No. 17-423

In the Supreme Court of the United States

RICHARD STERBA AND OLGA STERBA, PETITIONERS

v.

PNC BANK

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

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QUESTION PRESENTED

Whether a federal court exercising bankruptcy jurisdiction should apply a federal choice-of-law rule or the forum State's choice-of-law rules to determine whether a creditor's state-law claim is "unenforceable" within the meaning of 11 U.S.C. 502(b)(1).

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INTEREST OF THE UNITED STATES

This brief is submitted in response to the Court's order inviting the Solicitor General to express the views of the United States. In the view of the United States, the petition for a writ of certiorari should be denied.

STATEMENT

1. A debtor commences a voluntary bankruptcy case by filing a petition in bankruptcy court. 11 U.S.C. 301. The debtor may file a bankruptcy petition in the district in which the debtor has been domiciled, resided, or had its principal place of business for at least 180 days, or in a district in which the debtor's affiliate, general partner, or partnership has filed for bankruptcy. 28 U.S.C. 1408.

A petition for bankruptcy automatically stays other actions against the debtor to collect payments, 11 U.S.C. 362, and channels claims against the debtor into the bankruptcy proceedings. "Once a proof of claim

has been filed, the court must determine whether the claim is 'allowed' under § 502(a) of the Bankruptcy Code." *Travelers Cas. & Sur. Co. of Am.* v. *Pacific Gas & Elec. Co.*, 549 U.S. 443, 449 (2007); see 11 U.S.C. 502(a). Section 502(b) of the Code identifies specific circumstances in which the bankruptcy court shall disallow a claim. The provision at issue here requires disallowance of a claim that is "unenforceable against the debtor * * * under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. 502(b)(1).

2. In 2007, petitioners purchased a condominium in Santa Rosa, California. Pet. App. 2a, 16a-17a. To pay for the condominium, petitioners took out two loans secured by liens against the property. *Ibid.* The second loan was made by National City Bank. *Id.* at 2a. The promissory note provides:

> [T]he Bank is a national bank located in Ohio and [the] Bank's decision to make this Loan to you was made in Ohio. Therefore, this Note shall be governed by and construed in accordance with . . . the laws of Ohio, to the extent Ohio laws are not preempted by federal laws or regulations, and without regard to conflict of law principles.

Id. at 17a-18a (citation omitted).

In 2008, petitioners defaulted on both loans. Pet. App. 17a. The senior lender foreclosed, and National City Bank was left with a claim against petitioners for approximately $42,000. *Id.* at 3a. National City Bank later merged with respondent.[1]

In 2013, petitioners filed a Chapter 7 bankruptcy petition in the Northern District of California. Pet. App.

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[1] This brief will refer to National City Bank as respondent.

3a. Respondent submitted a claim based on the 2007 promissory note. *Ibid.* Respondent thus filed the claim five years after petitioners defaulted.

Petitioners objected to the claim under 11 U.S.C. 502(b)(1), arguing that it was "unenforceable" under "applicable law" because it was barred by California's four-year statute of limitations, Cal. Civ. Proc. Code § 337 (West 2006). See Pet. App. 3a. Respondent argued that the claim was enforceable because the parties' contract mandated the application of Ohio law, and the claim was timely under Ohio's six-year limitations period, Ohio Rev. Code Ann. § 1303.16 (LexisNexis 2003). See Pet. App. 3a.

3. The bankruptcy court allowed respondent's claim. Pet. App. 31a-34a. The court applied the choice-of-law rules of the forum State (California), reasoning that it was "exercis[ing] jurisdiction over state law claims." *Id.* at 31a (citing *Klaxon Co.* v. *Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941)). The bankruptcy court determined that California applies the Restatement (Second) of Conflict of Laws § 187 (1988) (Restatement) to determine whether a contractual choice-of-law provision is enforceable. See Pet. App. 32a. Applying that approach, the bankruptcy court held that California would give effect to the parties' agreement to apply Ohio law because Ohio had a "substantial relationship" to the transaction, and because application of Ohio law did not violate a fundamental public policy of California. *Ibid.* Applying Ohio's six-year limitations period, the bankruptcy court determined that the claim was timely and therefore not unenforceable. *Id.* at 32a-33a.

4. The bankruptcy appellate panel (BAP) reversed. Pet. App. 15a-30a. Relying on circuit precedent, the BAP first held that the bankruptcy court should have

applied a federal choice-of-law rule, rather than the forum State's choice-of-law rules, because the bankruptcy court was "exercising federal question jurisdiction pursuant to 28 U.S.C. §§ 1334 and 157(b)(2)(B)." *Id.* at 20a (citing *Liberty Tool & Mfg.* v. *Vortex Fishing Sys., Inc. (In re Vortex Fishing Sys., Inc.)*, 277 F.3d 1057, 1069 (9th Cir. 2002), and *Lindsay* v. *Beneficial Reinsurance Co. (In re Lindsay)*, 59 F.3d 942, 948 (9th Cir. 1995), cert. denied, 516 U.S. 1074 (1996)). The BAP explained that federal choice-of-law rules in the Ninth Circuit "generally follow" the Restatement. *Ibid.* The BAP applied Restatement § 187 and agreed with the bankruptcy court that Ohio had a "substantial relationship" to the parties and transaction, and that California had no fundamental policy against applying Ohio's limitations period. Pet. App. 22a-24a.

The BAP nevertheless held that California's four-year limitations period should apply. The BAP reached that conclusion because it construed *Des Brisay* v. *Goldfield Corp.*, 637 F.2d 680, 682 (9th Cir. 1981), to dictate that result under an earlier version of the Restatement, namely, Restatement (Second) of Conflict of Laws § 142 (1971). See Pet. App. 25a-27a. Specifically, the BAP read *Des Brisay* to hold that a "standard contractual choice of law provision does not cover choice of law questions involving statutes of limitations." *Id.* at 26a. The BAP thus found that the parties' contractual choice of Ohio law did not encompass Ohio's limitations period. *Ibid.* The BAP applied California's four-year limitations period, and concluded that respondent's claim was untimely and therefore unenforceable. *Id.* at 26a-28a.

5. The court of appeals reversed the BAP. Pet. App. 1a-14a. The court agreed with the BAP that, "in bankruptcy, federal choice-of-law rules control which state's

law applies." *Id.* at 2a (citing *In re Lindsay*, 59 F.3d at 948). The court also agreed with the BAP that, under *Des Brisay*, a contractual choice-of-law provision does not encompass a limitations period unless the parties "expressly" incorporate it, and that the promissory note at issue here does not. *Id.* at 4a.

The court of appeals held, however, that in the absence of an express contractual choice of a limitations period, Restatement § 142 governs the determination of what period applies. Pet. App. 5a-6a. Under the 1988 version of Section 142, the forum State's statute-of-limitations period governs "unless the *exceptional circumstances* of the case make such a result unreasonable." *Id.* at 6a (quoting Section 142). The court held that this case presented "exceptional circumstances" that required the application of Ohio's limitations period rather than California's. *Id.* at 7a. In particular, the court emphasized that *Des Brisay* was a federal securities case, not a bankruptcy case. *Id.* at 4a-5a. The court explained that, because of "the unique strictures of the bankruptcy code," respondent was required to file its proof of claim in bankruptcy court in California, even though outside bankruptcy "another jurisdiction—[respondent's] home state of Ohio—would hear the claim, and has a substantial interest in its resolution." *Id.* at 8a. The court held that, "under these exceptional circumstances, the bankruptcy court was correct to apply Ohio's six-year statute of limitations and overrule [petitioners'] objection to [respondent's] claim." *Ibid.*

Judge Tashima concurred in the judgment. Pet. App. 11a-12a. Judge Tashima would have resolved this case based on Restatement § 187, which provides that "[t]he law of the state chosen by the parties . . . will be applied." Pet. App. 11a (quoting Section 187) (brackets

in original). He explained that, under Section 187, "there is no reason not to give effect to the parties' choice-of-law, which included their choice of the Ohio statute of limitations." *Id.* at 12a. He concluded that the parties had made that choice by including in their choice-of-law provision "the phrase 'without regard to conflict of law principles,' which, in this case, means without regard to any analysis that would otherwise be called for under § 142 of the Restatement." *Ibid.*

DISCUSSION

The court of appeals correctly treated the question whether respondent's state-law claim was "unenforceable" within the meaning of 11 U.S.C. 502(b)(1) as an issue of federal law. Use of a federal rule in this bankruptcy context is appropriate because a court in determining whether a claim is unenforceable is interpreting and applying Section 502(b)(1), a federal statutory provision. The court below was also correct in holding that, because Ohio courts would have treated respondent's claim as timely outside the bankruptcy context, the claim is not "unenforceable" within the meaning of Section 502(b)(1). This approach is faithful to Section 502(b)(1)'s text and furthers the broader purposes of the Bankruptcy Code. The principles of *Erie Railroad Co.* v. *Tompkins*, 304 U.S. 64 (1938), are inapposite here because this case arises under bankruptcy jurisdiction, not under diversity jurisdiction, and involves the application of a federal statute.

Courts of appeals have articulated somewhat inconsistent standards for determining whether choice-of-law questions that arise in bankruptcy cases should be resolved under federal or state choice-of-law rules. No circuit conflict exists, however, concerning the ap-

proach that should be used to decide whether a particular state-law claim is time-barred and therefore "unenforceable" within the meaning of Section 502(b)(1). And there is no basis for petitioners' apparent assumption that a single standard or mode of analysis should govern every choice-of-law issue that might arise in a bankruptcy case.

Petitioners' argument assumes that California courts would have applied that State's four-year statute of limitations and would have treated respondent's claim as untimely, notwithstanding the choice-of-law clause in the promissory note, if the claim had been asserted outside of bankruptcy. But even on that assumption, the claim is not "unenforceable" under Section 502(b)(1), since the claim could have been brought and heard in an Ohio court under that State's six-year limitations period. Pet. App. 8a. Petitioners' decision to file their Chapter 7 petition in California does not affect the application of the federal rule that is used to determine whether a claim is enforceable in bankruptcy. See *ibid.*

No court of appeals has relied on the forum State's choice-of-law rules to identify the law to apply when deciding whether a claim is "unenforceable" under Section 502(b)(1). It is also unclear whether the broader tension in the circuits has any meaningful practical significance. Indeed, several courts of appeals have declined to decide whether federal or state choice-of-law rules should apply in particular bankruptcy contexts because the choice has consistently been immaterial to the outcome of the cases that have arisen in those circuits.

This case would be an especially poor vehicle for attempting to clarify the choice-of-law rules that apply in the bankruptcy context. In the court of appeals, petitioners did not argue that California's choice-of-law

rules should apply, but instead acknowledged that circuit precedent mandated the use of a federal choice-of-law rule. This Court should deny the petition for a writ of certiorari.

1. The court of appeals correctly applied a federal rule, rather than the forum State's choice-of-law rule, to determine whether respondent's claim was unenforceable in bankruptcy.

a. Section 502(b) of the Bankruptcy Code sets forth the grounds on which a bankruptcy court shall disallow a creditor's claim against the debtor's estate. Under Section 502(b)(1), a claim shall be disallowed if it is "unenforceable against the debtor * * * under any agreement or applicable law." 11 U.S.C. 501(b)(1). The relevant "applicable law" is the "applicable nonbankruptcy law" that would govern if the creditor brought suit on the claim outside of bankruptcy. *Travelers Cas. & Sur. Co. of Am.* v. *Pacific Gas & Elec. Co.*, 549 U.S. 443, 450 (2007) (citations omitted); see 4 *Collier on Bankruptcy* ¶ 502.03[2][b], at p. 502-21 (Richard Levin & Henry J. Sommer eds., 16th ed. 2017).

A claim is "unenforceable against the debtor" under applicable non-bankruptcy law if it could not be enforced under that law. See, *e.g.*, *Webster's Third New International Dictionary* 2493 (2002) (defining "unenforceable"). A bankruptcy court thus should consider whether the claim could be enforced under the laws of *any* State—in this case, either Ohio or California—in which the claim might have been asserted outside of bankruptcy in a suit brought by the creditor. If the claim could be enforced outside of bankruptcy under the laws of any such State, then it is not "unenforceable against the debtor" within the meaning of Section 502(b)(1). That is a federal rule of decision because it

depends on the meaning of terms in a federal statute, Section 502(b)(1).

That approach is also consistent with the structure and purpose of the Bankruptcy Code. A debtor's petition for bankruptcy channels all claims against the debtor into bankruptcy court in the venue the debtor has chosen—even if creditors proceeding outside of bankruptcy could or would have brought their claims against the debtor in a different jurisdiction. In light of this unique jurisdictional structure, "[t]he 'basic federal rule' in bankruptcy is that state law governs the substance of claims," and a federal court exercising bankruptcy jurisdiction must generally analyze state-law claims in the same way that they would be analyzed in a suit brought by the creditor outside of bankruptcy. *Raleigh* v. *Illinois Dep't of Revenue*, 530 U.S. 15, 20 (2000) (quoting *Butner* v. *United States*, 440 U.S. 48, 57 (1979)); *Travelers Cas. & Sur. Co. of Am.*, 549 U.S. at 450. That rule looks to the States' laws that could apply to the claim outside of bankruptcy, and allows any claim that could be enforced under any of those potentially applicable laws. This approach ensures that a state-law claim that could be brought and heard outside of bankruptcy does not become unenforceable "merely by reason of the happenstance of bankruptcy," *Butner*, 440 U.S. at 55 (citation omitted), or the debtor's decision to file his bankruptcy petition in a particular State.

b. Although the court of appeals reached its ultimate conclusion by a somewhat circuitous analytic route, the court correctly treated the issue of enforceability as one of federal law, and it correctly held that respondent's claim was enforceable. See Pet. App. 5a, 7a. The court looked to Restatement § 142, which provides that, "[i]n general, unless the *exceptional circumstances* of the

case make such a result unreasonable," the "forum will apply its own statute of limitations barring the claim." Pet. App. 6a (quoting Section 142). The court concluded that, although respondent had filed its claim after California's four-year statute of limitations had expired, this case presented "exceptional circumstances" that made it "unreasonable" to dismiss the claim on that basis. *Id.* at 7a-8a.

The court of appeals based that conclusion on "the unique strictures of the bankruptcy code," under which respondent "was obligated to bring all its claims in the district where [petitioners] filed" their bankruptcy petition. Pet. App. 8a. The court explained that, "[w]here another jurisdiction—[respondent's] home state of Ohio—would hear the claim [outside of bankruptcy], and has a substantial interest in its resolution, disallowing it by mechanical adoption of California's statute of limitations would be wholly unreasonable." *Ibid.* The court held that, "under these exceptional circumstances, the bankruptcy court was correct to apply Ohio's six-year statute of limitations and overrule [petitioners'] objection to [respondent's] claim." *Ibid.*

Although the court of appeals based its holding on the Restatement rather than on the text of Section 502(b)(1), the substance of its analysis was sound. The court considered the statutes of limitations—Ohio's and California's—that might have applied if respondent had brought the claim outside of bankruptcy. The court correctly held that, because Ohio courts would have treated the claim as timely if it had been filed in that State outside of bankruptcy, the claim is not unenforceable in this bankruptcy case. That analysis is consistent with Section 502(b)(1)'s language and with the Bankruptcy Code's purpose of ensuring that claims existing outside

of bankruptcy are not analyzed differently "by reason of the happenstance of bankruptcy." *Butner*, 440 U.S. at 55. The court below also correctly recognized that, even if California courts would have treated respondent's claim as untimely, petitioners' election to file their bankruptcy petition in that State should not preclude allowance of a claim that otherwise could have been brought and heard in Ohio.

c. Petitioner contends (Pet. 23-24) that *Erie* requires a bankruptcy court to apply the choice-of-law rules of the forum State. That argument lacks merit.

The *Erie* doctrine requires a federal court exercising diversity jurisdiction to apply the substantive law of the State in which it sits, including that State's choice-of-law rules. *Klaxon Co.* v. *Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496 (1941). That rule prevents a litigant's choice between state and federal court from being outcome-determinative in a diversity case, thus avoiding intrastate forum shopping and "inequitable administration of the laws" within a State. *Hanna* v. *Plummer*, 380 U.S. 460, 468 (1965). "Otherwise the accident of diversity of citizenship would constantly disturb equal administration of justice in coordinate state and federal courts sitting side by side." *Klaxon*, 313 U.S. at 496.

The *Erie* doctrine is inapplicable here because this is not a diversity case under 28 U.S.C. 1332. Instead, bankruptcy cases arise under federal-question jurisdiction, pursuant to 28 U.S.C. 157 and 1334. Bankruptcy jurisdiction is exclusive to federal court. See *Vanston Bondholders Protective Comm.* v. *Green*, 329 U.S. 156, 163 (1946) (explaining that bankruptcy courts "administer and enforce the Bankruptcy [Code] as interpreted by this Court in accordance with authority granted by

Congress"). And when deciding whether a claim is "unenforceable against the debtor" under "applicable law," 11 U.S.C. 502(b)(1), a bankruptcy court is construing and applying a federal statute.

To be sure, the court of appeals' determination that respondent's claim was not "unenforceable" under Section 502(b)(1) turned in part on the court's analysis of state law. In particular, an essential element of the court's reasoning was that respondent's claim would have been timely under Ohio's six-year statute of limitations if respondent had filed suit there outside of bankruptcy. See Pet. App. 8a. But petitioners have not disputed that Ohio courts would have heard and decided respondent's claim if it had been asserted in that State before petitioners sought bankruptcy relief. Rather, the contested issue in this case is whether the claim was "unenforceable" under Section 502(b)(1) when it would have been timely under Ohio's limitations provision but untimely under that of California, the State in which petitioners chose to file their bankruptcy petition. That question goes to the meaning of a federal statute, and it accordingly raises an issue of federal law.

It would also disserve the "twin aims" of *Erie* to determine the enforceability of a claim in bankruptcy based on the forum State's choice-of-law rules. *Hanna*, 380 U.S. at 468. That approach could encourage forum shopping and could result in "inequitable administration of the laws." *Ibid.* A debtor's petition for bankruptcy channels all claims against the debtor into whatever venue the debtor selects, and bankruptcy has relatively liberal venue provisions, see 28 U.S.C. 1408. Using the forum State's choice-of-law rules to identify the State whose law will govern the enforceability of a bankruptcy claim could encourage "debtors in the shadow of

bankruptcy to restructure or relocate their business dealings in such a way as to gain the benefit of a certain forum's laws." *Limor* v. *Weinstein & Sutton (In re SMEC, Inc.)*, 160 B.R. 86, 90 (M.D. Tenn. 1993) (*SMEC*); see *In re Ovetsky*, 100 B.R. 115, 118 (N.D. Ga. 1989) ("[I]f this Court were to find that it is the forum's state law which must control, such a holding would lead to forum shopping where tort-feasors would relocate to the state with the shortest statute of limitations."). By contrast, application of the federal-law rule described above, which takes into account whether the claim could be enforced under the non-bankruptcy laws of any relevant State, discourages forum shopping and ensures that creditors "are not subjected to, or given the benefit of, an unjustified quirk of legal procedure that imposes on them" the laws of a State in which they may never have transacted. *SMEC*, 160 B.R. at 90-91.

Unlike in diversity cases, there is also no reason to presume in bankruptcy that the forum State "has the greatest interest in seeing its law applied." *SMEC*, 160 B.R. at 90. In diversity cases, federal courts are sitting "side by side" with state courts in the forum State and have a goal of intrastate uniformity. See *Klaxon*, 313 U.S. at 496. That is not so in bankruptcy cases, which are likely to involve transactions and property with "significant contacts in many states." *Vanston*, 329 U.S. at 161; see *SMEC*, 160 B.R. at 90 ("[T]he location of a debtor may bear little relation to the location of his or her property interests or to the corpus of his or her business dealings."). A federal court exercising bankruptcy jurisdiction also "has a goal of national uniformity rather than congruence with" the law of the forum State. *Jafari* v. *Wynn Las Vegas, LLC (In re Jafari)*, 569 F.3d 644, 648 (7th Cir. 2009), cert. denied,

558 U.S. 1114 (2010). The relationship between the federal court and the forum State is thus fundamentally different in bankruptcy than in diversity.

2. There is some disagreement among the circuits about whether, in a bankruptcy case, federal courts should apply federal or state choice-of-law rules to select the law governing state-law claims. The specific question presented here, however, concerns the mode of analysis that should be used to determine whether a claim is "unenforceable" under 11 U.S.C. 502(b)(1). No circuit conflict exists on this question, as no court of appeals has relied on the forum State's choice-of-law rules to determine the enforceability of a claim.

The Ninth Circuit has stated in broad terms that, "in bankruptcy, federal choice-of-law rules control which state's law applies." Pet. App. 2a; see *Lindsay* v. *Beneficial Reinsurance Co. (In re Lindsay)*, 59 F.3d 942, 948 (1995) ("In federal question cases with exclusive jurisdiction in federal court, such as bankruptcy, the court should apply federal, not forum state, choice of law rules."), cert. denied, 516 U.S. 1074 (1996); see also *Danning* v. *Pacific Propeller, Inc. (In re Holiday Airlines Corp.)*, 620 F.2d 731, 734 (9th Cir.) (rejecting "mechanical application of the conflicts law of the forum State" in bankruptcy), cert. denied, 449 U.S. 900 (1980). The court below followed that general approach in determining whether respondent's claim was enforceable. Invoking Restatement § 142 as a source of federal choice-of-law rules, Pet. App. 5a, the court held that "disallowing [the claim] by mechanical adoption of California's statute of limitations would be wholly unreasonable" when the claim could have been brought and heard in Ohio outside the bankruptcy context, *id*. at 8a.

The Second and Fourth Circuits apply the forum State's choice-of-law rules in bankruptcy, "in the absence of a compelling federal interest which dictates otherwise." *Compliance Marine, Inc.* v. *Campbell (In re Merritt Dredging Co.)*, 839 F.2d 203, 206 (4th Cir.), cert. denied, 487 U.S. 1236 (1988); see *Bianco* v. *Erkins (In re Gaston & Snow)*, 243 F.3d 599, 606 (2d Cir.) (quoting *In re Merritt Dredging*), cert. denied, 534 U.S. 1042 (2001). It is unclear, however, whether those circuits would apply the forum State's choice-of-law rules when determining whether a claim is "unenforceable" under Section 502(b)(1)—particularly when the parties' contract has a choice-of-law clause and the contract claim is timely and therefore enforceable under the chosen State's law. Those circuits have addressed the choice-of-law issue only when deciding very different questions under the Bankruptcy Code. See *In re Gaston & Snow*, 243 F.3d at 607 (deciding which State's law applied in resolving a trustee's claim against a third party in an adversary proceeding to recover a debt); *In re Merritt Dredging*, 839 F.2d at 205 (deciding which State's law controlled whether a barge was property of the estate). Neither court has held that a claim can be deemed "unenforceable" under Section 502(b)(1), based on the forum State's statute of limitations, when the creditor has identified a State in which the claim could have been brought and heard outside of bankruptcy.

The Eighth Circuit has stated, without analysis, that a "bankruptcy court applies the choice of law rules of the state in which it sits." *Amtech Lighting Servs. Co.* v. *Payless Cashways, Inc. (In re Payless Cashways)*, 203 F.3d 1081, 1084 (2000).[2] The contested issue in that

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[2] In an unpublished opinion, the Eleventh Circuit applied the forum State's choice-of-law rule, without analysis, to select the law

case was whether a particular claim was secured and thus had priority under 11 U.S.C. 507, which depended on whether a lien had been perfected. See 203 F.3d at 1083-1084. Because it was undisputed that the claim was allowable, *id.* at 1083, the court had no occasion to address whether the claim was "unenforceable" within the meaning of Section 502(b)(1), or to identify the rules that would apply in making that determination.

The Fifth, Sixth, and Seventh Circuits have repeatedly declined to decide whether federal or forum-State choice-of-law rules should be used to select the law governing state-law claims in bankruptcy. See, *e.g.*, *MC Asset Recovery LLC v. Commerzbank A.G. (In re Mirant Corp.)*, 675 F.3d 530, 537 (5th Cir. 2012) (noting that "[t]his circuit has not determined whether the [federal common law] independent judgment test or the forum state's choice-of-law rules should be applied in bankruptcy," and declining to choose between the two because the relevant rules were "'essentially synonymous'") (citation omitted);[3] *State Bank* v. *Miller (In re Miller)*, 513 Fed. Appx. 566, 572 (6th Cir. 2013) ("We need not resolve that issue here" because "under either [State's] law," the result would be the same); *In re*

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governing an adversary proceeding brought by the trustee against third parties for breach of fiduciary duty. *Mukamal* v. *Bakes*, 378 Fed. Appx. 890, 896-897 (2010), cert. denied, 563 U.S. 904 (2011).

[3] The Fifth Circuit stated in *Crist* v. *Crist (In re Crist)*, 632 F.2d 1226 (1980), cert. denied, 451 U.S. 936, and 454 U.S. 819 (1981), that "[w]hen disposition of a federal question requires reference to state law, federal courts are not bound by the forum state's choice of law rules, but are free to apply the law considered relevant to the pending controversy." *Id.* at 1229. Later decisions have clarified that the circuit remains undecided on this issue. See *Woods-Tucker Leasing Corp.* v. *Hutcheson-Ingram Dev. Co.*, 642 F.2d 744, 748-749 (5th Cir. 1981).

Jafari, 569 F.3d at 651 ("[W]e need not decide * * * because Nevada substantive law would apply either way."). Indeed, the Fifth and Seventh Circuits have declined to resolve the question for decades, consistently finding that the choice between federal and state choice-of-law rules would not affect the outcome of the particular cases before them. See *In re Morris*, 30 F.3d 1578, 1582 (7th Cir. 1994); *Woods-Tucker Leasing Corp.* v. *Hutcheson-Ingram Dev. Co.*, 642 F.2d 744, 748-749 (5th Cir. 1981). The remaining circuits do not appear to have addressed the question.

In sum, petitioners offer no sound reason to believe that any other circuit would have applied the forum State's choice-of-law rules in determining whether respondent's claim was "unenforceable" within the meaning of Section 502(b)(1). More generally, petitioners offer no sound reason to believe that any inconsistency among the various circuits' approaches to choice-of-law issues in bankruptcy has affected the outcome of an appreciable number of cases. And while petitioners appear to assume that a single rule or mode of analysis governs all of the disparate choice-of-law issues that might arise in bankruptcy cases, there is no sound reason to suppose that such a uniform rule exists. This Court's elucidation of the respective roles of federal and state law in determining whether a particular claim is "unenforceable" under Section 502(b)(1) thus might provide little guidance for other bankruptcy contexts.

3. This case would be an especially poor vehicle for deciding how a bankruptcy court should approach choice-of-law issues in deciding whether a claim is "unenforceable" within the meaning of Section 502(b)(1). Petitioners did not press before the panel of the court of appeals any argument that California's choice-of-law

rules should apply. To the contrary, petitioners stated that, "[i]n federal question cases with exclusive jurisdiction in federal court, such as bankruptcy, this Court applies federal choice of law rules." Pets. C.A. Br. 5; see Resp. C.A. Br. 6 (same). The court below accordingly did not address that question at any length, but instead simply noted the Ninth Circuit's prior holding that, "in bankruptcy, federal choice-of-law rules control which state's law applies." Pet. App. 2a (citing *In re Lindsay*, 59 F.3d at 948).

In their briefs to the panel, the parties offered case-specific arguments about the application of Restatement principles to the facts of this case. See Pets. C.A. Br. 5-16; Resp. C.A. Br. 6-12. The panel majority applied Restatement § 142 to conclude that, because respondent could have brought its claim in an Ohio court outside the bankruptcy context, the claim should be treated as timely in this bankruptcy case. See Pet. App. 3a-10a. Judge Tashima concurred in the judgment. *Id.* at 11a-12a. Relying substantially on the choice-of-law provision in the promissory note, and on Restatement § 187, he concluded that "there is no reason not to give effect to the parties' choice-of-law, which included their choice of the Ohio statute of limitations." Pet. App. 12a.[4]

Petitioners filed a petition for rehearing en banc urging that California's choice-of-law rules should apply. See Pet. for Reh'g 1. The court of appeals denied that petition, with no judge requesting a vote. Pet. App. 35a.

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[4] Although the bankruptcy court applied California choice-of-law principles, it held that respondent's claim was allowable, based on the promissory note's selection of Ohio law. Pet. App. 31a-34a. The BAP reversed and ruled in petitioners' favor, but strongly suggested that it would have reached the opposite result if it had not been constrained by Ninth Circuit precedent. See *id.* at 27a-28a.

The Ninth Circuit therefore devoted no meaningful analysis to the question whether California's choice-of-law rules should govern the issue of enforceability under Section 502(b)(1). And any dispute as to the proper *application* of federal-law principles in resolving the enforceability issue is not fairly encompassed by the question presented in the certiorari petition. See Pet. i.

This Court previously denied certiorari on a choice-of-law question in a bankruptcy case where the issue was not clearly presented by the parties or discussed fully by the court below. See *Erkins* v. *Bianco* (*In re Gaston & Snow)*, 534 U.S. 1042 (2001). There is no reason for a different result here.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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