No. 20-1004

IN THE

Supreme Court of the United States of America

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 RESPONDENT, EARL THOMAS PETTY

January 19, 2021

TEAM NUMBER 24
COUNSEL FOR RESPONDENT

QUESTIONS PRESENTED

I. Under 11 U.S.C. § 362 and certain other judicial code provisions, is a debtor permitted to bring a bankruptcy case notwithstanding a valid prepetition arbitration agreement between the debtor and creditor when Congress overrode the FAA mandate by expressly and impliedly providing a contrary congressional command in 28 U.S.C. § 1334's text and when an inherent conflict exists between arbitration and the underlying purposes of § 362?

II. Under 11 U.S.C. § 362(c)(3)(A) does the automatic stay remain in effect after thirty days with regard to the bankruptcy estate when the language of 11 U.S.C. § 362(c)(3)(A) only terminates the automatic stay as to the debtor?

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The United States Court of Appeals for the Thirteenth Circuit's 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 appeal, the Thirteenth Circuit Court of Appeals affirmed the decision in favor of Earl Thomas Petty.

STATEMENT OF JURISDICTION

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

PERTINENT STATUTORY PROVISIONS

This action implicates certain statutory provisions of Title 11 and Title 28 of the United States Code.

The relevant portion of 28 U.S.C. § 1334 provides:

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

(c)

(1) Except with respect to a case under chapter 15 of title 11 [11 USCS §§ 1501 et seq.], nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

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

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title [11 USCS § 301, 302, or 303], or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970 [15 USCS § 78eee(a)(3)], 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.

(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 [11 USCS §§ 701 et seq., 1101 et seq., or 1301 et seq.], 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) [11 USCS § 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 [11 USCS §§ 701 et seq., 1101 et seq., and 1301 et seq.] 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 [11 USCS §§ 701 et seq., 1101 et seq., and 1301 et seq.] 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 [11 USCS §§ 101 et seq.] 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 [11 USCS §§ 701 et seq., 1101 et seq., or 1301 et seq.] or any other reason to conclude that the later case will be concluded—

(aa) if a case under chapter 7 [11 USCS §§ 701 et seq.], with a discharge; or

(bb) if a case under chapter 11 or 13 [11 USCS §§ 1101 et seq. or 1301 et seq.], 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

STATEMENT OF THE CASE

This appeal arises out of the Petitioner's attempt to undermine Congress's procedural posture of the Bankruptcy Code. Accordingly, the Petitioner threatens to put at risk the Respondent's guaranteed protections provided by the Bankruptcy Code.

I. FACTUAL HISTORY.

Petitioner Wildflowers Community Bank ("Wildflowers"), is the lender of Great Wide Open Brewing Company, Inc. ("Great Wide Open"), a brewery founded in 2002 and located in the State of Moot. R. at 3-4. Respondent Earl Thomas Petty ("Petty"), is the founder of Great Wide Open. R. at 3.

In 2005, a 9,000 square foot taproom was opened for Great Wide Open in the City of Royal Rapids, Moot. R. at 3. Within the taproom were small batch brewing equipment which Petty purchased himself (the "Equipment"). R. at 3. Progressively Great Wide Open became the State of Moot's largest craft brewery and due to increased demands, Petty engaged in additional business for growth. R. at 3-4. In 2010, Great Wide Open expanded their operations by opening four additional taprooms; and in 2012, unveiled a brewhouse which had the capacity for increased beer production. R. at 4.

To obtain capital for the business expansion, Great Wide Open entered into a $35 million revolving credit agreement with Wildflowers (the "Credit Agreement") who witnessed Great Wide Open become one of its largest credits in its loan portfolio. R. at 4. As security for the revolving credit, Great Wide Open granted Wildflowers a first priority lien on substantially all of its assets. R. at 4. Petty also signed a personal guaranty, conditionally guaranteeing repayment of the business's obligations (the "Guaranty") and Petty granted Wildflowers a first priority lien on the Equipment as security. R. at 4. Both the Credit Agreement and the Guaranty contained identical

"Remedies" clauses which provided that upon default, "Obligor 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 agreements also contained "Arbitration" clauses which provided 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.

In 2017, Great Wide Open began having liquidity problems. R. at 5. In March 2018, Great Wide Open closed three of its taprooms without notice to Wildflowers. R. at 5. Wildflowers learned about the closed taprooms when its loan officer saw a sign on the Royal Rapids taproom advising vendors and patrons, "Don't come around here no more." R. at 5. The landlord for the Royal Rapids taproom subsequently terminated the lease for that location. R. at 5.

In April 2018, Great Wide Open and Petty defaulted on their respective payment obligations. R. at 5. On June 4, 2018, Wildflowers filed a demand for arbitration and a general state law breach of contract complaint against Petty with the American Arbitration Association (the "AAA"). R. at 5. The complaint sought $33.2 million in damages which Wildflowers alleged was the balance owed under the Credit Agreement. R. at 5. The initial conference with the AAA was scheduled for July 12, 2018. R. at 5. The day prior, Great Wide Open terminated its employees and ceased all operations. R. at 5.

II. PROCEDURAL HISTORY.

On July 12, 2018, Great Wide Open commenced a chapter 7 bankruptcy petition, and Petty filed his own chapter 11 petition (the "Initial Bankruptcy Case"), both in the Bankruptcy Court for the District of Moot. R. at 5. On August 27, 2018, Petty's Initial Bankruptcy Case was dismissed

due to his attorney's failure to timely file certain documents, including his schedules of assets and liabilities. R. at 5.

After hiring new bankruptcy counsel, Petty commenced his second chapter 11 bankruptcy (the "Second Bankruptcy Case") on January 11, 2019 and all required documents were filed in a timely manner. R. at 5-6. Along with filing the petition in the Second Bankruptcy Case, Petty filed a chapter 11 plan of reorganization, proposing to pay his creditors, including Wildflowers, forty cents on the dollar from his income over a five-year period. R. at 6. The plan incorporated settlements that Petty had negotiated pre-petition with several of his creditors but not Wildflowers. R. at 6.

During the first day hearings in the Second Bankruptcy Case, Petty advised that after negotiating the lease with the landlord, he had reopened the original Royal Rapids taproom in December 2018 as a sole proprietorship doing business as "Full Moon Fever Brewing." R. at 6. Petty stated he was using the Equipment again which remained in the taproom after the landlord terminated its lease with Great Wide Open. R. at 6.

The Second Bankruptcy Case suffered from one significant omission which was that Petty did not file a motion to extend the automatic stay under section 262(c)(3)(B) during the first thirty days of the second Bankruptcy Case. R. at 6. 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 which remained subject to its security interest granted in connection with the Guaranty. R. at 6. While Wildflowers could have requested an order from the bankruptcy court for confirmation that the stay had terminated with respect to the Equipment under section 362(j), Wildflowers did not do so. R. at 6.

A week after Wildflowers' repossession, Petty filed a motion in the Second Bankruptcy Court alleging that Wildflowers violated the automatic stay and sought $500,000 in damages under section 362(k). R. at 6. Petty alleged that by Wildflowers repossessing the Equipment, Wildflowers effectively shut down Full Moon Fever Brewing and destroyed the goodwill the business had generated since opening. R. at 7. On March 5, 2019, Wildflowers filed a reply to Petty's motion stating that pursuant to section 362(c)(3)(A), no automatic stay existed with respect to the property of the estate, including the Equipment, because Petty had a prior bankruptcy case dismissed within one year of the filing of the Second Bankruptcy Case. R. at 7. Wildflowers added that Petty neglected to file a motion seeking to extend the automatic stay pursuant to section 362(c)(3)(B) and that Petty should be compelled to bring any claims against Wildflowers in the pending arbitration proceeding based on the arbitration provisions in the Guaranty. R. at 7.

The bankruptcy court ruled in favor of Petty and held that enforcing the arbitration agreement would conflict with the Bankruptcy Code, particularly section 362. R. at 7. The bankruptcy court denied Wildflowers' request to compel arbitration and held 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. R. at 7. The bankruptcy court held that since the Equipment was indisputably property of the bankruptcy estate, Wildflowers willfully violated the automatic stay. R. at 7. The bankruptcy court awarded compensatory damages in the amount of $200,000 to Petty and against Wildflowers. R. at 7. Wildflowers timely sought a direct appeal which the bankruptcy court certified. R. at 7. After the Thirteenth Circuit Court of Appeals affirmed the bankruptcy court's ruling, the petitioner, Wildflowers, filed an application for certiorari with the Supreme Court of the United States from such judgment and certiorari was granted. R. at 7.

STANDARD OF REVIEW

The questions presented in this matter involve questions of law because the issues are centered on the statutory interpretation of the Bankruptcy Code.[1] As a result, the appropriate 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

For centuries, the Bankruptcy Code has provided Debtors with a substantive right of extraordinary magnitude, the automatic stay. This fundamental protection arises by operation of law when a bankruptcy case is commenced in order to give the debtor a breathing spell from its creditors; "to stop all collection efforts, all harassment, and all foreclosure actions. Permitting the debtor to attempt a repayment or reorganization plan, or simply to be relieved of the financial pressures that drove them into bankruptcy." H.R. Rep. No. 95-595, at 340-41 (1997), reprinted in 1978 U.S.C.C.A.N. 5693, 6296-97. Wildflowers deprived Petty of that essential protection afforded by the Code when they repossessed the "property of his estate, the Equipment," when § 362(c)(3)(A) references only property of the debtor. Further, Petty met his heavy burden of proof of showing that "Congress intended to preclude a waiver of judicial remedies for the statutory rights at issue," therefore, the Bankruptcy court was proper in deciding it had the authority to decide the dispute. *In Shearson/Am. Express, Inc. v. McMahon*, 48 U.S. 220, 227 (1987).

Congress enacted the Federal Arbitration Act ("FAA") to provide for a "quicker, more informal, and often cheaper resolution for those involved." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1624 (2018) (citation omitted). While that might have been the intentions of Congress when

[1] The Bankruptcy Code is set forth in 11 U.S.C. §§ 101 *et seq*. Specific chapters of the Bankruptcy Code are identified as "chapter_" and specific sections of the Bankruptcy Code are identified herein as "section_."

enacting the FAA, the exact opposite is true if arbitration is enforced to resolve the dispute between Petty and Wildflowers. This court does not need to rigorously enforce the agreement to arbitrate because a countervailing policy manifests itself in another federal statute. *See Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 221 (1985). The Supreme Court of the United States has previously explained that "a statutory directive, the [FAA's] mandate may be overridden by a contrary congressional command, which may be deduced from the statutes text or legislative history, or from an inherent conflict between arbitration and the statutes underlying purposes." *McMahon*, 48 U.S. at 226-27. Both criteria are present in this case.

A few circuits have concluded that neither the text nor the legislative history of the Code reflects a congressional intent to preclude arbitration in the bankruptcy context, but that is not true. *See* R. at 10. Congress expressly and impliedly overrode the FAA by providing a contrary congressional command in § 1334 which we can find in both the text and the history of that particular statute. *See generally* John R. Hardison, Express Preclusion of the Federal Arbitration Act for All Bankruptcy-Related Matters, 93 St. John's L. Rev. 627, (2019). For example, the language in § 1334 does not mention the FAA, arbitration, or any other non-judicial remedies, instead, the statute refers to "courts" when providing that the "district court shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11…" *Id*. at 651; 28 U.S.C. §1334(b) (2018). The history of the 1984 amendment to the Code was to expand greatly the bankruptcy jurisdiction; the expansion of this jurisdiction was to be exercised by the new bankruptcy judges for the district courts, and not Article III federal court judges exercising bankruptcy jurisdiction as a whole. *See* John R. Hardison, Express Preclusion, St. John's L. Rev., 2019, at 661. The intended result of Congresses' expansion of jurisdiction was to consolidate all

bankruptcy-related matters into the bankruptcy court, indicating that the Bankruptcy Court for the District of Moot was correct in deciding the dispute between Petty and Wildflowers. *See id*.

Not only does the text and legislative history of § 1334 provide a contrary congressional command to override the FAA, but so does the presence of an inherent conflict between arbitration and the underlying purpose of the automatic stay. R. at 10. To decide whether an inherent conflict exists between the FAA and the Code, courts largely have relied on the distinction between "core" and "non-core" proceedings. *Id*. Bankruptcy courts are likely to have discretion to refuse to compel arbitration of core bankruptcy matters, which implicate "more pressing bankruptcy concerns." *MBNA Am. Bank, N.A. v. Hill*, 436 F.3d 104, 108 (2nd Cir. 2006). A proceeding that arises by their nature only in the context of a bankruptcy case, such as an automatic stay under § 362 are deemed core proceedings. *Id*. The Second Circuit in *Hill* found that while a claim based on a violation of the automatic stay is a core proceeding, they found that arbitration would not jeopardize or inherently conflict with the Code. *Id*. at 111. However, the reasoning behind why the Second Circuit in *Hill* found that holding to be applicable in that case is factually distinguishable than in this dispute between Petty and Wildflowers. Unlike the issue in *Hill* that involved a Chapter 7 liquidation, the issue in this case involves a Chapter 11 reorganization. *Hill*, 436 F.3d at 110; R. at 13. Petty's motion to enforce the automatic stay and recover damages from Wildflowers is critical to his ability to reorganize under the Bankruptcy Code, discharge his debts, and obtain a fresh start. R. at 13. Therefore, if this court allowed the dispute between Petty and Wildflowers to go to arbitration, it would undermine the underlying purposes of the Code because as a core proceeding, the automatic stay provides Petty the opportunity to reorganize his business, allowing him to obtain a fresh start.

As to the second issue, the Thirteenth Circuit Court of Appeals correctly held that § 362(c)(3)(A) did not apply to the property of the estate, and thus the automatic stay was still in effect as to Petty's equipment. When a debtor files for bankruptcy, 11 U.S.C. § 362(a) imposes an automatic stay as to actions against the debtor, the debtor's property, and the property of the estate. This automatic stay is a fundamental element of bankruptcy law and provides the debtor with a breathing spell. The correct interpretation, the majority approach of § 362(c)(3)(A), is that for a debtor with a previous bankruptcy case filed in the last year, the automatic terminates after 30 days only as to the debtor and his property and remains in place as to the estate property. The minority interpretation is that the automatic stay completely terminates after thirty days.

This Court should affirm the Thirteenth Circuit's decision for two crucial reasons. First, the plain meaning rule and other statutory rules of construction require that the § 362(c)(3)(A) be read as only applying to the debtor and the debtor's estate. Second, this interpretation of § 362(c)(3)(A) would best serve public policy and the fundamental goals of bankruptcy law.

Under the statutory rules of construction, § 362(c)(3)(A) does not apply to the bankruptcy estate's property. The cardinal plain meaning rule requires that statutory language be given its plain meaning. Following the plain meaning rule, the phrase "with respect to the debtor" must be read as limiting the termination of the stay to apply only to the debtor's property. Additionally, in the subsequent section of the act, the language terminates the stay in its entirety using different language. Thus, it is evident that the legislature knew the proper language to use if they wanted to terminate the stay in its entirety; and intentionally used limiting language in § 362(c)(3)(A) to limit the application of that section. Furthermore, under the statutory rule against superfluities, every phrase in a statute must have a purpose. Thus, the phrase "with respect to the debtor" cannot be ignored and has the effect of limiting the application of the section to the debtor's property.

Additionally, because § 362(c)(3)(A) has a plain meaning the Court should not delve into its scarce legislative history. However, the legislative history shows only a desire for a moderate approach to combat repeat bad faith filers. Applying § 362(c)(3)(A) only to the debtor's property accomplishes that moderate approach. It is the courts role to interpret statutes as they are written, therefore, this Court should apply the plain meaning interpretation of § 362(c)(3)(A) and affirm the Thirteenth Circuit's decision.

The goals of bankruptcy court and The Bankruptcy Abuse Prevention Act and Consumer Protection Act of 2005 ("BAPCPA") are best accomplished through the majority view's interpretation of § 362(c)(3)(A). The automatic stay is central to the goals of bankruptcy because it gives the debtor a breathing period and provides time in which the debtor may create a plan with all creditors involved. By applying § 362(c)(3)(A) to the bankruptcy estate, one creditor may obtain property from the bankruptcy estate that the debtor could have used to generate profits to pay multiple creditors back. A goal of bankruptcy is to provide a process that is beneficial to all creditors involved. However, applying § 362(c)(3)(A) to the bankruptcy estate would favor one creditor to the detriment of the other creditors. Furthermore, the BAPCPA's goal of deterring repeat bad faith creditors would still be adequately served under the majority view's interpretation. Creditors could still use § 362(d) to terminate the automatic stay at any point if the debtor has in fact filed in bad faith. Thus, the goals of bankruptcy are best served overall through the majority view's interpretation of § 362(c)(3)(A).

ARGUMENT

This Court should affirm the Thirteenth Circuit Court of Appeals' decision in determining that the Bankruptcy Court for the District of Moot has the authority to decide the dispute between Petty and Wildflowers, notwithstanding the prepetition arbitration agreement the parties entered

into. Further, this Court should affirm the circuit court's conclusion that 11 U.S.C. § 362(c)(3)(A) results in termination of the automatic stay only "with respect to the debtor" and not as to property of the estate.

I. THE THIRTEENTH CIRCUIT CORRECTLY HELD THAT THE BANKRUPTCY COURT HAD THE JURISDICTION TO DECIDE THE DISPUTE BETWEEN PETTY AND WILDFLOWERS.

When the FAA and bankruptcy laws collide in a Chapter 11 proceeding, we are given a controversial issue among the circuits and the Supreme Court: whether a bankruptcy court has the authority to determine disputes between a creditor and debtor notwithstanding a valid prepetition arbitration agreement between the parties. R. at 2-3. The Thirteenth Circuit correctly ruled that § 362 impliedly repealed the FAA, allowing the bankruptcy court the authority to decide the dispute between Petty and Wildflowers.

At issue in this appeal is the automatic stay, a substantive right, available only under the Bankruptcy Code, which only reinforces the incredible importance of this core issue. *See, e.g.*, *Amedisys, Inc. v. Nat'l Century Fin. Enters., Inc*. (*In re. Nat'l Century Fin. Enters., Inc*.), 423 F.3d 567, 573-74 (6th Cir. 2005); R. at 11. The FAA is impliedly repealed in this case because § 362 and related judicial code provisions are clearly at odds with Congress's intent to centralize disputes, promote participation from all stakeholders, and ensure that a debtor's reorganization efforts continue unbated in bankruptcy. R. at 13. Petty's motion to enforce the automatic stay and recover damages from Wildflowers is critical to his ability to reorganize under the Bankruptcy Code, discharge his debts, and obtain a fresh start. Accordingly, 11 U.S.C. § 362 and 28 U.S.C. § 1334 are at odds with the FAA, allowing the bankruptcy court the authority to deny enforcement of the arbitration agreement between Petty and Wildflowers.

A. Congress expressly and impliedly overrode the FAA by providing a contrary congressional command in 28 U.S.C. § 1334.

For years, the Supreme Court of the United States has been opposed to arguments of implied repeal or preclusion of claims under one federal statute by another, but 28 U.S.C. § 1334, the bankruptcy jurisdiction statute, contains express language of preclusion. *See* John R. Hardison, *Express Preclusion of the Federal Arbitration Act for All Bankruptcy-Related Matters*, 93 St. John's L. Rev. 627, 630 (2019). This statutory command expressly grants bankruptcy courts authority to hear all matters related to bankruptcy cases notwithstanding any arbitration agreement to the contrary. *Id*. Therefore, the Thirteenth Circuit was correct in denying to enforce the arbitration agreement between Petty and Wildflowers. *See* R. at 3.

When Congress enacted the FAA, they did so to provide for "quicker, more informal, and often cheaper resolutions," by instructing courts to enforce agreements to arbitrate according to their terms. *Epic Sys. Corp. v. Lewis*, 138 S Ct. 1612, 1624 (2018) (citation omitted); 9 U.S.C. § 2. However, like any statutory directive, the FAA may be overridden by a contrary congressional command – such a command may be deduced from the statute's text or legislative history… *or* from an inherent conflict between arbitration and the statute's underlying purpose. *Shearson/Am. Express, Inc. v. McMahon*, 48 U.S. 220, 226-27 (1987). "A later enacted statute…can sometimes operate to amend or even repeal an earlier statutory provision, the intention of the legislature to repeal must be clear and manifest." *See* John R. Hardison, *Express Preclusion*, St. John's L. Rev., 2019, at 651. Thus, courts "will not infer a statutory repeal unless the later statute expressly contradicts the original act." *Id*.

1. Congress's 1984 bankruptcy amendment expressly shows a clear intent to broadly displace the FAA for all bankruptcy-related matters.

Mere inference of intent to displace the FAA is not necessary for the current bankruptcy jurisdictional provisions, because Congress expressed clear intent to repeal any inconsistent statute. *Id*. The applicable statute, 28 U.S.C. § 1334 reads as follows:

> (b) "except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11." 28 U.S.C. §1334(b) (2018).

The language "notwithstanding any Act of Congress," shows that the Legislature in drafting the statute intended to displace at least some other acts of Congress, therefore, there is not a need for a presumption against repeal or preclusion. *See* John R. Hardison, *Express Preclusion*, St. John's L. Rev., 2019, at 651. While the statute itself does not mention the FAA and instead refers to "courts" without specifically mentioning non-judicial adjudicators, the Supreme Court has stated, "courts should rely on traditional rules of statutory interpretation [and that] does not change because the case may involve multiple federal statutes." *Id*. (quoting *POM Wonderful L.L.C. v. Coca-Cola Co.*, 573 U.S. 102, 112 (2014)). Based on this logic, we can rely on principals of statutory interpretation to comprehend that divestment of jurisdiction by the FAA in favor of non-judicial arbitration falls within the scope of the "notwithstanding" clause of § 1334(b). *See* John R. Hardison, *Express Preclusion*, St. John's L. Rev., 2019, at 651. Additionally, when reading the Bankruptcy Code and § 1334, we are not given an exception for or even a requirement that a bankruptcy court divest itself of that jurisdiction in favor of or order arbitration. *See id*. at 654. Even the FAA itself does not contain any sort of language that would indicate Congress's intent to modify the structure for bankruptcy law. *Id*. It seems clear then that Congress did not want the FAA to modify the structure of the bankruptcy code, if they had so wanted to, Congress had the

opportunity in include language modifying the structure of bankruptcy law, in 1988 when the Act was last amended, but they did not. *See id*.

One may argue when the Supreme Court emphasized that "the generalities in the FAA should not be lightly construed as to frustrate the specific policy of granting bankruptcy courts the jurisdiction and the ability to oversee bankruptcy matters that is embedded in § 1334", they were providing us with additional evidence to conclude Congress's express preclusion of the FAA. *See id*. at 654. We are given a glimpse of that express preclusion in *United States v. Estate of Romani*, where the Supreme Court found that the later enacted Tax Lien Act of 1966's more specific rule trumped the rule in the more general federal priority statute, 31 U.S.C. § 3713(a). *Id*. at 655; *United States v. Estate of Romani*, 523 U.S. 517, 530 (1998). The Court further explained that the later tax statute was "the more specific statute, and its provisions are comprehensive." *Id*. Similarly, the 1978 Bankruptcy Code and the 1984 amendments are extremely detailed and comprehensive, laying out the jurisdictional provision within Title 28, that was intended by Congress "to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected to the bankruptcy estate, and should not be demolished by the short and general FAA. *See id*.

Further, the legislative history behind the bankruptcy provision provides additional evidence to come to the conclusion that the jurisdictional grant in § 1334(b) was intended to ensure that federal courts hearing bankruptcy cases would have the jurisdiction and the ability to oversee the matters that could affect the bankruptcy case. *Id*. at 652. Specifically, a comment in the House Report voiced concern that in allowing "the extra expense entailed by the estate in litigating outside the bankruptcy court" or costs incurred in litigating "over whether the bankruptcy court has jurisdiction" could tax the estate. *Id*. This concern directly applies to Petty – if forced to arbitrate

he will incur additional costs already on top of the costs he is incurring by repaying other creditors. Surely, this is not the kind of outcome Congress envisioned.

2. § 1334 demonstrates congressional intent to impliedly repeal the FAA through its text, history, and purpose.

Controlling the inquiry into preclusion, is an "analysis of the statutory text and its history, aided by established principles of interpretation." *See* John R. Hardison, *Express Preclusion*, St. John's L. Rev., 2019, at 659. In a recent FAA case, the Supreme Court articulated that when confronted with two Acts of Congress allegedly touching on the same topic, this Court is not at "liberty to pick and choose among congressional enactments" and must instead "strive to give effect to both." *Epic*, 138 S. Ct. at 1624; *See* John R. Hardison, *Express Preclusion*, St. John's L. Rev., 2019, at 660. When a party, similar to Petty, seeks to suggest that two statutes cannot be harmonized, and that one displaces the other, bears the heavy burden of showing a clearly expressed congressional intention that the specific result should follow. *Id*. The Supreme Court when dealing with this conflict, has the strong presumption that repeals by implication are disfavored and that Congress will specifically address preexisting law when it wished to suspend its normal operations in a later statute. *Id*. The 1978 and 1984 bankruptcy amendments and the legislative history behind the amendments provides evidence of Congress's clearly expressed intent that the FAA cannot deprive bankruptcy courts of their original jurisdiction to hear bankruptcy related issues.

As noted by the Third Circuit in *Zimmerman*, the 1978 amendment significantly expands the jurisdiction of bankruptcy courts and is based on "the notion that to protect the positions of both the debtor and the creditor, bankruptcy actions should not be subject to any unnecessary delay and all claims relevant to such actions should be resolved by expeditious proceedings." *Zimmerman v. Cont'l Airlines, Inc*., 712 F.2d 55, 59 (3d Cir. 1983); *See* John R. Hardison, *Express Preclusion*,

St. John's L. Rev., 2019, at 661. Additionally, the Third Circuit argued that while the sanctity of arbitration is a fundamental federal concern, it cannot be said to occupy a position of similar importance. *Id*. Six years later, the Third Circuit in *Hays & Co. v. Merrill Lynch, Pierce, Fenner & Smith, Inc.,* drifted from their earlier reasoning, noting that the 1984 bankruptcy amendment required certain types of claims to be brought in the federal district courts or in the state courts, bringing them to the conclusion that the holding in *Zimmerman* of "congressional policy to consolidate all bankruptcy-related matters into the bankruptcy court, no longer applied." 885 F.2d 1149, 1159-60 (3d Cir. 1989); *See* John R. Hardison, *Express Preclusion*, St. John's L. Rev., 2019, at 661. But the Third Circuit in *Hays* did not understand that the 1984 amendments affected the allocation of the authority between Article III district courts and the non-Article III bankruptcy courts, rather than the federal courts exercising bankruptcy jurisdiction as a whole. *See* John R. Hardison, *Express Preclusion*, St. John's L. Rev., 2019, at 661. Therefore, their conclusion did not pertain to the right type of Judge. *See id*. The Second Circuit pointed to numerous Supreme Court decisions such as *McMahon* to reinforce their decision to overturn *Zimmerman*; concluding that we must carefully determine whether there is an underlying purpose of the Bankruptcy Code that would be affected by enforcing the arbitration clause and the clause should be enforced absent a counter policy to the Code. *Id*. at 663. However, the holdings in the recent Supreme Court decisions do not involve language similar to that of the Bankruptcy Code. *Id*. Additionally, the statutes involved in those cases did not include clear preclusion language like what we see in § 1334. *Id*. Therefore, indicating that the holding in *Zimmerman* is not a dead letter due to *Hays*. *See id*.

Congressional policy defines even further that § 1334 impliedly precludes the FAA. *See id*. at 667. § 1334 reflects congressional policy favoring all matters related to and affecting a bankruptcy proceeding to be heard in a centralized federal court, while also providing notice to all interested

parties, not just matters that are defined as "core." *Id*. Several courts of appeals have ignored important policy reasons as to why Congress wishes to have matters that affect the bankruptcy estate, both "core" and "non-core" to be heard in the federal courts. *Id*. The broad jurisdiction that § 1334 provides ensures that creditors and other interested parties in the claims have the right to notice and the opportunity to participate in the proceeding. *Id*. The statute also ensures that consistent rules of procedure are set in place, guaranteeing that the bankruptcy court is able to supervise matters affecting the estate. *Id.* We have been told that a "fundamental principle of the bankruptcy process is the collective treatment of all of a debtor's creditors at one time." *Id*.; *Owens v. LVNV Funding, LLC*, 832 F.3d 726, 732 (7th Cir. 2016), cert. denied, 137 S. Ct. 2157 (2017). This principle preserves the parties' and courts' resources while also providing an opportunity for all creditors and interested parties to participate; allowing for the matter to be handled in one setting rather than involving only one creditor in an arbitration. *See id*. The bankruptcy courts centralize disputes affecting the estate not only for efficiency sake, but also to ensure the indirect rights of other interested parties are protected and accounted for. *Id*. at 670. A bankruptcy proceeding may be the last time a creditor has the opportunity to share in the debtor's assets because of the discharge of debt. *Id.* In an individual creditor collection action such as an arbitration between Petty and Wildflowers, Wildflowers is the one most likely to gain the greater share of the limited assets Petty has, excluding the interests of Petty's other creditors. *See id*. Bankruptcy law on the other hand, provides a more equitable distribution of assets by including all other creditors who have an interest in the resolution of issues. Bankruptcy law as a result protects the rights of Petty's other creditors by providing these creditors with notice and an opportunity to participate in the matter and provides for an equitable distribution of assets. *See id* at 698-670. Therefore, the

Bankruptcy Code is better able to serve the interests of the creditors who are fundamental to a bankruptcy proceeding than allowing the dispute to be resolved through arbitration would. *See id*.

Clearly, Congress not only intended to expressly preclude the FAA, but they also did so impliedly. *See generally* John R. Hardison, *Express Preclusion*, St. John's L. Rev., 2019. As a result, the Thirteenth Circuit was correct in upholding the bankruptcy court's decision in declining to enforce the prepetition arbitration agreement between Petty and Wildflowers because § 1334 has repealed the FAA and the bankruptcy court had the original jurisdiction to resolve the issue. *See id.*

B. An inherent conflict exits between arbitration and the underlying purpose of the automatic stay, such that the bankruptcy court had discretion to decline to enforce the arbitration clause in the Guaranty.

While we already have ample evidence to conclude that Congress expressly and impliedly overrode the FAA based on the text and legislative history of § 1334, an inherent conflict also exists between the FAA and § 362. *See generally* John R. Hardison, *Express Preclusion*, St. John's L. Rev., 2019. Therefore, The Thirteenth Circuit was correct in affirming the bankruptcy courts' discretion in declining to enforce the arbitration agreement.

Like any statutory directive, the FAA may be overridden by a contrary congressional command – such a command may be deduced from the statute's text or legislative history… *or* from an inherent conflict between arbitration and the statute's underlying purpose. *McMahon*, 48 U.S. at 226-27. The party opposing arbitration bears the burden of showing "that Congress intended to preclude a waiver of judicial remedies for the statutory rights at issue." R. at 8-9; *McMahon*, 482 U.S. at 227.

1. In core proceedings a bankruptcy court has discretion to deny enforcement of an arbitration clause where the FAA and the Bankruptcy Code inherently conflict.

Specifically, this court should affirm the Thirteenth Circuit's decision in declining to enforce the arbitration agreement between Petty and Wildflowers because at issue is the automatic stay. The automatic stay is a core proceeding, which allows the bankruptcy court discretion to decline enforcement of the arbitration clause when enforcing the arbitration clause would inherently conflict with the underlying purpose of the automatic stay. *See* R. at 11.

Bankruptcy courts are likely to have discretion to refuse to compel arbitration of core bankruptcy matters, which implicate "more pressing bankruptcy concerns." *Hill*, 436 F.3d at 108. However, even as to core proceedings, the bankruptcy court will not have discretion to override an arbitration agreement unless it finds that the proceedings are based on the provisions of the Bankruptcy Code that "inherently conflict" with the Arbitration Act or that arbitration of the claim would "necessarily jeopardize" the objectives of the Bankruptcy Code. *Id*. This determination specifically requires a particularized inquiry into the nature of the claim and the facts of the specific bankruptcy. *Id*. If a severe conflict is found, then the court can properly conclude that, with respect to the particular Code provision involved, Congress intended to override the Arbitration Act's general policy favoring the enforcement of arbitration agreements. *Id*.

Claims that clearly invoke substantive rights created by federal bankruptcy law necessarily arise under Title 11 and proceedings that by their nature arise only in the context of a bankruptcy case are deemed core proceedings. *Id*. In *Hill*, the defendant claimed that the plaintiff violated the automatic stay provision of § 362(a) of the Bankruptcy Code and brought her claim as a class action lawsuit rather than through arbitration.[2] *Id*. at 106. The Second Circuit determined that the defendant's claim was a core proceeding because the claim arose under § 362, which is strictly a

[2] Hill's agreement with MBNA contained a mandatory arbitration provision.

product of the Bankruptcy Code. *Id*. at 109. However, the Second Circuit disagreed with the district court that allowing arbitration to go forward would seriously jeopardize the objectives of the Code in light of the fact that the automatic stay serves the same function as an injunction. *Id*. The court reasoned that Hill's bankruptcy case is now closed and she has been discharged – resolution of her claim against MBNA therefore would not affect an ongoing reorganization, and arbitration would not conflict with the objectives of the automatic stay. *Id*. at 110. The issue in *Hill* involved a liquidating Chapter 7 case and there was no reorganization of Hill's bankruptcy estate. *Id*. Additionally, she filed the claim as a putative class action, which demonstrates that the claim is not integral to her individual bankruptcy proceeding because of a lack of a close connection between the claim and her own underlying bankruptcy. *Id*. As a result, while the Second Circuit found Hill's claim to be a core proceeding because it arose strictly as a product of the Bankruptcy Code, they found that arbitration, however, would not necessarily jeopardize or inherently conflict with the Bankruptcy Code. *Id*. Therefore, in this case, the Second Circuit concluded that allowing the § 362 issue to be resolved through arbitration was appropriate. *Id*. at 111.

A proceeding that arises by their nature only in the context of a bankruptcy case, such as an automatic stay under § 362 are deemed core proceedings. *See Hill*, 436 F.3d at 108. The Second Circuit in *Hill*, premised their resolution of the dispute on the fact that arbitration "would not 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. While the court was persuasive and correct on their findings in *Hill*, that case is factually distinguishable to the issue between Petty and Wildflowers. *Id*. The Second Circuit acknowledged that an inherent conflict between the FAA and § 362 could exist under the right circumstances, and those circumstances happen to be the ones between Petty and

Wildflowers. *See* R. at 12. Unlike the issue in *Hill* that involved a Chapter 7 liquidation, the issue in this case involves a Chapter 11 reorganization. *Hill*, 436 F.3d at 110; R. at 13. Petty's motion to enforce the automatic stay and recover damages from Wildflowers is critical to his ability to reorganize under the Bankruptcy Code, discharge his debts, and obtain a fresh start. R. at 13. Enforcing the automatic stay is critical because Petty needs the equipment in order to continue to operate and do business as "Full Moon Fever Brewing;" part of his reorganization is to operate a new business which has already proven to be profitable. R. at 6. Additionally, recovering damages is critical to Petty because he plans to use those proceeds to fund his plan of reorganization to help pay off other creditors. R. at 13. Obviously, allowing the violation of the automatic stay to go to arbitration would necessarily jeopardize and inherently conflict with the Bankruptcy Code because enforcing the arbitration clause would undermine Petty's Chapter 11 reorganization, discharge his debts, and obtain a fresh start. *See* R. at 13; *Hill*, 436 F.3d at 111.

2. Intangibles exist that evidence an inherent conflict between the FAA and the underlying purposes § 362 and other sections of the Code.

The automatic stay is one of the most sacred and fundamental protections under the Bankruptcy Code because it protects both the creditor and the debtor. R. at 12. The automatic stay affects more than just the debtor and one creditor, therefore a two-party dispute subject to arbitration fails to serve the underlying purpose of the Code. *See id*.

Contrary to the Second Circuit in *Hill*, an alleged violation of the automatic stay does implicate the fundamental purposes of the Bankruptcy Code even if a bankruptcy case had already closed and the debtor received a discharge by the time the action is brought before the bankruptcy court. *See* John R. Hardison, *Express Preclusion*, St. John's L. Rev., 2019, at 6673; *Hill*, 436 F.3d 104 (2d Cir. 2006). It is additionally important for creditors to respect the automatic stay, in order to protect debtors from harassment by creditors and to protect the estate from dissipation. *See* John

R. Hardison, *Express Preclusion*, St. John's L. Rev., 2019, at 674. Two of the three core *in rem* functions of a bankruptcy court include the exercise of jurisdiction over the bankruptcy estate and the equitable distribution of the estate's property among the debtor's creditors. *Id*. The automatic stay "allows the court to carry out both of these functions [by facilitating] the orderly administration and distribution of the estate while protecting the estate from being diluted by other creditors before the trustee has had the opportunity to distribute amongst the creditor's equally. *Id*. It is critical to enforce the automatic stay because if it were routinely left unenforced, the power of a bankruptcy stay would lose its force and protections. *Id*. Congress has sought to encourage injured debtors to bring suit to vindicate their statutory right to the automatic stay, but this purpose of course can only be carried out if injured debtors are actually able to sue and recover damages that § 362(k) allows. *Id*. at 675. Therefore, allowing the issue of the automatic stay between Petty and Wildflowers to go to arbitration would prevent the bankruptcy court from facilitating two of its core functions and would undermine Congress's intention of debtors vindicating their right to the automatic stay. *See generally* John R. Hardison, *Express Preclusion*, St. John's L. Rev., 2019.

Further, compelling arbitration for an automatic stay dispute, "would make debtor-creditor rights contingent upon an arbitrator's ruling rather than that of the bankruptcy judge who is assigned to the hear a debtor's case." R. at 13; *In re White Mountain Mining Co*., L.L.C., 403 F.3d at 169 (citation and internal quotations omitted). It is especially important to remember the twin goals of bankruptcy: both to give a debtor a fresh start and to ensure an equitable distribution to the debtor's creditors. *See* John R. Hardison, *Express Preclusion*, St. John's L. Rev., 2019, at 676. As a result of a two-party arbitration, Petty's additional creditors would be deprived of an opportunity to monitor and oversee litigation that would serve as a major factor in Petty's reorganization plan and even their own potential recoveries. R. at 13. Additionally, while it might

seem fair to hold a debtor to his or her voluntary agreement to arbitrate instead of a bankruptcy court, in bankruptcy these restrictions will ultimately have a greater impact on the creditors who did not consent to this agreement. *See* John R. Hardison, *Express Preclusion*, St. John's L. Rev., 2019, at 676. Congress then provided a forum in which these parties are able to participate, and it would be unfair to punish these creditors and deprive them of this forum merely because of a prepetition agreement between Petty and Wildflowers; one they did not have the opportunity to consent to. *Id*. Just as the Thirteenth Circuit affirmed, in order to prevent undue delay in Petty's rehabilitation a fresh start in his new business, the better option for him and his other creditor's involved would be to prosecute his claims in the bankruptcy court rather than force an arbitration that is not binding on the other creditors.

II. THE AUTOMATIC STAY ON THE PROPERTY OF THE BANKRUPTCY ESTATE WAS NOT TERMINATED UNDER 11 U.S.C. § 362(c)(3)(A) WHEN WILDFLOWERS REPOSSED THE PROPERTY.

When a debtor files for bankruptcy, 11 U.S.C. § 541(a) automatically arises by operation of law and creates a bankruptcy estate. 11 U.S.C. § 541(a)(1). The bankruptcy estate primarily consists of all legal or equitable interests the debtor had in property when the bankruptcy case commenced, with some exceptions. 11 U.S.C. § 541(a)(1).

Contemporaneously, when a bankruptcy case commences, 11 U.S.C. § 362(a) imposes an automatic stay as to some post-petition actions. 11 U.S.C. § 362(a). These include actions against the debtor, the debtor's property, and the property of the estate. 11 U.S.C. § 362(a)(1)-(8). BAPCPA places limits on the power of this automatic stay. Specifically, 11 U.S.C. § 362(c)(3)(A) provides that for debtors who have filed for bankruptcy within the past year "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." 11 U.S.C. § 362(c)(3)(A) (emphasis added).

Before the thirty-day period ends, a party in interest may file a motion to extend the stay as to any or all creditors. 11 U.S.C. § 362(c)(3)(B). In order to extend the stay, the party in interest must overcome by clear and convincing evidence a presumption that the later case was not filed in good faith. 11 U.S.C. § 362(c)(3)(B)-(C).

The issue before this Court is how to interrupt § 362(c)(3)(A), which courts have been historically split over. The Thirteenth Circuit correctly held that § 362(c)(3)(A) terminated the stay only in regard to the debtor's property, not the property of the estate. Because the equipment Wildflowers repossessed was part of the property of the estate, § 362(c)(3)(A) did not terminate the stay and the equipment was still subject to the automatic stay.

A. The plain meaning of 11 U.S.C. § 362(c)(3)(A) dictates that the automatic stay only terminates "with respect to the debtor" and not with respect to the property of the estate.

It is a fundamental canon of construction that a statute's unambiguous plain meaning will apply when the plain meaning of the text is not absurd. *Lamie v. United States Tr.*, 540 U.S. 526, 534 (2004). When a statute's language has a plain meaning, it is the duty of the courts to enforce the statute by its written terms. *Id*.

As the majority of courts have held, the plain meaning of the text of § 362(c)(3)(A) is that the stay only terminates as to the debtor's property, and not as to the property of the estate. *See In re Goodrich*, 587 B.R. 829, 835 n.4-5 (Bankr. D. Vt. 2018) (collecting non-exhaustive list of cases). In the leading case *Rose v. Select Portfolio Servicing, Inc.*, the Fifth Circuit Court of Appeals evaluated whether a statute of limitations was tolled, which turned on whether or not there was a bankruptcy stay still in place. *Rose v. Select Portfolio Servicing, Inc.*, 945 F.3d 226, 229 (2019). The Fifth Circuit emphasized that the language of the statute, "with respect to the debtor" was clear, especially in light of the statute's context. *Id.* at 230.

Considering the language of the surrounding sections, the plain meaning of § 362(c)(3)(A) is further enforced. Another cardinal rule of statutory interpretation is to read a statue as a whole because meaning depends on context. *King v. St. Vincent's Hosp*., 502 U.S. 215, 221 (1991). Looking at the context surrounding § 362(c)(3)(A), the plain meaning becomes clearer. As the First Circuit noted in *In re Smith*, the § 362(a) automatic stay applies to actions in three distinct categories: "against the debtor, the debtor's property, and property of the bankruptcy estate." *Smith v. Me. Bureau of Revenue Servs. (In re Smith)*, 910 F.3d 576, 580 (1st Cir. 2018). The language of the statute reflects these categories. For instance, under § 362(a)(2) enforcement "against the debtor or against property of the estate" is stayed. § 362(a)(2). The language of the statue makes purposeful distinctions between these three categories throughout its sections. *See, e.g*., 11 U.S.C. § 362(b)(2)(B), (c)(1), (c)(2). Because § 362(c)(3)(A) states that the stay terminated with respect to the debtor and does not mention the property of the estate, it does not apply to the property of the estate.

Furthermore, § 362(c)(4)(A)(i) terminates the entire automatic stay with its language standing in sharp contrast to the language of § 362(c)(3)(A). *See Rose,* 945 F.3d at 230. Regarding debtors with two or more pending bankruptcy cases in the previous year, § 362(c)(4)(A)(i) provides that "the stay under subsection (a) shall not go into effect upon the filing of the later case." § 362(c)(4)(A)(i). § 362(c)(4)(A)(i) does not include the phrase "with respect to the debtor" or similar limiting language. *Id.* According to the rule against superfluities, every clause and word of a statue must be given effect if possible. *Smith v. Me. Bureau of Revenue Servs. (In re Smith)*, 910 F.3d 576, 584 (1st Cir. 2018) (quotation omitted). The drafters of § 362 demonstrated through § 362(c)(4)(A)(i) the language used to terminate the entire stay. By not using similar language in § 362(c)(3)(A) and including the phrase "with respect to the debtor," the drafters intentionally

indicated that they wanted to address the abuse differently in this section. *See*, e.g., *In re Harris*, 342 B.R. 274, 279-80 (Bankr. N.D. Ohio 2006) (citations omitted). The language of § 362(c)(3)(A) contrasted with the language of § 362(c)(4)(A)(i) evidences that § 362(c)(3)(A) does not apply to the bankruptcy estate.

The unambiguous plain meaning of § 362(c)(3)(A) is that after thirty days the automatic stay will terminate as to the debtor's property, not as to the bankruptcy estate's property. *Rose*, 945 F.3d at 231. It is undisputed that the equipment Wildflowers repossessed was the property of the bankruptcy estate. R. at 7. As such, the automatic stay with regard to the repossessed equipment was never terminated.

B. The legislative history surrounding 11 U.S.C. § 362(c)(3)(A) is ambiguous and does not justify departing from the plain meaning of the statute.

Only when the plain meaning of a statute is unclear may a court consider the surrounding legislative history to interpret a statute. *Lamie*, 540 U.S. at 534 (2004). Legislative history is irrelevant if a statute is unambiguous. *Davis v. Mich. Dep't of Treasury*, 489 U.S. 803, 808 n.3 (1989). Since the plain meaning of § 362(c)(3)(A) is unambiguous, the legislative history is irrelevant. Additionally, when legislative history is inconclusive, a court should follow the result suggested from the statute itself. *Jeffers v. United States*, 432 U.S. 137, 156-57 & n.26 (1977). BAPCPA's legislative history contains only a house report from 2005. Michael Miller, *Untangling the Web of S 362(c)(3)(a) and Its Legislative History*, 39 Am. Bankr. Inst. J. 22, 80 (Apr. 2020) (discussing legislative history). With such scarce legislative history and a clear plain meaning, the legislative history of § 362(c)(3)(A) should not even be considered.

Despite those rules of statutory construction, in *In Re Smith*, the First Circuit incorrectly relied on legislative history when examining § 362(c)(3)(A). *See Smith*, 910 F.3d at 590. In *In Re Smith*, Maine's Bureau of Revenue Service sought to claim a tax debt owed by a repeat Chapter 13

bankruptcy filer, and the First Circuit held that § 362(c)(3)(A) had terminated the entire automatic stay. *Smith*, 910 F.3d at 578. In reaching its conclusion, the First Circuit looked toward a legislative amendment proposed 8 years before BAPCPA which was ultimately vetoed and not enacted. *See Smith,* 910 F.3d at 590. The First Circuit examined portions from an NBC commission report that discussed reducing incentives to file bankruptcy repeatedly and concluded that must mean the entire stay was terminated under § 362(c)(3)(A). *Smith*, 910 F.3d at 590. The Supreme Court has specifically warned against isolating snippets from legislative history to manipulate statutory interpretation. Miller, *supra* at 80.

Even when looking toward the scarce legislative history, the majority view's interpretation of § 362(c)(3)(A) is correct. The portions the First Circuit examined did not even specifically mention the application of the language or the extent to which the stay should terminate. *Id.* The report did conclude that a drastic change was not warranted regarding refiling and that a "more moderate approach would suffice." *Id.* Interpreting § 362(c)(3)(A) as only terminating the stay as to the debtor's property is a moderate approach that would still deter repeat filers because repeat filers would still have the stay terminated as to the debtor's property under § 362(c)(3)(A).

The sparse legislative history merely shows a desire to deter repeat filers. *Id.* § 362 accomplishes this through its treatment of repeat filers. *Id.* Even though the legislative history should not even be considered, the legislative history would still support the majority interpretation of § 362(c)(3)(A).

C. Reading 11 U.S.C. § 362(c)(3)(A) as applying to the property of the estate as the minority view suggests would be detrimental to other creditors and oppose the goals of bankruptcy.

The minority view of § 362(c)(3)(A) would go against fundamental bankruptcy goals. Bankruptcy aims to balance providing debtors with a fresh start and achieving "a maximum and equitable distribution for creditors" through a centralized process. *BFP v. Resolution Trust Corp.*,

511 U.S. 531, 563 (1994) (citations omitted) (Souter, J., dissenting). If the minority view prevails and the stay is terminated as to the property of the estate, then a single creditor could repossess that property which could be used to help give the debtor a fresh start and to help the debtor earn money in a plan that will benefit all his creditors. Petty was using the equipment in his new business, Full Moon Fever Brewing. R. at 6. Petty had a plan of reorganization that included paying his creditors forty percent of his income over five years. R. at 6. Full Moon Fever Brewing shut down when Wildflowers repossessed the equipment. R. at 7. By taking the equipment, Wildflowers took away Petty's means of earning income and paying back all of his creditors.

All the creditors are better served when the majority view of § 362(c)(3)(A) is applied and the automatic stay remains as to property of the estate.

D. The plain meaning interruption of 11 U.S.C. § 362(c)(3)(A) would still advance the goals of bankruptcy and BAPCPA as creditors could still obtain relief under 11 U.S.C. § 362(d).

The goals of bankruptcy and BAPCPA would be best served by limiting § 362(c)(3)(A) to apply to the debtor's property. One of the goals of BAPCPA is to correct abuses of the bankruptcy system. *Smith*, 910 F.3d at 589. More specifically, § 362 was intended to discourage bad faith repeat filings. *Smith,* 910 F.3d at 590. The minority view has expressed a belief that the entire stay must terminate under § 362(c)(3)(A) in order to deter bad faith filers. *See Smith*, 910 F.3d at 590. However, bad faith filers would still be deterred if § 362(c)(3)(A) applied only to the debtor's property because the creditor would still have a remedy under § 362(d). § 362(d) provides that upon request from any interested party, and after notice and a hearing, the court can grant relief from the § 362(a) automatic stay. Thus, if the debtor is in fact a bad faith repeat filer, the stay can still be lifted.

Furthermore, a major goal of bankruptcy is to provide debtors a breathing spell from creditors. *See* H.R. Rep. No. 95-595, at 340-41 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6296-97. The automatic stay is a fundamental debtor protection that provides debtors with this necessary breathing spell. *Id.* Applying the majority view's interpretation of § 362(c)(3)(A) would best advance this bankruptcy goal. The majority view would still leave the stay in place after 30 days with respect to the property of the estate, subject to the creditor requesting to terminate the stay under § 362(d). Not terminating this aspect of the stay automatically more effectively protects the debtor's bankruptcy right to a breathing spell.

Applying the majority interpretation of § 362(c)(3)(A) would advance the bankruptcy goal of protecting the debtor through a breathing spell while simultaneously upholding the BAPCPA goal of discouraging repeat bad faith filers. The Court should affirm the Thirteenth Circuit's decision upholding the majority interpretation of § 362(c)(3)(A).

CONCLUSION

For the forgoing reasons, this Court should affirm the decision of Thirteenth Circuit Court of Appeals in determining that the Bankruptcy Court had the authority to decide the dispute between Petty and Wildflowers, notwithstanding the prepetition arbitration agreement, and § 362(c)(3)(A) "only applies with respect to the debtor," providing Petty with a fresh start as ensured by the Code.