Team 5

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 THE PETITIONER

Team 5
Counsel for Petitioner

QUESTIONS PRESENTED

1. Where a debtor and a creditor have an otherwise valid and enforceable prepetition agreement to arbitrate, does 11 U.S.C. § 362 override the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq.*, rendering the prepetition arbitration agreement between the parties ineffective in a bankruptcy case?

2. On the 30th day after the filing of the debtor's subsequent case, does 11 U.S.C. § 362(c)(3)(A)'s automatic stay terminate in its entirety or only as to the debtor and the property of the debtor?

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The Thirteenth Circuit Court of Appeals' decision is available at No. 19-0805. The bankruptcy court answered both of the questions presented in favor of the Debtor. The court held that enforcing the arbitration code would conflict with the Bankruptcy Code, specifically section 362, and ultimately denied the Petitioner's request to compel arbitration. The bankruptcy court further held that regardless if an extension is sought, the automatic stay under section 362(c)(3)(B) will not terminate in regards to the property of the estate. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed the bankruptcy court's decision on both issues. This Court granted the Petitioner's petition for writ of certiorari.

STATEMENT OF JURISDICTION

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

PERTINENT STATUTORY PROVISIONS

The pertinent constitutional and statutory provisions are 9 U.S.C. § 2, 11 U.S.C. § 102(2), 362, 28 U.S.C. § 1334 of the United States Bankruptcy Code. Their relevant portions are attached in Appendix A.

STATEMENT OF THE CASE

Petitioner seeks to enforce a binding arbitration agreement with Respondent. Petitioner also seeks to avoid compensatory damages awarded to the Respondent due to the property of the bankruptcy estate being repossessed while the automatic stay allegedly protected it.

I. Factual History

Respondent Earl Thomas Petty ("Petty") is a well-known craft brewer in Royal Rapids, Moot. Petty owns and operates Great Wide Open Brewing Company ("Great Wide Open"). Petitioner Wildflowers Community Bank ("Wildflowers") is a lender who provided Petty's credit line to support his business.

A. Petty establishes and expands Great Wide Open Brewing Company with the financial support of Wildflowers.

In 2002, after a career as an attorney, Petty shifted his focus to brewing full-time by opening the Great Wide Open. R. at 3. At that time, his brewery only sold beer to local restaurants and convenience stores. R. at 3. He quickly expanded in 2005 by opening Great Wide Open, a large 9,000 sq ft. taproom located in Royal Rapids, Moot. R. at 3. Petty bought the small-batch brewing equipment needed for new expanded operation with his own money ("The Equipment"). R. at 3.

At this time, the craft brewing industry was experiencing unsustainable, exponential growth. Great Wide Open became an award-winning brewery, which allowed Petty to grow the Great Wide Open right alongside the exploding industry. R. at 3. This early confidence led to an overly aggressive expansion strategy, including opening four additional taprooms in college towns throughout the State in 2010. R. at 4. Just two short years after this large expansion, Petty continued his aggressive growth strategy by opening a state of the art brewhouse. R. at 4. Less than a decade after opening his first location, Petty now could brew 250,000 barrels of beer

annually and brewed the majority of the beer served at all of Great Wide Open's locations from this central location. R. at 4.

Unlike The Equipment purchase, Petty did not have the resources to complete this massive expansion independently. R. at 4. To continue to grow his company, Petty turned to Wildflowers for help. R. at 4. Even though Petty was already one of Wildflowers' largest credits, Wildflowers agreed to enter a $35 million revolving credit agreement ("Credit Agreement") in September 2011. R. at 4. To secure repayment of this massive line of credit, Great Wide Open granted Wildflowers a first priority lien on substantially all of its assets. R. at 4. Given the Credit Agreement's size relative to the rest of Wildflowers' portfolio, Petty also executed a personal guarantee in which he unconditionally guaranteed repayment of the business's obligations (the "Guaranty"). R. at 4. To secure Petty's guarantee, Wildflowers also has a first priority lien on the Equipment. R. at 4.

Both the Credit Agreement and the Guaranty contained identical "Remedies" clauses that explained in the event a default occurs, the "[o]bligor grants to Wildflowers the right to enter any premises where Collateral may be located for the purpose of repossessing Collateral without the need for any prior judicial action." R. at 4. Both agreements also contained identical "Arbitration" clauses stating: "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 of by jury trial." R. at 4.

B. Financial problems for Great Wide Open lead to multiple bankruptcy filings.

In 2017, the unsustainable growth of craft brewing came to its inevitable result: the number of competitors to Great Wide Open increased, and at the same time, consumer

enthusiasm around craft beer died down. R. at 5. Petty's aggressive growth strategy meant that this revenue reduction quickly led to the Great Wide Open's liquidity problems. To quickly grow his business in prime locations, Petty signed leases for the property at above-market prices. R. at 5. With decreased customer traffic, Great Wide Open could not maintain paying these high lease costs while also paying down the significant debt owed to Wildflowers. R. at 5. In March of 2018, with no notice to Wildflowers, the lender who made Petty's dream possible, Great Wide Open closed three of its taprooms, including the original location in Royal Rapids. R. at 5. Wildflowers was notified of this significant change to the business plan by one of its loan officers, who saw a sign on the door of one of the closed taprooms. R. at 5. Shortly after the closure, the landlord for Royal Rapids terminated the lease of the property. R. at 5.

In April 2018, Great Wide Open and Petty defaulted on their respective payment obligations under the Credit Agreement and the Guaranty. R. at 5. Wildflowers, recognizing that this now non-performing loan makes up a large portion of their portfolio, grew increasingly concerned about scrutiny from federal bank regulators and sent a default letter to Great Wide Open and Petty. R. at 5. On June 4, 2018, Wildflowers filed a demand for arbitration and a general state law breach of contract complaint against P with the American Arbitration Association. R. at 5. The American Arbitration Association scheduled an initial conference in the arbitration proceeding for July 12, 2018. R. at 5.

However, one day before the initial conference, Great Wide Open terminated its employees and ceased all operations. R. at 5. The next day, Petty filed for Chapter 7 bankruptcy on behalf of his business and Chapter 11 bankruptcy as an individual ("Initial Bankruptcy Case"), both with the Bankruptcy Court for the District of Moot. R. at 5. Despite his personal legal knowledge, Petty failed to submit the required documents, including his schedule of assets

and liabilities, and his individual Chapter 11 bankruptcy case was dismissed on August 27, 2018. R. at 5.

Before continuing, Petty hired a new bankruptcy attorney. R. at 5. Then on January 11, 2019, just as the arbitration proceeding was about to begin, Petty commenced his second Chapter 11 ("Second Bankruptcy Case") and filed all required documents. R. at 5-6. Along with this case, Petty filed a chapter 11 plan of reorganization that proposed to pay his creditors, including Wildflowers, forty cents on the dollar from his income over a period of five years. R. at 6. Petty's plan incorporated settlements that he had negotiated pre-petition with several of his creditors. R. at 6. Despite having first priority lien status on "substantially all" of Great Wide Open's assets, Petty's "Guaranty," and first priority lien status on "The Equipment," no such negotiations were attempted with Wildflowers. R. at 6.

At the outset of the Second Bankruptcy Case, Petty advised the court that he had negotiated a lease with the landlord of the original Royal Rapids taproom and that he had reopened that taproom in December 2018 as a sole proprietorship doing business as "Full Moon Fever Brewing." R. at 6. He added that he returned to using the "Equipment" to brew beer at this location, where the equipment had remained since the landlord terminated Great Wide Open's lease. R. at 6.

In the Second Bankruptcy Case, Petty failed to file a motion to extend the automatic stay during the first thirty days, as required under section 362(c)(3)(B) when a debtor files more than one bankruptcy case within one calendar year. R. at 6. On February 12, 2019, thirty-two days after the Second Bankruptcy Case's commencement, Wildflowers sent a repossession company to the Royal Rapids taproom. R. at 6. The company peaceably repossessed The Equipment, which remained subject to its security interest granted in connection with the Guaranty. R. at 6.

A week after the repossession, Petty filed a motion alleging that Wildflowers violated the Second Bankruptcy Case's automatic stay and sought $500,000 in damages under section 362(k). R. at 6. On March 5, 2019, Wildflowers responded stating that no automatic stay existed in regards to the property of the estate under section 362(c)(3)(A) because Petty had a prior bankruptcy case dismissed within one year of the filing of the Second Bankruptcy Case. R. at 7. Wildflowers argued that Petty bore the responsibility, and failed, to extend the automatic stay pursuant to section 362(c)(3)(B). R. at 7.

On March 15, 2019, Wildflowers filed a response to the motion explaining under 362(c)(3)(B) that no automatic stay existed with respect to the property of the estate, which includes The Equipment. R. at 7. Additionally, they noted that, as previously stated, Petty failed to file a motion seeking to extend the automatic stay as required. R. at 7. However, as Wildflowers did not intend to act outside the scope of the statute or in violation of their agreement, it returned The Equipment to Petty the day before the hearing. R. at 7. Wildflowers also argued in its response that any issue between Wildflowers and Petty must be resolved through arbitration, as agreed to in their prepetition arbitration agreement included in the Guaranty. R. at 7.

II. Procedural History

The bankruptcy court denied Wildflowers' request for arbitration. It stated that even if the automatic stay is extended, a creditor may not take action with respect to the property of a debtor's estate. R. at 7. As a result, the court ruled for Petty and awarded Petty compensatory damages against Wildflowers for $200,000. R. at 7. On appeal, the Thirteenth Circuit affirmed. R. at 7.

Wildflowers timely sought, and the bankruptcy court certified, a direct appeal of the two issues we address today pursuant to 28 U.S.C. § 158(d). R. at 7.

STANDARD OF REVIEW

The parties do not dispute the facts set forth in this case. R. at 8. The questions of whether 11 U.S.C. § 362 overrides the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq*. and whether the automatic stay terminates its entirety under 11 U.S.C. § 362(c)(3)(A) on the 30th day after the filing of the debtor's subsequent case are both questions of law. Hence, a *de novo* standard of review governs both of the questions presented. *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 563 (2014).

SUMMARY OF ARGUMENT

The Thirteenth Circuit improperly held that Congress intended section 362 to override the Federal Arbitration Act ("FAA"). This conclusion contradicts the heavy presumption favoring arbitration. In order to rebut this presumption, the court favored the older *McMahon* approach over the more recent precedent established in *Epic*. While the court concluded Congress wanted to repeal the FAA, the court had to rely on broad and weak policy reasons to support this conclusion. Indeed, the court could give no evidence about any express congressional command to demonstrate Congress meant for the automatic stay to repeal the FAA. Thus, they improperly held Congress did intend to repeal the FAA through section 362.

Even though the court relied on outdated precedent in *McMahon*, it also misapplied the *McMahon* test. The court also inflates bankruptcy courts' jurisdiction by stating that they are the best fit for deciding bankruptcy matters, which directly conflicts with what the law actually says. By wanting to keep bankruptcy matters in-house, the court erred in finding arbitration was not suited to best resolve bankruptcy issues due to an inherent conflict that does not exist. Yet

Congress and the Supreme Court have been unwavering in saying that arbitration is a perfectly legitimate forum for such matters. Simply, the heavy burden necessary to overrule a valid prepetition arbitration agreement has not been met.

Furthermore, the Thirteenth Circuit improperly held that the automatic stay does not terminate in its entirety under 11 U.S.C. § 362(c)(3)(A). The court used an approach that states section 362(c)(3)(A)'s language is unambiguous, applying its plain meaning. However, section 362(c)(3)(A)'s language is ambiguous, corroborated by the conflicting interpretations that have split the courts. When one makes a judicious inquiry into its broader statutory scheme, the lower court's interpretation of the language renders parts of the statute itself inconsistent and futile. If this Court adopts the lower court's approach, then this nebulous statute becomes virtually ineffective in practice.

The congressional intent behind this ambiguous statute is to deter serial filers from deceitfully capitalizing on statutory protections because it prompts abuse in and of the bankruptcy system. Courts have noted that this congressional initiative is not properly promoted if the lower court's approach is adopted. Their interpretation creates a "loophole" that allows serial filers to benefit from the automatic stay even though Congress intended to deter them from doing so. Only the substantial minority interpretation effectively vivifies the congressional intent behind section 362(c)(3)(A) by deterring serial filers that intend to abuse the system for their own gain while simultaneously protecting creditors.

ARGUMENT

I. 11 U.S.C. § 362 does not override the Federal Arbitration Act, 9 U.S.C. §§ 1 *et seq*.. Any prepetition arbitration agreement between the debtors and creditors involved in a bankruptcy case is enforceable.

Epic provides that the FAA requires arbitration agreements to be enforced according to their terms absent any intent communicated by Congress for another end. The Thirteenth Circuit improperly adopted the viewpoint that the Court's decision in *Epic* did not abrogate the three-factor analysis for congressional intent found in *McMahon*. The two cases both provide guidance for determining whether a subsequent statute was meant by Congress to override an earlier statute. The holding from *McMahon* requires courts to look for congressional intent in the statute itself along with its legislative history and then evaluate whether the subsequent statute's purpose inherently conflicts with the original statute. Whereas, *Epic* specifically limits a court to look for the congressional intention within the law itself. In the opening few lines of the *Epic* decision, the Court makes itself clear by explaining that "[a]s a matter of policy these questions are surely debatable but as a matter of law the answer is clear." *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1631 (2018). As a result, any reference to *McMahon's* policy-based "inherent conflict" factor is conspicuously absent from the *Epic* decision. The *Epic* decision compels us to look only at the letter of the statute to determine Congress's intent.

A. The *Epic* decision limits the analysis of congressional intent to override strictly to text of the statute. Under this analysis, the Bankruptcy Code does not override Federal Arbitration Act.

Absent congressional intention to override the FAA or a valid contract defense, the FAA requires arbitration agreements to be enforced according to their terms. *Epic*, 138 S. Ct. at 1619. In *Epic*, the Court considered the enforceability of an arbitration agreement between an employee and their employer. *Epic*, 138 S. Ct. at 1619. The employees argued that a provision of

the National Labor Relations Act ("NLRA") that allows employees to organize and bargain collectively overrode the FAA by impliedly creating a right to file a class-action lawsuit. *Epic*, 138 S. Ct. at 1619. Thus, the employees argued that they could not be compelled to arbitration and denied their right to file a class-action lawsuit. *Epic*, 138 S. Ct. at 1619.

The Court held that Congress made no attempt in the body of the NLRA to override the FAA and that without any express override, Congress has instructed that arbitration agreements should be enforced as written. *Epic*, 138 S. Ct. at 1632. The Court reasoned that Congress knows how to do so, as they have in many other statutes, but that none of those methods were employed in the NLRA. *Epic*, 138 S. Ct. at 1626. It elaborated that Congress's failure to discuss arbitration in the NLRA can be interpreted as a "telling clue that Congress has not displaced the [FAA]." *Epic*, 138 S. Ct. at 1627. Reading *Epic* as a standalone measure of the enforceability of an arbitration agreement, the question of whether or not an issue must be compelled to arbitration is limited strictly to congressional intent communicated in the statute to override the FAA and the validity of the agreement itself.

In *Henry*, the Fifth Circuit incorrectly states that the Court did not indicate in *Epic* that it intended its decision to reach the Bankruptcy Code. *Henry v. Educ. Fin. Serv. (In re Henry)*, 944 F.3d 587, 590 (5th Cir. 2019). The Court's decision in *Epic* plainly states that it is "this Court's duty to interpret Congress's statutes as a harmonious whole rather than at war with one another." *Epic*, 138 S. Ct. at 1619. When the Court referred to this "harmonious whole" of Congress's statutes, it is likely that it meant the entirety of the United States Code, including the Bankruptcy Code. Given this Court's consistent proclamation that a court is not "at liberty to pick and choose among congressional enactments," it is unlikely that they meant whichever statutes a court might choose to include. *Epic*, 138 S. Ct. at 1624 (quoting *Morton v. Mancari*, 417 U.S. 535, 551

(1974)). When the Court stressed that the failure to discuss arbitration in a statutory scheme was telling, they cited multiple cases showing that they consistently held this way. *Epic*, 138 S. Ct. at 1619 (citing *CompuCredit Corp. v. Greenwood*, 565 U.S. 95, 103-104 (2012), *Shearson/ American Express v. McMahon*, 482 U.S. 220, 227 (1987), *Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 234 (2013)). In doing this, the Court did not provide a specific list of statutes that they believed fell under this decision, nor did it say that the case law provided an exhaustive list of applicable statutes. Rather, one can infer that by failing to note any exclusions, the Court intended the rule to be applied broadly and equally, even in cases like the present case that also implicates the Bankruptcy Code.

1. Congress enacted the Federal Arbitration Act with the intention that agreements to arbitrate should be binding and enforceable.

Congress passed the FAA in 1925 to compel arbitration at a time that courts were perceived as hostile to arbitration. *Epic*, 138 S. Ct. at 1621. This perception found roots in both the English and American common law courts, where judges routinely refused to enforce prepetition agreements to arbitrate. *Scherk v. Alberto-Culver Co.*, 417 U.S. 506, 510 (1974). Congress recognized that this failure to compel arbitration prevented the parties from experiencing arbitration's benefits: faster, less formal, and often cheaper, resolutions to their issue. *Scherk*, 417 U.S. at 511. Thus, Congress passed the Arbitration Act, which provided that agreements to arbitrate "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract." 9 U.S.C. § 2.

By establishing the FAA, Congress created a federal policy favoring arbitration. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983). A federal policy favoring arbitration means that courts must rigorously enforce prepetition agreements to arbitrate. *Italian Colors*, 570 U.S. at 233. Even where the right that forms the claim's basis arises in a statute, this

does not diminish an agreement to arbitrate. *McMahon*, 482 U.S. at 226. Unless there is a well-founded claim against the arbitration agreement itself that would provide grounds to revoke any contract, a court should find that there is no basis to disfavor arbitration. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, 473 U.S. 614, 627 (1985). Nearly 70 years ago, this Court proclaimed that "'we are well past the time when judicial suspicion of the desirability of arbitration. . .' should inhibit enforcement of the Act 'in controversies based on statutes.'" *McMahon*, 482 U.S. at 226 (quoting *Wilko v. Swan*, 346 U.S. 427, 432 (1953), *overruled by McMahon*, 482 U.S. at 220). This means that by itself, the Arbitration Act must mandate a court to compel arbitration even for statutory claims when the parties have agreed to resolve their disputes in this manner. *McMahon*, 482 U.S. at 226.

2. *There is an evident lack of congressional intent to override the Federal Arbitration Act in the Bankruptcy Code.*

Where a party alleges that two statutes provide conflicting guidance on the same topic, a court does not have the liberty to choose freely between which congressional enactments they wish to apply; rather, they must instead "strive to give effect to both." *Morton v. Mancari*, 417 U.S. 535, 551 (1974). In *Morton*, non-Bureau of Indian Affairs employees sued several governmental parties alleging that 25 U.S.C. § 45 (Wheeler-Howard Act) was discriminatory. *Morton*, 417 U.S. at 537. The employees argued that Congress intended to override the Wheeler-Howard Act by passing the Equal Employment Opportunity Act. *Morton*, 417 U.S. at 539. Both statutes guide hiring practices. The Wheeler-Howard gave preference to Indians for jobs in the Bureau of Indian Affairs. *Morton*, 417 U.S. at 539 (citing 25 U.S.C. § 461). The Equal Employment Opportunity Act included several workplace and hiring anti-discrimination provisions. *Morton*, 417 U.S. at 539 (citing 42 U.S.C. § 2000e). The non-BIA employees argued that the Wheeler-Howard Act violated the Equal Opportunity Act by giving preference to

Indians, and as such, the Wheeler-Howard Act was repealed when the Equal Employment Opportunity Act was passed. *Morton*, 417 U.S. at 539. The Court explained that an intention to repeal or override must "clear and manifest." *Morton*, 417 U.S. at 551. It ruled that, despite both statutes governing hiring practices in a seemingly contradictory manner, Congress expressed no intent to repeal the Indian Reorganization Act, and the two were capable of coexisting. *Morton*, 417 U.S. at 551.

In the present case, we have two statutes that make no reference to one another and govern vastly different areas of the law. If the Court determined that two statutes governing employment law can be read together, like in *Morton*, then it should have no issue with divergent statutes like the Arbitration Act and the Bankruptcy Code being read together. This Court explained that permitting judges to choose between statutes freely allows them to be policymakers from the bench rather than advocating what the law is as they should be doing. *Epic*, 138 S. Ct. at 902.

To determine whether two statutes should be read together or the second statute impliedly repealed the first, a court must look to Congress's intent. A court must strongly presume that Congress will not imply their intent to repeal and will specifically address any pre-existing law that it wishes to override by passing a later statute. *United States v. Fausto*, 484 U.S. 439, 452 (1988). The party suggesting that the two statutes conflict such that one must be considered repealed has a heavy burden to overcome this presumption. *Vimar Seguros Y Reaseguros v. M/V Sky Reefer*, 515 U.S. 528, 533 (1995). Again, in *Morton*, the Court explained that any claimed intention by Congress to override an earlier statute must be "clear and manifest." *Morton*, 417 U.S. at 551. Additionally, the Court has emphatically stressed in multiple cases that a failure to discuss arbitration in the body of the statute is a telling clue that Congress did not intend to

displace the FAA. *Epic*, 138 S. Ct. at 906 (citing *CompuCredit*, 565 U.S. at 103, *McMahon*, 482 U.S. at 227, and *Italian Colors*, 570 U.S. at 234).

In *Epic*, the Court explained that when Congress intends to mandate a specific dispute resolution method, it clearly knows how to communicate that intent. *Epic*, 138 S. Ct. at 904. The Court points to several examples where it did exactly that. For example, in the Fair Labor Standards Act, the language provides that:

> "[a]n action to recover the liability prescribed in the preceding sentences may be maintained against any employer (including a public agency) in any Federal or State court of competent jurisdiction by any one or more employees for and in behalf of himself or themselves and other employees similarly situated."

29 U.S.C. § 216.

Likewise, in the Equal Employment Opportunities Act, Congress created the Equal Employment Opportunity Commission. 42 U.S.C. § 2000e–4. And in the Enforcement Provisions section of that act provides the procedure by which an aggrieved person must seek to charge that another party has engaged in unfair employment practices directly with the Commission before they can file a lawsuit in federal or state court. 42 U.S.C, § 2000e–5.

The Court points to several examples where Congress shows that it knows how to override the Arbitration Act, in particular. *Epic*, 138 S. Ct. at 904. A Commerce and Trade provision in the U.S. Code provides that automobile dealerships ``[*n]otwithstanding any other provision of law*...arbitration may be used to settle such controversy only if…" all of the parties to the controversy consent. 15 U.S.C. § 1226 (emphasis added). More precisely, the Commodity Exchange Act provides that "[n]o predispute arbitration agreement shall be valid or enforceable" for disputes arising under that act. 7 U.S.C.§ 26(n)(2). And the Enforcement Powers of the Bureau of Consumer Financial Protection outlined in 12 U.S.C. § 5567 is nearly identical. In 10 U.S.C. § 987(e)(3), the language goes so far as to make it unlawful for a creditor to extend

consumer credit to covered military members with the requirement that the borrower submit to arbitration. However, no language like this exists in the Bankruptcy Code. *Cont'l Ins. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 671 F.3d 1011, 1020 (9th Cir. 2012).

The Court cited several cases in *Epic* where multiple courts found no congressional command to override. *Epic*, 138 S. Ct. at 906. The Court reasoned that it had considered this issue before with several other statutes and found that none of them displaced the Arbitration Act. *Epic*, 138 S. Ct. at 906. The Court then explained that if it was not displaced in the many other applications it had considered, it could not imagine how these facts would lead it to do so. *Epic*, 138 S. Ct. at 906. Adding the weight of *Epic*'s decision to this already overwhelming body of opinions, there is virtually no indication that Congress intended to override the FAA with the Bankruptcy Code.

Without liberty to pick and choose, a court must strive to apply both; like the two statutes in *Morton*, the Bankruptcy Code and the Arbitration Act can be read together. Just as with the NLRA in *Epic*, there is no express statement in the Bankruptcy Code that overrides the FAA. This means that the law is clear, and the Bankruptcy Code should be read to work in harmony with the FAA. As such, the prepetition agreement to arbitrate between Petty and Wildflowers is binding under the FAA, and thus the parties should be compelled to arbitrate the issue in this case.

B. Even if this Court finds that *Epic* does not abrogate *McMahon*, the prepetition agreement to arbitrate between Petty and Wildflowers is still binding under the Federal Arbitration Act.

Like *Epic*, the *McMahon* Court provides that the Arbitration Act mandates enforcement of arbitration agreements even for statutory claims. *McMahon*, 482 U.S. at 226. The Court explained that the Arbitration Act establishes a "federal policy favoring arbitration." *McMahon*, 482 U.S. at 226. This duty to enforce arbitration agreements is not diminished when a party

bound by an agreement raises a claim founded on statutory rights. *McMahon*, 482 U.S. at 226. However, the Court goes on to identify three factors that can be used to identify congressional intent to limit a statute: by the statute's text, by the statute's legislative history, or "from an inherent conflict between arbitration and the statute's underlying purposes." *McMahon,* 482 U.S. at 227 (quoting *Howsam v. Dean Witter Reynolds*, 537 U.S. 79, 217 (2002)).

Under *McMahon,* Petty cannot avoid arbitration simply because he makes a claim founded on statutory rights provided in the Bankruptcy Code. The Court must look to the Bankruptcy Code's text and legislative history, then weigh the Bankruptcy Code's purposes against arbitration to determine whether Congress intended to limit arbitration in the bankruptcy context when it passed the Bankruptcy Code.

1. *The Bankruptcy Code's statutory text does not exhibit a deducible congressional intention to override the Federal Arbitration Act.*

The first possible way under *McMahon* for the Bankruptcy Code to override the FAA is through examining section 362 for a deducible intent that Congress intended to limit the FAA. *McMahon,* 482 U.S. at 227. Unlike *Epic*, which required a "clear and manifest" intention to override the FAA, the language in *McMahon* indicates that only a "deducible" intent to override the FAA is required. *McMahon,* 482 U.S. at 227. Despite this arguably lower threshold, there is still no Congressional intent to override the FAA.

As discussed extensively above, there is no "clear and manifest" intention to override the FAA in the Bankruptcy Code's statutory text. In fact, there is a complete absence of discussion about arbitration in the Bankruptcy Code, making it impossible for a party to deduce that Congress intended to override the FAA with the text. Surely, if they intended to override the act entirely, it would have included at least a passing mention in the Bankruptcy Code. Even if a party identifies an obscure phrase that they argue calls into question Congress's intent, this will

not be enough to meet their heavy burden. *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001). When Congress wishes to make a specific change to a regulatory scheme, it will not do so in ancillary provisions. *Whitman*, 531 U.S. at 468.

2. The Bankruptcy Code's legislative history does not exhibit a congressional intention to override the Federal Arbitration Act.

The second possible way under *McMahon* for the Bankruptcy Code to override the FAA is through examining the legislative history to see if Congress intended to carve out an exception. *McMahon*, 482 U.S. at 227. There simply is no legislative history that indicates the Bankruptcy Code overrides the FAA. Conversely, several cases show that the Bankruptcy Code does not override the FAA. *In re Thorpe*, 671 F.3d at 1020. In *Whiting-Turner*, the court held that the claim was the type of bankruptcy issue that could be compelled to arbitration and remanded with directions to do so. *Whiting-Turner Contracting Co. v. Elec. Mach. Enters. (In re Elec. Mach. Enters.)*, 479 F.3d 791, 798 (11th Cir. 2007). In *Mintze*, the court concluded that the bankruptcy court "lacked the authority and discretion to deny enforcement of the arbitration provision in the contract…." *Mintze v. Am. Fin. Servs., Inc. (In re Mintze)*, 434 F.3d 222, 233 (3d Cir. 2006). In *Mor-Ben*, the court affirmed the bankruptcy court's decision to stay the bankruptcy proceedings and compel arbitration. *In re Mor-Ben Ins. Mkts. Corp.*, 73 B.R. 644, 649 (B.A.P. 9th Cir. 1987). These courts ruled that there are factual scenarios where arbitration is appropriate in a bankruptcy setting, demonstrating that the legislative history lacks the evidence needed to show congressional intent for the Bankruptcy Code overriding the FAA.

3. There is no inherent conflict between arbitration and the purposes of the Bankruptcy Code.

The third and final possible way under *McMahon* the Bankruptcy Code to override the FAA is if the Bankruptcy Code's "underlying purposes" for section 362 "inherently conflict[s]" with arbitration. *McMahon*, 482 U.S. at 227. Simply, if a statute's "text and legislative history

fail to reveal any intent to override the provisions of the Arbitration Act," then the only remaining way to escape arbitration is when the FAA has an "irreconcilable conflict" with the alleged conflicting statute. *McMahon*, 482 U.S. at 239. This is to preserve the court's before mentioned "duty to enforce arbitration agreements." *McMahon*, 482 U.S. at 226.

We are dealing with disputes over whether an automatic stay has been violated. For there to be an inherent conflict, the proceeding must first be deemed core. A claim that involves a "substantive right" from the Bankruptcy Code is a core proceeding. *MBNA Am. Bank, N.A. v. Hill*, 436 F.3d 104, 108–09 (2d Cir. 2006). The automatic stay is fundamental and staple to bankruptcy matters as it protects and benefits all parties involved. *See, e.g., St. Paul Fire & Marine Ins. Co. v. Labuzan*, 579 F.3d 533, 540 (5th Cir. 2009). Therefore, it is uncontested that the stay is indeed a core proceeding.

Even though the matter is core, it will not "automatically give the bankruptcy court discretion to stay arbitration." *In re No Place Like Home, Inc.*, 559 B.R. 863, 869 (Bankr. W.D. Tenn. 2016). Without an inherent conflict, courts must compel arbitration and have no discretion in the matter. *In re No Place Like Home*, 559 B.R. at 871. An inherent conflict exists when the FAA and other federal statutes are at odds with one another so that they "seriously jeopardize the objectives of the Code." *Hill*, 436 F.3d at 109. Due to the presumption favoring arbitration, a bankruptcy court may only exercise discretion to keep the matter before the court "where arbitration is inadequate to protect the substantive rights at issue." *Shearson*, 482 U.S. at 221. To summarize, bankruptcy courts must uphold arbitration unless doing so would be severely detrimental to the underlying issue.

In *Hill*, the court faced a similar action involving arbitration over whether the automatic stay had been willfully violated. *Hill*, 436 F.3d at 106. The bankruptcy court's initial holding was

that since Hill's claim was "strictly a product of the Bankruptcy Code," then it must follow that there was an inherent conflict. *Hill*, 436 F.3d at 109. However, on appeal, the *Hill* court rejected this automated conclusion and instead found that arbitration must be compelled, reasoning that there was no inherent conflict to give the court discretion. *Hill*, 436 F.3d at 110. This was because the bankruptcy case had been dismissed when the case was before the appellate court, so arbitrating the automatic stay violation would not influence the reorganization process. *Hill*, 436 F.3d at 110. Thus, going to arbitration would not impact, let alone jeopardize, bankruptcy rights. *Hill*, 436 F.3d at 109.

In another case, the debtor argued that "since all creditors will eventually be paid from the same pot of money," the court should not compel arbitration so as to not interfere with distributing the estate. *In re Shores of Panama, Inc.*, 387 B.R. 864, 867 (Bankr. N.D. Fla. 2008). The court found that "[a]lthough arbitration may be inconsistent with the [bankruptcy] policy of centralization, such inconsistency does not rise to the level of an inherent conflict." *In re Shores*, 387 B.R. at 866. The court elaborated stating that such speculation about possible conflicts "is too tangential to disregard the agreement to arbitrate and does not present an inherent conflict with the Bankruptcy Code." *In re Shores*, 387 B.R. at 867. Essentially, *Shores* clearly illustrates how speculating about inconsistencies after a prepetition arbitration agreement is enforced is not sufficient to prove an inherent conflict exists.

Policy arguments, like those in *Hill* and *Shores*, have been raised to establish an inherent conflict in an attempt to skirt around the mandate favoring the FAA. In a last-ditch attempt, these arguments are made to persuade bankruptcy courts to not comply with their duty to uphold arbitration absent clear congressional command. Policy behind the automatic stay is that it

"provide[s] debtors with a fresh start, protect[s] the assets of the estate, and allow[s] the bankruptcy court to centralize disputes concerning the estate." *Hill*, 436 F.3d at 109.

Bankruptcy courts may feel compelled to exclusively handle cases to centralize all disputes and avoid piecemeal litigation. However, the impacts that piecemeal litigation has on centralization is "*de minimis*." *In re Farmland Industries, Inc.*, 309 B.R. 14, 21 (Bankr. W.D. Mo. 2004). Any impediments caused by piecemeal litigation are materially similar to those faced solely in bankruptcy court. *Farmland*, 309 B.R. at 21. Because piecemeal litigation does not conflict with the Bankruptcy Code's policy, there must be specific facts in the individual case to warrant an egregious conflict so as to disallow a prepetition arbitration agreement. Otherwise, "weaker policies underlying the Bankruptcy Code must yield to the stronger federal policy favoring the enforcement of valid arbitration agreements." *Farmland*, 309 B.R. at 21.

Here, Petty contends that the automatic stay must be enforced to reorganize through the Bankruptcy Code, discharge all his debts, and obtain a fresh start. Petty's bankruptcy proceedings have not been finalized like was the case in *Hill*. However, Petty's inability to obtain Bankruptcy Code guarantees is primarily brought about by his own shortcomings and not an inherent conflict. Petty convinced the lower courts to give him yet another chance to stay in bankruptcy court as he would otherwise be prejudiced against receiving bankruptcy rights. But this argument is reaching to speculation. As the court in *Shores* points out, going to arbitration for a matter does not speculatively preclude a party from their bankruptcy rights. Nor would the *Farmland* court find prospective piecemeal litigation from truly conflicting with Petty's reorganization. Whether Petty swiftly obtains the dues he purports to be owed so he can get a fresh start sooner carries little weight when he has dragged his foot on the matter thus far. Yet still, it cannot be said in good faith that Petty will successfully recover from Wildflowers.

Therefore, as the *Shores* court stipulates, the mere inconsistency that may come from having to face arbitration does not give rise to an inherent conflict in this case.

Arbitration also inherently pulls parties away from courts to resolve their disputes. This raises the issue regarding whether taking bankruptcy matters away from their courts jeopardizes the Bankruptcy Code. As crucial as core principles like the automatic stay are to bankruptcy, Congress has chosen not to confer exclusive jurisdiction for bankruptcy matters to the respective federal courts. 28 U.S.C. § 1334(b). By contrast, Congress has given exclusive jurisdiction to other specific bankruptcy matters. 28 U.S.C. § 1334(e). Because Congress has not granted federal courts the exclusive right to hear automatic stay issues, it can therefore be inferred that Congress does not believe arbitration interferes with or jeopardizes the automatic stay.

"However, in light of the Supreme Court's *Epic* decision, a party must do more than simply show that referring a matter to arbitration would conflict with the purposes of the Bankruptcy Code." *In re Trevino*, 599 B.R. 526, 549 (Bankr. S.D. Tex. 2019). Since *McMahon*, the Supreme Court has ruled on other disputes involving whether a federal statute repealed the FAA. Most recently, in *Epic*, the Court paid inherent conflict no mind when confronted with yet another FAA case. At the very least, the Court in *Epic* downplays the inherent conflict factor to near irrelevance by placing the utmost emphasis on what Congress wanted. As such, it follows that a statute cannot impliedly repeal the FAA.

While the many circuits have their own interpretation about what constitutes an inherent conflict, the Supreme Court has always remained crystal clear on the matter; indeed, the Supreme Court "has rejected every such effort to date" to find an inherent conflict between the FAA and other federal statutes. *Epic*, 138 S. Ct. at 1627. Circuit courts have drawn on their discretionary power when choosing not to enforce arbitration agreements over automatic stay

violations. Lost in the chaos is the unyielding and resolute presumption favoring arbitration. The Supreme Court in *Epic* did not sway from this stance and even doubled down. *Epic* emphasizes legislative text and history, saying "clear and manifest congressional command to displace the Arbitration Act" is paramount. *Epic,* 138 S. Ct. at 1624. Further, *Epic* provides that the statutory text should weigh more heavily than underlying policy purposes of the statute, explaining that there may be debate as a question of policy, but the law is clear: courts must compel valid arbitration agreements between parties. *Epic,* 138 S. Ct. at 1619. Despite conflicting case law throughout the circuits on balancing *McMahon* and *Epic*, the Supreme Court has simply never found a reason for why a federal statute repeals the FAA.

In conclusion, the overwhelming presumption favoring arbitration remains resolute. The Supreme Court has repeatedly maintained and emphasized the heavy burden necessary to displace the FAA. There is also an irrefutable lack of any clear legislative intent through statutory text or history for the Bankruptcy Code to repeal the FAA. Taken together, the Bankruptcy Code in *no way* repeals the FAA's unequivocal mandate for arbitration.

II. 11 U.S.C. § 362(c)(3)(A) is an ambiguous statute that terminates the stay in its entirety.

This Court should reverse the appellate court's decision because the language "with respect to the debtor" within 11 U.S.C. § 362 (c)(3)(A) terminates the automatic stay in its entirety. Thus, Wildflowers did not violate the automatic stay. The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") was enacted to rectify recognized abuses within the bankruptcy system. *Milavetz, Gallop & Milavetz, P.A.*, 559 U.S. 229, 231 (2010). The BAPCPA includes debtor protection, such as the automatic stay under 11 U.S.C. § 362(a), a fundamental protection that becomes effective upon filing a bankruptcy petition. *Soares v. Brockton Credit Union (In re Soares)*, 107 F.3d 969, 971 (1st Cir. 1997). An automatic stay's

scope encompasses nearly all informal or formal actions that one could take against the debtor or the property of the estate, notwithstanding the exceptions found under subsection (b). *In re Montalvo*, 537 B.R. 128, 140 (Bankr. D.P.R. 2015). The automatic stay for a debtor is just one protection against creditors; however, the BAPCPA recognized that serial filers were abusing the system, so 11 U.S.C. § 362(c)(3) was enacted. *In re Goodrich*, 587 B.R. 829, 846 (Bankr. D. Vt. 2018). This section states that:

> (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)(2020) (emphasis added).

As the statute indicates, an automatic stay's scope narrows when the debtor has had a pending bankruptcy case dismissed within the previous year. An interested party may move for the court to extend the automatic stay before the thirty-day time limit has lapsed. 11 U.S.C. § 362(c)(3)(B) (2020). There is a presumption that the subsequent case was not filed in good faith; therefore, the moving party must rebut said presumption for the stay to be extended. 11 U.S.C. § 362(c)(3)(C). The issue of whether "with respect to the debtor" includes terminating the stay with respect to the property of the estate has divided the courts, giving rise to a majority and minority approach. Identifying each interpretation as "majority" or "minority" is deceiving because even a glance at various cases indicates that upwards of fifty courts use the majority approach while around forty courts use the minority approach. *In re Goodrich*, 587 B.R. at 835 n.4-5. This marginal difference illustrates how split the courts are on this issue.

The majority's approach asserts that the automatic stay does not terminate against the property of the estate. However, it does terminate in regards to the debtor and the debtor's property. *In re Holcomb*, 380 B.R. 813, 816 (B.A.P. 10th Cir. 2008). The majority believe the language to be unambiguous, so they deem that their judicial inquiry is complete, and they give effect to the plain meaning of the statute. *In re Goodrich*, 587 B.R. at 841. The majority approach isolates the language and then applies it plainly. However, when the statute is read as a whole, the majority's application leads to inconsistencies. Consequently, restricting the congressional intent behind section 362(c)(3)(A)'s that seeks to deter debtors from abusing the protections that the bankruptcy system has to offer.

The substantial minority explains that the language "with respect to the debtor" should not limit the stay's scope; instead, it is supposed to terminate the automatic stay in its entirety on the thirtieth day after the subsequent case is filed. *In re Daniel*, 404 B.R. 318, 324 (Bankr. N.D. Ill 2009). The substantial minority predicates its approach on the statute's ambiguous language; the ambiguity requires the court to examine its legislative history. *In re Reswick*, 446 B.R. 362, 371 (B.A.P. 9th Cir. 2011). This approach allows section 362(c)(3)(A)'s intended deterrent effect to be accomplished and would not lead to inconsistencies within its subsections.

A. 11 U.S.C. § 362(c)(3)(A)'s language is ambiguous when the statute is viewed as a whole.

The substantial minority acknowledges that the language "with respect to the debtor" has been a source of conflicting interpretations. When a statutory interpretation is required in a BAPCPA case, this Court begins with the statute's language itself. *Ransom v. FIA Card Servs., N.A.*, 562 U.S. 61, 69 (2011). This Court has indicated a preference for applying a plain meaning approach when interpreting statutory language, although it has been noted that this approach's application has its difficulties. *In re Goodrich*, 587 B.R. at 838. It has been explained that when

an inquiry into a statute's language results in contrasting definitions, a court must look at the broader statutory scheme and provisions within the same statute as a whole. *In re Goodrich,* 587 B.R. at 838. Furthermore, it must be determined whether applying one interpretation will render either the statute at hand or other provisions superfluous. *In re Goodrich*, 587 B.R. at 839.

The majority has found that the statute's language is entirely plain. *In re Jones*, 339 B.R. 360, 363 (Bankr. E.D.N.C. 2006). In contrast, courts have recognized that if section 362(c)(3)(A)'s language were read literally, it would be inapplicable to most cases. *In re Paschal*, 337 B.R. 274, 277 (Bankr. E.D.N.C. 2006). Moreover, if the majority approach were adopted, it would render the statute virtually meaningless. 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, 409 (2012). The majority approach has observed that if Congress wanted to terminate the stay in its entirety, it would have used the appropriate language as it had in other statutes. *In re Jones*, 339 B.R. at 364. Nevertheless, bankruptcy courts have acknowledged examples of statutes, like 11 U.S.C. § 102(2) (1986), that use the language "claim against the debtor" to encompass claims against the property of the debtor. *In re Jones*, 339 B.R. at 365. The language used in section 102(2) is similar to section 362(c)(3)(a) in the sense that courts have allowed a different interpretation to be applied. This tends to show that the plain language of section 362(c)(3)(A) is not as plain as they contend, and it requires an interpretation that includes looking to the other provisions within this statute to see its effect on them.

When "with respect to the debtor" is exclusively applicable to the debtor and property of the debtor, courts have found that it makes the other distinctions in § 362's subsections futile. *Kawaauhau v. Geiger*, 523 U.S. 57, 62 (1998). When the statute is viewed as a whole, one will recognize the inconsistency that arises between section 362(c)(3)(A) and 11 U.S.C. § 362(j) if

the stay is not terminated in its entirety. *In re Goodrich*, 587 B.R. at 843. Section 362(j) allows parties to broadly validate that the stay terminated. *In re Goodrich*, 587 B.R. at 843. Yet, it does not provide exceptions for the property protected by the stay, demonstrating that it presumes the stay has been terminated in its entirety. *In re Goodrich*, 587 B.R. at 843.

In a jurisdiction where the majority approach has been adopted, there is not a single case where a creditor sought to terminate the automatic stay under section 362(c)(3)(A). *In re Reswick*, 446 B.R. at 368. This is because most stay relief motions seek relief concerning the property of the estate, not the debtor. *In re Reswick*, 446 B.R. at 368. Courts have consistently criticized 11 U.S.C. § 362(c)(3)(A) because they have found the language to be garbled and confounding. *In re Curry*, 362 B.R. 394, 397 (Bankr. N.D. Ill. 2007). When considering section 362(c)(3)(A)'s language en bloc, its language renders a smatter of its subsections inconsistent. The statute itself is seemingly meaningless when the majority approach is applied; thus, its language is ambiguous.

B. The minority approach is consistent with the legislative history and promotes the congressional intent behind 11 U.S.C. § 362(c)(3)(A).

When a BAPCPA case is presented with conflicting interpretations of a statute, this Court frequently examines whether an interpretation will result in absurd repercussions, going against its legislative history. Brett M. Kavanaugh, *Fixing Statutory Interpretation Judging Statutes*, 129 Harv. L. Rev. 2118, 2144 (2014). It is pivotal to note that this Court's plain meaning approach incorporates a "general skepticism of legislative history and a general deference to congressional purpose." *In re Goodrich*, 587 B.R. at 840. Instead of solely observing the language in isolation, one must read about a statute's intended purpose to reach a conclusion; this method "better comports with principles of statutory construction." *In re Reswick*, 446 B.R. at 367. Therefore,

when confronted with ambiguous language, courts must look to its legislative history. *In re Reswick*, 446 B.R. at 366.

BAPCPA's legislative history is finite regarding this statute, but the available information indicates a clear congressional intent to deter serial bankruptcy filings that abuse the system. H.R. Rep. No. 109–31(I), at 2 (2005). The BAPCPA's key section that centers on serial filers is section 362(c)(3). *In re Reswick*, 446 B.R. at 372. The BAPCPA aims to deter serial filers from abusing the system by restricting or terminating key bankruptcy protections, like the automatic stay, in certain circumstances. *In re Reswick*, 446 B.R. at 372. Section 362(c)(3)(a)'s objective is to deny serial filers from receiving the automatic stay's benefit beyond the thirty days unless the interested party raises a special circumstance that would permit it to continue. *St. Anne's Credit Union v. Ackell*, 490 B.R. 141, 145 (D. Mass. 2013). The court noted that this objective is not adequately promoted if the statute is interpreted to exclude actions against the property of the estate. *St. Anne's Credit Union v. Ackell*, 490 B.R. at 145.

The majority approach creates a bankruptcy "loophole" because serial filers still receive the automatic stay's benefits even though legislative history indicates the congressional intent was to deter these types of debtors. *In re Jupiter*, 344 B.R. 754, 756 (Bankr. D.S.C. 2006). The automatic stay does expire after thirty days; however, a report found that judges grant 98% of the motions to extend the stay, so in jurisdictions where the majority approach is adopted, section 362(c)(3) is essentially futile to creditors. Sarah S. Greene, *The Failed Reform: Congressional Crackdown on Repeat Chapter 13 Bankruptcy Filers*, 89 Am. Bankr. L.J. 241, 244 (2015). As stated above, Congress intended this statute to be a deterrent, yet the majority approach renders the statute superfluous. The majority approach inhibits section 362(c)(3)(A)'s intended deterrent effect by limiting its potential impact on serial filers; the court noted that Congress should have

"saved ink" on this statute because of its minimal impact on a bankruptcy case. *St. Anne's Credit Union v. Ackell*, 490 B.R. at 145.

Unless section 362(c)(3)(A) terminates the automatic stay in its entirety, then the court would be wasting its resources deciding whether to grant a motion to extend a stay because the issue's determination would have no beneficial effect on the debtor. *In re Jupiter*, 344 B.R. at 760. The waste would be from the nominal amount of creditors that pursue the debtor personally or the debtor's property, so the court would be ruling on a motion that has practically no impact on the case itself. *In re Reswick*, 446 B.R. at 368. The property securing a debt virtually always includes the property of the state, so it would be illogical to believe that Congress wanted section 362(c)(3)(A) to only terminate in regards to the debtor and the property of the debtor because that outcome would have no practical significance. *In re Keeler*, 561 B.R. 804, 808 (Bankr. N.D. Ga. 2016). The substantial minority's interpretation materially penalizes a serial filer that fails to demonstrate a good faith basis for filing their second case; this interpretation is consistent with the congressional intent behind the BAPCPA. *In re Goodrich*, 587 B.R. at 843.

In sum, the language of section 362(c)(3)(A) is ambiguous. When considering this statute's legislative history, it is evident that the substantial minority's interpretation bolsters the congressional intent behind it, deterring abuse of the bankruptcy system. Therefore, Wildflowers did not violate the automatic stay as a matter of law.

CONCLUSION

The Bankruptcy Code provides debtors a chance to alleviate their financial strain caused by their onerous debts. This Code was enacted to protect creditors from debtors who are willing to exploit Bankruptcy Code protections to protect themselves while simultaneously preventing creditors from getting what they are owed. This present case illustrates the need for the

Bankruptcy Code's intended deterrent effect to be enforced by the courts and prevent this type of abuse from continuing. For the foregoing reasons, this Court should reverse the decision of the Thirteenth Circuit Court of Appeals.

APPENDIX A

9 U.S.C. § 2. Validity, irrevocability, and enforcement of agreements to arbitrate

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

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11 U.S.C. § 102. Rules of construction

In this title—

...

(2) "claim against the debtor" includes claim against property of the debtor;

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11 U.S.C. § 362. Automatic Stay

(c) Except as provided in subsections (d), (e), (f), and (h) of this section--

...

(3) if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)--

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)--

...

(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.

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

In this title—

...

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

...

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

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