

STATE OF MICHIGAN
IN THE COURT OF APPEALS

Michigan Senate and Michigan
Senate Majority Leader, Winnie
Brinks, in her official capacity,

Plaintiffs-Appellees,
v.

Michigan House of Representatives,
Michigan House Speaker Matt Hall, in
his official capacity, and Michigan House Clerk
Scott Starr, in his official capacity,

Defendants-Appellants.

Case. No. 25-000014-MB
Hon. Sima G. Patel

Urgent Constitutional Matter
COA# 374786

**Brief of the National Association of Consumer Bankruptcy Attorneys,
National Consumer Rights Bankruptcy Center and the National Consumer
Law Center as Amici Curiae in Support of Plaintiffs**

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STATEMENT OF INTEREST OF AMICI CURIAE¹

NACBA is a nonprofit organization of approximately 1,500 consumer bankruptcy attorneys nationwide, including members in the State of Michigan. NACBA advocates nationally in federal and state courts on consumer bankruptcy issues that cannot adequately be addressed by individual member attorneys. It is the only national association of attorneys organized for the specific purpose of protecting the rights of consumer bankruptcy debtors.

NCBRC is a nonprofit organization dedicated to preserving the bankruptcy rights of consumer debtors and protecting the bankruptcy system's integrity, primarily through the appellate process. The Bankruptcy Code grants financially distressed debtors rights that are critical to the bankruptcy system's operation. Yet consumer debtors with limited financial resources and minimal exposure to that system often are ill-equipped to protect their rights on appeal.

The National Consumer Law Center is a public interest, non-profit legal organization that is a national research and advocacy organization focusing specifically on the legal needs of low income, financially distressed, and elderly consumers.

NACBA and NCBRC regularly file amicus curiae briefs in systemically important cases to ensure that courts have a full understanding of the applicable bankruptcy law, the case, and its implications for consumer debtors. See *Hurlburt v. Black*, No. 17-2449, 2019 U.S. App. LEXIS 15603 (4th Cir. May 24, 2019),

¹ Pursuant to MCR 7.212(H) and 7.312(H), no counsel for any party authored this brief in whole or in part, and no person or entity or counsel for any party other than NACBA, NCLC and NCBRC, its members, and its counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

Richardson v. Pridelock Capital Partners, LLC (In re Richardson), 724 F. App'x 238 (4th Cir. 2018), and *Lynch v. Jackson*, 853 F.3d 116 (4th Cir. 2017).

Likewise, NCLC regularly submits amicus briefs to the court. See *Guthrie v. PHH Mortg. Corp.*, 79 F.4th 328 (4th Cir. 2023), *Henderson v. Source For Pub. Data, L.P.*, 53 F.4th 110 (4th Cir. 2022), and *Henson v. Santander Consumer USA, Inc.*, 817 F.3d 131 (4th Cir. 2016).

When referencing amicus curiae briefs that contribute citations to U.S. Supreme Court opinions in bankruptcy cases, it has been noted that, “The contribution of the NACBA briefs is not surprising. Aside from the Solicitor General, NACBA is the most common single amicus to appear in these cases...” See, Ronald J. Mann, *Bankruptcy and the U.S. Supreme Court*, p. 213, n. 6 (2017).

Amici submit that each of their organizations has a vital interest in the outcome of this litigation. The refusal of the House Speaker and Clerk of the House to present HB 4901² to the Governor has significant consequences for consumers represented by NACBA members in bankruptcy court. Bankruptcy exemptions determine what property a debtor can retain after filing bankruptcy. All nonexempt property of the debtor becomes property of the bankruptcy estate. A bankruptcy trustee will sell any nonexempt property, even with a few hundred dollars of nonexempt equity. And the trustee has an incentive to sell the property; the trustee receives a commission on every dollar collected during the bankruptcy case. Exemptions also determine if a consumer will file for bankruptcy. The possibility, even a remote possibility, of losing a car or a home to the bankruptcy trustee, is enough to keep a consumer from filing, and getting a fresh start.

² While this brief focuses on HB 4901, *amici* also support presentation of the other eight (8) bills including HB 4900, which modernizes the Michigan state exemptions applicable to the collection of debts in state court.

The current Michigan bankruptcy exemptions are so low for basic items, that many debtors are caught in a twilight zone. In particular, seniors, widows and widowers on a fixed income, barely have enough income to pay for food, mortgage, medicine and insurance, let alone to pay anything on accumulated, unsecured debt. Home and car prices have skyrocketed, creating nonexempt, paper equity in both classes of assets, especially for seniors who are long term homeowners. HB 4901 updated the Michigan bankruptcy exemptions to better reflect the current value of homes and cars, so that consumer debtors who otherwise qualify for bankruptcy, would have sufficient exemptions to exit bankruptcy with a home to live in and a car to drive.³

NCBRC and NCLC also have a vital interest in this case. NCBRC is dedicated to protecting the integrity of the bankruptcy system and preserving the rights of consumer bankruptcy debtors. NCBRC provides assistance to consumer debtors and their counsel, and files amicus briefs, in cases like this that strike at the integrity of the bankruptcy system. NCLC is a non-profit organization that focuses on consumer issues affecting low-income and elderly consumers. It is also the author of the “No Fresh Start Report”⁴, which examines whether states’ exemption laws meet the most basic of standards, such as protecting the family home, a car and a basic amount of money in a bank account to pay essential costs.

The failure of Defendants to present HB 4901 to the Governor has an outsized impact on the rights of consumer debtors in Michigan. HB 4901 modernizes the

³ All consumer debtors must pass a “means test” to be eligible to file chapter 7 bankruptcy in the first place. This “means test” subtracts from the debtor’s income necessary expenses as determined by the Internal Revenue Service collection standards. If the debtor has too much hypothetical income remaining after deduction of necessary expenses, the debtor fails the “means test” and is presumed to “abuse” Chapter 7. This “abuse” disqualifies debtors from filing chapter 7 bankruptcy if, under the “means test” calculation, they have as little as \$36.00 dollars a week left over after “necessary expenses”. See 11 USC 707(b)(2).

⁴ https://www.nclc.org/wp-content/uploads/2024/12/2024.12_Report_No-Fresh-Start.pdf.

Michigan bankruptcy exemptions to give vulnerable consumer debtors the ability to reorganize their debt and get a “fresh start”. The failure to present the bill also strikes at the heart of the legislative process. Michigan voters and consumers expect that bills passed by both Houses of the legislature will be sent to the Governor. Michigan voters and consumers expect that the “rule of law” will be followed and that properly passed legislation will not be derailed by individuals, even in their purported official capacity, when they exceed the powers granted to them.

PROCEDURAL AND FACTUAL BACKGROUND OF HB 4901

House Bill 4901 was introduced by House Finance and Insurance Committee Chair Brenda Carter on June 18, 2023, with sixteen (16) co-sponsors. The identical bill, Senate Bill 409, was introduced by Senate Finance, Insurance and Consumer Protection Chair, Mary Cavanagh with six (6) co-sponsors. Both bills were referred to the Committee Chair’s respective committee. Chair Cavanagh conducted hearings on S. 409 on May 2, 2024, and June 12, 2024, when testimony was taken. The bill was subsequently amended and SB 409, Substitute S-2, was reported out by the Committee of the Whole on December 12, 2024. A roll-call vote was held on December 12, 2024, and the bill passed 21-15. SB 409 was sent to the House on December 12, 2024.

Instead of taking up S. 409 directly, the House adopted HB 4901, Substitute H-1 on December 13, 2024. Substitute H-1 was identical to S. 409, S-2. The vote was 56 -0. On December 18, 2024, HB 4901 was sent to the Senate and referred to the Committee on Government Operations. That bill was reported out of Committee on December 18, 2024, and sent to the Senate floor where it passed 21-17. HB 4901 was returned to the House on December 20, 2024. It was enrolled in the House on December 23, 2024. But HB 4901 was not presented to the Governor.

HB 4901 amended MCL 600.5451 to modernize the Michigan bankruptcy exemptions last updated in 2005. While there were a number of changes, the main focus was on the homestead exemption, the car exemption and creating a small exemption in other property. That exemption could be used, for example, to protect small amounts of money in bank accounts necessary to pay immediate bills. Initially HB 4901, as introduced, increased the homestead exemption from \$30,000/45,000 (over 65 or disabled)⁵ per family to \$250,000/350,000 (over 65 or disabled) per debtor. The car exemption increased to \$15,000 and for the first time a debtor could exempt up to \$2,000 in other property. The substitute bill that ultimately passed the House and the Senate reduced the proposed homestead exemption to \$125,000/\$200,000 (over 65 or disabled) and the other property exemption to \$1475.00.⁶

ARGUMENT

A. HB 4901(SB 409) modernized the hopelessly outdated Michigan bankruptcy exemptions (MCL 600.5451), where outsized inflationary increases in the value of homes and cars, left consumer debtors unable to protect basic assets necessary for a “fresh start”.

The United States Constitution, Article One, Section 8, empowers Congress to establish “uniform Laws on the subject of Bankruptcies throughout the United States.” Congress enacted the Bankruptcy Code, 11 U.S.C. 101, *et. seq.* to create uniform laws on bankruptcy designed to give the “honest but unfortunate debtor ... a new opportunity in life and a clear field for future effort, unhampered by the

⁵ Those amounts had been adjusted for inflation every three years from 2005. At the time HB 4901 was introduced, the homestead exemption had increased to \$44,125/\$69,200 (over 65 or disabled) per family.

⁶ This exemption applies to all Michigan consumers, renters and homeowners. Homeowners can also use up to \$13,950 of their unused home equity exemption, to exempt other property. See HB 4901 which amends MCL 600.5451 by adding subsection (r).

pressure and discouragement of preexisting debt.” *Local Loan Co. v. Hunt*, 292 U.S. 234, 244, 54 S. Ct. 695, 699 (1934). As part of the bankruptcy process, debtors must surrender to the bankruptcy court all non-exempt property owned. *Id.*

To avoid debtors leaving bankruptcy destitute, Congress created a system of federal bankruptcy exemptions that allowed debtors to exit bankruptcy with certain limited property. 11 U.S.C. 522(d). Congress also allowed states to create their own bankruptcy exemptions and give debtors a choice between which set of exemptions to use, federal or state. 11 U.S.C. 522(b)(1).

In 2005 Michigan enacted the Michigan state bankruptcy exemptions. MCL 600. 5451. It is that set of exemptions that HB 4901 updates and modernizes.⁷

The increase in prices of homes and cars over the last twenty years has far outpaced even the indexing for inflation included in MCL 600.5451(o)(4). For example, the exemptions in 2005 protected \$2775.00 in a car and \$30,000.00 in a home. By 2024 application of the Consumer Price Indexing raised those amounts to \$4250 and \$46,125/69,200(over 65 or disabled), respectively. However, in the same year, the average price of a used car nationally was \$27,177.⁸ And in December 2024, the median sale price for a home in Michigan statewide was \$255,500.⁹ In a number of Michigan counties the median sale price far exceeded that amount. For

⁷ Michigan has a separate set of state exemptions that apply to collection of state court judgments. That set of exemptions is the subject of HB 4900, which is also one of the nine (9) bills not presented to the Governor. HB 4900 updates those exemptions, which are even more outdated than the bankruptcy exemptions. For example, the homestead exemption under existing Michigan state law is \$3,500.00. MCL 600.6023(1)(g).

⁸ Edmunds, Average Price Gap Between New and Used Vehicles Surpasses \$20K for the First Time Ever in Q3 (Oct. 29, 2024), <https://www.edmunds.com/car-news/used-car-report-q3-2024.html>.

⁹ Michigan Housing Market Overview, <https://www.redfin.com/state/Michigan/housing-market>.

example, the January 2025 median sale price of a home in Oakland County was \$355,296.¹⁰

H.B. 4901 made a significant effort to fix those problems. It raised the exemption for one car to \$15,000. It raised the homestead exemption to \$125,000/\$200,000 (over 65 or disabled) per debtor. And in an effort to more closely track the changes in home value, HB 4901 changed the inflation index applicable to homesteads to the specific FHFA Home Price Index for the United States.

B. The outsized changes in the value of assets meant that many Michigan consumer debtors on a fixed income had paper equity in assets, which combined with low exemptions, prevented them from getting a fresh start.

John Rao, Senior Attorney, with the National Consumer Law Center (NCLC), testified on SB. 409 (HB 4901) before the Senate Committee on Finance, Insurance and Consumer Protection on June 12, 2024.¹¹ He testified that in the NCLC 50-state evaluation of exemption statutes, Michigan's exemptions statutes were among the weakest in the nation. NCLC rated states on several categories including whether the state allows a debtor to keep:

- a car of at least average value
- the family's home – at least a median value home
- a basic amount in a bank account, so the debtor has funds to pay essential bills after exiting bankruptcy

Mr. Rao testified that the availability of bankruptcy exemptions determines whether consumers in financial distress can seek bankruptcy relief and if they do,

¹⁰ Median home sales prices for other counties in January 2025: Wayne County, \$195,000; Macomb County, \$254,900; Washtenaw County, \$412,500; Livingston County, \$381,000. See <https://rocket.com/homes/market-reports/mi/oakland-county>.

¹¹ For a video recording of this hearing, please see:
<https://cloud.castus.tv/vod/misenate/video/6669f089b48df900087fe9c7?page=HOME>

whether they will receive a fresh start. Too often debtors who cannot fully exempt their property are forced to file a Chapter 13 case to protect the asset from execution. They try to pay back the nonexempt equity, but for debtors on a fixed income, it is a strategy that often fails.

Mr. Rao also testified that particularly for older consumers, who have paid down or had no mortgage, the increase in home equity as home values have risen, made it difficult for them to get bankruptcy relief without losing their homes.

C. SB 409 (HB 4901) greatly improved Michigan's bankruptcy exemptions.

Mr. Rao also testified that SB 409 (HB 4901)'s changes to the exemption laws would significantly improve how bankruptcy works for individuals in Michigan. The bill increased the exemption values of cars, homes and added an exemption for a small amount of cash, bringing Michigan closer to NCLC's recommended exemptions in its Model Family Financial Protection Act. The homestead exemption moved toward the goal of protecting at least the median value of a home in that state. The improved car exemption earned Michigan a high rating in providing protection for cars. The small cash exemption (\$1475) and other changes, such as protecting Earned Income Tax Credits, unemployment compensation and other governmental assistance benefits, were also significant changes. Combined, the changes in SB 409 (HB 4901) provided Michigan consumers who needed to file bankruptcy a real opportunity for a fresh financial start.

D. The compelling testimony of two consumer debtors, Ms. Bonnie Angus and Mr. Douglas Boyd, exposed the desperate financial circumstances of Michigan seniors, widows and widowers who need relief from debt, accumulated through no fault of their own.

Ms. Bonnie Angus of Coldwater, MI testified in support of SB 409(HB 4901) at the very end of a Senate Finance, Insurance and Consumer Protection committee hearing on May 22, 2024.¹² Ms. Angus, who drove from Coldwater to Lansing to testify, is 73 years old, widowed and insolvent. Before her husband died in 2023, they were always able to pay their bills on time. Since he died, she lost her husband's social security income and was pushed into a higher tax bracket as a single filer. Her husband had accumulated significant balances on joint credit cards (of which she was unaware) which, when added to medical bills and other debt, totaled \$54,000.

She could not file a chapter 7 case because she had too much equity in her home. Her home is worth \$212,000 – \$218,000; her mortgage is \$97, 500, leaving her with equity of \$115,000 - \$121,000, far exceeding her exemption of \$69,200.

She resumed work at the age of 72 and filed chapter 13 bankruptcy in 2023, something she thought she would never have to do. Filing chapter 13 and going back to work, allowed her to try to pay down the nonexempt equity, and keep her creditors at bay. However, she did not know how much longer she could continue to work. Some mornings she felt so ill she had to call in and postpone her starting time.

Her social security income is \$1939.00 a month. If she could get a fresh start, she believed she could get by with her social security income and not have to work so much.

Ms. Angus believed she was representative of many seniors, who have been widowed or divorced. They have owned their homes for many years, paid down their mortgages, but late in life found themselves without a spouse, far less income and unexpected bills. The increased homestead exemption in SB 409 (HB 4901) would make it possible for her to get a fresh start in chapter 7.

¹² For a video recording of this hearing, please see:
<https://cloud.castus.tv/vod/misenate/video/664e326620353200080b7ee1?page=HOME>

Mr. Douglas Boyd of Kalamazoo, MI testified on June 12, 2024¹³ in support of SB 409 (HB 4901). He drove from Kalamazoo, MI to Lansing to appear before the Committee. He is 71 years old and widowed for thirteen years. For 25 years he worked at Walgreen Laboratories in Kalamazoo as a tablet coater making \$12.40 an hour. About 15 years ago he had to go on medical leave from work. He has heart disease, high blood pressure and diabetes. He suffered 3 heart attacks and survived stomach cancer surgery. He is now on regular social security receiving \$2200 a month. He gets an extra \$200 a month from his deceased wife's pension.

He testified that he was overwhelmed with debt and worn out. Due to his illnesses, he owed over \$250,000 in hospital bills that were not covered by insurance. He owed \$20,000 on two cars, one of which had a blown engine. He owed HUD \$20,000 on a loan he could repay. When he first left work on medical disability, he used over \$60,000 from his retirement account to pay for medical insurance. Even that insurance was not enough to cover all the medical bills he incurred.

He testified that he owns his own home. There is no mortgage. The estimated value of the home is \$154,000. His equity, therefore, is \$154,000, far above his current \$69,200 exemption.

His furnace needs repair. His stove does not work. He has tried to save money for those repairs by cutting back on what he eats, which gets him in trouble with his diabetes. After food, utilities, insurance, gas for the car and paying on small medical bills not covered by GAP insurance, there is nothing left over.

He owes so much money that taking out a mortgage will not help. Even if he could take out a mortgage, he doesn't have the income to pay it back. He cannot file a chapter 7 bankruptcy case because the trustee would sell his home. He testified

¹³ For a video recording of this hearing, please see:
<https://cloud.castus.tv/vod/misenate/video/6669f089b48df900087fe9c7?page=HOME>

that the money from his homestead exemption was not enough to buy another home. And if he rented, that exemption money would be gone in a few years.

A chapter 13 bankruptcy filing is outside his reach. He would have to pay \$85,000 to creditors in a chapter 13 case because of the excess equity in his home. He spends all of his current income on living expenses. He does not have any extra income; he can't even afford to fix his stove or oven. His disability prevents him from working to generate more income.

He testified that he thought he was very representative of seniors who have been widowed. They owned their homes for many years, always paying on the mortgage. While the homes have greatly appreciated, they can't make use of that equity. The home is all they have. And, as much as anyone else, they needed a fresh start.

E. The harm to Michigan residents caused by the Speaker and the Clerk by not presenting HB 4901 to the Governor is immediate and palpable.

Overwhelming debt is oppressive and distressing. It wears people down; it causes them to take on responsibilities that their health will not allow.

The testimony of Ms. Bonie Angus of Coldwater, MI and Mr. Douglas Boyd of Kalamazoo, MI, described, "lives of despair." The extraordinary medical bills, unexpected debt incurred by a now deceased spouse, serious illness resulting in disability and the loss of income had put them in situations they never thought they would be in. After paying the mortgage, food, insurance, drug costs and small medical bills, there is nothing left over. And the lack of an adequate homestead exemption placed their homes at risk of sale by a bankruptcy trustee (if they tried to file a chapter 7 bankruptcy) or a state court creditor with a writ of execution.

The Michigan legislature recognized that the state had not modernized its bankruptcy exemptions to take into account the recent, rapid inflation in home and

car values. And, in the regular course of business, both the Michigan House and the Senate passed HB 4901, providing Michigan residents, especially seniors, widows and widowers, with the tools they need to get a fresh start.

Amici agree with Plaintiffs' briefing that the Michigan Constitution requires the presentment of these nine (9) enrolled and passed bills. As such, *Amici* urges the Court to:

1. Reverse the Court of Claims' Opinion and Order Granting in Part Defendants' Countermotion for Summary Disposition by:

- A. Holding that the Senate is entitled to mandamus;
- B. Remanding to the Court of Claims for reconsideration of its denial of permanent injunctive relief enforcing its declaratory judgment by either:

- i. Ordering Clerk of the House Starr to present the nine bills to the Governor; or, alternatively,
- ii. Ordering Clerk of the House Starr to deliver the nine bills to the Secretary of the Senate for presentment to the Governor;

2. Such other and further relief as the Court deems appropriate.

Respectfully submitted,

Dated: June 17, 2025

/s/Matthew J. Mason
Attorney for *Amici Curiae*

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CERTIFICATE OF SERVICE

I certify that on the date below, the foregoing document was served on all parties or their counsel of record through the MITrueFiling system:

Respectfully submitted,

Dated: June 17, 2025

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