No. 08-538

IN THE

Supreme Court of the United States

WILLIAM G. SCHWAB,

Petitioner,

v.

NADEJDA REILLY,

Respondent.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

The Third Circuit affirmed the United States District Court for the Middle District of Pennsylvania, which held that when a debtor lists the value of an asset on the appropriate bankruptcy schedule and then exempts an identical value for that asset on her claim of exemptions, a Chapter 7 Trustee must object to the debtor's claim of exempt property within thirty days or the asset is completely exempt from the bankruptcy estate.

Petitioner presents the following three questions:

1. When a debtor claims an exemption using a specific dollar amount that is equal to the value placed on the asset by the debtor, is the exemption limited to the specific amount claimed, or do the numbers being equal operate to "fully exempt" the asset, regardless of its true value?

2. When a debtor claims an exemption using a specific dollar amount that is equal to the value placed on the asset by the debtor, must a trustee who wishes to sell the asset object to the exemptions within the 30-day period of Rule 4003, even though the amount claimed as ex-

empt and the type of property are within the exemption statute?

3. Did the Third Circuit unconstitutionally encroach on Congress's exclusive power to legislate in the field of bankruptcy when it created new trustee duties and when it created unlimited "in kind" exemptions where the statute contains specific dollar-value limitations?

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PRELIMINARY STATEMENT

This matter arises out of the chapter 7 bankruptcy case of respondent Nadejda Reilly ("Reilly"). Petitioner William G. Schwab ("Schwab") is the chapter 7 trustee in Reilly's case.

At the outset of her bankruptcy case, Reilly exempted certain business equipment of both sentimental and practical value from her bankruptcy estate. In the decision below, the Third Circuit held that both the district court and the bankruptcy court had correctly concluded that Reilly properly and completely exempted her business equipment from her bankruptcy estate by listing exemption amounts for her business equipment that were identical to the values she placed on those assets in her bankruptcy schedules. Based on its review of the record, the court of appeals determined correctly that the facts demonstrated that Reilly had expressed her intent to exempt the entirety of her listed business equipment, and accordingly, Schwab's failure to object to Reilly's exemptions within the 30-day exemption period operated to exempt all of Reilly's business equipment from the reach of the bankruptcy estate.

The decision of the Third Circuit provides no occasion for certiorari review. Contrary to Schwab's contentions, the decision below is fully consistent with the applicable precedent of this Court. In addition, to the extent there is a conflict between the decision below and the decisions of other courts of appeals, it is a shallow one. Further, despite some differences in the approaches taken by different courts of appeals, the result in this case would be the same under any of their respective approaches. Accordingly, this case does not present an appropriate vehicle for review in this Court, and certiorari should be denied.

STATEMENT

A. Background

Reilly, a cook with a one-person catering business, filed her Chapter 7 bankruptcy petition and related schedules on April 21, 2005. Pet. App. 2a. On her Schedule B list of personal property, she included various specific, individually priced pieces of business equipment, estimating a combined value of $10,718. On her Schedule C, which claimed her exemptions, she utilized two exemption provisions provided in the Bankruptcy Code to exempt the business equipment listed on her Schedule B in the full amount of $10,718. The exemption of the listed

equipment was of particular importance to Reilly in light of the "significant sentimental value" she attached to the equipment by virtue of the fact that her parents had purchased it for her. Pet. App. 17a-18a.

Thereafter, Schwab "made arrangements to have the inventoried items appraised on his own." Resp. App. 2a. Schwab then presided over a Section 341(a) meeting of creditors, which was completed on June 22, 2005, triggering the 30-day deadline set forth in Bankruptcy Rule 4003(b) for filing objections to Reilly's claim of exemptions. At the meeting of the creditors, Schwab "announced to the debtor at the meeting that his appraised value exceeded the value of the debtor by approximately, $7,200.00."[1] *Id.*

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[1] The hearing transcript on Schwab's motion to sell Reilly's exempt business equipment indicates that, according to the attorney for the trustee, "at the meeting of creditors, the Trustee did indicate that the value of the property was in excess of debtor's values." Resp. App. 4a. The attorney for Reilly indicated at that proceeding that "prior to the first meeting of creditors, the Trustee, on its own initiative, sent an appraiser out to examine and appraise the property. And at the time of the meeting he had higher valuations. He indicated verbally that his valuation was 17,000 – approximately $17,333." Resp. App. 6a. Schwab's attorney did not object to that characterization of the events, and to this day Schwab has not

In fact, Schwab indicated verbally to Reilly that "he desired to have an auction to generate funds for unsecured creditors in the case." Resp. App. 2a, 9a, 12a. Despite Schwab's statements to Reilly and her counsel, no parties filed objections within the 30-day period following the meeting of the creditors, thereby rendering Reilly's business equipment exempt from her bankruptcy estate.

Despite the passing of the 30-day objection period, on August 10, 2005, Schwab sought approval from the bankruptcy court to sell Reilly's business equipment. As the Third Circuit noted in its opinion below, "[w]hen faced with Schwab's motion to sell, Reilly attempted to have the bankruptcy proceeding dismissed, saying that she would find a way to pay all of her creditors rather than lose the equipment." Pet. App. 18a. In addition to filing a motion to dismiss her bankruptcy proceeding, Reilly further demonstrated her disagreement with Schwab's assertion that the property was includable in the bankruptcy estate by objecting to the motion to sell, arguing that her business equipment

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contested that characterization despite Reilly's repeated description of those events in her briefs at all levels of appeal. *See* Resp. App. 2a, 9a-10a, 12a.

was exempt from the reach of the bankruptcy estate. Pet. App. 21a.

The bankruptcy court subsequently denied both Reilly's motion to dismiss and Schwab's motion to sell on the ground that the business equipment was fully exempt because Schwab failed to file an objection to Reilly's exemptions within the 30-day objection period prescribed by Bankruptcy Rule 4003(b).

B. Decisions Below

Schwab appealed the bankruptcy court's decision to the United States District Court for the Middle District of Pennsylvania. The district court affirmed the bankruptcy court, explaining that Reilly's use of identical values on her list of business equipment assets and exemptions resulted in the exemption of the entire amount of the business equipment in the absence of any objection within the 30-day period.

Schwab then appealed the district court's decision to the Third Circuit, which affirmed. The Third Circuit held that a debtor is entitled to full exemption of the property where "the debtor indicates the intent to exempt her entire interest in a given property by claiming an exemp-

tion of its full value and the trustee does not object in a timely manner." Pet. App. 1a-2a.

REASONS FOR DENYING THE PETITION

Schwab contests the Third Circuit's conclusion that where "the debtor indicates the intent to exempt her entire interest in a given property by claiming an exemption of its full value and the trustee does not object in a timely manner...the debtor is entitled to the property in its entirety." Pet. App. 1a-2a. In support of his argument, Schwab asserts that (i) the Third Circuit's holding will place an additional strain on bankruptcy trustees in the form of unnecessary objections to exemptions and requests for extensions; (ii) a debtor's exemption claim of the full value of a given property will provide insufficient notice to a trustee that an objection is warranted; and (iii) the Third Circuit's decision unconstitutionally usurps the power of Congress to legislate exclusively in the field of bankruptcy by creating new duties for trustees and unlimited exemptions for debtors. Pet. 5, 25. Schwab contends that the decision misreads and overapplies this Court's decision in *Taylor v. Freeland & Kronz*, 503 U.S. 638 (1992), and also conflicts with the decision of the Eighth Circuit in *Stoebner v. Wick (In re Wick)*, 276 F.3d 412 (8th Cir. 2002) and the decision of the Ninth Circuit

in *Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316 (9th Cir. 1992). Pet. 5-14.

These assertions are unsound. First, Schwab's argument that the Third Circuit's decision will place an additional strain on bankruptcy trustees is not supported by the facts of this case. Here, as noted above, Schwab was not only able to obtain an appraisal of the exempted items within the 30-day objection period, but Schwab was actually able to obtain the appraisal *before* the creditors meeting that triggered the 30-day objection period. Furthermore, this Court has already explained that the appropriate action to be undertaken by a trustee where the trustee does not know the value of the exempted assets at issue is to either seek a hearing on the issue or ask the bankruptcy court for an extension of time to object. *Taylor*, 503 U.S. at 644. It can hardly be said, in light of the facts of this case, that any additional burden on the trustee imposed by this Court's decision in *Taylor* is insurmountable.

Second, Schwab's assertion that Reilly's claim of the full value of her property provides insufficient notice to a trustee to object is unpersuasive. Not only will an identical value exemption claim provide sufficient notice to a trustee of the debtor's intent to exempt the entire

asset,[2] the record in this case demonstrates that such an exemption in fact provided sufficient notice: Schwab was fully aware that the value of the business equipment may not have actually been $10,718. As noted above, Reilly's listing of identical values on her bankruptcy schedules prompted Schwab to obtain a preliminary appraisal of the property prior to the meeting of the creditors. Indeed, at the creditors meeting, Schwab actually indicated his intent to proceed with a sale of the property. It is unclear why Schwab then elected not to object to the claimed exemptions, in light of his concerns as to their value, but the fact remains that he did not object. In light of these facts, any circuit court deciding the case would reach the same outcome.

Finally, Schwab's argument alleging unconstitutionality is misplaced. Schwab contends that the Third Circuit's opinion unconstitution-

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[2] Indeed, the leading bankruptcy treatise provides the following guidance: "Normally, if a debtor lists an asset as having a particular value in the schedules and then exempts that value, the schedules should be read as a claim of exemption for the entire asset, to which the trustee should object if the trustee believes the asset has been undervalued." 4 ALAN N. RESNICK & HENRY J. SOMMER, COLLIER ON BANKRUPTCY ¶ 522.05[2][b] (15th rev. ed. 2007).

ally infringes upon the exclusive power of Congress, but its decision is based upon and follows the reasoning of this Court's decision in *Taylor*. Furthermore, the Third Circuit's decision does not increase the duties of the trustee or enlarge the exemptions available to the debtor under *Taylor*. In any event, the Third Circuit cannot properly be accused of legislating in a non-uniform way due to purportedly conflicting decisions by *other* courts in *other* circuits.

The Third Circuit properly concluded that Schwab's failure to object to Reilly's claim for exemptions within the 30-day objection period provided for by Rule 4003(b) operated to fully exempt Reilly's exemption claim for her business equipment. Accordingly, the Third Circuit correctly denied Schwab's motion to proceed with a sale of that property.

The decision of the Third Circuit is also consistent with this Court's decision in *Taylor* and with the decision of the Sixth Circuit's bankruptcy appellate panel in *Olson v. Anderson (In re Anderson)*, 377 B.R. 865 (B.A.P. 6th Cir. 2007) and the decision of the Eleventh Circuit in *Allen v. Green (In re Green)*, 31 F.3d 1098 (11th Cir. 1994). Moreover, to the extent that some aspects of the Third Circuit's analysis diverge from aspects of decisions from other circuits,

this case neither requires nor presents the appropriate vehicle for the Court's intervention, as there is no basis upon which to conclude that those decisions would trigger a different result. Indeed, review of those decisions demonstrates that the outcome would likely be the same.

A. The Writ Should Be Denied Because the Decision Below Comports with this Court's Precedent.

Schwab claims that the Third Circuit's analysis "perpetuates a mis-reading and over-application" of *Taylor*. Pet. 5. It is Schwab's analysis, however, that is in error, as the decision below is fully consistent with *Taylor*.

In *Taylor*, the debtor had a pending employment discrimination claim on appeal when she filed her bankruptcy petition. *Taylor v. Freeland & Kronz*, 503 U.S. 638, 640 (1992). The debtor's schedule filed with the bankruptcy court listed the money she expected to win in her discrimination suit as exempt property. She described the property as "Proceeds from lawsuit – [Davis] v. TWA" and "Claim for lost wages" with a listed value of "unknown." *Id.* Subsequently, the trustee held the required initial meeting of the creditors. At that meeting, the respondents told the trustee that the esti-

mated value of the debtor's lawsuit was potentially as high as $90,000. *Id.* After the meeting, the trustee wrote a letter to the respondents, indicating that he considered the eventual lawsuit proceeds to be property of the debtor's estate and seeking additional information about the suit. *Id.* The respondents provided the requested information, but the trustee elected not to object to the claimed exemption because he doubted the listed value of the lawsuit. *Id.* at 640-41.

When a subsequent settlement of the case resulted in a substantial sum of money, the trustee demanded its return from the respondents. *Id.* at 641. The respondents argued, however, that the proceeds from the lawsuit were exempt because the debtor had claimed them as exempt. *Id.* The bankruptcy court ruled in favor of the trustee, holding that the debtor "had 'no statutory basis' for claiming the proceeds of the lawsuit as exempt and ordered respondents to 'return' approximately $23,000 to Taylor, a sum sufficient to pay off all of [the debtor's] unpaid creditors." *Id.* On appeal, the district court affirmed the bankruptcy court's decision. *Id.*

The Third Circuit reversed, concluding that the respondents were not required to turn over the proceeds of the lawsuit because the debtor

had claimed them as exempt and the trustee "had failed to object to the claimed exemption in a timely manner." *Id.* at 641-42.

This Court framed the issue presented in *Taylor* as follows: "whether the trustee may contest the validity of an exemption after the 30-day period if the debtor had no colorable basis for claiming the exemption." *Id.* at 639. Focusing its analysis on the text of Section 522(l) and Rule 4003(b), the Court reasoned:

> [The debtor] claimed the lawsuit proceeds as exempt on a list filed with the Bankruptcy Court. Section 522(l), to repeat, says that "unless a party in interest objects, the property claimed as exempt on such list is exempt." Rule 4003(b) gives the trustee and creditors 30 days from the initial creditors' meeting to object. By negative implication, the Rule indicates that creditors may not object after thirty days "unless, within such period, further time is granted by the court." The Bankruptcy Court did not extend the 30-day period. Section 522(l) therefore has made the property exempt. [The trustee] cannot contest the ex-

> emption at this time whether or not [the debtor] had a colorable statutory basis for claiming it.

Id. at 643-44. The Court went on to hold that if the trustee "did not know the value of the potential proceeds of the lawsuit, he could have sought a hearing on the issue, *see* Rule 4003(c), or he could have asked the Bankruptcy Court for an extension of time to object, *see* Rule 4003(b). Having done neither, [the trustee] cannot now seek to deprive [the debtor] and respondents of the exemption." *Id.* at 644.

1. The Decision Below Is Fully Consistent with *Taylor*.

The petition incorrectly asserts that the Third Circuit erred by relying on *Taylor* to hold that Reilly's business equipment was exempt because Reilly did not seek to exempt a value of either "unknown" or "any amount to indicate that the value was contingent." Pet. 12-13. Indeed, Schwab's attempt to distinguish *Taylor* from this case rests entirely on this single distinction. A closer look at this Court's decision in *Taylor* demonstrates that this distinction makes no difference.

There is no basis on which to conclude that the holding of *Taylor* is limited to instances where the debtor lists a value for its exemption that indicates the value of the asset is contingent. *Taylor* addressed more broadly the requirement that the trustee must object to any exemption by the debtor within the 30-day objection period provided by Rule 4003(b). The crucial fact in *Taylor*, for the purposes of the decision below, is that the asset was listed on Reilly's schedule of exemptions and that the amounts for the value of the asset and the exemption were identical.

The decision below does not violate the holding of *Taylor*. The Third Circuit found that Reilly had properly listed her exemption in the business equipment, and that she indicated her intent to fully exempt the applicable property by using identical values for both the asset list and exemption amount. Pet. App. 11a.

Schwab contends that Reilly should have indicated her intent to exempt the asset in full by listing "unknown" or "$1 or any amount to indicate that the value was contingent." Pet. 13. Schwab's argument fails to address the fact that the value of Reilly's business equipment was not contingent at all. Reilly ascertained what she

believed to be the proper value for the business equipment and listed that value.

Indeed, the value Reilly provided as the amount of her exemption was neither arbitrary nor the product of bad faith, as the exemption amount Reilly claimed for the business equipment did not exhaust the remaining amount of exemptions available to her under Section 522(d)(5). *See* Resp. App. 10a. Rather, Reilly applied the remaining $1,328 of her available business exemption to exempt some, but not all, of the perishable food items in her possession. *Id.* Reilly thought she knew the value of the items she sought to exempt, and accordingly, she listed and sought to exempt their full value in good faith. Had Reilly been acting in bad faith, she would have ensured that all of the perishable food items were covered by the exemption amount as well. If she had known that her intent to exempt the full amount of her business equipment would be frustrated by Schwab, she would have used the remaining $1,328 to exempt a greater amount of the business equipment. In either event, a simple objection by Schwab or a hearing would have easily resolved any issues.

Schwab's contention that Reilly should have listed a value of "unknown" and sought to ex-

empt the same amount is further undercut by Schwab's simultaneous heavy reliance on the *Wick* decision that specifically found that the designation "unknown" was insufficient to demonstrate the requisite intent. *Stoebner v. Wick (In re Wick)*, 276 F.3d 412, 416 (8th Cir. 2002). Schwab ultimately seeks to nullify this Court's decision in *Taylor* and the force of Rule 4003(b) by presenting a moving target for Reilly to claim her exemptions.

Contrary to Schwab's argument, this Court's decision in *Taylor* did *not* hold that a debtor must list a contingent amount on its list of exemptions in order for the 30-day objection period of Rule 4003(b) to bar the trustee's later actions against the exempted property. The Third Circuit therefore properly construed this Court's decision in *Taylor* to require a trustee to object to a debtor's claim of exemption within thirty days from the meeting of the creditors where the debtor has indicated its intent to exempt the full amount of its property by listing an equal value for both the asset and the amount of the asset exempted. Accordingly, the Third Circuit's decision in this case is in accord with this Court's prior precedent and provides no basis for certiorari review.

2. Any Burden Imposed on the Trustee by the Decision Below Is Fully Consistent with *Taylor*.

Schwab argues that the decision below places an additional strain on the bankruptcy trustee in the form of unnecessary objections to exemptions and requests for exemptions. Schwab's argument is unsupported by the underlying facts of this case and a proper reading of this Court's decision in *Taylor*.

As noted above, in this case, Schwab was able to obtain an appraisal of the items claimed by Reilly on her schedule of exemptions *before* the meeting of the creditors that triggered the 30-day objection period under Rule 4003(b). Once such an appraisal is obtained, a diligent trustee can promptly object to the claimed exemption on the basis of its valuation, or seek a hearing on the issue. In the event the trustee has insufficient time to ascertain whether to object to a claim of exemption, the trustee can seek an extension of the 30-day period from the court. In this case, Schwab was able to obtain the necessary information before the 30-day objection period even *began*. It appears highly unlikely that any other trustee would not be able to obtain the necessary appraisals within the 30-day objection period, and even if they were unable to

do so, they could simply request an extension from the court for additional time to do so. Schwab's actions in this case demonstrate that any additional burden created by the need to object to identical value exemptions is minimal at best.

Additionally, Schwab misdirects this criticism to the decision below. In actuality, any additional burden imposed on trustees to object under Rule 4003(b) was imposed by this Court in *Taylor*, not by the Third Circuit. As noted above, this Court explained that Rule 4003(b) prevents trustees from objecting to claimed exemptions after thirty days from the meeting of creditors unless the court grants an extension. *Taylor*, 503 U.S. at 643-44. This Court explained in *Taylor* that if the trustee does not know the value of the claimed asset, he could seek a hearing on the issue of valuation or ask the Bankruptcy Court for an extension of time to object. *Id.* at 644. The decision below merely complies with this Court's directive in *Taylor*.[3]

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[3] Schwab's contention that a trustee would potentially face sanctions for an improper objection is likewise unpersuasive. Pet. 24. A trustee faced with a valuation issue can seek a hearing on the issue, citing this Court's decision in *Taylor* as support for the trustee's desire to make absolutely clear what is being claimed exempt. It

B. The Writ Should Be Denied Because the Decision Below Presents Only a Shallow Conflict with Decisions of the Other Circuit Courts that Have Addressed this Issue, and to the Extent that There Is any Disagreement, this Case Neither Requires nor Presents the Appropriate Vehicle for the Court's Intervention as the Result Would Be the Same Under the Cases Cited by Petitioner.

Schwab contends that: "The Third Circuit's holding conflicts in various respects with two other circuit court opinions, as conceded by the Third Circuit." Pet. 5. He specifically contends that the decision below conflicts with the decision of the Ninth Circuit in *Hyman*, and the decision of the Eighth Circuit in *Wick*. Neither of these asserted "conflicts" warrants certiorari review of this case.

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is highly unlikely that any court would find such a request for hearing or even an objection to an exemption on the basis of valuation sanctionable. This is particularly so, in light of the fact that Collier on Bankruptcy counsels a trustee to take this very approach. *See supra* note 2, and accompanying text.

1. The Conflict Between the Courts of Appeals, to the Extent One Exists, Is Shallow.

This Court's decision in *Taylor* adopts a plain meaning approach to the interpretation of Section 522(l) and Rule 4003(b), which directs courts to simply read the debtor's schedules to find listed exemptions, and if no objection is made within thirty days from the meeting of the creditors, to find whatever is listed on the debtor's schedules as exempt. *Taylor*, 503 U.S. at 643-44. However, where a debtor has exhibited some indications of fraudulent conduct, some circuit courts have declined to follow this rule strictly. Instead, they have pursued another approach that looks beyond the schedules to determine the debtor's underlying intent. With respect to this case, however, certiorari is not warranted because Reilly would succeed in exempting her assets under either approach.

The only real difference between the positions taken by the courts of appeals is the placement of the burden of demonstrating intent and the method employed to ascertain the debtor's intent regarding what she sought to exempt. The Sixth and Eleventh Circuits join the Third Circuit in strictly following the rule in *Taylor,* determining that where the debtor ex-

empts an identical amount as the value listed for a given asset, the debtor has elected to exempt the entire value of the asset. The Eighth and Ninth Circuits have declined to follow this rule, instead electing to look beyond the schedules to ascertain the intent of the debtor. These differences are insufficient to warrant certiorari in this case.

Reilly's exemption claims would clearly be considered exempt if considered by the Sixth, Eleventh, or Third Circuits. The Eighth and Ninth Circuits employ a somewhat different standard that involves testing the debtor's intent and ultimately shifting the burden of demonstrating that intent on the debtor. This burden-shifting appears to be contrary to *Taylor* and outside the scope of Rule 4003. Nevertheless, even under the more stringent approach adopted by these courts, Reilly would still prevail on her claim of exemption. Accordingly, certiorari is not warranted in this case.

2. The Decision Below Is Consistent with the Eleventh Circuit's decision in *Green* and the Sixth Circuit Bankruptcy Appellate Panel's Decision in *Anderson*.

In *Green*, the debtor reported a "lawsuit from auto accident" on her schedules with a value of one dollar. *Allen v. Green (In re Green)*, 31 F.3d 1098, 1098 (11th Cir. 1994). On her exemption schedule, the debtor likewise listed the "value claimed exempt" as one dollar. *Id.* Subsequently, the debtor's personal injury action was settled for $15,000. *Id.* at 1099. When the debtor sought the entire settlement, the bankruptcy court summarily dismissed her motion. *Id.* The district court reversed on appeal, holding that the debtor "had exempted the entire lawsuit, not just one dollar of its value." *Id.*

The Eleventh Circuit explained that "an unstated premise of the Court's holding [in *Taylor*] was that a debtor who exempts the entire reported value of an asset is claiming the 'full amount,' whatever it turns out to be." *Id.* at 1100. Ultimately, the Eleventh Circuit decided that because the debtor had "exempted the full value of her lawsuit, and because the Trustee did not object to her claim, she is entitled to the entire settlement fund." *Id.* at 1101. This re-

sult clearly accords with the Third Circuit's decision below.

Notably, the Eleventh Circuit considered the argument presented by the trustee that the Eleventh Circuit's holding would "force interested parties to make numerous, sometimes needless, objections in order to establish the value of contingent assets." *Id.* The Eleventh Circuit explained that "[i]f that is so, responsibility for that result rests with Congress and the Supreme Court." *Id.*

In the *Anderson* case, the debtors listed their undivided one-half interest in an old cabin on their schedule of assets, claiming the cabin had an approximate value of $30,000, and therefore "[t]he debtors' interest would be $15,000." *Olson v. Anderson (In re Anderson)*, 377 B.R. 865, 869 (B.A.P. 6th Cir. 2007). Additionally, the debtors listed an exemption for their interest in the cabin in an identical amount of $15,000. *Id.* The trustee never objected to the debtors' exemption claim. *Id.*

Almost a year later, the trustee obtained a drive-by appraisal of the property, which provided an estimated value for the cabin of $60,000. *Id.* In light of the appraisal, the trus-

tee filed an adversary proceeding against the debtors, seeking to sell the property. *Id.*

In deciding the case, the Sixth Circuit bankruptcy appellate panel in *Anderson* explained that "[t]he *Taylor* decision is clear that when a debtor makes an unambiguous manifestation of intent to seek an unlimited exemption in property, then, absent a timely objection, that property is exempt in its entirety, even if its actual value exceeds statutory limits, and it is no longer property of the estate." *Id.* at 875. The court then focused the issue on "what constitutes such an intent." *Id.* The court noted that the bankruptcy schedules themselves do not actually alert the debtor as to the proper way to assert an "in-kind" exemption. *Id.* Ultimately, the court joined the position taken by the Third Circuit in the case below, stating: "[W]e are persuaded generally that a debtor's listing of an exemption in an amount sufficient to exempt all of the available (i.e., unencumbered) value in the property indicates his or her intent to exempt the property in full." *Id.* at 876.

The bankruptcy appellate panel in *Anderson* agreed with the Eleventh Circuit that an unstated premise of *Taylor* "was that a debtor who exempts the entire reported value of an asset is claiming the 'full amount' whatever it turns out

to be." *Id.* (quoting *Green*, 31 F.3d at 1100). Indeed, "[a] contrary ruling would reverse the burden of proof placed on an objecting party to challenge the propriety of an exemption in Rule 4003(c) and render the 30-day objection period meaningless." *Id.* The court further noted that trustees who are uncertain about a given exemption may seek a hearing on the issue or request an extension to object. *Id.* Schwab takes issue with this comment in *Anderson*, questioning how a trustee is supposed to accomplish this, but, as noted above, this Court provided the method in the *Taylor* decision.

Additionally, the Sixth Circuit bankruptcy appellate panel in *Anderson* examined the *Wick* and *Hyman* cases. The bankruptcy appellate panel in *Anderson* distinguished *Hyman* on the grounds that "the debtors in *Hyman* did not exempt all of the unencumbered value in the property." *Id.* With respect to *Wick*, the bankruptcy appellate panel explained that "[n]otwithstanding the similarity with *Taylor*, the court limited the debtor's exemption to $3,925, looking behind the language used by the debtor in her schedules to determine her intent." *Id.* at 876-77. The bankruptcy appellate panel further explained that the Eighth Circuit concluded that "all of the parties understood that the options were only partially exempt" and

therefore found *Taylor* inapplicable. *Id.* at 877. Importantly, the bankruptcy appellate panel noted the potential area of disagreement between the circuits as the suggestion in *Wick* that "any ambiguity should be resolved against the debtor." *Id.* The bankruptcy appellate panel in *Anderson* rejected the Eighth Circuit's burden-shifting approach, but it is important to note that in this case, the factual circumstances surrounding Reilly's claim of exemption would satisfy even the increased burden of the Eighth Circuit's test.

Reilly clearly exempted an identical value as that listed for the asset, and she also would not accept a reduction in the amount of recovery in subsequent discussions with the trustee. On the contrary, as the Third Circuit noted, when faced with the potential sale of her business equipment, Reilly sought to dismiss her bankruptcy case altogether and subject herself to paying the full amounts to her creditors if that was what was necessary to save the business equipment her parents had purchased for her. Pet. App. 17a-18a.

3. The Decision Below Does Not Conflict with the Ninth Circuit's Decision in *Hyman* or the Eighth Circuit's Decision in *Wick* to the Extent that Petitioner Presents, and the Result in this Case Would Be the Same Under Either *Hyman* or *Wick*.

Schwab cites *Hyman* as evidence of a circuit split meriting review. As the Third Circuit noted, however, there are important differences between the facts of this case and *Hyman*. Pet. App. 12a-13a. As a threshold matter, it is important to note that, as the Ninth Circuit noted, the *Hyman* case "turns largely on the proper interpretation of California's homestead exemption statute." *Hyman v. Plotkin (In re Hyman)*, 967 F.2d 1316, 1318 (9th Cir. 1992). The focus in *Hyman* was not on the exemption objection issue at bar.

In *Hyman*, the Ninth Circuit declined to exempt the value of the debtors' home where they listed an exemption amount of $45,000 that was less than the equity available in their home. *See id.* at 1320-21. The Third Circuit recognized this distinction, explaining that "*Hyman* is distinguishable from the case before [it] because [Reilly] claimed an exemption in the amount of the entire value of the property." Pet. App. 12a.

This distinction is critical because, as the Ninth Circuit court noted, the debtors in *Hyman* "did not sufficiently notify others that they were claiming their entire homestead as exempt property; their schedule only gave notice that they claimed $45,000 as exempt." *Hyman*, 967 F.2d at 1319. In this case, however, Reilly's listing of an identical value for both her business equipment assets and the exemption amount indicated the intent necessary to put the trustee on notice to object.

It is true that the Ninth Circuit's approach differed from that taken by the Third Circuit in shifting the burden from the trustee to the debtor with respect to any ambiguity in the debtor's schedules. *See id.* This distinction does not merit certiorari review, however, as it would *not* dictate a different outcome in this case. Ultimately, the Ninth Circuit considered the underlying factual circumstances to ascertain the debtors' intent with respect to their claim of exemptions. On the facts of this case, Reilly would satisfy the Ninth Circuit's shifted burden of proof, inasmuch as the record demonstrates that Schwab was aware of a potential valuation issue prior to the meeting of the creditors and still failed to object within the 30-day objection period. Additionally, the immediate and extreme nature of Reilly's response to Schwab's later mo-

tion to sell (i.e., seeking dismissal of her entire bankruptcy case to save the business equipment purchased by her parents) demonstrated a clear intent to exempt the assets in full.

The Eighth Circuit in *Wick* considered a case where the debtor had listed stock options and, using the federal "wild card" or "catchall" exception, listed the current market value of the options as "unknown" and the value of the claimed exemption as "unknown." *Stoebner v. Wick (In re Wick)*, 276 F.3d 412, 414 (8th Cir. 2002). At the meeting of the creditors in that case, the trustee requested and received a copy of the employment agreement from the debtor that described the options. *Id.* The trustee never objected to the exemption, but eight months after the debtor received her discharge, the trustee wrote to her asking if she was still employed with the company associated with the stock options. *Id.* The debtor responded that she was no longer employed with the company, but that she had attempted to exercise her options and been denied. *Id.* As the Eighth Circuit noted, "[h]er veracity was later questioned by the trustee and the Bankruptcy Court," and while she "may not have lied to the trustee in her letter, she was not entirely candid and never informed him of the changed circumstances." *Id.*

When the debtor's stock options later turned out to have a value of $97,200, the trustee sought to re-open the bankruptcy case and demanded the $97,200 minus the $3,925 exemption that remained available to the debtor. *Id.*

In deciding the case, the Eighth Circuit was not content to simply look at the debtor's schedules to determine her intent to exempt a particular piece of property in full, but instead looked at the underlying factual circumstances surrounding the debtor's claim of exemption. The court noted that "[t]he facts suggest that [the debtor], her counsel, and the trustee understood that the options were only partially exempt." *Id.* at 416. The Eighth Circuit reached this conclusion by examining the interactions between the debtor and the trustee when the trustee sought to obtain the value of the stock options for the bankruptcy estate. As noted above, when questioned about the options by the trustee following the conclusion of the debtor's bankruptcy, the debtor was not entirely truthful, but nevertheless "did not question the trustee's follow-up on the options." *Id.* Additionally, the Eighth Circuit noted that the debtor's counsel "acknowledged in a July 22, 1999 letter to the trustee that the estate had at least some, if a minimal interest, in the options." *Id.*

As part of its refusal to look solely at the debtor's schedules to ascertain her intent, the court also rejected the "contention that listing 'unknown' as the current market value of the exemptions is sufficient as a matter of law to make an asset fully exempt." *Id.* Given the facts and holding of *Taylor*, such a position appears contrary to prior precedent of this Court, but ultimately does *not* require a different result in this case.

The Eighth Circuit attempted to distinguish its facts from *Taylor* on the basis that in the case before it, the debtor "listed a valid statutory basis for her asset" and had exemption value left to partially exempt the asset. *Id.* at 417. As a result, the Eighth Circuit held that the bankruptcy court had correctly determined that the trustee had no basis to object to the claimed exemption. *Id.*

Looking beyond the debtor's schedules, the Eighth Circuit determined that "the asset was only partially exempted," and the Bankruptcy Code and Rules did not oblige a trustee to object "every time a debtor partially exempts an asset." *Id.* The facts used by the Eighth Circuit to distinguish *Taylor* appear at odds with the actual facts of *Taylor*; however, this does not affect how the Eighth Circuit would decide this case.

Indeed, the Eighth Circuit acknowledged that the debtor in *Taylor* "did not have a right to exempt more than a small portion of the asset." *Id.* The Eighth Circuit reasoned that the Supreme Court in *Taylor* noted that the trustee in that case could have made a valid objection if he had acted promptly, and without anything further decided that the case before it was distinguishable. *See id.*

Taylor held that the debtor's listing of "unknown" as both the asset value and exemption amount indicated an intent to fully exempt the asset, despite the fact that the debtor only had a statutory basis to *partially* exempt the asset. When describing the facts of *Taylor*, the Eighth Circuit explained that "[t]he trustee did not object, despite the fact that the debtor had only a small exemption amount available and *was claiming the entire asset exempt.*" *Id.* at 417 (emphasis added). The Eighth Circuit held that the designation of "unknown" was sufficient to demonstrate an intent to exempt an entire asset in *Taylor*, but not in *Wick*. Looking to the underlying facts in *Taylor*, it appears the key distinction for the Eighth Circuit was that in *Taylor*, when the trustee sought the proceeds from the discrimination lawsuit, the respondents immediately objected and "argued that they could keep the fees because [the debtor] had

claimed the proceeds of the lawsuit as exempt." *Taylor*, 503 U.S. at 641.

In this case, Reilly listed an identical amount for both the asset value and exemption amount of the business equipment she sought to exempt. As noted above, the record indicates that the trustee then obtained an appraisal of the relevant items, and challenged the debtor's valuation verbally at the meeting of the creditors. Despite the trustee's knowledge and discussion with the debtor, the trustee failed to object to the claim of exemption or request additional time within the 30-day period required by Rule 4003(b). When the trustee later sought to sell the property, Reilly was so steadfastly opposed to the notion of losing the business equipment her parents had purchased for her that she sought dismissal of her bankruptcy case in order to save the items of sentimental value. Pet. App. 17a-18a. Unlike *Wick*, where the debtor was responsive to the trustee's later requests for information about the options and her counsel conceded that at least some of the relevant property was still property of the estate, Reilly was consistent in her stance that the property was properly exempted from the estate *in full*. Accordingly, even under *Wick*'s analysis of intent, which considers the actions of the parties to ascertain whether they attempted to partially

exempt the claimed property, the outcome in this case would be the same.

4. The Decision Below Does Not Conflict with the First Circuit's Recent Decision in *Barroso-Herrans*, and the Result Below Would Have Been the Same Under the First Circuit's Analysis.

The First Circuit recently addressed the issue presented in *Barroso-Herrans v. Lugo-Mender (In re Barroso-Herrans),* 524 F.3d 341 (1st Cir. 2008). In that case, the debtors had two lawsuits pending that sought over four million dollars for various alleged damages. *Id.* at 343. On their list of assets, the debtors included two accounts receivable from the defendant in the pending lawsuits, and listed their values at $102,843.21 and $67,608.98. *Id.* Additionally, the debtors listed the two pending lawsuits as assets, each with a value of $4,000. *Id.* As the *Barroso-Herrans* court explained, "[t]he suits included but were not limited to collection of the accounts receivable." *Id.* On the list of exempt assets, the debtors claimed the two lawsuits, listing a value of $4,000 for each. *Id.* During the meeting of the creditors, the trustee was given copies of the complaints in the two pending lawsuits, but ultimately, the trustee did not

object to the claimed exemptions for the two lawsuits. *Id.*

A little over a year later, the trustee requested that the bankruptcy court authorize an agreement reached with the debtors and their counsel, which included an equal split between the debtors and the bankruptcy estate of the proceeds of the suits. *Id.* After the bankruptcy court refused to commit to a particular distribution of the proceeds from the suits, the counsel for the debtors withdrew, and the debtors refused to cooperate with the trustee. *Id.* Over five months later, the debtors first asserted in the bankruptcy court that the two suits were entirely exempt from the bankruptcy estate. *Id.* The trustee's unilateral settlement of the suits garnered $100,000. Although the debtors objected to the settlement, the bankruptcy court approved it and held that the debtors had only exempted a $4,000 partial interest in each of the suits. *Id.* at 344. The bankruptcy court "also suggested that [the debtors] had acted in bad faith." *Id.*

In deciding this case, the *Barroso-Herrans* court employed a different test from the other circuits that have examined this issue, but ultimately, its analysis was similar to that employed by the Ninth Circuit and Eighth Circuit.

The *Barroso-Herrans* court asked "how a reasonable trustee would have understood the filings under the circumstances." *Id.* The court then focused on the fact that "[t]he law suits sought damages for, among other things, the accounts receivable." *Id.* at 345. According to the court, "given the much higher valuations of the accounts receivable, the trustee might reasonably assume that the $4,000 figure reflected...a $4,000 interest in the suit's proceeds." *Id.* The court further explained that "this reading alone reconciles the law suit valuations with the accounts receivable valuations." *Id.* at 346.

The *Barroso-Herrans* court also engaged in the burden-shifting employed by the Eighth and Ninth Circuits in *Hyman* and *Wick*. Moreover, these three cases reviewed additional factors in determining the debtors' intent to exempt *vel non*. *See Barroso-Herrans*, 524 F.3d at 346 (discussing whether Barroso had a reason to negotiate with Lugo over the lawsuits); *Wick*, 276 F.3d at 416-17 (discussing post-filing conduct in determining debtor's intent); *Hyman*, 967 F.2d at 1319-20 ("This case turns largely on the proper interpretation of California's homestead exemption statute").

Although the First, Eighth, and Ninth Circuits have employed different tests than the

Third, Sixth and Eleventh Circuits in deciding the issue, they all ultimately would reach the same outcome on the facts of this case. Reilly indicated an intent on her bankruptcy schedules to fully exempt her business equipment in a manner that would satisfy the *Taylor*-based interpretation of Rule 4003(b) employed by the Third, Sixth, and Eleventh Circuits. Additionally, Reilly's immediate and extreme reaction of seeking to have her bankruptcy case dismissed rather than face the possibility of Schwab selling her business equipment would satisfy the conduct-based approach employed by the First, Eighth and Ninth Circuits to determine a debtor's intent to fully exempt an asset. Accordingly, despite a shallow circuit split on this issue, this case does not provide the appropriate vehicle for this Court's consideration of this issue.

C. The Decision Below Does Not Encroach Unconstitutionally upon Congress's Exclusive Power to Legislate in the Field of Bankruptcy.

As a threshold matter, Schwab did not raise this constitutional issue in any of the courts below until his reply brief in the Third Circuit, and the issue was not addressed by any of the lower courts. *See* Pet'r-Appellant's Reply Br. 6,

Schwab v. Reilly (*In re Reilly*), No. 06-4290 (3d Cir. March 21, 2007). As this Court has stated, ordinarily it "does not decide questions not raised or resolved in the lower court[s]." *Taylor*, 503 U.S. at 645-46 (quoting *Youakim v. Miller*, 425 U.S. 231, 234 (1976) (per curiam)). This policy helps maintain the integrity of the certiorari process. *Id.* None of the circuit courts that have addressed the exemption issue have ever considered the constitutional argument that Schwab presents.

Additionally, Schwab's argument fails because (i) the Third Circuit was not legislating with its decision in the proceedings below, and certainly not in a non-uniform manner; and (ii) the decision below does not unconstitutionally create more duties for the trustee in a bankruptcy case, nor does it unconstitutionally enlarge the exemptions available to debtors.

1. The Third Circuit's Decision Does Not Legislate, and Certainly Not in a Non-Uniform Manner.

Schwab asserts that the Third Circuit's decision "not only legislated in the field of bankruptcy, but has done so in a non-uniform way." Pet. 26. This argument is undeveloped, unad-

dressed by the lower courts, and ultimately unpersuasive.

Schwab attempts to shoehorn his argument regarding the added burden on the duties of a trustee into a constitutional rubric. Schwab argues that the duties of trustees set forth in Section 704(a)(1) do not include the 30-day objection requirement associated with exemptions. Pet. 28. Schwab essentially argues that Congress elected not to include such time limits among the duties of trustees, so they should not be imposed by the Third Circuit's decision. *Id.* Schwab further argues that the Third Circuit has legislated in a non-uniform manner. *Id.* Schwab cites the purported conflict among the circuits as the only support for his lack-of-uniformity argument. *Id.*

First, as noted above, the Third Circuit did not establish the present duties of a trustee to object to a claim of exemptions; any additional duties were created by this Court's decision in *Taylor*.

Second, while it is true that Section 704(a)(1) does not impose the 30-day objection time limit in its text, Section 704(a)(1) also does not include any other time limits to which bankruptcy trustees are subject. Nevertheless, there are

numerous time limits in other parts of the Bankruptcy Code and Rules to which trustees are subject. Schwab singles out this particular time limit as somehow required to be included in the text of the general duties of a trustee.

Third, as the discussion above and this Court's decision in *Taylor* itself makes clear, a trustee is not required to administer the entire estate in thirty days, only to object or seek a hearing on the valuation issue when an exemption is in question. If thirty days is insufficient, this Court's decision in *Taylor* suggested a trustee should seek an extension from the bankruptcy court.

Fourth, the 30-day objection period is prescribed by Bankruptcy Rule 4003(b), which was validly issued by this Court pursuant to rulemaking authority granted to this Court *from Congress*.

Fifth, even if the Third Circuit was considered to be legislating in the field of bankruptcy, it can hardly be accused of doing so in a non-uniform manner by virtue of actions undertaken by *other courts* in *other circuits*. To the contrary, the Third Circuit's treatment of this issue has been uniform.

2. The Decision Below Does Not Unconstitutionally Create More Duties for the Trustee or Enlarge the Exemptions Available to the Debtor.

Schwab contends that "[i]f Congress wished to make the exemptions of Section 522(d)(5) and (6) unlimited in amount, it could have done so when it last amended the Bankruptcy Code. . . . However, just as Congress did not choose to create the additional duties on trustees created by the Third Circuit holding, as described above, Congress did not chose [sic] to grant unlimited exemptions to debtors." Pet. 33-34.

As noted above, however, any expansion of trustee duties or exemptions available to the debtor follows from this Court's decision in *Taylor*, and that decision has been in place since 1992. Congress therefore has had over sixteen years to scale back the impact of that decision. Indeed, the *Taylor* opinion itself actually encouraged congressional scrutiny of the law in this area. *See Taylor*, 503 U.S. at 644-45. Despite the Court's invitation to Congress in the *Taylor* opinion, Congress left Section 522(l) of the Bankruptcy Code unchanged in its recent comprehensive revisions to the Bankruptcy Code in 2005, indicating an implicit acceptance

of *Taylor*. *See Ankenbrandt v. Richards*, 504 U.S. 689, 700-01 (1992) ("where Congress made substantive changes to the statute in other respects," courts should presume, "absent any [contrary] indication," that Congress adopts the existing interpretation); *Rodriguez v. United States*, 480 U.S. 522, 525-526 (1987).

CONCLUSION

The record demonstrates that Reilly intended to and properly exempted the full value of the business equipment her parents had purchased for her. Accordingly, when Schwab failed to object to Reilly's claimed exemptions, the business equipment became fully exempted from the reach of the bankruptcy estate, and Schwab could not later seek to sell the property. Additionally, the decision of the Third Circuit correctly applies the objection time limit of Rule 4003(b) in a manner consistent with this Court's decision in *Taylor*. Finally, despite a shallow split among the circuits, the outcome would be the same under the decisions of each of the other courts of appeals that have examined this issue.

For the foregoing reasons, the petition for writ of certiorari should be denied.

Respectfully submitted,

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