No. 23-655

In the Supreme Court of the United States

LAWRENCE J. WARFIELD, PETITIONER

v.

UNITED STATES OF AMERICA

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

The Bankruptcy Code allows a debtor to "exempt" certain property "from property of the estate." 11 U.S.C. 522(b)(1). "Except in particular situations specified in the Code, exempt property 'is not liable' for the payment of 'any [prepetition] debt' or 'any administrative expense.'" *Law* v. *Siegel*, 571 U.S. 415, 417-418 (2014) (quoting 11 U.S.C. 522(c) and (k)). The question presented is as follows:

Whether, after a debtor has been allowed an exempt interest in the dollar value of her homestead, a bankruptcy trustee may then use 11 U.S.C. 724(a) and 551 to avoid and preserve a tax lien that remains attached to the debtor's allowed exempt interest, thus obtaining exempt funds to pay creditors or administrative expenses.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-43a) is reported at 53 F.4th 1160. The order of the district court (Pet. App. 44a-77a) is unreported but is available at 2021 WL 1530094. The order of the bankruptcy court (Pet. App. 78a-104a) is unreported but is available at 2020 WL 4574900.

JURISDICTION

The judgment of the court of appeals was entered on November 18, 2022. A petition for rehearing was denied on September 26, 2023 (Pet. App. 105a-106a). The petition for a writ of certiorari was filed on December 14, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. A Chapter 7 trustee administers and distributes "the property of the estate" for creditors. 11 U.S.C. 704(a)(1). Section 541 of the Bankruptcy Code provides that the estate generally comprises "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. 541(a)(1). As relevant here, the Code further specifies that "[n]otwithstanding section 541," a debtor "may exempt" certain property "from property of the estate." 11 U.S.C. 522(b). The Code enumerates available exemptions, but also allows state legislatures to opt out of the Code's exemption scheme and provide their own, limiting such States' debtors "to the exemptions provided by state law." *Owen* v. *Owen*, 500 U.S. 305, 308 (1991). Arizona has opted out of the Code's exemptions, Ariz. Rev. Stat. Ann. § 33-1133(B) (2021), and, during the time period relevant here, provided a homestead exemption of up to $150,000 in value for an "interest in real property * * * in which [the debtor] resides." Ariz. Rev. Stat. Ann. § 33-1101(A)(1) and (B) (2004).

Exemptions are "designed to permit individual debtors to retain exempt property so that they will be able to enjoy a 'fresh start' after bankruptcy." *United States* v. *Security Indus. Bank*, 459 U.S. 70, 72 n.1 (1982). Except in specific circumstances set out by the Code, "exempt property 'is not liable' for the payment of 'any [prepetition] debt' or 'any administrative expense.'" *Law* v. *Siegel*, 571 U.S. 415, 417-418 (2014) (quoting 11 U.S.C. 522(c) and (k)). As relevant here, Section 522(c)(2) provides that exempted property remains liable for a prepetition "debt secured by a lien that is * * * a tax lien, notice of which is properly filed." 11 U.S.C. 522(c)(2)(B).

In distributing the estate's property, the Chapter 7 trustee has the power to "avoid a lien that secures a claim of a kind specified in section 726(a)(4) of this title." 11 U.S.C. 724(a). Section 726(a)(4) in turn encompasses "allowed claim[s] * * * for any fine, penalty, or forfeiture." 11 U.S.C. 726(a)(4). The effect of avoiding a lien is to make the amount of the lien available to pay creditors. 11 U.S.C. 551. The avoidance power in Section 724(a) is designed to shield the estate from being reduced by the amount of the debtor's penalties. See *Simonson* v. *Granquist*, 369 U.S. 38, 41 (1962) (interpreting the predecessor to what is now 11 U.S.C. 724(a)); see also H.R. Rep. No. 595, 95th Cong., 1st Sess. 382 (1977). A lien avoided under Section 724(a) "is preserved for the benefit of the estate but only with respect to property of the estate." 11 U.S.C. 551.

2. a. In 2015, the debtor in this case, Sandra Tillman, purchased a residence in Prescott, Arizona, and secured a loan with a mortgage on the home. Pet. App. 6a. The debtor failed to timely pay her 2015 taxes, and the Internal Revenue Service (IRS) assessed a tax liability with related penalties and interest. *Ibid.* The debtor then paid her original tax liability, but did not fully pay the penalties and interest. *Ibid.* In 2018, the IRS recorded a notice of a federal tax lien securing the unpaid amount against the Prescott property. See *ibid.*[1]

The debtor subsequently filed a Chapter 7 bankruptcy petition in the United States Bankruptcy Court

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[1] The government has explained that a portion of the tax lien reflects interest on the underlying principal balance of the IRS's tax claim, Gov't C.A. Br. 5 n.2, 10-11, but the bankruptcy court assumed, without deciding, that the tax lien was entirely for penalties and penalty interest. See Pet. App. 88a n.40. The court of appeals did not address the question.

for the District of Arizona. Pet. App. 7a. The IRS filed a proof of claim for the amount secured by the tax lien. C.A. E.R. 105; see Pet. App. 88a. The lien was later valued at $26,771 for purposes of this litigation. See Pet. App. 11a. The debtor claimed a homestead exemption of up to $150,000 of her interest in the Prescott property. *Id.* at 7a; see 11 U.S.C. 522(b); Ariz. Rev. Stat. Ann. § 33-1101(A)(1) and (B) (2004). After accounting for the mortgage, the debtor's equity in the property was substantially less than $150,000. See Pet. App. 81a n.10 (estimating the potential value of the exemption at approximately $83,964).

Petitioner, the Chapter 7 trustee, filed an adversary proceeding against the government in which he sought to avoid the tax lien that attached to the debtor's exempt interest in the Prescott property in order to make the amount of the lien available to pay the estate's creditors. Pet. App. 84a. The government and the debtor opposed petitioner's attempt to avoid the tax lien. See *id.* at 79a.

b. The bankruptcy court determined that petitioner could avoid the tax lien on the homestead exemption under 11 U.S.C. 724(a). Pet. App. 78a-104a. In particular, it determined that Section 724(a) lien avoidance is available as to any property that has been property of the estate, even if it was later exempted. *Id.* at 88a-91a.

In reaching that conclusion, the bankruptcy court took the view that the debtor's homestead exemption covers only the debtor's home equity after subtracting both the value of the mortgage and the value of the tax lien, Pet. App. 95a, such that the IRS tax lien "never attached to the Debtor's homestead exemption," *id.* at 103a. Despite the express terms of 11 U.S.C. 522(c)(2)(B), which provides that exempted property re-

mains liable for a properly filed prepetition tax lien, the bankruptcy court held that, after the lien had been avoided, the government would simply hold an unsecured but possibly nondischargeable claim, see 11 U.S.C. 523(a)(1) and (7), and that the government's position would be "no different than any other nondischargeable claim." Pet. App. 103a. On that basis, the court rejected the government's argument that allowing the trustee to avoid the lien on the exempt property could cause the debtor's exempt interest to be burdened twice by the same debt. *Id.* at 79a-80a, 102a-104a. The debtor did not appeal or participate during later stages of the litigation. See *id.* at 10a-11a.

c. The debtor found a buyer for the Prescott property, which was sold with the bankruptcy court's approval. Pet. App. 11a. Petitioner administered the proceeds of the sale, including by paying off the mortgage. See *ibid.* The remaining proceeds of the sale after costs were approximately $56,771. *Ibid.* Pursuant to the bankruptcy court's order, petitioner set aside a portion of the proceeds equal to the total value of the tax lien at the time of sale for potential use by the estate, and valued the remaining homestead exemption at approximately $30,000. *Ibid.*

d. The district court affirmed, largely agreeing with the bankruptcy court's analysis. Pet. App. 44a-77a.

3. a. The court of appeals reversed. Pet. App. 1a-32a; see *id.* at 32a-43a (Bumatay, J., dissenting).

The court of appeals rejected the bankruptcy court's interpretation of the government's tax-lien rights. Pet. App. 22a n.4. Citing 11 U.S.C. 522(c)(2)(B), the court held that the federal tax lien "attaches to all of a debtor's property interests, with no carve-out for exempt property," such that the exempt property "re-

mains liable for tax penalty liens." Pet. App. 22a n.4. It further explained that, under applicable Arizona law, the amount of the debtor's homestead exemption was not reduced by the amount of the tax lien. *Id.* at 23a n.4. As a result, both the full value of the debtor's homestead exemption and the non-exempt interest in the Prescott property were each subject to the tax lien. See *id.* at 29a.

The court of appeals then rejected the trustee's argument that the trustee could use Section 724(a) to avoid the tax lien that attached to the debtor's exempt homestead interest. The court explained that Section "724(a) concerns the trustee's avoidance of qualifying liens attached to the property of the estate at the time of distribution." Pet. App. 18a (emphases omitted). "[B]ecause exempt property is not 'property of estate' which may be 'distributed,'" the court "conclude[d] that a trustee may not avoid a lien under § 724(a) * * * attached to exempt property which is no longer part of the estate." *Id.* at 18a-19a; see *id.* at 22a, 28a, 32a.

The court of appeals further observed that the trustee could still use Section 724(a) to avoid the tax lien on the "non-exempt property that remains in the estate." Pet. App. 31a. But the interest in the Prescott property that remained in the estate was worth $0, as all non-exempt value went to the senior mortgage, rendering "valueless" the power to avoid the lien on the estate's interest in the property in the particular circumstances of this case. *Ibid.*

A contrary conclusion, the court of appeals reasoned, would "apply the value of the lien [on the exempt property] for the benefit of the bankruptcy estate," while the debtor's "exempt homestead * * * remains encumbered by the tax lien," meaning that "the Debtor is bur-

dened twice by the same debt, resulting in a double penalty." Pet. App. 29a. That would make the debtor "worse off, with regard to the tax lien debt, than she was before she filed the bankruptcy petition," a "perverse result" contrary to the Bankruptcy Code. *Id.* at 29a-31a.

b. Judge Bumatay dissented. Pet. App. 32a-43a. In his view, the property of the estate "includes all property at the filing of the bankruptcy petition, including what's later claimed exempt." *Id.* at 39a. That means that "a tax penalty lien on exempt property constitutes 'property of the estate.'" *Ibid.* Accordingly, Judge Bumatay would have held that "nothing in the Code sets aside the trustee's avoidance authority just because the tax penalty lien attaches to exempt property." *Id.* at 34a; see *id.* at 37a, 43a. In Judge Bumatay's view, that result would better comport with "well-reasoned dicta" in an earlier Ninth Circuit opinion. *Id.* at 42a (brackets and citation omitted).

ARGUMENT

Petitioner renews (Pet. 7-13, 20-22, 30-32) his contention that, as Chapter 7 trustee, he could avoid and preserve a tax lien attached to the debtor's exempt homestead interest and thereby use part of the value of the homestead exemption for the benefit of the estate. The court of appeals correctly rejected that contention. And the decision below does not conflict with any decision of this Court or another court of appeals. Petitioner contends (Pet. 13-20, 22-25) that aspects of the reasoning of the decision below conflict with various other appellate decisions, but none of those decisions is relevant. Tellingly, petitioner did not cite any of them below, nor did the court of appeals majority or dissent address them. In fact, no other court of appeals has addressed a trustee's power to avoid an exemption and

thereby make assets available to creditors in similar circumstances. Petitioner's disagreement with the court of appeals' application of clear statutory language to the unusual factual circumstances presented here does not warrant further review. The petition for a writ of certiorari should be denied.

1. a. The court of appeals correctly held that petitioner, the bankruptcy trustee, lacked the ability to avoid a tax lien that attached to the debtor's exempt property, thereby obtaining the value of that lien for the estate. As the court explained, the trustee's ability to avoid a lien extends only to liens that attach to the property of the estate.

A Chapter 7 trustee administers and distributes "the property of the estate" for creditors. 11 U.S.C. 704(a)(1); see 11 U.S.C. 726(a) (directing how "property of the estate shall be distributed" by the trustee); see also *Harris* v. *Viegelahn*, 575 U.S. 510, 513 (2015) (explaining that "[a] Chapter 7 trustee is * * * charged with selling the property in the estate, and distributing the proceeds to the debtor's creditors") (citation omitted). But exempted property is withdrawn from what, at the commencement of the case, constituted property of the estate. 11 U.S.C. 522(b); see 11 U.S.C. 541. Exemptions are "designed to permit individual debtors to retain exempt property so that they will be able to enjoy a 'fresh start' after bankruptcy." *United States* v. *Security Indus. Bank*, 459 U.S. 70, 72 n.1 (1982). Accordingly, with some exceptions, "exempt property 'is not liable' for the payment of 'any [prepetition] debt' or 'any administrative expense.'" *Law* v. *Siegel*, 571 U.S. 415, 417-418 (2014) (quoting 11 U.S.C. 522(c) and (k)); see *Owen* v. *Owen*, 500 U.S. 305, 308 (1991) ("Property that is properly exempted under § 522 is (with some excep-

tions) immunized against liability for prebankruptcy debts.").

In distributing the estate's property, the trustee has the power to "avoid a lien that secures a claim of a kind specified in section 726(a)(4) of this title." 11 U.S.C. 724(a). The avoidance power in Section 724(a) prevents the estate from being reduced by the amount of the debtor's penalties. See *Simonson* v. *Granquist*, 369 U.S. 38, 41 (1962) (interpreting the predecessor provision to what is now 11 U.S.C. 724(a)); see also H.R. Rep. No. 595, 95th Cong., 1st Sess. 382 (1977). A lien that is avoided under Section 724(a) "is preserved for the benefit of the estate but only with respect to property of the estate." 11 U.S.C. 551.

As the court of appeals correctly explained, the interaction of those provisions means that, in distributing the property of the estate, the trustee can avoid a lien that attaches *to the property of the estate* at the time of distribution, thereby preventing the estate's property from being reduced by the amount of the lien. Pet. App. 17a, 28a; see *id.* at 12a-32a. But the trustee lacks the power to avoid a lien that attaches to a debtor's exempt property, which is not part of the property of the estate, 11 U.S.C. 522(b); see Pet. App. 18a, 28a. After all, the trustee's role is to distribute "property of the estate," rather than other property, to the creditors. See 11 U.S.C. 704(a)(1); see 11 U.S.C. 726(a). And the trustee's power to preserve a lien's value for the benefit of the estate exists only "with respect to property of the estate." 11 U.S.C. 551. That interpretation ensures that the estate is not *reduced* by the amount of the debtor's penalties, but it stops short of allowing the trustee to *augment* the estate by bringing back into the estate part of the value of the exempted property—here by

stepping into the shoes of the IRS with its ability to encumber property that is generally exempt from creditors.

b. In resisting that straightforward conclusion, petitioner contends (Pet. 9-10) that the trustee's avoidance power extends to a tax lien that attaches to the debtor's homestead exemption on the theory that the amount of the homestead exemption *had been* part of the estate at the commencement of the case. But that argument runs contrary to this Court's cases and the basic operation of bankruptcy law. The property that composes the estate is not fixed at the commencement of a bankruptcy case. Certain property "becomes property of the estate after [the commencement] date." 11 U.S.C. 522(a)(2); see 11 U.S.C. 541(a)(3)-(7). And other property interests—like the homestead interest at issue here—can become "exempt from property of the estate" after the commencement date, 11 U.S.C. 522(b)(1), that is, can be "withdraw[n] from the estate," *Schwab* v. *Reilly*, 560 U.S. 770, 791 (2010) (emphasis omitted); see *Owen*, 500 U.S. at 308 ("An exemption is an interest withdrawn from the estate (and hence from the creditors) for the benefit of the debtor."). The point of allowing a debtor to exempt an asset from the estate is that, as a result, the asset "is not available to his creditors." *Schwab*, 560 U.S. at 791; see *Owen*, 500 U.S. at 308 (exempted property is "immunized against liability for prebankruptcy debts"). Petitioner's time-of-commencement focus would do the opposite, making the portion of the exempt interest that is subject to a lien available for distribution to creditors, thus undoing the effect of the exemption in the amount of the lien.

An example helps illustrate that petitioner here seeks to reinfuse a portion of the value of the exemption

into the estate for the benefit of creditors. A tax lien attaches to all of a taxpayer's "property and rights to property," 26 U.S.C. 6321, meaning that when the interest in the property is bifurcated, both the interest in the asset that remains in the estate and the amount that is withdrawn pursuant to the exemption are each still subject to the lien. See Pet. App. 22a n.4; 11 U.S.C. 522(c)(2)(B). If the interest in the Prescott property that remained in the estate—the value of the debtor's home after subtracting the mortgage and the homestead exemption—had any value, then petitioner would have been able to secure the full value of that interest for the benefit of the estate's creditors by avoiding the lien. For instance, if the value of the property were $600,000, and that of the mortgage were $400,000, then, after the $150,000 homestead exemption was withdrawn, there would be $50,000 in equity that would still be estate property; as property of the estate, that $50,000 would have been encumbered by the $26,771 tax lien. Petitioner could have avoided the tax lien that attached to the estate property, making the full $50,000 available to the estate's creditors. See Pet. App. 31a (explaining that "the trustee may certainly avoid the tax lien on non-exempt property that remains in the estate"). And the debtor's $150,000 homestead exemption would also be subject to the tax lien, meaning that the debtor would continue to be liable to the IRS for $26,771 out of the exempt funds. See 11 U.S.C. 522(c)(2)(B) (providing that exempt property remains liable for a tax protected by a "properly filed" "tax lien" that encumbers exempt property). Thus, the lien avoidance would have prevented the other creditors from paying for the debtor's penalty.

Here, however, the interest in the homestead asset that remained in the estate after the value of the exempted property interest was withdrawn had no value because the mortgage on the Prescott property fully offset any remaining equity in the house. See Pet. App. 31a; see also *id.* at 11a. In other words, after the exemption was claimed, the home equity value that remained in the estate was $0, encumbered by the $26,771 tax lien. What petitioner seeks in purporting to avoid the tax lien therefore is not releasing for payment to the creditors the full amount of the interest in the homestead asset that belongs to the estate (worth $0) as the avoidance provision allows, but instead using the existence of the lien to *augment* estate property by reinfusing into the estate $26,771 in exempt property and making that property available to creditors. That approach would effectively reduce the amount of the debtor's exemption by $26,771. And the approximately $30,000 that was distributed to the debtor as her remaining exempt funds would continue to be liable to the IRS for the value of the tax lien.

Allowing the trustee to avoid a lien on exempt property, as petitioner urges, would not prevent the property of the estate from being *reduced* by penalties, as Section 724(a) aims to accomplish, see p. 9, *supra*, but it would cut the debtor's allowed exemption by allowing the tax lien to reduce the exemption twice, once as the Code specifically provides, by preserving the tax lien for collection by the IRS, 11 U.S.C. 522(c)(2)(B), and a second time, without any textual basis, by preserving the amount of the tax lien for use by the estate. And because "exemptions were designed to permit individual debtors to retain exempt property so that they will be able to enjoy a 'fresh start' after bankruptcy," au-

thorizing a trustee to take the debtor's exempt funds for general creditors would deprive the debtor of the financial fresh start that is a foundational goal of the Bankruptcy Code. *Security Indus. Bank*, 459 U.S. at 72 n.1. The court of appeals was correct to reject that "perverse result," Pet. App. 31a, which would undo a portion of the debtor's exemption in contravention of the Code.

c. Petitioner next asserts (Pet. 10-12) that the court of appeals erred in deeming the Prescott property as a whole, rather than the interest covered by the homestead exemption, as withdrawn from the estate. That argument misreads the court's opinion. The court explained that "[w]hen the exemption consists of an interest in an asset, the asset remains in the estate while only an interest in the property equal to the value of the exemption claimed at filing is removed from the estate." Pet. App. 16a n.2 (citation and internal quotation marks omitted). And it recognized that "the Debtor withdrew *her exempted property interest* from the property of the estate." See *id.* at 28a (emphasis added). Accordingly, both the homestead asset itself (*i.e.*, the Prescott property's legal title) as well as any remaining non-exempt interest in the value of the homestead remained in the estate. *Id.* at 31a. But the estate's portion of the asset had no value, see *ibid.*, meaning that avoiding the lien to release the full value of the estate's portion of the asset did not benefit creditors. Indeed, petitioner himself ultimately acknowledges (Pet. 14) that the court recognized "that only an interest in the residence was exempt."[2]

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[2] Petitioner also misreads the court of appeals' opinion in suggesting (Pet. 14-15, 20) that the court precluded the trustee from administering the homestead asset. To the contrary, the property was sold in a court-approved sale and the trustee administered the

d. Petitioner also suggests (Pet. 20) that, because the government has entered stipulations with trustees in some cases in which trustees have avoided liens on exempt property, the government has "recogni[zed] that trustees may avoid tax penalty liens on exempt property." That is not the government's view. The government has entered consensual carve-out agreements in its capacity as creditor where it is content to get paid the amount being offered without a fight. In each of the cases that petitioner cites (Pet. 20)—*Hutchinson* v. *United States (In re Hutchinson)*, 15 F.4th 1229 (9th Cir. 2021), *Gill* v. *Kirresh (In re Gill)*, 574 B.R. 709 (B.A.P. 9th Cir. 2017), and *In re Bolden*, 327 B.R. 657 (Bankr. C.D. Cal. 2005)—no party (including the debtor) challenged the power of the trustee to take the agreed-upon action. The stakeholders' ability to consent to a particular distribution does not indicate that the Code authorizes the same result in the absence of consent. See *Lawyer* v. *Department of Justice*, 521 U.S. 567, 579 n.6 (1997).

2. The decision below does not conflict with the decision of any other court of appeals. In his briefing before the court of appeals, petitioner did not invoke any of the out-of-circuit cases on which he now relies. And in his petition for rehearing in the court of appeals, petitioner acknowledged that "[t]he precise issue before the [court] * * * has not previously been addressed by [the court], or *by any other circuit court* of appeals." Pet. C.A. Reh'g Br. 1 (emphasis added). The court of appeals likewise described the question presented here as "a matter of first impression." Pet. App. 3a. Nor did

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funds. Pet. App. 11a. The proceeds of the sale after costs were less than the value of the debtor's homestead exemption. See *ibid.*

the dissenting judge invoke any out-of-circuit cases. See *id.* at 32a-43a.

Petitioner now contends (Pet. 13-20, 22-25) that various legal statements in the court of appeals' opinion contradict decisions in other circuits. But none of those claimed contradictions withstands scrutiny.

Petitioner first asserts (Pet. 13-15) a conflict between the decision below and cases holding that when an interest in an asset is exempt, legal title to the underlying asset remains in the estate. But as explained, see p. 13, *supra*, the decision below is consistent with those holdings, making it clear that only the exempt interest in the property is withdrawn from the estate. See Pet. App. 15a-16a n.2, 28a, 31a. Petitioner ultimately acknowledges (Pet. 14) that the court of appeals recognized "that only an interest in the residence was exempt." Similarly, petitioner asserts (Pet. 15) a conflict between the decision below and cases holding that "a residence can still be administered" by the trustee when an interest in the residence is removed from the estate. But the decision below did not bar the trustee from administering the Prescott property, and the trustee did in fact administer the property. See p. 13 n.2, *supra*; see Pet. App. 11a. None of the cited cases supports the proposition that petitioner would need to prevail: that a trustee is entitled not only to administer the asset remaining in the estate, but to avoid a lien that attaches *to the exempt interest* in order to bring a portion of that exempt interest back into the estate.

Petitioner next invokes (Pet. 15-20) decisions from the First, Fourth, and Tenth Circuits, which he asserts allow a trustee to avoid liens on exempt property. But none of those cases actually addresses the issue here. Petitioner primarily relies (Pet. 15-17) on an un-

published decision from the Fourth Circuit, *Reeves* v. *Callaway*, 546 Fed. Appx. 235 (2013) (per curiam), but that case addressed a situation in which the debtor had no equity in the property, such that the value of the debtor's *exemption* was zero, *id.* at 237-238. The Fourth Circuit rejected the debtor's argument that the exemption nonetheless removed the legal title of the property from the estate, precluding the trustee from selling the property. *Id.* at 241. That conclusion is consistent with the decision below, which did not hold that the legal title to the Prescott property left the estate, and which likewise allowed the property to be sold. See p. 13, *supra*. And, in any event, the unpublished nature of the decision in *Reeves*, see 546 Fed. Appx. at 236, means that even the Fourth Circuit would be free to address any aspect of the decision anew in a subsequent case.

Petitioner's remaining cases are also far afield. The First Circuit's decision in *DeGiacomo* v. *Traverse (In re Traverse)*, 753 F.3d 19, cert. denied, 574 U.S. 976 (2014), and the Tenth Circuit's decision in *Morris* v. *St. John National Bank (In re Haberman)*, 516 F.3d 1207 (2008), did not address the avoidance of a tax lien under Section 724(a) at all, but rather considered a trustee's attempt to avoid a different type of lien pursuant to a different provision, 11 U.S.C. 544. See *Traverse*, 753 F.3d at 23 (unperfected mortgage); *Haberman*, 516 F.3d at 1208-1209 (unperfected bank lien on a car). And neither case even addressed whether the relevant state-law exemption covered the value of the avoided lien, such that any of the value covered by the lien was exempt from being property of the estate. Nor do those decisions otherwise support petitioner. In *Traverse*, the First Circuit *rejected* the trustee's argument for avoiding a lien

where, as here, "no equity remain[ed] for the estate beyond the senior claims of secured creditors and the debtor's own exempt interest." 753 F.3d at 28; see *id.* at 28-29. And it specifically rejected the result—which petitioner's argument equally creates—that a lien-avoidance provision "clearly aimed at regulating the distribution of a debtor's estate among her creditors should exacerbate the debtor's substantive obligations and vulnerabilities in bankruptcy." *Id.* at 30. And the Tenth Circuit's decision in *Haberman* likewise did not address the trustee's power to avoid a lien that did not belong to the estate, but instead considered (and rejected) a trustee's argument that, when avoiding a lien, the trustee assumes all the rights that the original lienholder may have against the debtor. 516 F.3d at 1208; see *id.* at 1209-1212.

Petitioner's other Tenth Circuit decision, *Zubrod* v. *Duncan (In re Duncan)*, 329 F.3d 1195 (2003), also did not address a trustee's power to avoid a tax lien under Section 724(a). Instead, it considered a debtor's ability to exempt an interest in property voluntarily transferred under 11 U.S.C. 522(g)(1). *Duncan*, 329 F.3d at 1198. The Tenth Circuit held that the debtor had no right to an exemption in a property he voluntarily and fraudulently transferred to himself and to his wife in order to keep it beyond the reach of creditors. *Id.* at 1200. Accordingly, nothing in *Duncan* suggests that where, as here, a valid exemption exists, a lien that attaches to the exempt property can be avoided.

Finally, petitioner asserts a conflict between out-of-circuit decisions and what he describes as an "implicit[] holding" that "state exemption laws trump federal tax laws." Pet. 22-23; see Pet. 22-25. That assertion again mischaracterizes the decision below. The court of ap-

peals recognized that a federal tax lien "attaches to all of a debtor's property interests, with no carve-out for exempt property," meaning that state-law exemptions do not stop federal tax liens from attaching to a property interest, and thus are not superior to and do not trump federal tax liens. See Pet. App. 22a n.4; see 26 U.S.C. 6321. Instead, the court specified that "the Debtor takes her exempt interest * * * subject to the IRS tax penalty lien." Pet. App. 28a. For that reason, the decision below is fully consistent with the cases petitioner cites (Pet. 23-25) for the proposition that the government can enforce its tax lien despite a state-law exemption.

In short, the decision below conflicts with none of the out-of-circuit cases that petitioner cites. Nor do any of them support the result petitioner seeks: that the debtor, in addition to being required to pay the tax lien out of her exempt property, must *also* reduce the amount of her exemption by the value of the lien, permitting that amount to be reinfused into the property of the estate and made available to pay other creditors.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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