No. 20-1004

IN THE

Supreme Court of the United States

IN RE EARL THOMAS PETTY, DEBTOR,

WILDFLOWERS COMMUNITY BANK
Petitioner,

v.

EARL THOMAS PETTY
Respondent.

ON APPEAL FROM THE
UNITED STATES COURT OF APPEALS
FOR THE THIRTEENTH CIRCUIT

BRIEF FOR THE RESPONDENT

TEAM NUMBER 14
COUNSEL FOR RESPONDENT

JANUARY 19, 2021

QUESTIONS PRESENTED

I. The Federal Arbitration Act facilitates enforcement of contractual provisions by taking dispute resolution outside the court system, whereas Section 362 of the Bankruptcy Code centralizes litigation and protects property of the estate for the benefit of all parties. When enforcing arbitration undermines the purpose of Section 362, must bankruptcy courts compel arbitration?

II. When a debtor files a second bankruptcy case, Section 362(c)(3)(A) terminates the automatic stay after thirty days "with respect to the debtor," unless the debtor files a motion to extend the automatic stay. The provision never mentions property of the estate. When a creditor repossesses property that is unquestionably part of the estate without seeking any clarification from the court, does it violate the automatic stay?

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The Thirteenth Circuit Court of Appeals' decision is available at No. 19-0805 and reprinted at Record 2. The Bankruptcy Court for the District of Moot decided in favor of Earl Thomas Petty on both issues. On direct appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed the bankruptcy court.

STATEMENT OF JURISDICTION

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

RELEVANT STATUTORY PROVISIONS

This action implicates the statutory construction of Section 362 of the United States Bankruptcy Code, as well as the Federal Arbitration Act. The following are also restated in the Appendix.

The relevant portion of the Federal Arbitration Act provides:

> 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.
>
> 9 U.S.C. § 2.

11 U.S.C. § 362(c)(3)(A) provides:

> (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 concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, 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[...]

The other relevant provisions are:

11 U.S.C. § 362(a)

11 U.S.C. § 362(d)

11 U.S.C. § 362(k)

11 U.S.C. § 362(j)

11 U.S.C. § 502(b)

11 U.S.C. § 1109

28 U.S.C. § 157(b)(2)

28 U.S.C. § 1334(e)

28 U.S.C. § 1511

STATEMENT OF THE CASE

This appeal arises out of a violation of one of the most fundamental protections of the Bankruptcy Code: the automatic stay. Congress codified the automatic stay in Section 362 to ensure orderly and fair bankruptcy proceedings. Respondent urges this Court to safeguard the automatic stay, and in doing so, protect the rights of debtors and creditors alike.

I. Factual History

A. Earl Thomas Petty founded Great Wide Open Brewing Company, Inc., an award-winning brewery he operated successfully for fifteen years.

Earl Thomas Petty ("Petty") is a craft beer pioneer who began brewing beer in the late 1990s. R. at 3. To better service his community, Petty founded Great Wide Open Brewing Company, Inc. ("Great Wide Open") in 2002 to sell craft beer to local restaurants and convenience stores. R. at 3. In 2005, Great Wide Open launched a 9,000 square foot taproom with small batch brewing equipment (the "Equipment") purchased with Petty's own money. R. at 3.

Great Wide Open was highly successful and became one of the State of Moot's largest craft breweries, even winning awards for its highly rated products. R. at 3-4. Because demand was high for Great Wide Open's beers, Petty pursued an aggressive growth strategy to expand business. R. at 4. From 2010 to 2012, Great Wide Open opened an additional four taprooms and a state of the art brewhouse, Royal Rapids taproom, with the capacity to produce 250,000 barrels of beer annually. R. at 4.

B. Great Wide Open and Wildflowers entered into a credit agreement, guaranteed by Petty, to fund Great Wide Open's expansion.

In 2011, Wildflowers entered into a $35 million revolving credit agreement (the "Credit Agreement") with Great Wide Open, one of the largest credits in the Wildflowers portfolio. R. at 4. Great Wide Open granted Wildflowers a first priority lien on substantially all of its assets to secure repayment of the indebtedness. R. at 4. As part of the agreement, Petty executed a personal guaranty

(the "Guaranty") that he would unconditionally guarantee repayment of any business obligations. R. at 4. Petty also granted Wildflowers a first priority lien on the Equipment to secure his guarantee. R. at 4.

Both the Credit Agreement and Guaranty contained remedies clauses for Wildflowers. R. at 4. The first remedies clause at issue stated that "[o]bligor grants to Wildflowers the right to enter any premises where Collateral may be located for the purpose of repossessing Collateral without the need for any prior judicial action." R. at 4. The second stated that "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.

C. Due to significant market competition, Great Wide Open started having liquidity problems and eventually filed for chapter 7; Petty simultaneously filed his own chapter 11 case.

In 2017, Great Wide Open encountered financial problems, as market competition increased and demand for craft beer decreased. R. at 5. Overwhelmed with the significant debt owed under the Credit Agreement and above-market lease obligations, Great Wide Open had to close three of its taprooms in March 2018. R. at 5. By April, Great Wide Open and Petty were in default and Wildflowers had sent them a sternly-worded default letter. R. at 5. On June 4, 2018, Wildflowers filed a demand for arbitration seeking $33.2 million in damages, the balance owed under the Credit Agreement. R. at 5.

On July 12, 2018, Great Wide Open filed a chapter 7 case in the Bankruptcy Court for the District of Moot. R. at 5. On that same day, Petty filed his own chapter 11 petition (the "Initial Bankruptcy Case"). R. at 5. Great Wide Open's assets were liquidated by the chapter 7 trustee and $31.1 million was paid to Wildflowers, leaving a debt of just $2.1 million. R. at 7.

D. After a dismissal of Petty's initial chapter 11, he refiled and immediately submitted a plan for reorganization acceptable to various creditors to restructure his outstanding debts.

Petty's Initial Bankruptcy Case was dismissed on August 27, 2018 for failure to timely file required documents. R. at 5. After hiring a new lawyer, Petty filed a second chapter 11 case (the "Second Bankruptcy Case") on January 11, 2019. R. at 5. He timely filed all documents, including a chapter 11 plan of reorganization proposing to pay his creditors, including Wildflowers, forty cents on the dollar of his income over a period of five years. R. at 6. The plan included settlements Petty had negotiated with several of his creditors. R. at 6. Petty advised the court that he negotiated a new lease with the landlord of the original Royal Rapids taproom and that he reopened a taproom. R. at 6.

In December 2018, Petty, using the Equipment, successfully launched "Full Moon Fever Brewing." R. at 6. Even in the first month of operations, the taproom was profitable and former customers began to patronize the new taproom. R. at 6. Petty's plan for reorganization was in motion.

E. Although the Equipment was vital to the operation of Petty's new brewery, and therefore reorganization, Wildflowers repossessed the Equipment and forced the brewery out of business.

Progress came to a crashing halt on February 12, 2019 when Wildflowers repossessed the Equipment without seeking confirmation the stay had terminated under Section 362(j). R. at 6. Although Petty had not filed a motion to extend the automatic stay under Section 362(c)(3)(B), there was never a dispute that the Equipment was property of the estate. R. at 7. Without the Equipment, it was impossible for Full Moon Fever Brewing to produce its products and the taproom had to close its doors. R. at 7. Wildflowers waited weeks to return the Equipment to Petty, destroying the goodwill he had built with the community. R. at 7. As a result, Full Moon Fever Brewing never opened again. R. at 7.

II. Procedural History

In response to Wildflowers' violation of the automatic stay, Petty filed a motion under Section 362(k) seeking $500,000 in damages. R. at 6. The bankruptcy court ruled in favor of Petty, denying Wildflowers' attempt to compel arbitration and finding that Wildflowers violated the automatic stay when it repossessed the Equipment. R. at 7. The bankruptcy court also found that regardless of whether Petty had filed a motion under Section 362(c)(3)(B), Wildflowers willfully violated the automatic stay because the Equipment was indisputably property of Petty's bankruptcy estate. R. at 7. Therefore, the bankruptcy court awarded compensatory damages to Petty in the amount of $200,000. R. at 7.

Wildflowers filed a direct appeal to the United States Court of Appeals for the Thirteenth Circuit, which affirmed the bankruptcy court's holdings. R. at 7.

STANDARD OF REVIEW

The Supreme Court reviews legal conclusions *de novo*, "without the slightest deference." *U.S. Bank Nat. Ass'n ex rel. CWCapital Asset Management LLC v. Village at Lakeridge, LLC*, 128 S. Ct. 960, 965 (2018). The court below determined the scope and application of federal statutes, and the facts are undisputed. Therefore, this Court reviews the issues in this case *de novo* because the issues deal exclusively with legal application and conclusions.

SUMMARY OF THE ARGUMENT

The Thirteenth Circuit Court of Appeals properly held that Congress created an exception to the enforcement of the Federal Arbitration Act by enacting Section 362 of the Bankruptcy Code. This Court's decision in *Shearson/Amer. Exp., Inc. v. McMahon* established the proper test for determining whether a court should compel arbitration of a federal statutory claim. The inherent conflicts between arbitration of automatic stay disputes which threaten the bankruptcy estate and the purposes underlying Section 362 of the Bankruptcy Code satisfy the *McMahon* test. Specifically, when

resolution of an automatic stay dispute jeopardizes property of the estate, forcing a bankruptcy judge to compel arbitration contravenes the Bankruptcy Code's goal of centralized litigation. A centralized litigation process promotes the debtor's rehabilitation efforts and ensures that all creditors will receive equitable treatment as promised by the Bankruptcy Code. Where the proceeding involves rights uniquely available under the Bankruptcy Code, specialized bankruptcy courts, not arbitrators, are best equipped to resolve the dispute.

Furthermore, compelling arbitration of an automatic stay dispute divests creditors, who are not a party to the arbitration agreement, from exercising their statutorily granted rights. Arbitration requires parties' consent to arbitration of the dispute at issue. Forcing bankruptcy courts to compel arbitration of an automatic stay dispute ignores the rights of creditors with an interest in the proceeding and conflicts with the collective nature of bankruptcy proceedings. As a result, this Court should affirm that bankruptcy courts may refuse to compel arbitration of an automatic stay dispute when arbitration would undermine the goals of the Bankruptcy Code and conflict with the rights of creditors.

Section 362(c)(3)(A) limits the scope of the termination of the automatic stay "with respect to the debtor." The statute explicitly terminates the automatic stay defined in Section 362(a) after thirty days when an individual debtor files a second bankruptcy case within the year of having a previous case dismissed, and the debtor does not file a motion with the court to extend the stay. The language of the statute terminates the automatic stay only "with respect to the debtor." Bankruptcy courts are split as to the scope of the termination of the automatic stay and whether the phrase "with respect to the debtor" can be inflated to include property of the estate, as well as the debtor's property. However, the majority approach correctly interprets the plain and unambiguous meaning of the phrase "with respect to the debtor" and does not include property of the bankruptcy estate.

The majority approach is the correct interpretation for four compelling reasons. Importantly,

each step of the analysis builds on the previous step's conclusion. First, the plain, unambiguous language of the phrase "with respect to the debtor" cabins the termination of the automatic stay to the debtor. This Court instructs that when the plain language of the statute is clear, the inquiry halts. Nevertheless, the majority's interpretation of the phrase is further strengthened by a contextual reading of the statute. Elsewhere in Section 362 and throughout the Bankruptcy Code, Congress knew how to explicitly signal the statute's application to property of the estate. Therefore, the majority approach correctly limits the scope of the termination of the stay in Section 362(c)(3)(A) because Congress failed to include any language that would suggest the section's application to property of the estate. Next, the majority approach is bolstered by looking to congressional intent in enacting Section 362(c). Congress enacted Section 362(c) to deter repeat, bad faith bankruptcy filings by individual debtors. The majority approach provides for adequate deterrence for debtors who file multiple frivolous bankruptcy claims. Therefore, the majority approach is further justified because it does not run afoul of legislative intent.

Finally, the policy purposes underlying the automatic stay should compel this Court to side with the majority interpretation. The automatic stay allows the bankruptcy court to effectively execute the multiparty proceeding to the benefit of creditors and debtors, reinforcing the purpose of the automatic stay. So, not only does a careful statutory construction inquiry support the majority reasoning, but so do the policy pillars of the automatic stay. Therefore, this Court should be compelled by the majority's construction of the statute and interpretation of the phrase "with respect to the debtor" and hold that the termination of the automatic stay in Section 362(c)(3)(A) does not apply to property of the estate.

ARGUMENT

This Court should affirm the Thirteenth Circuit Court of Appeals' decision to reject Wildflowers' attempt to compel arbitration. This Court should further affirm the circuit court's

decision that Section 362(c)(3)(A) does not terminate the automatic stay with respect to the property of the estate.

I. THE THIRTEENTH CIRCUIT CORRECTLY HELD THAT CONGRESS CREATED AN EXCEPTION TO THE ENFORCEMENT OF THE FEDERAL ARBITRATION ACT WHEN IT ENACTED SECTION 362 OF THE UNITED STATES BANKRUPTCY CODE.

In deciding whether to compel arbitration of an automatic stay dispute, this Court must balance two countervailing federal statutes: (1) the Federal Arbitration Act ("FAA") which provides that contractual arbitration agreements shall be enforced absent "such grounds as exist at law or in equity for the revocation of any contract" and (2) the United States Bankruptcy Code, which specifically authorizes the modification of parties' contractual rights. 9 U.S.C. § 2; s*ee Ashton v. Cameron County Water Improvement District No. One,* 298 U.S. 513, 530 (1936) (the "purpose of all bankruptcy legislation is to interfere with the relations between the parties concerned—to change, modify, or impair the obligation of their contracts"). While this Court has established a liberal policy in favor of enforcing arbitration agreements, it has noted that not "all controversies implicating statutory rights are suitable for arbitration." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 613, 627 (1985); *see Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 221 (1985) (courts should not arbitrate statutory disputes when there is a "countervailing policy manifested in another federal statute").

In *Shearson/Amer. Exp., Inc. v. McMahon,* this Court established that a party seeking to demonstrate that an agreement to arbitrate a statutory claim is not enforceable must show congressional intent to make an exception to the FAA from either: (1) the text of the statute; (2) the statute's legislative history; or (3) an inherent conflict between arbitration and the purposes of the statute. 482 U.S. 220, 226 (1987). Lower courts applying *McMahon* in bankruptcy cases have consistently refused to enforce pre-petition arbitration agreements because an inherent conflict exists

between the FAA and the underlying purposes of the Bankruptcy Code.[1]

In the present case, the Thirteenth Circuit upheld the bankruptcy court's ruling that enforcing arbitration of a Section 362(k) motion for damages would conflict with the purposes underlying the Bankruptcy Code, particularly Section 362, a fundamental bankruptcy protection. R. 13. This Court should affirm the ruling below, because allowing an arbitrator to determine an automatic stay dispute affecting property of the estate would interfere with the statutory rights of creditors not a party to the arbitration agreement and contravene the underlying purposes of the Bankruptcy Code, particularly, centralizing resolution of purely bankruptcy issues and maximizing the benefit creditors receive by protecting property of the estate.

A. Applying *McMahon*, bankruptcy courts should not be forced to compel arbitration in core proceedings when arbitration would conflict with the policy objectives of the Bankruptcy Code.

This Court's ruling in *Epic Sys. Corp. v. Lewis* never stated an intention to overrule *McMahon* or any prong of its three-part test for determining whether arbitration of a federal statutory claim is enforceable. 138 S. Ct. 1612, 1624 (2018); *see Belton v. GE Capital Retail Bank (In re Belton),* 961 F.3d 612, 616-17 (2d Cir. 2020); *Robertson v. Intratek Computer, Inc.,* 976 F.3d 575, 581-82 (5th Cir. 2020) (reading the *Epic* and *McMahon* decisions together, along with other Supreme Court FAA jurisprudence). In fact, the *Epic* Court specifically cited *McMahon* for precedential support and both cases analyze whether the underlying purposes of a federal statute demonstrate congressional intent to displace the Federal Arbitration Act. *See Epic*, 138 S. Ct. at 1624-27; *McMahon*, 482 U.S. at 227, 239-42. Furthermore, this Court has emphasized that it does not overturn, or dramatically limit, binding precedent sub silentio. *See Bosse v. Oklahoma,* 137 S. Ct. 1 (2016); *Shalala v. Illinois Council on Long Term Care, Inc.,* 529 U.S. 1 (2000).

[1] *See Henry v. Educ. Fin. Serv. (In re Henry)*, 944 F.3d 587, 591-92 (5th Cir. 2019); *Cont'l Ins. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 671 F.3d 1011, 1020 (9th Cir. 2012); *Kraken Invs. Ltd. v. Jacobs (In re Salander-O'Reilly Galleries, LLC)*, 475 B.R. 9, 24 (S.D. N.Y. 2012).

While this Court has declined to find conflicts between other federal statutes and the FAA's mandate of enforcing contractual arbitration agreements, the very nature of bankruptcy is to modify the contractual rights of debtors and creditors. *See Grogan v. Garner*, 498 U.S. 279, 286 (1991); *see also MBNA Am. Bank, N.A. v. Hill*, 436 F.3d 104 (2d Cir. 2006) (disputes involving the Bankruptcy Code and the FAA often present conflicts of "near polar extremes"). As a result, lower courts across the country have applied the *McMahon* test to refuse to compel arbitration of bankruptcy proceedings. *See In the Wake of the U.S. Supreme Court's Decision, Epic Systems, Should Core Bankruptcy Matters Be Deemed a "Clear and Manifest" Exception to the Federal Arbitration Act*, 29 No. 2 Norton J. Bankr. L. & Prac. 1 (2020) (citing seven cases applying *McMahon* to refuse to compel arbitration).

In determining whether a conflict exists between arbitration and bankruptcy, courts first ask whether the dispute involves a core matter. *See 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). Core proceedings involve rights created by the Bankruptcy Code or rights that would arise only within a bankruptcy case. *Cont'l Nat'l Bank v. Sanchez (In re Toledo),* 170 F.3d 1340, 1348 (11th Cir.1999); *see* 28 U.S.C. § 157(b)(2) (providing a non-exhaustive list of core proceedings). A matter is non-core if it does not invoke a substantive right created by federal bankruptcy law and is one that could exist outside of bankruptcy. *In re Toledo*, 170 F.3d at 1348. Bankruptcy courts generally agree that they must compel arbitration of non-core proceedings. *See Anderson*, 884 F.3d 282; *but see In re Residential Capital, LLC*, 563 B.R. 756 (S.D. N.Y. 2016) (the bankruptcy court had discretion to stay arbitration on a non-core proceeding to avoid possibility of inconsistent judgments).

For core bankruptcy proceedings, courts are directed to follow the precedent established by *McMahon* and override any arbitration agreement where the proceeding is based on provisions of the Bankruptcy Code that inherently conflict with the FAA. *Whiting-Turner Contracting Co. v. Elec.*

Mach. Enters., Inc. (In re Elec. Mach. Enters., Inc.), 479 F.3d 791, 796 (11th Cir. 2007) (noting "this determination requires a particularized inquiry into the nature of the claim and the facts of the specific bankruptcy"). In the present case, Petty's Section 362(k) motion for damages resulting from Wildflowers' violation of the automatic stay is undoubtedly a core proceeding, because the automatic stay and its remedies could not exist without the Bankruptcy Code. *See* § 157(b)(2)(G); *MBNA Am. Bank, N.A. v. Hill*, 436 F.3d 104 (2d Cir. 2006); *In re Merril*, 343 B.R. 1, 9 (Bankr. D. Me. 2006). Therefore, this Court should apply *McMahon*'s three-part test and find that arbitration of a core proceeding is improper when it would inherently conflict with the purposes underlying the Bankruptcy Code.

B. Arbitration of an automatic stay dispute that jeopardizes the bankruptcy estate contravenes Section 362's goal of centralized litigation and commitment to protecting property of the estate.

One of the most important purposes effectuated by Section 362 of the Bankruptcy Code is to preserve the bankruptcy court's ability to centralize litigation of all disputes concerning property of the debtor's estate without impediment by uncoordinated proceedings in other forums. *See U.S. Lines, Inc. v. Am. S.S. Owners Mut. Prot. & Indem. Ass'n, Inc.,* 197 F.3d 631, 640 (2d Cir. 1999) (*citing In re Ionosphere Clubs, Inc.*, 922 F.2d 984, 989 (2d Cir. 1990); *see also* 28 U.S.C. § 1334(e). This is especially critical in chapter 11 cases, where bankruptcy courts seek to facilitate the debtor's rehabilitation and maximize the benefit creditors receive, because litigation in multiple forums adds substantial costs to debtors and increases the likelihood of inequitable treatment of similarly situated creditors. *See Phillips v. Congelton, L.L.C. (In re White Mountain Mining Co., L.L.C.),* 403 F.3d 164, 170 (4th Cir. 2005) (*citing NLRB v. Bildisco and Bildisco*, 465 U.S. 513, 528 (1984)). An essential purpose of the automatic stay is to protect the bankruptcy estate's value from creditor actions for the benefit of all parties. *Independent Union of Flight Attendants v. Pan Am. World Airways, Inc.,* 966 F.2d 457, 459 (9th Cir. 1992). It does this by ceasing all collection efforts and litigation against the

debtor or property of the estate and providing judicial remedies to debtors when creditor actions violate the stay. *See* 11 U.S.C. § 362(a), (k). Therefore, a bankruptcy court's ability to protect property of the estate depends on their authority to enforce the automatic stay against violations. *See Soares v. Brockton Credit Union (In re Soares)*, 107 F.3d 969, 975 (1st Cir. 1997) (bankruptcy courts "must display a certain rigor in reaction to violations" of the automatic stay).

Removing a bilateral dispute between a creditor and the debtor from the centralized, collective bankruptcy process, contravenes the fundamental principle of bankruptcy law to treat all of a debtor's creditors at one time. *See Owens v. LVNV Funding, LLC,* 832 F.3d 726, 732 (7th Cir. 2016), *cert denied,* 137 S. Ct. 2157 (2017). Allowing creditors to violate the automatic stay and adjudicate their claims individually in arbitration would negatively impact the fairness of distributions promised by the Bankruptcy Code. *See Sherwood Partners, Inc. v. Lycos, Inc.*, 394 F.3d 1198, 1203 (9th Cir. 2005) ("[i]n a world of individual actions, each creditor knows that if he waits too long, the debtor's assets will have been exhausted by the demands of the quicker creditors and he will recover nothing"). In addition, arbitration of stay disputes would saddle struggling debtors with increased costs, with no promise of the enhanced judicial economy that is sometimes promoted by arbitration in non-bankruptcy scenarios. Petty's dispute with Wildflowers exemplifies this concern because Petty proposed a promising plan to pay back creditors, and an initial arbitration conference with Wildflowers had yet to occur. R. 6. Forcing Petty to litigate his dispute in another forum would lengthen the expensive process Petty must endure and decrease the size of his estate available to creditors. *See In re Patriot Solar Group, LLC,* 569 B.R. 451 (Bank. W.D. Mich. 2017) (finding the Code's goal of centralized litigation directed the court to refuse to compel arbitration of an automatic stay dispute, especially where the arbitration proceeding was in its infancy).

Furthermore, when a matter arises out of rights uniquely available under the Bankruptcy

Code, there is even greater incentive for bankruptcy courts to uphold the principle of centralized litigation, because the specialized nature of bankruptcy matters requires the insight of bankruptcy judges. *See Ins. Co. of N. Am. V. NGC Settlement Trust & Asbestos Claims Mgmt. Corp. (In re Nat'l Gypsum),* 118 F.3d 1056, 1069 (5th Cir. 1997). The foundational protection provided by the automatic stay is a creature that does not exist outside of the bankruptcy regime. *In re Merril,* 343 B.R. at 9. Arbitration of automatic stay disputes would make debtor-creditor rights contingent upon an arbitrator's ruling, rather than the ruling of the bankruptcy judge with knowledge of the specialized system of bankruptcy. *In re White Mountain Mining,* 403 F.3d at 170. Unlike bankruptcy judges who have extensive experience determining the rights of parties under the Bankruptcy Code, there is no guarantee that arbitrators have the expert knowledge necessary to determine the resolution of specialized bankruptcy matters. *See Sonnax Indus., Inc. v. Tri Component Prods. Corp. (In re Sonnax Indus., Inc.),* 907 F.2d 1280 (2d Cir.1990). This concern has prompted courts to uphold bankruptcy's goal of centralized litigation and refuse to compel arbitration of disputes that could not exist outside of bankruptcy. *See Cont'l Ins. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.),* 671 F.3d 1011, 1020 (9th Cir. 2012); *National Gypsum,* 118 F.3d 1056. In *Thorpe,* the court emphasized that the need for centralization in bankruptcy is heightened where a creditor's motion to compel arbitration of a claim against the debtor is inextricably intertwined with the administration of a Section 524(g) trust. *Thorpe,* 671 F.3d at 1022. In *Anderson v. Credit One Bank, N.A.*, the Second Circuit recognized the "unique expertise" bankruptcy courts possess in interpreting violations of their own orders and injunctions. *Anderson,* 884 F.3d at 390-91 (refusing to compel arbitration of a discharge violation dispute). Similarly, the Thirteenth Circuit below correctly recognized that Petty's Section 362(k) motion for damages involves an intricate bankruptcy proceeding and correctly adhered to the Bankruptcy Code's goal of centralized litigation by affirming the right of a bankruptcy court to oversee the adjudication of the dispute.

The present case provides an example of how compelling arbitration of an automatic stay dispute could derail a successful rehabilitation and cause inequitable treatment of creditors. Wildflowers' original claim against Petty sought $33.2 million in damages, the balance allegedly owed under the Credit Agreement. R. 5. Through the liquidation of Great Wide Open's assets, Wildflowers was able to collect $31.1 million. R. at 5-6. Thereafter, Wildflowers tried to circumvent the bankruptcy process by seizing Petty's Equipment without any confirmation that the automatic stay had been terminated. R. at 6 (Wildflowers failed to file a Section 362(j) motion). If this Court finds that the automatic stay remained intact to protect property of the estate from unlawful action, then any bankruptcy judge would determine without hesitation that Wildflowers breached the automatic stay and is liable for damages under Section 362(k). *See* 11 U.S.C. § 362(k). However, compelling adjudication of this dispute to arbitration could remove the stay's fundamental protection and leave the result in the hands of an arbitrator who may or may not have specialized knowledge of the Bankruptcy Code.

Moreover, the impact resolving this dispute has on Petty's bankruptcy estate creates a distinction between the present case and *MBNA Am. Bank, N.A. v. Hill*, cited by the dissenting opinion below. 436 F.3d 104, (2d Cir. 2006); R. at 25. *Hill* is a chapter 7 no-asset case where a creditor moved to compel arbitration of the debtor's Section 362(h) claim. *Id.* at 106. The Second Circuit relied on three factors in reaching its decision: (1) the debtor had received a full discharge of her debts; (2) the debtor's action was styled as a class action complaint, thus lacking a direct connection to the bankruptcy case; and (3) litigation of automatic stay disputes was covered by 28 U.S.C. 1334(b), which allowed for district courts, in addition to bankruptcy courts, to have jurisdiction. *Id.* at 110. Each of these is inapplicable to the present case. First, Petty brought an individual action while his attempt to reorganize was in its early stages. R. 5. Resolution of this dispute would thus have an immense impact on Petty's ability to reorganize, because allowing Wildflowers to repossess the

Equipment will take away the only property Petty has to operate the Royal Rapids taproom. R. 6. Moreover, unlike the creditors in *Hill*, who were not receiving a distribution regardless of the dispute's resolution, properly adjudicating Petty's Section 362(k) motion in a bankruptcy court would not only protect the bankruptcy estate, but would add $200,000 to the amount distributed to creditors. *See* R. at 15; 28 U.S.C. § 1511. And lastly, the *Hill* court did not mention Section 1334(e)'s exclusive grant of jurisdiction to bankruptcy courts, because there was no property of the estate to protect in *Hill. See Hill,* 436 F.3d at 108. In the present case, where resolution of an automatic stay dispute will significantly impact property of the estate, the principles governing a bankruptcy court's exclusive jurisdiction over the bankruptcy estate should apply to govern the stay violation, because judicial enforcement of the automatic stay is critical to preserving the value of the estate. *See* 28 U.S.C. § 1334(e) (granting bankruptcy courts, through the power delegated by district courts, "exclusive jurisdiction … of property of the estate"); *see Tenn. Student Assistance Corp. v. Hood,* 541 U.S. 440, 447 (2004) ("[b]ankruptcy courts have exclusive jurisdiction over … [property of the estate]"). When the automatic stay applies to actions directed at property of the estate, bankruptcy courts warrant exclusive jurisdiction to enforce the stay. *See Chao v. Hospital Staffing Services, Inc.,* 270 F.3d 374, 383 (6th Cir. 2001). Therefore, compelling arbitration of an automatic stay dispute that affects property of the estate would infringe on the bankruptcy's courts authority and violate the purposes underlying Section 362.

C. Congress created a collective system of rights for creditors in recognition of their vulnerability within bankruptcy. Arbitration of automatic stay disputes conflicts with the rights provided to creditors not a party to the arbitration agreement.

Compelling arbitration of an automatic stay dispute divests creditors not a party to the arbitration agreement from exercising their right to be heard, as afforded by the Bankruptcy Code. The code permits nonparties, including the creditor's committee, or any individual creditor, to appear in any bankruptcy proceeding and raise any issues that party may have. 11 U.S.C. § 1109 (2018). In

an arbitration proceeding, however, nonsignatory creditors with an interest in the claim are unable to participate and protect their rights as they would if the bankruptcy court maintained jurisdiction over the dispute. Bankruptcy is a collective process that depends on the participation of creditors to achieve a successful result. *Owens v. LVNV Funding, LLC*, 832 F.3d 726, 732 (7th Cir. 2016), *cert denied,* 137 S. Ct. 2157 (2017). To that end, restricting creditors' rights to be heard in matters affecting property of the estate undermines the goals of bankruptcy law, which seek to centralize litigation and protect the rights of creditors to receive value from the estate. *See In re Mirant Corp.*, 310 B.R. 548 (Bankr. N.D. Tex. 2004). Furthermore, unlike proceedings under the Bankruptcy Code, which ensure that all parties affected are given notice and the right to participate, arbitration agreements have the power to exclude nonsignatory parties from any involvement or awareness of the proceeding. *Epic,* 138 S. Ct. at 1648 ("[a]rbitration agreements often include provisions requiring that outcomes be kept confidential or barring arbitrators from giving prior proceedings precedential effect") (Ginsburg, J., dissenting).

Here, Petty's creditors, other than Wildflowers, engaged in post-petition settlement negotiations. R. 6. They would receive notice and an opportunity to voice their opinions if Petty's Section 362(k) motion for damages remained under the jurisdiction of the bankruptcy court. *See* § 1109. But if an arbitrator decides the dispute, the possibility that they receive forty percent of their claims under Petty's plan could vanish, without affording the creditors any opportunity to participate. *See id; see Patriot Solar*, 569 B.R. at 459 (denying a creditor's attempt to lift the automatic stay and compel arbitration because creditors not a party to the arbitration agreement had a direct interest in the liquidation of the signatory creditor's claim). In *Patriot Solar*, the court highlighted the participation of two unsecured creditors who appeared at the hearing on the motion to grant relief from the automatic stay. *Id.* at 461. The court refused to lift the stay because compelling arbitration would transform a collective proceeding into a bilateral dispute and interfere with the rights of

nonparty creditors. *Id.* Similarly, the Thirteenth Circuit's decision appropriately protected nonsignatory creditors rights to be heard and preserved their hope of receiving a distribution under Petty's plan.

Relatedly, this Court has affirmed that arbitration agreements do not bind third parties from asserting their statutorily protected interests when they did not sign the arbitration agreement. *See EEOC v. Waffle House, Inc.*, 534 U.S. 279 (2002) (holding that the EEOC could pursue claims specific to an employee victim of discrimination, despite a binding arbitration agreement between the employee and the defendant employer). Although the *Waffle House* case involved a government agency third party acting as a plaintiff outside the bankruptcy context, the Court's reasoning for refusing to compel arbitration aligns with allowing nonsignatory creditors to protect their interests in bankruptcy. *Id.* The *Waffle House* decision relied on statutory support for the third party's independent authority to assert its rights against the defendant, notwithstanding the existence of an arbitration agreement between the defendant and the plaintiff. *Id.* at 289-291 (noting that the FAA "does not purport to place any restriction on a nonparty's choice of a judicial form"). Likewise, in bankruptcy, a creditor's right to participate and object should not be diminished by a pre-petition agreement signed by the debtor. *See* 11 U.S.C. §§ 502(b), 1109. To this end, multiple courts have applied the reasoning from the *Waffle House* decision to preclude the enforcement of a prepetition debtor/creditor arbitration agreement because of the effect arbitration would have on nonsignatory creditors. *See In re Belton*, No. 12-23037, WL 5819586, *4 (Bankr. S.D. N.Y. Nov. 10, 2014) ("a prepetition agreement between the debtor and a creditor that includes an arbitration provision may not be said to cover disputes in a bankruptcy case that involve multiple new parties who did not agree, pre-bankruptcy, to arbitration and who have a statutory right to intervene under section 1109(b) of the Code"); *In re Mirant Corp.* 316 B.R. 234 (Bankr. N.D. Tex. 2004). In *Mirant,* the bankruptcy court declined to compel arbitration of a claim quantification dispute, because doing so would

"effectively eliminate the Code-created rights [of the creditors committee and other parties in interest] to appear and be heard." *Id.* at 244 (emphasizing that "it goes without saying that to prevent a party from exercising rights expressly granted by the Code would contradict the purposes of the Code"). Here, if this Court compels Petty's Section 362(k) motion to arbitration, creditors in his chapter 11 case would face the same fate. Therefore, because it is "a fundamental tenet of arbitration that the parties consent to be bound by the tribunal's award," this Court should affirm that bankruptcy courts should not be forced to compel arbitration of an automatic stay dispute that conflicts with the purposes underlying the Bankruptcy Code and interferes with the rights of nonsignatory parties. *See Waffle House,* 534 U.S. at 294 (*citing Prima Paint Corp. v. Flood & Conklin Mfg*., 388 U.S. 395, 404 n.212 (1967)).

II. THE THIRTEENTH CIRCUIT CORRECTLY DECIDED THAT SECTION 362(c)(3)(A) DOES NOT TERMINATE THE AUTOMATIC STAY WITH RESPECT TO THE PROPERTY OF THE ESTATE.

The automatic stay is one of the greatest protections afforded to debtors and creditors when there is a chapter 7, 11 or 13 proceeding. Still, such protections are not without limit. Section 362(c)(3)(A), enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act (BAPCPA) of 2005, outlines limitations on the protections of the automatic stay in cases where the filing party has filed a bankruptcy case that was dismissed within the previous calendar year. Courts are split regarding the application of those limitations, with a majority of courts interpreting Section 362(c)(3)(A) to mean that "with respect to the debtor" signifies that the stay does not terminate as applied to the property of the estate.

This Court should rule in accordance with the majority approach because it rightly relies on the plain meaning of the statutory language, it uses surrounding provisions to create context for the plain meaning, and it aligns with legislative intent. Compelling policy justifications further bolster the majority's construction because it aligns with the purpose of the automatic stay and the

Bankruptcy Code.

A. The plain meaning of the phrase "with respect to the debtor" unambiguously limits the termination of the stay in Section 362(c)(3)(A).

The majority approach correctly limits the scope of the termination of the automatic stay in Section 362(c)(3)(A) because of the plain meaning of the phrase "with respect to the debtor" is clear. Congress used this language to cabin the scope of the termination of the stay, because the words "with respect to" refer only to the debtor and not the property of the estate. Because there is no reference to the estate or the property of the estate, an alternate reading that expands the scope of termination is not justified by the plain meaning of the phrase "with respect to the debtor."

Determining the meaning of Section 362(c)(3)(A) "begins where all such inquiries must begin: with the language of the statute itself." *United States v. Ron Pair Enterprises, Inc.*, 498 U.S. 235, 241 (1989). This Court has explained that when the "statute's language is plain, the sole function of the courts is to enforce it according to its terms." *Id*. (internal quotation omitted). The language of Section 362(c)(3)(A) reads:

> [T]he 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[.]
>
> 11 U.S.C. § 362(c)(3)(A).

Here, the phrase "with respect to the debtor" is unambiguous and plain. The clause "with respect to" modifies the word "debtor" and only that word. The statute does not contain an "and" clause; nor does it reference the estate or the property of the estate which would expand the scope of the termination of the automatic stay. Therefore, the plain language is explicit that the stay terminates only in reference to the debtor. As such, there is "no ambiguity in the language of the statute." *In re Holcomb*, 380 B.R. 813, 816 (10th Cir. BAP 2008).

Courts in the majority recognize that although the language of Section 362(c)(3)(A) is not free from ambiguity as a whole, "the words, 'with respect to the debtor' in that section are entirely plain." *In Re Jones*, 339 B.R. 360, 363 (Bankr. E.D.N.C 2006) (asking rhetorically, "how could that be any clearer?"). As such, this Court should be persuaded to end the inquiry, given the fact that the plain meaning of Section 362(c)(3)(A) is clear. In fact, "the inquiry should end, for where, as here, the statute's language is plain, the sole function of the courts is to enforce it according to its terms." *Ron Pair Enterprises, Inc.,* 498 U.S. at 241. Nevertheless, even when the plain meaning is clear and unambiguous, a contextual reading of the statute further enforces the plain meaning of the language of the statute.

B. Because Congress explicitly referenced property of the estate in other provisions of the Bankruptcy Code, it intentionally limited the scope of the termination in Section 362(c)(3)(A) when it omitted such reference.

The majority's interpretation is bolstered because the plain meaning of Section 362(c)(3)(A) is consistent with a contextual reading of the statute. While the plain meaning of the statute is clear, principled statutory construction cannot solely rely on reading the statute in isolation. Indeed, "statutory construction is a 'holistic endeavor.'" *In re Tubman*, 364 B.R. 574, 582 (D. Md. 2007) (quoting *United Sav. Ass'n of Texas v. Timbers of the Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 371 (1988)). A "cardinal rule" of statutory construction is 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). Here, not only does a plain reading of Section 362(c)(3)(A) by itself "make sense," but "it is entirely consistent with the other provisions of § 362 and other sections of the Bankruptcy Code." *In Re Jones*, 339 B.R. at 363. Therefore, because Section 362(c)(3)(A) does not exist in a vacuum, "it must be read in conjunction with § 362(a)," as well as Section 362(c)(4)(A)(i). *Rose v. Select Portfolio Servicing, Incorporated*, 945 F.3d 226, 230 (5th. Cir. 2019).

Reading Section 362(c)(3)(A) in the broader context of Section 362(c) makes clear that Congress understood the language it used. As the Fifth Circuit noted, "Congress knew how to terminate the entire stay, and in fact did so in the very next section of the statute." *Rose*, 945 F.3d at 230. Section 362(c)(4)(A)(i) discusses debtors who have had two or more cases pending in the prior year and states that "the stay under subsection (a) shall not go into effect upon the filing of the later case." This means that "for debtors falling under § 362(c)(4)(A)(i), the automatic stay is terminated in its entirety." *Id*. at 231. Importantly, it does not include any of the limiting language that Section 362(c)(3)(A) contains. Because Congress knew how to implicate property of the estate and terminate the stay in its entirety, "[but] did not do so" in Section 362(c)(3)(A), Congress "indicat[ed] an intent to curb abuse differently." *See In re Harris*, 342 B.R. 274, 279-80 (Bankr. N.D. Ohio 2006) (citations omitted). Congress chose to use the qualifying phrase "with respect to the debtor" in Section 362(c)(3)(A), which can only be interpreted as implying a limitation upon the scope of the termination of the automatic stay. *Id*.

The Court can even look to sections outside of Section 362(c) to clarify the meaning of Section 362(c)(3)(A). When discussing property of the estate in Section 362(a), Congress explicitly mentioned "property of the estate." Section 362(a), which defines the automatic stay, has three subsections that are of particular importance in determining the meaning of Section 362(c)(3)(A): subsections 362(a)(2), 362(a)(3), and 362(a)(4). In all three, Congress explicitly defined the scope of the protection of the automatic stay with reference to "property of the estate." By contrast, the language Congress used in Section 362(c)(3)(A) "provides for the expiration upon thirty days of the stay concerning 'debt or property securing such debt' *but only* '*with respect to the debtor*.'" *In re Williams*, 346 B.R. 361, 367 (Bankr. E.D. Pa. 2006) (emphasis added). Therefore, "since [S]ection 362(c)(3)(A) does not purport to terminate the stay as to estate property . . . the stay provisions imposed by sections 362(a)(3), (a)(4), and part of (a)(2), expressly protecting property of the estate,

do not expire after thirty days." *Id.*[2]

Congress even distinguished property of the estate from property of the debtor in Section 521(a)(6). "Section 521(a)(6) provides that the automatic stay is terminated with respect to the personal property of the estate or of the debtor if the debtor does not reaffirm or redeem property within 45 days after the first meeting of creditors. If Congress had intended the automatic stay to terminate under § 362(c)(3)(A) as to property of the estate, it would have specifically said so, as it did in § 521(a)(6)." *In re Jones*, 339 B.R. at 364. Therefore, property of the estate cannot be implicated in Section 362(c)(3)(A) because Congress explicitly omitted its reference.

When the plain meaning of the statutory language and contextual reading of Section 362(c)(3)(A) confirm that "with respect to the debtor" does not terminate the stay in its entirety, this Court's inquiry should be complete. The majority approach does not "violate the cardinal rule that, if possible, effect shall be given to every clause and part of a statute." *D. Ginsberg & Sons, Inc. v. Popkin*, 285 U.S. 204, 208 (1932). The majority approach does not engage in the "dubious practice" that "use[s] legislative history to rewrite a statute" that would render the phrase "with respect to the debtor" meaningless. *In re McGrath*, 621 B.R. 260, 266 (Bankr. D.N.M. 2020). "[A] government of law, not of men is to be governed by what the laws *say*, and not by what the people who drafted the laws intended." *Id.* With that said, however, the Court should be convinced that the majority interpretation is persuasive where the plain meaning of the text and its confirmation within the context of the statute aligns with the general congressional "intent" to discourage bad faith bankruptcy filings. That is exactly the circumstance in this case.

C. The majority interpretation of Section 362(c)(3)(A) aligns with legislative intent because it deters debtors from filing frivolous bankruptcy suits.

[2] *See also In re Baldassaro,* 338 B.R. 178, 185 (Bankr. D.N.H. 2006); *In re Harris,* 342 B.R. 274, 277–78 (Bankr. N.D. Ohio 2006); *In re Johnson,* 335 B.R. 805 (Bankr.W.D. Tenn. 2006); *In re Jones,* 339 B.R. 360 (Bankr. E.D.N.C. 2006); *In re Moon,* 339 B.R. 668, 671(Bankr. N.D. Ohio 2006).

The majority approach is confirmed, not contradicted, by legislative intent because it allows for adequate deterrence against frivolous bankruptcy filings. As an initial matter, the plain meaning of legislation should be conclusive, except in the "rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters." *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982). In such cases, the intention of the drafters, rather than the strict language, controls. *Ron Pair Enterprises, Inc.*, 498 U.S. at 242. To be clear, this is not such a case. Regardless, the Court's inquiry into legislative intent should further support the majority's interpretation of Section 362(c) because it does not offend Congress's purpose in enacting the section.

The legislative history of the 2005 amendments to the Bankruptcy Code makes clear that Congress intended to protect the property of the estate. In a report entitled "Discouraging Bad Faith Repeat Filings," Congress explains that it "amends section 362(c) of the Bankruptcy Code to terminate the automatic stay within 30 days in a chapter 7, 11, or 13 case filed by or against an individual if such individual was a debtor in a previously dismissed case pending within the preceding one-year period." H.R. Rep. No. 109-31, pt. 1, at 69 (2005). The majority approach does nothing to encourage bad faith filings, and therefore cannot be interpreted to be at odds with this "intent." For example, the "construction of Section 362(c)(3)(A), as written, permits mortgagee lawsuits, against the individual debtor (in any bankruptcy chapter) who has filed a second bankruptcy case within one year, to commence or continue until judgment, without bankruptcy court approval." *In re Williams*, 346 B.R. at 369. Lifting the stay "with respect to the debtor" to allow for such actions adequately deters frivolous filings.

The majority approach does not engage in a "dubious practice" that "use[s] legislative history to rewrite a statute" that would render the phrase "with respect to the debtor" meaningless. *In re McGrath*, 621 B.R. at 266. Instead, it "recognizes that Congressmen typically vote on the *language*

of the bill itself" and not the text legislative history. *Lamie v. U.S. Trustee*, 540 U.S. 526, 538 (2004) (emphasis added). Therefore, when there is statutory language "[w]ith a plain, non-absurd meaning in view," the Court need not proceed in a way that acts as "an enlargement of it by the court, so that what was omitted . . . may be included within its scope." *Id*. (quoting *Iselin v. United States*, 270 U.S. 245, 251 (1926)). In other words, this Court instructs courts not to inject meaning or phraseology, that otherwise does not exist, into the plain language of the statute under the guise of conforming to legislative intent. Because the majority approach conforms to every tenet of principled statutory construction, this Court should be persuaded by the court's cogent reasoning below and conclude that Section 362(c)(3)(A) does not terminate the stay with respect to property of the estate.

D. The majority's approach to Section 362(c)(3)(A) best reflects the goals of bankruptcy law because it balances the interests of debtors and creditors.

At the core of federal bankruptcy law are two policy objectives: "obtaining a maximum and equitable distribution for creditors and ensuring a 'fresh start' for individual debtors." *BFP v. Resolution Tr. Corp.*, 511 U.S. 531, 563 (1994). In other words, the bankruptcy case is a collective proceeding meant to protect the interests of stakeholders and facilitate reorganization. The automatic stay is essential to these goals because it preserves going-concern value by preventing creditors from picking apart the debtor one asset at a time, which would convert an operating business into a pile of spare parts, and gives debtors "breathing space" to focus on rehabilitation or reorganization. Alan N. Resnick & Henry J. Sommer, 3 Collier on Bankruptcy ¶ 362.03 (16th ed.2015).

1. The majority approach protects creditors during the bankruptcy process by preventing a single creditor from dismembering the debtor's assets – an action that would make Petty's chapter 11 reorganization impossible.

The majority approach, which limits the automatic stay to the debtor and the debtor's property, benefits all stakeholders by protecting the property of the estate from overzealous creditors. Absent this protection, creditors could pursue their own remedies against the estate to the detriment

of the other creditors. H.R. Rep. No. 95-595 at 340, (1977). Terminating the stay for property of the estate prevents a fair distribution for creditors because it would allow "a single creditor, who may be over secured, full access to property that would otherwise be property of the estate." *In re Holcomb,* 380 B.R. at 816. Picking apart the estate in this way would disrupt an orderly liquidation or reorganization, as creditors would be "incentiv[ized] to act as quickly and aggressively as possible to collect on their debts." *See* Kimberly Lehnert, *Termination of the Stay for Successive Filers: Interpreting § 362(c)(3),* 29 Emory Bankr. Dev. J. 243, 246 (2012).

The majority's limitation on Section 362(c)(3)(A) prevents creditors, like Wildflowers, from jumping the gun and repossessing property of the estate, an action which debilitates the efficacy of the bankruptcy proceeding. In the present case, Petty's reorganization plan, which included payments to all of Petty's creditors including Wildflowers, was disrupted when Wildflowers repossessed the Equipment he needed to operate his business. R. at 6. Petitioner would have this Court find that Wildflowers acted legally when it repossessed the Equipment to the detriment of Petty's other creditors and effectively cut the legs out from under Petty's business. Instead, the premature repossession of the Equipment destroyed Petty's goodwill in the community, causing his business to fail, his employees to be terminated, and any parties involved in Petty's business venture and reorganization plan to suffer the consequences. For this reason, a holding which allows creditors to disrupt reorganization violates the spirit of bankruptcy law and the automatic stay.

2. The majority approach relieves debtors from the pressures of creditor collection efforts.

While Section 362(c)(3)(A) was enacted to prevent abuses from serial filers, Congress's intent was not to gut the protections of the automatic stay entirely. Because of the powerful protections of the automatic stay, numerous debtors filing bankruptcy prior to the enactment of Section 362(c)

abused the stay through serial filings.[3] *See* Kimberly Lehnert, *Termination of the Stay for Successive Filers: Interpreting § 362(c)(3)*, 29 Emory Bankr. Dev. J. 243, 248 (2012). Such abuse prompted Congress to form the National Bankruptcy Review Commission in 1994. *Id* at 249. What followed were a series of reports that culminated in the 2005 version of Section 362(c)(3)(A) enacted with BAPCPA – a provision to prevent serial filings, not to eliminate the automatic stay all together.

Speaking to the importance of the automatic stay, the House Report accompanying the Bankruptcy Reform Act of 1978 explains:

> The automatic stay is one of the fundamental debtor protections provided by the bankruptcy laws. It gives the debtor a breathing spell from his creditors. It stops all collection efforts, all harassment, and all foreclosure actions. It permits the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove him into bankruptcy.
>
> H.R. Rep. No. 95-595 at 340, (1977).

The minority approach reimagines the provision as terminating the entirety of the stay because of a problem with the principles of the automatic stay. This represents a fundamental misunderstanding of Congress's intent – to prevent frivolous serial filings. *Id.* Rather than viewing the automatic stay as too generous, Congress intended Section 362(c)(3)(A) as a protection of the stay for deserving debtors not taking advantage of bankruptcy law to unnecessarily delay collection efforts.

In fact, if there is concern that a debtor is abusing the automatic stay, creditors may file a motion for relief under Section 362(d). *Rose,* 945 F.3d. at 231. The motion must be heard within thirty days and is granted unless the debtor can offer the creditor adequate protection. *Id.* Such a motion protects apprehensive creditors concerned that there is a "scheme to delay, hinder, or defraud" them. 11 U.S.C. § 362(d). Therefore, "even if the automatic stay remains in effect with respect to the bankruptcy estate—as is the case under our interpretation of Section 362(c)(3)(A)—creditors can still

[3] Serial filing constituted the continuous refiling of bankruptcy petitions each time a previous case was dismissed. Many debtors were serial filers to take advantage of the automatic stay.

obtain judicial relief under § 362(d) if circumstances demand it." *Rose*, 945 F.3d at 231.

CONCLUSION

For the foregoing reasons, Petty respectfully requests that this Court affirm the decision of the Court of Appeals for the Thirteenth Circuit. First, compelling arbitration of an automatic stay dispute between Petty and Wildflowers interferes with the rights of creditors, violates the goal of centralized litigation, and violates the Bankruptcy Code's commitment to protect property of the estate. Second, Section 362(c)(3)(A) does not terminate the automatic stay with respect to the property of the estate.

APPENDIX A

9 U.S.C. § 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.

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11 U.S.C. 362. 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;

(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;
>
> **(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;

(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.

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11 U.S.C. § 502. Allowance of claims or interests

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that[...]

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11 U.S.C. § 521. Debtor's duties

(a) The debtor shall—

(6) in a case under chapter 7 of this title in which the debtor is an individual, not retain possession of personal property as to which a creditor has an allowed claim for the purchase price secured in whole or in part by an interest in such personal property unless the debtor, not later than 45 days after the first meeting of creditors under section 341(a), either—[...]

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11 U.S.C. § 1109. Right to be heard.

(b) A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter.

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28 U.S.C. § 157. Procedures

(b)(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;
(D) orders in respect to obtaining credit;
(E) orders to turn over property of the estate;
(F) proceedings to determine, avoid, or recover preferences;
(G) motions to terminate, annul, or modify the automatic stay;
(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;
(J) objections to discharges;
(K) determinations of the validity, extent, or priority of liens;
(L) confirmations of plans;
(M) orders approving the use or lease of property, including the use of cash collateral;
(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.

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28 U.S.C. § 1334. Bankruptcy cases and proceedings

(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and
(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.