Docket No. 20-1004

IN THE

# Supreme Court of the United States

October Term, 2020

IN RE EARL THOMAS PETTY, DEBTOR

WILDFLOWERS COMMUNITY BANK, PETITIONER

v.

EARL THOMAS PETTY, RESPONDENT.

*On Writ of Certiorari to the United States Court of Appeals for the Thirteenth Circuit*

**BRIEF FOR PETITIONER**

**Team P25**
***Counsel for Petitioner***

**Oral Argument Requested**

## QUESTIONS PRESENTED

I. Whether 11 U.S.C. § 362 and related judicial code provisions impliedly repealed the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq*, and thus gives bankruptcy courts exclusive jurisdiction to determine the scope of the automatic stay?

II. Whether 11 U.S.C. § 362(c)(3)(A) applies to property of a debtor's bankruptcy estate and thus lifts the automatic stay on the thirtieth day absent an extension?

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## OPINIONS BELOW

The decisions and orders of the U.S. Bankruptcy Court and the Bankruptcy Appellate Panel for the Thirteenth Circuit. The decision for the U.S. Court of Appeals for the Thirteenth Circuit is also unreported. This opinion is set forth in the Decision of the U.S. Court of Appeals for the Thirteenth Circuit in Case No. 19-0805, dated March 4, 2020 and is incorporated in the record on appeal (hereinafter "R").

## STATEMENT OF JURISDICTION

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

## STATUTORY PROVISIONS

The statutory provisions and evidentiary rules listed below are relevant to determine the present case.

11 U.S.C. § 362

9 U.S.C. § 1 et seq.

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**BRIEF FOR PETITIONER**

TO THE SUPREME COURT OF THE UNITED STATES:

Petitioner, Wildflowers Community Bank, appellant in Docket No. 20-1004 before the U.S. Court of Appeals for the Thirteenth Circuit, respectfully submits this brief on the merits and asks this Court to reverse and remand the decision of the Thirteenth Court of Appeals.

## STATEMENT OF FACTS

**The Parties**. This case involves a creditor's attempt to repossess property of an estate following a debtor's second chapter 11 filing. The seized property is owned by Earl Thomas Petty ("Petty"), who purchased and retained brewery equipment (the "Equipment"), that was used to brew craft beer for his company Great Wide Open Company Inc. ("Great Wide Open"). (R. at 3). The creditor, Wildflowers Community Bank ("Wildflowers") operated as a lender to Petty and Great Wide Open through a credit agreement guaranteed by Petty. (R. at 4).

**The Agreements.** Great Wide Open entered into a $35 million revolving credit agreement with Wildflowers ("the Credit Agreement") on September 2011. (R. at 4). To guarantee repayment, Petty individually executed a personal guaranty alongside the Credit Agreement granting Wildflowers a first priority lien on the Equipment (the "Guaranty"). (R. at 4). In the event of default, both the Credit Agreement and the Guaranty contained identical remedy clauses that granted Wildflowers "the right to enter any premises … for the purpose of repossessing collateral without the need for any prior judicial action." (R. at 4). Additionally, both agreements contained arbitration clauses requiring "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).

**The Initial Bankruptcy Filing.** Great Wide Open and Petty defaulted: Wildflowers then filed a demand for arbitration and a state law breach of contract alleging $33.2 million in damages (the remaining balance of the Credit Agreement) on June 4, 2018. (R. at 5). The American Arbitration Association scheduled an initial conference proceeding for July 12, 2018. (R. at 5). Great Wide Open ceased all operations and terminated its employees the day prior

to the initial conference on July 11, 2018. (R. at 5). The following day, the date of the initial conference, Great Wide Open commenced a chapter 7 bankruptcy case in the Bankruptcy Court of the District of Moot. (R. at 5). Petty filed his own chapter 11 petition (the "Initial Bankruptcy Filing") on the same day and in the same bankruptcy court. (R. at 5). Petty's chapter 11 was later dismissed by the bankruptcy court on August 27, 2018 for failure to timely file certain documents including his schedules of assets and liabilities. (R. at 5).

**The Second Bankruptcy Case**. Petty filed a second chapter 11 (the "Second Bankruptcy Case") on January 11, 2019, around the same time as the arbitration proceeding was about to recommence (R. at 5–6). On the first day of the bankruptcy hearing, Petty informed the court that he had formed a new sole proprietorship operating as "Full Moon Fever Brewing" using the Equipment. (R. at 6). Petty's Second Bankruptcy Case failed to file a motion to extend the automatic stay under section 362(c)(3)(B) during the first thirty days of the second case. (R. at 6). Thirty-two days after the commencement of the Second Bankruptcy Case, Wildflowers repossessed the Equipment. (R. at 6).

**The Subsequent Litigation.** One week after the repossession, Petty filed a motion alleging Wildflowers violated the automatic stay and requested $500,000 in damages under section 362(k). (R. at 6). Wildflowers returned the Equipment to Petty, before the hearing, "out of an abundance of caution." (R. at 7 n.6). Wildflowers filed a response on March 5, 2019, asserting that no automatic stay existed with respect to property of the estate including the Equipment pursuant to section 362(c)(3)(A) because this is Petty's second filing within a year. (R. at 7). Wildflowers points to the failure of Petty to timely file a motion to extend the automatic stay pursuant to section 362(c)(3)(B). (R. at 7). Wildflowers also argued that Petty should be compelled to bring any claims it may have against Wildflowers in an

arbitration proceeding due to the arbitration provision in the Guaranty. (R. at 7). The bankruptcy court ruled in favor of Petty. (R. at 7). The court concluded 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). Holding that the Equipment was property of Petty's bankruptcy estate, the court held that Wildflowers violated the automatic stay. (R. at 7). The bankruptcy court then awarded compensatory damages to Petty in the amount of $200,000. (R. at 7). The United States Court of Appeals for the Thirteenth Circuit affirmed the lower court's decision. (P. at 19). This appeal followed.

## SUMMARY OF THE ARGUMENT

The bankruptcy court erred in ruling that the arbitration agreement was superseded by the FAA, and that the automatic stay did not terminate as to the debtor's bankruptcy estate upon the thirtieth day of the petition. Petty is attempting to utilize the automatic stay's protection without filing for an extension.

The text of section 362 does not mention arbitration, and even if the purpose of 362 conflicts with the FAA, conflicting purposes does not show a clear and manifest congressional intent that is required for one statute to impliedly repeal another. Therefore, section 362 did not impliedly repeal the FAA. Further, there is no inherent conflict between the automatic stay and the FAA because the jurisdictional nature of core proceedings cannot create an inherent conflict, and the substantive rights at issue in Petty's claim invoke pre-petition contractual rights.

Section 362(c)(3)(A) terminates the stay in its entirety on the thirtieth day following the debtor's second bankruptcy filing within a year. The section's plain language and long-standing bankruptcy common law interpretation clearly state that the stay terminates upon the thirtieth day absent an extension. Alternatively, even if this Court finds that the terms are plain, the

legislative history of the automatic stay and BAPCPA's goal of deterring bankruptcy abuses committed by serial filers reinforces the interpretation that the stay terminates in its entirety.

For these reasons, this Court should reverse the Thirteenth Circuit's decision and remand this case to allow the termination of the automatic stay, disallow the compensatory damages that were awarded to Petty, and allow Wildflowers to repossess the Equipment.

## ARGUMENTS AND AUTHORITIES

The Thirteenth Circuit erred in holding for Petty since (i) there is to irreconcilable conflict that impliedly repealed the FAA, nor is there an inherent conflict with the substantive rights that section 362 provides; and (ii) § 362(c)(3)(A) terminates the automatic stay in its entirety absent an extension. In this case, section 362 and the FAA do not have an irreconcilable conflict because both statutes are capable of co-existing, and there is no clear and manifest evidence that Congress intended to repeal the FAA when it enacted section 362. Further, there is no inherent conflict because determining the scope of the automatic stay is not exclusive to bankruptcy courts, and Petty's claim invokes pre-petition contractual rights. Additionally, the Second Bankruptcy Case's automatic stay terminated in its entirety on the thirtieth day. Terminating the stay in its entirety as opposed to the debtor and the debtor's property is more consistent with a plain meaning of section 362 and is consistent with the automatic stay's legislative history and BAPCPA's goal. For these reasons, this Court should reverse the Thirteenth Circuit's decision and remand to the lower court for the enforcement of the arbitration agreement and the termination of the stay in its entirety.

Decisions of bankruptcy courts are subject to *de novo* review for conclusions of law and to a clear error standard of review for findings of fact. *In re Gerhardt*, 348 F.3d 89, 91 (5th

Cir. 2003). This Court should apply a de novo standard of review as both issues pertain to an erroneous conclusion of law.

## I. CONGRESS DID NOT IMPLIEDLY REPEAL THE FAA WHEN IT ENACTED SECTION 362.

The Thirteenth Circuit of Appeals erroneously held that the bankruptcy court had discretion to deny enforcement of an applicable arbitration provision because it inherently conflicted with the automatic stay. (R. at 7). There is no inherent conflict because the two statutes are capable of effectually coexisting, and conflicting purposes between the two statutes is insufficient to render the FAA void. Therefore, the contractual arbitration agreement must be enforced. Further, the Supreme Court raised the standard for refusing to enforce arbitration agreements in the 2018 decision of *Epic Systems, Inc v. Lewis*, holding that there must be an irreconcilable conflict. Because there is no inherent conflict, the FAA cannot have been impliedly repealed. Since, neither of these standards have been met, the Thirteenth Circuit Court of Appeals' decision must be reversed, and arbitration must be compelled.

The Constitution grants Congress the power to regulate interstate commerce. *See* U.S. CONST., art. 1, § 8, cl. 3. Additionally, Congress has the power to enact a uniform Bankruptcy Code. *See id.*, art. 1, § 8, cl. 4. The filing of a chapter 11 petition places a stay on all claims for a creditor to recover property from a debtor. 11 U.S.C.A § 362(a)(1). However, Congress limited this statutory right by terminating the stay thirty days after a debtor files a second petition within one year of the first. *See id.* at 362(c)(3)(A). Under these conditions, the stay can only be extended when the debtor files a motion to the court before the expiration of the stay, and the court determines that the second case was filed in good faith. *See id.* at § 362(c)(3)(B).
In contrast, the Federal Arbitration Act ("FAA") mandates that arbitration agreements are "valid, irrevocable, and enforceable[.]" *See* 9 U.S.C.A § 2. The mandate equally applies to claims

derived under statutory rights. *Mitsubishi Motors Corp. v. Colers Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626—27 (1985). The party opposing enforcement of arbitration carries a heavy burden of proving "a clearly expressed congressional intention" that one statute displaces the other. *Epic Systems Corp. v. Lewis*, 138 S.Ct. 1612, 1624 (2018) (citing *Morton v. Mancari*, 417 U.S. 535, 551 (1974)). The Supreme Court has rejected every argument that the FAA was displaced by another statute. *Id.* at 1627 (2018).

### A. The FAA was not Impliedly Repealed by Section 362 Because There Is No Irreconcilable Conflict.

In 2018, the Supreme Court in *Epic Systems Inc. v. Lewis* held that the FAA was not impliedly repealed because, in the absence of any congressional intent, there must be an irreconcilable conflict between the FAA and another statute. A conflicting purpose between section 362 and the FAA does not express a clear and manifest congressional intent. *Id.* at 1624. Because there is no showing of a clear and manifest congressional intent, and one statute does not render the other inoperative, there is no irreconcilable conflict. Therefore, the Court of Appeals' denial of Wildflower's motion to compel arbitration must be reversed. (R. at 7).

The primary substantive portion of the FAA makes arbitration agreements "valid, irrevocable, and enforceable[.]" 9 U.S.C. § 2; s*ee Rent-A-Center, West, Inc. v. Jackson*, 561 U.S. 63, 67 (2010). The FAA requires courts to "rigorously enforce agreements to arbitrate." *Dean Witter Reynolds Inc. v. Byrd*, 470 U.S. 213, 221(1985). The separation of powers between the legislative and judiciary branch prohibits courts from choosing between congressional enactments. *Id.* Courts must strive to give meaning to both statutes and allow Congress to write and repeal law. *Id.* The cardinal rule of statutory interpretation is that repeals by implication are disfavored. *Morton*, 417 U.S. at 551. There is a "strong presumption" that Congress will expressly address existing law it seeks to repeal. *Epic*, 138 S.Ct. at 1624.

Congress has proven it knows how to repeal the FAA when it wishes. *Id.* at 1626. When a statute's text and legislative history fail to provide an affirmative showing of Congress' "clear and manifest" intent to repeal, "the only permissible justification … is when the earlier and later statutes are irreconcilable." *Id.* at 550. The party claiming that two statutes are irreconcilable "bears the heavy burden of showing 'a clearly expressed congressional intention' that such result should follow." *Id.* (citing *Morton*, 417 U.S. at 551). Therefore, a statute must have an "irreconcilable conflict" with the FAA to override Congress' mandate to enforce an existing arbitration agreement. *See Epic*, at 1624.

### 1. The Automatic Stay Does Not Irreconcilably Conflict with Protecting Debtors from Collection Efforts.

Conflicting purposes between congressional enactments do not create an irreconcilable conflict. *See id.* at 1624. For example, in *Epic Systems v. Lewis*, the Supreme Court held that the National Labor Relations Act ("NLRA") guarantee for workers right to act collectively did not create an irreconcilable conflict with an individual arbitration agreement in employment contracts, because the NLRA did not suggest any disapproval for arbitration. *Id.* at 1624, 1632. There, a previous employee argued that the individualized arbitration agreements were unlawful under the NLRA. *Id.* at 1623–24. The Court reasoned that NLRA's guarantee focused on the right to form unions and collectively bargain. *Id.* at 1624. However, it did not expressly deny arbitration, and even a statute that expressly calls for collective legal action does not necessarily overrule individual arbitration. *Id.* at 1624, 1628. The Court made it clear that deference is only given in statutory construction when there is unresolved ambiguity. *Id.* Additionally, in *In re Trevino,* the court held that conflicting purposes between the FAA and the Bankruptcy Code fail to show "a clear and manifest expression of congressional intention" to overrule the FAA. *In re Trevino*, 599 B.R. 526, 549 (Bankr. S.D. Tex. 2019). There, the debtors claimed after

receiving a discharge, that the defendants willfully violated the automatic stay. *Id.* at 532. The defendants responded with a motion to stay proceedings and compel arbitration. *Id.* at 533. The court reasoned that while enforcement of a discharge order is essential to the Bankruptcy Code, conflicting purposes does not show a clear and manifest congressional intention to displace the FAA. *Id* at 547, 549. So long as arbitration will not interfere with the substantive rights granted by the Bankruptcy Code, compelling arbitration is mandatory. *See id.* at 549.

Here, there is no irreconcilable conflict between section 362's purpose to stay creditors' collection efforts and the FAA's mandate of arbitration. Following *Epic*, Petty's agreement to arbitrate is enforceable notwithstanding a goal of centralized proceedings. Section 362 of the Bankruptcy Code protects debtors by prohibiting collection claims until a discharge is granted, or the stay is lifted. *See* 11 U.S.C.A § 362(a). Similar to *Epic*, this does not show any congressional intent to overrule the FAA. Following *Trevino*, compelling arbitration would merely allow an arbitrator to interpret section 362 and determine whether Petty is owed damages for a violation of a statutory right that the Bankruptcy Code provides him. As seen in *Epic*, an arbitrator is capable of interpreting a statute and determining damages. This does not interfere on Petty's statutory right to utilize the automatic stay, because a ruling in favor of Wildflowers on Petty's claim would negate any damages to be received by Petty. Admittedly, a ruling in favor of Wildflower's counterclaim under section 362(c)(3)(A) would terminate the stay. However, under *Epic*, determination of the issue is still a matter of statutory interpretation that arbitrators are capable of handling. Therefore, the FAA mandates that Petty's claim of willful violations of the automatic stay be sent to arbitration.

### 2. The FAA And Section 362 Are Capable of Coexisting and Having Effect.

Regardless of policy, there is no conflict between the FAA and any statute when both are capable of having effect while coexisting. *See Epic*, 138 S.Ct at 1624. For example, in *MBNA Am. Bank v. Hill*, the Second Circuit Court of Appeals held that there was no conflict between the FAA and section 362 because interpreting and enforcing a stay is not unique to bankruptcy courts. *MBNA Am. Bank v. Hill*, 436 F.3d 104, 110 (2nd. Cir. 2006). There, the debtor filed a claim alleging a willful violation of the automatic stay after the estate had been liquidated through chapter 7, but before the bankruptcy court issued a discharge. *Id.* at 106. The creditor responded by filing a motion to stay proceedings and compel arbitration, pursuant to a pre-petition arbitration agreement with the debtor. *Id.* The court reasoned that Congress authorized automatic stay litigation in district courts, and therefore, determining the scope of the automatic stay was not exclusive to bankruptcy courts. *Id.* In contrast, in *In re Anderson*, the Second Circuit Court of Appeals held that enforcement of an otherwise applicable arbitration agreement would conflict with the Bankruptcy Code because the discharge injunction is integral to a debtor's fresh start and requires continuous court supervision. *In re Anderson*, 884 F.3d 382, 385, 389 (2nd. Cir. 2019). There, the creditor moved to stay proceedings and compel arbitration after the debtor filed a claim alleging violations of the bankruptcy discharge injunction. *Id. at 385*. The court reasoned that enforcement of an arbitration agreement would conflict with the Code because the discharge injunction was still eligible for active enforcement. *Id* at 390. The court contrasted the discharge injunction with the automatic stay, reasoning that the discharge injunction is central to the Code long after the bankruptcy proceedings have closed, while the automatic stay exists only during the proceedings. *Id*.

Here, there is no irreconcilable conflict between the FAA and section 362 because both statutes can coexist with an effective meaning. Following *Hill*, Congress has not mandated that the scope of the automatic stay be determined solely by bankruptcy courts. In contrast, as seen in *Anderson*, this is because the automatic stay is not central to a bankruptcy court's power. *Hill* and *Anderson* both show that the determining factor is whether interpretation of the claim is unique to the bankruptcy court's interpretation. The scope of the automatic stay requires determining whether, under the conditions that Congress has proscribed under its Constitutional power, Petty was protected by the automatic stay. This is unlike the discharge injunction, in which Congress has given bankruptcy courts broad power to enjoin future claims. The undeniable difference in these two statutes is that Congress has specifically and clearly determined the scope of the automatic stay as it applies to a debtor. In contrast, Congress has given bankruptcy courts the power to determine the scope of the discharge order. Following *Hill*, claims arising from the automatic stay are not exclusive to a bankruptcy court's interpretation because Congress has codified the scope of the stay. Refusing to enforce arbitration of a claim that is based purely on statutory interpretation would be granting a bankruptcy court with exclusive jurisdiction that neither the Constitution, nor Congress, has proscribed. Therefore, following *Hill* and *Anderson*, this claim must be sent to arbitration because it is not unique to the bankruptcy court's interpretation.

Thus, any conflicting purpose between section 362 and the FAA is insufficient to show a clear and manifest congressional intent. Further, the two statutes are capable of effectually coexisting. Because there is no showing of clear and manifest congressional intent, and one statute does not render the other inoperative, there is no irreconcilable conflict. Therefore, the Court of Appeals' denial of Wildflower's motion to compel arbitration must be reversed.

### B. The Purposes of the FAA and The Automatic Stay Do Not Inherently Conflict Because the Substance of Petty's Claim Regards the Scope of his Statutory Rights.

There is no inherent conflict between the FAA and the automatic stay because the Bankruptcy Code does not place a duty on contracting parties to litigate issues applicable to an ongoing arbitration dispute. The automatic stay is a core proceeding that does not inherently conflict with the FAA. Since there is no inherent conflict, a bankruptcy court does not have discretion to deny arbitration. Therefore, the Court of Appeals' decision must be reversed to allow arbitration to be compelled.

Congress has explicitly stated that bankruptcy courts "may enter appropriate orders and judgments" for core proceedings "arising in a case under title 11[.]" 11 U.S.C. § 157(b)(1). To clarify, Congress provided a non-exclusive list of proceedings that are deemed core. *See id.* at § 157(b)(2). Thirty-one years prior to *Epic*, the Supreme Court ruled that the FAA's mandate could be overridden by congressional command. *See McMahon*, 482 U.S. at 226. This command can be derived from the statute's text, legislative history, or an inherent conflict in the purposes of the statute. *Id.* However, when neither the statute's text or legislative history reveal a clear and manifest congressional intent, there must be an irreconcilable conflict between the FAA and the underlying statute. *McMahon*, 482 U.S. at 239. There is a strong presumption that Congress will specifically state preexisting law it wishes to repeal. *Epic* at 1624. A court cannot choose between statutes, but rather must "strive 'to give effect to both.'" *Id.* (citing *Morton* 417 U.S. at 551). Repeals by implication are disfavored and are restricted by the separation of powers between Congress and the judiciary. *Id.*

### 1. A Statute's Grant of Jurisdiction Does Not Create A Conflict Because A Conflict Can Only Arise from Substantive Portions of A Statute.

A congressional grant of exclusive jurisdiction does not create an inherent conflict with the FAA because it does not impose a statutory duty on parties to a claim. *See McMahon*, 482 U.S. at 227−28. For example, in *Shearson/Am. Express, Inc. v. McMahon*, the Supreme Court held that a claim brought under the Exchange Act was arbitrable even though the statute granted federal courts exclusive jurisdiction over the claim. *Id* at 234; 15 U.S.C.A §78aa. There, a customer argued an arbitration agreement with a brokerage firm was unenforceable because Congress granted exclusive jurisdiction to federal courts for claims arising under the Exchange Act, and any provision that voided compliance with the act was void under section 29. *Id.* at 227; 15 U.S.C.A §78aa. The Court reasoned that the prohibition against waiving compliance with the Act only applied to the substantive portions of the Act. *Id.* at 228. Because a grant of jurisdiction did not impose a duty on securities traders, it was not substantive. *Id.* Therefore, the claim was arbitrable because resolving the issue in an arbitral forum did not require either party to forfeit their substantive statutory rights. *Id.* Further, the Court noted that arbitrators are well capable of handling the complexities that arise from claims of statutory violations. *See id.* at 233.

Here, Congress allowing bankruptcy judges to make determinations in core proceedings does not inherently conflict with the FAA because it does not invoke a substantive duty on contracting parties. Under section 157, bankruptcy judges may make determinations on core proceedings. 11 U.S.C. § 157. However, this does not mandate any type of procedure, and unlike *McMahon*, it does not grant bankruptcy judges with any sort of exclusive jurisdiction. The substantive right at issue is whether Wildflowers violated the automatic stay. (R. at 7). Similar to *McMahon*, an arbitrator is well capable of interpreting section 362 and determining if it was violated. Petty granted Wildflowers a first priority lien on

the Equipment, and Petty is currently in possession of the Equipment. (R. at 4, 7 n.6). Similar to *McMahon*, arbitration would not compel Petty to relinquish a statutory right but would merely allow an arbitrable forum to determine whether the automatic stay is present in accordance with the conditions provided by Congress. Thus, under *McMahon*, there is no inherent conflict between the automatic stay and the FAA, and therefore, this case must be resolved through arbitration pursuant to the terms Wildflowers and Petty agreed upon.

### 2. Arbitrating Petty's Claim Does Not Inherently Conflict With The Automatic Stay Because The Claim Derives From Pre-Petition Contract Rights.

An inherent conflict does not necessarily arise because a core proceeding's purpose is different from the FAA's purpose. *See Hill*, 436 F.3d at 104. For example, in *In re National Gypsum Co.*, the Fifth Circuit held that the bankruptcy court had discretion to deny enforcement of an applicable arbitration clause because the claim was derived entirely from the Bankruptcy Code, rather than pre-petition contract rights. *In re National Gypsum Co.*, 118 F.3d 1056, 1069 (5th Cir. 1997). There, the bankruptcy court denied a motion to compel arbitration for a claim that the debtor's confirmed reorganization plan barred the creditors' collection efforts. *Id.* The court rejected the argument that core proceedings automatically inherently conflict with the FAA. *Id.* at 1067. Rather, the court reasoned that the bankruptcy court has discretion to deny arbitration where there is both an inherent conflict, and the claim derives completely from the Bankruptcy Code. *Id.* A claim regarding the reorganization plan was derived entirely from the Bankruptcy Code, but the court noted that this is not the case in disputes regarding the arbitrability of claims arising under section 362. *Id.* at 1068. In making this distinction, the court looked to the reasoning of *In re Statewide Realty Co.*. *Id*. In *Statewide*, the court held that a contract claim was arbitrable despite the automatic stay being

in effect, because the bankruptcy court did not have discretion to deny enforcement of the arbitration agreement when there was no conflict with the Bankruptcy Code. *In re Statewide Realty Co.*, 159 B.R. 719, 725 (Bankr. N.J. 1993). There, a debtor filed a chapter 11 petition after arbitration proceedings were scheduled and commenced. *Id.* at 720−71. The creditor filed a motion to compel arbitration in response to the debtor filing an objection to the creditor's proof of claim. *Id.* at 721. The court reasoned that the debtor's objection to arbitration had to do with the substance of the pre-petition contract. *Id.* at 724. Further, the fact that arbitration may slow the bankruptcy proceedings is not sufficient to displace the FAA. *Id.* at 724.

Here, there is no inherent conflict between the FAA and the automatic stay because the substance of Petty's claim is determining whether he was protected from Wildflowers' attempt to repossess the Equipment pursuant to the Credit Agreement. Wildflowers contracted with Great Wide Open and provided the brewery with a $35 million revolving Credit Agreement in return for an unconditional personal Guaranty from Petty, a license to enter any facility holding the Equipment, and mandatory arbitration for any conflict arising under the Agreement. (R. at 4). Following, *National Gypsum*, the fact that resolution of this claim turns on the application of the automatic stay does not necessitate overriding the FAA's mandate. Similar to *Statewide*, arbitration proceedings had already been scheduled prior to Petty's filing of bankruptcy. (R. at 5). However, going further than *Statewide*, arbitration proceedings had been scheduled, but then stayed twice. (R. at 5−6). Following *National Gypsum*, this claim does not derive entirely from the Bankruptcy Code because it deals with pre-petition contract rights. Similar to *Statewide*, determining the substance of the pre-petition contractual rights, and whether these rights were overridden by a congressional enactment, does not inherently conflict with the

Bankruptcy Code. Therefore, this claim must be sent to arbitration because there is no inherent conflict between the FAA and the automatic stay claim.

Thus, there is no irreconcilable conflict between the FAA and the automatic stay claim because the Bankruptcy Code does not place a duty on contracting parties to litigate issues applicable to an ongoing arbitration dispute. Additionally, the automatic stay is a core proceeding, but there is no inherent conflict with the FAA. Because there is no inherent conflict, a bankruptcy court does not have discretion to deny arbitration. Therefore, the Court of Appeals' decision must be reversed to allow arbitration to be compelled.

## II. SECTION 362(c)(3)(A) LIFTS THE STAY IN ITS ENTIRETY.

The Thirteenth Circuit erroneously held that section 362(c)(3)(A) continues to apply to property of the bankruptcy estate. (R. at 19). Instead, the automatic stay does not remain in effect with respect to property of the estate absent an extension under section 362(c)(3)(B). Once a bankruptcy petition is filed, the automatic stay codified in section 362 places an injunction upon all creditors' attempts to collect the debt from the debtor and his property while the case is being administered. 11 U.S.C. § 362(a). Petty filed the Second Bankruptcy Case within a year of the Initial Bankruptcy Case's dismissal. (R. at 5−6). The issue is whether the stay was still in effect, even absent an extension, when Wildflowers repossessed the Equipment thirty-two days after the Second Bankruptcy Case was filed. (R. at 6). The section in dispute pertains to a debtor who has had an individual chapter 11 case dismissed within one-year of refiling the current chapter 11 case. 11 U.S.C. § 362(c)(3). Specifically, the stay "with respect to any action taken with respect to a debt or property securing such debt" will "terminate with respect to the debtor on the 30th day" after the second petition was filed. *Id.* at § 362(c)(3)(A).

While "any action taken" has been largely interpreted as referring to a "formal action, such as a judicial, administrative … or other essentially formal activity or proceeding," the phrase "with respect to the debtor" has not been interpreted by this Court. Instead, it has been widely contested among lower courts, with the emergence of three contesting interpretations. *In re Paschal*, 337 B.R. 274, 280 (Bankr. E.D.N.C. 2006). The majority interpretation which the Thirteenth Circuit applied, concludes that the automatic stay does not lift with respect to the property of the estate, even in the absence of an extension. *Rose v. Select Portfolio Servicing, Inc.*, 945 F.3d 226, 232 (5th Cir. 2019). Contrary to that interpretation, the minority approach construes section 362(c)(3)(A) as terminating the entire stay "thirty days after the filing of a second petition." *Smith v. State of Maine Bureau of Revenue Servs. (In re Smith)*, 910 F.3d 576 (1st Cir. 2018). Lastly, and most unfavored is the third approach that interprets the phrase as meaning nothing at all, attributed to "the sloppy draftsmanship which permeates all of BAPCPA." Peter E. Meltzer, *Won't You Stay A Little Longer? Rejecting the Majority Interpretation of Bankruptcy Code S 362(c)(3)(a)*, 86 Am. Bankr. L.J. 407, 408 (2012).

The Thirteenth Circuit should have followed, and this Court should adopt, the minority interpretation because it is more consistent with the plain language of the section and longstanding bankruptcy tradition regarding the automatic stay. Alternatively, this Court should look to the legislative purpose and BAPCPA's goal of curbing bankruptcy abuses to find that the stay is to terminate in its entirety upon the thirtieth day of the later filing.

### A. Section 362(c)(3)(A) Read Plainly and Interpreted Harmoniously with Bankruptcy Tradition Terminates the Automatic Stay in its Entirety.

Section 362(c)(3)(A) terminates the automatic stay in its entirety. *See* 11 U.S.C § 362(c)(3)(A). Statutory interpretation begins with the language of the statute itself. *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985); (R. at 16). The Thirteenth Circuit

correctly observed that "when the statute's language is plain, the sole function of the courts … is to enforce it according to its terms." *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004). "The mere fact that courts disagree on the meaning of a statutory provision does not render that provision ambiguous." *In re Reswick*, 446 B.R. 362, 370 (B.A.P. 9th Cir. 2011). In this case, the section provides enhanced scrutiny and fewer protections for repeat filers:

> (3) if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed …
>
> (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 …

11 U.S.C. § 362(c)(3)(A) (emphasis added). Courts following the majority approach interpret the statute as terminating the stay only with respect to the debtor and his property. *See, e.g.*, *Rose*, 945 F.3d at 231. Instead, courts correctly applying the minority approach hold that the stay terminates in its entirety upon the thirtieth day of the second petition. *See, e.g.*, *In re Smith*, 910 F.3d at 591. In interpreting the stay as terminating with respect to the debtor and his property, instead of the bankruptcy property, the Thirteenth Circuit distorted the plain language of the statute and ignored the automatic stay's longstanding history.

#### 1. The Plain Language of the Statute Indicates the Stay Terminates in its Entirety.

The Thirteenth Circuit correctly held that "the language of the statute is plain and unambiguous." (R. at 16). However, the minority view produces the plainest meaning. When the automatic stay comes into effect it automatically stays collection actions against eight categories targeting the debtor, the debtor's property, and the bankruptcy estate's property. 11 U.S.C. § 362(a)(1)–(8). Although it might appear that the phrase "with respect to the debtor" alludes to

the first category, "the definition of words in isolation … are not necessarily controlling in statutory construction." *Dolan v. U.S. Postal Service*, 546 U.S. 481, 486 (2006). Instead, the Court must bear in mind "the fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *King v. Burwell*, 576 U.S. 473, 475 (2015).

First, the minority approach considers the full language of section 362(c)(3)(A) instead of honing in on a specific word. Had the majority ventured past the first five words within section 362(c)(3)(A) "with respect to the debtor" they would have recognized why the stay must terminate in its entirety rather than exclusively to the debtor and his property. "Perhaps no interpretive fault is more common than the failure to follow the whole-text canon, which … consider[s] the entire text, in view of its structure and of the physical and logical relation of its many parts." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, at 167 (2012). "Context always matters … [for i]t is a tool for understanding the terms of the law, not an excuse for rewriting them." *King v. Burwell*, 576 U.S. at 500 (Scalia, J., dissenting). The stay is not intended to terminate as to the debtor only, as the preceding language of section 362(c)(3)(A) specifically mentions "debt or property securing the debt." Meltzer, 86 Am. Bankr. L.J. at 423. By interpreting "with respect to the debtor" as terminating the stay only with regard to the debtor personally and their property, but not as to the estate property, there "would be no reason for [the section] to reference 'with respect to a debtor or property securing debt.'" *In re Reswick*, 446 B.R. at 368. Indeed, it would render "the opening clause of [the section as] surplusage." *Id.* "These words cannot be meaningless, else they would not have been used." *U.S. v. Butler*, 297 U.S. 1, 65 (1936). Therefore, the most consistent interpretation reads "with respect to the debtor" as not concerning property, but as differentiating between the debtor

and the debtor's spouse which refers to the beginning phrase of the section "single or joint case." *See eg., In re Parker,* 336 B.R. 678, 680 (Bankr. S.D.N.Y. 2006).

Second, the minority interpretation allows for "permissible meanings [that] produce[] a substantive effect that is compatible with the rest of the law." *United Sav. Assn. of Tex. v. Timbers of Inwood Forest Associates*, Ltd., 484 U.S. 365, 371 (1988). Indeed, "[a] textually permissible interpretation that furthers rather than obstructs the document's purpose should be favored." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts,* at 63 (2012). The purpose of the automatic stay's termination is to allow creditors to repossess the secured collateral or to obtain an order against the debtor or the estate's property. *See* 11 U.S.C. § 362. Interpreting the stay as ending with respect to the debtor only "would allow a creditor to make collection calls and obtain a judgement against the debtor personally but it would not allow enforcement of the judgement, since all property available for that purpose would remain subject to the stay." *In re Daniel,* 404 B.R. 318, 322 (Bankr. N.D. Ill. 2009). To read the section as terminating with respect to secured collateral and leases only secured by property of the debtor, instead of estate property would be a hollow victory for the secured creditor. *In re Bender*, 562 B.R. 578, 584 (Bankr. E.D.N.Y. 2016). Further, most of the debtor's property becomes estate property upon filing, rendering such a distinction between the debtor and his non-estate property superfluous. *Taylor v. Freeland & Kronz,* 503 U.S. 638, 642, (1992). Hence, the majority's interpretation does not reconcile all parts of the section in a way that can be "read harmoniously with no inconsistenc[ies], no superfluities and no absurdities." Meltzer, 86 Am. Bankr. L.J. at 423.

Third, the minority view does not read language into the section that is not there. "Courts must take statutes as they find them .... They are not responsible for omissions in

legislation." *Morgan v. Plano Indep. Sch. Dist.*, 724 F.3d 579, 584 n.8 (5th Cir. 2013). The majority's view that the stay terminates only with regard to the debtor and their non-estate property, excluding the bankruptcy estate property incorrectly reads into the statute words that are not there. (R. at 29). The majority's interpretation expands the phrase to include "with respect to the debtor *and the debtor's property*." *In re Reswick*, 446 B.R. at 366. Such an addition into section 362(c)(3)(A) would be incorrect. Instead "property" is mentioned only in the context of "property securing [a] debt." *In re Bender*, 562 B.R. at 583−84. The majority urges that Congress knew how to terminate the stay as it did in section 362(c)(4)(A)(i) by deleting the phrase "with respect to the debtor." (R. at 17). However, although some sections of 362(a) reference acts against the debtor, the debtor's property, or acts against property of the estate, some do not.[1] Therefore, the absence of "acts against property of the estate" is not conclusive that Congress intended to omit it. Further, the majority's erroneous addition of "and the debtor's property" incorrectly partially terminates the stay. Such legal gymnastics seem illogical when the stay could be plainly read to terminate in its entirety and maintain its significance. Thus, a plainer interpretation of "with respect to the debtor" terminates the stay in its entirety.

Lastly, the majority interpretation furthers a statutory scheme that renders section 362(c)(3)(B) virtually invisible. The section allows a party in interest upon a hearing to extend the stay beyond the thirty day period if the moving party can establish that the petition was filed in good faith. *See* 11 U.S.C. § 362(c)(3)(B). As noted previously, property of the estate would have to be subject to the termination of the stay for the debtor to have a sufficient reason

[1] *See, eg.*, 11 U.S.C. § 362(a)(6) (precluding any act "to collect, assess, or recover a [prepetition] claim against the debtor," seemingly whether the act is done against the debtor, property of the debtor, or property of the estate); *see also* 11 U.S.C. § 362(a)(7) (barring setoffs of prepetition debts owed to the debtor without specifying whether such debts are property of the estate or property of the debtor against any claim against the debtor); *see also* 11 U.S.C. § 362(a)(8) (describing the proceedings in the United States Tax Court as brought by or against the debtor, without regard to how the liability was incurred).

to file the motion. *In re Jupiter*, 344 B.R. 754, 760 (Bankr. D.S.C. 2006). It seems absurd that Congress would enact "a provision which requires [a] moving party to meet a high burden of proof … on an expedited basis if … property in which secured creditors have the strongest interest—remained protected by the automatic stay despite expiration of the thirty-day period." *In re Curry*, 362 B.R. 394, 401 (Bankr. N.D. Ill. 2007). The court would waste resources deciding whether to extend the stay even though it would be virtually meaningless and of no utility to either debtor or creditor. *In re Moon*, 339 B.R. 668, 672 (Bankr. N.D. Ohio 2006). Indeed, partially terminating the stay provides pointless relief especially to creditors in a chapter 11 case who can take no action against property the debtor owned prior to filing or acquired post-petition as both become property of the estate. *In re Reswick*, 446 B.R. at 368. Furthering this point, in jurisdictions where the majority view has been adopted, "there does not appear to be a single case in which a creditor has sought to terminate the automatic stay under § 362(c)(3)(A)." Meltzer, 86 Am. Bankr. L.J. at 409. Therefore, the majority approach renders section 362(c)(3)(A)'s applicability rare and meaningless as it thwarts the creditors' ability to reach estate property.

#### 2. The Minority Approach is Consistent with the Automatic Stay's Long-Standing Bankruptcy Common Law Tradition.

In addition to the plain language supporting the minority view, the automatic stay's purpose and common law history do as well. "[C]ourts have consistently held legislation derogative of the common law accountable to an exactness of expression, and have not allowed the effects … to be extended beyond the necessary and unavoidable meaning of its terms." *Scharfeld v. Richardson*, 133 F.2d 340, 341 (D.C. Cir. 1942). In other words "a statute will be construed to alter the common law only when that disposition is clear." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts*, at 318 (2012). The automatic

stay benefits the debtor as it halts collection actions, for the orderly administration of the bankruptcy estate and serves the creditors by making sure they are all treated equally. S. REP. NO. 95−989, at 49 (1978). Before the codification of the automatic stay, the principle existed through the general principle of exclusive in rem jurisdiction of the federal bankruptcy court, codified today under section 1334(e)(1). *See Wiswall v. Sampson,* 55 U.S. 52, 69 (1852) (holding that the violation of the stay "was illegal and void, having been made while the estate was in the possession and safe keeping of the Court of Chancery"); 11 U.S.C. § 1334(e)(1).

Any interpretation of the stay should be read in continuity with the overarching purpose and common law background of the stay. "[A]n integrated statutory code such as the federal bankruptcy law can be navigated surely only with an awareness of the tributary principles that flow through various Code provisions." Ralph Brubaker, *Does § 549(c) Protect a Good Faith Purchaser in a Post-Petition Foreclosure Sale Conducted in Violation of the Automatic Stay?*, 23 BANKR. L. LETTER 1, 5 (Aug. 2003). Congress intended to amplify and codify the common law automatic stay when it enacted 11 U.S.C. § 362 as part of the Bankruptcy Reform Act of 1978. Pub.L. 95–598, 92 Stat. 2549 (1978); *see* Ralph Brubaker, *Money Judgments in Governmental Regulatory Actions: A Lesson in the Multiple Functions of Bankruptcy's Automatic Stay,* 36 BANKR. L. LETTER 1, 1 (Oct. 2016). Before BAPCPA, the automatic stay "remain[ed] in force" for all filers until specific judicial action lifted or modified it, or until the end of the bankruptcy case. *In re Soares,* 107 F.3d 969, 975 (1st Cir. 1997). As the Supreme Court explicitly stated, the Court "will not read the Bankruptcy Code to erode past bankruptcy practice absent a clear indication that Congress intended such a departure." *Travelers Cas. & Sur. Co. of Am. v. Pac. Gas & Electric Co.*, 549 U.S. 443, 454 (2007). Continuity is presumed unless the statute expressly veers from it. *See id.* The majority

erroneously urges the Court to depart from past bankruptcy practices, as nothing in section 362(c)(3)(A) expressly abrogates the common law doctrines of exclusive jurisdiction. The general statutory scheme reinforces the belief that the stay terminates upon the thirtieth day, as "it would be odd for Congress to have chosen 'with respect to the debtor' to articulate an important reform" by placing such a significant limit on the termination of the stay. *In re Smith*, 910 F.3d at 585. Thus, the Thirteenth Circuit inappropriately held that the plain language of the statute produces a result that is incompatible with longstanding bankruptcy tradition.

### B. The Spirit of Section 362(c)(3)(A) Reinforces the Interpretation that the Automatic Stay Terminates with Respect to the Debtor's Bankruptcy Estate.

A complete analysis of statutory interpretation requires an inquiry into the spirit of section 362(c)(3)(A). Canons of statutory interpretation attempt "to give effect, if possible, to every clause and word of a statute [as these canons are ultimately] designed to help judges determine the Legislature's intent." *Chickasaw Nation v. United States*, 534 U.S. 84, 94 (2001). *Mendles v. Danish*, 74 N.J.L. 333, 336 (Sup. Ct. 1907) (noting that ultimately "resort may be had to the principle that the spirit of a law controls the letter."). Indeed, the Supreme Court often reviews "legislative history in bankruptcy decisions to ensure that its interpretations are consistent with Congress' purposes." *In re Smith*, 910 F.3d at 589. The legislative history of section 362(c)(3)(A) and BAPCPA's purpose reinforce the plain meaning and interpretation of the stay terminating in its entirety.

#### 1. The Legislative History is Consistent with the Termination of the Automatic Stay in its Entirety.

The legislative history of section 362(c)(3)(A) is consistent with the interpretation that the stay terminates in its entirety upon the thirtieth day. Contrary to the majority opinion, the legislative history is not inconclusive, but is instead clear and consistent. (R. at 18). Legislative history may be consulted when the statute is ambiguous or when the statute as applied leads to

absurd results. *See Crooks v. Harrelson,* 282 U.S. 55, 59 (1930). In this case, although the plain language of the section may be considered unambiguous, the legislative history is relevant in dispelling the majority's interpretation that produces the absurd result of terminating the stay only as to the debtor. Specifically, "if the language is so hard to interpret … § 362(c) presents a perfect case for resorting to legislative history to clarify ambiguities." Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code,* 82 Am. Bankr. L.J. 201, 227 (2008).

In 1994, Congress tasked the National Bankruptcy Review Commission with investigating problems in the Code and suggesting solutions. *See* Bankruptcy Reform Act of 1994, Pub.L. 103–394, 108 Stat. 4106, §§ 602–03 (Oct. 22, 1994). One such problem identified, were the successive bankruptcy petitions debtors filed to exploit the automatic stay in halting creditors from seizing control of property. *In re Daniel*, 404 B.R. at 327. As a solution, Congress enacted, as part of the 1998 reform, language almost identical to today's formulation of section 362(c)(3)−(4). Pub.L. 103–394, 108 Stat. 4106, §§ 602–03 (Oct. 22, 1994). Interestingly, section 362(c)(3)(A) termination of the stay on the thirtieth day applied to all debtors who had filed more than one petition within a year. S. Rep. 105−253, at 39 (1998). When the finalized form of the statute was codified as part of BAPCPA, Congress kept the thirty-day language for second time filers and created a third class of debtors whose stay does not come into effect at all. H.R. Rep. No. 109–31(I), at 69 (2005). Hence, Congress intended to impose more severe consequences as the number of successive filings increase. *In re Nelson,* 391 B.R. 437, 452 (B.A.P. 9th Cir. 2008). The purpose of combating abuses of successive filings is better served by lifting the stay upon the thirtieth day of the latter filing. *In re Daniel*, 404 B.R. at 329. Had Congress wanted "to change the 1998 language's meaning or scope … [it would have been]

reflected in the BAPCPA House Report or elsewhere in BAPCPA's legislative history." *In re Smith*, 910 F.3d at 591.

Further, in the seven years between the 1998 Bankruptcy Reform Act and the 2005 BAPCPA amendments "none of the several committee reports that discussed the provision ever suggested that the phrase drew a distinction between actions against the debtor personally [and] actions against the debtor's estate property." *In re Goodrich*, 587 B.R. 829, 846 (Bankr. D. Vt. 2018). In contrast, each report viewed the section plainly by characterizing the stay termination "with respect to the debtor" as not excluding any property upon termination. *See* H.R. Rep. No. 105−540, p. 80 (1998); *see also* H.R. Rep. No. 109−31, pt. 1, p. 69 (2005); *see also In re Smith*, 573 B.R. 298, 306 (Bankr. D. Me. 2017) ("It makes little sense to conclude that Congress meant to protect most, if not all, of a debtor's property – by virtue of its status as property of the estate – in a case that was, at least presumptively, not filed in good faith."). Additionally, each House Report lists the section under the title "Discouraging Bad Faith Repeat Filings" further signaling that the purpose of the provision is to thwart bad faith successive filings with meaningful repercussions, namely lifting the stay in its entirety. *See* S. Rep. 105−253, at 39 (1998). Thus, the legislative history of section 362(c)(3)(A) is consistent with terminating the stay in its entirety upon the thirtieth day.

### 2. BAPCPA's Goal of Deterring Bankruptcy Abuses Committed by Serial Fillers Reinforces the Interpretation that the Stay Terminates in its Entirety.

Section 362(c)(3)(A) was initially codified as part of the "The Bankruptcy Reform Act of 1998." Pub.L. 103–394, 108 Stat. 4106, §§ 602–03 (Oct. 22, 1994). The section's final form was codified as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA"). Pub.L. No. 109–8, § 302 (2005). The Supreme Court has acknowledged BAPCPA's goal as an effort "to correct perceived abuses of the bankruptcy system." *Milavetz,*

*Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 231−32 (2010). The House Report accompanying the legislation also specifically provided "with respect to the interests of creditors, the proposed reforms respond to … the proliferation of serial filings." H.R. Rep. No. 109–31(I), at 2 (2005). As discussed in the sections above, the only interpretation that has any mitigating effect on the serial filing would be a terminated stay with respect to the debtor's estate property to allow creditors to repossess the secured collateral. *In re Jupiter,* 344 B.R. at 760 Hence, the goal and purpose of the BAPCPA amendments guide the conclusion that the stay terminates in its entirety with respect to the debtor and the bankruptcy estate.

The divergence in section 362(c)(3)(A)'s interpretation is not an uncommon circumstance, as many BAPCPA amendments have confused courts and rendered diametrically opposite legal conclusions. The overwhelming bankruptcy community consensus is that the amendments were "poorly drafted" and as "what in common parlance would be called, a mess." The Honorable Thomas F. Waldron, Neil M. Berman, *Principled Principles of Statutory Interpretation: A Judicial Perspective After Two Years of Bapcpa*, 81 Am. Bankr. L.J. 195, 196 (2007); *see also In re Charles*, 332 B.R. 538, 541 (Bankr. S.D.Tex. 2005) (noting that the provisions "are, at best, particularly difficult to parse and, at worst, virtually incoherent."). Clear direction is needed, as many provisions have been found to "contain superfluous provisions, oxymoronic provisions, and internally inconsistent provisions.". Meltzer, 86 Am. Bankr. L.J. at 417.

Courts must exercise caution when interpreting a poorly drafted statute. The Supreme Court, has warned that "rigorous application of [a] canon does not seem a particular useful guide [when a statute] contains more than a few examples of inartful drafting." *King*, 576 U.S. at 475. Only when statutes are meticulously drafted can one have confidence that the words

that were omitted or inserted were done purposefully. Bartell, 82 Am. Bankr. L.J. at 227. Therefore, legislative history is used to make clear Congress' focus. *See also Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 71 (2011) ("[C]onsideration of BAPCPA's purpose strengthens our reading of the [section] … 'to ensure [debtors] repay creditors the maximum they can afford.'") (quoting H.R.Rep. No. 109–31, pt. 1, p. 2 (2005)). Hence, ambiguities emanating from the BAPCPA amendments have been construed in favor of creditors. *See Baud v. Carroll*, 634 F.3d 327, 356 (6th Cir. 2011) ("where each competing interpretation of a Code provision amended by BAPCPA is consistent with the plain language of the statute, we must, as the Supreme Court did in Lanning and Ransom, apply the interpretation that has the best chance of fulfilling BAPCPA's purpose of maximizing creditor recoveries."). In this case, an interpretation in line with maximizing creditor recoveries, would construe section 362(c)(3)(A) as terminating the stay in its entirety, to allow Wildflowers to repossess the Equipment, as they did on the thirty-second day. (R. at 6). Accordingly, this Court should reverse the Thirteenth Circuit's decision and hold that the automatic stay terminated in its entirety upon the thirtieth day of Petty's second filing.

## Conclusion

Wildflowers should be allowed to repossess the Equipment and compel Petty to participate in arbitration in accordance with the Credit Agreement. Petty is simply being asked to honor its existing Agreement with Wildflowers.

A conflicting purpose between section 362 and the FAA is insufficient to displace the FAA. Additionally, the two statutes are capable of coexisting with each having an effect. Therefore, there is no irreconcilable conflict between the FAA and section 362. Further, there is no showing of clear and manifest congressional intent, and one statute does not render the other inoperative. Thus, section 362 did not impliedly repeal the FAA. Further, there is no inherent conflict with the FAA because the substance of the claim partially derives from the remedy's clause in the pre-petition contract. Because there is no inherent or irreconcilable conflict, arbitration must be enforced.

The fundamental purpose of the automatic stay's most recent form finalized by BAPCPA's 2005 amendments was to deter bankruptcy abuses committed by serial filers. To do that, there must be some repercussions incurred upon a repeat debtor who may have not filed the second petition in good faith. Allowing the stay to terminate only regarding the debtor and his property, would render the termination of the stay on the thirtieth day in accordance with section 362(c)(3)(A) meaningless to Wildflowers. Accordingly, this Court should reverse the Thirteenth Circuit's erroneous holdings and compel Petty to participate in arbitration in accordance with the Credit Agreement. Further this Court should terminate the automatic stay in its entirety, to allow Wildflowers to repossess the Equipment.

WHEREFORE, PREMISES CONSIDERED, Petitioner respectfully prays that this Court reverse the decision of the Thirteenth Circuit.

Respectfully Submitted,

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