No. 17-455

IN THE

Supreme Court of the United States

FIRST SOUTHERN NATIONAL BANK,

Petitioner,

v.

SUNNYSLOPE HOUSING LIMITED PARTNERSHIP,

Respondent.

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

BRIEF FOR *AMICI CURIAE* LAW PROFESSORS AND RETIRED UNITED STATES BANKRUPTCY JUDGES IN SUPPORT OF WRIT OF CERTIORARI, BUT NOT IN SUPPORT OF EITHER PARTY

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QUESTION PRESENTED

In a Chapter 11 bankruptcy, a bankruptcy court may "cram down" and confirm a plan of reorganization over the objection of a secured creditor, so long as the plan provides for payment of "at least the value of the creditor's interest in the estate's interest" in the collateral securing that claim. 11 U.S.C. § 1129(b)(2)(A)(i)(II).

The question presented is:

Whether a bankruptcy court may confirm a Chapter 11 plan of reorganization in which a debtor retains a secured creditor's collateral while paying the secured creditor less than the amount the creditor would realize in a foreclosure sale of the collateral.

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INTEREST OF AMICI CURIAE[1]

The amici fundamentally disagree about the merits of this case. Nevertheless, they have come together in support of this Petition for a Writ of Certiorari, because they agree that the split in authority as the result of the opinion below raises fundamental issues at the core of the bankruptcy process. However the Court may decide the issue on the merits, the amici agree that resolution of the question presented is essential for the continued functioning of the bankruptcy process.

The names, institutions and affiliations of the amici are set forth in alphabetical order on the Appendix. They are either retired United States Bankruptcy Judges and/or bankruptcy law scholars teaching at law schools around the nation who study the United States bankruptcy and commercial law systems. The amici span the spectrum of bankruptcy thinking and scholarship—from those who believe that the Bankruptcy Code should be construed with an emphasis on Congress' purpose of facilitating the reorganization of a debtor and providing a fresh start, to those who believe that bankruptcy law is intended to play a more modest role, placing emphasis on the text of the Bankruptcy Code with the view that Congress intended to disturb non-bankruptcy entitlements only where absolutely necessary to achieving a bankruptcy purpose.

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[1] The parties were timely notified of the amici's intention to file this brief pursuant to Supreme Court Rule 37(2)(a). The parties have consented to the filing of this brief in blanket letters on file with the Clerk. No counsel for a party authored this brief in whole or in part, and no persons or entities other than the amici and their counsel made a monetary contribution to the preparation or submission of this brief.

SUMMARY OF ARGUMENT

This case turns on what valuation standard applies to determine "the creditor's interest in the estate's interest" when a Chapter 11 debtor wants to retain collateral but to do so must satisfy the cram down provisions of § 1129(b)(2)(A)(i)(II). The question asks whether the replacement value standard utilized in *Rash*, and as applied by the *en banc* Ninth Circuit, is mandatory for all valuations under § 506(a)(1), or only those arising under Chapter 13. Whether *Rash* applies in Chapter 11 is central to reorganization practice.

Confusion about which valuation standard applies has been long-simmering, but intensified with this Court's decision in *Rash*.[2] There, this Court affirmed confirmation of a Chapter 13 bankruptcy plan in which the debtor proposed to retain personal property (a truck) over the objection of a secured creditor. The Court held that confirmation of that plan was authorized so long as the secured creditor would be paid the amount of its secured claim based on a replacement value standard, *i.e.,* what a willing buyer would pay for like property for the same use, over the 5-year life of the plan. *Rash*, 520 U.S. at 965, 117 S. Ct. at 1886. Because the debtor proposed to retain the personal property collateral under a Chapter 13 plan, the Court rejected the typically lower foreclosure value standard to determine the value of the secured claim under 11 U.S.C. § 506(a).

This Chapter 11 case involves a situation in which foreclosure value exceeds replacement value. Sunnyslope Housing Limited Partnership ("Sunnyslope"

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[2] *Assocs. Commercial Corp. v. Rash*, 520 U.S. 953, 117 S. Ct. 1879, 138 L. Ed. 2d 148 (1997) ("*Rash*").

or "Debtor") is the owner of an apartment complex in Phoenix Arizona (the "Property") which it sought to retain and value based on use as a low-income housing project. The foreclosure value of the Property was significantly higher and would have required a substantially higher distribution to the mortgage lender on its allowed claim. On appeal, the *en banc* Ninth Circuit interpreted *Rash* to require it to reject the foreclosure value in a Chapter 11 case, and instead to value the property "in light of its proposed disposition or use" as low-income housing.[3]

Petitioner is correct to say that the case presents the question whether a secured creditor can ever be required to accept less than the foreclosure value of its property under a plan in which the debtor retains the secured creditor's collateral. To resolve that question, the Court must necessarily determine whether the Court's decision in *Rash* was intended to apply in Chapter 11 reorganization cases.

In *Sunnyslope II,*[4] the Ninth Circuit, sitting *en banc*, split with the Seventh Circuit and other lower courts in finding that this Court's decision in *Rash* applied to improved real property, mandating the application of the replacement value standard. Critically, the issue has divided the trial and appellate courts. *Rash* was decided by this Court in a Chapter 13 cram down context regarding the value of a truck. Neither this Court nor Congress has dictated a mandatory valuation standard in Chapter 11 cases or cases involving real property. It is crucial for debtors to know whether

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[3] *In re Sunnyslope Hous. Ltd. P'ship*, 859 F.3d 637, 644 (9th Cir. 2017), *as amended* (June 23, 2017) ("*Sunnyslope II*") (citing *Rash*, 520 U.S. at 962).

[4] *Id*.

foreclosure value sets a floor that plans must offer secured creditors.

The amici do not take a substantive position on the determination of value in this case. Indeed the amici include former bankruptcy judges and bankruptcy scholars who—like the courts below—hold diverging views on the merits of the issue presented in this case. But the amici offer this brief in support of the Petition for a Writ of Certiorari because of the systemic importance of settling the split in authorities created by *Sunnyslope II*, which presents an important question of law that will affect the Chapter 11 process and the conduct of secured lending throughout the United States. Accordingly, the amici support the grant of a Writ of Certiorari on the question presented.

I. THE CIRCUITS HAVE SPLIT ON WHETHER *RASH* APPLIES IN CHAPTER 11.

In *Sunnyslope II*, the Ninth Circuit adopted the replacement value standard for valuation of real property under § 506(a)(1) for the purposes of a cram down under § 1129(b)(2)(A)(i)(II). Previously, the Seventh Circuit adopted the foreclosure value standard for Chapter 11 cases in which the foreclosure value exceeds the value proposed under the plan. *United Air Lines, Inc. v. Reg'l Airports Imp. Corp.*, 564 F.3d 873 (7th Cir. 2009) ("*United*"). And the Third Circuit has adopted an intermediate position. *In re Heritage Highgate, Inc.*, 679 F.3d 132 (3d Cir. 2012) ("*Heritage Highgate*").

In *United,* the issue was the valuation of the terminal and gates United leased at Los Angeles International Airport ("LAX"). *United*, 564 F.3d at 876.[5] The valuation was necessary to determine the secured status under § 506(a) of claims held by lenders who had security interests in the lease and improvements, for the purpose of treatment in the Chapter 11 plan under § 1129(b)(2)(A). *Id.* at 875. The bankruptcy court determined the value to be $17 per square foot based on the fair market value of *unimproved* leased space at LAX – which was the price the airline was actually paying at the time. *Id.* at 876. However, the lenders' security was in improved space and, therefore, the Seventh Circuit determined the value of the lease should include improvements, reasoning: "[i]f the Lender foreclosed and took over the space, it could rent the gates to United or some other airline at more than $17 a square foot- at perhaps four times that much, to go by prices at the airport's one terminal that leases fully built-out gates." *Id.* at 876-77. Thus, the Seventh Circuit concluded that the foreclosure value operated to set a floor on the secured creditor's recovery.

In *Heritage Highgate*, the Third Circuit, nominally adopted the replacement value standard, but equated that standard with the asset's foreclosure value. There, the debtor sought to retain real property through a Chapter 11 plan and to value that property based on its proposed use. *Heritage Highgate*, 679 F.3d at 137. The plan provided that the value would be determined through disposition of a motion under § 506(a) filed by the unsecured creditor's committee. *Id.* At the hearing on the committee's § 506 motion, the bankruptcy

[5] The issues as stated by the Seventh Circuit were: "[w]hat is the annual rental rate, and what is the appropriate discount rate?" *United*, 564 F.3d at 876.

court found that value had to be determined by the proposed use as of the date of confirmation, not on income projections under the plan's proposed budget. *Id.* at 138.

The Third Circuit noted that *Rash* equated replacement value with fair market value, and that this was the appropriate standard for valuation of real property in the Chapter 11 reorganization context. *Id.* at 141-42 (citing *In re Mayslake Village–Plainfield Campus, Inc.*, 441 B.R. 309, 320, n. 2 (Bankr. N.D. Ill. 2010)). The second lienholder, who was otherwise underwater, had argued that valuation based on a debtor's proposed use should be determined using the "wait and see" approach. *Id.* at 143. The Third Circuit rejected this approach, preferring instead to equate replacement value with the asset's fair market value on the theory that valuation determined at the time of confirmation is a "more realistic measure of present value." *Heritage Highgate*, 679 F.3d at 143. In doing so, the Third Circuit decision bears some of the hallmarks of the Seventh Circuit's approach under which the asset's foreclosure value effectively sets a floor on the secured creditor's recovery. But in focusing on the property's value as of the effective date without regard to future revenue, the analysis also resembles the Ninth Circuit's reasoning in the decision below.

The application of *Rash* to a Chapter 11 has divided the courts and will continue to do so.

II. UNDERSTANDING THE SCOPE OF *RASH* IS ESSENTIAL TO CHAPTER 11 PRACTICE.

Clarification is important to the administration of the bankruptcy process because *every* Chapter 11 cram down under § 1129(b)(2)(A)(i)(II) requires a valuation.

With more that 7,000 Chapter 11 cases filed each year, some of which inevitably involve our nation's largest and oldest companies, the potential impact of this case is enormous. Therefore, this case satisfies the Court's concern that its decision will reach "beyond the academic or the episodic." *Rice v. Sioux City Mem'l Park Cemetery*, 349 U.S. 70, 74, 75 S.Ct. 614, 616, 99 L.Ed. 897 (1955).

As noted, in *Sunnyslope II,* the Ninth Circuit, relying on *Rash*, rejected the foreclosure value standard and found that it was mandated to apply a replacement value standard when valuing the collateral of First Southern National Bank ("FSNB") for the purposes of a cram down plan in Sunnyslope's Chapter 11 Bankruptcy. *Sunnyslope II*, 859 F.3d at 640-54. The Ninth Circuit is not alone in relying on *Rash* to adopt what is referred to as "the replacement value standard" in Chapter 11 cram down contexts. *See Heritage Highgate*, 679 F.3d at 142 (finding that for purposes of valuation of real property to be retained by a debtor in a Chapter 11 plan, "[t]he proper measure under § 506(a) must therefore be the collateral's fair market value because it is most respectful of the property's anticipated use."); *In re Mayslake Vill.-Plainfield Campus, Inc.*, 441 B.R. at 320 (citing *Rash* and holding, "the same value can be used in this matter, even though a Chapter 11 cram down [of real property] is involved.").

Congress intended that valuations under § 506(a)(1) "be made in light of the Code section that is relevant at the time the valuation is made." *In re Arnold & Baker Farms*, 177 B.R. 648, 656 (B.A.P. 9th Cir. 1994) (citing S. REP. 95-989, 68 (1978); H.R. REP. 95-595, 356 (1977)), *aff'd*, 85 F.3d 1415 (9th Cir. 1996). This position was echoed in *Rash* where the Court

stated: "[w]hether replacement value is the equivalent of retail value, wholesale value, or some other value will depend on the type of debtor and the nature of the property." *Rash*, 520 U.S. at 965, n. 6. Despite the explanation in *Rash*, the lower courts are in sharp disagreement as to whether *Rash* sets out a hard and fast rule that replacement value is the only method for valuing property in a Chapter 11 cram down under § 1129(b)(2)(A)(i)(II).

Some courts contend that this Court placed a specific limitation in *Rash* so that it applies only to Chapter 13 reorganizations and not to Chapter 11 reorganizations. *See In re Bate Land & Timber, LLC,* 523 B.R. 483, 501 (Bankr. E.D.N.C. 2015)*, leave to appeal granted sub nom. Bate Land Co., LP v. Bate Land & Timber, LLC*, 7:15-CV-22-BO, 2015 WL 3409208 (E.D.N.C. May 27, 2015);[6] *In re Sugarleaf Timber*, LLC, 529 B.R. 317, 329 (M.D. Fla. 2015) (noting *Rash* is a narrow holding not applicable in Chapter 11 "dirt-for-debt" cases).

Others hold that *Rash* applies to Chapter 11. *See In re Mayslake Vill.-Plainfield Campus, Inc.*, 441 B.R. at 320 (using replacement value, which was higher than foreclosure value, where the debtor intended to retain and use the property post-confirmation); *In re Dunson*, 515 B.R. 387, 391 (Bankr. N.D. Ga. 2014) (noting proper valuation for property retained by

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[6] 523 B.R. at 500-01, n. 15 (Adopting a four part "highest and best" test for valuation, and stating:

> [*Rash*] does examine the propriety of either a liquidation value or a replacement value standard, but [] does so in the very different context of a debtor's retention of a motor vehicle over the creditor's objection through cram down under § 1325(a)(5)(B), and thus is not of probative weight in chapter 11 dirt-for-debt cases).

debtor in Chapter 11 is "the debtor's cost to replace the property for the same proposed use."); *In re Mirada Del Lago, LLC,* 11-12-14204 TA, 2013 WL 2318411, at *2 (Bankr. D.N.M. May 28, 2013) (stating "there is no dispute that the proper way to value the [p]roperty is to determine its full fair market value, rather than using a liquidation, distressed sale, or similar discounted value."); *In re Bell*, 304 B.R. 878, 880, n. 1 (Bankr. N.D. Ind. 2003) (stating "[a]lthough *Rash* dealt with a chapter 13 plan, the provisions of all three reorganization chapters—11, 12 and 13—concerning the treatment of secured claims are the same.").

The central question that arises from *Rash* is whether the holding applies to Chapter 11 cases or is limited to Chapter 13 cases.[7] A decision on the merits in this case would necessarily operate to bring greater uniformity to application of *Rash* than currently exists, and would provide beneficial clarity to the applicable standard – all to the benefit of the bankruptcy courts that are otherwise left to grapple with these unresolved issues.

The debate regarding *Rash* is based upon the context of the decision. Chapter 13 has different underlying policies than Chapter 11. Only individuals can file Chapter 13. Chapter 13 was enacted by Congress in 1978 with the stated purpose of "enabl[ing] an individual, under court supervision and protection, to develop and perform under a plan for the repayment of his debts over an extended period." H.R. REP. 95-595, 118 (1977). The primary goal of Chapter 13 is to provide

[7] This Court held that "under § 506(a), the value of property retained *because the debtor has exercised the § 1325(a)(5)(B) 'cram down'* option is the cost the debtor would incur to obtain a like asset for the same 'proposed . . . use.'" *Rash,* 520 U.S. at 965, 117 S.Ct. at 1886 (emphasis added).

individual debtors a "fresh start" by allowing them to protect assets and retain property through agreement to repay creditors, with a secondary focus on recovery for creditors. *Id.* at 117. Congress was focused on closing out avenues that creditors had developed under Chapter XIII of the Bankruptcy Act that served to thwart a debtor's fresh start, such as "overbroad security interests on all of a consumer's household and personal goods, reaffirmations, limited state exemption laws . . ." which ultimately left individual debtors "little better off than they were before [bankruptcy]." *Id.*

In contrast to Chapter 13's purpose of providing a "fresh start" for individual debtors, the Congressional purpose underlying Chapter 11 is to "restructure a business's finances so that it may continue to operate, provide its employees with jobs, pay its creditors, and produce a return for its stockholders." *Id.* at 220. Chapter 11 seeks to strike a balance between the two underlying policies of "preserving going concerns and maximizing property available to satisfy creditors." *Bank of Am. Nat. Tr. & Sav. Ass'n v. 203 N. LaSalle St. P'ship*, 526 U.S. 434, 453, 119 S.Ct. 1411, 1421, 143 L.Ed.2d 607 (1999) (citing *Toibb v. Radloff*, 501 U.S. 157, 163, 111 S.Ct. 2197, 115 L.Ed.2d 145 (1991)). In striking this balance between the interests of debtors and creditors, a House Report noted that Chapter 11 should maximize the economic value of assets and preserve them for debtor's use only when "assets that are used for production in the industry for which they were designed are more valuable than those same assets sold for scrap." H.R. REP. 95-595, 220; *see also* 7 COLLIER ON BANKRUPTCY ¶ 1100.01 (16th ed. 2017) (citations omitted) ("Chapter 11 must strike a balance between [making struggling business debtors] economically sound and . . . preserv[ing] creditors' and stockholders' existing legal rights to the greatest extent

possible."). In light of the differing underlying policies and purposes of Chapter 11 and Chapter 13, this Court should clarify the application of its rule from *Rash* to cases involving cram down under § 1129(b)(2)(A)(i)(II).

The issue is further complicated by the discord between the confirmation goals of Chapter 11 and the effect of confirmation on the rights of secured creditors under applicable non-bankruptcy law. In *Rash*, the secured creditor was to be paid the entire amount of its secured claim over a 5-year period. From a practical standpoint, the Court adopted replacement value over the "typically lower" foreclosure value to ensure the secured creditor was compensated during the 5-year life of the Chapter 13 plan for the increased risk it bore by a Chapter 13 debtor retaining personal property which "may deteriorate from extended use." *Rash*, 520 U.S. at 963, 117 S.Ct. at 1885.

The reality is much different in Sunnyslope's Chapter 11 context. To be sure, diminution from extended use is also a concern with real property. Here, the secured creditor's allowed claim was its mortgage that, upon foreclosure, would eliminate the restrictions on use as low-income housing. The plan in this case provided that the secured creditor's allowed claim was modified to stretch payments out forty years, well past the original maturity of the loan, with a balloon due at the end of that term, for an amount below what a willing buyer offered to pay in the foreclosure sale. The extended period exposes the secured creditor to additional risks that are substantially different from the original bargain, including changes in the market place, default by the debtor, and further depreciation of its collateral.

Unlike Chapter 13, Chapter 11 contains no statutory limitation on the time over which the debtor must

pay the secured creditor the amount of its allowed secured claim. Section 1129 provides that if the debtor will retain property over the objection of the secured creditor, the plan must provide the creditor with the present value of its claim, or as the statute states: "deferred cash payments totaling at least the allowed amount of such claim, of a value, as of the effective date of the plan, of at least the value of such holder's interest in the estate's interest in such property." § 1129(b)(2)(A)(i)(II) (emphasis added); *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 377, 108 S.Ct. 626, 633, 98 L.Ed.2d 740 (1988).

This Court should decide how valuation of the creditor's interest in the estate's interest is to be assessed when debtor's proposed use of the property under the replacement standard would provide the creditor with less than the realizable value of its interest in real property in a foreclosure. As noted above, the amici, like the courts of appeals, are divided on how they would resolve this question. But however the Court rules, a resolution would be beneficial to the administration of the bankruptcy process.

III. LOWER COURTS NEED CLARITY ON THE RELATIONSHIP BETWEEN BANKRUPTCY AND NON-BANKRUPTCY LAW.

This Court has explained that "[p]roperty interests are created and defined by state law. Unless some federal interest requires a different result, there is no reason why such interests should be analyzed differently simply because an interested party is involved in a bankruptcy proceeding." *Butner v. United States*, 440 U.S. 48, 55, 99 S.Ct. 914, 918, 59 L.Ed.2d 136 (U.S. 1979) ("*Butner*"); *see also Bd. of Trade of City of*

Chicago v. Johnson, 264 U.S. 1, 6, 44 S.Ct. 232, 232, 68 L.Ed. 533 (1924) (holding that debtor's seat on board of trade was property of bankruptcy estate, by following, *inter alia,* a decision of the Supreme Court of Illinois). In *Butner*, this Court also noted that the "justifications for application of state law are not limited to ownership interests; they apply with equal force to security interests . . . ." *Butner*, 440 U.S. at 55, 99 S.Ct. 914, 918.

The specific question in *Butner* was whether a federal court operating under Chapter VII of the Bankruptcy Act, could create a security interest in rents received by a mortgagor, in favor of a mortgagee who had not obtained that security under state law prior to the bankruptcy.[8] In denying the secured creditor's interest in the rents, the Court found that a "federal bankruptcy court should take whatever steps are necessary to ensure that the mortgagee is afforded in federal bankruptcy court the same protection he would have under state law if no bankruptcy had ensued." *Butner*, 440 U.S. at 56.[9]

This Court's decision in *Sunnyslope II* will clarify whether the rule from *Rash* is consistent with *Butner* when applied in a Chapter 11 cram down context.

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[8] *See Dewsnup v. Timm*, 502 U.S. 410, 419, 112 S.Ct. 773, 779, 116 L.Ed.2d 903 (1992) (noting Congress is presumed to have adopted prior bankruptcy practice and rules when it enacted the Bankruptcy Code in 1978).

[9] The concept of providing a creditor in a bankruptcy at least what it would receive outside of bankruptcy applies a long standing principle that when a creditor does not receive "either his money or at least his property he must be provided with a substitute of the most indubitable equivalence." *In re Murel Holding Corp.*, 75 F.2d 941, 942 (2d Cir. 1935). Congress codified indubitable equivalence in 11 U.S.C. § 361 and § 1129(b)(2)(A)(iii).

That is whether the application of § 1129(b)(2)(A) requires a "different result." *Id.* at 55.

For the reasons described above, the courts are divided on how these general principles apply in a context like the one presented. Specifically, *Sunnyslope II* authorized a debtor to utilize the confirmation provisions of Chapter 11 to restructure the debtor-creditor relationship and pay a secured creditor an amount less then it could recover under state foreclosure law. *Sunnyslope II* reached this conclusion by incorporating this Court's rationale in *Rash* as a mandatory standard, and setting the value based on the proposed use of the Property as low-income housing. *Sunnyslope II,* 859 F.3d at 645. The Ninth Circuit noted that *Rash* does not require valuation "at the higher of [] foreclosure value or replacement value . . . it expressly rejected the use of foreclosure value, and instead stressed the requirement in § 506(a)(1) that the property be valued in light of its 'proposed disposition or use.'" *Id.* (*citing Rash*, 520 U.S. at 962).

But absent Sunnyslope's bankruptcy and cram down of its plan, FSNB had the right to foreclose on its property, stripping the junior liens and use restrictions, resulting in a recovery of $7.65 million rather than $3.9 million. As *Butner* held, state law interests control "[u]nless some federal interest requires a different result." *Butner*, 440 U.S. at 55. This Court has ruled that the restructuring of the debtor-creditor relationship, such as that between Sunnyslope and FSNB, is "at the core of federal bankruptcy power." *N. Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 71, 102 S.Ct. 2858, 2871, 73 L.Ed.2d 598

(1982).[10] Bankruptcy courts are called upon to value collateral for plan confirmation purposes but there is no consistent practice regarding the standard to be used when § 1129 cram down is at issue.

The question that must be answered to promote uniformity in valuation of collateral in Chapter 11 confirmations is whether the federal interest of restructuring debtor-creditor relationships in a manner that does not return full value to a secured creditor predominates over the state-law rights of a secured creditor and permits reduction of its claim below what the creditor would receive through foreclosure under state law.

IV. CERTAINTY ABOUT WHICH RULE APPLIES IS MORE IMPORTANT THAN THE SUBSTANCE OF THE RULE.

The amici are divided on how they would resolve the question presented on the merits. Certain of the amici contend that the paramount purpose of Chapter 11 is to facilitate the reorganization of the debtor, and that this purpose requires the Court to construe the language of § 506 to limit the secured creditor's recovery to the value associated with the asset in view of the actual use to which the asset is put under the debtor's proposed plan. Others of the amici disagree, and believe that in the context of the Bankruptcy Code's intricate statutory structure, the Code is best construed to ensure that a secured creditor receives no

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[10] In *Rash*, responding to the Fifth Circuit's concern that "replacement-value standard [is] disrespectful of state law, which permits the secured creditor to . . . net foreclosure value 'and nothing more,'" found that replacement value does not disrupt state law any more than the cram down power. *Rash*, 520 U.S. at 964 (citation omitted).

less than the foreclosure value of its collateral. However the Court resolves that issue, the amici agree that this Court's resolution of this fundamental question is critical to the operation of the bankruptcy process.

This case presents the Court with the opportunity to provide clarity to a system that depends on uniform application of the law. This Court's ruling on the valuation standard to be applied in Chapter 11 cram down cases, whatever the ruling is, will facilitate both uniformity in confirmation and understanding by secured lenders as to the consequences they may face in a bankruptcy.

CONCLUSION

For the foregoing reasons, the amici believe that the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX

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