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 Number 8
Counsel for Respondent

QUESTIONS PRESENTED

I. Does enforcement of a prepetition arbitration agreement under the Federal Arbitration Act and removal of a pure bankruptcy issue from the purview of the federal bankruptcy forum, despite the automatic stay imposed by 11 U.S.C. § 362 et seq., inherently conflict with the Bankruptcy Code's central objectives of centralizing resolutions, avoiding piecemeal litigation, and preserving the unique power and expertise of the federal bankruptcy courts?

II. Does 11 U.S.C. § 362(c)(3)(A) terminate the automatic stay with respect to property of the debtor's Estate despite the explicit absence of any language to that effect and evidence of contrary Congressional intent?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

U.S. SUPREME COURT CASES

U.S. COURT OF APPEALS CASES

U.S. BANKRUPTCY COURT CASES

STATUTES & RULES

LEGISLATIVE HISTORY

OTHER AUTHORITIES

OPINIONS BELOW

The Thirteenth Circuit Court of Appeals' decision is available at No. 20-1004 and reprinted at Record 2. The Bankruptcy Court for the District of Moot decided in favor of Earl Thomas Petty. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed the Bankruptcy Court's decision in favor of Petty.

STATEMENT OF JURISDICTION

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

PERTINENT STATUTORY PROVISIONS

11 U.S.C. § 105 Power of court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.
(b) – (d) [omitted]

11 U.S.C. § 362 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 entitles, 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) [omitted]
(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) – (8) [omitted]

(b) [omitted]
(c) Except as provided in subsections (d), (e), (f), and (h) of this section –
(1) – (2) [omitted]

(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) [omitted]

(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) – (D) [omitted]

(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) – (4) [omitted]

(e) – (i) [omitted]

(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) – (n) [omitted]

11 U.S.C. § 521 Debtor's duties

(a) The debtor shall—

(1) – (6) [omitted]
(7) unless a trustee is serving in the case, continue to perform the obligations required of the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan if at the time of the commencement of the case the debtor (or any entity designated by the debtor) served as such administrator.

If the debtor fails to so act within the 45-day period referred to in paragraph (6), the stay under section 362(a) is terminated with respect to the personal property of the estate or of the debtor which is affected, such property shall no longer be property of the estate, and the creditor may take whatever action as to such property as is permitted by applicable nonbankruptcy law, unless the court determines on the motion of the trustee filed before the expiration of such 45-day period, and after notice and a hearing, that such property is of consequential value or benefit to the estate, 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.

(b) – (j) [omitted]

11 U.S.C. § 524 – Effect of discharge

(a) A discharge in a case under this title—
(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, 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 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), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, 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.

(b) – (m) [omitted]

STATEMENT OF THE CASE

I. FACTUAL HISTORY

A. Petty's Small Business and Resulting Success

Earl Thomas Petty began his small business nearly twenty years ago. R. at 3. As the owner of his craft brewery, Great Wide Open Brewing Company, Inc., Petty spent several years and his personal savings creating and sustaining this widely popular business in the craft brewing industry. R. at 3. Petty purchased his own brewing equipment (the "Equipment") and began soliciting sales to restaurants and stores in the community. R. at 3. Over a period of nearly two decades, Petty managed to turn his small business into one of Moot's preeminent craft breweries. R. at 3. With the success of his small business came a number of accolades and awards, as well as increased demand for the products it produced. R. at 3-4. To meet the demands of the community, Petty and his small business engaged in a fast-paced growth strategy that included opening three additional locations. R. at 4.

B. Great Wide Open's Prolonged Success Drives Petty to Seek External Capital to Keep Up with Community Demand

Meeting the demands of the community required Petty and Great Wide Open to search for capital to expand the business. R. at 4. This need for capital led Petty to Wildflowers, a long-time lender of Petty and Great Wide Open. R. at 4. Wildflowers agreed to open a $35 million revolving credit facility so that Petty could expand Great Wide Open's community operations. R. at 4. As part of that revolving credit agreement (the "Credit Agreement"), Great Wide Open granted Wildflowers a first priority lien on substantially all of its assets. R. at 4. Petty also signed a personal guaranty (the "Guaranty") promising repayment of Great Wide Open's loan obligations. R. at 4. This was secured by a first priority lien on the Equipment. R. at 4. To further

secure itself against the risk of default, as is common with small businesses, Wildflowers included two identical clauses in both the Credit Agreement and the Guaranty. R. at 4. Those clauses are respectively a "Remedies" and an "Arbitration" clause. R. at 4.

The Remedies Clause provides that in the event of default on the Credit Agreement, Wildflowers is entitled to "enter any premises where Collateral may be located for purposes of [repossession]..." R. at 4. The Arbitration Clause provides that "any and all disputes, claims, or controversies of any kind between [the parties] arising out of or relating to the relationship...will be resolved through mandatory, binding arbitration and each party gives up any rights to have disputes litigated in a court or by jury trial." R. at 4.

C. Petty's Small Business Struggles and Subsequent Bankruptcy Filings

After fifteen long years of sustained success, Great Wide Open began to struggle as the craft beer craze waned and the competition in the industry grew. R at 5. The small business made the difficult decision to close three of its four locations. R. at 5. Due to above-market lease obligations, Great Wide Open and Petty defaulted on their respective obligations to Wildflowers. R. at 5. Wildflowers sent a default letter to Petty and sought to begin arbitration, seeking $33 million in damages. R. at 5. As a result, Great Wide Open terminated its employees and ceased all operations. R. at 5. The next day, the small business filed a chapter 7 petition and Petty himself filed a chapter 11 petition in the Bankruptcy Court for the District of Moot. R. at 5. Petty's first chapter 11 case was dismissed because of a procedural error. R. at 5. Petty quickly hired a new attorney to re-file his chapter 11 petition. R. at 5.

D. Petty's Reorganization Plan and Fresh Start

Petty and his new attorney properly filed both his second chapter 11 petition and a reorganization plan with the Bankruptcy Court for the District of Moot. R. at 6. The plan set

forth an arrangement to pay his several creditors, including Wildflowers, forty cents on the dollar from his income over a period of five years. R. at 6. The reorganization plan reflected several negotiation settlements and arrangements with Petty's other creditors. R. at 6. Petty was also able to renegotiate the lease of his original taproom. R. at 6. Doing so allowed him to open a new business, hire employees, and begin serving the State of Moot once more. R. at 6. The loyal customer base of Great Wide Open continued to support Petty by patronizing this new brewery, Full Moon Fever Brewing, which was profitable in its first month of business. R. at 6.

E. Wildflowers Repossesses the Equipment Despite the Automatic Stay

As Petty's chapter 11 bankruptcy case was his second filed within a year, § 362(c)(3)(A) of the Bankruptcy Code limited the application of the automatic stay. R. at 6. Petty did not file an extension of the automatic stay as allowed by § 362(c)(3)(B). R. at 6. Wildflowers assumed the automatic stay had expired with regard to property of the Estate. R. at 6. Just two days after the expiration of the stay, Wildflowers went to Full Moon Fever Brewing and repossessed the Equipment. R. at 6. Petty, believing that property of his Estate was still covered by the automatic stay, filed a motion in his bankruptcy case claiming that Wildflowers violated the automatic stay by repossessing the Equipment. R. at 6. Wildflowers filed a response claiming the automatic stay did not continue to protect property of the Estate after it had expired. R. at 7. The Bankruptcy Court for the District of Moot ruled in favor of Petty. R. at 7. Wildflowers appealed. R. at 7. On appeal, the Thirteenth Circuit affirmed the bankruptcy court's decision and ruled in favor of Petty. R. at 7.

II. PROCEDURAL HISTORY

Petty voluntarily filed his first chapter 11 petition on July 12, 2018. R. at 5. This initial case was dismissed for failure to file certain documents in a timely manner. R. at 5. Petty filed a

second chapter 11 petition on January 11, 2019. R. at 5. The second filing triggered § 362(c)(3) and limited the application of the automatic stay. R. at 6. After Wildflowers repossessed the Equipment, Petty filed a motion alleging that Wildflowers violated the automatic stay on February 19, 2019. R. at 6-7. Wildflowers responded on March 5, 2019, alleging that no automatic stay existed with respect to the Equipment pursuant to § 362(c)(3)(B). R. at 7. Wildflowers also argued that Petty should be compelled to bring any claim against Wildflowers pursuant to the Arbitration Clause in the Guaranty. R. at 7.

The bankruptcy court ruled in favor of Petty on both issues. R. at 3. On appeal, the Court of Appeals for the Thirteenth Circuit affirmed the bankruptcy court's decision and ruled in favor of Petty. R. at 3. The appellate court held that (1) § 362 and related judicial code provisions inherently conflict with the Federal Arbitration Act ("FAA"), and (2) notwithstanding § 362(c)(3), the automatic stay continues to apply to property of the estate. R. at 8, 12.

STATEMENT OF THE STANDARD OF REVIEW

This case concerns issues of law because the facts are undisputed. R. at 8. This Court reviews issues of law de novo. *United States Lines, Inc. v. American S.S. Owners Mut. Protection & Indem. Ass'n (In re United States Lines, Inc.)*, 197 F.3d 631, 640-41 (2d Cir. 1999). This Court reviews the bankruptcy court's exercise of discretion for clear error if it finds that the bankruptcy court did have discretion to deny arbitration. *Mintze v. Am. Fin. Servs.*, Inc. (In re Mintze), 434 F.3d 222, 228 (3d Cir. 2006).

SUMMARY OF THE ARGUMENT

This Court should affirm the decision of the Court of Appeals for the Thirteenth Circuit on both issues presented. The Bankruptcy Code creates a unique statutory mechanism that serves the interests of both debtor and creditor alike. Via operation of the Bankruptcy Code, insolvent debtors are able to pursue a fresh start under the purview of the uniquely experienced federal bankruptcy courts. Federal bankruptcy court expertise and oversight protects the debtor's existing assets and thus allows for the equitable distribution to all similarly situated creditors. Integral to this process is the Bankruptcy Code's automatic stay, which prevents decentralized piecemeal litigation from inhibiting the successful operation of the federal bankruptcy process.

Courts agree that some form of analysis is required prior to considering whether arbitration would conflict with the objectives of the Bankruptcy Code. This analysis operates as a threshold inquiry that serves to weed out cases which do not meet the standard to overrule an act of Congress. However, courts disagree on which threshold inquiry to employ. Some courts use a "Nature of Claim" approach that analyzes whether the underlying claim giving rise to a plaintiff's cause of action arises exclusively from the Bankruptcy Code. Other courts utilize a "Core v. Non-core" inquiry which considers whether a proceeding can exist outside of a bankruptcy court. If a proceeding cannot exist outside of a bankruptcy court, the case involves a core proceeding. Accordingly, only those cases that arise exclusively from the Bankruptcy Code or those cases involving core proceedings may advance to the next stage of analysis. Courts agree that the next stage of analysis requires use of the *McMahon* standard to identify the existence of conflict between two federal statutes.

This Court in *McMahon* offered a tripartite standard by which parties opposing arbitration can show conflict between the FAA and another federal statute. The *McMahon*

standard instructs that three factors may be considered in determining the existence of conflict between the FAA and another federal statute. The three factors are (1) the text of the statute at issue, (2) the statute's legislative history, and (3) whether enforcement of an arbitration agreement inherently conflicts with that statute's underlying purpose. Here, the court below has properly indicated that there is no relevant text or legislative history on which to rely. Accordingly, the proper analysis considers whether enforcement of the parties' prepetition arbitration agreement inherently conflicts with the underlying purpose of the Bankruptcy Code.

Most courts in the bankruptcy context have interpreted an inherent conflict under the *McMahon* standard to be one that undermines the objectives and purposes of the Bankruptcy Code. The general consensus is that the Bankruptcy Code's three objectives are to centralize resolution of bankruptcy issues, avoid piecemeal litigation, and preserve the power and expertise of bankruptcy courts to interpret the Code's provisions. The automatic stay of § 362 of the Bankruptcy Code embodies these three objectives and is a central tenet of the Code. Enforcement of an arbitration agreement in the face of the automatic stay would undermine each objective of the Bankruptcy Code. Enforcement of the parties' prepetition arbitration agreement would decentralize Petty's bankruptcy proceedings, encourage piecemeal litigation amongst his creditors, and remove the case from the expertise of the bankruptcy court. The conflict created by enforcement of the prepetition arbitration agreement would cause interference with the automatic stay and present an inherent conflict with the objectives of the Bankruptcy Code. Therefore, the bankruptcy court properly denied enforcement of the parties' prepetition arbitration agreement under the *McMahon* standard set forth by this Court.

After determining that the *McMahon* standard was met, and thus that a bankruptcy court did have proper authority to deny enforcement of an arbitration agreement, some courts review a

bankruptcy court's exercise of discretion for plain error. Under this standard of review, due deference is afforded to the bankruptcy court's decision making given the facts of that particular case. Here, the Bankruptcy Court for the District of Moot did have the discretion to deny enforcement under either the "Nature of Claim" or "Core v. Non-core" inquiry. The federal policies behind the FAA and the Bankruptcy Code conflict with each other and enforcement of the parties' prepetition arbitration agreement would jeopardize the success of Petty's second bankruptcy case. This Court should affirm the bankruptcy court's decision because it did not abuse its discretion in refusing to enforce the parties' prepetition arbitration agreement.

With regard to the second issue before this Court, the Bankruptcy Court for the District of Moot and the Thirteenth Circuit both correctly interpreted the plain language of § 362(c)(3)(A) as terminating the automatic stay only with "respect to the debtor." This conclusion hinges on this Court's explicit directive that when the language of a statute is plain, that plain meaning is conclusive. The judiciary's role is not to amend language passed by Congress and signed into law by the President. It is the job of Congress alone to amend statutory language.

The plain language of § 362(c)(3)(A) is explicit in stating that the automatic stay terminates only with "respect to the debtor." The statute makes no mention of "property of the estate" and only addresses entities "with respect to the debtor." Additionally, adherence to the plain meaning of the statute would not create a result demonstrably at odds with Congress' intent. In passing the 2005 Amendments to the Bankruptcy Code, Congress intended to create a sliding scale of penalties for bad faith serial filers. This particular section of the statute addresses only those filers who have filed a single previous case in the preceding year, while other sections address those who have filed two or more cases in the preceding year. Congress clearly intended

to differentiate between the penalties imposed on single repeat filers and those imposed on serial filers.

Semantic canons of construction like *expressio unius* and *noscitur a sociis* shed light on the intent of Congress to exclude estate property from § 362(c)(3)(A). Contextual analysis of other sections of the Bankruptcy Code supplements the conclusion that Congress intended to only partially terminate the automatic stay for single repeat filers. Subsections of § 362 address property of the estate directly while other sections of the Code explicitly terminate certain rights with respect to property of the estate. Congress was clearly capable of including property of the estate in § 362(c)(3)(A), but simply chose not to.

The clear meaning of the statute promotes predictability and consistency rather than producing an absurd result. A plain reading of the statute's language balances the interests of both creditors and debtors. Protection of the estate ensures equitable distribution to all creditors while simultaneously limiting the penalty for good faith single repeat filers. Creditors are not harmed by a plain reading of § 362(c)(3)A) because they have several avenues for relief in other subsections of § 362 itself. Additionally, a plain language reading effectuates the objectives of the Bankruptcy Code. The Bankruptcy Code cannot operate as intended unless creditors and debtors are able to read and understand their rights and obligations under the statute. Requiring an obscure analysis of § 362(c)(3)(A) prevents individuals from remaining informed about their statutory obligations and rights. Thus, this Court should affirm the decision of the Thirteenth Circuit and hold that the automatic stay does not terminate as to property of the estate. This Court should affirm the decision of the Thirteenth Circuit and hold in favor of Petty on both issues.

ARGUMENT

I. THE THIRTEENTH CIRCUIT HAD DISCRETION TO DENY ARBITRATION AND CORRECTLY DETERMINED THAT AN INHERENT CONFLICT EXISTS BETWEEN ARBITRATION AND THE BANKRUPTCY CODE.

This Court should affirm the decision of the Thirteenth Circuit in favor of Petty and hold that § 362 (the "automatic stay") impliedly repealed the FAA. Congress enacted the FAA to provide a more efficient mechanism for dispute resolution. *Epic Sys. Corp. v. Lewis*, 138 S. Ct. 1612, 1643 (2018). To effectuate this goal, Congress instructed federal courts to enforce arbitration agreements according to their written terms. *Henry v. Educ. Fin. Serv. (In re Henry)*, 944 F.3d 587, 590 (5th Cir. 2019) (quoting *Lamps*, 139 S. Ct. at 1412. However, the FAA does not take precedence over other statutes on the books. *In re Henry*, 944 F.3d at 590. Like most federal law, the mandate of the FAA may be overridden by a contrary Congressional command. *Shearson/American Express v. McMahon*, 482 U.S. 220, 227 (1987). This command may be inferred from the statute's text, legislative history, or from an inherent conflict between arbitration and the statute's underlying purposes. *Id*. This Court's decision in *Epic* served to clarify the proper analytical framework that courts should employ when two of the factors laid out in *McMahon* clash with each other. *Belton v. GE Capital Retail Bank (In re Belton)*, 961 F.3d 612, 616 (2d Cir. 2020). In that event, *Epic* stands as instruction that the courts should resolve the dispute between the conflicting *McMahon* factors in favor of the statutory text itself and any clues derived therefrom. *Id*. (quoting *In re Henry*, 944 F.3d at 592). Neither the Bankruptcy Code nor its legislative history contains any express exception to the FAA. Leslie A. Berkoff & Theresa A. Driscoll, *To Enforce or Not to Enforce: What Test Should Courts Apply When Faced With Arbitration Agreements in Bankruptcy*, 28 No. 4 J. BANKR. L. & PRAC. NL ART. 6, Norton Journal of Bankruptcy Law and Practice (2019). Thus, contrary Congressional command must

come from the inherent conflict that arises between arbitration and the objectives of the Bankruptcy Code. *McMahon*, 482 U.S. at 227.

Inherent conflict arises between arbitration and the objectives of the Bankruptcy Code because the filing of a bankruptcy case triggers the immediate imposition of an automatic stay, which prevents creditors from pursuing actions against debtors and their property. Laura B. Bartell, *Staying the Serial Filer—Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 AM. BANKR. L.J. 201, 202 (2008). The automatic stay functions to best serve the interests of both debtor and creditor alike. *In re Williams*, 346 B.R. 361, 369 (Bankr. E.D. Pa. 2006). The automatic stay shields debtors from harassment during the adjudication of their case and affords them rehabilitation time. H.R. Rep. No. 95-595, at 340-41 (1977). Creditors are protected by the automatic stay because it ensures that they are provided the most equitable distribution of estate property. Kimberly Lehnert, *Termination of the Stay for Successive Filers: Interpreting § 362(c)(3)*, EMORY BANKR. DEV. J. 243 (2012). In the chapter 11 context, the automatic stay is integral to achieving these objectives. Michael Bernstein & Jonathan Friedland, *An Overview of the Automatic Stay*, 22 AM. BANKR. INST. J. 10, American Bankruptcy Institute Journal (2004).

Circuits are split between two threshold inquiries that must be satisfied prior to consideration of whether an inherent conflict exists between arbitration and the objectives of the Bankruptcy code. *United States Lines, Inc. v. American S.S. Owners Mut. Protection & Indem. Ass'n (In re United States Lines, Inc.)*, 197 F.3d 631, 637 (2d Cir. 1999) (Conducting a "Nature of Claim" Inquiry); *MBNA Am. Bank, N.A. v. Hill*, 436 F.3d 104, 107 (2d Cir. 2006) (Conducting a "Core v. Non-core" Inquiry"). The Fifth Circuit has adopted the "Nature of Claim" inquiry. *In re United States Lines, Inc.*, 197 F.3d at 637. This inquiry considers whether the underlying

claim in a case is derived from a prepetition contractual right or is instead derived from a right conferred by the Bankruptcy Code itself. *In re Nat'l Gypsum Co.*, 118 F.3d 1056, 1068 (5th Cir. 1997). Other circuits have adopted the "Core v. Non-core" inquiry to determine if a dispute involves a core proceeding under the Bankruptcy Code. Berkoff, *supra* at 1. A core proceeding is one that arises under or is related to Title 11. *Phillips v. Congelton, L.L.C. (In re White Mt. Mining Co., L.L.C.)*, 403 F.3d 164, 168-169 (4th Cir. 2005). Under these inquiries respectively, only claims predicated on a right derived wholly from the Bankruptcy Code and core proceedings may advance to an inherent conflict analysis as set out by this Court in *McMahon*. *McMahon*, 482 U.S. at 227.

Existing case law has not explicitly defined "inherent conflict" in the bankruptcy context, but courts have interpreted it to mean a conflict which would "jeopardize the objectives of the Bankruptcy Code." *In re Nat'l Gypsum Co.*, 118 F.3d at 1056. These objectives are widely recognized as centralizing resolutions, avoiding piecemeal litigation, and preserving the undisputed power and expertise of the bankruptcy courts. *Id*. at 1069. Disputes that involve the Bankruptcy Code and FAA often present conflicts of "near polar extremes" due to the centralization-oriented Bankruptcy Code and the decentralization-oriented FAA. *Hill*, 436 F.3d at 108. If compelling arbitration would present a conflict that threatens the objectives of the Bankruptcy Code, a bankruptcy court has the discretion to deny enforcement of a prepetition arbitration agreement. *In re Nat'l Gypsum Co.*, 118 F.3d at 1069-70. The burden of showing a conflict between arbitration and the objectives of the Bankruptcy Code is on the party opposing arbitration. *See McMahon*, 482 U.S. at 227 (Explaining that the burden of showing that Congress intended to preclude arbitration of the statutory rights at issue is on the party opposing arbitration).

This brief will first address the threshold required by the "Nature of Claim" inquiry and the "Core v. Non-core" inquiry. This brief will then analyze the inherent conflicts that exist between the FAA and the central objectives of the Bankruptcy Code as instructed by this Court in *McMahon*. Finally, this brief will analyze why the bankruptcy court properly used its discretion to adjudicate this case. Petty's underlying claim is both derived wholly from a right conferred by the Bankruptcy Code and involves a core proceeding. Thus, the threshold for each inquiry is met. The FAA inherently conflicts with the Bankruptcy Code because it undermines the Bankruptcy Code's objectives of centralizing resolutions, avoiding piecemeal litigation, and preserving the expertise of the bankruptcy court.

A. Petty's Claim is Wholly Derived from the Bankruptcy Code and Involves a Core Proceeding so the Thirteenth Circuit Was Correct to Apply the McMahon Standard.

Petty's claim is predicated on a right conferred wholly from the Bankruptcy Code and is a core proceeding. Under the "Nature of Claim" inquiry, underlying claims that are derived from prepetition contractual rights are distinguished from those rights derived wholly from the Bankruptcy Code. *In re Nat'l Gypsum Co.*, 118 F.3d at 1067. Only if an underlying claim is predicated on a right derived from the Bankruptcy Code itself does the court continue on to the analysis laid out in *McMahon*. *Id*.

Under the "Core v. Non-core" inquiry, claims that arise under or are related to the Bankruptcy Code are differentiated from claims that could exist absent the Bankruptcy Code. *Whiting-Turner Contracting Co. v. Elec. Mach. Enters. (In re Elec. Mach. Enters.), 479 F.3d 791, 797 (11th Cir. 2007).* Courts employing the "Core v. Non-core" inquiry agree that bankruptcy courts do not have discretion to deny enforcement of arbitration in non-core proceedings and that the inquiry ends upon this determination. *Anderson v. Credit One Bank,*

N.A. (In re Anderson), 884 F.3d 382, 388 (2d Cir. 2018). Here, the Bankruptcy Court for the District of Moot's decision to deny enforcement of the parties' prepetition arbitration agreement meets the threshold for both inquiries because (1) Petty filed his action based entirely on a right conferred by the Bankruptcy Code and (2) Petty's case involves a proceeding arising from the Bankruptcy Code.

1. Petty's claim derives itself exclusively from the bankruptcy code because his claim is predicated on a right conferred by the automatic stay of the Bankruptcy Code.

When an underlying claim is derived exclusively from the Bankruptcy Code, a bankruptcy court has the authority to assess whether arbitration would be consistent with the objectives of the Code. *In re Nat'l Gypsum Co.*, 118 F.3d at 1069. An underlying claim is derived exclusively from the Bankruptcy Code when the right at issue is itself a Bankruptcy Code creation. *Id*. at 1068. In *Gypsum*, a bankruptcy court refused a creditor's request to enforce a prepetition arbitration agreement to resolve the debtor's claim that the creditor had violated the terms of the § 524(a) discharge injunction. *Id*. at 1058. The bankruptcy court's holding in *Gypsum* relied on the reasoning that absent the right conferred to the debtor by the Bankruptcy Code, the debtor's claim could not have existed. *Id*. at 1067. Because the debtor's claim derived exclusively from the Bankruptcy Code, the bankruptcy court concluded that it had authority to deny enforcement of a prepetition arbitration agreement. *Id*. at 1069. On appeal, the Fifth Circuit affirmed. *Id*. at 1071. The Fifth Circuit held that when an underlying claim is derived exclusively from the Bankruptcy Code, a bankruptcy court retains "significant discretion as to whether arbitration would be consistent with the purpose of the code." *Id*. at 1069.

Petty's underlying claim against Wildflowers is derived exclusively from the Bankruptcy Code. Accordingly, the Bankruptcy Court for the District of Moot had authority to assess

whether enforcement of the parties' prepetition arbitration agreement met the *McMahon* standard. Just as the debtor's underlying claim in *Gypsum* derived itself exclusively from the Bankruptcy Code, Petty's underlying claim derives itself exclusively from the § 362(a) of the Code. R. at 6. Petty's underlying claim is that Wildflowers violated the terms of the automatic stay by repossessing Petty's Equipment and, in the process, damaged the goodwill Full Moon Fever Brewing had built within the community. R. at 6, 7. The debtor in *Gypsum* had no claim absent § 524(a), just as Petty would have no claim for the damages Wildflowers caused him absent the automatic stay imposed by § 362(a). Petty's claim is derived exclusively from a right conferred to him by the Bankruptcy Code and the Bankruptcy Court for the District of Moot had proper authority to apply the *McMahon* standard.

2. This case involves a core proceeding because Petty's claim can arise only in the context of a bankruptcy case.

A proceeding is core if it can arise only in the context of a bankruptcy case. *Hill*, 436 F.3d at 107. In *Hill*, the debtor filed a chapter 7 bankruptcy case. *Id*. at 106. The creditor attempted to collect payment from the debtor after the bankruptcy case had been filed, prompting the debtor to file a motion claiming violation of the automatic stay. *Id*. To determine the "Core v. Non-core" classification of the proceeding, the court explained that the proceeding must "clearly invoke substantive rights created by federal bankruptcy law and necessarily arise under Title 11." *Id*. at 108-109. The court in *Hill* concluded that cases arising out of the automatic stay are core proceedings because they derive from the Bankruptcy Code and exist only in the context of a bankruptcy case. *Id*. at 109.

Petty's case involves a core proceeding because the claim that Wildflowers violated the automatic stay can arise only in the context of a bankruptcy case. Like the debtor in *Hill*, Petty

was entitled to the benefits of the automatic stay immediately upon filing his second bankruptcy petition. R. at 6. As the court explained in *Hill*, cases arising out of the automatic stay involve core proceedings because those proceedings derive from the Bankruptcy Code and necessarily arise under Title 11. *Id*. at 108-109. This case involves a core proceeding because the proceeding necessarily arose under Title 11and the Bankruptcy Court for the District of Moot had proper authority to apply the *McMahon* standard.

B. The Thirteenth Circuit Correctly Denied Enforcement of the Parties' Prepetition Arbitration Agreement because Arbitration Inherently Conflicts with the Objectives of the Bankruptcy Code's Automatic Stay.

An inherent conflict exists between enforcement of the parties' prepetition arbitration agreement and the Bankruptcy Code because arbitration necessarily jeopardizes the objectives of the Bankruptcy Code. After addressing the requisite threshold inquiry, a court considers whether an inherent conflict exists under the *McMahon* standard. *McMahon*, 482 U.S. at 227. Existing case law has not explicitly defined "inherent conflict" in the bankruptcy context, but courts have interpreted it to mean a conflict which would "jeopardize the objectives of the bankruptcy code." *In re Nat'l Gypsum Co.*, 118 F.3d at 1066. The objectives of the Bankruptcy Code are to centralize resolution of bankruptcy issues, avoid piecemeal litigation, and preserve the undisputed power and expertise of the bankruptcy courts. *Id*. at 1069.

The automatic stay has been lauded as an integral component to the successful achievement of the Bankruptcy Code's objectives. *See In re United States Lines, Inc.*, 197 F.3d at 640 (Explaining that the automatic stay is integral to the reorganization process). The Second Circuit explained that the automatic stay "allow[s] the bankruptcy court to centralize all disputes concerning property of the debtor's estate so that reorganization can proceed efficiently,

unimpeded by uncoordinated proceedings in other arenas." *Id*. The Fourth Circuit has also highlighted the role of the automatic stay in chapter 11 cases. *In re White Mt. Mining Co., L.L.C.*, 403 F.3d at 170. The fundamental objective of chapter 11 cases is the rehabilitation of the debtor and "preventing [the debtor] from going into liquidation, with an attendant loss of jobs and possible misuse of economic resources." *Id*. at 170. The automatic stay functions to serve this very objective by providing debtors with a fresh start and protecting the assets of their estate. *Hill*, 436 F.3d at 109.

1. Arbitration would lead to both decentralized resolutions of a pure bankruptcy issue and lead to piecemeal litigation directly in conflict with the central objectives of the Bankruptcy Code.

Forcing arbitration of a core issue despite the automatic stay prevents the bankruptcy court from effectuating the Code's goals of avoiding piecemeal litigation and centralizing the resolution of pure bankruptcy issues. *In re White Mt. Mining Co., L.L.C.*, 403 F.3d at 169. In *White*, a creditor and debtor had agreements containing arbitration clauses. *Id*. at 166. The debtor defaulted on payments and filed a chapter 11 bankruptcy petition as well as an adversary proceeding in bankruptcy court. *Id*. at 167. The creditor moved to compel arbitration and to stay or dismiss the adversary proceeding. *Id*. The bankruptcy court denied this motion and the creditor appealed. *Id*. The court stated that permitting an arbitrator to decide a core issue would make debtor-creditor rights contingent upon an arbitrator's ruling rather than the ruling of the bankruptcy judge assigned to hear the debtor's case. *Id*. at 169. Permitting an arbitrator to decide a core issue would be inconsistent with the Bankruptcy Code's goal of centralized decision making. *Id*. Assigning the task of resolving these disputes to an arbitrator prevents all parties, namely creditors, from participating in a centralized proceeding "at a minimum cost." *Id*. at 170. The court held that arbitration was in opposition to the centralized decision making necessary for

chapter 11 proceedings and denied a motion to compel arbitration. *Id*. at 171. The Fourth Circuit affirmed the bankruptcy court's decision. *Id*. The court reasoned that arbitration of bankruptcy issues is directly in opposition to the centralized decision-making process necessary for the successful operation of the Bankruptcy Code. *Id*. The Second Circuit has adopted this perspective, focusing on the Bankruptcy Code's desire to have reorganization "proceed efficiently, unimpeded by uncoordinated proceedings in other arenas." *United States Lines, Inc. v. American S.S. Owners Mut. Protection & Indem. Ass'n (In re United States Lines, Inc.)*, 197 F.3d 631, 640 (2d Cir. 1999).

Forcing Petty to resolve his claim through arbitration would prevent the bankruptcy court from effectuating the Bankruptcy Code's goals of avoiding piecemeal litigation and centralizing resolution of pure bankruptcy issues. Petty has already filed a prospective chapter 11 reorganization plan with the bankruptcy court with the aim of ensuring that all of his creditors are paid fairly, including Wildflowers. R. at 6. Wildflowers is not the only creditor who wishes to be fairly compensated for what it is owed. R. at 6. The uncoordinated, decentralized arbitration proceedings sought by Wildflowers would have two primary effects on these other creditors. First, decentralized proceedings would jeopardize Petty's negotiated settlements with these other creditors and affect the likelihood of their equitable repayment. R. at 6. Enforcement of the parties' prepetition arbitration agreement would likely force the parties back to the negotiating table and affect Petty's chances at a fresh start. Second, arbitration would foreseeably lead to other creditors seeking enforcement of any prepetition arbitration agreements they may have with Petty. This would lead to more independent arbitration outside of the centralized bankruptcy forum – directly at odds with the central objectives of the Bankruptcy Code. These possibilities are much the same as the possibilities that led the Second and Fourth Circuits to

hold that arbitration would directly jeopardize the objectives of the Bankruptcy Code. Just as the court in *White* held, this Court should similarly hold in favor of Petty because enforcing the parties' prepetition arbitration agreement would foreseeably lead to piecemeal litigation and decentralized resolution – which directly conflicts with two of the Bankruptcy Code's central objectives.

2. Arbitration would render moot the unique position and expertise of the bankruptcy court in enforcing the provision of the Bankruptcy Code.

Enforcing the parties' prepetition arbitration agreement would undermine a central objective of the Bankruptcy Code by failing to respect the expertise that bankruptcy courts retain in enforcing their own injunctions. The unique expertise of the bankruptcy courts has been recognized by both Congress and the federal court system. *See In re Anderson*, 884 F.3d at 390-391; 11 U.S.C. § 105(a) (2006). Congress recognized this expertise when it bestowed upon the bankruptcy courts the awesomely broad authority to "issue any order, process, or judgment that is necessary… or appropriate to carry out the provisions" of the Bankruptcy Code. 11 U.S.C. § 105(a) (2006). The Second Circuit has also recognized the distinctive expertise of the bankruptcy courts. *In re Anderson*, 884 F.3d at 391-392. In *Anderson*, the court held that bankruptcy courts retain authority to deny enforcement of a prepetition arbitration agreement despite the FAA. *Id*. at 392. In reaching this holding, the court relied on both Congress' broad grant of power to the bankruptcy courts via § 105(a) and the unique expertise that bankruptcy courts retain in enforcing the Bankruptcy Code's injunctions. *Id*. at 390-391. The court in *Anderson* explained that the particular facts of the case before it were not quite as important as the simple fact that bankruptcy courts retain significant, "unique expertise" in enforcing their own injunctions. *Id*. at 391. Thus, removing a case involving an injunction imposed by the Bankruptcy Code from the

ambit of the bankruptcy court would fly in the face of the wide latitude granted to bankruptcy courts by Congress via § 105(a) of the Bankruptcy Code. *Id*. at 391.

Enforcing Petty and Wildflowers' prepetition arbitration agreement would undermine the unique expertise that bankruptcy courts retain in enforcing injunctions imposed by the Bankruptcy Code. Wildflowers is attempting to have an arbitrator review its brazen violation of the automatic stay. R. at 6-7. The automatic stay, in relevant part, serves as an injunction against Wildflowers repossession of Petty's brewing Equipment. 11 U.S.C. § 362(a)(3). Wildflowers is attempting to have an independent arbitrator, not the uniquely equipped bankruptcy court, determine a violation of an injunction created by the Bankruptcy Code. R. at 7. Just as the court in *Anderson* explained, arbitration of a core bankruptcy issue would fly in the face of the wide latitude granted to the bankruptcy courts by Congress via the Bankruptcy Code. Arbitration would directly conflict with a central objective of the Bankruptcy Code.

C. This Court Should Hold That the Bankruptcy Court Properly Exercised Its Discretion to Deny Enforcement of the Parties' Prepetition Arbitration Agreement Under the Clear Error Standard of Review.

This Court reviews the bankruptcy court's decision to deny enforcement of the parties' prepetition arbitration agreement for clear error. *In re United States Lines, Inc.*, 197 F.3d at 641. Where an analysis of conflicting federal policies reveals that enforcement of an arbitration agreement would jeopardize a core proceeding, due deference is shown to the bankruptcy court's exercise of discretion. *Id*. at 641-42.

This Court should affirm the bankruptcy court's exercise of discretion under the clear error standard of review. The Bankruptcy Court for the District of Moot in this case held that enforcement of the prepetition arbitration agreement would conflict with § 362 of the

Bankruptcy Code. R. at 7. The bankruptcy court's decision is correct in light of the foregoing analysis under both the "Nature of Claim" inquiry and the "Core v. Non-core" inquiry. Regardless of the inquiry adopted, the merits of this case reach the scope of the *McMahon* standard. The *McMahon* standard's inherent conflict prong is satisfied because enforcement of the parties' prepetition arbitration agreement would decentralize resolution of pure bankruptcy issues, encourage piecemeal litigation, and render moot the unique position and expertise of the bankruptcy courts.

II. THE THIRTEENTH CIRCUIT PROPERLY HELD THAT WILDFLOWERS VIOLATED THE AUTOMATIC STAY WHEN IT REPOSSESSED PETTY'S BREWING EQUIPMENT BECAUSE THE PLAIN LANGUAGE OF 11 U.S.C. § 362(C)(3)(A) APPLIES ONLY TO "WITH RESPECT TO THE DEBTOR."

This Court should affirm the decision of the Thirteenth Circuit and hold that § 362(c)(3) did not terminate the automatic stay with regard to property of Petty's Estate and that Wildflowers violated the automatic stay when it repossessed the Equipment.

Upon the filing of a bankruptcy petition, the automatic stay is immediately triggered. Laura B. Bartell, Staying the Serial Filer—Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code, 82 AM. BANKR. L.J. 201, 202 (2008). For the duration of the stay, creditors are prevented from pursuing actions against debtors and their property. *Id*. The automatic stay serves the best interests of both debtors and creditors. *In re Williams*, 346 B.R. 361, 369 (Bankr. E.D. Pa. 2006). Debtors are afforded rehabilitation time while creditors are provided the "most equitable distribution of estate property." Kimberly Lehnert, *Termination of the Stay for Successive Filers: Interpreting § 362(c)(3)*, EMORY BANKR. DEV. J. 243 (2012).

In the past, some debtors attempted to take advantage of automatic stay protections and engaged in serial filing of bankruptcy cases. *Id*. Congress wanted to curb serial filing while also

maintaining adequate protections for both debtors and creditors. *In re Williams*, 346 B.R. at 369. So, Congress enacted § 362(c)(3)(A) of the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") in 2005. Lehnert, *supra* at 243. Section 362(c)(3)(A) mandates that the automatic stay terminate, "with respect to the debtor," thirty days after the petition is filed if the debtor has had a prior case dismissed within one year of filing. 11 U.S.C. § 362(c)(3)(A) (2006). The bankruptcy court may extend the automatic stay upon the motion of a party in interest as to any or all creditors before the expiration of the thirty-day period. R. at 14.

At issue in this case is whether the automatic stay remains in effect with respect to the property of the estate absent an extension. R. at 15. To determine if property of the estate remains subject to the automatic stay in the absence of an extension, this Court should first look to the plain language of the statute to decide if any ambiguity exists. *In re Williams*, 346 B.R. at 365. Next, this Court uses tools of statutory interpretation to decipher a statute's meaning. *Gustafson v. Alloyd Co.*, 513 U.S. 561, 570 (1995). These tools include semantic canons of construction and contextual analysis of the statute itself and related statutes. *Id*. at 577. Despite the clear language of §362(c)(3)(A), a minority of courts have attempted to read in language that aligns with their own view of BAPCPA. R. at 15.

Although the plain language of § 362(c)(3)(A) does not protect property of the estate, some courts argue that Congress intended otherwise. *Rose*, 945 F.3d at 229-230. Even if the plain language reading of the statute is not in line with Congressional intent, it is the role of Congress alone to amend the statute to align with its intent. *Lamie v. United States Tr.*, 540 U.S. 526, 542 (2004). It is not the role of the judiciary to insert its own interpretation of what Congress intended. *Id*.

Finally, the majority's reading is in line with the purposes of the Bankruptcy Code. The majority reading does not create an absurd result, but rather ensures predictability and consistency. Protecting property of the estate under the automatic stay does not harm creditors. Instead, it continues to protect the equitable distribution of the estate while providing creditors with alternative avenues as detailed in other subsections of the statute.

This brief will follow the majority's approach by first analyzing the plain language, then applying tools of statutory interpretation, and concluding with discussion of relevant policy.

A. Section 362(c)(3)(A) Does Not Terminate the Automatic Stay with Respect to The Property of The Estate Because the Plain Language of the Statute is Clear and Unambiguous.

The plain language of § 362(c)(3)(A) is unambiguous and terminates the automatic stay. The argument is simple. As one court noted, there are "no fuzzy words; there are no hanging paragraphs; there are no words requiring a dictionary" to interpret the plain meaning of § 362(c)(3)(A). *Rinard v. Positive Invs., Inc. (In re Rinard)*, 451 B.R. 12, 19-20 (Bankr. C.D. Cal. 2011). The language contained in § 362(c)(3)(A) is not particularly verbose or dense. Section 362(c)(3)(A) is itself straightforward - in the event that a debtor had a case pending within the previous year dismissed,

> 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).

The clause mentions only "the debtor". 11 U.S.C. § 362(c)(3)(A) (2006). The clause makes no mention of "property of the debtor's estate" or "property of the estate." *Id*. The plain language of § 362(c)(3)(A) unambiguously instructs that the automatic stay terminates only "with respect to the debtor." *Id*.

Section 362(c)(3)(A) does not terminate the automatic stay with respect to property of the debtor's bankruptcy estate. *Rose v. Select Portfolio Servicing, Inc.*, 945 F.3d 226, 231 (5th Cir. 2019). The Fifth Circuit addressed the plain language of § 362(c)(3)(A) in *Rose v. Select Portfolio Service, Inc*. *Id*. at 230. Confronted with the argument that § 362(c)(3)(A) terminates the automatic stay with respect to both the debtor and property of the debtor's bankruptcy Estate, the Fifth Circuit quickly dispelled the argument. *Id*. Relying on the plain language of § 362(c)(3)(A) and the context of the clause, the court concluded that where the language of the clause is clear, the inquiry ends. *Id*. at 231.

This Court has mirrored the sentiment stated in *Rose*, stating that "plain meaning of legislation should be conclusive" absent an application that would "produce a result demonstrably at odds with the intentions of its drafters." *United States v. Ron Pair Enters.*, 489 U.S. 235, 242 (1989). Here, the meaning of § 362(c)(3)(A) is unquestionably plain. The remaining question in the eyes of this Court is whether a plain reading of § 362(c)(3)(A) would produce a result clearly at odds with the intentions of Congress. *Jumpp v. Chase Home Fin., LLC (In re Jumpp)*, 356 B.R. 789, 793 (B.A.P. 1st Cir. 2006). It does not. Semantic canons of construction and contextual analysis of the clause show that interpreting the phrase "with respect to the debtor" to mean 'with respect to the debtor' does not produce a result at odds with Congressional intent.

B. Semantic Canons of Construction and Contextual Analysis Show that Wildflowers Acted Against the Intended Effect of 11 U.S.C. § 362(c)(3)(A) When It Repossessed Petty's Brewing Equipment.

When courts attempt to decipher the meaning and intent of a statute, semantic canons of construction can prove to be instructive. *Gustafson*, 513 U.S. at 575. (Applying canons of

construction to determine Congressional meaning of the term 'prospectus' as used in the Securities Act of 1933). *Expressio unius est exclusio alterius* ("*expressio unius*") is a semantic canon that creates the presumption that when a statute explicitly includes certain provisions, all omitted provisions are assumed to be exclusions from that statute. *Silvers v. Sony Pictures Entm't, Inc.*, 402 F.3d 881, 885 (9th Cir. 2005). This canon helps prevent judges from inserting their own interpretations into an explicitly tailored list. *Expressio unius* works to preserve Congressional intent. *Id*. at 885. A second canon, *noscitur a sociis*, is also helpful in determining the intended meaning of a statute. *Gustafson*, 513 U.S. at 575. This Court stated in *Gustafson* that this doctrine stands for the proposition that courts should avoid imputing a broad meaning to one word in a statute such that the word's meaning becomes inconsistent relative to the other words around it. *Id*. at 575. *Noscitur a sociis* operates to ensure that statutes are understood against the background of what Congress was attempting to accomplish. *Id*.

Application of the *expressio unius* and *noscitur a sociis* canons to the plain language of § 362(c)(3)(A) reveals that Congress intended to exclude property of the estate when it explicitly wrote that the automatic stay shall "terminate with respect to the debtor." The *expressio unius* canon can be applied to Congress' choice of words. Congress only used the words "the debtor." 11 U.S.C. § 362(c)(3)(A) (2006). Using the *expressio unius* canon, this Court can deduce that the explicit reference to "the debtor" impliedly excludes provisions not mentioned. *Silvers,* 402 F.3d at 885. "The estate" and "property of the debtor" are the only other provisions in § 362 that could be protected by the automatic stay and its absence from § 362(c)(3)(A) should not be considered a Congressional oversight or mistake. The *noscitur a sociis* canon can be applied to the word "terminate." *Gustafson*, 513 U.S. at 575. This word is contextualized and limited by the succeeding words "with respect to the debtor" and should not be inferred to apply to entities not

mentioned. Using this canon, this Court can determine that termination of the automatic stay should not be interpreted broadly. Rather, "terminate" should be limited only to its surrounding words in order to effectuate true Congressional intent. The application of both *expressio unius* and *noscitur a sociis* reveals that Congress intended to omit the "property of the estate" from the termination of the automatic stay under § 362(c)(3)(A).

The context of a statute must also be considered when deciphering statutory meaning and intent. *Dolan v. US Postal Service*, 546 U.S. 481, 486. Modern bankruptcy courts frequently rely on context to handle ambiguity in the Bankruptcy Code. *In re Jumpp*, 356 B.R. at 793. In *Dolan*, this Court noted that interpretation of a word or phrase depends on "reading the whole statutory text [and] considering the purpose and context of the statute." *Dolan*, 546 U.S. at 486. One contextual consideration that courts remain cognizant of is the use of specific language in one section of the statute but that same language's absence in another section of the same statute. *In re Harris*, 342 B.R. 274, 279-280 (Bankr. N.D. Ohio 2006) (quoting *Russello*, 464 U.S. at 23.) In this event, it is presumed that Congress intended to omit that language intentionally. *Id*.

An analysis of the purpose and context of § 362 and other sections of the Bankruptcy Code show that Congress would have included property of the estate in § 362(c)(3)(A) if it truly intended to. In § 362, Congress frequently oscillates between addressing the debtor, property of the debtor, and property of the Estate. *In re Jumpp*, 356 B.R. at 794. Section 362(a) details several scenarios regarding these distinct ideas and proves that Congress is capable of distinguishing between them in sections other than § 362(c)(3)(A). Additionally, a separate section of the Bankruptcy Code explicitly terminates the stay "with respect to the personal property of the estate or of the debtor which is affected." 11 U.S.C. § 521(a)(6) (2006). This section communicates that Congress understands how to terminate the stay with respect to both

the property of the estate and the debtor's property. Supporters of the minority position also advocate using language similar to that in § 362(c)(4)(A) as it eliminates the automatic stay in its entirety. *In re Harris*, 342 B.R. at 279. But this in effect erases the disparate penalties imposed depending on how many prior bankruptcy cases a debtor filed. *Id*. Section 362(c)(3)(A) and § 362(c)(4)(A) serve distinct purposes and should not be used to compare the coverage of the automatic stay. These contextual clues show that Congress intended to treat property of the estate differently in the unique situation described in § 362(c)(3)(A).

C. Congress is the Proper Authority to Amend the Language of 11 U.S.C. § 362(c)(3)(A) Should this Court Find Congressional Intent in Conflict with the Plain Language of the Statute.

Even if this Court finds that Congress intended the scope of § 362(c)(3)(A) to include property of the estate, it should still find in favor of Petty. This Court has long recognized and stood by the simple tenet that if Congress "enacted into law something different from what it intended, then [Congress] should amend the statute to conform to its intent." *Lamie*, 540 U.S. at 542. If this Court were to find that the plain language of § 362(c)(3)(A) does not conform with Congressional intent, it should nonetheless affirm the judgment of the Thirteenth Circuit in favor of Petty. It is the job of Congress alone to amend statutory language. *Id*.

The ill-borne consequence of ignoring this simple tenet is illustrated by the First Circuit's decision in *Smith*. *Smith v. Me. Bureau of Revenue Servs. (In re Smith)*, 910 F.3d 576 (1st Cir. 2018). In *Smith*, the First Circuit found the plain meaning of § 362(c)(3)(A) to be ambiguous and resorted to legislative history to discern what it considered to be the proper meaning of the statute. *Id*. at 589-590. After a cursory review of the language of § 362(c)(3)(A), the court in *Smith* relied heavily on a single House Judiciary Report and "BAPCPA's precursor legislation" to hold that Congress intended to terminate the stay with respect to both the debtor and property

of the debtor's bankruptcy estate. *Id*. at 590. Reliance on § 362(c)(3)(A)'s scant legislative history is ill founded for two reasons.

First, as the *Smith* court itself recognized, the precursor legislation it relied on so heavily was explicitly vetoed by Congress and never enacted into law. *Id*. Relying on the history of vetoed legislation to derive legislative intent is akin to this Court finding precedent from unpublished drafts of issued opinions - they may either contain erroneous lines of reasoning or fail to recognize manifest shifts in perspective. Second, the *Smith* court used the broad, generalized Congressional intent behind BAPCPA to tease out perceived Congressional preference with respect to § 362(c)(3)(A) specifically. *Id*. at 589-590. BAPCPA was intended to deter serial and abusive bankruptcy filings. *Id*. at 589. The *Smith* court used that broad generalization to argue § 362(c)(3)(A) ought to be read as including property of the debtor's estate because that reading would best serve Congress' broad intent in passing BAPCPA. *Id*. at 590.

These applications of Congressional history run contrary to this Court's recognition of the reality that Congress enacts legislation with a specific scheme in mind and targets "specific problems with specific solutions." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012). This reality reflects the canon that specific clauses should govern over generalized, broad intent - not the other way around. *Id*. As applied to § 362(c)(3)(A), the specific language of the clause itself ought not be overshadowed by broad, ambiguous goals that do not speak to a specific solution. The consequence of flipping this canon, as the court in *Smith* did, is to create asynchronous meaning between the plain language of § 362(c)(3)(A) and the First Circuit's proposed application.

If Congress truly intended § 362(c)(3)(A) to include "property of the debtor's estate,"

then Congress is in the best position to amend the statute. After all, the Court's task in statutory interpretation is to apply the text as written, not to improve upon it. *Pavelic & LeFlore v. Marvel Entertainment Group, Div. of Cadence Indus. Corp.*, 493 U.S. 120, 126 (1989). This Court is "not at liberty to rewrite the statute passed by Congress and signed by the President." *Henry Schein, Inc. v. Archer White Sales, Inc.*, 139 S. Ct. 524, 528 (2019). If this Court were to hold that § 362(c)(3)(A) applies to "property of the estate," as the First Circuit did, then the plain language and application of the statute would be in obvious conflict with each other. This would, in effect, lead to the consequence of plainly written, unambiguous law being applied in a manner not written nor intended by Congress. This Court should hold in favor of Petty because Congress is the proper authority to amend § 362(c)(3)(A).

D. Applying a Plain Reading of 11 U.S.C. § 361(c)(3)(A) Benefits Debtors, Creditors, and the Courts by Promoting Predictability of Law and Encouraging Creditors to Pursue Existing Statutory Remedies.

A plain language reading of a statute will lead to an absurd result if it is demonstrably at odds with the intentions of its drafters. *In re Jumpp*, 356 B.R. at 793. In *Jumpp*, the debtor filed a chapter 13 petition and had previously been a debtor in a dismissed chapter 13 case. *Id*. at 791. Section 362(c)(3)(A) terminated the automatic stay after thirty days because the debtor had a pending bankruptcy case dismissed within the previous year. *Id*. The debtor filed a motion seeking a determination that § 362(c)(3)(A) did not terminate the automatic stay with regard to property of the estate and the bankruptcy court denied the petition. *Id*. However, the *Jumpp* court vacated the bankruptcy court's decision because the plain language of the statute was not ambiguous and was in line with Congressional intent. *Id*. at 790. The court noted that Congress' intent in partial termination of the automatic stay was to discourage bad faith serial filers who attempt to take advantage of the protection that comes with the automatic stay. *Id*. at 796. The

court held that, "although a lesser penalty than complete termination, § 362(c)(3)(A) nonetheless discourages abusive filings and, therefore, is a result that is neither absurd nor demonstrably at odds with the intention of the drafters." *Id*. at 797.

A plain language reading of § 362(c)(3)(A) would not lead to an absurd result because it both balances the interests of debtors and creditors and is not at odds with the intentions of its drafters. *In re Williams*, 346 B.R. 361, 369 (Bankr. E.D. Pa. 2006). Like the debtor in *Jumpp*, Petty's previous case was dismissed due to a procedural error. R. at 5. Due to this error, § 362(c)(3)(A) thus terminated the automatic stay after thirty days. R. at 6. As the court in Jumpp noted, application of a plain language reading of the statute would not produce an absurd result or a result at odds with Congressional intent. *In re Jumpp*, 356 B.R. at 797. Other courts have agreed and stated that the partial termination in § 362(c)(3)(A) serves to balance the competing interests of both creditors and debtors. (William) Debtors lose much of the protection of the automatic stay as a penalty for serial filings, but property of the estate is protected both for the sake of the debtor and to protect equitable distribution of the estate to all creditors.

Rather than simply repossessing the Equipment and thereby violating the automatic stay, Wildflowers could have done one or both of the following. R. at 6. Wildflowers could have used the protections enshrined in § 362(d). Section 362(d) allows a secured creditor to file a motion for relief from the automatic stay. 11 U.S.C. § 362(d) (2006). Wildflowers also could have used the protections detailed in §362(j). Section 362(j) allows a creditor to confirm with a bankruptcy court whether the automatic stay has in fact terminated with respect to certain property. 11 U.S.C. § 362(j) (2006). This Court should hold that a plain reading of § 362(c)(3)(A) balances the interests of Petty and Wildflowers as Congress intended and therefore does not lead to an absurd result.

The Bankruptcy Code cannot operate unless debtors and creditors are able to read and understand its provisions. The plain language reading of § 362(c)(3)(A) promotes consistency and predictability in the application of the Bankruptcy Code. This area of the law uniquely implicates individuals who must know what their rights are. Requiring esoteric analyses to understand the Bankruptcy Code would effectively bar lay people from pursuing their fresh start and functionally understanding the laws that affect them. Here, the plain language reading allowed Petty to feel fully informed of his rights and responsibilities as a debtor. Although Petty did not file an extension to the automatic stay before the thirty-day period expired, he could have chosen not to file because of a plain reading of the statute. The plain language of § 362(c)(3)(A) conveys that property of Petty's Estate, the Equipment, was still covered by the automatic stay. It would be reasonable for Petty to believe that the Equipment was still protected under the automatic stay and that no extension was necessary.

This Court should affirm the decision of the Thirteenth Circuit and hold that § 362(c)(3)(A) does not terminate the automatic stay with regard to property of the estate and that Wildflowers violated the automatic stay when it repossessed the Equipment.

CONCLUSION

For the foregoing reasons, this Court should affirm the decisions of the Court of Appeals for the Thirteenth Circuit on both issues and find in favor of Respondent.

Respectfully Submitted,

Team Respondent 8
Counsel for Respondent
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