No. 20-1004

In The

Supreme Court of the United States

October Term, 2020

IN RE EARL THOMAS PETTY,

Debtor,

WILDFLOWERS COMMUNITY BANK,

Petitioner,

v.

EARL THOMAS PETTY,

Respondent.

On Writ of Certiorari to

the United States Court of Appeals

For the Thirteenth Circuit

BRIEF FOR RESPONDENT

10R
Counsel for Respondent

Oral Argument Requested

QUESTIONS PRESENTED

I. Does 11 U.S.C. § 362 impliedly repeal the Federal Arbitration Act, 9 U.S.C. § 1 *et seq.*, such that a valid prepetition arbitration agreement between the parties may be superseded by a bankruptcy court's authority to determine violations of the automatic stay and resulting damages?

II. Absent an order extending the automatic stay, when an individual debtor files two bankruptcy petitions within one year and the first is dismissed, does the stay terminate under 11 U.S.C. § 362(c)(3)(A) against the bankruptcy estate thirty days after the later filing?

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The Thirteenth Circuit Court of Appeals' decision is available at No. 19-0805 and reprinted at Record 2 (hereinafter "R."). The bankruptcy court decided in favor of Earl Thomas Petty. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed in favor of Earl Thomas Petty.

STATEMENT OF JURISDICTION

The formal statement of jurisdiction is waived pursuant to Competition Rule VIII.

STATUTES INVOLVED

The constitutional and statutory provisions excerpted below are relevant in determining this case. Provisions from titles 9 and 11 are restated in full in Appendices A and B.

U.S. Const. art. I, § 8, cl. 4 provides:

> The Congress shall have Power to...establish...uniform Laws on the subject of Bankruptcies throughout the United States;

The relevant portion of 9 U.S.C. § 2 provides:

> A written provision in...an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract;

The relevant portion of 11 U.S.C. § 362(c) provides:

> (c) Except as provided in subsections (d), (e), (f), and (h) of this section--
>
> (3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)--
>
> (A) the stay under subsection (a) with respect to any action taken with respect to a debt or property

> securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case.

The relevant portion of 28 U.S.C. § 157 provides:

> (b)
>
> (1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.
>
> (2) Core proceedings include, but are not limited to—
>
> (A) matters concerning the administration of the estate;
>
> (B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;
>
> (C) counterclaims by the estate against persons filing claims against the estate;
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> (D) orders in respect to obtaining credit;
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> (E) orders to turn over property of the estate;
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> (F) proceedings to determine, avoid, or recover preferences;
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> (G) motions to terminate, annul, or modify the automatic stay;
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> (H) proceedings to determine, avoid, or recover fraudulent conveyances;
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> (I) determinations as to the dischargeability of particular debts;
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> (J) objections to discharges;
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> (K) determinations of the validity, extent, or priority of liens;
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> (L) confirmations of plans;
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> (M) orders approving the use or lease of property, including the use of cash collateral;
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> (N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;

> (O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and
>
> (P) recognition of foreign proceedings and other matters under chapter 15 of title 11.
>
> (3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.
>
> (4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).
>
> (5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.
>
> (c)
>
> (1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.
>
> (2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

The relevant portion F.R.B.P. R 9019 provides:

> (c) Arbitration. On stipulation of the parties to any controversy affecting the estate the court may authorize the matter to be submitted to final and binding arbitration.

STATMENT OF THE CASE

I. FACTS

A. Mr. Petty builds a successful craft brewery and signs a personal guaranty securing the debts on his business.

Respondent Earl Thomas Petty founded Great Wide Open Brewing Company, Inc. ("Great Wide Open"), in 2002. R. at 3. Mr. Petty transformed Great Wide Open from a small taproom in the City of Royal Rapids to one of Moot's largest craft breweries. R. at 3. While demand for Great Wide Open's product was increasing, Mr. Petty employed an aggressive growth strategy for the business. R. at 4.

In 2010, Great Wide Open opened four additional tap rooms in college towns across Moot. R. at 4. In 2012, Great Wide Open unveiled a state-of-the-art brewhouse capable of producing 250,000 barrels of beer annually. R. at 4. This brewhouse produced the majority of Great Wide Open's beer while the company continued brewing operations at the taprooms, including the taproom in Royal Rapids. R. at 4.

In order to fund the aggressive expansion of Great Wide Open and meet growing demand for its products, Great Wide Open entered into a $35 million revolving credit line with Petitioner, Wildflowers Community Bank ("Wildflowers"). R. at 4. As security for the loan, Great Wide Open granted Wildflowers a first priority lien in substantially all of Great Wide Open's assets. R. at 4. In addition, Mr. Petty executed a personal guaranty (the "Guaranty") in which he unconditionally guaranteed repayment of Great Wide Open's obligation. R. at 4. Mr. Petty secured the Guaranty with small batch brewing equipment (the "Equipment"). R. at 4. Mr. Petty had purchased the Equipment with his own funds and, at all times relevant, Mr. Petty owned the Equipment. R. at 3.

The Guaranty contained a remedies clause providing that, upon default, Wildflowers has the right to enter any premises where Collateral may be located to repossess the Equipment without the need for any prior judicial action. R. at 4. The Guaranty also contains an arbitration clause that provides: "any and all disputes, claims, or controversies of any kind between us arising out of or relating to the relationship between us will be resolved through mandatory, binding arbitration and each party voluntarily gives up any rights to have such disputes litigated in a court or by jury trial." R. at 4.

B. Great Wide Open faces financial difficulties and liquidates under chapter 7; Mr. Petty files a bankruptcy petition under chapter 11.

In 2017, the demand for craft beer began to wane and Great Wide Open began experiencing liquidity problems. R. at 5. Facing above-market lease obligations and significant debt, Great Wide Open closed three of its taprooms in March 2018. R. at 5. The following month, Great Wide Open and Mr. Petty defaulted on their payment obligations to Wildflowers. R. at 5.

Wildflowers sent letters of default to Great Wide Open and Mr. Petty. R. at 5. Wildflowers also filed a demand for arbitration and state law breach of contract complaint with the American Arbitration Association on June 4, 2018. R. at 5. Wildflowers sought $33.2 million in damages – the alleged remaining balance under Great Wide Open's and Mr. Petty's obligations. R. at 5. Great Wide Open ceased all operations and terminated all employees on July 11, 2018. R. at 5. The initial conference in the arbitration proceedings was scheduled for July 12, 2018. R. at 5.

Also on July 12, 2018, Great Wide Open filed a bankruptcy petition under chapter 7 and Mr. Petty filed a bankruptcy petition under chapter 11 (the "Initial Bankruptcy Case"). R. at 5. Mr. Petty did not timely file schedules of assets and liabilities. R. at 5. The bankruptcy court

dismissed Mr. Petty's Initial Bankruptcy Case on August 27, 2018 for failure to submit required documents. R. at 5.

After the dismissal of the Initial Bankruptcy Case, Mr. Petty negotiated a lease with the landlord of the original Royal Rapids taproom and reopened that taproom in December 2019 as a sole proprietorship doing business as "Full Moon Fever Brewing." R. at 6. Mr. Petty produced beer using the Equipment. R. at 6. Many of Great Wide Open's loyal patrons began to frequent the newly reopened taproom. R. at 6.

C. Mr. Petty refiles for reorganization under chapter 11, but Wildflowers nonetheless repossesses Mr. Petty's equipment.

With a new attorney, Mr. Petty filed a second bankruptcy petition, commencing his second chapter 11 case (the "Second Bankruptcy Case") on January 11, 2019. R. at 5. Mr. Petty filed all the required documents in the Second Bankruptcy Case. R. at 6. Mr. Petty also filed a proposed chapter 11 plan of reorganization that proposed to pay his creditors – including Wildflowers – forty percent of his income over a period of five years. R. at 6. This proposed plan of reorganization including settlements that Mr. Petty had negotiated pre-petition with several of his creditors. R. at 6.

Mr. Petty did not file a motion to extend the automatic stay during the first thirty days of the Second Bankruptcy Case. On February 12, 2019 – thirty-two days after the commencement of the Second Bankruptcy Case – Wildflowers sent a repossession company to the Royal Rapids taproom and repossessed the Equipment – effectively shutting down Full Moon Fever Brewing. R. at 6-7. Full Moon Fever Brewing, which was profitable during its first month of operation, ceased operations on February 17, 2019. R. at 6-7.

One week after Wildflower repossessed the Equipment, Mr. Petty filed a motion alleging that Wildflowers violated the automatic stay and sought $500,000 in damages. R. at 6. Wildflowers filed a response alleging that no automatic stay existed with respect to the bankruptcy estate – including the Equipment – because Mr. Petty had a prior bankruptcy case dismissed within one year of the Second Bankruptcy Case. R. at 7. Wildflower also argued that Mr. Petty was obligated to bring any claims – including any allegations that Wildflowers violated the automatic stay – in arbitration proceedings under the arbitration clause in the Guaranty. R. at 7.

II. PROCEDURAL HISTORY

The bankruptcy court ruled in favor of the Debtor on both questions. R. at 3. On direct appeal, a panel of three judges from the Court of Appeals for the Thirteenth Circuit affirmed and ruled in favor of the Debtor holding that (1) the bankruptcy code – specifically 11 U.S.C. § 362 – inherently conflict with the Federal Arbitration Act, and (2) the automatic stay continues to apply to the bankruptcy estate notwithstanding § 362(c)(3). R. at 3.

STANDARD OF REVIEW

The questions presented are based on statutory interpretation of the Bankruptcy Code and, as such, are pure issues of law. Therefore, the standard of review for this appeal is de novo. *Texas v. Soileau* (*In re Soileau*), 488 F.3d 302, 305 (5th Cir. 2007).

SUMMARY OF THE ARGUMENT

The Thirteenth Circuit Court of Appeals correctly affirmed the bankruptcy court's rulings on both issues before the Court today: that the automatic stay in the Bankruptcy Code triumphs over conflicting contractual provisions to arbitrate in Mr. Petty's case and that the automatic stay does not terminate against a bankruptcy estate's second bankruptcy filing within a one-year period.

The Thirteenth Circuit conducted a fact-intensive inquiry in ascertaining whether the Federal Arbitration Act's ("FAA") mandate to compel arbitration when a voluntary arbitration provision between two parties exists prior to the filing of a bankruptcy petition. Using the factors from the *McMahon* case, the Thirteenth Circuit concluded that based on the plain language and legislative history behind 11 U.S.C. § 362 and 9 U.S.C. § 2, there is no indication that a bankruptcy court must relinquish jurisdiction to arbitration. Furthermore, the Court determined that there is an inherent conflict between the underlying purposes of each statute, such that the Bankruptcy Code's purpose would be diminished if Mr. Petty's case were to proceed with arbitration.

Additionally, the plain language of § 362(c)(3)(A) terminates the automatic stay only with respect to the debtor and not with respect to the bankruptcy estate. Interpreting the code in this manner does not produce an absurd result that would permit this Court to engage in a broader statutory interpretation. Moreover, such an exercise would produce the same result because Congressional intent clearly requires the same result. Congress chose to terminate the automatic stay with respect to the bankruptcy estate only under other circumstances and this Court should respect Congress's role in balancing the rights between creditors and debtors by shaping the automatic stay to achieve unique goals under different circumstances.

For these reasons, this Court should affirm the Thirteenth Circuit's decision on both questions presented.

ARGUMENT

This Court should affirm the decisions of both the Thirteenth Circuit Court of Appeals and the Bankruptcy Court.

I. 11 U.S.C. § 362 IMPLIEDLY REPEALS THE FAA SUCH THAT A VALID PREPETITION ARBITRATION AGREEMENT BETWEEN THE PARTIES IS SUPERSEDED BY A BANKRUPTCY COURT'S AUTHORITY TO DETERMINE VIOLATIONS OF THE AUTOMATIC STAY AND RESULTING DAMAGES.

Tension between the Federal Arbitration Act and the Bankruptcy Code is ubiquitous and often presents a difficult inquiry for courts to resolve. "When litigation arises, 'involving both the Bankruptcy Code … and the Arbitration Act, 9 U.S.C. § 1 et seq., [it] presents a conflict of near polar extremes: bankruptcy policy exerts an inexorable pull towards centralization while arbitration policy advocates a decentralized approach towards dispute resolution.'"[1] (*United States Lines, Inc. and United States Lines (S.A.) U.S. Lines, Inc. v. Am. S.S. Owners Mut. Prot. & Indem. Ass'n (In* re *U.S. Lines, Inc.), 19*7 F.3d 631, 640 (2d Cir. 1999)).

This case involves litigation that provokes a conflict between the FAA and the Bankruptcy Code. Mr. Petty and one of his creditors, Wildflowers, are litigating whether Wildflowers violated the automatic stay when it repossessed Mr. Petty's Equipment without first confirming the automatic stay had expired. The parties have "polar extreme" views as to which forum for dispute resolution is appropriate; Mr. Petty champions centralized litigation before a bankruptcy court while Wildflowers demands decentralized arbitration. Mr. Petty asserts that the judicial route is correct because the dispute's central claim stems from an alleged violation of a statutory right from the Bankruptcy Code: section 362. On the opposite end, Wildflowers views litigation before the bankruptcy court as erroneous because Wildflowers and Mr. Petty are bound by the Guaranty,

[1] Irve Goldman, *Clash of the Statutory Titans: The Federal Arbitration Act v. The Bankruptcy Code*, Pullman & Comley Publication (Sep. 2011), https://www.pullcom.com/media/publication/250_Sept2011_Goldman.pdf.

which mandates arbitration for any dispute between the parties, regardless of where the disputed claim derives its authority.

Both the Bankruptcy Court and the Thirteenth Circuit Court of Appeals agree with Mr. Petty's view. This Court is unnecessarily tasked with finding the illusory logical flaw in both lower courts' opinions. This Court should affirm the lower courts' opinions because the controlling case law was properly followed, and the bankruptcy court appropriated exercised its discretion in resolving Mr. Petty's dispute.

A. The Thirteenth Circuit correctly applied the *McMahon* test in determining that a court does not need to enforce an arbitration provision when a countervailing policy manifests itself in another federal statute such as the Bankruptcy Code.

The Thirteenth Circuit recognized that while a court must "rigorously enforce agreements to arbitrate…," it need not do so where a countervailing policy manifests itself in another federal statute.[2] R. at 8. (quoting *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 221 (1985)). As such, the court focused its analysis on the countervailing policies behind both the FAA and the Bankruptcy Code, finding that policy behind the Bankruptcy Code generally, and the automatic stay specifically, is at odds with the mandate of the FAA.

As the Court recognized in *Shearson/Am. Express, Inc. v. McMahon*, the FAA "establishes a federal policy favoring arbitration." *Shearson/American Express v. McMahon*, 482 U.S. 220 (1987) (quoting *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)). However, the Court conditioned this favorable policy towards arbitration with exceptions in stating, "like any other statutory directive, the Arbitration Act's mandate *may* be overridden by a contrary congressional command." *McMahon, Id.* at 226 (emphasis added).

[2] "But Congress may impair the obligation of a contract and may extend the provisions of the bankruptcy laws to contracts already entered into at the time of their passage." (Citing *In re Klein*, 42 U.S. (1 How.) 277 (1843); *Hanover Nat'l Bank v. Moyses*, 186 U.S. 181 (1902).) Source: Congress.gov Annotated Constitution https://constitution.congress.gov/browse/essay/artI-S8-C4-2-1-1/ALDE_00001064/.

When the contrary congressional command consists of Bankruptcy Code provisions, courts apply the test from the Court's majority opinion in *McMahon* to determine if Congress intended to limit a court's power to override the FAA's mandate for a particular claim. The *McMahon* test provides that Congress's intent must be ascertained from (1) the statute's text; (2) its legislative history; or (3) "an inherent conflict between arbitration and the statute's underlying purposes." *McMahon*, *Id.* at 227.

In the three decades that bankruptcy judges have applied the *McMahon* test, most focused on whether there is "[a]n inherent conflict between arbitration and the underlying purposes of the Bankruptcy Code in determining whether a particular bankruptcy dispute is arbitrable or should remain with the bankruptcy court for adjudication." *The Whiting-Turner Contracting Co. v. Elec. Mach. Enters.* (*In re Elec. Mach. Enters.*), 479 F.3d 791, 795 (11th Cir. 2007); *Mintze v. Am. Gen. Fin. Services, Inc. (In re Mintze)*, 434 F.3d 222, 231 (3d Cir. 2006). As the Thirteenth Circuit recognized, "circuits overwhelming concluded, and we agree, that neither the text nor the legislative history of the Bankruptcy Code reflects a congressional intent to preclude arbitration in the bankruptcy context." R. at 10 (citing *Cont'l Ins. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 671 F.3d 1011, 1020 (9th Cir. 2012).

1. McMahon is the correct precedent because Epic did not abrogate McMahon.

The Thirteenth Circuit correctly rejected Wildflowers' interpretation of the Supreme Court's recent holding in *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1624 (2018). Wildflowers argued that the holding in *Epic* "rendered *McMahon* a dead letter…by restoring Congress's original intent with it enacted the FAA." R. at 9. The Thirteenth Circuit responded to Wildflowers' mistaken interpretation by concluding that not only did *Epic* not abrogate *McMahon*, *Epic* reinforced the holding in *McMahon*. *Id.* .

McMahon continues to espouse a liberal policy in favor of arbitration, asserting that the FAA's mandate may only be overridden in a narrow set of circumstances, one of which the Thirteenth Circuit found in Mr. Petty's case. Further, the court found that *McMahon* puts the burden of demonstrating an inherent conflict on the party opposing arbitration, signifying that arbitration under the FAA is the rule, not the exception. R. at 9. Therefore, *McMahon* remains the controlling authority on matters involving conflicting federal statutory laws and the Thirteenth Circuit properly utilized the test in *McMahon* to determine Mr. Petty's claim related to the automatic stay should be adjudicated rather than arbitrated.

2. Mr. Petty's case is a core proceeding, which permits a bankruptcy court to exercise its discretion in overriding an arbitration provision in a prepetition agreement between the parties.

When there is a conflict between the FAA and the Bankruptcy Code, courts often consider whether the conflict arises out of a "core" vs. "non-core" proceeding. (*See* 28 U.S.C. § 157(b) for a non-exhaustive list of "core" proceedings in bankruptcy matters). "Non-core" proceedings involve matters where the outcome could "conceivably have any effect on the estate being administered in bankruptcy … and which in any way impacts on the handling and administration of the bankruptcy estate." *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 n.6, 131 L. Ed. 2d 403 (1995) (quoting *Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)). With such a wide threshold for classifying a proceeding as "non-core," the weight of a conflict between the FAA and Bankruptcy Code is diminished and courts often lack the discretion to override a binding arbitration provision. *Anderson v. Credit One Bank, N.A.* (*In re Anderson*), 884 F.3d 382, 387 (2d Cir. 2018), *cert. denied subnom.* 139 S. Ct. 144 (2018); *The Whiting Turner Contracting Company v. Electric Machinery Enterprises (Whiting-Turner Contracting Co.*, 479 F.3d at 796; *Insurance Co. of North America v. NGC Settlement Trust & Asbestos Claims Management, (In the Matter of*

National Gypsum Co.), 18 F.3d 1056, 1066 (5th Cir. 1997); *Hays & Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc., 885 F.*2d 1149 (3d Cir. 1989); *In re Hermoyian*, 435 B.R. 456, 463 (Bankr. E.D. Mich. 2010).

The threshold for classifying a proceeding as "core" is much narrower and requires the conflict between arbitration and adjudication to bear significant weight on the outcome of the matter. Circuits have held that core proceedings are limited to matters involving a severe conflict, such that enforcing the FAA would jeopardize the objectives of the Bankruptcy Code. *MBNA Am. Bank, N.A. v. Hill*, 436 F.3d 104, 108 (2d Cir. 2006); *Insurance Co. of North America v. NGC Settlement Trust & Asbestos Claims Management Corp. (In the Matter of National Gypsum Co.)*, 118 F.3d 1056, 1067 (5th Cir. 1997). The Second Circuit then stated that in these types of matters, a court *may* conclude that "with respect to the particular Code section involved, Congress intended to override the Arbitration Act's general policy favoring the enforcement of arbitration provisions." *Hill*, 436 F.3d at 108 (emphasis added). Several cases provide examples of core proceedings, with the most applicable example being a proceeding that involved claims for violation of the automatic stay. *Merrill v. MBNA Am. Bank, N.A.* (*In re Merrill*), 343 B.R. 1, 7-9 (Bankr. D. Me. 2006); *Grant v. Cole* (*In re Grant*), 281 B.R. 721, 724 (Bankr. S.D. Ala. 2000) (Bankr. D Ala. 2000).

Both lower courts recognized that Mr. Petty's case is one that turns on a central matter relating to his bankruptcy estate involving the particular Code provisions in section 362. As such, the Thirteenth Circuit unequivocally concluded that "we can say with absolute certainty that [Mr. Petty's dispute] constitutes a core proceeding under 28 U.S.C. § 157(b)." R. at 11.

B. The Thirteenth Circuit correctly affirmed that the bankruptcy court did not err in exercising its discretion in declining to enforce the arbitration agreement in the Guaranty because permitting arbitration would inherently conflict with the underlying purpose of the automatic stay.

After crossing the first hurdle of determining that the matter is a core proceeding, a court must determine if enforcement of the arbitration clause would inherently conflict with the underlying purpose of the automatic stay. The Thirteenth Circuit astutely concluded that enforcing arbitration would conflict with the purpose of the automatic stay: affording debtors like Mr. Petty with a respite from creditors like Wildflowers. The court provided several reasons why a bankruptcy court is better positioned to efficiently and expeditiously adjudicate this dispute.[3]

1. Mr. Petty's case arises out of his Second Bankruptcy Case, meaning that this is a multi-party matter.

Wildflowers is not the only creditor involved in Mr. Petty's bankruptcy case. The Thirteenth Circuit correctly asserted that a bankruptcy court is better suited to handle multi-party disputes like Mr. Petty's because a bankruptcy court is able to balance a debtor's fresh start with maximum distribution to creditors. R. at 11. The Guaranty was only executed in anticipation of a two-party dispute between Mr. Petty and Wildflowers. *Id.*

Congress intended for the automatic stay to transcend traditional two-party disputes subject to arbitration. The Thirteenth Circuit listed several sections in the Bankruptcy Code that support Congress's limitation on FAA enforcement in matters involving multi-party disputes. *Id.* (citing 11 U.S.C. §§ 307, 323, 704, 1106, 1109, 1183, 1202, 1302; Fed. R. Bankr. P. 2018).

[3] The Thirteenth Circuit identifies a logistical reason for favoring adjudication: Mr. Petty has already initiated this proceeding while the arbitration proceeding is still in its infancy.

2. The automatic stay is critical to Mr. Petty's statutory right to reorganize under the Bankruptcy Code.

In *Grogan v. Garner*, the Supreme Court identified that the Bankruptcy Code's main purpose "is to provide a procedure by which insolvent debtors can reorder their affairs, make peace with their creditors, and enjoy a new opportunity in life with a clear field for future effort. 498 U.S. 279, 286 (1991). Four years later, the Court went on to state that "Congress intended to grant comprehensive jurisdiction to bankruptcy courts so that they might deal efficiently and expeditiously with *all* matters connected with the *bankruptcy estate*." *Celotex Corp. v. Edwards*, 514 U.S. 300, 308 (1995) (emphasis added).

The Thirteenth Circuit correctly labeled Mr. Petty's case as one that is connected to his bankruptcy estate and falls under the protection that Congress intended for the automatic stay to provide. R. at 12. Mr. Petty's motion to enforce the automatic stay and recover damages is critical to his ability to reorganize under the bankruptcy code, discharge debts, obtain a fresh start; particularly in funding Mr. Petty's chapter 11 plan of reorganization.

Moreover, the court correctly distinguished Mr. Petty's case from that of the debtor in *Hill*. The court recognized that "*Hill* was premised on the fact that resolution of the dispute 'would jeopardize the important purposes that the automatic stay serves: providing debtors with a fresh start, protecting assets of the estate, and allowing the bankruptcy court to centralize disputes concerning the estate.'" R. at 12 (quoting *Hill*, 436 F.3d at 109).

Furthermore, though the Second Circuit in *Hill* determined that the debtor's particular set of circumstances fell short of an inherent conflict between § 362 and the FAA, it did not preclude the possibility that another case may involve an inherent conflict under the right circumstances. R. at 12 (citing *Hill*, 436 F.3d at 108). Mr. Petty's circumstances fit this narrow exception. As the Thirteenth Court notes that Mr. Petty "intends to use any proceeds from his damages claim against

Wildflowers to fund his chapter 11 plan of reorganization." R. at 13 (citing to 11 U.S.C. §§ 1115, 1129).

3. Permitting arbitration in this case would damage future bankruptcy courts' ability to rule on debtor-creditor rights efficiently and fairly.

Finally, the Thirteenth Circuit correctly asserted that "if we were to compel arbitration for automatic stay disputes, we 'would make debtor-creditor rights contingent upon an arbitrator's ruling rather than the ruling of the bankruptcy judge assigned to hear the debtor's case.'" R. at 11 (quoting *Phillips v. Congelton, L.L.C.* (*In re White Mt. Mining Co.*), 403 F.3d 164, 169 (4th Cir. 2005)). The court recognized the need to consider all parties involved in a debtor-creditor rights dispute, stating that it would "deprive creditors of an opportunity to monitor and oversee litigation that serves as a key component of Mr. Petty's reorganization and their potential recoveries." R. at 13.

Congress's intent to centralize disputes, promote participation from all stakeholders, and ensure the debtor's reorganization efforts is at odds with the arbitration agreement, making the issue best decided by the bankruptcy court. Therefore, this Court should uphold the propositions affirmed by both lower courts in this case: that a bankruptcy court maintains discretionary authority in matters where a prepetition arbitration provision between the parties' conflicts with a fair resolution of a core bankruptcy proceeding.

II. ABSENT AN ORDER EXTENDING THE AUTOMATIC STAY, WHEN AN INDIVIDUAL DEBTOR FILES TWO BANKRUPTCY PETITIONS WITHIN ONE YEAR AND THE FIRST IS DISMISSED, UNDER 11 U.S.C. § 362(c)(3)(A), THE STAY DOES NOT TERMINATE AGAINST THE BANKRUPTCY ESTATE THIRTY DAYS AFTER THE LATER FILING.

The automatic stay provides a significant breathing spell for a bankrupt debtor. The automatic stay has limitations and provides smaller protections for repeat filers. There is a split among the courts of appeals regarding whether the automatic stay remains in place with respect to

bankruptcy estate when a debtor (1) has had one bankruptcy case dismissed within the previous year and (2) fails to ask the bankruptcy court to extend the automatic stay. By relying on the plain language of the statute and sound policy considerations, the Thirteenth Circuit Court of Appeals correctly adopted the majority interpretation, maintaining the automatic stay with respect to the bankruptcy estate.

A. The language of 11 U.S.C. § 362(c)(3)(A) is unambiguous in terminating the automatic stay only with respect to Mr. Petty and not the bankruptcy estate.

If a statute's language is plain and the law is within constitutional limitations, then the Court's only function is to enforce it according to its terms. *Caminetti v. United States*, 242 U.S. 470, 485 (1917). Where the language is plain and unambiguous, courts should not engage in a statutory interpretation exercise. Id. citing *Hamilton v. Rathbone*, 175 U.S. 414, 421 (1899). This Plain Meaning Rule is well-established jurisprudence, and this Court has "stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank v. Germain*, 503 U.S. 249, 253-54 (1992). The plain language of section 362(c)(3)(A) directly supports interpretation adopted by the majority of the courts of appeals.

Section 362(c)(3)(A) states:

> (3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—
>
> > (A) the stay under section (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the latter case.

Specifically, because the bankruptcy code terminates the automatic stay only "with respect to the debtor," the plain language requires the majority interpretation in maintaining the automatic stay

with respect to the bankruptcy estate. Furthermore, reading section 362(c) as a whole supports this conclusion.

1. The language of § 362(c)(3)(A) produces a clear effect that renders the statute unambiguous.

Section 362(c)(3)(A)'s language, explicitly terminating the automatic stay only "with respect to the debtor," is unambiguous and produces a clear effect without consideration of Congressional intent. Moreover, the section's plain language has a result that is not absurd and, therefore, does not warrant judicial intervention or determining that the language is ambiguous.

In determining the effect of a statute, the text's specific language of the text governs the general notion of the statute. *RadLAX Gateway Hotel, L.L.C. v. Amalgamated Bank,* 566 U.S. 639, 645 (2012) (holding that a secured creditor must be allowed to credit bid because the specific requirements of 11 U.S.C. § 1129 override the general principles of that section). Furthermore, when examining the language of a statute, this Court has long held that "when the statute's language is plain, the sole function of the courts—at least where the disposition required by the text is not absurd—is to enforce it according to its terms." *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004) (quoting *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000)). In determining whether a workers' compensation insurance provider can utilize section 506 administrative claims powers to obtain payment of post-petition insurance premiums, this Court noted that "Congress says in a statute what it means and means what it says there." *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1, 6 (2000). The section at issue there states that "[the] trustee may recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving, or disposing of, such property to the extent of any benefit to the holder of such claim." *Id.* at 5 (quoting 11 U.S.C. § 506(c)). This Court rejected the argument that section 506 merely permits a trustee to recover administrative expenses

and is silent on a non-trustee's ability to seek expenses under section 506. *Id.* at 6. While it is true, as this Court noted, that section 506 is technically silent as to its applicability to non-trustees, this Court nonetheless had little difficulty in holding that the plain language of the section made it applicable only to trustees and that an insurance provider did not qualify as a trustee. To answer the easy question of who may take advantage of section 506, the Court looked to the section's context —noting both that the section identifies that party who may use it and that the trustee serves a unique role in bankruptcy proceedings. *Id.* at 6-7. This Court has faced far more difficult statutory interpretation questions and still relied on the plain meaning rule. This Court has found that grammatical flaws are not enough to render a statute ambiguous so long as the statute's intended effect remains clear. *See Lamie*, 540 U.S. at 534 (holding that a Congressional drafting error deleting the conjunction "or" in a statute did not render the language ambiguous because the language, on its own, still clearly expressed the intended effect).

The language of section 362(c)(3)(A) is similar to the language the Court considered in *Hartford Underwriters Ins. Co.*, 530 U.S. 1, because its language limits its applicability to a specific subsect of the entire bankruptcy proceeding. This limitation produces a specific effect within the broad scope of the automatic stay and will therefore govern over the general principles of the stay under *RadLAX Gateway Hotel, L.L.C.*, 566 U.S. 639. Consequently, it is worth considering the context of the automatic stay. The general theme of section 362 is establishing an automatic stay and injunction of litigation, lien enforcement, and other actions—judicial or not—against a debtor and property of the bankruptcy estate. 3 Collier on Bankruptcy P 362.01 (16th 2020). It is against this broad backdrop that specific exceptions are carved out. For example, section 362(b) enumerates specific actions that never fall under the prevue of the automatic stay. 3 Collier on Bankruptcy P 362.05 (16th 2020). Section 362(c)(1) provides the general timeframe

in which the automatic stay applies. The stay remains in force with respect to property until it is no longer property of the bankruptcy estate. 11 U.S.C. § 362(c)(1).

In contrast, section 362(c)(3)(A) provides a specific limitation to the general rule: that the automatic stay shall terminate with respect to the debtor after thirty days if the debtor has had an earlier bankruptcy case dismissed within the previous year. Given the relationship between section 362(c)(3)(A) and the rest of section 362, the Court should apply the same principles set down in *RadLAX Gateway Hotel, LLC*. 362(c)(3)(A) provides only a narrow exception to the general provisions of the automatic stay, and the Court should not expand that specific provision.

Like *Hartford Underwriters Ins. Co.*, 530 U.S. 1, the Court should recognize the distinct roles of the elements in a bankruptcy case. Where *Hartford* was concerned with creditors and trustees' roles, the Court here should recognize the bankruptcy estate as being distinct from the debtor. The bankruptcy code's ability to terminate the automatic stay is discussed in subsection 2, *infra*, still, the distinction between the bankruptcy estate and the debtor is nonetheless relevant here because finding that the automatic stay does not terminate under section 362(c)(3)(A) with respect to the bankruptcy estate does not produce absurd results that would permit the Court to go beyond the plain meaning of the statute. Indeed, many actions against a debtor that would not be permissible if taken against the bankruptcy estate are explicitly excluded from the automatic stay under section 362(b). *See, e.g.*, 11 U.S.C. § 362(b)(2) (permitting action against a debtor for the establishment of paternity and establishment or modification of domestic support obligations). Section 362(b), however, does not cover all prohibited actions against a debtor but for the exception of section 362(c)(3)(A). For example, a creditor with a claim against a chapter 7 debtor could seek post-petition wage garnishments so long as section 362(c)(3)(A) is satisfied because post-petition wages are not part of the bankruptcy estate. *In re Tubman*, 364 B.R. 574, 585 (Bankr.

D. Md. 2007); *see* 11 U.S.C. § 541(a)(6). Congress providing limited benefits to creditors under section 362(c)(3)(A) does not render the section absurd, and this Court should rely on the statute's plain meaning.

2. When § 362 is read as a whole, it becomes clear that the automatic stay does not terminate as to the bankruptcy estate under § 362(c)(3)(A).

That the Court should rely on the plain language of section 362(c)(3)(A) in affirming the holdings of the Thirteenth Circuit is supported by other provisions of section 362 that do terminate the automatic stay with respect to the bankruptcy estate. That Congress uses language in one statute but not in another highlights Congressional intent. *In re Jones*, 339 B.R. 360, 364 (Bankr. E.D.N.C. 2006) (citation omitted). When such intent is clear, it is inappropriate for courts to consider legislative history or prior editions of the code. *United States v. Ron Pair Enters.*, 489 U.S. 235, 241 (1989) ("The language before us expresses Congress's intent – that post-petition interest be available – with sufficient precision so that reference to legislative history and to pre-Code practice is hardly necessary").

The Court has famously indicated that Congress does not hide elephants in mouseholes. *See Whitman v. Am. Trucking Ass'ns.*, 531 U.S. 457, 468 (2001). This oft-quoted locution stands for the simple proposition that if Congress intends to alter a statutory scheme dramatically, it will do so explicitly and clearly. *Id.*; *see also FDA v. Brown & Williamson Tobacco Corp.*, *52*9 U.S. 120, 159-60 (2000). The inverse of this proposition must be that courts must not find them when Congress does not explicitly make dramatic changes. The proposition is especially true where Congress makes a change in one section of a statute but declines to make the same change in a different section.

Bankruptcy courts that have been faced with the question before the Court now have noted that Congress did terminate the automatic stay with respect to the bankruptcy estate under different circumstances to those applicable under section 362(c)(3)(A). *See In re Jones*, 339 B.R. at 364 (noting that section 362(c)(4)(A)(i) extends to the bankruptcy estate). This position adopted by the majority of courts is supported by the principle passed down in A*m. Trucking Ass'ns*, *Brown* and *Williamson Tobacco Corp.*, and other cases on the question of Congressional intent. The automatic stay is an integral part of bankruptcy proceedings. *See* 3 Collier on Bankruptcy P 362.01 (16th 2020). That Congress would deliberately provide different limits to the automatic stay for debtors who have had only a single case dismissed in the past year—section 362(c)(3)(A)—than for debtors with more than one case in the previous year—section 362(c)(4)(A)(I)—is perfectly within Congress's power and this Court should respect Congressional legislative power.

B. Congress intended for the automatic stay to terminate with respect to the debtor and not with respect to property of the bankruptcy estate.

If the Court is not convinced that the plain meaning of the statute unambiguously terminates the automatic stay with respect to the debtor *only*, deciphering Congressional intent further indicates that the automatic stay is only terminated with respect to the debtor and not property of the bankruptcy estate.

1. Congress weighed the policy implications in deciding to what extent to terminate the automatic stay and chose not to terminate it with respect to the bankruptcy estate.

Congress's goal is to balance the rights of parties in bankruptcy proceedings with the concerns of abusive filings, absurd interpretation, and frustrating the purpose of the law. Congress only intended for the automatic stay under § 362(c)(3)(A) to terminate with respect to the debtor and not property of the estate. Congress knew how to terminate the automatic stay in its entirety, as it did in other sections. Unlike with section 541(a)(6), where Congress did explicitly state that

the automatic stay is terminated with respect to everything, Congress did not do so in section 362(c)(3)(A). Thus, Congress made it clear that the stay on property of the estate should remain for the purpose of protecting the debtor. Congress could have removed the phrase "With respect to the debtor" if the intent were to completely terminate the stay. The statutory language is clear as to what is and is not covered by the automatic stay. Interpreting the law under the minority approach would result in a Court muddying the clear intentions of the law. A Court does not need to go beyond the way Congress deliberately drafted section 362(c)(3)(A) to include only the debtor:

> Given the wording and categorization found in section 362(a), termination of the stay with respect to the debtor means that: suits against the debtor can commence or continue post-petition because section 362(a)(1) is no longer applicable; judgments may be enforced against the debtor, in spite of section 362(a)(2); collection actions may proceed against the debtor despite section 362(a)(6); and liens against the debtor's property may be created, perfected and enforced regardless of section 362(a)(5).

In re Williams, 346 B.R. 361, 367-69 (Bankr. E.D. Pa. 2006); *accord Ritzen Grp., Inc. v. Jackson Masonry, L.L.C.*, 140 S. Ct. 582, 589 (2020). Without a reference to "property of the estate" in section 362(c)(3)(A), a Court following the minority approach would be stretching beyond Congressional intent into judicial activism. The Thirteenth Circuit Court of Appeals correctly rejected the minority approach because the Supreme Court has frequently stated, "achieving a better policy outcome … is a task for Congress, not the courts." *Hartford Underwriters Ins. Co.*, 530 U.S. at 13-14. Thus, Congress clearly only intended for the automatic stay to expire "with respect to the debtor" and not with respect to the bankruptcy estate.

2. *The majority approach is consistent with Congress's intent to stop abusive bankruptcy filings under BAPCPA because of the deliberate inclusion of "with respect to the debtor."*

Wildflower's argues that a partial termination of the automatic stay goes against the Congressional intent of BAPCPA, to stop abusive bankruptcy filings; however, the Court must prevent favoring one creditor at the detriment to the others. Allowing for arbitration to proceed

would do just that. Arbitration is a two-party system that cannot provide the remedies of Bankruptcy. Congress passed BAPCPA in 2005 to curb bankruptcy abuse by repeated filings.

Congress decided the extent to which the stay would be terminated and used the correct language reach that result. The operative language regarding termination of the stay is clear. Section 362(a) references terminating the stay regarding debts, property securing debts, or leases "with respect to the debtor" only. Section 362(a) stays actions not only against the debtor, but also against the debtor's property and property of the estate. 11 U.S.C. § 362(a)(1)-(8). On its own, the meaning of the phrase "shall terminate with respect to the debtor" is plain and unambiguous. Congress went so far to distinguish the phase that it italicized it for added emphasis. A narrow reading of the scope of the termination of the stay under section 362(c)(3)(A) is consistent with the general declaration of the stay contained in section 362(a). Other sections of the statute support the distinction between a stay with respect to the debtor and a stay with respect to property of the estate. *See* 11 U.S.C. § 362(b)(2)(B), (c)(1), (c)(2) 11 U.S.C. § 521(a)(6). The interpretation of the law should not be viewed in isolation, the use of the phrase is also consistent with the broader statutory context of section 362, as discussed above.

Mr. Petty's filings do not go against the purposes of BAPCPA as the bankruptcy court remains the best venue for relief in this situation. Terminating the automatic stay with respect to Mr. Petty but preserving it for the Equipment is not absurd because the Equipment is vital to Mr. Petty's proposed chapter 11 plan of reorganization to pay his creditors.

3. The automatic stay remains in effect as to the Equipment because § 362(c)(3)(A) references only the debtor, and not "property of the estate"; thus, Wildflower's repossession of the Equipment violated the automatic stay.

Correctly stated by Thirteenth Circuit Court of Appeals, bankruptcy balances giving the debtor a second change with "a maximum and equitable distribution for creditors" through an orderly, centralized process. *Bfp v. Resolution Tr. Corp.*, 511 U.S. 531, 563 (1994) (citations

omitted) (Souter, J., dissenting). Bankruptcy court is the best venue to achieve the desired order and balance. The majority approach automatic stay on the property of the estate is important for Mr. Petty's ability to continue his business and benefit his creditors.

a. The majority approach has correctly applied the plain meaning of the statute to conclude that property of the estate remains subject to the automatic stay, even in the absence of an extension under 362(c)(3)(B)

The majority approach is the better interpretation of the statute as it sticks to the plain language and meaning of the statute itself. The Supreme Court has repeatedly reminded us, "when the statute's language is plain, the sole function of the courts – at least where the disposition required by the text is not absurd – is to enforce it according to its terms." *Lamie*, 540 U.S. at 534 (internal citations and quotations omitted). Clearly stated within section 362(c)(3)(A) are the terms for which the automatic stay terminates only "with respect to the debtor." Contrary to the minority belief, there is no ambiguity. The statutory interpretation holds true even when viewed beyond its plain language, as the Thirteenth Circuit Court of Appeals correctly acknowledges that "a statute is to be read as a whole, since the meaning of statutory language, plain or not, depends on context." *King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991). (citations omitted). Viewing the statute beyond isolation, the plain meaning interpretation of 362(c)(3)(A) is reinforced by section 362(a), which stays actions not only against the debtor, but also against the debtor's property and property of the estate. *See* 11 U.S.C. § 362(a)(1)-(8). Section 362(c)(3)(A) makes no mention of property of the estate. As the Thirteenth Circuit concluded, regardless of whether the automatic stay is extended under section 362(c)(3)(B), a creditor may not take action with respect to property of a debtor's estate. It is inescapable to conclude that Congress intentionally omitted any reference to it from that subsection. The Thirteenth Circuit Court of Appeals correctly upheld the bankruptcy court hold that regardless of whether the automatic stay is extended under section 362(c)(3)(B), a

creditor may not take action with respect to property of a debtor's estate. Wildflowers willfully violated the automatic stay by reposing the equipment, which was indisputably property of Mr. Petty's bankruptcy estate. The violation effectively shut down Full Moon Brewery and harmed Mr. Petty's ability to fund the chapter 11 reorganization plan.

The majority approach is consistent with the purposes and policies of the Bankruptcy Code. The Bankruptcy Code balances a debtor's fresh start with "a maximum and equitable distribution for creditors" through an orderly, centralized process. *BFP v. Resolution Trust Corp*, 511 U.S. at 549 (1994) (Souter, J., dissenting). Section 362(c)(3)(A) ensures creditors cannot dismember the estate by repossessing property that might be used to benefit the debtor (Petty) and his creditors the repossession of the equipment prevented Petty from operating the new brewery.

b. The minority approach, finding ambiguity in the statute, wrongfully interprets that section 362(c)(3)(A) terminates in its entirety thirty days after the commencement of the case by relying on canons of construction, loose legislative history and policy considerations.

The minority approach relies on canons of construction, loose legislative history and policy considerations to fight ambiguity in the statute by interpreting section 362(c)(3)(A) to mean that the automatic stay terminates in its entirety thirty days after the commencement of a case. *See, e.g.,* S*mith v. Me. Bureau of Revenue Servs. (*I*n re Smith)*, 910 F.3d 576 (1st Cir. 2018). This approach is an attempt to reach a conclusion the law does not allow. The minority approach would have a disastrous consequence on trustees and creditors in liquidation under Ch 7 by favoring one creditor to the detriment of all others. *In re Thu Thi Dao*, 616 B.R. 103, 109-16 (Bankr. E.D. Cal. 2020). Additionally, the minority approach raises concern that almost all of a Debtor's assets are considered property of the estate. Even if this is the case, it is Congress's job to fix, not the courts. Falling into judicial activism, the majority approach attempts to include "with respect to property

of the estate" which is not included in the statutory language with the idea that its exclusion means it is the opposite of with respect to the debtor. The Court in *In re Jupiter* takes the minority approach arguing that "a normal Chapter 13 case, property of the estate encompasses nearly all of a debtor's assets." *Jupiter*, 344 B.R. 754, 760-61 (Bankr. D.S.C. 2006). Viewing the language of section 362 this way goes against the plain language of § 362(c)(3)(A) that the stay that terminates under that section is not the stay that protects property of the estate. *In re Jones*, 339 B.R. at 365. As Courts have noted, if Congress intended for § 362(c)(3)(A) to terminate all of the protections of the automatic stay, it could have included language similar to that used in § 362(c)(4)(A)(i) rather than using the language set forth in § 362(c)(3)(A). *See In re Moon*, 339 B.R. 668, 672 (Bankr. N.D. Ohio 2006) (citing *In re Paschal*, 337 B.R. 274, 278-79 (Bankr. E.D.N.C. 2006)) (noting the contrast in language between the two sections and that § 362(c)(4)(A)(i) is broader than § 362(c)(3)(A)).

Wildflower argues that the statute's ambiguous language means that courts should reference legislative history to reach true meaning of 362(c)(3)(A). Because the language of *Section 362(c)(3)* is unambiguous, the Court should only interpret the law beyond its plain meaning if its literal application would frustrate the obvious purpose of section 362 or produce an absurd result. Even if the phrase "with respect to the debtor" could be construed as ambiguous, it is clear from section 362(c)(4)(A)(i) that Congress knew how to terminate the automatic stay in its entirety. *Rose v. Select Portfolio Servicing, Inc.* Section 362(c)(3)(A) and section 362(c)(4)(A)(i) are structurally similar but the language and intent are different. 362(c)(3)(A) applies with respect to the debtor when filing one case in past year. Under, section 362(c)(4)(A)(i) the stay is not automatic at all if two or more cases are filed in a in a year. If Congress wanted to terminate the stay to both the debtor and estate, it knew how. *In re Jones*, 339 B.R. 360. Unlike section

362(c)(3)(A), section 362(c)(4)(A)(i) does not contain any limiting language. Through its silence, section 362(c)(4)(A)(i) provides that the automatic stay does not go into effect with respect to the debtor, property of the debtor, or property of the estate. Congress could have terminated the stay in its entirety in section 362(c)(3)(A), as it did in section 362(c)(4)(A)(i), by simply deleting the phrase "with respect to the debtor." *RadLAX Gateway Hotel, L.L.C.*, 566 U.S. 639 (Congress has "deliberately targeted specific problems with specific solutions"). But Congress did not do so, thereby indicating an intent to curb abuse differently. *In re Harris*, 342 B.R. 274 (Bankr. N.D. Ohio 2006) ("where Congress includes particular language in one section of a statute but omits it in another, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion."); *Keene Corp. v. United States*, 508 U.S. 200 (1993). "[t]he task of resolving the dispute over [the interpretation of a statute] begins where all such inquiries must begin: with the language of the statute itself." - *United States v. Ron Pair Enters*., 489 U.S. 235 (1989). Therefore, the minority approach wrongfully interprets Congressional intent and the clear language of the law.

CONCLUSION

Mr. Petty's case presents this Court with the opportunity to protect a bankruptcy court's discretionary authority when determining if arbitration is the proper forum to settle disputes between contracting parties. The Thirteenth Circuit Court of Appeals affirmed the bankruptcy court's authority to ensure uniform application of bankruptcy law, particularly in proceedings a court deems as "core." Additionally, both lower courts properly upheld this Court's precedents and properly interpreted statutory provisions regarding the limitations of the FAA when it conflicts with another federal statute.

Furthermore, Mr. Petty's case presents an opportunity for this Court to settle a split among the courts of appeals around an issue important to both debtors and creditors. In amending § 362 of the Bankruptcy Code, Congress provided plain language that terminates the automatic stay *only* with respect to the debtor when the debtor has only one case dismissed in the past year. Additionally, Congressional intent, provided by context and legislative history, supports the effect rendered by the plain meaning of § 362(c)(3)(A).

WHEREFORE, PREMISES CONSIDERED, Respondent respectfully prays that this Court affirm the decision of the Thirteenth Circuit.

Respectfully Submitted,

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Counsel for Respondent

APPENDIX A: Selected Sections from Title 9 of the U.S. Code.

Section 2: Validity, Irrevocability, and enforcement of agreements to arbitrate

A written provision in any maritime transaction or a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction, or the refusal to perform the whole or any part thereof, or an agreement in writing to submit to arbitration an existing controversy arising out of such a contract, transaction, or refusal, shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract.

Section 4: Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination

A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28, in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure [USCS Rules of Civil Procedure]. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure, or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

APPENDIX B: Selected Sections from Title 11 of the U.S. Code.

Section 102. Rules of construction

In this title—

(1) "after notice and a hearing", or a similar phrase—

(A) means after such notice as is appropriate in the particular circumstances, and such opportunity for a hearing as is appropriate in the particular circumstances; but

(B) authorizes an act without an actual hearing if such notice is given properly and if—

(i) such a hearing is not requested timely by a party in interest; or

(ii) there is insufficient time for a hearing to be commenced before such act must be done, and the court authorizes such act;

(2) "claim against the debtor" includes claim against property of the debtor;

(3) "includes" and "including" are not limiting;

(4) "may not" is prohibitive, and not permissive;

(5) "or" is not exclusive;

(6) "order for relief" means entry of an order for relief;

(7) the singular includes the plural;

(8) a definition, contained in a section of this title that refers to another section of this title, does not, for the purpose of such reference, affect the meaning of a term used in such other section; and

(9) "United States trustee" includes a designee of the United States trustee.

Section 362. The automatic stay

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

(b) Omitted

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) the time the case is dismissed; or

(C) if the case is a case under chapter 7 of this title [11 USCS §§ 701 et seq.] concerning an individual or a case under chapter 9, 11, 12, or 13 of this title [11 USCS §§ 901 et seq., 1101 et seq., 1201 et seq., or 1301 et seq.], the time a discharge is granted or denied;

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors, if—

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

(bb) provide adequate protection as ordered by the court; or

(cc) perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

(aa) if a case under chapter 7, with a discharge; or

(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

(4)

(A)

(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and

(D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

(i) as to all creditors if—

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

(e) Omitted

(f) Omitted

(g) Omitted

(h) Omitted

(i) Omitted

(j) Omitted

(k)

(1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.

(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.

(l) Omitted

(m) Omitted

(n) Omitted

(o) Omitted

Section 541. Property of the estate

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—

(A) by bequest, devise, or inheritance;

(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or

(C) as a beneficiary of a life insurance policy or of a death benefit plan.

(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

(7) Any interest in property that the estate acquires after the commencement of the case.

(b) Omitted

(c) Omitted

(d) Omitted

(e) Omitted

(f) Omitted