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TICK TOCK: WHEN DOES THE THIRTY-DAY CLOCK IN RULE 4003(B) BEGIN?

MAEGHAN J. MCLOUGHLIN[†]

INTRODUCTION

An individual debtor files for bankruptcy. The debtor then files a list of his assets that he claims as exempt from the estate. The exempted assets will be protected from liquidation; the non-exempt assets will be converted into cash and distributed to creditors. The requisite meeting of creditors is held to determine if the claimed exemptions are proper under the applicable statutory provisions. No conclusion is reached. The presiding trustee¹ adjourns the meeting to an unspecified future date. Subsequently, the debtor crashes his car, an asset he claimed as exempt. Who owns the car? Who suffers the loss?

Exemptions play a vital role in chapter 7 consumer bankruptcies because the exempted assets serve as the bedrock for the debtor's new life after discharge from bankruptcy. The debtor's goal of maximizing exemptions to facilitate the post-bankruptcy "fresh start"² is rivaled by the creditor's objective of maximizing the estate for a larger recovery in the pro rata asset distribution.³ The Bankruptcy Code ("Code") and Federal Rules

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¹ In most instances, the meeting is presided over by the United States trustee, who then delegates that task to the trustee handling the case if the creditors wish to elect a trustee. See 3 COLLIER ON BANKRUPTCY ¶ 341.02[4] (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2010).

² The "fresh start" is a creature of congressional policy that enables the honest but unfortunate debtor a new opportunity in life, unhampered by the pressure and discouragement of pre-existing debt. See *In re Ramlow*, 417 B.R. 479, 481 (Bankr. N.D. Ohio 2009); *Cano v. GMAC Mortg. Corp.* (*In re Cano*), 410 B.R. 506, 535 (Bankr. S.D. Tex. 2009).

³ See *Boyd v. Engman*, 404 B.R. 467, 480 (W.D. Mich. 2009) (stating that the goal of bankruptcy process is to obtain a maximum equitable distribution for creditors and to ensure a fresh start for individual debtors); *In re Cross*, 255 B.R. 25,

of Bankruptcy Procedure ("Rules") strike a balance in this perennial conflict by requiring the debtor to file a list of claimed exemptions and providing the trustee and creditors the opportunity to object within a set time.⁴ However, attempts to efficiently resolve cases and restore equilibrium between debtors and creditors have been endangered by a practice that both manipulates and undermines the deadlines set out in the Code and Rules.

Section 522(*l*) of the Code and Federal Rule of Bankruptcy Procedure 4003(b) govern the process through which a debtor claims exemptions and parties in interest, namely the trustee and creditors, may object to the claimed objections.⁵ Section 522(*l*) requires the debtor to file a list of property claimed as exempt and states that if no objection is timely filed, "the property claimed as exempt on such list is exempt."⁶ Rule 4003(b) establishes the deadline for objections, providing that "a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded."⁷ The § 341 meeting of creditors⁸ is held to bring the debtor's financial affairs to light and allows the trustee and creditors to assess the validity of the claimed exemptions.⁹ The creditor's meeting cannot always be completed at one time, however; accordingly, trustees have adopted the practice of adjourning the meeting indefinitely, thereby preventing the thirty-day deadline for objections from

32 (Bankr. N.D. Ind. 2000) (pointing out that bankruptcy law simultaneously pursues two contradictory goals: it seeks to provide a distribution to creditors by liquidating debtor's property, but at the same time, it also seeks to give debtor a "fresh start" through the bankruptcy discharge and by allowing debtor to keep property from creditors through exemptions); *In re Campbell*, 124 B.R. 462, 464 (Bankr. W.D. Pa. 1991) (explaining that the basic objective of bankruptcy law is two-fold: to achieve just and equitable distribution of assets to creditors and to relieve debtor from the weight of oppressive indebtedness, thereby giving debtor a "fresh start").

⁴ See 11 U.S.C.A. § 522(*l*) (West 2011); FED. R. BANKR. P. 4003(b)(1).

⁵ See 11 U.S.C.A. § 522(*l*); FED. R. BANKR. P. 4003(a)–(b).

⁶ 11 U.S.C.A. § 522(*l*).

⁷ FED. R. BANKR. P. 4003(b)(1). The Rule further provides that the "court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension." *Id.*

⁸ See 11 U.S.C. § 341(a). This meeting is colloquially called "the section 341 meeting" or "the 341 meeting of creditors." See 3 COLLIER ON BANKRUPTCY, *supra* note 1, ¶ 341.02[5][c]; see also, e.g., *In re Campbell*, 124 B.R. at 464.

⁹ See 11 U.S.C. § 341; see also 3 COLLIER ON BANKRUPTCY, *supra* note 1, ¶ 341.02[5][d].

ever starting.¹⁰ These indefinite adjournments have exacerbated uncertainty over claimed exemptions and have thwarted the shared goal of expeditious administration of cases.

Trustees are empowered, pursuant to Rule 2003(e), to adjourn the meeting “from time to time by announcement at the meeting of the adjourned date and time without further written notice.”¹¹ Several courts have interpreted Rule 2003(e) to permit open-ended adjournments without announcement of the adjourned date and time.¹² Courts have also allowed the trustee to end meetings without concluding or adjourning them; thus leaving the question of whether the thirty-day deadline began a mystery. These practices increase delay, prevent an expeditious resolution, and render the thirty-day deadline in Rule 4003(b) meaningless—a result the Court and Congress could not have intended when promulgating and enacting the Rules.

A circuit split has emerged on the issue of when the creditors meeting is deemed concluded for purposes of starting the thirty-day clock if no formal announcement of a continuation date is made at the meeting.¹³ The Ninth Circuit adheres to the “bright line” approach, requiring the trustee to announce a specific date and time for the new 341 meeting of creditors within thirty days of the last meeting.¹⁴ If the trustee fails to do so, the meeting is deemed concluded.¹⁵ In contrast, the Fifth Circuit employs the “case-by-case” approach, which considers the facts of each case to determine whether a 341 meeting of creditors was either adjourned or concluded.¹⁶ The conflicting approaches result in the debtor’s uncertainty regarding post-bankruptcy retention of property and creditors’ confusion over the timeframe to object in hopes of maximizing the estate.

This Note surveys the competing approaches to the thirty-day limitation and its impact on the rights of both debtors and creditors. It concludes with a proposed solution derived from the

¹⁰ See, e.g., *Peres v. Sherman (In re Peres)*, 530 F.3d 375, 377 (5th Cir. 2008).

¹¹ FED. R. BANKR. P. 2003(e).

¹² See, e.g., *In re Flynn*, 200 B.R. 481, 483 (Bankr. D. Mass. 1996).

¹³ Prior to this circuit split, the Supreme Court strictly construed the thirty-day deadline, barring all belated challenges to the claimed exemptions, regardless of the validity of the exemptions. See *Taylor v. Freeland & Kronz*, 503 U.S. 638, 643–44 (1992).

¹⁴ See *Smith v. Kennedy (In re Smith)*, 235 F.3d 472, 476 (9th Cir. 2000).

¹⁵ *Id.*

¹⁶ See *Peres v. Sherman (In re Peres)*, 530 F.3d 375, 378 (5th Cir. 2008).

bright line approach but extends further to encompass the policies inherent in the Code. Part I provides a background of chapter 7 bankruptcy cases and the applicable Code and Rule provisions that facilitate the estate administration. Part II reviews the conflicting case law and differing interpretations regarding the conclusion of the 341 meeting of creditors. Part III examines the policies, interpretations, and equitable considerations underlying Rule 4003(b). Part III then proposes that Rule 4003(b) be revised to provide that unless the trustee, for cause, announces the future date and time of the adjourned meeting at the 341 meeting of creditors, the thirty-day period begins as of the last date of the creditors meeting. Part III concludes by detailing the practical concerns associated with indefinite adjournments and demonstrates that the proposed solution accords with the values animating the Code and Rules.

I. BACKGROUND

A. *Historical Treatment of Rule 4003(b) and Its Predecessors*

The history of exemptions in bankruptcy law has developed to ensure that the debtor receives a prompt, efficient, and comprehensive determination of any exemption dispute. The first two federal bankruptcy statutes, the Acts of 1800¹⁷ and 1841,¹⁸ allowed debtors a modest set of exemptions, such as necessary furniture and wearing apparel. The third federal bankruptcy statute, the Bankruptcy Act of 1867, added to exemption laws by promulgating procedural rules requiring the trustee to report to the court within twenty days of receiving the debtor's list of exemptions.¹⁹ The 1867 Act established the two enduring themes of requiring the trustee to determine the debtor's exemptions within a short period of time and requiring objections to be promptly submitted to the court for resolution.

General Order 17,²⁰ promulgated under the Bankruptcy Act of 1898,²¹ tightened the deadlines governing the trustee's

¹⁷ Act of Apr. 4, 1800, ch. 19, § 5, 2 Stat. 19, 23 (repealed 1803).

¹⁸ Act of Aug. 19, 1841, ch. 9, § 3, 5 Stat. 440, 443 (repealed 1843).

¹⁹ Act of Mar. 2, 1867, ch. 176, § 11, 14 Stat. 517, 523 (repealed 1878).

²⁰ General Orders in Bankruptcy 17(2) (1898), *reprinted in* 4B COLLIER ON BANKRUPTCY 1534 (James Wm. Moore & Lawrence P. King eds., 14th ed. 1978).

²¹ Act of July 1, 1898, ch. 541, § 6, 30 Stat. 544, 11 U.S.C. § 24, amended by Chandler Act, ch. 575, § 67(d), 52 Stat. 840 (1938) (repealed 1978).

determination, valuation, and distribution to the debtor of the exempt property, giving the trustee five days to make a report to the court.²² Former Rule 403, the predecessor to the current Rule 4003, superseded General Order 17 and allowed the trustee fifteen days to object to the debtor's report of exemptions.²³ If no objections were filed within fifteen days, the report was deemed approved by the court.²⁴ Former Rule 403(e) thus introduced the concept of automatic allowance of exemptions and further expedited the process of administering estates.

After Congress enacted the Bankruptcy Code of 1978, Rule 4003 was promulgated, giving any party in interest thirty days to object after the meeting of creditors concluded.²⁵ Together, Rule 4003 and section 522 enable the debtor to create a list of exemptions, which is presumed valid absent objection within thirty days.²⁶ The rigid deadlines present throughout history for filing objections serve the congressional purpose of determining, at an early stage in the case, a debtor's entitlement to exempt property.²⁷ Thus, the relevant history reflects a statutory scheme designed to ensure the speedy resolution and effective administration of a debtor's exemption entitlements.

B. Background of Exemption Policy

A primary goal of the bankruptcy system is to secure the speedy and efficient administration of the estate so that assets can be distributed to creditors.²⁸ The Code and Rules require an early and accurate list of the debtor's claimed exemptions to aid the trustee in expeditiously determining the rights of both the

²² General Orders in Bankruptcy 17(2) (1898).

²³ FED. R. BANKR. P. 403 (repealed 1975), *reprinted in* 4B COLLIER ON BANKRUPTCY, *supra* note 20, at 4-27.

²⁴ *Id.*

²⁵ FED. R. BANKR. P. 4003(b).

²⁶ 11 U.S.C.A. § 522 (West 2011).

²⁷ *See In re McCormack*, 244 B.R. 203, 207 (Bankr. D. Conn. 2000).

²⁸ Once a debtor files for bankruptcy, the property in which the debtor has a legal or equitable interest becomes property of the estate. *See* 11 U.S.C. § 541; *Young v. Adler (In re Young)*, 806 F.2d 1303, 1305 (5th Cir. 1987). After filing, the debtor may try to exempt certain property from the estate pursuant to 11 U.S.C. § 522(l). Exempt property is no longer property of the bankruptcy estate. *See Taylor v. Freeland & Kronz*, 503 U.S. 638, 642 (1992); *see also Superintendent of Ins. for the State of N.Y. v. Ochs (In re First Cent. Fin. Corp.)*, 377 F.3d 209 (2d Cir. 2004); *Beaty v. Selinger (In re Beaty)*, 306 F.3d 914 (9th Cir. 2002).

debtor and creditors.²⁹ This goal of prompt estate administration is paired with that of giving the debtor a fresh start, which allows the debtor to retain certain assets fundamental to becoming a productive member of society once again.³⁰ Other than the assets approved as exempt pursuant to § 522(l), all of the debtor's interests in property are transferred to the trustee for distribution among the creditors.³¹ Typically, exemption disputes arise from debtors' erroneous valuation of an item or debtors claiming as exempt an amount higher than the relevant law permits.³² Without a properly-timed objection under Rule 4003(b), the excess value over the legal exemption amount remains property of the debtor,³³ despite the claimed exemption's lack of merit.³⁴

C. *Structure and Purpose of the Individual Chapter 7 Bankruptcy*

Allowing trustees an open-ended time period to determine whether the exemptions are objectionable is contrary to the structure and purpose of the most common consumer bankruptcy, the chapter 7 liquidation.³⁵ In 2007, consumer

²⁹ See *In re Starns*, 52 B.R. 405, 410 (S.D. Tex. 1985) (stating that the purpose of § 522(l) and Rule 4003(b) "is to protect the rights of a debtor by requiring a prompt determination of the right to exemptions").

³⁰ See COLLIER CONSUMER BANKRUPTCY PRACTICE GUIDE ¶ 13.08[1] (Alan N. Resnick & Henry J. Sommer eds., 12A ed. 2009). This is frequently referred to as relieving the "honest but unfortunate debtor" from the oppression of indebtedness. See *Starr v. Reynolds (In re Reynolds)*, 193 B.R. 195, 200 (D.N.J. 1996) (quoting *Grogan v. Garner*, 498 U.S. 279, 287 (1991)).

³¹ COLLIER CONSUMER BANKRUPTCY PRACTICE GUIDE, *supra* note 30. However, the trustee can elect to abandon certain property if he or she determines that they have no value to the estate. *Id.*

³² *Id.* ¶ 13.08[3][a].

³³ See *id.* ¶ 13.08.

³⁴ See *Taylor v. Freeland & Kronz*, 503 U.S. 638, 633–34 (1992) (holding that a trustee may not contest the validity of a claimed exemption under § 522 after Rule 4003(b)'s thirty-day period has expired, even though the debtor had no colorable basis for claiming exemption); see also *In re Kazi*, 985 F.2d 318, 320 (7th Cir. 1993) (stating that Rule 4003(b) acts as an absolute bar to hearing objections, whatever the underlying merits of debtors' exemptions and debtors' actual knowledge of opposition to exemptions may be); *In re Ferretti*, 203 B.R. 796, 799 (Bankr. S.D. Fla. 1996) (finding that an automobile accident claim was exempt, although Florida law did not provide for exemption for accident claims, where trustee and creditors failed to object within the thirty-day limit).

³⁵ See Richard M. Hynes, *Credit Markets, Exemptions, and Households with Nothing To Exempt*, 7 THEORETICAL INQUIRIES L. 493, 500 (2006) (stating that about seventy percent of bankrupt consumers choose chapter 7).

chapter 7 bankruptcies lasted an average of just 124 days.³⁶ Rule 4003(b)'s thirty-day deadline plays a vital role in the comprehensive and fast-paced framework enacted by Congress by promoting the expeditious resolution of consumer cases.³⁷ Accordingly, adhering to a short deadline comports with the statutory design for individual cases because the need for certainty regarding exempted assets is at its zenith.³⁸ Certainty is vitally important in chapter 7 liquidations, as opposed to chapter 13 reorganizations, because the non-exempt assets will be turned over to the trustee, sold, and the proceeds will be distributed to creditors.³⁹ When the thirty-day deadline never begins, debtors may be hesitant to use the questionably exempt property because they are unsure if they even own it. A more troubling issue arises when the debtor does use the debatably exempt property and impairs its value while waiting for the trustee to declare a new meeting. In this scenario, the debtor has potentially interfered with the estate and distribution, but due to the delay, neither party knows who will suffer the loss.

Section 522 governs the process for claiming exemptions when filing for bankruptcy.⁴⁰ “The substantive purpose of

³⁶ See ADMIN. OFFICE OF THE U.S. COURTS, 2008 REPORT OF STATISTICS REQUIRED BY THE BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2005 STATISTICS tbl.3 (2008), available at <http://www.uscourts.gov/uscourts/Statistics/BankruptcyStatistics/BAPCPA/2007/Table3.pdf>; see also *Discharge in Bankruptcy*, UNITED STATES COURTS, <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/discharge.html#when> (last visited Feb. 11, 2011) (stating on the Federal Judiciary's “Bankruptcy Basics” that “typically, [a chapter 7 discharge is granted] about four months after the date the debtor files the petition”).

³⁷ See generally 11 U.S.C. § 341 (2006); *id.* § 365(d); 11 U.S.C.A. § 521(a)(2)(A) (West 2011); *id.* § 704(b)(1)(A); *id.* § 704(b)(2); FED. R. BANKR. P. 1007, 2015(a)(1), 2003(a), 2003(e), 3002, 4004, 4007(b)–(c).

³⁸ See 1 CONSUMER BANKRUPTCY LAW AND PRACTICE ch. 3.1 (John Rao & Henry J. Sommer eds., 9th ed. 2009). The congressional imperatives are designed to move cases along quickly because chapter 7 filings are by far the most frequently used type of bankruptcy case commenced by individual debtors.

³⁹ See *In re Graham*, 258 B.R. 286, 290 (Bankr. M.D. Fla. 2001) (noting that exemptions serve a very different purpose in chapter 7 as opposed to chapter 13 because protection of assets against a forced sale is not relevant in a chapter 13 proceeding).

⁴⁰ 11 U.S.C.A. § 522; 4 COLLIER ON BANKRUPTCY ¶ 522.01 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2010). Section 522(d) lists categories of property in varying amounts that a debtor may claim as exempt. Section 522(b) provides that some states can prohibit their citizens from using the exemptions in § 522(d). This is known as “opt[ing] out,” and the individual states then provide the list of exemptions available to their citizens under applicable state law. 11 U.S.C.A. § 522(b).

personal exemptions in bankruptcy is to ensure that individual debtors will not emerge from bankruptcy completely destitute” but rather will retain certain basic assets needed both for daily living and a quick reentry into normal economic life.⁴¹ “Without this kind of protection, the ‘fresh start’ that is a debtor’s primary goal in consumer bankruptcy would, in most cases, merely be a fresh path to new debt.”⁴² Section 522 specifies certain property that the debtor is entitled to exempt and provides the monetary caps for such exemptions.⁴³ Section 522(l) grants debtors property rights in the claimed exemptions by succinctly stating that in the absence of an objection, the list of claimed exemptions is exempt.⁴⁴ The Code defers to the Rules with regard to the timing and procedure for objecting to claims.⁴⁵

The 341 meeting of creditors is the means for evaluating the validity of the debtor’s claimed exemptions.⁴⁶ In a chapter 7 filing, the trustee must convene the meeting between twenty and forty days after the debtor files for bankruptcy.⁴⁷ The purpose of the meeting is to obtain information beyond what was listed in the debtor’s schedules, specifically, the assets and liabilities that exist.⁴⁸ At the meeting, the trustee and creditors may question the debtor regarding transactions involving the debtor, the debtor’s financial state, or any other issue that could affect the administration and settlement of the estate.⁴⁹ To bring to light any possible objections, creditors are entitled to inquire about

⁴¹ *In re Long*, 260 B.R. 859, 861 (Bankr. S.D. Ohio 2001) (citation omitted).

⁴² *Id.* at 861–62 (citation omitted).

⁴³ 11 U.S.C.A. § 522.

⁴⁴ *Id.* § 522(l).

⁴⁵ See 4 COLLIER ON BANKRUPTCY, *supra* note 40, ¶ 522.05[2].

⁴⁶ See COLLIER CONSUMER BANKRUPTCY PRACTICE GUIDE, *supra* note 30, ¶ 16.06. Section 341 of the Bankruptcy Code requires the debtor to attend the meeting. *Id.* The Rules also require the individual debtor to attend the meeting in person and submit to examination by the creditors. See FED. R. BANKR. P. 2003(b)(1).

⁴⁷ *Id.* 2003(a). In a chapter 7 or 11 proceeding, the meeting is to be convened between twenty-one and forty days after the order for relief. Chapter 13 creditors meetings are scheduled between twenty-one and fifty days after the order for relief. *Id.*; see also 9 COLLIER ON BANKRUPTCY ¶ 2003.01[2] (Alan N. Resnick & Henry J. Sommer eds., 15th rev. ed. 2010).

⁴⁸ See COLLIER CONSUMER BANKRUPTCY PRACTICE GUIDE, *supra* note 30, ¶ 16.03.

⁴⁹ See *id.* ¶ 16.01. The questions typically asked, as well as other guidelines for § 341(a) meetings and administration of chapter 7 cases, can be found in U.S. DEP’T OF JUSTICE, HANDBOOK FOR CHAPTER 7 TRUSTEES 2-1 to 2-4 (2002) [hereinafter TRUSTEE HANDBOOK], available at http://www.justice.gov/ust/eo/private_trustee/library/chapter07/docs/7handbook0301/Ch7hb0702.pdf.

concealed assets, fraudulent transfers, or grounds for dischargeability.⁵⁰ These inquiries should assess the accuracy of the schedules containing exemptions and determine whether the filing is an abuse of the system.⁵¹ If suspicion arises at the meeting of creditors, the creditors may: (1) ask the trustee to adjourn the meeting by announcing a new adjourned date in the future or⁵² (2) file a request for an extension of time within thirty days of the 341 meeting of creditors if cause exists.⁵³ Because a creditor can acquire the necessary financial information by other means, such as a court-ordered examination of the debtor,⁵⁴ a maneuver to create delay “by continuing the meeting of creditors would be unjustified and abusive.”⁵⁵

Rule 4003(b) provides the method for objecting to exemptions not allowed under § 522 and discovered in the 341 creditors meeting.⁵⁶ The primary purpose of Rule 4003(b) is to ensure that exemption disputes are resolved early and quickly in bankruptcy proceedings.⁵⁷ The Rule provides that

a party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension.⁵⁸

⁵⁰ See COLLIER CONSUMER BANKRUPTCY PRACTICE GUIDE, *supra* note 30, ¶ 16.06[3]. In the typical consumer debtor case, creditors rarely come to the § 341 meeting because these debtors rarely have any assets of significant value. *Id.* ¶ 16.06[3].

⁵¹ *Id.* ¶ 16.03.

⁵² See FED. R. BANKR. P. 2003(e).

⁵³ *Id.* 4003(b)(1).

⁵⁴ The trustee has the additional option of requesting a Rule 2004 examination. See *id.* 2004. Rule 2004(a) states that “[o]n motion of any party in interest, the court may order the examination of any entity.” *Id.* An examination under Rule 2004 allows a creditor great latitude to examine the debtor about almost any issue pertaining to the debtor’s case. See 9 COLLIER ON BANKRUPTCY, *supra* note 47, ¶ 2003.02[2][c].

⁵⁵ *In re Vance*, 120 B.R. 181, 197 (Bankr. N.D. Okla. 1990).

⁵⁶ FED. R. BANKR. P. 4003(b).

⁵⁷ See *In re McCormack*, 244 B.R. 203, 207 (Bankr. D. Conn. 2000) (noting that a rigid deadline for objecting to a debtor’s claimed exemptions serves the congressional purpose of determining a debtor’s entitlement to exempt property at an early stage of a bankruptcy case).

⁵⁸ FED. R. BANKR. P. 4003(b).

The thirty-day deadline incentivizes prompt action by the trustee and creditors to quickly resolve any disputes over the debtor's listed exemptions.⁵⁹ Thus, Rule 4003(b) "reflects a [c]ongressional attempt to strike a proper balance between providing trustees and creditors with an opportunity to object to any exemptions they feel are contrary to their interests, while at the same time assuring the debtor of some sense of finality."⁶⁰ Another vital purpose of the thirty-day limit is to provide the debtor with early notice of an objection and determine whether the listed exemption must instead be turned over to the trustee and liquidated.⁶¹

In addition, Rule 2003(e) provides the method for adjourning the 341 meeting of creditors when it could not be concluded in the initial session. Specifically, the Rule states that "[t]he meeting may be adjourned from time to time by announcement at the meeting of the adjourned date and time without further written notice."⁶² The trustee may have various reasons for not concluding a meeting in one session, such as a complex estate, mistaken exemptions, or the trustee's desire for more investigative time.⁶³ The creditors meeting, however, should only be adjourned if the trustee reasonably believes that the debtor's financial affairs and accuracy of the listed exemptions have not been fully investigated.⁶⁴

⁵⁹ See *Stoulig v. Traina*, 169 B.R. 597, 599 (Bankr. E.D. La. 1994).

⁶⁰ *Id.*

⁶¹ See *Spenler v. Siegel (In re Spenler)*, 212 B.R. 625, 630 (B.A.P. 9th Cir. 1997) (concluding that the purpose of Rule 4003(b) is to provide the debtor with timely notice that an interested party objects); *In re Bush*, 346 B.R. 523, 528 (Bankr. E.D. Wash. 2006) (dismissing the objection for being untimely when the trustee timely filed the objection but failed to send notice to the debtor within thirty days).

⁶² FED. R. BANKR. P. 2003(e).

⁶³ See *Bernard v. Coyne (In re Bernard)*, 40 F.3d 1028, 1031 (9th Cir. 1994) (concluding that the thirty-day period for filing objections to debtors' claimed exemptions did not begin to run on the date the creditors meeting was held where the meeting was continued because the § 341(a) purposes had not been fulfilled); see also *In re Kleinman*, 172 B.R. 764, 769–70 (Bankr. S.D.N.Y. 1994) (concluding that the meeting of creditors is not a "one shot event" and if Rule 4003(b) intended objections to be filed within thirty days of the first date set for the § 341 meeting, rather than after the conclusion of the first meeting, it would have said so).

⁶⁴ See *In re Bernard*, 40 F.3d at 1031 (the trustee has the right to continue the creditors meeting if he or she reasonably believes that the purposes of the § 341 meeting have not been fulfilled).

Neither the Code nor the Rules provide a specific manner or method to officially conclude the meeting of creditors.⁶⁵ While it is settled that objections to exemptions after the thirty-day period has expired are prohibited,⁶⁶ much confusion surrounds the issue of when a 341 meeting actually *concludes* for purposes of starting the Rule 4003(b) thirty-day clock. The problem arises when the trustee does not announce a date and time for a future meeting the 341 meeting. Recognizing that without a conclusion, the deadline for objections cannot begin, trustees frequently try to frustrate the deadline for objecting by continuing the meeting generally without either concluding it or continuing it to a definite date and time. The theory underlying this practice is that there is no need to object or apply for an extension of time if the period to object never began.

D. Taylor v. Freeland & Kronz

In *Taylor v. Freeland & Kronz*,⁶⁷ the Supreme Court strictly construed and enforced Rule 4003(b)'s thirty-day deadline, explicitly endorsing the prompt administration of the estate. The Court in *Taylor* did not answer the question of when the creditors meeting concluded⁶⁸ but instead addressed the issue of whether the trustee could object to an inappropriate exemption after the thirty days had expired.⁶⁹ There, the debtor listed potential proceeds from a lawsuit as an exempt asset with an unknown value.⁷⁰ This listed exemption was discussed at the 341 meeting of creditors, but the trustee declined to object because he doubted the suit's legitimacy.⁷¹ When the case later settled for \$110,000, the trustee demanded turnover of the funds, and the debtor resisted because the thirty-day deadline had expired.⁷² Despite the fact that the debtor had no "colorable [statutory] basis" for the exemption under § 522, the Court held that the failure to object to the exemption in a timely fashion barred the trustee

⁶⁵ See *In re Cherry*, 341 B.R. 581, 585 (Bankr. S.D. Tex. 2006).

⁶⁶ See *Taylor v. Freeland & Kronz*, 503 U.S. 638, 643 (1992).

⁶⁷ 503 U.S. 638.

⁶⁸ The Court in *Taylor* does not address this issue because the initial creditors meeting both began and concluded in one session. See *id.* at 640–41.

⁶⁹ *Id.* at 639.

⁷⁰ *Id.* at 640.

⁷¹ *Id.* at 640–41.

⁷² *Id.* at 641.

from later challenging the validity of the claim.⁷³ Announcing the significance of timeliness, the Court stated, “Deadlines may lead to unwelcome results, but they prompt parties to act and they produce finality.”⁷⁴

Notwithstanding its holding that the proceeds from the lawsuit were exempt, the Court acknowledged that this result might lead to perverse incentives. Specifically, debtors may try to claim property as exempt in the hopes that the trustee or creditors will fail to notice or object in time.⁷⁵ The Court, however, countered this argument by pointing out the various remedies and penalties already in place to discourage debtors from scamming the bankruptcy system.⁷⁶ These include the denial of discharge for presenting fraudulent claims,⁷⁷ the requirement that filings “be verified or contain an unsworn declaration” of truthfulness under penalty of perjury,⁷⁸ the provision for award of sanctions for signing documents not grounded in fact or existing case law,⁷⁹ and the imposition of criminal penalties for fraud in bankruptcy cases.⁸⁰

By strictly interpreting the deadlines and placing the objecting burden on interested parties, the Court endorsed the policy favoring expeditious administration of bankruptcy cases over “equitable” considerations of asset distribution.⁸¹ Though the results may be harsh for creditors, the decision is actually consistent with the general interpretation of deadlines for taking action in bankruptcy.⁸² This interpretation resonates strongly in

⁷³ *Id.* at 643–44.

⁷⁴ *Id.* at 644.

⁷⁵ *Id.*; see also Lawrence Ponoroff, *Procedural Exemptions and the Taylor Legacy*, 7 J. BANKR. L. & PRAC. 397, 410 (1998) (stating that “[t]he more general criticism of *Taylor* is that the precedential effect of the decision would be to allow debtors to claim property as exempt, whether or not so entitled, in the hopes that the trustee will be too busy to catch the spurious claims in time”). Ponoroff calls the exemptions at issue in *Taylor* and its progeny “procedural exemptions” that debtors have the power, though not necessarily the right, to create. *Id.* at 397 (internal quotation marks omitted). Despite the lack of substantive entitlement, these exemptions arise in bankruptcy cases due to the failure of the trustee or creditors to object within the deadlines. *Id.*

⁷⁶ *Taylor*, 503 U.S. at 644.

⁷⁷ 11 U.S.C. § 727(a)(4)(B) (2006).

⁷⁸ FED. R. BANKR. P. 1008.

⁷⁹ *Id.* 9011(c).

⁸⁰ 18 U.S.C. § 152 (2006).

⁸¹ Ponoroff, *supra* note 75, at 398.

⁸² *Id.*

consumer bankruptcy cases where the fresh start policy objective is of utmost importance.⁸³ The Court, having refused to imply a good faith requirement on debtors for § 522(*l*) and Rule 4003(b) purposes, advances the principles of finality, expeditious administration, and the fresh start, rather than vague equitable considerations and concerns over perverse incentives.⁸⁴

The Supreme Court upheld its holding in *Taylor* in a recent decision, *Schwab v. Reilly*.⁸⁵ There, the debtor listed “business equipment” on schedule B with an estimated market value of \$10,718 and claimed “business equipment” with a value of \$10,718 as fully exempt on schedule C.⁸⁶ The debtor used § 522(d)(5) and (6), claiming the full statutory maximum of the wildcard and tools of the trade exemptions as her business equipment.⁸⁷ The trustee did not object because the dollar value the debtor assigned to her business equipment fell within the limits prescribed by the Code.⁸⁸ When the business equipment was later found to have a value of \$17,200, the trustee moved to sell the equipment and distribute the \$10,718 to the debtor.⁸⁹ Relying on *Taylor*, the three lower courts denied the trustee’s motion.⁹⁰ The Supreme Court, however, ruled that because the value of the debtor’s claimed exemptions fell within allowed statutory limits, the trustee was not required to object to the exemptions.⁹¹

The Court maintained that it is not reducing Rule 4003(b)’s governance because “[c]hallenges to the valuation of . . . ‘exemptible assets’ are not covered by Rule 4003(b) in the first place.”⁹² The Court concluded that § 522(b), as opposed to § 522(*l*), was the operative provision.⁹³ Most of the categories of property listed in § 522(b) define the property a debtor can claim as exempt “as the debtor’s *‘interest’*—up to a specified dollar amount—in the assets described in the category, *not* as the

⁸³ *Id.*

⁸⁴ *Id.* at 410–11. The holding and policy implications in *Taylor* are particularly relevant in chapter 7 liquidations. *Id.* at 398.

⁸⁵ 130 S. Ct. 2652 (2010).

⁸⁶ *Id.* at 2658.

⁸⁷ *Id.* at 2657.

⁸⁸ *Id.* at 2658.

⁸⁹ *Id.*

⁹⁰ *Id.* at 2659.

⁹¹ *Id.* at 2669.

⁹² *Id.* at 2663 n.8.

⁹³ *Id.* at 2661.

assets themselves.”⁹⁴ By defining the exempted property as the debtor’s *interest* in the property, the Court found that the trustee had no duty to object to the property the debtor claimed as exempt—the two interests in her business equipment—because the stated value of each interest, and thus the “‘property claimed as exempt[.]’ was within the limits the Code allows.”⁹⁵ Challenges to “property claimed as exempt” under the Code are still subject to Rule 4003(b),⁹⁶ but when the Code defines that property as an interest with a specified dollar limit in an asset and the debtor accurately declares the value of the asset to be within Code limits, the trustee does not have a duty to object within thirty days.⁹⁷

The Court found that *Taylor* did not mandate a different result. The Court distinguished *Taylor* because there, the debtor listed an amount—“\$ unknown”—that was plainly not within Code limits, invoking the trustee’s duty to object within thirty days. In a vigorous dissent joined by two justices, Justice Ginsburg stated that “[i]n addition to departing from the prevailing understanding and practice, the Court’s decision exposes debtors to protracted uncertainty concerning their right to retain exempt property, thereby impeding the ‘fresh start’ exemptions are designed to foster.”⁹⁸

II. CONFLICTING CASE LAW SURROUNDING RULE 4003

As a result of this uncertainty, the issue of how long a trustee may adjourn a meeting of creditors and thereby keep open the period to object to the debtor’s claimed exemptions has resulted in three distinct lines of cases: (1) bright line; (2) case-by-case; and (3) debtor’s burden. In the absence of a clear Rule or section on point, each approach attempts to define what constitutes the “conclusion” of the meeting of creditors.⁹⁹

⁹⁴ *Id.* at 2661–62 (emphasis added).

⁹⁵ *Id.* at 2662.

⁹⁶ *Id.* at 2663 n.8.

⁹⁷ *Id.* at 2657.

⁹⁸ *Id.* at 2670 (Ginsburg, J., dissenting).

⁹⁹ See *Moyer v. Dutkiewicz (In re Dutkiewicz)*, 408 B.R. 103, 110 (B.A.P. 6th Cir. 2009). Without stating what action is necessary to conclude a meeting, the court found that merely “expressing the possible need for further questioning or investigation does not by itself continue the meeting.” *Id.*

A. *Bright Line*

The bright line approach requires the trustee to announce a specific date on which the meeting will be continued within thirty days of the last meeting held. If the trustee does not announce the future date and time, the meeting will be deemed concluded on the last date it was convened.¹⁰⁰ This approach considers the policy underlying Rule 4003(b), “which requires that a debtor’s exemptions become final without delay.”¹⁰¹ Courts applying the bright line approach have held that Rule 2003(e) and Rule 4003(b) should not be commingled to thwart the expeditious resolution of a case by indefinitely delaying the objection period.

The Ninth Circuit is the only circuit court that has adopted a bright line approach when facing an indefinite adjournment.¹⁰² In *In re Smith*, the trustee conducted the 341 meeting of creditors on October 27, 1995.¹⁰³ Instead of concluding the meeting, the trustee adjourned the meeting until further notice.¹⁰⁴ No further notice was ever given, and eight months later, the creditors objected to the debtor’s exemptions.¹⁰⁵ The *Smith* Court explicitly rejected the creditors’ argument that Rule 2003(e) permits a trustee to indefinitely continue a meeting of creditors.¹⁰⁶ Applying a plain meaning approach, the court found that for the adjournment to be effective, it must be accompanied by an announcement of “the adjourned date and time.”¹⁰⁷ The

¹⁰⁰ See *Smith v. Kennedy (In re Smith)*, 235 F.3d 472, 476–77 (9th Cir. 2000); *Chubb & Son, Inc. v. Clark (In re Clark)*, 262 B.R. 508, 515 (B.A.P. 9th Cir. 2001); *Moldo v. Blethen (In re Blethen)*, 259 B.R. 153, 158 (B.A.P. 9th Cir. 2001); *In re Friedlander*, 284 B.R. 525, 527 (Bankr. D. Mass. 2002); *In re Hurdle*, 240 B.R. 617, 622 (Bankr. D. Cal. 1999); *In re Levitt*, 137 B.R. 881, 883 (Bankr. D. Mass. 1992).

¹⁰¹ See *In re Cherry*, 341 B.R. 581, 585 (Bankr. S.D. Tex. 2006).

¹⁰² The Ninth Circuit first articulated this method in 1994 in *Bernard v. Coyne (In re Bernard)*, 40 F.3d 1028, 1031 n.4 (9th Cir. 1994) (“The objection period . . . remains open until 30 days after . . . the trustee concludes a 341(a) meeting without expressly continuing it to a later date . . .” (citing FED. R. BANKR. P. 2003(e))). The trustee, however, can only use his or her broad discretion to keep the § 341(a) meeting open as long as there are legitimate grounds for believing that further investigation will prove fruitful. *Id.*

¹⁰³ 235 F.3d 472, 474 (9th Cir. 2000).

¹⁰⁴ *Id.* at 474. The second issue in *Smith* is “whether conversion of the case from Chapter 11 to Chapter 7 triggers a new period within which to file objections to property already excluded as exempt during the Chapter 11 proceeding.” *Id.* at 473. The court concluded that it does not. *Id.*

¹⁰⁵ *Id.* at 474.

¹⁰⁶ *Id.* at 475–76.

¹⁰⁷ *Id.* at 476; FED. R. BANKR. P. 2003(e).

court bluntly stated that this is the exclusive method of adjournment permitted by Rule 2003(e).¹⁰⁸

The Ninth Circuit, therefore, rejected the argument that Rule 2003(e)'s "may be adjourned" is permissive and not mandatory.¹⁰⁹ Rather, the court held that "may" refers to the trustee's power to use his or her best judgment in deciding to adjourn meetings or not.¹¹⁰ The court concluded that on a plain reading of Rule 2003(e), for purposes of Rule 4003(b), adjournment, if taken under the trustees' discretion, "must be accompanied 'by announcement at the meeting of the adjourned date and time.'"¹¹¹ Relying on an earlier Ninth Circuit decision,¹¹² the *Smith* Court held that an announcement made after the meeting adjourns may be sufficient, but only if the delayed announcement is made within thirty days of the last held meeting.¹¹³ The court reasoned that requiring an announcement within thirty days of the last meeting was consistent with the goal of keeping the bankruptcy process moving by enforcing firm, explicit deadlines.¹¹⁴ Reiterating one of bankruptcy law's primary objectives, the court stated that "[t]o authorize trustees to adjourn meetings indefinitely, even when it is unlikely that any subsequent meeting will in fact be called, would nullify the thirty-day requirement of Rule 4003(b), rendering the holding in *Taylor* hollow, and undermining the concerns . . . about promptness and finality."¹¹⁵

The *Smith* Court relied heavily on *In re Levitt*,¹¹⁶ which held that Rules 2003(e) and 4003(b) should not be combined to postpone indefinitely the date by which objections to exemptions must be filed.¹¹⁷ In *Levitt*, the trustee held the 341 meeting of creditors and announced the meeting would be continued

¹⁰⁸ *In re Smith*, 235 F.3d at 476.

¹⁰⁹ *Id.* at 476 n.2.

¹¹⁰ *Id.*

¹¹¹ *Id.* (emphasis added).

¹¹² See *Bernard v. Coyne (In re Bernard)*, 40 F.3d 1028 (9th Cir. 1994).

¹¹³ *In re Smith*, 235 F.3d at 476.

¹¹⁴ *Id.* at 478.

¹¹⁵ *Id.* at 476. This view was reaffirmed in *Moldo v. Blethen (In re Blethen)*, 259 B.R. 153, 156 (B.A.P. 9th Cir. 2001) (finding that although the trustee has discretion to continue the meeting, general continuances render the 4003(b) deadline meaningless, promoting uncertainty and preventing finality).

¹¹⁶ 137 B.R. 881 (Bankr. D. Mass. 1992).

¹¹⁷ *Id.* at 883.

indefinitely because he wanted to investigate various issues.¹¹⁸ The trustee then delayed fifteen months before ultimately filing an objection to the debtor's exemptions.¹¹⁹ Analyzing the interplay between Rules 2003(e) and 4003(b), the court found a strong policy prohibiting the trustee from adjourning the meeting simply to delay the date by which objections must be filed.¹²⁰ Specifically, Rule 4003(b)'s thirty-day requirement exhibits the "rulemakers' concern that the exemptions become final within a definite and relatively short time."¹²¹ By providing the means for adjournment, Rule 2003(e) exhibits the legislature's focus on "keep[ing] the process moving."¹²² Therefore, allowing a trustee to wait over thirty days to announce the date and time for reconvening the creditors meeting defeats the policy supporting the bankruptcy system.¹²³ Adhering to the thirty-day deadline leads to finality,¹²⁴ which is important not only to debtors, "who need to get on with their lives, but also to trustees, who need to know which assets are theirs to administer."¹²⁵

Similarly, the bankruptcy court in *In re Friedlander* articulated two policy considerations underlying the bankruptcy system which support the bright line approach.¹²⁶ First, a bright line rule provides certainty to both debtors and creditors.¹²⁷ The purpose of Rule 4003(b)'s thirty-day deadline is to allow both debtors and creditors to accurately assess their assets and move forward.¹²⁸ In contrast, a reasonableness standard assessed on a case-by-case basis is unworkable in reality because it is nearly impossible to predict when a court will deem a delay unreasonable.¹²⁹ Second, the court embraced the bright line rule to prevent undue delay.¹³⁰ Just as Rule 4003(b) was enacted to prompt action, the "spirit of Rule 2003(e) is that a deadline for

¹¹⁸ *Id.* at 882.

¹¹⁹ *Id.* at 883.

¹²⁰ *See id.*

¹²¹ *Id.*

¹²² *Id.*

¹²³ *See id.*

¹²⁴ *See id.*

¹²⁵ *Id.* at 883 n.1.

¹²⁶ 284 B.R. 525 (Bankr. D. Mass. 2002).

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

exemptions be given in order to move the case along quickly.”¹³¹ Therefore, any approach that allows for indefinite extensions of the creditors meeting fails to follow the spirit and purpose of the bankruptcy laws.¹³²

B. Case-by-Case

A majority of courts have rejected a bright line approach, holding instead that indefinitely adjourned 341 creditors meetings are not necessarily concluded and therefore, do not trigger the thirty-day deadline.¹³³ The case-by-case approach requires a determination in each case as to whether the trustee acted reasonably, based on the specific circumstances in choosing to generally continue the meeting instead of concluding it or adjourning to a specific time. Courts using the case-by-case method rejected the bright line approach because such a strict rule could impede justice where a trustee needs more time and information to fully understand the debtor's financial affairs.¹³⁴

For example, in *In re Peres*, the Fifth Circuit found that the case-by-case method afforded the trustee discretion yet restrained his ability to indefinitely postpone the next meeting of creditors.¹³⁵ Under this approach trustee's actions are analyzed under a reasonableness standard, which considers (1) the length of the delay; (2) the complexity of the estate; (3) the cooperativeness of the debtor; and (4) the existence of any ambiguity regarding whether the trustee continued or concluded the meeting.¹³⁶

¹³¹ *Id.*

¹³² *See id.*

¹³³ *See Peres v. Sherman (In re Peres)*, 530 F.3d 375, 377 (5th Cir. 2008); *see also* *Petit v. Fessenden (In re Petit)*, 182 B.R. 59, 63 (D. Me. 1995) (declining to adopt a bright line rule but instead looking to the reasonableness of delay); *In re Bace*, 364 B.R. 166, 179 (Bankr. S.D.N.Y. 2007) (finding the case-by-case approach persuasive and refusing to impose a bright line rule without advance warning); *In re James*, 260 B.R. 368, 372 (Bankr. E.D.N.C. 2001) (finding that although a bright line rule would be preferable, the court must examine each case until the court adopted a local rule); *In re Brown*, 221 B.R. 902, 906 (Bankr. M.D. Fla. 1998) (finding that a case-by-case method is best because “[t]rustees should have the discretion to perform their duties,” however some limitation on reasonableness should apply).

¹³⁴ *In re Peres*, 530 F.3d at 378.

¹³⁵ *See id.*

¹³⁶ *Id.*; *see Steffen v. United States (In re Steffen)*, 405 B.R. 486 (M.D. Fla. 2009). The indefinite continuation was deemed reasonable due to the complex nature of the case and the lack of ambiguity regarding the continuance. *Id.* at 492. The debtor's lawyer did not object to the continuation, nor were the debtor's financial affairs in

In *Peres*, the first 341 meeting of creditors was held on June 20, 2005 and was subsequently adjourned three times.¹³⁷ The third 341 meeting of creditors took place on September 23, 2005 and was continued without an announcement of the next meeting's date and time.¹³⁸ The meeting was ultimately held and concluded on August 24, 2006, over eleven months after the last 341 creditors meeting.¹³⁹

The court concluded that the eleven month adjournment was reasonable because of the debtor's own complicity in the length of the delay.¹⁴⁰ Specifically, the September 23rd meeting was continued because the debtor had not provided the requisite materials and was later continued again at the debtor's request.¹⁴¹ Moreover, there was no ambiguity as to the continuance and thus little risk of harm to the debtor since he was the source of the delay.¹⁴²

Other courts have also applied the case-by-case analysis. For example, the bankruptcy court in *In re Williams* used the four factors from *Peres* to conclude that the ten month delay resulting from the trustee's indefinite continuance was unreasonable and "violated the spirit" of Rule 4003(b).¹⁴³ In examining whether the delay was justified, the court looked at the sequence of events to determine when the meeting concluded and when the thirty-day objection period began to run. Specifically, the court found that the reason for objecting resulted from the debtor's errors, made early in the case, in claiming exemptions and providing documents.¹⁴⁴ Moreover, these mistakes could have been easily discovered and resolved with the trustee's reasonable diligence in the initial 341 meeting of

order at the meeting. *Id.* at 493. Therefore, because the trustee acted reasonably under the circumstances, the meeting was not deemed "concluded" when the trustee continued the meeting indefinitely. *Id.* at 492.

¹³⁷ *In re Peres*, 530 F.3d at 376.

¹³⁸ *Id.*

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 378.

¹⁴¹ *Id.* The court also found that the August 2006 meeting did not require advance written notice, despite the fact that a date of continuation was not set at the initial meeting, because "the [d]ebtors were not prejudiced by the lack of written notice." *Id.* at 378-79.

¹⁴² *Id.* at 378.

¹⁴³ See *Logan v. Williams (In re Williams)*, 400 B.R. 479, 489-91 (Bankr. D. Md. 2008).

¹⁴⁴ *Id.* at 489-90.

creditors.¹⁴⁵ Accordingly, the court found that there was no reason why the trustee could not have filed an objection early in the case.¹⁴⁶ The *Williams* Court also held that the case was not complex and the delay truly resulted from the trustee's negligence in failing to recognize that the debtor had cited an incorrect statute for the exemption.¹⁴⁷ The trustee, by writing only "Meeting of Creditors Held and Disposition Pending," failed to continue, reschedule, or conclude the meeting, making it impossible to divine the status of the case.¹⁴⁸ Ultimately, the court found that, because Rule 4003(b)'s time limits existed to speed the administration of cases and bring closure to both debtors and creditors, the trustee had acted unreasonably in failing to conclude or reschedule the meeting.¹⁴⁹

The *Williams* Court adopted a reasonableness rather than bright line approach based on its interpretation of Rule 2003(e).¹⁵⁰ The court found that in the context of Rule 2003(e), "may" is permissive; adjourning a meeting by announcing the date and time is not the exclusive means by which a meeting can be continued.¹⁵¹ Furthermore, Rule 2003(e) is completely silent as to a time frame for when a continued meeting needs to be rescheduled.¹⁵² The court, however, rejected senseless general continuances due to the ambiguity and confusion that results for both parties.¹⁵³ As the Collier treatise stated

The practice of keeping [2003(e)] meetings alive in [necessary] cases by successive continuances has been common and has much to commend it; it saves delay and expense in calling creditors together to consider special matters and often makes prompt action possible.

However, meetings of creditors should not be routinely continued if no special circumstances warrant such action. . . . This practice plainly violates the intention of the Federal Rules of Bankruptcy Procedure that there be a deadline for trustees

¹⁴⁵ *Id.*

¹⁴⁶ *Id.*

¹⁴⁷ *Id.* at 490.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* at 491.

¹⁵⁰ *Id.* at 488.

¹⁵¹ *Id.* at 489 n.7.

¹⁵² FED. R. BANKR. P. 2003(e); see also *In re Williams*, 400 B.R. at 489 n.7 (interpreting Rule 2003(e) to not require a continued meeting to be rescheduled within thirty days).

¹⁵³ *In re Williams*, 400 B.R. at 491.

and creditors to object to exemptions so that exemption issues can be settled expeditiously. *If a trustee needs further information in order to decide whether to object to an exemption, the trustee should either continue the section 341 meeting to a definite date or seek an extension of time to file objections to the exemption.*¹⁵⁴

Therefore, the *Williams* Court, relying on the Collier treatise, concluded that even though a trustee “may” adjourn the meeting without announcing a date and time, when the propriety of a debtor’s exemption is in question, the better practice is for the trustee to file a motion with the bankruptcy court to extend the objection timeframe.¹⁵⁵ Moreover, the motion for an extended objection period must be filed within thirty days of the conclusion of the 341 creditors meeting, as the obvious purpose of these time limits is to expedite case administration and provide closure for both debtors and creditors.¹⁵⁶

C. Debtor’s Burden

The final approach imposes a burden on the debtor to ensure that the meeting of creditors concluded. This line of cases holds that the 341 creditors meeting is not concluded until the trustee declares it to be concluded or the court so orders.¹⁵⁷ On the one hand, these courts have rejected imposing a strict deadline for objecting because the Code and Rules do not provide one.¹⁵⁸ On the other hand, this approach is skeptical of the case-by-case approach because relying on the trustee’s reasonableness is too uncertain.¹⁵⁹

For example, the bankruptcy court in *In re DiGregorio* found that because “the debtor has the greatest interest in concluding the meeting” and “trigger[ing] the 30-day objection period[,] . . . the debtor [bears the burden] to move for a court order concluding the § 341 [creditors] meeting.”¹⁶⁰ The *DiGregorio* Court held that while Rule 2003(e) provides for

¹⁵⁴ 3 COLLIER ON BANKRUPTCY, *supra* note 1, ¶ 41.02[5][g] (emphasis added).

¹⁵⁵ *In re Williams*, 400 B.R. at 491; FED. R. BANKR. P. 2003(e).

¹⁵⁶ *In re Williams*, 400 B.R. at 491 n.8. It is somewhat ironic that the court makes frequent reference to speedy administration of the case and emphasizes finality yet embraces a reasonable standard that is more likely to lead to delay.

¹⁵⁷ *In re Koss*, 319 B.R. 317, 321 (Bankr. D. Mass. 2005).

¹⁵⁸ *See In re Flynn*, 200 B.R. 481, 484 (Bankr. D. Mass. 1996).

¹⁵⁹ *Id.*

¹⁶⁰ *In re DiGregorio*, 187 B.R. 273, 276 (Bankr. N.D. Ill. 1995).

adjournment to future certain dates, there is no authority in either the Code or the Rules for the trustee to adjourn a 341 creditors meeting generally.¹⁶¹ The court, however, conceded that in practice trustees do adjourn 341 meetings indefinitely and, in the absence of a statutorily defined conclusion date, the meeting can continue indefinitely, thereby preventing the commencement of the exemption objection period in 4003(b).¹⁶² Therefore, due to the Rules' silence, the debtor must move to conclude the meeting, and courts will only act if the adjournment was found to be "arbitrary, capricious, or an abuse of discretion."¹⁶³

More recently, the bankruptcy court in *In re Koss* noted the difference between a trustee's duty to *convene* a meeting and his duty to *conclude* a meeting.¹⁶⁴ The *Koss* Court held that Rule 4003(b) was best interpreted as not limiting continuances, and accordingly, a 341 creditors meeting is not concluded until the trustee declares or the court orders.¹⁶⁵ The court encouraged debtors who felt unduly and unnecessarily burdened by a lack of finality to file a motion to compel conclusion.¹⁶⁶ Further, since Rule 2003(e) does not impose a per se deadline for the conclusion of a 341 creditors meeting or a deadline for reconvening an adjourned meeting, the court declined to authorize or craft one.¹⁶⁷

III. ANALYSIS OF RULE 4003(B)

Read together, the Code and Rules, create a system where debtors, within a short timeframe, can attain finality about their retained assets and predict their finances more accurately moving forward. Construing Rule 2003(e) liberally and preventing the Rule 4003(b) deadline from running means that a debtor might never have the certainty of knowing whether she may keep the property listed as exempt until the trustee decides to object. Such a construction suggests that when a chapter 7 case has progressed to the point where the bankruptcy court may

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ *Id.* (quoting *In re Vance*, 120 B.R. 181, 196 (Bankr. N.D. Okla. 1990)); see also *In re Flynn*, 200 B.R. at 484 (quoting *In re DiGregorio*, 187 B.R. at 276) (finding that trustees may continue creditors meetings indefinitely and prevent commencement of the exemption objection period).

¹⁶⁴ 319 B.R. 317, 321 (Bankr. D. Mass. 2005).

¹⁶⁵ *Id.*

¹⁶⁶ *Id.*

¹⁶⁷ *Id.*

grant a discharge, individual debtors will remain clueless about whether their home, car, clothes, tools of trade, and so on will be objected to by the trustee. Allowing the trustee to dodge the Rule 4003(b) thirty-day deadline is logically inconsistent with the Bankruptcy Code's detailed framework promoting a speedy resolution in an individual's case.¹⁶⁸

A. *Exemption Policy: Striking a Balance*

Strictly construing the Code and the Rules effectuates congressional intent because the carefully drafted text reflects both the policy and the goals underlying the mandate.¹⁶⁹ The Code contains the numerous, and often conflicting, objectives of the consumer bankruptcy system: (1) equitably distributing assets among creditors; (2) expeditiously and efficiently resolving cases; (3) giving the individual debtor a fresh start; and (4) providing both debtors and creditors with a sense of finality.¹⁷⁰ Section 522 of the Code aims to strike a balance between these competing values—namely the tension between maximizing exemptions for the debtor's benefit and maximizing the estate for creditors' recovery. Though the policies of asset distribution and the fresh start are at odds, all parties desire a prompt and effective administration of the debtor's estate.¹⁷¹ Because Rule

¹⁶⁸ See *Lini, Inc. v. Schachter* (*In re Schachter*), 214 B.R. 767, 777 (Bankr. E.D. Pa. 1997) (describing an artificial extension of the first meeting as a mechanism for extending the Rule 4003(b) bar date as inconsistent with “the spirit if not the letter of *Taylor*”); Ponoroff, *supra* note 75, at 407 (“When employed purely to extend artificially the exemption objection period, the tactic of indefinitely continuing the first creditors meeting is a misuse of the process that ought not be tolerated.”).

¹⁶⁹ See *Stoulig v. Traina*, 169 B.R. 597, 601 (E.D. La. 1994) (“The bankruptcy rules should be interpreted to effectuate the mandate Congress announced.”); *In re Florida*, 268 B.R. 875, 880 (Bankr. M.D. Fla. 2001) (“When faced with a proper claim of exemption, courts strictly construe § 522(l) and Rule 4003(b.)”); Carlos J. Cuevas, *The Rehnquist Court, Strict Statutory Construction and the Bankruptcy Code*, 42 CLEV. ST. L. REV. 435, 455 (1994). See generally Robert K. Rasmussen, *A Study of the Costs and Benefits of Textualism: The Supreme Court's Bankruptcy Cases*, 71 WASH. U. L.Q. 535 (1993). Policy arguments are developed in the lower courts, so by the time the cases reach the Supreme Court, policy justifications exist for both sides. *Id.* at 538. The Court then picks the result, with its policy justifications that best support the statutory text. *Id.*

¹⁷⁰ See Keith Sharfman, *Derivative Suits in Bankruptcy*, 10 STAN. J.L. BUS. & FIN. 1, 16 (2004).

¹⁷¹ *Superintendent of Ins. for the State of N.Y. v. Ochs* (*In re First Fin. Corp.*), 377 F.3d 209, 216 (2d Cir. 2004); *Beaty v. Selinger* (*In re Beaty*), 306 F.3d 914, 922 (9th Cir. 2002).

4003(b) is derived from and supports the substance of § 522,¹⁷² it too must ensure that an equitable balance between debtor and creditor is met.

1. Fresh Start

The fresh start policy is a bedrock principle of consumer bankruptcy law, and retaining exempt property facilitates the debtor's transition into post-bankruptcy life.¹⁷³ It is axiomatic that a primary purpose of the Code's exemption provisions is to foster the fresh start by permitting a debtor to retain enough assets to stay afloat post-bankruptcy.¹⁷⁴ Two guiding rationales underlie the exemption process: "(1) to give the debtors a so-called 'grub stake' to begin their fresh start and (2) to act as a safety net, so that the debtor . . . [is] not [left] completely impoverished" by the collection process.¹⁷⁵ Exempt assets aid in a debtor's reentry into society as a productive member and prevent the debtor from becoming destitute and a public charge.¹⁷⁶ Although a central purpose of the Bankruptcy Code is to provide a means "by which certain insolvent debtors can reorder their affairs, [and] make peace with their creditors," the Code limits this "opportunity for . . . 'the honest but unfortunate debtor.'" ¹⁷⁷ Due to the fresh start's elevated status in consumer bankruptcy laws, any practice that hinders exemption entitlements must be narrowly construed.¹⁷⁸

¹⁷² See FED. R. BANKR. P. 4003.

¹⁷³ See Ponoroff, *supra* note 75, at 398 ("[T]he fresh start policy objective . . . animates the consumer bankruptcy system.").

¹⁷⁴ See Sheehan v. Morehead (*In re Morehead*), 283 F.3d 199, 206 (4th Cir. 2002); *Ins. Co. of N. Am. v. Cohn* (*In re Cohn*), 54 F.3d 1108, 1113 (3d Cir. 1995); *S & C Home Loans, Inc. v. Farr* (*In re Farr*), 278 B.R. 171, 175 (B.A.P. 9th Cir. 2002); *Funches v. Household Fin. Consumer Disc. Co.* (*In re Funches*), 381 B.R. 471, 491 (Bankr. E.D. Pa. 2008); *In re Remington*, 311 B.R. 315, 317 (Bankr. D. Me. 2004).

¹⁷⁵ See *In re Robinson*, 292 B.R. 599, 606 (Bankr. S.D. Ohio 2003) (quoting *In re Sumerell*, 194 B.R. 818, 826 (Bankr. E.D. Tenn. 1996)).

¹⁷⁶ H.R. REP. NO. 95-595, at 115 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6087 ("The historical purpose of these exemption laws has been to protect a debtor from his creditors, to provide him with the basic necessities of life so that even if his creditors levy on all of his nonexempt property, the debtor will not be left destitute and a public charge.").

¹⁷⁷ *Grogan v. Garner*, 498 U.S. 279, 286-87 (1991) (citations omitted); *see also* *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007) ("The principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the 'honest but unfortunate debtor.'" (quoting *Grogan*, 498 U.S. at 286-87)).

¹⁷⁸ See *Kawauhau v. Geiger*, 523 U.S. 57, 62 (1998).

An indefinite or unannounced adjournment can be equated with delay and instability, two concepts patently in conflict with the fresh start. Artificially extending the objection period by indefinitely continuing the § 341 meeting is a misuse of the bankruptcy process.¹⁷⁹ One commentator, Lawrence Ponoroff, names three factors that point toward restraining the ability of the trustee to avoid Rule 4003(b)'s time limitation by continuing the creditors meeting generally.¹⁸⁰ First, the trustee has special responsibilities to the court and to the bankruptcy system to act within the letter and spirit of the statute.¹⁸¹ These responsibilities include examining, investigating, and valuing the debtor's assets to facilitate a fresh start in a timely fashion.¹⁸² Second, the Code provides several other remedies to discourage and penalize a debtor who attempts to claim improper exemptions.¹⁸³ Finally, although the debtor can move to conclude the 341 meeting of creditors, there is a fundamental inequality of available resources, namely knowledge and money, favoring the trustee.¹⁸⁴ Therefore, it is appropriate to utilize the strict interpretation of Rule 4003(b) adopted in *Taylor* to focus on a debtor's fresh start rather than on improper incentives or abuses of process.¹⁸⁵

2. Efficient Resolution of Cases and Finality

Economy of administration, another fundamental purpose of bankruptcy law, has been accorded equal status with the dual goals of equitable distribution and the fresh start.¹⁸⁶ Delay, along with its inevitable counterpart of uncertainty, undermines a debtor's expectations of a financial fresh start and impairs creditors' expectations of prompt determination of distributions.¹⁸⁷ Dragging out cases "works to the detriment of creditors[,] . . . who often prefer to get paid less money with

¹⁷⁹ See Ponoroff, *supra* note 75, at 407.

¹⁸⁰ *Id.* at 408.

¹⁸¹ *Id.*

¹⁸² TRUSTEE HANDBOOK, *supra* note 49, ¶ 6(A), 6(B)(1).

¹⁸³ Ponoroff, *supra* note 75, at 408; *see infra* Part III.B.

¹⁸⁴ Ponoroff, *supra* note 75, at 408.

¹⁸⁵ *Id.*

¹⁸⁶ Superintendent of Ins. for the State of N.Y. v. Ochs (*In re* First Cent. Fin. Corp.), 377 F.3d 209, 214 (2d Cir. 2004); FED. R. BANKR. P. 1001 advisory committee's note; S.J. Res. 88, 91st Cong. (1970); 93 CONG. REC. 75 (1973).

¹⁸⁷ See Ponoroff, *supra* note 75, at 399.

certainty sooner rather than possibly a larger sum later.”¹⁸⁸ As delay ensues, hopes for distribution decrease, and unpaid creditors are forced to pass on the costs to the consuming public.¹⁸⁹ These creditor losses result in higher interest rates and lower credit availability to society.¹⁹⁰ Unfortunately, these adverse effects of stalled exemptions on credit markets are typically borne by the poor, who cannot afford the increased cost of acquiring credit.¹⁹¹ Therefore, bankruptcy law must balance “the creditor’s desire to be paid, the debtor’s desire to escape a burdensome situation, the value society places on having people pay their debts in full, and the value society places on allowing debtors to start anew.”¹⁹² Thus, Rule 4003(b)’s thirty-day deadline reflects an attempt to strike a proper balance between providing trustees and creditors with an opportunity to object to any potentially unlawful exemptions, while simultaneously assuring the debtor of some sense of finality.¹⁹³

One of Congress’s objectives in enacting the Code was to encourage a speedy resolution of cases, thereby reducing delay.¹⁹⁴ This stated goal is jeopardized by the practice of indefinite continuances, which promotes uncertainty and ambiguity regarding assets. In contrast, the thirty-day time period in Rule 4003(b) advances the general purpose of the Code, which is to

¹⁸⁸ Sharfman, *supra* note 170, at 21.

¹⁸⁹ See Douglas E. Deutsch, Note, *Exemption Reform: Examining the Proposals*, 3 AM. BANKR. INST. L. REV. 207, 213 (1995).

¹⁹⁰ *Id.*; see also Samuel J. M. Donnelly, *The New (Proposed?) Bankruptcy Act: The Development of Its Structural Provisions and Their Impact on the Interests of Consumer-Debtors*, 18 SANTA CLARA L. REV. 291, 320 (1978) (concluding that a creditor’s benefit, by surviving bankruptcy or being paid as much as possible, is often society’s gain); Thomas H. Jackson, *The Fresh Start Policy in Bankruptcy Law*, 98 HARV. L. REV. 1393, 1427 (1985) (noting that decreasing costs of discharges threaten to decrease availability of credit and increase costs to borrowers); Judith Schenck Koffler, *The Bankruptcy Clause and Exemption Laws: A Reexamination of the Doctrine of Geographic Uniformity*, 58 N.Y.U. L. REV. 22, 32–33 (1983) (suggesting that liberal exemption grants by legislatures may lead to reduced availability of goods and services on credit).

¹⁹¹ Richard M. Hynes et al., *The Political Economy of Property Exemption Laws*, 47 J.L. & ECON. 19, 20 (2004).

¹⁹² Deutsch, *supra* note 189 (quoting Douglass G. Boshkoff, *Limited, Conditional, and Suspended Discharges in Anglo-American Bankruptcy Proceedings*, 131 U. PA. L. REV. 69, 125 (1982)).

¹⁹³ See *Stoulig v. Traina*, 169 B.R. 597, 599 (E.D. La. 1994).

¹⁹⁴ See *Bankruptcy Reform Act of 1978, Hearings on S. 2266 and H.R. 8200 Before the Subcomm. on Improvements in Judicial Machinery of the Sen. Comm. on the Judiciary*, 95th Cong. 490 (1977).

“quickly and effectively . . . settle bankrupt estates.”¹⁹⁵ Ignoring this clear limitation by allowing indefinite delay means “debtors would remain suspended in limbo awaiting action by the trustee or creditors to file objections to the debtor’s claim for exemptions.”¹⁹⁶ This result, created by trustees attempting to circumvent the thirty-day deadline, defies the fundamental principle that bankruptcy laws in general, and Rule 4003(b) in particular, were created to efficiently administer debtors’ estates.¹⁹⁷

Similarly, the goal of finality is vitally important in securing both a fresh start and speedy resolution to the debtor’s case.¹⁹⁸ In the exemption process, finality promotes efficiency by encouraging strict adherence to time-tables for addressing exemptions and mandating that the issue cannot be reviewed after the thirty-day deadline has passed. Both debtors and creditors structure financial decisions in accordance with Code provisions,¹⁹⁹ and any approach carving out an exception to the text creates uncertainty and chaos. Interpretational variations regarding a meeting’s conclusion, seen in the three approaches above, have promoted this uncertainty and unpredictability. The uncertainty has led to wasteful litigation, which prevents finality, the fresh start, and any reasonable expectation of a speedy resolution.²⁰⁰

B. *Plain Meaning and a Holistic Reading of Rule 4003(b) and Its Counterparts*

When interpreting and applying the Code and the Rules, analysis necessarily begins with the text.²⁰¹ The Supreme Court

¹⁹⁵ *Stoulig*, 169 B.R. at 599 (internal quotation marks omitted) (quoting *In re Robintech, Inc.*, 863 F.2d 393, 397–98 (5th Cir. 1989)).

¹⁹⁶ *Id.* at 601.

¹⁹⁷ *Id.*

¹⁹⁸ *Yeager v. United States*, 129 S. Ct. 2360, 2365–66 (2009).

¹⁹⁹ See 3 COLLIER ON BANKRUPTCY, *supra* note 1, ¶ 341.02[5][g].

²⁰⁰ Ponoroff, *supra* note 75, at 399.

²⁰¹ *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004) (“The starting point . . . is the existing statutory text.”); *United States v. Ron Pair Enters., Inc.*, 489 U.S. 235, 241 (1989) (“[W]here . . . the statute’s language is plain, ‘the sole function of the courts is to enforce it according to its terms.’” (quoting *Caminetti v. United States*, 242 U.S. 470, 485 (1917))); Gregory E. Maggs, *Estoppel and Textualism*, 54 AM. J. COMP. L. 167, 171 (2006). Textualism is based on: (1) legislative supremacy and (2) the fact that legislatures speak only through enacted legislation. *Id.* Therefore, the words of the statute are to be the primary basis for determining the statute’s meaning. *Id.*

has primarily used strict statutory construction in its bankruptcy decisions.²⁰² The Bankruptcy Code and Rules necessitate a narrow, plain meaning reading because of the substantive and fundamental property rights at stake, which should only be disturbed on the most irrefutable of grounds: the unequivocal meaning of the language in the statute.²⁰³ Exemptions are vital to the paramount bankruptcy concept of a “fresh start,”²⁰⁴ and limitations that impair the fresh start should be tightly construed.²⁰⁵

Courts should first attempt to use the plain meaning approach, which analyzes only the text of the statute, in an effort to enforce its literal meaning.²⁰⁶ On the other hand, if a particular provision is ambiguous or if there is no specific provision to govern a particular issue, such as the action required for “concluding” a creditors meeting, then the courts should engage in holistic statutory interpretation.²⁰⁷ This process

Textualists consult canons of construction, dictionaries, and other parts of the legislation in more difficult cases. *Id.*

²⁰² See Cuevas, *supra* note 169, at 438–40 (1994); see also Peter H. Carroll, III, *Literalism: The United States Supreme Court's Methodology for Statutory Construction in Bankruptcy Cases*, 25 ST. MARY'S L.J. 143, 144–46 (1993); Thomas G. Kelch, *An Apology for Plain-Meaning Interpretation of the Bankruptcy Code*, 10 BANKR. DEV. J. 289, 290 (1994). Strictly construing a statute means that application of the statute is limited to the cases to which the language clearly applies. *Id.* at 322. Strict construction is analogous to plain meaning. *Id.* at 323. In contrast, “liberally” construing a statute requires an interpretation affording broad and inclusive application to remedy the broadest set of evils. *Id.* at 322–23.

²⁰³ See Kelch, *supra* note 202, at 325. The article goes on to say that bankruptcy law has many characteristics of laws that are strictly construed, such as vested property rights, debtor-creditor relations, a legislative history full of compromises, as well as intense interest group pressure. *Id.* at 323. Furthermore, because the Code affects fundamental rights in and to property, it should be treated differently from other remedial statutes that are typically liberally construed. *Id.* at 325. Because bankruptcy law substantively affects the property rights of both debtors and creditors, it is fitting that the Code be interpreted as dislodging those rights only when the statute unequivocally states so. *Id.*

²⁰⁴ *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007) (“The principal purpose of the Bankruptcy Code is to grant the debtor a ‘fresh start’ to the ‘honest but unfortunate debtor.’” (quoting *Grogan v. Garner*, 498 U.S. 279, 286 (1991))); *Rousey v. Jacoway*, 544 U.S. 320, 325 (2005) (“To help the debtor obtain a fresh start, the Bankruptcy Code permits him to withdraw from the estate certain interests in property, such as his car or home, up to certain values.”).

²⁰⁵ See *Kawaauhau v. Geiger*, 523 U.S. 57, 62 (1998) (referring to the “‘well-known’ guide that exceptions to discharge ‘should be confined to those plainly expressed’” (citations omitted)).

²⁰⁶ Cuevas, *supra* note 169, at 438.

²⁰⁷ *Id.*

promotes predictability,²⁰⁸ and it prevents bankruptcy judges from using their equitable powers to create substantive entitlements that are not specifically authorized by the Code.²⁰⁹

The holistic approach focuses on the Rules promulgated by the Court and enacted by Congress and views them in light of the structure of the Code as a whole, seeking a determination that is compatible with the entire statutory scheme.²¹⁰ When engaging in a holistic endeavor of statutory construction, the relevant provisions of the Code and Rules must be construed together and harmonized to divine a congressional intent that effectuates the purpose of the legislative enactment.²¹¹ Statutes should be read as giving effect to each word, clause, and sentence, and if the provision is susceptible to various meanings, the construction adopted should advance the overall statutory policy.²¹² Thus, ascertaining the congressional intent for when a 341 meeting concludes requires a natural reading of § 522 and the relevant Rules and selecting an interpretation that is consistent with the entire statutory scheme.

Rule 4003(b), working in tandem with § 522(l), governs the procedures for claiming and objecting to exemptions. The Rule sets a deadline for objections to prevent an open-ended continuation of the meeting and to discourage parties from sleeping on their rights and then swooping in months or years

²⁰⁸ See also Walter A. Effross, *Grammarians at the Gate: The Rehnquist Court's Evolving "Plain Meaning" Approach to Bankruptcy Jurisprudence*, 23 SETON HALL L. REV. 1636, 1639 (1993). A plain meaning approach to interpretation is the best route for certainty and predictability when structuring commercial transactions. Kelch, *supra* note 202, at 329. Plain meaning interpretation is said to be better than a policy-based analysis because it provides the greatest degree of accuracy and clarity. *Id.*

²⁰⁹ Cuevas, *supra* note 169, at 439.

²¹⁰ *Id.*; see also *United Saving Ass'n of Tex. v. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365, 371–72 (1998). The Court based its decision on its interpretation of different Code sections because no particular Code provision addressed the issue. *Id.*

²¹¹ See Carroll, *supra* note 202, at 151–52. The article espouses the Supreme Court's "new literalism" tactic employed in *Ron Pair*, which emphasizes a statute's "intrinsic construction" through a rigorous examination of statutory text, structure, composition, and relationship to other statutes. *Id.* at 151. The analysis requires consideration of the grammatical structure of the statute, the use of particular words in the same statute, and the language as part of a comprehensive statutory scheme. *Id.*

²¹² *Id.* at 151–52.

later to protest the debtor's exemption.²¹³ By writing a deadline, and a short one at that, the Rule indicates an attempt to bring an end to the objection process in order to move the ultimate discharge process forward.²¹⁴

Significantly, Rule 2003(e) provides the trustee with virtually unlimited control over the objection process. The Rule provides that "[t]he meeting *may* be adjourned from time to time by announcement at the meeting of the adjourned date and time without further written notice."²¹⁵ A natural reading of the Rule indicates that the trustee has discretion to adjourn the meeting but that the trustee lacks discretion regarding the announcement of a specific future date and time at the meeting.²¹⁶ Though the statute's language is plain, and thus, must be enforced according to its terms,²¹⁷ courts have interpreted the language of the Rule permissively, finding that the trustee "may," but is not required to, announce a future date and time at the meeting. This liberal construction gives the trustee unfettered discretion to adjourn the meeting and leaves the debtor guessing as to when and if it will be reconvened. This construction also impedes the cohesive and fast-paced framework designed to resolve individual debtors' cases within a short timeframe. When viewed in light of the statutory scheme providing for case resolution within 124 days, an interpretation allowing an indefinite continuance in order to circumvent the Rules is manifestly unreasonable.

²¹³ See *In re Peterman*, 358 B.R. 801, 804 (Bankr. D. Colo. 2006) (following the expiration of the thirty-day deadline, the debtor can treat exempted property as his own and is not forced to wait until some unknown future date, when the trustee might haul the debtor into court seeking that property).

²¹⁴ *Id.*

²¹⁵ FED. R. BANKR. P. 2003(e) (emphasis added).

²¹⁶ In addition, the trustee has the option of requesting an extension of the thirty-day period if the request is made within the original thirty-day period. *Id.* 4003(b)(1).

²¹⁷ See *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000).

C. *Equitable Considerations, Strict Statutory Construction, and § 105*

Section 105(a) gives the bankruptcy court broad equitable powers to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code.”²¹⁸ It further states:

No provision of the [the Bankruptcy Code] providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.²¹⁹

Despite its seemingly boundless language, § 105 may only be used in furtherance of other sections of the Code and cannot be used to expand judicial power or conflict with other statutes.²²⁰ Accordingly, § 105 does not provide for open-ended adjournments in derogation of the policy of finality underlying the Code. Moreover, although bankruptcy courts have been called courts of equity,²²¹ § 105 is “not a roving commission to do equity.”²²² Therefore, courts cannot create remedies or override provisions in derogation of the stated limits present in the Code and Rules.²²³

For example, in *Coie v. Sadkin (In re Sadkin)*, where a creditor missed the explicit thirty-day deadline and belatedly filed an objection, using § 105 to sustain the objection was held to be inconsistent with the operation of § 522(l), Rule 4003(b), and the Supreme Court’s interpretation of these provisions.²²⁴ The

²¹⁸ See Nicholas B. Malito, *Recent Developments: Section 105(a) of the Bankruptcy Code*, in NORTON ANNUAL SURVEY OF BANKRUPTCY LAW 363, 363 (2009) (quoting 11 U.S.C. § 105 (2006)).

²¹⁹ 11 U.S.C.A. § 105(a) (West 2011); see also Malito, *supra* note 218.

²²⁰ See *id.*

²²¹ See Edith H. Jones, *The Bankruptcy Galaxy*, 50 S.C. L. REV. 269, 270–71 (1999) (“Approaching bankruptcy from the standpoint of a law court instead of an equity court may, in my view, lead to a more even balance between debtors’ and creditors’ rights.”).

²²² *Ameriquist Mortg. Co. v. Nosek (In re Nosek)*, 544 F.3d 34, 43 (1st Cir. 2008); see also Jones, *supra* note 221.

²²³ See *Scrivner v. Mashburn (In re Scrivner)*, 535 F.3d 1258, 1265 (10th Cir. 2008); *Mazon v. Tardif*, 395 B.R. 742, 749 (M.D. Fla. 2008) (holding that § 105(a) may not be used in a manner inconsistent with other, more specific provisions of the Code and that a bankruptcy court may not read additional exceptions or remedies into the statutory provisions of the Code); Malito, *supra* note 218, at 365.

²²⁴ 36 F.3d 473 (5th Cir. 1994).

reasoning was that § 105 does not empower the court to override explicit mandates of other Code sections.²²⁵ Realistically, the potential prejudice to creditors is remedied by the Code and Rules' various provisions discouraging debtors from making claims lacking merit.²²⁶

Additionally, strict statutory construction limits a bankruptcy court's ability to utilize equitable considerations to evade the clear language in the statute.²²⁷ If a court were empowered to use equity to disregard the text of statutes, then carefully-crafted legislation would be meaningless and the "rule of law would be eviscerated."²²⁸ If a court were allowed to consider the relative equities of a decision, such as the reasonableness of the trustee or the complexity of a case, it would produce havoc and decrease predictability.²²⁹ Because the court's decision would not be based upon the plain meaning of the text, parties could not plan their transactions with certainty because the outcome might vary depending on the particular judge's sense of fairness.²³⁰ Strict statutory construction constrains a court's equitable powers by favoring the certainty and predictability embodied within the dictates of the Code.²³¹ Thus, the correct interpretation of Rule 4003(b) focuses on the principles of finality, expeditious administration, and a fresh start, rather than on equitable considerations of prejudice to creditors from narrowly construed deadlines.²³²

IV. RESOLVING THE CONFLICT WITH A PROPOSED SOLUTION

A. *Revision Requiring Action*

A law that effectively implements the policies animating the Code and Rules must strike a balance between the perennial conflict surrounding debtors and creditors. Therefore, resolving ambiguity in the "conclusion" of a meeting must accommodate

²²⁵ *Id.* at 478.

²²⁶ *See infra* Part III.B.

²²⁷ *See Cuevas, supra* note 169, at 466.

²²⁸ *Id.*

²²⁹ *See id.* at 467.

²³⁰ *See id.*

²³¹ *See id.*

²³² *See Ponoroff, supra* note 75, at 410–11; *see also Effross, supra* note 208 (explaining that the literal reading of the Code increases predictability in bankruptcy decisions and decreases the volume of litigation).

the debtor's need for a fresh start, the creditors' right to equitable distribution, and the shared goals of expeditious and efficient administration of the estate. This Note advocates that Rule 4003(b) be revised to require that unless the trustee, "for cause," announces the future date and time of the adjourned meeting at the 341 meeting of creditors, the thirty-day period begins as of the last date of the 341 meeting.

This approach fosters the fresh start, promotes speedy resolution, creates certainty, and advances a sense of finality, yet provides the trustee and creditors with the opportunity to object at the meeting based on the particular circumstances. The flexible "for cause" requirement considers the motives and strategies of all the parties by allowing an adjournment for a legitimate reason, yet proscribes adjournment tactics that result in unnecessary delay. The "for cause" requirement thus prohibits the trustee from extending the duration of the case for no reason but also allows for objections when the debtor has not acted appropriately or legitimate concerns remain about the debtor's finances.

Requiring "cause" for adjourning the 341 meeting is consistent with current Rule 4003(b), which requires a party to show cause on a motion for an extension of time after the meeting has concluded. Rule 4003(b) states: "The court may, *for cause*, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension."²³³ The cause requirement was specifically added to Rule 4003(b) in the 2000 amendments but was not defined by the Rules.²³⁴ The "for cause" requirement found in Rules 4004(b) and 4007(c) has not been interpreted as "just because I ask," but rather as a showing of good reason why an extension should be granted.²³⁵ Since there is no explicit definition of "cause" anywhere in the Code or Rules, the determination is left to judicial interpretation.²³⁶

²³³ FED. R. BANKR. P. 4003(b) (emphasis added).

²³⁴ See FED. R. BANKR. P. 4003 advisory committee's note; see also *In re Booth*, 259 B.R. 413, 415 (Bankr. M.D. Fla. 2001).

²³⁵ See *In re Garner*, 339 B.R. 610, 611 (Bankr. W.D. Tex. 2006) (internal quotation marks omitted).

²³⁶ See *In re Stonham*, 317 B.R. 544, 547 (Bankr. D. Colo. 2004).

What constitutes “cause” is fact specific, taking into consideration the circumstances of each case but also placing restraints on the trustee’s actions.²³⁷ Many courts have interpreted “cause” to mean that the trustee or creditor must demonstrate a reasonable degree of due diligence to receive the requested extension of time.²³⁸ Several factors that aid in the determination of showing cause include (1) whether the debtor refused in bad faith to cooperate with the creditor; (2) whether the creditor has sufficient notice of the deadline and the information to file an objection; (3) the possibility that the proceedings pending in another forum will result in collateral estoppel on the relevant issues; (4) whether the creditor exercised diligence; and (5) the complexity of the case.²³⁹

For example, in *In re Booth*, when the debtor converted her case from chapter 13 to chapter 7, “cause” for an extension existed in order to give the trustee the opportunity to review and object to the claimed exemptions.²⁴⁰ “Cause” also existed when the debtor failed to respond to formal discovery requests, but the court did not grant more time when a debtor failed to respond to informal requests.²⁴¹ Additionally, “cause” could be shown by simply noting the claim’s failure to establish the debtor’s entitlement to the exemption sought or the claim’s failure to identify the property claimed.²⁴² Though there is no precise definition of what constitutes “cause,” reasonable concern regarding the legitimacy of claimed exemptions, made at the 341 meeting of creditors or in the thirty days following, would probably suffice for an extension of time.

²³⁷ See *id.* at 547–48; *In re Molitor*, 395 B.R. 197, 205 (Bankr. S.D. Ga. 2008).

²³⁸ See *In re Stonham*, 317 B.R. at 547 (finding that if “cause” must be shown, “then the Court does not agree that the movant’s burden of proof can be satisfied with only a scintilla of evidence”).

²³⁹ See *In re Ballas*, 342 B.R. 853, 856 (Bankr. M.D. Fla. 2005).

²⁴⁰ See *In re Booth*, 259 B.R. 413, 416 (Bankr. M.D. Fla. 2001) (holding that “cause” for extending deadline for objecting to exemptions existed when debtor converted from one chapter to another in order to give trustee time to review exemptions and to prevent potential abuse).

²⁴¹ See *In re Carlson*, 380 B.R. 906, 908 (Bankr. S.D. Fla. 2008) (holding that informal discovery requests made in June 2007, without further filing formal requests, were not legally sufficient showings of “cause” for granting further extensions of deadlines in January 2008).

²⁴² See *Moldo v. Clark (In re Clark)*, 266 B.R. 163, 171 (B.A.P. 9th Cir. 2001) (noting that the trustee should have made a “for cause” motion based on the debtor’s withholding of information and thereby saved much time and uncertainty for all parties).

This proposed revision prohibits the trustee from dodging the thirty-day deadline and undermining the framework and policies underlying consumer bankruptcies. The bright line, case-by-case, and debtor's burden approaches have all proved unworkable and, instead of quickly resolving cases, have made the process slower and more protracted. Logically, Rule 4003(b) was promulgated to provide a deadline because the Court and Congress expected that deadline to begin running early in the case. Allowing the trustee additional time in the absence of special circumstances contravenes the values reflected in the Code and thwarts both debtors' and creditors' expectations of a prompt resolution.

The Code and the Rules have intentionally adopted a framework in which individual chapter 7 cases are almost always concluded within four months.²⁴³ Within that timeframe, individual debtors should acquire some clarity and security regarding their finances on a going-forward basis. Early on in the case, a debtor makes substantial disclosures about his or her finances and is questioned by the trustee at the creditors meeting and therefore, deserves to be on notice of any objections to the listed exemptions. The approaches adopted above, particularly the case-by-case and debtor's burden, suggest that a debtor's finances, future prospects, and ability to use property claimed as exempt must remain in limbo while the trustee decides whether and when to reconvene the meeting. As a practical concern, as time progresses, debtors will not have even been put on notice about whether their car, home, furnishings, clothes, tools of the trade, and other items will later be turned over to the trustee. By requiring the trustee to announce a definite future meeting date at the current meeting or risk losing the authority to, debtors can begin to reasonably restructure their affairs with some certainty as to what they still own. The Code and Rules act together to set forth a framework pushing chapter 7 cases to conclusion in four months and require that objections be filed

²⁴³ See *Discharge in Bankruptcy*, UNITED STATES COURTS, <http://www.uscourts.gov/bankruptcycourts/bankruptcybasics/discharge.html#when> (last visited Feb. 11, 2011) (stating on the Federal Judiciary's "Bankruptcy Basics" that "typically, [a chapter 7 discharge is granted] about four months after the date the debtor files the petition"). See generally 11 U.S.C.A. § 521 (West 2011); FED. R. BANKR. P. 1007, 4003(a).

within just thirty days of the last 341 creditors meeting. Permitting trustee's unfettered discretion to prevent this deadline from ever beginning is irrational.

B. The Code Provides Numerous Other Remedies for Protection of Creditors

Tension exists between the debtor's interest in a fresh start and the trustee's duties to catch abusive exemptions in a limited time frame. Critics of *Taylor* and the bright line approach suggest that an open ended construction of Rules 4003(b) and 2003(e) is necessary to prevent abusive debtors who list erroneous exemptions in the hopes that the trustee will not notice in time.²⁴⁴ This proposed solution, however, clarifies the intended thrust of the Rules: "If a trustee needs further information in order to decide whether to object to an exemption, the trustee should either continue the section 341 meeting to a definite date or seek an extension of time to file objections to the exemption."²⁴⁵ Under this approach, if the trustee does not catch an improper exemption at the 341 meeting, he or she still has thirty days to move for an extension of time to investigate.²⁴⁶

In 2008, Rule 4003(b) was amended to create an exception to the thirty-day deadline in cases where a debtor fraudulently claimed an exemption.²⁴⁷ The Rule provides: "The trustee may file an objection to a claim of exemption at any time prior to one year after the closing of the case if the debtor fraudulently asserted the claim of exemption."²⁴⁸ The Advisory Committee Notes demonstrates that the revised Rule was designed to resolve the very situation with which critics are concerned: "Extending the deadline for trustees to object to an exemption when the exemption claim has been fraudulently made will permit the court to review and, in proper circumstances, deny improperly claimed exemptions, thereby protecting the legitimate interests of creditors and the bankruptcy estate."²⁴⁹

²⁴⁴ See, e.g., *Peres v. Sherman (In re Peres)*, 530 F.3d 375, 378 (5th Cir. 2008).

²⁴⁵ 3 COLLIER ON BANKRUPTCY, *supra* note 1, ¶ 341.02[5][g].

²⁴⁶ FED. R. BANKR. P. 4003(b).

²⁴⁷ *Id.* 4003(b)(2).

²⁴⁸ *Id.*

²⁴⁹ FED. R. BANKR. P. 4003 advisory committee's note.

Notably, in 2009, only thirteen individual debtors out of the 1.4 million who filed were convicted of bankruptcy fraud.²⁵⁰ To the very limited extent exemption fraud exists, this added safeguard assuages the critics' fear of debtor fraud.²⁵¹

The possibility of debtors making groundless exemption claims with impunity is an insufficient reason to render the deadline for objections meaningless in light of the numerous Code provisions discouraging abuse. Section 727, the discharge statute for chapter 7 bankruptcies, contains a number of provisions authorizing denial of discharge for fraud or abuse of the system. Overall, pursuant to § 727, if the debtor knowingly or fraudulently hindered, delayed, falsified, or concealed with respect to any property or process of the administration, he or she will be denied discharge.²⁵² In addition, § 152 of Title 18 imposes criminal penalties for concealing assets and making false oaths and claims.²⁵³

In addition to the Code, the Rules also serve to limit bad faith claims of exemptions by debtors. Rule 9011 authorizes sanctions for signing certain documents not “well grounded in fact” and “warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.”²⁵⁴ Similarly, Rule 1008 requires all filings to be “verified or contain an unsworn declaration” of truthfulness under penalty of perjury.²⁵⁵ These significant provisions help ensure that adequate and accurate information is provided in all filings made in chapter 7 consumer cases.

²⁵⁰ See *Bankruptcy Fraud—Criminal Investigation (CI)*, IRS, <http://www.irs.gov/compliance/enforcement/article/0,,id=117520,00.html> (last visited Feb. 11, 2011); *Statistical Data—Bankruptcy Fraud*, IRS, <http://www.irs.gov/compliance/enforcement/article/0,,id=118207,00.html> (last visited Feb. 11, 2011).

²⁵¹ Realistically, this exception may be of little use to creditors. 9 COLLIER ON BANKRUPTCY, *supra* note 47, ¶ 4003.03[1][b]. “Once a case is closed, a trustee is not likely to spend further time considering the debtor’s assets.” *Id.* This is especially so considering that “the trustee is discharged before the case is closed and would have to seek reappointment.” *Id.*

²⁵² See 11 U.S.C. § 727 (2006).

²⁵³ See 18 U.S.C. § 152 (2006).

²⁵⁴ 11 U.S.C.A. § 707 (West 2011).

²⁵⁵ FED. R. BANKR. P. 1008.

CONCLUSION

The solution proposed in this Note—which requires announcement of the date and time of a future meeting at the current meeting—fosters the expeditious, efficient, and responsible administration of a chapter 7 consumer bankruptcy case. The proposal harmonizes the competing desires of debtors and creditors by providing a means to resolve disputes early on so both parties can move forward. By requiring the trustee to declare a new meeting or risk losing the authority to do so, this proposal accords with the comprehensive statutory design mandated by the Code and Rules. Any practice that unnecessarily extends the objection period contravenes the fresh start policy embedded in the Code's exemption provisions and denies the honest, but unfortunate, debtor a chance for financial rebirth.