No. 16-6603

IN THE

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

In re PHILIP C. BURKE and NEKOLIA S. BURKE,
Debtors.

RICHARD P. JAHN,
Trustee/Appellant,

– v. –

PHILIP C. BURKE; NEKOLIA S. BURKE,
Debtors/Appellees.

On Appeal from the United States District Court
For the Eastern District of Tennessee (No. 1:15-cv-00246)

BRIEF OF AMICI CURIAE NATIONAL ASSOCIATION OF CONSUMER BANKRUPTCY ATTORNEYS AND NATIONAL CONSUMER BANKRUPTCY RIGHTS CENTER IN SUPPORT OF APPELLEES AND SEEKING AFFIRMANCE OF THE DISTRICT COURT'S DECISION

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January 5, 2017

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Jahn v. Burke, et al., No. 16-6603

Pursuant to Fed. R. App. P. 26.1, Amicus Curiae, the ***National Consumer Bankruptcy Rights Center***, makes the following disclosure:

1) For non-governmental corporate parties please list all parent corporations. **NONE.**

2) For non-governmental corporate parties please list all publicly held companies that hold 10% or more of the party's stock. **NONE.**

3) If there is a publicly held corporation which is not a party to the proceeding before this Court but which has a financial interest in the outcome of the proceeding, please identify all such parties and specify the nature of the financial interest or interests. **NONE.**

This 14th day of February 2017.

s/ Tara Twomey
Tara Twomey, Esq.
Attorney for Amici Curiae

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This 14th day of February 2017.

s/ Tara Twomey
Tara Twomey, Esq.
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STATEMENT OF INTEREST OF AMICI CURIAE

NCBRC is a nonprofit organization dedicated to preserving the bankruptcy rights of consumer debtors and protecting the bankruptcy system's integrity. 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 in the appellate process. NCBRC files *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.

NACBA is a nonprofit organization of approximately 3,000 consumer bankruptcy attorneys nationwide. NACBA advocates nationally on 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, NACBA and its membership have a vital interest in the outcome of this case. The ability to exit bankruptcy with property that was fully exempted, especially a home, is a key part of the fresh start that is a fundamental goal of bankruptcy. Any issue concerning the nature and extent of a trustee's power to sell such property is of great significance to all such debtors, who seek a "fresh start"

with the expectation that this property will be available for their use during and after the bankruptcy process.

AUTHORSHIP AND FUNDING OF AMICI BRIEF

Pursuant to Fed. R. App. P. 29(c)(5), no counsel for a party authored this brief in whole or in part, and no person or entity other than NACBA, its members, NCBRC, and their counsel made any monetary contribution toward the preparation or submission of this brief.

CONSENT

The parties have consented to the filing of this amicus brief.

SUMMARY OF ARGUMENT

The long-established practice in Chapter 7 bankruptcy proceedings is that assets providing no (or only nominal) value to the estate are abandoned back to debtors. If the trustee does not abandon such property voluntarily, then debtors, as parties in interest, can move the court to compel abandonment. There is little controversy about this practice, which furthers the efficient administration of the estate, and facilitates debtors' fresh starts by allowing them to retain certain exempt assets.

Trustee's approach turns this entrenched practice on its head. The bankruptcy court here explicitly found that the Burke's home was of inconsequential value to the bankruptcy estate, and should be abandoned. Nevertheless, Trustee insists that the Burke family should be evicted from their home in hopes that he can sell the property for a significant gain sometime in the future. There is no statutory authority for Trustee to take this action that even he concedes is unprecedented. Even more concerning, Trustee suggests that debtors should be denied the ability to seek abandonment of estate property pursuant to section 554 of the Bankruptcy Code. This proposal is based on the remarkable (and mistaken) belief that debtors like the Burkes do not have a stake in their own housing, and therefore have no standing to pursue abandonment.

This Court should not ratify Trustee's unprecedented actions, and should

affirm the decisions of the courts below. Debtors, and their attorneys, should be able to rely on established bankruptcy procedure when deciding whether to proceed with a Chapter 7 filing. Should Trustee have his way, the deeply-rooted practice of abandonment would be disrupted, creating great uncertainty as to how bankruptcy would affect important assets such as homes. The harshest effects of this disruption would fall on those debtors who can ill afford to risk their housing.

ARGUMENT

I. Abandonment Is Proper In Cases, Such As This One, Where The Court Finds The Value Of The Asset To Be Nominal.

A. The Abandonment Of Nominal Assets.

"Abandonment is the release from the debtor's estate of property previously included in that estate." *Midlantic Nat'l Bank v. N.J. Dep't of Envtl. Prot.*, 474 U.S. 494, 508 (1986) (Rehnquist, J., dissenting) (internal citations and quotations omitted). The concept of abandonment, now codified in the Bankruptcy Code, derives from the common law practice barring asset sales that would not result in distribution to creditors. *See, e.g.*, *Hoehn v. McIntosh*, 110 F.2d 199, 203 (6th Cir. 1940); *see also* Pub. L. No. 95-598, 92 Stat. 2549, 2603 (1978) (enacting 11 U.S.C. § 554). Indeed, it is now "almost universally recognized that where the estate has no equity in a property, abandonment is virtually always appropriate because no unsecured creditor could benefit from the administration." *In re Feinstein Family*

Pshp., 247 B.R. 502, 507 (Bankr. M.D. Fla. 2000); *see also In re Barfield*, No. 11-72074, 2015 Bankr. LEXIS 270, at *22 (Bankr. C.D. Ill. Jan. 29, 2015); *In re Jaussi*, 488 B.R. 456, 458-59 (Bankr. D. Colo. 2013); *In re Covington*, 368 B.R. 38, 41 (Bankr. E.D. Cal. 2006); *In re Rambo*, 297 B.R. 418, 433 (Bankr. E.D. Pa. 2003) ("Where property is of inconsequential value to the estate, abandonment under § 554, rather than sale under § 363, is the proper course."); *In re Ayers*, 137 B.R. 397, 400 (Bankr. D. Mont. 1992); *In re Cunningham,* 48 B.R. 509, 514 (Bankr. M.D. Tenn. 1985).

The abandonment, rather than sale, of fully encumbered property by the estate serves several purposes. First and foremost, abandonment "serve[s] the overriding purpose of bankruptcy liquidation: the expeditious reduction of the debtor's property to money, for equitable distribution to creditors," because liquidating worthless assets would necessarily "slow[] the administration of the estate and drain[] its assets." *Midlantic*, 474 U.S. at 508 (Rehnquist, J., dissenting). In fact, the Chapter 7 "trustee's duty to expeditiously close the estate [is] his 'main' duty." *In re Riverside-Linden Inv. Co.*, 925 F.2d 320, 322 (9th Cir. 1991); *In re Dorn*, 167 B.R. 860, 865 (Bankr. S.D. Ohio 1994) ("there are two goals in the administration of chapter 7 cases, i.e., to administer nonexempt assets as expeditiously as possible for the benefit of creditors, and to provide a fresh start to debtors.").

Allowing trustees to sell fully encumbered assets invites self-dealing by less scrupulous trustees. History shows that this concern is far from hypothetical. As noted by this Court, in codifying the abandonment procedures in section 554,

> Congress was aware of the claim that formerly some trustees took burdensome or valueless property into the estate and sold it in order to increase their commissions. Some of the early cases condemned this particular practice in no uncertain terms, and decried the practice of selling burdensome or valueless property simply to obtain a fund for their own administrative expenses.

In re K.C. Machine & Tool Co., 816 F.2d 238, 246 (6th Cir. 1987); *see also In re KVN Corp.*, 514 B.R. 1, 7 (B.A.P. 9th Cir. 2014) (describing "past abuses"). Indeed, "[t]he existence of nominal asset cases, in which the bankruptcy system is operated primarily for the benefit of those operating it, has been one of the most frequently expressed criticisms" of the prior bankruptcy system. H. Rep. No. 95-595, at 94 (1977). Congress has thus encouraged the abandonment of nominal assets. 6 Collier on Bankruptcy ¶ 704.02[1] (16th ed.).

The procedure for abandoning property is found in section 554 of the Code. Citing this procedure, Trustee believes that he is the "only party authorized to abandon property." Appellant's Br. at 21, citing 11 U.S.C. § 554(a). This view distorts the abandonment process because it ignores subparagraph (b), which specifically allows the bankruptcy court to overrule a trustee's action, and compel abandonment of property. 11 U.S.C. § 554(b). Any "party in interest" can request the court to compel the trustee to abandon property. *Id*.

B. The Court's Valuation Of The Property Was Proper.

Much of Trustee's argument is premised on his apparent belief that the bankruptcy court incorrectly valued the debtors' home. Because the question of whether abandonment should be ordered largely turns on the value of a particular asset, this false premise should be addressed, and rejected, before evaluating Trustee's other arguments.

"Great deference is given to the bankruptcy court's fact-finding in determining value." *In re Hadley*, 561 B.R. 384, 2016 Bankr. LEXIS 4445, at *20 (B.A.P. 6th Cir. 2016). This wide deference arises from the long-held view that the "valuation of property is an inexact science and whatever method is used will only be an approximation and variance of opinion by two individuals does not establish a mistake in either." *Boyle v. Wells (In re Gustav Schaefer Co.)*, 103 F.2d 237, 242 (6th Cir. 1939). Bankruptcy courts therefore have broad discretion in weighing the credibility of competing appraisals, and making appropriate findings of fact. These valuations are only to be overturned if they are "clearly erroneous." *Hadley*, 2016 Bankr. LEXIS 4445, at *20.

Here, it cannot be said that the bankruptcy court's valuation of $108,000.00 was "clearly erroneous." While this number was supported by the appraisal of Joseph M. Ramirez, whose report the court found credible, Tr. 8/28/15, 8:16-17, it was also not far from the value of another appraisal, *id*. at 6:1, and consistent with

the testimony of the debtor himself, who is a home builder. *Id*. at 6:2. By contrast, Trustee did not submit any appraisals as evidence, and the court did not believe that the valuations submitted by Trustee took all necessary home repairs into account. *Id*. at 8:21-9:8.

Because there is no reason to doubt the court's valuation from the record, *amici* will present the below legal discussion assuming that any sale of the asset (valued at $108,000.00) would not create any meaningful benefit for the estate.

II. As Trustee Recognizes, Debtors Are Undeniably "Parties In Interest" That May Move The Court For Abandonment.

Having his valuations rejected by the bankruptcy court, Trustee makes the remarkable claim that debtors generally have no "personal stake" in whether they are evicted from their homes in the process of a coerced sale. This position is contradicted by Trustee's own reading of the Bankruptcy Code, as well as common sense.

A. The Text of Section 554 Clearly Allows Debtors To Seek Abandonment.

The Bankruptcy Code is clear that "[o]n request of a *party in interest* and after notice and hearing, the court may order the trustee to abandon any property of the estate… that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(b) (emphasis added). The term "party in interest" is a broad one, covering

"anyone who has a practical stake in the outcome of a case." *In re Morton*, 298 B.R. 301, 307 (B.A.P. 6th Cir. 2003) (quoting *In re Cowan*, 235 B.R. 912, 915 (Bankr. W.D. Mo. 1999)).

Not only does Trustee recognize that debtors are "parties in interest," Appellants Br. at 17, but he concedes that courts routinely allow debtors to pursue relief under Section 554. Appellants Br. at 22. Indeed, legal precedent unequivocally finds that "[t]he debtor is a 'party in interest' who may request abandonment of estate property." *Barletta v. Tedeschi*, 121 B.R. 669, 673 (N.D.N.Y. 1990); *see also In re Thompson*, 193 B.R. 83, 84 (D.D.C. 1994) (debtors are parties in interest entitled to object to abandonment). This practice makes sense because the debtor is normally the party to whom the property is abandoned, and thus clearly has a "practical stake" in abandonment decisions.

The cases relied upon by Trustee to support his argument that debtors cannot be "parties in interest" all involve different factual scenarios where the debtor did not have an actual stake in the outcome. For example, one case dealt with claims objections, not abandonment of estate property, and found that the debtor did not have standing to object to a creditor's claim because there would not be a distribution to the debtor even if his objection were sustained. *See In re Khan*, 2011 Bankr. LEXIS 3786, at *11 (Bankr. E.D. Tenn. Sep. 29, 2011). One of the authorities cited by *Khan* for this approach described the rationale for this rule:

> A chapter 7 debtor… is usually not a 'party in interest' with standing to object to claims. The success of his objection cannot affect him because the debtor receives a distribution only after all creditors have been paid in full, and an estate will rarely have enough assets to do even that.

In re Ulz, 401 B.R. 321, 328 (Bankr. N.D. Ill. 2009). Because an objection by the debtor in such a situation would only affect amounts distributed to creditors,[1] the debtor lacked a stake in prosecuting the objection in that case. However, the *Ulz* Court went on to note that a "debtor will have standing [] if there is a reasonable possibility of a surplus once all claims are paid." *Id*. at 328; *see also Khan*, *supra* at *12 (quoting *Ulz*, 401 B.R. at 328). The *Khan* Court recognized that debtors having a "stake" in the action continue to enjoy standing to assert their interests.

All of Trustee's cited authority adopts this same approach. Another example amongst these cases (common to several of them) is the situation where a debtor objects to the terms of an asset sale, even though it is not expected that the debtor will receive any benefit from the sale. *See In re Cormier*, 382 B.R. 377, 409-10 (Bankr. W.D. Mich. 2008) (debtor cannot object to sale unless there will be a surplus that would be distributed to debtor); *Lunan v. Jones (In re Lunan)*, 523 F. App'x 339, 340 (6th Cir. 2013) (same); *Cult Awareness Network, Inc. v. Martino*

[1] Depending on the nature of an objection, a creditor's claim could be denied in full, in which case the distribution would just go to different creditors altogether, or the claim could be reduced, in which case the pro rata distribution to the group of creditors would be rebalanced.

(In re Cult Awareness Network, Inc.), 151 F.3d 605, 608 (7th Cir. 1998) (same). Obviously, if the debtor's objection to a sale only affects payments to creditors, and confers no benefit to the debtor, then the debtor simply has no basis to assert an objection.

By illustrating these situations when debtors lack a "personal stake," these cases in many ways reinforce the Debtors' concrete interest in abandonment in this context. After all, "the debtor is, in a very real sense, the beneficiary of abandonment." *In re Drost*, 228 B.R. 208, 210 (Bankr. N.D. Ind. 1998).[2] Here, the Debtors will either keep there home, or it will be sold by the Trustee. That beneficial interest is surely sufficient to give debtors a stake in the outcome of an abandonment motion.

B. Debtors Likewise Have Standing To Pursue Abandonment As A Form Of Relief.

In order to escape the straightforward text of section 554, Trustee makes the tortured argument that the term "party in interest" is different from Article III standing, and that the debtors lack such standing. Appellant's Br. at 17-19. Although Trustee's brief relies heavily on this purported distinction, he does not

[2] Trustee cites one additional case that is beside the point. *See In re Jones*, 545 B.R. 778, 782-83 (Bankr. N.D. Ga. 2016). The *Jones* case did not address whether the debtor had an "interest," but instead focused on the question of whether the trustee was required to pay the debtor in full for his exemption claim of $9,309 against estate assets that sold for only $2,700. *Id*.

explain what the difference actually is, and why an "interest" for purposes of section 554 would be different than the stake required for Article III standing.

In any event, assuming that there is some difference between the standards, it is clear that debtors seeking abandonment would pass any of the various iterations of Article III standing. In its simplest formulation, "the standing question is whether the plaintiff has 'alleged such a personal stake in the outcome of the controversy' as to warrant his invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his behalf." *Warth v. Seldin*, 422 U.S. 490, 498-99 (1975); *see also Allstate Ins. Co. v. Thrifty Rent-A-Car Sys.*, 249 F.3d 450, 457 (6th Cir. 2001) ("plaintiff must demonstrate a personal stake in the resolution of the controversy").

It simply cannot be disputed that the debtors here have a "personal stake" in the outcome of their abandonment motion. The central question raised by the Debtors is whether their home will remain with the estate, or will go back to them. If the Debtors succeed in compelling abandonment, the Debtors receive the property. If abandonment efforts fail, the property remains with the estate. Clearly, this determination gives the Debtors a "personal stake" in the outcome of the abandonment motion, as it affects whether the Burkes will remain in their

home after the close of their bankruptcy case. There is no clearer "personal stake" than retaining one's home.[3]

Trustee's challenge to the Debtors' standing largely takes three forms – each one of which fails. First, Trustee's characterization of the Debtor's requested relief as speculative is a non-starter. *See* Appellant's Br. at 23; *see also id*. at 19. As Trustee sees it, "[u]ntil an abandonment order had been entered, the Burkes lacked standing to maintain an action pertaining to the property," and "[w]hether abandonment will occur is [] speculative." *Id*. In other words, Trustee argues that the debtors cannot seek abandonment until the property has actually been abandoned. Amici has been unable to find a single case supporting the circular notion that litigants lack standing until they have already received the requested relief.[4] Even beyond this circular rationale, Trustee's approach is in direct conflict of Article III standing jurisprudence, as it suggests that courts should only decide controversies once they become moot.

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[3] This analysis also fits easily into the standard three-prong standing test, requiring injury-in-fact, causation, and redressability. *See Phillips v. DeWine*, 841 F.3d 405, 414 (6th Cir. 2016). The unwarranted sale of debtors' home would clearly be an injury, caused by the trustee's actions, and redressable by the court through abandonment proceedings.

[4] The cases cited by Trustee in this argument involve entirely different legal questions. For example, the case of *In re Jones* involved whether debtors had standing to pursue a legal claim that had not been abandoned by the estate. 396 B.R. 638, 646-48 (Bankr. W.D. Pa. 2008). The court did not discuss a debtor's standing to seek abandonment itself. *Id*.

Second, Trustee attempts to assert that he can moot any request for abandonment simply by paying the debtors' exemption. Not only does Trustee fail to provide any authority directly approving this approach, but the Supreme Court has recently rejected similar mootness arguments. "A case becomes moot [] only when it is impossible for a court to grant any effectual relief whatever to the prevailing party. As long as the parties have a concrete interest, however small, in the outcome of the litigation, the case is not moot." *Campbell-Ewald Co. v. Gomez*, 136 S. Ct. 663, 669 (2016) (internal citations and quotations omitted). *Campbell-Ewald* involved a Rule 68 offer, which, like the attempted tender here, purported to offer complete relief to a party. Applying contract principles, the Supreme Court decided that the plaintiff's mere rejection of the offer was sufficient to keep his controversy alive. *Id*. at 670-71 ("with no settlement offer still operative, the parties remained adverse; both retained the same stake in the litigation they had at the outset").

If anything, this context presents an even weaker case for mootness because Trustee's attempted tender only purported to pay the debtor's exemption, and did not even offer the complete relief sought by the debtors: abandonment and the ability to remain in their home after their bankruptcy case concluded. Accepting the tender itself even has the potential to inflict significant hardship on the Burke family, who would presumably incur moving expenses that will surely diminish

the value of the tender. Even beyond these monetary concerns, the way the litigants depict the Burke's living situation makes it appear that a forced move could be quite disruptive. As the litigants describe, the Burke family consists of three children, one of whom "was experiencing substantial mental health complications that had included a recent hospitalization," Appellees' Br. at 7, and they "had no place to go" if evicted from their home. Appellant's Br. at 4. This potential hardship created by Trustee's tender could be avoided if the debtors obtain relief on their requested abandonment. As succinctly described by the bankruptcy court here, "the trustee overlooks the fact that, even if is true that the debtors hold no interest in the property following the tender, if they were to prevail on their motion, the estate's interest would revest in the debtors." Tr. 8/28/15, 3:16-19.

Third, Trustee creates out of whole cloth an additional element for Article III standing – one that he dubs "statutory standing." Under this proposed requirement for standing, "[i]n order to invoke the statute, you must be the person the statute is intended to protect." Appellant's Br. at 19 (citing *Phillips*, 841 F.3d at 414.) It is not exactly clear where Trustee gets this "fourth element," but the *Phillips* Court certainly did not establish it. The *Phillips* Court found that prison inmates lacked standing to challenge the constitutionality of a state statute that did not regulate their conduct. 841 F.3d at 414-15. Contrary to Trustee's suggestion, *Phillips* did

not rule that standing requires a statutory source that is both expressly and intentionally designed to confer standing upon a particular litigant. Even if this "fourth element" of standing existed, as shown above, debtors clearly meet the statutory definition of "party in interest." *See Drost*, 228 B.R. at 210 ("the debtor is, in a very real sense, the beneficiary of abandonment.").

In the end, when debtors seek the abandonment of property back to them, their property interests are at stake: the property either comes back to the debtor or not. That interest in the outcome is clearly sufficient to give them standing to seek abandonment.

III. Trustees Do Not Have Authority To Evict Debtors In Hopes Of A Future Property Transaction.

Entirely separate from his standing argument, Trustee raises the misguided argument that he was entitled to evict the debtors from their home in anticipation of a future sale simply by paying their homestead exemption. Trustee even concedes that he "has not located a case where this was done before a sale." Appellant's Br. at 24 n.3.

The powers and duties of a Chapter 7 trustee are defined by the Bankruptcy Code. Section 704 delineates the Chapter 7 trustee's duties, while the trustee's powers are found in various other sections. *See, e.g.*, 11 U.S.C. §§ 544-549 (avoidance powers of trustee). None of these enumerated powers suggest that a

trustee can defeat the purpose of the exemption or evict debtors before the sale of their property by simply tendering the value of the exemption.

Armed with neither statutory text nor precedent, Trustee largely turns to dicta from the Seventh Circuit to support his tactic. The case of *In re Szekely* analyzed whether Chapter 7 debtors must pay rent to the trustee, to be deducted out of the final payment of their homestead exemption. 936 F.2d 897, 898-99 (7th Cir. 1991). In ruling that debtors were not obliged to pay rent to the trustee, the *Szekely* Court opined that the trustee could just pay the value of the homestead exemption "and tell them to skedaddle." *Id*., at 902. The cases cited by Trustee that have followed *Szekely* have all similarly involved the rent question. See *In re Payne,* 512 B.R.421 (Bankr. E.D. N.Y. 2014) (same); *In re Rolfes,* 307 B.R. 59 (Bankr. E.D. Tenn. 2004). Not a single one of them reviews whether it was proper for a trustee to tell debtors "skedaddle."

Historically, the purpose of exemption law has always been to allow debtors to keep those items of property, such as a home or car, deemed essential to daily life. In the bankruptcy context, exemptions serve the overriding purpose of helping the debtor to obtain a fresh start by maintaining essential property necessary to build a new life. *See* H.R. Rep. No. 95-595, at 117 (1977) (purpose of this scheme is to provide "adequate exemptions and other protections to ensure that bankruptcy will provide a fresh start."); *Rousey v. Jacoway*, 544 U.S. 320, 322,

325 (2005). This purpose would be eviscerated if Trustee could simply take all the debtor's property and give them the dollar value of the exemption.

There is also a notable distinction between this case and *Szekely*: this case implicates Tennessee's homestead exemption, while the ultimate holding in *Szekely* was expressly limited to the Illinois homestead exemption. *Szekely*, 936 F.2d at 903 ("We hold that the homestead exemption in Illinois entitles the debtor to remain in his home rent free until he receives the cash value of the exemption."). This difference is important because, despite Trustee's reading of the Tennessee exemption, it expressly exempts the asset itself, not just the debtor's interest in that asset.

The text of the exemption statute "determine[s] whether the statute exempts the asset or an interest therein." *Mwangi v. Wells Fargo Bank, N.A. (In re Mwangi)*, 764 F.3d 1168, 1175 (9th Cir. 2014). The *Mwangi* case involved a Nevada statute that exempted "[f]or any workweek, 75 percent of the disposable earnings of a judgment debtor during that week." *Id*. at 1175 n.2 (quoting Nevada Revised Statutes § 21.090(1)(g)). Although the exemption had its limits, the *Mwangi* Court found that the asset was exempted because "[o]n its face, § 21.090(1)(g) defines the property that the debtor is authorized to exempt as the asset itself, i.e., disposable earnings." *Id*. at 1176. The exemption scheme at play in this case similarly entitles a debtor "to a homestead exemption upon real

property which is owned by the individual and used by the individual or the individual's spouse or dependent, as a principal place of residence." Tenn. Code Ann. § 26-2-301. As in *Mwangi*, there may be limits to that exemption, but the exemption expressly applied to the asset itself: "real property which is owned by the individual." Because the Tennessee statute exempts the asset itself, rather than just a specific dollar value of the debtor's interest, Trustee cannot diminish the exemption simply by tendering a specific dollar amount.

CONCLUSION

For the reasons stated above, *amici curiae* ask this court to affirm the decision of the district court.

Respectfully submitted,

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1. This brief complies with the type-volume limitation of Fed. R. App. P. 29(d) and 6th Cir. R. 29(a)(2)(5) because this brief contains 4,368 words, excluding parts exempted by Fed. R. App. P. 32(a)(7)(B)(iii).

2. This filing complies with Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point type.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Sixth Circuit by using the appellate CM/ECF system on February 14, 2017. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

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