the sole situations when exemptions may be limited.

First, Section 522(b)(2) authorizes states to opt out of the federal exemption scheme and instead set exemptions—and the limits on exemptions—as a matter of state law so long as there is no direct conflict with any provision of the Code. As this Court has

explained, "[n]othing in subsection (b) (or elsewhere in the Code) limits a state's power to restrict the scope of its exemptions; indeed, it could theoretically accord no exemptions at all." *Owen*, 500 U.S. at 308. Congress's endorsement of state opt outs indicates that it did not intend Section 522 to provide a comprehensive scheme of limitations on exemptions.

Second, the provisions on which Law relies are scattered throughout Section 522 and were enacted at different times by different Congresses—which belies any notion that they are intended to work together as an exhaustive legislative pronouncement on how exemptions may be restricted. *See, e.g.*, *Perlin* v. *Hitachi Capital Am. Corp.*, 497 F.3d 364, 370 (3d Cir. 2007) (declining to reason by negative inference from provisions of Bankruptcy Code enacted at different times because there was no indication Congress intended them to "go hand in hand" (internal quotation marks omitted)). Some of the provisions Law cites were enacted 35 years ago as part of the Bankruptcy Reform Act of 1978, 92 Stat. 2590. *See* 11 U.S.C. § 522(k)(1), (k)(2). Others were amended to their current language by the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, § 453(b), 98 Stat. 333, 375. *See* 11 U.S.C. § 522(c)(2)(A), (c)(2)(B). Still others did not appear in the Code until 1990. *See* 11 U.S.C. § 522(c)(3) (added by Crime Control Act of 1990, Pub. L. No. 101-647, § 2522(b), 104 Stat. 4789, 4866). Others were enacted in 2000. *See* 11 U.S.C. § 522(c)(4) (added by College Scholarship Fraud Prevention Act of 2000, Pub. L. No. 106-420, § 4, 114 Stat. 1867, 1868). And, as discussed, Congress most recently added additional limitations on exemptions as part of BAPCPA, 119 Stat. 55, 81-82, 96-97. *See*

11 U.S.C. § 522(c)(1), (*o*)(1), (*o*)(2), (*o*)(3), (*o*)(4), (p)(1)(A), (p)(1)(B), (p)(1)(C), (p)(1)(D), (q)(1)(A), (q)(1)(B)(i), (q)(1)(B)(ii), (q)(1)(B)(iii), (q)(1)(B)(iv).

Cobbling these provisions together, Law argues they constitute the exclusive universe of limitations on exemptions. But that is not a fair inference. The history of the provisions suggests that Congress was focused on addressing discrete problems at discrete points in time, with no broader ambition to legislate globally about forfeiture of exemptions. *See Varity Corp.*, 516 U.S. at 511 (interpreting ERISA provision as "reflecting a special congressional concern" with the subject matter of the provision, without necessarily "intend[ing] that section to contain the exclusive set of remedies for every kind of fiduciary breach").

Third, bankruptcy courts have long exercised their authority to address abuses of the exemption process, *see supra* at 32, and Congress gave no indication it intended to displace that power in enacting Section 522. This Court does not generally rely on negative implication to depart from historical bankruptcy practice or to read limitations into a court's inherent authority. *See Hamilton*, 130 S. Ct. at 2473; *Chambers*, 501 U.S. at 47. Because nothing in Section 522's text or history affirmatively suggests that Congress intended to foreclose a court's ability to protect the integrity of the bankruptcy process through equitable forfeiture, the Court should conclude that this discretionary remedy remains available.

* * *

Law's suggestion that Section 522 implicitly precludes equitable forfeiture is not just incorrect, but also ironic, given that a debtor who abuses those

provisions by fraudulently attempting to retain more than they permit is himself "improperly upset[ting] the careful legislative balance reflected in Section 522." Pet'r Br. 23. Equitable forfeiture is a necessary and appropriate remedy to right this wrong—and nothing in Section 522 says otherwise.

III. THE EXISTENCE OF PUNITIVE MEASURES UNDER THE CODE DOES NOT PRECLUDE EQUITABLE FORFEITURE.

Law contends that other provisions penalizing misconduct in bankruptcy proceedings "are the sanctions that Congress chose to rely upon in lieu" of equitable forfeiture. Pet'r Br. 42. But once again, his reasoning by negative inference falls flat. The fact that other provisions of the Code penalize a debtor for his misconduct does not abrogate a bankruptcy court's power to order other appropriate relief when it deems the enumerated penalties inadequate. Law must point to "a much clearer expression of purpose" than the mere existence of other sanctions to demonstrate congressional intent to disapprove equitable forfeiture. *Link*, 370 U.S. at 631-632.

Tellingly, Law never explains how his reasoning squares with this Court's decision in *Chambers*. There, the Court made clear that courts are not "forbidden to sanction bad-faith conduct by means of the inherent power simply because that conduct could also be sanctioned under the statute or the Rules. * * * [I]f in the informed discretion of the court, neither the statute nor the Rules are up to the task, the court may safely rely on its inherent power." 501 U.S. at 50.

None of the other penalties Law points to are "up to the task" of fully remedying a debtor's fraudulent at-

tempt to retain non-exempt property. As previously discussed, *see supra* at 21, remedies such as a denial of discharge or criminal sanctions may punish a debtor for misconduct, but they "add nothing to the pot for listed creditors, who would otherwise bear the brunt of the fraud." *Malley*, 693 F.3d at 30. As such, they do not make the victims of the fraud whole, nor do they attempt to do so. Moreover, they are qualitatively different than the equitable forfeiture imposed here, which is designed to protect the integrity of the proceedings and help ensure the Trustee does not pay out of pocket for fulfilling his duty to expose and prevent fraud. *See Latman*, 366 F.3d at 783 (denial of discharge and equitable forfeiture "serve[] separate purposes and [ar]e aimed at enforcing distinct rights under the Bankruptcy Code").[13]

Similarly, monetary sanctions under Rule 9011 or the civil contempt power are not always adequate to redress abuse of the exemption provisions. Many debtors are judgment-proof, making any such order a hollow remedy. And even if the estate *could* eventually collect from the debtor, there is no reason to think Congress intended to delay access to that remedy or impose additional cumbersome procedures be-

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[13] Law argues that "[i]f Congress had wanted to deprive a debtor of exempt property simply upon a showing that a denial of discharge was warranted, it would have said so." Pet'r Br 34-35. But once again, his attempt to reason by negative inference is unavailing. Although a debtor may be able to exempt property even if he is denied a discharge, nothing in the Code mandates that he must *always* be able to do so. Congress properly left it to bankruptcy courts to determine in their discretion on a case-by-case basis when gross abuse of the bankruptcy proceedings warrants the equitable forfeiture of a claim to an exemption—either instead of, or in addition to, a denial of discharge.

fore granting relief. Notably, the debtor's post-petition assets would not be protected against this kind of sanction, which could be used to attach a lien to a debtor's assets, including any dwelling purchased with the homestead exemption. Section 105(a) and the court's inherent powers are "surely adequate to authorize the immediate" forfeiture of claims to exemptions "in lieu of a[n] * * * order that merely postpones the allowance of equivalent relief and may provide a debtor with an opportunity to take action prejudicial to creditors." *Marrama*, 549 U.S. at 375; *see also, e.g.*, *In re Piazza*, 719 F.3d 1253, 1262 (11th Cir. 2013) (Because "[b]ad-faith bankruptcy filings significantly burden the legal system in general and bankruptcy courts in particular," courts "should not artificially limit the tools Congress has given bankruptcy judges to protect their jurisdictional integrity." (internal quotation marks omitted)).

In resisting this conclusion, Law relies on *Taylor* v. *Freeland & Kronz*, 503 U.S. 638 (1992), and *United Student Aid Funds Inc.* v. *Espinosa*, 559 U.S. 260 (2010)—but the analysis in those cases is inapplicable here. In both *Taylor* and *Espinosa*, this Court declined to "depart[] from the [Code's] statutory text," Pet'r Br. 39, based on policy concerns about creating improper incentives for debtors, *see Taylor*, 503 U.S. at 642-644; *Espinosa*, 559 U.S. at 273-275, 278-279. Unlike the petitioners in *Taylor* and *Espinosa*, the Trustee here is not asking this Court to "depart[] from the statutory text" to combat "improper incentives," Pet'r Br. 39; instead, he is asking the Court to *rely on* the statutory text in Section 105(a), as well as a bankruptcy court's inherent authority, to uphold the court's power to combat actual fraud and abuse.

Law is therefore wrong to suggest that Congress needs to "amend the Code" every time a debtor devises a new way to undermine the bankruptcy system. Pet'r Br. 42. Congress codified the court's broad equitable authority in Section 105(a) precisely to give the court the flexibility and power to respond in kind.

* * *

This case provides a perfect illustration of why bankruptcy courts must have the flexibility to order equitable forfeiture: The debtor here behaved so egregiously that the remedies Law points to are wholly inadequate. When a debtor subverts the bankruptcy process in this manner, forfeiture of the privilege of exemptions becomes not only appropriate to carry out the provisions of the Code, but necessary to prevent an abuse of process and to protect the integrity of the courts. The bankruptcy court therefore did not err when it determined that Law had forfeited his claim to a homestead exemption. Forfeiture was the only remedy capable of redressing the harm produced by Law's misconduct.

CONCLUSION

For the foregoing reasons, the judgment of the Ninth Circuit should be affirmed.

Respectfully submitted,

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ADDENDUM

STATUTORY ADDENDUM

§ 522. Exemptions

(a) In this section—

(1) "dependent" includes spouse, whether or not actually dependent; and

(2) "value" means fair market value as of the date of the filing of the petition or, with respect to property that becomes property of the estate after such date, as of the date such property becomes property of the estate.

(b) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate the property listed in either paragraph (1) or, in the alternative, paragraph (2) of this subsection. In joint cases filed under section 302 of this title and individual cases filed under section 301 or 303 of this title by or against debtors who are husband and wife, and whose estates are ordered to be jointly administered under Rule 1015(b) of the Federal Rules of Bankruptcy Procedure, one debtor may not elect to exempt property listed in paragraph (1) and the other debtor elect to exempt property listed in paragraph (2) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (1), where such election is permitted under the law of the jurisdiction where the case is filed. Such property is—

(1) property that is specified under subsection (d) of this section, unless the State law that is applicable to the debtor under paragraph (2)(A) of this subsection specifically does not so authorize; or, in the alternative,

(2)(A) any property that is exempt under Federal law, other than subsection (d) of this section, or State or local law that is applicable on the date of the filing of the petition at the place in which the debtor's domicile has been located for the 180 days immediately preceding the date of the filing of the petition, or for a longer portion of such 180-day period than in any other place; and

(B) any interest in property in which the debtor had, immediately before the commencement of the case, an interest as a tenant by the entirety or joint tenant to the extent that such interest as a tenant by the entirety or joint tenant is exempt from process under applicable nonbankruptcy law.

(c) Unless the case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except—

(1) a debt of a kind specified in section 523(a)(1) or 523(a)(5) of this title;

(2) a debt secured by a lien that is—

(A)(i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and

(ii) not void under section 506(d) of this title; or

(B) a tax lien, notice of which is properly filed;

(3) a debt of a kind specified in section 523(a)(4) or 523(a)(6) of this title owed by an in-

stitution-affiliated party of an insured depository institution to a Federal depository institutions regulatory agency acting in its capacity as conservator, receiver, or liquidating agent for such institution; or

(4) a debt in connection with fraud in the obtaining or providing of any scholarship, grant, loan, tuition, discount, award, or other financial assistance for purposes of financing an education at an institution of higher education (as that term is defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)).

(d) The following property may be exempted under subsection (b)(1) of this section:

(1) The debtor's aggregate interest, not to exceed $15,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's interest, not to exceed $2,400 in value, in one motor vehicle.

(3) The debtor's interest, not to exceed $400 in value in any particular item or $8,000 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.

(4) The debtor's aggregate interest, not to exceed $1,000 in value, in jewelry held primarily

for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest in any property, not to exceed in value $800 plus up to $7,500 of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed $1,500 in value, in any implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor.

(7) Any unmatured life insurance contract owned by the debtor, other than a credit life insurance contract.

(8) The debtor's aggregate interest, not to exceed in value $8,000 less any amount of property of the estate transferred in the manner specified in section 542(d) of this title, in any accrued dividend or interest under, or loan value of, any unmatured life insurance contract owned by the debtor under which the insured is the debtor or an individual of whom the debtor is a dependent.

(9) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(10) The debtor's right to receive—

(A) a social security benefit, unemployment compensation, or a local public assistance benefit;

(B) a veterans' benefit;

(C) a disability, illness, or unemployment benefit;

(D) alimony, support, or separate maintenance, to the extent reasonably nec-

essary for the support of the debtor and any dependent of the debtor;

(E) a payment under a stock bonus, pension, profitsharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor, unless—

(i) such plan or contract was established by or under the auspices of an insider that employed the debtor at the time the debtor's rights under such plan or contract arose;

(ii) such payment is on account of age or length of service; and

(iii) such plan or contract does not qualify under section 401(a), 403(a), 403(b), or 408 of the Internal Revenue Code of 1986.

(11) The debtor's right to receive, or property that is traceable to—

(A) an award under a crime victim's reparation law;

(B) a payment on account of the wrongful death of an individual of whom the debtor was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor;

(C) a payment under a life insurance contract that insured the life of an individual of whom the debtor was a dependent on the date of such individual's death, to the extent

reasonably necessary for the support of the debtor and any dependent of the debtor;

(D) a payment, not to exceed $15,000, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

(E) a payment in compensation of loss of future earnings of the debtor or an individual of whom the debtor is or was a dependent, to the extent reasonably necessary for the support of the debtor and any dependent of the debtor.

(e) A waiver of an exemption executed in favor of a creditor that holds an unsecured claim against the debtor is unenforceable in a case under this title with respect to such claim against property that the debtor may exempt under subsection (b) of this section. A waiver by the debtor of a power under subsection (f) or (h) of this section to avoid a transfer, under subsection (g) or (i) of this section to exempt property, or under subsection (i) of this section to recover property or to preserve a transfer, is unenforceable in a case under this title.

(f)(1)Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is—

(A) a judicial lien, other than a judicial lien that secures a debt—

(i) to a spouse, former spouse, or child of the debtor, for alimony to, maintenance for, or support of such spouse or child, in connection with a separation agreement, divorce decree or other order of a court of record, determination made in accordance with State or territorial law by a governmental unit, or property settlement agreement; and

(ii) to the extent that such debt—

(I) is not assigned to another entity, voluntarily, by operation of law, or otherwise; and

(II) includes a liability designated as alimony, maintenance, or support, unless such liability is actually in the nature of alimony, maintenance or support[]; or

(B) a nonpossessory, nonpurchase-money security interest in any—

(i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(iii) professionally prescribed health aids for the debtor or a dependent of the debtor.

(2)(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of—

(i) the lien;

(ii) all other liens on the property; and

(iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor's interest in the property would have in the absence of any liens.

(B) In the case of a property subject to more than 1 lien, a lien that has been avoided shall not be considered in making the calculation under subparagraph (A) with respect to other liens.

(C) This paragraph shall not apply with respect to a judgment arising out of a mortgage foreclosure.

(3) In a case in which State law that is applicable to the debtor—

(A) permits a person to voluntarily waive a right to claim exemptions under subsection (d) or prohibits a debtor from claiming exemptions under subsection (d); and

(B) either permits the debtor to claim exemptions under State law without limitation in amount, except to the extent that the debtor has permitted the fixing of a consensual lien on any property or prohibits avoidance of a consensual lien on property other-

wise eligible to be claimed as exempt property;

the debtor may not avoid the fixing of a lien on an interest of the debtor or a dependent of the debtor in property if the lien is a nonpossessory, nonpurchase-money security interest in implements, professional books, or tools of the trade of the debtor or a dependent of the debtor or farm animals or crops of the debtor or a dependent of the debtor to the extent the value of such implements, professional books, tools of the trade, animals, and crops exceeds $5,000.

(g) Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee recovers under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

(1)(A) such transfer was not a voluntary transfer of such property by the debtor; and

(B) the debtor did not conceal such property; or

(2) the debtor could have avoided such transfer under subsection (f)(2) of this section.

(h) The debtor may avoid a transfer of property of the debtor or recover a setoff to the extent that the debtor could have exempted such property under subsection (g)(1) of this section if the trustee had avoided such transfer, if—

(1) such transfer is avoidable by the trustee under section 544, 545, 547, 548, 549, or 724(a) of

this title or recoverable by the trustee under section 553 of this title; and

(2) the trustee does not attempt to avoid such transfer.

(i)(1)If the debtor avoids a transfer or recovers a setoff under subsection (f) or (h) of this section, the debtor may recover in the manner prescribed by, and subject to the limitations of, section 550 of this title, the same as if the trustee had avoided such transfer, and may exempt any property so recovered under subsection (b) of this section.

(2) Notwithstanding section 551 of this title, a transfer avoided under section 544, 545, 547, 548, 549, or 724(a) of this title, under subsection (f) or (h) of this section, or property recovered under section 553 of this title, may be preserved for the benefit of the debtor to the extent that the debtor may exempt such property under subsection (g) of this section or paragraph (1) of this subsection.

(j) Notwithstanding subsections (g) and (i) of this section, the debtor may exempt a particular kind of property under subsections (g) and (i) of this section only to the extent that the debtor has exempted less property in value of such kind than that to which the debtor is entitled under subsection (b) of this section.

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

(1) the aliquot share of the costs and expenses of avoiding a transfer of property that the debtor exempts under subsection (g) of this section, or of recovery of such property, that is at-

tributable to the value of the portion of such property exempted in relation to the value of the property recovered; and

(2) any costs and expenses of avoiding a transfer under subsection (f) or (h) of this section, or of recovery of property under subsection (i)(1) of this section, that the debtor has not paid.

(l) The debtor shall file a list of property that the debtor claims as exempt under subsection (b) of this section. If the debtor does not file such a list, a dependent of the debtor may file such a list, or may claim property as exempt from property of the estate on behalf of the debtor. Unless a party in interest objects, the property claimed as exempt on such list is exempt.

(m) Subject to the limitation in subsection (b), this section shall apply separately with respect to each debtor in a joint case.