No. 18A-_____

IN THE
SUPREME COURT OF THE UNITED STATES

In re WALTER ENERGY, INC., et al.

UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND and UNITED MINE WORKERS OF AMERICA 1992 BENEFIT PLAN,

Applicants,

v.

ANDRE M. TOFFEL, as Chapter 7 Trustee for WALTER ENERGY, INC., STEERING COMMITTEE OF FIRST LIEN HOLDERS, WARRIOR MET COAL, INC.

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

APPLICATION FOR EXTENSION OF TIME TO FILE A PETITION FOR A WRIT OF CERTIORARI

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To Associate Justice Clarence Thomas, Circuit Justice for the United States Court of Appeals for the Eleventh Circuit:

1. Under this Court's Rules 13.5 and 22, Applicants United Mine Workers of America (UMWA) Combined Benefit Fund and UMWA 1992 Benefit Plan (the Funds)[1] respectfully request an extension of sixty days to file a petition for a writ of certiorari. The petition will challenge the decision of the Eleventh Circuit in *In re Walter Energy, Inc.*, 911 F.3d 1121 (11th Cir. 2018), a copy of which is attached. The Court of Appeals issued its opinion and judgment was entered on December 27, 2018. Without an extension, the petition for a writ of certiorari would be due on March 27, 2019. With the requested extension, the petition would be due on May 26, 2019. This Court's jurisdiction will be based on 28 U.S.C. § 1254(1).

2. This case is a serious candidate for this Court's review. It involves a bankruptcy court's termination of debtors' statutory obligations to pay health premiums for retired coal workers under the Coal Industry Retiree Health Benefit Act, 26 U.S.C. §§ 9701 *et seq.* (the Coal Act). This Court has recognized the importance of cases raising substantial issues under the Act—previously deciding three Coal Act cases. *See Barnhart* v. *Peabody Coal Co.*, 537 U.S. 149 (2003); *Barnhart* v. *Sigmon Coal Co.*, 534 U.S. 438 (2002); *E. Enters.* v. *Apfel*, 524 U.S. 498 (1998).

[1] Pursuant to Rule 29.6 of the Rules of this Court, the parties to the proceedings include those on the cover. United Mine Workers of America Combined Benefit Fund and United Mine Workers of America 1992 Benefit Plant do not have any stock-owning parent corporations. No publicly held company owns ten percent or more interest in the applicants.

3. The bankruptcy court held, and the district court and Eleventh Circuit panel agreed, that 11 U.S.C. § 1114—the Bankruptcy Code provision governing payment and modification of retiree benefits during bankruptcy—permitted the bankruptcy court to terminate the debtors' Coal Act obligations. That conclusion is wrong, and relies on several legal errors that misinterpret both Section 1114 and how its provisions apply, if at all, to the Coal Act.

4. Whether Chapter 11 debtors reorganize or liquidate, debtors' estates must pay administrative expenses incurred during bankruptcy—including taxes, 11 U.S.C. § 503(b)(1)(B), and the cost of providing "retiree benefits," *id.* § 1114(e)(2). A bankruptcy court can reduce a debtor's obligation to pay "retiree benefits" if "necessary to permit the reorganization of the debtor." *Id.* § 1114(g). Separately, in the Coal Act, Congress created two statutory funds (the Combined Benefit Fund and the 1992 Plan: Applicants here) to provide healthcare benefits to retired coal miners. The Act requires coal operators, including debtors here, to pay federal taxes (which the Act calls "premiums") to support the funds.

5. These two federal statutes represent Congress's carefully reticulated plan to address the problems posed by rapidly shrinking demand for coal and industrial products, which resulted in the 1980s in many coal companies leaving the industry and nearly half of all coal mining employees losing their jobs, while healthcare costs for coal miners more than doubled. To cut these healthcare costs, several companies filed for bankruptcy and halted healthcare payments for tens of thousands of coal miner retirees. In response to these problems, Congress passed Section 1114 of the Bankruptcy Code in 1988 to give retiree benefits administrative-expense priority,

meaning they must be paid by Chapter 11 debtors unless modified under Section 1114's rules. And in 1992, Congress passed the Coal Act to provide greater protection for healthcare benefits for retirees—creating benefit plans funded by new taxes under Title 26 of the U.S. Code to be paid by coal operators and other sources. Applied correctly, these two statutes together ensure that coal miner retirees receive healthcare benefits despite coal companies entering bankruptcy or leaving the industry.

6. A third statute also limits bankruptcy courts' jurisdiction under Section 1114 to terminate a coal company's obligation to pay the federal tax "premiums" to the Funds to support retired miner healthcare benefits—namely, the Anti-Injunction Act, 26 U.S.C. § 7421(a) (AIA). One consequence of Congress treating Coal Act premiums as federal taxes, in addition to protecting those premiums through bankruptcy via administrative-expense priority, was to invoke application of the AIA. Under that AIA, courts are denied the power to prevent the assessment of taxes including, as in this case, by modifying a debtor's liability for unassessed taxes.

7. The Eleventh Circuit's decision below upends these protections for retired coal miner health benefits in two ways, both of which will have significant and negative effects not intended by Congress. First, the Eleventh Circuit skirted application of the AIA by holding (a) premiums owed to the 1992 Benefit Plan do not qualify as taxes under the AIA, *Walter Energy*, 911 F.3d at 1139-40, and (b) that although premiums owed to the Combined Fund qualify as taxes, an exception to the AIA applies, *id.* at 1140-42. Both decisions effectively negate application of the AIA and allow bankruptcy courts to obstruct the collection of federal taxes for the Funds—

despite Congress's clear indication that premiums for both Funds *are* taxes and should not be enjoined. Second, the panel below permitted the bankruptcy court to terminate debtors' clear Coal Act obligations on an impermissibly expansive view of Section 1114 of the Bankruptcy Code, holding that those obligations are mere "retiree benefits" and that terminating the obligations can be necessary to *reorganization* even when the debtor is *liquidating*. Both holdings weaken the protections for retired coal miners contrary to Congress's intent.

8. The petition will present questions involving proper application of the AIA and the scope of Section 1114 of the Bankruptcy Code. The petition will ask (1) whether premiums owed to the 1992 Benefit Plan under the Coal Act should be considered taxes for purposes of the AIA, and (2) whether the narrow exception to the AIA established in *South Carolina* v. *Regan*, 465 U.S. 367 (1984), applies in this bankruptcy case. The Eleventh Circuit's improper resolution of both of these questions conflicts with the decisions of other Circuits.

a. First, at least four other U.S. Courts of Appeals have held that Coal Act premiums are taxes for purposes of applying statutory restrictions. *See, e.g.*, *Adventure Res. Inc.* v. *Holland*, 737 F.3d 786, 794-95 (4th Cir. 1998); *In re Chateaugay Corp.*, 53 F.3d 478, 496 (2d Cir. 1995); *In re Sunnyside Coal Co.*, 146 F.3d 1273, 1277-80 (10th Cir. 1998); *Unity Real Estate Co.* v. *Hudson*, 178 F.3d 649, 675 (3d Cir. 1999). It is inconsistent with these opinions—as well as contrary to this Court's decision in *NFIB* v. *Sebelius*, 132 S. Ct. 2566 (2012), and the D.C. Circuit's opinion in *Florida Bankers Ass'n* v. *U.S. Department of Treasury*, 799 F.3d 1065 (D.C. Cir. 2015) (Kavanaugh, J.)—to hold that the

same Coal Act premiums are not taxes for purposes of the statutory restrictions under the AIA.

b. Second, the panel's application of the *Regan* exception here also misapplies that case (which involved a construction of the AIA to avoid an unconstitutional restriction on this Court's original jurisdiction and was limited to requiring an "alternative legal avenue by which to contest the legality of a particular tax," 465 U.S. at 373 & n.9) and deepens another circuit conflict regarding the scope of *Regan*. *Compare, e.g.*, *In re Am. Bicycle Ass'n*, 895 F.2d 1277, 1280-81 (9th Cir. 1990) (holding that exception to AIA should be strictly construed and limited to challenges to a tax's legality); *In re LaSalle Rolling Mills, Inc.*, 832 F.2d 390, 393-94 (7th Cir. 1987) (similar), *with In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 584-85 (4th Cir. 1996) (applying *Regan* in Coal Act case).

9. The petition may also raise questions about the scope of Section 1114 of the Bankruptcy Code—novel to this Court—involving (1) whether coal companies' statutory obligation to pay premiums under the Coal Act qualifies as a "retiree benefit" under 11 U.S.C. § 1114; and, if so, (2) whether a bankruptcy court terminating a debtor's Coal Act obligations may be "necessary to reorganization of the debtor" when the debtor is liquidating, not reorganizing. The Eleventh Circuit answered both of these questions affirmatively and thus held that the bankruptcy court had authority to terminate Walter Energy's statutory obligation to pay premiums to the Funds. *Walter Energy*, 911 F.3d at 1142-56. But neither conclusion is correct. And the misinterpretation of these important federal statutes will undo

Congress's carefully reticulated scheme for providing health benefits to retired coal workers. This Court's review of these questions, also, is warranted.

10. An extension to file the writ of certiorari in this case is needed to permit counsel to file a petition that adequately addresses these "very important and complex issue[s]." *Id.* at 1126. As evident above, the statutory framework (including the relationship between the Coal Act and the Bankruptcy Code) is intricate, and more time is needed to present the best advocacy to this Court. More time is needed, as well, to allow potential *amici* to bring the consequences of the Court of Appeals' decision to this Court's attention.

11. In light of the above, and the press of other matters on undersigned counsel—including advocacy in other cases involving similar questions under the Bankruptcy Code—Applicant respectfully requests that the due date for its petition for writ of certiorari be extended to May 26, 2019.

Dated: March 14, 2019

Respectfully submitted,

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