No. 18-_____

IN THE

Supreme Court of the United States

SONJA RITTER,

Petitioner,

v.

LOIS I. BRADY, Chapter 7 Trustee,

Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Under Chapter 7 of the Bankruptcy Code, a debtor's assets are liquidated. Creditors then submit claims for payment, with priority going to secured claims—that is, claims backed by a lien on property. Under Section 506(a) of the Code, a claim is "a secured claim to the extent of the value of [the] creditor's interest" in the property underlying the lien. 11 U.S.C. § 506(a). The remaining value of the lien is treated as unsecured. *Id.* And Section 506(d) voids any part of a lien that "is not an allowed secured claim." *Id.* § 506(d). Yet *Dewsnup v. Timm*, 502 U.S. 410 (1992), held that Section 506(d) does not void the portion of the lien that the Court acknowledged is made unsecured by Section 506(a). Instead, *Dewsnup* concluded that for purposes of Section 506(d) only, a claim with a lien is fully secured, regardless of the value of the underlying property. Because *Dewsnup* gave different meanings to the same terms in the same section of the same statute, it "has been the target of criticism" "[f]rom its inception." *Bank of Am., N.A. v. Caulkett*, 135 S. Ct. 1995, 2000 & n.† (2015).

The question presented is whether *Dewsnup v. Timm*, 502 U.S. 410 (1992), should be overruled.

PARTIES

Petitioner Sonja Ritter was the petitioner in the bankruptcy court and the appellant before the bankruptcy appellate panel and the court of appeals.

Respondent Lois I. Brady, a Chapter 7 bankruptcy trustee for the Northern District of California, represented the estate in the bankruptcy court. She was the appellee before the bankruptcy appellate panel and the court of appeals, but she took no part in the appellate proceedings.

The lien that is the subject of this case is held by PNC Bank. PNC was served notice of Ritter's bankruptcy but took no part in the proceedings below and is not presently a party in this Court. PNC has been served with this petition.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner Sonja Ritter respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Ninth Circuit (Pet. App. 1a) is available at 730 F. App'x 529. The opinion of the United States Bankruptcy Appellate Panel of the Ninth Circuit (Pet. App. 4a) is available at 2017 WL 3392671. The two orders of the United States Bankruptcy Court and the accompanying transcripts denying petitioner's motion to reopen (Pet. App. 12a-17a) and motion to reconsider that denial (Pet. App. 19a-25a) are unpublished.

JURISDICTION

The Ninth Circuit entered its order affirming the United States Bankruptcy Court for the Northern District of California and the Bankruptcy Appellate Panel of the Ninth Circuit on July 13, 2018. Pet. App. 1a. On September 18, 2018, Chief Justice Roberts extended the time to file this petition for a writ of certiorari to and including December 10, 2018. No. 18A280. This Court has jurisdiction under 28 U.S.C. § 1254(1).

RELEVANT STATUTORY PROVISIONS

Section 506 of the Bankruptcy Code, 11 U.S.C. § 506, entitled "Determination of secured status," provides in relevant part:

> (a)(1) An allowed claim of a creditor secured by a lien on property in which the estate has an interest, or that is subject

to setoff under section 553 of this title, is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to setoff is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

…

(d) To the extent that a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void, unless—

(1) such claim was disallowed only under section 502(b)(5) or 502(e) of this title; or

(2) such claim is not an allowed secured claim due only to the failure of any entity to file a proof of such claim under section 501 of this title.

INTRODUCTION

Bankruptcy is intended to give the honest but "unfortunate debtor" a "fresh start in life." *Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752, 1758 (2018) (quoting *Stellwagen v. Clum*, 245 U.S. 605, 617 (1918)). The "fresh start" releases a debtor from old debts, *Cent. Va. Cmty. Coll. v. Katz*, 546 U.S. 356, 364 (2006), freeing the debtor from creditors' collection efforts and "the worries and pressures of too much debt," H.R. Rep. No. 95-595, at 125 (1977). Hundreds of thousands of people file for bankruptcy under Chapter 7 of the Bankruptcy Code every year in the hope of receiving this fresh start. *See* Administrative Office of the U.S. Courts, Quarterly Non-business Filings by Chapter (1994-2017), https://perma.cc/HM72-LEKZ.

Under Chapter 7, a debtor's assets are liquidated to satisfy her obligations to creditors. Those creditors submit "claims" to be repaid. Section 506 of the Code, entitled "Determination of secured status," concerns creditors' claims secured by liens on property. Under Section 506(a) of the Code, a claim is a secured claim up to the value of the collateral underlying the debt. 11 U.S.C. § 506(a). The rest of the claim is an unsecured claim. *Id.* Under Section 506(d), to the extent a creditor's lien is not part of an "allowed secured claim," the lien is void. *Id.* § 506(d). Thus, under Section 506, the portion of a lien greater than the value of the underlying collateral should be unsecured and therefore void.

That was the view of most bankruptcy courts to have addressed the question until this Court's decision in *Dewsnup v. Timm*, 502 U.S. 410 (1992). *Dewsnup* involved a Chapter 7 claim that was partially

unsecured under Section 506(a) because the debt exceeded the value of the collateral. Yet the Court determined that, under 506(d), the entire claim was a secured claim and therefore none of the lien was void. *Id.* at 417. To reach this conclusion, the Court gave the term "secured claim" one meaning in Section 506(a) and a completely different meaning two subsections later, in 506(d).

Dewsnup has been "the target of criticism" "[f]rom its inception." *Bank of Am., N.A. v. Caulkett*, 135 S. Ct. 1995, 2000 n.† (2015). That criticism—from courts and commentators alike—has been intense and persistent. *See infra* at 12 note 3. *Dewsnup* has "enshrouded both the Courts of Appeals and, even more tellingly, Bankruptcy Courts, which must interpret the Code on a daily basis," with "methodological confusion." *Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 463 (1999) (Thomas, J., concurring). Yet *Dewsnup* lives on.

Dewsnup should be overruled because it is plainly wrong. It ignores Section 506's text, and its negative consequences are far reaching, causing confusion in the courts and denying people the fresh start that Congress promised them.

In the courts below, petitioner Sonja Ritter's motion to void her second mortgage lien was denied based solely on a faithful application of *Dewsnup*. This case thus presents an ideal vehicle to answer a question that this Court has never addressed head-on: Should *Dewsnup* be overruled?

STATEMENT OF THE CASE

I. Legal background

1. Under Chapter 7 of the Bankruptcy Code, debtors are relieved of personal debt after liquidation of their assets. The filing of a Chapter 7 petition creates what is known as a bankruptcy estate. The estate generally has legal control of the debtor's property, 11 U.S.C. § 541(a)(1), and is administered by an appointed trustee. The trustee collects the debtor's property, reduces it to cash where practicable, and distributes any proceeds to creditors. *See id.* § 704(a)(1).

Creditors can assert their right to payment from the estate by filing a "proof of claim." 11 U.S.C. § 501(a). How a creditor's claim is treated depends, among other things, on whether it is unsecured or secured. A claim is unsecured when not backed by a property interest. For example, common credit-card debt is unsecured because the debtor has only a personal obligation to repay the lender. A claim is secured, on the other hand, when the creditor's interest is backed by a lien on the debtor's property. Generally, secured claims have priority and are satisfied by the proceeds from the sale of the underlying collateral. After secured claims have been dealt with, the remaining value of the estate is distributed among the creditors with unsecured claims. 6 Collier on Bankruptcy ¶ 700.04 (16th ed. 2018).

2. This case involves one of the most common secured claims, a home loan. There are two basic pieces of a home loan: a note and a mortgage lien. The note is the debtor's personal obligation to repay a loan.

The lien is the creditor's legal interest in the home until the loan is repaid.

In a Chapter 7 bankruptcy, the outstanding balance of a mortgage note is a creditor's claim. With exceptions not relevant here, all claims (including those evidenced by notes) are discharged at the end of a Chapter 7 case. That means that the debtor is relieved of any personal obligation to pay, regardless of whether creditors have been fully compensated. Liens, on the other hand, are not discharged. But their value can be reduced—"stripped down"—or rendered void when permitted by the Code. *See generally* 4 Collier on Bankruptcy ¶ 506.06 (16th ed. 2018).

3. Section 506 of the Code "governs the definition and treatment of secured claims." *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 238-39 (1989). Specifically, it defines secured claims in 506(a) and addresses liens in 506(d). 11 U.S.C. § 506(a), (d). Under 506(a), a claim may be split in two: a "secured claim" and an "unsecured claim." *Id.* § 506(a). A claim is secured to the extent of the "value of [the] creditor's interest in the estate's interest" in the collateral underlying the lien. *Id.* This language means that a claim is secured only up to the value of the collateral. *See Ron Pair*, 489 U.S. at 239. The "remainder of that claim" not backed by value in the collateral is an unsecured claim. *Id.*

For example, assume that, at the time of bankruptcy, a debtor owes $150,000 on a mortgage note for a home worth $100,000. This mortgage is undersecured, or, in common parlance, "underwater," because the outstanding debt is more than the collateral's value. In bankruptcy jargon, the home is said to be "overencumbered"—that is, burdened by

liens exceeding the home's value. Section 506(a) would split the creditor's claim into a secured claim for $100,000 (the value of the home) and an unsecured claim for $50,000 (the remaining portion owed to the creditor).[1]

The creditor's mortgage lien in this hypothetical would not be altered by 506(a) itself. But, under 506(d), a lien is void to the extent it "secures a claim against the debtor that is not an *allowed secured claim*." 11 U.S.C. § 506(d) (emphasis added). Before this Court's decision in *Dewsnup v. Timm*, 502 U.S. 410 (1992), most bankruptcy courts that had addressed the issue held that any portion of a claim made unsecured by 506(a) was not an "allowed secured claim" under 506(d), and the lien was void to that extent.[2] Put another way, under 506(d), a debtor could

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[1] If a debtor's home is overencumbered, it usually is not liquidated in Chapter 7 proceedings. That is because the sale price would be less than the value of the lien. Any proceeds would go to (but would not fully compensate) the lien-holding creditor. Because there would be no value gained by the estate, the trustee may "abandon" the home, which would then revert back to the debtor. The debtor would become the legal owner of the property again, and the home would be susceptible to foreclosure by the creditor if the debtor were in default. *See generally* 5 Collier on Bankruptcy ¶ 554.02 (16th ed. 2018).

[2] *See, e.g.*, *In re Kostecky*, 111 B.R. 823 (Bankr. D. Minn. 1990); *In re Donahue*, 110 B.R. 41 (Bankr. D. Kan. 1990); *In re Moses*, 110 B.R. 962 (Bankr. N.D. Okla. 1990); *In re Zobenica*, 109 B.R. 814 (Bankr. W.D. Tenn. 1990); *In re Zlogar*, 101 B.R. 1 (Bankr. N.D. Ill. 1989); *In re Hunter*, 101 B.R. 294 (Bankr. S.D. Ala. 1989); *United States v. Garnett*, 99 B.R. 757 (W.D. Ky. 1989), *aff'g*, 88 B.R. 123 (Bankr. W.D. Ky. 1988); *In re Crouch*, 76 B.R. 91 (Bankr. W.D. Va. 1987); *In re O'Leary*, 75 B.R. 881 (Bankr. D. Ore. 1987); *In re Worrell*, 67 B.R. 16 (C.D. Ill. 1986); *In re*

"strip down" the value of the lien to the value of the collateral.

4. This Court's decision in *Dewsnup* changed the common understanding of Section 506(d). *Dewsnup* held that 506(d) does not strip down undersecured liens. *See Dewsnup*, 502 U.S. at 417. Instead of following the definition in 506(a), *Dewsnup* interpreted "allowed secured claim" in 506(d) to mean any claim that is (1) generally allowed by the Code, *see* 11 U.S.C. § 502, and (2) secured by a lien, regardless of the collateral's value. *See Dewsnup*, 502 U.S. at 415, 417. Thus, according to *Dewsnup*, the mere presence of a lien generally suffices to fully "secure" a claim for purposes of 506(d). To conclude otherwise, the Court reasoned, could provide debtors an unjustified windfall. *Id.* at 417.

Justice Scalia, joined by Justice Souter, dissented. Justice Scalia explained that the term "allowed secured claim" in Section 506(d) was defined only two subsections earlier in Section 506(a). *Dewsnup*, 502 U.S. at 421 (Scalia, J., dissenting). He also reasoned that throughout the Code "allowed secured claim" followed the definition in 506(a), so 506(d) should be no different. *Id.* at 421-22. In his view, the majority had "abandon[ed] the normal and sensible principle that a term (especially an artfully defined term such as 'allowed secured claim') bears the same meaning throughout the statute." *Id.* at 423. It was thus "impossible to hold" that 506(a)'s definition does not apply to 506(d). *See id.* at 422.

Cleveringa, 52 B.R. 56 (Bankr. N.D. Iowa 1985); *In re Lyons*, 46 B.R. 604 (Bankr. N.D. Ill. 1985); *In re Gibbs*, 44 B.R. 475 (Bankr. D. Minn. 1984); *In re Bracken*, 35 B.R. 84 (Bankr. E.D. Pa. 1983).

The *Dewsnup* majority, Justice Scalia observed, made "no attempt to establish a textual or structural basis for overriding the plain meaning of § 506(d)." *Dewsnup*, 502 U.S. at 422. Instead, the majority impermissibly "rest[ed] its decision upon policy intuitions of a legislative character." *Id.*

5. *Dewsnup* addressed only partially underwater liens. More recently, in *Bank of America v. Caulkett*, 135 S. Ct. 1995 (2015), the Court addressed Chapter 7's treatment of wholly underwater liens. A lien is wholly underwater when unsupported by any value in the collateral. *See id.* at 1998. This scenario usually occurs when a debtor's home is subject to multiple liens. The first-established lien—known as the senior lien—has priority in payment. When there is not enough value in the collateral to fully satisfy the senior lien, later-established liens—junior liens—are left wholly underwater. *See id.*

The respondent in *Caulkett* argued that Section 506(d)'s plain text entirely voided, or "stripped off," wholly underwater junior liens. Resp. Br. 11-16, *Caulkett*, 135 S. Ct. 1995 (No. 13-1421). But that argument seemed to run headlong into *Dewsnup*'s reasoning, which, as explained above, held that Section 506(d) does not strip down any secured claim so long as the claim is "allowed" under the Code. *Dewsnup*, 502 U.S. at 415, 417.

At oral argument in *Caulkett*, Justice Kagan noted that "the only thing that may be less persuasive" than Caulkett's position was "*Dewsnup* itself." Transcript of Oral Argument at 45, *Caulkett*, 135 S. Ct. 1995 (No. 13-1421). Justice Scalia's *Dewsnup* dissent, she observed, "clearly has the better of the argument." *Id.* at 15.

But the debtor in *Caulkett* had not requested that *Dewsnup* be overruled. *Caulkett*, 135 S. Ct. at 2000-01. And without a textual basis for distinguishing between partially and wholly underwater liens, *id.*, this Court followed *Dewsnup*, holding that 506(d) does not authorize stripping down or stripping off any lien in Chapter 7, including wholly underwater liens. *Caulkett*, 135 S. Ct. at 2001.

II. Factual and procedural background

In 2013, Petitioner Sonja Ritter was in financial trouble. Bankruptcy Court Docket (Dkt.) 10, at 1, 18. Her most valuable asset was her home, which was overencumbered. *Id.* at 1. She had two home mortgages, with outstanding debt totaling $339,645: one with Bank of America for $297,229 and a second, junior mortgage with PNC Bank for $42,416. *Id.* at 8. But the market value of her home was only about $185,000. Dkt. 14-1, at 2. And she was in default on her second mortgage with PNC. Dkt. 14, at 11.

Ritter filed a pro se petition under Chapter 7 of the Code. Dkt. 1. Because PNC's lien was junior and completely underwater, Ritter filed a motion to strip it off under Section 506. Dkt. 14. PNC never responded, despite being served notice when the petition was filed and again when the strip-off motion was filed. Dkt. 15. The bankruptcy court issued a discharge and closed Ritter's Chapter 7 case, but it did not rule on her motion. *See* Dkt. 22. Thus, she left bankruptcy encumbered by two liens totaling $339,645 on a home worth about $185,000.

Three years later, Ritter learned to her surprise that her bankruptcy discharge had not stripped off PNC's lien. *See* Dkt. 41, at 2. This came about when

Ritter tried to refinance her senior mortgage but could not because PNC was unwilling to give her clear title. Dkt. 52, at 2. Ritter thus filed a motion to reopen her bankruptcy case. Dkt. 27. Still acting pro se, she again asked the court to void PNC's wholly underwater junior lien. *Id.* The bankruptcy court denied her motion, Pet. App. 17a-19a, holding that, under this Court's decision in *Bank of America v. Caulkett*, 135 S. Ct. 1995 (2015), Section 506(d) does not "strip off a wholly unsecured lien" in a Chapter 7 case. Pet. App. 14a, 17a-18a.

Ritter moved for reconsideration. Dkt. 34. The court again denied her motion, Pet. App. 25a-27a, stating that "the United States Supreme Court has told me in no uncertain terms, you can't strip a lien in a Chapter 7. Thank you. Go home. End of story." Pet. App. 21a.

Ritter appealed to the Ninth Circuit Bankruptcy Appellate Panel, which affirmed the bankruptcy court, emphasizing that *Dewsnup* and "*Caulkett* forbid[] a bankruptcy court" from stripping off an underwater junior lien in a Chapter 7 bankruptcy. Pet. App. 10a.

The Ninth Circuit affirmed. Pet. App. 3a. Like the bankruptcy court and the appellate panel before it, the court of appeals explained that the lien-avoidance mechanism in Section 506(d) is not available for an allowed claim in a Chapter 7 bankruptcy under this Court's decisions in *Dewsnup* and *Caulkett*. *Id.*

REASONS FOR GRANTING THE WRIT

I. *Dewsnup* should be overruled.

Dewsnup's interpretation of Section 506 cannot be squared with the Code's text, history, and objectives. As a majority of this Court recognized in *Bank of America v. Caulkett*, 135 S. Ct. 1995, 1998, 2000 n.† (2015), "[f]rom its inception," *Dewsnup* has been the subject of withering, sustained, and widespread disapproval from Justices of this Court, other federal appellate judges, bankruptcy courts, and bankruptcy scholars.[3]

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[3] *See, e.g.*, *Dewsnup v. Timm*, 502 U.S. 410, 420-36 (1992) (Scalia, J., dissenting); *Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 463 & n.3 (1999) (Thomas, J., concurring); *In re Woolsey*, 696 F.3d 1266, 1272-78 (10th Cir. 2012) (Gorsuch, J.); *In re Garrido-Yarnis*, 545 B.R. 459, 460 (Bankr. S.D.N.Y. 2016); *In re Mayer*, 541 B.R. 812, 815 (Bankr. E.D. La. 2015); *In re Burnett*, 427 B.R. 517, 520 (Bankr. C.D. Cal. 2010); *In re Cunningham*, 246 B.R. 241, 245-46 (Bankr. D. Md. 2000), *aff'd*, 253 F.3d 778 (4th Cir. 2001); *In re Crain*, 243 B.R. 75, 78-79 (Bankr. C.D. Cal. 1999), *abrogated by In re Enewally*, 368 F.3d 1165, 1169 (9th Cir. 2004); *In re Seasons Apartment, Ltd. P'ship*, 215 B.R. 953, 959 (Bankr. W.D. La. 1997); *In re Dever*, 164 B.R. 132, 138, 145 (Bankr. C.D. Cal. 1994); *In re Ireland*, 137 B.R. 65, 69 (Bankr. M.D. Fla. 1992); Raff Ferraioli, Bank of America, N.A. v. Caulkett: Dewsnup *Lives*, 24 No. 6 J. Bankr. L. & Prac. NL Art. 4 (2015); Ian D. Ghrist, *The Saga of Income from Income-Producing Collateral Treatment in Bankruptcy for Undersecured Creditors*, 23 Am. Bankr. Inst. L. Rev. 457 (2015); Symposium, *Consumer Bankruptcy Panel Strip off in Chapter 7: The Limits of* Dewsnup, 30 Emory Bankr. Dev. J. 291 (2014); Lynn M. LoPucki, *The Systems Approach to Law*, 82 Cornell L. Rev. 479, 519 & n.173 (1997); Lawrence Ponoroff & Stephen F. Knippenberg, *The Immovable Object Versus the Irresistible Force: Rethinking the Relationship Between Secured*

As we now explain, *Dewsnup* should be overruled, and stare decisis does not demand otherwise.

A. Section 506's plain text mandates lien stripping, consistent with the Code's history and objectives.

1. It is "axiomatic" that the starting point in every statutory-construction case is the statute's text. *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985). If the text is unambiguous, the "judicial inquiry is complete." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 254 (1992) (quoting *Rubin v. United States*, 449 U.S. 424, 430 (1981)). Here, Section 506's text is "pretty plain." *In re Woolsey*, 696 F.3d 1266, 1274 (10th Cir. 2012) (Gorsuch, J.).

Section 506(a) states that an "allowed claim" is also a "secured claim" to the "extent of the value of [the] creditor's interest" in the collateral underlying the lien. 11 U.S.C. § 506(a). Any portion of the claim

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Credit and Bankruptcy Policy, 95 Mich. L. Rev. 2234, 2305-07 (1997); Margaret Howard, *Secured Claims in Bankruptcy: An Essay on Missing the Point*, 23 Cap. U. L. Rev. 313, 318-19 (1994); William E. Callahan, Jr., Dewsnup v. Timm *and* Nobelman v. American Savings Bank*: The Strip Down of Liens in Chapter 12 and 13 Bankruptcies*, 50 Wash. & Lee L. Rev. 405, 421 (1993); Thomas M. Ward, *The Supreme Court Diminishes the "Redeeming" Qualities of the Bankruptcy Code in* Dewsnup v. Timm, 1993 Ann. Surv. Bankr. Law 4 (1993); Mary Josephine Newborn, *Undersecured Creditors in Bankruptcy:* Dewsnup*,* Nobelman*, and the Decline of Priority*, 25 Ariz. St. L.J. 547, 582-590 (1993); Barry E. Adler, *Creditor Rights After* Johnson *and* Dewsnup, 10 Bankr. Dev. J. 1, 10-12 (1993); A. W. Bailey III, Dewsnup v. Timm*: Judicial Sleight of Hand in Statutory Construction of the Bankruptcy Code*, 7 BYU J. Pub. L. 319, 332-33 (1993); Margaret Howard, *Dewsnupping the Bankruptcy Code*, 1 J. Bankr. L. & Prac. 513, 516-17 (1992).

not backed by value in the collateral is an unsecured claim. *Id.* Section 506(d) then states that "[t]o the extent a lien secures a claim against the debtor that is not an allowed secured claim, such lien is void." *Id.* § 506(d).

Read naturally, 506(d)'s reference to an allowed secured claim "can only be referring to that allowed 'secured claim' so carefully described two brief subsections earlier" in 506(a). *Dewsnup*, 502 U.S. at 421 (Scalia, J., dissenting). Because any portion of a claim not backed by value in the collateral is an unsecured claim under 506(a), it cannot be an "allowed secured claim" under 506(d). Thus, a lien is void under 506(d) to the extent that the claim it secures is an unsecured claim under 506(a). *See id.* at 421-22.

This straightforward reading aligns with the bedrock principle that multiple uses of the same term in "the same section of the statute" have the same meaning. *Mohasco Corp. v. Silver*, 447 U.S. 807, 826 (1980). This principle applies to Section 506. "Allowed secured claim" in 506(b)—which addresses post-petition interest—means the same thing as it does in 506(a). *See* 4 Collier on Bankruptcy ¶ 506.04[1] (16th ed. 2018). So too should it mean the same thing in 506(d).

Similarly, identical terms used in "different parts of the same act" are presumed "to have the same meaning." *Sullivan v. Stroop*, 496 U.S. 478, 484 (1990) (quoting *Sorenson v. Bank*, 475 U.S. 851, 860 (1986)). Typically, outside of Section 506—in 11 U.S.C. §§ 722 and 1225(a)(5), for example—"allowed secured claim" means what it does in 506(a). 6 Collier on Bankruptcy ¶ 722.05[1] (16th ed. 2018) (an allowed secured claim in Section 722 "is the value of the secured party's

collateral"); 8 Collier on Bankruptcy ¶ 1225.03[2] (16th ed. 2018) (an allowed secured claim in Section 1225(a)(5) is "equal to the value of the collateral"). Section 506(d) should be no different.

But, under *Dewsnup*, "allowed secured claim" in 506(d) does *not* follow 506(a). Instead, *Dewsnup* read "allowed secured claim" in Section 506(d) to mean any claim that is (1) generally allowed under Section 502 of the Code and (2) secured by a lien, regardless of the collateral's value. 502 U.S. at 415, 417. This "remarkable and untenable" interpretation of Section 506(d) violated well-settled principles of statutory construction. *See Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 461 (1999) (Thomas, J., concurring).

Those violations of fundamental rules of statutory interpretation produced a "topsy-turvy" result. *In re Woolsey*, 696 F.3d at 1273 (Gorsuch, J.). Under 506(a), a secured creditor's underlying property must have *some* value to qualify the creditor's interest as a "secured claim." *Id.* But, under *Dewsnup*, the underlying property's value (or complete lack thereof) is irrelevant for qualifying that interest as a "secured claim" two subsections later under 506(d). *Id.* This reading rendered Section 506(d)'s lien-avoidance mechanism nearly meaningless because it shifted away from Section 506(d)'s obvious focus on the collateral's value to the claim's allowability under Section 502, which broadly "allows" any claim unless someone objects. 11 U.S.C. § 502.

In sum, because *Dewsnup* bypassed Section 506(d)'s text and interpreted "allowed secured claim" in a manner incompatible with Section 506(a)'s

definition of that term, this Court need go no further to overrule *Dewsnup*.

As explained below, doing so would also be consistent with the Code's history and objectives.

2.a. In 1978, after nearly a decade of study, Congress adopted the Bankruptcy Code to "substantial[ly] overhaul" the pre-Code bankruptcy system. *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 240 (1989).

One significant change was in the way that the Code treated creditors with liens. Prior to the Code, under the Bankruptcy Act of 1898, a creditor with a lien fully backed by value in collateral could either ignore the debtor's bankruptcy (leaving the lien unaffected) or participate in the bankruptcy (receiving full payment on the claim, thus extinguishing the lien). *See U.S. Nat'l Bank in Johnstown v. Chase Nat'l Bank of N.Y.C.*, 331 U.S. 28, 33-34 (1947); *see also* Transcript of Oral Argument at 4-6, *Dewsnup*, 502 U.S. 410 (No. 90-741).

But, under the 1898 Act, it was unclear whether a secured creditor's lien could be stripped down when the debt was greater than the value of the collateral—that is, when the lien was underwater. *See* Mary Josephine Newborn, *Undersecured Creditors in Bankruptcy:* Dewsnup*,* Nobelman*, and the Decline of Priority*, 25 Ariz. St. L.J. 547, 565-67 & n.106 (1993). When drafting the Code, Congress was aware of this pre-Code uncertainty: "Current law is ambiguous and vague … on whether an undersecured creditor is to be treated as a secured creditor, or as a partially secured and partially unsecured creditor." H.R. Rep. No. 95-595, at 180-81 (1977).

Congress resolved this ambiguity through a shift in focus from creditors to claims: "*One of the more significant changes* from current law … is the treatment of secured creditors and secured claims. … The distinction becomes important in the handling of … those creditors that are undersecured." H.R. Rep. No. 95-595, at 180-81 (emphasis added). By shifting the focus to claims—instead of creditors—the problem of the undersecured creditor was addressed: Such a creditor "is to be treated as having a secured claim to the extent of the value of the collateral, and an unsecured claim for the balance of his claim against the debtor." *Id.* at 181.

Commentators at the time of the Code understood the significance of this shift in focus from creditors to claims. They observed that Section 506 "is crucial to the secured creditor's rights: it spells out the fact that an undersecured creditor has two claims." Frank R. Kennedy, *Secured Creditors Under the Bankruptcy Reform Act*, 15 Ind. L. Rev. 477, 487 (1982); *see also* Theodore Eisenberg, *The Undersecured Creditor in Reorganizations and the Nature of Security*, 38 Vand. L. Rev. 931, 934-35 (1985). Those claims "may be both secured and unsecured, and [the creditor's] rights will be determined separately with respect to the value of each part of his claim." Charles A. Shanor, *A New Deal for Secured Creditors in Bankruptcy*, 28 Emory L.J. 587, 594-95 (1979). "[O]nly to the extent that a claim is secured does the claimant have special entitlement to particular property of the estate." *Id.*

Congress did more than significantly alter debt classification in Section 506. Congress also defined "secured claim" for purposes of the rest of the Code. Both the House and Senate Committees that drafted

the Code explained that "*[t]hroughout the bill*, references to secured claims are only to the claim determined to be secured under [Section 506(a)], and not to the full amount of the creditor's claim." H.R. Rep. No. 95-595, at 356 (emphasis added); S. Rep. No. 95-989, at 68 (1978) (emphasis added). Thus, Congress wanted Section 506(a) to be a broad definitional provision whose meaning of "secured claim" applied throughout the Code, including, necessarily, in Section 506(d).

b. *Dewsnup* supported its anti-textual holding by insisting that it was preserving pre-Code law. *See* 502 U.S. at 419. Thus, the Court relied on what it viewed as a generic pre-Code rule that liens passed through bankruptcy unaffected, concluding that "nothing in the Code's legislative history … reflects any intent to alter" that rule. *Id.* at 416, 418-19. But as just explained (at 16), the legislative history actually indicates that pre-Code practice was unclear as to whether underwater liens passed through bankruptcy unaffected.

Rather than looking to the legislative history as a whole, *Dewsnup* relied on a one-sentence snippet asserting that "Subsection [506](d) *permits* liens to pass through the bankruptcy case unaffected." H.R. Rep. No. 95-595, at 357 (emphasis added); *see Dewsnup*, 502 U.S. at 419. That reliance was doubly mistaken.

First, even assuming that the general rule posited by *Dewsnup* existed pre-Code *and* that the rule could somehow override Section 506's text, "it would seem to have (at best) limited interpretive significance today, given that Chapter 7 indubitably permits liens to be removed in many situations." *In re Woolsey*, 696 F.3d

at 1274 (Gorsuch, J.) (citing *Harmon v. United States*, 101 F.3d 574, 581 (8th Cir. 1996) and *In re Penrod*, 50 F.3d 459, 461-62 (7th Cir. 1995)); *see also id.* at 1278 (noting that lien stripping also is authorized under other Code chapters).

Second, *Dewsnup* misread the fragment of legislative history on which it relied. The word "permits" means only what it says: It has "a permissive, not a mandatory, meaning." Newborn, 25 Ariz. St. L.J. at 572. It does not establish a categorical rule against lien stripping; rather, Section 506(d) "permits" a lien to pass through liquidation unaffected only when Section 506 (and other sections of the Code) permit it to do so. And that occurs when a lien is not underwater—that is, when it fully secures an allowed secured claim under Section 506(a).

3.a. The Code's overarching goals dovetail with Section 506's text. Reading 506(a) and (d) together to void unsecured liens advances "the whole point of bankruptcy": providing the debtor with a "fresh start." *Matter of Folendore*, 862 F.2d 1537, 1540 (11th Cir. 1989), *overruled in light of Caulkett by In re Waits*, 793 F.3d 1267 (11th Cir. 2015). Bankruptcy strives to aid the honest but "unfortunate debtor by giving him a fresh start in life, free from debts, except of a certain character." *Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752, 1758 (2018) (quoting *Stellwagen v. Clum*, 245 U.S. 605, 617 (1918)). In Chapter 7, the "two most important aspects of the fresh start … are the provision of adequate property for a return to normal lif[e], and the discharge, with the release from creditor collection attempts." H.R. Rep. No. 95-595, at 125.

Both of these fresh-start principles favor the lien stripping that Section 506's text demands. First, lien

stripping provides the debtor with "adequate property for a return to normal lif[e]." H.R. Rep. No. 95-595, at 125. The homeowner has the opportunity to pay the fair price for her home, which allows her later to build equity in it. Second, lien stripping releases the debtor from creditor collection attempts by ensuring that a debtor won't be plagued years after liquidation by lingering, undersecured (or even wholly underwater) liens.

Dewsnup, on the other hand, leaves a debtor with overencumbered property—that is, property burdened by liens exceeding its value. Among other negative consequences, *Dewsnup* makes the debtor's home harder to sell, which forces the debtor into a difficult choice: risk losing the home in foreclosure (if a lienholder perceives foreclosure to be in its interest) or pay a potentially crippling mortgage payment to try to keep it. For households currently faced with this choice and in risk of default outside of bankruptcy, Chapter 7 provides no relief. Lien stripping in Chapter 7, on the other hand, would reduce foreclosures and could help underwater homeowners gain a fresh start.[4]

Dewsnup's negative effects are broadly felt. People with underwater homes drastically cut their household spending.[5] In contrast, lien stripping would

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[4] *See* Wenli Li, et al., *Using Bankruptcy to Reduce Foreclosures*, 12 CESifo DICE Report 31 (2014), *available at* https://www.econstor.eu/bitstream/10419/167175/1/ifo-dice-report-v12-y2014-i3-p31-38.pdf.

[5] *See* Zachary A. Goldfarb, *Did Underwater Mortgages Kill the Economy?*, Wash. Post (Apr. 18, 2013), https://perma.cc/

be a boon to the economy. *See* Goldfarb, *supra* note 5. Because a relatively low-income homeowner emerging from bankruptcy often must spend her extra resources, a "dollar lost by a creditor has less of a negative effect on consumption than the positive effect on consumption from a dollar gained by an underwater homeowner." *Id.*

b. Ignoring bankruptcy's goals, *Dewsnup* asserted that if the value of a creditor's secured interest were frozen at the judicially determined valuation, any resulting increase in the property's value by the time of a foreclosure sale (if foreclosure occurred) would unfairly benefit the debtor. 502 U.S. at 417. This "windfall," the Court said, should "rightly accrue[] to the benefit of the creditor" instead. *Id.*

But *Dewsnup*'s fears are unfounded. The opportunity for a windfall arises only in rare instances and, even then, is unlikely to benefit the debtor. A windfall could arise in two scenarios: (1) a judge erroneously values the property below the eventual foreclosure price, or (2) the property's value increases after the valuation but before a foreclosure sale because of market conditions unrelated to the debtor. *See* Transcript of Oral Argument at 7, 31-32, *Dewsnup*, 502 U.S. 410 (No. 90-741); Jeffrey K. Robison, *The Debtor's Right to Restrict Lienholder Recovery to the Value of the Encumbered Property Under Section 506 of the Bankruptcy Code*, 11 J. Corp. L. 433, 445 (1986). Neither possibility supports reading the plain meaning out of Section 506.

C6CF-G4WD (citing Atif R. Mian et al., *Household Balance Sheets, Consumption, and the Economic Slump*, Chicago Booth (June 7, 2013), https://ssrn.com/abstract=1961211).

First, there is no reason to conclude that bankruptcy judges inaccurately value properties. Any interested party can move the court to conduct valuation proceedings, 10 Collier on Bankruptcy ¶ 7001.03[1] (16th ed. 2018), giving the secured creditor ample opportunity to protect its property rights. Parties may present evidence ranging from appraisals and expert testimony to less-formal evidence of sales of similar property. 4 Collier on Bankruptcy ¶ 506.03[9] (16th ed. 2018). And a dissatisfied creditor can appeal the judicial valuation. *See, e.g.*, *In re Hous. Reg'l Sports Network, L.P.*, 886 F.3d 523, 527 (5th Cir. 2018); *In re Midway Partners*, 995 F.2d 490, 493 (4th Cir. 1993).

Second, it is unlikely that a property's value will materially increase during a Chapter 7 bankruptcy because those bankruptcies generally conclude quickly. In 2017, Chapter 7 consumer cases "had a mean time interval of 199 days and a median time interval of 114 days" from filing to closing.[6]

* * *

Section 506 need not be the muddle *Dewsnup* created. Its language is plain: Allowed secured claim has the same meaning in 506(a) and (d). Thus, under 506(d), a lien is secured only up to the value determined by 506(a). The rest is void. This straightforward reading is consistent with the Code's history and core objectives. *Dewsnup* was wrong when it was decided, and it is wrong today.

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[6] U.S. Courts, BAPCPA Report–2017: 2017 Report of Statistics Required by the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, https://perma.cc/8WEP-JNYC.

B. Stare decisis does not save *Dewsnup*.

Stare decisis is a presumption that courts generally adhere to prior precedent, but it is not "an inexorable command." *Payne v. Tennessee*, 501 U.S. 808, 827-28 (1991). To be sure, the presumption is strong when the targeted precedent involves this Court's statutory (mis)interpretation because Congress can fix this Court's errors. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 695 (1978). But stare decisis has never been used to "mechanically … prohibit overruling earlier decisions determining the meaning of statutes." *Id.* Between 1961 and 2016, this Court expressly overruled statutory precedent in thirty-one cases. *See* S. Doc. No. 112-9, at 2613-15 (2d Sess. 2016) (1987-2016); William N. Eskridge, Jr., *Overruling Statutory Precedents*, 76 Geo. L.J. 1361 app. at 1427 (1988) (1961-1987). Because *Dewsnup* creates systemic confusion and runs headlong into the Code's purposes, this Court can—and should—correct its own error.

1. This Court is not bound by a prior decision that is a "detriment to coherence and consistency in the law." *Patterson v. McLean Credit Union*, 491 U.S. 164, 173 (1989), *superseded by statute on other grounds*, 105 Stat. 1071. *Dewsnup* is just that.

Dewsnup appeared to realize that its statutory interpretation could produce inconsistency throughout the Code. It thus "express[ed] no opinion as to whether the words 'allowed secured claim' have different meaning in other provisions of the Bankruptcy Code," *Dewsnup*, 502 U.S. at 417 n.3, leaving the courts without guidance as to if, when, or how other chapters of the Code allow lien stripping. This lack of guidance is particularly confounding because 11 U.S.C. § 103(a)

makes Section 506 generally applicable to Chapters 7, 11, 12, and 13. *See In re Dever*, 164 B.R. 132, 137-38 (Bankr. C.D. Cal. 1994).

By limiting its interpretation to one subsection—506(d)—in the context of Chapter 7 alone, 502 U.S. at 417 n.3, *Dewsnup* "enshrouded both the Courts of Appeals and, even more tellingly, Bankruptcy Courts, which must interpret the Code on a daily basis," with "methodological confusion," *see Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 463 n.3 (1999) (Thomas, J., concurring) (collecting cases); *see also In re Johnson*, 386 B.R. 171, 175 n.5 (Bankr. W.D. Pa. 2008), *aff'd sub nom. I.R.S. v. Johnson*, 415 B.R. 159 (W.D. Pa. 2009).

Dewsnup also confuses bankruptcy courts handling so-called "Chapter 20" bankruptcies—in which debtors file under Chapter 13 within four years after filing under Chapter 7, *see* 8 Collier on Bankruptcy ¶ 1328.06[1] (16th ed. 2018). In a Chapter 20, the debtor receives the benefits of Chapter 13 (stay of collection and restructuring of debt, for example) during the pendency of the case. But because the Code prohibits a Chapter 13 discharge in the Chapter 20 context, the case simply is dismissed (without a discharge) when the Chapter 13 plan is completed.

"Bankruptcy courts are split on whether a debtor may strip off liens in a Chapter 20 case." *In re Davis*, 716 F.3d 331, 336 (4th Cir. 2013) (collecting cases). Courts have resolved the problem in three different ways: (1) refusing to strip the lien following *Dewsnup*'s Chapter 7 holding, *see id.* at 337; (2) stripping the lien off because nothing in the Code explicitly prohibits it; or (3) following a middle ground by stripping the lien while the Chapter 13 plan is pending and then

reinstating the lien after the plan has been completed and the Chapter 20 bankruptcy is dismissed. *See In re Dolinak*, 497 B.R. 15, 20-23 (Bankr. D.N.H. 2013) (citing *In re Jennings*, 454 B.R. 252, 256-57 (Bankr. N.D. Ga. 2011)). Without guidance on which outcome is correct, the courts are in disarray. *Id.*; *see also In re Washington*, 587 B.R. 349, 355 (Bankr. C.D. Cal. 2018).

All of this underscores the prescience of Justice Scalia's dissent. *Dewsnup*'s "enduring damage … consists in its destruction of predictability, in the Bankruptcy Code and elsewhere. By disregarding well-established and oft-repeated principles of statutory construction, it renders those principles less secure and the certainty they are designed to achieve less attainable." *Dewsnup*, 502 U.S. at 435 (Scalia, J., dissenting).

2. Stare decisis gives way where a prior decision is at odds with the policy of the relevant statute. *See Boys Mkts., Inc. v. Retail Clerks Union, Local 770*, 398 U.S. 235, 240-42 (1970). As discussed above (at 19-21), because debtors leave bankruptcy burdened by overencumbered property, *Dewsnup* is an obstacle to bankruptcy law's key objective: giving debtors a fresh start. *Dewsnup* not only frustrates that goal, but, in some instances, makes achieving it impossible. *See supra* at 20.

3. Congress's inaction is no reason for this Court to ignore its own error. *See Boys Mkts.*, 398 U.S. at 241-42. In light of experience—involving judicial confusion and erosion of the fresh-start principle—this Court is "responsib[le] for reconsidering" its flawed statutory construction. *Helvering v. Hallock*, 309 U.S. 106, 122 (1940). That is because "[i]t is at best

treacherous to find in congressional silence alone the adoption of a controlling rule of law." *Girouard v. United States*, 328 U.S. 61, 69 (1946).

At the end of the day, then, the Court does not "place on the shoulders of Congress the burden of the Court's own error." *Girouard*, 328 U.S. at 70; *see also James v. United States*, 366 U.S. 213, 220-21 (1961). That error can be a flawed reading of statutory text, *see Hubbard v. United States*, 514 U.S. 695, 699-701 (1995); or of the statute's history, *see Monell*, 436 U.S. at 664-90; or a holding contrary to the statute's policy, *see James*, 366 U.S. at 220-21. As demonstrated above, *Dewsnup* made all three errors in spades.

4. Nor are creditors' reliance interests any basis for adhering to *Dewsnup*. This Court considers only "legitimate reliance interests" when reexamining "an earlier but flawed precedent." *South Dakota v. Wayfair, Inc.*, 138 S. Ct. 2080, 2098 (2018) (quoting *United States v. Ross*, 456 U.S. 798, 824 (1982)). As discussed above (at 23-25), *Dewsnup* failed to create "a clear or easily applicable standard, so [any] arguments for reliance based on its clarity [would be] misplaced." *Id.*

Moreover, courts and commentators alike have viewed *Dewsnup* as incorrect from the day it was decided. *See supra* at 12 note 3; Transcript of Oral Argument at 11-12, 15, 45, *Bank of Am., N.A. v. Caulkett*, 135 S. Ct. 1995 (2015) (No. 13-1421). Citing Justice Scalia's powerful and prophetic *Dewsnup* dissent, this Court has recognized that *Dewsnup* has always rested on shaky ground. *Caulkett*, 135 S. Ct. at 2000 n.†. Creditors thus "have been on notice for years regarding this Court's misgivings" and never could have been justifiably confident that *Dewsnup* would

survive the test of time. *See Janus v. Am. Fed'n of State, Cty., & Mun. Emps., Council 31,* 138 S. Ct. 2448, 2484-85 (2018). For this reason as well, stare decisis is no barrier to overruling *Dewsnup*.

II. This case is an ideal vehicle for reexamining *Dewsnup*.

This case presents only one legal issue—whether *Dewsnup* should be overruled—and the case comes to this Court on undisputed facts and a pristine record. Free from any other considerations, the lower courts concluded that *Dewsnup* prevented them from voiding PNC's underwater, junior lien on Ritter's home. *See* Pet. App. 3a, 10a, 14a-15a, 26a-27a. On that score, the lower courts were correct. They followed this Court's precedent—which only this Court can reconsider.

Ritter's case is thus the perfect vehicle for answering the question that the debtor in *Caulkett* never asked: Should *Dewsnup* be overruled?

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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