Exemption Stacking in Montana Bankruptcies—"Windfall" or "Fresh Start"?

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NOTE

EXEMPTION STACKING IN MONTANA BANKRUPTCIES—“WINDFALL” OR “FRESH START”?

Brady M. Peterson*

“Neither a borrower nor a lender be.”

I. INTRODUCTION

Although Lord Polonius’ advice to Laertes in Hamlet may be sound, it is not often followed in today’s world. Borrowing and lending continue at record rates. Consequences have followed these patterns. In 2002, there were 4062 bankruptcy filings in Montana, and 1,577,651 nationally.

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1. WILLIAM SHAKESPEARE, THE TRAGEDY OF HAMLET, PRINCE OF DENMARK act 1, sc. 3.
Congress and state legislatures have enacted laws that provide a roadmap for consistent treatment of debtors in bankruptcy proceedings. The United States Bankruptcy Court for the District of Montana has consistently applied Montana law to property exemptions in a bankruptcy proceeding. However, in *In re Zimmerman* the Montana Supreme Court ignored precedent and state legislative action. The court based its holding on a cursory review of the applicable statute, and created a change in Montana's bankruptcy exemption scheme that should have been reserved for legislative action.

This note discusses the Montana Supreme Court's inconsistent holding from *In re Zimmerman* that joint debtors may “stack” their exemptions in a jointly held piece of property. Part II gives a brief overview of exemptions, joint bankruptcy petitions, and exemption stacking. Part III traces stacking jurisprudence from the United States Bankruptcy Court for the District of Montana, with specific attention to holdings dealing with § 25-13-609. Part IV reviews Montana Supreme Court jurisprudence dealing with § 25-13-609, including *Zimmerman*. Part V proposes a possible solution to the now murky law of exemption stacking in Montana.

II. EXEMPTIONS AND “STACKING”

This section discusses bankruptcy exemptions in federal and Montana law. It further provides a definition and historical background of exemption “stacking.”

A. Property Exemptions in Bankruptcy

Exemptions are a crucial part of bankruptcy law. The protection of exempt assets from creditor claims is a fundamental component of a debtor's “fresh start.” However, a fair process is also needed to protect creditor interests.

2003).

5. 2002 MT 90, 309 Mont. 337, 46 P.3d 599.
6. *Id.* ¶ 16.
address these two seemingly opposite goals, the federal government enacted 11 U.S.C. § 522 which allows debtors to exempt property from the bankruptcy estate, subject to value limitations. The Bankruptcy Code also gives states the option to "opt-out" of the federal exemption scheme, and a majority have enacted their own separate exemption statutes. Montana is one of those states. The Montana Constitution requires that "[t]he Legislature shall enact liberal homestead and exemption laws." In accordance with this mandate, title 31, chapter 2, part 106 of the Montana Code "opts out" of the federal exemption provisions and instead provides a "laundry list" of available exemptions found throughout the Montana Code, involving everything from the homestead to proceeds received from hail insurance.

10. Id. § 522(d).
11. Id. § 522(b)(1).
12. COLLIER ON BANKRUPTCY, supra note 8, at § 522.02[1] n.3. COLLIER lists 34 states that have prohibited bankruptcy petitioners in their state from using the Federal exemptions under 11 U.S.C. § 522(d). They are Alabama, Arizona, California, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Mississippi, Missouri, Montana, Nebraska, Nevada, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Utah, Virginia, West Virginia, and Wyoming. See also Brown, supra note 8, at 151 n.11.
14. MONT. CONST. art. XIII, § 5.
15. As this note will deal extensively with different code sections, title 31, chapter 2, part 106 of the Montana Code will hereinafter be referred to by the short form § 31-2-106.
16. "The basis for providing the debtor with a variety of exemptions is to prevent the debtor and his or her dependents from becoming public charges." In re Glass, 164 B.R. 759, 764 (B.A.P. 9th Cir. 1994) (citing In re Neal, 140 B.R. 634, 636 (Bankr. W.D. Tex. 1992)).
17. The complete list of available exemptions under MONT. CODE ANN. § 31-2-106 are:
   (2) the individual's right to receive unemployment compensation and unemployment benefits; and
   (3) the individual's right to receive benefits from or interest in a private or governmental retirement, pension, stock bonus, profit-sharing, annuity, or similar plan or contract on account of illness, disability, death, age, or length of service.
claims. Also included in the § 31-2-106 list is title 25, chapter 13, part 609 of the Montana Code, which grants exemptions subject to value limitations for personal property. Some of the personal property exemptions mentioned in the statute are for household furnishings, clothing, a motor vehicle, tools of the trade, and unmatured life insurance contracts. Many of these Montana personal property exemptions correspond with the personal property exemptions found in 11 U.S.C. § 522(d).

Congress has provided that § 522 applies separately to each debtor in a joint case. Thus, each debtor receives a separate set of property exemptions under the federal exemption scheme. However, neither § 31-2-106 nor § 25-13-609 specifically authorizes each debtor to receive a separate set of personal property exemptions in a joint bankruptcy case in Montana. The Montana Supreme Court gave this authorization through its holding in the recent case In re Zimmerman.

22. All of the exemptions in § 25-13-609 of the Montana Code are listed as follows:
   (1) the judgment debtor's interest, not to exceed $4,500 in aggregate value, to the extent of a value not exceeding $600 in any time of property, in household furnishings and goods, appliances, jewelry, wearing apparel, books, firearms and other sporting goods, animals, feed, crops, and musical instruments;
   (2) the judgment debtor's interest, not to exceed $2,500 in value, in one motor vehicle;
   the judgment debtor's interest, not to exceed $3,000 in aggregate value, in any implements, professional books, and tools, of the trade of the judgment debtor or a dependent of the judgment debtor; and
   (3) the judgment debtor's interest, not to exceed $4,000 in value, in any unmatured life insurance contracts owned by the judgment debtor.
26. Id. ¶ 18. Montana Code Annotated § 31-2-106 states "an individual" may claim the exemptions referenced in the section, but does not refer specifically to the case of joint debtors. The Montana Supreme Court in Zimmerman used the AMERICAN HERITAGE DICTIONARY to define "individual" as a "single human." Zimmerman, ¶ 12. Therefore, the Court found that the statute granted any single human the exemptions listed in the statute regardless of whether the Bankruptcy petition listed single or joint debtors. Thus, in the view of the Court, each individual would be entitled to claim the listed exemptions in §31-2-106. However, one may argue with the Montana Supreme Court's usage of the AMERICAN HERITAGE DICTIONARY instead of other dictionaries of choice. For example, while BLACK'S LAW DICTIONARY defines "individual" as "of or relating to a single person or thing, as opposed to a group," it further defines "individual" as "existing as an indivisible entity." BLACK'S LAW DICTIONARY 777 (7th ed. 1999). Therefore, one could also argue that "individual" could refer to joint debtors as an
addition to allowing joint debtors to each receive a separate set of exemptions, the court held that when each debtor maintains an interest in jointly held personal property, each may claim a separate exemption and "stack" those exemptions on one piece of property.27

B. Bankruptcy Exemption “Stacking”

When a husband and wife file a joint bankruptcy petition, a bankruptcy estate is created for each individual.28 The bankruptcy estate "consists of all the interests in property, legal and equitable, possessed by the debtor at the time of filing, as well as those interests recovered or recoverable through transfer and lien avoidance provisions."29 The federal code and some state codes entitle each individual debtor to claim a separate set of exemptions for his or her respective bankruptcy estate.30 "Stacking" occurs when each bankruptcy estate uses these separate exemptions on one jointly held piece of property, essentially doubling the exemption on that piece of property.

Exemption stacking has taken several forms throughout history. Prior to the Bankruptcy Amendments and Federal Judgeship Act of 1984, joint debtors could elect to use either federal or applicable state exemptions.31 One spouse could use the federal exemptions, while the other could use the state exemptions.32 The joint debtors could then stack these exemptions on jointly held pieces of property. However, the 1984 Bankruptcy Amendments prohibited this practice by providing that debtors may not elect to exempt both property described in the federal § 522(d) exemptions and other property described in state or other permitted exemption statutes.33 This amendment along with subsequent cases clarified that federal-

27. Zimmerman, ¶ 16.
32. Id.
state exemption stacking is prohibited.\textsuperscript{34}

Exemption stacking can also result from the use of “wild card” provisions.\textsuperscript{35} If a debtor has already claimed the maximum exemption permitted in certain property, many states allow a debtor to exempt a certain amount of “any other property.”\textsuperscript{36} First, the debtor exempts an amount of property under the relevant provision of an exemption statute (e.g., an automobile). If the exemption amount is not sufficient to cover the debtor’s entire equity in that piece of property, the debtor may then exempt any remaining equity by virtue of the “wild card” provision contained in an exemption statute.\textsuperscript{37}

An Illinois case, \textit{In re Barker},\textsuperscript{38} provides an example of “wild card” stacking. Barker filed bankruptcy, and listed an exemption of $1,200 in a 1979 Oldsmobile Toronado under the applicable personal property statute.\textsuperscript{39} Barker also listed the remaining $1,022.72 of equity in the motor vehicle as exempt under the “wild card” provision of the personal property exemption statute.\textsuperscript{40} The court recognized that the statute was ambiguous as to whether one could stack the “wild card” exemption on other exemptions available for pieces of personal property.\textsuperscript{41} It then examined the legislative history surrounding the enactment of the exemption statute, and further found that personal property exemptions should be liberally construed to protect debtors.\textsuperscript{42} In accordance with this liberal construction, the court allowed the debtor to stack the “wild card” exemption

\textsuperscript{34} Franck, \textit{supra} note 31, at 284. In \textit{In re Leys}, 49 B.R. 852 (Bankr. E.D. Wis. 1985), joint debtors filed a bankruptcy petition that claimed one exemption in their residence through Wisconsin state statutes and another under 11 U.S.C. § 522(d)(1). \textit{Leys}, 49 B.R. at 852. In so doing, the petitioners attempted to exempt the entire amount of equity in the property by stacking state and federal exemptions. \textit{Id.} Instead of deciding whether this type of stacking was permitted, the court resolved the case through application of the state statute. \textit{Id.} at 853-54. However, the court stated in dicta that it was unlikely that the use of both federal and state exemptions would ever be an issue because of the 1984 Amendments’ prohibition of the use of both Federal and state exemption schemes. \textit{Id.} at 854 n.6.


\textsuperscript{37} See, eg., \textit{In re Barker}, 768 F.2d 191, 196 n.5 (7th Cir. 1985).

\textsuperscript{38} \textit{Id.}

\textsuperscript{39} \textit{Id.} at 192.

\textsuperscript{40} \textit{Id.}

\textsuperscript{41} \textit{Id.} at 195.

\textsuperscript{42} \textit{Id.} at 196.
on the motor vehicle exemption, thereby completely exempting it from execution.\textsuperscript{43}

While different methods of "stacking" may or may not be allowed, the practice of "[a]llowing debtors to shield expensive property economically harms creditors, obviously is not consistent with debt repayment, and appears to abuse the spirit of bankruptcy policy."\textsuperscript{44} Approving the use of stacking seems to support the policy of shielding more expensive assets. It is this same property that can provide something of value to offset the losses a creditor will incur in the bankruptcy process. The \textit{Barker} case provides a prime example: instead of using the remaining equity in the motor vehicle to pay creditor claims, exemption stacking allowed the debtor to shield the asset from execution.

Further, different opinions on stacking between jurisdictions creates disparate treatment of debtors from state to state. The United States Constitution mandates Congress to enact \textit{uniform} bankruptcy laws,\textsuperscript{45} yet each state's ability to "opt-out"\textsuperscript{46} of the federal exemption scheme creates disharmony as allowable exemption values differ greatly from state to state,\textsuperscript{47} and bankruptcy courts must then interpret whether these differing state exemption statutes permit stacking. While the United States Supreme Court has not found the option for the states to enact their own exemption laws unconstitutional,\textsuperscript{48} the uniformity mandate seems to be suspect because of the ability to "opt-out" and resulting differences in interpretation of state exemption statutes.

\textsuperscript{43} Id.

\textsuperscript{44} A. Mechele Dickerson, \textit{Lifestyles of the Not-So-Rich or Famous: The Role of Choice and Sacrifice in Bankruptcy}, 45 \textit{BUFF. L. REV.} 629, 681 (1997).

\textsuperscript{45} U.S. CONST. art. I, § 8, cl. 4.


\textsuperscript{47} The most striking example of differing exemptions may be the unlimited homestead exemption provisions of Florida when compared with Delaware, where no homestead exemption is permitted. Wells M. Engledow, \textit{Cleaning up the Pigsty: Approaching a Consensus on Exemption Laws}, 74 AM. BANKR. L.J. 275, 276 (2000).

\textsuperscript{48} In \textit{Owen v. Owen}, the Supreme Court stated that "[n]othing in subsection (b) (or elsewhere in the Code) limits a state's power to restrict the scope of its exemptions; indeed, it could theoretically accord no exemptions at all." 500 U.S. 305, 308 (1991). \textit{COLLIER ON BANKRUPTCY} recognizes "[w]hile this statement is dicta in the decision, it clearly reflects the Court's view of the scope of a state's power both to opt out of the federal exemption system of section 522(d), and to limit dramatically its own citizens' exemption rights." \textit{Supra} note 8, at § 522.02.
III. "Stacking" in the Montana Bankruptcy Court

The United States Bankruptcy Court for the District of Montana has had many occasions to consider debtor arguments advocating the allowance of exemption stacking. Most stacking litigation has focused on exemptions contained in the first three subparts of § 25-13-609, namely exemptions in personal property, motor vehicles, and business property.49

A. 609(1)—"Wildcard" Exemption Stacking

The Montana Bankruptcy Court judicially created a Montana "wildcard" exemption in In re Mutchler.50 In Mutchler, the court stated that the phrase "in any property" from § 25-13-609(1) created an exemption in any item of property up to the statutory $600 limitation, because exemption statutes are to be construed liberally and this interpretation was consistent with allowing a "fresh start" for the debtors.51

However, the court forbade the use of "wildcard provisions" to increase the exemption in a single item of property in In re Neutgens.52 Debtors listed two motor vehicles and three pieces of farm equipment as exempt under § 25-13-609(3).53 The court disallowed the exemptions as claimed. Instead, the court allowed exemptions for only one piece of farm equipment under the § 25-13-609(3)(c) tools of the trade exemption, and allowed a $1,200 exemption in one motor vehicle under § 25-13-609(2).54 The court also noted that the debtors could claim a $600

50. 95 B.R. 748 (Bankr. Mont. 1989). However, the Montana wildcard exemption has now been specifically disallowed in the case In re Siegle, 257 B.R. 591 (Bankr. Mont. 2001). While the Siegle court recognized the policy that exemption laws should be construed liberally, it also recognized that a court's primary objective is to implement legislative intent. By reviewing the different clauses and punctuation patterns of § 25-13-609, the court found that the $4,500 amount was meant to set the aggregate value of items that could be exempted in all categories listed in the statute, while the $600 value "in any item of property" set the limitation on the items in each category listed in the statute. The court took note that the Montana code did not have a corresponding exemption to the Federal "wildcard exemption" found in section 522(d)(5), while several other parts of § 25-13-609 did have corresponding exemptions in section 522. It also noted the inaction of the Montana Legislature in clarifying whether a "wildcard exemption" existed. Thus, while recognizing the policy of liberally construing exemption laws, the court found that a plain meaning reading of the statute led to the conclusion that no wildcard exemption exists under § 25-13-609(1). Id. at 598-99.
53. Id.
54. Id. at 93.
wildcard exemption in any item of property, but specifically forbade stacking the wildcard exemption on any one item.\footnote{Id.}

\section*{B. The 609(2) Motor Vehicle Exemption—A Case Study in "Stacking"}

Montana debtors have made almost every conceivable argument to allow stacking of the motor vehicle exemption. Four separate cases illustrate the principal arguments Montana joint debtors have made for exemption stacking. The factual situations are similar in that joint debtors each claimed an exemption in one jointly owned motor vehicle. In each case the bankruptcy trustee argued that exemption stacking should not be permitted.

The first Montana bankruptcy case dealing with the motor vehicle exception was \textit{In re Miller}.\footnote{6 Mont. B.R. 96 (1988).} Joint debtors argued that § 25-13-609(2) and 11 U.S.C § 522(m) entitled each debtor to a $1,200 exemption in a jointly owned vehicle.\footnote{Id.} The court found that Montana exemptions did not have to be given separately to each debtor because the Montana code did not contain specific authorization for each debtor to receive a separate set of exemptions in a joint case.\footnote{Id. at 97.} The court further held that although the statute referred to "judgment debtor" in the singular, the definition should apply to joint judgment debtors because of statutory definitional rules.\footnote{Id. at 98.} Thus, the court sustained the objection of the trustee, and allowed only one exemption of $1,200 in a single motor vehicle.\footnote{This holding was reaffirmed in \textit{In re Ripper}, 14 Mont. B.R. 525 (1995).}

In 1991, the Montana Bankruptcy Court decided \textit{In re Arnold},\footnote{10 Mont. B.R. 170 (1991).} where joint debtors each claimed an exemption of $1,200 in \textit{separate} vehicles.\footnote{Id. at 171.} The trustee argued that joint debtors could only exempt $1,200 in one motor vehicle between them.\footnote{Id.} The court found that each judgment debtor in a joint case could claim a $1,200 motor vehicle exemption because § 25-13-609(2) allows a "judgment debtor" a $1,200 exemption in one
motor vehicle.\textsuperscript{64} Although the court permitted each debtor to claim a separate motor vehicle exemption, it did not authorize stacking both exemptions in one jointly held motor vehicle.

In 1996, in \textit{In re Grove},\textsuperscript{65} joint debtors each claimed a $1,200 motor vehicle exemption in the same 1992 Chevrolet Cavalier.\textsuperscript{66} The court reaffirmed that joint debtors who are co-owners of a motor vehicle are entitled to exempt only $1,200 in one motor vehicle.\textsuperscript{67} In addition to reiterating the \textit{Miller} holding, the court further addressed the relationship of the parties as co-owners of the property. The court stated that whether debtors hold a motor vehicle as joint tenants with right of survivorship or as tenants in common, each tenant enjoys the right to possession and use of the vehicle during their lives.\textsuperscript{68} The court deemed that the "judgment debtor's interest" in the vehicle consisted of the tenants' joint possession and use.\textsuperscript{69} This joint interest was then subject to the exemption limit of $1,200.\textsuperscript{70}

Finally, in the case \textit{In re Garvin},\textsuperscript{71} the court addressed the debtors' argument that previous Montana bankruptcy case law was inconsistent and not supported by statutory authority.\textsuperscript{72} The court first reviewed the history of the automobile exemption in Montana. It concluded joint debtors in Montana bankruptcies are subject to the exemption limitation in § 25-13-609(2), and should not be allowed to each claim a motor vehicle exemption in a jointly held vehicle.\textsuperscript{73} The court presumed that the Montana Legislature was familiar with the allowance of separate exemptions for debtors under 11 U.S.C. § 522(m).\textsuperscript{74} The court felt it was not appropriate to "redraft the statutes to render it more grammatically correct or more to the Court's personal predilection."\textsuperscript{75} However, the court also implored the legislature to clarify the exemption laws under § 25-13-609.\textsuperscript{76}

\textsuperscript{64} \textit{Arnold}, 10 Mont. B.R. at 176.
\textsuperscript{65} 15 Mont. B.R. 131 (1996).
\textsuperscript{66} \textit{Id.}
\textsuperscript{67} \textit{Id.} at 133.
\textsuperscript{68} \textit{Id.}
\textsuperscript{69} \textit{Id.}
\textsuperscript{70} \textit{Id.}
\textsuperscript{71} 262 B.R. 529 (Bankr. Mont. 2001).
\textsuperscript{72} \textit{Id.} at 532.
\textsuperscript{73} \textit{Id.} at 533.
\textsuperscript{74} \textit{Id.}
\textsuperscript{75} \textit{Id.} (quoting Atwell v. Merit Systems Protection Bd., 670 F.2d 272, 286 (D.C. Cir. 1981)).
\textsuperscript{76} \textit{In re Garvin}, 262 B.R. at 534.
Throughout this thirteen-year span, the Montana Bankruptcy Court consistently interpreted § 25-13-609(2) and followed its own precedent when examining motor vehicle exemption stacking. While joint debtors could each claim an exemption in a separate motor vehicle, they could not stack that exemption on a jointly held motor vehicle. The Montana Legislature never altered this consistent holding through any statutory amendment. Until the Montana Supreme Court's decision in Zimmerman, the law in Montana regarding exemptions remained well-delineated with respect to the motor vehicle exemption in § 25-13-609(2).

C. Tools of the Trade “Stacking”—The Legislature Speaks

The Montana Bankruptcy Court permitted stacking the "tools of the trade" exemption of § 25-13-609(3) in two separate cases between 1987 and 1989. The Montana Legislature subsequently amended the statute in order to disallow stacking. The following discussion traces these two cases and the subsequent legislative amendment.

In In re Cabrera, the Montana Bankruptcy Court considered the $3,000 value limitation of exemptions under § 25-13-609(3). The statute at that time read as follows:

A judgment debtor is entitled to exemption from execution of the following:

(3) the judgment debtor's interest, not to exceed $3,000 in value, in:

(a) any implements;

(b) professional books; or

(c) tools of the trade of the judgment debtor or a dependent of the judgment debtor...

The debtor argued he could exempt $3,000 in each of the listed categories. The Small Business Administration

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80. Id. at 305.
82. Cabrera, 96 B.R. at 305.
83. The Cabrera decision arose as a result of the debtor's motion to avoid a lien on some business property. The Small Business Administration (SBA) was the lienholder, thus they acted as the opposing party in this decision.
responded that $3,000 was an aggregate value limitation. The court emphasized the disjunctive structure of the list and permitted a $3,000 limitation in each category.

In In re Mutchler, the court revisited the question of whether a debtor could exempt up to $3,000 in each category of property under § 25-13-609(3). The court reiterated its finding that the subsection did not expressly indicate $3,000 as an aggregate number. Therefore, the debtor could exempt up to $3,000 in each of the listed categories and stack the “tools of the trade” exemption.

In 1989, Senate Bill 135 amended § 25-13-609(3) to read in pertinent part:

A judgment debtor is entitled to exemption from execution of the following: . . .

(3) the judgment debtor's interest, not to exceed $3,000 in aggregate value, in any implements, professional books, and tools, of the trade of the judgment debtor or a dependent of the judgment debtor. . . .

Senator Mike Halligan, the sponsor of the amending bill, stated the bill was “a result of some district court decisions on bankruptcy.” Further testimony on the bill confirms this. Through the 1989 statutory amendment, the Montana Legislature changed the statute to apply to the aggregate amount in order to disallow the “stacking” approved by the Montana Bankruptcy Court in Cabrera and Mutchler, thereby indicating its intent as to the ability to stack an exemption for personal property.

84. Cabrera, 96 B.R. at 305.
85. Id.
86. 95 B.R. 748 (Bankr. Mont. 1989).
87. Id. at 756.
88. Id. While the court permitted “tools of the trade” exemption stacking, it disallowed personal property exemption stacking under § 25-13-609(1) because the statute indicated that $4,500 of personal property was an aggregate amount. The court instead found that each joint debtor could exempt different personal property items up to $600 with the total of all exempt items totaling $4,500. Mutchler, 95 B.R. at 754-55.
89. 1989 Mont. Laws 130.
91. The Montana Credit Unions League had been involved with both the study and hearings that ultimately led to the final version of § 25-13-609 in 1987. Bob Pyfer, representing the Montana Credit Unions League, stated that “SB 135 clarifies the original intent” of the Legislature when enacting § 25-13-609. Minutes, supra note 90, at 2. Ralph Kirscher, now the current Bankruptcy Judge for the U.S. District of Montana, also testified in favor of the amendments because “interpretations by Judge Peterson indicated that the current statute is stacked so the $3,000 can be used for each subclassification.” Id.
implements, professional books, and tools.

IV. THE MONTANA SUPREME COURT’S INCONSISTENT TREATMENT OF § 25-13-609

The Montana Supreme Court has addressed § 25-13-609 in four separate cases since its enactment in 1987.92 Only two are relevant to this note.93 A comparison of the two relevant cases illustrates the shift in policy in Zimmerman.

In In re Estate of Sandvig,94 the Montana Supreme Court specifically focused on the motor vehicle exemption under § 25-13-609(2). A couple had filed for bankruptcy protection and had listed the husband’s truck as their exempt vehicle, but had neglected to list any exemption in an old Model A Ford that was part of an estate to which the couple was heir.95

The Sandvig court recognized that the underlying purpose of the Montana exemption scheme is to strike a balance between the debtor’s need to maintain a livelihood and the creditor’s ability to collect money.96 The court stated the statute granted an exemption in only one motor vehicle and did not authorize an exemption in all of the couple’s motor vehicles.97 The couple had elected to exempt the husband’s vehicle.98 The court concluded that “granting an additional election would create a windfall for appellants.”99

The most recent Montana Supreme Court case dealing with

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93. The two cases not relevant to this note are Berry v. Seman and Dorwart v. Caraway. Berry decided whether an appeal was properly perfected from Justice Court to District Court. § 25-13-609 was used to determine that the motor vehicle exemption made a pledged motor vehicle insufficient surety to allow pursuit of the appeal. Dorwart treated the issue of whether property should have been exempted from a sheriff’s levy, and whether the property exemption was a protected property right under the U.S and Montana Constitutions. Dorwart claimed that the sheriff levied on property exempt under § 25-13-609. While the Montana Supreme Court’s holding that the § 25-13-609 personal property exemptions are protected property rights is important, it is not critical to the analysis in this note.

95. Sandvig, 250 Mont. at 222, 819 P.2d at 185.
96. Id.
97. Sandvig, 250 Mont. at 223, 819 P.2d at 186.
98. Id.
99. Id.
§ 25-13-609 is *In re Zimmerman.*\(^{100}\) The United States Bankruptcy Court for the District of Montana presented seven certified questions concerning the first three subparts of § 25-13-609 to the Montana Supreme Court.\(^{101}\) In four separate bankruptcy proceedings,\(^{102}\) married couples filed joint bankruptcy petitions where each spouse claimed a separate set of personal property exemptions.\(^{103}\) The Bankruptcy Trustee objected, arguing that joint debtors should be limited to a single set of exemptions.\(^{104}\) The Bankruptcy Court consolidated the cases in order to certify the questions of law to the Montana

\(^{100}\) 2002 MT 90, 309 Mont. 337, 46 P.3d 599.
\(^{101}\) The certified questions were framed by the Bankruptcy Court as follows:
   1. Are married debtors entitled to only one set of exemptions under MCA § 25-13-609(1) in the several identified categories to an aggregate of $4,500, or is each debtor regardless of marriage, entitled to claim a separate set of exemptions in the identified categories?
   2. Does joint or individual ownership of the personal property identified in the categories described in MCA § 25-13-609(1) affect a debtor's ability to claim an exemption?
   3. If married debtors jointly own two (2) motor vehicles, may one debtor claim an exemption in one vehicle and may the other debtor claim an exemption in the other vehicle under MCA § 25-13-609(2)?
   4. If married debtors jointly own one motor vehicle, may each debtor claim an exemption of up to $2,500 in the one jointly owned vehicle under MCA § 25-13-609(2), for a potential total exemption of $5,000 in one motor vehicle?
   5. If married debtors individually own two (2) vehicles, may each debtor claim an exemption in his or her individually owned vehicle under MCA § 25-13-609(2)?
   6. Are married debtors entitled to only one set of exemptions under MCA § 25-13-609(3) in the three identified categories to an aggregate of $3,000, or is each debtor, regardless of marriage, entitled to claim a separate set of exemptions in the identified categories?
   7. Does joint or individual ownership of the personal property identified in the categories described in MCA § 25-13-609(3) affect a debtor's ability to claim an exemption?

*In re Zimmerman*, 19 Mont. B.R. 153, 153-54 (2001) (hereinafter *Certification Order*). However, these seven questions were reformulated by the Montana Supreme Court into two issues:

   1. May joint debtors in a bankruptcy proceeding each claim separate personal property exemptions under Montana law?
   2. May joint debtors in a bankruptcy proceeding each claim a separate exemption for a jointly owned item of personal property?

*Zimmerman*, 2002 MT 90, ¶¶ 4-5.

\(^{102}\) The *Certification Order* lists four joint debtors as having their cases consolidated for purposes of certifying questions of law to the Montana Supreme Court. However, the Montana Supreme Court decision lists only three joint debtors in the case heading. It is unknown to the author why four cases are listed as consolidated in the *Certification Order* and only three appear in the Montana Supreme Court decision.

\(^{103}\) *Certification Order*, 19 Mont. B.R. at 154-56.
\(^{104}\) *Zimmerman*, ¶ 2.
Supreme Court.\textsuperscript{105}

In \textit{In re Zimmerman},\textsuperscript{106} the Montana Supreme Court directly addressed whether joint debtors in a bankruptcy proceeding each may claim separate personal property exemptions under Montana law, and if so, whether they may each claim a separate exemption for a jointly owned item of property.\textsuperscript{107} The court first addressed whether each debtor in a joint proceeding was entitled to a separate set of exemptions. The trustee argued that Montana's bankruptcy exemption scheme was patterned after the federal provisions.\textsuperscript{108} The trustee asserted that the legislature's failure to enact a section similar to 11 U.S.C. § 522(m) indicated its intent to limit joint debtors to one set of exemptions.\textsuperscript{109}

The court instead found that the legislature intended to allow joint debtors separate sets of exemptions by simply referring to the language of the Montana statute.\textsuperscript{110} Using the AMERICAN HERITAGE DICTIONARY as a guide,\textsuperscript{111} the court found that each individual in a Montana joint bankruptcy proceeding may claim separate personal property exemptions.\textsuperscript{112} Holding that joint debtors each may claim separate exemptions is not controversial,\textsuperscript{113} because it follows federal treatment of exemptions in bankruptcy,\textsuperscript{114} the law of a majority of states,\textsuperscript{115} and Montana Bankruptcy Court precedent.\textsuperscript{116}

The \textit{Zimmerman} court then established that where each debtor maintains an interest in jointly held personal property, each may claim a separate exemption and stack those exemptions on that one piece of property.\textsuperscript{117} The court reasoned when two people jointly own a piece of property each person owns an equal share in that property.\textsuperscript{118} Thus, the court found that each debtor could claim a separate exemption on the piece

\footnotesize
\begin{enumerate}
\item \textsuperscript{105} Certification Order, 19 Mont. B.R. at 153.
\item \textsuperscript{106} 2002 MT 90, 309 Mont. 337, 46 P.3d 599.
\item \textsuperscript{107} Id. at ¶ 4-5.
\item \textsuperscript{108} Id. at ¶ 9.
\item \textsuperscript{109} Id.
\item \textsuperscript{110} Id. at ¶ 11.
\item \textsuperscript{111} See also supra text accompanying note 26.
\item \textsuperscript{112} Zimmerman, ¶ 18.
\item \textsuperscript{113} See discussion supra Part II.B.
\item \textsuperscript{114} See, eg, 11 U.S.C. § 522(m) (2000).
\item \textsuperscript{115} See also supra text accompanying note 12.
\item \textsuperscript{116} In re Arnold, 10 Mont. B.R. 170 (1991). See also discussion supra Part III.B.
\item \textsuperscript{117} Zimmerman, ¶ 16.
\item \textsuperscript{118} Id.
\end{enumerate}
of property. The stacking issue was not extensively briefed by the parties and the conclusion does not incorporate previous Montana precedent. A seemingly cursory review of the statute is probably not sufficient justification of the court's haphazard finding.

The Zimmerman holding directly conflicts with the statement from Sandvig that "granting an additional election would create a windfall for appellants." As some scholars have noted, exemption stacking may provide married debtors with an unduly large exemption at their creditor's expense. Under this reasoning exemption stacking goes beyond the "fresh start" envisioned by the Bankruptcy Code, and instead provides the debtors with a "running start."

The Montana Supreme Court has tipped the scales in favor of debtors when balancing "the debtor's need to maintain a livelihood through rehabilitation while doing as little damage as possible to the creditor's ability to collect money." The Zimmerman court effectively reversed thirteen years of consistent bankruptcy court precedent without any significant discussion. The Zimmerman court also ignored previous legislative action taken as a direct result of the Montana Bankruptcy Court ruling permitting tools of the trade exemption stacking under § 25-13-609(3).

The legislature indicated pursuant to its 1989 statutory amendment that it does not approve of stacking exemptions under Mont. Code Ann. § 25-13-609(3). It remains to be seen whether it will approve of the Montana Supreme Court's recent stacking authorization in Zimmerman. If the ability to stack exemptions amounts to a "windfall" to the debtors at the expense of the creditors, legislative action may soon follow.

V. A POSSIBLE SOLUTION TO THE "STACKING" CONUNDRUM

Imposing a fixed dollar cash allotment for debtors could grant debtors a "fresh start" and disallow a "windfall." One

119. Zimmerman, ¶16.
120. See Trustee's Brief, Zimmerman (No. 01-333) and Debtor's Opening Brief, Zimmerman (No. 01-333). While it is unknown what was said at oral argument surrounding the "stacking" of exemptions on one piece of property, neither brief submitted to the court dedicated significant discussion to the issue of "stacking."
121. Sandvig, 250 Mont. at 223, 819 P.2d at 186
122. See Engledow, supra note 47, at 315 n.208.
123. Sandvig, 250 Mont. at 222, 819 P.2d at 185.
124. See discussion supra Part III.C.
commentator suggested this alternative could create national uniformity and fairness with regards to bankruptcy exemptions, but it can also apply on the state level. A state could specify a specific cash allotment for an "individual debtor" and another for "joint debtors." By discontinuing the use of specific exemptions, each debtor could use the fixed dollar amount to exempt whatever that person chooses. After using that amount, everything else remaining in the bankruptcy estate would be applied to payment of creditors.

It is impossible for any legislature to separate bankruptcy laws from political, social and economic considerations. Competing interests of creditors and debtors create conflict in the bankruptcy arena. Although voters elect legislative representatives, creditor interests have been much more successful in lobbying efforts than any group of individual debtors. Thus, legislative exemption reform is often somewhat skewed in favor of the creditor.

Commentators suggest that the first determination a court should make when dealing with exemptions is whether the statute is ambiguous. The two separate courts charged with application of Montana bankruptcy exemption law each made this determination in In re Garvin and In re Zimmerman. Although the Montana Supreme Court's decision in Zimmerman stands as the definitive ruling, the holdings of the two courts were so different that legislative action is necessary to remedy the inconsistency.

If the legislature sets fixed dollar amounts for both individual and joint debtors, courts would not have to deal with questions of stacking and what constitutes a "windfall." A bright line rule would allow fair and simple disbursement of the

125. See Engledow, supra note 47, at 316.
126. See id.
127. See Brown, supra note 8, at 152.
128. See id.
129. See id. at 162.
130. As previously mentioned, The Montana Credit Unions League (a creditor organization) had been actively involved with both the study and hearings that ultimately crafted the final version of § 25-13-609 that was enacted in 1987. See supra text accompanying note 94.
131. See Dickerson, supra note 44, at 682.
133. 2002 MT 90, 309 Mont. 337, 46 P.3d 599.
134. The Montana Supreme Court is "the final authority on the legal weight to be given a presumption under Montana law." Sandstrom v. Montana, 442 U.S. 510, 516 (1979).
bankruptcy estate. Although this scheme may seem idealistic, its simplicity, efficiency, and fairness are worth pursuing to remedy the inconsistencies of Montana personal property exemption case law.

A fixed dollar allotment could be considered as permitting exemption stacking in a different form. While a fixed dollar allotment may allow complete exemption of a valuable motor vehicle or tool of the trade, the set allotment would also force debtors to choose which personal property items to exempt. Any personal property items that are not exempted would then be distributed to creditors in satisfaction of their claims against the bankruptcy estate. This process would strike a balance between the clear Montana constitutional mandate to “enact liberal exemption laws” and the need for a fair process for creditors.

VI. CONCLUSION

While the holding of the court in Zimmerman is not fatal to interests of all creditors in Montana, its generalized holding alters all future cases dealing with the issue of exemptions in Montana. The court’s holding that joint debtors may stack two exemptions in one item of jointly owned personal property creates a “windfall” that grants a “running start” to joint debtors.

Through the Zimmerman holding, the Montana Supreme Court has created a significant change in Montana exemption law. Previous Montana case law dealing with exemptions established the rule that one could not stack exemptions on jointly owned property. The Montana Legislature previously amended the statute to disallow exemption stacking when permitted by the court. Although exemptions should be liberally construed in favor of debtors, their application should not result in inequitable treatment of creditors. The Zimmerman court overstepped its bounds of interpretation by permitting debtors to stack personal property exemptions. Instead of considering consistent precedent and legislative action, the court cursorily reviewed the statutory language, and

136. See discussion supra Part III.B.
138. Title 3, chapter 2, part 204, subpart (3) of the Montana Code charges the Montana Supreme Court to “pass upon and determine all the questions of law involved in the case presented upon such appeal and necessary to the final determination of the case.”
significantly changed Montana’s bankruptcy exemption scheme. The Montana Legislature should now restore balance to the area of personal property exemptions in bankruptcy by adopting a bright line rule that will allow debtors a “fresh start,” but not a “windfall” at the expense of creditors.