

No. 05-1171

IN THE
Supreme Court of the United States

ROBERT SASSON,

Petitioner,

v.

NORMAN F. SOKOLOFF, M.D., individually
and as Trustee for CAMELOT MEDICAL
GROUP, INC., PROFIT SHARING PLAN,

Respondent.

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

**BRIEF OF AMICUS CURIAE G. ERIC BRUNSTAD, JR.,
IN SUPPORT OF PETITION FOR A WRIT
OF CERTIORARI**

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QUESTION PRESENTED

The bankruptcy jurisdiction statute, 28 U.S.C. § 1334(b), grants district courts jurisdiction over “civil proceedings arising under title 11, or arising in or related to cases under title 11.” In turn, 28 U.S.C. § 157(a) provides that district courts may refer such proceedings to “the bankruptcy judges for the district.”

The general federal supplemental jurisdiction statute, 28 U.S.C. § 1367(a), grants district courts jurisdiction “in any civil action of which the district courts have original jurisdiction,” over “claims that are so related to claims in the action . . . that they form part of the same case or controversy under Article III of the United States Constitution.”

The question presented, which has divided the courts of appeals, is whether bankruptcy courts may exercise the general supplemental jurisdiction provided in section 1367(a) to hear claims that fall outside section 1334(b)’s more restrictive grant of jurisdiction over matters “related to” the bankruptcy case.

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INTEREST OF THE AMICUS CURIAE

Amicus curiae G. Eric Brunstad, Jr. respectfully submits this brief in support of Petitioner's request for issuance of a writ of certiorari. Pursuant to Rule 37.3(a), all parties have consented to the filing of this brief.¹

The undersigned *amicus* is the Macklin Fleming Visiting Lecturer of Law at the Yale Law School, where he teaches courses on bankruptcy law, domestic and international business reorganizations, secured transactions, commercial transactions, and argument and reason. He has taught at Yale since 1992, and has also taught at the Harvard Law School.

In addition to teaching, the undersigned is the current Chair of the ABA Business Bankruptcy Committee. He is also a partner with the law firm of Bingham McCutchen LLP, practicing in the areas of bankruptcy law and appeals. He is a contributing author to the Collier treatise on bankruptcy and is responsible for writing and editing multiple chapters of the treatise. He has argued matters of bankruptcy law before the Court, most recently in *Marshall v. Marshall*, no. 04-1544 (2006) (counsel of record for respondent), and *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004) (counsel of record for respondent), and has participated in numerous other bankruptcy cases before the Court, including *Howard Delivery Serv. Inc. v. Zurich American Ins. Co.*, no. 05-128 (2006) (counsel of record for *amici curiae*), *Central Virginia Community College v. Katz*, 126 S. Ct. 990 (2006) (co-counsel for respondent), *Rousey v. Jacoway*, 544 U.S. 320 (2004) (co-counsel for petitioners), *Tennessee Student Assistance Corp. v. Hood*, 541 U.S. 440

¹ Pursuant to Supreme Court Rule 37.6, *amicus curiae* states that no counsel for any party to this dispute authored this brief in whole or in part and no person or entity, other than *amicus curiae*, made a monetary contribution to the preparation or submission of this brief. Both parties have filed letters with the Court consenting to the filing of this brief.

(2004) (counsel of record for *amicus curiae*), *Kontrick v. Ryan*, 540 U.S. 443 (2004) (co-counsel for respondent), *Lamie v. United States Trustee*, 540 U.S. 526 (2004) (co-counsel for petitioner), *FCC v. NextWave Personal Communications Inc.*, no. 01-653 (2002) (co-counsel for respondent), *Archer v. Warner*, no. 01-1418 (2002) (counsel of record for *amicus curiae*), *Hartford Underwriters Ins. Co. v. Union Planters Bank, N.A.*, 530 U.S. 1 (2000) (counsel of record for petitioner), and *Connecticut Nat'l Bank v. Germain*, 503 U.S. 249 (1992) (associate counsel for petitioner).

The undersigned is interested in the administration of bankruptcy law, particularly matters relating to the administration and jurisdiction of the bankruptcy courts. He has studied and published articles on a variety of bankruptcy topics, including the history and evolution of bankruptcy law. The basic perspective of the undersigned is that, in order to preserve the constitutionality of the bankruptcy jurisdictional statutes, careful attention must be given to the limitations upon bankruptcy court jurisdiction enacted by Congress. Consistent with Supreme Court Rule 37.1, the purpose of this brief is to bring to the Court's attention matters that other parties do not intend to address, particularly relating to the constitutional implications of allowing bankruptcy courts to exercise supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over claims which bankruptcy courts would not otherwise have jurisdiction.

RELEVANT STATUTORY PROVISIONS

Section 1334(b) of title 28, United States Code provides: "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 a case under title 11."

Section 157(a) of title 28, United States Code provides, in relevant part: "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.”

Section 157(b) of title 28, United States Code provides, in relevant part: “Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, . . . and may enter appropriate orders and judgments, subject to review under section 158 of this title.”

Section 157(c) of title 28, United States Code provides, in relevant part: “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 a 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.”

Section 1367(a) of title 28, United States Code provides: “Except as provided in subsections (b) and (c) or as expressly provided otherwise by Federal statute, in any civil action of which the district courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all other claims that are so related to the claims in the action within such original jurisdiction that they form a part of the same case or controversy under Article III of the United States Constitution. Such supplemental jurisdiction shall include claims that involve the joinder or intervention of additional parties.”

Section 523(a)(6) of title 11, United States Code provides, in relevant part: “A discharge under section 727, 1141, 1228(a), 1228(b), or 1328(b) of this title does not discharge an individual debtor from any debt . . . (6) for willful and malicious injury by the debtor to another entity or to the property of another entity.”

STATEMENT

In 1988, Respondent Norman Sokoloff, individually and as trustee of the Camelot Medical Group (collectively, “Sokoloff”), obtained a \$120,000 state court judgment against Petitioner

Robert Sasson (“Sasson”) on a breach of contract claim. Pet. App. 22a. Sasson obtained a stay of that judgment (the “State Court Stay”), based on his agreement not to dissipate his assets. *Id.* Sasson violated the State Court Stay and satisfied the claims of creditors other than Sokoloff. *Id.* The state court then dissolved the State Court Stay and entered judgment against Sasson for \$149,489.53 plus interest (the “State Court Judgment”). Pet. App. 23a. Sokoloff recorded an abstract of the State Court Judgment in April 1989, but failed to renew it and it eventually lapsed. *Id.*

In May 1989, Sasson filed a petition for relief under chapter 7 of the Bankruptcy Code. Pet. App. 23a. In the chapter 7 case, Sokoloff sought a determination that the judgment *debt* arising from the State Court Judgment was nondischargeable under 11 U.S.C. § 523(a)(6). Pet. App. 23a. Whereas the State Court Judgment arose from a breach of contract claim that was an “indisputably *dischargeable* debt,” Sokoloff’s complaint in the adversary proceeding alleged a separate and distinct claim against Sasson. Pet. App. 28a n.17. Sokoloff alleged that Sasson’s conduct in violating the State Court Stay “constituted a willful and malicious injury” within the scope of section 523(a)(6) of the Code, giving rise to a nondischargeable debt. Sokoloff asked the bankruptcy court to enter a *new* money judgment, holding Sasson liable for willful and malicious conduct in violating the State Court Stay. Pet. App. 24a.

The bankruptcy court ruled in favor of Sokoloff. Pet. App. 24a. Rather than just determining “the *dischargeability* of [the alleged] debt,” Fed. R. Bankr. P. 7001(6) (emphasis supplied); *see* 11 U.S.C. § 523(a)(6), the bankruptcy court entered a final money judgment on the merits of this new claim (the “Bankruptcy Court Judgment”), *see* Pet. App. 24a.

Sasson then sought to vacate the Bankruptcy Court Judgment, arguing that the bankruptcy court lacked subject matter jurisdiction to enter a final money judgment against him on the nondischargeable claim alleged by Sokoloff. The bankruptcy court and the United States Bankruptcy Appellate Panel of the Ninth Circuit disagreed, concluding that the

bankruptcy court had jurisdiction to “make an independent determination” on the merits of Sokoloff’s alleged underlying claim that Sasson’s “prepetition, postjudgment, manipulative conduct” violated the State Court Stay because that conduct was willful and malicious and therefore “arises under” section 523(a)(6) of the Bankruptcy Code. Pet. App. 29a-30a.

The Ninth Circuit affirmed, but instead of holding that Sokoloff’s claim “arises under” the Bankruptcy Code, held that Sokoloff’s claim was within the bankruptcy court’s “related to” jurisdiction. Pet. App. 6a. In so doing, the Ninth Circuit stated that “[a] bankruptcy court’s ‘related to’ jurisdiction is very broad, ‘including nearly every matter directly or indirectly related to the bankruptcy.’” *Id.* The court reasoned that bankruptcy courts may adjudicate claims *not* within the traditional definition of a bankruptcy court’s “related to” jurisdiction because bankruptcy “jurisdiction also includes the district court’s supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, over all other claims that are so related to claims in the action within [the court’s] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” Pet. App. 6a (internal quotation marks omitted). The Ninth Circuit thus held that the bankruptcy court had “supplemental” jurisdiction to adjudicate and enter a final judgment on Sokoloff’s claim. Pet. App. 1a-2a.

REASONS FOR GRANTING THE WRIT

Sasson correctly notes that the courts of appeals are intractably divided on the question whether bankruptcy courts have supplemental jurisdiction under 28 U.S.C. § 1367 to adjudicate claims that are not within the “related to” jurisdiction granted by Congress under the bankruptcy jurisdictional statutes. The Court’s intervention is warranted, not only to resolve the split among the courts of appeals, but also because the decision below, in condoning the exercise of jurisdiction by bankruptcy courts that exceeds the jurisdiction granted to them by Congress under 28 U.S.C. §§ 1334 and 157, directly contravenes the constitutional principles espoused by this Court in *Northern*

Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982) (plurality), and adopted by Congress shortly thereafter in enacting sections 1334 and 157. Indeed, in affirming the bankruptcy court's entry of a final money judgment on a claim that is neither a "core" claim that arises under the Bankruptcy Code or arises in a case under the Code, nor "related to" Sasson's bankruptcy case or estate, the decision below completely unwinds the measures enacted by Congress in response to *Marathon*.

Moreover, the decision below renders superfluous the "related to" jurisdiction provided in sections 1334 and 157 -- which authorize bankruptcy courts to hear *only* those claims that have "some effect" on the bankruptcy estate -- because the supplemental jurisdiction provided in 28 U.S.C § 1367 and relied upon by the Ninth Circuit in the decision below is much broader than the grant of "related to" jurisdiction provided in section 1334(b). The decision below also permits the general supplemental jurisdiction statute, 28 U.S.C § 1367, to control the meaning of the specific bankruptcy jurisdiction statute, 28 U.S.C. § 1334, in violation of this Court's well-established maxims of statutory construction. For these reasons, the Court should grant certiorari to resolve this important question concerning the fundamental scope of bankruptcy jurisdiction.

A. The Ninth Circuit's Interpretation Of The Bankruptcy Jurisdiction Statutes Creates, Rather Than Avoids, Serious Constitutional Questions.

This Court has long directed that courts must follow the canon of statutory construction that, where possible, statutes should be read in a manner that avoids clashes with the Constitution. *See, e.g., Clark v. Benitez*, 543 U.S. 371, 380-81 (2005) ("[W]hen deciding which of two plausible statutory constructions to adopt, a court must consider the necessary consequences of its choice. If one of them would raise a multitude of constitutional problems, the other should prevail"); *Legal Servs. Corp. v. Velazquez*, 531 U.S. 533, 545 (2001); *United States v. Security Indus. Bank*, 459 U.S. 70,

78 (1982); *Crowell v. Benson*, 285 U.S. 22, 62 (1932). This rule of construction “is a tool for choosing between competing plausible interpretations of statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts. The canon is thus a means of giving effect to congressional intent, not of subverting it.” *Clark*, 543 U.S. at 381. The decision below plainly violates this rule by interpreting the bankruptcy jurisdictional statutes in a manner that *creates* a constitutional conflict where none need exist, and completely undercuts Congress’s revision of the bankruptcy jurisdiction statutes, 28 U.S.C. §§ 1334 and 157, after *Marathon*.

Both before and after *Marathon*, Congress gave district courts “original but not exclusive jurisdiction of all civil proceedings *arising under* title 11, or *arising in* or *related to* cases under title 11.” 28 U.S.C. § 1334(b) (emphasis supplied). In turn, Congress has constituted the federal bankruptcy courts as “units” of the district courts, 28 U.S.C. § 151, and has set forth their jurisdiction in 28 U.S.C. § 157. Under section 157(a), “[e]ach 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.” 28 U.S.C. § 157(a) (emphasis supplied). Following *Marathon*, however, exercise of the district courts’ bankruptcy jurisdiction by the bankruptcy courts is specifically circumscribed by further provisions of section 157 precisely because, unlike district judges, bankruptcy judges are not constitutionally authorized to exercise the full judicial power of the United States, as they are not judges appointed under Article III of the Constitution.

In *Marathon*, the debtor commenced its bankruptcy case and sought to have the bankruptcy court fully and finally adjudicate a state law cause of action for breach of contract and warranty between the debtor and defendant Marathon Pipe Line. Under the bankruptcy jurisdiction provisions that pre-dated *Marathon*, the bankruptcy court had express statutory authorization to adjudicate the suit because the outcome of the suit would affect

the debtor's bankruptcy estate since, if the debtor won the lawsuit, any recovery would increase its estate. *Marathon*, 458 U.S. at 53-54.

Observing that the bankruptcy courts were not constituted as Article III tribunals, the Court struck down the bankruptcy jurisdictional provisions that allowed the bankruptcy court to enter a final judgment on such claims, because they permitted a non-Article III court to exercise plenary jurisdiction over, and finally resolve, a garden variety, state law breach of contract action. 458 U.S. at 71. The Court concluded that federal court resolution of such claims is properly reserved for Article III tribunals exercising the full judicial power of the United States -- i.e., the federal district courts. *Id.* at 87.

In reaching its conclusion, the Court distinguished between strict "bankruptcy" matters, such as causes of action unique to the bankruptcy process, and matters traditionally adjudicated in other courts, such as breach of contract actions and tort claims. *Marathon*, 458 U.S. at 84. The Court explained that matters of "public right," such as rights and actions created peculiarly as a matter of federal bankruptcy law, might be assigned for resolution by a non-Article III judicial officer. *Id.* at 83-84. In contrast, matters of "private right," including causes of action created and defined under state law, must be resolved in federal court only by an Article III judge. *Id.* Based on this analysis, the Court found the pre-*Marathon* jurisdictional scheme to be unconstitutional because it vested bankruptcy judges with too much authority.

Rather than address the constitutional defects of the pre-*Marathon* jurisdictional statutes by making bankruptcy judges Article III judges, Congress instead chose to limit the bankruptcy courts' ability to finally determine claims and causes of action by creating two fundamental classes of proceedings in bankruptcy cases under section 157 -- "core" matters that arise under the Bankruptcy Code or arise in a case under the Code, and "noncore" matters that "relate to" a bankruptcy case.

Consistent with this Court's mandate in *Marathon*, section 157(b)(1) vests the bankruptcy courts with plenary jurisdiction

only with respect to “public right” bankruptcy issues; namely, “core proceedings” that either (a) “*arise under* title 11” or (b) “*arise in* a case under title 11.” 28 U.S.C. § 157(b)(1) (emphasis supplied). Proceedings that “*arise under* title 11” or “*arise in* a case under title 11” either (a) depend for their existence on a substantive provision of the Code and do not exist independently of the Code or (b) are “‘administrative matters’ that arise only in bankruptcy cases,” “are not based on any right expressly created by [the Code],” and “have no existence outside of the bankruptcy.” *Eastport Assocs. v. City of Los Angeles (In re Eastport Assocs.)*, 935 F.2d 1071, 1076 (9th Cir. 1991). In such proceedings, bankruptcy courts may hear and determine the merits of a claim and enter a final judgment subject to ordinary appellate review under 28 U.S.C. § 158. *See* 28 U.S.C. § 157(b). By expressly limiting the scope of the bankruptcy courts’ plenary jurisdiction, however, Congress acted purposefully to *exclude* from such jurisdiction all “private right” controversies, such as ordinary state law causes of action like the state law breach of contract action at issue in *Marathon*.

“Noncore proceedings,” or “private right” cases, are proceedings that are, at best, merely “related to a case under title 11.” 28 U.S.C. § 157(c). Under the most widely accepted standard, a claim is “related to a case under title 11” if “the outcome of that proceeding could conceivably have any effect on the estate being administered in bankruptcy.” *Pacor, Inc. v. Higgins*, 743 F.2d 984 (3d Cir. 1984); *see Celotex Corp. v. Edwards*, 514 U.S. 300, 308 n.6 (1995) (noting that nine courts of appeals had at that time adopted the *Pacor* test). In noncore proceedings, a bankruptcy court may not enter a final judgment but instead submits proposed findings of fact and conclusions of law to the district court, which must conduct a *de novo* review. 28 U.S.C. § 157(c). Indeed, “[a]ny final order or judgment” in a noncore proceeding “shall be entered by the district [court],” and not the bankruptcy court. *Id.*

The distinction between core matters that arise under the Bankruptcy Code or arise in a case under the Code, and noncore matters that merely relate to a case, was the key factor in

Congress's scheme to remedy the constitutional infirmities identified by the Court in *Marathon*. Cf. *Celotex*, 514 U.S. at 322 (“In my view the distinction between the jurisdiction to ‘hear and determine’ core proceedings on the one hand and the jurisdiction only to ‘hear’ noncore proceedings on the other hand is critical.”) (Stevens, J. dissenting). The distinction is what prevents bankruptcy courts from entering final judgments on state law claims that are merely “related to” the bankruptcy estate.

The decision below treats as irrelevant the plain fact that the bankruptcy court entered a final money judgment on a garden-variety state law claim. Far from comporting with the jurisdictional limitations enacted by Congress in the wake of *Marathon*, the rule followed in the decision below ignores them:

The bankruptcy court had jurisdiction to enter a money judgment in the adversary proceeding. We have long held that “the Bankruptcy Court has jurisdiction to enter a monetary judgment on a disputed state law claim *in the course of making a determination that a debt is nondischargeable.*”

Pet. App. 4a (citations omitted) (emphasis supplied). In the Ninth Circuit's view, once the pure bankruptcy law question of whether a debt is nondischargeable is raised in an adversary proceeding, bankruptcy courts *gain* jurisdiction to enter final judgments on the underlying merits of the allegedly nondischargeable cause of action (and, apparently, any other claim related to the controversy), regardless of the fact that there is no underlying basis for bankruptcy jurisdiction over such claims. See Pet. App. 5a, 6a, 26a, 27a.²

² Congress expressly provided creditors the right to have a debt declared nondischargeable, and creditors with such claims may pursue the adjudication and liquidation of such claim outside of the bankruptcy court and process. 11 U.S.C. § 523. To protect such claims, creditors must seek a determination of

The Ninth Circuit cited two statutes in support of its rule. The first is section 105(a) of the Bankruptcy Code. Pet. App. 5a. But section 105(a) does not and cannot confer independent jurisdiction upon a bankruptcy court where jurisdiction does not otherwise exist. *See Celotex v. Edwards*, 514 U.S. 300, 326-27 (1995) (Stevens and Ginsburg, J.J., dissenting) (stating the “[i]t cannot be the law, however, that a bankruptcy judge has jurisdiction to enter any conceivable order that a party might request simply because § 105(a) authorizes some injunctions or because the request was first made in a pending Title 11 case,” and citing the leading bankruptcy treatise for the proposition that “Section 105 ‘is not an independent source of jurisdiction, but rather it grants the courts flexibility to issue orders which preserve and protect their jurisdiction’”) (citations omitted); *In re Combustion Eng’g, Inc.*, 391 F.3d 190, 224-25 (3d Cir. 2005) (“[A]s the statute makes clear, § 105 does not provide an independent source of federal subject matter jurisdiction.”); *In re Johns-Manville Corp.*, 801 F.2d 60, 63 (2d Cir. 1986) (“Section 105(a) . . . does not broaden the bankruptcy court’s jurisdiction.”).

The second statute relied upon by the Ninth Circuit is 28 U.S.C. § 1367, which confers “supplemental” jurisdiction upon federal district courts. Pet. App. 6a. The Ninth Circuit stated that “[a] bankruptcy court’s ‘related to’ jurisdiction is very broad, ‘including nearly every matter directly or indirectly related to the bankruptcy,’” and that “Congress [has] expanded the Bankruptcy Court’s Article I jurisdiction by granting federal

nondischargeability, or the claim will be discharged. Under the Ninth Circuit’s rule, however, once a creditor seeks a simple declaration of nondischargeability, the bankruptcy court has jurisdiction to determine the underlying claim. The Ninth Circuit’s rule amounts to a waiver of the creditor’s fundamental right to choose when, where, and how to assert its underlying claim. This cannot be what Congress intended under the bankruptcy statutes, as enacted.

district courts with ‘original and exclusive jurisdiction of all cases under title 11.’” Pet. App. 6a (citations omitted). Ignoring the principles enunciated in *Marathon* and blurring the distinctions among (a) the jurisdiction that Congress is empowered to grant, (b) the jurisdiction that Congress has, in fact, granted to Article III courts, and (c) the limited jurisdiction that Congress may grant to Article I courts, the court concluded:

Thus, at present, the bankruptcy court’s “related to” jurisdiction also includes the district court’s supplemental jurisdiction pursuant to 28 U.S.C. § 1367 “over all claims that are so related to claims in the action within [the court’s] original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.”

Pet. App. 6a.

Simply put, the rule followed by the Ninth Circuit in this case ignores the constitutional issues identified by the Court in *Marathon* and entirely eviscerates the prophylactic measures that Congress adopted in response to *Marathon*. See *Marathon*, 458 U.S. at 71 (“But the restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power, must be distinguished from the adjudication of state-created private rights, such as the right to recover contract damages that is at issue in this case.”). That Congress has granted to *Article III district courts* the broad jurisdiction provided in 28 U.S.C. § 1367 does not change the fact that bankruptcy courts are *not* Article III courts; nor does it change the fact that the jurisdictional grant in bankruptcy cases is limited.

Here, instead of simply deciding that the underlying debt that Sokoloff alleged Sasson owed was *excepted from discharge*, the bankruptcy court adjudicated Sasson’s *liability* and entered its findings as a final judgment for money damages.³ In doing

³ Section 523 does *not* create a *right of recovery* but simply permits the bankruptcy court to make a *determination* as to

so, the bankruptcy court improperly entered a final judgment on a garden-variety state law claim without complying with the restrictions imposed by Congress with respect to noncore matters, which limit the bankruptcy court's decision-making authority to proposing findings of fact and conclusions of law. *See* 28 U.S.C. § 157(c). In affirming this result, the Ninth Circuit relied upon a rule of law that permits precisely what Congress precluded bankruptcy courts from doing when it enacted 28 U.S.C. §§ 157(b) & (c). In short, the Ninth Circuit's interpretation of 28 U.S.C. §§ 157, 1334 and 1367, and 11 U.S.C. § 105 expands the bankruptcy court's jurisdiction in direct conflict with the constitutional limitations identified by the Court in *Marathon*. This unconstitutional result should not be allowed to stand.

Numerous courts have reached the conclusion that bankruptcy courts are not automatically empowered to enter a judgment on the underlying claim when the pure bankruptcy law issue of nondischargeability has been raised. *See, e.g., Walker v. Cadle Co. (In re Walker)*, 51 F.3d 562, 573 (5th Cir. 1995); *Miller v. Kemira (In re Lemco Gypsum, Inc.)*, 910 F.2d 784, 789 (11th Cir. 1990); *Wisconsin Dep't of Indus., Labor & Human Relations v. Marine Bank Monroe (In re Kubly)*, 818 F.2d 643,

dischargeability. *Butler v. Clark (In re Clark)*, 202 B.R. 243, 257 n.38 (Bankr. W.D. Mich. 1996) ("The Court recognizes that no independent cause of action for defalcation exists under authority of § 523(a)(4), but that substantive non-bankruptcy law will determine whether defalcation has occurred."); *In re Verdon*, 95 B.R. 877, 881-82 (Bankr. N.D.N.Y. 1989) (noting that section 523 "creates a cause of action for nondischargeability, not damages"); *see also James v. McCoy*, 56 F. Supp. 2d 919, 935 (S.D. Ohio 1998) (discussing nondischargeability statutes and stating that "[t]hese statutes do not create a private right of action, but merely set forth the criteria that a bankruptcy court must follow in determining dischargeability of debts").

645 (7th Cir. 1987); *Bobroff v. Continental Bank (In re Bobroff)*, 766 F.2d 797, 802 (3d Cir. 1985). By adhering to the distinctions that Congress made in enacting section 157, and by holding that the district court's "supplemental jurisdiction" does not apply to the limited jurisdiction of the bankruptcy courts, these courts have properly avoided an interpretation of the bankruptcy jurisdictional statutes that runs afoul of the constitutional principles addressed in *Marathon*. The decision below is erroneous precisely because it creates a constitutional conflict where one need not exist. See *Legal Servs. Corp.*, 531 U.S. at 545 ("It is well understood that when there are two reasonable constructions for a statute, yet one raises a constitutional question, the court should prefer the interpretation which avoids the constitutional issue.").

B The Decision Below Erroneously Interprets The Specific Bankruptcy Jurisdiction Statutes As Controlled By The General Supplemental Jurisdiction Statute.

The decision below also violates the canon of statutory construction providing that the terms of a statute that specifically address the issue at hand will govern over a more general statute that arguably could be read as being broadly applicable. See *Guidry v. Sheet Metal Workers Nat'l Pension Fund*, 493 U.S. 365, 375 (1990) ("It is an elementary tenet of statutory construction that where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one . . .") (quoting *Morton v. Mancari*, 417 U.S. 535, 550-551 (1974)); *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976) ("[W]here there is no *clear* intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment."). As the Court has explained:

The reason and philosophy of the rule is, that when the mind of the legislator has been turned to the details of a subject, and he has acted upon it, a subsequent statute in general terms, or treating the subject in a general

manner, and not expressly contradicting the original act, shall not be considered as intended to affect the more particular or positive previous provisions, unless it is absolutely necessary to give the latter act such a construction, in order that its words shall have any meaning at all.

Radzanower, 426 U.S. at 153.

Title 28, section 1334 constitutes a specific and limited grant of jurisdiction to federal courts to hear and determine only certain types of matters when bankruptcy jurisdiction and the provisions of the Bankruptcy Code are involved. *See* 28 U.S.C. § 1334(b). The types of matters that federal courts are entitled to adjudicate under their *bankruptcy* jurisdiction, as compared with other fonts of federal jurisdiction, are specifically set forth in section 1334. *Id.* Within the context and confines of a bankruptcy case, Congress gave federal courts jurisdiction to adjudicate *only* claims: (a) “arising under title 11,” (b) “arising in” a case under title 11, or (c) “related to” such a case. *Id.* Congress could have, but did not, give federal courts jurisdiction in bankruptcy cases to hear and determine “all claims,” or claims that are other than “related to” the bankruptcy estate. Instead, Congress’s grant of jurisdiction in bankruptcy matters is specific, limited, and tethered to either the provisions of the Bankruptcy Code or the *res* being administered in bankruptcy.

By contrast, 28 U.S.C. § 1367 applies “in any civil action of which the district courts have original jurisdiction.” In that context, the district court acquires “supplemental jurisdiction over all other claims that are so related to claims in the action within such original jurisdiction that they form part of the same case or controversy under Article III of the United States Constitution.” *Id.* Thus, unlike 28 U.S.C. §§ 1334 and 157, which apply specifically to bankruptcy matters and circumscribe the jurisdiction of the Article I bankruptcy courts, 28 U.S.C. § 1367’s grant of jurisdiction to the Article III district courts is not limited to a specific type of case or controversy, but applies more generally in “any civil action.” The grant of jurisdiction under section 1367 has been described as being at the outer limit

of Article III jurisdiction. *See, e.g., New Rock Asset Partners, L.P. v. Preferred Entity Advancements, Inc.*, 101 F.3d 1492, 1509 (3d Cir. 1996) (“the language and history of § 1367 support its extension to the limits that Article III permits”); *In re Walker*, 51 F.3d at 571-71 (collecting cases).

In holding that the general grant of jurisdiction “at the outer limited of Article III” under 28 U.S.C. § 1367 supplants the more specific and limited grant of jurisdiction under 28 U.S.C. §§ 157 and 1334, the decision below plainly violates this Court’s precedents and canons of statutory construction.

C. The Decision Below Renders The Bankruptcy Court’s “Related To” Jurisdiction Superfluous.

Not only does the rule followed by the Ninth Circuit allow a statute couched in general terms to supplant a specific grant of jurisdiction, it also renders the specific grant of jurisdiction in 28 U.S.C. § 1334 superfluous, since it is subsumed within the broad terms of 28 U.S.C. § 1367. As this Court has explained, however, “[i]t is, of course, a basic canon of statutory construction that we will not interpret a congressional statute in such a manner as to effectively nullify an entire section.” *Dodd v. United States*, 545 U.S. 353, 358 (2005) (citing *Duncan v. Walker*, 533 U.S. 167, 174 (2001)) (“a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant”); *see also Dole Food Co. v. Patrickson*, 538 U.S. 468, 476-77 (2003) (construing a statute in a manner that avoids making one provision redundant).

Although Congress intended the “related to” jurisdiction provided by section 1334(b) to be broad, it is not without limits. *See Celotex*, 514 U.S. at 308 (noting that “a bankruptcy court’s ‘related to’ jurisdiction cannot be limitless”); *see also Pacor*, 743 F.2d at 994 (“The jurisdiction of the bankruptcy courts to hear cases related to bankruptcy is not without limit, however, and there is a statutory, and eventually constitutional, limitation to the power of a bankruptcy court.”). Accordingly, courts generally interpret the phrase “related to” as giving bankruptcy

courts jurisdiction over only those claims that “could conceivably have any effect on the estate being administered in bankruptcy.” *Celotex*, 514 U.S. at 308 n.6.

Supplemental jurisdiction under section 1367, by contrast, is exceedingly broad, giving federal district courts jurisdiction over any claim that is “so related to claims in the action within the [court’s] original jurisdiction that they form the same case or controversy under Article III of the United States Constitution.” As noted, some courts have opined that the supplemental jurisdiction granted to district courts is the outer limit of Article III jurisdiction. *See, e.g., New Rock Asset Partners, L.P.*, 101 F.3d at 1509 (“the language and history of § 1367 support its extension to the limits that Article III permits”); *In re Walker*, 51 F.3d at 571-71 (collecting cases).

In this case, the “original jurisdiction” required before the application of section 1367 could even be considered is, clearly, the bankruptcy jurisdiction provided by section 1334. Under the rule followed in the decision below, if a party to the bankruptcy case brings *any* claim -- between parties already in the bankruptcy case or not -- that shares a “common nucleus of operative fact” with *any* other claim that “arises under title 11,” “arises in a title 11 case,” or is even just “related to” the bankruptcy case, the bankruptcy court has plenary jurisdiction to enter a final judgment on that claim.

In allowing a bankruptcy court to utilize the district court’s supplemental jurisdiction, the decision below completely eliminates the “related to” limitation contained in section 1334 and 157 and greatly expands the bankruptcy court’s jurisdiction. For example, under the rule followed in the decision below, if a third party (and non-participant in the bankruptcy case) had agreed to indemnify a *creditor* for any amounts that the debtor owed, a bankruptcy court would have supplemental jurisdiction, both to bring that third-party before the court and to determine the creditor’s state law indemnification claims against the third party on the merits, even though the resolution of such claims would have absolutely no effect on the estate because they have no bearing on the amount the creditor can recover from the

debtor. The same would be true in ordinary tort actions in which a creditor seeks contribution or an apportionment of liability involving a third party. As long as the third-party claims arise out of a common nucleus of operative fact as the claim between the creditor and debtor, the bankruptcy court would have supplemental jurisdiction over those claims.

The decision below wholly ignores the reality that permitting an Article I bankruptcy court to exercise an Article III district court's supplemental jurisdiction over state law claims that are not within the specific jurisdiction granted in section 1334 allows the general supplemental jurisdiction statute to nullify the jurisdictional limits provided in 28 U.S.C. §§ 1334 and 157, statutes that Congress specifically tailored to apply in bankruptcy cases. That result not only conflicts with this Court's well-established rules of construction, *see Guidry*, 493 U.S. at 375; *Morton*, 417 U.S. at 550-51, it also is completely unnecessary, *see Radzanower*, 426 U.S. at 153 (noting that a general statute should not nullify a specific one "unless it is absolutely necessary to give the [general] act such a construction, in order that its words shall have any meaning at all"). Section 1367 is not stripped of its effect if it is not applied in bankruptcy; it still applies in civil actions before Article III district courts outside of the bankruptcy context. *See* 28 U.S.C. § 1367. However, if it is applied in bankruptcy, as discussed above, the "related to" jurisdiction specifically provided for by Congress in section 1334(b) serves no purpose.

The foregoing makes plain that, if the decision below is permitted to stand, bankruptcy courts will not have to consider whether a claim "affects" the bankruptcy estate in order to determine whether they have jurisdiction. Instead, litigants would simply argue that their claim is supplemental to some other claim in the bankruptcy case, and thus within the bankruptcy court's jurisdiction. Such an interpretation flies in the face of this Court's long-standing canons of statutory construction and could not have been intended by Congress. Accordingly, the Court should grant certiorari to review the decision below.

CONCLUSION

For the foregoing reasons, the Court should grant certiorari.

Respectfully submitted,

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