No. 12-5196

IN THE

Supreme Court of the United States

STEPHEN LAW,

Petitioner,

v.

ALFRED SIEGEL, TRUSTEE,

Respondent.

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

BRIEF OF PETITIONER

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QUESTION PRESENTED

Section 522 of the Bankruptcy Code allows debtors to exempt certain property – such as the debtor's homestead – from distribution in the bankruptcy estate. Section 522 expressly states that exempted property may not be used to satisfy "any debt" or "administrative expense." 11 U.S.C. § 522(c), (k). Section 522 further enumerates in exhaustive detail certain exceptions to the debtor's right to exempt property. *See, e.g.*, *id.* § 522(c)(1)–(4), (k)(1)–(2), (o)(1)–(4), (p)(1)(A)–(D), (q)(1)(A)–(B).

In this case, the bankruptcy court acknowledged that Petitioner was entitled to a $75,000 homestead exemption under Section 522, but nonetheless eliminated Petitioner's exemption to make the $75,000 available to pay the administrative expenses of the Trustee and his counsel. The bankruptcy court justified its order as a matter of equity because it found that Petitioner had engaged in misconduct during the bankruptcy proceedings that increased the estate's administrative expenses.

The equitable power of the bankruptcy court is codified at Section 105 of the Code, which states that a bankruptcy court may take any action "necessary or appropriate to carry out the provisions" of the Code. 11 U.S.C. § 105(a).

The question presented is whether Section 105 empowers a bankruptcy court to eliminate an exemption that Section 522 guarantees to the debtor.

PARTIES TO THE PROCEEDING

The Petitioner is Stephen Law.

The Respondent is the Trustee of Petitioner's bankruptcy estate, Alfred Siegel.

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JURISDICTION

The Ninth Circuit's judgment was entered on June 6, 2011. A timely petition for rehearing en banc was denied on April 18, 2012. J.A. 50a. The petition was timely filed on July 5, 2012. This Court's jurisdiction rests on 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The primary statutory provisions involved in this case are Sections 105(a) and 522 of the Bankruptcy Code, which are reprinted in an appendix at the end of this brief.

STATEMENT OF THE CASE

Section 522 of the Bankruptcy Code authorizes a debtor to exempt certain property from the bankruptcy estate "under . . . State or local law," so that the debtor is entitled to retain the property even if creditors remain unsatisfied. *See* 11 U.S.C. § 522. The purpose of exemptions is to allow debtors to emerge from bankruptcy with sufficient minimal property – such as their

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[1] Due to Petitioner's *in forma pauperis* status, the petition appendix in this case was not filed in booklet form. All materials from that appendix are reprinted for the Court's convenience in the joint appendix pursuant to Rule 26.1.

homesteads – that they might make a fresh start and not be left wards of the state. Accordingly, Congress has specified that exempt property may not be used to satisfy the claims of creditors except in a narrow set of enumerated circumstances. *See* 11 U.S.C. § 522(c), (k). These exceptions generally do not deprive a debtor of all exempt property even where the debtor has engaged in egregious wrongdoing. *See, e.g.*, 11 U.S.C. § 522(q)(1)(A) (capping homestead exemption at $155,675 where debtor is convicted of felony bankruptcy fraud).

In this case, the bankruptcy court acknowledged that Section 522 entitled Petitioner to a $75,000 exemption for his homestead under California law. But the court nonetheless held that Petitioner's homestead exemption should be eliminated and the property made available to "Debtor's creditors, including Trustee and his attorneys," because the court found that Petitioner had engaged in misconduct during his bankruptcy proceedings. J.A. 97a.

The bankruptcy court relied on the purported equitable authority vested in it by Section 105 of the Code. Section 105 provides that a bankruptcy court may take action "necessary or appropriate to carry out the provisions" of the Code. 11 U. S. C. § 105(a). The bankruptcy court's order plainly exceeded its authority under Section 105. Congress could have chosen to premise a debtor's entitlement to exemptions on equitable considerations, but it instead determined that even culpable debtors should not be left penniless after bankruptcy, and that those debtors would be subject to other sanctions. When the bankruptcy court substi-

tuted its own contrary judgment and eliminated Petitioner's exemption, it contravened rather than carried out the Code. This Court should reaffirm that "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code," *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988), and reverse the order of the bankruptcy court.

A. Petitioner's Bankruptcy Filing

Petitioner Stephen Law, a California resident, declared bankruptcy on January 5, 2004. His primary asset was his house, which he listed as having a value of $363,348. S.A. 4a (Schedule A).[2] Relying on California's homestead exemption, Cal. Civ. Proc. Code § 704.730(b), Petitioner claimed that his equity in the home up to $75,000 was exempt from the bankruptcy estate.[3] S.A. 8a (Schedule C). The Trustee did not ob-

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[2] Oversize documents designated for the joint appendix are contained in a supplemental appendix denoted as "S.A. ___."

[3] As discussed below, *see infra* p. 18 n.5, the Bankruptcy Code both sets forth a series of exemptions defined by federal law, and allows each state to create its own exemptions. Some states, like Florida, permit an unlimited homestead exemption. *See* FLA. CONST. art. X, § 4(a). Other states, like Pennsylvania, permit debtors to take advantage of the federal homestead exemption, *see Allan v. Putnam Cnty. Nat'l Bank* (*In re Allan*), 431 B.R. 580, 583 (Bankr. M.D. Pa. 2010), which is currently $22,975, 11 U.S.C. § 522(d)(1); *see* Revision of Certain Dollar Amounts in the Bankruptcy Code Prescribed Under Section 104(a) of the Code, 78 Fed. Reg. 12,089, 12,090 (Feb. 21, 2013) (adjusting dollar amount pursuant to 11 U.S.C. § 104(a)). In California, a single debtor may claim up to $75,000 of value in a homestead as exempt. Individuals 65 years

ject to Petitioner's claimed homestead exemption, and the time for doing so expired.

Petitioner's bankruptcy petition identified a 1999 tort judgment of $188,505.05 owed to Cau Min Li as his primary debt. The petition further stated that his house was subject to two mortgages. According to the petition, Petitioner owed $147,156.52 on his first mortgage, issued by Washington Mutual Bank, in Los Angeles, California; and he owed $156,929.04 on his second mortgage, issued by Lin's Mortgage & Associates, in Guangzhou, China. S.A. 9a (Schedule D). In concert with Petitioner's $75,000 homestead exemption, the liens, which totaled more than $300,000, meant that there would be no excess funds to the pay the estate's creditors in the event that the house sold for its estimated value of $363,468.

When the Trustee put Petitioner's home up for auction, pursuant to a court order of February 17, 2006, it sold for $680,000. J.A. 138a. The Trustee then entered into a court-approved settlement with Cau Min Li, who was the only creditor who timely filed a proof of claim. Under the settlement, the Trustee agreed to pay Mr. Li $120,000, and Mr. Li agreed to waive further claims against the estate. J.A. 13a (Docket entry No. 142). Mr. Li's $120,000 settlement was paid in full from the proceeds from the sale of the house. *See In re Law*, No. 2:04-bk-10052-TD (Bankr. C.D. Cal. June 17, 2009), ECF No. 354.

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and older may claim up to $175,000. Cal. Civ. Proc. Code §§ 704.710(c), 704.730.

B. The Surcharge Litigation

The proceeds from the sale of the house thus should have been more than sufficient to cover Petitioner's debts, the costs of administering the estate, and Petitioner's homestead exemption. J.A. 138a. Instead, the entirety of the surplus was consumed by administrative expenses resulting from the Trustee's challenge to the existence of the second lien on the home. In proceedings in which Petitioner predominately represented himself *pro se*, Petitioner claimed that the second mortgage secured a $168,000 personal loan he received from a woman from China named Lili Lin. J.A. 83a–84a. Asserting that this second lien did not exist, however, the Trustee commenced an adversary proceeding and secured a default judgment against Lili Lin. J.A. 88a–89a. The default judgment was vacated when a woman from China purporting to be Lili Lin filed papers through counsel in court in support of the lien. J.A. 89a.

Yet another Lili Lin, residing in Artesia, California, subsequently filed an answer and entered into a stipulated judgment with the Trustee.[4] J.A. 89a. As part of that stipulation, Lin of Artesia testified that she was acquainted with Petitioner and that in 1999, five years before Petitioner declared bankruptcy, he had asked her to lend him money in exchange for taking a second mortgage on the home, and further asked her to foreclose on the home and transfer it to Petitioner's ex-wife.

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[4] Petitioner opposed this stipulated judgment, but the bankruptcy court held that Petitioner lacked standing and approved the stipulated judgment upon the Trustee's motion. *In re Law*, No. 2:04-bk-10052-TD (Bankr. C.D. Cal. June 17, 2009), ECF No. 74.

J.A. 64a–65a & n.9. Lin of Artesia testified that she had neither lent him money nor undertaken the transaction that she claimed he proposed. *Id.* Petitioner disputed Lin of Artesia's account and claimed that she was acting in retaliation against him because of a separate, small-claims dispute between the two of them. J.A. 88a n.20.

Based on the Lin dispute, the Trustee contended that Petitioner had made false statements regarding the Lin lien and successfully moved to deny Petitioner a discharge of his debts. J.A. 40a. The Trustee also moved to surcharge (*i.e.*, eliminate) Petitioner's $75,000 homestead exemption in order to make those funds available for payments to the Trustee from the bankruptcy estate. The Trustee's motion claimed that the surcharge was justified so that the Trustee could recoup some of the expenses it had incurred – mostly attorneys' fees – in litigating the existence of the Lin lien. J.A. 7a–8a (Docket entry No. 97), 140a. The bankruptcy court authorized the surcharge, finding that Petitioner's conduct was "the direct cause of the expenses that have been incurred by" the Trustee. J.A. 140a.

Petitioner appealed, and the Bankruptcy Appellate Panel (BAP) of the Ninth Circuit reversed in an opinion on December 29, 2006. J.A. 132a–152a. The BAP explained that under the Ninth Circuit's decision in *Latman v. Burdette*, 366 F.3d 774 (9th Cir. 2004), a bankruptcy court could exercise its equitable authority – found in Section 105 of the Code – to surcharge a debtor's exemptions where "exceptional circumstances" so warranted. J.A. 149a (quoting *Latman*, 366 F.3d at 786). But the BAP found that no such exceptional circumstances existed here because although "this case

presents instances of debtor misconduct . . . , the debtor was not hiding property." J.A. 150a. "[I]t is apparent," the BAP concluded, "that the debtor was not abusing his exemptions and that the trustee was not seeking to remedy such abuse." Instead, "the court was merely shifting litigation expenses to the debtor in a fashion designed to punish the debtor for his litigation activity." J.A. 151a. The BAP "express[ed] no opinion whether specific instances of mischief by the debtor" could support a surcharge, but held there was no basis for upholding the surcharge order on the record before it. *Id.*

The BAP's order reversing the surcharge led to further proceedings on remand. Petitioner moved for the immediate payment of his $75,000 homestead exemption. J.A. 18a (Docket entry No. 193). The bankruptcy court denied the motion, finding that it lacked jurisdiction because the Trustee was at that time appealing the BAP order reversing the surcharge to the Ninth Circuit (an appeal that was ultimately unsuccessful). J.A. 20a (Docket entry No. 204).

Petitioner again appealed, and again the BAP reversed the bankruptcy court. The BAP held that the Trustee's Ninth Circuit appeal did not deprive the bankruptcy court of jurisdiction to pay Petitioner's exemption. The Court explained that "[a]n unopposed homestead exemption is analogous to a judgment" and that "once the period to object to a claimed exemption expires . . . the property claimed as exempt is exempt." *In re Law*, BAP No. CC–07–1127–DKMo, 2007 WL 7545164, at *3 (9th Cir. BAP Oct. 5, 2007). The BAP reiterated that "although the debtor's conduct toward

the bankruptcy court and the trustee had been both resistant and antagonistic," there had been no showing that an "equitable surcharge of his homestead exemption was . . . appropriate." *Id.* at *2.

Meanwhile, in the bankruptcy court, the Trustee engaged in additional discovery regarding the existence of Lin of China, during which he took a deposition of Petitioner, who continued to represent himself *pro se*. *See* J.A. 35a (Docket entry No. 307). The Trustee again moved to surcharge the exemption, and the bankruptcy court again granted the motion. J.A. 29a–30a (Docket entry No. 268), 81a–97a.

In its order, the bankruptcy court made new factual findings that Petitioner had submitted "false evidence" to the court and had "been unable to produce persuasive, credible evidence substantiating the [Lin] loan in response to Trustee's discovery requests, motions, or otherwise." J.A. 85a. Based on those findings, the court invoked *Latman* and its equitable authority to surcharge Petitioner's exempt property on the ground that Petitioner's "misconduct amounts to a fraud on the court and the debtor's creditors." J.A. 83a. The court reasoned:

> Were Debtor to receive his homestead exemption, the financial consequences of Debtor's misconduct would fall most heavily upon Debtor's creditors, including Trustee and his attorneys. A surcharge must be levied to avoid this outcome. Because the actual costs to the estate far exceed $75,000 (the exemption to which Debtor otherwise would be entitled), I find that Deb-

> tor's homestead must be surcharged in its entirety.

J.A. 97a.

The result of the surcharge order was that Petitioner's $75,000 exemption was made available to pay the remaining claims against the estate, which consisted entirely of the Trustee's claims for administrative expenses. The bankruptcy court also entered a discovery sanction under Federal Rule of Bankruptcy Procedure 7037 in the amount of $3,520 against Petitioner for having initially refused to appear at a deposition. J.A. 63a.

C. Proceedings On Appeal

The BAP affirmed. The court acknowledged that "[t]he Bankruptcy Code does not expressly authorize surcharges against a debtor's exemptions." J.A. 68a. But citing *Latman*, the BAP held that the bankruptcy court could "equitably surcharge a debtor's statutory exemptions" even in the absence of express statutory authority. *Id.* The BAP distinguished the first surcharge order from the second on the ground that the second order was not intended to punish Petitioner for litigation tactics, but was based on findings that the "preponderance of the evidence" showed that the Lin lien did not exist despite Petitioner's contentions to the contrary. J.A. 74a & n.11. The BAP held that the bankruptcy court's factual findings were not clearly erroneous and that the bankruptcy court did not abuse its discretion in imposing an equitable surcharge pursuant to Section 105. J.A. 74a.

Judge Markell filed a concurring opinion. Acknowledging that the panel was bound by *Latman*, Judge Markell "question[ed] whether *Latman* remains good policy." J.A. 79a. He observed that "[a] leading treatise has . . . noted *Latman*'s outlier status." J.A. 80a (citing 2 *Collier on Bankruptcy* ¶ 105.02[5][b], at 105-30 n.130 (Henry J. Sommer & Alan Resnick eds., 16th ed. 2009)).

The Ninth Circuit affirmed. Relying on *Latman*, it concluded that "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." J.A. 52a.

Petitioner filed a petition for rehearing en banc, which was denied, J.A. 50a, and then timely filed a petition for certiorari to this Court, which was granted on June 17, 2013.

SUMMARY OF ARGUMENT

The bankruptcy court found that Petitioner's conduct warranted stripping him of his homestead exemption. But Congress did not commit a debtor's right to his homestead and other exempt property to the equitable discretion of bankruptcy courts. Instead, the Bankruptcy Code reflects Congress's longstanding policy judgment that a debtor's exempt property should be protected, even where the debtor has acted inequitably, so that the debtor and his dependents are not left wards of the state and may make a fresh start. Culpable debtors may properly be punished in other ways under the Code, but a court may not deprive a debtor of

exempt property, save in the narrow circumstances where Congress has specifically so authorized.

1. By its plain terms, Section 105 permits a bankruptcy court only to take action "necessary or appropriate to *carry out* the provisions" of the Code. 11 U.S.C. § 105(a) (emphasis added). In surcharging Petitioner's exemption, the bankruptcy court did not "carry out" the Code; it overrode the Code's express provisions. Section 522 states that "property exempted under this section is not liable . . . for any debt" or "any administrative expense," including the attorneys' fees at issue here. 11 U.S.C. § 522(c), (k). These exemptions – for such property as the debtor's homestead, retirement funds, and motor vehicle – reflect Congress's determination that a debtor should be able to emerge from bankruptcy with "the basic necessities of life" and not be "left destitute and a public charge." H.R. Rep. No. 95-595, at 126 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6087. When the bankruptcy court surcharged Petitioner's homestead exemption to compensate "Debtor's creditors, including Trustee and his attorneys," J.A. 97a, the court wrongly substituted its judgment for Congress's about whether a debtor is entitled to exempt property.

2. The bankruptcy court's error is particularly clear given that Congress has specified in exhaustive detail when otherwise exempt property *may* be used to satisfy claims. *See, e.g.*, 11 U.S.C. § 522(c)(1), (c)(2)(A), (c)(2)(B), (c)(3), (c)(4), (k)(1), (k)(2), (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).

As this Court has explained many times, "where 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) (quotation marks omitted). And as this Court recently reiterated, "the specific governs the general" in the interpretation of the Bankruptcy Code, and where the Code contains both "a general authorization" and "a more limited, specific authorization," "[t]he terms of the specific authorization must be complied with." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 132 S. Ct. 2065, 2071 (2012).

Those canons apply with full force here. Section 105 contains only a general grant of authority to take action that would carry out the provisions of the Bankruptcy Code. Reading Section 105 to permit a bankruptcy court to eliminate exemptions whenever it concludes that the equities so warrant would make the far more detailed exceptions in Section 522 superfluous. That is not a proper interpretation of Section 105. *See FCC v. NextWave Personal Commc'ns Inc.*, 537 U.S. 293, 302 (2003) ("These latter exceptions [to the Bankruptcy Code] would be entirely superfluous if we were to read § 525 as the Commission proposes – which means, of course, that such a reading must be rejected.").

Indeed, this Court reached precisely that conclusion – a bankruptcy court's general equitable authority cannot override specific Code provisions – when it considered Section 105's predecessor statute in *D. Ginsberg & Sons, Inc. v. Popkin*, 285 U.S. 204 (1932). Much

like the modern Section 105, the statute in *Ginsberg & Sons* granted bankruptcy courts the authority to "'make such orders . . . as may be necessary for the enforcement of the provisions of this title.'" *Id.* at 206 (quoting former 11 U.S.C. § 2(15)). The Court nonetheless held that Section 2(15) did not authorize a bankruptcy court to arrest the debtor because the Bankruptcy Code at that time contained a "general exemption of bankrupts from arrest" and a "carefully guarded exception" to that general exemption. *Id.* at 207. Precisely the same logic applies here: Section 105 does not authorize a bankruptcy court to surcharge exemptions in light of Section 522's prohibition on using exempt property and Congress's enumerated exceptions to that general rule.

3. Not only has Congress specified exceptions in Section 522, but it has even specified the precise extent to which a debtor's *misconduct* should affect exempt property. Congress was fully aware that not every debtor claiming exemptions would be free of fault, and in Section 522, Congress balanced the competing goals of punishing dishonest conduct and ensuring that debtors and their dependents do not emerge from bankruptcy with nothing.

Section 522 therefore contains no exception that grants a bankruptcy court the authority to eliminate a debtor's exempt property merely on a finding that the debtor acted inequitably, nor does it premise a debtor's entitlement to exempt property on a discharge from bankruptcy. Instead, Section 522's exceptions are carefully and narrowly drawn to address certain types of culpable behavior. *See, e.g.*, 11 U.S.C. § 522(c)(4) (ex-

empt property may be used to satisfy debts arising from student loan fraud).

Tellingly, even in cases of egregious misbehavior, Congress determined that a debtor's homestead exemption should be only *capped*, not eliminated. For example, where a debtor is convicted of a felony such as criminal bankruptcy fraud, and the bankruptcy court finds that the debtor's bankruptcy petition was an abuse of the Code, Section 522 provides only that the debtor's homestead exemption will be capped at $155,675. 11 U.S.C. § 522(q)(1)(A). And even these felon debtors are entitled to claim a larger homestead exemption where "reasonably necessary for the support of the debtor and any dependent of the debtor." *See id.* § 522(q)(2).

These exceptions show that the surcharge order here is inconsistent with the Code. Even a debtor who is *convicted of criminal bankruptcy fraud* may not have his homestead exemption reduced below $155,675. Yet the bankruptcy court deprived Petitioner of his *entire* $75,000 homestead exemption even though Petitioner has never been convicted of any crime, let alone felony bankruptcy fraud. That purported exercise of equitable discretion improperly displaced Congress's careful balancing of competing policies in Section 522.

4. In its order, the bankruptcy court also suggested that a surcharge was necessary to prevent an abuse of process. J.A. 92a, 97a. But Section 105 simply provides: "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).

By its plain terms, this provision is only a rule of construction. It clarifies that where the Code authorizes a party to seek relief, Section 105 should not be read to deprive the bankruptcy court of the power to act on its own if necessary to prevent an abuse of process. The provision does not entitle a bankruptcy court to override other provisions of the Code as a sanction to correct an abuse of process. Again, any other result cannot be squared with Section 522's detailed provisions specifying the precise grounds for which a debtor may be deprived of exempt property.

5. This Court has also repeatedly recognized that the existing remedies under the Code are sufficient to deter debtor misconduct and protect creditors. *See United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 269, 278 (2010) ("[E]xpanding the availability of relief under Rule 60(b)(4) is not an appropriate prophylaxis . . . [because] '[d]ebtors and their attorneys face penalties under various provisions for engaging in improper conduct in bankruptcy proceedings.'" (quoting *Taylor v. Freeland & Kronz*, 503 U. S. 638, 644 (1992)).

The deterrents to bad faith conduct in the Code are numerous and substantial: Debtors who litigate in bad faith may be denied a discharge, such that they will remain personally liable for their debts even after the close of the bankruptcy case. *See* 11 U.S.C. § 727(a). The possibility of sanctions under the Code's equivalent of Rule 11 and Rule 37 for litigation misconduct represents another deterrent. And in extreme cases, a

debtor who commits fraud or perjury in the course of a bankruptcy proceeding may face criminal conviction.

These are the punishments that Congress made available to courts, and the bankruptcy court erred here by fashioning a sanction that the Code expressly forbids. If "existing sanctions prove inadequate," then it is a task for Congress, not a bankruptcy court, to amend the Code. *Espinosa*, 559 U.S. at 278. The judgment below should be reversed and Petitioner's homestead exemption restored.

ARGUMENT

The bankruptcy court acknowledged that Petitioner's $75,000 of equity in his homestead was exempt property to which he was entitled under Section 522 of the Bankruptcy Code. *See* J.A. 97a. The court nevertheless held that equity warranted stripping Petitioner of his $75,000 exemption and making it available to satisfy the administrative expenses of the Trustee and Trustee's counsel. Invoking Ninth Circuit precedent, the court relied upon the equitable authority found in Section 105 of the Code as the basis for depriving Petitioner of his exemption. J.A. 83a. That determination was erroneous. Both the Code's text and this Court's precedents establish that Section 105 does not allow a bankruptcy court to deprive a debtor of an exemption that Section 522 protects.

I. Stripping A Debtor Of Property That Section 522 Exempts Does Not "Carry Out" The Provisions Of The Bankruptcy Code.

The analysis in this case should begin and end with the plain text of Section 105:

> 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) (emphasis added).

By its express terms, Section 105 is limited to "carry[ing] out the provisions" of the Code. *Id.*; *see also Norwest*, 485 U.S. at 206 ("[W]hatever equitable powers remain in the bankruptcy courts must and can only be exercised *within* the confines of the Bankruptcy Code." (emphasis added)). There are many situations in which a bankruptcy court might appropriately exercise power under Section 105 to "carry out" the Code. For example, Section 105 is frequently used to enter an injunction to enforce a lawfully entered order. *See, e.g.*, *Celotex Corp. v. Edwards*, 514 U.S. 300, 300 (1995). Indeed, both the Senate and House Reports for Section 105 specifically state that the purpose of Section 105 is to authorize a bankruptcy court to enter injunctions and to stay state court proceedings. H.R. Rep. No. 95-595, at 316-17 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6273-74; S. Rep. No. 95-989, at 29 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5815.

But stripping a debtor of an exemption does not "carry out" the provisions of the Bankruptcy Code. To the contrary, surcharging exemptions *overrides* the provisions in Section 522 of the Code, which expressly

prohibit using exemptions to pay debts or administrative expenses except when specific, codified circumstances are met.

A. The Surcharge Order Is Directly Contrary To Section 522's Provisions Protecting Exempt Property.

"[F]or more than two centuries," Congress has permitted debtors to exempt certain property from being paid out to creditors. *Schwab v. Reilly*, 130 S. Ct. 2652, 2664 (2010). The provisions governing exemptions today are set forth in Section 522 of the Code. Section 522 permits a debtor to exempt certain types of core property defined either by state or federal law by designating them on a schedule filed with the bankruptcy petition.[5] 11 U.S.C. § 522(b), (*l*). One of "the most venerable, most common, and most important exemptions" is the homestead exemption, which ensures that the debtor leaves bankruptcy either with his home or with sufficient proceeds from the sale of his home to obtain another home. *Owen v. Owen*, 500 U.S. 305, 312 (1991). Other common exemptions include those for the debtor's motor vehicle, retirement accounts, and personal items like clothing. 11 U.S.C. § 522(b).

As this Court has explained, when a debtor claims an exemption under Section 522, and no objection is

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[5] The Code permits states to choose whether to opt out of the federal exemptions, such that a debtor domiciled in that state may claim only state exemptions. 11 U.S.C. § 522(b)(1). Like many states, California has opted out of the federal exemptions and has made its state law exemptions exclusive for California debtors. Cal. Civ. Proc. Code §§ 703.130, 703.140.

made, it "prevent[s] the distribution" of the property to creditors. *Taylor v. Freeland & Kronz*, 503 U.S. 638, 642–43 (1992). *See Schwab*, 130 S. Ct. at 2658 ("If an interested party fails to object within the time allowed, a claimed exemption will exclude the subject property."). Specifically, Section 522(c) provides that exempt property "is not liable during or after the case for *any debt* of the debtor that arose . . . before the commencement of the case." 11 U.S.C. § 522(c) (emphasis added). And Section 522(k) further provides that exempt property "is not liable [for] payment of *any administrative expense*." *Id.* § 522(k) (emphasis added). "[A]dministrative expense[s]" include trustee's fees, attorneys' fees, and all other "actual, necessary costs and expenses of preserving the estate." *Id.* § 503(b)(1)(A).

Operating together, and subject to certain exceptions discussed in detail below, Sections 522(c) and 522(k) 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.[6] The prohibition

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[6] Additional provisions of the Code buttress this rule. Under Section 522(e), waivers of exemptions are unenforceable, as are waivers of a debtor's power to recover or avoid the transfer of exempt property. *See* 11 U.S.C. § 522(e). And Section 522(f) empowers debtors to avoid judicial liens and certain security interests that "impair[] an exemption" — that is, where the sum of the lien at issue, all other liens on the exempt property, and the amount of the exemption to which the debtor would otherwise be entitled "exceeds the value that the debtor's interest in the property would have in the absence of any liens." *Id.* § 522(f); *see Owen*, 500 U.S. at 311. This subsection "protects the debtor's exemptions, his discharge, and thus his fresh start by permitting him to avoid certain

reflects Congress's policy determination – which has been a constant feature of federal bankruptcy law since 1800[7] – that debtors should be able to leave bankruptcy with sufficient assets to make a "fresh start," even if it means that claims of creditors go unsatisfied and the trustee is left holding the bag for the costs of administering the estate. As the House Report accompanying Section 522 explained, protecting exempt property ultimately serves the public interest by ensuring that debtors do not become wards of the state:

> The historical purpose of . . . exemption laws has been to protect a debtor from his creditors, to provide him with the basic necessities of life so that even if his creditors levy on all of his non-

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liens on exempt property . . . to the extent that the property could have been exempted in the absence of the lien." 11 U.S.C. § 522 note (S. Rep. No. 95-989); *see* 4 *Collier on Bankruptcy* ¶ 522.11[1], at 522-94 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2013).

[7] *See, e.g.*, Act of Nov. 6, 1978, Pub. L. No. 95-598, 92 Stat. 2549; Act of July 1, 1898, ch. 541, 30 Stat. 544 (recognizing non-bankruptcy exemptions) (repealed 1978); Act of Mar. 2, 1867, ch. 176, 14 Stat. 517 (providing limited federal exemptions and allowing debtors to claim non-bankruptcy exemptions to the extent they exceeded federal amounts) (repealed 1878); Act of Aug. 18, 1841, ch. 9, § 3, 5 Stat. 440, 443 (exempting "necessary household and kitchen furniture" and other items at discretion of assignee, up to a maximum of $300, as well as wearing apparel of debtor and debtor's family) (repealed 1843); Act of Apr. 4, 1800, ch. 19, §§ 5, 34, 2 Stat. 19, 23, 30 (1800) (exempting apparel and bedding; additional assets exempted based on amount of creditors' recovery) (repealed 1803).

> exempt property, the debtor will not be left destitute and a public charge.

H.R. Rep. No. 95-595, at 126, *reprinted in* 1978 U.S.C.C.A.N. 5963, 6087. Accordingly, Congress intended that Section 522 would provide debtors a relatively "unqualified" right to exemptions. Report of the Commission on the Bankruptcy Laws of the United States, H.R. Doc. No. 93-137, pt. II, at 128 (1973) (proposed § 4-503 note 2). Indeed, Congress considered the right to exempt property so important that it described Section 522 as one of "the two most important aspects of the fresh start" the Code provides, which is the "essence of modern bankruptcy law." *Id.* at 117, 125, 1978 U.S.C.C.A.N. at 6078, 6086.

Here, the bankruptcy court's decision to strip Petitioner of his homestead exemption violated Section 522 and thus cannot be justified as "carry[ing] out" the Code under Section 105. Section 522 expressly provides that Petitioner's exempt property may not be used to satisfy Petitioner's debts or the Trustee's administrative expenses. 11 U.S.C. § 522(c), (k). Yet that is exactly what the bankruptcy court acknowledged that it did here:

> Were Debtor to receive his homestead exemption, the financial consequences of Debtor's misconduct would fall most heavily *upon Debtor's creditors, including Trustee and his attorneys*. A surcharge must be levied to avoid this outcome. Because the actual costs to the estate far exceed $75,000 (*the exemption to which Debtor*

> *otherwise would be entitled*), I find that Debtor's homestead must be surcharged in its entirety.

J.A. 97a (emphasis added).

In the surcharge order, therefore, the bankruptcy court impermissibly substituted its policy judgment for Congress's. Congress concluded that debtors should emerge from bankruptcy with sufficient minimal property so that the public will not need to support them. But the bankruptcy court chose instead to take that property – which would have allowed Petitioner to obtain a home – and give it as compensation to the Trustee based on the court's notions of fairness. That was not an equitable judgment the bankruptcy court was entitled to make under Section 105 because it violated Congress's express legislative determination in Section 522.

Indeed, this Court has repeatedly held that "whatever equitable powers remain in the bankruptcy courts must and can only be exercised *within* the confines of the Bankruptcy Code." *Norwest*, 485 U.S. at 206; *see also, e.g.*, *Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15, 24–25 (2000) ("Bankruptcy courts are not authorized in the name of equity to make wholesale substitution of underlying law controlling the validity of creditors' entitlements, but are limited to what the Bankruptcy Code itself provides."); *United States v. Noland*, 517 U.S. 535, 543 (1996) ("[T]he [equity] chancellor never did, and does not now, exercise unrestricted power to contradict statutory or common law when he feels a fairer result may be obtained by application of a different rule."); *SEC v. U.S. Realty & Improvement Co.*, 310 U.S. 434, 455 (1940) ("A bankruptcy court . . . is guided

by equitable doctrines and principles except in so far as they are inconsistent with the Act."); *cf. Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 374–75 (2007) (observing that where "[n]othing in the text of [the two relevant Code provisions] (or the legislative history of either provision) limits the authority of the court to take appropriate action," taking such action is consistent with Section 105).

Accordingly, the bankruptcy court exceeded its equitable authority when it deprived Petitioner of property that Section 522 guaranteed as exempt. Surcharging Petitioner's exemption was not "necessary or appropriate to carry out" the Code; rather, it expressly overrode Section 522 of the Code.

B. Congress Specified When A Debtor Is Not Entitled To Exempt Property, And The Bankruptcy Court Was Not Entitled To Create Additional Exceptions.

It is particularly clear that the bankruptcy court's order surcharging Petitioner's homestead exemption cannot be justified under Section 105 because Congress has stated with great detail and clarity in Section 522 the circumstances in which exempt property *may* be taken from a debtor. Permitting bankruptcy courts to use Section 105 to fashion uncodified exceptions to Section 522 – as the bankruptcy court did here – would improperly upset the careful legislative balance reflected in Section 522.

"[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*, 133 S. Ct. at

1953 (quotation marks omitted). That is especially true in the bankruptcy context. As this Court recently reiterated, "the specific governs the general" in the interpretation of the Bankruptcy Code, and where the Code contains both "a general authorization" and "a more limited, specific authorization," "[t]he terms of the specific authorization must be complied with." *RadLAX*, 132 S. Ct. at 2071. The "general/specific" canon "avoids . . . the superfluity of a specific provision that is swallowed by the general one" and thus implements "the cardinal rule that, if possible, effect shall be given to every clause and part of a statute.'" *Id.* (quoting *D. Ginsberg & Sons*, 285 U.S. at 208).

The applicability of the "general/specific" canon is at its zenith here. In contrast to Section 105's exceedingly "general authorization" to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title," 11 U.S.C. § 105, Section 522 spells out in meticulous detail the circumstances under which a bankruptcy court may limit a debtor's exemptions. *See, e.g.*, *id.* § 522(c)(1), (c)(2)(A), (c)(2)(B), (c)(3), (c)(4), (k)(1), (k)(2), (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).

These exceptions balance Congress's interest in providing a debtor with a fresh start with a range of competing policy considerations. For example, Congress has determined that the claims of certain creditors, such as those entitled to domestic support, are sufficiently important that they may be paid from exempt property. *See id.* § 522(c)(1). And as discussed below, many of the exceptions pertain to the effect of a deb-

tor's culpable conduct. *See infra* Part I.C. It is undisputed that none of the exceptions codified by Congress in Section 522 applies in this case, and all of them would be superfluous if Section 105 were read to allow bankruptcy courts to deprive debtors of their exemptions whenever the courts found that equity so warranted.

Under these circumstances, "additional exceptions are not to be implied," *Hillman*, 133 S. Ct. at 1953 (quotation marks omitted), and bankruptcy courts may not use their "general authority" in Section 105 to upset Congress's specific statutory scheme in Section 522, *RadLAX*, 132 S. Ct. at 2071; *see also FCC v. NextWave Personal Commc'ns Inc.*, 537 U.S. 293, 302 (2003) ("These latter exceptions [to the Bankruptcy Code] would be entirely superfluous if we were to read § 525 as the Commission proposes – which means, of course, that such a reading must be rejected."); *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Elec. Co.*, 549 U.S. 443, 453 (2007) ("[W]here Congress has intended to provide . . . exceptions to provisions of the Bankruptcy Code, it has done so clearly and expressly." (ellipsis in original; quotation marks omitted)).

Indeed, this is not first time this Court has had occasion to consider whether language comparable to Section 105 allows bankruptcy courts to take action contrary to the Code in the name of equitable considerations. In *D. Ginsberg & Sons, Inc. v. Popkin*, 285 U.S. 204 (1932), this Court addressed the scope of the predecessor statute of Section 105(a), 11 U.S.C. § 2(15), which is virtually identical to Section 105(a): it granted bankruptcy courts the authority to "'make such orders, issue such process, and enter such judgments in addition to

those specifically provided for as may be necessary for the enforcement of the provisions of this title.'" *Ginsberg & Sons*, 285 U.S. at 206 (quoting former 11 U.S.C. § 2(15)).

The Court held that Section 2(15) did not authorize a bankruptcy court to issue an order directing the arrest of the officer of a bankrupt corporation, even if the officer intended to flee the jurisdiction to the detriment of creditors. The Court observed that the Bankruptcy Code generally "exempts the bankrupt from arrest upon civil process issued from a court of bankruptcy except for contempt or disobedience of its lawful orders," with a narrow exception for "bankrupts about to leave the district in order to avoid examination." *Id.* at 207. It then reasoned:

> In view of the *general exemption of bankrupts* from arrest under section 9a and the carefully guarded exception made by section 9b as to those about to leave the district to avoid examination, there is no support for petitioner's contention that the general language of section 2(15) is a limitation upon section 9(b) or grants additional authority in respect of arrests of bankrupts. *General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in another part of the same enactment.* Specific terms prevail over the general in the same or another statute which otherwise might be controlling.

Id. at 207–08 (emphasis added and citations omitted).

Precisely the same analysis applies here. In view of the general property exemptions set forth in Section 522(b), and the "carefully guarded exceptions" to those exemptions elsewhere in Section 522, Section 105(a) cannot be construed to grant a bankruptcy court additional authority to surcharge a debtor's exemption. *See RadLAX*, 132 S. Ct. at 2071 (citing *Ginsberg & Sons* for the proposition that specific provisions should control over general ones).

This Court reached the same conclusion in an analogous ERISA case, *Guidry v. Sheet Metal Workers*, 493 U.S. 365 (1990). There, the Court considered the interplay between a specific ERISA provision barring the garnishment of pension benefits as a means of collecting a judgment, and a general provision permitting a court to grant "appropriate relief." *Id.* at 371, 374. Guidry embezzled funds from his union, and the district court required him to repay those funds from his pension benefits pursuant to its general authority to provide "appropriate relief." This Court held that the district court's order was improper in light of ERISA's "express, specific congressional directive that pension benefits not be subject to assignment or alienation." *Id.* at 376. It declined "to approve any generalized equitable exception – either for employee malfeasance or for criminal misconduct – to ERISA's prohibition on the assignment or alienation of pension benefits." *Id.* This Court stressed that the statute "reflects a considered congressional policy choice, a decision to safeguard a stream of income for pensioners (and their dependents, who may be, and perhaps usually are, blameless), even if that decision prevents others from securing relief for the wrongs done them." *Id.* It noted that this restric-

tion "acts, by definition, to hinder the collection of a lawful debt," and "therefore can be defended only on the view that the effectuation of certain broad social policies sometimes takes precedence over the desire to do equity between particular parties." *Id.* Thus, the Court held that "[i]f exceptions to this policy are to be made, it is for Congress to undertake that task." *Id.*

Identical reasoning applies here. Just as ERISA's specific directive that individuals should retain their pension benefits overrides a district court's general authority to provide "appropriate relief," Section 522's specific directive that individuals should retain their homestead exemptions overrides a district court's general authority under Section 105. Section 522 represents Congress's considered policy choice to safeguard a debtor's homestead exemption, except under narrow circumstances not present here – even if that would "prevent[] others from securing relief for the wrongs done them." *Id.* The Court should respect that policy choice, and if additional exceptions to the policy are to be made, it is for Congress to undertake that task.

C. Congress Further Specified Precisely When Debtor Misconduct Warrants The Deprivation Of Exempt Property, And The Bankruptcy Court's Contrary Order Conflicts With Congress's Judgment.

Not only has Congress prohibited taking a debtor's exempt property – and specified detailed exceptions to that rule – but the exceptions that Congress has created expressly determine when a debtor's *misconduct* warrants a deprivation of exempt property. Thus,

Congress has legislated regarding the very policy considerations the bankruptcy court invoked here and found them insufficient to warrant depriving a debtor of exempt property. The bankruptcy court was not free to fashion an exception to Section 522 that Congress refused to create.

Fraudulent and Illegal Conduct. Of greatest relevance here, Congress has specified the precise scenarios under which a debtor's exempt property may be taken because of fraud or other misconduct on the part of the debtor. These provisions represent Congress's legislative judgment about how to balance the goal of ensuring that debtors are able to make a fresh start with the competing goal of punishing culpable conduct.

In crafting these exceptions, Congress notably declined to create a general exception for bad conduct. Instead, Congress chose to create a handful of specific exceptions targeting certain behavior. *See, e.g.*, § 522(c)(4) (exempt property may be used to satisfy "a debt in connection with fraud in the obtaining or providing of . . . financial assistance for . . . an institution of higher education"). And even for those debtors who engage in the most egregious conduct, Congress chose to *cap*, rather than eliminate, their exemptions. This accords with Congress's policy that a debtor – even one who has acted dishonestly or in bad faith – should emerge from bankruptcy with "the basic necessities of life" and not be "left destitute and a public charge." H.R. Rep. No. 95-595, at 126, *reprinted in* 1978 U.S.C.C.A.N. 5963, 6087.

For instance, Congress has specified that if "the debtor has been convicted of a felony . . . , which under

the circumstances, demonstrates that the filing of the [bankruptcy] case was an abuse of the provisions of this title," the debtor's property exemptions will be capped at $155,675,[8] but *not* eliminated. 11 U.S.C. § 522(q)(1)(A). The typical "felony" that triggers Section 522(q) is bankruptcy fraud. *See, e.g.*, *Prince v. Am. Bank of Tex.*, Civ. A. No. 11-CV-657, 2012 WL 3916481, at *4 (E.D. Tex. Sept. 7, 2012) (holding that bankruptcy fraud and perjury prosecutions capped, but did not eliminate, the debtor's exemptions under Section 522(q)(1)(A)). And Congress has imposed the same cap on exemptions for debtors whose debts arise from, among other things, "criminal act[s]" that caused "serious physical injury or death." 11 U.S.C. § 522(q)(1)(B)(iv). Yet Congress has such solicitude for the importance of the homestead exemption that even for these felon debtors, it provided that the cap should be lifted where "reasonably necessary for the support of the debtor or any dependent of the debtor."[9] *Id.* § 522(q)(2).

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[8] When Section 522(q) was enacted, the exemption cap was $125,000. Congress provided that this cap would increase according to a set formula to account for inflation. *See* Revision of Certain Dollar Amounts in the Bankruptcy Code Prescribed Under Section 104(a) of the Code, 78 Fed. Reg. 12,089, 12,090 (Feb. 21, 2013) (adjusting dollar amount pursuant to 11 U.S.C. § 104(a)).

[9] Another example of a provision that limits rather than eliminates the debtor's homestead exemption is Section 522(o). Under that provision, a debtor's homestead exemption is reduced to the extent that its "value is attributable to any portion of any property that the debtor disposed of in the 10-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt." 11

Here, Petitioner is far less culpable than the individuals contemplated by Section 522(q)(1)(a). Petitioner was never charged with, let alone convicted of, bankruptcy fraud or any other crime. Yet the bankruptcy court deprived Petitioner of the *entirety* of his $75,000 homestead exemption because the court found, under a civil preponderance standard, that Petitioner had made false statements to the court that caused the Trustee and his counsel to incur additional costs. That punishment cannot be reconciled with Congress's determination that Petitioner would have been entitled to every dollar of his $75,000 exemption even in the extreme circumstances where Section 522(q) applies. Congress already balanced the competing policies and chose not to permit the punishment that the bankruptcy court imposed.

The legislative history behind these provisions confirms the point. Section 522(q) is the product of a recent, substantial revision to Section 522 in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), Pub. L. No. 109-8, 119 Stat. 23, and it was intended to respond to perceived "fraud and abuse" of the homestead exemption in particular. *See* 151 Cong. Rec. 3038 (2005) (statement of Sen. Chuck Grassley) ("The[se] homestead provisions . . . will sub-

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U.S.C. § 522(o). In other words, a debtor who seeks to defraud creditors by selling non-exempt property and using it to increase the equity in the debtor's homestead prior to filing for bankruptcy may not claim that additional equity as exempt. The provision does not eliminate the debtor's homestead exemption altogether except where the entirety of the debtor's equity is attributable to fraudulently disposed non-exempt property.

stantially cut down on the abuses that might be referred to."). In adopting the capping provisions, Congress recognized that it was striking a compromise between protecting the debtor's homestead and deterring inappropriate conduct. *See* 151 Cong. Rec. 3026 (2005) (statement of Sen. Orrin Hatch) ("These provisions [in the bill] are a compromise, a balance of States rights and Federal imperatives under bankruptcy law and we must let the provision stand as written."); *see id.* at 3038 (statement of Sen. Chuck Grassley) ("These homestead provisions were delicately compromised."). That balance was undone by the bankruptcy court's surcharge order.

Exemptions and Denial of Discharge. Further confirmation that Congress did not intend a debtor's bad acts to be a basis for stripping the debtor of exempt property comes from the Code's careful distinction between surcharging a debtor's exempt property and denying the debtor a discharge from bankruptcy. One of the main benefits of bankruptcy is that, once all non-exempt funds are paid to creditors from the estate, the debtor's debts are discharged – *i.e.*, the debtor is no longer held personally liable for them. But the Code prohibits the discharge of certain debts (called "non-dischargeable" debts), *see* 11 U.S.C. § 523(a), including several kinds of debts caused by the debtor's fraud or bad faith, *see, e.g.*, *id.* § 523(a)(2) (debts incurred under "false pretenses" may not be discharged); *id.* § 523(a)(4) (debts incurred by "fraud or defalcation while acting in a fiduciary capacity" may not be discharged). The Code also permits a bankruptcy court to deny a discharge of *all* debts under certain circumstances, including if the court finds that the debtor "knowingly and fraudulent-

ly" made "a false oath or account" during the bankruptcy proceeding. *See id.* § 727(a).

Critically, however, Section 522 makes clear that a debtor may retain his exempt property – including his homestead exemption – even if the debtor has non-dischargeable debts. Congress expressly provided for just two circumstances under which exempt property may be used to pay non-dischargeable debts, and neither involves the debtor's fraud. *See id.* § 522(c)(1) (providing that exempt property may be used to pay debts for child support or for taxes and custom duties (citing *id.* § 523(a)(1), (5))). By making exempt property available to pay only those two types of non-dischargeable debts, Congress indicated that exempt property should *not* be available to satisfy other kinds of non-dischargeable debts, including those debts resulting from the debtor's fraud. *See Hillman*, 133 S. Ct. at 1953 (the enumeration of exceptions means additional exceptions "are not to be implied" (quotation marks omitted)). Instead, those debts are ones that the creditor cannot satisfy with exempt property even though the debtor remains liable for them after discharge.

The Code is equally clear that where the bankruptcy court denies a discharge of *all* debts due to the debtor's fraud in the bankruptcy proceeding, *see* 11 U.S.C. § 727(a), exempt property still may not be taken to satisfy those debts. Section 727 states that a debtor should be denied a discharge, for example, where the debtor made a "false oath or account" or "presented or used a false claim" to the bankruptcy court. 11 U.S.C. § 727(a)(4)(A), (B). But as discussed above, Section 522

contains no general exception to the debtor's entitlement to his claimed exemptions merely for the debtor's bad faith conduct. Indeed, the discharge provisions expressly contemplate that a debtor will be entitled to retain exempted property even where a discharge is denied. Section 727 states that where a debtor is charged with a crime that warrants capping an exemption under Section 522(q), a discharge may be denied. *Id.* § 727(a)(12)(B) (discharge may be denied if "there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B)"). In other words, Section 727(a) provides that even when a discharge is denied, the debtor will still be entitled to exempt property to the extent that Section 522 permits. As the Commission on the Bankruptcy Laws explained in addressing the provision that ultimately became Section 522 of the Code:

> The right to the exemption is unqualified; it does not depend on *whether the debtor receives a discharge* and is *not forfeited by "bad conduct"* of the debtor.

Report of the Commission on the Bankruptcy Laws of the United States, H.R. Doc. No. 93-137, pt. II, at 128 (1973) (proposed § 4-503 note 2).

In short, when a debtor incurs debts through fraud, or engages in fraud in a bankruptcy proceeding, Congress has provided for the severe penalty of making the debts non-dischargeable. But even in those instances, Congress has determined that the debtor should be left with his exempt property. If 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. The bankruptcy court thus erred when it made that conduct the basis for denying Petitioner his homestead exemption.

Administrative Expenses. Finally, Congress's treatment of the provisions governing exemptions and administrative expenses further undermines the bankruptcy court's reasoning. Administrative expenses include the fees incurred by counsel in administering the estate. *See* 11 U.S.C. § 503(b). Congress could have created an exception allowing administrative expenses to be paid from exempt property where the bankruptcy court determined that the debtor had engaged in misconduct before the bankruptcy court. Indeed, as just explained, Congress did make such a conduct a predicate for denying the debtor's discharge. *See supra.*

But Congress created just two exceptions to the rule that exempt property "is not liable for payment of any administrative expense," and neither is relevant here. 11 U.S.C. § 522(k). Both exceptions concern scenarios in which the trustee or debtor incurs costs to recover or retain estate property to the debtor's ultimate benefit. *See id.* § 522(k)(1)–(2) (allowing exempt property to pay certain costs incurred in recovering property that the debtor is able to exempt). Congress thus decided the scenarios in which administrative expenses could be paid from exempt property, and fraudulent conduct by the debtor is not one of them. The bankruptcy court did not have the authority under Section 105 to add that exception to Congress's list.

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In sum, Congress has specified the precise circumstances – the precise kinds of debts and the precise kinds of debtor conduct – that warrant depriving the debtor of exempt property. Section 105's authorization to take action "necessary or appropriate to carry out" the Code does not give the bankruptcy court the authority to substitute its own equitable judgment for Congress's in deciding whether a debtor should be able to keep his exempt property.

II. Section 105 Does Not Permit A Court To Surcharge Exemptions Protected By Section 522 In Order To Prevent An Abuse Of Process.

In ordering that Petitioner's exemption be surcharged, the bankruptcy court also suggested that it was acting to prevent an abuse of process. J.A. 92a, 97a. That alternative rationale does not make the court's order any more proper under Section 105.

In addition to providing authorization for a court to take action to "carry out" the provisions of the Bankruptcy Code, Section 105 also sets forth the circumstances under which the court may act on its own initiative. Section 105 states in relevant part:

> 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).

By its plain terms, this provision is not a free-standing grant of power but rather a rule of construction. It provides that *if* a distinct provision of the Bankruptcy Code "provid[es] for the raising of an issue by a party in interest," *then* that distinct provision should not be "construed to preclude the court from, *sua sponte*, taking" certain actions, including those necessary "to prevent an abuse of process." *Id.* The clause thus confirms that the bankruptcy court's existing authority to act *sua sponte* "to enforce or implement court orders or rules, or to prevent an abuse of process" is not restricted by other provisions of the Bankruptcy Code that grant creditors the right to raise issues. The clause does not act as a license for a bankruptcy court to override other substantive provisions of the Code in the name of preventing an abuse of process.

The legislative history confirms this textual analysis. The "carry out" first sentence of Section 105(a) was enacted in its current form in 1978. *See* Act of Nov. 6, 1978, Pub. L. No. 95-598, § 105(a), 92 Stat. 2555, 2549. But Congress did not add the "sua sponte" second sentence of Section 105(a) until 1986. *See* Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, Title II, § 203, 100 Stat. 3088, 3097. The impetus for the amendment was a Second Circuit case, *In re Gusam Restaurant Corp*, which held that a bankruptcy court was impliedly barred from *sua sponte* converting a case from Chapter 11 to Chapter 7 because the Code stated that a conversion could be made "on request of a party in interest." 737 F.2d 274, 276 (2d Cir. 1984).

Congress added the second sentence of Section 105 to overrule *Gusam* and clarify that bankruptcy courts were not barred from acting *sua sponte* simply because the Code also authorized a party to move for the relief in question. *See, e.g.*, *In re Greene*, 127 B.R. 805, 808 (Bankr. N.D. Ohio 1991) ("The [second sentence] of § 105(b) was enacted specifically to overrule [*Gusam*], which denied the Court's right to convert a case sua sponte.") (citing Collier Pamphlet Edition 1990–1991, at 43)). The second clause of Section 105(a) clearly overrules *Gusam*; but, just as clearly, it does not constitute an affirmative grant of authority to the bankruptcy court above and beyond the first clause of Section 105(a).

Again, no other conclusion makes sense given Section 522's detailed provisions. Congress could have added an exception denying a debtor his exempt property if the court found that he abused the court's processes, but it did not. As noted above, instead the Code is clear that even if a debtor engages in misconduct sufficient to warrant a denial of discharge, the debtor's exempt property remains unaffected. Indeed, Congress has specified that even where the debtor's very filing for bankruptcy amounts to an "abuse of the provisions of the Code" due to a felony on the part of the debtor, the debtor is still entitled to retain $155,675 of exempt property. 11 U.S.C. § 522(q)(1)(A).

Those are the specific provisions – including the provisions speaking directly to abuses of the Code – that govern a bankruptcy court's authority regarding exempt property. Section 105's language does not authorize a bankruptcy court to deprive a debtor of ex-

empt property protected by Section 522 in the name of preventing an abuse of process.

III. The Punishments That Congress Has Authorized Are Sufficient To Deter Improper Conduct In A Bankruptcy Proceeding.

For all the reasons explained above, Section 105 does not authorize a bankruptcy court to deprive a debtor of exempt property that Section 522 protects. But that does not mean that the Code lacks provisions to deter dishonest behavior and protect creditors.

As this Court has twice observed, "'[d]ebtors and their attorneys face penalties under various provisions for engaging in improper conduct in bankruptcy proceedings,'" and "[t]he specter of such penalties" is sufficient to combat "the potential for bad-faith litigation tactics." *Espinosa*, 559 U.S. at 278 (quoting *Taylor*, 503 U.S. at 644; first bracket in original). In *Taylor*, and again in *Espinosa*, the parties argued that a departure from the statutory text was warranted by the concern of "improper incentives" to engage in bankruptcy fraud. But in each case, this Court examined the provisions of the Code and concluded without hesitation that the existing provisions were sufficient to deter fraud and bad-faith conduct, and if they were not, "Congress may enact . . . provisions to address the difficulties." *Taylor*, 503 U.S. at 644; *see also Espinosa*, 559 U.S. at 278 ("[T]o the extent existing sanctions prove inadequate to [the] task [of deterring fraud], Congress may enact additional provisions.").

This Court should apply the same reasoning here. As the Court observed in *Espinosa* and *Taylor*, the provisions of the Code that deter bad faith conduct are

numerous and substantial. Those provisions include (as recounted in *Taylor*):

> 11 U.S.C. § 727(a)(4)(B) (authorizing denial of discharge for presenting fraudulent claims); Rule 1008 (requiring filings to "be verified or contain an unsworn declaration" of truthfulness under penalty of perjury); Rule 9011 (authorizing sanctions for signing certain documents not "well grounded in fact and . . . warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law"); [and] 18 U.S.C. § 152 (imposing criminal penalties for fraud in bankruptcy cases).

503 U.S. at 644 (ellipsis in original).

In the first place, the Code requires that a debtor who makes false claims or statements in a bankruptcy proceeding be denied a discharge under Section 727(a) of the Code, as Petitioner was here. *See* 11 U.S.C. § 727(a)(3) (discharge denied where "the debtor has . . . falsified . . . any recorded information"); *id.* § 727(a)(4)(A) (discharge denied where the debtor "made a false oath or account"); *id.* § 727(a)(4)(B) (discharge denied where the debtor "presented or used a false claim").

The threat of denial of discharge is a serious one for the debtor because of the consequence it entails: the debtor remains personally obligated to satisfy unpaid debts. *See* 11 U.S.C. §§ 524(a), 727. Yet at the same time, as explained above, *supra at* pp. 32–35, Congress has made clear that even debtors who are denied a discharge are still entitled to retain their exempt property. They remain liable for their debts, which

represents a significant deterrent to dishonest conduct. *See Taylor*, 503 U.S. at 644. But they are permitted to retain a modicum of post-bankruptcy funds so that they are not forced to become "destitute and a public charge." H.R. Rep. No. 95-595, at 126, *reprinted in* 1978 U.S.C.C.A.N. 5963, 6087.

Sanctions for bad faith conduct in bankruptcy proceedings may also be imposed under the Federal Rules of Bankruptcy Procedure. *See Taylor*, 503 U.S. at 644. Under Federal Rule of Bankruptcy Procedure 9011(c), which tracks Federal Rule of Civil Procedure 11(c), sanctions may be levied "upon attorneys, law firms, or parties" who engage in a variety of misconduct in connection with a bankruptcy case. *See* Fed. R. Bankr. P. 9011(b)–(c). "[T]he sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation." Fed. R. Bankr. P. 9011(c)(2). In addition, Federal Rule of Bankruptcy Procedure 7037 authorizes sanctions for discovery violations pursuant to Federal Rules of Civil Procedure 37. Indeed, in this case, Petitioner was sanctioned $3,520 under this Rule. J.A. 63a. These sanctions make a debtor liable for the costs imposed, but they do not authorize the use of exempt property to satisfy them.

Finally, in extreme cases, a debtor who commits bankruptcy fraud may be criminally prosecuted under 18 U.S.C. § 152. *See Taylor*, 503 U.S. at 644. And because Rule 1008 requires that declarations be submit-

ted under penalty of perjury, a debtor who lies in such a declaration may be prosecuted for criminal perjury.

All of these sanctions, both individually and together, represent a significant deterrent to dishonest debtor conduct. More important, they are the sanctions that Congress chose to rely upon in lieu of depriving debtors of their homestead, retirement funds, and other exempt property. If these "existing sanctions prove inadequate," then it is a task for Congress, not the bankruptcy courts, to amend the Code. *Espinosa*, 559 U.S. at 278.

CONCLUSION

The judgment of the Ninth Circuit should be reversed and the case remanded for further proceedings.

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Respectfully submitted,

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ADDENDUM

ADDENDUM — STATUTORY PROVISIONS INVOLVED

11 U.S.C. § 105(a)

§ 105. Power of court

(a) 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. § 522

§ 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)(1) Notwithstanding section 541 of this title, an individual debtor may exempt from property of the estate

the property listed in either paragraph (2) or, in the alternative, paragraph (3) 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 (2) and the other debtor elect to exempt property listed in paragraph (3) of this subsection. If the parties cannot agree on the alternative to be elected, they shall be deemed to elect paragraph (2), where such election is permitted under the law of the jurisdiction where the case is filed.

(2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.

(3) Property listed in this paragraph is--

(A) subject to subsections (o) and (p), 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 to the place in which the debtor's domicile has been located for the 730 days immediately preceding the date of the filing of the petition or if the debtor's domicile has not been located in a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately

preceding the 730-day period or for a longer portion of such 180-day period than in any other place;

(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; and

(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

If the effect of the domiciliary requirement under subparagraph (A) is to render the debtor ineligible for any exemption, the debtor may elect to exempt property that is specified under subsection (d).

(4) For purposes of paragraph (3)(C) and subsection (d)(12), the following shall apply:

(A) If the retirement funds are in a retirement fund that has received a favorable determination under section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the filing of the petition in a case under this title, those funds shall be presumed to be exempt from the estate.

(B) If the retirement funds are in a retirement fund that has not received a favorable determination under

such section 7805, those funds are exempt from the estate if the debtor demonstrates that--

> (i) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and
>
> (ii)(I) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or
>
> > (II) the retirement fund fails to be in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986 and the debtor is not materially responsible for that failure.

(C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, under section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such direct transfer.

(D)(i) Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such distribution.

(ii) A distribution described in this clause is an amount that--

(I) has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986; and

(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of such amount.

(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 paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in such paragraph);

(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 institution-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)(2) of this section:

(1) The debtor's aggregate interest, not to exceed $22,975 [FN1] 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 $3,675 [FN1] in value, in one motor vehicle.

(3) The debtor's interest, not to exceed $575 [FN1] in value in any particular item or $12,250 [FN1] 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 $1,550 [FN1] 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 $1,225 [FN1] plus up to $11,500 [FN1] of any unused amount of the exemption provided under paragraph (1) of this subsection.

(6) The debtor's aggregate interest, not to exceed $2,300 [FN1] 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 $12,250 [FN1] 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 necessary 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 $22,975, [FN1] 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.

(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.

(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 of a kind that is specified in section 523(a)(5); 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 otherwise 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 $6,225 [FN1].

(4)(A) Subject to subparagraph (B), for purposes of paragraph (1)(B), the term "household goods" means--

(i) clothing;

(ii) furniture;

(iii) appliances;

(iv) 1 radio;

(v) 1 television;

(vi) 1 VCR;

(vii) linens;

(viii) china;

(ix) crockery;

(x) kitchenware;

(xi) educational materials and educational equipment primarily for the use of minor dependent children of the debtor;

(xii) medical equipment and supplies;

(xiii) furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor;

(xiv) personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor; and

(xv) 1 personal computer and related equipment.

(B) The term "household goods" does not include--

(i) works of art (unless by or of the debtor, or any relative of the debtor);

(ii) electronic entertainment equipment with a fair market value of more than $650 [FN1] in the aggregate (except 1 television, 1 radio, and 1 VCR);

(iii) items acquired as antiques with a fair market value of more than $650 [FN1] in the aggregate;

(iv) jewelry with a fair market value of more than $650 [FN1] in the aggregate (except wedding rings); and

(v) a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.

(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)(1)(B) 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 attributable 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.

(n) For assets in individual retirement accounts described in section 408 or 408A of the Internal Revenue Code of 1986, other than a simplified employee pension under section 408(k) of such Code or a simple retirement account under section 408(p) of such Code, the aggregate value of such assets exempted under this section, without regard to amounts attributable to rollover contributions under section 402(c), 402(e)(6), 403(a)(4), 403(a) (5), and 403(b) (8) of the Internal Revenue Code of 1986, and earnings thereon, shall not exceed $1,245,475 [FN1] in a case filed by a debtor who is an individual, except that such amount may be increased if the interests of justice so require.

(o) For purposes of subsection (b)(3)(A), and notwithstanding subsection (a), the value of an interest in--

(1) real or personal property that the debtor or a dependent of the debtor uses as a residence;

(2) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

(3) a burial plot for the debtor or a dependent of the debtor; or

(4) real or personal property that the debtor or a dependent of the debtor claims as a homestead;

shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 10-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b), if on such date the debtor had held the property so disposed of.

(p)(1) Except as provided in paragraph (2) of this subsection and sections 544 and 548, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate $155,675 [FN1] in value in--

(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

(C) a burial plot for the debtor or a dependent of the debtor; or

(D) real or personal property that the debtor or dependent of the debtor claims as a homestead.

(2)(A) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of such farmer.

(B) For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of such 1215-day period) into the debtor's current principal residence, if the debtor's previous and current residences are located in the same State.

(q)(1) As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate $155,675 [FN1] if--

(A) the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title; or

(B) the debtor owes a debt arising from--

(i) any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws;

(ii) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933;

(iii) any civil remedy under section 1964 of title 18; or

(iv) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.

(2) Paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor.

[FN1] Dollar amount as adjusted by the Judicial Conference of the United States. See Adjustment of Dollar Amounts notes set out under this section and 11 U.S.C.A. § 104.