No. 99-387

IN THE SUPREME COURT OF THE UNITED STATES

THOMAS E. RALEIGH, Chapter 7 Trustee
for the Estate of William J. Stoecker,
Petitioner,

v.

STATE OF ILLINOIS,
DEPARTMENT OF REVENUE,
Respondents.

BRIEF OF THE COUNCIL OF STATE GOVERNMENTS, NATIONAL LEAGUE OF CITIES, NATIONAL GOVERNORS' ASSOCIATION, NATIONAL ASSOCIATION OF COUNTIES, U.S. CONFERENCE OF MAYORS, INTERNATIONAL MUNICIPAL LAWYERS ASSOCIATION, AND INTERNATIONAL CITY/COUNTY MANAGEMENT ASSOCIATION AS *AMICI CURIAE* SUPPORTING RESPONDENT

Filed March 23, 2000

QUESTION PRESENTED

Whether federal bankruptcy courts are bound by state law burdens of proof when state tax claims are litigated in bankruptcy.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases — Page

TABLE OF AUTHORITIES—Continued

Page

TABLE OF AUTHORITIES—Continued

Statutes and Rules

TABLE OF AUTHORITIES—Continued

Other Authorities

INTEREST OF THE *AMICI CURIAE*

Amici, organizations whose members include state, county, and municipal governments and officials throughout the United States, have a compelling interest in legal issues that affect state and local governments.[1] *Amici* regularly file briefs in this Court in cases that present important questions concerning the relationship between state and federal law.

The position advanced by Petitioner in this case, that federal bankruptcy courts are empowered to disregard the extensive body of state law addressing the burden of proof in tax litigation, *see* Appendix, would effect a very substantial displacement of state law in a core area of state regulatory authority. Petitioner's position is unsupported by this Court's precedents and is contrary to the Court's long-held view that "Congress and this Court repeatedly have shown an aversion to federal interference with state tax administration." *National Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, 515 U.S. 582, 586 (1995).

Amici are also concerned that adoption of Petitioner's position will substantially disrupt state and local government tax administration, encourage bankruptcy filings, and unfairly impose additional monetary burdens on innocent taxpayers. *Amici* accordingly file this brief to assist the Court in its resolution of this case.

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[1] Pursuant to Rule 37.3 of the Rules of this Court, the parties have consented to the filing of this brief and their letters of consent filed with the Clerk. Pursuant to Rule 37.6, *amici* state that this brief was not authored in whole or in part by counsel for a party, and no person other than *amici* or their members made a monetary contribution to the preparation or submission of this brief.

SUMMARY OF ARGUMENT

A. When construing federal legislation in an area historically subject to state authority, this Court begins with the "basic assumption that Congress did not intend to displace state law." *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981). Consequently, in bankruptcy as in other areas, "[t]o displace traditional state regulation . . . the federal statutory purpose must be 'clear and manifest.' Otherwise the Bankruptcy Code will be construed to adopt, rather than displace, pre-existing state law." *BFP v. Resolution Trust Corp.*, 511 U.S. 531, 544-45 (1994) (citations omitted). Federalism concerns apply with particular force when bankruptcy courts adjudicate state tax disputes. *See National Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, 515 U.S. 582 (1995).

It is within this framework that the Court must evaluate the ruling below. It is a fundamental principle of tax law that the burden of proof in tax disputes is ordinarily on the taxpayer. Because the burden of proof is an integral part of a litigant's substantive right, the burden of proof is not within the common law rulemaking authority of the federal bankruptcy courts. Rather, it is a carefully conceived aspect of state law in every State. Congress cannot displace these laws absent a clear statement to that effect.

B. Nothing in the Bankruptcy Code intimates, much less clearly states, that bankruptcy courts can ignore state law burdens of proof when adjudicating state tax claims. Moreover, Congress has directly addressed the burden of proof in several other aspects of bankruptcy litigation. As the court of appeals noted, "the close attention that the drafters of the Code paid to issues of burden of proof makes their

silence on the burden of proof in tax cases eloquent." Pet. App. 11a.

Congress's silence on the burden of proof in tax disputes is particularly significant given the Court's longstanding directive to bankruptcy courts to apply state law when determining the validity of a state law claim. Nor is there any federal interest requiring a different result. Bankruptcy courts should therefore apply the burden of proof provided by state law when adjudicating the validity of state tax claims.

Petitioner's argument that Congress adopted a prevailing pre-Code judicial construction placing the burden of proof on taxing authorities is unpersuasive for three reasons. First, there was no pre-Code practice placing the burden on the taxing authority when tax claims were litigated in bankruptcy court. Second, even if there arguably was such a pre-Code practice on burden of proof, this Court has never suggested that preemption of state law would be appropriate absent a clear and manifest indication in the Code. Inferential preemption of the kind urged by Petitioner would be flatly contrary to core notions of federalism.

Finally, Petitioner's pre-Code practice argument asks the wrong question. What is at issue is not the burden of proof ultimately applied but the source of the law that supplies that burden of proof. In many pre-Code cases involving disputed tax claims courts placed the burden of proof on the party that would have carried that burden in the non-bankruptcy setting, thus demonstrating the appropriate respect for state law.

C. Petitioner's argument that the bankruptcy court's equitable powers enable the court to reallocate

the burden of proof on tax claims is meritless. "[W]hatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988). Nothing in the Bankruptcy Code supports allowing bankruptcy courts to use their equitable powers categorically to reallocate burdens of proof.

On the contrary, in *United States v. Noland*, 517 U.S. 535 (1996), this Court held that a bankruptcy court inappropriately invades the legislative sphere when it uses its equitable powers categorically to override the legislatively-created rights of creditors. Permitting bankruptcy courts to reallocate burdens of proof to balance the equities between the State and other creditors, as Petitioner advocates, is irreconcilable with *Noland*. Moreover, there is no policy in the Code that all creditors should receive equality of treatment, as is illustrated by the fact that the claims of tax creditors are expressly given priority over the claims of certain other creditors.

D. The consequences of permitting federal bankruptcy courts to shift the burden of proof from the taxpayer to the taxing entity weigh heavily in favor of rejecting Petitioner's position. A categorical federal rule that placed the burden of proof on the State in tax claims litigated in bankruptcy court would substantially disrupt state tax administration, encourage bankruptcy filings to avoid taxes, and be unfair to innocent taxpayers. Bankruptcy courts should not be permitted to supplant settled state law and wreak such harmful consequences absent a clear congressional directive. Because such a directive is plainly lacking, the judgment of the court of appeals should be affirmed.

ARGUMENT

FEDERAL BANKRUPTCY COURTS ARE BOUND BY STATE LAW BURDENS OF PROOF WHEN STATE TAX CLAIMS ARE LITIGATED IN BANKRUPTCY

A. Congress Must Clearly Indicate Its Intention To Displace State Law In Vital Areas Of State Regulation Such As Taxation

When construing federal legislation in an area historically subject to state authority, this Court begins with the "basic assumption that Congress did not intend to displace state law." *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981). This reluctance to find preemption in an area of traditional state control is essential to "avoiding unintended encroachment on the authority of the States." *CSX Transp., Inc. v. Easterwood*, 507 U.S. 658, 664 (1993). As the Court recently reaffirmed,

> Federal statutes impinging upon important state interests 'cannot . . . be construed without regard to the implications of our dual system of government . . . . [W]hen the Federal Government takes over . . . local radiations in the vast network of our national economic enterprise and thereby radically readjusts the balance of state and national authority, those charged with the duty of legislating [must be] reasonably explicit.'

BFP v. Resolution Trust Corp., 511 U.S. 531, 544 (1994) (quoting *Kelly v. Robinson*, 479 U.S. 36, 49-50, n.11 (1986) (quoting Felix Frankfurter, *Some Reflections on the Reading of Statutes*, 47 Colum. L. Rev. 527, 539-40 (1947))).

These principles are fully applicable in bankruptcy, as the Court made clear in *BFP*. "To displace traditional state regulation . . . the federal statutory pur-

pose must be 'clear and manifest.' Otherwise the Bankruptcy Code will be construed to adopt, rather than to displace, pre-existing state law." 511 U.S. at 544-45 (citations omitted). "The Bankruptcy Code can, of course, override [state law] by implication when the implication is unambiguous. But where the intent to override is doubtful, our federal system demands deference to long established traditions of state regulation." *Id.* at 546; *see also Kelly*, 479 U.S. at 49; *Butner v. United States*, 440 U.S. 48, 54-55 & n.9 (1979) ("State laws are . . . suspended only to the extent of actual conflict with the system provided by the Bankruptcy Act of Congress."); *Stellwagen v. Clum*, 245 U.S. 605, 615 (1918) (same).

Federalism concerns apply with particular force when bankruptcy courts adjudicate state tax disputes. Recognizing that "[i]t is upon taxation that the several States chiefly rely to obtain the means to carry on their respective governments," this Court has long held that "it is of the utmost importance to all of them that the modes adopted to enforce the taxes levied should be interfered with as little as possible." *Dows v. Chicago*, 78 U.S. 108, 110 (1871). In *National Private Truck Council, Inc. v. Oklahoma Tax Comm'n*, 515 U.S. 582 (1995), the Court reiterated that "Congress and this Court repeatedly have shown an aversion to federal interference with state tax administration." *Id.* at 586. Acknowledging this "strong background principle against federal interference with state taxation," the Court emphasized that "principles of federalism and comity generally counsel that courts should adopt a hands-off approach with respect to state tax administration." *Id.* at 586, 589; *cf.* 28 U.S.C. § 1341 (Tax Injunction Act).

It is within this framework that the Court must evaluate the ruling below. It is a fundamental principle of tax law that the burden of proof in tax disputes is usually on the taxpayer. *See* Appendix; *Welch v. Helvering*, 290 U.S. 111, 115 (1933); *Helvering v. Taylor*, 293 U.S. 507, 515 (1935) ("[u]nquestionably the burden of proof is on the taxpayer to show that the [taxing authority's] determination is invalid").[2] The burden of proof is "a part of the very substance of [the] claim and cannot be considered a mere incident of a form of procedure." *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 249 (1942) (statutory right of plaintiff in admiralty case to be free of burden of proof "inhere[s] in his cause of action"); *see also Dick v. New York Life Ins. Co.*, 359 U.S. 437, 446 (1959) ("Under the Erie rule . . . burden of proof [is] substantive"); *Cities Serv. Oil Co. v. Dunlap*, 308 U.S. 208, 210-12 (1939). Consistent with these principles, the court below rightly acknowledged the "critical importance of burden of proof to a person's rights" and noted that "burden of proof is rightly classified as part of [a litigant's] entitlement." Pet. App. 10a. Consequently, as that court held, the burden of proof in state tax disputes is not within the rulemaking authority of the federal bankruptcy courts.

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[2] In some States this rule is subject to statutory exceptions. *See, e.g.*, Colo. Rev. Stat. Ann. § 39-21-105(b) (West 1990) (taxpayer does not carry burden of proof on issue of whether he is guilty of fraud with intent to evade tax); Del. Code Ann. tit. 30, § 526(a) (1974) (same); Ariz. Rev. Stat. Ann. § 42-1254(D)(4) (West Supp. 1999) (placing burden of proof on taxing authority in specified situations); Mo. Ann. Stat. § 136.300 (West Supp. 2000) ("The director of revenue shall have the burden of proof with respect to any factual issue relevant to ascertaining the liability of a taxpayer" in specified circumstances).

In this regard, the Court should also consider the disruptive consequences of reversing the judgment below. The longstanding rule placing the burden of proof on the taxpayer is a carefully conceived aspect of federal, state, and local tax law. It is based on the taxpayer's superior access to the relevant evidence. A rule requiring the taxing authority to bear the burden of proof when asserting a claim against a debtor in bankruptcy proceedings would preempt at least some aspect of tax law in every State, thus undermining carefully considered legislative and judicial determinations. *See* Appendix.[3] State legislatures have broad authority over taxation and can exercise it to alter the burden of proof in circumstances in which they conclude it is warranted. Thus, a categorical rule shifting the burden to the taxing authority in all bankruptcy proceedings would disturb the carefully considered schemes of the States which balance the competing interests of the taxpayer and the taxing authority.

B. The Code Does Not Intimate, Much Less Clearly Indicate, That Congress Intended To Displace State Law Burdens Of Proof When State Tax Claims Are Litigated In Bankruptcy

1. *The Bankruptcy Code Is Silent On Burdens Of Proof In State Tax Disputes And Therefore Federal Bankruptcy Courts Must Apply State Law*

This Court has consistently held that the validity of a claim in bankruptcy court "is a question which, in the absence of overruling federal law, is to be determined by reference to state law." *Vanston Bondholders Protective Comm. v. Green*, 329 U.S. 156, 161 (1946); *see also Butner*, 440 U.S. at 55; *Grogan v. Garner*, 498 U.S. 279, 283 (1991) ("The validity of a creditor's claim is determined by rules of state law.").[4] In *Butner*, the Court held that because Congress had not formulated a rule "defining the mortgagee's interest in the rents and profits earned by property in a bankrupt estate," 440 U.S. at 54, such interest must be determined by reference to state law. Noting that "[p]roperty interests are created and defined by state law," the Court ruled that "[u]nless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding." *Id.* at 55.[5]

Nothing in the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure intimates, much less clearly states, that bankruptcy courts may ignore state law burdens of proof when adjudicating state

[3] The Appendix identifies at least one law in each State that places the burden of proof on the taxpayer.

[4] *See also Bryant v. Swofford Bros. Dry Goods Co.*, 214 U.S. 279, 290-91 (1909) ("in bankruptcy the construction and validity of such a contract must be determined by the local laws of the state"); *Security Mortgage Co. v. Powers*, 278 U.S. 149, 158 (1928) (validity of a lien is determined by state law).

[5] As Professor Countryman observed with respect to the predecessor to the Bankruptcy Code,

> [T]he bankruptcy process deals with an existing condition . . . [a]nd the Bankruptcy Act does not provide a body of law, to be applied retroactively, in the establishment of claims. Hence the existence and amount of a bankrupt's liabilities, though determined by the bankruptcy court in allowing or disallowing claims, will inevitably be determined by non-bankruptcy, usually state, law.

Vern Countryman, *The Use of State Law in Bankruptcy Cases (Part I)*, 47 N.Y.U. L. Rev. 404, 412 (1972).

tax claims. The Code establishes that a claim or interest properly filed under section 501 will be allowed unless a party in interest objects. *See* 11 U.S.C. § 502(a) (1994). The Rules further provide that a proof of claim properly filed "shall constitute prima facie evidence of the validity and amount of the claim." *See* Fed. R. Bankr. P. 3001(f). Neither of these provisions speaks to the method by which the validity of a claim should be determined when disputed by a party in interest.

Moreover, Congress has directly addressed the burden of proof in several aspects of bankruptcy litigation. *See, e.g.*, 11 U.S.C. § 362(g) (assigning burden of proof in challenges to automatic stay); 11 U.S.C. § 363(o) (assigning trustee burden of proof on adequate protection issue in hearings on use of property); 11 U.S.C. § 364(d)(2) (assigning trustee burden of proof on adequate protection issue in hearing on obtaining credit); 11 U.S.C. § 547(g) (assigning burden with respect to avoidability of certain allegedly preferential transfers); 11 U.S.C. § 1129(d) (assigning to government burden of proving claim of tax avoidance as principal purpose of plan).[6] As the court of appeals noted, "the close attention that the drafters of the Code paid to issues of burden of proof makes their silence on the burden of proof in tax cases eloquent." Pet. App. 11a (citations omitted).

Congress's silence on the burden of proof in this context is particularly significant given the Court's longstanding directive to bankruptcy courts to apply state law when determining the validity of a state

[6] *See also* Fed. R. Bankr. P. 4003(c) (party objecting to exemption bears burden); Fed. R. Bankr. P. 4005 (burden assigned to party objecting to discharge).

law claim, *see Vanston*, 329 U.S. at 161, a significance reinforced by the Code's legislative history.[7] Nor is there any federal interest requiring a different result. *See infra* p. 22. Bankruptcy courts should therefore apply the burden of proof provided by state law when adjudicating the validity of state tax claims.

Petitioner argues that cases like *Vanston* and *Grogan* establish that state law burdens of proof should govern the validity of the creditor's claim outside of bankruptcy, but that federal law burdens of proof should govern the allowance of claims under section 502. *See* Pet. Br. 23-24. Petitioner is incorrect. *Vanston* and *Grogan* hold that state law governs the validity of a claim in bankruptcy court, but that federal law governs the disallowance or the discharge of claims in bankruptcy. *See Vanston*, 329 U.S. at 161-63; *Grogan*, 498 U.S. at 283-84. Thus, in *Vanston* this Court explained:

> What claims of creditors are *valid* and subsisting obligations against the bankrupt at the time a petition in bankruptcy is filed is a question which, in the absence of overruling federal law, is to be determined by reference to state law. . . . In determining what claims are *allowable* and how a debtor's assets shall be distributed, a bankruptcy court does not apply the law of the state where it sits. . . . [B]ankruptcy courts must administer and enforce the Bankruptcy Act as interpreted

[7] The legislative history of the Code demonstrates that Congress was aware that "tax collection rules for bankruptcy cases have a direct impact on the integrity of the Federal, State, and local tax systems" and that "the tax collector . . . should not lose taxes which he has not had reasonable time to collect." S. Rep. No. 598, 95th Cong., 2d Sess., *reprinted in* 1978 U.S.C.C.A.N. 5787, at 5800.

> by this Court in accordance with authority granted by Congress to determine how and what claims shall be allowed under equitable principles.

329 U.S. at 161-63 (emphasis added) (citations omitted). The Court thus described two distinct processes to be followed by bankruptcy courts: courts should determine the validity of the creditor's claim under state law, and then determine whether the claim must nevertheless be disallowed pursuant to other provisions specified by Congress in the Bankruptcy Act. Indeed, the Court in *Vanston* went on to "assum[e] *arguendo*, that the obligation for interest on interest is valid under the law of New York, Kentucky, and the other states having some interest in the indenture transaction" before addressing "whether allowance of the claim would be compatible with the policy of the Bankruptcy Act." 329 U.S. at 162.

The Bankruptcy Code of 1978 likewise embodies the two distinct processes described in *Vanston*. Section 502 provides that when a trustee objects to a proof of claim filed by a creditor, a bankruptcy court "shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that" such claim is inconsistent with the eight specific bases for disallowing claims enumerated by Congress. *See* 11 U.S.C. § 502(b) (1994). Moreover, contrary to Petitioner's assertion, *Grogan* only confirms that under the Bankruptcy Code of 1978, as was the case pre-Code, the "validity of a creditor's claim [in bankruptcy court] is determined by rules of state law." 498 U.S. at 283 (citing *Vanston*, 329 U.S. at 161).[8]

[8] The Court's ruling in *Grogan* that "the issue of nondischargeability has been a matter of federal law governed by

Thus, bankruptcy courts should apply state law, including state law burdens of proof, when determining the validity of state tax claims.

2. *Pre-Code Practice Does Not Displace State Law Burdens Of Proof*

Petitioner argues that, when enacting the Bankruptcy Code, Congress adopted a "prevailing judicial construction" of the Bankruptcy Act that placed the burden of persuasion on taxing authorities. *See* Pet. Br. 15-20. Petitioner's argument based on pre-Code practice is unpersuasive for three reasons.

First, Petitioner has failed to establish a prevailing pre-Code practice placing the burden of proof on the taxing authority. This Court has found a prevailing pre-Code practice to exist when there is in fact a consensus among all, or nearly all, the courts addressing a given point. *See, e.g., Cohen v. De La Cruz*, 523 U.S. 213, 221 (1998). In *Cohen*, this Court relied on a pre-Code practice established by provisions in the Bankruptcy Act of 1898 and this Court's precedent interpreting that Act. *Id.* The Court noted no contrary authority on the issue.[9]

terms of the Bankruptcy Code," 498 U.S. at 284, does not indicate, as Petitioner suggests, that federal burdens of proof should apply in this case. *See* Pet. Br. 24. Rather, the Court in *Grogan* simply reiterated that the validity of a claim should be governed by state law, but other bankruptcy inquiries, such as the discharge of a claim, should be governed by federal bankruptcy law. *See* 498 U.S. at 283-84.

[9] *See also Dewsnup v. Timm*, 502 U.S. 410, 418 & n.4, 419 (1992) (pre-Code practice established by provision of Bankruptcy Act and this Court's precedent; no contrary authority noted); *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 373 (1988) (pre-Code practice

In contrast, this Court has refused to find that a pre-Code practice exists where the proffered practice is supported only by divided authority. *See United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 380-82 (1988). There, the Court pointed to seven bankruptcy court cases and the comments of a leading bankruptcy commentator as authority which contradicted the proffered pre-Code practice before concluding that "[t]he at best divided authority under Chapter 11 removes all cause for wonder that the alleged departure from it should not have been commented upon in the legislative history." *Id.* at 381-82.

Likewise, in the present case Petitioner has failed to establish a pre-Code practice placing the burden of proof on the taxing authority when tax claims are adjudicated in bankruptcy court. Petitioner himself acknowledges that five courts had placed the burden on the taxpayer rather than the taxing authority before the enactment of the Bankruptcy Code, and two courts required the objecting party to rebut the presumptive validity of tax claims by clear and convincing evidence. *See* Pet. Br. 15 n.5. Moreover, a review of the relevant case law demonstrates many more pre-Code cases placing the burden of proof on the taxpayer/debtor.[10] Finally, it is unclear whether

established by plain text of statute and this Court's precedent; no contrary authority noted); *Midlantic Nat'l Bank v. New Jersey Dep't of Envtl'l Prot.*, 474 U.S. 494, 500-01 (1986) (pre-Code practice established by relevant circuit and bankruptcy cases; no contrary authority noted); *Kelly*, 479 U.S. at 44-46 (pre-Code practice established by this Court's precedent, court of appeals cases and leading commentator; one court of appeals case noted as contrary authority).

[10] *See, e.g., In re Shackelford*, 3 B.R. 42, 44 (Bankr. W.D. Mo. 1980); *In re Canady*, 43 A.F.T.R.2d 79-472, 473 (N.D.

each of the cases Petitioner cites (Br. 14-15) support the existence of a pre-Code practice placing the burden of proof on the taxing authority.[11] Thus, Petitioner establishes "at best, divided authority" as to which party bears the burden of proof when the validity of a tax claim is adjudicated in bankruptcy court. *United Savings Association*, 484 U.S. at 382.

Second, even if there arguably was such a pre-Code practice on burden of proof, this Court has never suggested that preemption of state law would be appropriate absent a clear and manifest indication in the Code.[12] Inferential preemption of the kind urged by

Ga. 1978); *In re Menefee*, 40 A.F.T.R.2d 77-5006, 5013 & n.19 (E.D. Mo. 1977); *In re Uneco*, 532 F.2d 1204, 1207 (8th Cir. 1976); *In re Certified Credit Corp.*, 329 F. Supp. 1402, 1403-04 (S.D. Ohio 1971); *In re Standard Milling Co.*, 324 F. Supp. 386, 390 (N.D. Tex. 1970); *In re Parr*, 205 F. Supp. 492, 498 (S.D. Tex. 1962); *In re Oxford Assoc.*, 209 F. Supp. 242, 243-44 (D.N.J. 1962); *In re Petersilge*, 70 F. Supp. 95, 96-97 (N.D. Ohio 1946); *Paschal v. Blieden*, 127 F.2d 398, 401-02 (8th Cir. 1942); *In re Raflowitz*, 37 F. Supp. 202, 207 (D. Conn. 1941); *In re Lasky*, 38 F. Supp. 24, 30 (N.D. Ala. 1941); *In re Gandolfi & Co.*, 42 F. Supp. 706, 707 (S.D.N.Y. 1940); *In re Mid America Co.*, 31 F. Supp. 601, 607 (S.D. Ill. 1939); *In re Lang Body Co.*, 92 F.2d 338, 341 (6th Cir. 1937), *cert. denied*, 303 U.S. 637 (1938); *United States v. Knox-Powell-Stockton Co.*, 83 F.2d 423, 425 (9th Cir. 1936), *cert. denied*, 299 U.S. 573 (1936); *In re Bell*, 34 F.2d 677, 680 (W.D. Pa. 1929); *In re Glover-McConnell Co.*, 9 F.2d 683, 686 (N.D. Ga. 1925).

[11] *See, e.g., Fiori v. Rothensies*, 99 F.2d 922, 922 (3d Cir. 1938) (per curiam) (discussing prima facie value of taxing authority's claim, but failing to reach the issue of burden of proof).

[12] Indeed, in the leading cases in which both a pre-Code practice and issues of federalism were at stake, the Court

Petitioner would be flatly contrary to core notions of federalism that require Congress to clearly indicate its intention to displace state law. As the Court held in *BFP*, only a congressional intention that is "clear and manifest," 511 U.S. at 544, suffices to displace state law in the bankruptcy context. As *amici* have noted, it is a fundamental principle of state tax law that, with the exception of certain specifically delineated situations, the burden of proof in tax disputes falls upon the taxpayer. *See* Appendix. If this Court is to begin with the "basic assumption that Congress did not intend to displace state law," *Maryland v. Louisiana*, 451 U.S. at 746, it should find a congressional intent to adopt a pre-Code practice which displaces state substantive law only in the clearest and most compelling circumstances, which are not present here.

Finally, Petitioner's proffered pre-Code analysis should be rejected because it asks the wrong question. At issue here is not so much the burden of proof to be applied as the source of the law that determines how the burden is allocated. Thus, in terms of pre-Code practice, the more appropriate inquiry is whether pre-Code cases applied specific bankruptcy law burdens of proof or the burdens that applied under relevant non-bankruptcy law. A review of case law involving disputed tax claims indicates that many courts placed the burden of proof on the party which would otherwise have carried that burden under

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preserved state law. *See, e.g., Cohen*, 523 U.S. at 221, 223 (pre-Code practice respected State's interest in enforcement of state law judgment against debtor); *Dewsnup*, 502 U.S. at 417-19 (pre-Code practice preserved the result otherwise obtained under state law); *see also Midlantic*, 474 U.S. at 500; *Kelly*, 479 U.S. at 53.

non-bankruptcy law, thereby demonstrating an appropriate respect for state law.[13]

For all of these reasons, this Court should decline to find an intent of Congress to adopt a pre-Code practice placing the burden of proof on the taxing authority in state tax disputes.

C. The Bankruptcy Court's Equitable Power To Reorder Claims Does Not Empower It To Reallocate Burdens Of Proof

Petitioner contends that the bankruptcy court's equitable powers should be used to reallocate the burden of proving the validity of a tax claim in order to promote the policy of equality among creditors. *See* Pet. Br. 26-29; *see also Franchise Tax Bd. of California v. Macfarlane*, 83 F.3d 1041, 1045 (9th Cir. 1996) (shifting burden to taxing authority in order to "balance the equities," on grounds that taxing authority should not receive "double benefit," because tax claims also receive statutory priority over claims of other creditors), *cert. denied*, 520 U.S. 1115 (1997). This argument is without merit. The

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[13] *See, e.g., In re Shackelford*, 3 B.R. at 44 (citing non-bankruptcy law, or cases relying on nonbankruptcy law, when stating burden of proof); *accord In re Canady*, 43 A.F.T.R.2d at 473; *In re Menefee*, 40 A.F.T.R.2d at 5013 & n.19; *In re Uneco*, 532 F.2d at 1207; *In re Standard Milling Co.*, 324 F. Supp. at 390; *In re Oxford Assoc.*, 209 F. Supp. at 243-44; *In re Petersilge*, 70 F. Supp. at 96-97; *Paschal v. Blieden*, 127 F.2d at 401-02; *In re Lasky*, 38 F. Supp. at 30; *In re Glotzer*, 42 F. Supp. 712, 713 (S.D.N.Y. 1941); *In re Trustees System Co. of Louisville*, 30 F. Supp. 361, 363 (1939); *In re Gandolfi & Co.*, 42 F. Supp. at 707; *In re Mid America Co.*, 31 F. Supp. at 607; *In re Lang Body Co.*, 92 F.2d at 341; *United States v. Knox-Powell-Stockton Co.*, 83 F.2d at 424-25; *In re Bell*, 34 F.2d at 680; *In re Glover-McConnell Co.*, 9 F.2d at 686.

equitable powers of the bankruptcy court to reorder claims cannot be used to override the state law that determines the validity of a claim. In "balancing the equities," bankruptcy courts must also consider this Court's directive that, absent a contravening statement from Congress, creditors are entitled to the same substantive rights in bankruptcy court that they possess outside of bankruptcy. The goal of bankruptcy courts should be to ensure that the validity of a creditor's claim does not depend upon whether the claim is asserted in bankruptcy court or some other forum. This goal, rather than some undefined desire for equality among creditors, controls this case.

Bankruptcy courts are courts of equity. *See* 11 U.S.C. § 105(a). This Court has repeatedly held, however, that "whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988); *see also United States v. Noland*, 517 U.S. 535, 539 (1996) ("although [the bankruptcy court] is a court of equity, it is not free to adjust the legally valid claim of an innocent party who asserts the claim in good faith merely because the court perceives that the result is inequitable"); *Butner*, 440 U.S. at 56 ("undefined considerations of equity provide no basis for adoption of a uniform federal [bankruptcy] rule").

The Bankruptcy Code does not state that bankruptcy courts may use their equitable powers categorically to shift the burden of proof in tax disputes. Petitioner nevertheless contends that bankruptcy courts are entitled to disregard state substantive law when determining the validity of a claim, if doing so

will promote "equality" among creditors. Pet. Br. 27; *see also Macfarlane*, 83 F.3d at 1045. Indeed, Petitioner asserts that "[i]n order to balance the equities between taxing authorities and other creditors, taxing authorities should shoulder the same burden of persuasion as other creditors to establish their claims." Pet. Br. 29.

Petitioner's argument is without merit. In *Noland*, this Court held that a bankruptcy court inappropriately invades the legislative function when it uses its equitable powers categorically to override the legislatively-created rights of creditors. 517 U.S. at 540-41. The *Noland* Court reasoned that the equitable powers of a bankruptcy court do not justify categorical subordination of claims where such subordination was at odds with Congress' articulated scheme of priorities. *Id.* The Court stated that bankruptcy courts could not categorically subordinate the claims of creditors—in this case the Internal Revenue Service —in derogation of Congress's ordering of priorities because doing so would contravene the reasoned policy judgment of the legislature. *See id.* at 543.

Despite *Noland*'s admonition that "bankruptcy courts may not take it upon themselves to make . . . categorical determination[s] under the guise of [equity]," 517 U.S. at 543, Petitioner advocates a rule that would require bankruptcy courts to do precisely that. Permitting bankruptcy courts to reallocate burdens of proof in order to "balance the equities 'between the [State] and other creditors' " or to avoid " 'granting the [State] a double benefit,' " *Macfarlane*, 83 F.3d at 1045 (citations omitted), is irreconcilable with *Noland*. Indeed, the rule that Petitioner seeks—that the burden of proof is always on the taxing entity in bankruptcy—is a blanket rule

of the very sort struck down by the Court in *Noland* as "inappropriately categorical in nature." 517 U.S. at 543.[14] Petitioner's request must be denied because this Court has already made clear that equitable powers do not authorize a bankruptcy court to "exercise unrestricted power to contradict statutory or

[14] Petitioner's suggestion that the equitable powers of the Court may be used to shift the burden of proof because the " 'balance of equities between creditor and creditors' is at work when a bankruptcy court is called upon to adjudicate an objection to the allowance of a priority tax claim," Pet. Br. 29, is without merit. As discussed above, this case involves the burden of proof to be applied when determining the validity of the claim under state law, not the allowance of the claim under federal law. Moreover, it is questionable whether a bankruptcy court may use its equitable powers to disallow a claim when, as here, the creditor has engaged in no misconduct or fraud. *See, e.g., In re Mobile Steel Co.*, 563 F.2d 692, 699 (5th Cir. 1977) ("[E]quitable considerations can justify only the subordination of claims, not their disallowance."); *In re 80 Nassau Assoc.*, 169 B.R. 832, 837 & n.4 (Bankr. S.D.N.Y. 1994); *In re Babbin*, 164 B.R. 157, 160 (Bankr. D. Colo. 1994); *In re Georgia Villa, Inc.*, 10 B.R. 79, 85 (Bankr. N.D. Ga. 1981); *In re Huckabee Auto Co.*, 33 B.R. 132, 139-40 (Bankr. M.D. Ga. 1981); *see also* 4 Lawrence P. King, *Collier on Bankruptcy* ¶ 510.02 (15th ed. 1999) ("There are in addition, situations in which the claim of a creditor is enforceable at law and should be allowed, but where the creditor's misconduct requires an equitable remedy. In such a case, the valid claim will not be disallowed but will be subordinated, or postponed in rank, until the claims of other creditors have been satisfied.") (citing Asa S. Herzog & Joel B. Zweibel, *The Equitable Subordination of Claims in Bankruptcy*, 15 Vand. L. Rev. 83, 86 (1961) and Daniel C. Cohn, *Subordinated Claims: Their Classification and Rating Under Chapter 11 of the Bankruptcy Code*, 56 Am. Bankr. L.J. 293 (1982)); *cf. Pepper v. Litton*, 308 U.S. 295, 312 (1989) (acknowledging equitable powers of disallowance or subordination when creditor breached fiduciary duty).

common law when [the court] feels a fairer result may be obtained by application of a different rule." *Id.* at 543; *accord United States v. Reorganized CF & I Fabricators*, 518 U.S. 213, 229 (1996) ("categorical reordering of priorities that takes place at the legislative level of consideration is beyond the scope of judicial authority to order equitable subordination under § 510(c)").

Petitioner also contends that the Code's "fundamental goal of equality of treatment of creditors is put at risk if one class of creditors—and indeed, a class of creditors whose claims are often granted priority status—is given the benefit of a favorable presumption that is unavailable to other creditors." Pet. Br. 27. There is, however, no policy in the Code that all creditors should receive "equality of treatment" in bankruptcy proceedings. On the contrary, the Code expressly grants favorable treatment to tax creditors in other instances. *See, e.g.*, 11 U.S.C. § 507(a)(8) (priority of distribution); 11 U.S.C. § 523(a)(1) (nondischargeability of tax liability).[15] The decision to grant certain priorities to tax creditors is a reasoned congressional judgment reflecting the fact that taxing authorities are non-consensual

[15] Taxing authorities have a fundamentally different relationship with debtors than do most private creditors because they are public agencies and nonconsensual creditors. Most private creditors achieve through contract greater access to information with which to monitor the financial activities of their debtors than the government obtains on tax returns. *See* Frances R. Hill, *Toward A Theory Of Bankruptcy Tax: A Statutory Coordination Approach*, 50 Tax Law. 103, 107, 149 (1996). Moreover, private creditors can adjust the terms of credit to reflect risk. Consequently, Congress had valid reasons for providing taxing authorities with certain preferences in the bankruptcy context.

creditors. A bankruptcy court should not be permitted to undermine that judgment.[16]

In short, a bankruptcy court cannot invoke its powers of equity to "create equitable impediments for a certain class of creditors based on the notion that Congress has given [those creditors] too much." *Thinking Machines Corp. v. New Mexico Taxation & Revenue Dep't*, 211 B.R. 426, 431 n.7 (Bankr. D. Mass. 1997) (citation omitted). Rather, as this Court recognized in *Butner*, 440 U.S. at 56, unless Congress has mandated otherwise, "undefined considerations of equity provide no basis for adoption of a uniform federal rule" in bankruptcy that contravenes generally applicable state law rules.

D. Allowing Bankruptcy Courts To Reallocate Burdens of Proof Would Substantially Disrupt State Tax Administration, Encourage Bankruptcy Filings, And Be Unfair To Innocent Taxpayers

The adverse consequences of permitting federal bankruptcy courts to shift the burden of proof from the taxpayer to the taxing entity also weigh heavily in favor of affirming the judgment of the court of appeals. These consequences are distinctly at odds with the concerns expressed in the legislative history of the Bankruptcy Code.

> Since tax authorities are creditors of practically every taxpayer, . . . tax collection rules for bankruptcy cases have a direct impact on the integrity of the Federal, State, and local tax systems. These tax systems, generally based on voluntary assessment, work[] to the extent that the majority of taxpayers think they are fair. This presumption of fairness is an asset which should be protected and not be jeopardized by permitting taxpayers to use bankruptcy as a means of improperly avoiding their tax debts. To the extent that debtors in a bankruptcy are freed from paying their tax liabilities, the burden of making up the revenues thus lost must be shifted to other taxpayers.

S. Rep. No. 598 at 14, *reprinted in* 1978 U.S.C.C.A.N. at 5800. The Senate Report expressed particular concern that "the tax collector . . . should not lose taxes which he has not had reasonable time to collect or which the law has restrained him from collecting." *Id.*

"Claims for taxes figure prominently in nearly all bankruptcy proceedings." William T. Plumb, *The Tax Recommendations of the Commission on the Bankruptcy Laws—Tax Procedures*, 88 Harv. L. Rev. 1360, 1363 (1975). The allocation of the burden of proof frequently has a substantial impact on state revenue collection because the determination of which party bears the burden of proof in tax cases will often be "critical" to the ultimate outcome of the dispute, as it is in this case. *See* Pet. App. 8a. If the State is unable to collect taxes from debtors because of the reallocation of the burden of proof, it will necessarily pass on its losses to the general public in the form of higher taxes. *See Thinking Machines*, 211 B.R. at 431 n.8 (citing Hill, 50 Tax Law. at 112). Consequently, "other present and future taxpayers

[16] As one commentator has observed, "It is scarcely a surprise to note that the government's claim for unpaid prepetition taxes may be afforded priority status in bankruptcy distribution. Indeed, perhaps the surprise is that the priority for taxes is as low as it is; taxes rank eighth in the priority line." Charles J. Tabb, *The Law of Bankruptcy* 520 (1997) (citing 11 U.S.C. § 507(a)(8)).

[will be] left to provide the revenue required for governmental operations," Hill, 50 Tax Law. at 107, potentially creating "concerns about the fairness of the distribution of the burden of funding the government." Steve R. Johnson, *The Dangers of Symbolic Legislation: Perceptions and Realities of the New Burden-of-Proof Rules*, 84 Iowa L. Rev. 413, 451-52 (1999).

Requiring bankruptcy courts to adjust the burden of proof for tax claims would be particularly disruptive because both federal and state tax systems rely upon voluntary compliance and self-reporting by citizens.[17] *See United States v. Bisceglia*, 420 U.S. 141, 145 (1975). The taxpayer, rather than the government, is the party most likely to possess relevant evidence regarding potential tax liability and is thus best able to carry the burden of proof in the event of any contest as to that liability. *See United States v. Rexach*, 482 F.2d 10, 16 (1st Cir.), *cert. denied*, 414 U.S. 1039 (1973). A taxing authority is a nonconsensual creditor who "has no discretion in choosing those from whom it must collect taxes" and "no ability to monitor debtors and could gain no benefit from doing so." Hill, 50 Tax Law. at 149.

Indeed, both the court below and other courts have recognized that permitting bankruptcy courts to shift the burden of proof in tax disputes would "create a new incentive to declare bankruptcy." Pet. App. 11a.[18]

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[17] Indeed, the current allocation of the burden of proof is in harmony with rules requiring taxpayers adequately to document their financial affairs. *See United States v. Rexach*, 482 F.2d 10, 16 (1st Cir.), *cert. denied*, 414 U.S. 1039 (1973).

[18] *See also Barrows v. Internal Revenue Serv.*, 231 B.R. 446, 452 (Bankr. D.N.H. 1998) (stating that "if the burden of proof was allocated differently between the bankruptcy forum and other forums, there would be a great incentive for taxpayers to forum shop. Simply by filing for bankruptcy, the taxpayer could shift the potential responsibility for establishing the validity and amount *vel nom* of a tax claim to the taxing authority."); *Thinking Machines*, 211 B.R. at 431-32 ("in the view of this Court, a rule shifting the burden of proof to the taxing authority in bankruptcy proceedings would render the bankruptcy forum more favorable to taxpayers than the non-bankruptcy forum"); *In re Cobb*, 135 B.R. 640, 641 (Bankr. D. Neb. 1992) ("to rule [in favor of the taxpayer] would permit a tax litigant to shift the burden of proof to the [taxing authority] by filing bankruptcy").

A taxpayer disputing a substantial tax liability would have a strong incentive to file a bankruptcy petition for no other reason than to obtain a favorable forum to litigate the issue. Perhaps even more significantly, a rule shifting the burden of proof to the State in tax disputes (and thus decreasing the State's chances of recovering back taxes from the estate) would create an incentive for non-governmental creditors to initiate involuntary bankruptcy proceedings under 11 U.S.C. § 303.

Alternatively, reallocating the burden of proof would undermine the fairness of the tax system by providing taxpayers "with a windfall merely by reason of the happenstance of bankruptcy." *Lewis v. Manufacturers Nat'l Bank*, 364 U.S. 603, 609 (1961). Such a change in the law would "funnel people with tax problems into the bankruptcy courts, and thus undermine the enforcement of state tax law." *Thinking Machines*, 211 B.R. at 431.

A bankruptcy court is not "untethered to any obligation to preserve the coherence of substantive [legislative] judgments." *Noland*, 517 U.S. at 542. Consequently, these courts should not be permitted to

supplant well-established state law in an area of fundamental importance to state sovereignty absent a clear congressional mandate to do so. Because Congress has not sanctioned such wholesale abrogation of state law, Petitioner's position should be rejected.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted,

STEVEN H. GOLDBLATT
APPELLATE LITIGATION PROGRAM
GEORGETOWN UNIVERSITY LAW CENTER
600 New Jersey Ave., N.W.
Washington, D.C. 20001
(202) 662-9555

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RICHARD RUDA *
Chief Counsel
JAMES I. CROWLEY
STATE AND LOCAL LEGAL CENTER
444 North Capitol Street, N.W.
Suite 345
Washington, D.C. 20001
(202) 434-4850
* Counsel of Record for the *Amici Curiae*