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ORDERED PUBLISHED

HAROLD S. MARENUS, CLERK
U.S. BKCY. APP. PANEL
OF THE NINTH CIRCUIT

UNITED STATES BANKRUPTCY APPELLATE PANEL
OF THE NINTH CIRCUIT

6	In re:)	
7	STANLEY VINCENT URBAN,)	BAP No. MT-07-1059-HBMo
8	Debtor.)	Bk. No. 06-60045-13
9	_____)	
10	ROBERT G. DRUMMOND, Chapter)	
11	13 Trustee,)	
12	Appellant,)	<u>O P I N I O N</u>
13	v.)	
14	STANLEY VINCENT URBAN; UNITED)	
15	STATES OF AMERICA,)	
16	Appellees.)	
17	_____)	

Argued and Submitted on June 20, 2007
at Pasadena, California

Filed - August 29, 2007

Appeal from the United States Bankruptcy Court
for the District of Montana

Hon. Ralph B. Kirscher, Chief Bankruptcy Judge, Presiding.

Before: HOLLOWELL,¹ BRANDT and MONTALI, Bankruptcy Judges.

¹ Hon. Eileen W. Hollowell, Bankruptcy Judge for the
District of Arizona, sitting by designation.

1 HOLLOWELL, Bankruptcy Judge:

2
3 The bankruptcy court issued a final order rejecting the
4 Chapter 13 Trustee's challenge to the constitutionality of
5 11 U.S.C. § 522(b) (3)² and overruling the Trustee's objection to
6 the Debtor's exemption claims based on California law. The
7 Trustee appealed. We AFFIRM.

8
9 **FACTS**

10 The Debtor, Stanley Vincent Urban ("Debtor"), resided in
11 Montana when he filed a Chapter 13 Petition. Along with his
12 Petition, he filed a Schedule C - Property Claimed as Exempt,
13 listing the following amounts as exempt under Montana law:

14 Homestead	\$100,000
15 Household Goods	600
16 Wearing Apparel	600
17 Guns/Sporting Goods	600
18 Jewelry	600
19 2004 Dodge Stratus	2,500
20 Interest in Insurance Policy	4,000
21 Retirement Account	3,522.87

22
23 The Chapter 13 Trustee ("Trustee") filed an objection to the
24 exemptions. The basis of the objection was that, under
25 § 522(b) (3),³ the Debtor was not entitled to claim exemptions

26 ² Unless otherwise indicated, all chapter and section
27 references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, as
28 revised by The Bankruptcy Abuse Prevention and Consumer
Protection Act of 2005 ("BAPCPA"), Pub. L. 109-8, 119 Stat. 23.

³ An individual debtor may exempt certain property of the
estate under § 522(b). Section 522(b) (3) (A) permits a debtor to
exempt:

(continued...)

1 under Montana law because he had not been domiciled in Montana
2 for the full 730-day period prior to filing his bankruptcy
3 petition. The Debtor had moved to Montana from California, and
4 the Trustee asserted that § 522(b)(3) required Debtor to claim
5 exemptions under California law.

6 In response to the Trustee's objection, the Debtor filed an
7 Amended Schedule C, claiming the following exemptions under
8 California law:

9	Homestead	\$ 50,000
	Household Goods	450
10	Wearing Apparel	450
	Guns/Sporting Goods	925
11	Jewelry	1,150
	2004 Dodge Stratus	2,775
12	Interest in Insurance Policy	9,300
	Retirement Account	3,522.87

13
14 The Debtor included the current market values for the
15 property on both his original and amended schedules, as follows:

16	Homestead	\$153,000
	Household Goods	625
17	Wearing Apparel	500
	Guns/Sporting Goods	450
18	Jewelry	100
	2004 Dodge Stratus	9,000
19	Interest in Insurance Policy	650
	Retirement Account	3,522.87

20
21
22 ³(...continued)

23 [A]ny property that is exempt under . . . State or local law
24 that is applicable on the date of the filing of the petition
25 at the place in which the debtor's domicile has been located
26 for the 730 days immediately preceding the date of the
27 filing of the petition or if the debtor's domicile has not
28 been located at a single State for such 730-day period, the
place in which the debtor's domicile was located for 180
days immediately preceding the 730-day period or for a
longer portion of such 180-day period than in any other
place.

1 In addition, the Debtor's schedules indicated that he had \$31,000
2 equity in his homestead (home valued at \$153,000 less \$122,000
3 debt) and no equity in his car (car valued at \$9,000 with debt
4 close to \$11,000).

5 The Trustee then objected to the amended claim of
6 exemptions. The basis of the second objection was that the
7 domicile requirement of § 522(b)(3) violates the requirement in
8 Article I, Section 8, Clause 4, of the United States Constitution
9 that Congress enact uniform bankruptcy laws, because it requires
10 the extra-territorial application of California's exemption law
11 to a case filed in Montana. The Trustee argued that the Debtor
12 should be required to use the federal exemptions in § 522(d),
13 made available by the "catch-all" provision of § 522(b)(3).⁴

14 At the same time the Trustee filed his objection to the
15 claim of exemptions in Debtor's Amended Schedule C, he filed a
16 Motion for Certification of Claim of Unconstitutionality, as
17 required by 28 U.S.C. § 2403 and Montana Local Bankruptcy
18 Rule 9013-5. The court granted the Trustee's Motion and the
19 United States's Uncontested Motion to Intervene to defend the
20 constitutionality of § 522(b)(3).

21 In spite of the Trustee's objection to the application of
22 the California exemptions and concomitant constitutional
23 challenge, he consented to confirmation of the Debtor's Chapter
24 13 Plan ("Plan") without preserving his objection to Debtor's use

25
26 ⁴ The last sentence of § 522(b)(3) provides: "If the effect
27 of the domiciliary requirement under subparagraph (A)
28 [§ 522(b)(3)(A)] is to render the debtor ineligible for any
exemption, the debtor may elect to exempt property that is
specified under subsection (d) [the federal exemptions]."

1 of the California exemptions. The Plan was confirmed, applying
2 the best interests test of § 1325(a)(4) based upon the California
3 exemptions.⁵

4 The Trustee and the United States stipulated to the facts
5 underlying the constitutional challenge.⁶ The parties and the
6 bankruptcy court assumed that claiming exemptions under
7 California law resulted in a net gain to the Debtor of \$6,130 in
8 exempt assets that would not have been protected under Montana
9 law. We do not agree with this assumption which, with the
10 exception of the homestead exemption, was based upon the maximum
11 amounts that could be claimed as exempt, rather than the actual
12 value of the assets or the Debtor's equity in those assets. The
13 analysis should have been based upon the Debtor's equity in the
14 exempt assets -- not on the maximum amounts potentially
15 available.⁷ For example, the \$275 difference in the car

17 ⁵ In a Chapter 13 case, exemptions are used to show what the
18 debtor would claim as exempt if the case were a liquidation case
19 and "allow the bankruptcy court to make an informed decision
20 regarding the liquidation comparison" required by § 1325(a)(4).
21 Winchester v. Watson (In re Winchester), 46 B.R. 492, 494 (9th
22 Cir. BAP 1984). Section 1325(a)(4) requires a showing that under
23 the plan the unsecured creditors will receive no less than they
24 would receive in a Chapter 7 liquidation.

25 ⁶ The Trustee and the United States agreed that the Debtor
26 properly claimed his exemptions under California law, as required
27 by § 522(b)(3). The Debtor did not participate in the litigation
28 regarding the Trustee's objection before the bankruptcy court or
on appeal.

⁷ Section 522(d) exempts the debtor's interest in property -
- not the property itself. The value that can be exempted is the
unencumbered portion. Consequently, the amount of exemption
available to a debtor is the lesser of either the equity in the

(continued...)

1 exemption between California and Montana law makes no difference
2 because the Debtor reported no equity in his car and, therefore,
3 had no interest which could be exempted.

4 Based upon the values claimed for the exempt assets in the
5 Debtor's schedules, the value of Debtor's exempt assets is \$200
6 less applying the California exemptions than under Montana's, and
7 \$11,550 less using the federal "catch all" exemptions allowed by
8 § 522(b)(3), which the Trustee argues should apply.⁸

9 The bankruptcy court issued a Memorandum Decision overruling
10 the Trustee's objection and holding that § 522(b)(3) does not

11 _____
12 ⁷(...continued)
13 property or the maximum amount of the applicable exemption. The
14 bankruptcy court excluded Debtor's homestead exemption from the
15 comparison because, although the maximum exemption available
16 under Montana law is higher, the Debtor's equity of \$31,000 was
17 equally protected under either Montana or California law.

18 ⁸ Below is a chart comparing the Montana, California and
19 federal exemptions, as applied to the Debtor's scheduled
20 property.

	SCHEDULED			
	INTEREST IN FMV	MT	CA	FED
21 Homestead	\$ 31,000	\$31,000	\$31,000	\$19,425*
22 Household Goods	625	600	450	
23 Wearing Apparel	500	500	450	1,575**
24 Guns/Sporting Goods	450	450	450	
25 Jewelry	100	100	100	100
26 2004 Dodge Stratus	0	0	0	0
27 Insurance Policy	650	650	650	650
28 Retirement Account	<u>3,522.87</u>	<u>3,522.87</u>	<u>3,522.87</u>	<u>3,522.87</u>
		36,822.87	36,622.87	25,272.87

* The federal homestead exemption is comprised of \$18,450
(\$ 522(d)(1)) + \$975 (\$ 522(d)(5)).

** Household goods, wearing apparel and guns/sporting goods are
grouped together under § 522(d)(3).

1 violate the uniformity clause of the Constitution. The Trustee
2 timely filed a Notice of Appeal.⁹

3
4 **ISSUES**

- 5 1. Is the appeal moot?
6 2. Does § 522(b)(3) violate the uniformity clause of the
7 Constitution by applying state exemption laws different
8 than those of the forum state, when the debtor has not
9 been domiciled in the forum state for 730 days
10 immediately preceding the petition date?

11
12 **JURISDICTION**

13 The Trustee challenges the extraterritorial application of
14 California's exemption law to the Debtor's Chapter 13 case filed
15 in Montana. Because the Debtor's Chapter 13 Plan has already
16 been confirmed using California's exemptions and the Trustee did
17 not appeal confirmation of the Plan, the question arises whether
18 the appeal is moot. See Cohen v. Tran (In re Tran), 309 B.R.
19 330, 338 (9th Cir. BAP 2004) (exemptions in Chapter 13 are
20 "significant primarily in determining whether the plan meets the
21 best interests test of § 1325(a)(4)"). We lack jurisdiction to
22 hear a moot appeal. Internal Revenue Serv. v. Pattullo (In re
23 Pattullo), 271 F.3d 898, 900 (9th Cir. 2001).

24 The Trustee argues that the appeal is not moot because,
25

26
27 ⁹ In light of the Plan's confirmation, this panel issued an
28 Order to Show Cause Why Appeal Should Not Be Dismissed As Moot.
The Trustee timely filed a responsive brief. The Appellee chose
not to file a brief on the mootness issue.

1 inter alia, exemptions are "pertinent to a subsequent
2 modification or conversion of the case to Chapter 7." We agree.

3 In a Chapter 13 case, a debtor's debts are discharged only
4 upon the bankruptcy court's order after completion of the
5 debtor's plan -- not upon confirmation of the debtor's plan. 11
6 U.S.C. § 1328(a). A request for modification may be made "[a]t
7 any time after confirmation of the plan but before the completion
8 of payments under such plan." § 1329(a). The Debtor's thirty-
9 six-month Chapter 13 Plan was confirmed on April 11, 2006, and
10 may be modified before completion of the payments, which would
11 require the bankruptcy court to apply the best interests test of
12 § 1325(a)(4) again. See § 1329(b)(1). The exemption issue is
13 "material" to a § 1325(a)(4) analysis. Profit v. Savage (In re
14 Profit), 283 B.R. 567, 573 (9th Cir. BAP 2002), citing McDonald
15 v. Burgie (In re Burgie), 239 B.R. 406, 411 n.8 (9th Cir. BAP
16 1999).

17 The Trustee contends that the Debtor should use the federal
18 exemptions, applying the "catch-all" provision of § 522(b)(3).
19 If the Trustee's position prevails and the Debtor's Plan is
20 modified under § 1329,¹⁰ the Debtor would have to pay more to
21 satisfy the best interests test of § 1325 because the value of
22 his exempt assets is much less under federal law than under
23 California law.

24
25 ¹⁰ Under § 1329(a), the plan may be modified "upon request
26 of the debtor, the trustee, or the holder of an allowed unsecured
27 claim." We express no opinion as to whether the Trustee could
28 seek modification, absent changed circumstances, in view of his
earlier insistence that the Debtor claim the California
exemptions and his subsequent recommendation that the Plan be
confirmed.

1 Further, this case may be converted to a Chapter 7 case by
2 the Debtor at any time, § 1307(a), or by the court upon request
3 by a party in interest or the United States Trustee, § 1307(c),
4 (e). Because a Chapter 7 debtor would be entitled to his
5 exemptions under § 522, the question of the amount of the
6 exemptions that may be claimed is not moot.¹¹ See In re Tran,
7 309 B.R. at 338.

8 The Trustee also complains that under § 522(b)(3), the court
9 -- and presumably, the Trustee -- "may have to examine in excess
10 of fifty different exemption schemes, depending upon the
11 residency of debtors filing in the district." If the Trustee
12 prevails, he would have to apply only Montana or federal law.

13 Because the appeal is not moot, we will consider the case on
14 the merits. The bankruptcy court had jurisdiction pursuant to
15 28 U.S.C. § 157(b)(2)(B). We have jurisdiction under 28 U.S.C.
16 § 158(c).

17 18 **STANDARD OF REVIEW**

19 The parties have stipulated to the relevant facts; thus, all
20 of the issues presented by this appeal are legal issues. We
21 review conclusions of law and issues of statutory interpretation
22 de novo. Irwin Mortgage Co. v. Tippett (In re Tippett), 338 B.R.
23 82, 85 (9th Cir. BAP 2006).

24
25
26 ¹¹ If the case were converted, no party could object to the
27 Debtor's exemptions unless he amended them following the
28 conversion. Smith v. Kennedy (In re Smith), 235 F.3d 472, 477-78
(9th Cir. 2000).

1 **DISCUSSION**

2 A. Introduction

3 Article I, Section 8, Clause 4, of the United States
4 Constitution grants Congress the power to "establish . . .
5 uniform Laws on the subject of Bankruptcies throughout the United
6 States." The Trustee asserts that Congress violated the
7 uniformity provision of the bankruptcy clause when it enacted
8 § 522(b) (3) because, in cases like this one, the statute requires
9 the application of exemption laws different from the laws of the
10 state where the debtor's case was filed. As a result, creditors,
11 including the Trustee, will not have the same access to the
12 debtor's assets in bankruptcy that they would have outside of
13 bankruptcy.

14 B. Bankruptcy Code's Exemption Provisions

15 Section 522(b) authorizes individual debtors to exempt
16 property from the bankruptcy estate. In Chapter 7 cases, exempt
17 property is the only property that the debtors are entitled to
18 keep. Although a Chapter 13 debtor is permitted to keep all of
19 his property, he may claim the same exemptions as a Chapter 7
20 debtor. See In re Tomasso, 98 B.R. 513, 515 (Bankr. S.D. Cal.
21 1989). As previously noted, exemptions are relevant in
22 Chapter 13 as a factor in the best interests of creditors test of
23 § 1325(a) (4). In re Winchester, 46 B.R. at 494.

24 Section 522(d) specifies the property that may be exempted
25 from the debtor's bankruptcy estate. Under § 522(b) (1), the
26 debtor may choose to exempt either the property listed in
27 § 522(d) ("federal exemptions") or "any property that is exempt
28 under Federal law, other than subsection (d) of this section, or

1 State or local law that is applicable." The debtor may choose
2 the federal exemptions in § 522(d) "unless the State law that is
3 applicable to the debtor under subparagraph (3)(A) specifically
4 does not so authorize." § 522(b)(2). This "opt out" provision,
5 which makes the federal exemptions unavailable, has been adopted
6 by a majority of states, including California¹² and Montana.¹³
7 4 Collier on Bankruptcy ¶ 522.02[1], p. 522-18 (15th ed. rev.
8 2006).

9 The "State law that is applicable to the debtor" is
10 determined by where the debtor was domiciled¹⁴ for the 730 days
11 (two years) immediately preceding the filing of bankruptcy.
12 § 522(b)(3)(A). If the debtor was not domiciled in a single
13 state during that period, then the applicable state law is that
14 of the state in which the debtor was domiciled for the 180 days
15 immediately preceding the 730-day period, or for the longest
16 portion of that 180-day period. Id. The bankruptcy case may be
17 filed where a debtor's domicile, residence or principal place of
18 business has been for the greater part of the 180 days prior to
19

20 ¹² Cal. Civ. Proc. Code § 703.130 (2006) provides: "Pursuant
21 to the authority of paragraph (1) of subsection (b) of Section
22 522 of Title 11 of the United States Code, the exemptions set
23 forth in subsection (d) of Section 522 of Title 11 of the United
24 States Code (Bankruptcy) are not authorized in this state."

25 ¹³ Mont. Code Ann. § 31-2-106 (2005) provides in pertinent
26 part: "An individual may not exempt from the property of the
27 estate in any bankruptcy proceeding the property specified in 11
28 U.S.C. § 522(d)."

29 ¹⁴ For purposes of § 522(b), "domicile" means actual
30 residence coupled with a present intention to stay there. See
31 Lowenschuss v. Selnick (In re Lowenschuss), 171 F.3d 673, 684
32 (9th Cir. 1999).

1 the petition date. 28 U.S.C. § 1408. If the domiciliary
2 requirement renders a debtor ineligible for any state exemptions,
3 the debtor may elect to use the federal exemptions pursuant to
4 the "catch-all" provision of § 522(b)(3).

5 The combined effect of the 730-day domicile period for
6 determining the applicable state exemption law and the 180-day
7 period for determining venue is that the law for exemptions may
8 be different from the law of the forum. In such a case, "the
9 court must give effect to those exemptions allowed by the law of
10 the state of domicile, and it makes no difference where the
11 property is situated or where the petition is filed, so long as
12 the property is exempt under the law of the domiciliary state."
13 4 Collier on Bankruptcy ¶ 522.06 at 522-41, citing, inter alia,
14 Arrol v. Broach (In re Arrol), 170 F.3d 934, 936-37 (9th Cir.
15 1999) (debtor domiciled in California for majority of domiciliary
16 period under former § 522(b)(2)(A) is entitled to claim
17 California exemption for residence located in Michigan).

18 C. The Constitutionality of the Domicile Requirement of
19 § 522(b)(3)(A)

20 The focus of the Trustee's constitutional challenge is the
21 statute's requirement that California's exemption law be applied
22 in Debtor's Montana bankruptcy case because the Debtor did not
23 live in Montana for two years before filing his bankruptcy
24 petition. Section 522(b)(3)(A) was amended by BAPCPA to extend,
25 from 180 days to 730 days, the time period in which a debtor must
26
27
28

1 be domiciled in order to use the forum state's exemption laws.¹⁵
2 The amendment was designed to curb the so-called "mansion
3 loophole" in which debtors contemplating bankruptcy would move to
4 states with generous homestead exemption statutes. See Report of
5 the Committee on the Judiciary, House of Representatives, to
6 Accompany S. 256, H.R. Rep. No. 109-31, pt. 1, at 15-16, 109th
7 Cong., 1st Sess. (2005), reprinted in 2005 U.S.C.C.A.N. 88, 102.

8 The Trustee relies heavily on the holding of Hanover Nat'l
9 Bank v. Moyses, 186 U.S. 181 (1902), for the proposition that
10 bankruptcy legislation violates the uniformity provision if it
11 prevents a trustee from reaching a debtor's assets to the same
12 extent those assets would be subject to the legal process of the
13 forum state outside of bankruptcy. Because of the importance of
14 the Moyes case to the Trustee's argument, a brief summary of the
15 case is warranted.

16 Max Moyses gave a promissory note to a Mississippi bank,
17 which assigned it to Hanover National Bank of New York
18 ("Hanover"). After Moyses defaulted, Hanover obtained a judgment
19 against him in Mississippi in 1892. Moyses then moved to
20 Tennessee and filed for relief under the Bankruptcy Act of 1898,
21 obtaining his discharge in August -- one month after the Act
22 became effective. After Moyses received his discharge, Hanover
23 initiated an action in Tennessee to enforce its judgment, arguing
24 that the discharge was a nullity because the bank had not been

25
26 ¹⁵ Before the bankruptcy court, the Trustee argued that the
27 extended domiciliary requirement under BAPCPA was improper
28 because it created a different time period from the venue
statute, 28 U.S.C. § 1408. The Trustee abandoned that argument
on appeal.

1 served with process nor had it appeared in the bankruptcy case,
2 and the court had never acquired jurisdiction over the bank or
3 the debt. *Moyes* demurred, and the case was dismissed based on
4 the entry of his bankruptcy discharge. On writ of error to the
5 Supreme Court, Hanover also argued, inter alia, that the
6 Bankruptcy Act violated the bankruptcy clause because it
7 authorized the filing of voluntary cases by persons who were not
8 merchants or traders and because it was not uniform throughout
9 the United States. As one commentator has noted: "It can only
10 be inferred from the opinion that the uniformity argument hinged
11 on the fact that the Act permitted exemptions to the extent
12 provided by state law, even though no such exemptions were at
13 issue in *Moyes*." Randolph J. Haines, The Uniformity Power: Why
14 Bankruptcy is Different, 77 Am. Bankr. L.J. 129, 160 (2003)
15 (footnote omitted).

16 Most of the *Moyes* opinion addresses the constitutionality
17 of a law that permitted voluntary bankruptcy for non-merchants
18 and non-traders, and whether the Bankruptcy Act's notice
19 provisions satisfied due process. The exemption/uniformity
20 argument is briefly addressed and rejected: "[T]he system is, in
21 the constitutional sense, uniform throughout the United States,
22 when the trustee takes in each State whatever would have been
23 available to the creditor if the bankrupt law had not been
24 passed." *Moyes*, 186 U.S. at 190.

25 It is the above-quoted language, along with an earlier
26 observation in the opinion that "uniformity is geographical and
27
28

1 not personal,"¹⁶ id. at 188, on which the Trustee relies to argue
2 that the uniformity clause imposes a bright line rule requiring
3 that a trustee receive as much in bankruptcy as he would outside
4 of bankruptcy. However, Moyses did not involve an exemption
5 claim by a debtor who had moved from another state to the forum
6 state and is insufficient authority to support the Trustee's
7 constitutional challenge, especially in light of subsequent
8 Supreme Court cases interpreting the uniformity clause.

9 As noted by the bankruptcy court, the opinion in Reg'l Rail
10 Reorganization Act Cases, 419 U.S. 102 (1974), is particularly
11 instructive about the nature of the uniformity clause. Those
12 cases, consolidated on appeal, involved a challenge to the
13 Regional Rail Reorganization Act of 1973, which was passed to
14 reorganize eight railroads in the northeast and midwest regions
15 of the country. Creditors argued that because the law operates
16 only in "a single statutorily defined region" of the country, it
17 was geographically non-uniform and violated the uniformity
18 clause. Id. at 158. The Supreme Court found no merit to the
19 uniformity challenge because it overlooked "the flexibility
20 inherent in the constitutional provision." Id. The Reg'l Rail
21 Reorganization Act Cases interpreted the uniformity clause, not
22 in terms of geographic uniformity, but rather as requiring that
23 "the Rail Act apply equally to all creditors and all debtors."
24 Id. at 160.

25
26 ¹⁶ Geographic uniformity requires that a statute apply
27 consistently to all similarly situated persons throughout the
28 United States. A statute may be geographically uniform even if
implementation of the statute varies from state to state. See
Stellwagen v. Clum, 245 U.S. 605, 613 (1918).

1 In Railway Labor Executives' Ass'n v. Gibbons, 455 U.S. 457,
2 469 (1982), the Supreme Court held that the uniformity
3 requirement is neither a "straightjacket that forbids Congress to
4 distinguish among classes of debtors," nor does it "require the
5 elimination of any differences among the States in their laws."
6 In Gibbons, the Supreme Court for the first time invalidated a
7 bankruptcy law for lack of uniformity because its provisions
8 covered "neither a defined class of debtors nor a particular type
9 of problem, but a particular problem of one bankrupt railroad."
10 Id. at 470-71. The Court explicitly noted, however, that its
11 holding did "not impair Congress' ability under the Bankruptcy
12 Clause to define classes of debtors and to structure relief
13 accordingly." Id. at 473. As one court has recently explained
14 in finding § 522(b)(3)(A) does not violate the uniformity clause:
15 "Geographical uniformity and class uniformity are separate
16 concepts, and when a law is applied to a specified class of
17 debtors, the uniformity requirement is met so long as the law
18 applies uniformly to that defined class of debtors." In re
19 Chandler, 362 B.R. 723, 728 (Bankr. N.D. W. Va. 2007), citing
20 Gibbons, 455 U.S. at 473 (footnote omitted).

21 A federal law is constitutionally uniform, even though its
22 effect may vary due to differences in state law, if it treats the
23 defined class uniformly. Gibbons, 455 U.S. at 473 (to survive
24 scrutiny, "a law must at least apply uniformly to a defined class
25 of debtors"). Because the uniformity clause is flexible and
26 encompasses the concept of class, as well as geographic
27 uniformity, Congress may enact bankruptcy laws that treat defined
28 classes of debtors or creditors differently, so long as the

1 classification scheme applies in the same manner to all similarly
2 situated parties. See id. Section 522(b)(3)(A) is such a
3 classification statute. It creates special exemption rules for a
4 specific class of debtors who have relocated from one state to
5 another within a defined period of time. In re Chandler, 362
6 B.R. at 729. The law is uniform because it applies to all
7 debtors who have not been domiciled in the forum state for at
8 least two years preceding bankruptcy, regardless of where a
9 bankruptcy petition is filed.

10 The Trustee's argument that § 522(b)(3)(A) burdens the
11 parties and courts by requiring them to familiarize themselves
12 with out-of-forum exemption laws is unpersuasive. Parties to a
13 bankruptcy case should not be surprised to be confronted with the
14 application of laws of various states. Even before BAPCPA's
15 enactment, there were differences between the venue statute and
16 the exemption statute which required courts to apply out-of-forum
17 exemption laws. See, e.g., Morad v. Xifaras (In re Morad), 323
18 B.R. 818, 826 (1st Cir. BAP 2005) (affirming Massachusetts
19 bankruptcy court's holding that debtor was not a domiciliary of
20 Florida for the requisite time and could not claim that state's
21 exemptions). Furthermore, parties to a bankruptcy case are
22 frequently confronted by issues determined by non-forum state
23 law, such as valuation, contract interpretation, and perfection
24 of security interests in real and personal property. Congress's
25 choice to make state law applicable to certain parties or types
26 of transactions may impose more work on parties to a bankruptcy
27 case, but it does not violate the uniformity provision of the
28 bankruptcy clause. See St. Angelo v. Victoria Farms, Inc., 38

1 F.3d 1525, 1531 (9th Cir. 1994) ("A bankruptcy law may have
2 different effects in various states due to dissimilarities in
3 state law as long as the federal law itself treats creditors and
4 debtors alike.").

5 The Trustee's claim that § 522(b)(3) impermissibly permits
6 one state to exercise sovereignty over another confuses one
7 state's attempt to impose its rules upon another with Congress's
8 determination to use state law as the law to be applied to a
9 particular party or transaction. See In re Arrol, 170 F.3d at
10 936 ("[F]ederal bankruptcy law has prescribed the applicable
11 exemptions -- in this case, the exemptions provided by California
12 law. This is a federal choice of law in which the choice has
13 been made."). In Stellwagen, the Supreme Court upheld Congress's
14 grant of power to the trustee to utilize state statutes for the
15 benefit of creditors even though results will vary from state to
16 state:

17 Notwithstanding this requirement as to uniformity
18 the bankruptcy acts of Congress may recognize the laws
19 of the State in certain particulars, although such
20 recognition may lead to different results in different
21 States. . . . Such recognition in the application of
state laws does not affect the constitutionality of the
Bankruptcy Act, although in these particulars the
operation of the Act is not alike in all the States.

22 245 U.S. at 613, citing Moyses, 186 U.S. at 188-90.

23 24 **CONCLUSION**

25 Congress may enact a bankruptcy law to address a particular
26 problem, so long as the law operates in every place in the
27 country in the same way. Even though the different laws of the
28 states "may lead to different results in different states," it

1 does not run afoul of the uniformity provision. Stellwagen, 245
2 U.S. at 613; see also St. Angelo v. Victoria Farms, Inc., 38 F.3d
3 at 1531. Section 522(b)(3) is such a law. For the foregoing
4 reasons, we AFFIRM.

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