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 Respondent

Team R6
Counsel for Respondent

QUESTIONS PRESENTED

I. Whether a bankruptcy court may decline to enforce a party's pre-petition arbitration agreement when it moves to arbitrate on an alleged violation of the automatic stay.

II. Whether the automatic stay continues to apply to the property of the bankruptcy estate, notwithstanding section 362(c)(3)(A).

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The United States Court of Appeals for the Thirteenth Circuit affirmed the decision from the Bankruptcy Court for the District of Moot on both issues appealed in Case No. 19-0805. The full opinion of the Circuit Court is reproduced as the record in this appeal. [R at 1-32.]

First, the Circuit Court held that 11 U.S.C. § 362 and related judicial provisions impliedly repeal the Federal Arbitration Act ("FAA"), 9 U.S.C. §§ 1 *et. seq.* [R. at 3.] Petitioner and creditor, ("Wildflowers")sought to compel arbitration when Respondent ("Debtor") alleged a willful violation of the automatic stay under section 362. [R. at 6-7.] The Bankruptcy Court denied arbitration due to an inherent conflict between the Bankruptcy Code and the FAA, particularly in relation to the automatic stay. [R. at 7.] On appeal, the Circuit Court affirmed this finding because of the "core" nature of the automatic stay and in light of Congress' intent to centralize disputes, promote comprehensive participation from parties in interest, and ensure uninterrupted reorganization efforts. [R. at 11-13.] Accordingly, the Circuit Court found valid discretion to decline arbitration and that the lower court properly did so. [R. at 13.]

Second, the Circuit Court held that 11 U.S.C. § 362(c)(3)(A) limits the scope of the automatic stay, such that an automatic stay is terminated with respect to the debtor, not the property of the bankruptcy estate [R. at 14]. The creditor repossessed the taproom equipment of debtor, Thomas Petty, thirty-two days following the debtor's initial bankruptcy case [R. at 6]. The Bankruptcy court ruled in favor of the debtor, holding that regardless of whether the automatic stay is extended under 362(c)(3)(B), a creditor may not take action with respect to the property of the debtor's bankruptcy estate [R. at 7]. On appeal, the Circuit Court implemented the plain meaning canon of statutory interpretation to examine the phrase "with respect to debtor," in § 362(c)(3)(A) [R. at 14-19]. The Circuit Court held that the plain meaning and statutory context of

§ 362(c)(3)(A) suggests that an automatic stay terminates in the thirty days following the commencement of the case for the debtor, not however, for the property of the bankruptcy estate [R. at 17]. Simply, if Congress had wished for the automatic stay to terminate entirely, they would not have included the qualifier, "with respect to debtor" [R. at 17]. As a result, the circuit court ruled in favor of the debtor.

STATEMENT OF JURISDICTION

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

STATUTORY PROVISIONS

The relevant statutory provisions involved in this case are listed below and are reproduced in Appendices A - K.

9 U.S.C. §§ 1 *et. seq.*

11 U.S.C. §§ 362 *et. seq.*

11 U.S.C. § 507

11 U.S.C. § 521(a)(6)

11 U.S.C. § 524

11 U.S.C. § 547(b)

28 U.S.C. § 157

28 U.S.C. § 1334

U.S. Const. art. I, § 2, cl. 4

U.S. Const. art. I, § 8, cl. 4

U.S. Const. art. I, § 10, cl. 1

STATEMENT OF FACTS

Thomas Debtor ("Debtor") was a classic case of attorney to brew-master. [R. at 3.] Debtor's pastime became a career when he switched from brewing beer in his basement to founding the Great Wide Open Brewing Company, Inc, ("Great Wide Open") in 2002. [R. at 3.] Before opening a taproom in Royal Rapids, Debtor would sell his craft brewery to local restaurants and convenience stores. [R. at 3.] Royal Rapids taproom included small batch brewing equipment ("equipment") that Debtor financed himself. [R. at 3.] Debtor's talent for brewing beer evolved Great Wide Open into one of the State of Moot's largest craft breweries. [R. at 3.] With rising popularity and increased demand, Debtor pursued an aggressive growth strategy to develop his business. [R. at 4.] This strategy *brewed* four additional taprooms, and in 2012, Great Wide Open's new brewhouse came into fruition. [R. at 4.]

This period of expansion required additional financing, so Great Wide Open entered into a $35 million dollar credit agreement ("credit agreement") with Wildflowers Community Bank ("Wildflowers"). [R. at 4.] The credit agreement stipulated that Great Wide Open granted Wildflowers a first priority lien on all of its assets, as well as a personal guaranty between Debtor and Wildflowers where Debtor unconditionally guaranteed repayment of the business's obligations ("the guaranty") [R. at 4.] Debtor also unconditionally guaranteed a first priority lien on the equipment to secure the guarantee. [R. at 4.] The credit agreement and the guaranty included identical "remedies" clauses providing that, upon default, "Obligor grants to Wildflowers the right to enter any premises where Collateral may be located for the purpose of repossessing Collateral without the need for any prior judicial action." [R. at 4.] The credit agreement and the guaranty also contained identical arbitration clauses, providing that "any and all disputes, claims, or controversies of any kind between us arising out of or relating to the relationship between us will

be resolved through mandatory, binding arbitration, and each party voluntarily gives up any rights to have such disputes litigated in a court or by jury trial." [R. at 4.]

In 2017, Great Wide Open was tethered with significant debt, and ultimately resorted to closing three of its taprooms in March of 2018, without notice to Wildflowers. [R. at 5.] Wildflowers only discovered the closure of the taprooms when a loan officer visited the vacated premises. [R. at 5.] Eventually, Great Wide Open and Debtor defaulted on their payment obligations under the credit agreement and guarantee in April 2018. [R. at 5.] Wildflowers sent a default notice to Great Wide Open and Debtor, and later, on June 4, 2018, Wildflowers filed a demand for arbitration and a general state law breach of contract complaint against Debtor with the American Arbitration Association. [R. at 5.] Wildflowers sought damages equaling the balance owed under the credit agreement, and thus, an initial conference was scheduled for July 12, 2018. [R. at 5.]

On June 11, 2018, Great Wide Open terminated its employees, ceased all operations, and commenced with a chapter 7 bankruptcy case. [R. at 5.] Debtor filed a chapter 11 bankruptcy petition ("the initial bankruptcy case") the following day. [R. at 5.] This initial bankruptcy case was dismissed on August 27, 2018, due to untimely filing [R. at 5.] After retaining new counsel, Debtor commenced with a second chapter 11 bankruptcy case (the "second bankruptcy case"), and a chapter 11 plan of reorganization on January 11, 2019. [R. at 5-6.] At the first day of hearings for the second bankruptcy case, Debtor revealed that he reopened Royal Rapids Taproom as a sole proprietorship called "Full Moon Fever Brewing." [R. at 6.] Debtor was producing beer using his equipment and was even able to develop patronage from Royal Rapids previous clientele. [R. at 6.] The success of this new taproom, however, was short-lived. [R. at 6.] Thirty-two days following

the start of the Initial Bankruptcy Case, on February 12, 2019, Wildflowers sent a repossession company to the taproom, and repossessed the Equipment. [R. at 6.]

Debtor alleged that Wildflowers violated the automatic stay, and sought $500,000 in damages under 362(k), since Wildflower's repossession resulted in the taproom shutting down. [R. at 6-7.] Wildflowers filed a response, asserting that no automatic stay existed with respect to the property of the estate (including the equipment) pursuant to section 362(c)(3)(A), because Debtor had a prior bankruptcy case dismissed within one year of filing the Second Bankruptcy Case. [R. at 7.] The Bankruptcy Court ruled in favor of Debtor, holding that enforcing the arbitration agreement would conflict with section 362 of the Bankruptcy Code, and that, regardless of whether the automatic stay is extended under 362(c)(3)(B), a creditor may not take action with respect to the property of the debtor's estate. [R. at 7.] The equipment that Wildflowers repossessed was the property of Debtor's bankruptcy estate, and therefore, a violation of the automatic stay. [R. at 7.] The Bankruptcy Court awarded damages to Debtor of $200,000 [R. at 7.]

ARGUMENT

I. Bankruptcy Rights Manifest Clear, Irreconcilable Conflict With Mandated Arbitration.

Congress clearly removed bankruptcy from arbitration's sphere of supremacy, evident in both statutory analysis and its functional purpose. Following the *McMahon* and *Epic Systems* tests on congressional intent, the Court should affirm that the Bankruptcy Court had the discretion to deny Wildflower's request to arbitrate on both A) statutory and B) policy grounds. *Shearson/American Express v. McMahon*, 482 U.S. 220, 226-27 (1987); *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1624, 1627 (2018). Bankruptcy occupies a unique legal lane, and mandated

arbitration does not comport with the goals of an efficient, equitable solution when a debtor files for relief. *In re Nat'l Gypsum Co.*, 118 F.3d 1056, 1069 (5th Cir. 1997).

A. Statutory Analysis Proves Bankruptcy Law Precludes Mandated Arbitration when Related to an Ongoing Bankruptcy Procedure.

Classic principles of textual analysis and statutory interpretation demand that the more specific provisions in bankruptcy law override the general mandate to enforce arbitration agreements. The Court has established core concepts of statutory analysis and interpretation which consider not only the words of a singular provision, but also the context of those words. *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132–33 (2000). Analysis requires interpretation of the words' ordinary, common meaning at the time of enactment, and may rely on the legislative history for better understanding. *Wis. Cent. Ltd. v. United States*, 138 S. Ct. 2067, 2074 (2018); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth*, 473 U.S. 614, 628 (1985). First, one examines the words in their immediate context, then broadens that consideration to the statutory scheme, and finally contemplates the overarching system of legal authority. *Brown & Williamson Tobacco*, 529 U.S. at 123–33. Statutes passed at different times may affect one another, particularly when a subsequently enacted law addresses an issue more specifically than a prior, more general Act. *id.* The Bankruptcy Code, and its more specific provisions on the administration of bankruptcy procedures, impliedly repeals the command to enforce arbitration contracts when they relate to an ongoing bankruptcy case.

In *McMahon*, the Court laid out the standard for determining when Congress intended to preclude a waiver of judicial remedies for particular statutory rights, and then *Epic Systems* underscored the "stout, uphill climb" required to find this preclusion. *McMahon*, 482 U.S. at 226-27; *Epic Systems*, 138 S. Ct. at 1624, 1627. If a party opposes mandatory arbitration on the grounds of congressional preclusion, it has the burden to show evidence of an intent to preclude

arbitration in 1) the statutory text, 2) the legislative history, or 3) an inherent conflict between the underlying purposes of the statute and arbitration. *McMahon*, 482 U.S. at 226-27. When possible, the Court must harmonize congressional enactments, and give effect to all pieces of the regulatory scheme. *Epic Systems*, 138 S. Ct. at 1624. A party needs to show "clear and manifest" intent to displace an earlier statute, or else "irreconcilable conflicts" between the laws at issue. *Id.* Ordinarily, such a finding will not rest on "vague terms or ancillary provisions," but rather, fundamental aspects of the statutes or scheme. *Id.* at 1627 (quoting *Whitman v. American Trucking Assns., Inc.*, 531 U. S. 457, 468 (2001)).

Both the majority and dissenting opinions below wrongfully assert that nothing in the text or legislative history of the Bankruptcy Code reflect congressional intent to preclude mandatory arbitration in bankruptcy. [R. at 10, 23.] Instead, each opinion jumps to analysis of the third, policy-driven prong under *McMahon*, 482 U.S. at 226-27. Importantly, the opinions below rest on other circuit courts' findings, but those courts reached the same conclusion with virtually no discussion of statutory text or legislative history, and some rely on previous opinions with similarly absent analysis. *E.g., Ins. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 671 F.3d 1011 (9th Cir. 2012) (citing other court findings). The Bankruptcy Code, its related judicial provisions, and the legislative history all clearly indicate that the bankruptcy court *does* have the authority to hear and decide any requests to arbitrate issues related to an ongoing bankruptcy proceeding.

The simplest means of resolving the conflict between these laws rests on the term "shall." Congress enacted the Federal Arbitration Act ("FAA") in 1925, which allows contracting parties to waive their rights to judicial remedies in favor of a more informal, speedy, and inexpensive alternative to the complications of litigation. *Wilko v. Swan*, 346 U.S. 427, 431-32 (1953)

(discussing legislative history). The FAA provides that voluntary contracts to arbitrate future disputes, "shall be valid, irrevocable, and enforceable." 9 U.S.C. § 2. The Court has construed this command quite liberally, particularly in recent years, to hold that—ordinarily—courts must enforce arbitration agreements, according to their terms, with doubts resolved in favor of arbitration. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24-25 (1983); *Epic Systems* 138 S. Ct. at 1627. Arbitration terms may include special rules for dispute resolution, such as confidential proceedings, and they fundamentally limit the parties who will arbitrate disputes that fall within the scope of the agreement. *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 344-45 (2011); *Lamps Plus, Inc. v. Varela*, 139 S. Ct. 1407, 1416 (2019).

The Court has held that judges shall enforce the terms of arbitration agreements, but judges shall not compel arbitration when the matter concerns the interests of parties beyond the scope of the agreement, who did not consent to such dispute resolution. *id.* A party to an arbitration agreement may not adjudicate the rights of absent parties as it risks serious due process violations. *id.* However, a court shall enforce arbitration notwithstanding an underlying dispute with non-parties to the agreement when it finds the issues severable. *Moses*, 460 U.S. at 20-21. A party may not rebuff mandated arbitration simply because it will result in piecemeal dispute resolution. *id.* (hospital's related disputes with contractor and architect found severable).

In *Lamps Plus*, the Court wrestled with an ambiguous arbitration agreement that may have required class-wide arbitration when a single employee unintentionally disclosed the tax information for all 1300 employees of a light fixture retailer. 139 S. Ct. at 1412. The retailer wished to compel individual arbitration against the employee, but the lower courts mandated collective arbitration because state law there held ambiguous contracts against their drafters—in that case, the retailer. *id.* at 1413. Chief Justice Roberts reversed, emphasizing how arbitration

requires parties' prior consent to the terms and how bi-lateral arbitration fundamentally differs from a collective action. *id.* at 1417-18. The Court found error below where the courts relied on state law to manufacture the consent of absent class-members, since the federal statute requires parties to voluntarily agree to alternative terms of dispute resolution. *id.* Such a fundamentally different process risked burdening the rights of absent members and eliminated the benefits of the quick, simple, and inexpensive procedure Congress intended in the FAA. *id.* at 1416.

Turning to bankruptcy laws, Congress provided powerful jurisdictional authority to bankruptcy courts, as subsidiaries of the district courts, with a different "shall" command:

> [N]otwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts **shall have *original*** but not exclusive jurisdiction of all civil proceedings arising under Title 11, or arising in ***or related to*** cases under Title 11.

28 U.S.C. § 1334(b)(emphasis added). Title 11 depends upon this original jurisdiction in order to facilitate the fundamental, orderly, and expeditious nature of bankruptcy. *New York v. Irving Tr. Co.*, 288 U.S. 329, 333 (1933). Indeed, the Bankruptcy Code relies on original jurisdiction to maintain due process, evidenced by provisions requiring notice and opportunities to object for all parties in interest. *See, e.g.,* 11 U.S.C. § 342 (creditors' notice upon filing); 11 U.S.C. § 502(a) (claim objections). Original jurisdiction also facilitates equitable distribution among creditors by centralizing the dispute and preventing preferential treatment of any one party, evidenced by provisions on priority of claims. *See, e.g.,* 11 U.S.C. § 507 (priority claims); 11 U.S.C. § 547(b) (voidable preferences). This Court previously recognized the primary goal of bankruptcy, from when the Framers drafted the bankruptcy clause: to halt competition among those who interfere with orders to discharge debt. *Allen v. Cooper*, 140 S. Ct. 994, 1002 (2020) (historical analysis).

Legislative history confirms the equitable distribution goals of bankruptcy provisions. *Union Bank v. Wolas*, 502 U.S. 151, 161 (1991) (citing H. R. Rep. No. 95-595, at 177-78.

("[T]he preference provisions facilitate the prime bankruptcy policy of equality of distribution among creditors...")). The historical record also emphasizes the fundamental shift to a centralized process, reasoned to be the only adequate means of maintaining a consistent, fair process toward fiscal relief. H. R. Rep. No. 95-595, at 542 ("I support the increase and centralization of jurisdiction provided by H.R. 8200 with the modification that detriment to the estate be shown prior to removal..."). Congress understood that creditors may take advantage of any opportunity to tap into a debtor's resources ahead of others, and it purposely created a new, exceptional forum of a "singular nature" to prevent that. *Allen*, 140 S. Ct. at 1002; *see also, Pacor, Inc. v. Higgins*, 743 F.2d 984, 994 (3d Cir. 1984)(" Congress intended to grant comprehensive jurisdiction to the bankruptcy courts so that they might deal efficiently and expeditiously with all matters connected with the bankruptcy estate.").

When taken together, the conflicting "shall" commands must resolve in favor of the bankruptcy court. In an initial assessment of the text, the provision of original jurisdiction appears conclusive in that it explicitly overrides previous legislation: "...notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts..." 28 U.S.C. § 1334(b). The FAA provides exclusive jurisdiction in the parties' agreed-upon forum that would seem to fall well within the boundaries of this text, though one could argue that such a forum does not constitute "a court or courts." 9 U.S.C. §§ 1 *et. seq.* To understand congressional intent, ordinary interpretation looks to words' contemporary meaning at the time of enactment. *Wisconsin Central* 138 S. Ct. at 2074. The Court has noted that Congress knows how to expressly preclude arbitration, but only statutes from "recent vintage" have used such literal terms to eliminate doubts about the preclusive intent. *Epic Systems*, 138 S. Ct. at 1646 (Ginsburg, J., dissenting). When enacted in 1978, Congress must have reasonably

intended to include arbitral forums as "courts" in this context, otherwise large creditors could simply contract other parties in interest out of their rights to monitor estate administration or receive equitable shares of the estate prior to the debtor's discharge, as bankruptcy laws sought to prevent. *Cent. Va. Cmty. Coll. v. Katz*, 546 U.S. 356, 372 (2006) ("[T]hose who crafted the Bankruptcy Clause would have understood it to give Congress the power to authorize courts to avoid preferential transfers...").

As the earlier statute, the FAA would need to specifically contemplate the role of one arbitration agreement among many in a bankruptcy proceeding in order for its mandate to overcome the many specific provisions ensuring due process and equitable distribution in the Bankruptcy Code. *id.* As the Court emphasized in *Lamps Plus*, a bi-lateral procedure greatly differs from a collective proceeding, and eliminating the right to hear claims and objections together would allow the first creditor to arbitrate an unfair advantage over its competing creditors in the bankruptcy proceeding, exceeding the scope of agreed-upon arbitration terms. 139 S. Ct. at 1416. Arbitration requires the consent of all parties to the dispute. *id.* A bankruptcy proceeding with several creditors will almost inevitably include parties beyond those bound in a single, pre-petition agreement to arbitrate. Furthermore, if a court must enforce agreements to arbitrate matters that affect a bankruptcy proceeding, any absent parties in interest will have their rights adjudicated without due process. *id.* This contradicts the precedent from the overruled class-action mandate in *Lamps Plus*. *id.* Finally, unlike the contractor and architect disputes with a hospital in *Moses*, bankruptcy procedures are not inherently severable due to the limited kettle of resources desired by all parties in interest. 460 U.S. at 20-21. Once a debtor files for relief, it's last call for debt claims before the discharge eliminates all rights to repayment under section 524.

The bankruptcy court must have the discretion to hear and decide any request to compel arbitration so that parties can maintain their rights under bankruptcy law.

The case at hand contemplates the right to an automatic stay under section 362, and demonstrates a clear statutory conflict, irreconcilable with an arbitration command. The automatic stay ordinarily enjoins any procedures or actions to collect debts until the end of a bankruptcy proceeding. 11 U.S.C. §§ 362 *et. seq.* Under section 362(k), a creditor faces sanctions for willful violations of the automatic stay. Any damages awarded may become part of the debtor's reorganization plan or bankruptcy estate, and ultimately enrich the thirsty creditors. *Mintze v. Am. Fin. Servs., Inc. (In re Mintze)*, 434 F.3d 222, 227 (3d Cir. 2006). Importantly, a debtor can only pursue this right under the authority that issues the injunction. *Green Point Credit, LLC v. McLean (In re McLean)*, 794 F.3d 1313, 1318-19 (11th Cir. 2015). The Constitution granted Congress the authority to enact uniform laws on bankruptcy, and it did so by providing debtors with a powerful means of deterring creditor harassment under section 362(k). Art. I, Sec. 8, Cl. 4; *America's Servicing Co. v. Schwartz-Tallard (In re Schwartz-Tallard)*, 803 F.3d 1095, 1100 (9th Cir. 2015).

Here, Wildflowers hoped to arbitrate the dispute on whether it violated the automatic stay against Debtor, but this Court should affirm the decision rendered below. Without seeking any permission from the Bankruptcy Court, Wildflowers opted to act on its own determination that the automatic stay had terminated, and it repossessed the equipment. [R at 6-7.] Debtor had been using the equipment to rebuild his business; it represented a critical component to his reorganization plan. [R at 6, 19.] When Debtor sought to resolve the issue in the Bankruptcy Court, Wildflowers attempted to avoid notice to other creditors and evade judicial sanctions by requesting compelled arbitration on the disputed violation. [R at 7.] The Bankruptcy Court

denied arbitration and awarded damages to Debtor upon finding a willful stay violation. *id.* Without deciding the merits of the violation, the Court should now find that the Bankruptcy Court had the authority to make this determination. Congress sought to prevent preferential transfers with a singular authority to oversee the case. *Allen*, 140 S. Ct. at 1002; *Katz*, 546 U.S. at 372. Here, the Bankruptcy Court effectively managed Debtor's case due to that authority. *id.* Through textual and historical analysis, the Court should affirm the discretionary denial below.

B. The Purposes of Bankruptcy Law Require Judicial Discretion on Whether to Arbitrate Issues Related to an Ongoing Bankruptcy Case.

Mandatory arbitration conflicts, irreconcilably, with the purposes of bankruptcy law. Congress enacted the Bankruptcy code to ensure a centralized resolution of issues, protect creditors and debtors against piecemeal litigation, and afford bankruptcy courts the power to enforce their own orders. *National Gypsum*, 118 F.3d at 1069. If a bankruptcy court must compel arbitration at every creditor's request, then the centralized forum loses all meaning and authority to carry out these goals. The Court should affirm the opinions below on the third, policy prong of the *McMahon* test. 482 U.S. at 226-27.

Unlike the parties involved in recent FAA precedent, a party in interest to a bankruptcy case may not effectively vindicate its statutory rights in the face of an arbitration command. *E.g., Am. Express Co. v. Italian Colors Rest.*, 570 U.S. 228, 236 (2013). If the arbitral forum allows for effective vindication of statutory rights, then mandating arbitration will not eliminate a statute's remedial or deterrent functions. *Mitsubishi Motors*, 473 U.S. at 637. In *Italian Colors*, the Court declined to find arbitral forums inadequate. 570 U.S. at 231, 236. In that case, merchants attempted to pursue class-action litigation against a credit card company, despite prior agreements to individually arbitrate disputes. *id.* The merchants argued that antitrust laws precluded a class-action waiver there because their cost of individual arbitration would far

exceed any potential recovery. *id.* at 231. Justice Scalia explained that prohibitively high costs do not eliminate the right to *pursue* a statutory remedy. *id.* at 236. As such, the Court found the merchants' arbitration agreements remained effective and enforceable. *id.*

The parties in the case at hand would not have the ability to pursue their statutory rights like the merchants in *Italian Colors*, if bankruptcy courts must mandate arbitration. *id.* The dissenting opinion below wrongfully found arbitration appropriate in this case, stating that arbitration generally outpaces litigation in expediency and cost-efficiency. [R. at 24.] While the dissent may have a factual basis for this conclusory argument, it fails to recognize the implications of always mandating arbitration in bankruptcy procedure. For example, arbitration becomes less efficient when multiple creditors line up to arbitrate matters individually with one debtor. If Debtor must arbitrate the continued validity of the automatic stay with several creditors independently, this will naturally create a longer, more costly process. This directly conflicts with the goals of the Bankruptcy Code. *National Gypsum*, 118 F.3d at 1069.

Furthermore, the dissent did not consider the effects upon the estate or upon the authority Congress granted bankruptcy courts to enforce the automatic stay. 11 U.S.C. § 362(k). Excessive, piecemeal litigation will unnecessarily deplete the essential resources of the bankruptcy estate, reducing payments on creditor claims and jeopardizing equitable distribution of the estate. *id.* The dissent also fails to imagine a bitter debtor with one or more arbitration agreements. If a debtor would rather pour resources from the estate into attorneys' pockets, he could purposely arbitrate with abandon on any small dispute and prevent creditors from obtaining their equitable shares of the original estate. Finally, arbitral forums lack the authority to provide damages for willful stay violations, stripping bankruptcy courts of their enforcement powers. *id.*; *Green Point Credit*, 794 F.3d at 1318-19. There will be instances where arbitration

creates a more efficient and inexpensive process, but the bankruptcy court requires discretion to deny improper requests as it did in this case. For these reasons, the Court should now affirm.

II. A Balancing Test Should Resolve Whether to Arbitrate Any Issues Related to a Bankruptcy Procedure.

The fact that the bankruptcy court *may* displace a party's previously agreed-upon means of dispute resolution does not mean that it *must*. 28 U.S.C. §1334. Parties in interest to bankruptcy should have reasonable opportunity to exercise all their rights afforded by bankruptcy laws, but parties should also have reasonable protection for their contractual reliance interests. The bankruptcy court should employ its singular, centralized, and neutral position to determine whether to compel arbitration in a balancing test. *id.* Currently, our judicial ranks have come to inconsistent standards, and this argument proposes a fair, unified test. *Thorpe*, 671 F.3d at 1019-21(comparing standards). With a new, clear standard for arbitrating bankruptcy matters, the Court should affirm the decision below.

The circuit courts have formulated varying standards on when a bankruptcy court has the discretion to enforce or deny requests to arbitrate issues related to a current proceeding. *id.* The standards chiefly distinguish between "core" and "non-core" bankruptcy matters. *id.* Non-core matters do not implicate rights, provisions, or purposes of bankruptcy law. *id.* Ordinarily, our courts find that non-core matters lie beyond the bankruptcy court's discretion to deny arbitration. *id.*; *but see, Crysen/Montenay Energy Co. v. Shell Oil Co. (In re Crysen/Montenay Energy Co.)*, 226 F.3d 160, 166 (2d Cir. 2000) ("[W]e now state explicitly, that bankruptcy courts *have* authority to stay *non-core* proceedings in favor of arbitration."). Core matters, on the other hand, have created inconsistent standards in our circuit courts today. *Thorpe*, 671 F.3d at 1019-21.

The circuit courts generally agree that core matters arise under a statutory right established by the Bankruptcy Code, and especially include those listed as "core" under 28 U.S.C. § 157(b)(2)

(*e.g.,* orders to return property of the estate; motions to terminate the automatic stay). *Whiting-Turner Contracting Co. v. Elec. Mach. Enters. (In re Elec. Mach. Enters.)*, 479 F.3d 791, 797 (11th Cir. 2007). Core matters typically remain in the bankruptcy court, pursuant to the discretion of the judge. *Thorpe*, 671 F.3d at 1021; *but see, Sisters of Providence Health Sys. v. Summerfield Elm Manor (In re Summerfield Pine Manor)*, 219 B.R. 637, 638 (B.A.P. 1st Cir. 1998) (finding congressional intent precludes arbitration on all core matters). Depending on the circuit, the core definition may go further to include more rights. *E.g., Whiting-Turner*, 479 F.3d at 796.

In the context of requests to arbitrate, some circuits define core bankruptcy matters to encompass anything related to the general purpose of bankruptcy laws. *id.* These circuits include the centralization of disputes, efficient debtor-reorganization efforts, and other policy-driven goals in their core definitions. *id.* ; *United States Lines, Inc. v. Am. S.S. Owners Mut. Prot. & Indem. Ass'n (In re United States Lines, Inc.)*, 197 F.3d 631, 637 (2d Cir. 1999). Even after finding a dispute "core", however, courts with this perspective then determine whether the arbitration will "necessarily jeopardize" the core purpose or right. *MBNA Am. Bank, N.A. v. Hill*, 436 F.3d 104, 109-10 (2d Cir. 2006). If arbitrating the issue will not substantially frustrate the implicated core matter, then those courts will typically compel arbitration under a valid pre-petition agreement. *Id.*

In *MBNA*, the Second Circuit allowed arbitration to proceed when a debtor filed a class-action suit against a bank that allegedly violated the automatic stay in multiple, independent bankruptcy cases. *id.* at 106. In that case, the debtor had already fully administered her bankruptcy estate and received her discharge of debt. *id.* at 110. Since the debtor no longer had the need to prevent creditor harassment or efficiently administer her estate under the automatic stay, the appellate court there found no discretion for the bankruptcy court to deny arbitration. *id.* The completion of her bankruptcy case and the class-action nature of the new lawsuit also meant that

any potential award of damages would belong to multiple, unrelated persons, as opposed to her (already administered) bankruptcy estate. *id.* These facts rendered that case distinguishable from other "core" disputes, and that afforded the bank a right to compel arbitration since it would not compromise the fundamental purposes of bankruptcy law. *id.*

Other circuits define core matters more narrowly. The Eighth, Fifth, and Third Circuit Courts of Appeal, for example, believe core matters arise *exclusively* from the express provisions of the Bankruptcy Code. *Specialty Mills v. Citizens State Bank*, 51 F.3d 770, 773 (8th Cir. 1995); *National Gypsum*, 118 F.3d at 1067-69; *Mintze*, 434 F.3d at 229. The Fifth and Third Circuits have narrowed this even further to find arbitration ordinarily appropriate outside of debtor-derived bankruptcy rights. *Mintze*, 434 F.3d at 230-31; *National Gypsum*, 118 F.3d at 1069. According to this perspective, individuals retain their bankruptcy rights regardless of whether they ever file for bankruptcy. *id.* Creditors and other non-debtor parties in interest, however, only receive their bankruptcy rights once a debtor files relief—triggering those rights. *id.* Since those rights may or may not conflict with the overall purposes of the Bankruptcy Code, the judge has far more latitude to compel arbitration when it finds no true conflict exists. *id.*

The Ninth Circuit has found that core and non-core determinations may inform decisions, but that the classification will not compel a bankruptcy judge to automatically enforce or deny arbitration requests. *Thorpe*, 671 F.3d at 1021 ("[T]he core/non-core distinction, though relevant, is not alone dispositive."). In an earlier decision, the Ninth Circuit spelled out ten factors that a bankruptcy judge should consider when deciding whether to deny or compel arbitration. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166-67 (9th Cir. 1990) (quoting *In re Republic Reader's Serv., Inc.*, 81 Bankr. 422, 429 (Bankr. S.D. Tex. 1987)). Some of the factors include: the relatedness or remoteness to the case at hand, the presence of non-debtor parties to the proceeding,

and any jurisdictional basis other than the original jurisdiction under 28 U.S.C. §1334. *id.* The Seventh Circuit has also favored the *Tuscon Estate* factors. *In re Chi., M. & St. P. & Pac. R.R.*, 6 F.3d 1184, 1189 (7th Cir. 1993) (quoting *Tucson Estates* factors, 912 F.2d at 1166-67). That circuit recognized the value of a flexible set of factors that bankruptcy courts can readily apply in diverse situations. *id.* It did not find any one factor dispositive and it asserted that each factor will vary in relative importance depending on the particular circumstances of each case. *id.*

The current use of core and non-core definitions provides an unclear, inconsistent approach that superficially determines the effect of a particular dispute on fundamentally unique bankruptcy cases. What's more, focusing only on whether a matter exists within the text or purpose of bankruptcy laws fails to account for the impact on a party who fairly relied on a valid arbitration agreement. The Ninth and Seventh Circuits have taken the totality of the circumstances into account with their factors, and the Court should follow that approach today. *Tucson Estates*, 912 F.2d at 1166-67; *In re Chi., M. & St. P. & Pac. R.R.*, 6 F.3d at 1189.

The Court should set out a uniform standard for assessing requests to arbitrate matters in an ongoing bankruptcy case. First, the Court should create a clear framework on who bears the burden to overcome the presumption for or against compelled arbitration. Then, the Court should instruct bankruptcy courts to apply the *Tuscon Estates* Factors to make its ultimate decision. The Court can create a burden of proof framework by distilling the circuit courts' discordant definitions of core and non-core matters, within the context of arbitration, into clear categories. *E.g., Thorpe*, 671 F.3d at 1020–21 (listing split standards).

The Court should establish three grades of cause: 1) Indispensable, 2) Pertinent, and 3) Ancillary ("**IPA**"). Grade (1) "Indispensable" matters include all "core" items listed under 28 U.S.C. § 157(b)(2), as well as debtor-derived rights under the Bankruptcy Code, as narrowly

defined by the Fifth and Third Circuits. *Mintze*, 434 F.3d at 230-31; *National Gypsum*, 118 F.3d at 1069. These matters cannot divest their interests from the procedure, therefore, the party wishing to compel arbitration must show how the benefits of arbitrating the issue outweigh the burdens, if any, on the current case. *id.* Grade (2) "Pertinent" matters align with the broad "core" definition found in the Second and Eleventh Circuits, and include all rights expressly stated in the Bankruptcy Code as well as any matters related to its purpose. *Whiting-Turner*, 479 F.3d at 796; *MBNA*, 436 F.3d at 109-10. Since Grade (2) issues may or may not jeopardize the purposes of bankruptcy, the party opposing arbitration must first show that arbitration would burden some bankruptcy right or purpose, and then the party wishing to compel arbitration must show how the scope of arbitration is narrowly tailored and will not substantially prejudice bankruptcy goals. *id.* Grade (3) "Ancillary" matters include the general non-core definition of rights with no inherent ties to bankruptcy law. *id.* This category will require the party opposing arbitration to show how the burdens on bankruptcy rights outweigh the strong presumption in favor of arbitration.

A party triggers the test by requesting to arbitrate an issue related to a bankruptcy case. The bankruptcy court will then classify the issue within the IPA grading scale. Third, parties have the opportunity to present their arguments, as framed by the IPA determination. Finally, the judge will determine whether to arbitrate by applying the *Tuscon Estate* factors. 912 F.2d at 1166–67. Applying this test will create a more equitable and predictable outcome than our current approach, thereby serving the interests of judicial economy. If courts and parties have a better idea of when matters will go to arbitration, then they may reduce the waste of valuable court time and debtor resources. This test also allows for notice to all parties in interest to the proceeding and may grant those not bound by the pre-petition agreement the opportunity to either object or support the

proposed resolution. This conflict of rights has gone on for too long; today, the Court should settle the matter with this clear and manageable means of assessment.

In the area of electoral law, Justice White demonstrated how the Court may approach conflicting constitutional rights. *Burdick v. Takushi*, 504 U.S. 428, 433-34 (1992). In elections, voters will always bear some burdens in exercising their right to participate in the electoral process, but the states must also have the ability to administer secure, free, and fair elections under the elections clause *id.*; Art. I, Sec. 2, Cl. 4. When these interests come into conflict due to a state's regulation, each side has the opportunity to show 1) the burden, or lack thereof, on exercising the right to vote, and then 2) the compelling nature of the state's interest in enacting the regulation and whether it is narrowly-tailored to advance that interest. *id.* Just like electoral rights, the conflicting rights at stake here emanate from the Constitution, and it is likewise appropriate for courts to weigh the associated benefits and burdens against one other. Art. I, Sec. 8, Cl. 4; Art. I, Sec. 10, Cl. 1. The IPA burden of proof framework and *Tuscon Estate* factors will provide a uniform means of assessing when we should arbitrate a dispute related to bankruptcy, and thereby secure our constitutional rights to bankruptcy and contractual reliance, together.

In the case at hand, the lower courts did not apply the newly proposed balancing test *supra*, but the Court should affirm the finding or, if not, remand for assessment under this test. The Thirteenth Circuit first weighed the critically fundamental, debtor-derived right in the automatic stay under section 362—and the related damages only available in bankruptcy court—along with the interests of all the non-debtor parties to the proceeding. [R at 11-13.] It then considered Wildflowers' reliance on bi-lateral arbitration terms in its pre-petition agreement with Debtor. *id.* The lower court essentially found a Grade (1), Indispensable matter, and that Wildflowers' bi-lateral arbitration terms could not justify a reliance interest that would overcome the bankruptcy

rights at issue here. *id.* The matter in dispute related very closely to the bankruptcy proceeding, it directly implicated the rights of other non-debtor parties in interest, and the jurisdictional basis for arbitration would undermine the authority granted to the bankruptcy court. *id.* The decision below, therefore, made its final determination with *Tuscon Estate* factors, even though it did not analyze the case under that precedent. 912 F.2d at 1166–67.

The appellate court found that the stay applied to items in the bankruptcy estate, and therefore, Wildflowers cannot effectively bind the other non-debtor parties in interest, or the Bankruptcy Court, with mandatory arbitration. [R at 11-13, 16.] To do so would adjudicate those absent, non-debtor parties' rights by denying them any opportunity to monitor or object to the administration of the estate, bringing to life Chief Justice Roberts' concerns in *Lamps Plus*, 139 S. Ct. at 1416. Compelling mandatory arbitration here would also disrupt the reorganization plan—which in this case critically depended upon items in the estate. [R at 13, 19.]

The case here also concerns the issue of sanctions under section 362(k). [R at 13.] While the scope of the pre-petition agreement may have generally contemplated, and sought to avoid, the risk of judicial punitive damages, it did not waive the debtor's right to enforce the automatic stay under section 362(k). Any damages awarded from those sanctions once again implicate the non-debtor parties here, but also the Bankruptcy Court's power to enforce its own authority. *National Gypsum*, 118 F.3d at 1069. Arbitrating the dispute would eliminate the right to damages, since they are only available under the laws in the bankruptcy court. *id.* This would ultimately harm the reorganization efforts because Debtor intended to invest any damages awarded into his reorganization plan. [R at 13.] Furthermore, arbitrating here would eliminate the Bankruptcy Court's congressionally granted authority to deter willful violations of the stay. *National Gypsum*,

118 F.3d at 1069. If the bankruptcy court cannot sanction a willful violation, then creditors will have much less reason to respect the authority of the stay, and virtually eliminate that right. *id.*

The Thirteenth Circuit ruled appropriately, and the Court should affirm that today.

III. When Presented with an Unambiguous Statute, the Court's Responsibility Is To Interpret the Statute Based on the Plain Meaning.

This court should affirm the lower court, as the lower court was correct in determining the termination of the stay to apply only to Debtor, not the bankruptcy estate. While the Circuits remain divided as to whether the termination of the automatic stay applies to actions against property of the bankruptcy estate, this court should affirm the lower court since the plain meaning of the statute does not include the property of the bankruptcy estate. When a statute is unambiguous, the court's role is simple, but to analyze the plain meaning of the statute. *See United States v. Ron Pair Enters, Inc.*, 489 U.S. 235 (1989). This is further supported by examining the broader context of section 362(c)(3)(A) with its surrounding sections. Ultimately, section 362(c)(3)(A) reads as terminating the stay only in part, allowing actions against the debtor and their property to move forward, however, preserving a stay as to the actions against the property of the bankruptcy estate.

A. The Plain Meaning of Section 362(c)(3)(A) Clearly Distinguishes the Debtor from the Property of the Bankruptcy Estate, Therefore, No Further Analysis is Needed Since the Language is Not Ambiguous.

While there is some contention on the proper interpretation of section 362(c)(3)(A) and the import of the phrase "with respect to the debtor," the court must begin with an examination of the plain language of the statute. *Rose v. Select Portfolio Servicing, Inc.*, 945 F.3d 226 (2019); *see also Lamie v. United States*, 540 U.S. 526 (2004). Barring exceptional circumstances, the court must focus on the language of the statute, the specific context that the language is used, and the broader context of the statute as a whole. *In re Coleman*, 426 F.3d 719, 725 (4th Cir. 2005) (*quoting Robinson v. Shell Oil Co*., 519 U.S. 337, 341 (1997)). When a statutory scheme is clear and

consistent, generally, courts have not inquired beyond the plain language of the statue. *United States v. Ron Pair Enter. Inc*., 489 U.S. 235, 241. When the statutory language is plain, "the sole function of the courts is to enforce it according to its terms." *Caminetti v. United States*, 242 U.S. 470, 485 (1917).

In interpreting the language of section 362(c)(3)(A), the Circuits are divided on the issue, however, it is clear that the court should begin with interpreting the plain meaning of the statute. The 5th Circuit holds the majority view, contending that the statutory language is plain, and therefore unambiguous. *Rose*, 945 F.3d at 230. As the Fifth Circuit aptly articulated, "when that language is clear, that is where our inquiry ends. Such is the case here." *id.* at 231.

section 362(c)(3)(A) is an unambiguous statute; therefore, it can be interpreted based on the plain meaning of its words. The language of section 362(c)(3)(A) states:

> (3) If a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 111, 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 7070(b)-
>
> (A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate ***with respect to the debtor*** on the 30th day after the filing of the later case …

11 U.S.C. § 362(c)(3)(A) (emphasis added). Reading section 362(c)(3)(A) with this canon of statutory interpretation invokes the notion that the provision to terminate the stay pertains to the actions against the debtor, and perhaps even the property of the debtor, but not the bankruptcy estate. Section 362(c)(3)(A) refers to the stay terminating "with respect to the debtor." This section makes no mention of the property of the bankruptcy estate.

Debtor, Thomas Petty's Royal Rapids Taproom, experienced a premature termination of a stay by Creditor, Wildflowers Community Bank. [R. at 6.] Thirty-two days following the initial Bankruptcy Case, on February 12, 2019, Petitioner repossessed the equipment of Respondent's

Taproom. [R. at 6.] Debtor's Taproom was falsely repossessed by Wildflowers, as Royal Rapids Taproom was in fact property of the bankruptcy estate, and therefore, not property of Debtor. [R. at 5-7.] Despite Wildflowers' failure to file for an extension of the automatic stay in a timely manner, this point is moot regarding the Taproom equipment, since the Taproom equipment are property of the bankruptcy estate, and not Debtor.

1. The Use of the Qualifier "With Respect to the Debtor" is a Limiting Term and Excludes the Property of the Bankruptcy Estate from the Debtor.

When endeavoring statutory interpretation, the court is to interpret the terms plainly. *Lamie.*, 540 U.S. at 534. Deviating from the plain meaning of statutory language has consistently been limited by the Supreme Court. *id.* In fact, deviations are to occur in "rare cases [in which] the literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters." *Ron Pair Enter. Inc*., 489 U.S. at 242 (quoting *Griffin v. Oceanic Contractors, Inc*., 458 U.S. 564, 571 (1982) ("In such cases, the intention of the drafters, rather than the strict language, controls.")). Even in cases where drafting errors resulted in omitted, but necessary, conjunctions, the Supreme Court has continued to find statutes unambiguous, and continued to use the plain language of statutes. *See e.g. Lamie.,* 540 U.S. at 526 (declining to deviate from the plain language canon of interpretation even where the statute at issue was missing a crucial conjunction, creating an awkward sentence).

Congress intended the automatic stay to remain in effect when they drafted the phrase, "with respect to the debtor," in section 362(c)(3)(A). The statute read without this phrase would, in fact, terminate the stay, irrespective of the category of stay. However, Congress made the decision to intentionally include the phrase, "with respect to debtor," to qualify the statute. 11 U.S.C. § 362(c)(3)(A). By including the phrase, "with respect to debtor," the statute can essentially be read as "the automatic stay shall continue for the property of the bankruptcy estate." *id.* Had

Congress wished to terminate the stay in its entirety, it would have done so, as it had in preceding sections, including section 362(c)(4)(A)(i). Accordingly, for debtors falling under section 362(c)(4)(A)(i), the automatic stay is terminated in its entirety. In contrast, Congress chose to use a qualifier in section 362(c)(3)(A). This can only be interpreted as "impl[ying] a limitation upon the scope of the termination of the automatic stay." *Rose v. Select Portfolio Servicing, Inc.*, 945 F.3d 226 (2019).

2. The Qualifier, "with respect to debtor," Is Not Referring to a Refiling Debtor's First-Time Filing Spouse in a Joint Case.

The language of section 362(c)(3)(A) is abundantly clear, it is unlikely that Congress was referring to anything more than the debtor when drafting the statute. Those holding the view of the minority court rely on the spousal exclusion theory to find ambiguity in the language of the statute. Michael Miller, *Untangling the Web of §362(c)(3)(A) and Its Legislative History*, 39 Am. Bankr. Inst. J, 22, 80 (Apr. 2020). The theory contends that the language of section 362(c)(3)(A) is referring to the refiling debtor's first-time filing spouse in a joint case. *See Smith v. State of Maine Bureau of Revenue Servs. (In re Smith)*, 910 F.3d 576 (1st Cir. 2018). However, the First Circuit addressed the fault within this contextual argument. *See id.* Joint bankruptcies are often administered jointly, but segregate the rights of individual debtors, regardless of their marital status. Even without the addition of the phrase, "with respect to debtor," section 362(c)(3)(A) is not applicable to the non-repeat-filing spouse. *id.* This reading of the statute renders the phrase superfluous.

Additionally, Congress abstains from including clarifying language at section 362(c)(4)(A)(i), which reads:

> if a single or joint case is filed by or against a debtor who is an individual under this title, 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)(i). If the intention of this phrase was to refer to the refiling debtor's first-time filing spouse in a joint case, the same language would be included in section 362(c)(4)(A)(i), which also refers to jointly administered bankruptcy petitions. *See In re Smith*, 910 F.3d at 576. Here, it is clear that Congress' intention when drafting section 362(c)(3)(A) was to create a statute that terminated a stay with respect to the debtor, not the property of the bankruptcy estate, or for a first-time filing spouse in a joint case. Any other reading of section 362(c)(3)(A) does not comport with the surrounding context of the Bankruptcy Code.

3. The language of Section 362(c)(3)(A) is Not Superfluous, It is Meant to Distinguish The Property of the Bankruptcy Estate from the Debtor.

Within the plain meaning canon of interpretation, it is crucial that the court gives effect to every clause, and word of the statute. *Williams v. Taylor*, 529 U.S. 362, 404 (2000); *In re Smith*, 910 F. 3d at 575. According to the Rule of Superfluities, the court must consider the phrase "with respect to the debtor," as it was intended. *id.* If Congress intended for the stay to terminate in respect to the debtor, the property of the debtor, and the property of the bankruptcy estate, utilizing the phrase "with respect to the debtor," is superfluous. *id.* Congress could have given effect to terminating the entire stay without using the phrase, "with respect to the debtor," and clearly realized this objective. *id.* However, since Congress inherently included this phrase, it is not for the courts to cast aside as superfluous.

B. Reading Section 362(c)(3)(A) in the Context of the Surrounding Sections Lends Itself to Terminating the Stay Only Applies to the Debtor, Not the Property of the Debtor or the Property of the Bankruptcy Estate.

1. Reading Section 362(c)(3)(A) Together with Section 362(a) Distinguishes the Debtor from the Property of the Bankruptcy Estate for Automatic Stays.

Some courts have not been satisfied with a mere analysis of the plain language of the statute. If the plain language of the statute is ambiguous, then the courts have traditionally looked beyond the plain meaning of the statute to the statutory context and legislative history surrounding its enactment. *King v. St. Vincent's Hosp*., 502 U.S. 215, 221 (1991). Although the Fifth Circuit held the majority view, that section 362(c)(3)(A) terminated a stay with respect to the debtor, and not the bankruptcy estate, the court still evaluated the language of the section 362(c)(3)(A) in the context of the sections that surround it. *Rose v. Select Portfolio Servicing, Inc.*, 945 F.3d 226, 230 (2019).

The text of section 362(a) defines the scope of an automatic stay and can be read in conjunction with section 362(c)(3)(A) to determine what is meant by the phrase "with respect to the debtor." *Rose*, 945 F.3d at 230. The First Circuit noted that section 362(a) specifies three separate categories: against the debtor, the debtor's property, and finally, the property of the bankruptcy estate. *See Smith v. State of Maine Bureau of Revenue Servs. (In re Smith)*, 910 F.3d 576 (1st Cir. 2018). Examining the following excerpts taken from §362, each section is designated towards staying a different type of action. *Rose*, 945 F.3d at 230. As the First Circuit noted, section 362(a)(1) stays actions against the debtor, section 362(a)(2) stays actions against the debtor or property of the estate, while section 362(a)(3) stays "any act to obtain possession of property of the estate or of property from the estate." *id.* at 226. Since the following sections clearly designate particular actions of stays, the language of section 362(c)(3)(A) is no longer nebulous; the language "with respect to the debtor" is simply that. *id.* The stay terminates with respect to the debtor. *id.* Here, there is no mention of the debtor's property, or the property of the bankruptcy estate, therefore, the court should read the statute exactly as it was written.

Additionally, it is section 362(c)(4)(A)(i), which serves as a way to terminate an entire stay. The section expressly states:

> (i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b) [11 U.S.C. § 707(b)], the stay under subsection (a) shall not go into effect upon the filing of the later case …

This section makes a distinction towards debtors who have had two or more cases pending in the prior year. Critically, it does not include the limiting language contained in section 362(c)(3)(A). The court noted in Paschal, that Congress' "use of a particular phrase in one statute but not another 'merely highlights the fact that Congress knew how to include such a limitation when it wanted to.'" *In re Paschal* 337 B.R. 274 at *4 (2006); *see also In re Williams,* 346 B.R. 361, 370 (Bankr. E.D. Pa. 2006). The Supreme Court has emphasized the deliberate nature of Congress' language when drafting statutes. *In re Jones*, 339 B.R. 360, 364 (2006). Congress acts with intention, and when certain language is included in one section, and not another, it is likely a purposeful exclusion. *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993).

2. Section 362(c)(3)(A) Read In Conjunction With 11 U.S.C. § 521 Supports the Reading That a Stay is Terminated with Respect to the Debtor, and Not the Property of the Bankruptcy Estate.

Statutes cannot be read in isolation; they must be read within a broader context than merely what is written within a single section. *King v. St. Vincent's Hosp.*, 502 U.S. 215, 221 (1991). Examining the context beyond the language of the section 362(c)(3)(A) itself purports a reading that the language "with respect to the debtor" does not include the property of the debtor or the bankruptcy estate. *See generally In re Jones*, 339 B.R. 360, 364 (Bankr. E.D.N.C. 2006). Section 521 of the Bankruptcy Code also distinguishes between the property of the estate and that of the debtor. Section 521(a)(6) of the Bankruptcy Code provides that an automatic stay is terminated

"with respect to the personal property of the estate or of the debtor." Here, the language of the Bankruptcy Code clearly stipulates the personal property of the estate as separate from the debtor. 11 U.S.C. § 521(a)(6). Therefore, if Congress had intended for a stay to terminate with respect to the property of the estate and that of the debtor, they would have clearly elucidated this concept, just as they have in other statutes.

IV. Analyzing the Legislative Intent of Section 362(c)(3)(4) is Both Unnecessary and Yields Inconclusive Support for the Minority View.

While a minority of courts contend that section 362(c)(3)(A) should be read to include the property of the debtor and bankruptcy estates, the analysis used to achieve this conclusion is unnecessary, since the statute is clear and unambiguous. *See In re Smith*, 910 F.3d at 580. When a Bankruptcy Code's provision is plain, then delving into the legislative history is unnecessary. Michael Miller, *Untangling the Web of §362(c)(3)(A) and Its Legislative History*, 39 Am. Bankr. Inst. J, 22 (Apr. 2020).

Despite finding a plain meaning for the language of the statute, the First Circuit incorrectly turned to legislative history, relying on the creation of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA") by Congress in their analysis. *In re Smith,* 919 F.3d at 581; Michael Miller, *Untangling the Web of § 362(c)(3)(A) and Its Legislative History*, 39 Am. Bankr. Inst. J, 22 (Apr. 2020). The legislative history surrounding the BAPCPA is wanting, and primarily consists of a singular House report from 2005. *id.* at 80. What remains in the legislative history of the BAPCPA is wanting in traditional reports and would therefore be insufficient to assist in statutory interpretation. *id.*

Since legislative history on the Bankruptcy Code is lacking, the minority view often relies on proposed and unenacted pieces from 1994 in order to support the reading that a stay terminates with respect to the debtor, the property of the debtor, and the property of the bankruptcy estate. *id.*

The Supreme Court has cautioned courts from isolating excerpts from legislative history in order to find a reading of section 362(c)(3)(A) that conforms to its view. *id.* Bankruptcy statutes should not be deemed to have changed pre-Code law unless there is some indication that Congress thought that it was affecting such a change, which is not the case here. *United States v. Ron Pair Enter. Inc*., 489 U.S. 235 (1989).

Most of the support towards the minority view of section 362(c)(3)(A) is derived from a 1998 House and Senate Judiciary Committee Report which included proposed legislation for sections 362(c)(3)(A), 362(c)(4)(A)(i) and 362(d)(4). Michael Miller, *Untangling the Web of §362(c)(3)(A) and Its Legislative History*, 39 Am. Bankr. Inst. J, 22, 80 (Apr. 2020). Within these committee reports of proposed legislation, included language suggesting that Congress meant to terminate the entire stay. *id.* However, the other sections referenced within the legislative history of BAPCPA suggest that Congress created multiple ways to combat repeat filings, with no indication of the extent the stay should terminate under section 362(c)(3)(A). *id.*

Although the court should find satisfaction with a reading of the plain meaning of the words in section 362(c)(3)(A), the broader statutory context surrounding the section supports the majority's reading of the statute. *Wyss v. General Dynamics Corp*. 24, F. Supp. 2d 202 (D.R.I. 1998); *Crandon v. United States*, 494 U.S. 152, 168 (1990). A statute's language need not be the perfect expression of congressional intent, it only needs to be consistent with one of the policies that motivated Congress. *id.* Here, there is little to show that the legislative intent to support the minority view of section 362(c)(3)(A). *id.*

Not only is an analysis of the legislative intent behind BAPCPA not necessary, given the unambiguous nature of section 362(c)(3)(A), but what is found is not necessarily supportive of the assertion that section 362(c)(3)(A) terminates a stay in its entirety. Therefore, the court should

avoid looking beyond the plain meaning of the statute when interpreting section 362(c)(3)(A). The text of section 362(c)(3)(A) is abundantly clear, the stay only terminates with respect to the debtor, and not the property of the bankruptcy estate. In fact, there is evidence to support the majority reading, that section 362(c)(3)(A) terminates a stay only for the debtor, nothing more. Senate Bill No. 256, which enacted BAPCPA in 2005, was published alongside the Judiciary House Report. 11 U.S.C. § 362(c)(3)(A); Michael Miller, *Untangling the Web of §362(c)(3)(A) and Its Legislative History*, 39 Am. Bankr. Inst. J, 22, 80 (Apr. 2020). These two documents went on to become the only implemented form of legislation surrounding BAPCPA and section 362(c)(3)(A). *id.* The language contained in the Judiciary House Report and Senate Bill No. 256 simply reiterated the language of sections 362 (c)(3)(A), 362 (c)(4)(A)(i) and 362 (d)(4). *id.* Therefore, the history behind section 362(c)(3)(A) illustrates a concerted effort by Congress to limit the scope of the stay such that it would continue for the property of the bankruptcy estate but terminate for the debtor.

Although a reading of the legislative history is not necessary, since section 362(c)(3)(A) is unambiguous, and therefore only requires a plain meaning interpretation of the statute; the statutory history does not fully support the minority view. Not only is the statutory history behind section 362(c)(3)(A) wanting, but it ultimately suggests that Congress truly intended for a stay to terminate with respect to only the debtor, not the property of the bankruptcy estate. Therefore, Wildflowers wrongly repossessed Debtor's equipment pursuant to section 362(c)(3)(A). [R. at 7.]

V. The Stay Terminating with Respect to the Debtor and Not the Bankruptcy Estate Allows Debtors Reprieve from Creditors and an Opportunity to Reorganize.

Finally, the policy implications behind section 362(c)(3)(A) purport the same conclusion, that section 362(c)(3)(A) distinguishes the debtor and the property of the debtor from the property of the bankruptcy estate when terminating a stay. The automatic stay is an essential protection

provided by bankruptcy laws for debtors, by offering them some "breathing room" during a period of financial reorganization. *See Midlantic Nat'l Bank v. New Jersey Dep't of Envtl. Prot.* 474 U.S. 494, 503 (1986); *see also Soares v. Brockton Credit Union (In re Soares)*, 107 F.3d 969, 975 (1st Cir. 1997).

An automatic stay is created with the intention of giving a debtor peace of mind, and a "clean slate" so they can reorganize without the pressure of appeasing creditors. *See Rose v. Select Portfolio Servicing, Inc.*, 945 F.3d 226 (2019). The stay is also intended to protect a debtor's assets from the fragmentation and dissection that can occur outside the bankruptcy proceeding. *Mann v. Chase Manhattan Mortg. Corp.*, 316 F.3d 1, 3 (1st Cir. 2003). In the context of chapter 7 and 11 cases, maintaining that a stay terminates with respect to the debtor, not the property of the debtor nor the property of the bankruptcy estate is essential. For the sake of chapter 7 cases, it is integral to protect the property of the estate. *In re Jones*, 339 B.R. 360, 365 (2006). In such cases, the chapter 7 trustee is obligated to administer the assets of the bankruptcy estate. Maintaining a stay with respect to property of the estate is also a crucial protection for creditors. *id.*

Additionally, holding that the stay is terminated with respect to the debtor, and not the property of the debtor or the bankruptcy estate does not substantially burden creditors. *Rose*, 945 F.3d at 231. Creditors have other outlets to file a motion for relief under section 362(d) if a debtor is abusing the automatic stay. *id.* Creditors are able to seek relief from stays by filing motions in court to terminate or modify stays. *Accord Ritzen Grp., Inc. V. Jackson Masonry, LLC,* 140 S. Ct. 582, 589 (2020). These motions must be heard within 30 days, and unless the debtor can provide protection for the creditor, relief will be granted. *Rose*, 945 F.3d at 231. Since creditors have other alternatives to seek relief from stays, they need not rely solely on section 362(c)(3)(A) to terminate

a stay. However, a reading of the statute that includes the property of the debtor and the bankruptcy estate would substantially harm the debtor, contrary to the purpose of an automatic stay.

It is clear, when Wildflowers repossessed respondent's Taproom equipment only a mere 32 days following the initial bankruptcy case, Wildflowers was contradicting the very intention behind section 362(c)(3)(A). [R. at 6-7.] Following liquidity problems in 2017, the excessive burden of debt, and default payments which have plagued Debtor, creating a sole proprietorship at the former Royal Rapids Taproom was an essential action meant to help Debtor hop back into the black. [R. at 5-6.] At this time, Debtor was struggling with Wildflowers' demands for arbitration, while filing for Chapter 11 and Chapter 7 Bankruptcy. [R. at 5.] In the process of crucially reorganizing his finances following the initial bankruptcy case, Wildflowers eagerly moved forward with seizing Debtor's Taproom equipment. [R. at 6.] Wildflowers waited only two days after they believed the stay terminated to seize Debtor's equipment, subsequently hemorrhaging his ability to repay creditors by hindering production and goodwill. [R. at 7.]

Wildflowers had other, more appropriate avenues for relief to pursue that did not involve repossessing the property of Debtor's bankruptcy estate. Not only did Wildflowers violate the provisions of section 362(c)(3)(A) by repossessing the property of the bankruptcy estate as opposed to the property of the debtor, but Wildflowers undermined the very intention of the Bankruptcy Code.

CONCLUSION

In conclusion, the Thirteenth Circuit correctly found that the Bankruptcy Court not only had discretion to hear the matter, but that the issue falls under a presumption of staying arbitration that Wildflowers could not overcome. The Court may wish to remand the case and allow the lower

courts to properly apply the IPA-*Tuscon Estate* test but given the sound reasoning that falls perfectly in line with this test, the Court should simply affirm.

Second, the language of section 362(c)(3)(A) is abundantly clear, and hardly unambiguous. The Thirteenth Circuit was correct in evaluating the statute based on the plain meaning of the canon of interpretation. Both the words of the statute and the broader statutory context illustrate that the stay continues for the property of the bankruptcy estate.

Finally, section 362(c)(3)(A) and the Bankruptcy Code were created with the intent to give debtors a moment of reprieve from the obligation of repaying debtors. In order to truly give debtors an opportunity to reorganize their finances, they must be granted leeway, in the form of a continuing stay in regard to the property of the bankruptcy estate. Reading section 362(c)(3)(A) to terminate the stay in its entirety does not comport with the policy reasons for the statute.

In sum, the Court should affirm on all issues here today.

APPENDIX A

9 U.S.C. §§ 2-4.

(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.

(3) Stay of Proceedings where Issue therein referable to arbitration
If any suit or proceeding be brought in any of the courts of the United States upon any issue referable to arbitration under an agreement in writing for such arbitration, the court in which such suit is pending, upon being satisfied that the issue involved in such suit or proceeding is referable to arbitration under such an agreement, shall on application of one of the parties stay the trial of the action until such arbitration has been had in accordance with the terms of the agreement, providing the applicant for the stay is not in default in proceeding with such arbitration

(4) Failure to arbitrate under agreement; petition to United States court having jurisdiction for order to compel arbitration; notice and service thereof; hearing and determination
A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28 [28 USCS §§ 1 et seq.], in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. Five days' notice in writing of such application shall be served upon the party in default. Service thereof shall be made in the manner provided by the Federal Rules of Civil Procedure [USCS Rules of Civil Procedure]. The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement. The hearing and proceedings, under such agreement, shall be within the district in which the petition for an order directing such arbitration is filed. If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court shall proceed summarily to the trial thereof. If no jury trial be demanded by the party alleged to be in default, or if the matter in dispute is within admiralty jurisdiction, the court shall hear and determine such issue. Where such an issue is raised, the party alleged to be in default may, except in cases of admiralty, on or before the return day of the notice of application, demand a jury trial of such issue, and upon such demand the court shall make an order referring the issue or issues to a jury in the manner provided by the Federal Rules of Civil Procedure [USCS Rules of Civil Procedure], or may specially call a jury for that purpose. If the jury find that no agreement in writing for arbitration was made or that there is no default in proceeding thereunder, the proceeding shall be dismissed. If the jury find that an agreement for arbitration was made in writing and that there is a default in proceeding thereunder, the court shall make an

order summarily directing the parties to proceed with the arbitration in accordance with the terms thereof.

APPENDIX B

11 U.S.C. § 362 (2012).

Automatic Stay.

(a) Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of—

(1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

(2) the enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case under this title;

(3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

(4) any act to create, perfect, or enforce any lien against property of the estate;

(5) any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under this title;

(6) any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title;

(7) the setoff of any debt owing to the debtor that arose before the commencement of the case under this title against any claim against the debtor; and

(8) the commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title.

(b) The filing of a petition under section 301, 302, or 303 of this title, or of an application under section 5(a)(3) of the Securities Investor Protection Act of 1970, does not operate as a stay—

(1) under subsection (a) of this section, of the commencement or continuation of a criminal action or proceeding against the debtor;

(2) under subsection (a)—

(A) of the commencement or continuation of a civil action or proceeding--

(i) for the establishment of paternity;

(ii) for the establishment or modification of an order for domestic support obligations;

(iii) concerning child custody or visitation;

(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

(v) regarding domestic violence;

(B) of the collection of a domestic support obligation from property that is not property of the estate;
(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;
(D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;
(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;
(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or
(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;

(3) under subsection (a) of this section, of any act to perfect, or to maintain or continue the perfection of, an interest in property to the extent that the trustee's rights and powers are subject to such perfection under section 546(b) of this title or to the extent that such act is accomplished within the period provided under section 547(e)(2)(A) of this title;
(4) under paragraph (1), (2), (3), or (6) of subsection (a) of this section, of the commencement or continuation of an action or proceeding by a governmental unit or any organization exercising authority under the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, opened for signature on January 13, 1993, to enforce such governmental unit's or organization's police and regulatory power, including the enforcement of a judgment other than a money judgment, obtained in an action or proceeding by the governmental unit to enforce such governmental unit's or organization's police or regulatory power;
[(5) Repealed. Pub.L. 105-277, Div. I, Title VI, § 603(1), Oct. 21, 1998, 112 Stat. 2681-886]
(6) under subsection (a) of this section, of the exercise by a commodity broker, forward contract merchant, stockbroker, financial institution, financial participant, or securities clearing agency of any contractual right (as defined in section 555 or 556) under any security agreement or arrangement or other credit enhancement forming a part of or related to any commodity contract, forward contract or securities contract, or of any contractual right (as defined in section 555 or 556) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such contracts, including any master agreement for such contracts;
(7) under subsection (a) of this section, of the exercise by a repo participant or financial participant of any contractual right (as defined in section 559) under any security agreement or arrangement or other credit enhancement forming a part of or related to any repurchase agreement, or of any contractual right (as defined in section 559) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(8) under subsection (a) of this section, of the commencement of any action by the Secretary of Housing and Urban Development to foreclose a mortgage or deed of trust in any case in which the mortgage or deed of trust held by the Secretary is insured or was formerly insured under the National Housing Act and covers property, or combinations of property, consisting of five or more living units;
(9) under subsection (a), of—
(A) an audit by a governmental unit to determine tax liability;
(B) the issuance to the debtor by a governmental unit of a notice of tax deficiency;
(C) a demand for tax returns; or
(D) the making of an assessment for any tax and issuance of a notice and demand for payment of such an assessment (but any tax lien that would otherwise attach to property of the estate by reason of such an assessment shall not take effect unless such tax is a debt of the debtor that will not be discharged in the case and such property or its proceeds are transferred out of the estate to, or otherwise revested in, the debtor).
(10) under subsection (a) of this section, of any act by a lessor to the debtor under a lease of nonresidential real property that has terminated by the expiration of the stated term of the lease before the commencement of or during a case under this title to obtain possession of such property;
(11) under subsection (a) of this section, of the presentment of a negotiable instrument and the giving of notice of and protesting dishonor of such an instrument;
(12) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Transportation under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage, or a security interest in or relating to a vessel or vessel under construction, held by the Secretary of Transportation under chapter 537 of title 46 or section 109(h) of title 49, or under applicable State law;
(13) under subsection (a) of this section, after the date which is 90 days after the filing of such petition, of the commencement or continuation, and conclusion to the entry of final judgment, of an action which involves a debtor subject to reorganization pursuant to chapter 11 of this title and which was brought by the Secretary of Commerce under section 31325 of title 46 (including distribution of any proceeds of sale) to foreclose a preferred ship or fleet mortgage in a vessel or a mortgage, deed of trust, or other security interest in a fishing facility held by the Secretary of Commerce under chapter 537 of title 46;
(14) under subsection (a) of this section, of any action by an accrediting agency regarding the accreditation status of the debtor as an educational institution;
(15) under subsection (a) of this section, of any action by a State licensing body regarding the licensure of the debtor as an educational institution;
(16) under subsection (a) of this section, of any action by a guaranty agency, as defined in section 435(j) of the Higher Education Act of 1965 or the Secretary of Education regarding the eligibility of the debtor to participate in programs authorized under such Act;
(17) under subsection (a) of this section, of the exercise by a swap participant or financial

participant of any contractual right (as defined in section 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any swap agreement, or of any contractual right (as defined in section 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such agreements, including any master agreement for such agreements;

(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition;

(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or

(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title; but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;

(20) under subsection (a), of any act to enforce any lien against or security interest in real property following entry of the order under subsection (d)(4) as to such real property in any prior case under this title, for a period of 2 years after the date of the entry of such an order, except that the debtor, in a subsequent case under this title, may move for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;

(21) under subsection (a), of any act to enforce any lien against or security interest in real property—

(A) if the debtor is ineligible under section 109(g) to be a debtor in a case under this title; or

(B) if the case under this title was filed in violation of a bankruptcy court order in a prior case under this title prohibiting the debtor from being a debtor in another case under this title;

(22) subject to subsection (l), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

(23) subject to subsection (m), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease

or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;

(24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;

(25) under subsection (a), of—

(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;

(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by such securities self regulatory organization to enforce such organization's regulatory power; or

(C) any act taken by such securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;

(26) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the date of the order for relief against an income tax liability for a taxable period that also ended before the date of the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of such authority in the setoff under section 506(a);

(27) under subsection (a) of this section, of the exercise by a master netting agreement participant of any contractual right (as defined in section 555, 556, 559, or 560) under any security agreement or arrangement or other credit enhancement forming a part of or related to any master netting agreement, or of any contractual right (as defined in section 555, 556, 559, or 560) to offset or net out any termination value, payment amount, or other transfer obligation arising under or in connection with 1 or more such master netting agreements to the extent that such participant is eligible to exercise such rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue; and

(28) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act pursuant to title XI or XVIII of such Act).

The provisions of paragraphs (12) and (13) of this subsection shall apply with respect to any such petition filed on or before December 31, 1989.

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

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such property is no longer property of the estate;
(2) the stay of any other act under subsection (a) of this section continues until the earliest of--

(A) the time the case is closed;
(B) the time the case is dismissed; or
(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

(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)--

(i) as to all creditors, if—

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;
(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to--

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);
(bb) provide adequate protection as ordered by the court; or
(cc) perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded--

(aa) if a case under chapter 7, with a discharge; or
(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

(4)(A)(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, 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;

(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and

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

(i) as to all creditors if—

(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay--

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if—

(A) the debtor does not have an equity in such property; and

(B) such property is not necessary to an effective reorganization;

(3) with respect to a stay of an act against single asset real estate under subsection (a), by a creditor whose claim is secured by an interest in such real estate, unless, not later than the date that is 90 days after the entry of the order for relief (or such later date as the court may determine for cause by order entered within that 90-day period) or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later--

(A) the debtor has filed a plan of reorganization that has a reasonable possibility of being confirmed within a reasonable time; or

(B) the debtor has commenced monthly payments that—

(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before, on, or after the date of the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or

(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either--

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.

(e)(1) Thirty days after a request under subsection (d) of this section for relief from the stay of any act against property of the estate under subsection (a) of this section, such stay is terminated with respect to the party in interest making such request, unless the court, after notice and a hearing, orders such stay continued in effect pending the conclusion of, or as a result of, a final

hearing and determination under subsection (d) of this section. A hearing under this subsection may be a preliminary hearing, or may be consolidated with the final hearing under subsection (d) of this section. The court shall order such stay continued in effect pending the conclusion of the final hearing under subsection (d) of this section if there is a reasonable likelihood that the party opposing relief from such stay will prevail at the conclusion of such final hearing. If the hearing under this subsection is a preliminary hearing, then such final hearing shall be concluded not later than thirty days after the conclusion of such preliminary hearing, unless the 30-day period is extended with the consent of the parties in interest or for a specific time which the court finds is required by compelling circumstances.

(2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

(B) such 60-day period is extended--

(i) by agreement of all parties in interest; or

(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.

(f) Upon request of a party in interest, the court, with or without a hearing, shall grant such relief from the stay provided under subsection (a) of this section as is necessary to prevent irreparable damage to the interest of an entity in property, if such interest will suffer such damage before there is an opportunity for notice and a hearing under subsection (d) or (e) of this section.

(g) In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section--

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.

(h)(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)--

(A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such

personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the

debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.

(i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.

(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.

(k)(1) Except as provided in paragraph (2), an individual injured by any willful violation of a stay provided by this section shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages.
(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.
(l)(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that--

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and
(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankruptcy law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).
(3)(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.
(B) If the court upholds the objection of the lessor filed under subparagraph (A)—

(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and
(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

(4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)—

(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

(5)(A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.

(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify--

(i) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition; and

(ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.

(C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.

(D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.

(m)(1) Except as otherwise provided in this subsection, subsection (b)(23) shall apply on the date that is 15 days after the date on which the lessor files and serves a certification described in subsection (b)(23).

(2)(A) If the debtor files with the court an objection to the truth or legal sufficiency of the certification described in subsection (b)(23) and serves such objection upon the lessor, subsection (b)(23) shall not apply, unless ordered to apply by the court under this subsection.

(B) If the debtor files and serves the objection under subparagraph (A), the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the situation giving rise to the lessor's certification under paragraph (1) existed or has been remedied.

(C) If the debtor can demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied, the stay provided under subsection (a)(3) shall remain in effect until the termination of the stay under this section.

(D) If the debtor cannot demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied--

(i) relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to proceed with the eviction; and
(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's certification.

(3) If the debtor fails to file, within 15 days, an objection under paragraph (2)(A)--
(A) subsection (b)(23) shall apply immediately upon such failure and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and
(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure.

(n)(1) Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor—
(A) is a debtor in a small business case pending at the time the petition is filed;
(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;
(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or (D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.

(2) Paragraph (1) does not apply—

(A) to an involuntary case involving no collusion by the debtor with creditors; or (B) to the filing of a petition if--
(i) the debtor proves by a preponderance of the evidence that the filing of the petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and
(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.

(o) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.

APPENDIX C

11 U.S.C. § 507

Priority Claims

(a) The following expenses and claims have priority in the following order:

(1) First:

(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.

(C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302 [*11 USCS § 701*, *702*, *703*, *1104*, *1202*, or *1302*], the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) [*11 USCS § 503(b)*] shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment of such claims.

(2) Second, administrative expenses allowed under section 503(b) of this title [*11 USCS § 503(b)*], unsecured claims of any Federal reserve bank related to loans made through programs or facilities authorized under section 13(3) of the Federal Reserve Act (*12 U.S.C. 343*), and any fees and charges assessed against the estate under chapter 123 of title 28 [*28 USCS §§ 1911* et seq.].

(3) Third, unsecured claims allowed under section 502(f) of this title [*11 USCS § 502(f)*].

(4) Fourth, allowed unsecured claims, but only to the extent of $13,650 for each individual or corporation, as the case may be, earned within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first, for—

(A)wages, salaries, or commissions, including vacation, severance, and sick leave pay earned by an individual; or

(B) sales commissions earned by an individual or by a corporation with only 1 employee, acting as an independent contractor in the sale of goods or services for the debtor in the

ordinary course of the debtor's business if, and only if, during the 12 months preceding that date, at least 75 percent of the amount that the individual or corporation earned by acting as an independent contractor in the sale of goods or services was earned from the debtor.

(5) Fifth, allowed unsecured claims for contributions to an employee benefit plan—

(A)arising from services rendered within 180 days before the date of the filing of the petition or the date of the cessation of the debtor's business, whichever occurs first; but only

(B)for each such plan, to the extent of—

(i)the number of employees covered by each such plan multiplied by $13,650; less

(ii)the aggregate amount paid to such employees under paragraph (4) of this subsection, plus the aggregate amount paid by the estate on behalf of such employees to any other employee benefit plan.

(6) Sixth, allowed unsecured claims of persons—

(A)engaged in the production or raising of grain, as defined in section 557(b) of this title [*11 USCS § 557(b)*], against a debtor who owns or operates a grain storage facility, as defined in section 557(b) of this title [*11 USCS § 557(b)*], for grain or the proceeds of grain, or

(B)engaged as a United States fisherman against a debtor who has acquired fish or fish produce from a fisherman through a sale or conversion, and who is engaged in operating a fish produce storage or processing facility— but only to the extent of $6,725 for each such individual.

(7) Seventh, allowed unsecured claims of individuals, to the extent of $3,025 for each such individual, arising from the deposit, before the commencement of the case, of money in connection with the purchase, lease, or rental of property, or the purchase of services, for the personal, family, or household use of such individuals, that were not delivered or provided.

(8) Eighth, allowed unsecured claims of governmental units, only to the extent that such claims are for—

(A)a tax on or measured by income or gross receipts for a taxable year ending on or before the date of the filing of the petition—

(i)for which a return, if required, is last due, including extensions, after three years before the date of the filing of the petition;

(ii)assessed within 240 days before the date of the filing of the petition, exclusive of—

(I)any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and

(II)any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period, plus 90 days; or

(iii)other than a tax of a kind specified in section 523(a)(1)(B) or 523(a)(1)(C) of this title [*11 USCS § 523(a)(1)(B)* or *523(a)(1)(C)*], not assessed before, but assessable, under applicable law or by agreement, after, the commencement of the case;

(B)a property tax incurred before the commencement of the case and last payable without penalty after one year before the date of the filing of the petition;
(C)a tax required to be collected or withheld and for which the debtor is liable in whatever capacity;
(D)an employment tax on a wage, salary, or commission of a kind specified in paragraph (4) of this subsection earned from the debtor before the date of the filing of the petition, whether or not actually paid before such date, for which a return is last due, under applicable law or under any extension, after three years before the date of the filing of the petition;
(E)an excise tax on—
(i) a transaction occurring before the date of the filing of the petition for which a return, if required, is last due, under applicable law or under any extension, after three years before the date of the filing of the petition; or
(ii)if a return is not required, a transaction occurring during the three years immediately preceding the date of the filing of the petition;
(F)a customs duty arising out of the importation of merchandise—
(i) entered for consumption within one year before the date of the filing of the petition;
(ii)covered by an entry liquidated or reliquidated within one year before the date of the filing of the petition; or
(iii) entered for consumption within four years before the date of the filing of the petition but unliquidated on such date, if the Secretary of the Treasury certifies that failure to liquidate such entry was due to an investigation pending on such date into assessment of antidumping or countervailing duties or fraud, or if information needed for the proper appraisement or classification of such merchandise was not available to the appropriate customs officer before such date; or
(G) a penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss. An otherwise applicable time period specified in this paragraph shall be suspended for any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days; plus any time during which the stay of proceedings was in effect in a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days.
(9) Ninth, allowed unsecured claims based upon any commitment by the debtor to a Federal depository institutions regulatory agency (or predecessor to such agency) to maintain the capital of an insured depository institution.
(10) Tenth, allowed claims for death or personal injury resulting from the operation of a motor vehicle or vessel if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance.

(b) If the trustee, under section 362, 363, or 364 of this title [*11 USCS § 362*, *363*, or *364*], provides adequate protection of the interest of a holder of a claim secured by a lien on property of the debtor and if, notwithstanding such protection, such creditor has a claim allowable under subsection (a)(2) of this section arising from the stay of action against such property under

section 362 of this title [*11 USCS § 362*], from the use, sale, or lease of such property under section 363 of this title [*11 USCS § 363*], or from the granting of a lien under section 364(d) of this title [*11 USCS § 364(d)*], then such creditor's claim under such subsection shall have priority over every other claim allowable under such subsection.

(c) For the purpose of subsection (a) of this section, a claim of a governmental unit arising from an erroneous refund or credit of a tax has the same priority as a claim for the tax to which such refund or credit relates.

(d) An entity that is subrogated to the rights of a holder of a claim of a kind specified in subsection (a)(1), (a)(4), (a)(5), (a)(6), (a)(7), (a)(8), or (a)(9) of this section is not subrogated to the right of the holder of such claim to priority under such subsection.

APPENDIX D

11 U.S.C. § 521(a)(6)

The Debtor's Duties

(a) The debtor shall—

(1) file—

(A) a list of creditors; and

(B) unless the court orders otherwise—

(i) a schedule of assets and liabilities;

(ii) a schedule of current income and current expenditures;

(iii) a statement of the debtor's financial affairs and, if section 342(b) [**11** USCS § 342(b)] applies, a certificate—

(I) of an attorney whose name is indicated on the petition as the attorney for the debtor, or a bankruptcy petition preparer signing the petition under section 110(b)(1) [**11** USCS § 110(b)(1)], indicating that such attorney or the bankruptcy petition preparer delivered to the debtor the notice required by section 342(b) [**11** USCS § 342(b)]; or

(II) if no attorney is so indicated, and no bankruptcy petition preparer signed the petition, of the debtor that such notice was received and read by the debtor;

(iv) copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor;

(v) a statement of the amount of monthly net income, itemized to show how the amount is calculated; and

(vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of the filing of the petition;

(2) if an individual debtor's schedule of assets and liabilities includes debts which are secured by property of the estate—

(A) within thirty days after the date of the filing of a petition under chapter 7 of this title [**11** USCS §§ 701 et seq.] or on or before the date of the meeting of creditors, whichever is earlier, or within such additional time as the court, for cause, within such period fixes, file with the clerk a statement of his intention with respect to the retention or surrender of such property and, if applicable, specifying that such property is claimed as exempt, that the debtor intends to redeem such property, or that the debtor intends to reaffirm debts secured by such property; and

(B) within 30 days after the first date set for the meeting of creditors under section 341(a) [**11** USCS § 341(a)], or within such additional time as the court, for cause, within such 30-day period fixes, perform his intention with respect to such property, as specified by subparagraph (A) of this paragraph; except that nothing in subparagraphs (A) and (B) of this paragraph shall alter the debtor's or the

trustee's rights with regard to such property under this title [**11** USCS §§ 101 et seq.], except as provided in section 362(h) [**11** USCS § 362(h)];

(3) if a trustee is serving in the case or an auditor is serving under section 586(f) of title 28 [28 USCS § 586(f)], cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties under this title [**11** USCS §§ 101 et seq.];

(4) if a trustee is serving in the case or an auditor is serving under section 586(f) of title 28 [28 USCS § 586(f)], surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers, relating to property of the estate, whether or not immunity is granted under section 344 of this title [**11** USCS § 344];

(5) appear at the hearing required under section 524(d) of this title [**11** USCS § 524(d)];

(6) in a case under chapter 7 of this title [**11** USCS §§ 701 et seq.] in which the debtor is an individual, not retain possession of personal property as to which a creditor has an allowed claim for the purchase price secured in whole or in part by an interest in such personal property unless the debtor, not later than 45 days after the first meeting of creditors under section 341(a) [**11** USCS § 341(a)], either—

(A) enters into an agreement with the creditor pursuant to section 524(c) [**11** USCS § 524(c)] with respect to the claim secured by such property; or

(B) redeems such property from the security interest pursuant to section 722 and;

APPENDIX E

11 U.S.C. § 524(a)

Effect of Discharge

(a) A discharge in a case under this title [11 USCS §§ 101 et seq.]—

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1192, 1228, or 1328 of this title [11 USCS § 727, 944, 1141, 1192, 1228, or 1328], whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and

(3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title [11 USCS § 541(a)(2)] that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1192, 1228(a)(1), or 1328(a)(1) [11 USCS § 523, 1192, 1228(a)(1), or 1328(a)(1)], or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title [11 USCS §§ 523(c) and 523(d)], in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

APPENDIX F

11 U.S.C. § 547

Voidable Preferences

(a) In this section—

(1) "inventory" means personal property leased or furnished, held for sale or lease, or to be furnished under a contract for service, raw materials, work in process, or materials used or consumed in a business, including farm products such as crops or livestock, held for sale or lease;

(2) "new value" means money or money's worth in goods, services, or new credit, or release by a transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the debtor or the trustee under any applicable law, including proceeds of such property, but does not include an obligation substituted for an existing obligation;

(3) "receivable" means right to payment, whether or not such right has been earned by performance; and

(4) a debt for a tax is incurred on the day when such tax is last payable without penalty, including any extension.

(b) Except as provided in subsections (c) and (i) of this section, the trustee may, based on reasonable due diligence in the circumstances of the case and taking into account a party's known or reasonably knowable affirmative defenses under subsection (c), avoid any transfer of an interest of the debtor in property—

(1) to or for the benefit of a creditor;

(2) for or on account of an antecedent debt owed by the debtor before such transfer was made;

(3) made while the debtor was insolvent;

(4) made—

(A) on or within 90 days before the date of the filing of the petition; or

(B) between ninety days and one year before the date of the filing of the petition, if such creditor at the time of such transfer was an insider; and

(5) that enables such creditor to receive more than such creditor would receive if—

(A) the case were a case under chapter 7 of this title [11 USCS §§ 701 et seq.];

(B) the transfer had not been made; and

(C) such creditor received payment of such debt to the extent provided by the provisions of this title [11 USCS §§ 101 et seq.].

APPENDIX G

28 U.S.C. 157(b)(2)

Orders to Return Property of the Estate; Motions to Terminate the Automatic Stay

(b)

(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title [28 USCS § 158].

(2) Core proceedings include, but are not limited to—

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 [11 USCS §§ 1101 et seq., 1201 et seq. or 1301 et seq.] but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul, or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and

(P) recognition of foreign proceedings and other matters under chapter 15 of title 11 [11 USCS §§ 1501et seq.].

APPENDIX H

28 U.S.C. § 1334 (2020).

Bankruptcy cases and proceedings

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

APPENDIX I

U.S. CONST. art. I, § 2, cl. 4

Article I

Section 2

Clause 4

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

APPENDIX J

U.S. CONST. art. I, § 8, cl. 4
Naturalization – Bankruptcy

Article I
Section 8
Clause 4

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

APPENDIX K

U.S. CONST. art. I, § 10, cl. 1

Powers Denied To States – Treaties – Money – Ex Post Facto Laws – Obligation Of Contracts

Article I

Section 10

Clause 1

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.