No. 20-1004

IN THE

Supreme Court of the United States

In re Earl Thomas Petty,

Debtor,

Wildflowers Community Bank,

Petitioner

v.

Earl Thomas Petty,

Respondent

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

BRIEF FOR PETITIONER

TEAM NUMBER 31
Counsel for Petitioner

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I. Whether 11 U.S.C. § 362 and related judicial code provisions impliedly repealed the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq.

II. Whether 11 U.S.C. § 362(c)(3)(A) applies to property of a debtor's bankruptcy estate.

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The Thirteenth Circuit Court of Appeals' decision is available at 19-0805. The United States Bankruptcy Court for the District of Moot ruled in favor of Petty on both questions. The bankruptcy court concluded that it had the authority to adjudicate the dispute between Petty and Wildflowers despite the parties' prepetition arbitration agreement. The court further concluded that 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. On appeal, the Thirteenth Circuit Court of Appeals affirmed the bankruptcy court's decision on both issues.

STATEMENT OF JURISDICTION

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

STATUTORY PROVISIONS

This action requires statutory interpretation of certain provisions of Title 9 and Title 11 of the United States Code.

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

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

The relevant portion of 11 U.S. Code § 362 (c)(3)(A) provides:

> **(c)** 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;

STATEMENT OF THE CASE

Wildflowers Community Bank ("Wildflowers") is a community lender that helped Great Wide Open Brewing Company, Inc. ("Great Wide Open") grow to become one of the largest craft breweries in the State of Moot. R. 3-4. Founded in 2002 by Earl Thomas Petty ("Petty"), Great Wide Open grew substantially over a fifteen year period eventually operating five taprooms and a large brewhouse. *Id.* Since 2005, Great Wide Open has used a set of small batch brewing equipment (the "Equipment") purchased personally by Petty in its original taproom. *Id.*

Wildflowers partnered with Great Wide Open on multiple occasions to help fuel their growth. *Id.* at 4. In 2011, Great Wide Open and Wildflowers agreed to establish a $35 million revolving credit facility (the "Credit Agreement") making Great Wide Open one of Wildflowers' largest debtors. *Id.* Petty simultaneously executed a personal guaranty to unconditionally repay the business's obligations (the "Guaranty"), and he granted Wildflowers a first priority lien on the Equipment. *Id.* Both documents contained arbitration agreements and "Remedies" clauses that allowed Wildflowers to repossess collateral without the need for prior judicial action. *Id.*

Great Wide Open began to have liquidity problems in 2017. *Id.* at 5. Struggling to fulfill its obligations under the Credit Agreement, Great Wide Open closed three of its taprooms in March 2018. *Id.* Great Wide Open never notified Wildflowers that it was forfeiting these assets. *Id.* In April 2018, Great Wide Open and Petty both defaulted on their respective payment obligations under the Credit Agreement and the Guaranty. *Id.* On June 4, 2018 Wildflowers filed a demand for arbitration and a breach of contract complaint against Petty with the American Arbitration Association. *Id.* The American Arbitration Association scheduled an initial conference in the arbitration proceeding for July 12, 2018. *Id.*

Instead of commencing the scheduled arbitration proceeding, on July 12, 2018, Great Wide Open commenced a chapter 7 bankruptcy case in the Bankruptcy Court for the District of Moot. *Id.* On the same day, Petty also filed a Chapter 11 petition (the "Initial Bankruptcy Case") in the same court. *Id.* Petty failed to timely file certain documents, and the bankruptcy court dismissed the chapter 11 case on August 27, 2018. *Id.* The chapter 7 case proceeded, and Wildflowers received the majority of proceeds from the liquidation of Great Wide Open's assets. *Id.* at 6. However, following the chapter 7 case Petty still owed Wildflowers a balance of $2.1 million under the Guaranty. *Id.*

Over four months later and just as arbitration proceedings were about to recommence, Petty filed a second chapter 11 bankruptcy case (the "Second Bankruptcy Case" on January 11, 2019. *Id.* at 5-6. Petty simultaneously filed a chapter 11 plan of reorganization that included out-of-court negotiated settlements that Petty had negotiated pre-petition with other creditors. *Id.* at 6. Despite their long history and an outstanding $2.1 million obligation owed to Wildflowers, Petty never attempted to conduct any such negotiations with the local bank. *Id.*

Now almost a year after defaulting on his obligations, Petty failed to file a motion to extend the automatic stay under section 362(c)(3)(B) during the first thirty days of the Second Bankruptcy Case. *Id.* Thirty-two days after the commencement of the Second Bankruptcy Case, on February 12, 2019, Wildflowers sent a repossession company to the Royal Rapids taproom and peaceably repossessed the Equipment in accordance with the Guaranty. *Id.* Petty subsequently filed a motion in the Second Bankruptcy Case alleging that Wildflowers violated the automatic stay and seeking $500,000 in damages. *Id.* Wildflowers filed a response arguing that Petty neglected to file a motion seeking to extend the automatic stay. *Id.* at 7. Wildflowers also argued that Petty should be compelled to bring any claims against Wildflowers in the pending arbitration proceeding. *Id.*

The bankruptcy court refused to honor the arbitration agreement and ruled in favor of Petty. *Id.* It held that the agreement would conflict with section 362 of the Bankruptcy Code. *Id.* The court also ruled that Wildflowers willfully violated the automatic stay and awarded $200,000 of damages against Wildflowers. *Id.*

STANDARD OF REVIEW

The facts of the present case are undisputed, and the only questions before the court are questions of law. Therefore, the standard of review is *de novo. Texas v. Soileau (In re Soileau)*, 488 F.3d 302, 305 (5th Cir. 2007). A *de novo* standard of review requires that the court examine the questions of law as if it were the original trial court. *Razavi v. Comm'r of Internal Revenue*, 74 F.3d 125, 127 (6th Cir. 1996).

SUMMARY OF THE ARGUMENT

This Court should reverse the decision of the Thirteenth Circuit Court of Appeals by holding for the Petitioner on both issues presented.

The Federal Arbitration Act compels arbitration with few exceptions. One such exception is when Congress passes legislation *explicitly* indicating that the FAA should not apply in certain types of cases. However for this type of exception to apply, congressional intent must be clear. A dispute related to the automatic stay in a bankruptcy proceeding is not one of these cases. We know this because Congress could have carved out bankruptcy-related exceptions to the FAA when it passed the Bankruptcy Reform Act of 1978 and its subsequent amendments, but it declined to do so. More importantly, the Bankruptcy Code is completely silent regarding arbitration. This Court should not infer congressional intent to override the FAA from an alleged "inherent conflict" between the purposes of the Bankruptcy Code and the FAA. To do so would undermine decades of precedent upholding arbitration.

Even if the Court could infer Congressional intent to overturn the FAA based on an irreconcilable conflict between arbitration and a statute's purpose, no such conflict exists in this case. The Bankruptcy Code seeks to avoid the complications of multi-party disputes and ensures that debtors can discharge their debts to obtain a fresh start. Petty and Wildflowers are the only parties involved in the present dispute. Other creditors, while perhaps relevant to the overall bankruptcy proceedings, in no way affect whether Wildflowers violated the automatic stay. Likewise, the resolution of this issue by an arbiter does not prevent Petty from obtaining his fresh start. Certainly the automatic stay is an important provision of the Bankruptcy Code, but arbitrating disputes related to the automatic stay is not contrary to the Code's purpose. The Thirteenth Circuit ultimately argues that it is good policy to allow the bankruptcy court, rather than an arbiter, to resolve this dispute. However, this Court has never equated policy arguments with an irreconcilable conflict between the FAA and another federal statute. This Court should enforce the prepetition agreement. The use of an arbiter to resolve Wildflowers and Petty's dispute in no way conflicts with the purpose of the Bankruptcy Code. This court should adopt the minority interpretation of section 362(c)(3)(A). The minority interprets the statute to terminate the stay for second-time filers after 30 days. This includes stay protecting the debtor, the debtor's property, and the property of the bankruptcy estate. The majority interpretation, as adopted by the Thirteenth Circuit, interprets the statute to only terminate the stay for the debtor and the debtor's property. The majority reads the phrase "with respect to the debtor" to exclude the property of the bankruptcy estate. This court should reverse the decision of the Thirteenth Circuit because the text, the context in BAPCA, and the legislative history and congressional intent.

The minority approach is supported by (1) section 362(c)(3)(A), (2) the context of BABPCA, and (3) the legislative history. First, section 362(c)(3)(A) is an ambiguous statute that

is not fit for a literal interpretation. The majority attempts to read the statute on its face and use canons of statutory construction to focus on the phrase "with respect to the debtor" as the basis of their argument. This fails because the statute is poorly drafted and ambiguous. The minority interpretation looks to the section as a whole to argue that "with respect to the debtor" is used to distinguish the debtor from a spouse as the statute references joint filed cases. The minority's approach of looking to the remainder of the section clarifies the ambiguities in the statute. Second, the context of BAPCA favors the minority approach. The section appears in a tiered system of protections and the minority approach places the section in the middle of those protections. BAPCA also includes a process for extending the stay, which presumes that the stay regarding the property of the estate is terminated. Additionally, other uses of the phrase "with respect to the debtor" in BAPCA are found to be used superfluously. Third, the legislative history and congressional intent supports the minority view. Congress intended section 362(c)(3)(A) to prevent bankruptcy abuse through serial filing. The minority view satisfies this intent through limiting the protection stay for second-time filers.

ARGUMENT

I. The Parties' prepetition agreement compels arbitration because the Bankruptcy Code did not impliedly repeal the Federal Arbitration Act.

This Court should reverse the decision of the Thirteenth Circuit and hold that 11 U.S.C. § 362 does not repeal the FAA for two reasons. First, the Bankruptcy Code contains no clear and manifest indication from Congress that it intended to repeal the FAA as is required following this Court's decision in *Epic Systems*. Second, there is no inherent conflict between the FAA and the bankruptcy code that could allow the Court to dismiss the parties' prepetition agreement.

Before *Epic Systems*, bankruptcy judges could decline to compel arbitration if Congressional intent to override the FAA was deducible from a statute's legislative text, a statute's textual history, or from an inherent conflict between arbitration and the statute's underlying purpose. *Shearson/Am. Exp., Inc. v. McMahon*, 482 U.S. 220, 227 (1987). This Court's majority opinion in *Epic Systems* changed that standard. Alleging that an inherent conflict exists between the FAA and another statute is insufficient. Inherent conflicts may no longer override the FAA without a "clear and manifest" command from Congress. *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1624, (2018). The majority stressed that courts must "[aim] for harmony over conflict in statutory interpretation." *Id*. Courts may not infer a clear and manifest congressional command when a statute "does not even hint at a wish to displace the Arbitration Act—let alone accomplish that much clearly and manifestly, as our precedents demand." *Id.* No such command is present in the Bankruptcy Code.

Even if an "inherent conflict" between the FAA and the Bankruptcy Code's purpose is alone sufficient to displace the FAA, no such conflict exists in the present case. It is generally agreed that the Bankruptcy Code embodies two ideals: (1) giving the individual debtor a fresh start, by giving him a discharge of most of his debts; and (2) equitably distributing a debtor's assets among competing creditors. *Sherwood Partners, Inc. v. Lycos, Inc.*, 394 F.3d 1198, 1203 (9th Cir. 2005). To equitably distribute assets, adjudicators should seek to prevent piecemeal litigation and centralize disputes. *In re White Mountain Mining Co., L.L.C.*, 403 F.3d 164, 170 (4th Cir. 2005). Enforcing the Parties' prepetition agreement undermines none of these goals. The present case involves a two-party dispute with a single creditor and a single debtor. Both parties are bound to adjudicate claims via the same arbiter. The Guaranty contains no provision that precludes Petty from discharging his debts. Furthermore, Congress never intended that the bankruptcy courts have

exclusive jurisdiction in adjudicating bankruptcy proceedings. *See* 28 U.S.C. § 1334(b). Petty and the majority in the Thirteenth Circuit argue that resolving the present controversy in the bankruptcy courts is the "better approach." R. 13. Put differently, Petty seeks to discard the arbitration agreement because he prefers another forum. Unfortunately, this argument is irrelevant. Arbitration agreements must be enforced as written, regardless of policy considerations. *Epic Systems*, 138 S. Ct. at 1632. Resolving a dispute involving the automatic stay does not affect Petty's ability to reorganize, and invoking an arbiter to resolve such a dispute certainly doesn't amount to an inherent conflict.

Lacking a clear congressional command to override the FAA, Respondents rely upon policy arguments to circumvent the FAA. These arguments, while perhaps compelling from a policy perspective, are irrelevant in analyzing whether Congress intended to override the FAA with the Bankruptcy Code. Congress directed courts to abandon their hostility toward arbitration and treat arbitration agreements as "valid, irrevocable, and enforceable." 9 U.S.C. § 2. This Court has long upheld a "liberal federal policy favoring arbitration agreements." *Moses H. Cone Memorial Hospital v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). This tradition requires that the Court enforce Parties' prepetition agreement and compel arbitration.

A. The Bankruptcy Code contains no indication that Congress intended to override the FAA.

Respondents cannot point to a clear and manifest command from Congress indicating that the FAA should not apply in bankruptcy proceedings. The Thirteenth Circuit majority opinion concedes "that neither the text nor the legislative history of the Bankruptcy Code reflects a congressional intent to preclude arbitration in the bankruptcy context." R.10. Absent a definitive congressional command evident in the legislative text, courts may not infer an inherent conflict.

1. This Court's decision in Epic Systems requires a clear and manifest expression of congressional intent to displace the FAA.

The Supreme Court recently emphasized the rigorous standard that is required to demonstrate that a competing federal statute overrides the FAA. To displace the FAA, litigants must demonstrate a "clear and manifest" congressional intention to displace one Act with another. *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1624, (2018). Moreover, the Court emphasized its skepticism toward implicit repeals of the FAA noting that "Congress will 'specifically address' preexisting law when it wishes to suspend its normal operations in a later statute." *Id.* (quoting *United States v. Fausto*, 484 U.S. 453 (1988)). Repeals by implication are disfavored. *Id.* If possible, statutes should be read harmoniously. *Id.* Absent a clear and manifest congressional command, judges should assume that no irreconcilable conflict exists between two statutes. *Id.*

2. The fact that the Bankruptcy Code fails to mention arbitration makes it very unlikely that Congress intended to supplant the FAA.

"The preeminent canon of statutory interpretation requires us to 'presume that [the] legislature says in a statute what it means and means in a statute what it says there.'" *BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183 (2004) (quoting *Connecticut Nat. Bank v. Germain*, 503 U.S. 249, 253–254 (1992). When Congress wants to override the FAA, it "knows exactly how to do so." *Epic Sys.*, 138 S. Ct. at 1626. Congress historically has carved out exceptions to the FAA. *Ibid*; *E.g.* 15 U.S.C. § 1226(a)(2) ("[n]o predispute arbitration agreement shall be valid or enforceable" in other circumstances). In the absence of any textual evidence that Congress intended to displace the FAA, the argument that two statutes cannot be harmonized faces a "stout uphill climb." *Id.* at 1624.

While *Epic Systems* did not discuss the Bankruptcy Code, it's holding requires an examination of the Code's statutory text to determine whether Congress intended to displace the FAA. No provision of the Bankruptcy Code prohibits the use of arbitration in resolving disputes related to the automatic stay. *Hays & Co. v. Merrill Lynch*, 885 F.2d 1149, 1157. In fact, the Bankruptcy Code does not mention arbitration at all. *Id.* This is conceded by the majority opinion below. R. 10. The Supreme Court has stressed that "the absence of any specific statutory discussion of arbitration or class actions is an important and telling clue that Congress has not displaced the Arbitration Act." *Epic Systems*, 138 S. Ct. at 1627.

3. Following *Epic Systems*, legislative history and "inherent conflicts" are no longer sufficient to indicate that Congress intended to displace the FAA.

Prior to *Epic Systems*, any Congressional intent to limit the FAA would be "deducible from [the statute's] text or legislative history, or from an inherent conflict between arbitration and the statue's underlying purposes." *McMahon,* 482 U.S. at 227 (citations omitted). In *Epic Systems*, the court explicitly stated that "legislative history is not the law." 138 S. Ct. at 1631. Furthermore, it emphasized that any irreconcilable conflict between a statute and the FAA must amount to a "clear and manifest congressional command" in order to topple the FAA. *Id.* at 1624. The employees in *Epic Systems*, argued that NRLA provisions guaranteeing collective bargaining rights inherently conflicted with contracts that required individualized arbitration proceedings. *Id.* The Court rejected this argument noting any alleged irreconcilable conflict must still clearly and manifestly displace the Arbitration Act. *Id.* Courts may be tempted to find that an expansive reading of a statute conflicts with the FAA, but the majority stressed that such a reading is not necessary in the absence of a clear and manifest congressional command. *Id.* at 1632-33. There is no need to determine which law should prevail "because, as our precedents demand, we have sought and

found a persuasive interpretation that gives effect to all of Congress's work, not just the parts we might prefer." *Id.* at 1633. This is not a new argument; rather it is supported by decades of Supreme Court precedent.

The Supreme Court noted that "over many years, this Court has heard and rejected efforts to conjure conflicts between the Arbitration Act and other federal statutes. In fact, this Court has rejected *every such effort to date . . .*, with statutes ranging from the Sherman and Clayton Acts to the Age Discrimination in Employment Act, the Credit Repair Organizations Act, the Securities Act of 1933, the Securities Exchange Act of 1934, and the Racketeer Influenced and Corrupt Organizations Act." Epic Systems, *Id.* at 1627 (emphasis added). Perhaps most telling is that there was no conflict between the FAA and the CROA, despite explicit provisions in the CROA that give consumers the right to bring an action in a "court of law." *CompuCredit Corp. v. Greenwood*, 565 U.S. 95, 132 (2012). This Court has made itself clear: inherent conflicts do not signal congressional intent.

Alleging an inherent conflict between the FAA and the Bankruptcy Code is not enough to overturn the FAA. This Court has never equated such a conflict to congressional intent. In the absence of any indication of an intent to overrule the FAA in the Bankruptcy Code, this Court should avoid breaking from precedent in the present case. The FAA's mandate is clear, and it "leaves no place for the exercise of discretion by a district court, but instead mandates that district courts shall direct the parties to proceed to arbitration on issues as to which an arbitration agreement has been signed." *Dean Witter Reynolds, Inc. v. Byrd*, 470 U.S. 213, 218, (1985). The District Court's obligation in the present case is no exception.

B. Even if an inherent conflict can displace the FAA following this Court's ruling in *Epic Systems*, arbitration in the present case would not undermine the objectives of the Bankruptcy Code.

The objectives of the bankruptcy code relevant here include "the goal of centralized resolution of purely bankruptcy issues" and "the need to protect creditors and reorganizing debtors from piecemeal litigation…." *Matter of Nat'l Gypsum Co.*, 118 F.3d 1056, 1069 (5th Cir. 1997). Additionally the Supreme Court has recognized that "[o]ne of the primary purposes of the Bankruptcy Act is to 'relieve the honest debtor from the weight of oppressive indebtedness, and permit him to start afresh free from the obligations and responsibilities consequent upon business misfortunes.'" *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934) (quoting *Williams v. U.S. Fidelity & Guaranty Co.*, 236 U.S. 549, 554-55 (1915)). An inherent conflict exists only when arbitration would "seriously jeopardize the objectives of the [Bankruptcy] Code." *Hays*, 885 F.2d at 1161.

Before *Epic Systems*, bankruptcy judges applied *McMahon* to override arbitration agreements when the courts felt that the arbitration agreements inherently conflicted with the purposes of the Code. *See, e.g.*, *Cont'l Ins. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 671 F.3d 1011, 1020 (9th Cir. 2012) (collecting cases). *McMahon* was overridden in *Epic Systems*, but even under *McMahon* the authority of bankruptcy judges to circumvent arbitration was limited. Judges typically did not have the authority to override arbitration agreements as they related to non-core proceedings. *See, e.g.*, *Anderson v. Credit One Bank, N.A. (In re Anderson)*, 844 F.3d 382, 388 (2d Cir. 2018). Bankruptcy courts were more likely to have discretion to refuse to compel arbitration of core bankruptcy matters, which implicate "more pressing bankruptcy concerns." *U.S. Lines, Inc. v. Am. S.S. Owners Mut. Prot. & Indem. Ass'n, Inc. (In re U.S. Lines, Inc.)*, 197 F.3d 631, 640 (2d Cir. 1999). However, under *McMahon*, bankruptcy courts could not

override an arbitration agreement related to a core proceeding "unless it finds that the proceedings are based on provisions of the Bankruptcy Code that 'inherently conflict' with the Arbitration Act or that arbitration of the claim would 'necessarily jeopardize' the objectives of the Bankruptcy Code." *MBNA Am. Bank, N.A. v. Hill*, 436 F.3d 104, 108 (2d Cir. 2006). Furthermore, to determine whether a conflict exists requires a court to inquire "into the nature of the claim and the facts of the specific bankruptcy." *Id.* Thus, simply classifying Perry and Wildflowers' dispute as "core" is not sufficient to dismiss arbitration. Even if *Epic Systems* failed to override *McMahon*, resolving this dispute through arbitration would not conflict with the core goals of the Bankruptcy Code.

1. Congress never intended to preclude the use of arbitration in bankruptcy proceedings; resolution via arbitration avoids piecemeal litigation and is no less centralized than a judicial forum.

Congress granted original but not exclusive jurisdiction to the federal courts to adjudicate disputes regarding the automatic stay. *See* 28 U.S.C. § 1334(b). This section of the Code contrasts sharply with § 1334(e) which does grant exclusive jurisdiction over property and claims or causes of action that involve construction of section 327, the United States Code, or other rules. Furthermore, other bankruptcy-related statutes provide strong evidence that Congress never intended to foreclose arbitration. For example, Congress instructed the district courts to adopt local rules authorizing arbitration of disputes applicable to "all civil actions, including adversary proceedings in bankruptcy." 28 U.S.C. § 651(b). Additionally, Congress has given explicit instructions that a district court may allow referrals to arbitration in any adversary proceeding in bankruptcy. 28 U.S.C. § 654(a). Furthermore, non-bankruptcy courts have often adjudicated disputes regarding the scope of the automatic stay. *See, e.g.*, *Dominic's Restaurant of Dayton, Inc. v. Mantia*, 683 F.3d 757, 760 (6th Cir. 2012); *Erti v. Paine Webber Jackson & Curtis, Inc. (In re*

Baldwin-United Corp. Lit.), 765 F.2d 343, 347 (2d Cir. 1985). More persuasively, the Second Circuit ruled that a bankruptcy court did not have the authority to override an arbitration agreement in a case regarding an automatic stay dispute. *Hill*, 436 F.3d at 108.

Analogously in *Gilmer*, this Court found that "Congress' grant of concurrent jurisdiction over ADEA claims to state and federal courts" supported the conclusion that Congress did not intend to preclude arbitration of such claims, "because arbitration agreements, like the provision for concurrent jurisdiction, serve to advance the objective of allowing claimants a broader right to select the forum for resolving disputes, whether it be judicial or otherwise." *Gilmer v. Interstate / Johnson Lane Corp.*, 500 U.S. 20, 29 (1991) (quotation marks, citation, and brackets omitted); *see also Rodriguez de Quijas v. Shearson/Am. Exp., Inc.*, 490 U.S. 477, 483 (1989) (arbitration agreements "should not be prohibited under the Securities Act, since they, like the provision for concurrent jurisdiction, serve to advance the objective of allowing buyers of securities a broader right to select the forum for resolving disputes, whether it be judicial or otherwise"). Thus, Respondents cannot claim that use of arbitration in resolving bankruptcy disputes is contrary to the purpose of the Bankruptcy Code.

Case history provides strong evidence that disputes involving the automatic stay can be resolved outside of bankruptcy courts, and the current case presents no unique dispute that cannot likewise be resolved by an arbiter. The Thirteenth Circuit makes several arguments regarding why a centralized forum is important in many bankruptcy proceedings, but unfortunately none apply to the present case. The majority opinion below correctly points out that a bankruptcy proceeding often constitutes "a collective, multi-party proceeding that balances a debtor's fresh start with a maximum distribution to creditors." R. 11. However, the current dispute does not involve several parties. In fact, it is exactly the kind of two-party dispute that Wildflowers and Petty anticipated

when they executed the Guaranty. The Thirteenth Circuit opinion argues that "[b]ecause creditors and other parties in interest cannot be compelled to arbitrate, the collective nature of bankruptcy inherently conflicts with the FAA." R. 12. But exactly the opposite is true in the present case. Here, all relevant parties are bound by the same prepetition agreement. Wildflowers only moved to compel arbitration in the dispute regarding the automatic stay. This conflict does not involve any of Petty's other creditors. Thus, enforcing the arbitration agreement in accordance with the FAA would not decentralize bankruptcy proceedings in a way that inherently conflicts with the Bankruptcy Code.

2. Arbitration does not eliminate Perry's ability to discharge his debts or obtain a fresh start.

"By agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum. It trades the procedures and opportunity for review of the courtroom for the simplicity, informality, and expedition of arbitration." *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 628 (1985). The Thirteenth Circuit opinion argues that the Bankruptcy Code awards Petty with a substantive right that is integral to the underlying purposes of the Bankruptcy Code. However, this does not mean that arbitration would eviscerate such a right. This Court has emphasized that all is required is the "*right to pursue* [a] remedy." *Am. Exp. Co. v. Italian Colors Rest.*, 570 U.S. 228, 236 (2013) (emphasis in original). The analysis is no different in the present case.

Specifically here, Petty and Wildflowers' dispute whether Wildflowers violated the automatic stay pursuant to section 362(c)(3)(B). The majority opinion below correctly points out that the automatic stay is critical for Petty to reorganize, discharge his debts, and obtain a fresh

start. However, the Guaranty signed by Petty and Wildflowers does not eliminate Petty's right to the automatic stay, rather it simply changes the forum to resolve disputes related to the stay. The Thirteenth Circuit makes several arguments that bankruptcy courts are best-equipped to resolve such a conflict. R. 13. However, this Court has previously dismissed "concerns that the arbitral forum was inadequate." *Italian Colors*, 570 U.S. at 236. It is irrelevant whether "the better approach is to permit [Petty] to immediately prosecute his claims in the bankruptcy court" as long as Petty's substantive rights under the Bankruptcy Code have not been eliminated. *Id.* While the automatic stay is surely an important provision of the Bankruptcy Code, there is no indication from the statute that any dispute relating to an automatic stay should categorically be exempt from resolution by arbitration. *Hill*, 436 F.4d at 110.

This case contrasts sharply with other pre-*Epic Systems* decisions that refused to enforce arbitration agreements based on inherent conflicts with the Bankruptcy Code. For example in *White Mountain*, the Fourth Circuit refused to compel arbitration for a dispute related to a core claim. 403 F.3d at 170. In that case, a West Virginia coal miner (Phillips) sold half of his mining company (White Mountain) to a foreign investor (Congelton). *Id.* at 164. The parties agreed that all disputes between the parties would be resolved via binding arbitration in London. *Id.* When the business began facing financial difficulties, Phillips advanced over $10.6 million of his own money to cover expenses. *Id.* Despite this advance, the business was forced to file for chapter 11. *Id.* Phillips claimed that the $10.6 million advances were loans; Congelton claimed that they were capital contributions and moved to compel arbitration to resolve the dispute. *Id.* The bankruptcy court refused to compel arbitration, noting that the adversary proceeding was a core proceeding that was "critical to [White Mountain's] ability to formulate a Plan of Reorganization." *Id.* at 167. Until the debt/equity issue was resolved, the bankruptcy proceedings would be stalled. *Id.* at 170.

Similarly in *Thorpe*, the Ninth Circuit refused to compel arbitration in a dispute that affected "what was available for all creditors to receive." *In re Thorpe,* 671 F.3d at 1022-23. Resolution of the dispute would have caused a severe delay prejudicing the rights of creditors and delaying the ability to approve a reorganization plan. *Id.*

Unlike in *White Mountain* and *Thorpe*, the resolution of Petty's action against Wildflowers does not affect the rights of other creditors or impair Petty's ability to reorganize. The present dispute involves whether Petty may collect monetary damages from Wildflowers. Property of the estate includes "all legal or equitable interests of the debtor in property as of the *commencement* of the case." 11 U.S.C.A. § 541(a)(1) (emphasis added). Thus, any damages awarded to Petty would not be available to any of Petty's other creditors. Their monetary proceeds from the bankruptcy case are unaffected by the resolution of whether Wildflowers violated the automatic stay. Petty contends that he will use damages to fund his reorganization plan. R. 13. However, Petty already submitted a chapter 11 plan of reorganization that incorporated settlements with many of his creditors. R. 6. These plans and settlement agreements were already negotiated without the prospect of money damages that could be used to fund growth. Furthermore, Wildflowers returned the Equipment to Petty, and the resolution of this conflict does not affect whether Petty may use the equipment to produce beer for Full Moon Fever Brewing. R. 7. Therefore, unlike in *White Mountain* and *Thorpe,* resolving the present case via arbitration will not affect the rights of other creditors or the formulation of Petty's reorganization plan.

3. Policy considerations do not amount to conflicts with the FAA. Concluding that the Bankruptcy Code inherently conflicts with the FAA would undermine decades of Supreme Court precedent.

For decades, this Court has rejected innovations of policy considerations to generate conflicts with the FAA. The list of unsuccessful policy arguments is long. First, as we have discussed, this Court found that the FAA did not conflict with the collective bargaining rights guaranteed to employees under the NLRA. *Epic Systems*, 138 S. Ct. at 1621. Similarly in *Gilmer*, the Court refused to find a conflict between the FAA and the ADEA's policy "'to promote employment of older persons based on their ability rather than age; to prohibit age discrimination in employment; [and] to help employers and workers find ways of meeting problems arising from the impact of age on employment.'" 500 U.S. at 27 (citing 29 U.S.C. § 621(b)). In *McMahon*, the Court held that RICO's policy of creating "vigorous incentives" to "advance society's fight against organized crime" were not in conflict with the FAA. *McMahon*, 482 U.S. at 241. The same conclusion was reached in *Mitsubishi Motors* regarding antitrust law. 473 U.S. at 635.

Here, the Thirteenth Circuit argues that the use of arbitration in bankruptcy proceedings leads to bad policy outcomes. Even if their policy conclusions are correct, it still does not move the needle on the arbitration question. The policy implications regarding the arbitrability of the automatic stay are no more significant than the policy issues that this Court has already dismissed. *Epic Systems* reiterated what is clear from decades of precedent: that "[t]he policy may be debatable, but the law is clear: Congress has instructed that arbitration agreements like those before us must be enforced as written." *Epic Systems*, 138 S. Ct. at 1632.

II. 11 U.S.C. § 362(c)(3)(A) applies to and terminates the automatic stay for the property of the bankruptcy estate.

Section 362(c)(3)(A) applies to the property of the bankruptcy estate and terminates the automatic stay for the property of the estate. This court should reverse the Thirteenth Circuit's reliance on the majority interpretation regarding section 362(c)(3)(A) and instead, adopt the

minority interpretation because of the (1) text itself, (2) the greater context in the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCA"), and (3) the legislative purpose and history. The subsection of section 362 at issue reads 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).

There are two prominent interpretations of section 362. The first, known as the majority interpretation, views the words "with respect to the debtor" to terminate the stay for the debtor and the debtor's property, but not the property of the bankruptcy estate. The other interpretation, known as the minority interpretation, views those words to terminate the stay for the property of the bankruptcy estate as well. The courts are closely split in favoring the majority interpretation. This court should reverse the Thirteenth's circuit decision and adopt the minority interpretation.

The Supreme Court has reviewed several BAPCA cases and provided instruction to the courts on how to interpret the statutes. These instructions were summarized into three guideposts in *In re Goodrich*. The first guidepost is that "courts should apply the language as written where the definitions, context, and structure support a single, plain meaning." *In re Goodrich,* 587 B.R. 829, 841 (Bankr. D. Vt. 2018). The second guidepost is that "courts should be mindful of congressional purpose when weighing competing interpretations and consider whether a particular reading of the statute will produce "absurdities" or "senseless results" not intended by Congress." *Id.* The final guidepost is that if congressional purpose is not clear from the statute, "courts are well advised to refer to the 2005 House Judiciary Report to discern the core purpose of a BAPCPA

provision. *Id.* Based on these three guideposts to consider the text, context, and legislative history and intent, the minority interpretation should be adopted by the court.

A. A textual analysis of section 362(c)(3)(A) favors the minority approach because the section is ambiguous and not fit for a literal interpretation.

Section 362(c)(3)(A) is an ambiguous statute, which has led to two different interpretations of the section – the majority and minority. When analyzing the text of the section and considering the ambiguities, the minority approach is favorable and should be adopted by this court. Many courts have criticized Congress' drafting of section 362(c)(3)(A). Judge Thomas Small in *In re Paschal* stated, "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." *In re Paschal*, 337 B.R. 274, 276 (Bankr. E.D.N.C. 2006). Judge Small went on to describe that "a literal reading of the statute would render the statute meaningless, and undoubtedly be contrary to what Congress intended." *Id.* at 278. Others have weighed in, "If BAPCPA were a book, one could say that, after it became law, the reviews from both the courts and commentators came in swiftly and were unanimous . . . in their negativity." 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, 415 (2012). This is the crux of the problem in interpretation. The majority position attempts to read the statute's plain meaning when the statute is actually ambiguous; whereas the minority interpretation looks to the greater context of BAPCA and legislative history to resolve the ambiguities.

1. The text is ambiguous and does not allow for literal interpretation of the statute

The main ambiguity comes from the phrase "with respect to the debtor." Both the majority and minority read additional words into that phrase to satisfy their own interpretation. The majority attempts to use the plain meaning rule to read the text on its face, but the majority also reads words

into the statute that are not written. This issue is addressed in *In re Smith* where the court states, "the phrase 'with respect to the debtor' would most naturally be read to terminate the stay only for actions against the debtor, and not, as [the majority] reads it, for actions against both the debtor and the debtor's property … Yet no court has read the provision that way." *In re Smith,* 910 F.3d 576, 582 (1st Cir. 2018). The court states here that no court has read the statute on its true plain meaning and all interpretations involve including additional terms to the text. *Id.* The majority interprets that phrase by also reading into it "the debtor's property." While the minority, reads the section as a whole to include the debtor's property and the property of the bankruptcy estate. *In re Goodrich,* 587 B.R. at 829. Neither position is reading the statute at its face value, nor can it, because the statute is ambiguous.

Arguments in favor of the majority approach typically look to the canons of statutory construction, but these arguments are undermined by the fact that the statute was "inartfully drafted." Proponents of the majority interpretation argue the plain meaning rule as mentioned above where the only limitation on interpretation is "where the disposition required by the text is not absurd." *Lamie v. U.S. Tr.*, 540 U.S. 526, 534 (2004). Other arguments for the majority approach look to the maxim 'expressio unius est exclusion alterius,' meaning 'as the expression of one thing is the exclusion of other things.' *In re Smith,* 910 F.3d at 584. But the court explains in *In re Smith* that this argument contradicts the majority approach because the text only states, "with respect to the debtor" and does not include anything regarding the debtor's property. *Id.* Under this maxim, only the stay protecting the debtor should be terminated, but as stated earlier, no court has ever read the statute to mean that. *Id*. Nor does the majority attempt to read the statute in that light. The majority's reliance on this maxim undermines their own position. Lastly, the majority argues that courts must "give effect, if possible, to every clause and word of a statute."

Williams v. Taylor, 529 U.S. 362, 404 (2000). The problem in doing so is the statute is "inartfully drafted." The Supreme Court cautioned courts in *King v. Burwell* against "rigorous application of the canon[s] … [when provisions are] inartful[ly] drafted." *King v. Burwell*, 576 U.S. 473, (2015). Section 362(c)(3)(A) is a provision that is inartfully drafted and should not be analyzed with strict application of canons. Evidence of the poor draftsmanship is seen through inconsistent and improper terminology. For example, the section at issue refers to a 'case' being filed when actually a petition is filed. Additionally,

> the statute requires that the case must be filed by "[a] debtor who is an individual in a case . . . ." For a debtor to be an individual in a case in the present tense, a case must still be pending. Thus, this section literally applies only to a debtor who has a case open when a new petition is filed by or against that individual. Finally, a single or joint case of the debtor had to be pending within the preceding one-year period but was then dismissed.

Meltzer, *supra* at 422.

This literal reading has "exceedingly rare applicability" and not likely to occur. *Id*. This is not the way the majority interprets the statute; they read additional words into it to make more sense out of it. This shows the problem with the majority interpretation trying to use strict application of statutory canons when a statute is drafted poorly.

2. The majority approach is inconsistent with the remainder of the section at issue.

The text of the statute favors the minority approach through the use of the phrase "property securing debt." Section 362(c)(3)(A) states, "the stay under subsection (a) with respect to any action taken with respect to a debt or property securing 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). The majority interpretation focuses heavily on the phrase "with respect to the debtor" but ignores the phrase "property securing debt." *In re Daniel*, 404 B.R. 318, 322 (Bankr. N.D. Ill. 2009). The statute referencing a property securing a debt recognizes that the stay is

terminated against property. One court described these two phrases as oxymoronic if interpreted under the majority view: "Reading the phrase 'with respect to the debtor' as an all-property exclusion would make § 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." *Id*. Another court described the inconsistencies of the statute:

> Interpreting "with respect to the debtor" as a distinction regarding property (i.e., the stay terminates with respect to the debtor personally and to non-estate property, but not as to estate property) renders section 362(c)(3)(A) internally inconsistent. If the phrase "with respect to the debtor" meant that the automatic stay only terminated as to the debtor personally and as to non-estate property, the opening clause of section 362(c)(3)(A) would be surplusage. There would be no reason for section 362(c)(3)(A) to reference actions "with respect to a debtor or property securing debt or with respect to any lease" if the interpretation of the Debtor and the majority were correct.

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

Most courts that use the majority approach do not even attempt to reconcile the inconsistencies in interpretation with the two phrases. These courts also do not place any importance on the phrase "property securing debt," "either because it can't be explained harmoniously with the majority view or because they overlooked it." Meltzer, *supra* at 424. The text of the statute favors the minority approach because it renders the majority interpretation inconsistent.

The minority interprets the phrase "with respect to the debtor" to distinguish a repeat filer from their spouse. The beginning of section 362(c)(3)(A) states, "if a single or joint case is filed by or against a debtor," which provides context to the way "with respect to the debtor" should be read. The court in *In re Reswick* explains the two phrases, "Keeping this introduction in mind, 'with respect to the debtor' in section 362(c)(3)(A) is best interpreted as meaning that the stay terminates as to a repeat-filing debtor, but not as to the debtor's spouse who is not a repeat filer."

In re Reswick, 446 B.R. at 369. The courts that favor the minority approach argue that the phrase "with respect to the debtor" "logically refers *to whom* (i.e. the serial filing spouse) termination of the automatic stay applies under section 362(c)(3)(A), not *to which property* the termination applies." *Id.* at 370. This interpretation allows for the entire section to be consistent with itself, unlike the majority interpretation.

This court should adopt the minority approach because the section at issue is ambiguous and poorly drafted. The majority approach's attempt to use canon of statutory interpretation fails because the statute is poorly written as cautioned by the Supreme Court in *King*. The minority approach looks to the entire section to create a consistent interpretation that "with respect to the debtor" is used to distinguish the serial filer from the spouse. This is because the context at the beginning of the section differentiates single and joint filed cases. When looking to the text, the minority approach should be adopted because it is consistent with the entire section.

B. The context of BAPCA supports the minority interpretation because of the tiered protection system, the extension process, and other uses of the phrase "with respect to the debtor."

The context of BAPCA provides further support for the minority position. This is evidenced by a tiered system of protections for debtors, the extension process, and other instances of the phrase "with respect to the debtor" in BAPCA. The Supreme Court explained the importance of looking to the overall context of the statute and not just the words in isolation. The court wrote, "words in isolation [are] … not necessarily controlling in statutory construction … Interpretation of a word or phrase depends upon reading the whole statutory text, considering the purpose and context of the statute, and consulting any precedents." *Dolan v. U.S. Postal Service*, 546 U.S. 481, 486 (2006). Looking at BAPCA as a whole provides the proper context for the minority approach

because BAPCA sets up a total protection of a permanent stay for first-time filers and no stay at all for third time filers within a year. 11 U.S.C. § 362(c). This gives context for the court to place the minority interpretation of section 362(c)(3)(A) – being a temporary stay of 30 days for second time filers – in the middle between a permanent stay and no stay at all. Additionally, the extension process for the stay further supports the minority position because it is consistent with the Congressional intent. Finally, looking to the rest of BAPCA and analyzing other uses of the phrase "with respect to the debtor" can color how that phrase should be interpreted in the section at issue. That analysis reveals that the other instances of the phrase are not substantive.

1. The minority approach takes the middle ground in the tiered protection system.

BAPCA sets up a tiered system of protections depending on how many times a debtor files in a given year. This tiered system of protections favors the minority approach because the minority approach would take the middle ground between the two extremes. For first-time filers, section 362(a) sets up a permanent stay to protect the property and debtor. For debtors who have filed three or more times in a year, there will not be a stay to protect the debtor. Section 362(c)(4)(A) states, "if a single or joint case is filed … and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, the stay under subsection (a) shall not go into effect upon the filing of the later case." 11 U.S.C. § 362(c)(4)(A). These two scenarios set up the two extremes of protections in the tiered system – first-time filers, permanent stay and three or more, no stay at all. The court in *In re Smith* explains this tiered system, "Section 362(c) seems to establish a system of progressive protections, so protections for second-time filers should fall, as the bankruptcy court put it, '[i]n the middle.'" *In re Smith,* 910 F.3d at 586. The court in *In re Smith* goes on to state the based on the context of BABPCA, "the most sensible middle ground, and the one most likely intended by Congress, is … under which second-time filers get the benefit

of the stay, but only temporarily (albeit with a procedure to seek the stay's continuation)." *Id.* When viewing the section in broader context of BAPCA, the minority approach is the favorable view in fitting into the middle ground of the tiered protections.

2. The context of the extension process for the stay favors the minority approach.

The process in BAPCA to extend the stay for second-time filers is further support for the minority approach. Section 362(c)(3)(B) allows for an extension of the stay described in section 362(c)(3)(A) for second-time filers. 11 U.S.C. § 362(c)(3)(B). For the court to extend the stay, a party in interest must motion for an extension before the 30 days ends. *Id.* The party in interest then must show that bankruptcy was filed in good faith. *Id.* Section 362(c)(3)(C) provides a presumption that it is filed in bad faith that can be rebutted by clear and convincing evidence. *Id.* Courts have found the extension process to support the minority interpretation and to be at odds with the majority." *In re Smith*, 910 F.3d at 588. One of the main reasons courts find this is because the statute allows for any party at interest – including a creditor – to file a motion to extend the stay. *Id*. Courts have found that "[m]ost likely, Congress anticipated that a creditor might move to extend the stay to prevent another creditor from reaching, and draining, estate property in a separate action during the bankruptcy process. That situation would arise only under [the minority approach]." *Id*. The estate property is the most important to protect for creditors because the payments back to them will come from the estate property and not the debtor's property as the debtor's property is typically exempt because it is for essential resources. *Id*. The extension process also allows for "certain second-time filers who meet an enhanced burden [of proving good faith] have an escape route from the termination of the entire automatic stay, including as to actions against estate property." *Id.* The context of the extension process furthers the argument for the minority position.

3. Other uses of the phrase "with respect to the debtor" in BAPCA are Superfluous.

Uses of the phrase "with respect to the debtor" in other places in BAPCA is often superfluous and provides no substance to the text. An analysis of BABPCA and the entire bankruptcy code reveals that the phrase "with respect to the debtor" appears "seventeen times in BAPCPA and zero times in the Bankruptcy Code as it was previously formulated." Meltzer, *supra* at 431. Meltzer found that of those seventeen uses "only in ten of those occasions, it is or could be used as a stand-alone phrase, and on the other seven occasions, it occurs within the flow of the sentence. The latter uses are not relevant for our purposes." *Id.* Meltzer argues that in all ten of those uses the phrase "with respect to the debtor" is superfluous and not substantive to the sentence. *Id.* at 432. This argument goes beyond the minority approach in relation to section 362(c)(3)(A) where the minority interprets the phrase to distinguish between the spouse of the debtor. But the context for BAPCA as a whole, which shows that there are no necessary uses of the phrase and they are superfluous, makes it less likely that it is a crucial phrase as the majority interprets. Meltzer finally points to the context of the entire bankruptcy code, which never once uses the phrase "with respect to the debtor" to argue that it is simply a filler or superfluous in the context of BABPCA. *Id.* at 430.

Looking to the overall context of BABPCA, the minority approach is the best interpretation because it takes the middle ground between the tiered system of protection, the extension process, and analysis of the phrase in BAPCA. The minority approach fits in between the levels of protection for first-time and repeat filers by giving a temporary stay. The extension process presumes the need for creditors to extend the stay to protect the bankruptcy estate from other creditors, which can only occur under the minority approach. Lastly, an analysis of BAPCA and the entire bankruptcy code shows that the phrase with respect to the debtor is typically a superfluous phrase.

C. Legislative history and congressional intent favor the minority approach to curb bankruptcy abuse through serial filing.

The purpose of BAPCA was to prevent abuse in the bankruptcy system. *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 231-32 (2010). The minority position best addresses this concern of Congress by limiting the stay to 30 days for second-time filers in a year. The majority approach fails to address these concerns of Congress by keeping the stay in place for the property of the bankruptcy estate for second-time filers. Courts can look to BAPCA's legislative history "when congressional purpose is not apparent from the statute itself, or related provisions, courts are well advised to refer to the 2005 House Judiciary Report to discern the core purpose of a BAPCPA provision." *In re Goodrich*, 587 B.R. at 841. After reviewing the legislative history and intent, the minority approach best serves Congress' intent to curb bankruptcy abuse through serial filing.

The purpose of BAPCA was to prevent bankruptcy abuses. The Supreme Court states, "Congress enacted [BAPCPA] to correct perceived abuses of the bankruptcy system*." Milavetz,* 559 U.S. 229, 231-32. There were several common abuses that Congress was looking to prevent, including the "repeat filer, who would commence serial eve-of-foreclosure bankruptcies without ever getting a discharge in previously filed cases." Meltzer, *supra* at 410 (2012). The problem with repeat filing is that it "increases the debtor's leverage in negotiation with creditors … [and] judges have devoted significant time and resources to develop tools to address this problem." *Id.* at 411. The history of section 362(c)(3)(A) stems back to the Bankruptcy Reform Act of 1998. The House Judiciary Committee issued a report in 1999 that summarized the legislature's intent:

> [The Report] titled 'Discouraging bad faith repeat filings,' contained language essentially identical to BAPCPA's § 362(c)(3)(A). The Report explained that this provision was directed precisely against the abuse the Review Commission had identified. A provision of the Report entitled "Adequate Protections for Secured Creditors" makes clear that the

> automatic stay terminates 30 days after a second filing if a prior case was dismissed within the preceding year.

Id. at 412. This is most compatible with the interpretation of the minority approach. A similar interpretation is also seen in the 1998 Senate Report and the 2005 Senate Report when the section was finally passed into law. *Id*. These reports have no "indication that its scope was intended to apply only to the debtor and not to estate property or that the words 'with respect to the debtor' were to have any meaning at all." *Id.* at 413. This shows that there is no legislative history that supports the majority interpretation, but instead, the legislative history supports the minority interpretation because it reinforces the intent of Congress to prevent serial filers.

The minority approach is closest to the legislative intent of Congress to prevent bankruptcy abuse – serial filing. The legislative history provides no indication that the phrase "with respect to the debtor" is meant to be anything more than superfluous. The legislative history from 1998 and 2005 House and Senate reports shows that the minority approach is closer to Congress' intent to curb serial filings by terminating the stay after 30 days.

CONCLUSION

For the foregoing reasons, this Court should reverse the Court of Appeals for the Thirteenth Circuit and find in favor of Petitioner.

Respectfully Submitted,

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