American College of Bankruptcy
Seventh Circuit Education Seminar, 2024

Year in Review

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Harrington v. Purdue Pharma L.P.

Supreme Court of the United States, June 27, 2024

<u>Background of Facts:</u>

In 2007, a Purdue Pharma affiliated pleaded guilty to a federal felony for false marketing OxyContin as "less addictive", affirming Purdue's role in the Opioid Crisis

The Sackler family, owners of Purdue, initiated a "milking program" withdrawing about $11 billion (75% of total assets) from Purdue after thousands of lawsuits following the false marketing decision, leaving Purdue Pharma in a poor financial state

In 2019 Purdue filed Chapter 11 Bankruptcy. The Sacklers proposed to return about $4.3 billion to Purdue's bankruptcy estate in exchange for 1) extinguishing any claims the estate might have against the family members and 2) releasing the family from all opioid related claims in the future (the Sackler discharge)

> 2) contained a release and injunction banning claims by anyone who might otherwise sue Purdue

Purdue agreed to these terms and included them in the reorganization plan. Additionally, Purdue would help individual victims with a minimum payment of $3,500 and maximum of $48,000. Any victim receiving more than the base would receive payment installments over up to 10 years.

Creditors were polled on the proposed plan and overwhelmingly supported it.

The bankruptcy court approved, but the district court vacated that decision saying nothing in the law gives bankruptcy courts the authority to extinguish claims against third parties without claimants consent. The Second Circuit reversed the District Court's ruling.

During appeal, the Sacklers proposed a new plan where they would contribute an additional $1.175-1.675 billion if the eight objecting States and District of Columbia dropped their objections to the reorganization plan. The States agreed.

Question Presented: Whether the Bankruptcy Code authorizes a bankruptcy court to extinguish claims against third parties (non debtors) without claimants consent?

Legal Reasoning and outcome:

The Court rules the Bankruptcy Code does not authorize a release and injunction to discharge claims against a non debtor without consent of affected claimants within a Chapter 11 reorganization plan. They reverse the Second Circuit.

§1141(d)(1)(A) of the Bankruptcy Code states when a court confirms a reorganization plan it discharges the debtor from any debt arising before the date of confirmation and operates as an injunction from creditors to collect or recover that debt. §524(e) says this only operates for the benefit of the debtor against creditors not other parties

> The Sacklers did not file bankruptcy and thus did not place all of their assets for distribution to the creditors, yet they seek a discharge such as the one described

Text: §1123 outlines the contents or terms of Chapter 11 reorganization plans. §1123(b) states six things a plan “may” contain. The Court, like the Second Circuit,

focuses on §1123(b)(6) which says it can "include any other appropriate provision not inconsistent with the applicable provisions of this title"

> The Court claims §1123(b)(6) is a catchall phrase and thus it does not receive broad interpretation but rather interpreted only in the light of surrounding context (ejusdem generis canon).
>
> The link between the listed items (1-5) are "appropriate provision[s]" concerning the *debtor's* rights, responsibilities, and relationships between its creditors. Therefore, it does not give authority to discharge the debt of a non debtor.
>
> Looking at the code more broadly, a discharge is usually reserved for the debtor alone. The code also constrains the debtor and requires them to come forward with virtually all its assets.

The dissent reading of §1123(b)(3) that states bankruptcy estates settle creditors derivative claims against non debtors does not address the reason a bankruptcy court may do so: because those claims belong to the debtor's estate. The Sackler discharge is not like this because it seeks to resolve claims against the Sackler's not Purdue

Statutory purpose: The Court must look at how far Congress has gone in a statue to pursue one policy over another. The Bankruptcy Code does not allow a bankruptcy court to resolve all collective-action problems blind to the role of other mechanisms. §1123(b)(6) say a bankruptcy court can address certain collective-action problems, but also states those powers are not limitless

§524(e) and §524(g)(4)(A)(ii) provides a notable exception to the Code for asbestos-related bankruptcies stating the court may issue an injunction barring action directed against a third party. The code only doing so in one context makes it more unlikely that §1123(b)(6) applies to third parties.

History/context: every bankruptcy law from 1800-1978 (the enactment of the present Bankruptcy Code) generally reserved the benefits of discharge to the debtor who offered a fair and full surrender of property

The Court should not rule on the policy debates presented by either side - those are for Congress to add to the Bankruptcy Code rules for opioid-related bankruptcy like it did for asbestos-related cases.

The Court clarifies it did not rule on consensual third party releases in connection with a reorganization plan. Nor do they say what qualifies a consensual release providing full satisfaction claims against a third party debtor

Office of the United States Trustee v. John Q. Hammons Fall 2006, LLC

Supreme Court of the United States, June 14, 2024

Issue: What is the appropriate remedy for debtors who overpaid their quarterly U.S. Trustee fees after the Supreme Court found an unconstitutional disparity with Bankruptcy Administrator districts in *Siegel v. Fitzgerald*, 142 S.Ct. 1770 (2022).

Holding: Given the "small, short-lived disparity caused by the constitutional violations" found in *Siegel*, prospective parity is the only appropriate remedy. In other words, debtors who paid unconstitutionally higher quarterly U.S. Trustee fees were not entitled to any refunds.

Facts: In 2022 the Supreme Court held in *Siegel* that disparate quarterly fees for debtors in U.S. Trustee districts versus Bankruptcy Administrator districts violated the uniformity requirement of the Constitution's Bankruptcy Clause. In deciding *Siegel*, the Supreme Court specifically declined to address the appropriate remedy. The debtors in *John Q. Hammons* – like the trustee in *Siegel* – had challenged the constitutionality of the fee disparity. The *John Q. Hammons* debtors litigated their challenge up to the Tenth Circuit. After *Siegel*, the Tenth Circuit ordered a refund of the overpaid fees. The U.S. Trustee sought certiorari. Although there was no circuit split and three other circuits had also ordered refunds after *Siegel*, the Supreme Court granted certiorari to determine the appropriate remedy.

Analysis: In a 6-3 decision authored by Justice Ketanji Brown Jackson, the Supreme Court held that prospective parity was the only appropriate remedy in this case. The Court noted that "the nature of the violation determines the scope of the remedy." In *Siegel*, the Constitutional violation was non-uniformity, rather than the magnitude of the fees. The disparity was short-lived – lasting only about seven months. And the disparity was "small," because only about 50 out of more than 2,000 large chapter 11 cases during this time period were filed in Bankruptcy Administrator districts. In other words, only about 2% of debtors during this period paid non-uniform fees. Concluding that the constitutional violation was short-lived

and small, the Court then turned to the appropriate remedy.
To make that determination, it considered what Congress would have done had it been aware of the Constitutional infirmity. Consistent with Congress' intent to keep the U.S. Trustee system self-funded, Congress having itself fixed the problem in 2021 by mandating uniform fees prospectively, and the prospect taxpayers footing the bill for a $326 million refund for a program that was supposed to be self-funded, the Court determined that prospective parity was the only appropriate remedy. The Court reversed the Tenth Circuit, denying the debtors a refund.

Truck Insurance Exchange v. Kaiser Gypsum Co., Inc

Supreme Court of the United States, June 6, 2024

On June 6, 2024, the Supreme Court decided *Truck Insurance Exchange v. Kaiser Gypsum Co., Inc.,* clarifying who can qualify as a "party in interest" under §1109(b) of the Bankruptcy Code. The Court held that a "party in interest" includes insurers with financial responsibility for bankruptcy claims, and that those parties can "raise" and "appear and be heard on any issue" in Chapter 11 cases.

The Petitioner Truck Insurance Exchange (Truck) served as the primary insurer for many companies involved in the production and distribution of products containing asbestos. The Debtors, Kaiser Gypsum Co. and its parent company Hanson Permanente Cement both filed for bankruptcy under Chapter 11 after facing thousands of asbestos-related lawsuits. The reorganization plan (the Plan) created a §524(g) Asbestos Personal Injury Trust (Trust), channeling all current and future asbestos claims into the Trust while also enjoining further legal action against the Debtors for any of those claims.

As the Debtors' primary insurer, Truck's contractual obligations included defending asbestos personal injury claims and indemnifying the Debtors' for up to $500,000 for each claim. Truck was the only party to oppose the Plan. They argued that the Plan lacked the same disclosures and authorizations for uninsured claims as it did for insured claims. The disparity rose concerns for Truck being at financial risk for fraudulent claims. Truck also asserted that the Plan modified its rights under insurance policies.

After the Bankruptcy Court recommendation, the District Court confirmed the Debtors' Plan, concluding that Truck's standing to object was limited. The court deemed the Plan "insurance neutral,"—unchanging Truck's prepetition obligations or its contractual rights. The Fourth Circuit affirmed the District Court's decision that Truck did not qualify as a "party in interest" under §1109(b).

The Supreme Court reversed the lower courts' decision and remanded the case. Justice Sotomayor delivered the opinion of the Court, in which all other Justices joined. Justice Alito took no part in the consideration or decision of the case. The Court emphasized the broad application of §1109(b), supported by the provision's text, context, and legislative history. When Congress enacted the Bankruptcy Code in 1978, §1109(b) expanded participatory rights, enabling any entity significantly impacted by a bankruptcy proceeding to participate and voice their concerns while also encouraging fair and equitable reorganization processes.

The Court concluded that by bearing the majority of the Trust's liability, Truck faced potential financial harm. Its financial responsibility thus gave Trust an interest in the bankruptcy proceedings, allowing their objections to be heard. In this case, Truck may be the only entity that would identify problems within the Plan, as the Plan already benefits the Debtors and any asbestos claimants.

Conceptually, the Court also found issue with the "insurance neutrality" doctrine, particularly that it conflated the merits of an objection with the question of whether an entity falls under a "party of interest." The inquiry in §1109(b) does not focus on the specific impact of a reorganization plan, but rather whether the proceedings can affect a prospective party. The Court reiterated that the narrow scope of "insurance neutrality" wrongly limits the numerous other ways that bankruptcy proceedings can impact insurers.

In response to Truck's objections, the Debtors point to the notion of peripheral parties potentially impeding a reorganization. However, the Court noted that §1109(b) does not provide parties in interest with a vote or a veto in bankruptcy proceedings—only the chance to be heard. While there may be other cases that include further evaluation on peripheral parties and direct interest, the Court decided that this case is not included. Thus, an insurer who bears financial responsibility for bankruptcy claims does in fact qualify as a "party in interest," and they can object to a Chapter 11 plan.

In Re LTL Management LLC

United States Court of Appeals for the Third Circuit (July 25, 2024)

Background of Facts:

- Johnson & Johnson (J&J), through its subsidiary JJCI, sold talc-based products that plaintiff's (starting around 2010) began claiming caused mesothelioma or ovarian cancer
- In 2021 J&J used a Texas divisional merger to spli JJCI into two entities: New JJCI and LTL Management LLC. The merger allocated most assets to New JJCI and all talc-related liability to LTL. But it also included a funding agreement requiring J&J and New JJCI to cover LTL's talc liabilities and bankruptcy expenses up to the value of the assets previously held by JJCI (estimated at $61.5 billion).
- LTL filed a Chapter 11 bankruptcy, which was dismissed on appeal by the Third Circuit for lack of finding financial distress. Hours after the dismissal became final, LTL filed for Chapter 11 again. In doing so, it had amended the funding agreement so that the guarantee provided access to only around $30 billion for talc-related claims.
- This was less than half of what was covered under the initial agreement. The new structure was intended to address the lack of financial distress noted in the dismissal of the first bankruptcy.
- An official committee of talc claimants moved to dismiss the bankruptcy for want of good faith claiming LTL was still not financially distressed. The bankruptcy court granted the motion.
- This case is an appeal by LTL and the Ad Hoc Committee from the Bankruptcy Court's decision dismissing LTL's bankruptcy for want of good faith.

Question Presented: Was LTL's second Chapter 11 bankruptcy petition filed in good faith?

Legal Reasoning and Outcome:

- No, The Court affirmed the Bankruptcy Court's dismissal of the LTL's second chapter 11 finding.
- The debtor bears the burden of proving a bankruptcy case was filed in good faith. LTL claims it will be unable to pay its liabilities in both the short and long term.
    - In the short term, the Court disagreed with the theory of costs related to trial and settlement presented.
    - In the long term, the Court compared LTL's $21 billion worst-case estimate for lifetime talc liabilities with J&J's estimated $22.3 billion forced liquidation value. Because J&J's forced liquidation value exceeds the worst-case estimate the Court does not find LTL to be in financial distress.
- LTL offered two additional challenges which the Court dismisses: 1. The Court erred in its fact finding 2. The Court misapplied the past decision from the first LTL case.
- Fact Finding: LTL disagrees with the expert witness's $21 billion worst case estimate on the grounds they did not consider blockbuster verdicts. But LTL points to no evidence to the likelihood or size of such verdicts.
- Application of Third Circuit decision to dismiss the first bankruptcy:
    - LTL argued that the first decision allows bankruptcy filings if there is a credible threat that mass tort litigation will result in liabilities greater than the firm's assets. The Court rejected this argument because the Bankruptcy Court found LTL's forced liquidation value exceeded the worst-case scenario talc liability.

    - LTL argued the Bankruptcy Court misread the first Third Circuit opinion and looked only at current conditions. The Court rejected this argument, noting that LTL's arguments still did not establish the requisite financial distress. LTL did not point to any other financial distress such as difficulties paying employees, customers and vendors wary of the firm's credit risk, liquidity problems, etc.
- LTL's claim that J&J might be forced to liquidate assets does not demonstrate financial distress because the Court found such a forced liquidation would still exceed LTL's worst case talc liabilities.
- The Ad Hoc Committee claims that LTL's bankruptcy is protected by Section 1112(b)(2), which allows a court to decline to dismiss a bankruptcy case if unusual circumstances show that dismissal is not in the best interest of the creditors. The Bankruptcy Court said lack of financial distress is not the type of bad faith to trigger the 1112(b)(2) exception. The Third Circuit Court agreed.

In the

United States Court of Appeals

For the Seventh Circuit

No. 23-1931

JOHN J. PETR, Trustee for BWGS, LLC,

Plaintiff-Appellant,

v.

BMO HARRIS BANK N.A. and
SUN CAPITAL PARTNERS VI, L.P.,

Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Indiana, Indianapolis Division.
No. 1:22-cv-01742 — **Jane Magnus-Stinson**, *Judge*.

ARGUED JANUARY 19, 2024 — DECIDED MARCH 15, 2024

Before ST. EVE, KIRSCH, and LEE, *Circuit Judges*.

ST. EVE, *Circuit Judge*. Acquisition company Sun Capital, through its subsidiary, acquired the financially floundering BWGS, LLC. It financed the acquisition with a loan from BMO Harris that BWGS repaid a month later. Now bankrupt, BWGS asserts that this payment was a constructively fraudulent transfer and seeks to avoid it and recover its value under the United States Bankruptcy Code and Indiana Uniform

Voidable Transactions Act. This appeal raises two issues of first impression in this Circuit. First, whether § 546(e) of the Bankruptcy Code, 11 U.S.C. § 546(e), which shields from avoidance certain transactions made "in connection with a securities contract," extends to transactions involving private securities that do not implicate the national securities clearance market. And second, if so, whether § 546(e) also preempts state law claims seeking similar relief such that a bankruptcy trustee may not bring them under § 544(a) of the Bankruptcy Code. We hold today that the answer to each of these questions is "yes."

I. Background

Because the district court dismissed this case at the pleadings stage, we recite the facts in the light most favorable to the nonmovant Trustee, accepting as true all the well-pleaded facts in the complaint. *In re Jepson*, 816 F.3d 942, 945 (7th Cir. 2016).

A. Factual History

Formed as Worm's Way, Inc. in 1987, the debtor, BWGS, LLC ("BWGS")[1] was a wholesale distributor of hydroponic and organic garden products. Beginning in 2015, BWGS's gross profit margin dropped and it incurred net losses each year. At that time, all BWGS's outstanding stock was in an Employee Stock Ownership Plan Trust ("ESOP Trust"). BWGS was thus a privately held company whose stock was never publicly traded.

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[1] While recognizing that the debtor's name did not change from Worm's Way, Inc. to BWGS, LLC until 2016, for consistency, we refer to the debtor uniformly as BWGS.

In 2016, defendant Sun Capital Partners VI, L.P. ("Sun Capital") targeted BWGS for acquisition. Sun Capital negotiated with the ESOP Trust, and they ultimately reached a stock purchase agreement ("SPA"). Under the SPA, Sun Capital's subsidiary would acquire all stock in BWGS for $37,751,632. Sun Capital then formed BWGS Intermediate Holding, LLC ("Intermediate Holding") to acquire BWGS's stock. The acquisition closed on December 30, 2016, and BWGS thus became a direct, wholly owned subsidiary of Intermediate Holding.

To finance the acquisition, Intermediate Holding entered into a loan authorization agreement with defendant BMO Harris Bank N.A. ("BMO"). Under this agreement, BMO extended Intermediate Holding a loan of about $25.8 million (the "Bridge Loan"). Sun Capital guaranteed the agreement. The day of the closing, BMO transferred these funds to Intermediate Holding, which then transferred them to the ESOP Trust in exchange for BWGS's stock.

On January 27, 2017—less than one month after the acquisition—Sun Capital caused BWGS and Intermediate Holding to enter two credit agreements as joint borrowers. The first was for a $20 million term loan with LBC Credit Agency Services, LLC ("LBC"), under which LBC transferred $19,477,597 to BMO. The second provided for revolving loans of up to $20 million with JP Morgan Chase Bank, N.A. ("JP Morgan"), under which JP Morgan transferred $5 million to BMO. That same day, BWGS transferred an additional $409,706 from its cash on hand to BMO.

BMO accepted these three transfers, totaling $24,887,303 (collectively, "the Transfer"), in full payment of the Bridge Loan. The Transfer thus relieved Intermediate Holding and

Sun Capital of their obligations under the Bridge Loan. BWGS received no value from the Transfer.

The Transfer left BWGS, already in poor financial condition, in dire financial straits. BWGS defaulted repeatedly between 2017 and 2019, and BWGS's creditors ultimately filed an involuntary bankruptcy petition against it under Chapter 7 of the United States Bankruptcy Code. The bankruptcy court entered an order for relief under Chapter 7 on April 24, 2019.

B. Legal Background and Procedural History

The Bankruptcy Trustee for BWGS (the "Trustee") filed this action against BMO, Sun Capital, and other unidentified entities in the United States Bankruptcy Court for the Southern District of Indiana. The Trustee's amended complaint seeks to avoid the Transfer and recover its value from either BMO or Sun Capital under Chapter 5 of the United States Bankruptcy Code.

Chapter 5 affords bankruptcy trustees the authority to "se[t] aside certain types of transfers ... and ... recaptur[e] the value of those avoided transfers for the benefit of the estate." *Merit Mgmt. Grp., LP v. FTI Consulting, Inc.*, 583 U.S. 366, 370 (2018). Sections 544 through 553 of the Code outline the circumstances under which a trustee may pursue avoidance. *Id.* Here, the Trustee invokes § 544(b)(1), which provides:

> [T]he trustee may avoid any transfer of an interest of the debtor in property or any obligation incurred by the debtor that is voidable under applicable law by a creditor holding an unsecured claim that is allowable under section 502 of this title or that is not allowable only under section 502(e) of this title.

11 U.S.C. § 544(b)(1). Section 544(b) thus allows the Trustee to "step into the shoes of a creditor" and "avoid any transfers such a creditor could have avoided" under applicable law. *In re Tribune Co. Fraudulent Conv. Litig.*, 946 F.3d 66, 85 (2d Cir. 2019) (quoting *Univ. Church v. Geltzer*, 463 F.3d 218, 222 n.1 (2d Cir. 2006)).

The applicable law the Trustee relies upon here is the Indiana Uniform Voidable Transactions Act ("IUVTA"). Section 14(a)(2) of the IUVTA provides that a constructively fraudulent transfer is "voidable as to a creditor." Ind. Code § 32-18-2-14(a)(2). Section 17(a) subsequently provides that, "[i]n an action for relief against a transfer," a creditor may obtain, *inter alia*, "[a]voidance of the transfer." Ind. Code § 32-18-2-17(a)(1). Alleging that the Transfer was constructively fraudulent under § 14(a)(2), the Trustee seeks to avoid the Transfer by combining § 544(b) of the Bankruptcy Code with §§ 14(a)(2) and 17(a) of the IUVTA.

The Trustee further seeks to recover the value of the Transfer from either BMO or Sun Capital pursuant to § 550(a) of the Bankruptcy Code and § 18(b)(1) of the IUVTA. Section 550(a) provides, in relevant part:

> [T]o the extent that a transfer is avoided under section 544 … of this title, the trustee may recover, for the benefit of the estate, the property transferred, or, if the court so orders, the value of such property, from … the initial transferee of such transfer or the entity for whose benefit such transfer was made ….

11 U.S.C. § 550(a)(1). Similarly, § 18(b)(1) of the IUVTA provides: "To the extent that a transfer is avoidable in an action by a creditor under section 17(a)(1) … the creditor may

recover a judgment for the value of the asset transferred" from certain transferees. Ind. Code § 32-18-2-18(b)(1).

Alleging he can avoid the Transfer under § 544(b) via § 17(a), the Trustee contends that he may thereafter recover its value under § 550(a) and § 18(b)(1) from either the original transferee—BMO—or a beneficiary of the transfer—Sun Capital.

BMO and Sun Capital (together, the "Defendants") moved to dismiss the Trustee's claims, arguing that the Transfer is not avoidable because it falls within the safe harbor of § 546(e), which prevents a bankruptcy trustee from undoing certain transfers. As relevant here, the safe harbor provides that "the trustee may not avoid a transfer … made by or to (or for the benefit of) a … financial institution … in connection with a securities contract, as defined in section 741(7) … except under section 548(a)(1)(A) of this title." 11 U.S.C. § 546(e).

The bankruptcy court disagreed. Denying the Defendants' motions, the court found that only the SPA was a "securities contract" and the Transfer was not made "in connection with" the SPA because it lacked a "sufficient material nexus" to it. As an alternative basis for denying the Defendants' motions, the court also held sua sponte that the Trustee's claim to recover the value of the Transfer from Sun Capital under § 18(b)(1) of the IUVTA, brought via the "'strong arm' powers of § 544," did not implicate § 546(e)'s safe harbor. Because § 18(b)(1) provides that a creditor may recover the value of a transfer "[t]o the extent that a transfer is *avoidable* in an action by a creditor," Ind. Code § 32-18-2-18(b)(1) (emphasis added), the bankruptcy court found that it permits the Trustee to recover the value of the Transfer from Sun Capital without actually avoiding the Transfer.

After granting the Defendants leave to file an interlocutory appeal, the United States District Court for the Southern District of Indiana reversed. The district court found that the SPA, Bridge Loan Authorization Agreement, and Sun Capital Guaranty all qualified as securities contracts under the safe harbor and the Transfer was made "in connection with" these securities contracts. Accordingly, the district court held that § 546(e)'s safe harbor barred the Trustee's claims.

Turning to the bankruptcy court's alternative ruling, the district court first rejected as waived the Trustee's newfound argument that the safe harbor does not apply to an IUVTA § 18(b)(1) claim against Sun Capital brought pursuant to the strong-arm power of § 544(a) of the Bankruptcy Code. The Trustee had not brought a claim under § 544(a) in the bankruptcy court and could not do so for the first time in the district court on appeal. Finally, the district court found that, even if the Trustee had asserted freestanding claims under § 18(b)(1), § 546(e)'s safe harbor nevertheless preempted those claims.

Accordingly, the district court remanded the case to the bankruptcy court with instructions to enter a dismissal with prejudice. The Trustee appeals.

II. Analysis

"We review the judgment of the district court using the same standard of review with which the district court reviewed the bankruptcy court's ruling." *In re Sheehan*, 48 F.4th 513, 520 (7th Cir. 2022). "Like the district court, we review a bankruptcy court's factual findings for clear error and its legal conclusions de novo." *In re Miss. Valley Livestock, Inc.*, 745 F.3d 299, 302 (7th Cir. 2014).

On appeal, the Trustee contends that the district court erred in directing the dismissal of his complaint based on the § 546(e) safe harbor. The crux of the instant appeal thus centers on whether § 546(e)'s safe harbor precludes the Trustee's claims to avoid and recover the value of the Transfer. In resolving this dispute, we must consider two ancillary questions. First, does § 546(e) apply to the Trustee's claims to avoid the Transfer here? And second, if so, can the Trustee nevertheless circumvent § 546(e) and proceed with claims to recover the value of the Transfer under § 544(a) of the Bankruptcy Code and § 18(b)(1) of the IUVTA? We address each question in turn.

A. Section 546(e)'s Safe Harbor Applies to the Transfer

The § 546(e) safe harbor precludes a bankruptcy trustee from avoiding a transfer "made by or to … [a] financial institution … in connection with a securities contract." Relying on legislative history, the Trustee contends that § 546(e) applies only to transactions that implicate the national system for the clearance and settlement of publicly held securities. He reasons that Congress enacted § 546(e) to insulate the nation's financial markets from instability generated by the avoidance of public securities transactions, and undoing private transactions does not advance that purpose. Thus, he argues that Congress did not intend to shield the Transfer here, which involved the sale of only privately held stock, from avoidance under § 546(e)'s safe harbor.

In determining whether § 546(e)'s prohibition on the avoidance of transfers made "in connection with a securities contract" applies to private securities transactions, we begin, as we must, with the statutory text. *Nielen-Thomas v. Concorde Inv. Servs., LLC*, 914 F.3d 524, 528 (7th Cir. 2019). We read the

statute as a whole and give words "'their ordinary and natural meaning' in the absence of a specific statutory definition." *Id.* (quoting *CFTC v. Worth Bullion Grp., Inc.*, 717 F.3d 545, 550 (7th Cir. 2013)). If the statutory text is clear and unambiguous, our inquiry ends. *Id.*

Section 546(e) provides:

> Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) of this title, the trustee may not avoid a transfer that is a margin payment, as defined in section 101, 741, or 761 of this title, or settlement payment, as defined in section 101 or 741 of this title … or that is a transfer made by or to (or for the benefit of) a … financial institution … in connection with a securities contract, as defined in section 741(7) ….

The Trustee insists that this court has already held § 546(e) ambiguous and found it necessary to consult legislative history in construing the provision. *See FTI Consulting, Inc. v. Merit Mgmt. Grp.*, 830 F.3d 690 (7th Cir. 2016).[2] In *FTI Consulting*, we held no such thing. Instead, in *FTI Consulting*, we considered the discrete question of "whether the section 546(e) safe harbor protects transfers that are simply conducted *through* financial institutions (or the other entities named in section 546(e)), where the entity is neither the debtor nor the transferee but only the conduit." *Id.* at 691. In resolving that question, we noted at the outset that there was "no question that the transfer at issue [was] either a 'settlement payment' or a payment made 'in connection with a securities contract'"

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[2] At oral argument, counsel for the Trustee walked back this argument.

for purposes of the safe harbor. *Id.* at 692. Thus, far from holding that § 546(e) as a whole is ambiguous, we were untroubled by the meaning of the portion of that provision at issue here: "in connection with a securities contract."

Indeed, it was only *after* we held the phrases "by or to" and "for the benefit of" in § 546(e) were ambiguous that we "turn[ed] to the statute's purpose and context for further guidance." *Id.* at 693. And even then, we did not come close to holding that § 546(e), or any portion thereof, applies only to securities transactions implicating the national securities clearance system. *See id.* at 697 (holding narrowly that "section 546(e) does not provide a safe harbor against avoidance of transfers between non-named entities where a named entity acts as a conduit"). Moreover, in affirming our *FTI Consulting* decision, the Supreme Court in *Merit Management* suggested that these disputed provisions are unambiguous and thus resort to legislative history is unnecessary. *See* 583 U.S. at 385–86 ("Even if this were the type of case in which the Court would consider statutory purpose, here Merit fails to support its purposivist arguments. In fact, its perceived purpose is actually contradicted by the plain language of the safe harbor…. For these reasons, we need not deviate from the plain meaning of the language used in § 546(e)." (citation omitted)).

Turning to the relevant portion of § 546(e) here, the parties do not dispute that the Transfer to BMO was "made to a financial institution." (ellipses omitted). We must determine whether the Transfer was made "in connection with a securities contract" within the meaning of § 546(e). In making this determination, we turn to legislative history and other canons of statutory interpretation only if this language is ambiguous. *See Nielen-Thomas*, 914 F.3d at 528.

1. "Securities Contract"

We first consider the term "securities contract" as used in § 546(e). This court has twice cited the definition of "securities contract" as it applies to § 546(e) with approval. *Peterson v. Somers Dublin Ltd.*, 729 F.3d 741, 750 (7th Cir. 2013); *Grede v. FCStone, LLC*, 746 F.3d 244, 252 (7th Cir. 2014). Indeed, the Trustee identifies no ambiguities in the plain text of the term or its definitions, and we can conceive of none. "Securities contract" as used in § 546(e) is unambiguous.

Moreover, nothing in the plain language of § 546(e) excludes private contracts not implicating the national securities clearance system from the definition of "securities contract." Section 546(e) defines "securities contract" by reference to 11 U.S.C. § 741(7) of the Bankruptcy Code. As we have recognized, § 741(7) defines the term "very broadly," *Grede*, 746 F.3d at 252, containing eleven sub-definitions. And not one of these eleven sub-definitions contains any indication that it is limited to contracts implicating only publicly held securities. Indeed, the first sub-definition "provides that a 'securities contract' is a contract for the purchase or sale of a security, and § 101(49)(A)(ii) says that security includes stock." *Peterson*, 729 F.3d at 750. As commonly understood, "stock" is a broad term, covering shares in private and public companies. *See* STOCK, Black's Law Dictionary (11th ed. 2019) (defining "stock" as "[t]he capital or principal fund raised by a corporation through subscribers' contributions or the sale of shares" and "[a] proportional part of a corporation's capital represented by the number of equal units (or shares) owned, and granting the holder the right to participate in the company's general management and to share in its net profits or earnings").

Nor are we persuaded that the location of the definition of "securities contract" within the section of the Bankruptcy Code governing stockbroker liquidations somehow grafts a public-securities requirement onto the otherwise-clear meaning of the term. To the contrary, the "General Provisions" subchapter of the Code provides that "a definition, contained in a section of this title that refers to another section of this title, does not, for the purpose of such reference, affect the meaning of a term used in such other section." 11 U.S.C. § 102(8). Congress thus made it clear that it did not intend cross-references between sections of the Code to impact the meaning of terms used in those sections.

The decisions of our sister circuits support our conclusion that nothing in the definition of "securities contract" or the text of § 546(e) restricts the term to public securities. *See, e.g.*, *In re Plassein Int'l Corp.*, 590 F.3d 252, 258 (3d Cir. 2009) (rejecting the notion that "settlement payments" as contemplated by § 546(e) "must travel through the settlement system"); *Contemp. Indus. Corp. v. Frost*, 564 F.3d 981, 986 (8th Cir. 2009) ("Nothing in the relevant statutory language suggests Congress intended to exclude these payments from the statutory definition of 'settlement payment' simply because the stock at issue was privately held."), *abrogated in part by Merit Mgmt. Grp.*, 583 U.S. 366; *In re QSI Holdings, Inc.*, 571 F.3d 545, 547 (6th Cir. 2009) ("[Section] 546(e) is not limited to publicly traded securities but also extends to transactions, such as the leveraged buyout at issue here, involving privately held securities."), *abrogated in part by Merit Mgmt. Grp.*, 583 U.S. 366; *In re Olympic Nat. Gas Co.*, 294 F.3d 737, 742 n.5 (5th Cir. 2002) ("By including references to both the commodities and the securities markets, it seems clear that Congress meant to

exclude from the stay and [§ 546(e)] avoidance provisions both on-market, and the corresponding off-market, transactions.").

Accordingly, we hold that the term "securities contract" as used in § 546(e) unambiguously includes contracts involving privately held securities. Applying the term's unambiguous definition here, we have little trouble agreeing with the district court that the SPA, Bridge Loan Authorization Agreement, and Sun Capital Guaranty are "securities contract[s]" as defined in § 741(7).[3]

Turning first to the SPA. We agree with both the bankruptcy court and district court that the SPA falls squarely within § 741(7)'s definition of a "securities contract" as "a contract for the purchase … of a security." § 741(7)(A)(i). The amended complaint alleges that the SPA was "the transaction by which Intermediate Holding acquired the stock of BWGS." Because a "security" includes "stock," the Trustee's own allegations establish that the SPA was a contract for the purchase of a security, and therefore a securities contract. *See* 11 U.S.C. § 101(49)(A)(ii); *Peterson*, 729 F.3d at 750.

The Bridge Loan Authorization Agreement also comfortably falls within the definition of "securities contract." The Trustee alleges that "[t]o provide a portion of the $37,751,632 due [to] the ESOP Trust at closing, [BMO] agreed, pursuant to

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[3] The Defendants also argue that the two loan agreements BWGS entered into with LBC and JP Morgan constitute securities contracts for purposes of § 546(e). Because we find that the other three agreements were securities contracts and the Transfer was made in connection with those agreements, we need not consider whether the remaining loan agreements were also securities contracts for purposes of § 546(e).

a [Bridge] Loan Authorization Agreement … between Intermediate Holding and BMO … to make a bridge loan to Intermediate Holding of $25.8 million." By his own words, the Trustee concedes that BMO extended credit for the clearance of a securities transaction—i.e., the sale of all stock in BWGS. This places the Agreement within the definition of "securities contract" set out in § 741(7)(A)(v): "any extension of credit for the clearance or settlement of securities transactions."

Finally, the Trustee alleges that the Guaranty was a "credit enhancement in some manner to [BMO] with respect to the Bridge Loan." This allegation closely mirrors the definition of "securities contract" under § 741(7)(A)(xi) as "any … credit enhancement related to any agreement or transaction referred to in this subparagraph, including any guarantee … to a … financial institution … in connection with any agreement or transaction referred to in this subparagraph." As the Sun Capital Guaranty was a credit enhancement for the Bridge Loan Authorization Agreement—a securities contract—it was a securities contract itself.

Consistent with its "extraordinary breadth," *In re Bernard L. Madoff Inv. Sec. LLC*, 773 F.3d 411, 417 (2d Cir. 2014), section 741(7) contains a catch-all sub-definition of "securities contract." That definition provides that "any other agreement or transaction that is similar to an agreement or transaction referred to in this subparagraph" is a securities contract. § 741(7)(A)(vii). Even if the SPA, Bridge Loan Authorization Agreement, and Sun Capital Guaranty did not fall within the narrower sub-definitions we just described, they are, at minimum, agreements that are *similar to* those defined in those sub-definitions. And that is enough.

2. "In connection with"

That brings us to the "in connection with" requirement of § 546(e). We have previously rejected a bankruptcy trustee's invitation to consult legislative history in construing the phrase "in connection with." *See Peterson*, 729 F.3d at 749 ("Ambiguity sometimes justifies resort to legislative history, but it is used to decipher the ambiguous language, not to replace it."). Instead, we looked to decisions such as *Merrill Lynch, Pierce, Fenner & Smith Inc. v. Dabit*, 547 U.S. 71 (2006), and *United States v. O'Hagan*, 521 U.S. 642 (1997), which discuss the "in connection with" requirement of a different securities fraud statute. *See Peterson*, 729 F.3d at 749. Finding that these decisions establish that § 546(e)'s "in connection with" requirement "is more than comprehensive enough to cover" the transaction at issue there, we did not adopt a precise definition of the requirement.

Just as in *Peterson*, we find it unnecessary to define the outer limits of the "in connection with" requirement here. The broad construction of the phrase, as recognized in *Peterson*, *Dabit*, and *O'Hagan*, makes clear that the Transfer here was made "in connection with" the relevant securities contracts.

Indeed, it is difficult to imagine how the Transfer was not made "in connection with" the securities contracts here. The Transfer fully satisfied the Bridge Loan—a securities contract—and extinguished Sun Capital's obligations under the Guaranty—another securities contract. And these two securities contracts effectuated the fulfillment of the SPA—yet another securities contract.

That the Transfer occurred a little less than a month after the SPA's execution does not change our view. Section 546(e)

contains no temporal requirement, and we see no reason to impose one. Of course, a more temporally attenuated transaction is less likely to have been "made in connection with" a given securities contract. But the passage of time, however long, does not categorically eliminate any connection. And here, nearly $25 million—an amount that undoubtedly takes time to plan and arrange—changed hands in under a month. That gap does not break the connection between the Transfer and the SPA.

* * *

In sum, we hold that the SPA, Bridge Loan Authorization Agreement, and Sun Capital Guaranty are securities contracts, the Transfer was made in connection with these securities contracts, and thus § 546(e)'s safe harbor applies and precludes the Trustee from avoiding the Transfer under § 544(b) of the Bankruptcy Code.

B. The Trustee Cannot Advance Successful Claims Under § 544(a) of the Bankruptcy Code

The Trustee next seeks to amend his complaint to add a claim under § 544(a) of the Bankruptcy Code to recover the value of the Transfer from Sun Capital. Relying on the bankruptcy court's alternative holding, the Trustee now argues for the first time that even if § 546(e)'s safe harbor precludes his claims to *avoid* the Transfer, a claim under § 544(a) would allow him to recover the value of the *avoidable* Transfer without actually avoiding it.

Section 544(a) provides: "The trustee shall have … the *rights and powers* of, *or* may avoid any transfer of property of the debtor or any obligation incurred by the debtor that is voidable by" certain creditors. 11 U.S.C. § 544(a) (emphasis

added). The Trustee thus argues that a claim under § 544(a) would empower him to exercise the "rights and powers" afforded a creditor—specifically, those set out in §§ 14(a)(2), 17(a), and 18(b)(1) of the IUVTA.

Recall that § 14(a)(2) provides that a constructively fraudulent transfer "is voidable as to a creditor." Section 17(a)(1) provides that a creditor may seek "avoidance" of such a transfer "to the extent necessary to satisfy the creditor's claim." Finally, § 18(b)(1) provides that, "[t]o the extent that a transfer is *avoidable* in an action by a creditor under section 17(a)(1) … the creditor may recover judgment for the value of the asset transferred" against certain creditors including, as relevant here, "the person for whose benefit the transfer was made." (emphasis added).

In advancing a claim under § 544(a), the Trustee would allege that the Transfer was constructively fraudulent under § 14(a)(2) and therefore *avoidable* under § 17(a)(1). Exercising the "rights and powers" afforded a creditor by this statutory scheme via § 544(a), the Trustee would thus seek to pursue a judgment for the value of this *avoidable* Transfer against Sun Capital[4]—the alleged beneficiary of the Transfer—under § 18(b)(1). The Trustee contends that § 546(e)'s prohibition on the *avoidance* of a transfer would not prohibit him from seeking such a judgment because he need not actually *avoid* the *avoidable* Transfer.

The parties spill much ink over whether the Trustee waived his right to advance such a claim under § 544(a) by

[4] The parties agree that the Trustee could not proceed with a claim under this theory against BMO, which was not a beneficiary of the Transfer.

failing to raise it before the bankruptcy and district courts. We need not address this issue here. Even if the Trustee did not waive his § 544(a) claim, amending the complaint to add it would be futile. Through this claim, the Trustee is attempting to invoke state-law IUVTA provisions to obtain the same relief that § 546(e) otherwise precludes. Section 546(e) accordingly preempts the claim.

Under the Supremacy Clause of the Constitution, federal law prevails over state law. U.S. Const. art. VI, cl. 2. "Under this principle, Congress has the power to preempt state law." *Arizona v. United States*, 567 U.S. 387, 399 (2012). This "preclude[es] courts from 'giv[ing] effect to state laws that conflict with federal laws.'" *Nationwide Freight Sys., Inc. v. Ill. Com. Comm'n*, 784 F.3d 367, 372 (7th Cir. 2015) (quoting *Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 324 (2015)). "Preemption can take on three different forms: express preemption, field preemption, and conflict preemption." *Wigod v. Wells Fargo Bank, N.A.*, 673 F.3d 547, 576 (7th Cir. 2012) (quoting *Aux Sable Liquid Prods. v. Murphy*, 526 F.3d 1028, 1033 (7th Cir. 2008)).

The Defendants concede that neither § 546(e) nor any other statute expressly preempts the Trustee's proposed IUVTA (via § 544(a)) claim. But they argue the doctrine of "conflict" or "obstacle" preemption nevertheless bars it. Conflict preemption applies to "cases where compliance with both federal and state regulations is a physical impossibility and those instances where the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *McHenry Cnty. v. Kwame Raoul*, 44 F.4th 581, 591 (7th Cir. 2022) (quotation omitted). The Defendants do not assert any physical impossibility, so we

consider whether allowing the Trustee to proceed with his proposed IUVTA claim under § 544(a) obstructs congressional purposes. *Id.* "That inquiry 'is a matter of judgment, to be informed by examining the federal statute as a whole and identifying its purpose and intended effects.'" *Id.* (quoting *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 373 (2000)).

Two other circuits have considered the preemptive effect of § 546(e) on state law claims. Both held that § 546(e) preempts state law claims seeking to recover the value of transfers that the safe harbor shields. *In re Tribune Co.*, 946 F.3d at 83, 90–92; *Contemp. Indus. Corp.*, 564 F.3d at 988. While we have yet to directly consider the preemptive effect of § 546(e) on state law claims, we have suggested that we would fall in line with our sister circuits on this issue. *See Grede*, 746 F.3d at 259. In *Grede*, we found a trustee's state law unjust enrichment claim preempted because "[t]o allow an unjust enrichment claim in this context would allow the trustee or a creditor to make an end run around the bankruptcy code's allocation of assets and losses, frustrating the administration of the bankruptcy estate." *Id.* And although we did not indicate which provision of the Bankruptcy Code preempted the unjust enrichment claim, we cited the Eighth Circuit's decision in *Contemporary Industries* as support for this proposition. *See id. Grede* thus implies that § 546(e) preempts state law claims seeking the same relief that its safe harbor otherwise prohibits.

The decisions of our sister circuits persuade us that § 546(e) preempts state law claims to recover the value of transfers shielded by the safe harbor. Indeed, to allow a bankruptcy trustee to recover the otherwise-unavoidable payments "would render the § 546(e) exemption meaningless,

and would wholly frustrate the purpose behind that section." *Contemp. Indus. Corp.*, 564 F.3d at 988.

While the Trustee claims that he seeks different relief under the IUVTA and § 544(a)—namely, recovery of the value of the Transfer from Sun Capital—we are not persuaded. The relief the Trustee seeks, while different in name, is functionally the same as the avoidance remedy the safe harbor prohibits. The Trustee seeks the prohibited relief provided by §§ 544(b) and 550(a)—to recover the value of the safe-harbored Transfer from transfer-beneficiary Sun Capital.

As the Supreme Court described the "general avoiding powers of a bankruptcy trustee" in *Merit Management*:

> Chapter 5 of the Bankruptcy Code affords bankruptcy trustees the authority to set aside certain types of transfers and recapture the value of those avoided transfers for the benefit of the estate. These avoiding powers help implement the core principles of bankruptcy. For example, some deter the race of diligence of creditors to dismember the debtor before bankruptcy and promote equality of distribution. Others set aside transfers that unfairly or improperly deplete assets or dilute the claims against those assets.

583 U.S. at 370 (cleaned up). Thus, the avoidance power recognized under the Bankruptcy Code is part and parcel of the power to recover the value of the property for the bankruptcy estate. Without the recovery of transferred property, the avoidance power is essentially meaningless. Allowing the Trustee to obtain the part and not the parcel by dressing up his claim as an IUVTA claim brought under § 544(a) poses an

insurmountable obstacle to the safe harbor—an obstacle that the doctrine of conflict preemption does not permit.

Moreover, the Trustee's argument ignores the Bankruptcy Code's framework and the interplay among §§ 546(e), 544, and 550(a). Although § 544(a) allows the Trustee to exercise the "rights and powers" of a hypothetical creditor under state law, it is § 550(a) that provides the trustee with the recovery remedy. Section 550(a) provides, "to the extent that a transfer is *avoided* under section 544 … the trustee may recover, for the benefit of the estate, the property transferred, or … the value of such property" from either "the initial transferee of such transfer or the entity for whose benefit such transfer was made." § 550(a)(1) (emphasis added). Thus, to enjoy § 550's recovery remedy, a trustee must first avoid the transfer under § 544. And where, as here, § 546(e) renders a particular transfer unavoidable under § 544, then it also precludes recovery for that transfer's value under § 550(a).

Accordingly, we hold that § 546(e) preempts the Trustee's proffered IUVTA claim to the extent that he could otherwise bring it under § 544(a). To hold differently would render § 546(e) meaningless. As such, leave to amend would be futile, and the district court did not err in directing the bankruptcy court to dismiss the Trustee's complaint with prejudice.

III. Conclusion

The judgment of the district court is

AFFIRMED.

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

OFFICE OF THE UNITED STATES TRUSTEE *v.* JOHN Q. HAMMONS FALL 2006, LLC, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

No. 22–1238. Argued January 9, 2024—Decided June 14, 2024

Two Terms ago, in *Siegel* v. *Fitzgerald*, 596 U. S. 464, the Court held that a statute violated the Bankruptcy Clause's uniformity requirement because it permitted different fees for Chapter 11 debtors depending on the district where their case was filed. In this case, the Court is asked to determine the appropriate remedy for that constitutional violation. As noted in *Siegel*, there are three options: (1) refund fees for the thousands of debtors charged higher fees in districts administered by the U. S. Trustee Program, (2) retroactively extract higher fees from the small number of debtors charged lower fees in districts administered by the Bankruptcy Administrator Program, or (3) require only prospective fee parity. See *id.*, at 480.

As in *Siegel*, this case arises from a case filed in a U. S. Trustee district. In 2016, 76 legal entities filed for Chapter 11 bankruptcy in the District of Kansas. In 2018, under the amended fee statute the Court later found unconstitutional in *Siegel*, the debtors began paying higher fees than they would have if their case had been filed in a Bankruptcy Administrator district. In 2020, the debtors challenged the constitutionality of those fees. The Bankruptcy Court found no constitutional violation, but the Tenth Circuit, anticipating *Siegel*, reversed. To remedy the constitutional violation, the Tenth Circuit ordered a refund of the debtors' quarterly fees to the extent they exceeded the lower fees paid in the Bankruptcy Administrator districts. This Court vacated that judgment and remanded the case in light of *Siegel*, and the Tenth Circuit reinstated its original opinion without alteration.

Held: Prospective parity is the appropriate remedy for the short-lived and small disparity created by the fee statute held unconstitutional in *Siegel*. Pp. 5–16.

(a) Across remedial contexts, "the nature of the violation determines the scope of the remedy." *Swann* v. *Charlotte-Mecklenburg Bd. of Ed.*, 402 U. S. 1, 16. Three aspects of the Court's holding in *Siegel* are relevant here. First, the violation identified was nonuniformity, not high fees. Second, the fee disparity was short lived, lasting only from 2018 to 2021. Third, the disparity was small: 98% of the relevant class of debtors still paid uniform fees. Pp. 5–7.

(b) To determine the appropriate remedy for this short-lived and small disparity, the Court asks "what the legislature would have willed had it been apprised of the constitutional infirmity." *Sessions* v. *Morales-Santana*, 582 U. S. 47, 74. In cases involving unequal treatment, the Court focuses on two considerations: Congress's "intensity of commitment" to the more broadly applicable rule, and "the degree of potential disruption to the statutory scheme that would occur" if the Court were to extend the exception. *Id.,* at 75. Here, faced with the short-lived and small fee disparity created by the constitutional violation identified in *Siegel*, Congress would have wanted prospective parity, not a refund or retrospective raising of fees.

To start, Congress has demonstrated intense commitment to the more broadly applicable rule, higher fees in U. S. Trustee districts. That commitment stems from Congress's desire for the U. S. Trustee program to "be funded in its entirety by user fees." *Siegel*, 596 U. S., at 469. In light of this desire, it is not surprising that, in the 2017 fee statute at issue in *Siegel*, Congress chose to address a funding shortfall for the U. S. Trustee program by raising fees on the largest Chapter 11 debtors. In 2021, when Congress amended the fee statute to require uniform fees, it kept fees at an elevated level "to further the long-standing goal of Congress of ensuring that the bankruptcy system is self-funded." §2(b), 134 Stat. 5086.

Now consider the disruption that would follow from extending the exception, lower fees in Bankruptcy Administrator districts. Retrospectively lowering fees for all relevant debtors in U. S. Trustee districts would cost approximately $326 million. Thus, in mandating a refund, this Court would transform a program Congress designed to be self-funding into an enormous bill for taxpayers. On top of that, respondents' proposed refund would almost certainly exacerbate the existing fee disparity.

The only remaining question, then, is whether Congress would have wanted to retrospectively impose higher fees on debtors in Bankruptcy Administrator districts. The best evidence that Congress would not want such a remedy is that Congress itself chose not to pursue that course when amending the fee statute in 2021. Congress's choice makes sense. Retrospectively raising fees in Bankruptcy Administrator districts would do nothing to achieve Congress's goal of keeping the

U. S. Trustee program self-funding. What is more, there are serious practical challenges to a retrospective imposition of higher fees, including the logistical problems with locating all the former debtors or their successors who would owe the higher fees. Pp. 7–14.

(c) Relying on a series of cases involving unconstitutional state taxes, respondents and the dissent claim that due process requires overriding Congress's clear intent. See, *e.g., McKesson Corp.* v. *Division of Alcoholic Beverages and Tobacco, Fla. Dept. of Business Regulation*, 496 U. S. 18; *Harper* v. *Virginia Dept. of Taxation*, 509 U. S. 86. These cases, respondents contend, stand for the proposition that unless an "exclusive" predeprivation remedy is both "clear and certain," *Newsweek, Inc.* v. *Florida Dept. of Revenue*, 522 U. S. 442, 443–444 (*per curiam*), due process requires "meaningful backward-looking relief," *McKesson*, 496 U. S., at 31. And, they claim, the predeprivation remedy here was neither exclusive nor clear and certain.

The tax cases, assuming that they are even applicable here, do not entitle respondents to relief. In those cases, the Court held that the existence of a predeprivation hearing would be enough to satisfy the Due Process Clause. See *Harper*, 509 U. S., at 101. Respondents acknowledge that they had the opportunity to challenge their fees before they paid them, so due process is satisfied. Respondents misread this Court's later decisions on bait-and-switch schemes as displacing that basic holding. To be sure, due process may sometimes constrain the Court's remedial options. In this case, though, due process does not mandate any particular remedy. Thus, as the tax cases themselves advise, the Court must "implement what the legislature would have willed." *Levin* v. *Commerce Energy, Inc.*, 560 U. S. 413, 427. Pp. 13–16.

15 F. 4th 1011, reversed and remanded.

JACKSON, J., delivered the opinion of the Court, in which ROBERTS, C. J., and ALITO, SOTOMAYOR, KAGAN, and KAVANAUGH, JJ., joined. GORSUCH, J., filed a dissenting opinion, in which THOMAS and BARRETT, JJ., joined.

NOTICE: This opinion is subject to formal revision before publication in the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, pio@supremecourt.gov, of any typographical or other formal errors.

SUPREME COURT OF THE UNITED STATES

No. 22–1238

OFFICE OF THE UNITED STATES TRUSTEE, PETITIONER *v.* JOHN Q. HAMMONS FALL 2006, LLC, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[June 14, 2024]

JUSTICE JACKSON delivered the opinion of the Court.

Two Terms ago, in *Siegel* v. *Fitzgerald*, 596 U. S. 464 (2022), we held that a statute violated the Bankruptcy Clause's uniformity requirement because it permitted different fees for Chapter 11 debtors depending on the district where their case was filed. See *id.*, at 479–480, and n. 2. Today, we are asked to determine the remedy for that constitutional violation. We agree with the Government that the appropriate remedy is prospective parity. Requiring equal fees for otherwise identical Chapter 11 debtors going forward comports with congressional intent, corrects the constitutional wrong, and complies with due process.

Resisting this conclusion, respondents, a group of Chapter 11 debtors, argue that they are entitled to a refund. But, as respondents forthrightly concede, adopting their preferred remedy would require us to undercut congressional intent and transform, by judicial fiat, a program that Congress designed to be self-funding into an estimated $326 million bill for taxpayers. Neither remedial principles nor due process requires that incongruous result. We reverse.

I

A

The federal bankruptcy system is administered by two programs. See *id.,* at 468–470. The U. S. Trustee Program, housed within the Department of Justice, administers 88 of the 94 bankruptcy districts. The six remaining districts, all in Alabama and North Carolina, are administered by the Bankruptcy Administrator Program, which the Administrative Office of the U. S. Courts runs under the supervision of the Judicial Conference.

For our purposes, the most salient difference between these two programs is their funding. Congress designed the U. S. Trustee Program to be entirely self-funded by user fees paid by debtors. See 28 U. S. C. §589a(b). By contrast, Congress supports the Bankruptcy Administrator Program through its general appropriation for the Judiciary, with fees used only to offset that funding. See §1930(a)(7).

Despite these different funding schemes, the fees charged to debtors in U. S. Trustee and Bankruptcy Administrator districts were identical between 2001 and 2018. See *Siegel*, 596 U. S., at 470. During that almost two-decade period, Congress would set the filing and quarterly fees for U. S. Trustee districts, and then the Judicial Conference, pursuant to a standing order, would require Bankruptcy Administrator districts to match them. See *ibid*. (citing Report of the Proceedings of the Judicial Conference of the United States 46 (Sept./Oct. 2001) (Report Proceedings)).

In 2017, facing a funding shortfall for the U. S. Trustee Program, Congress amended the fee statute to raise fees in U. S. Trustee districts. See 596 U. S., at 470–471. Specifically, Congress increased quarterly fees for new and pending Chapter 11 cases in which debtors disbursed $1 million or more in that quarter. See Div. B, 131 Stat. 1232 (2017 Act). Consistent with its goal of maintaining a self-funding U. S. Trustee Program, Congress made the fee increase for

large debtors conditional on the operating fund for the program falling below $200 million in the prior fiscal year. See *Siegel*, 596 U. S., at 470–471. That threshold was met in 2017, so, starting in January 2018, fees increased for large Chapter 11 debtors in U. S. Trustee districts. See *ibid.*

Despite the Judicial Conference's standing order, though, fees did not immediately increase in Bankruptcy Administrator districts. See *ibid.* For reasons that remain obscure, it was not until October 2018 that the Judicial Conference increased fees for newly filed cases in Bankruptcy Administrator districts. See Report Proceedings 11–12 (Sept. 13, 2018). And fees for already pending large Chapter 11 cases in Bankruptcy Administrator districts remained at their 2017 level until Congress mandated equal fees in 2021. See Pub. L. 116–325, §3(d)(2), 134 Stat. 5088 (2021 Act). In the interim, a disparity emerged between the fees paid by large Chapter 11 debtors in U. S. Trustee districts and those paid by large Chapter 11 debtors in Bankruptcy Administrator districts. See *Siegel*, 596 U. S., at 478–479.

B

In *Siegel*, we traced the origin of that disparity to a single statutory word. See *id.*, at 479–480. The fee statute passed by Congress, and in effect at the time of the 2017 increase, read: "[T]he Judicial Conference of the United States *may* require the debtor in a case under chapter 11 of title 11" in a Bankruptcy Administrator district "to pay fees equal to those imposed" on otherwise identical debtors in U. S. Trustee districts. 28 U. S. C. §1930(a)(7) (emphasis added). That permissive language, we explained, violated the Constitution's Bankruptcy Clause. *Siegel*, 596 U. S., at 480, n. 2.

The Bankruptcy Clause empowers Congress "[t]o establish . . . Laws on the subject of Bankruptcies throughout the United States," but it requires that such laws be "uniform." Art. I, §8, cl. 4. Though the Clause "confers broad authority

on Congress," including the flexibility to "enact geographically limited bankruptcy laws . . . if it is responding to a geographically limited problem," we concluded that the Clause's grant of power did not extend to the disparate fees facilitated by the permissive language in the fee statute. *Siegel*, 596 U. S., at 476–477. As we explained, Congress could not constitutionally "treat identical debtors differently based on an artificial funding distinction that Congress itself created." *Id.*, at 479–480.

Having found a constitutional wrong, we then faced the question of how to remedy it. We acknowledged three options: (1) refund fees for those charged more in U. S. Trustee districts, (2) retroactively extract higher fees from those charged less in Bankruptcy Administrator districts, or (3) require only prospective parity. See *id.*, at 480. The final option, we noted, was already in effect: By the time *Siegel* reached our Court, Congress had replaced the permissive "may" in the fee statute with a mandatory "shall," resulting in equal fees for U. S. Trustee and Bankruptcy Administrator districts as of April 2021. *Id.*, at 471 (quoting Pub. L. 116–325, §3(d)(2), 134 Stat. 5088). But, because the remedial question had not been passed on below, we remanded for the Fourth Circuit to address it in the first instance. See *Siegel*, 596 U. S., at 481.

C

As in *Siegel*, this case arises from a Chapter 11 case filed in a U. S. Trustee district. Cf. *id.*, at 471. In 2016, a group of 76 legal entities related to a chain of hotels and resorts filed for bankruptcy in the District of Kansas. Starting in January 2018, the debtors were subjected to increased quarterly fees under the amended fee statute. In March 2020, the debtors challenged the constitutionality of those fees, seeking both a refund of fees already paid and a reversion of future fees to their 2017 level. See Debtors' Motion

To Determine Extent of Liability for Quarterly Fees Payable in No. 16–21142 (Bkrtcy. Ct. Kan., Mar. 3, 2020), ECF Doc. 2823. Finding no constitutional violation, the Bankruptcy Court did not reach the remedial question. See *In re John Q. Hammons Fall 2006, LLC*, 618 B. R. 519, 525–526 (Kan. 2020).

The Tenth Circuit reversed. See *In re John Q. Hammons Fall 2006, LLC,* 15 F. 4th 1011, 1016 (2021). It anticipated our holding in *Siegel* and found that the fee statute permitting nonuniform fees violated the Bankruptcy Clause. See *id.*, at 1025. To remedy that violation, the panel then ordered a refund of the debtors' quarterly fees so that they equaled the lower fees the debtors would have paid had their case been filed in a Bankruptcy Administrator district. See *id.*, at 1025–1026. The U. S. Trustee sought certiorari. After deciding *Siegel*, we granted the petition, vacated the Tenth Circuit's judgment, and remanded for further consideration. 596 U. S. ___ (2022). The Tenth Circuit sought supplemental briefing, but ultimately reinstated its original opinion without alteration. See *In re John Q. Hammons Fall 2006, LLC*, 2022 WL 3354682, *1 (Aug. 15, 2022). After rehearing was denied, the U. S. Trustee again petitioned for review.

We granted certiorari to answer the remedial question left open in *Siegel*. 600 U. S. ___ (2023).

II

Across remedial contexts, "the nature of the violation determines the scope of the remedy." *Swann* v. *Charlotte-Mecklenburg Bd. of Ed.*, 402 U. S. 1, 16 (1971); see also *Ayotte* v. *Planned Parenthood of Northern New Eng.*, 546 U. S. 320, 328 (2006) ("Generally speaking, when confronting a constitutional flaw in a statute, we try to limit the solution to the problem"). Accordingly, before we can determine the appropriate remedy for the Bankruptcy Clause vi-

olation in this case, we must bear down upon the particulars of the constitutional violation we identified in *Siegel*. Three aspects of our holding are worth highlighting.

First, the violation we identified was nonuniformity, not high fees. There was no doubt raised in *Siegel* about Congress's power to raise fees for large Chapter 11 debtors. The constitutional issue arose only because the fee statute's permissive language effectively "exempted debtors in" Bankruptcy Administrator districts from paying the new rates, resulting in a disparity in fees between the two types of bankruptcy districts. *Siegel*, 596 U. S., at 468. Though respondents understandably complain about their higher payments, our task is not necessarily to reduce them; it is to remedy the disparity.[1]

Second, the fee disparity at issue here was short lived. It began in January 2018. By October 2018, the Judicial Conference required newly filed Chapter 11 cases in Bankruptcy Administrator districts to pay the higher fees. And starting in April 2021, Congress required uniform fees for pending cases too. Due to these policy shifts by the Judicial Conference and Congress, a large Chapter 11 debtor was subject to, at most, three years and three months of nonuniform treatment.

Finally, the disparity was small. The Government estimates (and respondents do not dispute) that, during the relevant period, only about 50 out of the more than 2,000 cases involving large Chapter 11 debtors were filed in Bankruptcy Administrator districts—a mere 2%. See Brief for Petitioner 11; Reply Brief 16–19. Therefore, even when the

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[1] Notably, even with the 2017 Act's increase, large Chapter 11 debtors in U. S. Trustee districts often paid lower fees, relative to their disbursements, than much smaller debtors. For example, fees for those with disbursements over $1 million, like respondents, were capped at 1% of disbursements, while fees for those debtors disbursing $15,000 or less were set at a flat rate of $325, for a minimum of about 2.2%. See §1004(a)(2), 131 Stat. 1232, 28 U. S. C. §1930(a)(6)(A).

statute unconstitutionally permitted the complained-of fee disparity, 98% of the relevant class of debtors still paid uniform fees.

In short, the constitutional violation we identified in *Siegel* created a monetary disparity in bankruptcy fees that was short lived and small. With the limited nature of the constitutional problem in mind, we now turn to the question of how to remedy it.

III

A

"[T]he touchstone for any decision about remedy is legislative intent." *Ayotte*, 546 U. S., at 330. Thus, the key question in determining how to remedy a constitutional violation wrought by the legislative process is always "'what the legislature would have willed had it been apprised of the constitutional infirmity.'" *Sessions* v. *Morales-Santana*, 582 U. S. 47, 73–74 (2017) (quoting *Levin* v. *Commerce Energy, Inc.*, 560 U. S. 413, 427 (2010)). In cases involving unequal treatment, answering this question generally leads to a focus on two considerations: Congress's "'"intensity of commitment"'" to the more broadly applicable rule, and "'"the degree of potential disruption of the statutory scheme that would occur"'" if we were to extend the exception. *Morales-Santana*, 582 U. S., at 75 (quoting *Heckler* v. *Mathews*, 465 U. S. 728, 739, n. 5 (1984)). In light of our limited institutional competence, we are also cognizant that Congress likely would not have intended relief that is impractical or unworkable. See, *e.g.*, *Seila Law LLC* v. *Consumer Financial Protection Bureau*, 591 U. S. 197, 236–237 (2020) (opinion of ROBERTS, C. J.); *Los Angeles Dept. of Water and Power* v. *Manhart*, 435 U. S. 702, 718–723 (1978). And we must keep in mind that our ultimate aim is to remedy the constitutional wrong consistent with congressional intent, not to provide the complaining parties' preferred form of relief. See, *e.g.*, *Barr* v. *American Assn. of Political*

Consultants, Inc., 591 U. S. 610, 634–635 (2020) (opinion of KAVANAUGH, J.); *Morales-Santana*, 582 U. S., at 77, n. 29.

As respondents acknowledge, "Congress's intentions here were unmistakable." Brief for Respondents 31. Faced with the constitutional violation we identified in *Siegel*, Congress would have wanted prospective parity, not a refund or retrospective raising of fees. In other words, to remedy the fee disparity, Congress would have wanted to impose equal fees in all districts going forward. This conclusion is clear from the intensity of Congress's commitment to raising fees in U. S. Trustee districts, the extreme disruption a refund would cause to the bankruptcy system, and Congress's own decision to remedy the wrong we face by imposing equal fees going forward. We discuss each of these considerations in turn.

Start with Congress's commitment to higher fees in U. S. Trustee districts. Congress designed the U. S. Trustee Program to "be funded in its entirety by user fees." *Siegel*, 596 U. S., at 469. Chapter 11 cases play a central role in achieving that goal. Congress required 100% of Chapter 11 quarterly fees to be deposited in the U. S. Trustee's operating fund. §589a(b)(5).[2] By 2017, almost two-thirds of the U. S. Trustee Program's funding came from Chapter 11 fees alone. See H. R. Rep. No. 115–130, p. 7, n. 26 (2017). It is not surprising, then, that when there was a funding shortfall for the U. S. Trustee Program, Congress chose to address it by raising fees on the largest Chapter 11 debtors. See *Siegel*, 596 U. S., at 470.

In 2021, when Congress amended the fee statute, it removed any doubts about its commitment to raising fees in order to keep the U. S. Trustee Program self-funded. The statute specifically stated that the purpose of keeping fees

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[2] As part of the 2017 Act, Congress committed 98% of the money that the fee increase generated to funding the U. S. Trustee Program; the remaining 2% was deposited in the general fund of the Treasury. See §1004, 131 Stat. 1232.

at an elevated level was "to further the long-standing goal of Congress of ensuring that the bankruptcy system is self-funded, at no cost to the taxpayer." 2021 Act §2(b); see also §2(a)(1). Respondents point to nothing—in the history of the bankruptcy system, the design of the U. S. Trustee Program, or the 2017 or 2021 Acts—that cuts against Congress's stated commitment to having higher fees for large Chapter 11 debtors in U. S. Trustee districts.

Now consider the flipside of this clear congressional commitment: the disruption that would follow from granting respondents' request to refund their fees. Our imposition of a refund would significantly undermine Congress's goal of keeping the U. S. Trustee Program self-funded. Respondents do not dispute that refunding all large Chapter 11 debtors in U. S. Trustee districts would be expensive; the Government estimates it would cost approximately $326 million. See Brief for Petitioner 35–36; see also Brief for Respondents 21, and n. 6. If the Government's estimate is even close to correct, the cost of the refund would greatly exceed the $200 million threshold Congress selected in 2017 to signal fiscal distress in the U. S. Trustee Program and trigger higher fees. See *Siegel*, 596 U. S., at 470–471. Thus, in mandating such a remedy, we would transform a program Congress designed to be self-funding into an enormous bill for taxpayers. It is hard to imagine a remedy more diametrically opposed to clear congressional intent.

On top of that, respondents' proposed refund would almost certainly exacerbate the small fee disparity we are attempting to remedy. As already noted, respondents are among the 98% of large Chapter 11 debtors who paid higher fees starting in 2018, just as Congress wanted. By refunding them, we would add to the past nonuniformity by increasing the tiny percentage of debtors—currently 2%—who paid lower fees. As the Government aptly notes, even if 95% of the debtors in U. S. Trustee districts that paid higher fees received a refund, we would still end up creating

a greater overall disparity than what resulted from Congress's requirement of prospective parity. See Brief for Petitioner 40.

Of course, it is true that the disparity could be entirely eliminated if all the debtors who paid higher fees were given a refund. But that theoretical possibility blinks reality. The Government estimates that 85% of the large Chapter 11 cases subject to higher fees between January 2018 and April 2021 have closed, and some of those debtors have been liquidated or otherwise ceased to exist. See Reply Brief 20. Respondents offer no meaningful path to reducing the small existing disparity through refunds. Instead, they encourage us to defy congressional intent, disrupt the U. S. Trustee Program's self-funding mandate, and divert the attendant costs to taxpayers—all to give them a remedy that will make the disparity caused by the constitutional violation worse.

The only real question, then, is whether Congress would have wanted to retrospectively impose higher fees on debtors in Bankruptcy Administrator districts. The best evidence that Congress did not intend such a remedy is that Congress itself chose not to pursue that course. In the 2021 Act, as respondents acknowledge, "Congress revised the fee scheme to address this very issue, and it did so by mandating equal fees *prospectively only*." Brief for Respondents 31 (citing Pub. L. 116–325, §§3(d)(2), 3(e)(2)(B), 134 Stat. 5088–5089); see also 28 U. S. C. §1930(a)(6)(B)(ii)(II).

Congress's choice makes sense. Because fees collected in Bankruptcy Administrator districts go toward offsetting the Judiciary's appropriation, not to supporting the U. S. Trustee Program, retrospectively raising fees in Bankruptcy Administrator districts would do nothing to achieve Congress's goal of keeping the U. S. Trustee Program self-funding. See §1930(a)(7). Thus, with the 2021 Act, Congress evinced a clear desire to comply with the constitu-

tional mandate of uniformity by requiring prospective parity, but it reasonably chose not to impose higher fees retrospectively in Bankruptcy Administrator districts.

What is more, there are serious practical challenges to a retrospective imposition of higher fees. As in U. S. Trustee districts, many of the debtors who paid lower fees in Bankruptcy Administrator districts have exited bankruptcy or ceased to exist. See Brief for Respondents 38–39. Indeed, the Government estimates that only 10 of the roughly 50 cases involving debtors who paid lower fees are still open. See Reply Brief 17–18. Moreover, locating all the former debtors or their successors would not end the practical problems. The Government would be forced to extract fees from funds that might already be disbursed, inevitably prompting additional litigation and even the unwinding of closed cases. See *ibid.* And all that effort would be directed against parties who followed the law and complied with the fee schedule imposed by the Judicial Conference under the 2017 Act.

Our remedial principles do not require us to follow that unintended, impractical course. Faced with far more serious dignitary harms than those implicated by a small and short-lived disparity in bankruptcy fees for large debtors, we have deemed prospective parity sufficient to remedy unconstitutional differences in treatment. See *Heckler*, 465 U. S., at 740, n. 8 ("[W]e have often recognized that the victims of a discriminatory government program may be remedied by an end to the preferential treatment for others"); see also, *e.g.*, *Morales-Santana*, 582 U. S., at 77 (sex discrimination); *Manhart*, 435 U. S., at 721 (same). Here, Congress would have wanted prospective parity, and that remedy is sufficient to address the small, short-lived disparity caused by the constitutional violation we identified in *Siegel*.

B

The dissent offers three primary responses to our analysis thus far. First, the dissent argues that congressional intent is irrelevant, and we should simply defer to the plaintiffs' request for damages. See *post,* at 9, 11 (opinion of GORSUCH, J.). For their part, respondents do not claim that this is how our remedial precedent works; as already noted, they agree that "courts crafting constitutional remedies consult 'the legislature's intent.'" Brief for Respondents 31 (quoting *Morales-Santana*, 582 U. S., at 73). That's for good reason: The dissent's argument turns on a misapprehension of the constitutional wrong at issue here. The remedial question before us is not whether to pay damages or not; it is how to address a short-lived and small disparity. "How equality is accomplished—by extension or invalidation of the unequally distributed benefit or burden, or some other measure—is a matter on which the Constitution is silent." *Levin,* 560 U. S., at 426–427. So, when seeking to remedy an unconstitutional disparity, rather than divining the right answer ourselves or picking a party's preferred form of relief (which may, as in this case, make the disparity worse), we generally look to the intent of the Legislature. See *id.*, at 427–428.

Second, the dissent argues that, if we are to rely on congressional intent, it actually points to a refund. See *post*, at 13–14. For support, the dissent cites only to the fiscal year 2020 appropriations law. See *post,* at 13 (citing 133 Stat. 2398). But, again, there is a reason that respondents do not advance this argument; in fact, they concede that "Congress . . . address[ed] this very issue" and mandated prospective equalization of fees. Brief for Respondents 31. The dissent cites boilerplate language that simply allows the U. S. Trustee to respond effectively to commonplace overpayments by debtors. See Pub. L. 116–93, 133 Stat. 2398 ("[D]eposits . . . and amounts herein appropriated shall be available in such

amounts as may be necessary to pay refunds due depositors"). Such statements have been part of every appropriations law for years, including before the disparity at issue here came into existence. See, *e.g.*, 131 Stat. 195 (2017 appropriations law); 129 Stat. 2298 (2016 appropriations law). Far from confirming a congressional intent to authorize an estimated $326 million refund here, the broader provision the dissent invokes underscores that a refund would send the U. S. Trustee Program into fiscal freefall, contradicting Congress's intent to have the program be self-funding. See 133 Stat. 2398 (estimating fee revenue and structuring appropriations "so as to result in a final fiscal year 2020 appropriation from the general fund estimated at $0").

Finally, the dissent suggests we need not address congressional intent at all, because the Government actually promised these respondents a refund. See, *e.g.*, *post*, at 1, 5–7, 18–19, n. 7. Once again, the dissent relies on an argument respondents have not advanced in this Court. And, once again, the dissent might have done better following respondents' cue. The relied-upon passage in the Government's bankruptcy court filing is nothing more than a request by the Government not to be forced to provide any remedy until after it has exhausted all appeals. See Objection of the United States to Debtor's Motion To Determine Extent of Liability for Quarterly Fees Payable in No. 16–21142 (Bkrtcy. Ct. Kan., Apr. 27, 2020), ECF Doc. 2868, pp. 59–61. Read fairly, the Government promised only what you would expect: that it would comply with a final judgment. See *ibid.*; see also Reply Brief 7, n. 1 ("Although the government does not believe a refund is the appropriate remedy, if it is subject to a judgment directing it to pay a refund, it will of course comply").

In sum, while the dissent invents new arguments to ar-

rive at its favored outcome, we prefer to stick with the parties and our controlling precedent.[3]

IV

Respondents and the dissent ask us to override Congress's clear intent because, they claim, due process requires it. See *post*, at 14–18. To advance this argument, they rely on a series of cases involving unconstitutional state taxes. See, *e.g.*, *McKesson Corp.* v. *Division of Alcoholic Beverages and Tobacco, Fla. Dept. of Business Regulation*, 496 U. S. 18 (1990); *Harper* v. *Virginia Dept. of Taxation*, 509 U. S. 86 (1993); *Reich* v. *Collins*, 513 U. S. 106 (1994); *Newsweek, Inc.* v. *Florida Dept. of Revenue*, 522 U. S. 442 (1998) (*per curiam*). In respondents' view, these cases stand for the proposition that "due process requires 'meaningful backward-looking relief' unless an 'exclusive' predeprivation remedy is both 'clear and certain.'" Brief for Respondents 22 (first quoting Brief for Petitioner 29, in turn quoting *McKesson*, 496 U. S., at 31, then quoting *Newsweek*, 522 U. S., at 443–444; capitalization and boldface deleted). Respondents claim that because the predeprivation remedy here was neither exclusive nor clear and certain, they are entitled to a refund. See Brief for Respondents 22–28.

We disagree. To start, we note that the tax cases arrived at their holdings only after scrutinizing close to a century of tax-specific jurisprudence and carefully analyzing the unique interests the taxation context involves, including the Government's "exceedingly strong interest in financial stability" and the attendant need for prompt payment and postdeprivation protections. See *McKesson*, 496 U. S., at

[3] The dissent attempts, in various additional ways, to cabin, qualify, or contradict our analysis, including by wrongly suggesting that it rests on the party presentation principle. See *post*, at 13, n. 4. Readers are reminded that the dissent is "just that." *National Pork Producers Council* v. *Ross*, 598 U. S. 356, 389, n. 4 (2023) (opinion of GORSUCH, J.).

37; see also *id.*, at 32–38. The dissent does not dispute this, nor does it adequately explain why we deemed such history and context so central to our holdings in the tax cases. See *post*, at 17–18. For their part, respondents simply ignore this context entirely. Instead, they replace the word "tax" with "fee," see Brief for Respondents 22, and assert that the constitutional holding of the tax cases applies to any case involving "monetary injury," including those arising from the voluntary, fee-for-service bankruptcy system, *id.*, at 9.

No matter, though. Even assuming that the tax cases apply, respondents are not entitled to relief under them. We held in those cases that if there was "'a meaningful opportunity for taxpayers to withhold contested tax assessments and to challenge their validity in a predeprivation hearing,' the 'availability of a predeprivation hearing constitute[d] a procedural safeguard . . . sufficient by itself to satisfy the Due Process Clause.'" *Harper*, 509 U. S., at 101 (quoting *McKesson*, 496 U. S., at 38, n. 21). Here, respondents acknowledge that they had the opportunity to challenge their fees before they paid them. See Brief for Respondents 25 ("[T]he same bankruptcy procedures are open and available before or after paying an invalid fee. Both are equally acceptable for a party to assert and preserve its rights"). Under the tax cases, then, respondents are not entitled to any particular remedy.

Respondents and the dissent misread our later decisions as displacing that basic holding. In subsequent cases, we addressed situations where a State "reconfigure[d] its scheme, unfairly, in *mid-course*—to 'bait and switch'" taxpayers out of a refund remedy guaranteed under state law. *Reich*, 513 U. S., at 111; see also *Newsweek*, 522 U. S., at 444. We held that States could not hold open a postdeprivation refund remedy to encourage payment and then take it away after taxpayers paid. See *Reich*, 513 U. S., at 111–112; *Newsweek*, 522 U. S., at 444–445. In this case, though, there was neither a guaranteed refund remedy nor a bait

and switch. Nothing in the Bankruptcy Code promises a refund to those who successfully challenge their fees. And respondents point to no previously available statutory remedy of which the Government has now deprived them. So those later cases do not help respondents either.

With all that said, nothing we say here should be taken to diminish or depart from the holdings of the tax cases as they apply in the tax context. Nor do we mean to suggest that congressional intent is an entirely unchecked guide in our remedial analysis for constitutional violations. We cannot remedy an old constitutional problem by creating a new one, so due process and other constitutional protections undoubtedly will limit the possible remedies in many cases. See *Barr*, 591 U. S., at 633. Here, though, due process does not mandate any particular remedy. Therefore, as the tax cases themselves advise, we must, "within the bounds of [our] institutional competence, . . . implement what the legislature would have willed." *Levin*, 560 U. S., at 427.

* * *

Faced with the unconstitutional nonuniformity we recognized in *Siegel*, Congress would have provided for uniform fees going forward. That remedy cures the constitutional violation, and due process does not require another result. The judgment of the Court of Appeals for the Tenth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

SUPREME COURT OF THE UNITED STATES

No. 22–1238

OFFICE OF THE UNITED STATES TRUSTEE, PETITIONER *v.* JOHN Q. HAMMONS FALL 2006, LLC, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[June 14, 2024]

JUSTICE GORSUCH, with whom JUSTICE THOMAS and JUSTICE BARRETT join, dissenting.

What's a constitutional wrong worth these days? The Court's answer today seems to be: not much. Between 2018 and 2020, the government charged fees to bankruptcy debtors that varied arbitrarily from region to region, leaving some debtors millions of dollars worse off than others. Two years ago, we held that this geographically discriminatory treatment violated the Constitution's Bankruptcy Clause—a provision that, we stressed, was not "toothless." *Siegel* v. *Fitzgerald*, 596 U. S. 464, 468 (2022). Today, however, the Court performs a remedial root canal, permitting the government to keep the cash it extracted from its unconstitutional fee regime.

The path the Court follows is as striking as its destination. Never mind that a refund is the traditional remedy for unlawfully imposed fees. Never mind that the government promised to supply precisely that relief if the debtors in this case prevailed, as they have, in their constitutional challenge. Never mind that backtracking on that promise raises separate due process concerns. As the majority sees it, supplying meaningful relief is simply not worth the effort. Respectfully, that alien approach to remedies has no place in our jurisprudence.

I

A

Certainty is the lifeblood of bankruptcy. For the system to function, a debtor must be certain that putting all his assets on the table for creditors will afford him a fresh start. So too must a creditor have certainty about what priority his loan may or may not enjoy in the event of a borrower's bankruptcy. Recognizing as much, our Constitution grants Congress power to establish "uniform Laws on the subject of Bankruptcies throughout the United States." Art. I, §8, cl. 4; see 3 J. Story, Commentaries on the Constitution of the United States §§1101–1103, pp. 4–8 (1833). That provision affords Congress some "flexibility" in drafting bankruptcy laws, but it does not tolerate laws that treat parties in bankruptcy differently based on the "arbitrary" happenstance of their "geograph[y]." *Siegel*, 596 U. S., at 476. Laws like those, this Court has held, do not apply "uniform[ly] . . . throughout the United States."

Our case arises from a violation of that uniformity requirement. In much of the country, the United States Trustee Program, housed in the Department of Justice, handles administrative tasks once handled by bankruptcy courts. *Id.*, at 468. The Trustee Program is funded by quarterly fees paid principally "by debtors who file cases under Chapter 11 of the Bankruptcy Code." *Id.*, at 469; see 28 U. S. C. §1930(a)(6)(A). Thanks to a quirk of history, however, six federal judicial districts are not in the Trustee Program. Instead, they are part of the so-called Administrator Program, overseen by the Judicial Conference of the United States and "funded by the Judiciary's general budget." *Siegel*, 596 U. S., at 469. In those districts, Congress did not require debtors to pay fees "at all." *Ibid.* That is, until a lower court highlighted the disparity and held it violated the Bankruptcy Clause. *St. Angelo* v. *Victoria Farms, Inc.*, 38 F. 3d 1525, 1529–1532 (CA9 1994).

In 2000, Congress implemented a fix. It provided that

"the Judicial Conference of the United States may require" debtors in Administrator Program districts "to pay fees equal to those" debtors pay in Trustee Program districts. 114 Stat. 2412 (enacting §1930(a)(7)). Although the statutory language ("may require") was permissive, the Judicial Conference took the hint and began charging the same fees as those levied in Trustee Program districts, thus putting all debtors on equal footing. *Siegel*, 596 U. S., at 470.

The solution didn't last. Come 2017, Congress enacted temporary measures to boost Trustee Program funding. There, Congress directed that, whenever Trustee Program funds dropped below $200 million, certain bankruptcy estates had to pay new and much higher quarterly fees (where some once paid $30,000, for example, the law now required them to pay up to $250,000). §1004, 131 Stat. 1232; see *Siegel*, 596 U. S., at 470. The 2017 Act "applied to all pending cases" in Trustee Program districts. *Id.*, at 471. But for reasons not entirely clear from the record before us, the Judicial Conference didn't immediately follow suit. It waited until October 2018 to implement those changes in Administrator Program districts—and even then applied them "only to newly filed cases." *Ibid.*

Ultimately, Congress had to intercede again. At the close of 2020, Congress withdrew its direction to the Judicial Conference providing that it "may require" debtors in Administrator Program districts to pay the same fees as debtors in Trustee Program districts. In its place, Congress issued a more emphatic instruction, telling the Judicial Conference that it "shall" ensure that quarterly fees remain "consistent across all Federal judicial districts." §§2–3, 134 Stat. 5086, 5088.

But if that solved the problem going forward, it left another question unanswered: what to do about Trustee Program debtors who had paid more in fees between 2018 and 2020 than did their similarly situated Administrator Program counterparts. Many Trustee Program debtors

brought challenges alleging that the fees they had paid violated the uniformity requirement of the Bankruptcy Clause. And in 2022, we agreed with them, holding that the debtors before us had been subject to "arbitrary geographically disparate" fees in violation of the Constitution. *Siegel*, 596 U. S., at 476. After reaching that conclusion, we remanded the case then before us for a lower court to determine "the appropriate remedy . . . in the first instance." *Id.*, at 480–481.

B

John Q. Hammons Hotels & Resorts found itself in the middle of this mess. In 2016, various entities affiliated with Hammons filed Chapter 11 bankruptcy petitions in the District of Kansas, a Trustee Program district. *In re John Q. Hammons Fall 2006, LLC*, 15 F. 4th 1011, 1018 (CA10 2021). The cases remained pending after the 2017 Act kicked in and before the 2020 Act mandated fee uniformity across the Nation. So Hammons was charged higher quarterly fees than debtors in Administrator Program districts.

Hammons did not challenge the fee disparity immediately. That would have come at a heavy cost: Until Hammons paid its fees in full, the bankruptcy court could not confirm Hammons's plan of reorganization, a vital step in the Chapter 11 process. See 11 U. S. C. §1129(a)(12). Worse, as a debtor defaulting on its fees, Hammons would also have run the risk of being kicked out of the Chapter 11 process entirely. §§1112(b)(1), (b)(4)(K).

So Hammons waited until early 2020. By that time the bankruptcy court had confirmed its plan. See Debtors' Motion To Determine Extent of Liability for Quarterly Fees in No. 16–21142 (Bkrtcy. Ct. Kan., Mar. 3, 2020), ECF Doc. 2823, p. 5. But by that time Hammons had also "paid over $2.5 million more in quarterly fees than [it] would have paid had [it] filed in" an Administrator Program district. 15 F. 4th, at 1018. Arguing that this discriminatory treatment

was unconstitutional under the Bankruptcy Clause, Hammons sought a refund of those excess payments. ECF Doc. 2823, at 8.

The U. S. Trustee opposed the request. But he promised that "[i]f [Hammons] prevail[ed] after all levels of review on [its] claim that [the fee disparity] is unconstitutional, the government [would] refund fees to the extent they were overpaid." Objection of the United States to Debtor's Motion to Determine Extent of Liability for Quarterly Fees in No. 16–21142 (Bkrtcy. Ct. Kan., Apr. 27, 2020), ECF Doc. 2868, p. 59. As reassurance, the U. S. Trustee stressed that Congress had "authorized payments of refunds . . . in its most recent annual appropriation law." *Id.*, at 59–60 (citing 133 Stat. 2398).

This long-promised payment eventually came due. Anticipating our decision in *Siegel* by a year, in 2021 the Tenth Circuit held that Hammons had been subjected to an arbitrary and geographically disparate fee forbidden by the Bankruptcy Clause. 15 F. 4th, at 1023. By way of remedy, that court held the Trustee to its promise, ordering him to pay Hammons a refund of the fees it had paid in excess of those it would have owed in an Administrator Program district during the same period. *Id.*, at 1026. This Court granted certiorari to address what remedy is due debtors, like Hammons, who were charged unconstitutional fees between 2018 and 2020—the question we left open in *Siegel*. 600 U. S. ___ (2023).

II

A

Where does that leave us? Before this Court, the U. S. Trustee does not question Hammons suffered a constitutional injury in having to pay nonuniform fees. That much was settled by *Siegel*. Nor does the U. S. Trustee dispute he promised to refund Hammons its overpayments should

it prevail—as it has now prevailed—on the merits of its constitutional claim. Everyone agrees those fees total approximately $2.5 million. Even more than that, it is undisputed Congress has already taken the affirmative step of appropriating funds for refunds in cases just like this one. With all that beyond dispute, the next step should be too: Just as the Tenth Circuit held, the U. S. Trustee should be ordered to make Hammons whole for its injury and pay the promised refund.

Traditional remedial principles command that result. No one argues, for example, that sovereign immunity bars this suit or others like it. Nor is there a question Hammons sought a refund in a timely fashion. As the U. S. Trustee puts it, Congress has allowed "[t]he amounts of the payments [to] be litigated at the time of the budget submission; by filing an adversary proceeding to challenge fees at any time while the bankruptcy case is ongoing; or by filing a district court action after the case has terminated." Brief for Petitioner 5–6. And Hammons brought its fee challenge while its bankruptcy case was still ongoing. It is long since settled, too, that where (as here) Congress has provided "a general right to sue" for the invasion of a legal right but has not specified any particular form of relief, "federal courts may use any available remedy to make good the wrong done." *Barnes* v. *Gorman*, 536 U. S. 181, 189 (2002) (internal quotation marks omitted). And where (as here), someone pays money—or has money withheld from him—because of invalid government action, the most appropriate remedy is monetary relief.

Centuries of judicial practice confirm as much. This Court has long said that the "[a]ppropriate remedy" for "duties or taxes erroneously or illegally assessed . . . is an action of assumpsit for money had and received." *Philadelphia* v. *Collector*, 5 Wall. 720, 731 (1867). We have held that "the law . . . will compel restitution or compensation" "if a

county obtains the money or property of others without authority." *City of Louisiana* v. *Wood*, 102 U. S. 294, 299 (1880) (internal quotation marks omitted). And on the theory that "the appropriate remedy" for unconstitutional discrimination "is a mandate of equal treatment," *Heckler* v. *Mathews*, 465 U. S. 728, 740 (1984) (emphasis deleted), we have "regularly . . . affirmed District Court judgments ordering that welfare benefits be paid to members of an unconstitutionally excluded class," *Califano* v. *Westcott*, 443 U. S. 76, 90 (1979).

Our longstanding precedents should make short work of this case. Hammons remitted to the U. S. Trustee more than $2.5 million in "overpayments." *Siegel*, 596 U. S., at 472 (internal quotation marks omitted). Those overpayments were exacted in violation of the Bankruptcy Clause. To remedy the violation, Hammons is entitled to a refund—the relief the U. S. Trustee promised from the start.

B

Despite all this, the government now tries to backtrack. Yes, it promised to pay should Hammons prove a constitutional injury. Yes, Hammons has now done exactly that, consistent with *Siegel*. Yes, Congress has appropriated sums to make Hammons and others like it whole. And, yes, traditional remedial principles would seem to dictate just that form of relief. Still, the government insists, it should not be forced to pay. It's an astonishing claim, made all the more astonishing by the fact a majority of the Court goes along with it.

How do they get there? To determine the appropriate remedy for Hammons's constitutional injury, the government and majority reason, we "must adopt the remedial course Congress likely would have chosen had it been apprised of the constitutional infirmity." Brief for Petitioner 14 (internal quotation marks omitted). And, they continue,

had Congress known in 2017 that the disparate fee arrangement was unconstitutional, it would have responded by imposing higher fees on debtors in the Administrator Program districts. *Id.*, at 14–15. And, the government and majority say, "[t]he most appropriate way to effectuate that remedy is on a purely prospective basis"—ensuring that fees are "uniform going forward." *Id.*, at 20. Of course, Congress already provided just this prospective relief in the 2020 Act. So really, the government and majority conclude, that means "no further relief is required." *Ibid.*; see *ante*, at 7–11. Presto: No refund for Hammons. It is a line of reasoning as bold as it is untenable.[1]

1

Start with the government and majority's major premise: the notion that our only proper role is to speculate about—and then give effect to—the course of action Congress would have taken to address the constitutional injury its fee regime imposed had it been warned in advance. Consider what that would mean in a more familiar context. Suppose you suffered some form of arbitrary and unlawful discrimination in the workplace and sued your employer for damages. In response, suppose your employer reassured you that, had it known beforehand what the incident would mean for its wallet, it would have taken steps to avoid the incident—and it promises to do better in the future. In what world does your employer's promise of a *prospective-only* remedy do anything to redress your *past* injuries? And why would it matter what the employer might have done

[1] In the alternative, the government contends, the Court should "direct the Judicial Conference to . . . collect increased fees from" debtors in Administrator Program districts that did not pay the increased fees. Brief for Petitioner 34. Rightly, the Court declines this invitation. See *ante*, at 10–11. The Judicial Conference is not a party to this case, so we lack power to enter an order that would bind it. And shaking down debtors—many of whom are no longer in Chapter 11 proceedings—for additional fees many years after the fact would raise serious due process concerns.

differently?

None of that comports with traditional remedial principles. A promise of fee uniformity going forward may prevent future discrimination between debtors. But it does nothing to remedy fees unlawfully exacted in the past. Far from an "appropriate remedy," the majority's *prospective* remedy for a *past* injury is no remedy at all. By overlooking the (obvious) distinction between prospective and retrospective relief, the majority defies this Court's teaching that, in cases like this one, "effective relief consists of damages, not an injunction." *Tanzin* v. *Tanvir*, 592 U. S. 43, 51 (2020).

Nor is it sensible to ask what remedy the government might prefer. This Court has long held that, in our legal system, it is the plaintiff, not the defendant, who "has a right to choose" what form of legally permissible relief he will seek. *Twist* v. *Prairie Oil & Gas Co.*, 274 U. S. 684, 689 (1927). And for just as long we have considered irrelevant a defendant's plea that, if he had known what he was doing was wrong, "he would have pursued a different course of action within the law." *Corsicana Nat. Bank of Corsicana* v. *Johnson*, 251 U. S. 68, 88 (1919). Entertaining that kind of "hypothesis," we have explained, "would be an unwarranted resort to fiction in aid of a wrongdoer, and at the expense of the party injured." *Ibid.*

Seeking a way around these problems and following the government's lead, the majority points to cases in which plaintiffs sought prospective equitable relief from an unconstitutional law. See Brief for Petitioner 14–15.[2] And in *that* posture, those cases indicate, the Court has sometimes

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[2] See *Barr* v. *American Assn. of Political Consultants, Inc.*, 591 U. S. 610, 617 (2020) (opinion of KAVANAUGH, J.) (seeking a declaration); *Sessions* v. *Morales-Santana*, 582 U. S. 47, 77 (2017) (grant of citizenship); *Ayotte* v. *Planned Parenthood of Northern New Eng.*, 546 U. S. 320, 325 (2006) (declaration and injunction); *Levin* v. *Commerce Energy, Inc.*, 560 U. S. 413, 419 (2010) (same).

thought it appropriate to ask how much of the challenged statute it should declare inoperative going forward: Should the whole statute, or only parts of it, be held unenforceable in the future?

That question, the Court has sometimes said, poses one of "severability." *Barr* v. *American Assn. of Political Consultants, Inc.*, 591 U. S. 610, 614 (2020) (opinion of KAVANAUGH, J.); see *Ayotte* v. *Planned Parenthood of Northern New Eng.*, 546 U. S. 320, 331–332 (2006). Sometimes, Congress will include an express severability clause providing that the unconstitutionality of any one provision will not preclude the enforcement of others going forward. *Barr*, 591 U. S., at 623. But what happens when a statute contains no such provision? In cases like that, this Court has, from time to time, resorted to asking the hypothetical question: What would Congress "have willed" about the law's future application had it foreseen its constitutional defect? *Levin* v. *Commerce Energy, Inc.*, 560 U. S. 413, 427 (2010).

So, for example, in *Sessions* v. *Morales-Santana*, 582 U. S. 47 (2017), the Court faced a statute that supplied a faster path to citizenship for children born abroad to American mothers than for those born abroad to American fathers. *Id.*, at 51. The Court held that law violated the Equal Protection Clause. *Id.*, at 72. To resolve how the law should operate going forward consistent with the Constitution, the Court asked whether Congress would have preferred the "'withdrawal of benefits'" from children of American mothers or the "'extension of benefits'" to children of American fathers, and chose the former option. *Id.*, at 73.[3]

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[3] Proceeding this way—asking what a hypothetical Congress might have done (but didn't do)—has drawn its fair share of criticism, including from Members of today's majority, as beyond the scope of the judicial power. See, *e.g.*, *Murphy* v. *National Collegiate Athletic Assn.*, 584 U. S. 453, 486–488 (2018) (THOMAS, J., concurring); *Barr*, 591 U. S., at 625

None of that, however, has anything to do with our case. Hammons seeks damages to remedy a past violation. The company does not seek from us any form of prospective relief. As a result, we have no occasion to take a scalpel to Congress's work. We do not face anything like the question whether to extend or withdraw benefits to ensure a statute's constitutional operation going forward. Indeed, attempting to do so in this case would be utterly pointless, for in 2020 Congress *already* modified the challenged provision to remove its constitutional infirmity going forward. And just because *future* parties will not be injured does nothing to erase the fact that parties injured by *past* misconduct are entitled to relief.

The decisions the majority relies upon only confirm the point. Take *Morales-Santana*. While the Court consulted hypothetical legislative intent to resolve a question about the scope of prospective relief, it also acknowledged limits on the propriety of that course. It observed, for example, that legislative intent is "irrelevant" when "a defendant [is] convicted under a law classifying on an impermissible basis"; for that past harm, he is entitled to relief "without regard to the manner in which" Congress might have wanted to "cure the infirmity." *Id.*, at 74, n. 24. The Court stressed, too, that we "loo[k] to Justice Harlan's concurring opinion in *Welsh* v. *United States*," 398 U. S. 333 (1970), when considering remedies for discriminatory treatment. 582 U. S., at 75. And that opinion is wholly inconsistent with the majority's approach today. Guessing how the legislature

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(KAVANAUGH, J., joined by ROBERTS, C. J., and ALITO, J.) ("[C]ourts are not well equipped to imaginatively reconstruct a prior Congress's hypothetical intent"); *id.*, at 652–653 (GORSUCH, J., concurring in judgment in part and dissenting in part); *United States* v. *Arthrex, Inc.*, 594 U. S. 1, 32–35 (2021) (GORSUCH, J., concurring in part and dissenting in part). Even those who have *advocated* for the practice agree it "is essentially legislative." R. Ginsburg, Some Thoughts on Judicial Authority To Repair Unconstitutional Legislation, 28 Clev. St. L. Rev. 301, 317 (1979); accord, *ante*, at 7.

would have fixed a statute had it known of a constitutional defect might be appropriate "in an action for a declaratory judgment or an action in equity," Justice Harlan wrote. *Welsh*, 398 U. S., at 363–364 (opinion concurring in result) (internal quotation marks omitted). But, he added, that course is *not* "appropriate" in cases, like the one before him, where the plaintiff sought relief for a past harm and the result of guesswork about legislative intentions could leave him "remediless." *Id.*, at 362.

The few decisions the majority cites addressing requests for retrospective relief make a similar point. Consider *Los Angeles Dept. of Water and Power* v. *Manhart*, 435 U. S. 702 (1978), a case alleging unlawful discrimination under Title VII of the Civil Rights Act of 1964. See *ante,* at 7. That statute, the Court observed, provides that "retroactive relief 'may' be awarded if it is 'appropriate.'" 435 U. S., at 719. Despite the permissive statutory language, the Court recognized the traditional "presumption in favor of" money damages to remedy past discrimination. *Ibid.* This presumption, *Manhart* continued, was so strong it "can seldom be overcome." *Ibid.* Exactly so.[4]

[4] With so much against it, the majority replies that I have "misapprehen[ded]" the "constitutional wrong at issue here." *Ante,* at 12. That charge is misdirected. Everyone appreciates that the question before us is how to remedy a past violation of the Bankruptcy Clause. It is only the majority that steadfastly refuses to recognize what remedy our cases call for when that kind of past wrong is established: damages. Trying another line of response, the majority seeks to characterize our centuries-old precedents concerning retrospective relief and the irrelevance of the severability decisions on which it relies as "new arguments." *Ante*, at 13. But this reply is no more persuasive. The majority proceeds as if Hammons didn't argue that it had a "'legal right to recover the amount of the funds unlawfully exacted of it,'" Brief for Respondents 11 (brackets omitted); that the cases cited by the government concerned "principles of *severability*, not backward-looking remedies," *id.*, at 19; or that it was entirely unilluminating to consider the intent of the "Congress [that] created the statutory scheme that resulted in th[e] constitutional infirmity," Brief in Opposition 20. Still, if the majority wishes to

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Turn now to the minor premise of the majority's argument and a second, independent problem emerges. Relying on severability precedents, the majority reasons that Congress would not have wanted to issue refunds in cases like this one. But even assuming speculation about Congress's wishes has anything to do with the scope of retrospective relief, it would still require a refund here.

When searching for congressional intent, we have said, there is no better place to look than "existing statutory text." *Lamie* v. *United States Trustee*, 540 U. S. 526, 534 (2004). Even in severability cases, we have taken pains to stress that courts may not elevate judicial guesswork about "Congress's hypothetical intent" over "statutory text," which is "the definitive expression of Congress's will." *Barr*, 591 U. S., at 624–625 (opinion of KAVANAUGH, J.).

Follow those directions here and we end up at a refund. As the government has admitted, existing statutory text reveals that "Congress [has] authorized payments of refunds" from appropriated funds. ECF Doc. 2868, at 59–60; see 133 Stat. 2398. This fact is as sure a sign as any that Congress didn't believe refunds would cause the sort of "'disruption of the statutory scheme'" the majority worries over. *Ante*, at 7. The law gives us our answer—refunds—no guesswork necessary.

How does the majority respond? It points to Congress's decision in the 2020 Act to "'mandat[e] equal fees *prospectively*.'" *Ante*, at 10. And that decision, the majority asserts, is "[t]he best evidence that Congress did not intend" for us to permit refunds. *Ibid.* But the majority never ex-

rest its holding today on the lack of party presentation of these arguments, I will not stand in its way, for it means debtors who have more forcefully pressed the arguments the majority overlooks need not join Hammons on the remedial trash-heap. Courts below remain free to consider those arguments.

plains why that inference is a good, let alone the best, inference to draw from the 2020 Act's silence about retroactive relief. Given that Congress had already legislated to provide for refunds, why would it need to repeat itself in the 2020 Act? Cf. *Bowen* v. *Michigan Academy of Family Physicians*, 476 U. S. 667, 681 (1986) ("We ordinarily presume that Congress intends the executive to obey its statutory commands"). And, particularly in those circumstances, why wouldn't the better inference be that Congress assumed courts would apply their ordinary rules and recognize that refunds are the appropriate remedy for illegal fees already exacted?[5]

III

A

Traditional remedial principles guarantee Hammons a refund. Nothing the majority offers begins to suggest otherwise. Still, even if we could somehow put all that aside, this Court's due process precedents would demand the same result.

Those precedents contemplate cases like this one. We have held that, if an individual "reasonably relie[s] on the apparent availability of a postpayment refund when paying" a contested fee, the government may not later "declare, only after the disputed [fees] have been paid, that no such

[5] Alternatively, in places, the majority seems to suggest that we should dismiss Congress's authorization of moneys for refunds as "boilerplate language," *ante*, at 12—as if an appropriation were a meaningless formality rather than an act of constitutional magnitude, see Art. I, §9, cl. 7; *Consumer Financial Protection Bureau* v. *Community Financial Services Assn. of America, Ltd.*, 601 U. S. 416 (2024). In other places yet, the majority seems to suggest that the party-presentation principle somehow allows the Court to ignore Congress's authorization of refunds entirely, see *ante*, at 12—a proposition that runs headlong into the settled rule that no party may "'waiv[e]'" the proper interpretation of the law by "fail[ing] to invoke it." *EEOC* v. *FLRA*, 476 U. S. 19, 23 (1986) (*per curiam*); see also, *e.g.*, *Rumsfeld* v. *Forum for Academic and Institutional Rights, Inc.*, 547 U. S. 47, 56 (2006).

remedy exists." *Newsweek, Inc.* v. *Florida Dept. of Revenue*, 522 U. S. 442, 444–445 (1998) (*per curiam*) (internal quotation marks omitted). This due process rule holds true even when the individual had the option of pursuing a "prepayment remedy" but chose instead to take the "apparent[ly] availab[le]" postpayment route. *Id.*, at 443, 445. It does because due process prevents the government from engaging in a "'bait and switch'" by later refusing to honor any remedial path it previously held open to the plaintiff. *Reich* v. *Collins*, 513 U. S. 106, 111 (1994).

The majority's failure to supply a refund violates that rule. Start with the bait the government offered. As constitutional challenges like Hammons's began trickling in, U. S. Trustees across the country urged courts against awarding injunctive relief or setoffs to parties contesting their disparate fee assessments. That kind of relief was unnecessary, the government contended, precisely "because the statute appropriating funds to the United States Trustee Program . . . permits refunds from the U. S. Trustee System Fund . . . according to standard procedures." Memorandum of Law in Support of Defendants' Motion for Summary Judgment in *In re MF Global Holdings Ltd.*, No. 19–01379 (Bkrtcy. Ct. SDNY, Nov. 21, 2019), ECF Doc. 13, pp. 48–49. With representations like these—representations the government would repeat in Hammons's own bankruptcy proceeding, see Part I–B, *supra*—who could doubt that the opportunity to seek a postpayment refund was anything less than "'clear and certain'"? *Reich*, 513 U. S., at 111. Or that Hammons's decision to choose this route rather than delay its plan confirmation to pursue a prepayment challenge was anything other than "reasonabl[e]"? *Newsweek*, 522 U. S., at 445.

Now the impermissible switch. Even as it continues to maintain that "[t]he amounts of the payments can be litigated . . . at any time," Brief for Petitioner 5–6, the U. S. Trustee asks us to "declare, only after the disputed [fees]

have been paid, that no such remedy exists," *Reich*, 513 U. S., at 108. Try as litigants might, the government now insists, they cannot in fact secure "refunds from the U. S. Trustee System Fund" under *any* "procedures." ECF Doc. 13, at 49.

That bait and switch violates due process, plain and simple. We should not be in the business of tolerating such "contrived and self-serving" changes in position. *McKesson Corp.* v. *Division of Alcoholic Beverages and Tobacco, Fla. Dept. of Business Regulation*, 496 U. S. 18, 42 (1990). Rather, our precedents "requir[e] the [government] to provide the remedy it has promised." *Alden* v. *Maine*, 527 U. S. 706, 740 (1999); accord, *Newsweek*, 522 U. S., at 445; see *McKesson*, 496 U. S., at 31 (government "obligate[d]" to supply "meaningful backward-looking relief").

B

How does the majority answer this latest problem? On its telling, the only bait and switch our due process precedents guard against arises when the government holds open the possibility of a postpayment refund and then removes that option by statute or regulation after a party has paid the fee it wishes to contest. *Ante*, at 15–16. So, yes, the Trustee promised that litigants could pay now and litigate for a refund later. But, the majority insists, Hammons should have disregarded those representations and seized "the opportunity" always provided by statute to seek injunctive relief "before [it] paid" the challenged fees. *Ante*, at 15.[6]

This argument, too, misreads our precedents. The availability of "predeprivation remedies," we have explained, is

[6] Pause to notice that, under the majority's logic, debtors who did choose to "withhol[d] the unconstitutional fees" and brought *pre*payment challenges may not now be ordered to hand over that money. Brief for MF Global Holdings Ltd. as *Amicus Curiae* 5 (boldface and capitalization deleted); see *ante*, at 16 (courts "cannot remedy an old constitutional problem by creating a new one").

"beside the point" when a party reasonably relies on the apparent availability of a postpayment remedy. *Reich*, 513 U. S., at 113. Nor is it the case that an impermissible bait and switch can be accomplished only through statutory or regulatory changes. In *Newsweek* and *Reich*, for example, this Court held that a state-court decision violated due process by robbing the taxpayer of a postpayment remedy that appeared available until the court ruled otherwise. *Newsweek*, 522 U. S., at 443–445; *Reich*, 513 U. S., at 111–113. Indeed, *Newsweek* summarily reversed a lower court for "fail[ing] to consider" this point. 522 U. S., at 443. The case before us is therefore no different from those we've considered before, except in one respect: In *Newsweek* and *Reich*, this Court cured the lower courts' due process violation; here, the Court itself creates one by robbing Hammons of a postpayment remedy that until this moment appeared available.

With nowhere left to go, the majority tries to suggest that our due process precedents are limited to the tax context. *Ante*, at 14. It's the "[g]overnment's exceedingly strong interest in" prompt tax payments, the majority reasons, that brings with it the "postdeprivation protections" discussed in our tax cases. *Ibid.* (internal quotation marks omitted). But the majority does not explain why, as a matter of due process, the government's promises about the availability of postdeprivation procedures must be honored only in the tax context. Nor could it. If there's anything unique about our tax decisions, it's our treatment of "the field of taxation" as an area where we've "afforded [governments] great flexibility in satisfying the requirements of due process." *National Private Truck Council, Inc.* v. *Oklahoma Tax Comm'n*, 515 U. S. 582, 587 (1995). In other words, we have long treated the procedural protections described in our tax cases as some of the most government-friendly due process will tolerate. See *Londoner* v. *City and County of Denver*, 210 U. S. 373, 385–386 (1908). And if a bait and switch is

impermissible in the tax context, surely it must be in others.

This is hardly a new message. Reprimanding the Georgia Supreme Court for announcing there was no postpayment remedy only after the plaintiffs had paid a contested tax in reliance on that remedy, this Court in *Reich* explained that the case before it bore "a remarkable resemblance to *NAACP* v. *Alabama ex rel. Patterson*, 357 U. S. 449 (1958)." 513 U. S., at 112. And *Patterson* concerned a challenge to a state court's contempt holding, not anything having to do with a tax. There, the Court held that, if "nothing 'suggest[s]'" a particular procedural route "'is the *exclusive* remedy,'" due process prohibits a government from later penalizing an individual for pursuing one available route rather than another. 513 U. S., at 113. Precisely the same reasoning and rule apply here—another inconvenient fact the majority prefers to ignore. See *ante*, at 15 (asserting there's no "dispute" that *McKesson* and its progeny apply only to taxes). In choosing this path, however, the majority sends a clear message to lower courts and litigants: Next time the government asks you to hold off on pursuing a remedy on the promise you can always pursue it later, its representations are worth no more than the relief the Court awards Hammons today.[7]

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[7] Failing all else, the majority tries to reconceive the government's promise to pay as a representation merely that the government "would comply with a final judgment." *Ante*, at 13. But why the government would need to state this obvious point goes unexplained. And try as the majority might, what the government *actually* wrote leaves little room for reimagination: "If Debtors prevail after all levels of review on their claim that the 2017 amendment does not apply to this case or is unconstitutional, the government will refund fees to the extent they were overpaid." ECF Doc. 2868, at 59. Nor does the majority even attempt to explain away the government's concession before this Court that "[t]he amounts of the payments can be litigated . . . at any time." Brief for Petitioner 5–6.

IV

The government's final salvo has to do with an appeal to public policy. Because there are fewer Administrator Program debtors who paid lower fees between 2018 and 2020 than there are Trustee Program debtors who paid arbitrarily higher fees during that period, the government reasons it is preferable either to try to recoup money from Administrator Program debtors or to do nothing at all. Brief for Petitioner 37–40. A refund to Trustee Program debtors, the government warns, would "transfe[r] to taxpayers substantial costs." Reply Brief 2; see Brief for Petitioner 35. The majority echoes these concerns. Providing a refund, it says, would be "enormous[ly]" "disrupti[ve]," in part because reimbursing debtors in Trustee Program districts "would be expensive." *Ante*, at 9.[8]

These concerns may be animated by prudent fiscal policy, but that is not how remedies work. Declining to pay an injured plaintiff will *always* be the cheapest option for the defendant. But when a refund is "otherwise available" as a matter of law, "the cost of [the] refund" cannot "justify a decision to withhold it." *McKesson*, 496 U. S., at 51, n. 35. Consider how different, for example, our equality jurisprudence would look were it any other way. In the 1970s, pointing to the price tag associated with extending equal benefits to men and women was a favorite tactic of the federal government. See, *e.g.*, Brief for Appellant in *Wein-*

[8] At times, the majority appears so eager to inflate the consequences of supplying meaningful relief that it contradicts the government's more moderate position. It asserts, for example, that the statute authorizing refunds somehow proves that "refund[s] would send the U. S. Trustee program into fiscal freefall." *Ante*, at 13. But the majority does not supply whatever back-of-the-napkin calculation leads it to contradict the U. S. Trustee's more informed representation that the program's hundreds of millions of dollars in funds are more than sufficient to reimburse Hammons and others. See Part I–B, *supra*.

berger v. *Wiesenfeld*, O. T. 1974, No. 73–1892, p. 22 (extending "'mother's benefits' to fathers" might lead to "over $300 million" in costs, equivalent to many times more than that amount today). Should this Court have balked at the sticker price for remedying this "monetary disparity"? *Ante*, at 7. More recently, the government argued that a "damages remedy against federal employees" for religious discrimination was too costly to count as "'appropriate relief,'" Brief for Petitioners in *Tanzin* v. *Tanvir*, O. T. 2020, No. 19–71, p. 30, even though damages were "the *only* form of relief that [could] remedy some . . . violations," *Tanzin*, 592 U. S., at 51. Should we have stopped to perform a cost-benefit analysis there, too?[9]

V

I struggle to understand why today the majority so readily dismisses any remedy in this case—all to save the government from the trouble of issuing funds the Legislature has appropriated and the Executive has promised to pay. As I see it, two possible lines of thinking may explain this unusual outcome, neither reassuring.

One possibility is that the majority views Bankruptcy Clause violations as less worthy of relief than other constitutional violations. The majority nods in that direction

[9] Besides emphasizing the cost to the fisc as a ground for its decision, the majority also cites the fact that granting Hammons a refund will not guarantee the past disparities will "be entirely eliminated." *Ante*, at 10. Why? Because not every overpaying debtor in a Trustee Program district has sought reimbursement. *Ibid*. But, as best I can tell, this Court has never before declined to remedy a plaintiff's constitutional harm on the theory that other would-be plaintiffs forfeited or waived their right to seek similar relief. Such a rule would be dangerous indeed for those seeking to vindicate their constitutional rights. As the government concedes, too, "there is a putative class action on behalf of all affected debtors pending in the Court of Federal Claims." Brief for Petitioner 36. Given the weight the majority places on Hammons's inability to recover for all affected debtors, it's far from clear what the impact of today's decision is on that action.

when it compares today's decision to others involving what it calls "far more serious dignitary harms." *Ante*, at 11. But if that's the reason, it is hardly a convincing one. After all, the majority describes its "What would Congress have done?" approach to remedies as universally applicable—governing questions of retrospective relief in sex discrimination and free exercise cases no less than those arising under the Bankruptcy Clause. See *ante*, at 7. Nor do we as judges have any warrant to play favorites among the Constitution's provisions, exalting some while relegating others to the status of "a second-class right." *New York State Rifle & Pistol Assn., Inc.* v. *Bruen*, 597 U. S. 1, 70 (2022) (internal quotation marks omitted).

The other possibility is no better. Perhaps the majority thinks supplying relief isn't worth the trouble because the constitutional violation at issue here was, as the majority puts it, "short-lived and small." *Ante*, at 12. After all, the violation began in 2018 and ended in 2020. But on what account does a multiyear violation of the Constitution count as "short-lived"? And how does that violation count as "small" when it cost Hammons $2.5 million and, as the majority itself emphasizes, cost others millions more? Cf. *Culley* v. *Marshall*, 601 U. S. 377, 411–412 (2024) (SOTOMAYOR, J., joined by KAGAN and JACKSON, JJ., dissenting) (months-long deprivation of a car is a harm of constitutional proportions); *Wellness Int'l Network, Ltd.* v. *Sharif*, 575 U. S. 665, 703 (2015) (ROBERTS, C. J., dissenting) (insisting there is no "'*de minimis*'" exception for constitutional "incursion[s]"). Consider, too, what that kind of thinking could mean for those seeking retrospective relief for other constitutional violations. It's not hard to imagine today's decision receiving a warm welcome from those who seek to engage in only a dash of discrimination or only a brief denial of some other constitutionally protected right. The rest of us can only hope that the Court corrects its mistake before it

metastasizes too far beyond the bankruptcy context.[10]

Respectfully, I dissent.

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[10] One might wonder as well: By declining to supply a damages remedy for a constitutional violation even when statutory law authorizes it, what is left of the mistaken notion that the Constitution demands a damages remedy for its violation even in the absence of statutory authority? See *Egbert* v. *Boule*, 596 U. S. 482, 508–509 (2022) (SOTOMAYOR, J., joined by, *inter alios*, KAGAN, J., concurring in judgment and dissenting in part); *Armstrong* v. *Exceptional Child Center, Inc.*, 575 U. S. 320, 338 (2015) (SOTOMAYOR, J., joined by, *inter alios*, KAGAN, J., dissenting).

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

TRUCK INSURANCE EXCHANGE *v.* KAISER GYPSUM CO., INC., ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

No. 22–1079. Argued March 19, 2024—Decided June 6, 2024

Petitioner Truck Insurance Exchange is the primary insurer for companies that manufactured and sold products containing asbestos. Two of those companies, Kaiser Gypsum Co. and Hanson Permanente Cement (Debtors), filed for Chapter 11 bankruptcy after facing thousands of asbestos-related lawsuits. As part of the bankruptcy process, the Debtors filed a proposed reorganization plan (Plan). That Plan creates an Asbestos Personal Injury Trust (Trust) under 11 U. S. C. §524(g), a provision that allows Chapter 11 debtors with substantial asbestos-related liability to fund a trust and channel all present and future asbestos-related claims into that trust. Truck is contractually obligated to defend each covered asbestos personal injury claim and to indemnify the Debtors for up to $500,000 per claim. For their part, the Debtors must pay a $5,000 deductible per claim, and assist and cooperate with Truck in defending the claims. The Plan treats insured and uninsured claims differently, requiring insured claims to be filed in the tort system for the benefit of the insurance coverage, while uninsured claims are submitted directly to the Trust for resolution.

Truck sought to oppose the Plan under §1109(b) of the Bankruptcy Code, which permits any "party in interest" to "raise" and "be heard on any issue" in a Chapter 11 bankruptcy. Among other things, Truck argues that the Plan exposes it to millions of dollars in fraudulent claims because the Plan does not require the same disclosures and authorizations for insured and uninsured claims. Truck also asserts that the Plan impermissibly alters its rights under its insurance policies. The District Court confirmed the Plan. It concluded, among other things, that Truck had limited standing to object to the Plan because

the Plan was "insurance neutral," *i.e.,* it did not increase Truck's prepetition obligations or impair its contractual rights under its insurance policies. The Fourth Circuit affirmed, agreeing that Truck was not a "party in interest" under §1109(b) because the plan was "insurance neutral."

Held: An insurer with financial responsibility for bankruptcy claims is a "party in interest" under §1109(b) that "may raise and may appear and be heard on any issue" in a Chapter 11 case. Pp. 7–15.

(a) Section 1109(b)'s text, context, and history confirm that an insurer such as Truck with financial responsibility for a bankruptcy claim is a "party in interest" because it may be directly and adversely affected by the reorganization plan. Pp. 7–13.

(1) Section 1109(b)'s text is capacious. To start, it provides an illustrative but not exhaustive list of parties in interest, all of which are directly affected by a reorganization plan either because they have a financial interest in the estate's assets or because they represent parties that do. This Court has observed that Congress uses the phrase "party in interest" in bankruptcy provisions when it intends the provision to apply "broadly." *Hartford Underwriters Ins. Co.* v. *Union Planters Bank, N. A.*, 530 U. S. 1, 7. This understanding aligns with the ordinary meaning of the terms "party" and "interest," which together refer to entities that are potentially concerned with, or affected by, a proceeding. The historical context and purpose of §1109(b) also support this interpretation. Congress consistently has acted to promote greater participation in reorganization proceedings. That expansion of participatory rights continued with the enactment of §1109(b). Broad participation promotes a fair and equitable reorganization process. Pp. 7–11.

(2) Applying these principles, insurers such as Truck are parties in interest. An insurer with financial responsibility for bankruptcy claims can be directly and adversely affected by the reorganization proceedings in myriad ways. In this case, for example, Truck will have to pay the vast majority of the Trust's liability, and §524(g)'s channeling injunction, which stays any action against the Debtors, means that Truck would stand alone in carrying that financial burden. According to Truck, however, a plan that lacks the disclosure requirements for the uninsured claims risks exposing Truck to millions of dollars in fraudulent tort claims. The Government frames Truck's interest slightly differently, but the result is the same: Where a proposed plan "allows a party to put its hands into other people's pockets, the ones with the pockets are entitled to be fully heard and to have their legitimate objections addressed." *In re Global Indus. Technologies, Inc.*, 645 F. 3d 201, 204.

Providing Truck an opportunity to be heard is consistent with

§1109(b)'s purpose of promoting a fair and equitable reorganization process. Here, the Plan eliminates the Debtors ongoing liability, and claimants similarly have little incentive to propose barriers to their ability to recover from Truck. Truck may well be the only entity with an incentive to identify problems with the Plan. Pp. 11–13.

(b) The Court of Appeals looked exclusively at whether the Plan altered Truck's contract rights or its "quantum of liability." This approach, known as the "insurance neutrality" doctrine, is conceptually wrong and makes little practical sense. Conceptually, the doctrine conflates the merits of an objection with the threshold party in interest inquiry. The §1109(b) inquiry asks whether the reorganization proceedings might affect a prospective party, not how a particular reorganization plan actually affects that party. Practically, the doctrine is too limited in its scope. By focusing on the insurer's prepetition obligations and policy rights, the doctrine wrongly ignores all the other ways in which bankruptcy proceedings and reorganization plans can alter and impose obligations on insurers and debtors. The fact that Truck's financial exposure may be directly and adversely affected by a plan is sufficient to give Truck a right to voice its objections. Finally, in resisting the text of §1109(b), the Debtors emphasize the risks of allowing "peripheral parties" to derail a reorganization. This "parade of horribles" argument cannot override the statute's text, and in any event, §1109(b) provides parties in interest only an opportunity to be heard—not a vote or a veto in the proceedings. In all events, the Court today does not opine on the outer bounds of §1109. Difficult cases may require courts to evaluate whether truly peripheral parties have a sufficiently direct interest to be heard. This case is not one of them because insurers such as Truck with financial responsibility for claims are not peripheral parties. Pp. 13–15.

60 F. 4th 73, reversed and remanded.

SOTOMAYOR, J., delivered the opinion of the Court, in which all other Members joined, except ALITO, J., who took no part in the consideration or decision of the case.

NOTICE: This opinion is subject to formal revision before publication in the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, pio@supremecourt.gov, of any typographical or other formal errors.

SUPREME COURT OF THE UNITED STATES

No. 22–1079

TRUCK INSURANCE EXCHANGE, PETITIONER *v.* KAISER GYPSUM COMPANY, INC., ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[June 6, 2024]

JUSTICE SOTOMAYOR delivered the opinion of the Court.

The Bankruptcy Code allows any "party in interest" to "raise" and "be heard on any issue" in a Chapter 11 bankruptcy. 11 U. S. C. §1109(b). The question in this case is whether an insurer with financial responsibility for a bankruptcy claim is a "party in interest" under this provision.

Truck Insurance Exchange (Truck) is the primary insurer for companies that manufactured and sold products containing asbestos. Those companies filed for Chapter 11 bankruptcy after facing thousands of asbestos-related lawsuits. Truck is obligated to pay up to $500,000 per asbestos claim covered under its insurance contracts with the companies. Truck sought to object to the companies' bankruptcy reorganization plan primarily because the plan lacked disclosure requirements that Truck thought could save it from paying millions of dollars in fraudulent claims.

The Court of Appeals concluded that Truck was not a "party in interest" because the reorganization plan was "insurance neutral"; that is, the plan neither increased Truck's prepetition obligations nor impaired its rights under the insurance contracts. This Court disagrees. The insurance

neutrality doctrine conflates the merits of an insurer's objection with the threshold §1109(b) question of who qualifies as a "party in interest." Section 1109(b) asks whether the reorganization proceedings might directly affect a prospective party, not how a particular reorganization plan actually affects that party.

Truck is a "party in interest" under §1109(b). An insurer with financial responsibility for a bankruptcy claim is sufficiently concerned with, or affected by, the proceedings to be a "party in interest" that can raise objections to a reorganization plan. Section 1109(b) grants insurers neither a vote nor a veto; it simply provides them a voice in the proceedings.

I

A

Bankruptcy offers individuals and businesses in financial distress a fresh start to reorganize, discharge their debts, and maximize the property available to creditors. "Chapter 11 of the Bankruptcy Code enables a debtor company to reorganize its business under a court-approved plan governing the distribution of assets to creditors." *U. S. Bank N. A.* v. *Village at Lakeridge, LLC*, 583 U. S. 387, 389 (2018). This plan, which is primarily the product of negotiations between the debtor and creditors, "govern[s] the distribution of valuable assets from the debtor's estate and often keep[s] the business operating as a going concern." *Czyzewski* v. *Jevic Holding Corp.*, 580 U. S. 451, 455 (2017). Chapter 11 strikes "a balance between a debtor's interest in reorganizing and restructuring its debts and the creditors' interest in maximizing the value of the bankruptcy estate." *Florida Dept. of Revenue* v. *Piccadilly Cafeterias, Inc.*, 554 U. S. 33, 51 (2008).

Section 1109(b) of the Bankruptcy Code addresses which stakeholders can participate, and to what extent, in these reorganization proceedings:

> "A party in interest, including the debtor, the trustee, a creditors' committee, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter."

A "party in interest" enjoys certain rights in the proceedings, including the ability to file a Chapter 11 plan when a trustee has been appointed, 11 U. S. C. §1121(c)(1); request the appointment or removal of a trustee, §§1104, 1105; challenge the good faith of persons voting to approve a plan, §1126(e); and object to confirmation of a plan, §1128(b).

B

This case concerns the Chapter 11 reorganization of companies facing overwhelming asbestos liability. Exposure to asbestos, a natural mineral used in industrial work, has led to devastating health consequences for millions of people. See National Cancer Institute, Asbestos Exposure and Cancer Risk (Nov. 29, 2021). Companies filing for bankruptcy because of asbestos liability face unique challenges. "'[B]ecause of a latency period that may last as long as 40 years for some asbestos related diseases, a continuing stream of claims can be expected.'" *Amchem Products, Inc.* v. *Windsor*, 521 U. S. 591, 598 (1997). Claims therefore arrive on a long and unpredictable timeline. If bankruptcy proceedings resolved only existing asbestos liability, companies would face unknown future liability and claimants might be unable to recover just because their injuries had not yet manifested.

Congress responded to these challenges in §524(g) of the Bankruptcy Code. This section allows a Chapter 11 debtor with substantial asbestos-related liability to establish and fund a trust that assumes the debtor's liability for "damages allegedly caused by the presence of, or exposure to, asbestos or asbestos-containing products." §524(g)(2)(B)(i)(I). Section 524(g) then channels all present and future claims

into the trust by "enjoin[ing] entities from taking legal action for the purpose of directly or indirectly collecting, recovering, or receiving payment or recovery" for claims "to be paid in whole or in part by [the] trust." Finally, §524(g) imposes safeguards, including the appointment of a representative to protect the interest of future claimants, §524(g)(4)(B)(i); treatment of "present claims and future demands that involve similar claims in substantially the same manner," §524(g)(2)(B)(ii)(V); and approval from at least 75% of current claimants, §524(g)(2)(B)(ii)(IV)(bb). This all "ensure[s] that health claims can be asserted only against the Trust and that [the company's] operating entities will be protected from an onslaught of crippling lawsuits that could jeopardize the entire reorganization effort." *Kane* v. *Johns-Mansville Corp.*, 843 F. 2d 636, 640 (CA2 1988). It also ensures that "future claimants" are "treated identically to the present claimants." *Ibid.*

C

Kaiser Gypsum Company, Inc., and its parent company, Hanson Permanente Cement, Inc., manufactured and sold products that, at some point, contained asbestos. The companies faced tens of thousands of asbestos-related lawsuits as a result. To resolve their liabilities, both companies (Debtors) filed for Chapter 11 bankruptcy. The Bankruptcy Court in turn appointed representatives for the current and future asbestos claimants (Claimants). The Debtors eventually agreed on a proposed reorganization plan (Plan) with the Claimants, various creditors and government agencies, and all but one of their insurance providers.

The Plan creates a §524(g) Asbestos Personal Injury Trust (Trust) that assumes the Debtors' liabilities and is funded by the Debtors and their parent company. The Plan also transfers "all of the Debtors' rights" under their insurance contracts to the Trust, including "all rights to coverage and insurance proceeds." App. to Pet. for Cert. 181a.

Truck was the Debtors' primary insurer. It issued policies that covered the Debtors from 1965 through 1983. Truck is contractually obligated to defend each covered asbestos personal injury claim and typically indemnify the Debtors for up to $500,000 per claim. The Debtors have to pay a $5,000 deductible per claim, and assist and cooperate with Truck in defending against the claims. The Plan required the Bankruptcy Court to make a finding that the Debtors' conduct in the bankruptcy proceedings neither violated this assistance-and-cooperation duty nor breached any implied covenant of good faith and fair dealing (Plan Finding).

The Plan treats insured and uninsured claims differently. Insured claims are filed "in the tort system to obtain the benefit of [the] insurance coverage." *Id.,* at 241a. Truck has to defend these lawsuits, and if the claimant obtains a favorable judgment, the Trust pays the deductible and Truck pays up to $500,000 per claim. Uninsured claims, however, are submitted directly to the Trust for resolution. As part of that process, claimants have to identify "all other [related] claims" and file a release authorizing the Trust to obtain documentation from other asbestos trusts about other submitted claims. See 2 App. 428–431. These disclosure requirements are intended to reduce fraudulent and duplicative claims.[1]

Truck was the only party involved in the bankruptcy that

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[1] Without these requirements, Truck contends, it can be difficult to trace an asbestos injury to a particular exposure or to identify earlier claims against other entities. Knowing a claimant's other exposures and claims helps prevent inflated recoveries. The Debtors and Claimants contend that Truck was not entitled to these disclosures before bankruptcy and could still obtain them in discovery in the tort system. That ignores the practical and legal consequences of the Debtors' bankruptcy petition. See *infra*, at 14. Indeed, in recent years, "nearly every Section 524(g) trust has included almost identical fraud-prevention measures to protect debtors and their insurers." Brief for Petitioner 10. In any event, these are merits arguments on which Truck is entitled to be heard.

did not support the Plan. It advanced three main objections. First, and most relevant here, the Plan was not "proposed in good faith," 11 U. S. C. §1129(a)(3), "because it reflected a collusive agreement between the Debtors and claimant representatives," and did not require "the same disclosures and authorizations" for insured and uninsured claims, *In re Kaiser Gypsum Co.*, 60 F. 4th 73, 80 (CA4 2023). This "disparate treatment would expose [Truck] to millions of dollars in fraudulent tort claims." *Ibid*. Second, the Plan Finding impermissibly altered Truck's rights under its insurance policies "by relieving the Debtors of their assistance-and-cooperation obligations and by barring Truck from raising the Debtors' bankruptcy conduct as a defense in future coverage disputes." *Ibid*. Third, the Trust did not comply with various provisions of §524(g), including the requirement to "deal equitably with claims and future demands," as required by §524(g)(2)(B)(ii)(III).

Following the Bankruptcy Court's recommendation, the District Court confirmed the Plan. Relevant here, it concluded that "Truck has limited standing to object to the Plan solely on the grounds that the Plan is not insurance neutral." *In re Kaiser Gypsum Co.,* 2021 WL 3215102, *27 (WDNC, July 28, 2021). The court found, however, that the Plan was "insurance neutral" because it "neither increase[d] Truck's obligations nor impair[ed] its prepetition contractual rights under the Truck Policies. The Plan simply restore[d] Truck to its position immediately prior to the Petition Date." *Id.*, at *26. The court also rejected Truck's challenge to the Plan Finding because the Plan expressly provided that the Debtors "will continue to fulfill their cooperation obligations arising under" the policies. *Id.,* at *27.

The Fourth Circuit affirmed, agreeing with the District Court that Truck was not a "party in interest" under §1109(b) because the Plan did not "increase [Truck's] prepetition obligations or impair [Truck's] pre-petition policy

rights." 60 F. 4th, at 83. In other words, the Plan was "insurance neutral" because it did not "alte[r] Truck's prebankruptcy 'quantum of liability'" given that Truck was "not entitled" to the "fraud-prevention measures" it sought. *Id.*, at 87. The court also concluded that the Plan Finding did not alter Truck's contractual rights and that the Debtors did not "breach their assistance-and-cooperation obligations or the implied covenant of good faith and fair dealing." *Id.,* at 84.

This Court granted certiorari to decide whether an insurer with financial responsibility for a bankruptcy claim is a "party in interest" under §1109(b). 601 U. S. ___ (2023).[2]

II

Courts must determine on a case-by-case basis whether a prospective party has a sufficient stake in reorganization proceedings to be a "party in interest." Section 1109(b)'s text, context, and history confirm that an insurer such as Truck with financial responsibility for a bankruptcy claim is a "party in interest" because it may be directly and adversely affected by the reorganization plan.

A

Section 1109(b) permits any "party in interest" to "appear and be heard on any issue" in a Chapter 11 proceeding. This text is capacious. To start, §1109(b) provides an illustrative but not exhaustive list of parties in interest. See *supra*, at 3. A common thread uniting the seven listed parties is that each may be directly affected by a reorganization plan either because they have a financial interest in the estate's assets (the debtor, creditor, and equity security

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[2] The courts below also addressed whether Truck is a "party in interest" on the separate basis that it is "a creditor." 11 U. S. C. §1109(b). Because this Court holds that Truck is a "party in interest" based on its insurer status, the Court does not address alternative arguments based on Truck's creditor status.

holder) or because they represent parties that do (a creditors' committee, an equity security holders' committee, a trustee, and an indenture trustee). "The general theory behind [§1109(b)] is that anyone holding a direct financial stake in the outcome of the case should have an opportunity (either directly or through an appropriate representative) to participate in the adjudication of any issue that may ultimately shape the disposition of his or her interest." 7 Collier on Bankruptcy ¶1109.01 (16th ed. 2023). This understanding aligns with this Court's observation that Congress uses the phrase "'party in interest'" in bankruptcy provisions when it intends the provision to apply "broadly." *Hartford Underwriters Ins. Co.* v. *Union Planters Bank, N. A.*, 530 U. S. 1, 7 (2000) (quoting 11 U. S. C. §502(a)).

The ordinary meaning of the terms "party" and "interest" confirms this. "Party" in this context is best understood as "[a] person who constitutes or is one of those who compose . . . one or [the] other of the two sides in an action or affair; one concerned in an affair; a participator; as, a *party* in interest." Webster's New International Dictionary 1784 (2d ed. 1949). "Interest" is best understood as "[c]oncern, or the state of being concerned or affected, esp[ecially] with respect to advantage, personal or general." *Id.,* at 1294. The plain meaning of the phrase thus refers to entities that are potentially concerned with or affected by a proceeding.[3] The parties in this case land on roughly this same definition. See Brief for Petitioner 26 (defining "party in interest" as anyone that may be "'directly and adversely affected' by

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[3] Legal dictionaries from the time of §1109(b)'s enactment and onward similarly define the phrase "party in interest." See Ballentine's Law Dictionary 920 (3d ed. 1969) (defining "party in interest" as a "party to an action who has an actual interest in the controversy, as distinguished from a nominal party"); cf. Black's Law Dictionary 1122 (6th ed. 1990) ("Primary meaning ascribed the term 'party in interest' in bankruptcy cases is one whose pecuniary interest is directly affected by the bankruptcy proceeding").

the reorganization" (alterations omitted)); Brief for Debtor-Side Respondents 29 ("To the extent Truck acknowledges that a 'party in interest' under Section 1109(b) is someone 'directly and adversely affected by the reorganization,' the parties are in violent agreement"); Brief for Claimant Respondents 1 (similar).[4]

The historical context and purpose of §1109(b) also support this interpretation. Congress consistently has acted to promote greater participation in reorganization proceedings. Section 77B of the Bankruptcy Act of 1898, for example, provided debtors the right to be heard on all issues, but limited the right of creditors and stockholders to only certain issues. See 11 U. S. C. §207 (1946 ed.). Section 206 of the Bankruptcy Act of 1938 broadened participation and provided that "[the] debtor, the indenture trustees, and any creditor or stockholder of the debtor shall have the right to be heard on all matters arising in a proceeding under this chapter." §606. Although the 1938 Act allowed a "party in interest" to intervene "for cause shown," it permitted only

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[4] The phrase "party in interest" appears in other statutory contexts. The Court's analysis of the term today does not apply across all other, unrelated statutory schemes. The term's meaning elsewhere will turn on the text, structure, context, history, and purpose of those statutory provisions, just as it does here. Still, precedent confirms that this Court's interpretation of §1109(b) is not an outlier. See, *e.g.*, *Western Pacific California R. Co.* v. *Southern Pacific Co.*, 284 U. S. 47, 51–52 (1931) (competitor railroad was a "party in interest" under the Transportation Act of 1920 because the challenged railroad expansion had the potential to "directly and adversely affect the complainant's welfare by bringing about some material change in the transportation situation"); *L. Singer & Sons* v. *Union Pacific R. Co.*, 311 U. S. 295, 304 (1940) (food vendors were not a "party in interest" under the Transportation Act of 1920 because a "person engaged in business within or adjacent to a public market" was only "indirectly and consequentially affected" by a railroad "seeking only to serve a competing market by means of an extension"); *Alton R. Co.* v. *United States*, 315 U. S. 15, 19–20 (1942) (railroad companies were "parties in interest" under the Motor Carrier Act of 1935 because they were "directly affected by competition with the motor transport industry").

the four named parties to intervene as of right. Still, the Advisory Committee's Note to Former Chapter X, Bkrtcy. Rule 10–210(a) (1976), which implemented §206, noted that the section "was originally enacted to broaden the practice that had developed upon former §77 . . . . This broader concept was to insure fair representation and to prevent excessive control over the proceedings by insider groups." 11 U. S. C. App., p. 1445 (1976 ed.).

In 1978, Congress enacted the Bankruptcy Code containing §1109(b), which continued the expansion of participatory rights in reorganization proceedings. Congress moved from an exclusive list to the general and capacious term "party in interest," accompanied by a nonexhaustive list of parties in interest. These parties "may raise and may appear and be heard on any issue." 11 U. S. C. §1109(b). "Section 206 . . . and Chapter X Rule 10–210(a), the predecessor provisions of section 1109(b) of the Code, constituted an effort to encourage and promote greater participation in reorganization cases. . . . Section 1109(b) continues in this tradition and should be understood in the same way." *In re Amatex Corp.*, 755 F. 2d 1034, 1042 (CA3 1985).

Now consider the purpose of §1109(b). Broad participation promotes a fair and equitable reorganization process. The Bankruptcy Code seeks to prevent "the danger inherent in any reorganization plan proposed by a debtor" that "the plan will simply turn out to be too good a deal for the debtor's owners." *Bank of America Nat. Trust and Sav. Assn.* v. *203 North LaSalle Street Partnership*, 526 U. S. 434, 444 (1999); see also *ibid.* (discussing Congress's concern that "'a few insiders, whether representatives of management or major creditors, [could] use the reorganization process to gain an unfair advantage'"). Section 1109(b) addresses this concern. "[D]rafters and early commentators hoped that an expansive definition [of "party in interest" in §1109(b)] would allow a broad range of individual and mi-

nority interests to intervene in Chapter 11 cases, and expressly warned that undue restrictions on who may be a party in interest might enable dominant interests to control the restructuring process." D. Dick, The Chapter 11 Efficiency Fallacy, 2013 B. Y. U. L. Rev. 759, 774–775 (2014). In short, §1109(b) was "designed to serve . . . the policies of inclusion underlying the chapter 11 process." 7 Collier on Bankruptcy ¶1109.02.

B

Applying these principles, the Court holds that insurers such as Truck with financial responsibility for bankruptcy claims are parties in interest.

Bankruptcy reorganization proceedings can affect an insurer's interests in myriad ways. A reorganization plan can impair an insurer's contractual right to control settlement or defend claims. A plan can abrogate an insurer's right to contribution from other insurance carriers. Or, as alleged here, a plan may be collusive, in violation of the debtor's duty to cooperate and assist, and impair the insurer's financial interests by inviting fraudulent claims. The list goes on. See, *e.g.*, Brief for American Property Casualty Insurance Association et al. as *Amici Curiae* 16–17 (American Property Brief) ("For example, a plan that purports to maintain an insurer's coverage defenses could nonetheless allow claims at amounts far above their actual value and out of line with the claimants' injuries or the payment of claims for which little to no proof of injury is required"). An insurer with financial responsibility for bankruptcy claims can be directly and adversely affected by the reorganization proceedings in these and many other ways, making it a "party in interest" in those proceedings.

Take Truck, for example. Truck will have to pay the vast majority of the Trust's liability—up to $500,000 per claim for thousands of covered asbestos-injury claims. The proposed Plan would have Truck stand alone in carrying the

financial burden, because the §524(g) channeling injunction "permanently and forever stay[s], restrain[s] and enjoin[s]" any action against Debtors, App. to Pet. for Cert. 178a, and other "[e]ntities, other than Asbestos Insurers," *id.*, at 201a. According to Truck, however, a plan that lacks the disclosure requirements for the uninsured claims risks exposing Truck "to millions of dollars in fraudulent tort claims." 60 F. 4th, at 80. That potential financial harm—attributable to Truck's status as an insurer with financial responsibility for bankruptcy claims—gives Truck an interest in bankruptcy proceedings and whatever reorganization plan is proposed and eventually adopted.

The Government frames Truck's interest in a slightly different but substantively identical way. According to the Government, Truck is a party in interest because it "is a party to a contract with the debtor that is property of the estate and may be interpreted, assigned, or otherwise affected by the Chapter 11 proceedings." Brief for United States as *Amicus Curiae* 13. This is just another side of the same coin. Those executory contracts are the ones that give insurers an interest in the proceedings and, in this case, make Truck financially responsible for the bankruptcy claims. So, whether Truck's direct interest is framed as its executory contracts or instead its obligations resulting from those contracts, it cashes out in the same way: Where a proposed plan "allows a party to put its hands into other people's pockets, the ones with the pockets are entitled to be fully heard and to have their legitimate objections addressed." *In re Global Indus. Technologies, Inc.*, 645 F. 3d 201, 204 (CA3 2011).

This opportunity to be heard is consistent with §1109(b)'s purpose. In this case, neither the Debtors nor the Claimants have an incentive to limit the postconfirmation cost of defending or paying claims. For the Debtors, the Plan eliminates all of their ongoing liability. The Claimants similarly have little incentive to propose barriers to their ability

to recover from Truck. Truck may well be the only entity with an incentive to identify problems with the Plan. This "realignment of the insured's economic incentives . . . makes participation in the bankruptcy by insurers—who will ultimately be asked to foot the bill for most or all of those claims—critical." American Property Brief 15–16.

III

The Court of Appeals looked exclusively to whether the Plan altered Truck's contract rights or its "quantum of liability." Under this approach, known as the "insurance neutrality" doctrine, courts ask if the plan "increase[s] the insurer's pre-petition obligations or impair[s] the insurer's pre-petition policy rights." 60 F. 4th, at 83, 87. This doctrine is conceptually wrong and makes little practical sense.

Conceptually, the insurance neutrality doctrine conflates the merits of an objection with the threshold party in interest inquiry. The §1109(b) inquiry asks whether the reorganization proceedings might affect a prospective party, not how a particular reorganization plan actually affects that party. Indeed, §1109(b) cannot "depend on a plan-specific rule—that standard would be unusable for the Code provisions empowering a party in interest to request acts unrelated to a specific plan or that occur before a plan is confirmed or even proposed." Reply Brief 11; see also *supra*, at 3 (a party in interest, for example, can file a Chapter 11 plan when a trustee has been appointed or request the appointment and removal of a trustee). Practically, the insurance neutrality doctrine is too limited in its scope. It zooms in on the insurer's prepetition obligations and policy rights. That wrongly ignores all the other ways in which bankruptcy proceedings and reorganization plans can alter and impose obligations on insurers. See *supra*, at 11–12.

In defending the decision below, the Debtors and Claimants contend that Truck faces similar exposure in the tort system before and after bankruptcy, in part because Truck

was not entitled to the disclosure provisions before the bankruptcy. That may be so, but this argument suffers from the same flaw identified above—at bottom, it concerns the merits of whether the Plan should include the disclosure provisions for insured claims in accordance with §§524(g) and 1129. See *supra*, at 5–6 (describing Truck's objections). Whether and how the particular proposed Plan here affects Truck's prepetition and postpetition obligations and exposure is not the question. The fact that Truck's financial exposure may be directly and adversely affected by a plan is sufficient to give Truck (and other insurers with financial responsibility for bankruptcy claims) a right to voice its objections in reorganization proceedings. The Debtors' and Claimants' argument also ignores the practical and legal consequences of the Debtors' bankruptcy proceedings and reorganization plan. They transformed the Debtors' asbestos liabilities into bankruptcy claims that Truck will now have to indemnify through the Trust without the protections of disclosure requirements in place for uninsured claims filed directly with the Trust.

Finally, in resisting the text of §1109(b), the Debtors emphasize the risk of allowing "'peripheral parties' to derail a reorganization." Brief for Debtor-Side Respondents 33. To start, a "parade of horribles" argument generally cannot "surmount the plain language of the statute." *Arthur Andersen LLP* v. *Carlisle*, 556 U. S. 624, 629 (2009). Moreover, §1109(b) provides parties in interest only an opportunity to be heard—not a vote or a veto in the proceedings.[5] In all events, the Court today does not opine on the outer bounds of §1109. Of course, a party in interest is "not intended to

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[5] Bankruptcy courts also have equitable discretion to control participation in a proceeding. See, *e.g.*, 11 U. S. C. §105(a) ("No provision of [the Code] 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").

include literally every conceivable entity that may be involved in or affected by the chapter 11 proceedings." 7 Collier on Bankruptcy ¶1109.03. There may be difficult cases that require courts to evaluate whether truly peripheral parties have a sufficiently direct interest. This case is not one of them. Insurers such as Truck with financial responsibility for claims are not peripheral parties.

* * *

Section 1109(b) provides parties in interest a voice in bankruptcy proceedings. An insurer with financial responsibility for bankruptcy claims is a "party in interest" that may object to a Chapter 11 plan of reorganization.

The judgment of the United States Court of Appeals for the Fourth Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

JUSTICE ALITO took no part in the consideration or decision of this case.