SUPREME COURT OF THE UNITED STATES

No. 92–1370

BFP, PETITIONER *v.* RESOLUTION TRUST CORPORATION, AS RECEIVER OF IMPERIAL FEDERAL SAVINGS ASSOCIATION, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

[May 23, 1994]

JUSTICE SCALIA delivered the opinion of the Court.

This case presents the question whether the consideration received from a noncollusive, real estate mortgage foreclosure sale conducted in conformance with applicable state law conclusively satisfies the Bankruptcy Code's requirement that transfers of property by insolvent debtors within one year prior to the filing of a bankruptcy petition be in exchange for "a reasonably equivalent value." 11 U. S. C. §548(a)(2).

Petitioner BFP is a partnership, formed by Wayne and Marlene Pedersen and Russell Barton in 1987, for the purpose of buying a home in Newport Beach, California, from Sheldon and Ann Foreman. Petitioner took title subject to a first deed of trust in favor of Imperial Savings Association (Imperial)[1] to secure

[1]Respondent Resolution Trust Corporation (RTC) acts in this case as receiver of Imperial Federal Savings Association (Imperial Federal), which was organized pursuant to a June 22, 1990, order of the Director of the Office of Thrift Supervision, and into which RTC transferred certain assets and liabilities of Imperial. The Director

payment of a loan of $356,250 made to the Pedersens in connection with petitioner's acquisition of the home. Petitioner granted a second deed of trust to the Foremans as security for a $200,000 promissory note. Subsequently, Imperial, whose loan was not being serviced, entered a notice of default under the first deed of trust and scheduled a properly noticed foreclosure sale. The foreclosure proceedings were temporarily delayed by the filing of an involuntary bankruptcy petition on behalf of petitioner. After the dismissal of that petition in June 1989, Imperial's foreclosure proceeding was completed at a foreclosure sale on July 12, 1989. The home was purchased by respondent Paul Osborne for $433,000.

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previously had

appointed RTC as receiver of Imperial. For convenience we refer to all respondents other than RTC and Imperial as the private respondents.

In October 1989, petitioner filed for bankruptcy under Chapter 11 of the Bankruptcy Code, 11 U. S. C. §§1101–1174. Acting as a debtor in possession, petitioner filed a complaint in bankruptcy court seeking to set aside the conveyance of the home to respondent Osborne on the grounds that the foreclosure sale constituted a fraudulent transfer under §548 of the Code, 11 U. S. C. §548. Petitioner alleged that the home was actually worth over $725,000 at the time of the sale to Osborne. Acting on separate motions, the bankruptcy court dismissed the complaint as to the private respondents and granted summary judgment in favor of Imperial. The bankruptcy court found, *inter alia,* that the foreclosure sale had been conducted in compliance with California law and was neither collusive nor fraudulent. In an unpublished opinion, the District Court affirmed the bankruptcy court's granting of the private respondents' motion to dismiss. A divided bankruptcy appellate panel affirmed the bankruptcy court's entry of summary judgment for Imperial. 132 B. R. 748 (1991).

Applying the analysis set forth in *In re Madrid*, 21 B. R. 424 (Bkrtcy. App. Pan. CA9 1982), affirmed on other grounds, 725 F. 2d 1197 (CA9), cert. denied, 469 U. S. 833 (1984), the panel majority held that a "non-collusive and regularly conducted nonjudicial foreclosure sale . . . cannot be challenged as a fraudulent conveyance because the consideration received in such a sale establishes `reasonably equivalent value' as a matter of law." 132 B. R., at 750.

Petitioner sought review of both decisions in the Court of Appeals for the Ninth Circuit, which consolidated the appeals. The Court of Appeals affirmed. *In re BFP*, 974 F. 2d 1144 (1992). BFP filed a petition for certiorari, which we granted. 508 U. S. ___ (1993).

Section 548 of the Bankruptcy Code, 11 U. S. C. §548, sets forth the powers of a trustee in bankruptcy (or, in a Chapter 11 case, a debtor in possession) to avoid fraudulent transfers.[2] It permits to be set aside not only transfers infected by actual fraud but certain other transfers as well—so-called constructively fraudulent transfers. The constructive fraud provision at issue in this case applies to transfers by insolvent debtors. It permits avoidance if the trustee can establish (1) that the debtor had an interest in property; (2) that a transfer of that interest occurred within one year of the filing of the bankruptcy petition; (3) that the debtor was insolvent at the time of the transfer or became insolvent as a result thereof; and (4) that the debtor received "less than a reasonably equivalent value in exchange for such transfer." 11 U. S. C. §548(a)(2)(A). It is the last of these four elements that presents the issue in the case before us.

Section 548 applies to any "transfer," which

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[2]Title 11 U. S. C. §548 provides in relevant part:

"(a) The trustee may avoid any transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within one year before the date of the filing of the petition, if the debtor voluntarily or involuntarily—

"(1) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or

"(2)(A) received less than a reasonably equivalent value in exchange for such transfer or obligation; and

"(B)(i) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation . . . ."

includes “foreclosure of the debtor's equity of redemption.” 11 U. S. C. §101(54) (1988 ed., Supp. IV). Of the three critical terms “reasonably equivalent value,” only the last is defined: “value” means, for purposes of §548, “property, or satisfaction or securing of a . . . debt of the debtor,” 11 U. S. C. §548(d)(2)(A). The question presented here, therefore, is whether the amount of debt (to the first and second lien holders) satisfied at the foreclosure sale (viz., a total of $433,000) is “reasonably equivalent” to the worth of the real estate conveyed. The Courts of Appeals have divided on the meaning of those undefined terms. In *Durrett* v. *Washington Nat. Ins. Co.*, 621 F. 2d 201 (1980), the Fifth Circuit, interpreting a provision of the old Bankruptcy Act analogous to §548(a)(2), held that a foreclosure sale that yielded 57% of the property's fair market value could be set aside, and indicated in dicta that any such sale for less than 70% of fair market value should be invalidated. *Id.*, at 203–204. This “*Durrett* rule” has continued to be applied by some courts under §548 of the new Bankruptcy Code. See *In re Littleton*, 888 F. 2d 90, 92, n. 5 (CA11 1989). In *In re Bundles*, 856 F. 2d 815, 820 (1988), the Seventh Circuit rejected the *Durrett* rule in favor of a case-by-case, “all facts and circumstances” approach to the question of reasonably equivalent value, with a *rebuttable* presumption that the foreclosure sale price is sufficient to withstand attack under §548(a)(2). *Id.,* at 824–825; see also *In re Grissom*, 955 F. 2d 1440, 1445–1446 (CA11 1992). In this case the Ninth Circuit, agreeing with the Sixth Circuit, see *In re Winshall Settler's Trust*, 758 F. 2d 1136, 1139 (CA6 1985), adopted the position first put forward in *In re Madrid*, 21 B. R. 424 (Bkrtcy. App. Pan. CA9 1982), affirmed on other grounds, 725 F. 2d 1197 (CA9), cert. denied, 469 U. S. 833 (1984), that the consideration received at a noncollusive, regularly conducted real estate foreclosure sale constitutes a reasonably equivalent value under §548(a)(2)(A). The Court of Appeals acknowledged that it "necessarily part[ed] from the positions taken by the Fifth Circuit in *Durrett* . . . and the Seventh Circuit in *Bundles*." 974 F. 2d, at 1148.

In contrast to the approach adopted by the Ninth Circuit in the present case, both *Durrett* and *Bundles* refer to fair market value as the benchmark against which determination of reasonably equivalent value is to be measured. In the context of an otherwise lawful mortgage foreclosure sale of real estate,[3] such reference is in our opinion not consistent with the text of the Bankruptcy Code. The term "fair market value," though it is a well-established concept, does not appear in §548. In contrast, §522, dealing with a debtor's exemptions, specifically provides that, for purposes of that section, "`value' means fair market value as of the date of the filing of the petition." 11 U. S. C. §522(a)(2). "Fair market value" also appears in the Code provision that defines the extent to which indebtedness with respect to an equity security is not forgiven for the purpose of determining whether the debtor's estate has realized taxable income. §346(j)(7)(B). Section 548, on the other hand, seemingly goes out of its way to avoid that standard term. It might readily have said "received less than fair market value in exchange for such transfer or obligation," or perhaps "less than a reasonable equivalent of fair market value." Instead, it used the (as far as we are aware) entirely novel phrase "reasonably equivalent value." "[I]t is generally presumed that Congress acts intentionally and purposely when it includes particular language in one section of a statute but omits it in another," *Chicago*

[3]We emphasize that our opinion today covers only mortgage foreclosures of real estate. The considerations bearing upon other foreclosures and forced sales (to satisfy tax liens, for example) may be different.

v. *Environmental Defense Fund*, 511 U. S. ___ (1994) (slip op., at 9) (internal quotation marks omitted), and that presumption is even stronger when the omission entails the replacement of standard legal terminology with a neologism. One must suspect the language means that fair market value cannot—or at least cannot *always*—be the benchmark.

That suspicion becomes a certitude when one considers that market value, as it is commonly understood, has no applicability in the forced-sale context; indeed, it is the very *antithesis* of forced-sale value. "The market value of . . . a piece of property is the price which it might be expected to bring if offered for sale in a fair market; not the price which might be obtained on a sale at public auction or a sale forced by the necessities of the owner, but such a price as would be fixed by negotiation and mutual agreement, after ample time to find a purchaser, as between a vendor who is willing (but not compelled) to sell and a purchaser who desires to buy but is not compelled to take the particular . . . piece of property." Black's Law Dictionary 971 (6th ed. 1990). In short, "fair market value" presumes market conditions that, by definition, simply do not obtain in the context of a forced sale. See, *e.g.*, *East Bay Municipal Utility District* v. *Kieffer*, 99 Cal. App. 240, 255, 278 P. 476, 482 (1929), overruled on other grounds by *County of San Diego* v. *Miller*, 13 Cal. 3d 684, 532 P. 2d 139 (1975) (in bank); *Nevada Nat. Leasing Co.* v. *Hereford*, 36 Cal. 3d 146, 152, 680 P. 2d 1077, 1080 (1984) (in bank); *Guardian Loan Co.* v *Early*, 47 N. Y. 2d 515, 521, 392 N. E. 2d 1240, 1244 (1979).

Neither petitioner, petitioner's *amici*, nor any federal court adopting the *Durrett* or the *Bundles* analysis has come to grips with this glaring discrepancy between the factors relevant to an appraisal of a property's market value, on the one hand, and the strictures of the foreclosure process on the other. Market value cannot be the criterion of equivalence in the foreclosure-sale context.[4] The language of §548(a)(2)(A) ("received less than a reasonably equivalent value in exchange") requires judicial inquiry into whether the foreclosed property was sold for a price that approximated its worth at the time of sale. An appraiser's reconstruction of "fair market value" could show what similar property would be worth if it did not have to be sold within the time and manner strictures of state-prescribed foreclosure. But property that *must* be sold within those strictures is simply *worth less*. No one would pay as much to own such property as he would pay to own real estate that could be sold at leisure and pursuant to normal marketing techniques. And it is no more realistic to ignore that characteristic of the property (the fact that state foreclosure law permits the mortgagee to sell it at forced sale) than it is to ignore other price-affecting characteristics (such as the fact that state zoning law permits the owner of the neighboring lot to open a gas station).[5] Absent a

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[4]Our discussion assumes that the phrase "reasonably equivalent" means "approximately equivalent," or "roughly equivalent." One could, we suppose, torture it into meaning "as close to equivalent as can reasonably be expected"—in which event even a vast divergence from equivalent value would be permissible so long as there is good reason for it. On such an analysis, fair market value *could* be the criterion of equivalence, even in a forced-sale context; the forced sale would be the reason why gross inequivalence is nonetheless reasonable equivalence. Such word-gaming would deprive the criterion of all meaning. If "reasonably equivalent value" means only "as close to equivalent value as is reasonable," the statute might as well have said "reasonably infinite value."

[5]We are baffled by the dissent's perception of a "patent" difference between zoning and foreclosure laws insofar as

clear statutory requirement to the contrary, we must assume the validity of this state-law regulatory background and take due account of its effect. "The existence and force and function of established institutions of local government are always in the consciousness of lawmakers and, while their weight may vary, they may never be completely overlooked in the task of interpretation." *Davies Warehouse Co.* v. *Bowles*, 321 U. S. 144, 154 (1944). Cf. *Gregory* v. *Ashcroft*, 501 U. S. ___, ___ (1991) (slip op., at 6–8).

There is another artificially constructed criterion we might look to instead of "fair market price." One might judge there to be such a thing as a "reasonable" or "fair" forced-sale price. Such a conviction must lie behind the *Bundles* inquiry into

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impact upon property value is concerned, *post*, at 10–11, n. 10. The only distinction we perceive is that the former constitute permanent restrictions upon use of the subject property, while the latter apply for a brief period of time and restrict only the manner of its sale. This difference says nothing about how significantly the respective regimes affect the property's value when they are operative. The dissent characterizes foreclosure rules as "merely procedural," and asserts that this renders them, unlike "substantive" zoning regulations, irrelevant in bankruptcy. We are not sure we agree with the characterization. But in any event, the cases relied on for this distinction all address creditors' attempts to claim the benefit of state rules of law (whether procedural or substantive) as property rights, in a bankruptcy proceeding. See *United Savings Assn. of Texas* v. *Timbers of Inwood Forest Associates, Ltd.*, 484 U. S. 365, 370–371 (1988); *Owen* v. *Owen*, 500 U. S. 305, 313 (1991); *United States* v. *Whiting Pools, Inc.*, 462 U. S. 198, 206–207, and nn. 14, 15 (1983). None of them declares or even intimates that state laws, procedural or otherwise, are irrelevant to prebankruptcy valuation questions such as that presented by §548(a)(2)(A).

whether the state foreclosure proceedings "were calculated . . . to return to the debtor-mortgagor his equity in the property." 856 F. 2d, at 824. And perhaps that is what the courts that follow the *Durrett* rule have in mind when they select 70% of fair market value as the outer limit of "reasonably equivalent value" for forecloseable property (we have no idea where else such an arbitrary percentage could have come from). The problem is that such judgments represent policy determinations which the Bankruptcy Code gives us no apparent authority to make. How closely the price received in a forced sale is likely to approximate fair market value depends upon the terms of the forced sale—how quickly it may be made, what sort of public notice must be given, etc. But the terms for foreclosure sale are not *standard*. They vary considerably from State to State, depending upon, among other things, how the particular State values the divergent interests of debtor and creditor. To specify a federal "reasonable" foreclosure-sale price is to extend federal bankruptcy law well beyond the traditional field of fraudulent transfers, into realms of policy where it has not ventured before. Some sense of history is needed to appreciate this.

The modern law of fraudulent transfers had its origin in the Statute of 13 Elizabeth, which invalidated "covinous and fraudulent" transfers designed "to delay, hinder or defraud creditors and others." 13 Eliz., ch. 5 (1570). English courts soon developed the doctrine of "badges of fraud": proof by a creditor of certain objective facts (for example, a transfer to a close relative, a secret transfer, a transfer of title without transfer of possession, or grossly inadequate consideration) would raise a rebuttable presumption of actual fraudulent intent. See *Twyne's Case*, 3 Coke Rep. 80b, 76 Eng. Rep. 809 (K.B. 1601); O. Bump, Fraudulent Conveyances: A Treatise upon Conveyances Made by Debtors to

Defraud Creditors 31–60 (3d ed. 1882). Every American bankruptcy law has incorporated a fraudulent transfer provision; the 1898 Act specifically adopted the language of the Statute of 13 Elizabeth. Bankruptcy Act of July 1, 1898, ch. 541, §67(e), 30 Stat. 564–565.

The history of foreclosure law also begins in England, where courts of chancery developed the "equity of redemption"—the equitable right of a borrower to buy back, or redeem, property conveyed as security by paying the secured debt on a later date than "law day," the original due date. The courts' continued expansion of the period of redemption left lenders in a quandary, since title to forfeited property could remain clouded for years after law day. To meet this problem, courts created the equitable remedy of foreclosure: after a certain date the lender would be forever foreclosed from exercising his equity of redemption. This remedy was called strict foreclosure because the borrower's entire interest in the property was forfeited, regardless of any accumulated equity. See G. Glenn, 1 Mortgages 3–18, 358–362, 395–406 (1943); G. Osborne, Mortgages 144 (2d ed. 1970). The next major change took place in 19th century America, with the development of foreclosure by sale (with the surplus over the debt refunded to the debtor) as a means of avoiding the draconian consequences of strict foreclosure. Osborne, *supra*, at 661–663; Glenn, *supra*, at 460–462, 622. Since then, the States have created diverse networks of judicially and legislatively crafted rules governing the foreclosure process, to achieve what each of them considers the proper balance between the needs of lenders and borrowers. All States permit judicial foreclosure, conducted under direct judicial oversight; about half of the States also permit foreclosure by exercising a private power of sale provided in the mortgage documents. See Zinman, Houle, & Weiss, Fraudulent Transfers According to Alden, Gross and Borowitz: A

Tale of Two Circuits, 39 Bus. Law. 977, 1004–1005 (1984). Foreclosure laws typically require notice to the defaulting borrower, a substantial lead time before the commencement of foreclosure proceedings, publication of a notice of sale, and strict adherence to prescribed bidding rules and auction procedures. Many States require that the auction be conducted by a government official, and some forbid the property to be sold for less than a specified fraction of a mandatory presale fair-market-value appraisal. See *id.*, at 1002, 1004–1005; Osborne, *supra*, at 683, 733–735; G. Osborne, G. Nelson, & D. Whitman, Real Estate Finance Law 9, 446–447, 475–477 (1979). When these procedures have been followed, however, it is "black letter" law that mere inadequacy of the foreclosure sale price is no basis for setting the sale aside, though it may be set aside (*under state foreclosure law*, rather than fraudulent transfer law) if the price is so low as to "shock the conscience or raise a presumption of fraud or unfairness." Osborne, Nelson, & Whitman, *supra*, at 469; see also *Gelfert* v. *National City Bank of New York*, 313 U. S. 221, 232 (1941); *Ballentyne* v. *Smith*, 205 U. S. 285, 290 (1907).

Fraudulent transfer law and foreclosure law enjoyed over 400 years of peaceful coexistence in Anglo-American jurisprudence until the Fifth Circuit's unprecedented 1980 decision in *Durrett*. To our knowledge no prior decision had ever applied the "grossly inadequate price" badge of fraud under fraudulent transfer law to set aside a foreclosure sale.[6] To say that the "reasonably equivalent value" language in the fraudulent transfer provision of the Bankruptcy Code requires a foreclosure sale to yield a

[6]The only case cited by *Durrett* in support of its extension of fraudulent transfer doctrine, *Schafer* v. *Hammond*, 456 F. 2d 15 (CA10 1972), involved a direct sale, not a foreclosure.

certain minimum price beyond what state foreclosure law requires, is to say, in essence, that the Code has adopted *Durrett* or *Bundles*. Surely Congress has the power pursuant to its constitutional grant of authority over bankruptcy, U. S. Const., Art. I, § 8, cl. 4, to disrupt the ancient harmony that foreclosure law and fraudulent-conveyance law, those two pillars of debtor-creditor jurisprudence, have heretofore enjoyed. But absent clearer textual guidance than the phrase "reasonably equivalent value"—a phrase entirely compatible with pre-existing practice—we will not presume such a radical departure. See *United Savings Assn. of Texas* v. *Timbers of Inwood Forest Associates, Ltd.*, 484 U. S. 365, 380 (1988); *Midlantic Nat. Bank* v. *New Jersey Dept. of Environmental Protection*, 474 U. S. 494, 501 (1986); cf. *United States* v. *Texas*, 507 U. S. ___, ___ (1993) (slip op., at 4) (statutes that invade common law must be read with presumption favoring retention of long-established principles absent evident statutory purpose to the contrary).[7]

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[7]We are unpersuaded by petitioner's argument that the 1984 amendments to the Bankruptcy Code codified the *Durrett* Rule. Those amendments expanded the definition of "transfer" to include "foreclosure of the debtor's equity of redemption," 11 U. S. C. §101(54) (1988 ed., Supp. IV), and added the words "voluntarily or involuntarily" as modifiers of the term "transfer" in §548(a). The first of these provisions establishes that foreclosure sales fall within the general definition of "transfers" that may be avoided under several statutory provisions, including (but not limited to) §548. See §522(h) (transfers of exempt property), §544 (transfers voidable under state law), §547 (preferential transfers), §549 (postpetition transfers). The second of them establishes that a transfer may be avoided as fraudulent even if it was against the debtor's will. See *In re Madrid*, 725 F. 2d 1197, 1199 (CA9 1984) (pre-amendment decision holding that a foreclosure sale

Federal statutes impinging upon important state interests "cannot . . . be construed without regard to the implications of our dual system of government. . . . [W]hen the Federal Government takes over . . . local radiations in the vast network of our national economic enterprise and thereby radically readjusts the balance of state and national authority, those charged with the duty of legislating [must be] reasonably explicit." F. Frankfurter, Some Reflections on the Reading of Statutes, 47 Colum. L. Rev. 527, 539–540 (1947), quoted in *Kelly* v. *Robinson*, 479 U. S. 36, 49–50 n. 11 (1986). It is beyond question that an essential state interest is at issue here: we have said that "the general welfare of society is involved in the security of the titles to real estate" and the power to ensure that security "inheres in the very nature of [state] government." *American Land Co.* v. *Zeiss*, 219 U. S. 47, 60 (1911). Nor is there any doubt that the interpretation urged by petitioner would have a profound effect upon that interest: the title of every piece of realty purchased at foreclosure would be under a federally created cloud. (Already, title insurers have reacted to the *Durrett* rule by including specially crafted exceptions from

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is not a "transfer" under §548). Neither of these consequences has any bearing upon the meaning of "reasonably equivalent value" in the context of a foreclosure sale.

Nor does our reading render these amendments "superfluous," as the dissent contends, *post*, at 8. Prior to 1984, it was at least open to question whether §548 could be used to invalidate even a *collusive* foreclosure sale, see *Madrid*, 725 F. 2d, at 1204 (Farris, J., concurring). It is no superfluity for Congress to clarify what had been at best unclear, which is what it did here by making the provision apply to involuntary as well as voluntary transfers and by including foreclosures within the definition of "transfer." See *infra*, at 14–15.

coverage in many policies issued for properties purchased at foreclosure sales. See, *e. g.*, L. Cherkis & L. King, Collier Real Estate Transactions and the Bankruptcy Code 5–18 to 5–19 (1992).) To displace traditional State regulation in such a manner, the federal statutory purpose must be “clear and manifest,” *English* v. *General Electric Co.*, 496 U. S. 72, 79 (1990). Cf. *Gregory* v. *Ashcroft*, 501 U. S., at ___ (1991) (slip op., at 7).[8] Otherwise, the Bankruptcy Code will be construed to adopt, rather than to displace, pre-existing state law. See *Kelly*, *supra*, at 49; *Butner* v. *United States*, 440 U. S. 48, 54–55 (1979); *Vanston Bondholders Protective Comm.* v. *Green*, 329 U. S. 156, 171 (1946) (Frankfurter, J., concurring).

For the reasons described, we decline to read the phrase “reasonably equivalent value” in §548(a)(2) to mean, in its application to mortgage foreclosure sales, either “fair market value” or “fair foreclosure price” (whether calculated as a percentage of fair market value or otherwise). We deem, as the law has always deemed, that a fair and proper price, or a “reasonably equivalent value,” for foreclosed property, is the price in fact received at the foreclosure sale, so long as all the requirements of the State's foreclosure law have been complied with.

This conclusion does not render §548(a)(2) superfluous, since the “reasonably equivalent value”

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[8]The dissent criticizes our partial reliance on *Gregory* because the States' authority to “defin[e] and adjus[t] the relations between debtors and creditors . . . [cannot] fairly be called essential to their independence.” *Post*, at 18–19, n. 17 (internal quotations omitted). This ignores the fact that it is not state authority over debtor-creditor law *in general* that is at stake in this case, but the essential sovereign interest in the security and stability of title to land. See *American Land Co.* v. *Zeiss*, 219 U. S. 47, 60 (1911).

criterion will continue to have independent meaning (ordinarily a meaning similar to fair market value) outside the foreclosure context. Indeed, §548(a)(2) will even continue to be an exclusive means of invalidating some foreclosure sales. Although *collusive* foreclosure sales are likely subject to attack under §548(a)(1), which authorizes the trustee to avoid transfers “made . . . with actual intent to hinder, delay, or defraud” creditors, that provision may not reach foreclosure sales that, while not intentionally fraudulent, nevertheless fail to comply with all governing state laws. Cf. 4 L. King, Collier on Bankruptcy ¶548.02, p. 548–35 (15th ed. 1993) (contrasting subsections (a)(1) and (a)(2)(A) of §548). Any irregularity in the conduct of the sale that would permit judicial invalidation of the sale under applicable state law deprives the sale price of its conclusive force under §548(a)(2)(A), and the transfer may be avoided if the price received was not reasonably equivalent to the property's actual value at the time of the sale (which we think would be the price that would have been received if the foreclosure sale had proceeded according to law).

A few words may be added in general response to the dissent. We have no quarrel with the dissent's assertion that where the “meaning of the Bankruptcy Code's text is itself clear,” *post*, at 19, its operation is unimpeded by contrary state law or prior practice. Nor do we contend that Congress must override historical state practice “expressly or not at all,” *Ibid*. The Bankruptcy Code can of course override by implication when the implication is unambiguous. But where the intent to override is doubtful, our federal system demands deference to long established traditions of state regulation.

The dissent's insistence that here no doubt exists—

that our reading of the statute is "in derogation of the *straightforward language* used by Congress," *post*, at 1 (emphasis added)—does not withstand scrutiny. The problem is not that we disagree with the dissent's proffered "plain meaning" of §548(a)(2)(A) ("the bankruptcy court must compare the price received by the insolvent debtor and the worth of the item when sold and set aside the transfer if the former was substantially (`[un]reasonabl[y]') `less than' the latter," *post*, at 4–5)—which indeed echoes our own framing of the question presented ("whether the amount of debt . . . satisfied at the foreclosure sale . . . is `reasonably equivalent' to the worth of the real estate conveyed," *supra*, at 4). There is no doubt that this provision directs an inquiry into the relationship of the value received by the debtor to the worth of the property transferred. The problem, however, as any "ordinary speaker of English would have no difficulty grasping," *post*, at 4, is that this highly generalized reformulation of the "plain meaning" of "reasonably equivalent value" continues to leave unanswered the one question central to this case, wherein the ambiguity lies: *What is a foreclosed property worth?* Obviously, until that is determined, we cannot know whether the value received in exchange for foreclosed property is "reasonably equivalent." We have considered three (not, as the dissent insists, only two, see *post*, at 1) possible answers to this question—fair market value, *supra*, at 5–8, reasonable forced-sale price, *supra*, at 8, and the foreclosure sale price itself—and have settled on the last. We would have expected the dissent to opt for one of the other two, or perhaps even to concoct a fourth; but one searches JUSTICE SOUTER'S opinion in vain for any alternative response to the question of the transferred property's worth. Instead, the dissent simply reiterates the "single meaning" of "reasonably equivalent value" (with which we entirely agree): "a court should discern the `value' of the property transferred and determine whether the price paid was, under the circumstances, `less than reasonabl[e].'" *Post*, at 11–12. Well and good. But what *is* the "value"? The dissent has no response, evidently thinking that, in order to establish that the law is clear, it suffices to show that "the eminent sense of the natural reading," *post*, at 18, provides an unanswered question.

Instead of answering the question, the dissent gives us hope that someone else will answer it, exhorting us "to believe that [bankruptcy courts], familiar with these cases (and with local conditions) as we are not, will give ["reasonably equivalent value"] sensible content in evaluating particular transfers on foreclosure." *Post*, at 13. While we share the dissent's confidence in the capabilities of the United States Bankruptcy Courts, it is the proper function of *this* Court to give "sensible content" to the provisions of the United States Code. It is surely the case that bankruptcy "courts regularly make . . . determinations about the `reasonably equivalent value' of assets transferred through other means than foreclosure sales," *Ibid*. But in the vast majority of those cases, they can refer to the traditional common-law notion of fair market value as the benchmark. As we have demonstrated, this generally useful concept simply has no application in the foreclosure-sale context, *supra*, at 5–8.

Although the dissent's conception of what constitutes a property's "value" is unclear, it does *seem* to take account of the fact that the property is subject to forced sale. The dissent refers, for example, to a reasonable price "under the circumstances," *post*, at 12, and to the "worth of the item *when sold*," *post*, at 4 (emphasis added). But just as we are never told how the broader question of a property's "worth" is to be answered, neither are we informed how the lesser included inquiry into the impact of forced sale is to be conducted. Once again, we are called upon to have faith that bankruptcy courts will be able to determine whether a property's foreclosure sale price falls unreasonably short of its "optimal value," *post*, at 12, whatever that may be. This, the dissent tells us, is the statute's plain meaning.

We take issue with the dissent's characterization of our interpretation as carving out an "exception" for foreclosure sales, *post*, at 1, or as giving "two different and inconsistent meanings," *post*, at 10, to "reasonably equivalent value." As we have emphasized, the inquiry under §548(a)(2)(A)—whether the debtor has received value that is substantially comparable to the worth of the transferred property—is the same for all transfers. But as we have also explained, the fact that a piece of property is legally subject to forced sale, like any other fact bearing upon the property's use or alienability, necessarily affects its worth. *Unlike* most other legal restrictions, however, foreclosure has the effect of completely redefining the market in which the property is offered for sale; normal free-market rules of exchange are replaced by the far more restrictive rules governing forced sales. Given this altered reality, and the concomitant inutility of the normal tool for determining what property is worth (fair market value), the only legitimate evidence of the property's value at the time it is sold is the foreclosure sale price itself.

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For the foregoing reasons, the judgment of the Court of Appeals for the Ninth Circuit is

Affirmed.