Docket No. 22-0909

IN THE

Supreme Court of the United States

OCTOBER TERM, 2022

IN RE PENNY LANE INDUSTRIES, INC., DEBTOR,

ELEANOR RIGBY, PETITIONER

v.

PENNY LANE INDUSTRIES, INC., RESPONDENT.

ON WRIT OF CERTIORARI FROM THE
UNITED STATES COURT OF APPEALS FOR THE THIRTEENTH CIRCUIT

BRIEF FOR RESPONDENT

TEAM NUMBER 34

JANUARY 19, 2023

COUNSEL FOR RESPONDENT

QUESTIONS PRESENTED

I. Does a bankruptcy court act within the bounds of its jurisdiction and the Constitution when it approves non-consensual releases of direct claims held by third parties against non-debtor affiliates as part of a chapter 11 plan of reorganization?

II. May a corporate debtor proceeding under Subchapter V of chapter 11 of the Bankruptcy Code, pursuant to 11 U.S.C. § 1192, discharge debts of types specified as nondischargeable by an individual debtor in subparagraphs (1) through (19) of 11 U.S.C. § 523(a)?

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The Thirteenth Circuit Court of Appeals decision is available at No. 21-0803 and reprinted at Record 3. The bankruptcy court decided in favor of Penny Lane Industries, Inc. On appeal, the United States Court of Appeals for the Thirteenth Circuit affirmed in favor of Penny Lane Industries, Inc.

STATEMENT OF JURISDICTION

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

RELEVANT STATUTORY PROVISIONS

This action requires statutory construction of certain provisions of Title 11 of the United States Code.

The relevant portion of 11 U.S.C. § 105(a) provides:

> (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.

The relevant portion of 11 U.S.C. § 1123(b)(6) provides:

> (b) Subject to subsection (a) of this section, a plan may—
>
> > (6) include any other appropriate provision not inconsistent with the applicable provisions of this title.

The relevant portion of 11 U.S.C. § 1192 provides:

> If the plan of the debtor is confirmed under section 1191(b) of this title, as soon as practicable after completion by the debtor of all payments due within the first 3 years of the plan, or such longer period not to exceed 5 years as the court may fix, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided in section

> 1141(d)(1)(A) of this title, and all other debts allowed under section 503 of this title and provided for in the plan, except any debt—
>
> (2) of the kind specified in section 523(a) of this title.

The relevant portion of 11 U.S.C. § 523(a) provides:

> (a) A discharge under section 727, 1141, 1192[,] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt—
>
> (6) for willful and malicious injury by the debtor to another entity or to the property of another entity[.]

STATEMENT OF THE CASE

This appeal arises from Petitioner's desire to obstruct the Debtor's reorganization and delay and diminish all other claimants' restitution by preventing the Debtor from discharging all its debts and clinging to a potential claim against the Debtor's parent company. If Petitioner were to have her way, hold-out claimants would be able to single-handedly freeze plan confirmations, and Subchapter V's goal of simplifying the corporate debtor restructuring process would be frustrated and nullified.

I. FACTUAL HISTORY

Penny Lane Industries, Inc. ("Debtor") is a manufacturer of plastic, glass, and metal food containers based in Blackbird, Moot, and is a wholly-owned subsidiary of Strawberry Fields, a producer of cereal and convenience foods sold nationwide. R. at 4–5. This case arises from mass tort litigation surrounding allegations that the Debtor contaminated the Blackbird area's groundwater supply by knowingly disposing of industrial-grade chemicals and pollutants at its manufacturing plant. *Id.* at 5. Between 2013 and 2017, Blackbird residents were exposed to water containing toxins at concentrations 250 to 3,000 times the legally-permitted level, and this exposure has been linked to sickness, birth defects, and death. *Id.* at 5. Eleanor Rigby ("Petitioner"), a Blackbird resident, sued the Debtor in 2017, claiming that the Debtor's actions caused her four-year-old daughter to die of leukemia. *Id.* at 5. Petitioner also sued Strawberry Fields on the basis that it knew or should have known of its subsidiary's alleged wrongdoing. *Id.* at 6.

The Debtor and Strawberry Fields both dispute Petitioner's lawsuit, as well as the numerous others like Petitioner's, but faced with these lawsuits, the Debtor filed this present Subchapter V chapter 11 case seeking reorganization on January 11, 2021. *Id.* Almost all of the chapter 11 claims against the Debtor are these disputed tort claims, which assert claims of nearly $400 million cumulatively in damages. *Id.* Petitioner has filed an unsecured claim of $1 million against the Debtor. *Id.*

The bankruptcy court stayed the pending tort litigation in hopes to facilitate a settlement. *Id.* at 8. After long negotiations, a promising settlement plan was reached that would likely give qualified creditors a substantial distribution. *Id.* The plan consisted of the creation of a creditor trust that would be funded with the Debtor's disposable net income for five years and, more importantly, $100 million to be voluntarily paid into the trust by Strawberry Fields. *Id.* In exchange for its hefty contribution to the plan, Strawberry Fields conditioned its participation on a release from all claims, including estate claims and third-party direct claims. *Id.* This release would be non-consensual, meaning that parties who disapprove of the settlement plan would also be bound by the release; anyone wishing to pursue a claim against Strawberry Fields would have to resort to the Strawberry Fields-funded creditor trust. *Id.* at 8–9. Creditors demonstrated overwhelming support for this plan, with over 95 percent of the creditors voting in favor of the plan's confirmation. *Id.* at 9. However, a few creditors voted against the plan, including Petitioner, who asserted that non-consensual third-party releases are not allowed in a chapter 11 plan. *Id.* Meanwhile, in an adversary proceeding against the Debtor, Petitioner argued that her alleged damages are a nondischargeable debt in a Subchapter V case. *Id.* at 7.

II. PROCEDURAL HISTORY

The bankruptcy court considered the two issues now before the Court and held for the Debtor on both issues. *Id.* at 7–10. After a plan confirmation hearing, the court held that the Debtor's reorganization plan could include a non-consensual release of Petitioner's claims against third-party Strawberry Fields because this case was the type of extraordinary situation in which such a release is fair, reasonable, and efficient. *Id.* at 10. In an adversary proceeding on the second issue, the bankruptcy court held that the discharge exceptions in § 523(a) apply only to individual debtors, not corporate debtors, even in the Subchapter V context. *Id.* at 7. Petitioner timely appealed directly to the Thirteenth Circuit pursuant to 28 U.S.C. § 158(d), and the Thirteenth Circuit affirmed the bankruptcy court's treatment of both issues. *Id.* at 11, 23.

STANDARD OF REVIEW

The questions presented in this case center on the legality of non-consensual third-party releases and statutory construction of the Bankruptcy Code, codified as 11 U.S.C. §§ 101 *et seq*., and are thus purely issues of law. Therefore, this appeal is subject to *de novo* review. *Highmark Inc. v. Allcare Health Mgmt. Sys., Inc.*, 572 U.S. 559, 563 (2014).

SUMMARY OF THE ARGUMENT

Bankruptcy courts have long been recognized as courts of equity. Bankruptcy courts are tasked with using their equitable powers in order to effectuate the goal of the bankruptcy case before it. In chapter 11, that goal is achieving a plan of reorganization. This broad equitable grant is appropriately cabined and cannot be exercised in a manner that would run contrary to the statutory jurisdiction of the bankruptcy court or the Constitution.

Approving a chapter 11 plan of reorganization that contains a non-consensual third-party release is within the bankruptcy court's power because it is a permissible use of its equitable powers. There is nothing contained within the Code that unequivocally bars non-consensual third-party releases. Rather, non-consensual third-party releases are implied authorized under the court's jurisdiction through §§ 105(a) and 1123(b)(6) of the Code. The precedent established by this Court has also made clear that a bankruptcy court is acting within its constitutional bounds when it approves non-consensual third-party releases in appropriate circumstances. For these reasons, a bankruptcy court is not operating outside of its statutory or constitutional bounds when it approves non-consensual third-party releases when such a release is warranted based on the facts of the case before it.

The text and purpose of § 1192 continues the chapter 11 theme of limiting the nondischargeable debts under § 523(a) to primarily apply only to individual debtors. Although individual debtors may file for bankruptcy under chapter 11 and Subchapter V, both sets of provisions were drafted with a focus on granting businesses the opportunity to continue on. Congress's purpose in passing Subchapter V of chapter 11 was to ease the process for small business owners within a chapter that was written with a focus on larger corporations.

The primary goal of chapter 11 is reorganization, which must be preserved in each interpretation of provisions within the chapter. To maintain this objective, courts must properly construe the list of nondischargeable debts under § 523(a) to only apply to individual debtors filing under § 1192. Extending the nondischargeable debts onto corporate debtors would serve as a disservice to the purpose of the chapter. The plain language, statutory construction, and legislative history presented by Congress in adopting chapter 11 and § 1192 provides overwhelming support to further demonstrate the need for courts to deny any extension of § 523(a)'s list of discharge exceptions onto corporate debtors.

This Court should therefore affirm the Thirteenth Circuit's rulings on both issues.

ARGUMENT

This Court should affirm the Thirteenth Circuit's decision that a bankruptcy court has the authority to approve non-consensual third-party releases as part of a chapter 11 plan of reorganization. This Court should also affirm the Thirteenth Circuit's decision that Subchapter

V's cross-reference to § 523(a)'s exceptions to discharge apply only to individual debtors, not corporate debtors.

I. THE THIRTEENTH CIRCUIT CORRECTLY HELD A NON-CONSENSUAL THIRD-PARTY RELEASE CAN BE INCLUDED IN A CHAPTER 11 PLAN.

A third-party release addresses what claims, if any, remain between two identified third parties after the release is effectuated. Often, the third-party release protects one third party from any claim, obligation, cause of action, or liability that could be asserted by another third party. In the context of a chapter 11 plan, the third parties are also known as non-debtors, and the debtor is the common party through which they are linked. When a third-party release is included in a chapter 11 plan, the release serves to shield a non-debtor who is somewhat tied to the debtor from another non-debtor who has filed a claim against the debtor.

In bankruptcy, third-party releases can foster efficient resolutions to plan issues. Given the breadth of the parties that can be impacted by a single plan, third-party releases are seen as a tool to help resolve concerns of the estate. For example, in mass tort cases, third-party releases are often the key component used to effectuate an agreement that clears the path to plan confirmation. Third-party releases are widely accepted as permissible practice so long as they are consensual. As for the permissibility of non-consensual third-party releases, there is staunch disagreement among the circuits.

The minority view holds that only a debtor who has submitted itself to the bankruptcy process is entitled to its protections; therefore, third parties are not entitled to releases. *See Feld v. Zale Corp.* (*In re Zale Corp.*), 62 F.3d 746 (5th Cir. 1995) (holding that third-party releases are not permissible); *Resorts Int'l, Inc. v. Lowenschuss* (*In re Lowenschuss*), 67 F.3d 1394, 1401 (9th Cir. 1995) (same); *Abel v. West*, 932 F.2d 898 (10th Cir. 1991) (same). However, two of the minority circuits have issued more recent opinions that indicate the hard line they previously drew may in fact have some nuanced flexibility. The Fifth Circuit has recently recognized that third-party releases may be appropriate when used to direct funds in a mass claims scenario, as suggested by 11 U.S.C. § 524(g). *Bank of NY Trust Co., NA v. Official Unsecured Creditors' Comm.* (*In re Pacific Lumber Co.*), 584 F.3d 229, 252 (5th Cir 2009). The Ninth Circuit in *Blixseth v. Credit Suisse* seemed to indicate that its previously-announced bar on non-debtor discharges has some flexibility. *See* 961 F.3d 1074, 1081–85 (9th Cir. 2020) (holding a narrowly tailored exculpation clause that released a non-debtor of liability was not barred by the Bankruptcy Code).

The majority view, on the other hand, holds that non-consensual third-party releases are permitted in limited and appropriate circumstances.[1] *See In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 142–43 (2d Cir. 2005) (holding that non-debtor releases "should not be approved absent the finding that truly unusual circumstances *render the release terms important to success of the plan* . . . .") (emphasis added);[2] *In re Cont'l Airlines*, 203 F.3d 203, 214 (3d Cir. 2000) (holding the "hallmarks of permissible non-consensual releases" are "fairness, necessity to the reorganization, and specific factual findings to support these conclusions"); *In re A.H. Robins Co., Inc.*, 880 F.2d 694 (4th Cir. 1989) (finding a third-party release can be appropriate in a mass tort case); *In re Dow Corning Corp.*, 280 F.3d 648, 658 (6th Cir. 2002) (establishing a seven-factor test for assessing the permissibility of non-consensual third-party releases and holding they are only permissible in "unusual circumstances" and those circumstances must be founded in specific

[1] A few circuits have not yet squarely addressed this issue, but have authored opinions that are consistent with the majority view. *See Murray Kentucky Energy Inc. v. Ceralvo Holdings, LLC* (*In re Armstrong Energy Inc.*), 613 B.R. 529, 535 (B.A.P. 8th Cir. 2020) (upholding a release provision based on the reasoning of the majority circuits that have held third-party releases permissible under the right circumstances); *Monarch Life Ins. Co. v. Ropes & Gray*, 65 F.3d 973, 984–85 (1st Cir. 1995) (recognized as a holding consistent with the majority by *Collier*); *In re AOV Indus., Inc.*, 792 F.2d 1140, 1152 (D.C. Cir. 1986) (same).

[2] The Second Circuit has taken up this issue again in a pending appeal, addressing a third-party injunction contained within the confirmed plan. *See In re Purdue Pharma, L.P.*, No. 22-110-bk *et al*. (2d Cir. *appeal docketed* Jan. 18, 2022).

facts that relate to the released parties); *In re Airadigm Commc'ns, Inc.*, 519 F.3d 640, 657 (7th Cir. 2008) (holding non-consensual third-party releases are allowed as long as they are "not inconsistent with any provision of the Bankruptcy Code"); *In re Centro Grp., LLC*, No. 21-11364, 2021 WL 5158001 (11th Cir. Nov. 5, 2021) (holding that the court's prior decision in *In re Seaside Engineering & Surveying, Inc.* allows for third-party releases in the plan confirmation context) (internal citation omitted). The circuits holding with the majority make it clear that finding non-consensual third-party releases permissible does not give bankruptcy courts unfettered authority to approve third-party releases. *Id*. Though no standard for determining when it is appropriate to allow a non-consensual third-party release has emerged, it is widely recognized that deciding whether a non-consensual third-party release is appropriate should be "fact intensive and depend[ent] on the nature of the reorganization." *In re Airadigm Commc'ns, Inc.*, 519 F.3d at 657.

In the case before the Court, the third-party release is shielding Strawberry Fields, which, again, is the parent company of Debtor, from liability asserted by Petitioner. R. at 4. The lower courts held that including this non-consensual third-party release was appropriate because such a release is impliedly authorized by the Bankruptcy Code and is constitutionally permissible. *Id.* at 11–15. This Court should affirm the lower courts' holdings and find that the bankruptcy court acted within the bounds of its jurisdiction and the Constitution when it authorized the non-consensual third-party release.

A. The Bankruptcy Court's Jurisdiction Is Broad and Extends to Third-Party Disputes.

The bankruptcy court has long been recognized as a court of equity. *N.L.R.B. v. Bildisco & Bildisc*o, 465 U.S. 513, 527 (1984). In a plan of reorganization, the bankruptcy court must utilize its equitable powers to accomplish the overarching goals of chapter 11. *Id*. However, the broad grant of equity afforded to bankruptcy courts does not grant the authority to act unrestrained under the guise of "equity." *Id*. Rather, this Court had said that the utilization of these equitable powers should "relate to the success of the reorganization." *Id*. Therefore, this Court should hold that the bankruptcy court acted within its jurisdiction when it utilized its equitable powers and approved the non-consensual third-party release because the plan confirmation hinged on the inclusion of the release, and such a release is authorized, not barred, under the Code.

1. Subject Matter Jurisdiction Exists Because Third-Party Releases, Connected to Plan Confirmation, Constitute a Core Proceeding.

A bankruptcy court's jurisdiction is founded in statute. *Celotex Corp. v. Edwards,* 514 U.S. 300, 307 (1995). Bankruptcy courts have jurisdiction over cases that "arise under," "arise in," or are "related to" a bankruptcy case. 28 U.S.C § 1334. Matters that "arise under" or "arise in" a bankruptcy case are recognized as core proceedings to the bankruptcy, while matters "related to" such a case are classified as non-core proceedings. *Id*. § 157(b)(1)–(b)(2)(C).

The Code provides a non-exhaustive list of what are recognized as core proceedings. *Id*. § 157(b)(2). One of the delineated core proceedings recognized by the Code includes confirmation of plans. *Id*. § 157(b)(2)(L). Therefore, disputes that affect the success of plan confirmation, like claim allowances, releases, and sales orders, constitute a core proceeding and are thus squarely within the bounds of a bankruptcy court's jurisdiction.

2. The Bankruptcy Code Impliedly Authorizes Non-Consensual Third-Party Releases.

Statutory authority for non-consensual third-party releases is rooted in §§ 105(a) and 1123(b)(6) of the Code. Section 105(a) provides, in relevant part, "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Section 1123(b)(6) provides a plan can "include any other provision not inconsistent with the applicable provisions of this title." 11 U.S.C. § 1123(b)(6). The majority opinion, which holds a bankruptcy court has statutory authority to approve third-party releases, read §§ 105(a) and 1123(b)(6) collectively as providing the bankruptcy court the authority to approve any plan provision that is not explicitly prohibited by the Code. This conclusion is consistent with this Court's precedent, which recognizes §§ 105(a) and 1123(b)(6) codify "broad authority" to bankruptcy courts to take equitable measures to effectuate a successful reorganization.[3] *United States v. Energy Resources Co*., 495 U.S. 545, 549 (1990).

In *Energy Resources*, the Court explained that these statutes articulate a directive that is in line with "the traditional understanding that bankruptcy courts, as courts of equity, have broad authority to modify creditor-debtor relationships." *Id*. In applying these statutes, the Court approved a tax provision because such a provision was not specifically barred by the Code. *Energy Resources*, 495 U.S. at 549–50. The Court's decision to approve the tax provision settled the debate on whether the authority granted through § 105(a) must be tied to a specific Code provision, answering with an emphatic no. *Id*. at 549.

Although the plan provision at issue in *Energy Resources* is different from the one now before the Court, the guidance established should be viewed as applicable to third-party releases. In fact, some have viewed the Court's reasoning as providing statutory guidance to lower courts on the authority for third-party releases. *See* Joshua M. Silverstein, *Hiding in Plain View: A Neglected Supreme Court Decision Resolves the Debtor Over Non-Debtor Releases in Chapter 11 Reorganizations*, 23 EMORY BANKR. DEV. J. 13 (2006). To reach this conclusion, though, the holding in *Energy Resource*s must be reconciled with the holding in *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197 (1988). *Id*. at 109. *Ahlers* is viewed as restricting a bankruptcy court's equitable power to "the confines of the Bankruptcy Code." *Id*. (quoting *Ahlers*, 485 U.S. at 206). Silverstein's article reconciles the two holdings, finding that *Ahlers* does not disagree with the

[3] The Bankruptcy Code has been amended since the Court authored its opinion in *Energy Resources*. The provision referenced as § 1123(b)(5) through the opinion has now been codified as § 1123(b)(6).

opinion of *Energy Resources* but rather affirms that the "substantive equitable powers" granted through §§ 105(a) and 1123(b)(6) carry a restriction that the authority must not run afoul of other delineated Code provisions. *Id*. at 109.

The Ninth Circuit—one that is notably against third-party releases—has construed the same reading of *Energy Resources* and *Ahlers*. *Id*. at 110 (citing *Gurney v. Arizona Dept. Rev.* (*In re Gurney*), 192 B.R. 529, 537 (B.A.P. 9th Cir. 1996)). Applying the substantive equitable powers of the bankruptcy court, as authorized by §§ 105(a) and 1123(b)(6), to third-party releases, the question becomes whether third-party releases are expressly barred under the Code. Because third-party releases are not expressly barred under the Code, the Court should recognize a bankruptcy court operates within its statutory authority when such releases are necessary for reorganization.

3. If Congress Intended to Limit the Bankruptcy Court's Powers, It Would Have Done So Clearly.

Petitioner relies on §§ 524(e), 524(g), and 524(h) as the basis for the Court to find that non-consensual third-party releases are inconsistent with the Bankruptcy Code. R. at 15. Section 524(e) provides that the "discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt." 11 U.S.C § 524(e). As the Thirteenth Circuit notes, this section is merely a savings clause and does not have any impact on the discharge of another party's claims. R. at 15. Several courts have also held that § 524(e) does not prohibit releases of third-party claims.[4]

Likewise, §§ 524(g) and 524(h) should not be read to foreclose third-party releases. Sections 524(g) and 524(h) were enacted to specifically address third-party releases in asbestos

[4] *See In re Seaside Eng'g & Surv'g, Inc.*, 780 F.3d 1070, 1078 (11th Cir. 2015) ("Pursuant to § 524(e), the discharge of the debtor's debt does not *itself* affect the liability of a third party") (emphasis added); *Airadigm Commc'ns*, 519 F.3d at 656 (similar); *In re Dow Corning Corp*., 280 F.3d at 657 (similar); *In re Cont'l Airlines*, 203 F.3d 203, 211 (3d Cir. 2000) (similar); *In re A.H. Robins Co., Inc.*, 880 F.2d 694, 702 (4th Cir. 1989) (similar).

related claims. 11 U.S.C. §§ 524(g)–(h). When § 524(g) was added to the Code, Congress enacted a savings clause provision with it. Bankruptcy Reform Act of 1994, Pub. L. No. 103-394, § 11(b), 108 Stat. 4106 (Oct. 22, 1994). When enacting these asbestos related statutes, The House Report spoke to Congress's intent, stating the statutes were not intended to alter the authority that already existed for bankruptcy courts regarding plans of reorganization. H.R. REP. NO. 103-834 (1994).

This Court should apply its prior reasoning and affirm the Thirteenth Circuit's decision by finding that the bankruptcy court was statutorily authorized to approve the non-consensual release provision contained in the plan of reorganization because the Code does not unequivocally bar such a provision.

B. A Federal Bankruptcy Court Has the Constitutional Authority to Confirm a Plan Containing a Non-Consensual Third-Party Release Provision.

The Supreme Court has held that bankruptcy courts have the authority to hear and enter a final judgment on matters that are recognized as a core proceeding within the Bankruptcy Code. *Stern v. Marshall*, 564 U.S. 462, 475 (2011). This does not mean that a bankruptcy court that acts within its statutory authority is incapable of reaching beyond its constitutional bounds. *See Ct. Exec. Benefits Ins. Agency v. Arkison*, 573 U.S. 25, 30–31 (2014) (recognizing *Stern* claims were statutorily authorized but prohibited on constitutional grounds). Therefore, when a bankruptcy court is acting within its statutory authority on core matters, it must still be determined "whether that exercise of authority comports with the Constitution." *In re Millennium Lab Holdings II, LLC.*, 945 F.3d 126, 135 (3d Cir. 2019). This Court should find the bankruptcy court acted within its constitutional bounds when it approved the non-consensual third-party release because the approval of the release directly impacted the plan confirmation and was integral to the restructuring of the debtor-creditor relationship.

1. Bankruptcy Courts Have Constitutional Authority Over Third-Party Releases That Directly Affect Plan Confirmation.

Congress has been granted "broad power '[t]o establish . . . uniform laws on the subject of Bankruptcies throughout the United States.'" *Wright v. Vinton Branch of Mountain Trust Bank of Roanoke*, 300 U.S. 440, 470 (1937) (quoting U.S. CONST. art. I, § 8, cl. 4). For nearly four decades, this Court has recognized that Congress can grant Article I courts the power to decide matters that are "at the core of the federal bankruptcy power." *N. Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 71 (1982) (plurality op.). To determine whether constitutional authority exists for a bankruptcy court to issue a final order, the question turns on the type of proceeding that is presently before the court. *See In re AOV Industries*, 792 F.2d 1140, 1145 (D.C. Cir. 1986) (allowing confirmation of a plan that included releases, holding confirmation proceedings to be "at the core of bankruptcy law," and rejecting the argument that released claims are only "related to" bankruptcy, thereby stripping the bankruptcy court of constitutional authority).

The Bankruptcy Code provides that "[b]ankruptcy 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 . . . ." 28 U.S.C. § 157(b)(1). The Code provides a non-exhaustive list of what are recognized as core proceedings. *Id*. § 157(b)(2). In this case, the relevant proceeding was a plan confirmation, which is recognized as a core proceeding. *Id*. § 157(b)(2)(L). "There has never been any doubt about the constitutional authority of a [bankruptcy judge] to enter final orders in [confirmation proceedings]." 1 COLLIER ON BANKRUPTCY ¶ 3.02[3][a] (Alan N. Resnick & Henry J. Somme eds., 16th ed.).

Finding that a bankruptcy court has the constitutional authority to hear and enter final judgments in core proceedings is consistent with prior decisions by this Court. *See Katchen v. Landy*, 382 U.S. 323, 334 (1966) (finding that resolving a core proceeding was within the bankruptcy court's authority, even when exercising this grant of power could leave nothing before an Article III court); *Stern* 564 U.S. at 474 ("Bankruptcy judges may hear and enter final judgments in [] core proceedings.") (internal citation omitted). The Third Circuit has also recently addressed whether bankruptcy courts have the authority to approve plans that contain non-consensual third-party releases. *In re Millennium Lab Holdings II, LLC.*, 945 F.3d 126 (3d Cir. 2019). In *Millennium*, the bankruptcy court approved a plan, over the objection of a creditor, that would provide third-party releases in exchange for a $325 million contribution to fund the plan. *Id*. at 130–31. On appeal, the District Court remanded the question back to the bankruptcy court to determine whether, considering *Stern*, constitutional authority existed to confirm the plan. *Id*. at 132. In answering this question, both the bankruptcy court and District Court held that *Stern* does not apply when a matter is involved in the plan confirmation proceeding. *Id*. at 133. Therefore, utilizing non-consensual third-party releases to effectuate plan confirmation is constitutional.

The third-party releases the *Millennium* Court was assessing are like the third-party release that is now under review by this Court. The third-party releases in *Millennium* were heavily negotiated for and were integral to the success of the reorganization. *Id*. at 131–32. The parties would not have agreed to provide a sizeable contribution to the plan absent the releases, and the plan would not have been able to garner large support absent the sizeable contribution. *Id*. The Third Circuit upheld the lower court's reasoning and clarified that "[s]uch an exercise of authority is permissible if it involves a matter integral to the restructuring of the debtor-creditor relationship." *Id*. at 137. Just as the *Millennium* court held, this Court should find that including the third-party release in the plan was within the bankruptcy court's authority because the release was integral to the restructuring of the debtor-creditor relationship.

2. A Bankruptcy Court Is Acting Within Its Constitutional Bounds When It Approves a Third-Party Release Integral to the Restructuring of the Debtor-Creditor Relationship.

It has long been recognized that matters that involve "the restructuring of debtor-creditor relations" are permitted to be decided by Article I or Article III courts. *Marathon*, 458 U.S. at 71 (plurality op.). This Court has provided a two-part test to help determine when Congress has properly granted a bankruptcy court the authority to hear a matter traditionally reserved for Article III courts. *Stern*, 564 U.S. at 499. To determine whether a bankruptcy court has constitutional authority, the action at issue must either "stem[] from the bankruptcy itself *or* would necessarily be resolved in the claims allowance process." *Id*. (emphasis added).

To properly apply the test laid out in *Stern*, it must first be understood what to "necessarily be resolved in the claims allowance process" means. *Id*. The Court has not squarely defined the scope for determining when a matter qualifies under this second prong. However, there is sufficient guidance provided through Supreme Court and Circuit Court precedent to conclude that the standard being articulated through this second prong turns on whether the matter is integral to the restructuring of the debtor-creditor relations. Meaning, when a matter is integral to the restructuring of the debtor-creditor relationship, the bankruptcy court is constitutionally permitted to hear it. To hold otherwise would run contrary to prior decisions by this Court.

Stern left open the question of what impact "the restructuring of debtor-creditor relations" may have on a bankruptcy court's constitutional authority. *Id*. at 492 n.7. The Third Circuit recently addressed *Stern* and its accompanied Supreme Court precedent as they relate to the constitutionality of third-party releases. *Millennium*, 945 F.3d at 134–38. While on its face, it may appear as though the "claims allowance process" prong provides a limited scope of constitutionality, the Third Circuit held "[t]he reason bankruptcy courts may adjudicate matters arising in the claims allowance process is because those matters are integral to the restructuring of the debtor-creditor relations, not the other way around." *Id*. at 138. Essentially, the second prong articulated in *Stern* should be read as providing bankruptcy courts the constitutional authority to resolve matters that are integral to the restructuring of the debtor-creditor relationship. Because the decision in *Stern* was "narrow" and addressed a single isolated issue, it makes sense why the chosen language of the second prong was tailored to the issue before the court. 564 U.S. at 502–03.[5] *Stern* acknowledged that under 28 U.S.C. § 157(b)(2)(B), the claims allowance process is integral to the restructuring of the debtor-creditor relationship. *Id*. at 497–99.

The Court did not intend for the second prong of the *Stern* test to be interpreted as only granting constitutionality to matters that would necessarily be resolved in the claims allowance process, because such an interpretation runs counter to prior decisions of this Court. The Court has spoken to the importance of determining whether a matter is integral to the restructuring of debtor-creditor relations when assessing whether the bankruptcy court had the authority to resolve the matter. *See Katchen*, 382 U.S. at 336 (noting that a bankruptcy court's constitutional authority turns on whether resolving the claim is integral to the restructuring of the debtor-creditor relationship); *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 58 (1989) (same); *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990) (same). Other courts have likewise held that *Stern*'s second prong is not limited to claims allowance.[6]

In *Millennium*, the bankruptcy court and District Court confirmed a chapter 11 plan of reorganization that contained third-party releases, over the objection of non-consenting lenders. 945 F.3d at 132–33. Just as in the case presently before the Court, the *Millennium* plan provided

[5] The Court was addressing whether bankruptcy courts may hear and decide a debtor's counterclaim against a creditor.

[6] *See, e.g.*, *In re Linear Electric Co.*, 852 F.3d 313, 320 (3d Cir. 2017) (applying *Stern* in an automatic stay setting); *In re Charles St. African Methodist Episcopal Church*, 499 B.R. 66, 103 (Bankr. D. Mass. 2013) (applying *Stern* to a plan confirmation setting); *In re Christ Hosp.*, No. CIV.A. 14-472 ES, 2014 WL 4613316, *10 (D.N.J. Sept. 12, 2014) (applying *Stern* to a sales order setting).

for non-consensual releases because of the multi-million-dollar contribution that would be provided to fund the plan. *Id*. at 130–32. The Third Circuit affirmed the lower court's reasoning, holding that a bankruptcy court does not violate the Constitution when it determines a matter that is integral to the restructuring of the debtor-creditor relationship. *Id*. at 135. Because the success of the plan hinged on providing third-party releases, the court found the releases to be integral to the debtor-creditor relationship and therefore constitutional. *Id*. at 137.

Nothing in *Stern* provides that bankruptcy courts do not have the constitutional authority to grant releases that are integral to the debtor-creditor relations. However, since *Stern*, Chief Justice Roberts, who authored the *Stern* opinion, has addressed this question. *Cf. Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665 (2015) (Roberts, C.J., dissenting) ("Our precedents have [] recognized an exception to the requirements of Article III for certain bankruptcy proceedings. . . . This historical practice, combined with Congress's constitutional authority to enact bankruptcy laws, confirms that Congress may assign to non-Article III courts adjudications involving 'the restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power.'") (internal citations omitted). This Court should affirm the Thirteenth Circuit's decision and hold that the bankruptcy court acted within its constitutional authority to approve a plan containing a non-consensual third-party release provision because the release is integral to the restructuring of the debtor-creditor relationship.

C. A Non-Consensual Third-Party Release Against Petitioner Is Appropriate Under the Circumstances.

The circuits that share in the majority holding, finding that non-consensual third-party releases are permissible, provide guidance for when such a release is appropriate. Though the guidance can vary amongst majority circuits, most apply either the *Dow Corning* test, the *Master Mortgage* test, or a variation on one of the two. *In re Dow Corning*, 280 F.3d 648 (6th Cir. 2002), *cert. denied*, 537 U.S. 816 (2002); *In re Master Mortg. Inv. Fund Inc*., 168 B.R. 930 (Bankr. W.D. Mo. 1994).

The American Bankruptcy Institute ("ABI") formed a commission in 2012 to evaluate and make a report and recommendation ("Report") on non-consensual third-party releases, among other things. AM. BANKR. INST. COMM'N TO STUDY THE REFORM OF CHAPTER 11, 2012–2014 FINAL REP. AND RECOMMENDATIONS (2014), http://commission.abi.org/full-report. In making its recommendation, the ABI "methodically worked through the various issues that arise in the context of third-party releases." Report at 255. The ABI determined that third-party releases should not be struck down as per se illegal. *Id*. The ABI likewise rejected that there should be a presumption in favor of third-party releases. *Id*. Rather, the recommendation of the ABI aligns with the majority opinion—finding that third-party releases are permissible in appropriate circumstances. *Id*. In coming to this conclusion, the ABI determined "these kinds of contractual agreements are outside the scope of section 524(e) and [are] consistent with the underlying policies of the Bankruptcy Code." *Id*.

The ABI further recommended which standard should be applied to determine whether a non-consensual third-party release is appropriate. *Id*. at 256. After addressing the multi-factored tests laid out in *In re Dow Corning* and in *In re Master Mortgage*, the ABI rejected the *Dow Corning* test, finding that the *Master Mortgage* test "adequately captured the careful review required" for cases involving third-party releases. *Id*. The five factors laid out in the *Master Mortgage* test include looking at (1) whether the relationship between the debtor and the third party receiving a release would impact the estate; (2) whether the third party has contributed significant resources to the reorganization; (3) whether the injunction is necessary to effectuate reorganization; (4) whether the release was largely accepted by impacted creditors; and (5) whether the plan provides a way to distribute payment to those impacted. 168 B.R. at 935. Applying this five-factor test recommended by the ABI to the facts of this case makes evident that a non-consensual third-party release provision is appropriate.[7]

The first factor instructs the Court to consider the identity between the debtor and the third party—specifically assessing whether a suit against the third party would reduce the assets of the estate. 168 B.R. at 935. Here, the third-party, Strawberry Fields, is the Debtor's corporate parent. R. at 4. While the record is silent as to how the finances between the parent company and its subsidiary are managed, it is conceivable that a suit against Strawberry Fields could reduce the assets of the estate. The second factor instructs the Court to consider whether a substantial contribution has been made by the third party to the reorganization. 168 B.R. at 935. Here, one could hardly argue that the $100 million contribution by Strawberry Fields would not qualify as substantial. R. at 8. The third factor instructs the Court to consider whether the release is essential to effectuate reorganization. 168 B.R. at 935. Here, the release is essential to effectuate reorganization because Strawberry Fields' contribution is contingent on the release. R. at 8. The fourth factor instructs the Court to consider whether a majority of creditors agree to the release—specifically whether the impacted class has voted "overwhelmingly" in favor of the proposed plan. 168 B.R. at 935. Here, an overwhelming 95 percent of creditors who submitted ballots voted in favor of plan confirmation. R. at 9. Lastly, the fifth factor instructs the Court to consider whether the plan provides a mechanism for payment of the claims. 168 B.R. at 935. Here, the plan provides a mechanism for payment through the creditor trust to make substantial disbursements to the creditors. R. at 4.

[7] Petitioner does not challenge the factual findings of the lower court. R. at 11.

Upon careful review of the record, the non-consensual third-party release provision provided for in this plan is appropriate under the circumstances. If the Court instead overturned the Thirteenth Circuit's decision, finding the third-party release impermissible, the direct impact of that decision would deplete the available assets of the estate by $100 million. R. at 8. The Court should affirm the Thirteenth Circuit's decision and hold that the non-consensual third-party release provision provided for in this plan is permissible because the release is within the bounds of the bankruptcy court's jurisdiction and the Constitution and is in the best interest of the class of claimants as a whole.

II. A CORPORATE DEBTOR FILING UNDER § 1192 OF SUBCHAPTER V OF CHAPTER 11 OF THE BANKRUPTCY CODE IS NOT SUBJECT TO THE DISCHARGE EXCEPTIONS LISTED UNDER § 523(A).

"The overriding purpose of the Bankruptcy Code is to relieve debtors from the weight of oppressive indebtedness and provide them a fresh start." *In re Cohn*, 54 F.3d 1108, 1113 (3d Cir. 1995). For debtors filing under chapter 11, specifically, the focus is more on the preservation or "reorganization" of the corporation rather than on the fresh start typically used for an individual. Although chapter 11 is available for an individual debtor, the backdrop in creating this chapter was for a corporation, as Congress realized the inherent differences between the two types of debtors. In addition, Congress acknowledged that if reorganization was going to be successful, corporations could not be left with the same exceptions to discharge as was commonly applied to individuals. Therefore, the need for the Bankruptcy Code to distinguish between an individual and corporate focus was shown in order to maintain and achieve the goals for each chapter.

In 2019, Congress passed Subchapter V of chapter 11 of the Bankruptcy Code, known as the Small Business Reorganization Act ("SBRA"), to "streamline the bankruptcy process by which small businesses debtors reorganize and rehabilitate their financial affairs." H.R. REP. No. 116-

171, at 1 (2019). Courts and commentators have boiled down this purpose to provide recourse to small business owners without the attendant costs and restraints typically imposed by traditional chapter 11 cases. *In re GFS Industries, LLC*, No. 22-50403-CAG, 2022 WL 16858009 at *2 (Bankr. W.D. Tex. Nov. 10, 2022). Therefore, debtors who qualify as a small business filing under Subchapter V proceed under § 1191, which requires that a bankruptcy court need only find that the proposed plan will provide the creditors payment for a three-to-five-year period. 11 U.S.C. § 1191(c)(2)(A)–(c)(3). Previously this process was guided solely by the absolute priority rule, which required any plan in which creditors had not consented to provide payment to "a dissenting class of unsecured creditors in full before any junior class can receive" any payments. *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 202 (1988).

Under the SBRA, the proposed plan may be confirmed consensually or through the § 1191(b) cramdown provision. *In re Rtech Fabrications, LLC*, 635 B.R. 559, 563 (Bankr. D. Id. 2021). If the plan is consensual, the debtor is entitled to discharge pursuant to § 1141(d), and if the proposed plan is non-consensual, under § 1191(b)'s cramdown provision, the debtor may discharge pursuant to § 1192. *Id*. As in the case at hand, the proposed plan was non-consensual because the Court confirmed the plan despite Ms. Rigby's objection. R. at 4. Therefore, the plan was confirmed under § 1191(b), making § 1192 the controlling provision for evaluating the dischargeable debt. *Id.*

The courts have been faced with issues interpreting the Subchapter V provisions with the recent passing of the SBRA. Specifically, courts have faced the issue of whether a corporate debtor is subject to the discharge exceptions of § 523(a), as cross-referenced by § 1192, when § 523(a) by itself only applies to individual debtors. According to Congress's intention of § 1192, the correct interpretation is to limit the nondischargeable debts of § 523(a) to individual debtors and not to expand the language onto corporate debtors as well. To rule on the contrary would undermine the standard method of statutory interpretation moving forward. In reading §§ 1192 and 523(a) together, Congress's intention of discharge exceptions is confined to debts of an individual debtor.

This Court should find that corporate debtors filing under § 1192 should not be confined to the standards set for individuals. Section 1192 was not intended to disrupt the steps taken by corporate debtors filing under Subchapter V. The statute's discharge exceptions should remain limited to individuals alone, as clearly shown in the plain language and legislative history. Therefore, this Court should uphold the Thirteenth Circuit's ruling and find that § 523(a)'s list of nondischargeable debts applies solely to individual debtors as explicitly stated and should not be expanded onto corporate debtors under § 1192.

A. The language, statutory construction, and legislative history of § 1192 suggests that the types of debts under § 523(a) were intended to be limited to individuals, not corporations.

The plain meaning, statutory construction, and legislative history all work together to show that when evaluating § 1192, corporations should not be bound by the discharge exceptions listed specifically for individual debtors under § 523(a). Despite multiple revisions on § 523(a), including when Subchapter V was adopted, Congress has clearly shown its intent to maintain "individual debtors" to be the specific type of debtor subject to the provision's discharge exceptions. By maintaining the same language, it would be misguided for this Court to expand beyond the stringent language used in § 523(a) and apply it to corporate debtors when the limitation to individuals is plainly stated. When construing a statute, courts shall be sure "that effect is given to all its provisions, so that no part will be inoperative or superfluous, void, or insignificant." *Hibbs v. Winn*, 542 U.S. 88, 101 (2004).

Courts may read §§ 1192 and 523(a) and find that there may be some ambiguity. However, courts should nevertheless arrive at the same conclusion not to extend § 523(a) onto corporate debtors because the rules of statutory construction maintain the limiting language. This can be further supported when courts look to the history in drafting and passing the Bankruptcy Code and chapter 11, specifically. Congress was careful to maintain the protection and emphasis on the purpose of chapter 11 with reorganization. If Congress had granted extensive discharge exceptions onto chapter 11 debtors, comprised mostly of corporations, then the effectiveness would be minimal, if any at all. When the entire context is considered, the courts will be able to properly define the intentions of Congress among each statute.

1. The plain meaning of § 1192's text shows that § 523(a)'s nondischargeable debts are subject only to the individual debtors filing under Subchapter V.

The goal of statutory construction by the courts is to give light to the legislature's intent when the statute was enacted. *Takao Ozawa v. United States*, 260 U.S. 178, 194 (1922). The first step in assessing the correct interpretation of a statute is to look at the language employed by Congress because it should be presumed that the "purpose is expressed by the ordinary meaning of the words used." *Am. Tobacco Co. v. Patterson*, 456 U.S. 63, 68 (1982) (citing *Richards v. United States*, 369 U.S. 1, 9 (1962)). Further, it is the court's job to make its decision following the ordinary and natural meaning unless such an interpretation leads to an unreasonable result that is clearly adverse to the statute's purpose. *City of Lincoln v. Ricketts*, 297 U.S. 373, 376 (1936). Here, this Court should establish that the plain reading of § 1192 includes only individual debtors who are subject to § 523(a)'s exceptions to discharge because such an interpretation is consistent with the plain meaning of the statute's words and stated purpose.

The plain meaning of § 1192 allows for any debtor to discharge all debts both provided in § 1141(d)(1)(A) and all others permitted under § 503 but with two exceptions that may apply. 11

U.S.C. § 1192. The first exception is a non-issue in this case, but the second exception, which is at the center of this dispute, includes any debt "of the kind specified in section 523(a)." 11 U.S.C. § 1192(2). Therefore, this language should be interpreted to except from discharge only the plainly specified debt in § 523(a). Until this point, § 1192 does not discriminate as to the character of the debtor—individual or corporate. Accordingly, the plain language seemingly leads courts to the conclusion that § 1192 as a whole can apply, as intended by Congress, to both individual and corporate debtors. However, the Court cannot stop there; the purview of § 1192's cross-reference to § 523(a) necessarily depends on the language of § 523(a) itself.

Section 523(a) states that a "discharge under section 727, 1141, 1192[,] 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt" specified in a list of nineteen types of debt. 11 U.S.C. § 523(a). And § 101 of the Bankruptcy Code states that a corporation includes an "association having a power or privilege that a private corporation, but not an individual or a partnership, possesses." 11 U.S.C. § 101(9)(A)(i). A common rule of statutory construction posits that "every word must be given meaning so that no word in a statute is rendered superfluous," and the language of § 523 is clear that it applies only to individual debtors. *In re Satellite Restaurants Inc. Crabcake Factory USA*, 626 B.R. 871, 876 (Bankr. D. Md. 2021). In addition, case law is well established that a corporate debtor is not an individual debtor under § 523. *In re MF Glob. Holdings, Ltd.*, No. 11-15059-MG, 2012 WL 734175, at *3 (Bankr. S.D.N.Y. Mar. 6, 2012). Thus, it is clear that the nineteen discharge exceptions listed in § 523(a) apply to individual debtors alone.

2. Despite any ambiguity identified by the Fourth Circuit in its minority holding, the rules of statutory construction favor the limitation to individual debtors.

The Fourth Circuit has misinterpreted the reading of § 1192 to expand its discharge exceptions onto corporate debtors. *In re Cleary Packaging, LLC*, 36 F.4th 509 (4th Cir. 2022). The Fourth Circuit determined that the relationship between §§ 1192 and 523(a) lacks clarity. *Id.* at 513. In holding for an extension onto corporate debtors, the Fourth Circuit focused on the opposing parties' interpretations of the "kind of debt" language used in § 1192. The Court distinguished that the language of § 1192 has no reference to the type of debtor, only types of debt, and this allows an extension onto corporate debtors. *Id.* The court reasoned that the cross-reference in § 1192(2) "to §523(a) does not refer to any kind of debtor addressed by § 523(a) but rather the kind of debt listed in § 523(a)," and therefore attaching the list of exceptions to corporate debtors may be appropriate. *Id.* at 515.

With such logic, the Fourth Circuit believed that Congress was using shorthand to avoid a listing of all debts in § 523(a). *Id.* at 515. Due to the tension between the sections, the Fourth Circuit reasoned that the more specific provision, § 1192 which addresses individual and corporate debtors, should ultimately govern which direction the court should take. *Id.* at 515. However, the Fourth Circuit misapplied the principle of statutory interpretation that the specific controls the general.

In the most recent decision brought down on the relationship of §§ 1192 and 523(a), *In re GFS Industries, LLC*, the Western District Texas Bankruptcy Court identifies the gaps in the Fourth Circuit's reasoning in support of their minority decision to include corporate debtors in § 523(a)'s exceptions. Here, the court ruled that the § 523(a) nondischargeable debts do not apply to corporate debtors. *GFS Industries*, 2022 WL 16858009, at *5. GFS Industries, LLC ("GFS"), a provider of cleaning and environmental services, filed for bankruptcy under Subchapter V after attempting to expand its business with financial backing from Merchant Cash Advances ("MCA"). *Id*. at 4. After GFS filed for bankruptcy, one of its MCA financers alleged that GFS made material misrepresentations by failing to discount the existence of other MCA lenders, so the financer sought relief in the form of the nondischargeable debt owed by GFS pursuant to § 523(a).

In challenging the Fourth Circuit's use of the principle that the specific controls the general, the court in *GFS Industries* explained that such a principle would only apply "when conflicting provisions simply cannot be reconciled—when the attribution of no permissible meaning can eliminate the conflict." *GFS Industries*, 2022 WL 16858009, at *8 (citing ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 69, 183 (2012)). Then, the court in *GFS Industries* said such a conflict is resolved between provisions by including § 1192(2) § Section 523(a). *GFS Industries*, 2022 16858009, at *8. One reason that led the court to its determination was that § 1192 referred to § 523 as a method to absorb the list of nondischargeable debts. *Id.* Therefore, the limiting language of "individual" within § 523 maintains its same limitations when placed into a § 1192 analysis. The "language of § 1192(2) does not empower § 523(a) to cast a wider net than the text of § 523(a) permits." *Id*.

3. The legislators concern in expanding discharge exemptions and damaging reorganization for corporate debtors is shown through the legislative history leading up to the Bankruptcy Code's adoption.

While advocating for the principle that the specific controls the general, the Fourth Circuit failed to include an analysis of the legislative history for the creation of the Bankruptcy Code, specifically on the topic of discharge for a corporate debtor. Therefore, separate from the statute's plain language, Congress's intention can be shown and supported by analyzing the Bankruptcy Code's history with corporate debtor discharge to arrive at the proper interpretation of § 1192(2).

Moreover, legislative history was one of the many reasons used to support the bankruptcy court's decision for *In re Cleary Packaging, LLC*, which the Fourth Circuit completely ignored in holding for a reversal. *In re Cleary Packaging, LLC*, 630 B.R. 466, 473 (Bankr. D. Md. 2021).

Before the Bankruptcy Code's enactment, Congress first passed the Bankruptcy Act of 1898, which eventually included two separate chapters, chapter X for public corporations and chapter XI for smaller, closely held businesses. Ralph Brubaker, *Taking Exception to the New Corporate Discharge Exceptions*, 13 AM. BANKR. INST. L. REV. 757, 763 (2005). Initially, chapter X included a comprehensive discharge of all debts applied for corporate reorganization and seeing the potential to "jeopardize prospects for a successful reorganization," chapter XI was adopted. *Id*. As first enacted for the closely held businesses, chapter XI eventually "evolved into the dominant reorganization vehicle and very substantial debtors [we]re able to reorganize under Chapter XI." *Id.* at 765 (citing Report of the Commission on the Bankruptcy Laws of the United States, H.R. DOC. No. 93-137, pt. I, at 246 (1973)). Therefore, as Congress was drafting the Bankruptcy Code and consolidating the two reorganization provisions, the difference in corporate discharge received much scrutiny. *Id*. at 765. This has led the courts to "strenuously protect[] a corporate debtor's discharge." *In re Cleary Packaging, LLC*, 630 B.R. at 474. And currently, § 1141 is the only expressed categorical exception to a corporate debtor's discharge. *Id*. at. 475.

B. Chapters 11 and 12 are distinct and serve vastly different purposes, so their respective corporate debtor discharge provisions should not be interpreted in the same way.

Although Congress uses the same language among statutes, the standards for determining whether or not such statutes have the same meaning cannot be determined solely by the word choice. With its decision in *In re Trepetin*, the Maryland Bankruptcy Court explained the connection of similar language between Chapter 12 and Subchapter V. *In re Trepetin*, 617 B.R.

841 (Bankr. D. Md. 2020). However, the Court is clear in distinguishing that although the two have been adopted with similar language, "Subchapter V and chapter 12 are not identical and invoking chapter 12 standards may not be warranted in every instance. *Id.* Taking the language alone would be a disservice by ignoring additional influence and background that was considered when adopting each provision. The courts cannot properly determined what Congress's intentions are if it ignores everything but similar language among provisions. Therefore, despite any similarities among chapters, it is in the best interest of courts to be certain that its evaluation extends beyond the language by considering the entire context of each provision.

In re JRB Consol Inc., a chapter 12 case, the court allowed a § 523(a) dischargeability action against a corporate debtor. *In re JRB Consol Inc.*, 188 B.R. 373 (Bankr. W.D. Tex. 1995). After that decision, chapter 11 litigants have argued for extending § 523(a) to corporate debtors by comparing it to the discharge exceptions made for corporate debtors under a chapter 12 filing. *See In re Cleary Packaging, LLC*, 36 F.4th at 516. Despite the filings falling under separate chapters, arguments stand on the similar language used between §§ 1228(a)(2) and 1192(a). In comparing the two sections side by side, the provisions are identical. However, interpreting both chapters' sections in the same fashion is too narrow of a conclusion.

Although there is identical language between chapter 12 and Subchapter V of chapter 11, the two chapters are structurally different, at their core. Chapter 12 covers a more exclusive set of debtors, applying only to family farmers and fishers. Paul Bonapfel, *A Guide to the Small Business Reorganization Act of 2019*, at 223 (June 2022). Subchapter V, on the other hand, applies to a wide range of businesses and is significantly more expansive than those in chapter 12. *Id.* The *JRB Consol Inc*. court reasoned that "[a]ll eligible Chapter 7, Chapter 11, or Chapter 13 debtors are not necessarily eligible to file a Chapter 12. It is a specific chapter, limited to special types of debtors, and therefore, it would not be unexpected that Congress may provide some different treatment of these debtors." *In re JRB Consol Inc.*, 188 B.R. at 374.

CONCLUSION

Non-consensual third-party releases, as often a crucial step in the plan confirmation process, are within the bounds of a bankruptcy court's jurisdiction and the Constitution. Pursuant to the overarching goals of chapter 11, corporate debtors proceeding under Subchapter V ought to be able to discharge all types of debt. For the foregoing reasons, we ask that the Court AFFIRM.