# Breaking News from the Supreme Court

G. Eric Brunstad, Jr. | Dechert LLP; Hartford, Conn.

Educational Materials

2011

Syllabus

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# SUPREME COURT OF THE UNITED STATES

Syllabus

## RANSOM *v.* FIA CARD SERVICES, N. A., FKA MBNA AMERICA BANK, N. A.

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

No. 09–907. Argued October 4, 2010—Decided January 11, 2011

Chapter 13 of the Bankruptcy Code uses a statutory formula known as the "means test" to help ensure that debtors who *can* pay creditors *do* pay them. The means test instructs a debtor to determine his "disposable income"—the amount he has available to reimburse creditors—by deducting from his current monthly income "amounts reasonably necessary to be expended" for, *inter alia,* "maintenance or support." 11 U. S. C. §1325(b)(2)(A)(i). For a debtor whose income is above the median for his State, the means test indentifies which expenses qualify as "amounts reasonably necessary to be expended." As relevant here, the statute provides that "[t]he debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service [IRS] for the area in which the debtor resides." §707(b)(2)(A)(ii)(I).

The Standards are tables listing standardized expense amounts for basic necessities, which the IRS prepares to help calculate taxpayers' ability to pay overdue taxes. The IRS also creates supplemental guidelines known as the "Collection Financial Standards," which describe how to use the tables and what the amounts listed in them mean. The Local Standards include an allowance for transportation expenses, divided into vehicle "Ownership Costs" and vehicle "Operating Costs." The Collection Financial Standards explain that "Ownership Costs" cover monthly loan or lease payments on an automobile; the expense amounts listed are based on nationwide car financing data. The Collection Financial Standards further state that a taxpayer who has no car payment may not claim an allowance

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for ownership costs.

When petitioner Ransom filed for Chapter 13 bankruptcy relief, he listed respondent (FIA) as an unsecured creditor. Among his assets, Ransom reported a car that he owns free of any debt. In determining his monthly expenses, he nonetheless claimed a car-ownership deduction of $471, the full amount specified in the "Ownership Costs" table, as well as a separate $388 deduction for car-operating costs. Based on his means-test calculations, Ransom proposed a bankruptcy plan that would result in repayment of approximately 25% of his unsecured debt. FIA objected on the ground that the plan did not direct all of Ransom's disposable income to unsecured creditors. FIA contended that Ransom should not have claimed the car-ownership allowance because he does not make loan or lease payments on his car. Agreeing, the Bankruptcy Court denied confirmation of the plan. The Ninth Circuit Bankruptcy Appellate Panel and the Ninth Circuit affirmed.

*Held:* A debtor who does not make loan or lease payments may not take the car-ownership deduction. Pp. 6–18.

(a) This Court's interpretation begins with the language of the Bankruptcy Code, which provides that a debtor may claim only "applicable" expense amounts listed in the Standards. Because the Code does not define the key word "applicable," the term carries its ordinary meaning of appropriate, relevant, suitable, or fit. What makes an expense amount "applicable" in this sense is most naturally understood to be its correspondence to an individual debtor's financial circumstances. Congress established a filter, permitting a debtor to claim a deduction from a National or Local Standard table only if that deduction is appropriate for him. And a deduction is so appropriate only if the debtor will incur the kind of expense covered by the table during the life of the plan. Had Congress not wanted to separate debtors who qualify for an allowance from those who do not, it could have omitted the term "applicable" altogether. Without that word, all debtors would be eligible to claim a deduction for each category listed in the Standards. Interpreting the statute to require a threshold eligibility determination thus ensures that "applicable" carries meaning, as each word in a statute should.

This reading draws support from the statute's context and purpose. The Code initially defines a debtor's disposable income as his "current monthly income . . . less amounts reasonably necessary to be expended." §1325(b)(2). It then instructs that such reasonably necessary amounts "shall be determined in accordance with" the means test. §1325(b)(3). Because Congress intended the means test to approximate the debtor's reasonable expenditures on essential items, a debtor should be required to qualify for a deduction by actually incur-

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ring an expense in the relevant category. Further, the statute's purpose—to ensure that debtors pay creditors the maximum they can afford—is best achieved by interpreting the means test, consistent with the statutory text, to reflect a debtor's ability to afford repayment. Pp. 6–9.

(b) The vehicle-ownership category covers only the costs of a car loan or lease. The expense amount listed ($471) is the average monthly payment for loans and leases nationwide; it is not intended to estimate other conceivable expenses associated with maintaining a car. Maintenance expenses are the province of the separate "Operating Costs" deduction. A person who owns a car free and clear is entitled to the "Operating Costs" deduction for all driving-related expenses. But such a person may not claim the "Ownership Costs" deduction, because that allowance is for the separate costs of a car loan or lease. The IRS' Collection Financial Standards reinforce this conclusion by making clear that individuals who have a car but make no loan or lease payments may take only the operating-costs deduction. Because Ransom owns his vehicle outright, he incurs no expense in the "Ownership Costs" category, and that expense amount is therefore not "applicable" to him. Pp. 9–11.

(c) Ransom's arguments to the contrary—an alternative interpretation of the key word "applicable," an objection to the Court's view of the scope of the "Ownership Costs" category, and a criticism of the policy implications of the Court's approach—are unpersuasive. Pp. 11–18.

577 F. 3d 1026, affirmed.

KAGAN, J., delivered the opinion of the Court, in which ROBERTS, C. J., and KENNEDY, THOMAS, GINSBURG, BREYER, ALITO, and SOTOMAYOR, JJ., joined. SCALIA, J., filed a dissenting opinion.

# SUPREME COURT OF THE UNITED STATES

No. 09–907

JASON M. RANSOM, PETITIONER *v.* FIA CARD SERVICES, N. A., FKA MBNA AMERICA BANK, N. A.

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

[January 11, 2011]

JUSTICE KAGAN delivered the opinion of the Court.

Chapter 13 of the Bankruptcy Code enables an individual to obtain a discharge of his debts if he pays his creditors a portion of his monthly income in accordance with a court-approved plan. 11 U. S. C. §1301 *et seq*. To determine how much income the debtor is capable of paying, Chapter 13 uses a statutory formula known as the "means test." §§707(b)(2) (2006 ed. and Supp. III), 1325(b)(3)(A) (2006 ed.). The means test instructs a debtor to deduct specified expenses from his current monthly income. The result is his "disposable income"—the amount he has available to reimburse creditors. §1325(b)(2).

This case concerns the specified expense for vehicle-ownership costs. We must determine whether a debtor like petitioner Jason Ransom who owns his car outright, and so does not make loan or lease payments, may claim an allowance for car-ownership costs (thereby reducing the amount he will repay creditors). We hold that the text, context, and purpose of the statutory provision at issue preclude this result. A debtor who does not make loan or

lease payments may not take the car-ownership deduction.

## I

### A

"Congress enacted the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA or Act) to correct perceived abuses of the bankruptcy system." *Milavetz, Gallop & Milavetz, P. A.* v. *United States*, 559 U. S. ___, ___ (2010) (slip op., at 1). In particular, Congress adopted the means test—"[t]he heart of [BAPCPA's] consumer bankruptcy reforms," H. R. Rep. No. 109–31, pt. 1, p. 2 (2005) (hereinafter H. R. Rep.), and the home of the statutory language at issue here—to help ensure that debtors who *can* pay creditors *do* pay them. See, *e.g., ibid.* (under BAPCPA, "debtors [will] repay creditors the maximum they can afford").

In Chapter 13 proceedings, the means test provides a formula to calculate a debtor's disposable income, which the debtor must devote to reimbursing creditors under a court-approved plan generally lasting from three to five years. §§1325(b)(1)(B) and (b)(4).[1] The statute defines "disposable income" as "current monthly income" less "amounts reasonably necessary to be expended" for "maintenance or support," business expenditures, and certain charitable contributions. §§1325(b)(2)(A)(i) and (ii). For a debtor whose income is above the median for his State, the means test identifies which expenses qualify as "amounts

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[1] Chapter 13 borrows the means test from Chapter 7, where it is used as a screening mechanism to determine whether a Chapter 7 proceeding is appropriate. Individuals who file for bankruptcy relief under Chapter 7 liquidate their nonexempt assets, rather than dedicate their future income, to repay creditors. See 11 U. S. C. §§704(a)(1), 726. If the debtor's Chapter 7 petition discloses that his disposable income as calculated by the means test exceeds a certain threshold, the petition is presumptively abusive. §707(b)(2)(A)(i). If the debtor cannot rebut the presumption, the court may dismiss the case or, with the debtor's consent, convert it into a Chapter 13 proceeding. §707(b)(1).

reasonably necessary to be expended." The test supplants the pre-BAPCPA practice of calculating debtors' reasonable expenses on a case-by-case basis, which led to varying and often inconsistent determinations. See, *e.g.*, *In re Slusher*, 359 B. R. 290, 294 (Bkrtcy. Ct. Nev. 2007).

Under the means test, a debtor calculating his "reasonably necessary" expenses is directed to claim allowances for defined living expenses, as well as for secured and priority debt. §§707(b)(2)(A)(ii)–(iv). As relevant here, the statute provides:

> "The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service [IRS] for the area in which the debtor resides." §707(b)(2)(A)(ii)(I).

These are the principal amounts that the debtor can claim as his reasonable living expenses and thereby shield from creditors.

The National and Local Standards referenced in this provision are tables that the IRS prepares listing standardized expense amounts for basic necessities.[2] The IRS uses the Standards to help calculate taxpayers' ability to pay overdue taxes. See 26 U. S. C. §7122(d)(2). The IRS also prepares supplemental guidelines known as the Collection Financial Standards, which describe how to use the

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[2]The National Standards designate allowances for six categories of expenses: (1) food; (2) housekeeping supplies; (3) apparel and services; (4) personal care products and services; (5) out-of-pocket health care costs; and (6) miscellaneous expenses. Internal Revenue Manual §5.15.1.8 (Oct. 2, 2009), http://www.irs.gov/irm/part5/irm_05-015-001.html#d0e1012 (all Internet materials as visited Jan. 7, 2011, and available in Clerk of Court's case file). The Local Standards authorize deductions for two kinds of expenses: (1) housing and utilities; and (2) transportation. *Id.*, §5.15.1.9.

tables and what the amounts listed in them mean.

The Local Standards include an allowance for transportation expenses, divided into vehicle "Ownership Costs" and vehicle "Operating Costs."[3] At the time Ransom filed for bankruptcy, the "Ownership Costs" table appeared as follows:

***Ownership Costs***

| | **First Car** | **Second Car** |
|---|---|---|
| **National** | $471 | $332 |

App. to Brief for Respondent 5a. The Collection Financial Standards explain that these ownership costs represent "nationwide figures for monthly loan or lease payments," *id.,* at 2a; the numerical amounts listed are "base[d] . . . on the five-year average of new and used car financing data compiled by the Federal Reserve Board," *id.,* at 3a. The Collection Financial Standards further instruct that, in the tax-collection context, "[i]f a taxpayer has no car payment, . . . only the operating costs portion of the transportation standard is used to come up with the allowable transportation expense." *Ibid.*

B

Ransom filed for Chapter 13 bankruptcy relief in July 2006. App. 1, 54. Among his liabilities, Ransom itemized over $82,500 in unsecured debt, including a claim held by respondent FIA Card Services, N. A. (FIA). *Id.,* at 41. Among his assets, Ransom listed a 2004 Toyota Camry, valued at $14,000, which he owns free of any debt. *Id.,* at 38, 49, 52.

For purposes of the means test, Ransom reported in-

[3] Although both components of the transportation allowance are listed in the Local Standards, only the operating-cost expense amounts vary by geography; in contrast, the IRS provides a nationwide figure for ownership costs.

come of $4,248.56 per month. *Id.,* at 46. He also listed monthly expenses totaling $4,038.01. *Id.,* at 53. In determining those expenses, Ransom claimed a car-ownership deduction of $471 for the Camry, the full amount specified in the IRS's "Ownership Costs" table. *Id.,* at 49. Ransom listed a separate deduction of $338 for car-operating costs. *Ibid.* Based on these figures, Ransom had disposable income of $210.55 per month. *Id.,* at 53.

Ransom proposed a 5-year plan that would result in repayment of approximately 25% of his unsecured debt. *Id.,* at 55. FIA objected to confirmation of the plan on the ground that it did not direct all of Ransom's disposable income to unsecured creditors. *Id.,* at 64. In particular, FIA argued that Ransom should not have claimed the car-ownership allowance because he does not make loan or lease payments on his car. *Id.,* at 67. FIA noted that without this allowance, Ransom's disposable income would be $681.55—the $210.55 he reported plus the $471 he deducted for vehicle ownership. *Id.,* at 71. The difference over the 60 months of the plan amounts to about $28,000.

C

The Bankruptcy Court denied confirmation of Ransom's plan. App. to Pet. for Cert. 48. The court held that Ransom could deduct a vehicle-ownership expense only "if he is currently making loan or lease payments on that vehicle." *Id.,* at 41.

Ransom appealed to the Ninth Circuit Bankruptcy Appellate Panel, which affirmed. *In re Ransom,* 380 B. R. 799, 808–809 (2007). The panel reasoned that an "expense [amount] becomes relevant to the debtor (i.e., appropriate or applicable to the debtor) when he or she in fact has such an expense." *Id.,* at 807. "[W]hat is important," the panel noted, "is the payments that debtors actually make, not how many cars they own, because [those] payments . . . are what actually affect their ability to" reimburse unse-

cured creditors. *Ibid.*

The United States Court of Appeals for the Ninth Circuit affirmed. *In re Ransom,* 577 F. 3d 1026, 1027 (2009). The plain language of the statute, the court held, "does not allow a debtor to deduct an 'ownership cost' . . . that the debtor does not have." *Id.,* at 1030. The court observed that "[a]n 'ownership cost' is not an 'expense'—either actual or applicable—if it does not exist, period." *Ibid.*

We granted a writ of certiorari to resolve a split of authority over whether a debtor who does not make loan or lease payments on his car may claim the deduction for vehicle-ownership costs. 559 U. S. ___ (2010).[4] We now affirm the Ninth Circuit's judgment.

## II

Our interpretation of the Bankruptcy Code starts "where all such inquiries must begin: with the language of the statute itself." *United States* v. *Ron Pair Enterprises, Inc.*, 489 U. S. 235, 241 (1989). As noted, the provision of the Code central to the decision of this case states:

> "The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the [IRS] for the area in which the debtor resides." §707(b)(2)(A)(ii)(I).

The key word in this provision is "applicable": A debtor may claim not all, but only "applicable" expense amounts

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[4] Compare *In re Ransom,* 577 F. 3d 1026, 1027 (CA9 2009) (case below), with *In re Washburn*, 579 F. 3d 934, 935 (CA8 2009) (permitting the allowance), *In re Tate*, 571 F. 3d 423, 424 (CA5 2009) (same), and *In re Ross-Tousey*, 549 F. 3d 1148, 1162 (CA7 2008) (same). The question has also divided bankruptcy courts. See, *e.g., In re Canales*, 377 B. R. 658, 662 (Bkrtcy. Ct. CD Cal. 2007) (citing dozens of cases reaching opposing results).

listed in the Standards. Whether Ransom may claim the $471 car-ownership deduction accordingly turns on whether that expense amount is "applicable" to him.

Because the Code does not define "applicable," we look to the ordinary meaning of the term. See, *e.g., Hamilton* v. *Lanning*, 560 U. S. ___, ___ (2010) (slip op., at 6). "Applicable" means "capable of being applied: having relevance" or "fit, suitable, or right to be applied: appropriate." Webster's Third New International Dictionary 105 (2002). See also New Oxford American Dictionary 74 (2d ed. 2005) ("relevant or appropriate"); 1 Oxford English Dictionary 575 (2d ed. 1989) ("[c]apable of being applied" or "[f]it or suitable for its purpose, appropriate"). So an expense amount is "applicable" within the plain meaning of the statute when it is appropriate, relevant, suitable, or fit.

What makes an expense amount "applicable" in this sense (appropriate, relevant, suitable, or fit) is most naturally understood to be its correspondence to an individual debtor's financial circumstances. Rather than authorizing all debtors to take deductions in all listed categories, Congress established a filter: A debtor may claim a deduction from a National or Local Standard table (like "[Car] Ownership Costs") if but only if that deduction is appropriate for him. And a deduction is so appropriate only if the debtor has costs corresponding to the category covered by the table—that is, only if the debtor will incur that kind of expense during the life of the plan. The statute underscores the necessity of making such an individualized determination by referring to "*the debtor's* applicable monthly expense amounts," §707(b)(2)(A)(ii)(I) (emphasis added)—in other words, the expense amounts applicable (appropriate, etc.) to each particular debtor. Identifying these amounts requires looking at the financial situation of the debtor and asking whether a National or Local Standard table is relevant to him.

If Congress had not wanted to separate in this way

debtors who qualify for an allowance from those who do not, it could have omitted the term "applicable" altogether. Without that word, all debtors would be eligible to claim a deduction for each category listed in the Standards. Congress presumably included "applicable" to achieve a different result. See *Leocal* v. *Ashcroft*, 543 U. S. 1, 12 (2004) ("[W]e must give effect to every word of a statute wherever possible"). Interpreting the statute to require a threshold determination of eligibility ensures that the term "applicable" carries meaning, as each word in a statute should.

This reading of "applicable" also draws support from the statutory context. The Code initially defines a debtor's disposable income as his "current monthly income . . . less amounts *reasonably necessary to be expended*." §1325(b)(2) (emphasis added). The statute then instructs that "[a]mounts reasonably necessary to be expended . . . shall be determined in accordance with" the means test. §1325(b)(3). Because Congress intended the means test to approximate the debtor's reasonable expenditures on essential items, a debtor should be required to qualify for a deduction by actually incurring an expense in the relevant category. If a debtor will not have a particular kind of expense during his plan, an allowance to cover that cost is not "reasonably necessary" within the meaning of the statute.[5]

Finally, consideration of BAPCPA's purpose strengthens our reading of the term "applicable." Congress designed

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[5]This interpretation also avoids the anomalous result of granting preferential treatment to individuals with above-median income. Because the means test does not apply to Chapter 13 debtors whose incomes are below the median, those debtors must prove on a case-by-case basis that each claimed expense is reasonably necessary. See §§1325(b)(2) and (3). If a below-median-income debtor cannot take a deduction for a nonexistent expense, we doubt Congress meant to provide such an allowance to an above-median-income debtor—the very kind of debtor whose perceived abuse of the bankruptcy system inspired Congress to enact the means test.

the means test to measure debtors' disposable income and, in that way, "to ensure that [they] repay creditors the maximum they can afford." H. R. Rep., at 2. This purpose is best achieved by interpreting the means test, consistent with the statutory text, to reflect a debtor's ability to afford repayment. Cf. *Hamilton,* 560 U. S., at ___ (slip op., at 14) (rejecting an interpretation of the Bankruptcy Code that "would produce [the] senseless resul[t]" of "deny[ing] creditors payments that the debtor could easily make"). Requiring a debtor to incur the kind of expenses for which he claims a means-test deduction thus advances BAPCPA's objectives.

Because we conclude that a person cannot claim an allowance for vehicle-ownership costs unless he has some expense falling within that category, the question in this case becomes: What expenses does the vehicle-ownership category cover? If it covers loan and lease payments alone, Ransom does not qualify, because he has no such expense. Only if that category also covers other costs associated with having a car would Ransom be entitled to this deduction.

The less inclusive understanding is the right one: The ownership category encompasses the costs of a car loan or lease and nothing more. As noted earlier, the numerical amounts listed in the "Ownership Costs" table are "base[d] . . . on the five-year average of new and used car financing data compiled by the Federal Reserve Board." App. to Brief for Respondent 3a. In other words, the sum $471 is the average monthly payment for loans and leases nationwide; it is not intended to estimate other conceivable expenses associated with maintaining a car. The Standards do account for those additional expenses, but in a different way: They are mainly the province of the separate deduction for vehicle "Operating Costs," which include payments for "[v]ehicle insurance, . . . maintenance, fuel, state and local registration, required inspection,

parking fees, tolls, [and] driver's license." Internal Revenue Manual §§5.15.1.7 and 5.15.1.8 (May 1, 2004), reprinted in App. to Brief for Respondent 16a, 20a; see also IRS, Collection Financial Standards (Feb. 19, 2010), http://www.irs.gov/individuals/article/0,,id=96543,00.html.[6] A person who owns a car free and clear is entitled to claim the "Operating Costs" deduction for all these expenses of driving—and Ransom in fact did so, to the tune of $338. But such a person is not entitled to claim the "Ownership Costs" deduction, because that allowance is for the separate costs of a car loan or lease.

The Collection Financial Standards—the IRS's explanatory guidelines to the National and Local Standards—explicitly recognize this distinction between ownership and operating costs, making clear that individuals who have a car but make no loan or lease payments may claim only the operating allowance. App. to Brief for Respondent 3a; see *supra*, at 4. Although the statute does not incorporate the IRS's guidelines, courts may consult this material in interpreting the National and Local Standards; after all, the IRS uses those tables for a similar purpose—to determine how much money a delinquent taxpayer can afford to pay the Government. The guidelines of course cannot control if they are at odds with the statutory language. But here, the Collection Financial Standards' treatment of the car-ownership deduction reinforces our conclusion that, under the statute, a debtor seeking to claim this deduction must make some loan or lease payments.[7]

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[6] In addition, the IRS has categorized taxes, including those associated with car ownership, as an "Other Necessary Expens[e]," for which a debtor may take a deduction. See App. to Brief for Respondent 26a; Brief for United States as *Amicus Curiae* 16, n. 4.

[7] Because the dissent appears to misunderstand our use of the Collection Financial Standards, and because it may be important for future cases to be clear on this point, we emphasize again that the statute

Because Ransom owns his vehicle free and clear of any encumbrance, he incurs no expense in the "Ownership Costs" category of the Local Standards. Accordingly, the car-ownership expense amount is not "applicable" to him, and the Ninth Circuit correctly denied that deduction.

## III

Ransom's argument to the contrary relies on a different interpretation of the key word "applicable," an objection to our view of the scope of the "Ownership Costs" category, and a criticism of the policy implications of our approach. We do not think these claims persuasive.

### A

Ransom first offers another understanding of the term "applicable." A debtor, he says, determines his "applicable" deductions by locating the box in each National or Local Standard table that corresponds to his geographic location, income, family size, or number of cars. Under this approach, a debtor "consult[s] the table[s] alone" to determine his appropriate expense amounts. Reply Brief for Petitioner 16. Because he has one car, Ransom argues that his "applicable" allowance is the sum listed in the first column of the "Ownership Costs" table ($471); if he had a second vehicle, the amount in the second column ($332) would also be "applicable." On this approach, the word "applicable" serves a function wholly internal to the tables; rather than filtering out debtors for whom a deduction is not at all suitable, the term merely directs each

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does not "incorporat[e]" or otherwise "impor[t]" the IRS's guidance. *Post,* at 1, 4 (opinion of SCALIA, J.). The dissent questions what possible basis except incorporation could justify our consulting the IRS's view, *post*, at 4, n., but we think that basis obvious: The IRS *creates* the National and Local Standards referenced in the statute, revises them as it deems necessary, and uses them every day. The agency might, therefore, have something insightful and persuasive (albeit not controlling) to say about them.

debtor to the correct box (and associated dollar amount of deduction) within every table.

This alternative reading of "applicable" fails to comport with the statute's text, context, or purpose. As intimated earlier, *supra,* at 7–8, Ransom's interpretation would render the term "applicable" superfluous. Assume Congress had omitted that word and simply authorized a deduction of "the debtor's monthly expense amounts" specified in the Standards. That language, most naturally read, would direct each debtor to locate the box in every table corresponding to his location, income, family size, or number of cars and to deduct the amount stated. In other words, the language would instruct the debtor to use the exact approach Ransom urges. The word "applicable" is not necessary to accomplish that result; it is necessary only for the different purpose of dividing debtors eligible to make use of the tables from those who are not. Further, Ransom's reading of "applicable" would sever the connection between the means test and the statutory provision it is meant to implement—the authorization of an allowance for (but only for) "reasonably necessary" expenses. Expenses that are wholly fictional are not easily thought of as reasonably necessary. And finally, Ransom's interpretation would run counter to the statute's overall purpose of ensuring that debtors repay creditors to the extent they can—here, by shielding some $28,000 that he does not in fact need for loan or lease payments.

As against all this, Ransom argues that his reading is necessary to account for the means test's distinction between "applicable" and "actual" expenses—more fully stated, between the phrase "*applicable* monthly expense amounts" specified in the Standards and the phrase "*actual* monthly expenses for . . . Other Necessary Expenses." §707(b)(2)(A)(ii)(I) (emphasis added). The latter phrase enables a debtor to deduct his actual expenses in particular categories that the IRS designates relating mainly to

taxpayers' health and welfare. Internal Revenue Manual §5.15.1.10(1), http://www.irs.gov/irm/part5/ irm_05-015-001.html#d0e1381. According to Ransom, "applicable" cannot mean the same thing as "actual." Brief for Petitioner 40. He thus concludes that "an 'applicable' expense can be claimed [under the means test] even if no 'actual' expense was incurred." *Ibid.*

Our interpretation of the statute, however, equally avoids conflating "applicable" with "actual" costs. Although the expense amounts in the Standards apply only if the debtor incurs the relevant expense, the debtor's out-of-pocket cost may well not control the amount of the deduction. If a debtor's actual expenses exceed the amounts listed in the tables, for example, the debtor may claim an allowance only for the specified sum, rather than for his real expenditures.[8] For the Other Necessary Expense categories, by contrast, the debtor may deduct his actual expenses, no matter how high they are.[9] Our read-

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[8] The parties and the Solicitor General as *amicus curiae* dispute the proper deduction for a debtor who has expenses that are *lower* than the amounts listed in the Local Standards. Ransom argues that a debtor may claim the specified expense amount in full regardless of his out-of-pocket costs. Brief for Petitioner 24–27. The Government concurs with this view, provided (as we require) that a debtor has *some* expense relating to the deduction. See Brief for United States as *Amicus Curiae* 19–21. FIA, relying on the IRS's practice, contends to the contrary that a debtor may claim only his actual expenditures in this circumstance. Brief for Respondent 12, 45–46 (arguing that the Local Standards function as caps). We decline to resolve this issue. Because Ransom incurs no ownership expense at all, the car-ownership allowance is not applicable to him in the first instance. Ransom is therefore not entitled to a deduction under either approach.

[9] For the same reason, the allowance for "applicable monthly expense amounts" at issue here differs from the additional allowances that the dissent cites for the deduction of actual expenditures. See *post*, at 3–4 (noting allowances for "actual expenses" for care of an elderly or chronically ill household member, §707(b)(2)(A)(ii)(II), and for home energy costs, §707(b)(2)(A)(ii)(V)).

ing of the means test thus gives full effect to "the distinction between 'applicable' and 'actual' without taking a further step to conclude that 'applicable' means 'nonexistent.'" *In re Ross-Tousey*, 368 B. R. 762, 765 (Bkrtcy. Ct. ED Wis. 2007), rev'd, 549 F. 3d 1148 (CA7 2008).

Finally, Ransom's reading of "applicable" may not even answer the essential question: whether a debtor may claim a deduction. "[C]onsult[ing] the table[s] alone" to determine a debtor's deduction, as Ransom urges us to do, Reply Brief for Petitioner 16, often will not be sufficient because the tables are not self-defining. This case provides a prime example. The "Ownership Costs" table features two columns labeled "First Car" and "Second Car." See *supra*, at 4. Standing alone, the table does not specify whether it refers to the first and second cars *owned* (as Ransom avers), or the first and second cars for which the debtor incurs *ownership costs* (as FIA maintains)—and so the table does not resolve the issue in dispute.[10] See *In re Kimbro*, 389 B. R. 518, 533 (Bkrtcy. App. Panel CA6 2008) (Fulton, J., dissenting) ("[O]ne cannot really 'just

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[10] The interpretive problem is not, as the dissent suggests, "whether to claim a deduction for one car or for two," *post,* at 3, but rather whether to claim a deduction for *any* car that is owned if the debtor has no ownership costs. Indeed, if we had to decide this question on the basis of the table alone, we might well decide that a debtor who does not make loan or lease payments cannot claim an allowance. The table, after all, is titled "Ownership *Costs*"—suggesting that it applies to those debtors who incur such costs. And as noted earlier, the dollar amounts in the table represent average automobile loan and lease payments nationwide (with all other car-related expenses approximated in the separate "Operating Costs" table). See *supra*, at 9–10. Ransom himself concedes that not every debtor falls within the terms of this table; he would exclude, and thus prohibit from taking a deduction, a person who does not own a car. Brief for Petitioner 33. In like manner, the four corners of the table appear to exclude an additional group—debtors like Ransom who own their cars free and clear and so do not make the loan or lease payments that constitute "Ownership Costs."

look up' dollar amounts in the tables without either referring to IRS guidelines for using the tables or imposing preexisting assumptions about how [they] are to be navigated" (footnote omitted)). Some amount of interpretation is necessary to decide what the deduction is for and whether it is applicable to Ransom; and so we are brought back full circle to our prior analysis.

B

Ransom next argues that viewing the car-ownership deduction as covering no more than loan and lease payments is inconsistent with a separate sentence of the means test that provides: "Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts." §707(b)(2)(A)(ii)(I). The car-ownership deduction cannot comprise *only* loan and lease payments, Ransom contends, because those payments are *always* debts. See Brief for Petitioner 28, 44–45.

Ransom ignores that the "notwithstanding" sentence governs the full panoply of deductions under the National and Local Standards and the Other Necessary Expense categories. We hesitate to rely on that general provision to interpret the content of the car-ownership deduction because Congress did not draft the former with the latter specially in mind; any friction between the two likely reflects only a lack of attention to how an across-the-board exclusion of debt payments would correspond to a particular IRS allowance.[11] Further, the "notwithstanding" sentence by its terms functions only to exclude, and not to authorize, deductions. It cannot establish an allowance

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[11] Because Ransom does not make payments on his car, we need not and do not resolve how the "notwithstanding" sentence affects the vehicle-ownership deduction when a debtor has a loan or lease expense. See Brief for United States as *Amicus Curiae* 23, n. 5 (offering alternative views on this question); Tr. of Oral Arg. 51–52.

for non-loan or -lease ownership costs that no National or Local Standard covers. Accordingly, the "notwithstanding" sentence does nothing to alter our conclusion that the "Ownership Costs" table does not apply to a debtor whose car is not encumbered.

C

Ransom finally contends that his view of the means test is necessary to avoid senseless results not intended by Congress. At the outset, we note that the policy concerns Ransom emphasizes pale beside one his reading creates: His interpretation, as we have explained, would frustrate BAPCPA's core purpose of ensuring that debtors devote their full disposable income to repaying creditors. See *supra*, at 8–9. We nonetheless address each of Ransom's policy arguments in turn.

Ransom first points out a troubling anomaly: Under our interpretation, "[d]ebtors can time their bankruptcy filing to take place while they still have a few car payments left, thus retaining an ownership deduction which they would lose if they filed just after making their last payment." Brief for Petitioner 54. Indeed, a debtor with only a single car payment remaining, Ransom notes, is eligible to claim a monthly ownership deduction. *Id.,* at 15, 52.

But this kind of oddity is the inevitable result of a standardized formula like the means test, even more under Ransom's reading than under ours. Such formulas are by their nature over- and under-inclusive. In eliminating the pre-BAPCPA case-by-case adjudication of above-median-income debtors' expenses, on the ground that it leant itself to abuse, Congress chose to tolerate the occasional peculiarity that a brighter-line test produces. And Ransom's alternative reading of the statute would spawn its own anomalies—even placing to one side the fundamental strangeness of giving a debtor an allowance for loan or lease payments when he has not a penny of loan or lease

costs. On Ransom's view, for example, a debtor entering bankruptcy might purchase for a song a junkyard car—"an old, rusted pile of scrap metal [that would] si[t] on cinder blocks in his backyard," *In re Brown*, 376 B. R. 601, 607 (Bkrtcy. Ct. SD Tex. 2007)—in order to deduct the $471 car-ownership expense and reduce his payment to creditors by that amount. We do not see why Congress would have preferred that result to the one that worries Ransom. That is especially so because creditors may well be able to remedy Ransom's "one payment left" problem. If car payments cease during the life of the plan, just as if other financial circumstances change, an unsecured creditor may move to modify the plan to increase the amount the debtor must repay. See 11 U. S. C. §1329(a)(1).

Ransom next contends that denying the ownership allowance to debtors in his position "sends entirely the wrong message, namely, that it is advantageous to be deeply in debt on motor vehicle loans, rather than to pay them off." Brief for Petitioner 55. But the choice here is not between thrifty savers and profligate borrowers, as Ransom would have it. Money is fungible: The $14,000 that Ransom spent to purchase his Camry outright was money he did not devote to paying down his credit card debt, and Congress did not express a preference for one use of these funds over the other. Further, Ransom's argument mistakes what the deductions in the means test are meant to accomplish. Rather than effecting any broad federal policy as to saving or borrowing, the deductions serve merely to ensure that debtors in bankruptcy can afford essential items. The car-ownership allowance thus safeguards a debtor's ability to retain a car throughout the plan period. If the debtor already owns a car outright, he has no need for this protection.

Ransom finally argues that a debtor who owns his car free and clear may need to replace it during the life of the plan; "[g]ranting the ownership cost deduction to a vehicle

that is owned outright," he states, "accords best with economic reality." *Id.,* at 52. In essence, Ransom seeks an emergency cushion for car owners. But nothing in the statute authorizes such a cushion, which all debtors presumably would like in the event some unexpected need arises. And a person who enters bankruptcy without any car at all may also have to buy one during the plan period; yet Ransom concedes that a person in this position cannot claim the ownership deduction. Tr. of Oral Arg. 20. The appropriate way to account for unanticipated expenses like a new vehicle purchase is not to distort the scope of a deduction, but to use the method that the Code provides for all Chapter 13 debtors (and their creditors): modification of the plan in light of changed circumstances. See §1329(a)(1); see also *supra*, at 17.

## IV

Based on BAPCPA's text, context, and purpose, we hold that the Local Standard expense amount for transportation "Ownership Costs" is not "applicable" to a debtor who will not incur any such costs during his bankruptcy plan. Because the "Ownership Costs" category covers only loan and lease payments and because Ransom owns his car free from any debt or obligation, he may not claim the allowance. In short, Ransom may not deduct loan or lease expenses when he does not have any. We therefore affirm the judgment of the Ninth Circuit.

*It is so ordered.*

# SUPREME COURT OF THE UNITED STATES

No. 09–907

JASON M. RANSOM, PETITIONER *v.* FIA CARD SERVICES, N. A., FKA MBNA AMERICA BANK, N. A.

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

[January 11, 2011]

JUSTICE SCALIA, dissenting.

I would reverse the judgment of the Ninth Circuit. I agree with the conclusion of the three other Courts of Appeals to address the question: that a debtor who owns a car free and clear is entitled to the car-ownership allowance. See *In re Washburn,* 579 F. 3d 934 (CA8 2009); *In re Tate,* 571 F. 3d 423 (CA5 2009); *In re Ross-Tousey,* 549 F. 3d 1148 (CA7 2008).

The statutory text at issue is the phrase enacted in the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 (BAPCPA), "applicable monthly expense amounts specified under the National Standards and Local Standards," 11 U. S. C. §707(b)(2)(A)(ii)(I). The Court holds that the word "applicable" in this provision imports into the Local Standards a directive in the Internal Revenue Service's Collection Financial Standards, which have as their stated purpose "to help determine a taxpayer's ability to pay a delinquent tax liability," App. to Brief for Respondent 1a. That directive says that "[i]f a taxpayer has no car payment," the Ownership Cost provisions of the Local Standards will not apply. *Id.*, at 3a.

That directive forms no part of the Local Standards to which the statute refers; and the fact that portions of the Local Standards are to be disregarded for revenue-

collection purposes says nothing about whether they are to be disregarded for purposes of Chapter 13 of the Bankruptcy Code. The Court believes, however, that unless the IRS's Collection Financial Standards are imported into the Local Standards, the word "applicable" would do no work, violating the principle that "'we must give effect to every word of a statute wherever possible.'" *Ante*, at 8 (quoting *Leocal* v. *Ashcroft*, 543 U. S. 1, 12 (2004)). I disagree. The canon against superfluity is not a canon against verbosity. When a thought could have been expressed more concisely, one does not always have to cast about for some additional meaning to the word or phrase that could have been dispensed with. This has always been understood. A House of Lords opinion holds, for example, that in the phrase "'in addition to and not in derogation of'" the last part adds nothing but emphasis. *Davies* v. *Powell Duffryn Associated Collieries*, *Ltd.*, [1942] A. C. 601, 607.

It seems to me that is the situation here. To be sure, one can say "according to the attached table"; but it is acceptable (and indeed I think more common) to say "according to the applicable provisions of the attached table." That seems to me the fairest reading of "applicable monthly expense amounts specified under the National Standards and Local Standards." That is especially so for the Ownership Costs portion of the Local Standards, which had no column titled "No Car." Here the expense amount would be that shown for one car (which is all the debtor here owned) rather than that shown for two cars; and it would be no expense amount if the debtor owned no car, since there is no "applicable" provision for that on the table. For operating and public transportation costs, the "applicable" amount would similarly be the amount provided by the Local Standards for the geographic region in which the debtor resides. (The debtor would not first be required to prove that he actually operates the cars that he owns, or, if does not own a car, that he actually uses

public transportation.) The Court claims that the tables "are not self-defining," and that "[s]ome amount of interpretation" is necessary in choosing whether to claim a deduction at all, for one car, or for two. *Ante*, at 14–15. But this problem seems to me more metaphysical than practical. The point of the statutory language is to entitle debtors who own cars to an ownership deduction, and I have little doubt that debtors will be able to choose correctly whether to claim a deduction for one car or for two.

If the meaning attributed to the word by the Court were intended, it would have been most precise to say "monthly expense amounts specified under the National Standards and Local Standards, if applicable for IRS collection purposes." And even if utter precision was too much to expect, it would at least have been more natural to say "monthly expense amounts specified under the National Standards and Local Standards, *if applicable*." That would make it clear that amounts specified under those Standards may nonetheless not be applicable, justifying (perhaps) resort to some source other than the Standards themselves to give meaning to the condition. The very next paragraph of the Bankruptcy Code uses that formulation ("if applicable") to limit to actual expenses the deduction for care of an elderly or chronically ill household member: "[T]he debtor's monthly expenses may include, *if applicable*, the continuation of actual expenses paid by the debtor that are reasonable and necessary" for that purpose. 11 U. S. C. §707(b)(2)(A)(ii)(II) (emphasis added).

Elsewhere as well, the Code makes it very clear when prescribed deductions are limited to actual expenditures. Section 707(b)(2)(A)(ii)(I) itself authorizes deductions for a host of expenses—health and disability insurance, for example—only to the extent that they are "actual . . . expenses" that are "reasonably necessary." Additional deductions for energy are allowed, but again only if they are "actual expenses" that are "reasonable and necessary."

§707(b)(2)(A)(ii)(V). Given the clarity of those limitations to actual outlays, it seems strange for Congress to limit the car-ownership deduction to the somewhat peculiar category "cars subject to any amount whatever of outstanding indebtedness" by the mere word "applicable," meant as incorporation of a limitation that appears in instructions to IRS agents.*

I do not find the normal meaning of the text undermined by the fact that it produces a situation in which a debtor who owes no payments on his car nonetheless gets the operating-expense allowance. For the Court's more strained interpretation still produces a situation in which a debtor who owes only a single remaining payment on his car gets the full allowance. As for the Court's imagined horrible in which "a debtor entering bankruptcy might purchase for a song a junkyard car," *ante*, at 17: That is fairly matched by the imagined horrible that, under the Court's scheme, a debtor entering bankruptcy might purchase a junkyard car for a song plus a $10 promissory note payable over several years. He would get the full ownership expense deduction.

Thus, the Court's interpretation does not, as promised,

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*The Court protests that I misunderstand its use of the Collection Financial Standards. Its opinion does not, it says, find them to be incorporated by the Bankruptcy Code; they simply "reinforc[e] our conclusion that . . . a debtor seeking to claim this deduction must make some loan or lease payments." *Ante*, at 10. True enough, the opinion says that the Bankruptcy Code "does not incorporate the IRS's guidelines," but it immediately continues that "courts may consult this material in interpreting the National and Local Standards" so long as it is not "at odds with the statutory language." *Ibid.* In the present context, the real-world difference between finding the guidelines incorporated and finding it appropriate to consult them escapes me, since I can imagine no basis for consulting them unless Congress meant them to be consulted, which would mean they are incorporated. And without incorporation, they *are* at odds with the statutory language, which otherwise contains no hint that eligibility for a Car Ownership deduction requires anything other than ownership of a car.

maintain "the connection between the means test and the statutory provision it is meant to implement—the authorization of an allowance for (but only for) 'reasonably necessary' expenses," *ante*, at 12. Nor do I think this difficulty is eliminated by the *deus ex machina* of 11 U. S. C. §1329(a)(1), which according to the Court would allow an unsecured creditor to "move to modify the plan to increase the amount the debtor must repay," *ante*, at 17. Apart from the fact that, as a practical matter, the sums involved would hardly make this worth the legal costs, allowing such ongoing revisions of matters specifically covered by the rigid means test would return us to "the pre-BAPCPA case-by-case adjudication of above-median-income debtors' expenses," *ante*, at 16. If the BAPCPA had thought such adjustments necessary, surely it would have taken the much simpler and more logical step of providing going in that the ownership expense allowance would apply only so long as monthly payments were due.

The reality is, to describe it in the Court's own terms, that occasional overallowance (or, for that matter, underallowance) "is the inevitable result of a standardized formula like the means test . . . . Congress chose to tolerate the occasional peculiarity that a brighter-line test produces." *Ibid.* Our job, it seems to me, is not to eliminate or reduce those "oddit[ies]," *ibid.*, but to give the formula Congress adopted its fairest meaning. In my judgment the "applicable monthly expense amounts" for operating costs "specified under the . . . Local Standards," are the amounts specified in those Standards for either one car or two cars, whichever of those is applicable.

**No. 10-179**

IN THE

# Supreme Court of the United States

HOWARD K. STERN, EXECUTOR
OF THE ESTATE OF VICKIE LYNN MARSHALL,
*Petitioner*,

v.

ELAINE T. MARSHALL, EXECUTRIX
OF THE ESTATE OF E. PIERCE MARSHALL,
*Respondent*.

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

## BRIEF FOR RESPONDENT


Roy T. Englert, Jr.
ROBBINS, RUSSELL,
ENGLERT, ORSECK,
UNTREINER & SAUBER LLP
1801 K Street, NW Ste. 411
Washington, DC 20006
(202) 775-4500

G. Eric Brunstad, Jr.
*Counsel of Record*
Collin O'Connor Udell
Matthew J. Delude
DECHERT LLP
90 State House Square
Hartford, CT 06103
(860) 524-3999
eric.brunstad@dechert.com

*Counsel for Respondent*

ADDITIONAL COUNSEL LISTED ON INSIDE COVER

Seth P. Waxman
Craig Goldblatt
Danielle Spinelli
WILMER CUTLER PICKERING
HALE AND DORR, LLP
1875 Pennsylvania Ave., NW
Washington, DC 20006
(202) 663-6000

Kenneth N. Klee
Daniel J. Bussel
Whitman L. Holt
KLEE, TUCHIN, BOGDANOFF & STERN LLP
1999 Avenue of the Stars, 39th Floor
Los Angeles, CA 90067
(310) 407-4000

Don Jackson
WARE, JACKSON, LEE &
CHAMBERS, LLP
America Tower, 42nd Floor
2929 Allen Parkway
Houston, TX 77019
(713) 659-6400

Sanford Svetcov
ROBBINS GELLER RUDMAN &
DOWD LLP
100 Pine Street, Suite 2600
San Francisco, CA 94111
(415) 288-4545

Joseph A. Eisenberg
Julia J. Rider
JEFFER, MANGELS, BUTLER &
MARMARO LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067
(310) 203-8080

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## PRELIMINARY STATEMENT

In 1978, Congress enacted a new Bankruptcy Code, created a new system of non-Article III bankruptcy courts, and vested these courts with broad jurisdiction to hear and determine all "civil proceedings arising under title 11 [the Bankruptcy Code] or arising in or related to cases under title 11." 28 U.S.C. §1471(b) (repealed 1984). In 1982, this Court invalidated section 1471(b), at least insofar as it authorized the non-Article III bankruptcy court to finally decide a state law breach of contract action. *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 87 (1982); *see also id.* at 91 (Rehnquist, J., concurring in judgment).

In 1984, Congress responded to *Marathon* by revamping the bankruptcy jurisdictional scheme. In doing so, Congress recast bankruptcy judges as non-Article III "unit[s]" of the district court "to be known as the bankruptcy court for that district," 28 U.S.C. §151, and enacted 28 U.S.C. §§1334(b) and 157 to govern the exercise of federal bankruptcy jurisdiction.

In relevant part, section 157(b)(1) authorizes a bankruptcy judge to "hear and determine" all "core proceedings arising under title 11, or arising in a case under title 11," subject to ordinary appellate review. 28 U.S.C. §§157(b)(1), 158. In contrast, section 157(c)(1) authorizes a bankruptcy judge to "hear" a

proceeding that is "related to" a case under title 11, but not to finally decide it. *Id*. §157(c)(1). For "related to" matters, the bankruptcy judge submits proposed findings of fact and conclusions of law, subject to *de novo* review in the district court. *Id*. Further, section 157(b)(5) commands that all "personal injury tort...claims shall be tried in the district court." *Id*. §157(b)(5).

Petitioner Howard K. Stern ("Stern") contends that, prior to 1995, E. Pierce Marshall ("Pierce") tortiously interfered with an expectancy of a gift held by Vickie Lynn Marshall ("Vickie"). In 1996, Vickie filed for bankruptcy. Vickie's bankruptcy filing created her "bankruptcy estate" consisting of all of her property, including her tortious interference cause of action. 11 U.S.C. §541. Invoking section 157, Vickie pursued her state law cause of action against Pierce in the bankruptcy court.

In *Celotex Corp. v. Edwards*, this Court stated that proceedings "related to" bankruptcy include "causes of action owned by the debtor which become property of the estate pursuant to 11 U.S.C. §541." 514 U.S. 300, 307-08 n.5 (1995). The Court explained that this category of claims includes "a claim like the state-law breach of contract action at issue in [*Marathon*]." *Id*. This explanation sensibly follows the plain meaning of the text and readily encompasses Vickie's pre-existing state law tort claim—for purposes of

section 157, her state law cause of action plainly does not "arise under" the Bankruptcy Code, or "arise in" a case under the Code; it plainly arises under state law.

Stern contends that the fact that Pierce filed a proof of claim fundamentally alters the calculus. BR.16. Stern is mistaken. It is true that Pierce filed a proof of claim in Vickie's bankruptcy case for a defamation cause of action he held against her. It is also true that the filing of a proof of claim generally triggers the claims allowance process. It is not true, however, that the adjudication of state law counterclaims—even "compulsory" ones—is a necessary part of that process. The claims allowance procedure is not a broad clearinghouse for litigation by and against the debtor; it is a narrow procedure for determining a creditor's share of the debtor's bankruptcy estate. 11 U.S.C. §502.

In this case, the adjudication of Vickie's state-law tortious interference claim against Pierce does not involve determining his share of her estate under federal law; it involves resolving her cause of action against him under state law. Thus, at best, Vickie's claim is merely "related to" the administration of her estate on the theory that, if successful, it might increase the assets available for distribution. *Celotex*, 514 U.S. at 308 n.6 (explaining the concept of "related to" jurisdiction in this way).

Stern asserts that, out of administrative convenience, it is appropriate to have the bankruptcy court finally determine not only Pierce's defamation claim, but also Vickie's tortious interference claim as a compulsory counterclaim. The short answer is that the statute is not drafted that way, and Stern confuses procedure with jurisdiction. Because bankruptcy judges are not Article III judicial officers, Congress intentionally limited their ability to resolve state law causes of action that the debtor may hold against others. This does not mean that the bankruptcy court can never hear such matters. It simply means that, if the bankruptcy court hears them, it may only address them by submitting proposed findings of fact and conclusions of law (unless the parties otherwise expressly consent in writing).

It is true that there are some *federally created* causes of action that a debtor may assert against a creditor that must be adjudicated in order to resolve the creditor's claim, such as a preference action "arising under" section 547 of the Bankruptcy Code. 11 U.S.C. §547; *see also Katchen v. Landy*, 382 U.S. 323 (1966). But these causes of action are specified in section 502(d) of the Code, and Vickie's state law claim is not one of them. 11 U.S.C. §502(d).

Likewise, it may be true that there are some state law counterclaims that a debtor may assert against a creditor that are so inextricably intertwined with the creditor's claim that, as a practical matter, they must also be adjudicated in order to determine the creditor's claim. As the court below properly determined, however, Vickie's claim is not one of those, either. Pet. App. 51-55. Moreover, even if it were, the statute properly directs that the bankruptcy court may only address such matters by submitting proposed findings of fact and conclusions of law.

Cutting through all of this, a bankruptcy court is prohibited from even hearing "personal injury tort claims." Pursuant to section 157(b)(5), these may only be resolved in the district court (or an appropriate State tribunal). Because Pierce's defamation claim is such a claim, the bankruptcy court lacked jurisdiction to finally decide it, as well as Vickie's tortious interference "counterclaim."

## JURISDICTION

The bankruptcy court lacked jurisdiction to decide Pierce's defamation claim, 28 U.S.C. §157(b)(5), and therefore Vickie's counterclaim. *E.g., Vaden v. Discover Bank*, 129 S. Ct. 1262, 1272 & n.10 (2009). Vickie's state law claim also does not constitute a "core proceeding[] arising under title 11, or arising in a case under title

11"; thus, the bankruptcy court could hear but not finally decide it, and was required to issue proposed findings of fact and conclusions of law. *Id.* §§157(b)(1), (c)(1). The district court had jurisdiction to vacate the bankruptcy court's final judgment. *Id.* §§1334, 158. The court of appeals had jurisdiction to affirm. *Id.* §§1291, 158. This Court has jurisdiction. *Id.* §1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The relevant constitutional provisions of Article III, the relevant jurisdictional provisions of 28 U.S.C. §§1334 & 157, and the relevant miscellaneous provisions of the Bankruptcy Code are reprinted in the appendix to this brief.

## STATEMENT

1. Article III of the Constitution provides that "[t]he judicial power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish" and that "[t]he Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall...receive...a Compensation, which shall not be diminished during their continuance in Office." U.S. CONST. art. III, §1. As stated in *Marathon*, "our Constitution unambiguously enunciates a fundamental principle—that the 'judicial Power of the United States'

must be reposed in an independent Judiciary," and likewise "commands that the independence of the Judiciary be jealously guarded," providing, as it does, "clear institutional protections for that independence." 458 U.S. at 60 (plurality).[1]

Downplaying the commands of Article III, Stern and his *amici* contend that Congress crafted the current bankruptcy jurisdictional provisions with an eye toward administrative efficiency and, building on that theme, advocate a broad, centralized power in the bankruptcy courts to adjudicate claims having some relation to a bankruptcy case. BR.15-16; USBR.2. Administrative convenience and centralized adjudication of state law claims, however, have not been the exclusive rationale of bankruptcy jurisdiction, and in crafting the current law, Congress focused on other important values, including the principles of Article III, federalism, and fairness. *See infra* pp. 13-20; *see also Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 63 (1989) (quoting *Bowsher v. Synar*, 478 U.S. 714, 736 (1986)) ("[T]he fact that a given law or

[1] Under the current regime, Congress has not granted bankruptcy judges Article III status. They are appointed by the courts of appeals for fourteen-year terms. 28 U.S.C. §152(a)(1). They are subject to removal from office other than by impeachment. *Id*. §152(e). Their salaries are fixed by statute and are not immune from adjustment. *Id*. §153.

procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution") (internal quotation marks omitted).

Embodying these values, the current jurisdictional scheme purposefully limits a bankruptcy court's ability to determine state law causes of action: a bankruptcy court may generally hear, but not finally decide, a debtor's state law causes of action against creditors and third parties; it may not *hear at all* state law personal injury tort claims. The principles that motivated Congress to so limit the bankruptcy court's jurisdiction have deep historical antecedents.

a. The Bankruptcy Act of 1898, Act of July 1, 1898, ch. 541, 30 Stat. 544 (repealed 1979) ("1898 Act"), conferred equitable bankruptcy jurisdiction on the federal district courts. *Id.* §2, 30 Stat. 545. The 1898 Act distinguished the district court's equitable summary jurisdiction to resolve bankruptcy administrative matters from its plenary jurisdiction to resolve legal controversies. For example, section 2(2) of the 1898 Act granted the district courts summary jurisdiction to allow and disallow claims against property within their possession. *Id.* §2(2); *Katchen*, 382 U.S. at 327. Legal controversies involving actions against creditors and other third parties, however, generally fell within the district court's

"plenary" jurisdiction, which was sharply restricted under section 23b of the Act.

Section 23b provided that "[s]uits by the trustee shall only be brought or prosecuted in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant." 1898 Act §23b, 30 Stat. 552; *see Bardes v. First Nat'l Bank of Hawarden*, 178 U.S. 524, 533 (1900). The purpose "was to leave such controversies to be heard and determined for the most part in the state courts, 'to the greater economy and convenience of litigants and witnesses.'" *Schumacher v. Beeler*, 293 U.S. 367, 374 (1934) (citation omitted).[2] As section 23b makes plain, Congress did not in the 1898 Act universally promote centralized adjudication in the bankruptcy court at the expense of other values.

The 1898 Act authorized the district courts sitting in bankruptcy to appoint referees for two-year terms to assist them in their administrative duties. 1898 Act §34a, 30 Stat. 555; *see Weidhorn v. Levy*, 253 U.S. 268, 270 (1920). Section

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[2] In 1903 and 1910, Congress made exceptions to section 23 for certain fraudulent transfer and preference actions, which could be brought as plenary matters in the district courts. Act of June 25, 1910, 36 Stat. 840 (repealed 1979).

38a of the 1898 Act, 30 Stat. 555, authorized referees (later called "bankruptcy judges") to exercise designated portions of the district courts' summary jurisdiction, including the allowance or disallowance of claims filed against the debtor's bankruptcy estate, "subject always to a review by the [district] judge." *Id.*; *see also* 1898 Act §2a(10), 30 Stat. 546 (prescribing review procedure for order of referee). Critically, the referee's jurisdiction was summary only; the referee could not hear a plenary matter absent the defendant's consent. *See Marathon*, 458 U.S. at 79 n.31.

The scope of the district courts' equitable "summary" jurisdiction and, by extension, the referees' summary jurisdiction was never precisely defined, particularly with respect to counterclaims asserted against those who filed proofs of claim. Notably, section 2 did not expressly grant the district courts summary jurisdiction to adjudicate state law claims against those filing proofs of claim, and section 23b appeared expressly to preclude it. *See* App. 13a-18a. Without discussing the requirements of Article III, some lower courts determined that summary jurisdiction encompassed counterclaims "that would also be defenses to the [creditor's] claim." *Katchen*, 382 U.S. at 336 n.12 (citing lower court decisions); *see, e.g., Gill v. Phillips*, 337 F.2d 258, 265 (5th Cir. 1964); *Cherno v. Engine Air Serv.*, 330 F.2d 191, 193 (2d Cir. 1964). Other courts,

however, concluded that it did not, or did so only in sharply limited fashion. *See Katchen*, 382 U.S. at 326 n.1 (citing cases); *Solomon v. Allied Bldg. Credits, Inc.*, 209 F.2d 828, 831 (8th Cir. 1954); *In re Eakin*, 154 F.2d 717, 719 (2d Cir. 1946); *Metz v. Knobel*, 21 F.2d 317, 318 (2d Cir. 1927).

This Court never resolved the controversy, at least with respect to a district court's summary jurisdiction to adjudicate counterclaims based on pre-existing state law causes of action. In *Katchen*, all the Court decided was that a bankruptcy court could resolve within its summary jurisdiction (and therefore without a jury) a federal preference action asserted as an objection to a proof of claim—which type of action was *already* expressly excepted from section 23b. *See supra* note 2*; Marathon*, 458 U.S. at 79 n.31 (noting that *Katchen* did not discuss the requirements of Article III).

b. In 1978, Congress revamped the bankruptcy laws, creating a new system of non-Article III bankruptcy courts to administer them. *Id.* at 60-61 (plurality). Pursuant to section 1471(b), Congress vested bankruptcy judges with broad jurisdiction to hear and determine all "civil proceedings arising under title 11 or arising in or related to cases under title 11." 28 U.S.C. §1471(b) (1978).

In 1980, the Northern Pipeline Construction Co. ("Northern") commenced a bankruptcy case under the new regime. Northern's bankruptcy filing created a "bankruptcy estate" consisting of all of its property, including its pre-existing breach of contract cause of action against Marathon Pipe Line Co. ("Marathon"). 11 U.S.C. §541. Invoking section 1471(b), Northern pursued its state law cause of action against Marathon in the bankruptcy court. In 1982, this Court invalidated section 1471(b), at least to the extent it authorized the non-Article III bankruptcy court to finally decide Northern's state law action. *Marathon*, 458 U.S. at 87 (1982); *see also id.* at 91 (Rehnquist, J., concurring in judgment).

In *Marathon*, the Court explained that there are three exceptions to the constitutional command that the judicial power of the United States (including the power to adjudicate traditional state law causes of action) shall be exercised by Article III judges: (1) the jurisdiction traditionally exercised by courts-martial; (2) the jurisdiction exercised by the territorial courts; and (3) the resolution of "public right" controversies, such as disputes over public rights or benefits that Congress has created. *Id.* at 64-70 (plurality). Although some benefits conferred under the federal bankruptcy laws (*i.e.*, the discharge of debt) may be thought of as "public rights," the plurality explained that

these "must be distinguished from the adjudication of state-created private rights, such as the right to recover contract damages." *Id*. at 71. Such state-created rights, the plurality concluded, could not be finally heard and decided by the non-Article III bankruptcy court. Although not necessarily adopting precisely the same rationale, the concurrence agreed with this conclusion. *See id.* at 92 (Rehnquist, J., concurring).

The Court stayed its judgment until October 4, 1982 to "afford Congress an opportunity to reconstitute the bankruptcy courts or to adopt other valid means of adjudication." *Id*. at 88 (plurality). The Court later extended its stay until December 24, 1982. *Northern Pipeline Constr. Co. v. Marathon Pipe Line Co*., 459 U.S. 813 (1982).

c. Almost immediately after *Marathon*, Congress began work on legislation to accommodate the Court's judgment. In general, early proposals favored reconstituting bankruptcy judges as Article III judicial officers. *See, e.g.,* H.R. 6978, 97th Cong. (2d Sess. 1982) (introduced on August 12, 1982, proposing essentially to reenact section 1471(b) staffed by Article III judges); H.R. REP. NO. 97-807 at 1 (1982) (discussing H.R. 6978); App. 19a. These proposals, however, did not prevail.

On December 24, 1982, the Supreme Court's stay of its mandate in *Marathon* expired. Pending action by Congress, federal courts implemented a proposed rule promulgated by the director of the Judicial Conference (the "Emergency Rule") governing the conduct of bankruptcy proceedings. Contrary to Stern's and the Government's suggestion, the foundations for the current jurisdictional scheme do not truly lie in the Emergency Rule. BR.28; USBR.7-8. Although the rule was influential, the foundations of sections 1334 and 157 were forged more deeply from a broader series of proposals, principles, and debates.

On January 24, 1983, the Senate Subcommittee on Courts held hearings. *Bankruptcy Reform Before the Subcomm. on Courts of the Comm. on the Judiciary*, 98th Cong., 1st Sess. 1 (1983). At the hearing, attendees debated a number of competing concerns in crafting a legislative response to *Marathon*, including constitutional considerations and fairness to the parties affected. Senator Heflin cautioned that the "all-encompassing" grant of jurisdiction under the 1978 Act allowed bankruptcy courts to hear any case, arising anywhere in the country, related to a debtor's petition, whether it be a civil rights, product liability, labor-management, or divorce case. *Id.* at 3 (statement of Sen. Heflin). He worried that "[f]orum shopping may develop as a race that makes the Kentucky Derby seem slow," *id.*, and opposed broad bankruptcy jurisdiction

out of fairness to litigants drawn into the proceeding.

On February 2, 1983, the House of Representatives held hearings. *Bankruptcy Court Act of 1983: Hearing Before the Subcomm. on Monopolies and Commercial Law of the Comm. on the Judiciary*, 98th Cong., 1st Sess. 58 (1983). Edward C. Schmults, Deputy Attorney General, Department of Justice, urged granting bankruptcy judges Article III status, in part on efficiency grounds: "The appointment of Article III judges will resolve any constitutional concerns, allow the consolidated disposition of all related bankruptcy matters, and attract the highest caliber of lawyers to the bench." *Id.* at 63.

The Judicial Conference of the United States, however, supported an alternative proposal that would allow non-Article III bankruptcy judges to decide all cases "arising under Title 11," but would send all claims "related to Title 11" to the Article III district courts. *Id.* at 213-14 (statement of the Judicial Conference of the United States). The Conference pointed out that those who favored establishing Article III bankruptcy courts mainly did so because of the perceived efficiency of being able to resolve all related claims in one court. *Id.* at 214. While conceding that its proposal to send all "related to" claims to the district courts could generate "a certain amount of delay as a consequence," the Conference noted that these "related to" cases

were relatively infrequent and argued that the establishment of an entire system of separate Article III courts would be overkill. *Id.*

On April 7, 1983, S. 1013, a bill sponsored by Senators Thurmond and Heflin (and ultimately passed by the Senate) was introduced, and the Senate Judiciary Committee issued a report. S. REP. NO. 98-55 (1983). The report opposed creating Article III bankruptcy courts with broad jurisdiction over bankruptcy proceedings. *Id.* at 30. It explained that, "[w]hile the objective of consolidation of judicial proceedings within a single forum is a desirable one, this is not the overriding objective of the Nation's constitutional system of courts." *Id.* at 18. The report continued: "[t]he purpose of our constitutional institutions is not mere 'efficiency'," and "[t]he value of judicial economy is further undermined by a court system in which issues of state law are adjudicated, not by those who are experts in this law (i.e. state courts), but by Federal bankruptcy and district court judges who may be totally unfamiliar with it." *Id.* at 19. Finally, the report stated that it is also "unfair to require an individual engaged in a state law dispute, who is entitled to his day in state court and who wants to exercise such an opportunity, to have to submit to the exercise of jurisdiction by a Federal court where venue may be on the opposite side of the country." *Id.*

Summarizing its reading of *Marathon*, the report stated that "[a]bsent the consent of parties to litigation, Article III of the Constitution requires that 'traditional' state common-law actions, which are only tangentially related to a title 11 bankruptcy action, be tried before an Article III judge." *Id.* at 33. The report added further, "[t]here is serious constitutional question about the ability of Congress to establish jurisdiction in the Federal courts over causes *arising purely under State law*, *e.g. contract claims, property valuation, etc.*...." *Id.* at 40 (emphasis added).

Following debate, the Senate passed S. 1013 on April 27, 1983, and transmitted the legislation to the House. App. 21a. On March 19, 1984, H.R. 5174 was introduced. App. 25a. As originally formulated, the language of H.R. 5174 proposed the creation of Article III bankruptcy courts with broad authority over matters affecting a bankruptcy case. App. 26a.

During debate in the House on H.R. 5174, members explained that the original jurisdictional scheme of the 1978 Act that sought to "spread the jurisdiction of the bankruptcy courts" went too far, permitting bankruptcy courts to adjudicate too much, namely "rights arising under State law." 130 CONG. REC. H6204-05 (daily ed. March 21, 1984) (statement of Rep. Kindness). Echoing the views of Senator Heflin, Representative Kastenmeier urged that

the solution to the constitutional problem was to restrict the ability of bankruptcy judges to hear state law matters and to make them non-Article III judicial officers subject to supervision by the district courts. *Id.* at H6202 (statement of Rep. Kastenmeier). These views carried the day, and the House adopted a heavily revised H.R. 5174 setting out most of the basic provisions of the current law. App. 27a.[3]

Following passage, the House sent the legislation to the Senate, which held further debate and offered additional amendments. *See, e.g.*, App. 33a, 40a. Senator DeConcini proposed an amendment to exclude personal injury tort claims from the bankruptcy courts' claims allowance authority. *See* App. 42a-43a. As he explained, "[u]nlike a trade creditor who elects to do business with a particular company, the personal injury tort claimant does not choose to be injured by a particular debtor," and therefore should "have the right to have a final order entered by an Article III district judge." 130 CONG. REC. S13076 (daily ed. May 21, 1984) (statement

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[3] Although Stern and the Government cite to some of the legislative history, they ignore the proceedings in the Senate, as well as the overall evolution of the legislation, focusing instead on excerpts from the House debate on March 21, 1984. *See, e.g.,* BR.31; USBR.7-8. Among other omissions, they skip subsequent amendments adding, among other things, section 157(b)(5). *See* App. 29a-32a, 42a-45a, 50a-54a.

of Sen. DeConcini); *see also id.* at S13077 (section-by-section analysis). Senator Thurmond moved for a conference with the House to address the Senate's amendments. 130 CONG. REC. S17158-59 (daily ed. June 19, 1984) (statement of Sen. Thurmond).

On June 29, 1984, the conference issued a report that reproduced the text of an amended H.R. 5174, which included the addition from conference of section 157(b)(5) requiring personal injury tort claims to be decided in the district courts. H.R. REP. NO. 98-882 at 10 (1984); App. 52a-53a. Senator Dole explained that, under the amended bill, "[o]ne of those areas reserved for attention of the district courts will be personal injury claims, which are exempted from the definition of core proceeding under the bill." 130 CONG. REC. S20083 (daily ed. June 29, 1984) (statement of Sen. Dole). Senator Dole also stated that "[t]he result of the conference discussion was a provision that preserves the integrity of bankruptcy jurisdiction while allowing abstention for personal injury cases where they can be timely adjudicated in State courts." *Id.* Critically, he then added: "*In addition, where abstention does not occur, those cases will be handled by the district court where the bankruptcy has been filed or, if that court finds it appropriate, where the claim arose.*" *Id.* (emphasis added). Thus, as Senator Dole explained, the abstention provisions of the current law (28 U.S.C. §1334(c)) are available to channel personal injury tort litiga-

tion to the state courts. Where abstention is not appropriate, section 157(b)(5) channels personal injury tort litigation to the district courts.

2. In June of 1994, J. Howard Marshall ("J. Howard") married Vickie. ER-95, 2420.[4] Both prior to and during their marriage, J. Howard gave Vickie substantial gifts worth over $6 million. ER-2536-39, 2547-48. Two weeks after the marriage, J. Howard executed his final amended and restated living trust instrument, irrevocably fixing the terms of his living trust in a manner that left the bulk of his estate to his son, Pierce. ER-645-46, 1018, 3210, 3264-68. J. Howard died on August 4, 1995. ER-2661.

In April 1995 (several months prior to J. Howard's death), Vickie commenced proceedings in the Texas probate court (the "Probate Court"), seeking a declaration concerning the validity of the living trust and alleging that Pierce had tortiously interfered with her property rights concerning J. Howard's assets. Pet. App. 11; ER-5615-17, 5620. Vickie thereafter contested J. Howard's will in the Probate Court, challenged the validity of J. Howard's estate plan, and subsequently pursued against Pierce in the probate case her alleged state law claim for "tortious in-

[4] The term "ER" refers to certain "excerpts of record" filed in the Ninth Circuit.

terference with an expectancy of a gift" (the "Probate Case"). ER-1319-31, 2863-65, 5523-31.

For several years, Vickie participated fully in the Probate Case, litigated her tortious interference claim there, and likewise litigated all of her allegations involving J. Howard's intent and Pierce's conduct. Pet. App. 61; *Marshall v. Marshall*, 392 F.3d 1118, 1128-29 (9th Cir. 2004). In particular, prior to trial, Vickie identified the causes of action against Pierce that she proposed to try to the Texas jury, including her claim of tortious interference with a gift, ER-4073, 4076-78, 4089, 4102, later emphasizing to the jury that "[t]his is a case about tortious interference with an intent to give an *inter vivos* gift...." ER-4068, 4106, 4134. Vickie called seven witnesses in her case in chief, ER-4069-70, and three additional witnesses in rebuttal. ER-4070-71. Vickie's counsel questioned at least fourteen other witnesses. ER-4070-71. Vickie herself testified for approximately six days, including extensively regarding her alleged expectancy of a gift. ER-4071.

All told, the Probate Court heard the testimony of over forty witnesses and received hundreds of items of evidence, ER-4066-71, 4706-27, including the testimony of J. Howard's staff, family, accountants, and lawyers. Following the jury's verdict, the Probate Court entered a final

amended judgment on December 7, 2001 (the "Probate Judgment"). ER-4706, 4727.

The Probate Court specifically ruled that "[J. Howard] did not intend to give and did not give to [Vickie] a gift or bequest from the Estate of [J. Howard] or from the [living trust—which contained all of his assets] either prior to or upon his death" and "that [Vickie] does not possess any interest in and is not entitled to possession of any property within the Estate of [J. Howard] or any property [of the living trust] because of any representations, promises, or agreements." ER-4721. The Probate Court also held that (1) all of Vickie's claims were resolved and dismissed; (2) Vickie was entitled to "take nothing" from Pierce; and (3) Pierce was entitled to his inheritance free and clear of any claim by Vickie. ER-4718-19, 4721.[5]

During the course of the proceedings in the Probate Court, Vickie attempted to withdraw from the case by "non-suiting" her claims. The Probate Court, however, refused to let her withdraw, Pet. App. 20-21; *Marshall*, 392 F.3d at 1128, and Vickie thereafter participated fully as a defendant to Pierce's declaratory judgment ac-

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[5] Stern inappropriately characterizes the scope of the Probate Judgment not by what it actually provides, but by snippets of statements made before it was entered. BR.7-8.

tion seeking a determination of Vickie's rights and Pierce's liabilities. Pet. App. 21 & n.19; ER-4713.[6]

As the court below concluded, all of the issues regarding J. Howard's intent to give Vickie a gift and Pierce's alleged misconduct "were fully and fairly litigated by Vickie...and Pierce...in the Texas probate court." Pet. App. 61. Further, "[d]uring the five-month trial in Texas, the jury and judge considered the evidence and arguments advanced by the parties, and the Texas probate court issued a reasoned opinion based upon the findings of fact as made by the unanimous jury." Pet. App. 61.

a. During the pendency of the probate proceedings, Vickie's lawyers made various allegedly defamatory statements about Pierce. ER-930. Subsequently, Pierce commenced a state law defamation action in Texas state court against Vickie and two of her lawyers. SER-6001.[7] After Vickie commenced her bankruptcy case, Pierce dismissed her without prejudice from the defamation suit. Pet. App. 14 n.10.

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[6] Stern observes that the Bankruptcy Court enjoined Pierce from pursuing certain aspects of this litigation in the Probate Court. BR.6-7. The District Court, however, set aside that improper injunction. ER-3989.

[7] The term "SER" refers to certain "Supplemental Excerpts of Record" filed in the Ninth Circuit.

b. On January 25, 1996, while the probate and defamation proceedings were ongoing, Vickie commenced her chapter 11 bankruptcy case in the bankruptcy court in California (the "Bankruptcy Court"). ER-2642. As a result of her bankruptcy filing, the defamation action against her was stayed, *see* 11 U.S.C. §362, and Pierce therefore dismissed her "without prejudice" from the defamation action. Pet. App. 14 n.10.

By operation of law, when a debtor commences a bankruptcy case, a bankruptcy estate is formed consisting of all of the debtor's property. 11 U.S.C. §541(a)(1). Accordingly, when Vickie filed her bankruptcy case, her pre-existing state law cause of action against Pierce for tortious inference with an expectancy of a gift passed to her estate.

Under the Bankruptcy Code, a creditor holding a pre-petition claim against the debtor may file a proof of claim. *Id.* §501(a), 502(b); Fed. R. Bankr. P. 3001, 3002. Subject to exceptions not relevant here, only creditors who file proofs of claim may receive distributions from the debtor's estate. Fed. R. Bankr. P. 3002(a); *New York v. Irving Trust Co.*, 288 U.S. 329, 333 (1933). The process of the allowance of claims against the estate is governed by section 502 of the Code, which lists the relevant grounds for allowance and disallowance. 11 U.S.C. §502.

The Bankruptcy Code provides further that certain obligations that a debtor owes to a creditor are "non-dischargeable"—meaning that they pass through bankruptcy unaffected and are not extinguished. *Id*. §523. On May 7, 1996, Pierce filed a complaint to determine the nondischargeability of his defamation claim against Vickie under section 523(a)(6). JA-59. The complaint alleged that, *after* J. Howard died, Vickie's attorneys made various defamatory statements against Pierce knowing them to be false. JA-62-64. The complaint alleged that Vickie was aware of and participated in a conspiracy to make these statements. JA-65. The complaint requested a determination that Pierce's claim was non-dischargeable, but did not ask the Bankruptcy Court to decide the defamation claim itself. JA-66; Pet. App. 67-68 (Kleinfeld, J., concurring).

On June 12, 1996, Pierce filed a proof of claim form with a copy of the nondischargeability complaint attached. JA-67. In filing the form, Pierce checked the box indicating that his claim was one for a personal injury tort. JA-68; Pet. App. 78.

On June 14, 1996, Vickie filed a counterclaim to Pierce's *nondischargeability* complaint, alleging that, based on facts occurring *before* J. Howard died, J. Howard intended to give her a

substantial gift and that Pierce had interfered. ER-936, 941-45, 948-49. Vickie later objected separately to Pierce's proof of claim (listed as number 0018 in her objection), but raised no counterclaim to Pierce's proof of claim. SER-6031-32. Thus, Vickie asserted her tortious interference claim in response to Pierce's request that the bankruptcy court determine the nondischargeability of her personal liability for defamation, not in response to the defamation claim against her estate.[8]

Pierce objected to the Bankruptcy Court's assertion of jurisdiction over Vickie's claim and requested that the Bankruptcy Court abstain. *Marshall*, 392 F.3d at 1126; ER-957, 1049-69; SER-6754. Likewise, Pierce did not expressly consent in writing to the Bankruptcy Court's jurisdiction. Pet. App. 266 & n.17; Fed. R. Bankr. P. 7012(b).[9]

In September 1998, Pierce further moved to withdraw the entire litigation to the district court (the "District Court"). JA-94. As grounds for withdrawal, Pierce stated *inter alia* that his

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[8] Stern's counsel conceded this point below. 9th BR-132-33 n.7 (2003).

[9] Stern incompletely characterizes Pierce's intentions concerning his proof of claim not by what Pierce filed or pled, but with brief excerpts of what Pierce or his counsel said at certain points. BR.3.

defamation claim was a personal injury tort claim and that the Bankruptcy Court lacked jurisdiction to decide it under 28 U.S.C. §157(b)(5). JA-110-12. The District Court initially granted the motion, JA-123, but later returned the matter to the Bankruptcy Court after receiving an internal memorandum from the Bankruptcy Court. JA-138-39.[10]

On March 5, 1999, while Vickie's counterclaim for tortious interference remained pending, Vickie confirmed her chapter 11 plan and received a discharge of her debts. ER-2200-02. On November 5, 1999, the Bankruptcy Court granted Vickie's motion for summary judgment on Pierce's nondischargeability complaint. ER-2756-58. Instead of resolving the narrow bankruptcy question of nondischargeability, the court summarily determined that Vickie had no liability for any defamatory conduct and that Pierce had no claim. ER-2757. Significantly, the resolution of Vickie's tortious interference claim

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[10] On January 12, 1999, the bankruptcy judge stated his intent to submit a memorandum to the district court "to assist in his review of the matter" and that the contents would not be "available to the parties." ER-2158. In a subsequent hearing, the district judge acknowledged receiving the memorandum, stating that "as far as the memorandum that he shared with me, he does have the authority to try everything [other than a separate lawsuit not at issue in this proceeding]." JA-128.

played no part in the allowance or disallowance of Pierce's claim. Following her bankruptcy discharge and the subsequent summary resolution of Pierce's underlying defamation claim, Vickie litigated her tortious interference claim against Pierce in both the Bankruptcy Court and the Probate Court.

c. On October 25, 1999, the Bankruptcy Court commenced hearings on Vickie's tortious interference claim. Over five days of hearings, the Bankruptcy Court severely circumscribed Pierce's presentation of evidence and made findings of fact adverse to him as a sanction for alleged discovery abuses that remain strenuously disputed. ER-2173-75, 2641-49.[11] The Bankruptcy Court had previously entered its sanctions order against Pierce on February 2, 1999. As the Court of Appeals explained, "[t]he sanctions imposed by the court deemed almost all facts alleged in the pleadings filed by the attorneys for Vickie...to be admitted facts...." *Marshall*, 392 F.3d at 1126. In addition, "[a]s a re-

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[11] Contrary to Stern's statements, BR.4-5 nn.4-5, Elaine, Pierce's widow, contends that Pierce did not destroy any documents relevant to Vickie's claim, that he did not fail to produce critical documents, and contests Stern's other allegations of discovery abuse—none of which have been resolved on appeal, apart from the District Court's initial vacatur of the Bankruptcy Court's sanctions as not supported by the record, discussed *infra*.

sult of the sanctions order, [Pierce] was not allowed to present conflicting evidence...." *Id.* at 1127; Pet. App. 19 n.17.

Pierce appealed the sanctions order to the District Court. On March 9, 1999, the District Court vacated the sanctions order, finding that the order was not supported by the record. ER-2211-12, 5744-49. On remand, and without taking evidence, the Bankruptcy Court reimposed its sanctions order. ER-2240.

On January 18, 2000, "the bankruptcy court *sua sponte* withdrew its sanctions order, but did not change any of its other rulings which had been based on the allegations by Vickie...deemed true." *Marshall*, 392 F.3d at 1127. In doing so, the Bankruptcy Court "did not hold another evidentiary hearing." *Id.*

On September 27, 2000, nearly a year after it summarily resolved and dismissed Pierce's underlying defamation claim, the Bankruptcy Court determined that Vickie had an expectancy of an inheritance, based on a "widow's election" theory, and awarded Vickie $449,754,134. Pet. App. 18; ER-3031-38. On October 6, 2000, the Bankruptcy Court *sua sponte* issued a revised opinion, abandoning its "widow's election" theory and deeming that Vickie had an expectancy of a substantial portion of J. Howard's wealth. Pet. App. 19; ER-3047-55. Concluding on the basis of

presumed facts imposed as a sanction that Pierce interfered with this expectancy, the court again awarded Vickie $449,754,134. On November 21, 2000, the Bankruptcy Court assessed punitive damages against Pierce in the amount of $25 million and, on December 29, 2000, entered judgment in Vickie's favor for approximately $475 million (the "Bankruptcy Judgment"). ER-3360.

In its opinion of December 29, 2000, the Bankruptcy Court concluded that it had jurisdiction to enter the Bankruptcy Judgment, rejecting Pierce's argument that the "probate exception" to federal jurisdiction applied. Pet. App. 286-99. In addition, the court concluded that Vickie's claim for "tortious interference" constituted a counterclaim to Pierce's defamation claim and, thus, a "core" bankruptcy proceeding under 28 U.S.C. §157(b)(2)(C). ER-306-07.

d. Pierce appealed the Bankruptcy Judgment to the District Court. On June 20, 2001, the District Court affirmed the Bankruptcy Court's determination that the "probate exception" did not apply, but reversed the Bankruptcy Court's conclusion that Vickie's tortious interference claim constituted a "core" proceeding that the Bankruptcy Court could finally resolve and vacated the Bankruptcy Judgment. Pet. App. 283. The District Court concluded that Vickie's claim was not "core" because it was only "some-

what related" to Pierce's defamation claim, and Pierce was entitled to an adjudication of Vickie's allegations in an Article III forum. Pet. App. 283.

Following vacatur of the Bankruptcy Court's decision, Pierce moved in the District Court to dismiss Vickie's "tortious interference" counterclaim on the grounds that it was barred by the doctrines of claim and issue preclusion following the Probate Court's final judgment. Pet. App. 222-23. The District Court denied the motion. Pet. App. 234.

Asserting its own bankruptcy jurisdiction, the District Court conducted a "*de novo*" review of Vickie's "tortious interference" claim. Like the Bankruptcy Court, the District Court refused to hear many of Pierce's percipient witnesses, Pet. App. 63 n.33, but heard all of Vickie's witnesses. ER-5280-87. On March 7, 2002, the District Court ultimately awarded Vickie $88,585,534.66 on her claim (the "District Court Judgment"), concluding that J. Howard's signature on the Trust was forged; that the estate plan did not reflect J. Howard's true intentions; and that Pierce had thwarted J. Howard's intent to give Vickie an alleged gift by engaging in illegitimate "estate planning transactions for J. Howard," Pet. App. 90-214, 215-16, conclusions diametrically opposed to the determinations of the Probate Court

and, Pierce argued, unsupported by any evidence.

The District Court did not reach the issue whether Pierce committed discovery abuse and declined to consider the Bankruptcy Court's sanctions rulings. Pet. App. 98-99. Accordingly, the merits of the sanctions order and the Bankruptcy Judgment on which it was based have never been reviewed on appeal, the District Court having vacated the Bankruptcy Judgment on jurisdictional grounds.

Prior to conducting its own hearings, the District Court ordered a complete "redo" of discovery that included turning over to Vickie's counsel not only all of the relevant documents, but also all of Pierce's privileged communications with his attorneys, ER-4063, including the privileged document between Pierce and his counsel that Stern has reproduced in the Joint Appendix. JA-53. Pierce appealed the District Court Judgment to the Court of Appeals.

e. In vacating the District Court Judgment, the Ninth Circuit first held that the "probate exception" applied in this matter. *Marshall*, 392 F.3d at 1137. This Court subsequently reversed that determination. *Marshall v. Marshall*, 547 U.S. 293 (2006). Following remand, the principal parties died. Stern assumed responsibility for pursuing the interests of Vickie's

estate. Elaine, Pierce's widow, assumed responsibility for pursuing the interests of Pierce's estate.

In the decision below, the Ninth Circuit held that Vickie's counterclaim to Pierce's nondischargeability complaint was not a "core" bankruptcy proceeding arising in a bankruptcy case because her counterclaim was "not so closely related to Pierce Marshall's defamation claim that it must be resolved in order to determine the allowance or disallowance of his claim against her bankruptcy estate." Pet. App. 51. Accordingly, because it resolved a "related to" matter, the Bankruptcy Judgment properly constituted merely *proposed* findings of fact and conclusions of law subject to "*de novo*" review in the District Court, and not a final judgment. *See* Fed. R. Bankr. P. 9033. In contrast, the Probate Judgment was properly a final judgment. Because the Probate Judgment preceded the District Court Judgment and resolved issues dispositive of Vickie's "tortious interference" claim, the Ninth Circuit applied the doctrine of issue preclusion and held that the earlier final Probate Judgment prevented Vickie from succeeding on her claim for tortious interference in the District Court. (Stern did not seek review of the court's preclusion determination.) Pet. App. 55-57.

Judge Kleinfeld filed a concurring opinion "to offer additional grounds that compel the

same result," Pet. App. 66, including that the Bankruptcy Court lacked jurisdiction over Pierce's defamation claim, and likewise Vickie's counterclaim, because both constituted personal injury tort claims. Pet. App. 74-75.

In resolving this case on jurisdictional and preclusion grounds, the court below did not address several issues raised, briefed, and argued, including (1) whether Vickie's claim was barred by the Texas statute of frauds; (2) whether Pierce's due process rights were violated; (3) whether there is any evidence to support Vickie's claim that Pierce engaged in wrongdoing; (4) whether bankruptcy jurisdiction existed over Vickie's claim given that she had no unpaid creditors and the outcome of the litigation over her claim could benefit no one other than her; (5) whether Texas recognizes a cause of action for tortious interference with an expectancy of a gift and, if so, what are its elements; (6) whether Vickie's claim is barred by doctrines of issue and claim preclusion, including the "last-in-time" rule; and (7) whether jurisdiction in the Bankruptcy Court was precluded because Pierce's claim is a personal injury tort claim. In addition, although Pierce appealed the Bankruptcy Judgment to the District Court on a variety of grounds, the District Court reached only the jurisdictional issues discussed above, leaving the others unresolved, including the merits of the sanctions orders. These issues remain open. *See*

*United States v. O'Hagan*, 521 U.S. 642, 678 (1997).

## SUMMARY OF THE ARGUMENT

Vickie's alleged cause of action for tortious interference with an expectancy of a gift is a claim that pre-dates her bankruptcy and arises under state law. Adhering to the requirements of Article III, the principles of *Marathon* and *Celotex*, and likewise the express provisons, history, and purposes of the governing statutory scheme, Vickie's state law claim is, at best, a "related to" matter, and the decision below should be affirmed.

First, the adjudication of Vickie's state law claim in federal court requires the exercise of the federal judicial power. Under the provisions of Article III, that power must be exercised by a federal judge with the guarantees of lifetime tenure and irreducible salary. None of the recognized exceptions to that requirement apply in this case. As a bankruptcy matter, it was not necessary for the Bankruptcy Court to finally decide Vickie's claim in order to allow or disallow Pierce's proof of claim. Consistent with the requirements of Article III, the Bankruptcy Court could not finally "hear and determine" Vickie's claim.

Second, when Congress created the current statutory scheme, it did so to comply with the requirements of *Marathon*, and likewise to promote federalism and fairness to non-debtor litigants. Consistent with these values, Congress purposefully limited the bankruptcy courts' jurisdiction in section 157(b)(1) to "core proceedings arising under title 11, or arising in a case under title 11." Under a plain reading of this provision, a debtor's state law cause of action that exists prior to bankruptcy does not fall within its scope. Among other reasons, such an action does not "arise under" the Bankruptcy Code, or "arise in" a case under the Code; it arises under state law. Further, the fact that the debtor asserts the state law claim as a "counterclaim" to a proof of claim does not alter the analysis, especially where, as here, it is not necessary to adjudicate the debtor's claim in order to allow or disallow the creditor's proof of claim. Applying these principles in this case, Vickie's state law claim constitutes a "related to" matter that the Bankruptcy Court could "hear" and address only by submitting proposed findings of fact and conclusions of law, subject to *de novo* review in the district court.

Finally, Congress explicitly provided that all "personal injury tort...claims shall be tried in the district court." 28 U.S.C. §157(b)(5). Pierce's defamation claim is a personal injury tort claim within the meaning of this provision. Given that

the bankruptcy court could not decide Pierce's defamation claim *at all*, there is no basis for the conclusion that the Bankruptcy Court, for efficiency or other reasons, should have decided Vickie's tortious interference claim as a "counterclaim" to Pierce's claim.

## ARGUMENT

### I. The Constitution Bars a Non-Article III Bankruptcy Court from Finally Adjudicating a State Law Counterclaim Where the Adjudication Is Not Necessary to the Claims Allowance Process.

A. Stern and his *amici* contend that 28 U.S.C. §157(b)(2) authorizes a non-Article III bankruptcy judge to hear and finally determine a debtor's state-law counterclaim against any creditor filing a claim against the estate, subject only to ordinary appellate review. That interpretation is contrary to Article III. In addition, because it raises serious constitutional questions, it should be avoided. *See Crowell v. Benson*, 285 U.S. 22, 62 (1932).

Vickie's counterclaim against Pierce alleged that he tortiously interfered with her expectancy of an *inter vivos* gift. To the extent Texas law recognizes this cause of action at all, it is a classic common-law tort. *See In re Marshall*,

275 B.R. 5, 50-51 & n.43 (C.D. Cal. 2002). This sort of state-law action between two private parties is a "private right" controversy sheltered at the heart of Article III.

In *Murray's Lessee v. Hoboken Land & Improvement Co.*, this Court acknowledged the existence of a class of cases "involving public rights" that "[C]ongress may or may not bring within the cognizance of the courts of the United States, as it may deem proper." 59 U.S. (18 How.) 272, 284 (1856). The Court emphasized, however, that Congress may *not* "withdraw from judicial cognizance any matter which, from its nature, is the subject of a suit at the common law, or in equity, or admiralty." *Id.* The Constitution requires that such matters of private right be decided by Article III judges.

Since *Murray's Lessee*, the Court has refined the boundaries of the "public rights" exception. Some cases have stated that "a matter of public rights must at a minimum arise 'between the government and others.'" *Marathon*, 458 U.S. at 69 (plurality) (quoting *Ex Parte Bakelite Corp.*, 279 U.S. 438, 451 (1929)). More recently, the Court rejected the conclusion "that the right to an Article III forum is absolute unless the Federal Government is a party of record." *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 586 (1985). Instead, the Court recognized that, in rare cases, Congress "may create a seem-

ingly 'private' right that is so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution with limited involvement by the Article III judiciary." *Id.* at 594.

The Court has made clear, however, that even this broadened category of "public rights" captures only rights created by Congress. As the Court explained in its most recent discussion of the issue, "[t]he crucial question, in cases not involving the Federal Government, is whether Congress, acting for a valid legislative purpose pursuant to its constitutional powers under Article I, has created a seemingly 'private' right that is so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution with limited involvement by the Article III judiciary." *Granfinanciera*, 492 U.S. at 54 (brackets and internal quotation marks omitted).

The Court has also made clear that "if a statutory cause of action…is not a 'public right'" under this standard, "then Congress may not assign its adjudication to a specialized non-Article III court lacking the essential attributes of the judicial power." *Id.* at 53 (internal quotation marks omitted). And it has likewise emphasized that suits between private parties arising under state common law are paradigmatic cases of "private right" in which the parties have a right to a decision by an Article III tribunal. *See*

*Marathon,* 458 U.S. at 70 (plurality); *id.* at 90 (Rehnquist, J., concurring in judgment). As the Court has since reiterated, *Marathon* stands for the proposition that "Congress may not vest in a non-Article III court the power to adjudicate, render final judgment, and issue binding orders in a traditional contract action arising under state law, without consent of the litigants, and subject only to ordinary appellate review." *Thomas*, 473 U.S. at 584. Because Vickie's claim against Pierce for tortious interference is a paradigmatic private-right legal dispute, it is precisely the kind of claim that may not be decided by a non-Article III tribunal.

B. In light of *Marathon* and *Granfinanciera*, it is clear that if Pierce had not filed a claim against Vickie's estate, her common-law claim for tortious interference with an *inter vivos* gift could not be decided constitutionally by a non-Article III tribunal. Neither Stern nor the Government appears to dispute this proposition. Instead, they contend that Pierce's filing of a proof of claim somehow converts Vickie's counterclaim into a matter of public right or otherwise alters the constitutional calculus. Their arguments are unsound.

Stern and the Government rely heavily on *Katchen v. Landy*, 382 U.S. 323 (1966), and *Langenkamp v. Culp*, 498 U.S. 42 (1990). BR.41-49; USBR.24-28. Those cases held that a creditor

that asserts a claim against a bankruptcy estate has no right to a jury trial on the estate's counterclaim to recoup a preferential transfer to that creditor, even though the creditor would have been entitled to a jury in the preference dispute had it not asserted a claim in bankruptcy.

But the preference counterclaims at issue in *Katchen* and *Langenkamp* differ from the counterclaim at issue here in a crucial respect: They were integral to the claims allowance process because relevant provisions of both the 1898 Act at issue in *Katchen* and the Bankruptcy Code at issue in *Langenkamp* required that the preference claim be decided and any money owed by the creditor returned before the creditor's claim could be allowed. The common-law counterclaim at issue here, of course, is entirely different. Because there was no need to adjudicate Vickie's counterclaim for tortious interference in order to resolve Pierce's proof of claim—and because Vickie's claim against Pierce is an archetypal state-law tort claim that has nothing to do with bankruptcy law or procedures—the Bankruptcy Court lacked jurisdiction to enter final judgment on Vickie's claim.

As *Katchen* explained, the 1898 Act's provisions regarding preferences "contain[ed] an[] important congressional directive around which much of this case turns." 382 U.S. at 330. Specifically, §57(g) of the Bankruptcy Act "forb[ade]

the allowance of a claim when the creditor has 'received o[r] acquired preferences...void or voidable under this title,' absent a surrender of any preference." *Id.* Thus, "[u]navoidably and by the very terms of the Act, when a bankruptcy trustee presents a §57, sub. g objection to a claim, the claim can neither be allowed nor disallowed until the preference matter is adjudicated." *Id.* Likewise, the current law provides the same rule. *See* 11 U.S.C. §502(d).

Vickie's counterclaim against Pierce, however, is not a federally-created preference action, and there was no need to decide it in order to determine whether or not to allow Pierce's claim against the estate. (In fact, the Bankruptcy Court actually resolved Pierce's claim nearly a year before it decided Vickie's counterclaim.) Accordingly, the resolution of the counterclaim at issue here simply was not "part and parcel of the allowance process," *Katchen*, 382 U.S. at 330, as in *Katchen* and *Langenkamp*.

Likewise, the resolution of Pierce's claim against the estate did not fully decide Vickie's counterclaim—in fact it did not resolve it at all. This is not surprising, given that the allowance or disallowance of claims involves a process conducted within the parameters of section 502 of the Code, which does not require (or necessarily permit) the determination of all counterclaims—even compulsory ones—in order to allow or

disallow a claim. 11 U.S.C. §502; *see Travelers Cas. & Sur. Co. v. Pacific Gas & Elec. Co.*, 549 U.S. 443, 449-50 (2007) (discussing the operation of section 502). As this Court has explained, a proof of claim "must" be allowed, unless one of the enumerated grounds for disallowance set forth in section 502(b) exists. *Id.* at 449 ("even where a party in interest objects, the court 'shall allow' the claim 'except to the extent that' the claim implicates any of the nine exceptions enumerated in §502(b)"). Significantly, the enumerated list in section 502(b) does *not* include as a ground for disallowance the fact that the debtor holds a tort claim against the creditor.[12] Thus, for purposes of section 502, Vickie's tortious interference claim was neither procedurally nor substantively relevant to (let alone intertwined with) the allowance or disallowance of Pierce's claim. In addition, because it involved vastly different and more complex factual and legal elements, the resolution of Vickie's counterclaim required the adjudi-

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[12] Section 502(b) prescribes a list of defenses that may be asserted in opposition to a proof of claim, including defenses demonstrating the "unenforceability" of a claim under section 502(b)(1) (*e.g.*, a statute of limitations defense). *See* 4 COLLIER ON BANKRUPTCY ¶502.03[2][b] at 502-21 (16th ed. 2010) (discussing section 502(b)(1)). The fact that the debtor holds a claim for money damages against the creditor is not such a defense.

cation of a far broader bundle of issues. *See* Pet. App. 51-55.

Stern and the Government seek to minimize the fundamental aspects of *Katchen* (and the current law) described above, preferring instead to focus on the Court's statement, quoting *Alexander v. Hillman*, 296 U.S. 222, 241 (1935), that "[b]y presenting their claims [the claimants against the estate] subjected themselves to all the consequences that attach to an appearance." *Katchen*, 382 U.S. at 335. They also place great weight on *Katchen*'s statement that its result was "in harmony with the rule generally followed by courts of equity that, having jurisdiction of the parties to controversies brought before them, they will decide all matters in dispute and decree complete relief." *Id.*

Reliance on these very general statements, however, begs the questions of *what* consequences attach to an appearance in bankruptcy court, and *what* controversy was brought before the Bankruptcy Court in this case. *Katchen*'s ultimate holding on when bankruptcy courts may decide counterclaims consistent with the Seventh Amendment is quite specific. *Katchen* leaves no doubt that its Seventh Amendment holding extends *only* to counterclaims (*e.g.*, preference actions) that must necessarily be decided in order to complete the claims allowance process—not to any counterclaim that happens to

arise out of the same transaction as the creditor's claim. The Court confirmed this interpretation in *Granfinanciera*, explaining that "[o]ur decision [in *Katchen*] turned...on the bankruptcy court's having 'actual or constructive possession' of the bankruptcy estate, and its power and obligation to consider objections by the trustee *in deciding whether to allow claims against the estate*." 492 U.S. at 57 (emphasis added). In this case, it was not necessary to decide Vickie's claim in order to allow or disallow Pierce's claim. Accordingly, *Katchen* provides no support for Stern's analysis—on the contrary, it supports the analysis of the court of appeals.

C. Stern next argues that by choosing to file a claim against Vickie's estate, Pierce effectively waived his right to an Article III tribunal. BR.51-55. This claim is meritless. To be sure, this Court has held that, under certain circumstances, a party can waive his personal rights under Article III. In *Commodity Futures Trading Comm'n v. Schor*, the Court concluded that a party waived his right to have an Article III tribunal decide a counterclaim against him when he "elect[ed] to forgo his right to proceed in state or federal court on his claim" and instead proceeded in an administrative tribunal within the Commodity Futures Trading Commission. 478 U.S. 833, 849 (1986). The Court concluded that by filing his claim before the CFTC, "Schor effectively agreed to an adjudication by the CFTC of

the entire controversy," including counterclaims, in that forum. *Id.* at 850.

Stern seeks to extend the reasoning of *Schor* to this case, but fails to note that *Schor* differed from this case in a critical respect: As the Court emphasized, "Schor *had the option of having the common law counterclaim against him adjudicated in a federal Article III court*, but...chose to avail himself of the quicker and less expensive procedure Congress had provided him." 478 U.S. at 850 (emphasis added).

No similar justification applies in this case because there was no other forum in which Pierce could have pursued his claim against Vickie. He was required to file a claim in bankruptcy if he wished to secure his right to a pro rata share of her estate. Indeed, this Court recognized precisely this feature of bankruptcy in *Granfinanciera*: "[In *Schor*] [t]he investors could have pursued their claims, albeit less expeditiously, in federal court. By electing to use the speedier, alternative procedures Congress had created, the Court said, the investors waived their right to have the state-law counterclaims against them adjudicated by an Article III court. *Parallel reasoning is unavailable in the context of bankruptcy proceedings, because creditors lack an alternative forum to the bankruptcy court in which to pursue their claims*." *Granfinanciera*,

492 U.S. at 59 n.14 (emphasis added) (citation omitted).[13]

D. Stern and the Government also argue that, in light of the changes made in the 1984 amendments, the bankruptcy court's exercise of jurisdiction over Vickie's counterclaim can be justified based on the "adjunct" theory rejected in *Marathon*. BR.61-64; USBR.30-32. That argument should be rejected for several reasons.

First, to comply with Article III, "the functions of the adjunct must be limited in such a way that 'the essential attributes' of judicial power are retained in the Art. III court." *Marathon*, 458 U.S. at 81 (plurality) (quoting *Crowell*, 285 U.S. at 51). It cannot be said that the "essential attributes" of judicial power are maintained in the district court when the bankruptcy court decides state-law matters of private right under §157(b)(1)'s provisions for "core proceedings" "arising under" the Bankruptcy Code, or

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[13] Stern asserts that Pierce "could have avoided core jurisdiction…by seeking only a nondischargeability ruling" rather than filing a claim against the estate as well. BR.55 n.22. But this is no answer, because a nondischargeability ruling only preserves the possibility of a future recovery against the debtor's post-bankruptcy assets, if any. Filing a claim in bankruptcy is the means by which a creditor can pursue its right to a share of the bankruptcy estate.

"arising in" a case under the Code. Most obviously, in such proceedings, bankruptcy courts are empowered to enter final judgments, which is the paradigmatic attribute of the judicial power. *Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211, 219 (1995) ("[A] 'judicial Power' is one to render dispositive judgments." (internal quotation marks omitted)).

Moreover, the bankruptcy court's determinations are subject only to ordinary appellate review. As Justice Rehnquist explained in *Marathon*, "the bankruptcy court is not an 'adjunct' of either the district court or the court of appeals" when it can resolve "[a]ll matters of fact and law in whatever domains of law to which the parties' dispute may lead …, with only traditional appellate review by Art. III courts." 458 U.S. at 91 (Rehnquist, J., concurring). The same conclusion follows here. *See United States v. Raddatz*, 447 U.S. 667, 683 (1980) (upholding the Magistrates Act against an Article III challenge because in matters delegated to magistrate judges, "the ultimate decision is made by the district court").

Second, and more fundamentally, even Stern acknowledges that *Crowell*'s adjunct theory allows a non-Article III body to make factual determinations only "with respect to *congressionally created rights*." BR.63 (quoting *Marathon*, 458 U.S. at 80-81 (emphasis added)). Vickie's alleged right to recover for tortious in-

terference with an *inter vivos* gift, however, is a creation of state law, not federal statute. Thus, the full protections of Article III apply. *See Marathon*, 458 U.S. at 83-84 (plurality). As a result, the bankruptcy court's entry of final judgment on Vickie's tortious interference claim cannot be justified on an "adjunct" theory.

## II. The Bankruptcy Court Could Not Finally Hear and Determine Vickie's State Law Counterclaim Under Section 157.

A. It is evident that Congress enacted the provisions of the current bankruptcy jurisdictional scheme in response to *Marathon* and in an effort to comply with its requirements. It is also evident that, in enacting section 157, Congress rejected proposals calling for an Article III bankruptcy court with broadly expansive jurisdictional reach. In opting for bankruptcy tribunals with more modest authority, Congress eschewed administrative efficiency and centralized adjudication as the exclusive goals of its legislative solution and embraced not only the requirements of Article III, but also values of federalism and fairness in crafting the various subparts and mechanisms of sections 1334 and 157. These provisions should be interpreted in this light.

In fleshing out its design, Congress further elected to create a stututory structure superintended by three jurisdictional concepts, namely jurisdiction over proceedings "arising under" the Bankruptcy Code; proceedings "arising in" bankruptcy cases; and proceedings "related to" such cases. Congress vested the district courts with this jurisdiction in section 1334(b) and then authorized the delegation of this jurisdiction to the bankruptcy courts in section 157(a). Because these three concepts of "arising under," "arising in," and "related to" are so obviously foundational, it is not surprising that this Court has stated that a bankruptcy court's jurisdiction "must be based on the 'arising under,' 'arising in,' or 'related to' language of §§1334(b) and 157(a)." *Celotex*, 514 U.S. at 307.

Structurally, Congress then divided this tripartite jurisdictional system into two branches. First, it authorized bankruptcy judges to finally "hear and determine" all "core proceedings arising under title 11, or arising in a case under title 11," subject to ordinary appellate review. 11 U.S.C. §§157(b)(1), 158. Second, it authorized bankruptcy judges to "hear" proceedings that are "related to" a case under title 11, but not to finally decide them. *Id*. §157(c)(1).

In creating the first branch, Congress introduced a new concept that does not appear in

section 1334(b) or 157(a)—the phrase "core proceedings." Congress defined the phrase "core proceedings" in section 157(b)(2) to include a nonexhaustive list of matters. Some of these are fairly limited and specific, such as "proceedings to determine, avoid, or recover preferences." *Id.* §157(b)(2)(F). Others, however, are open-ended, such as "matters concering the administration of the estate," *id.* §157(b)(2)(A); and "other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor…relationship," *id.* §157(b)(2)(O). By themselves, these open-ended authorizations threaten to vest an exceptionally sweeping jurisdiction in the bankruptcy courts. But it is obvious from the overall structure of the statute that Congress intended the "arising under" and "arising in" concepts to impose some restraint on their reach. Among other reasons, section 157(b)(1) does not confer jurisdiction simply over "core proceedings"; it confers it over "core proceedings" that "arise under" the Code, or that "arise in" a case under the Code.

Ignoring the "arising under" and "arising in" language, Stern contends that the Bankruptcy Court possessed jurisdiction to finally decide Vickie's tortious interference claim exclusively by reference to section 157(b)(2)(C), which includes as an example of "core proceedings" "counterclaims by the estate against persons filing claims against the estate."

*Id*. §157(b)(2)(C). *See* BR.14. Stern asserts that Vickie's tortious interference claim falls within the scope of this provison as a "compulsory counterclaim," and that "Pierce forced Vickie to file her compulsory counterclaim in the bankruptcy by filing his proof of claim for defamation." BR.14. Stern contends further that, by filing his proof of claim, Pierce triggered the claims-allowance process, thereby "acquiesc[ing] to the adjudication of integrally-related counterclaims." BR.16.

Stern's argument contains several legal errors. At the outset, however, his factual contentions require qualification. Vickie did not file her tortious interference claim as a counterclaim to Pierce's proof of claim. Although she objected to his claim (listed as claim number 0018 in her pleading), she did not assert her tortious interference counterclaim in her objection. *See* SER-6030-31. In addition, her tortious interference counterclaim played no part in the allowance or disallowance of Pierce's proof of claim, which was disposed of separately long before the Bankruptcy Court decided her tortious interference claim. ER-2757.

Stern contends that "the counterclaim arose out of the same transaction that Pierce placed at issue by seeking a distribution from the bankruptcy estate." BR.14. This factual assertion also requires qualification. The

"transaction" underlying Pierce's claim is Vickie's alleged responsibility for her attorneys' defamatory statements made *after* J. Howard died on August 4, 1995. JA-59-66. In contrast, the "transaction" underlying Vickie's tortious interference counterclaim is Pierce's alleged interference with a gift *before* J. Howard passed away. ER-941-45, 948-49. The only connection between the two sets of circumstances is Stern's contention that the proof of certain facts alleged in Vickie's counterclaim could have been asserted as a "truth" defense to the defamation claim. BR.14. But Vickie did not actually object to Pierce's proof of claim on this basis.

Instead, Vickie asserted her tortious interference claim as a counterclaim to Pierce's nondischargeability complaint. This complaint, of course, was not a claim against Vickie's bankruptcy estate. It was a complaint to determine whether her personal liability for defamation would survive her bankruptcy discharge. *See* 11 U.S.C. §523; *Kawaauhua v. Geiger*, 523 U.S. 57, 60-62 (1998) (discussing nondischargeability requirements under section 523(a)(6)). Stern's factual predicates thus do not support his legal theory.

Stern's legal theory of "acquiesc[ing] to" jurisdiction is itself also unsound. At bottom, Stern seeks to elevate a procedural device—jurisdiction over "compulsory counterclaims"—

into a statutory authorization that section 157 does not condone. Although section 157(b)(2) defines core proceedings to include "counterclaims" against "persons filing claims against the estate," section 157(b)(1) confers jurisdiction only over such counterclaims that "arise under" the Code, or "arise in" a case under the Code. By ignoring these provisions, Stern misses an indispensible part of the statute.

Stern's theory is misplaced for another reason. As the court below explained, "[t]he test for compulsory counterclaims is generous and designed to promote judicial efficiency by avoiding multiplicity of lawsuits." Pet. App. 49-50; *see also, e.g.*, *Southern Constr. Co. v. Pickard*, 371 U.S. 57, 60 (1962). As explained above, however, judicial efficiency was not Congress' guiding concern in circumscribing the jurisdiction of the bankruptcy courts in *Marathon*'s wake. As a result, section 157 has a narrower focus. *See* Pet. App. 50 (explaining that section 157 "is much narrower because it is designed to comply with the constitutional limitations on the bankruptcy court's jurisdiction as set forth in *Marathon*."). Likewise, the claims allowance process has a narrower focus and does not supply a procedural vehicle to ventilate counterclaims like Vickie's tortious interference claim.

B. Although section 157 does not define the phrases "arising under" or "arising in," they have developed a generally accepted meaning that excludes Vickie's pre-existing state law claim from the scope of section 157(b)(1) and renders her claim, at most, a "related to" proceeding. The common understanding of the phrase "arising under" is that it encompasses causes of action created by the Bankruptcy Code. Pet. App. 40 (citing cases); *see In re Wood*, 825 F.2d 90, 96-97 (5th Cir. 1987) ("Congress used the phrase 'arising under [the Bankruptcy Code]' to describe those proceedings that involve a cause of action created or determined by a statutory provision of [the Code]."). The common understanding of the phrase "arising in" is that it encompasses matters that are "not based on any right expressly created by title 11, but nevertheless, would have no existence outside of bankruptcy." Pet. App. 40-41 (citing cases) (citations and internal quotation marks omitted); *see also Wood*, 825 F.2d at 96-97 ("'arising in' proceedings are those that are not based on any right expressly created by [the Bankruptcy Code], but nevertheless, would have no existence outside of the bankruptcy."). Vickie's tortious interference claim obviously falls outside the scope of these standards; it is a creation of state law that could be brought in a court outside of bankruptcy.

But even if the Court were to conclude that the phrases "arising under" and "arising in" do not encompass these precise boundaries, it is still clear that they cannot include Vickie's tortious interference claim, which so plainly "arises under" state law. *See* S. REP. NO. 98-55, at 40 (1983) (characterizing traditional state law "contract claims" and the like as those "*arising purely under State law*") (emphasis added); 130 CONG. REC. H6204-05 (daily ed. March 21, 1984) (statement of Rep. Kindness) (criticizing the original jurisdictional scheme of the 1978 Act on the ground it sought to "spread the jurisdiction of the bankruptcy court" too far, permitting bankruptcy courts to adjudicate too much, namely "*rights arising under State law*") (emphasis added); THE AMERICAN HERITAGE COLLEGE DICTIONARY 76 (4th ed. 2004) (defining words "arise" and "arising" as "4. To come into being; originate. 5. To result, issue, or proceed."); WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 117 (1986) (defining words "arise" and "arising" as "4a: to originate from a specified source...b: to come into being...6...a: to come about : come up : take place"); A DICTIONARY OF MODERN ENGLISH USAGE 35 (2d ed. 1965) (word "arise," it is said, "[i]n ordinary speech and writing...means merely to come into existence or notice or to originate *from*").

Stern (implicitly) and the Government (explicitly) contend that the Court should simply

ignore the "arising under" and "arising in" limitations in applying section 157(b). BR.26-28; USBR.18-20. Doing so, however, would be a textual disaster: not only would it render significant portions of the statute superfluous, but it also would render the statute as a whole incoherent and unconstitutional. *See Dole Food Co. v. Patrickson*, 538 U.S. 468, 476-77 (2003) ("we should not construe the statute in a manner that is strained and, at the same time, would render a statutory term superfluous").

For example, removing the "arising under" and "arising in" concepts as limitations on the broad definition of "core proceedings" would effectively gut the separate category of "related to" jurisdiction under section 157(c). Section 157(b)(2)(A) defines "core proceedings" broadly to include "matters concerning the administration of the estate." 28 U.S.C. §157(b)(2)(A). But that is also essentially the definition of "related to" proceedings: matters that "'in any way impact[] upon the handling and administration of the bankruptcy estate.'" *Celotex*, 514 U.S. at 308 n.6; *see also* Pet. App. 41-42 (discussing "related to" jurisdiction). Critically, applying the concepts of "arising under" and "arising in" prevents section 157(b)(2)(A) from overtaking section 157(c): with the "arising under" and "arising in" concepts in place, the category of "matters concerning the administration of the estate" under section 157(b)(2)(A) is properly limited to those that ei-

ther (1) constitute an administrative proceeding created by the Code, or (2) are otherwise unique to bankruptcy.

In addition, removing the "arising under" and "arising in" concepts as limitations on the broad definition of "core proceedings" would render section 157(b)(2)(O) unconstitutional. This provision defines "core proceedings" to include "proceedings affecting the liquidation of the assets of the estate." 28 U.S.C. §157(b)(2)(O). Left to its own devices, this category would subsume the adjudication of the very state law breach of contract action at issue in *Marathon*. As noted, a debtor's pre-existing cause of action is an asset that passes to the debtor's bankruptcy estate upon the bankruptcy filing. *Celotex,* 514 U.S. at 307-08 n.5; 11 U.S.C. §541. In order to liquidate such an asset, it ordinarily must be adjudicated, and any adjudication would obviously "affect" the asset's liquidation. Thus, if jurisdiction under section 157(b)(1) turns merely on whether a type of matter fits into one of the categories listed in section 157(b)(2), a bankruptcy court would be authorized under section 157(b)(2)(O) to do exactly what *Marathon* proscribes—the very result Congress intended to avoid. On the other hand, applying the "arising under" and "arising in" concepts readily prevents this from occurring by screening out such state law causes of action from the scope of section 157(b)(1) because they (1) are not created by the

Code, and (2) do not involve an administrative matter that is unique to the bankruptcy process.

The Government complains that reference to the "arising under" and "arising in" concepts as jurisdictional boundaries is undesirable because they are not defined, thereby giving little guidance to judges. USBR.19. But the same is true of the phrase "arising under" used in the general federal question jurisdictional provision, 28 U.S.C. §1331. The Government's complaint is no reason to abandon the statutory text.

The Government contends that reference to the murky provisions of section 157(b)(3) suggests that the phrases "arising under" and "arising in" have no meaning because section 157(b)(3) directs a bankruptcy judge to make the initial determination whether a particular matter is "core." USBR.18-19. This is countered, however, by the more serious problem occasioned by the Government's interpretation in connection with section 157(b)(4), which provides that "[n]on-core proceedings under section 157(b)(2)(B)...shall not be subject to the mandatory abstention provisions of section 1334(c)(2)." 28 U.S.C. §157(b)(4). Section 1334(c)(2) requires mandatory abstention for "related to" proceedings that can be timely adjudicated in a State forum. 28 U.S.C. §1334(c)(2). Under the Government's theory, there is no such thing as a "non-core" proceeding under section 157(b)(2)(B), and

thus section 157(b)(4) would have to be ignored in its entirety. In contrast, recognizing that the concepts of "arising in" and "arising under" limit the scope of "core proceedings" (effectively culling matters from the scope of section 157(b) and transferring them to the "related to" category of section 157(c)) saves section 157(b)(4) from surplusage.

The Government argues that adopting its approach would avoid a conundrum in the wording of the text owing to the fact that the section 157 does not appear to provide a jurisdictional home for items listed as "core proceedings" that do not also "arise under" or "arise in." USBR.20. This Court, however, has already suggested the answer to that concern: matters listed as examples of "core proceedings" that do not also "arise under" or "arise in" are simply to be treated as "related to" bankruptcy if they may conceivably have some impact on the administration of the estate. This follows logically and textually from the fact that there are three overarching categories of bankruptcy jurisdiction ("arising under," "arising in," and "related to") from which everything else derives. *See Celotex*, 514 U.S. at 307 (explaining that a bankruptcy court's jurisdiction "must be based on the 'arising under,' 'arising in,' or 'related to' language *of §§1334(b) and 157(a)*.") (emphasis added). In any event, the Government's concerns do not justify its radical reworking of the statute.

C. Stern contends that denying bankruptcy courts the ability to decide counterclaims will "confound bankruptcy administration." BR.15. Stern is incorrect. Adherence to the commands of Article III and the governing statutory text does not mean that bankruptcy courts are barred from "hearing" all counterclaims. On the contrary, it simply limits the bankruptcy courts' ability to finally decide a narrow category of pre-existing claims that arise under state law.

Many counterclaims commonly asserted in bankruptcy "arise under" the Bankruptcy Code, such as preference actions created by section 547 of the Code and equitable subordination actions created by section 510. 11 U.S.C. §§547, 510. Likewise, many counterclaims commonly asserted in bankruptcy "arise in" a case under the Code, such as post-bankruptcy causes of action to recover property wrongfully removed from the debtor's post-bankruptcy estate. Under section 157(b)(1), the bankruptcy courts may finally decide these types of counterclaims, subject to ordinary appellate review.

In contrast, for pre-existing state law counterclaims that neither "arise under" the Code nor "arise in" a case under the Code, the bankruptcy court may still "hear" such matters (other than personal injury tort claims), but may

not finally decide them. Instead, as noted, the court enters proposed findings of fact and conclusions of law subject to plenary *de novo* review in the Article III district court. In other words, treating pre-existing state law counterclaims as "related to" matters simply alters the relevant standard of review.

Altering the standard of review does not trench seriously on bankruptcy administration. At the same time, *de novo* review preserves the essential attributes of the judicial power for the Article III tribunal. This result is both faithful to the plain meaning of Congress' jurisdictional scheme and relevant constitutional principles.

D. Stern contends that limiting the scope of section 157(b)(2)(C) (the "counterclaim" provision) would reduce it to surplusage in light of section 157(b)(2)(B) (the "allowance or disallowance of claims" provision). BR.15, 34. Stern is mistaken. Under the Bankruptcy Code, the process of allowing and disallowing claims is analytically distinct from the process of determining counterclaims in general, and state law counterclaims in particular.

As noted, section 502 of the Code does not require the adjudication of state law counterclaims in order to allow or disallow a claim. Section 502(d), however, does create an exception for certain federally created

counterclaims—*e.g*, preference actions. 11 U.S.C. §502(d) (discussing, *inter alia*, §547). By statutory directive, these must be resolved as part of the claims allowance process. Because the Bankruptcy Code creates these causes of action, however, they "arise under" the Code within the meaning of section 157(b)(1), and, under the statutory scheme, the bankruptcy court has jurisdiction to finally determine them.

It may well be, of course, that there are some state law counterclaims that are so inextricably intertwined with the creditor's claim that, as a practical matter, they must be adjudicated in order to allow or disallow the claim. If so, the bankruptcy court may hear them. But because such counterclaims do not "arise under" or "arise in," the bankruptcy court may only address them by submitting proposed findings of fact and conclusions of law (unless the parties expressly consent otherwise in writing as required by the applicable rule).

Adjusting the standard meaning of the "arising in" concept, the court below concluded that if a state-law counterclaim is so inextricably intertwined with a proof of claim that, as a practical matter, it must be adjudicated in order to determine the creditor's claim, the bankruptcy

court may finally decide it. Pet. App. 50.[14] The decision below is a plausible alternative to Elaine's argument. This Court, however, need not choose between the two because, as the court below properly concluded, Vickie's tortious interference claim is not so inextricably intertwined with Pierce's defamation claim that it had to be decided in order to allow or disallow Pierce's proof of claim. Pet. App. 51-55. Accordingly, under either approach, the decision below should be affirmed.[15]

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[14] The court below reasoned that, if the concepts of "arising under" and "arising in" prevent the bankruptcy court from finally adjudicating state law counterclaims that are inextricably intertwined with a proof of claim, that would appear to create a redundancy with respect to section 157(b)(2)(C). Pet. App. 43. Section 157(b)(2)(C) includes as "core proceedings" "counterclaims by the estate against persons filing claims against the estate." The court below worried that all of the examples of counterclaims that "arise under" or "arise in" are already specifically enumerated elsewhere in section 157(b)(2) (*e.g.*, preference actions in section 157(b)(2)(F)). Pet. App. 43. The court therefore reasoned that section 157(b)(2)(C) must encompass something more. The court's concern, however, is readily redressed. Two common types of counterclaims that either "arise under" or "arise in," and are not specifically listed in section 157(b)(2), are equitable subordination actions created by section 510(c), 11 U.S.C. §510(c), and post-petition causes of action between the bankruptcy estate and others for the return of property wrongfully taken from the estate.

[15] Of course, if the Court were to conclude that, contrary to the decision below, Vickie's claim is inextricably inter-

## III. The Bankruptcy Court Lacked Jurisdiction To Hear or Determine Pierce's Defamation Action Under Section 157(b)(5) and Thus Lacked Jurisdiction To Hear Vickie's "Counterclaim."

A. Federal jurisdiction cannot exist solely on the basis of a counterclaim. *See, e.g., Vaden v. Discover Bank*, 129 S. Ct. 1262, 1272 n.10 (2009) ("a counterclaim asserted in a responsive pleading cannot provide the basis for 'arising under' jurisdiction consistently with the well-pleaded complaint rule"); *Holmes Group, Inc. v. Vornado Air Circulation Sys.*, 535 U.S. 826, 830 (2002); *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392 (1987). In this case, Stern contends that the Bankruptcy Court had jurisdiction to finally determine Vickie's tortious interference claim as a "counterclaim" to a claim against the estate, namely Pierce's "proof of claim for defamation," and the nexus with Pierce's claim is thus the foundation on which Stern rests his jurisdictional assertion. BR.14. The Bankruptcy Court, however, lacked jurisdiction over Pierce's

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twined with Pierce's proof of claim such that, as a practical matter, the Bankruptcy Court was required to decide it in order to allow Pierce's proof of claim, Elaine submits that the "arising in" limitation on the scope of jurisdiction under section 157(b)(1) would nonetheless render her claim a "related to" matter.

defamation claim under section 157(b)(5); accordingly, it also lacked jurisdiction to resolve Vickie's "counterclaim." *Pettibone Corp. v. Easley*, 935 F.2d 120, 123 (7th Cir. 1991) (holding that bankruptcy judges cannot enter final judgments on personal injury tort claims and "[t]he whole case, including defenses of all kinds, goes off to the district court or the state court."); Pet. App. 75 (Kleinfeld, J., concurring).

Section 157(b)(5) provides that all "personal injury tort…claims shall be tried in the district court." 28 U.S.C. §157(b)(5). The wording of this statute is plain, and it unambiguously directs adjudication of personal injury tort claims in the district court, not the bankruptcy court. *See Lopez v. Davis*, 531 U.S. 230, 241 (2001) (Congress' use of the word "shall" imposes "discretionless obligations").

As explained previously, *see supra* pp. 18-20, just prior to its enactment, the Senate amended section 157 to add section 157(b)(5). As Senator Dole stated in terms as plain as the statute itself, "[o]ne of those areas reserved for attention of the district courts will be personal injury claims, which are exempted from the definition of core proceeding under the bill." 130 CONG. REC. S20083 (daily ed. June 29, 1984) (statement of Sen. Dole). As the Senator further explained, personal injury tort claims are chan-

neled away from the bankruptcy court in two ways.

First, they are channeled to the state courts through the abstention provisions of 28 U.S.C. §1334(c). 130 CONG. REC. S20083 (daily ed. June 29, 1984) (statement of Sen. Dole). ("[t]he result of the conference discussion was a provision that preserves the integrity of bankruptcy jurisdiction while allowing abstention for personal injury cases where they can be timely adjudicated in State courts.").

Second, in the absence of abstention, they are channeled to the district courts through section 157(b)(5). *Id*. ("In addition, where abstention does not occur, those cases will be handled by the district court where the bankruptcy has been filed or, if that court finds it appropriate, where the claim arose."). Thus, by statutory design, no jurisdiction to adjudicate personal injury tort claims is left in the bankruptcy courts, not even if the tort claimant files a proof of claim.

Although section 157(b)(2)(B) includes as a "core proceeding" the "allowance or disallowance of claims," it expressly *excludes* "unliquidated" (*i.e.*, unadjudicated) "personal injury tort claims." 11 U.S.C. §157(b)(2)(B). As Senator DeConcini explained, the exclusion rests on grounds of fairness: "Unlike a trade creditor who elects to do business with a particular company, the personal injury tort claimant does not choose to be

injured by a particular debtor," and therefore should not be forced to try his or her claims in bankruptcy court. 130 CONG. REC. S13076 (daily ed. May 21, 1984) (statement of Sen. DeConcini).

In this case, when Pierce filed his proof of claim, he expressly indicated that his defamation action constituted a personal injury tort. Pet. App. 78; SER-6020. Moreover, Pierce's defamation claim is properly a "personal injury tort claim" within the plain meaning of the statutory provision. *See* BLACK'S LAW DICTIONARY 802 (8th ed. 2004) (defining "personal injury" as "[a]ny invasion of a personal right, including mental suffering and false imprisonment.").

Under Texas law, a defamation action constitutes a "personal injury tort." *See In re Dillard Dep't Stores, Inc.*, 186 S.W.3d 514, 516 (Tex. 2006) ("The phrase 'personal injuries' has been interpreted by Texas courts to include injuries to reputation."). This rule is likewise the norm among the States that have considered the issue.[16] Further, numerous bankruptcy courts

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[16] *See, e.g.,* N.H. Rev. Stat. Ann. §507-B:1 (2010) ("'Personal injury' means…[a]ny injury to the feelings or reputation of a natural person"); N.D. Cent. Code §32-12.2-01 (2010); *Ex parte Graham*, 634 So. 2d 994, 997 (Ala. 1993); *O'Hara v. Storer Commc'ns*, 282 Cal. Rptr. 712, 722 (Cal. Ct. App. 1991) ("defamation is a personal injury…"); *Brooks v. Jackson*, 813 P.2d 847, 848-49 (Colo. App. 1991);

have also concluded that a defamation action is a personal injury tort within the meaning of section 157(b)(5), precluding the bankruptcy court from finally resolving it. *See, e.g.*, *In re Arnold*, 407 B.R. 849, 853 (Bankr. M.D.N.C. 2009) ("Plaintiffs' defamation claims constitute personal injury tort claims within the meaning of Section 157(b)(5)"); *In re Passialis*, 292 B.R. 346, 348 (Bankr. N.D. Ill. 2003); *Control Ctr., LLC v. Lauer*, 288 B.R. 269, 286 (M.D. Fla. 2002); *In re Goidel*, 150 B.R. 885, 888 (Bankr. S.D.N.Y. 1993).

As used in section 157(b)(5), the concept of a "personal injury tort" is not limited to bodily injury; where Congress intends to narrow "personal injury torts" to those involving bodily injury, it does so expressly. *See* 11 U.S.C. §522(d)(11) (exempting from property of the estate payments or property traceable to an award for "personal bodily injury"). Because Congress did not impose such a limitation in section

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*De Moss v. News-Journal Co.*, 408 A.2d 944, 945 (Del. 1979); *Zieve v. Hairston*, 598 S.E.2d 25, 32 (Ga. Ct. App. 2004); *New York, P. & N. R. Co. v. Waldron*, 82 A. 709, 714 (Md. 1911); *Commonwealth v. Miller*, 432 N.E.2d 463, 467 (Mass. 1982); *Small v. McRae*, 651 P.2d 982, 992 (Mont. 1982); *Gallion v. O'Connor*, 494 N.W.2d 532, 534 (Neb. 1993); *Nadra v. Mbah*, 893 N.E.2d 829, 834 (Ohio 2008); *Via v. O'Donnell*, 27 Va. Cir. 433, 445 (Va. Cir. Ct. 1982); *Hemberger v. Bitzer*, 574 N.W.2d 656, 660 (Wis. 1998).

157(b)(5), the term should be given its ordinary, intended meaning. *See Wilson v. Garcia*, 471 U.S. 261, 280 (1985) (civil rights claims brought under section 1983 "are best characterized as personal injury actions."), *superseded by statute as recognized in Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 378-80 (2004). In addition, Vickie's cause of action for tortious interference with a gift is also included within the broad meaning of personal injury tort as used in section 157(b)(5). *See* JA-75 (Kleinfeld, J., concurring).

B. The Government asserts that, in considering whether the Bankruptcy Court had jurisdiction to finally decide Vickie's tortious interference counterclaim, the Court should essentially ignore section 157(b)(5). USBR.23 n.1. But "[w]ithout cross-petitioning for certiorari, a prevailing party may, of course, 'defend its judgment on any ground properly raised below whether or not that ground was relied upon, rejected, or even considered by the District Court or the Court of Appeals.'" *Granfinanciera*, 492 U.S. at 38-39. Pierce repeatedly raised section 157(b)(5) below; sought withdrawal of the reference on the basis of it; and briefed and argued it on appeal. Indeed, the concurrence below accepted it as an additional ground of decision, Pet. App. 74-76 (Kleinfeld, J., concurring), and Pierce raised it in this Court in his brief in opposition. BIO 41-43.

Moreover, the provision is jurisdictional; is subsumed within the jurisdictional questions presented; and is an integral part of the very statute at issue. Further, affirming on the basis of section 157(b)(5) avoids the constitutional issues at play in this litigation. Finally, and most important, Stern's jurisdictional theory regarding Vickie's claim unavoidably *rests* on the Bankruptcy Court's jurisdiction over Pierce's defamation claim.

Either jurisdiction to finally decide Vickie's counterclaim exists because of some compelling connection between the counterclaim and some other matter the bankruptcy court had jurisdiction to finally resolve, or the counterclaim stands entirely by itself as simply a state law claim that Vickie has against Pierce. If the former, Stern cannot prevail because the bankruptcy court had no jurisdiction to finally determine Pierce's claim. If the latter, Stern likewise cannot prevail because, if Vickie's tortious inference claim is considered independently, it lies in the same posture as the state law claim in *Marathon*. In either event, the decision below should be affirmed.

## CONCLUSION

For the foregoing reasons, the decision of the court below should be affirmed.

Respectfully submitted,

Roy T. Englert, Jr.
ROBBINS, RUSSELL, ENGLERT, ORSECK, UNTREINER & SAUBER LLP
1801 K Street, NW, Ste. 411
Washington, DC 20006
(202) 775-4500

G. Eric Brunstad, Jr.
*Counsel of Record*
Collin O'Connor Udell
Matthew J. Delude
DECHERT LLP
90 State House Square
Hartford, CT 06103
(860) 524-3999

Seth P. Waxman
Craig Goldblatt
Danielle Spinelli
WILMER CUTLER PICKERING HALE AND DORR, LLP
1875 Pennsylvania Ave, NW
Washington DC, 20006
(202) 663-6000

Kenneth N. Klee
Daniel J. Bussel
Whitman L. Holt
KLEE, TUCHIN, BOGDANOFF & STERN, LLP
1999 Avenue of the Stars, 39th Floor
Los Angeles, CA 90067
(310) 407-4000

Don Jackson
WARE, JACKSON, LEE
& CHAMBERS
American Tower, 42nd Fl.
2929 Allen Parkway
Houston, TX 77019
(713) 659-6400

Sanford Svetcov
ROBBINS GELLER RUDMAN
& DOWD LLP
100 Pine Street, Suite 2600
San Francisco, CA 94111
(415) 288-4545

Joseph A. Eisenberg
Julia J. Rider
JEFFER, MANGELS, BUTLER
& MARMARO LLP
1900 Avenue of the Stars, 7th Floor
Los Angeles, CA 90067
(310) 203-8080

Dated: December 13, 2010 *Counsel for Respondent*

## APPENDIX A

*Constitutional and Statutory Provisions*

1. Article III, Section 1 of the United States Constitution provides:

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

2. 11 U.S.C. §502 provides in relevant part:

**Allowance of claims or interests**

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a

hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

(1) such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other then because such claim is contingent or unmatured;

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(d) Notwithstanding subsections (a) and (b) of this section, the court shall disallow any claim of any entity from which property is recoverable under section 542, 543, 550, or 553 of this title or that is a transferee of a transfer avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of this title, unless such entity or transferee has paid the amount, or turned over any such property, for which such entity or transferee is liable under section 522(i), 542, 543, 550, or 553 of this title.

*Appendix A*

3. 11 U.S.C. §522(d)(11) provides in relevant part:

**Exemptions**

(d) The following property may be exempted under subsection (b)(2) of this section:

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(11) The debtors right to receive, or property that is traceable to—

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(D) a payment, not to exceed $21,625, on account of personal bodily injury, not including pain and suffering or compensation for actual pecuniary loss, of the debtor or an individual of whom the debtor is a dependent; or

4. 11 U.S.C. §541 provides in relevant part:

**Property of the estate**

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable inter-

ests of the debtor in property as of the commencement of the case.

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(7) Any interest in property that the estate acquires after the commencement of the case.

5. 28 U.S.C. §152 provides in relevant part:

**Appointment of bankruptcy judges**

(a)(1) Each bankruptcy judge to be appointed for a judicial district, as provided in paragraph (2), shall be appointed by the court of appeals of the United States for the circuit in which such district is located. Such appointments shall be made after considering the recommendations of the Judicial Conference submitted pursuant to subsection (b). Each bankruptcy judge shall be appointed for a term of fourteen years, subject to the provisions of subsection (e). However, upon the expiration of the term, a bankruptcy judge may, with the approval of the judicial council of the circuit, continue to perform the duties of the office until the earlier of the date which is 180 days after the expiration of the term or the date of the appointment of a successor. Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.

6. 28 U.S.C. §153 provides in relevant part:

**Salaries; character of service**

(a) Each bankruptcy judge shall serve on a full-time basis and shall receive as full compensation for his services, a salary at an annual rate that is equal to 92 percent of the salary of a judge of the district court of the United States as determined pursuant to section 135, to be paid at such times as the Judicial Conference of the United States determines.

7. 28 U.S.C. §157 provides:

**Procedures**

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

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

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

(A) matters concerning the administration of the estate;

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

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

(D) orders in respect to obtaining credit;

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

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

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

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

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

(J) objections to discharges;

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

(L) confirmations of plans;

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

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

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

(P) recognition of foreign proceedings and other matters under chapter 15 of title 11

(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de

novo those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

(e) If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.

8. 28 U.S.C. §158 provides in relevant part:

**Appeals**

(a) The district courts of the United States shall have jurisdiction to hear appeals

(1) from final judgments, orders, and decrees;

(2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and

(3) with leave of the court, from other interlocutory orders and decrees;

and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

*Appendix A*

9. 28 U.S.C. §1334 provides:

**Bankruptcy cases and proceedings**

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

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

(c)(1) Except with respect to a case under chapter 15 of title 11, nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the

United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction.

(d) Any decision to abstain or not to abstain made under subsection (c) (other than a decision not to abstain in a proceeding described in subsection (c)(2)) is not reviewable by appeal or otherwise by the court of appeals under section 158(d), 1291, or 1292 of this title or by the Supreme Court of the United States under section 1254 of this title. Subsection (c) and this subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

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

(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclo-

sure requirements under section 327.

10. Act of July 1, 1898, ch. 541, 30 Stat. 544 (repealed 1979) provides in relevant part:

**CHAPTER II.**

**CREATION OF COURTS OF BANKRUPCY AND THEIR JURISDICTION.**

SEC. 2. That the courts of bankruptcy as hereinbefore defined, viz, the district courts of the United States in the several States, the supreme court of the District of Columbia, the district courts of the several Territories, and the United States courts in the Indian Territory and the District of Alaska, are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as now established, or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they are now or may be hereafter held, to (1) adjudge persons bankrupt who have had their principal place of business, resided, or had their domicile within their respective territorial jurisdictions for the preceding six months, or the greater portion thereof, or who do not have their principal place of business, reside, or have their domicile

within the United States, but have property within their jurisdictions, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States and have property within their jurisdictions; (2) allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates; (3) appoint receivers or the marshals, upon application of parties in interest, in case the courts shall find it absolutely necessary, for the preservation of estates, to take charge of the property of bankrupts after the filing of the petition and until it is dismissed or the trustee is qualified; (4) arraign, try, and punish bankrupts, officers, and other persons, and the agents, officers, members of the board of directors or trustees, or other similar controlling bodies, of corporations for violations of this Act, in accordance with the laws of procedure of the United States now in force, or such as may be hereafter enacted, regulating trials for the alleged violation of laws of the United States; (5) authorize the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustees, if necessary in the best interests of the estates; (6) bring in and substitute additional persons or parties in proceedings in bankruptcy when necessary for the complete determination of a matter in controversy; (7) cause the estates of bankrupts to be collected, reduced to money and distributed, and determine contro-

versies in relation thereto, except as herein otherwise provided; (8) close estates, whenever it appears that they have been fully administered, by approving the final accounts and discharging the trustees, and reopen them whenever it appears they were closed before being fully administered; (9) confirm or reject compositions between debtors and their creditors, and set aside compositions and reinstate the cases; (10) consider and confirm, modify or overrule, or return, with instructions for further proceedings, records and findings certified to them by referees; (11) determine all claims of bankrupts to their exemptions; (12) discharge or refuse to discharge bankrupts and set aside discharges and reinstate the cases; (13) enforce obedience by bankrupts, officers, and other persons to all lawful orders, by fine or imprisonment or fine and imprisonment; (14) extradite bankrupts from their respective districts to other districts; (15) make such orders, issue such process, and enter such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this Act; (16) punish persons for contempts committed before referees; (17) pursuant to the recommendation of creditors, or when they neglect to recommend the appointment of trustees, appoint trustees, and upon complaints of creditors, remove trustees for cause upon hearings and after notices to them; (18) tax costs, whenever they are allowed by law,

and render judgments therefor against the unsuccessful party, or the successful party for cause, or in part against each of the parties, and against estates, in proceedings in bankruptcy; and (19) transfer cases to other courts of bankruptcy.

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## CHAPTER V.

## OFFICERS, THEIR DUTIES AND COMPENSATION.

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SEC. 38. JURISDICTION OF REFEREES.—a. Referees respectively are hereby invested, subject always to a review by the judge, within the limits of their districts as established from time to time, with jurisdiction to (1) consider all petitions referred to them by the clerks and make the adjudications or dismiss the petitions; (2) exercise the powers vested in courts of bankruptcy for the administering of oaths to and the examination of persons as witnesses and for requiring the production of documents in proceedings before them, except the power of commitment; (3) exercise the powers of the judge for the taking possession and releasing of the property of the bankrupt in the event of the issuance by the clerk of a certificate showing the absence of a judge from the judicial district, or the division of the district, or his sickness, or inability to act; (4) perform such part of the duties, except as to

questions arising out of the applications of bankrupts for compositions or discharges, as are by this Act conferred on courts of bankruptcy and as shall be prescribed by rules or orders of the courts of bankruptcy of their respective districts, except as herein otherwise provided; and (5) upon the application of the trustee during the examination of the bankrupts, or other proceedings, authorize the employment of stenographers at the expense of the estates at a compensation not to exceed ten cents per folio for reporting and transcribing the proceedings.

11. Act of July 1, 1898, ch. 541, 30 Stat. 544, *as amended by* Act of May 27, 1926, ch. 406, 44 Stat. 662, 664 (repealed 1979) provides in relevant part:

**CHAPTER IV.**

**COURTS AND PROCEDURE THEREIN.**

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SEC. 23. JURISDICTION OF UNITED STATES AND STATE COURTS.—a. The United States district courts shall have jurisdiction of all controversies at law and in equity, as distinguished from proceedings in bankruptcy, between trustees as such and adverse claimants concerning the property acquired or claimed by the trustees, in the same manner and to the same extent only as though bankruptcy proceedings had not been in-

stituted and such controversies had been between the bankrupts and such adverse claimants.

b. Suits by the trustee shall be brought or prosecuted only in the courts where the bankrupt, whose estate is being administered by such trustee, might have brought or prosecuted them if proceedings in bankruptcy had not been instituted, unless by consent of the proposed defendant, except suits for the recovery of property under section 60, subdivision b; section 67, subdivision e; and section 70, subdivision e.

## APPENDIX B
*Proposed Bills*

1. H.R. 6978, 97th Cong. (2d Sess. 1982), as proposed on August 12, 1982, provides in relevant part:

SEC. 33. (a) Title 28 of the United States Code is amended by inserting after chapter 89 the following new chapter:

**"CHAPTER 90—BANKRUPTCY COURTS**

*******

**"§ 1471. Jurisdiction.**

"(a) Except as provided in subsection (b) of this section, the bankruptcy courts shall have original and exclusive jurisdiction of all cases under title 11.

"(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the bankruptcy courts, the bankruptcy courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11.

"(c) Subsection (b) of this section does not prevent a bankruptcy court, in the interest of justice, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11. Such abstention,

or a decision not to abstain, is not reviewable by appeal or otherwise.

"(d) The bankruptcy court in which a case under title 11 is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor, as of the commencement of the case.

***

**"§ 1481. Powers of bankruptcy court**

"A bankruptcy court shall have the powers of a court of equity, law, and admiralty.

**"§ 1482. Appeals**

"(a) Bankruptcy appellate panels established in section 159(a) of this title shall have jurisdiction of appeals from all final judgments, orders, and decrees of bankruptcy courts.

"(b) Bankruptcy appellate panels shall have jurisdiction of appeals from interlocutory judgments, orders, and decrees of bankruptcy courts, but only by leave of the panel to which the appeal is taken."

2. S. 1013, 98th Cong. (1st Sess. 1983), as referred to the House Committee on the Judiciary on May 4, 1983, provides in relevant part:

Sec. 102. (a) Title 28, United States Code, is amended by inserting after chapter 89 the following:

**"CHAPTER 90—DISTRICT COURTS AND BANKRUPTCY COURTS**

*******

**"§ 1471. Jurisdiction**

"(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

"(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

"(c) All cases under title 11 and all civil proceedings arising under title 11, or arising in or related to cases under title 11 shall be referred to the bankruptcy court for the district. The bankruptcy court for the district in which a case or proceeding under title 11 is pending shall have the authority to exercise all of the jurisdiction conferred on the district courts by subsections (a)

and (b) of this section, except where inconsistent with the Constitution, unless such case or proceeding has been recalled by the district court.

"(d) The district court on its own motion may recall any case or proceeding referred to the bankruptcy court under subsection (c) of this section.

"(e)(1) Any party, or the bankruptcy judge, may file a petition for recall of any civil case or proceeding referred to the bankruptcy court under subsection (c). Such petition shall be filed with the clerk of the district court for the district, and shall contain a short and plain statement of the grounds for recall. Written notice of the filing of such a petition shall be given promptly to all parties.

"(2) Recall of a proceeding pursuant to such petition may be granted in the discretion of the district court, except that recall shall be granted—

> "(A) with respect to a proceeding involving a claim or cause of action which is not one arising under title 11; or
>
> "(B) where the district court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

"(f) A case or proceeding which has been recalled by the district court under this section shall be determined by the district court. The court, in its discretion, may determine the entire case. In any case or proceeding before the district court pursuant to subsection (d) or (e), such court may—

"(1) designate any bankruptcy judge within the district to serve as a special master to hear such case or proceeding and to make findings and recommendations pursuant to the Federal Rules of Civil Procedure, notwithstanding Rule 53(b) thereof, or

"(2) refer such case or proceeding to a United States magistrate in accordance with the provisions of section 636 of this title as applicable to civil proceedings generally, or to a bankruptcy judge, who shall exercise all of the jurisdiction and powers of a United States magistrate under section 636.

For purposes of this section, the district court shall use the standard of review provided in Rule 53(e)(2) of the Federal Rules of Civil Procedure or section 636(b) of this title, as the case may be, unless the court, in its designation of the special master or its referral to the magistrate orders otherwise.

"(g) Notwithstanding the provisions of subsection (e), and subject to a right to appeal pursuant to section 1334 of this title, any party to a case or

proceeding under subsection (a) or (b) of this section shall be deemed to have consented to the exercise of jurisdiction by the bankruptcy court to determine the entire matter if the party has failed to file a timely petition pursuant to subsection (e)(1) of this section. Such a petition must be filed together with the initial pleading of the party.

"(h)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts and respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11. Such abstention, or a decision not to abstain, is not reviewable by appeal or otherwise.

"(2) In the case of a proceeding involving the debtor which is based upon a claim or cause of action arising under State law, the Court shall, upon proper motion, abstain from adjudicating such claim in the bankruptcy proceeding where an action to adjudicate such claim has been or will be instituted and timely prosecuted in a State forum of appropriate jurisdiction: *Provided*, That this paragraph shall not be construed to otherwise limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section governs an action affecting the property of the estate in bankruptcy.

"(3) A motion to abstain pursuant to this subsection shall be filed within ten days of the granting of a petition to recall pursuant to subsection 1741(e).

"(i) Subject to the provisions of this section, the bankruptcy court in which a case, under title 11 is commenced or pending may exercise jurisdiction over all property, wherever located, of the debtor or the estate as of the date of the commencement of such case.

3. H.R. 5174, 98th Cong. (2d Sess. 1984), as introduced on March 19, 1984, provides in relevant part:

SEC. 132. (a) Title 28 of the United States Code is amended by inserting after chapter 89 the following new chapter:

**"CHAPTER 90—BANKRUPTCY COURTS**

*******

**"§1471. Jurisdiction**

"(a) Except as provided in subsection (b) of this section, the bankruptcy courts shall have original and exclusive jurisdiction of all cases under title 11.

"(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the bankruptcy courts, the bank-

ruptcy courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11.

"(c) Subsection (b) of this section does not prevent a bankruptcy court, in the interest of justice, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11. Such abstention, or a decision not to abstain, is not reviewable by appeal or otherwise.

"(d) The bankruptcy court in which a case under title 11 is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor, as of the commencement of the case.

***

**"§ 1481. Powers of bankruptcy court**

"A bankruptcy court shall have the powers of a court of equity, law, and admiralty.

**"§ 1482. Appeals**

"(a) Bankruptcy appellate panels established in section 159(a) of this title shall have jurisdiction of appeals from all final judgments, orders, and decrees of bankruptcy courts.

"(b) Bankruptcy appellate panels shall have jurisdiction of appeals from interlocutory judgments, orders, and decrees of bankruptcy courts,

but only by leave of the panel to which the appeal is taken."

4. H.R. 5174, 98th Cong. (2d Sess. 1984), as enacted by the House and referred to the Senate on March 22, 1984, provides in relevant part:

**TITLE I—BANKRUPTCY JURISDICTION AND PROCEDURE**

SEC. 101. (a) Section 1334 of title 28, United States Code, is amended to read as follows:

"(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

"(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11 or arising in or related to cases under title 11.

"(c) Nothing in this section prevents a district court in the interest of justice or in the interest of comity with State courts and respect for State law, from abstaining from hearing a particular proceeding arising in or related to a case under title 11. Upon the timely motion of a party in a proceeding based upon a State law claim or State

law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction. Any decision to abstain made under this subsection is not reviewable by appeal or otherwise. This subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

"(d) The district court in which a case under title 11 is commenced or is pending shall have jurisdiction of all of the property, wherever located, of the debtor, as of the commencement of such case, and of all of the property of the estate.".

(b) The heading for section 1334 of title 28, United States Code, is amended to read as follows:

**"§ 1334. Bankruptcy cases and proceedings".**

(c) The table of sections of chapter 85 of title 28, United States Code, is amended by amending the item relating to section 1334 to read as follows:

*Appendix B*

**"§ 1334. Bankruptcy cases and proceedings".**

***

SEC. 104. (a) Title 28 of the United States Code is amended by inserting after chapter 5 the following new chapter:

**"CHAPTER 6—BANKRUPTCY JUDGES**

***

**"§ 157. Procedures**

"(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

"(b)(l) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

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

"(A) matters concerning the administration of the estate;

"(B) allowance or disallowance of claims against the estate or exemptions from property of the estate;

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

"(D) orders in respect to obtaining credit;

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

"(F) proceedings to determine or set aside preferences;

"(G) motions to lift or modify the automatic stay;

"(H) proceedings to set aside fraudulent conveyances;

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

"(J) objections to discharges;

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

"(L) confirmations of plans;

"(M) orders approving the sale of property not resulting from claims brought by the estate against persons who have not filed claims against the estate; and

"(N) other proceedings affecting the liquidation of the assets of the estate or the adjust-

ment of the debtor-creditor or the equity security holder relationship.

"(3) The bankruptcy judge may determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by state law.

"(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

"(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

"(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

**"§ 158. Appeals**

"(a) The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees, and from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. And appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

"(b) An appeal to a district court under subsection (a) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts.

"(c) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees of the district courts entered under this section."

5. Amendment No. 3083 to H.R. 5174, 98th Cong. (2d Sess. 1984), as proposed by Senator Thurmond on May 21, 1984 (130 CONG. REC. S13086 (daily ed. May 21, 1984)), provides in relevant part:

**TITLE I—BANKRUPTCY JURISDICTION AND PROCEDURE**

SEC. 101. (a) Section 1334 of title 28. United States Code, is amended to read as follows:

**"§ 1334. Bankruptcy cases and proceedings**

"(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

"(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

"(c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a par-

ticular proceeding arising under title 11 or arising in or related to a case under title 11. Such decision to abstain or to not abstain is not reviewable by appeal or otherwise.

"(2) In a proceeding involving the debtor which is based upon a State law claim or cause of action neither arising under title 11 nor arising in a case under title 11, which could not otherwise have been brought in Federal court absent jurisdiction under this section, the court shall, upon proper motion, abstain from adjudicating such claim in the bankruptcy proceeding where an action to adjudicate such claim has been or will be timely instituted and prosecuted in a State forum of appropriate jurisdiction: *Provided*, that this paragraph shall be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, only to the extent necessary to permit adjudication but not the execution of such claim by the State forum. Such abstention is not reviewable by appeal or otherwise.

"(3) A motion to abstain pursuant to this subsection shall be filed with the initial pleading.

"(d) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wher-

ever located, of the debtor, or of the estate, as of the commencement of such case.

(b) The table of sections for chapter 85 of title 28, United States Code, is amended by amending the item relating to section 1334 to read as follows:

"1334. Bankruptcy cases and proceedings.".

***

**"§ 157. Procedures**

"(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

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

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

"(A) matters concerning the administration of the estate;

"(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, but not the liquidation or estimation of contingent or unliquidated claims against the estate;

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

"(D) orders in respect to obtaining credit;

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

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

"(F) proceedings to determine or set aside preferences;

"(H) proceedings to set aside fraudulent conveyances;

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

"(J) objections to discharges;

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

"(L) confirmations of plans; and

"(M) orders approving the sale of property not resulting from claims brought by the estate against persons who have not filed claims against the estate.

"(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

"(c)(1) a bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

"(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceed-

ing, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

"(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

**"§ 158. Appeals**

"(a) The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

"(b)(1) The judicial council of a circuit may establish a bankruptcy appellate panel, comprised of bankruptcy judges from districts within the circuit, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

"(2) No appeal may be referred to a panel under this subsection unless the district judges for the district, by majority vote, authorize such referral of appeals originating within the district.

"(3) A bankruptcy judge may not hear an appeal originating within a district for which the judge is appointed or designated under section 152 of this title.

"(c) An appeal to a district court under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts.

"(d) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees of the district courts entered under subsections (a) and (b) of this section."

6. Amendment No. 3087 to Amendment No. 3083 proposed by Senator Thurmond, as proposed by Senator DeConcini on May 21, 1984 (130 CONG. REC. S13107 (daily ed. May 21, 1984)), provides in relevant part:

**TITLE I—BANKRUPTCY JURISDICTION AND PROCEDURE**

SEC. 101. (a) Section 1334 of title 28, United States Code, is amended to read as follows:

**"§ 1134. Bankruptcy cases and proceedings**

"(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

"(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

"(c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law from abstaining from hearing a particular proceeding arising under title 11 or aris-

ing in or related to a case under title 11. Such decision to abstain or to not abstain is not reviewable by appeal or otherwise.

"(2) "In a proceeding brought by the trustee which is based upon a State law claim or cause of action neither arising under title 11 nor arising in a case under title 11, which could not otherwise have been brought in Federal court absent jurisdiction under this section, the court shall upon timely motion of the party against whom the claim is brought, abstain from adjudicating such claim in the bankruptcy proceeding where (1) such claim will be timely adjudicated in a State forum of appropriate jurisdiction and (2) abstention would not be detrimental to the best interests of the estate. Such abstention is not reviewable by appeal or otherwise."

"(3) A motion to abstain pursuant to this subsection shall be filed with the initial appearance of the party.

"(d) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor, as of the commencement of such case, and the estate.".

(b) The table of sections for chapter 85 of title 28, United States Code, is amended by amending

the item relating to section 1334 to read as follows:

"1334. Bankruptcy cases and proceedings.".

***

**"§ 157. Procedures**

"(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

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

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

"(A) matters concerning the administration of the estate;

"(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, but not the liquidation or estima-

tion of contingent or unliquidated personal injury tort claims against the estate;

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

"(D) orders in respect to obtaining credit;

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

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

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

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

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

"(J) objections to discharges;

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

"(L) confirmations of plans;

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

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

"(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law. A motion by a party under this section shall be filed with the initial appearance of the party in the proceeding.

"(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after review-

ing de novo those matters to which any party has timely and specifically objected.

"(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title. In any such proceeding the debtor, trustee, creditors committee, representation of the estate and examiner shall be deemed to have consented to have the proceeding referred to the bankruptcy court.

"(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce. Any such motion of a party shall be filed with the initial appearance of the party in the proceeding.

*Appendix B*

**"§ 158. Appeals**

"(a) The district courts of the United States shall have jurisdiction to hear appeals from fiscal judgments, orders, and decrees and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

"(d)(1) The judicial council of a circuit may establish a bankruptcy appellate panel, comprised of bankruptcy judges from districts within the circuit, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

"(2) No appeal may be referred to a panel under this subsection unless the district judges for the district, by majority vote, authorize such referral of appeals originating within the district.

"(3) A panel established under this section shall consist of three bankruptcy judges, provided a bankruptcy judge may not hear an appeal originating within a district for which the judge is appointed or designated under section 152 of this title.

"(c) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

"(d) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.".

(b) The table of chapters of part I of title 28, United States Code, is amended by inserting after the item relating to chapter 5, the following new item:

"6. Bankruptcy judges..... 151.".

7. H.R. 5174, 98th Cong. (2d Sess. 1984), as reported from the committee of conference on June 29, 1984 (130 CONG. REC. H20206 (daily ed. June 29, 1984)), provides in relevant part:

## TITLE I—BANKRUPTCY JURISDICTION AND PROCEDURE

SEC. 101. (a) Section 1334 of title 28, United States Code, is amended to read as follows:

### "§ 1334. Bankruptcy cases and proceedings

"(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

"(b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

"(c)(1) Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

"(2) Upon timely motion of a party in a proceeding based upon a State law claim or State law cause of action, related to a case under title 11 but not arising under title 11 or arising in a case under title 11, with respect to which an action could not have been commenced in a court of the United States absent jurisdiction under this section, the district court shall abstain from hearing such proceeding if an action is commenced, and can be timely adjudicated, in a State forum of appropriate jurisdiction. Any decision to abstain made under this subsection is not reviewable by appeal or otherwise. This subsection shall not be construed to limit the applicability of the stay provided for by section 362 of title 11, United States Code, as such section applies to an action affecting the property of the estate in bankruptcy.

"(d) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction of all of the property, wherever located, of the debtor as of the commencement of such case, and of the estate.".

(b) The table of sections for chapter 85 of title 28, United States Code, is amended by amending the item relating to section 1334 to read as follows:

"1334. Bankruptcy cases and proceedings.".

*Appendix B*

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**"§ 157. Procedures**

"(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

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

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

"(A) matters concerning the administration of the estate;

"(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interest for the purposes of confirming a plan under chapter 11 or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims

against the estate for purposes of distribution in a case under title 11;

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

"(D) orders in respect to obtaining credit;

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

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

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

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

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

"(J) objections to discharges;

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

"(L) confirmations of plans;

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

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

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

"(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party, whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

"(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

"(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bank-

ruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

"(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

"(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

"(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so with-

draw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

**"§ 158. Appeals**

"(a) The district courts of the United States shall have jurisdiction to hear appeals from final judgments, orders, and decrees, and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

"(b)(1) The judicial council of a circuit may establish a bankruptcy appellate panel, comprised of bankruptcy judges from districts within the circuit, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

"(2) No appeal may be referred to a panel under this subsection unless the district judges for the district, by majority vote, authorize such referral of appeals originating within the district.

"(3) A panel established under this section shall consist of three bankruptcy judges, provided a bankruptcy judge may not hear an appeal originating within a district for which the judge is appointed or designated under section 152 of this title.

"(c) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

"(d) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.".