No. 13-299

In the Supreme Court of the United States

BRANDON C. CLARK AND HEIDI K. HEFFRON-CLARK,
PETITIONERS

v.

WILLIAM J. RAMEKER, TRUSTEE, ET AL.

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

REPLY BRIEF FOR THE PETITIONERS

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This is the exceptionally rare case at the certiorari stage where respondents do not dispute any of the three propositions most relevant to the determination of whether to grant review. First, respondents do not dispute—and indeed concede—that a circuit conflict exists on the question of whether an inherited IRA qualifies for the "retirement funds" exemption in Section 522 of the Bankruptcy Code. Second, respondents do not dispute that the question presented is of substantial importance to litigants and to the administration of the Bankruptcy Code. Third, respondents do not dispute that this case is an ideal vehicle in which to consider and resolve the question presented.

In a halfhearted effort to shield their victory before the court of appeals, respondents argue only that the circuit conflict on the question presented—a conflict that

the court of appeals deliberately created—is a shallow one that does not yet warrant the Court's review. There are compelling reasons, however, why the Court should answer the question presented in this case, rather than allowing the disagreement in the lower courts to fester and waiting for another case that may never come. Because this case plainly satisfies the familiar criteria for further review, the petition for certiorari should be granted.

1. Respondents contend that this Court "ordinarily would not intervene" to resolve a one-to-one circuit conflict. Br. in Opp. 18. To the contrary, especially in recent years, the Court has routinely granted review to resolve conflicts between two courts of appeals on questions of statutory or regulatory interpretation. See, *e.g.*, *PPL Corp.* v. *Commissioner*, 133 S. Ct. 1897, 1901 (2013); *Salazar* v. *Ramah Navajo Chapter*, 132 S. Ct. 2181, 2188 & n.2 (2012); *Christopher* v. *SmithKline Beecham Corp.*, 132 S. Ct. 2156, 2165 (2012); *Hall* v. *United States*, 132 S. Ct. 1882, 1886 & n.1 (2012); *Chase Bank USA, N.A.* v. *McCoy*, 131 S. Ct. 871, 877 (2011).[1]

Whatever the Court's practice in other contexts, moreover, the Court has long granted review to resolve shallow circuit conflicts in the bankruptcy context, rec-

[1] Moreover, as noted in the petition (at 11-12), the two bankruptcy appellate panels to have considered the question presented have reached the same conclusion as the Fifth Circuit. See *In re Hamlin*, 465 B.R. 863, 871-873 (B.A.P. 9th Cir. 2012); *In re Nessa*, 426 B.R. 312, 314-315 (B.A.P. 8th Cir. 2010). Notably, in describing circuit conflicts on issues of bankruptcy law, this Court has frequently included decisions of bankruptcy appellate panels. See, *e.g.*, *Schwab* v. *Reilly*, 130 S. Ct. 2652, 2659 & n.4 (2010); *Grogan* v. *Garner*, 498 U.S. 279, 283 & n.7 (1991). If the decisions in *Hamlin* and *Nessa* were counted here, it would turn respondents' claimed one-to-one conflict into a three-to-one conflict in petitioners' favor.

ognizing the paramount importance of uniformity in the interpretation of the Bankruptcy Code. See U.S. Const. Art. I, § 8, cl. 4. Not only do respondents ignore that need for uniformity, but they overlook (and mischaracterize) a recent example of the Court's granting review in an almost identical posture. In *Hall*, the decision below, like the decision here, created a conflict with one other court of appeals and with numerous district and bankruptcy courts on the interpretation of a provision of the Bankruptcy Code. See Pet. at 7-10, *Hall*, *supra* (No. 10-874). Unlike respondents here, however, the respondent in *Hall* agreed that, while there was only a one-to-one circuit conflict, immediate review was warranted because of "the importance of uniform administration of federal tax and bankruptcy laws." See U.S. Cert. Br. at 7, 14, *Hall*, *supra*.

As noted above, in *Hall*, the Court granted certiorari. See 131 S. Ct. 2989 (2011). Contrary to respondents' misleading suggestion (Br. in Opp. 19 n.8), moreover, a third court of appeals did not address the question presented until *after* the Court granted review. See *In re Dawes*, 652 F.3d 1236 (10th Cir. 2011). Here, just as in *Hall*, the conflict on a question of bankruptcy law between the decision below, on the one hand, and the decisions of another court of appeals and every other court to have validly decided the question, on the other, merits this Court's immediate review and resolution.

In addition, as explained in the petition (at 16-17), the Court's intervention is warranted in this case because the circuit conflict on the question presented is unlikely to deepen anytime soon. On that point, respondents offer only the weak response that, in some cases in which this Court granted review to resolve *other* questions of bankruptcy law, the circuit conflicts were deeper. See Br. in Opp. 18-19. The best evidence that the circuit con-

flict on the question presented *here* is unlikely to deepen, however, is the actual evidence of litigation to date on the question.

In the near decade since the "retirement funds" exemption was enacted, only two of the numerous cases in which the question presented has been decided have percolated up to a court of appeals; in fact, the vast majority of those cases never even made it out of bankruptcy court. See Pet. 11-12 & n.5. What is more, respondents have not identified any court of appeals where the question is currently pending, and we are aware of none.[2] Given the reality that parties in cases presenting the question will often lack the financial resources to pursue protracted litigation, it is unsurprising that such cases have only rarely made it even to the court of appeals level. There is therefore good reason to doubt that this Court will have another opportunity anytime soon, if ever, to resolve the question presented if it were to deny review in this case.

2. Unable to dispute the existence of a circuit conflict, respondents resort to the speculative argument that the conflict may eventually "heal itself." Br. in Opp. 3. But it is highly unlikely that the conflict will be eliminated, for reasons that serve only to confirm why this case warrants the Court's review.

To begin with, the Fifth Circuit is unlikely to overrule its decision in *In re Chilton*, 674 F.3d 486 (2012), even if it were to have an opportunity to do so. Putting aside respondents' snide characterization of its analysis as "cursory" (Br. in Opp. 2, 17), the Fifth Circuit in fact

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[2] In *Hall*, by contrast, petitioners noted that the same issue was then pending in the Tenth Circuit, yet the Court granted review on the existing one-to-one circuit conflict without awaiting further percolation. See Pet. at 10, *Hall*, *supra*.

considered, and rejected, the same arguments that the Seventh Circuit advanced in the opinion below. The trustee in *Chilton*, like the Seventh Circuit, emphasized the differences between IRAs in the hands of their original owners and inherited IRAs, and contended that the essence of the funds in an IRA changes upon the original owner's death because the funds in an inherited IRA are no longer held for retirement but are available for current consumption. Compare Br. of Appellant at 14-18, *Chilton*, *supra* (No. 11-40377), with Pet. App. 2a-7a. Those arguments had also been accepted by the bankruptcy court in *Chilton*, which held that an inherited IRA does not qualify for the "retirement funds" exemption in Section 522. See *In re Chilton*, 426 B.R. 612, 616-618 (Bankr. E.D. Tex. 2010), rev'd, 444 B.R. 548 (E.D. Tex. 2011). The Fifth Circuit, however, squarely rejected those arguments in favor of the "plain meaning" of the statute. See *Chilton*, 674 F.3d at 488-489.

More broadly, even assuming that the Fifth Circuit were to have an opportunity to revisit the question and were to grant en banc review and overrule *Chilton*, the problem of uncertain and disuniform application of the "retirement funds" exemption would persist. Courts across the country—including the bankruptcy appellate panels of two circuits and district and bankruptcy courts in almost every other circuit—would still be applying a different standard. See Pet. 11-12 & n.5. As is the case today, debtors in the Missouri suburbs of St. Louis would likely be able to retain their inherited IRAs post-bankruptcy, while debtors across the river in the Illinois suburbs would not. Resolving the disuniformity in the federal courts on this important question is therefore not simply a matter of waiting for one court to change its mind; courts nationwide would have to reverse course.

And there is little reason to believe that they will. Contrary to respondents' hopeful predictions (Br. in Opp. 16, 21), the Seventh Circuit's decision in this case has yet to convince a single court to follow suit. In fact, the two courts to have considered the issue since the Seventh Circuit's decision have specifically *rejected* its reasoning. One court concluded that the Fifth Circuit's reasoning was "more persuasive," *In re Bauer*, No. 13-1562, 2013 WL 2661835, at *2 (Bankr. D.S.C. June 12, 2013), and the other criticized the Seventh Circuit on the ground that its interpretation "is not based on the plain language of the statute, but appears to be based on the court's own policy considerations," *In re Trawick*, 497 B.R. 572, 586-588 (Bankr. C.D. Cal. 2013).[3] Those decisions amply confirm that the Seventh Circuit's "cogent analysis" (Br. in Opp. 16) has not proven the game-changer that respondents make it out to be. Given the disuniformity created by the Seventh Circuit's decision and the rarity with which the question presented reaches the court of appeals level, this Court's intervention is warranted, and it is warranted now.

3. Finally, perhaps recognizing that this case is a compelling candidate for the Court's review, respondents jump the gun with an extended discussion of the merits. See Br. in Opp. 10-16. For present purposes, it should suffice to note that the sharply contrasting views of the parties (and of lower courts) concerning the interpretation of the "retirement funds" exemption in Section 522

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[3] Oddly, respondents cite those two decisions for the proposition that, "[b]efore the Seventh Circuit's decision, bankruptcy courts reflexively followed the lead, and repeated the errors, of *Nessa*." Br. in Opp. 21 & n.10. As noted above, those two decisions were issued *after* the Seventh Circuit's decision, and they expressly rejected the Seventh Circuit's approach in favor of the majority approach.

underscore the need for this Court's review. But respondents' contention that the majority interpretation is not just incorrect but "irrational," see Br. in Opp. 13, demands a brief response here.

At the risk of stating the obvious, an inherited individual retirement account remains a "retirement account," and it retains the hallmark feature of an IRA: namely, that funds contained in the account are exempt from taxation, with funds being taxed, if at all, only upon distribution. See 26 U.S.C. 408(e)(1); 26 U.S.C. 408A(a). As such, funds in an inherited IRA satisfy the statutory requirement that they be "in a fund or account that is exempt from taxation under" one of the listed provisions of the Internal Revenue Code. 11 U.S.C. 522(b)(3)(C) and (d)(12). Every inherited IRA, moreover, was initially created for a retirement purpose, and the funds in the account were set apart for retirement by being placed in a retirement account. By any definition, that is sufficient to render the funds in an inherited IRA "retirement funds." *Chilton*, 674 F.3d at 489 (quoting *Webster's Third New International Dictionary* 921, 1939 (1993)).

Respondents suggest that "[w]hat matters is how the money is being used now." Br. in Opp. 15; see *id.* at 10-11. The text of Section 522, however, does not mandate a further inquiry into how the funds are used after they are initially set apart for retirement in a retirement account. And such a purposive inquiry would create a host of problematic scenarios. While the original owner of an IRA initially places funds in a retirement account in the expectation that they will be used for retirement, the owner may subsequently use the funds therein for any purpose, subject only to a penalty in most instances if he withdraws funds before age 59½. See IRS, Publication 590: Individual Retirement Arrangements (IRAs) 55, 70-71 (2013). Conversely, after the original owner dies, the

beneficiary of the inherited IRA may use the funds therein for retirement, subject only to minimum distributions that the beneficiary is required to withdraw annually based on his life expectancy. See David J. Cartano, *Taxation of Individual Retirement Accounts* § 32.02[A][1], at 857 (2013).

Two examples prove the point. Suppose a 60-year-old individual who remains employed falls on hard times and begins withdrawing funds from his IRA to pay down his debts. Under respondents' interpretation, assuming the individual intended to deplete his IRA further in that fashion, the remaining funds in the IRA would apparently cease to be "retirement funds," because they are not being "used after [he] has ceased employment" or "saved for anyone's retirement." Br. in Opp. 11, 15. Conversely, suppose an individual such as Mrs. Heffron-Clark intended to use for her own retirement the funds remaining in an inherited IRA after any minimum distributions. Those funds would seemingly qualify as "retirement funds" even under respondents' interpretation, because they are "resources to be used after one has ceased employment." *Id.* at 11. It is hard to see why Congress would have wanted the determination of what constitutes "retirement funds" for purposes of Section 522 to turn on such a fact-intensive, case-by-case inquiry. There is therefore nothing "irrational" about a simple, categorical approach under which an inherited IRA qualifies for the "retirement funds" exemption in Section 522.

As every court other than the Seventh Circuit to have validly decided the question presented has held, an interpretation of the "retirement funds" exemption based on the plain language of the provision is much sounder than the purposive, atextual interpretation advanced by respondents. And it accords with Congress's intention, in enacting the "retirement funds" exemption, to "ex-

pand the protection for tax-favored retirement plans or arrangements that may not be already protected under * * * state or Federal law." H.R. Rep. No. 31, 109th Cong., 1st Sess., Pt. I, at 63-64 (2005). In the wake of the Seventh Circuit's decision, there is a clear circuit conflict on the question of whether inherited IRAs are exempt from bankruptcy estates. This Court should grant review to resolve the circuit conflict and restore uniformity on that important question of bankruptcy law.

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The petition for a writ of certiorari should be granted.

Respectfully submitted.

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