

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 27
Counsel for Petitioner

QUESTIONS PRESENTED

1. Whether the Bankruptcy Code's automatic stay provision impliedly repeals the Federal Arbitration Act, absent evidence of congressional intent to displace arbitration within the statutory language, legislative history, or through an irreconcilable conflict, and in the face of recent Supreme Court precedent strongly favoring arbitration.
2. Whether section 362(c)(3)(A) of the Bankruptcy Code merely terminates the automatic stay only as to those actions taken against the debtor personally and the debtor's personal property, where the statute's plain language, the rules of statutory construction, and the legislative history suggest a termination of the stay entirely, allowing creditors to repossess property of the estate.

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United States Court of Appeals Cases

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Other Sources

| | |
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| Bankruptcy Reform Act of 1994, Pub. L. No. 103–394, 108 Stat. 4106, §§ 602–03 (Oct. 22, 1994) | # |
| H.R. Rep. No. 109–31(I) (2005) | # |
| John R. Hardison, <i>Express Preclusion of the Federal Arbitration Act for All Bankruptcy-Related Matters</i> , 93 St. John's L. Rev. 627 (2019)..... | # |

Peter E. Meltzer, *Won't You Stay a Little Longer? Rejecting the Majority Interpretation of Bankruptcy Code § 362(C)(3)(A)*, 86 Am. Bankr. L.J. 407, 415 (2012) #

Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 180 (2012) #

OPINIONS BELOW

The United States Bankruptcy Court for the District of Moot held for the debtor, Earl Thomas Petty (“Petty”), on both issues, in an opinion not yet reported. (R. at 3). Specifically, the Bankruptcy Court found that: (i) it had the authority to decide the dispute between Petty and Wildflowers Community Bank (“Wildflowers”) notwithstanding the prepetition arbitration agreement that the parties entered into; and (ii) section 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. *Id.* The United States Court of Appeals for the Thirteenth Circuit affirmed on both issues, in an unreported opinion for Case No. 19-0805, which appears in the Record on pages 2–32. *Id.* at 19. This Court has now granted Wildflowers petition for writ of certiorari. *Id.* at 1.

STATEMENT OF JURISDICTION

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

STATUTES INVOLVED

The relevant federal laws controlling this case are 11 U.S.C. § 362 (2020) of the United States Bankruptcy Code, the automatic stay, and 9 U.S.C. §§ 1 *et seq.* (2018), the Federal Arbitration Act (“FAA”). Due to their expansive length, these respective texts have not been attached in full. However, the text of 11 U.S.C. § 362(c)(3)(C) (2020), a provision of specific importance, has been reproduced in full in the attached Appendix.

STATEMENT OF THE CASE

I. Facts

After quitting his job as a practicing lawyer, Earl Thomas Petty (“Petty”), the debtor in this case (“Debtor”), opened a craft brewery in 2002 and began brewing beer to be sold to local retailers and restaurants. R. at 3. In 2005, the brewery, Great Wide Open Brewing Company, Inc. (“Great Wide Open”), expanded production by opening a 9,000 square foot taproom. *Id.* This taproom used brewing equipment (“Equipment”) that Debtor had purchased with his own personal funds. *Id.* Great Wide Open experienced substantial growth over the next ten years, eventually becoming one of the largest craft breweries in the State of Moot. *Id.* With demand increasing, Debtor chose to initiate an aggressive expansion and, in 2010, Great Wide Open opened four additional taprooms and a large brewhouse in 2012. R. at 4.

This vast expansion was funded by Great Wide Open’s lender, Wildflowers Community Bank (“Wildflowers”), which agreed to extend a \$35 million revolving line of credit. *Id.* While the agreement (“Credit Agreement”) granted Wildflowers a first priority lien in substantially all of Great Wide Open’s assets, the debtor also executed a personal guaranty to Wildflowers (“Guaranty”), unconditionally guaranteeing repayment of Great Wide Open’s obligations. *Id.* To secure the Guaranty, Debtor also granted Wildflowers a first priority lien on the Equipment. *Id.*

Both of these agreements granted Wildflowers the right, upon default, to “enter any premises where Collateral may be located for the purpose of repossessing Collateral without the need for any prior judicial action.” *Id.* Furthermore, both agreements also contained identical arbitration clauses, which stated that “any and all disputes, claims, or controversies of any kind between us arising out of or relating to the relationship between us will be resolved through

mandatory, binding arbitration and each party voluntarily gives up any rights to have such disputes litigated in a court or by jury trial.” *Id.*

Unfortunately, in 2017, Great Wide Open began experiencing significant liquidity problems. R. at 5. Due to the substantial amount of debt incurred by its earlier expansion, Great Wide Open was forced to close three of its four taprooms in March of 2018. *Id.* Notably, however, Wildflowers was not informed of these closures and, instead, only found out due to happenstance. *Id.* The following month, Great Wide Open and Debtor defaulted on their obligations to repay Wildflowers under the Credit Agreement and the Guaranty, respectively. *Id.* Consequently, Wildflowers sent both Great Wide Open and Petty a default letter. *Id.* On June 4, 2018, after three months of nonpayment, Wildflowers filed a demand for arbitration and breach of contract complaint with the American Arbitration Association (“AAA”). *Id.* The AAA then scheduled the initial conference for the arbitration proceedings for July 12, 2018. *Id.*

On July 11, 2018—the day before the initial arbitration conference—Great Wide Open terminated all employees and ceased operations. *Id.* The following day, instead of attending the previously scheduled arbitration conference, Great Wide Open filed for chapter 7 bankruptcy in the Bankruptcy Court for the District of Moot (“bankruptcy court”) and the business was subsequently liquidated. R. at 5–6. On the same day, Debtor also filed for chapter 11 bankruptcy with the bankruptcy court as an individual (“Initial Bankruptcy Case”). R. at 5.

Debtor’s Initial Bankruptcy Case was dismissed on April 27, 2018 by the bankruptcy court due to Debtor’s failure to timely file the requisite documents with the court, including his schedules of assets and liabilities. *Id.* On January 11, 2019, just before arbitration was to recommence, Debtor refiled for chapter 11 with the bankruptcy court (“Second Bankruptcy Case”—thereby halting arbitration, once again. R. at 5–6.

During the pendency of the Second Bankruptcy Case, Debtor continued to use the Equipment—which Wildflowers had claim to under the Guaranty—to produce and sell beer as a sole proprietor of “Full Moon Fever Brewing.” R. at 6. Importantly, however, Debtor failed to file a motion to extend the automatic stay under section 362(c)(3)(B) within the first thirty days of the Second Bankruptcy Case. *Id.* Consequently, thirty-two days after the commencement of the Second Bankruptcy Case, Wildflowers “peaceably repossessed the Equipment which remained subject to its security interest” granted by the Guaranty. *Id.*

Despite his failure to extend the stay, Debtor filed a motion with the bankruptcy court, claiming that Wildflowers had violated the automatic stay by repossessing the Equipment. *Id.* Wildflower filed a response asserting that the automatic stay of actions against property of the estate, such as the repossession of Equipment, was terminated by section 362(c)(3)(A), since Debtor had a previous bankruptcy case dismissed within one year of initiating the current case, and Debtor had failed to extend the stay under section 362(c)(3)(B). R. at 7. Additionally, in the response, Wildflowers further stated that Debtor should be compelled to bring any and all claims against it in the pending arbitration proceeding, pursuant to the valid and binding arbitration agreement in the Guaranty. *Id.*

II. Procedural History

Ultimately, the bankruptcy court held in favor of the debtor on both issues. *Id.* The court denied Wildflower’s request to compel arbitration, reasoning that doing so would conflict with both section 362 of the Bankruptcy Code and the Code, generally. *Id.* The court further held that section 362(c)(3)(B) does not terminate the automatic stay of actions against property of the estate, regardless of whether the stay had been extended. *Id.* Therefore, in deciding that the stay had not been terminated as to the Equipment, the court found that Wildflowers had willfully violated the

automatic stay in repossessing the Equipment. *Id.* Consequently, the court awarded Debtor \$200,000 in compensatory damages. *Id.*

Wildflowers timely appealed both issues to the Court of Appeals, pursuant to 28 U.S.C. § 158(d), and the Thirteenth Circuit affirmed the bankruptcy court on both issues. *Id.* Wildflowers then petitioned for a writ of certiorari, which was granted by this Court. R. at 1.

STANDARD OF REVIEW

The facts of this case are not in dispute by the parties. R. at 8. The Thirteenth Circuit's holding that section 362 impliedly repeals the Federal Arbitration Act's mandate of arbitration and that section 362(c)(3)(A) does not result in the termination of the automatic stay as to property of the estate are both questions of law, which are reviewed de novo. *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 134 S. Ct. 1744, 1748 (2014) (quoting *Pierce v. Underwood*, 487 U.S. 552, 558 (1988)). Accordingly, this Court should decide these issues as if it were the original trial court in the matter. *Razavi v. Comm'r of Internal Revenue*, 74 F.3d 125, 127 (6th Cir. 1996) (citation omitted).

SUMMARY OF THE ARGUMENT

This Court should reverse the decision of the Thirteenth Circuit on both issues. First, the automatic stay provision of the Bankruptcy Code does not impliedly repeal the mandate for arbitration found in the Federal Arbitration Act ("FAA"). In order to overcome the presumption of a valid arbitration agreement, the party opposing arbitration bears the burden of providing clear and manifest evidence of Congress's intent to displace arbitration for disputes surrounding the respective federal law in question. Here, Respondent has failed to meet that burden, as analyses of the automatic stay's statutory language and legislative history, along with an absence of irreconcilable conflict, suggest congressional intent toward displacement.

Moreover, Respondent has failed to show that any inherent conflict exists between the automatic stay and the FAA, nor has Respondent provided any evidence that arbitration would usurp the underlying purpose of the Bankruptcy Code, as the automatic stay's classification as a core proceeding is neither the sole, nor a determinative factor as to whether a court should compel arbitration or allow the case to proceed in its own court. In fact, recent Supreme Court precedent suggests that a proceeding's characterization as core or non-core is no longer the correct assessment to be made when deciding this issue. Instead, this Court's recent trend in jurisprudence illustrates both a strong preference for arbitration and the preeminence of the FAA. Thus, this Court should find in favor of Petitioner and hold that the automatic stay does not impliedly repeal the FAA.

Furthermore, section 362(c)(3)(A) was enacted to deter serial bankruptcy filings that abuse the protection afforded by the automatic stay. When section 362(c)(3)(A) is read in context, as required by this Court's precedent, it only has one reasonable interpretation. According to the plain text of the statute, "the stay under subsection (a) . . . shall terminate with respect to the debtor" who is the repeat filer and not with respect to both debtors in a jointly filed case. While Respondent interprets the language "with respect to the debtor" as only terminating the automatic stay as to the debtor personally, and not as to property of the estate, this interpretation should be disfavored, as it conflicts with both section 362(j) and the language within section 362(c)(3)(A) itself.

Additionally, unlike Petitioner's interpretation, Respondent's interpretation renders the language in section 362(c)(3)(A) superfluous, while also rendering sections 362(c)(3)(B) and (C) inoperative or insignificant. Lastly, Petitioner's reading is further confirmed by the legislative history of section 362(c) and the Bankruptcy Abuse and Consumer Protection Act. Therefore, the plain language of section 362(c)(3)(A), the rules of statutory interpretation, and the legislative

history should persuade this Court to find in favor of Petitioner and hold that section 362(c)(3)(A) terminates the stay entirely—including those actions taken against property of the estate.

For these reasons, the Court of Appeals incorrectly held that the Bankruptcy Code’s automatic stay provision impliedly repeals the FAA’s mandate for arbitration and that section 362(c)(3)(A) does not terminate the automatic stay with respect to property of the estate. Accordingly, Petitioner respectfully requests this honorable Court to **REVERSE** and **REMAND** the decision of the Thirteenth Circuit.

ARGUMENT

The United States Court of Appeals for the Thirteenth Circuit erred as a matter of law by affirming the decision of the United States Bankruptcy Court for the District of Moot in its entirety, as evidenced by the following reasons. Therefore, this Court should **REVERSE** the decision of the Thirteenth Circuit and **REMAND** for further proceedings in accord with subsequent conclusions.

- I. The Thirteenth Circuit incorrectly held that the automatic stay impliedly repeals the Federal Arbitration Act, as there is no evidence of congressional intent to displace the FAA within the statutory language of section 362, its legislative history, or through an irreconcilable conflict, no inherent conflict exists, and recent Supreme Court precedent illustrates the preeminence of the FAA.**

In 1926, Congress passed the Federal Arbitration Act (“FAA”), thereby instructing the United States judiciary to consider arbitration agreements as “valid, irrevocable, and enforceable” covenants, which courts were to compel, according to the respective agreement’s terms. 9 U.S.C. § 2. As long as its formulation was not at issue, Congress ordered the courts to “make an order” requiring parties to proceed with the valid arbitration agreement. 9 U.S.C. § 4. Therefore, even if the decision results in “piecemeal litigation,” courts must “rigorously enforce agreements to arbitrate.” *Dean Witter Reynolds, Inc., v. Byrd*, 470 U.S. 213, 221 (1985).

The purpose of the FAA was two-fold. First, the FAA served as a direct reflection of Congress's attitude towards arbitration, an illustration of their "liberal federal policy favoring arbitration agreements." *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). Additionally, the FAA was intended to increase the efficiency and speed of dispute resolution, while simultaneously decreasing its cost and formality. *See Dean Witter Reynolds*, 470 U.S. at 221; *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1624 (2018).

However, when a conflicting policy is exhibited within another federal statute, courts must analyze whether to enforce arbitration or allow the action to continue in their jurisdiction. *See Dean Witter Reynolds*, 470 U.S. at 221. A party opposing a valid arbitration agreement bares the burden of providing clear and manifest evidence of Congress's intent to displace the FAA in favor of the statute at issue, either through its statutory language, legislative history, or the existence of an irreconcilable conflict between the FAA and the federal law. *See Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987).

Here, Respondent has failed to meet that burden and, thus, this Court should find in favor of Petitioner. Respondent has provided no evidence suggesting congressional intent to override the FAA's mandate of arbitration in disputes involving the Bankruptcy Code's automatic stay and, further, has also failed to show evidence of an irreconcilable conflict between the FAA and section 362. Additionally, the Thirteenth Circuit incorrectly placed a heavy significance upon the automatic stay's classification of a core proceeding, as this Court's precedent suggests that inquiry is neither determinative nor the appropriate test. Moreover, recent Supreme Court decisions, along with the overall direction of the Court's jurisprudence, both suggest a strong preference for upholding arbitration and clarify the preeminence of the FAA. For these reasons, this Court should rule in favor of Petitioner and hold that the automatic stay does not impliedly repeal the FAA.

A. There is no evidence of Congress's intent to displace the FAA in disputes involving the automatic stay within the statutory language or legislative history of section 362, nor is there any evidence of an irreconcilable conflict between the laws.

In its *Shearson/Am. Express, Inc. v. McMahon* decision in 1987, the Supreme Court held that, in order for a court to validly decline to compel arbitration, there must be sufficient evidence of a “congressional command” to displace the FAA by the federal statute. 482 U.S. 220, 226 (1987). The Court further ruled that the requisite intent of Congress could be ascertained from one of three sources: the statutory text, legislative history, or, in the absence of the other two, an irreconcilable conflict between the FAA and the statute in question. *Id.* at 227, 229. For the following reasons, it is clear that the automatic stay does not provide the necessary evidence required to discern a congressional command.

1. Neither the statutory language nor the legislative history of section 362's reveal a congressional intent to override the FAA's provisions.

First and foremost, the Bankruptcy Code is silent with respect to arbitrability. Congress's silence on the matter is, according to this Court, beyond telling. Furthermore, the legislative history surrounding the automatic stay and arbitration agreements. Thus, the complete and total absence of the two makes it impossible for Respondent to meet its burden of providing clear and manifest evidence.

2. The automatic stay and the FAA can be read together in harmony, such that no irreconcilable conflict between the two exists.

Still, the Court's evaluation of congressional intent does not end with the absence of explicit statutory language or legislative history. Instead, this Court has stated that, without express language from Congress, intent can still be determined if an irreconcilable conflict exists between the FAA and additional federal law. *Shearson/Am. Express, Inc. v. McMahon*, 482 U.S. 220, 227 (1987); *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1624 (2018). Rather, if a party opposing

arbitration can show that the two laws cannot be harmonized, congressional intent may still be discernable. *Epic*, 138 S. Ct. 1624.

However, just as the statutory language and legislative history analyses require, an irreconcilable conflict can only be proven through a showing of “clear and manifest” evidence. *Epic*, 138 S. Ct. at 1624 (quoting *Morton v. Mancari*, 417 U. S. 535, 551, (1974)). Thus, in addition to the heavy burden already facing a party proposing harmonization to be impossible the party claiming an irreconcilable conflict will also be met by a “‘stron[g] presum[ption]’ that repeals by implication are ‘disfavored’ and that ‘Congress will specifically address’ preexisting law when it wishes to suspend its normal operations in a later statute.” *Epic*, 138 S. Ct. at 1624 (quoting *United States v. Fausto*, 484 U. S. 439, 452, 453, (1988)).

This presumption comes not only from this Court’s respect for Congress as drafters, but from a fundamental respect for the separation of powers, as a whole. *Epic*, 138 S. Ct. at 1624. In fact, this Court has taken great care to outline the substantial risk incurred by “allowing judges to pick and choose between statutes,” thereby transforming their roles as judges into that of policymakers, and expanding the nature of their decisions from “what the law is” into “what the law should be.” *Id.* Thus, the demanding rule behind the irreconcilable conflict theory underscores this Court’s own recognition that it is Congress who makes and repeals the laws through legislation, not the judiciary. *Id.*

Despite the theoretical difficulty involved in invoking the irreconcilable conflict argument, the analysis in this case is rather simple, as Respondent has failed to provide any evidence whatsoever—let alone any evidence that is clear or manifest—that an irreconcilable conflict exists between the FAA and the automatic stay. *See R. 2–32.* Nevertheless, even without Respondent’s contention or evidence, it is clear that the two laws can be read in harmony and are not

irreconcilable with one another. For example, not only do federal courts not have exclusive jurisdiction over disputes arising out of the automatic stay's scope, non-bankruptcy courts have routinely adjudicated claims regarding the scope of section 362. *See* 28 U.S.C. § 1334(b); *see, e.g.*, *Dominic's Restaurant of Dayton, Inc. v. Mantia*, 683 F.3d 757, 760 (6th Cir. 2012) (stating that a court "in which [a non-bankruptcy] proceeding is pending . . . has jurisdiction to decide whether the proceeding is subject to the stay."). Accordingly, neither the complexity of the automatic stay nor the integral nature of section 362 suggests the statute cannot be read in harmony with the FAA. *See McMahon*, 482 U.S. at 239–41 (discussing the complexity and nature of RICO).

B. No inherent conflict exists between the FAA and the underlying purposes of section 362, regardless of the automatic stay's characterization as a core proceeding.

The Thirteenth Circuit erred by focusing its decision on the core or non-core determination of an automatic stay proceeding, ultimately concluding that this characterization, along with evidence of "certain intangibles," resulted in an inherent conflict between the FAA and section. This analysis was flawed, as this Court has determined that a proceeding's classification as core or non-core is not only a nondeterminative factor in a court's decision, but it is additionally the incorrect test required by the courts.

1. Although section 362 may be considered a core proceeding, this inquiry is neither determinative nor the correct test for compelling arbitration.

Prior to this Court's decision in Epic, several Courts of Appeals have held that bankruptcy courts have the discretion to decline to compel arbitration, based on the proceeding's nature of core or non-core. Indeed, this approach was the focus of the Thirteenth Circuit's majority opinion in this matter, as well. These courts employed a standard that, if deemed "core" pursuant to 28 U.S.C. § 157, arbitration of those issues would create an "inherent conflict" or a "severe conflict" with the purposes of the Bankruptcy Code. *See Whiting-Turner Contracting*

Co. v. Elec. Mach. Enters., Inc. (In re Elec. Mach. Enters., Inc.), 479 F.3d 791, 799 (11th Cir. 2007). However, that method was displaced by this Court's decision in *Epic*. As stated in an earlier section, the appropriate test delineated by *Epic* is to inquire into the congressional intent to displace arbitration, either through evidence in statutory language, legislative history, or the presence of an irreconcilable conflict.

2. The FAA does not inherently conflict with the underlying purposes of the automatic stay.

The Court of Appeals correctly noted the importance of the automatic stay, however, it ultimately placed the entirety of its weight upon that concept, as opposed to one of the previously discussed, appropriate tests. Instead of basing its conclusion on the requisite evidence of congressional intent to displace the FAA, the majority attempts to reason its way through a perplexing discussion, absent any of the aforementioned rules and, essentially, creates its own test for compelling arbitration. As stated by Justice Tench in his dissent,

The majority goes on a fishing expedition for a conflict, and ultimately concludes that a conflict exists because the automatic stay created by section 362 is integral to the bankruptcy process, bankruptcy cases are collective, multi-party proceedings, and resolution of the dispute between Wildflowers and Petty may impact the interests of Petty and his creditors alike.

R. at 23.

The gravity of the error in the majority's approach is further demonstrated by comparing this Court's perspective regarding separation of powers. As previously stated, this Court holds the utmost respect for Congress and refrains from finding unnecessary and nonexistent conflicts. Thus, this is precisely the type of holding this Court tries to avoid. Because the Thirteenth Circuit, in essence, forged its own path that lead to a holding inconsistent with this Court's precedent, this Court should reverse the Court of Appeals holding.

C. The direction of this Court’s jurisprudence suggests a strong preference for honoring valid arbitration agreement.

Finally, in addition to the aforementioned, recent decisions made by this Court and the Court’s notable trend in jurisprudence both weigh in favor of Petitioner, as both suggest a strong preference for honoring valid arbitration agreements. Foundationally, this Court’s decision in *Epic* should serve as a guidepost for its holding regarding the current matter. Both the ultimate conclusions discussed in *Epic* and this Court’s statements within the decision support Petitioner’s contention, as discussed herein.

Furthermore, the overall trend in this Court’s decisions enunciates the preeminence of the FAA. For example, with regard to the irreconcilable conflict argument, the Supreme Court has “rejected every … effort” to find a conflict between the FAA and another federal statute. *Epic*, 138 S. Ct. at 1627 (citing *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20 (1991); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985); *McMahon*, 482 U.S. at 242.

Accordingly, this Court should continue its direction with regard to arbitration and hold that the FAA is not displaced by the automatic stay.

II. The Thirteenth Circuit incorrectly held that section 362(c)(3)(A) does not terminate the automatic stay with respect to property of the estate, because, upon expiration of the debtor’s thirty-day period, section 362(c)(3)(A) terminates the automatic stay entirely.

Section 362(c)(3)(A) of the Bankruptcy Code was added in 2005 as a part of the Bankruptcy Abuse Prevention and Consumer Protection Act (“BAPCPA”), which had the overarching goal of preventing “perceived abuses of the bankruptcy system.” *Ransom v. FIA Card Services, N.A.*, 562 U.S. 61, 64 (2011). More specifically, section 362(c)(3)(A) was intended to “deter serial and abusive bankruptcy filings” by limiting the scope of the automatic stay for those debtors who are repeat filers. *In re Smith*, 910 F.3d 576, 589 (1st Cir. 2018) (citing H.R. Rep. No.

109–31(I), at 2 (2005)). However, experts have suggested that it is not surprising that section 362(c)(3)(A) has joined the “long string of incredibly poorly drafted statutory provisions under the BAPCPA” that have generated much debate with regard to their respective statutory interpretations.¹

Nevertheless, section 362(c)(3)(A)’s plain text is best interpreted as completely terminating the automatic stay, in the absence of an extension under section 362(c)(3)(B). This plain text interpretation is supported by the rules of statutory construction: first, by the rule favoring interpretations that read the provision in harmony with the language of the provision itself and other provisions, and, second, by the rule favoring interpretations that do not render any language superfluous or insignificant. Alternatively, if the Court cannot resolve the matter in favor of Petitioner based solely on the plain language of the statute, in light of two reasonable interpretations, section 362(c)(3)(A) should be found ambiguous. In that instance, the legislative history should persuade this Court to find in favor of Petitioner and hold that section 362(c)(3)(A) terminates the automatic stay entirely.

A. The plain language of section 362(c)(3)(A) supports finding that the automatic stay was terminated in its entirety.

As an initial step in their statutory analyses, courts should first consider the plain language of the statute.² The statute’s language is not to be considered in isolation, rather, “since the meaning of statutory language, plain or not, depends on context,” “reasonable statutory interpretation must account for both ‘the specific context in which . . . language is used’ and ‘the

¹ Peter E. Meltzer, *Won’t You Stay a Little Longer? Rejecting the Majority Interpretation of Bankruptcy Code § 362(C)(3)(A)*, 86 Am. Bankr. L.J. 407, 415 (2012).

² *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1 (2000) (stating that courts interpreting the Bankruptcy Code should begin “with the understanding that Congress ‘says in a statute what it means and means in a statute what it says’”); *U.S. v. Turkette*, 452 U.S. 576, 580 (1981) (“In determining the scope of a statute, we look first to its language.”).

broader context of the statute as a whole.”” *King v. St. Vincent’s Hosp.*, 502 U.S. 215, 221 (1991); *Utility Air Regulatory Group v. E.P.A.*, 573 U.S. 302, 321 (2014) (citation omitted). While a statute may have multiple permissible meanings when viewed in isolation, the broader statutory scheme often clarifies any ambiguity by indicating only one reasonable interpretation that is “compatible with the rest of the law.” *Id.* If made unambiguous by the broader context, the plain language will control, unless there is “a clearly expressed legislative intent to the contrary.”³ In *U.S. v. Ron Pair Enterprises, Inc.*, the Supreme Court recognized this rule of law when it interpreted the Bankruptcy Code, stating that, “The plain meaning of legislation should be conclusive, except in the ‘rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the’’ drafters’ intentions. 489 U.S. 235, 242 (1989) (citing *Griffin v. Oceanic Contractors, Inc.*, 458 U.S. 564, 571 (1982)⁴).

Starting with the text of the statute itself, section 362(c)(3)(A) states as follows:

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

11 U.S.C. § 362(c)(3)(A) (emphasis added).

When properly applying the rules of statutory interpretation, which require considering “the specific context in which . . . [the phrase “with respect to the debtor”] is used’ [in section

³ *Turkette*, 452 U.S. at 580 (“If the statutory language is unambiguous, in the absence of ‘a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive.’”) (citation omitted).

⁴ 458 U.S. at 571 (stating that while the words of a statute are most persuasive of the statute’s purpose and intent, “in rare cases the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters, and those intentions must be controlling. We have reserved ‘some ‘scope for adopting a restricted rather than a literal or usual meaning of its words where acceptance of that meaning . . . would thwart the obvious purpose of the statute.’’” (citation omitted)).

362(c)(3)(A)] and ‘the broader context of the [Bankruptcy Code] as a whole,’” it becomes clear that only one reasonable interpretation of the plain text is most “compatible with the rest of the”⁵ Bankruptcy Code: section 362(c)(3)(A) completely terminates the automatic stay with respect to the debtor and not as to a non-repeat filing spouse in a joint case. Section 362(c)(3) begins by making the provision applicable in a “joint case” when it “is filed by . . . a debtor who is an individual in [the case]” who had a case dismissed in the “preceding 1-year period.” If the language, “with respect to the debtor” were stricken, subsection (A) would read: “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.” Since section 362(c)(3) makes subsection (A) applicable to jointly-filing spouses, then the unintended implication of subsection (A) would be to punish the jointly-filing spouse by terminating the stay with respect to both filers, even when the jointly-filing spouse had not abused the bankruptcy process by filing serial petitions.

Congress likely intended to proactively prevent this from happening by clarifying that the stay was not terminated with respect to both spouses, but only “with respect to the debtor.” This language protects the jointly-filing spouses, who are not repeat filers, from the presumption of filing in bad faith. § 362(c)(3)(C). As concisely put by the Ninth Circuit Bankruptcy Appellate Panel in *In re Reswick*, “the language ‘with respect to the debtor’ in section 362(c)(3)(A) simply distinguishes between the debtor and the debtor’s spouse.” 446 B.R. 362, 366 (9th Cir. BAP 2011) (citation omitted) (holding with a slight minority of other jurisdictions that the spousal interpretation is the correct interpretation of section 362(c)(3)(A)); *see also In re Goodrich*, 587 B.R. 829, 835 n.5 (Bankr. D. Vt. 2018) (collecting cases holding to this interpretation).

⁵ *St. Vincent’s Hosp.*, 502 U.S. at 221; *Utility Air Regulatory Group*, 573 U.S. at 321 (citation omitted).

Therefore, according to the plain text of the statute, “the stay under subsection (a) . . . shall terminate *with respect to the debtor*” who is the repeat filer and not with respect to both debtors. In other words, the plain language dictates that all actions stayed by section 362(a), including those actions to repossess the property of the estate—such as in section 362(a)(3)—are completely terminated after thirty days in the absence of any extension under section 362(c)(3)(B).

Admittedly, when reading section 362(c)(3)(A) in isolation without considering its context, it is understandable that some may conclude that, “the stay under subsection (a) . . . shall terminate *with respect to the debtor*” only, and not with respect to the property of the estate.⁶ However, this interpretation is flawed in that it fails to respect this Court’s precedent which requires considering “‘the specific context in which . . . language is used’ and ‘the broader context of the statute as a whole.’” *St. Vincent’s Hosp.*, 502 U.S. at 221; *Utility Air Regulatory Group*, 573 U.S. at 321 (citation omitted). Rather, the courts ascribing to Respondent’s view “state that the court need not read beyond the phrase ‘with respect to the debtor’ to discern its meaning.” *In re Reswick*, 446 B.R. at 366. This is blatantly incorrect.

Nevertheless, the court in *In re Jones* did just that. 339 B.R. 360 (Bankr. E.D. N.C. 2006). Despite recognizing that its interpretation renders other parts of section 362(c)(3)(A) untenable, the court focused exclusively on the five “words ‘with respect to the debtor’” and held that it “could [not] be any clearer” that the stay terminates only “with respect to the debtor” and not with respect to property of the estate. *In re Jones*, 339 B.R. at 363. This interpretation, adopted by Respondent and a slight majority of courts, fails to heed this Court’s recent warning that while a few words in a statute “may seem plain ‘when viewed in isolation,’ such a reading turns out to be ‘untenable in light of [the statute] as a whole.’” *King v. Burwell*, 576 U.S. 473, 497 (2015).

⁶ *Supra* note 1, at 420—24.

The danger of Respondent's approach of interpreting statutory text by construing the operative language in a vacuum, absent contextual considerations, can be demonstrated by way of example. If such was done to interpret section 362(c)(3), then it would seldom apply. The text states that it only applies "if a single or joint *case is filed . . .*" § 362(c)(3) (emphasis added). However, cases are never "*filed*"; thus, this would make the statute never applicable if these words are to be construed literally and without any context. *In re Paschal*, 337 B.R. 274, 277 (Bankr. E.D.N.C. 2006) (emphasis added). Ignoring what was likely a drafting blunder, this statute is also only literally applicable after a petition is filed by a "debtor who is an individual *in a case . . .*" § 362(c)(3) (emphasis added). A completely literal interpretation of this language would mean that section 362(c)(3) is only applicable when (1) the debtor is presently in a case; (2) at the time they file a second case; and (3) had a third case that was "pending within the preceding 1-year period but was dismissed . . ." *Id.* As stated by Judge Small in *In re Paschal*, "Such a circumstance is not likely to occur, and a literal reading of the statute would render the statute meaningless, and undoubtedly be contrary to what Congress intended." *Id.* at 278.⁷ Respondent's method of statutory interpretation fails in that it is not guided by the context of the statute, nor the broader Bankruptcy Code, resulting in a reading that is "'untenable.'" *Burwell*, 576 U.S. at 497. Therefore, the plain language of the statute, in light of the statute's context, best supports Petitioner's interpretation of section 362(c)(3)(A), which entirely terminates the automatic stay.

B. Section 362(c)(3)(A) should be understood as terminating the automatic stay entirely, as this interpretation proves to be the most harmonious with the statutory scheme and the general purposes manifested by Congress.⁸

⁷ *Corley v. U.S.*, 556 U.S. 303, 317 (2009) (Applying the same logic in a different context where this court concluded that "These are some of the absurdities of literalism that show that Congress could not have been writing in a literalistic frame of mind.").

⁸ *C.I.R. v. Engle*, 464 U.S. 206, 217 (1984).

This Court has recognized its duty “to find that interpretation which can most fairly be said to be imbedded in the statute, in the sense of being most harmonious with its scheme and with the general purposes that Congress manifested.” *C.I.R. v. Engle*, 464 U.S. 206, 217 (U.S. 1984). In other words, “The provisions of a text should be interpreted in a way that renders them compatible, not contradictory . . . [T]here can be no justification for needlessly rendering provisions in conflict if they can be interpreted harmoniously.” *Maracich v. Spears*, 570 U.S. 48, 68 (2013) (citing A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 180 (2012)). Thus, Respondent’s interpretation of section 362(c)(3)(A), such that the automatic stay does not terminate entirely, cannot be the correct interpretation, as it conflicts not only with other provisions in the statutory scheme, but with its own language—further rendering the provision inharmonious with the general purpose for which it was enacted. *Engle*, 464 U.S. at 217; *Spears*, 570 U.S. at 68.

1. Respondent’s interpretation of section 362(c)(3)(A) conflicts with section 362(j), which allows creditors to broadly confirm that the automatic stay has been terminated by section 362(c), without any carveouts or exceptions.

Section 362(j) states that, “On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.” (emphasis added). If section 362(c)(3)(A) allows the stay to be terminated only in part, then it would be inconsistent with the most natural reading of section 362(j), which “broadly and summarily allows parties to confirm that the stay has been terminated under section 362(c).” *In re Jupiter*, 344 B.R. 754, 760 (Bankr. D.S.C. 2006). While a natural reading of section 362(j) supports Petitioner’s interpretation, if Respondent is correct, then section 362(j) should instead read: “On request . . . the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated, except as to property of the estate.” In applying the cannons of interpretation that this Court used in

Spears, the Court should be persuaded to favor Petitioner's interpretation, as it renders section 362(j) compatible and harmonious with section 362(c)(3)(A). 570 U.S. at 68.

2. Respondent's interpretation causes an internal inconsistency with respect to the language in section 362(c)(3)(A), which terminates "the stay . . . with respect to . . . property securing [a] debt"

If Respondent were correct in that section 362(c)(3)(A) only terminates the stay "with respect to the debtor" personally, and not as to property of the estate, then how can the stay be terminated "with respect to . . . property securing [a] debt . . . ?" (emphasis added). As stated by the court in *In re Daniel*, "Reading the phrase 'with respect to the debtor' as an all-property exclusion would make section 362(c)(3)(A) oxymoronic, terminating the stay as to 'any action taken with respect to . . . property securing [a] debt,' but at the same time, as limited by the phrase, not terminating the stay as to any property." 404 B.R. 318, 322 (Bankr. N.D. Ill. 2009).

Anticipating the legitimacy of this argument, Respondent aligns with the majority view that section 362(c)(3)(A) terminates the stay for actions against the debtor personally, as well as against the debtor's personal property only, not terminating the stay for actions against property of the estate. While this reading may avoid the contradiction, it remains untenable. Initially, though Respondent claims to be supported by the plain language of the text, this would require one to read into the statute words which are simply not there. The majority view expands the phrase "with respect to the debtor" to say, "with respect to the debtor *and the debtor's property*." *In re Bender*, 562 B.R. 578, 583 (Bankr. E.D.N.Y. 2016) (emphasis added).

Furthermore, the canon of interpretation against rendering provisions without effect prevents this Court from accepting Respondent's interpretation. This reading, which would allow creditors to recover from the debtor and debtor's personal property, but not from property of the estate, violates the canon of interpretation against rendering the provision in question, or another

provision, “inoperative or superfluous, void or insignificant.” *Corley*, 556 U.S. at 314. In fact, in Chapter 13 cases, Respondent’s interpretation causes the language in section 362(c)(3)(A) that terminates the stay “with respect to . . . *property* securing [a] debt . . . ” to be completely “inoperative or superfluous, void or insignificant.” *Id.* If this is to mean that the stay is terminated only against the debtor’s property, not as to property of the estate, then “creditors in a chapter 13 case could take no action against property that the debtor owned” upon commencement, “because it is property of the estate under section 541(a)(1), and they could take no action against property that the debtor acquired post-petition because it would also constitute property of the estate under section 1306(a).” *In re Reswick*, 446 B.R. at 368. Consequently, “in a Chapter 13 case, where repeat filings are most prevalent,”⁹ it would be impossible for section 362(c)(3)(A) to deter repeat filing by terminating the automatic stay “with respect to . . . *property* securing [a] debt . . . ,” since no such property would exist.

In contrast, Petitioner’s interpretation of section 362(c)(3)(A) does not create this issue, since it allows the stay to be terminated as to property of the estate. Therefore, this Court is not prevented from accepting Petitioner’s interpretation since, unlike Respondent’s reading, it does not render part of the provision “inoperative or superfluous, void or insignificant.” *Corley*, 556 U.S. at 314; *see also In re Daniel*, 404 B.R. at 323. Instead, Petitioner’s interpretation renders the provision harmonious with the statutory scheme and the general purpose for which it was enacted. *Engle*, 464 U.S. at 217; *Spears*, 570 U.S. at 68.

C. This Court should interpret section 362(c)(3)(A) as entirely terminating the automatic stay in order to give full effect to the statute and the Bankruptcy Code, “so that no part will be inoperative or superfluous, void or insignificant.”¹⁰

⁹ *In re Reswick*, 446 B.R. 362, 368 (9th Cir. BAP 2011).

¹⁰ *Corley*, 556 U.S. at 314.

1. The rule against surplusage favors Petitioner’s spousal interpretation, as it “gives effect to every clause and word” of the statute, while Respondent’s interpretation does not.

This Court has held that “the canon against surplusage” favors interpretations that “give[] effect to every clause and word of a statute” if the competing interpretation results in excessive, superfluous language. *Microsoft Corp. v. I4I Ltd. Partnership*, 564 U.S. 91, 106 (2011). While Petitioner’s spousal interpretation “gives effect to every clause and word of [section 362(c)],”¹¹ Respondent’s limited-termination interpretation results in excessive, superfluous language.¹² Section 362(c)(3) begins with the language: when “a *single or joint* case is filed by or against a debtor . . . and if a *single or joint* case was pending within the preceding one-year period . . .” (emphasis added). Under Petitioner’s spousal interpretation, it is reasonable that the language in section 362(c)(A), “with respect to the debtor,” simply distinguishes between the repeat-filing debtor and the debtor’s spouse in a joint case—giving effect to the entirety of the language in the statute.

Respondent’s limited-termination interpretation, on the other hand, renders the language “single or joint case” in section 362(c) superfluous. In other words, if section 362(c) omitted the word “single or joint,” then it would still have the same meaning that Respondent attributes: when “a *single or joint* case is filed by or against a debtor . . . and if a *single or joint* case was pending within the preceding one-year period . . . [the stay] shall terminate *with respect to the debtor* . . .” (emphasis added). Since “courts should disfavor interpretations of statutes that render language superfluous” and Respondent’s interpretation renders the language “single or joint” superfluous, this Court should disfavor Respondent’s interpretation. *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253 (1992).

¹¹ *In re Daniel*, 404 B.R. at 324–27.

¹² *Supra* note 1, at 429–30.

2. The canon against rendering other provisions “inoperative” or “insignificant” favors Petitioner’s spousal interpretation, as it gives full effect to sections 362(c)(3)(B) and (C), while Respondent’s interpretation renders such provisions “inoperative” or “insignificant.”

This Court has consistently held in recent years that “one of the most basic interpretive canons” is “that [a] statute should be construed so that effect is given to all its provisions, so that no part will be inoperative . . . or insignificant.” *Rubin v. Islamic Republic of Iran*, 138 S.Ct. 816, 824 (2018) (citing *Corley*, 556 U.S. 303, 314 (2009)). Respondent’s interpretation renders sections 362(c)(3)(B) and (C) inoperative or, at the very least, insignificant.

Section 362(c)(3)(B) states that a creditor, or other party in interest, may request that the court “extend the stay . . . before the expiration of the 30-day period.” § 362(c)(3)(B). First, if Respondent’s interpretation of section 362(c)(3)(A) is correct in only terminating the stay as to collection actions against the debtor personally, then “only the debtor would be interested in extending the stay” of these actions, so it is “unlikely that anyone other than the debtor would seek an extension.” *In re Jones*, 339 B.R. 360, 364 (Bankr. E.D. N.C. 2006). Therefore, no party other than the debtor would have an interest in filing the motion to prevent collection efforts since those collection efforts would be unable to target property of the estate. *In re Reswick*, 446 B.R. at 369. In other words, the language in section 362(c)(3)(B) that gives “part[ies] in interest” other than the debtor the ability to file a motion to extend the stay is rendered “inoperative” or, at minimum, “insignificant” under Respondent’s interpretation.

Furthermore, the stay can only be extended if the movant demonstrates by clear and convincing evidence that the subsequent filing was in “good faith.” §§ 362(c)(3)(B), (C). Congress went to great effort to write very detailed, specific guidelines in section 362(c)(3)(C) to assist courts in determining if a subsequent filing was filed in “good faith,” meriting an extension of the stay. *See infra* app. A. As section 362(c)(3)(C) is just “one of only three places in the entire

Bankruptcy Code” that is so detailed as to include six levels of subsections, it defies logic to believe that Congress intended such a detailed section to only apply in the narrowest of circumstances, where a party other than the debtor would file a motion to stay collection efforts brought only against the debtor personally, and not against property of the estate.¹³ Aptly put by the court in *In re Jupiter*,

It seems illogical that Congress would enact a provision which both requires moving parties to meet a high burden of proof and which requires the courts to hear these matters on an expedited basis, only to have both the process and the end result meaningless and of no utility if property of the estate remains protected by the automatic stay, notwithstanding a termination of the automatic stay under § 362(c)(3)(A) Despite the cryptic language used by Congress in § 362(c)(3)(A), the Court does not believe that Congress enacted this section, which both requires an extraordinary amount of work on the part of the moving parties and the courts, only to have no meaningful penalty if the stay is not extended. Such an interpretation is not consistent with the intent of Congress nor the new statutory scheme set forth in § 362(c)(3).

344 B.R. at 760; *accord In re Reswick*, 446 B.R. at 368-69. At the very least, such an interpretation of section 362(c)(3)(A), as advanced by Respondent, should be disfavored under “one of the most basic interpretive canons,” in that such a construction would render a very detailed provision, section 362(c)(3)(C), “inoperative . . . or insignificant.” *Rubin*, 138 S.Ct. at 824.

D. Alternatively, section 362(c)(3)(A) should be found ambiguous, as it possesses two reasonable interpretations, and the legislative history supports holding in favor of Petitioner.

While this Court has previously consulted legislative history to confirm that a statute’s interpretation is consistent with the purpose of Congress, and may do so again here,¹⁴ when a statute is ambiguous, it is clear that courts may use legislative history and the purpose for which the statute was enacted to inform the court’s interpretation. *Fla. Power & Light Co. v. Lorion*, 470 U.S. 729, 737 (1985). “A statute is ambiguous when it is capable of being understood by

¹³ *Supra* note 1, at 427-29.

¹⁴ See e.g., *Ransom v. FIA Card Services, N.A.*, 562 U.S. 61, 71 (2011).

reasonably informed persons in two or more different senses.”¹⁵ While Petitioner contends that the spousal interpretation is the plain meaning of the text, Petitioner’s interpretation is at least one of two reasonable interpretations. Accordingly, this makes section 362(c)(3)(A) ambiguous and gives reason for this Court to follow its own “practice of utilizing legislative history,” a practice reaching “well into its past,” to aid in interpreting statutory meaning. *Wisconsin Public Intervenor v. Mortier*, 501 U.S. 597, 610 (1991); *In re Smith*, 910 F.3d at 583 (holding that section 362(c)(3)(A) is unclear since “the language at issue could have different meanings.”); *In re Reswick*, 446 B.R. at 367 (“while we recognize the desire to be cautious in designating statutory text as ‘ambiguous,’ . . . such a designation is appropriate” for section 362(c)(3)(A).).¹⁶

1. Petitioner’s interpretation supports the legislative intent of both BAPCPA and the Bankruptcy Code, holistically.

The court below, and undoubtedly Respondent, took the position that Petitioner’s interpretation cuts against the “purposes and policies of the Bankruptcy Code” since entirely terminating the automatic stay would allow creditors to “dismember the estate by repossessing property.” R. at 19. However, Petitioner’s interpretation accords with the “purposes and policies of the Bankruptcy Code” more so than Respondent’s interpretation. *Id.* While it is true that section 362 is the mechanism by which the Bankruptcy Code prevents creditors from dismembering the estate, the protection of the automatic stay is a privilege granted by Congress when the debtor files in good faith. *See* § 362(c); *In re Smith*, 910 F.3d at 581. “Congress, concerned about abuses of the automatic stay” by “repeat-filing debtors,” “altered the stay’s applicability” by enacting section 362(c)(3), which presumes that repeat-filers have abused the privilege of the automatic stay by not

¹⁵ *In re Reswick*, 446 B.R. at 371; *accord Burwell*, 576 U.S. at 484 (affirming the use of this definition of ambiguity used by the Court in *King v. Burwell*, 759 F.3d 358, 367 (4th Cir. 2014)).

¹⁶ *See also In re Paschal*, 337 B.R. at 277 (“The language of the statute is susceptible to conflicting interpretations, and if read literally, would apply to virtually no cases at all. In sum, it’s a puzzler.”).

filing in good faith. *In re Smith*, 910 F.3d at 581. Therefore, Respondent's interpretation, which protects the estate of presumptively abusive filers from being dismembered through property repossession, runs directly contrary to the "purposes and policies of the Bankruptcy Code." R. at 19.

Instead, Congress expressly intended, under these circumstances, for the estate to be dismembered outside the bankruptcy court using state law. Congress manifested this intent through section 362(c)(3) by directing that the stay shall be terminated in certain instances in order to punish and deter those "repeat-filing debtors" who presumptively abused the protection of the automatic stay. See § 362(c); *In re Smith*, 910 F.3d at 581. Consequently, Petitioner's interpretation better accords with the "purposes and policies" of the post-BAPCPA Bankruptcy Code that allows for organized dissolution, but is also "intended to deter successive bankruptcy filings by imposing stricter limitations on the power of the automatic stay as subsequent bankruptcy cases are filed."

In re Reswick, 446 B.R. at 372.

2. Petitioner's interpretation is further supported by section 362(c)(3)(A)'s legislative history.

While section 362(c)(3)(A)'s legislative history is sparse, it directly supports the Petitioner's view that the statute terminates the automatic stay in its entirety. In 1994, Congress "created [the] National Bankruptcy Review Commission [to] address[] the issue of successive filers abusing the power of the automatic stay." *In re Reswick*, 446 B.R. at 371.¹⁷ This Commission responded by "suggesting that the automatic stay not go into effect in certain successive' bankruptcy filings." *Id.* Acting on this recommendation, the House and Senate drafted language essentially identical to what would later be adopted as section 362(c)(3)(A) in 2005. *Id.* at 372.

¹⁷ (Citing *Daniel*, 404 B.R. at 327; Bankruptcy Reform Act of 1994, Pub.L. No. 103–394, 108 Stat. 4106, §§ 602–03 (Oct. 22, 1994)).

When section 362(c) was enacted, Congress titled the amendment “Discouraging Bad Faith Repeat Filings.” *Id.* (citing H.R. Rep. No. 109–31(I) at 69–70 (2005)) (citation omitted).

In fact, upon enactment, Congress clearly stated in the legislative history that section 362(c)(3)(A) was intended to amend “§ 362(c) of the Bankruptcy Code to terminate the automatic stay within 30 days in a chapter 7, 11, or 13 case filed by or against an individual if such individual was a debtor in a previously dismissed case pending within the preceding one-year period.” *In re Smith*, 910 F.3d at 589 (citing H.R. Rep. No. 109-31, pt. 1, at 69 (2005)) (emphasis added). “The legislative history does not support the notion that termination of the automatic stay was only a partial and extremely limited termination as most opinions on this issue have found.” *In re Curry*, 362 B.R. 394, 401–02 (Bankr. N.D. Ill. 2007). Instead, the legislative history of section 362(c) fully supports finding that section 362(c)(3)(A) entirely terminates the automatic stay in order to achieve Congress’ purpose of deterring abusive, repeat filings.

CONCLUSION

For the reasons stated herein, Petitioner respectfully requests that this Court **REVERSE** the decision of the United States Court of Appeals for the Thirteenth Circuit in its entirety and **REMAND** this case for further proceedings in accord therewith.

Respectfully submitted,

/s/ Team 27
Counsel for Petitioner

APPENDIX A

United States Code
Title 11 – Bankruptcy
Chapter 3 – Case Administration
Subchapter IV – Administrative Powers

§ 362 – Automatic Stay

- (C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—
 - (i) as to all creditors, if—
 - (I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;
 - (II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to
 - (aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);
 - (bb) provide adequate protection as ordered by the court; or
 - (cc) perform the terms of a plan confirmed by the court; or
 - (I) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—
 - (aa) if a case under chapter 7, with a discharge; or
 - (bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and
 - (ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

11 U.S.C § 362(c)(3)(C) (2020).