No. 20-___

IN THE

Supreme Court of the United States

TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA COMBINED BENEFIT FUND AND TRUSTEES OF THE UNITED MINE WORKERS OF AMERICA 1992 BENEFIT PLAN,
Petitioners,

v.

WESTMORELAND COAL CO., ET AL.,
Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

Bryan Killian
Counsel of Record
John C. Goodchild III
Stephanie Schuster
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave. NW
Washington, DC 20004
(202) 373-6191
bryan.killian@morganlewis.com

John R. Mooney
Paul A. Green
MOONEY, GREEN, SAINDON, MURPHY & WELCH PC
1920 L St. NW, Suite 400
Washington, DC 20036

QUESTIONS PRESENTED

In the decision below, the Fifth Circuit held that the tax Anti-Injunction Act (26 U.S.C. § 7421(a)) does not withdraw jurisdiction over a debtor's effort to use Section 1114(g) of the Bankruptcy Code (11 U.S.C. § 1114(g)) to restrain the assessment of premiums for two benefit plans created under the Coal Industry Retiree Health Benefit Act ("Coal Act") (26 U.S.C. ch. 99).

The Fifth Circuit's decision warrants further review. Its holding that a bankruptcy court may exercise discretion to restrain the assessment of Coal Act premiums deepens a circuit split over the scope of the exception to the Anti-Injunction Act created by *South Carolina* v. *Regan*, 465 U.S. 367 (1984). And its holding that Coal Act premiums are not "any tax" protected by the Anti-Injunction Act deepens another split.

The questions presented are:

1. Is the *South Carolina* v. *Regan* exception to the Anti-Injunction Act available to debtors who want to avoid paying a tax for reasons unrelated to the tax's validity?

2. Are Coal Act premiums "any tax" protected by the Anti-Injunction Act?

PARTIES TO THE PROCEEDING

The Petitioners are the Trustees of the United Mine Workers of America Combined Benefit Fund ("Combined Fund") and the Trustees of United Mine Workers of America 1992 Benefit Plan ("1992 Plan"), who, in their capacities as trustees, were appellants in the proceedings below.

- The Trustees of the Combined Fund are:
  - Michael H. Holland
  - Micheal W. Buckner
  - Michael O. McKown
  - Joseph R. Reschini
  - William P. Hobgood
  - Carl E. Van Horn
  - Gail R. Wilensky
- The Trustees of the 1992 Plan are:
  - Michael H. Holland
  - Michael O. McKown
  - Carlo Tarley
  - Joseph R. Reschini

The Respondents are the following entities, who were appellees in the proceeding below:

- Westmoreland Coal Company
- Absaloka Coal, LLC
- Baskin Resources, Inc.
- Buckingham Coal Company, LLC
- Dakota Westmoreland Corporation
- Daron Coal Company, LLC
- Harrison Resources, LLC
- Haystack Coal Company
- Oxford Conesville, LLC
- Oxford Mining Company - Kentucky, LLC
- Oxford Mining Company
- San Juan Coal Company

- San Juan Transportation Company
- Texas Westmoreland Coal Company
- WCC Land Holding Company, Inc.
- WEI - Roanake Valley, Inc.
- Western Energy Company
- Westmoreland Coal Company Asset Corp.
- Westmoreland Coal Sales Company, Inc.
- Westmoreland Energy Services New York, Inc.
- Westmoreland Energy Services, Inc
- Westmoreland Energy, LLC
- Westmoreland Kemmerer Fee Coal Holdings, LLC
- Westmoreland Kemmerer, LLC
- Westmoreland Mining LLC
- Westmoreland North Carolina Power, LLC
- Westmoreland Partners
- Westmoreland Power, Inc.
- Westmoreland Resource Partners, LP
- Westmoreland Resources GP, LLC
- Westmoreland Resources, Inc.
- Westmoreland San Juan Holdings, Inc.
- Westmoreland San Juan, LLC
- Westmoreland Texas Jewett Coal Company
- Westmoreland - Roanoke Valley, LP
- WRI Partners, Inc.
- Basin Resources, Inc.

RELATED PROCEEDINGS

In re Westmoreland Coal Company, et al., No. 18-35672 (Bankr. S.D. Tex.).

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OPINIONS BELOW

The opinion of the bankruptcy court (Pet. App. 33) is not published, but may be found at 2018 WL 6920227. The opinion of the court of appeals (Pet. App. 1) is published at 968 F.3d 526.

JURISDICTION

The bankruptcy court had jurisdiction over the debtors' cases under 28 U.S.C. § 1334(a) and in accordance with 28 U.S.C. § 157(a); the bankruptcy court had jurisdiction over the Petitioners' adversary proceeding under 28 U.S.C. § 1334(b) and in accordance with 28 U.S.C. § 157(b). When the bankruptcy court ordered judgment on the pleadings, it certified its ruling for direct appeal in accordance with 28 U.S.C. § 158(d)(2)(A)(i) and (iii). See Pet. App. 52. The court of appeals accepted the appeal and had jurisdiction under 28 U.S.C. § 158(d)(2)(A).

The judgment of the court of appeals was entered on August 4, 2020. Under this Court's March 19, 2020 order, the time for filing a petition for a writ of certiorari was extended to January 1, 2021. This Court has jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Relevant provisions of the tax Anti-Injunction Act (26 U.S.C. § 7421(a)), the Coal Industry Retiree Health Benefit Act of 1992 (26 U.S.C. ch. 99), and the Retiree Benefits Bankruptcy Protection Act of 1988 (11 U.S.C. § 1114) are set out in the Appendix. See Pet. App. 53–64.

STATEMENT

Amid a crisis over healthcare benefits for retired miners and their dependents, Congress passed the Coal Industry Retiree Health Benefit Act. The Act eliminated the failing, collectively bargained system for providing benefits and replaced it with a statutory system. The Act created two statutory benefit plans—the United Mine Workers of America Combined Benefit Fund and the United Mine Workers of America 1992 Benefit Plan—whose Trustees are the Petitioners here. Under the Act, "premiums" for the Combined Fund and 1992 Plan are regularly assessed on certain coal-industry employers, unless they cease operating or cease to exist.

This case comprises the jointly administered Chapter 11 bankruptcy cases of nearly three dozen affiliated debtors, some of whom had been paying Coal Act premiums before bankruptcy. Because those debtors did not cease operating or cease to exist, they were due to be assessed Coal Act premiums during bankruptcy. The debtors, however, made clear that they planned to ask the bankruptcy court to shield them from Coal Act assessments—not because the debtors believed the assessments would be invalid, but simply because the debtors wanted to conserve money.

The Petitioners countered that the tax Anti-Injunction Act ("AIA") barred the court from granting that discretionary relief. The AIA strips federal courts of jurisdiction to "restrain[] the assessment or collection of any tax." 26 U.S.C. § 7421(a). Because Coal Act premiums are taxes, debtors cannot avoid Coal Act assessments in bankruptcy. Rather, as most courts have held, Coal Act premiums may be assessed against debtors, and those assessments are paid in accordance with the Bankruptcy Code's priority rules.

The Fifth Circuit ruled for the debtors, holding the AIA inapplicable to the two types of Coal Act premiums at issue. Despite recognizing that premiums for the Combined Fund are "any tax" under the AIA, the court of appeals relied on *South Carolina* v. *Regan*, 465 U.S. 367 (1984), and held that the AIA does not bar actions by taxpayers seeking discretionary relief from undisputedly valid taxes. Next, the court of appeals held that premiums for the 1992 Plan are not "any tax" under the AIA because Congress labeled them "premiums" instead of "taxes."

Each of the Fifth Circuit's jurisdictional holdings implicates separate circuit splits that this Court should resolve.

The lower courts are divided over the scope of the *South Carolina* v. *Regan* exception to the AIA. The Fifth, Eleventh, and D.C. Circuits interpret *South Carolina* v. *Regan* broadly and, along with the Fourth Circuit, are the only courts of appeals that have applied the *South Carolina* v. *Regan* exception to bypass the AIA. By contrast, the Sixth, Seventh, Eighth, and Ninth Circuits interpret *South Carolina* v. *Regan* narrowly and have never applied its exception to bypass the AIA. What's more, the Seventh, Eighth, and Ninth Circuits specifically hold that the AIA bars bankruptcy courts from exercising its discretionary powers to shield a debtor from a tax assessment—exactly what the Fifth Circuit allowed to happen here.

The lower courts also are divided over whether Coal Act premiums are federal taxes. The Second, Fourth, and Tenth Circuits hold that they are taxes for purposes of the AIA, the Bankruptcy Code, and other federal statutes that expressly apply to "any tax." The Fifth and Eleventh Circuits, by contrast, hold that 1992 Plan premiums are not taxes under the

AIA, reasoning that the meaning of "any tax" in the AIA is unique. The Fourth Circuit squarely rejects that reasoning and has held that the reference to "any tax" means the same thing in the AIA, in the Bankruptcy Code, and in other federal statutes.

These questions are critical to the Coal Act and bankruptcy courts and should be resolved now. The Court should grant the petition and hold *both* that Coal Act premiums are "any tax" under the AIA and that *South Carolina* v. *Regan* does not justify restraining the assessment of those premiums just because a debtor's reorganization may be more successful if its Coal Act obligations are extinguished.

I. Statutory Background

In the mid-twentieth century, the United Mine Workers of America secured healthcare benefits for retired coal miners. See *Eastern Enterprises* v. *Apfel*, 524 U.S. 498, 504–11 (1996) (plurality). As paying for those benefits became expensive, companies tried to avoid the costs. Some refused to sign CBAs. Some shrank and continued mining without union employees. Others stopped mining. See *id.* at 511; *Barnhart* v. *Sigmon Coal Co.*, 534 U.S. 438, 445 (2002).

And some companies declared bankruptcy. A flashpoint was the bankruptcy of LTV Corporation, a steel and mining conglomerate. Upon filing its petition, LTV immediately stopped paying for the healthcare benefits of 78,000 retirees. LTV theorized that retirees' claims for benefits were general unsecured claims, which LTV could not pay before the claims of secured creditors and priority unsecured creditors. See *In re Chateaugay Corp.*, 64 B.R. 990, 993 (S.D.N.Y. 1986).

As the collectively bargained system for providing lifetime healthcare benefits was collapsing, Congress stepped in and passed two laws at issue in this case. First, Congress required LTV and other Chapter 11 debtors to continue paying for their retirees' healthcare benefits during bankruptcy—in the Retiree Benefits Bankruptcy Protection Act of 1988, Pub. L. No. 100-334, § 2, 102 Stat. 610–13 (Jun. 16, 1988), codified at Sections 1114 and 1129(a)(13) of the Bankruptcy Code. Second, Congress mandated that coal employers fulfill their promises to provide healthcare benefits to retired miners—in the Coal Act, Pub. L. No. 102-486, 106 Stat. 2776, 3036–56 (Oct. 24, 1992), codified at Chapter 99 of the Internal Revenue Code.

A. Section 1114 of the Bankruptcy Code

Section 1114 governs the payment of a debtor's "retiree benefits" during a Chapter 11 bankruptcy. 11 U.S.C. § 1114(a). For these retiree benefits, Section 1114 preserves the pre-bankruptcy status quo by mandating that a debtor "shall timely pay *** any retiree benefits" after filing a petition. *Id.* § 1114(e)(1).

Section 1114 also regulates whether, when, and how a debtor can temporarily or permanently modify its obligation to pay retiree benefits. See *ibid.* The Section 1114 process for modifying these obligations is highly discretionary. The debtor may submit "a proposal *** which provides for those necessary modifications in the retiree benefits that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably." *Id.* § 1114(f)(1)(A). If the retirees, through an authorized

representative, accept the debtor's proposal, the modifications may be implemented without a court order. If the representative rejects the proposal, the court may implement the proposal by order, but only if the representative "refused to accept such proposal without good cause" and only if the court independently concludes that the proposal is fair, equitable, and "necessary to permit the reorganization of the debtor." *Id.* § 1114(g)(1)–(3).

B. The Coal Act

The Coal Act eliminated the coal industry's collectively bargained system for providing healthcare benefits to covered miners. In its place, the Act created a rigid, statutory system that coal operators cannot manipulate or avoid. The two main parts of the statutory system are the unique benefits plans the Act established—the Combined Fund and the 1992 Plan.

1. The Combined Fund

The Combined Fund supersedes two collectively bargained plans that were failing before the Coal Act. See 26 U.S.C. § 9702(a)(1), (b). The beneficiaries of the Combined Fund are the retirees who were receiving benefits under those plans at the cutoff date. See *id.* § 9703(f). The benefits provided by the Combined Fund are "substantially the same as" the benefits provided under the collectively bargained plans. *Id.* § 9703(b)(1).

But, unlike the collectively bargained plans, the Combined Fund is financed entirely and solely under the Coal Act. See *id.* §§ 9704–9706; see also *id.* § 9708 ("All liability for contributions to the Combined Fund that arises on and after February 1, 1993, shall be determined exclusively under this chapter *** . "). The

Commissioner of Social Security assigned each Combined Fund beneficiary to a "signatory operator"—often, but not always, a company that employed the beneficiary and supported the collectively bargained plans. See *id.* § 9706(a); see also *id.* § 9701(c). These "assigned operators" are assessed annual Combined Fund premiums based on the number of Combined Fund beneficiaries assigned to them. See *id.* § 9704(a)–(b); see also *Barnhart* v. *Peabody Coal Co.*, 537 U.S. 149, 153–54 (2003).

The Coal Act contains provisions to ensure that coal companies do not evade paying Combined Fund premiums. Among them is "a penalty on the failure of any assigned operator to pay any" Combined Fund premium—$100 per beneficiary per day. 26 U.S.C. § 9707(a), (b). The penalty "shall be treated in the same manner as the tax imposed by section 4980B" of the Internal Revenue Code. *Id.* § 9707(f).

2. The 1992 Plan

The Coal Act established the 1992 Plan as "separate" from the Combined Fund. *Id.* § 9712(a)(1). Whereas the Combined Fund provides benefits to retirees who were actually receiving benefits from certain collectively bargained plans as of the cutoff date, the 1992 Plan provides benefits to two different categories of retirees. One category comprises miners who were or would have been eligible for benefits under those collectively bargained plans had the miners retired in time. See *id.* § 9712(b)(2)(A). The second, larger category comprises "orphaned" miners, whose employers fail to provide them benefits under an individual employer plan. See *id.* §§ 9711, 9712(b)(2)(B).

Premiums for the 1992 Plan are assessed monthly on "last signatory operators," which are the most recent coal industry employers of covered retirees. See 26 U.S.C. §§ 9701(c)(4), 9712(d)(1)(A), (d)(3). The magnitude of a last signatory operator's 1992 Plan premiums depends on the number of beneficiaries enrolled in the 1992 Plan who are attributable to the operator. See *id.* § 9712(d)(1)(A), (d)(3). Some last signatory operators pay no premiums because their retirees are covered by individual employer plans as the Coal Act requires. Those operators can be assessed 1992 Plan premiums if their individual employer plans terminate and the retirees are enrolled in the 1992 Plan as required. Whether they pay premiums or not, certain last signatory operators (called "1988 last signatory operators") must post security, whose proceeds the 1992 Plan may collect when an operator fails to maintain an individual employer plan. *Id.* § 9712(d)(1)(B); see *id.* § 9711.

II. Case Background

1. In October 2018, Westmoreland Coal Company and 36 affiliates filed Chapter 11 petitions. Before bankruptcy, the companies had Coal Act obligations. Among those obligations, the companies paid Combined Fund premiums and 1992 Plan premiums. See Pet. App. 34, 41–42.

Like many Chapter 11 debtors, the Westmoreland debtors proposed to auction their assets. All the bidders conditioned their bids on the bankruptcy court ruling that the winner would not have successor liability for the debtors' Coal Act obligations. While some courts have approved of using Section 363(f) of the Bankruptcy Code to extinguish the Coal Act obliga-

tions of new owners *while leaving the debtors' obligations in place*, see, *e.g.*, *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 585–87 (CA4 1996), the Westmoreland debtors signaled that they intended to go further and ask the bankruptcy court to extinguish their own Coal Act obligations under Section 1114(g). See Pet. App. 5–6 & n.5.

Because the Section 1114 process moves quickly, the Petitioners instituted an adversary proceeding, asking the bankruptcy court to declare that the debtors could not use Section 1114(g) to extinguish Coal Act obligations. The bankruptcy court ruled for the debtors. The court first held that Coal Act obligations are "retiree benefits" subject to modification under Section 1114, rejecting the Petitioners' argument that Section 1114(g) applies only to negotiable contractual obligations, not to non-negotiable statutory obligations. See Pet. App. 42–46. The court thus faced the question whether the AIA prevents the debtors and the court from using Section 1114(g) to extinguish Coal Act obligations, and the court held that Coal Act obligations are not "any tax" for purposes of the AIA. See Pet. App. 48–51. Recognizing the importance of these issues, the bankruptcy court certified its order for direct appeal to the Fifth Circuit. See Pet. App. 51–52.

While the appeal was pending, the Section 1114(g) process played out, and the Westmoreland debtors' Coal Act obligations were extinguished. See Pet. App. 6 n.5. That outcome did not moot the Petitioners' appeal, however. The debtors' confirmed plan of reorganization sets aside money to pay the Petitioners if they prevail on appeal.

2. The Fifth Circuit (Judge Costa, joined by Judges Davis and Smith) affirmed the bankruptcy court's jurisdiction, on somewhat different grounds.

For guidance on how to answer the question "whether a Coal Act premium is a 'tax' under the AIA," the court of appeals looked to *Nat'l Fed'n of Indep. Bus.* v. *Sebelius*, 567 U.S. 519 (2012), where this Court held that the AIA did not prohibit a pre-assessment suit over the constitutionality of an exaction labeled a "penalty." Pet. App. 11. From *NFIB*, the court of appeals concluded that an exaction must be labeled a "tax" in order to be "any tax" under the AIA: "With the AIA, form—specifically, the label Congress uses—does matter over substance." Pet. App. 12. Notwithstanding the court's emphatic statement that "how Congress *labels* the exaction is key," *ibid.*, the court recognized that the AIA protects some non-"tax" exactions, including those that are enforced by a "tax." See Pet. App. 13 (citing *Fla. Bankers Ass'n* v. *U.S. Dep't of Treasury*, 799 F.3d 1065 (CADC 2015) (Kavanaugh, J.), and *CIC Servs., LLC* v. *IRS*, 925 F.3d 247 (CA6 2019)).

Because "Congress called the annual exactions on signatory operators 'premiums,' not taxes," the court of appeals held that the AIA does not protect them. Pet. App. 12. But then, the court of appeals acknowledged that the statutory penalty for failing to pay Combined Fund premiums is a tax, and so the court treated Combined Fund premiums as covered by the AIA. See *id.* at 14. There being no penalties for failing to pay 1992 Plan premiums, the court of appeals held that 1992 Plan premiums are not covered by the AIA. In other words, the court of appeals concluded that Combined Fund "premiums" are "any tax" protected by the AIA, but that 1992 Plan "premiums" are not,

simply because the former are backed by a tax penalty while the latter are not.

The Fifth Circuit stopped short of holding that the AIA covers Combined Fund premiums. The court only *assumed* it because the court *held* that, even if they are covered, an exception to the AIA applies to Section 1114(g) motions. See Pet. App. 14–17. The court derived that exception from *South Carolina* v. *Regan*, 465 U.S. 367 (1984), where this Court held that the AIA did not bar South Carolina from filing an original-jurisdiction action in this Court to raise a Tenth Amendment challenge to an income tax assessed on private citizens. The court of appeals read *South Carolina* v. *Regan* as holding that the AIA never applies to plaintiffs who have "no alternative avenue for federal court jurisdiction." Pet. App. 14. Because Section 1114(g) is the only mechanism for debtors to obtain discretionary relief from their obligations to pay "retiree benefits," the court of appeals held that the AIA does not stop the Westmoreland debtors from using Section 1114(g) to extinguish their Coal Act obligations. Pet. App. 17.

REASONS FOR GRANTING THE PETITION

I. This Court's Review Is Necessary To Settle How The *South Carolina* v. *Regan* Exception Applies In The Lower Courts.

In the 35 years since this Court decided *South Carolina* v. *Regan*, the Court has never again applied its exception to the AIA and has repudiated the reasoning on which the exception was based. Meanwhile, lower courts have struggled with whether and how the *South Carolina* v. *Regan* exception applies beyond the unique facts of that case. The Sixth, Seventh, Eighth, and Ninth Circuits set a high bar for plaintiffs

trying to circumvent the AIA, and three of those circuits have specifically rebuffed debtors who argued that the exception permits them to obtain discretionary relief from federal tax assessments during bankruptcy. Yet, in the decision below, the Fifth Circuit joined the Eleventh and D.C. Circuits in adopting an approach that makes it easy to circumvent the AIA's jurisdictional requirements, and two of those circuits (the Fifth and Eleventh) have permitted debtors to invoke the exception to obtain discretionary relief from federal tax assessments during bankruptcy.

A. The *South Carolina* v. *Regan* exception to the AIA is an outlier.

The AIA limits federal courts' subject-matter jurisdiction. See *Bob Jones Univ.* v. *Simon*, 416 U.S. 725, 749 (1974). The text of the AIA's jurisdictional bar is clear:

> Except as provided in sections 6015(e), 6212(a) and (c), 6213(a), 6232(c), 6330(e)(1), 6331(i), 6672(c), 6694(c), 7426(a) and (b)(1), 7429(b), and 7436, no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

26 U.S.C. § 7421(a). Though the AIA contained no exceptions when enacted, see Act of Mar. 2, 1867, § 10, 14 Stat. 475, Congress has now listed thirteen exceptions by cross-reference. Not only that, but Congress has emphasized that litigants cannot evade the AIA's jurisdictional bar by arguing that they are not "the person against whom such tax was assessed." See Federal Tax Lien Act, Pub. L. No. 89-719, §110(c), 80 Stat. 1144.

In *South Carolina* v. *Regan*, this Court created an additional, atextual exception to the AIA. Invoking this Court's original jurisdiction, the State of South Carolina sued the Secretary of the Treasury to challenge the constitutionality of a federal law that, the State alleged, violated the Tenth Amendment by taxing the interest earned by holders of State-issued bonds. See 465 U.S. at 371–72. The Court held that the AIA did not bar South Carolina's suit: deeming the AIA's clear text "largely irrelevant," *id.* at 377, the Court inferred from legislative history, the AIA's purposes, and other extrinsic "circumstances of its enactment" that the AIA does not apply when "Congress has not provided the plaintiff with an alternative legal way to challenge the validity of a tax." *Id.* at 373; see *id.* at 381. There being no other forum where South Carolina could challenge the validity of a tax assessed on bondholders, the Court held the AIA did not bar the State's original action. See *ibid.*; see also *id.* at 403–04 (Stevens, J., concurring in part and dissenting in part) (agreeing to create an exception to the AIA).

Four Justices, led by Justice O'Connor, opposed creating a new, atextual exception to the AIA. "The Act's language, purpose, and history should leave no doubt that Congress intended to preclude both taxpayer and nontaxpayer suits, regardless of the availability of an alternative forum." *Id.* at 395 (O'Connor, J., concurring in judgment). Nevertheless, Justice O'Connor agreed that the AIA did not bar South Carolina's suit because she interpreted the AIA's reference to "any court" as meaning only lower courts. See *id.* at 398–99. Justice O'Connor thus concluded that the AIA does not limit this Court's original jurisdiction, avoiding the difficult constitutional question

whether Congress has power to do so. See *California* v. *Arizona*, 440 U.S. 59, 66 (1979) ("It is extremely doubtful that [Congress has] the power to limit in this manner the original jurisdiction conferred upon this Court by the Constitution.").[1]

In recent years, this Court has signaled that Justice O'Connor's approach, though it failed to garner a majority at the time, has withstood the test of time. Recent decisions have repudiated the atextual underpinnings of the *South Carolina* v. *Regan* exception:

- The Court in *South Carolina* v. *Regan* derived the exception from legislative history that is "contrary to the apparent meaning of the [AIA's] language." *Interfirst Bank, N.A.* v. *United States*, 769 F.2d 299, 307 n.13 (CA5 1985); see *Nat'l Tr. for Historic Pres. in the U.S.* v. *FDIC*, 21 F.3d 469, 472 (CADC 1994) (Wald, J., concurring) ("In *Regan*, the Court turned to the Tax Anti-Injunction Act's legislative history, despite the fact that the Act's language 'could scarcely be more explicit.'" (quoting *Bob Jones Univ.*, 416 U.S. at 736)). Now, the Court consistently holds that legislative history cannot trump clear statutory text. See, *e.g.*, *Whitfield* v. *United States*, 543 U.S. 209, 215 (2005); *Milner* v. *Dep't of Navy*, 562 U.S. 562, 572 (2011).

- The Court in *South Carolina* v. *Regan* created the exception to the AIA's jurisdiction bar because of equitable concerns about the availability of alternative remedies. See *Regan*, 465 U.S. at 381 n.19. Now,

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[1] Justice Blackmun shared Justice O'Connor's "reservations about the breadth of the approach taken by" the Court yet concurred in the judgment because, in his view, the AIA does not bar suits that will have little or no effect on tax revenues. *Regan*, 465 U.S. at 382–83 (Blackmun, J., concurring in judgment).

the Court holds that federal courts have "no authority to create equitable exceptions to jurisdictional requirements." *Bowles* v. *Russell*, 551 U.S. 205, 214 (2007).

As the exception's foundations have eroded, this Court has neither endorsed nor applied the *South Carolina* v. *Regan* exception outside that single case. On the contrary, the Court has minimized *South Carolina* v. *Regan* as a "unique suit" and, echoing Justice O'Connor, has construed the decision as holding that the AIA does "not bar this Court's exercise of original jurisdiction." *Hibbs* v. *Winn*, 542 U.S. 88, 103 n.6 (2004).

This Court's decisions applying the AIA display "a cyclical pattern of allegiance to the plain meaning of the Act, followed by periods of uncertainty caused by a judicial departure from that meaning, and followed in turn by the Court's rediscovery of the Act's purpose." *Bob Jones Univ.*, 416 U.S. at 742. Almost every departure from the Act's text has "produced a prompt correction in course." *Id.* at 743. Yet the Court has not revisited *South Carolina* v. *Regan*, the last case where the Court deemed the AIA's text "largely irrelevant." *Regan*, 465 U.S. at 377. This case presents an excellent vehicle for the Court to revisit *South Carolina* v. *Regan* and address whether and how the exception the Court created in that case applies in lower courts.

B. Deepening circuit splits, the Fifth Circuit held that the *South Carolina* v. *Regan* exception applies broadly to debtors seeking discretionary relief from taxes.

Because *South Carolina* v. *Regan* is unique and its exception is so difficult to rationalize, lower courts struggle to apply it in a principled way. The courts of

appeals divide into two main camps—those that apply the exception narrowly and those that apply it broadly. In the decision below, the Fifth Circuit joined the courts that apply the exception broadly.

Most courts "construe the exception very narrowly." *Judicial Watch* v. *Rossotti*, 317 F.3d 401, 408 n.3 (CA4 2003); see *In re Am. Bicycle Ass'n*, 895 F.2d 1277, 1281 (CA9 1990) (requiring "strict construction of" the exception and holding that the exception does not allow bankruptcy courts to terminate a debtor's tax obligations). These courts apply the exception only to parties who, like South Carolina, challenge the *validity* of a tax and who have no other forum in which to raise a validity challenge. This approach is extracted verbatim from the Court's holding "that the [AIA] was not intended to bar an action where, as here, Congress has not provided the plaintiff with an alternative legal way to challenge the validity of a tax." *Regan*, 465 U.S. at 373. This approach places the exception in line with due process precedents holding that Congress must give a taxpayer at least one opportunity to obtain judicial review of the validity of a tax. See *Phillips* v. *Commissioner*, 283 U.S. 589, 596–97 (1931); cf. *Bob Jones Univ.*, 416 U.S. at 746–47 ("This is not a case in which an aggrieved party has no access at all to judicial review.").

- The Sixth Circuit holds that the *South Carolina* v. *Regan* exception is inapplicable when plaintiffs have no objection to a tax's validity but want only "to protect themselves from lost profits." *RYO Mach., LLC* v. *Dep't of Treasury*, 696 F.3d 467, 472 (CA6 2012).
- The Seventh Circuit holds that the exception does not apply when a bankruptcy debtor seeks "to avoid (or at least postpone) the assessment of that

tax on grounds unrelated to whether the tax is lawful, due and owing." *In re LaSalle Rolling Mills, Inc.*, 832 F.2d 390, 393 (CA7 1987).

- The Eighth Circuit similarly declines to apply the exception when a bankruptcy trustee "does not dispute the validity of the tax." *Laughlin* v. *IRS*, 912 F.2d 197, 199 (CA8 1990).
- And the Ninth Circuit holds that the exception cannot aid bankruptcy debtors who—like the Westmoreland debtors—"do not seek to determine the validity of the tax, but to prevent substantial harm to the debtor's reorganization plan." *Am. Bicycle Ass'n*, 895 F.2d at 1281; see *Confederated Tribes & Bands of Yakama Indian Nation* v. *ATF*, 843 F.3d 810, 815 (CA9 2016).

Of the four circuits that construe the *South Carolina* v. *Regan* exception narrowly, three circuits—the Seventh, Eighth, and Ninth Circuits—specifically rejected applying the exception in bankruptcy cases, like this one, where debtors or trustees sought to avoid paying a tax for equitable reasons, not because the tax was invalid or unlawful.[2]

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[2] No court of appeals has held that the *South Carolina* v. *Regan* exception applies only to original actions in this Court, but two have signaled their support for that position. See *RYO Mach.*, 696 F.3d at 472 ("[T]he context of our consideration is quite different because the *South Carolina* Court construed the AIA in light of a claim that barring South Carolina's suit would be an unconstitutional restriction on the Supreme Court's original jurisdiction."); *LaSalle Rolling Mills*, 832 F.2d at 393 (noting that "*South Carolina* v. *Regan* could be distinguished for a host of reasons, including the fact that the Court construed the statute in light of a claim that barring the suit would be an uncon-

In the decision below, the Fifth Circuit rejected the narrow approach of the Sixth, Seventh, Eighth, and Ninth Circuits in favor of "view[ing] the exception *more broadly*." Pet. App. 16 (emphasis added). The Fifth Circuit held that the *South Carolina* v. *Regan* exception is available whenever a taxpayer has "no alternative avenue for" seeking relief from a tax, even if the taxpayer seeks only discretionary relief from the tax and is not challenging the tax's validity. *Id.* at 14. In so ruling, the Fifth Circuit joined the Eleventh Circuit in holding that bankruptcy debtors seeking discretionary relief from undisputedly valid taxes may avail themselves of the exception as long as they have "no available alternative remedy" for seeking such discretionary relief. *In re Walter Energy, Inc.*, 911 F.3d 1121, 1138 (CA11 2018). In non-bankruptcy cases, the D.C. Circuit has endorsed this broader view of the *South Carolina* v. *Regan* exception. See *Cohen* v. *United States*, 650 F.3d 717, 726 (CADC 2011) (*en banc*) (holding that, in light of *South Carolina* v. *Regan*, the AIA did not bar claims that could not be raised in a refund suit); *Z Street* v. *Koskinen*, 791 F.3d 24, 31–32 (CADC 2015) (same).

The Fifth Circuit tried to distinguish the contrary decisions of the Seventh, Eighth, and Ninth Circuits, see Pet. App. 16 & n.10, but the purported distinctions are superficial and unpersuasive. The Fifth Circuit characterized the other circuit's bankruptcy cases as ones where debtors and trustees tried to "enjoin the IRS from collecting undisputedly lawful taxes merely

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stitutional restriction of the Supreme Court's original jurisdiction"). The Fifth Circuit expressly disagreed with those courts of appeals, see Pet. App. 15–16 n.9, yet completely ignored this Court's statement in *Hibbs* that the posture of *South Carolina* v. *Regan* was relevant to the outcome.

to facilitate reorganization." *Id.* Indeed. Substitute "the IRS" for "the Coal Act Funds," and that describes this case: the Westmoreland debtors asked the bankruptcy court to restrain the Funds from assessing and collecting *undisputedly lawful* Coal Act premiums *merely to facilitate the debtors' reorganization*. See Pet. App. 5–6 (quoting Section 1114(g) and explaining how the Westmoreland debtors want to eliminate their Coal Act obligations to facilitate their reorganization). Nor are the Seventh, Eighth, and Ninth Circuit decisions distinguishable because the debtors and trustees in those cases did not seek relief under Section 1114(g), "an independent statute." Pet. App. 16 n.10. They sought relief under different Bankruptcy Code provisions, which, like Section 1114(g), give bankruptcy courts discretion to protect a debtor from a range of pre-bankruptcy obligations in order to promote or facilitate the debtor's reorganization. *See LaSalle Rolling Mills*, 832 F.2d at 392 (11 U.S.C. § 105(a)); *Am. Bicycle Ass'n*, 895 F.2d at 1279–80 (same); *Laughlin*, 912 F.2d at 198 (11 U.S.C. § 362(a)). The point is that the debtors and trustees in those cases, like the Westmoreland debtors here, sought discretionary relief in bankruptcy from obligations to pay undisputedly valid and lawful taxes.

By now, most courts of appeals have weighed in, and there is no consensus on how to apply the *South Carolina* v. *Regan* exception generally and no consensus on how to apply it in bankruptcy cases specifically.[3] The Petitioners undoubtedly prevail under the

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[3] The Fourth Circuit has contradictory decisions on the *South Carolina* v. *Regan* exception. *Compare In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 584 (CA4 1996) (applying the exception because the debtors "do not have any 'alternative legal way' " to

narrower approaches. If *South Carolina* v. *Regan* requires a plaintiff to challenge the validity of a tax, the Westmoreland debtors cannot avail themselves of it: their Section 1114(g) motion asked the bankruptcy court to terminate their Coal Act obligations because the debtors believe paying Coal Act premiums and any penalties would be financially too burdensome, not because paying premiums and penalties would be unlawful or unconstitutional. And, if the exception applies only to original actions in this Court, as *Hibbs* suggests, bankruptcy debtors obviously cannot avail themselves of it.

Until this Court provides definitive guidance, lower courts will continue to fracture over how to apply the *South Carolina* v. *Regan* exception. Only this Court can end the current "period[] of uncertainty." *Bob Jones Univ.*, 416 U.S. at 742; see, *e.g.*, *Bowles*, 551 U.S. at 214 (limiting two of this Court's decisions "to the extent they purport to authorize an exception to a jurisdictional rule"). The Court should therefore grant the petition.

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obtain relief), *with Judicial Watch*, 317 F.3d at 408 ("This case differs markedly from *Regan*. Judicial Watch does not challenge the validity of any provision of the Code ***.").

In the decision below, the Fifth Circuit cited *SEC* v. *Credit Bancorp., Ltd.*, 297 F.3d 127, 139 (CA2 2002), as accepting the broader approach to the exception, see Pet. App. 16. Without expressing a view on which approach to the *South Carolina* v. *Regan* exception is better, the Second Circuit simply reversed a lower court's application of the broader approach because the litigant had an alternative remedy. See *Credit Bancorp.*, 297 F.3d at 135, 139–40.

II. This Court's Review Is Necessary To Resolve Whether 1992 Plan Premiums Are "Any Tax" Under The AIA.

The Fifth Circuit technically limited its application of the *South Carolina* v. *Regan* exception to Combined Fund premiums because, in the court's view, 1992 Plan premiums are not "any tax" for AIA purposes. See Pet. App. 11–13.[4] The Fifth Circuit's characterization of 1992 Plan premiums deepened a 3–2

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[4] There is no split on whether Combined Fund premiums are "any tax." The Second, Fourth, and Tenth Circuits hold that Combined Fund premiums (as well as 1992 Plan premiums) are "any tax" because the word "premium" means the same thing as "tax." See pp. 22–23, *infra*. In the decision below, the Fifth Circuit joined the Eleventh Circuit in accepting that Combined Fund premiums are "any tax", not because the word "premium" means the same thing as "tax," but because Congress expressly provided that the penalties owed for failing to pay Combined Fund premiums are "taxes." See Pet. App. 13–14.

One of the opinions the Fifth and Eleventh Circuits relied on is the Sixth Circuit's opinion in *CIC Services*. This Court has granted certiorari in *CIC Services* to answer the question whether the AIA bars challenges to regulatory mandates that are not taxes. See 140 S. Ct. 2737 (2020). The Court's opinion in *CIC Services* is unlikely to resolve all the questions presented by this Petition, for *CIC Services* is not a bankruptcy case and does not implicate the Coal Act. If the Court in *CIC Services* holds that the AIA does not bar a challenge to a nontax obligation when the penalty for violating that obligation is a tax, that holding would (at most) repudiate the Fifth and Eleventh Circuits' views on Combined Fund premiums, and those courts (probably) would hold that Combined Fund premiums are not "any tax" for the same (mistaken) reason those courts hold that 1992 Plan premiums are not "any tax." Accordingly, the current split about 1992 Plan premiums would expand to encompass a split about Combined Fund premiums—making the question even more worthy of this Court's review.

split on the question whether those premiums are "any tax" for federal statutory purposes and a 2–1 split on whether they are "any tax" for purposes of one particular federal statute—the AIA.

The Fourth Circuit holds that Coal Act premiums are "any tax" protected by the AIA because the premiums "are involuntary pecuniary burdens imposed by Congress for the public purpose of restoring financial stability to coal miners' benefit plans." *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 583 (CA4 1996) (citing, *inter alia*, *In re Lorber Indus.*, 675 F.2d 1062, 1066 (CA9 1982)). Exactly like other federal taxes, Coal Act premiums are codified in the Internal Revenue Code. See *Elect. Welfare Tr. Fund* v. *United States*, 907 F.3d 165, 169 n.* (CA4 2018) ("It bears mentioning that the Coal Act premiums at issue in *Leckie* were enacted as an amendment to the Internal Revenue Code of 1986, codified in Title 26, and administered by the Secretary of the Treasury.") (citing *Leckie*); see also *Fed. Energy Admin.* v. *Algonquin SNG, Inc.*, 426 U.S. 548, 558 n.9 (1976) (declining to apply the AIA because the exactions were not under the Internal Revenue Code).

Following the same logic, the Fourth Circuit holds that Coal Act premiums are taxes for all federal statutory purposes. Coal Act premiums are "Federal taxes" and thus beyond the reach of the Declaratory Judgment Act, 28 U.S.C. § 2201. See *Leckie*, 99 F.3d at 582–85. And the Fourth Circuit holds that Coal Act premiums are "any internal revenue tax" and thus properly the subject of a tax-refund action under 28 U.S.C. § 1346(a)(1). See *Pittston Co.* v. *United States*, 199 F.3d 694, 702–04 (CA4 1999). The Fourth Circuit's holding in *Pittston* is especially significant,

for this Court has time and again noted the close relationship between the AIA and tax-refund actions: "Because of the Anti-Injunction Act, taxes can ordinarily be challenged only after they are paid, by suing for a refund." *NFIB*, 567 U.S. at 543; *Enochs* v. *Williams Packing & Nav. Co.*, 370 U.S. 1, 7 (1962) ("The manifest purpose of § 7421(a) is to permit the United States to assess and collect taxes alleged to be due without judicial intervention, and to require that the legal right to the disputed sums be determined in a suit for refund.").

The Fourth Circuit also holds that Coal Act premiums are "any tax" for purposes of Section 503(b) of the Bankruptcy Code, 11 U.S.C. § 503(b)(1)(B), which gives administrative-expense priority to "any tax" assessed against a debtor during bankruptcy. See *Adventure Res. Inc.* v. *Holland*, 137 F.3d 786, 793–95 (CA4 1998). The Second and Tenth Circuits agree. See *In re Chateaugay Corp.*, 53 F.3d 478, 498 (CA2 1995); *In re Sunnyside Coal Co.*, 146 F.3d 1273, 1277–80 (CA10 1998). The Second, Fourth, and Tenth Circuit's Bankruptcy Code decisions are relevant here because Section 503(b) of the Bankruptcy Code uses the exact same words as the AIA—"any tax."

By contrast, in the decision below, the Fifth Circuit adopted a label-only test by which the AIA protects an exaction if and only if Congress explicitly labels the exaction a "tax." See Pet. App. 11–12. Since Coal Act exactions are labeled "premiums," not "taxes," the Fifth Circuit concluded that the AIA does not protect Coal Act premiums. *Ibid.* In so ruling, the Fifth Circuit sided with the Eleventh Circuit, which reached the same conclusion in another Section 1114(g) case. See *Walter*, 911 F.3d at 1137–38.

The Fifth Circuit rejected the out-of-circuit decisions holding that Coal Act premiums are "any tax" for federal statutory purposes. It rejected the Fourth Circuit's AIA decision because it predates *NFIB*. See Pet. App. 13. And it rejected the Second, Fourth, and Tenth Circuits' decisions because they addressed whether Coal Act premiums are "any tax" under Bankruptcy Code provisions, not under the AIA. See *id.* at 13 n.8. Neither distinction should stand in the way of this Court's review of this important question.

This Court never has reduced the AIA to the point that an exaction's label—"tax" or something else—is the sole criterion for whether the AIA protects the exaction. Rather, the Court holds that the AIA protects exactions whenever the traditional tools of statutory interpretation indicate that Congress intended the exaction to raise revenue. Thus the Court has held that some exactions labeled "tax" are not protected by the AIA and that some exactions not labeled "tax" are protected by the AIA. See, *e.g.*, *Lipke* v. *Lederer*, 259 U.S. 557, 562 (1922) (holding that an exaction, though labeled a "tax," was not "any tax" under the AIA because it was in a criminal statute and intended by Congress to punish scofflaws); *Horton* v. *Humphrey*, 146 F. Supp. 819, 821 & n.5 (D.D.C.), *aff'd* 352 U.S. 921 (1956) (holding that the AIA protected a "special dumping duty").

Lower courts reject the label-only test for the AIA's cousin, the Tax Injunction Act, 28 U.S.C. § 1341. See *Direct Marketing Ass'n* v. *Brohl*, 575 U.S. 1, 8 (2015) ("We assume that words used in both Acts are generally used in the same way."); see also *Enochs*, 370 U.S. at 6 ("The enactment of the comparable Tax Injunction Act of 1937 *** throws light on

the proper construction to be given § 7421(a)."). Tracing precedents back to *Lipke* (an AIA case), the *en banc* Seventh Circuit held that the fact that an exaction "isn't called a tax *** has nothing to do with any concern behind the Tax Injunction Act. 'Taxation' is unpopular these days, so taxing authorities avoid the term." *Empress Casino Joliet Corp.* v. *Balmoral Racing Club, Inc.*, 651 F.3d 722, 729 (CA7 2011) (en banc). Likewise, the Second Circuit recently acknowledged that "It may well be significant, sometimes even dispositive, that the legislature affirmatively attaches the label 'tax' to a required payment. But the legislature's silent refusal to call a tax a tax, even though it raises revenue to provide a clear general public benefit, is less significant to our inquiry." *Ass'n for Accessible Medicines* v. *James*, 974 F.3d 216, 226 (CA2 2020).

Citing cases stretching back almost a century, *NFIB* didn't purport to change how to ascertain whether an exaction is "any tax" for AIA purposes. See *NFIB*, 567 U.S. at 544 (citing, *inter alia*, *Bailey* v. *George*, 259 U.S. 16 (1922)). An exaction's label always has mattered to deciding whether the exaction is "any tax," and in *NFIB*, the label was practically dispositive—the word "penalty" does not connote a revenue-raising purpose. See *ibid.*; see also *id.* at 543 ("There is no immediate reason to think that a statute applying to 'any tax' would apply to a 'penalty.'").

Here, the statutory label "premium" means the same thing as "tax," for both connote revenue-raising. To follow *NFIB*, the court of appeals should have given "premium" its ordinary meaning—a meaning synonymous with "tax" when the premium is "imposed by the government for the purpose of defraying the expenses of an undertaking which it authorized."

In re Pan Am. Paper Mills, Inc., 618 F.2d 159, 162 (CA1 1980) (statutory "premiums" are "taxes"); *New Neighborhoods, Inc.* v. *W.V. Workers' Comp. Fund*, 886 F.2d 714, 716 (CA4 1989) (statutory "premiums" are "excise taxes"); cf. *Hotze* v. *Burwell*, 784 F.3d 984, 998 (CA5 2015) ("The terms 'tax' and 'assessable payment' do not present a contradiction in the use of terms.").

The Fifth Circuit did not explain why the phrase "any tax," which appears in the Bankruptcy Code and in many other federal statutes, means something unique in the AIA. Normally, courts presume that identical phrases in similar statutes mean the same thing. The Fourth Circuit, in fact, squarely rejects the Fifth Circuit's view that "the term 'tax' has 'different meanings in different contexts.'" *Pittston* 199 F.3d at 702. The Fifth Circuit was wrong to brush off other circuits' Bankruptcy Code cases as irrelevant: the Second Circuit's decision holding that Coal Act premiums are "any tax" *under the Bankruptcy Code* influenced the Fourth Circuit's holding that Coal Act premiums are "any tax" *under the AIA*. See *Leckie*, 99 F.3d at 583 ("Finding the Second Circuit's reasoning persuasive, and discerning no basis for distinguishing the meaning of the word 'tax' in the Bankruptcy Code from the use of that term in the two statutes at issue before us, we adopt the Second Circuit's reasoning as our own.") (citing *Chateaugay*, 53 F.3d at 498).

Even if this Court, like the Fifth Circuit, disregarded the Second, Fourth, and Tenth Circuit's decisions just because they arose in the Bankruptcy Code context, the 2–1 split between the Fourth, Fifth, and Eleventh Circuits over whether 1992 Plan premiums are "any tax" under the AIA still deserves immediate

review. Historically, the Court has not delayed review of Coal Act splits. Two of the Court's three Coal Act opinions resolved 1–1 splits, and the third resolved a splitless question.[5] In Coal Act cases, the Court has granted review quickly—as quickly as it does in tax cases generally—because regional differences in administration of federal tax laws are highly problematic. See *Commissioner* v. *Sunnen*, 333 U.S. 591, 599 (1948) (noting that the results of circuit splits on tax issues are "inequalities in the administration of the revenue laws, discriminatory distinctions in tax liability, and a fertile basis for litigious confusion").

III. The Questions Presented In This Case Are Important, And This Case Is An Excellent Vehicle For Answering Them.

The story of coal miners' fight to secure lifetime healthcare benefits is a story of promises broken, not promises kept. See *Eastern Enterprises*, 524 U.S. at 504–15. Coal employers proved willing to do almost anything—even file bankruptcy petitions—to avoid fulfilling their promises to retirees. Congress crafted

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[5] *Eastern Enterprises* v. *Apfel*, 524 U.S. 498 (1998), decided a splitless constitutional question. See *Eastern Enterprises* v. *Chater*, 110 F.3d 150, 152 (CA1 1997) (joining five other circuits in upholding the constitutionality of the Coal Act).

Barnhart v. *Sigmon Coal Co.*, 534 U.S. 438 (2002), resolved a 1–1 split over successor liability right after the Fourth Circuit broke with the D.C. Circuit. See Pet'n for a Writ of Certiorari, Case No. 00-1307, at 13, *available at* 2001 WL 34091953. An unpublished Third Circuit opinion perhaps made it a 2–1 split. See *Aloe Energy Corp.* v. *Apfel*, 225 F.3d 648 (Table) (CA3 2000).

Barnhart v. *Peabody Coal Co.*, 537 U.S. 149 (2003), resolved a 1–1 split over retiree assignments right after the Sixth Circuit broke with the Fourth Circuit. See Pet'n for a Writ of Certiorari, Case No. 01-705, at 15, *available at* 2001 WL 34092025.

the Coal Act to ensure those promises would be broken no more. Missed payments incur penalties. See 26 U.S.C. § 9707. Operators post security that they lose if they terminate benefits. See *id.* §§ 9711(c)(3), 9712(d)(1)(B). Related persons, even those who aren't in the coal business, are jointly and severally liable for Coal Act obligations. See *id.* §§ 9704(a), 9711(c), 9712(d)(4). And perhaps most significantly, Coal Act obligations are federal taxes, and federal taxes are notoriously difficult to avoid, inside and outside of bankruptcy. See 11 U.S.C. § 503(b).

Yet, the Fifth Circuit held that Section 1114 of the Bankruptcy Code allows coal companies to use bankruptcy to escape their Coal Act obligations: "seeing no clear indication that Congress intended to carve out Coal Act obligations from section 1114's reach, we hold that section 1114 can apply to those obligations." Pet. App. 32. The Fifth Circuit had it backwards. Section 1114 preceded the Coal Act by several years, so the Fifth Circuit held, in effect, that Section 1114 exposes a latent flaw that has undermined the Coal Act from the beginning.

This Court should not wait for a future case to answer the questions presented. Bankruptcy cases involving the AIA and the Coal Act might not last long enough to rise to a court of appeals, let alone to this Court, because of mootness concerns. Bankruptcy orders are usually appealed to a district court first; only if there's time are they appealed to a court of appeals. See 28 U.S.C. § 158(a), (d)(1). While creditors are appealing time-sensitive orders like Section 1114(g) orders, the bankruptcy court pushes the case toward conclusion. Some appellate courts hold that confirmation of a Chapter 11 plan of reorganization moots some appeals of orders issued before the plan. See

generally *In re Pac. Lumber Co.*, 584 F.3d 229, 240–43 (CA5 2009) (explaining the dubious doctrine of equitable mootness). Debtors have a head start and usually win the race; they end their bankruptcy cases before appellants end their appeals. As a result, appellate decisions on these important issues are infrequent, as are opportunities for creditors to seek this Court's review.

In 2019, the Court had a chance to review both of these questions after the Eleventh Circuit's decision in *Walter*. See Case No. 18-1468. That case, it turned out, was a poor vehicle because Justice Alito was recused. See *Archdiocese of Wash.* v. *Wash. Metro. Area Transit Auth.*, 140 S. Ct. 1198, 1199 (2020) (Gorsuch, J., respecting the denial of certiorari) ("Because the full Court is unable to hear this case, it makes a poor candidate for our review.").

In the decision below, the Fifth Circuit endorsed *Walter* and confirmed that the questions presented "are important ones the Supreme Court has not decided." Pet. App. 8. Petitioners, retirees, and coal employers need to know how the AIA, Section 1114, and Coal Act interact. If the Court limits the *South Carolina* v. *Regan* exception to original-jurisdiction cases or to cases challenging the validity of a tax, the emerging threat to the Coal Act will be snuffed out. At the same time, the Court cannot be confident that it will have a chance to review the important questions presented in a future case.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

Bryan Killian
Counsel of Record
John C. Goodchild III
Stephanie Schuster
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Ave., NW
Washington, DC 20004
(202) 373-6191
bryan.killian@morganlewis.com

John R. Mooney
Paul A. Green
MOONEY, GREEN, SAINDON,
MURPHY & WELCH PC
1920 L St. NW, Suite 400
Washington, DC 20036

APPENDIX

PETITION APPENDIX

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United States Court of Appeals, Fifth Circuit.

In the MATTER OF: WESTMORELAND COAL COMPANY, *et al*, Debtors,

Michael H. HOLLAND, as trustee for the United Mine Workers of America Combined Benefit Fund and United Mine Workers of America 1992 Benefit Plan; William P. HOBGOOD, as trustee for the United Mine Workers of America Combined Benefit Fund; Michael W. BUCKNER, as trustee for the United Mine Workers of America Combined Benefit Fund; Michael O. MCKOWN, as trustee for the United Mine Workers of America Combined Benefit Fund and United Mine Workers of America 1992 Benefit Plan; Joseph R. RESCHINI, as trustee for the United Mine Workers of America Combined Benefit Fund and United Mine Workers of America 1992 Benefit Plan; Carlo TARLEY, as trustee for the United Mine Workers of America 1992 Benefit Plan; Carl E. VAN HORN, as trustee for the United Mine Workers of America Combined Benefit Fund; Gail R. WILENSKY, as trustee for the United Mine Workers of America Combined Benefit Fund, Appellants,

Appellants,

v.

WESTMORELAND COAL COMPANY; ABSALOKA COAL, L.L.C.; BUCKINGHAM COAL COMPANY, L.L.C.; DAKOTA WESTMORELAND CORPORATION; DARON COAL COMPANY; et al,

Appellees.

No. 19-20066

Filed: August 4, 2020

Before DAVIS, SMITH, and COSTA, Circuit Judges.

GREGG COSTA, Circuit Judge:

This case involves the interaction of two laws that protect retirees' health care benefits. Passed in 1992, the Coal Act culminated decades of efforts to guarantee benefits for retired coal miners. It requires coal companies to pay premiums that fund retirees' benefits and limits interference with those obligations. Enacted four years earlier, section 1114 of the Bankruptcy Code followed a number of high-profile Chapter 11 cases in which debtors—among them, a coal company—unilaterally terminated their retirees' benefits. It requires a debtor to keep paying benefits unless those benefits are modified through either an agreement between the debtor and the retirees' representative or a court order. This appeal asks whether section 1114 allows for the modification of Coal Act obligations. In line with every other court that has answered the question, we conclude that it does.

I.

A.

The history of the Coal Act is detailed elsewhere, so we review it only briefly. *See generally E. Enterprises v. Apfel*, 524 U.S. 498, 504–15 (1998); *In re Walter Energy, Inc.*, 911 F.3d 1121, 1126–32 (11th Cir. 2018).

Before the Coal Act, a series of National Bituminous Coal Wage Agreements between the United Mine Workers of America (UMWA) and coal companies had resulted in two multiemployer trusts that provided health care benefits to retired miners: the 1950 Benefit Plan and the 1974 Benefit Plan and Trust. These trusts guaranteed lifetime benefits, but

they quickly encountered financial difficulties due to rising health care costs, increases in the number of covered beneficiaries, and decline in the coal industry. In response, the union and coal companies agreed in 1978 to move away from multiemployer plans. Each coal company became responsible for financing its own individual employer plan (IEP). But the 1950 and 1974 Plans remained in effect for limited purposes. The 1950 Plan covered retirees who were already enrolled, and the 1974 Plan covered "orphaned" retirees whose employers had gone out of business. Despite these reforms, the Plans' financial woes continued to deepen as some coal companies refused to sign on to the wage agreements and others exited the industry.

To remedy the Plans' financial troubles, Congress enacted the Coal Industry Retiree Health Benefit Act of 1992 (Coal Act). Pub. L. No. 102-486, 106 Stat. 2776. The Act requires coal companies that had entered into any National Bituminous Coal Wage Agreements from 1978 on—the statute calls such companies "signatory operator[s]"—to provide retirees' health care benefits through IEPs.[1] 26 U.S.C. § 9711(a). That obligation continues as long as the company or a "related person" remains in business. *Id.*; *see also id.* § 9701(c)(2) (defining "related persons"). The Act also created two new multiemployer plans. The Combined Fund merged the 1950 and 1974 Plans. *Id.* § 9702(a)(2). The 1992 Benefit Plan covers retirees who could have received benefits under the 1950 or 1974 Plans but had not retired when the Coal Act was passed as well as orphaned retirees who are

[1] The Coal Act does not cover coal miners who retired after September 30, 1994. 26 U.S.C. §§ 9711(b)(1), 9712(b)(2).

entitled to IEP coverage but are not yet receiving those benefits. *Id.* § 9712(b)(2). Each plan's funding consists primarily of "premiums" levied on signatory operators[2] and money from the federal government. *Id.* §§ 9704(a), 9705(b)(1); 9712(a)(3), (d)(1). A signatory operator's premium obligations extend to "related person[s]" such that, when it "sells substantially all of its assets, the purchaser inherits the obligation to pay" the premiums. *Walter Energy*, 911 F.3d at 1131–32; *see also* 26 U.S.C. §§ 9706(a), 9712(d)(4).

Also included in the Coal Act are several provisions that protect its benefit scheme. Two are relevant to this case. One annuls "any transaction" with "a principal purpose" of "evad[ing] or avoid[ing] liability" under the Act. *Id.* § 9722. The other is specific to the Combined Fund and states that "[a]ll liability for contributions to" that fund "shall be determined exclusively under" the Act. *Id.* § 9708. Even though the Coal Act contains these and other safeguards, it does not expressly address the fate of an operator's premium obligations when the operator enters bankruptcy.

The Bankruptcy Code does address a debtor's health care obligations to its retirees. Four years before Congress passed the Coal Act, it added section 1114 to the Code. It responded to a series of Chapter 11 debtors—most famously, the coal company LTV—that unilaterally terminated their retirees' health care benefits. 7 COLLIER ON BANKRUPTCY ¶

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[2] A signatory operator's premiums are calculated based on the retirees "assigned" to it under each plan. 26 U.S.C. §§ 9704(b), 9706(a)(1)–(2), 9712(d)(1)(A). Only signatories to the 1988 agreement must pay premiums to the 1992 Plan. *Id.* § 9712(d)(6).

1114.01[2], at 1114-10 (Alan N. Resnick & Henry J. Sommer, eds., 16th ed. 2019). Section 1114 requires a debtor to continue paying promised "retiree benefits" unless the debtor and the retirees' representative agree to modify those benefits or a bankruptcy court orders modification. 11 U.S.C. § 1114(e)(1). A debtor can move for court-ordered modification if it first proposes modifications to the retirees' representative and negotiates in good faith, only to have the representative refuse the proposal "without good cause." *Id.* § 1114(f), (g)(1)–(2). In that case, the court "shall" order modification if it "is necessary to permit the reorganization of the debtor and assures that all creditors, the debtor, and all of the affected parties are treated fairly and equitably, and is clearly favored by the balance of the equities." *Id.* § 1114(g)(3).

B.

In October 2018, Westmoreland Coal Company and its affiliates[3] filed Chapter 11 petitions. As part of its reorganization, Westmoreland negotiated an agreement with creditors to sell the bulk of its assets through an auction. Every bidder conditioned its purchase of Westmoreland's assets on the termination of successor liability for Westmoreland's Coal Act obligations.

Consequently, Westmoreland proposed modifying those obligations under section 1114. The Trustees of the Combined Plan and the 1992 Plan responded by filing a complaint for a declaratory judgment that Coal Act obligations are not "retiree benefits" and

[3] Unless differentiation between the Appellees is necessary, this opinion refers to them collectively as "Westmoreland" for simplicity.

thus cannot be modified under section 1114. Westmoreland moved for a Rule 12(c) judgment on the pleadings.

Before the bankruptcy court ruled, the Eleventh Circuit decided the same issue. *See In re Walter Energy, Inc.*, 911 F.3d 1121 (11th Cir. 2018). *Walter Energy*—in which the Trustees were a party—determined that Coal Act obligations were "retiree benefits" subject to modification under section 1114. *Id.* at 1126.[4] Two days later, the bankruptcy court issued an opinion arriving at the same conclusion. It then certified its judgment for direct appeal to our court. *See* 28 U.S.C. § 158(d)(2)(A)(i), (iii).[5]

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[4] The Eleventh Circuit affirmed a district court and a bankruptcy court. *See United Mine Workers of Am. 1974 Pension Plan & Tr. v. Walter Energy, Inc.*, 579 B.R. 603 (N.D. Ala. 2016); *In re Walter Energy, Inc.*, 542 B.R. 859 (Bankr. N.D. Ala. 2015). When this opinion mentions "*Walter Energy*" without citation, it refers to the Eleventh Circuit's decision.

[5] Meanwhile, the bankruptcy court appointed a committee as the retirees' authorized representative for benefit modification negotiations. Westmoreland and the committee eventually reached a settlement. They agreed that Westmoreland will help transition retirees enrolled in its IEP to the 1992 Plan (in part by extending IEP coverage until retirees are covered by the 1992 Plan) and that its Coal Act premium obligations will end once it sells its assets. Westmoreland told the court that terminating successor liability for its Coal Act obligations was necessary to sell its assets, keep its mines running, and save thousands of its miners' jobs. The bankruptcy court conditionally approved the settlement pending appeal to our court. It found that the settlement was "better for the Coal Act retirees, the Coal Act Funds, and all of [Westmoreland's] constituencies, than the alternative." Although the settlement meant the court did not need to make section 1114(g)(3) findings, it did so as an alternative ground for approving the termination of Coal Act obligations.

II.

"When directly reviewing an order from a bankruptcy court, findings of fact are reviewed for clear error and conclusions of law are reviewed *de novo*." *In re OCA, Inc.*, 552 F.3d 413, 419 (5th Cir. 2008). This appeal involves the latter. But Westmoreland says we should engage in no review at all because the Trustees lost on these same issues in the Eleventh Circuit. It contends *Walter Energy* precludes relitigating the issues in the different bankruptcy in this circuit.

Issue preclusion, or collateral estoppel, prevents the same party from relitigating an issue when "(1) the identical issue was previously adjudicated; (2) the issue was actually litigated; and (3) the previous determination was necessary to the decision." *Pace v. Bogalusa City Sch. Bd.*, 403 F.3d 272, 290 (5th Cir. 2005) (en banc).[6] This suit checks all three boxes: *Walter Energy* rejected the same outcome-determinative claim the Trustees press again here.

But something seems amiss. If one circuit's resolution of a legal issue is binding when the losing litigant has a case in another circuit, how would circuit splits develop with repeat litigants (like the Trustees here or, perhaps most often, the federal government)? Sure enough, there is an exception to nonmutual issue preclusion for pure issues of law. Preclusion does not apply if "[t]he issue is one of law and treating it as conclusively determined would inappropriately foreclose opportunity for obtaining reconsideration of the legal

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[6] A fourth factor—whether any special circumstances would make preclusion unfair—applies only to offensive issue preclusion. *Bradberry v. Jefferson Cty.*, 732 F.3d 540, 548 (5th Cir. 2013). It does not apply here because Westmoreland has invoked preclusion as a defense.

rule upon which it was based." RESTATEMENT (SECOND) OF JUDGMENTS § 29(7) (1982). Two situations in which issue preclusion is usually inappropriate are when the issue was previously decided by a coordinate court of appeals or when the issue is of public importance but the highest court that can resolve it has not done so. *Id.* cmt. i. Applying preclusion in those circumstances would inhibit a court from "perform[ing] its function of developing the law." *Id.*; *see also* 18 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 4425, at 697–701 (3d ed. 2016) (summarizing the considerations underpinning "[t]he rule that issue preclusion does not attach to abstract rulings of law," *id.* at 697).

The Trustees' suit falls within this exception. It presents only questions of law. So preclusion is inappropriate both because the other court that decided them was a fellow intermediate federal court and because they are important ones the Supreme Court has not decided. Issue preclusion thus does not bar the Trustees' suit. *See Pharm. Care Mgmt. Ass'n v. District of Columbia*, 522 F.3d 443, 446–47 (D.C. Cir. 2008) (declining to apply issue preclusion to legal question under ERISA addressed in First Circuit case); *Af-Cap, Inc. v. Chevron Overseas (Congo) Ltd.*, 475 F.3d 1080, 1086 (9th Cir. 2007) (declining to apply issue preclusion to Foreign Sovereign Immunities Act issue decided in Fifth Circuit case).

We nevertheless consider the Eleventh Circuit's recent decision as persuasive authority. That is no small thing. Our usual reluctance to create circuit splits is even more pronounced in bankruptcy cases where the need for uniformity is a constitutional command. *In re Ultra Petroleum Corp.*, 943 F.3d 758, 763–64 (5th Cir. 2019) (citing *In re Marciano*,

708 F.3d 1123, 1135 (9th Cir. 2013) (Ikuta, J., dissenting) (quoting U.S. Const. art. I, § 8, cl. 4)).

III.

There is a threshold question before we get to the heart of the matter: Does the Anti-Injunction Act bar a section 1114 modification of Coal Act premiums? The Anti-Injunction Act (AIA) prohibits "suit[s] for the purpose of restraining the assessment or collection of any tax." 26 U.S.C. § 7421(a). It "protects the Government's ability to collect a consistent stream of revenue" and requires taxes to be challenged "only after they are paid." *Nat'l Fed'n of Indep. Bus. v. Sebelius (NFIB)*, 567 U.S. 519, 543 (2012). When the AIA applies, it divests courts of subject-matter jurisdiction. *Hotze v. Burwell*, 784 F.3d 984, 996 (5th Cir. 2015). The Trustees' argue that Coal Act obligations are taxes, so there is no jurisdiction in a section 1114 proceeding to modify them.

A.

The parties disagree about what the relevant "suit" is for purposes of the AIA. Westmoreland contends that its Chapter 11 bankruptcy case is not an adversarial "suit" subject to the AIA but is instead a petition to a bankruptcy court for relief. But adversary proceedings like the one the Trustees initiated "are separate lawsuits within the context of a particular bankruptcy case." 10 COLLIER, *supra*, ¶ 7001.01, at 7001-3; *see also In re TWL Corp.*, 712 F.3d 886, 892 (5th Cir. 2013). Consequently, the AIA can still apply to them. *See Laughlin v. I.R.S.*, 912 F.2d 197, 199–200 (8th Cir. 1990); *In re Am. Bicycle Ass'n*, 895 F.2d 1277, 1279–80 (9th Cir. 1990); *Matter of LaSalle Rolling Mills, Inc.*, 832 F.2d 390, 392–94 (7th Cir. 1987).

Even though we look at this adversary proceeding rather than the bankruptcy as a whole, Westmoreland still says the AIA does not apply. That is because it is a suit brought by the Trustees to compel the collection of taxes—if that is what Coal Act premiums are—as opposed to a suit to "restrain" collection. Indeed, this declaratory judgment action is in a posture different from that of other cases that addressed the AIA in proceedings where debtors actually moved to modify their obligations. *Walter Energy*, 911 F.3d at 1133–34; *In re Leckie Smokeless Coal Co.*, 99 F.3d 573, 583 (4th Cir. 1996). For that reason, the Trustees agree that the AIA does not bar *this* proceeding; they are the ones who filed it after all. But, the Trustees explain, this suit asks us to declare what the law is for the impending section 1114 proceeding. That is typically the point of a declaratory judgment—to decide the issues in another suit that is on the horizon. *See* 10B WRIGHT ET AL., *supra*, § 2751 ("[The declaratory judgment] gives a means by which rights and obligations may be adjudicated in cases involving an actual controversy that has not reached the stage at which either party may seek a coercive remedy and in cases in which a party who could sue for coercive relief has not yet done so."). Because we end up holding that the AIA is not a bar, we will assume the declaratory judgment posture allows us to decide if the AIA would forbid the section 1114 proceeding that everyone agreed was going to happen (and now has).[7]

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[7] The text of the AIA differs from that of the Declaratory Judgment Act, which does not allow courts to issue declaratory judgments "with respect to Federal taxes" (subject to several exceptions). 28 U.S.C. § 2201(a). Although the Trustees request a

B.

1.

The key question is whether a Coal Act premium is a "tax" under the AIA. *National Federation of Independent Business v. Sebelius*, 567 U.S. 519, helps with the answer. It held that because the AIA is a "creature[ ] of Congress's own creation," something is a tax under the AIA only when Congress intended it to be. *Id.* at 544. In other words, the statutory bar on suits to stop the collection of taxes applies only to exactions Congress considered to be taxes. And "the best evidence of Congress's intent is the statutory text." *Id.* It is particularly significant when Congress describes some exactions in a statutory scheme as "taxes" but not others. *Id.*; *see also Hotze*, 784 F.3d at 997. This approach stands in contrast to the framework for evaluating whether an exaction is a tax in the *constitutional* sense, in which case the label Congress uses is of minimal importance. *See NFIB*, 567 U.S. at 544, 564–66. So the AIA applies to something that is not really a tax when it nonetheless has that label, *see id.* at 544 (citing *Bailey v. George*, 259 U.S. 16 (1922)), and does not apply to something that is a tax but doesn't have that label, *see id.* at 544–46. With the AIA, form—specifically, the label Congress uses—does matter over substance.

The Coal Act's labels indicate that Congress did not intend premiums to be taxes for AIA purposes.

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declaratory judgment, neither party asserts that the Declaratory Judgment Act would bar a suit that the AIA does not. We thus assume without deciding that the two statutes are coterminous and limit our discussion to the AIA. *See, e.g.*, *Cohen v. United States*, 650 F.3d 717, 727–31 (D.C. Cir. 2011) (en banc); *Leckie Smokeless*, 99 F.3d at 583–84.

Most obviously, Congress called the annual exactions on signatory operators "premiums," not taxes. *E.g.*, 26 U.S.C. § 9704(a) (Combined Fund); *id.* § 9712(d)(1)(A) (1992 Plan). And its use of the word "tax" elsewhere in the Coal Act—especially its express treatment of penalties for failing to pay Combined Act premiums as a tax—shows that this word choice was intentional. *See id.* § 9707(f) (providing that the penalty for failing to pay Combined Fund premiums "shall be treated in the same manner as [a] tax"); *see also id.* § 9702(a)(4) (granting Combined Fund tax-exempt status); *id.* § 9705(a)(4)–(5) (describing tax treatment of money transferred from the 1950 and 1974 Plans to the Combined Fund). In addition, although the Coal Act's provisions are in the Internal Revenue Code, they are under the subtitle "Coal Industry Health Benefits" while other subtitles expressly describe their contents as taxes. *Compare* 26 U.S.C. Subtitle J ("Coal Industry Health Benefits"), *with, e.g. id.* Subtitle A ("Income Taxes"). *See also I.N.S. v. Nat'l Ctr. for Immigrants' Rights, Inc.*, 502 U.S. 183, 189 (1991) ("[T]he title of a statute or section can aid in resolving an ambiguity in the legislation's text.").

The Trustees raise several counterarguments. First, they assert that premiums are the "same thing" as taxes because the government assesses them for a public purpose. But that functional analysis misses the point of *NFIB*: because the AIA is a statutory creature, how Congress *labels* the exaction is key. *See* 567 U.S. at 544 (rejecting the argument that "even though Congress did not label the shared responsibility payment a tax, we should treat it as such under the Anti-Injunction Act because it functions like a tax").

Second, the Trustees point to several cases holding that Coal Act premiums are taxes. But only one addressed the application of the AIA.[8] *See Leckie Smokeless*, 99 F.3d at 583. And all the cases predated *NFIB* and relied on a functional approach that put little, if any, weight on congressional labels. *See, e.g.*, *In re Chateaugay Corp.*, 53 F.3d 478, 498 (2d Cir. 1995) (looking at whether an exaction is "[a]n involuntary pecuniary burden, *regardless of name*" (emphasis added)).

The Trustees' final argument holds more water. They point to 26 U.S.C. § 9707, which imposes a penalty for failing to pay Combined Fund (but not 1992 Plan) premiums and states that the penalty "shall be treated in the same manner as the tax imposed by section 4980B." *Id.* § 9707(a), (f). This time the label makes the penalty a tax under the AIA. *See NFIB*, 567 U.S. at 544 ("Congress can ... describe something as a penalty but direct that it nonetheless be treated as a tax for purposes of the Anti-Injunction Act.").

That potentially means the AIA forbids not only suits involving the penalty for failing to pay Combined Fund premiums, but also suits involving the Combined Fund premiums themselves. At least two circuits have held that the AIA prohibits challenges to nontax obligations if those obligations are enforced by a tax because relief from the nontax obligation

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[8] Three of the others considered whether Coal Act premiums were a "tax" entitled to administrative-expense priority under the Bankruptcy Code. *See In re Sunnyside Coal Co.*, 146 F.3d 1273, 1276–78 (10th Cir. 1998); *Adventure Res. Inc. v. Holland*, 137 F.3d 786, 793–95 (4th Cir. 1998); *In re Chateaugay Corp.*, 53 F.3d 478, 498 (2d Cir. 1995). Another evaluated a takings claim. *See Unity Real Estate Co. v. Hudson*, 178 F.3d 649, 675 (3d Cir. 1999).

would "necessarily 'restrain' the assessment and collection of the tax." *See Fla. Bankers Ass'n v. U.S. Dep't of the Treasury*, 799 F.3d 1065, 1072 (D.C. Cir. 2015) (Kavanaugh, J.); *accord CIC Servs., LLC v. IRS*, 925 F.3d 247, 257 (6th Cir. 2019). The Eleventh Circuit applied this principle to Combined Fund premiums, explaining that even a suit to modify only the premiums would "mak[e] it impossible for the Combined Fund to assess or collect a tax—that is, the penalty imposed by the Coal Act for a company's failure to pay its premiums." *Walter Energy*, 911 F.3d at 1141.

Like the Eleventh Circuit, we will assume that, because the section 9707 penalty should be treated like a tax, Combined Fund premiums are effectively taxes under the AIA too. We thus consider whether an exception to the AIA permits litigation to modify Combined Fund premiums.

2.

The AIA applies "only when Congress has provided an alternative avenue for an aggrieved party to litigate its claims on its own behalf." *South Carolina v. Regan*, 465 U.S. 367, 381 (1984). In a typical tax case, that other avenue is a postpayment refund suit. *NFIB*, 567 U.S. at 543. The exception, then, is that when no alternative avenue for federal court jurisdiction exists, the AIA will not bar a suit to restrain tax collection. *Regan*, 465 U.S. at 381 (concluding that the AIA did not block South Carolina's suit challenging a federal tax on state bonds on Tenth Amendment grounds because there was no other way to bring that claim). The same idea underlies courts' reluctance to read a statute as precluding all judicial review as opposed to merely channeling litigation into a specific

forum. *See generally Elgin v. Dep't of Treasury*, 567 U.S. 1, 9–10 (2012).

Two courts have held that bankruptcy court motions to modify Coal Act obligations fit within the *Regan* exception. *See Walter Energy*, 911 F.3d at 1141–42 (addressing section 1114 proceeding like this one); *Leckie Smokeless*, 99 F.3d at 584–85 (addressing section 363(f) request to sell assets "free and clear" of Coal Act obligations). As the Eleventh Circuit explained, a debtor cannot modify its retiree benefits except through section 1114, which applies only to Chapter 11 proceedings in bankruptcy court. *Walter Energy*, 911 F.3d at 1141–42 (citing 11 U.S.C. § 103(g)). That means a debtor cannot bring a postassessment refund suit to modify its Coal Act obligations because the district court entertaining that suit would lack the power to grant relief under section 1114. *Id.*

The Trustees do not point to an alternative avenue that Westmoreland could pursue. Instead, they argue that the *Regan* exception is "very narrow" and "almost unique." *E.g.*, *RYO Mach., LLC v. U.S. Dep't of Treasury*, 696 F.3d 467, 472 (6th Cir. 2012). In particular, they contend that *Regan* applies only to suits challenging the *validity* of a tax.[9] Several cases in the

[9] The Trustees also point out that some courts have noted that *Regan* involved the Supreme Court's original jurisdiction. *See RYO Mach.*, 696 F.3d at 472; *LaSalle Rolling Mills*, 832 F.2d at 393. Though other courts have considered that posture relevant, the *Regan* Court expressly declined to reach South Carolina's argument that applying the AIA would have unconstitutionally restricted its original jurisdiction. 465 U.S. at 373 n.9.

Trustees' briefs describe *Regan*'s holding in those terms, but they are distinguishable.[10]

The bigger point is that other courts—including ours, though we have not discussed *Regan* at length—view the exception more broadly. *See Interfirst Bank Dallas, N.A. v. United States*, 769 F.2d 299, 307 n.13 (5th Cir. 1985) ("In *Regan*, the Supreme Court held that the [AIA] was not intended to bar an action where Congress has not provided an adequate, alternative remedy." (citation omitted)); *see also, e.g.*, *Walter Energy*, 911 F.3d at 1138; *SEC v. Credit Bancorp., Ltd.*, 297 F.3d 127, 139 (2d Cir. 2002). That view is consistent with the language the Supreme Court used in *Regan*, which does not limit the exception to validity challenges. *See* 465 U.S. at 378 ("In sum, the [AIA's] purpose and the circumstances of its enactment indicate that Congress did not intend the [AIA] to apply to actions brought by aggrieved parties for whom it has not provided an alternative remedy."); *id.* at 381 ("[T]he [AIA] was intended to apply only when Congress has provided an alternative avenue for an

[10] Three cases barred attempts by Chapter 11 debtors to enjoin the IRS from collecting undisputedly lawful taxes merely to facilitate reorganization. *See LaSalle Rolling Mills*, 832 F.2d at 391–93; *see also Laughlin*, 912 F.2d at 199; *In re Am. Bicycle Ass'n*, 895 F.2d at 1280–81. A fourth case found the AIA prohibited a nonprofit watchdog from enjoining an IRS audit to determine its tax liability. *See Judicial Watch, Inc. v. Rossotti*, 317 F.3d 401, 408 (4th Cir. 2003). In three of these cases, the court observed that alternative remedies were available. *See Judicial Watch*, 317 F.3d at 408; *LaSalle Rolling Mills*, 832 F.2d at 393; *Am. Bicycle Ass'n*, 895 F.2d at 1281 n.4. None of them addressed a situation where the AIA would have blocked the operation of an independent statute that entitles a party to seek relief from a certain category of tax liability, as is the case here.

aggrieved party to litigate its claims on its own behalf.").

We therefore side with the other two courts of appeals to decide the issue and hold that, because bankruptcy court is the only place a debtor can use section 1114 to modify its Coal Act obligations, the AIA does not bar adversary proceedings seeking to do so.

IV.

We finally reach the merits and examine whether Coal Act obligations are "retiree benefits" subject to modification under section 1114. We note at the outset that all courts to consider the question have held that Coal Act obligations are subject to modification. *See Walter Energy*, 911 F.3d at 1142–51; *In re Alpha Nat. Res., Inc.*, 552 B.R. 314, 326–28 (Bankr. E.D. Va. 2016); *In re Horizon Nat. Res. Co.*, 316 B.R. 268, 274–79 (Bankr. E.D. Ky. 2004).

We first analyze section 1114's text to see if the law covers Coal Act obligations. Because we conclude that it does, we then address the interaction of section 1114 with the Coal Act.

A.

Section 1114 defines "retiree benefits" as:

> [P]ayments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise) maintained or established in whole or in part by the

> debtor prior to filing a petition commencing a case under this title.

11 U.S.C. § 1114(a). The parties' textual disputes center on whether Coal Act obligations are "under any plan, fund, or program ... maintained ... in whole or in part" by Westmoreland "prior to filing" bankruptcy.

1.

The first question is whether Westmoreland's payment of premiums "maintained" the Coal Act plans (at least in part). The statute does not define "maintain," so we look to the word's ordinary meaning. *United States v. Lauderdale Cty.,* 914 F.3d 960, 964 (5th Cir. 2019). Dictionaries indicate that providing financial support fits within the plain meaning of "maintain." *Maintain*, Black's Law Dictionary (6th ed. 1990) (including "bear the expense of" and "furnish means for subsistence or existence of"); WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1362 (1993) ("to provide for : bear the expense of"); 9 OXFORD ENGLISH DICTIONARY 224 (2d ed. 1989) ("to bear the expense of, afford"). A homeowner who pays HOA fees thus helps maintain the homeowner's association.

The Trustees counter that "an employer does not 'maintain' a plan simply by cutting checks; a plan is 'maintained' by the persons who operate and administer it day-in and day-out." For support, they cite cases interpreting "employee welfare benefit plan"

under ERISA, which they believe should be read consistent with "retiree benefits" in section 1114 because they share similar language.[11]

The Trustees' argument faces several roadblocks. First, they cite no cases saying that "employee welfare benefit plan" and "retiree benefits" should be read the same (the Latin phrase is *in pari materia*). Although some courts have looked to the former to interpret the latter, they do so to inform the phrase "any plan, fund, or program," not "maintained or established." *See* 7 COLLIER, *supra*, ¶ 1114.02[2][b], at 1114-12 (citing cases). And although the Bankruptcy Code does define some terms by cross-referencing other federal statutes,[12] section 1114 does not refer to ERISA. *See United States v. Reorganized CF & I Fabricators of Utah, Inc.*, 518 U.S. 213, 219–20 (1996).

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[11] Below is the definition of "employee welfare benefit plan" under 29 U.S.C. § 1002(1). Language similar to section 1114's definition of "retiree benefits" is in italics.

> *[A]ny plan, fund, or program* which was heretofore or is hereafter *established or maintained* by an employer or by an employee organization, or by both, to the extent that such plan, fund, or program was established or is maintained *for the purpose of providing* for its participants or their beneficiaries, *through the purchase of insurance or otherwise*, (A) *medical, surgical, or hospital care or benefits, or benefits in the event of sickness, accident, disability, death* or unemployment, or vacation benefits, apprenticeship or other training programs, or day care centers, scholarship funds, or prepaid legal services, or (B) any benefit described in section 186(c) of this title (other than pensions on retirement or death, and insurance to provide such pensions).

[12] *See, e.g.*, 11 U.S.C. § 101(41)(C)(ii) (defining "eligible deferred compensation plan" with reference to the Internal Revenue Code); *id.* § 761(5) (defining "commodity option" with reference to the Commodity Exchange Act).

Second, the two provisions come from statutory schemes with different purposes. Indeed, they are different enough that the Supreme Court has warned against courts' using ERISA to "fill in blanks in a Bankruptcy Code provision." *Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 661 (2006). Even the courts that have looked to ERISA for guidance in interpreting "retiree benefits" have acknowledged doing so "with due regard ... for the different purposes that animate ERISA and the Bankruptcy Code." *E.g.*, *In re Avaya Inc.*, 573 B.R. 93, 102 (Bankr. S.D.N.Y. 2017). Those different purposes prevent us from reading the statutes in tandem. *See Latimer v. Sears Roebuck & Co.*, 285 F.2d 152, 157 (5th Cir. 1960) ("[A] statute is not in pari materia if its scope and aim are distinct ...." (citation omitted)).

Third, though the cases the Trustees cite suggest that "maintaining" an ERISA plan may require something more than financial support, none definitively says that. Three of them grappled with the preliminary question of whether a "plan" exists. *See Fort Halifax Packing Co. v. Coyne*, 482 U.S. 1, 6, 12 (1987); *Cantrell v. Briggs & Veselka Co.*, 728 F.3d 444, 451 (5th Cir. 2013); *Golden Gate Rest. Ass'n v. City & Cty. of S.F.*, 546 F.3d 639, 648–52 (9th Cir. 2008).[13] Two

[13] *Golden Gate* did state that employers forced to pay into a city-run health care plan did not "establish[ ] or maintain[ ]" it for purposes of ERISA. 546 F.3d at 653 (alterations in original). The panel reasoned that (1) the plan existed regardless of whether an employer made payments to the city; (2) employers had no control over conditions of eligibility; and (3) employers had no control over the benefits provided. *Id.* at 653–54. Nevertheless, this reasoning was dicta because the court was responding to the argument of an amicus "to indicate [the court's] disagreement" without "conced[ing] ... that the argument [was] properly before [it]." *Id.* at 653.

others held that a plan was not an employee welfare benefit plan because it was not established or maintained by an employer or employee organization. *See MDPhysicians & Assocs., Inc. v. State Bd. of Ins.*, 957 F.2d 178, 185–86 (5th Cir. 1992); *Taggart Corp. v. Life & Health Benefits Admin., Inc.*, 617 F.2d 1208, 1210 (5th Cir. 1980). Another two concerned whether a plan satisfied an exemption from ERISA's coverage. *See Medina v. Catholic Health Initiatives*, 877 F.3d 1213, 1219 (10th Cir. 2017) (church plan)[14]; *Hightower v. Tex. Hosp. Ass'n*, 65 F.3d 443, 448–49 (5th Cir. 1995) (governmental plan).[15]

Finally, the language of section 1114 differs in at least one key respect from the language in ERISA's definition of "employee welfare benefit plan": whereas section 1114 qualifies "maintained" with the phrase "in whole or in part," ERISA's definition contains no similar qualification. What is required to maintain something in part of course may differ from what is required to maintain something in whole. Even if

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[14] *Medina* did interpret the word "maintain" under 29 U.S.C. § 1002(33)(C)(i) (which defines church plans) to mean "cares for the plan for purposes of operational productivity." 877 F.3d at 1226. But it "t[ook] no position ... on what 'maintain' might mean in other provisions of ERISA, where context may present a different answer." *Id.* n.4.

[15] *Hightower* turned on whether a county government or a private foundation "maintained" a plan. 65 F.3d at 449. Without defining "maintain," the panel concluded that the foundation's "assumption" of responsibility for the plan under a lease agreement meant the foundation "maintained" it. *Id.* The panel did not decide if something less, such as providing mere financial support for a plan, could constitute "maintaining" it.

merely "cutting checks" does not maintain a plan *in whole*, providing financial support does so *in part*.[16]

In sum, the ordinary meaning of "maintain" includes providing financial support. The Trustees have not convincingly demonstrated that ERISA cases suggesting otherwise should govern section 1114. Coal Act obligors thus "maintain" the Combined Fund and the 1992 Plan, in part, by funding them.

2.

The Trustees argue that, even if Westmoreland "maintained" the funds by paying premiums, its other Coal Act obligations do not constitute "retiree benefits" subject to modification. In particular, they assert that posting security for the 1992 Plan did not maintain the plans "prior to filing a petition" under Chapter 11.[17]

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[16] The Trustees argue that the phrase "in whole or in part" does not diminish what it means to "maintain[ ]" a plan. Instead, they assert, it is included to encompass both debtors who maintain their own plans and debtors who jointly maintain a multiemployer plan. Their reading is possible, but it is not the most natural one. Indeed, ERISA's definition of "employee welfare benefit plan" also covers multiemployer plans despite omitting the phrase "in whole or in part." It refers to plans "established or maintained by an employer," 29 U.S.C. § 1002(1), and then defines the word "employer" to "include[ ] a group or association of employers," *id.* § 1002(5).

[17] They also contend that being jointly and severally liable for Coal Act obligations does not amount to maintaining Coal Act obligations. *See, e.g.,* 26 U.S.C. § 9704(a) (joint and several liability for Combined Fund premiums); *id.* § 9711(a) (same for IEPs); *id.* § 9712(d)(4) (same for 1992 Plan premiums and security). But the Trustees forfeited this claim by failing to raise it at the bankruptcy court.

Under the Coal Act, a 1988 last signatory operator[18] must provide security "in an amount equal to a portion of the projected future cost" of providing healthcare benefits to its retirees under the 1992 Plan. 26 U.S.C. § 9712(d)(1)(B). That security can take the form of a bond, letter of credit, or cash escrow. *Id.* It is provided to the 1992 Plan if a 1988 last signatory operator does not maintain its own plan. *Id.* § 9711(c)(3)(A)(ii). Westmoreland and its affiliate Basin posted bonds to satisfy the security requirement before filing for bankruptcy.

The Trustees concede that "[s]ecurity is a form of payment." *See Holland as Tr. of United Mine Workers of Am. 1992 Benefit Plan v. Arch Coal, Inc.*, 346 F. Supp. 3d 99, 105–06 (D.D.C. 2018). But they argue that "the money Westmoreland and Basin paid to secure their bonds didn't reach the 1992 Plan's accounts" before bankruptcy because, until then, "Westmoreland and Basin continued their IEPs."

Their position does not comport with section 1114. Although Westmoreland's and Basin's bonds did not funnel cash directly into the 1992 Plan, section 1114 does not require that. Under the statute, "retiree benefits" include "payments to *any entity* ... for the purpose of providing ... retired employees ... medical ... benefits ... under any plan, fund or program ... maintained ... by the debtor" made prior to bankruptcy. 11 U.S.C. § 1114(a) (emphasis added). Westmoreland and Basin made the bond payments prior to bankruptcy with the purpose of providing their retirees

[18] A 1988 last signatory operator is a coal company that was a signatory to the 1988 wage agreement and was the most recent coal industry employer of a given retiree. 26 U.S.C. § 9701(c)(3)–(4).

health care benefits if they ever stopped operating their individual plans. Those payments ensured that the 1992 Plan would be able to "bear the expense of" additional retirees displaced from their individual plans. *See Maintain*, BLACK'S LAW DICTIONARY, *supra*. As a result, the bond payments fit the definition of "retiree benefits" even if the 1992 Plan did not receive them prior to bankruptcy.

B.

Having determined that Coal Act obligations are "retiree benefits" under section 1114, we now consider the potential clash between those two laws. When evaluating two laws that may conflict, we must "regard each as effective" if they "are capable of co-existence" unless there is "a clearly expressed congressional intention to the contrary." *Morton v. Mancari*, 417 U.S. 535, 551 (1974).

1.

The Trustees' broadest attack is that several provisions of the Coal Act affirmatively "block" the negotiation process that section 1114 requires for a debtor to modify its Coal Act obligations.

The first Coal Act protection they invoke, 26 U.S.C. § 9722, may coexist with a section 1114 proceeding. As mentioned, this provision nullifies "any transaction" with the "principal purpose" of "evad[ing] or avoid[ing] liability" under the Coal Act. 26 U.S.C. § 9722. *Walter Energy* recognized that the Coal Act could thus bar a section 1114 modification that has a principal purpose of avoiding Coal Act liability. *See* 911 F.3d at 1149–50. But the modification was not so motivated in that bankruptcy; instead "the purpose of the sale was to provide the best possible outcome for the various stakeholders because it would

allow some of Walter Energy's mines to continue operating." *Id.* We do not have any findings to support such a conclusion here because this is a declaratory judgment action brought in anticipation of a section 1114 modification attempt. To be sure, the findings that section 1114 requires for court-mandated modification—that "such modification is necessary to permit the reorganization of the debtor and assures that all creditors, the debtor, and all of the affected parties are treated fairly and equitably, and is clearly favored by the balance of the equities," 11 U.S.C. § 1114(g)(3)—would usually preclude a finding that the principal purpose was to extinguish Coal Act obligations. In any case, requiring the bankruptcy court to make a principal purpose finding whenever a debtor attempts to modify its Coal Act obligations maintains a role for both section 1114 and section 9722.

The problem with the Trustees' next argument is that it does not give force to both statutes but instead asks us to displace the bankruptcy modification procedure in favor of a Coal Act provision. The Trustees contend that the provision stating that "[a]ll liability for contributions to the Combined Fund ... shall be determined exclusively under" the Coal Act, 26 U.S.C. § 9708, means there is no role for the Bankruptcy Code to modify those obligations. But there is a narrower reading of section 9708 that gives it meaning while preserving a role for section 1114. Section 9708's title ("Effect on pending claims or obligations") and text[19] indicate that it "serve[s] a specific, narrow

[19] 26 U.S.C. § 9708 reads in relevant part:

All liability for contributions to the Combined Fund that arises on and after February 1, 1993, shall be determined exclusively under this chapter, including all liability for contributions

purpose: to address the effect that the creation of the Combined Fund had on coal companies' existing and future obligations to the 1950 and 1974 Benefit Plans." *Walter Energy*, 911 F.3d at 1149. The Eleventh Circuit explained it well:

> In the first sentence, Congress explained that because the Combined Fund was replacing the 1950 and 1974 Benefit Plans, the Coal Act—not the wage agreements—would determine coal companies' liabilities for contributions going forward. The next sentence clarified that to the extent that a coal company owed obligations to the 1950 and 1974 Benefit Plans that pre-dated the creation of the Combined Fund, those obligations would remain.

Id. Accordingly, section 9708 can be read in a quite reasonable way that does not block a bankruptcy court's ability to modify Coal Act obligations.

Lastly, the Trustees point to 26 U.S.C. § 9711(e),[20] which briefly states that benefits for employees not

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to the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for coal production on and after February 1, 1993. However, nothing in this chapter is intended to have any effect on any claims or obligations arising in connection with the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993 ....

[20] 26 U.S.C. § 9711 is entitled "Continued obligations of individual employer plans." Subsection (e) reads:

> Treatment of noncovered employees.—The existence, level, and duration of benefits provided to former employees of a last signatory operator (and their eligible beneficiaries) who are not otherwise covered by this chapter and who are (or were) covered by a coal wage agreement shall only be determined by, and shall

covered by the Coal Act "shall only be determined by, and shall be subject to, collective bargaining, lawful unilateral action, or other applicable law." This subsection, they argue, implies that Coal Act obligations *are not* subject to "collective bargaining, lawful unilateral action, or other applicable law." That is a strong negative inference to draw from the fairly bland language of section 9711(e). We agree with other courts that read section 9711(e) as leaving benefits for noncovered employees to future collective bargaining agreements or legislation. *See Pa. Mines Corp. v. Holland*, 197 F.3d 114, 118 n.1 (3d Cir. 1999); *Barrick Gold Expl., Inc. v. Hudson*, 823 F. Supp. 1395, 1400–01 (S.D. Ohio 1993), *aff'd*, 47 F.3d 832 (6th Cir. 1995). Section 9711(e) hardly amounts to the clear indication required to show that Coal Act benefits should not be subject to "other applicable law[s]" like section 1114.

2.

The Trustees' next structural argument stems not from the Coal Act but from another part of the Bankruptcy Code. They cite the statute requiring a bankruptcy court to confirm that a reorganization plan provides for the payment of retiree benefits "for the duration of the period *the debtor has obligated itself* to provide such benefits." 11 U.S.C. § 1129(a)(13) (emphasis added). According to the Trustees, the "obligated itself" language means that "retiree benefits" must be voluntarily assumed, not imposed involuntarily by statute.

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be subject to, collective bargaining, lawful unilateral action, or other applicable law.

Even assuming that is true, the Trustees do not carry the day.[21] Coal companies "did in some sense previously obligate themselves to provide the retiree health care benefits" now required under the Coal Act. *Walter Energy*, 911 F.3d at 1145. The Coal Act imposes obligations only on signatories to the wage agreements from 1978 onward that guaranteed lifetime health care benefits to miners. And the Supreme Court has found that initial voluntariness significant in past Coal Act litigation. *See E. Enterprises*, 524 U.S. at 530–37 (plurality opinion) (holding that levying Coal Act premiums on a pre-1978 signatory operator was an unconstitutional taking because the operator never agreed to provide lifetime benefits to its retirees); *id.* at 549–50 (Kennedy, J., concurring in

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[21] The phrase "obligated itself" must have some meaning. But it is hard to say that two words in a different section of the statute books restrict section 1114's scope to voluntarily assumed retirement obligations to the exclusion of statutorily imposed ones when section 1114 makes no such distinction. *See Wirtz v. Local Union No. 125, Laborers' Int'l Union of N. Am., AFL-CIO*, 389 U.S. 477, 482 (1968) ("Such a severe restriction ... should not be read into [a] statute without a clear indication of congressional intent to that effect."). The Fourth Circuit refused to draw a similar line when it rejected the argument that a free-and-clear order could not extinguish coal companies' Coal Act premium obligations because the premiums are taxes. *Leckie Smokeless*, 99 F.3d at 585–86 (addressing 11 U.S.C. § 363(f)(5)). Observing that the Bankruptcy Code did not differentiate taxes from other obligations subject to section 363, it concluded that "Congress has given no indication that bankruptcy courts cannot order property sold free and clear of interests that Congress has itself created by statute." *Id.* at 586. Nevertheless, because we hold that Westmoreland effectively "obligated itself" to provide Coal Act benefits, we do not need to decide whether a debtor must always voluntarily assume its "retiree benefits" to modify them under section 1114.

the judgment and dissenting in part) (finding due process violation on similar retroactivity grounds). So although Coal Act obligations are now "undeniably involuntary," *In re Sunnyside Coal Co.*, 146 F.3d 1273, 1278 (10th Cir. 1998), Westmoreland did originally "obligate[ ] itself" to provide lifetime health care benefits to its retirees through the National Bituminous Coal Wage Agreements.

3.

Finally, the Trustees argue that section 1114 assumes "retiree benefits" are "negotiable" because it permits a bankruptcy court to modify them only after the debtor negotiates with the retirees' representative and the representative rejects a debtor's modification proposal "without good cause." *See* 11 U.S.C. § 1114(e)(1), (f)–(g). But because the Coal Act's financing obligations are statutorily mandated, the argument goes, they are nonnegotiable and therefore cannot be modified under section 1114. Although we address this argument last, it may be the closest one, as it captures the uneasy fit between a bankruptcy code provision that typically deals with benefits created by contracts and Coal Act premiums that are imposed by statute.

The first step of the argument is correct. Section 1114's modification scheme not only presumes but *requires* a back-and-forth negotiation between the debtor's trustee and the retirees' authorized representative. *See id.* § 1114(f). Indeed, Westmoreland acknowledges that section 1114's structure indicates that "retiree benefits" must be negotiable. The Eleventh Circuit came to the same conclusion. *Walter Energy*, 911 F.3d at 1145.

The second step of the Trustees' argument is the difficult question. To be sure, the Coal Act imposes its financing obligations in mandatory terms. *E.g.* 26 U.S.C. § 9704(a) (Combined Fund); *id.* § 9712(d)(1) (1992 Plan); *see also Pa. Mines*, 197 F.3d at 119 n.2 ("[W]hatever discretion the 1992 Plan Trustees have in making eligibility determinations is bounded by the mandatory terms of the Coal Act."). But past settlements between the Trustees and other Coal Act obligors indicate that Coal Act obligations are "to some extent negotiable." *Walter Energy*, 911 F.3d at 1145 ("That the Funds have agreed to modify premiums in the past shows that the obligations are negotiable."); *see also, e.g.*, *Holland v. Va. Lee Co.*, 188 F.R.D. 241, 246, 256–57 (W.D. Va. 1999) (enforcing settlement in which coal company paid Trustees lump sum in exchange for release "from any and all past and future funding liability to the Combined Fund"); *In re Bethlehem Steel Corp.*, 2004 WL 601656, at *2 (Bankr. S.D.N.Y. Feb. 9, 2004) (describing settlement in which Coal Act obligor paid Trustees lump sum in exchange for, *inter alia*, release of "claims for the funding of the provision of health care benefits by the 1992 Plan"). Although a settlement does not affect the Coal Act's statutory provisions, it can permit a coal company to pay something less than the Act requires by preventing the settlement's counterparty from enforcing against that company the Act's full obligations. A coal company can thus negotiate with its retirees' representative an effective "modification" of its Coal Act obligations (as enforceable by the retirees) through the back-and-forth bargaining process described in section 1114.

Another circuit's decision on a closely related issue is instructive. Section 363 permits a bankruptcy trustee to sell property free and clear of another entity's interest in the property if "such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest." 11 U.S.C. § 363(f)(5). The Fourth Circuit held that the Trustees could be required to accept a money satisfaction of their Coal Act interests, so it affirmed a district court's free-and-clear order. *Leckie Smokeless*, 99 F.3d at 585. That the Trustees can be forced to accept a money satisfaction of their Coal Act interests further illustrates that Coal Act obligations are not as set in stone as the Trustees claim them to be. Rather than create a circuit split that would result in different treatment of debtors in different circuits, we will follow the Fourth and Eleventh Circuit's view that the Coal Act does leave some room for negotiation. At a minimum, the Coal Act's perceived non-negotiability is not so clear that it displaces a bankruptcy law otherwise directly applicable to the situation we confront.

* * *

Given who the parties are, it may seem like this case decides whether retirees will receive their promised benefits. But that is not what is at stake; the retired miners will receive their benefits regardless of this case's outcome. *Walter Energy*, 911 F.3d at 1156. The question instead is whether Westmoreland must continue to pay those obligations or whether the government—that is, the taxpayers—will have to pick up the slack.

To find the answer, we have to reconcile two laws addressing the persistent problem of underfunded retiree health care benefits. That duty does not let us

pick the law that we think is the better policy. We must instead give effect, when possible, to both section 1114 and the Coal Act. The unusual nature of the Coal Act—a codification of retirement benefits that are ordinarily (and were originally) the product of private bargaining—makes that task a difficult one. But seeing no clear indication that Congress intended to carve out Coal Act obligations from section 1114's reach, we hold that section 1114 can apply to those obligations. And recall that section 1114 prohibits the unilateral changes to a debtor's retirement obligations that were once common. A section 1114 modification is allowed only if the debtor and the retirees' representative agree or the bankruptcy court orders changes after finding that the equities favor modification.

We therefore AFFIRM the bankruptcy court's ruling that Coal Act obligations may be modified via section 1114, though we clarify that a court must find that the principal purpose of the transaction is not to avoid liability under the Act.

United States Bankruptcy Court, S.D. Texas, Houston Division.

IN RE: WESTMORELAND COAL COMPANY, et al., Debtors.

Trustees of the United Mine Workers of America 1992 Benefit Plan, et al., Plaintiffs,

v.

Westmoreland Coal Company, et al., Defendants.

Case No. 18-35672

Adversary No. 18-3300

Signed December 28, 2018

Entered December 29, 2018

Memorandum Opinion

DAVID R. JONES, United States Bankruptcy Judge

Before the Court is the question of whether the Debtors' obligations under the Coal Industry Retiree Health Benefits Act of 1992 (the "Coal Act") are subject to the provisions of 11 U.S.C. § 1114. As set forth below, the Court answers the question[1] in the affirmative. Accordingly, the Court will grant the Debtor-Defendants' Motion for Judgment on the Pleadings [Docket No. 22] and deny the Plan Trustees' Cross-Motion for Judgment on the Pleadings under Rules

[1] For purposes of clarity, this memorandum opinion is limited solely to the question of whether 11 U.S.C. § 1114 applies to the Debtors' obligations under the Coal Act. Nothing herein is intended to express an opinion about whether the Debtors are entitled to relief under § 1114.

12(c) and 56 [Docket No. 25]. A separate judgment will issue consistent with this memorandum opinion.

Relevant Procedural History

1. On October 9, 2018, Westmoreland Coal Company and 36 affiliates[2] filed voluntary petitions under chapter 11 of the Bankruptcy Code. By Order entered the same day, the Court approved the joint administration of the cases pursuant to FED. R. BANKR. P. 1015(b) and LOC. R. BANKR. P. 1015-1 [Docket No. 71, Case No. 18-35672].

2. On October 23, 2018, Michael H. Holland, Michael O. McKown, Joseph R. Reschini, Marty D. Hudson, William P. Hobgood, Carl E. Van Horn, and Gail R. Wilensky, as trustees of the United Mine Workers of America Combined Benefit Fund and Michael H. Holland, Michael O. McKown, Joseph R. Reschini,

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[2] The Debtors include Westmoreland Coal Company, Absaloka Coal, LLC, Buckingham Coal Company, LLC, Dakota Westmoreland Corporation, Daron Coal Company, Harrison Resources, LLC, Haystack Coal Company, Oxford Conesville, LLC, Oxford Mining Company – Kentucky, LLC, Oxford Mining Company, San Juan Coal Company, San Juan Transportation Company, Texas Westmoreland Coal Company, WCC Land Holding Company, Inc., WEI – Roanoke Valley, Inc., Western Energy Company, Westmoreland Coal Company Asset Corp., Westmoreland Coal Sales Company, Inc., Westmoreland Energy Services New York, Inc., Westmoreland Energy Services, Inc., Westmoreland Energy, LLC, Westmoreland Kemmerer Fee Coal Holdings, LLC, Westmoreland Kemmerer, LLC, Westmoreland Mining, LLC, Westmoreland North Carolina Power, LLC, Westmoreland Partners, Westmoreland Power, Inc., Westmoreland Resource Partners, LP, Westmoreland Resources, GP, LLC, Westmoreland Resources, Inc., Westmoreland San Juan Holdings, Inc., Westmoreland San Juan, LLC, Westmoreland Texas Jewett Coal Company, Westmoreland – Roanoke Valley, LP, WRI Partners, Inc. and Basin Resources, Inc.

and Carlo Tarley as trustees of the United Mine Workers of America 1992 Benefit Plan (collectively, the "Plan Trustees") filed their complaint in this adversary proceeding against the Debtors seeking a declaratory judgment that the Debtors' obligations under the Coal Act are not "retiree benefits" subject to 11 U.S.C. § 1114 [Docket No. 1]. In addition, the Plan Trustees seek an award of attorney's fees and costs under 29 U.S.C. § 1132(g)(2) [Docket No. 1].

3. On November 12, 2018, the Debtors filed their Motion for Judgment on the Pleadings on the Coal Act Funds' Complaint for Declaratory Relief pursuant to Federal Rule of Civil Procedure 12(c) [Docket No. 22]. In the motion, the Debtors request (i) a finding that § 1114 is applicable to their obligations under the Coal Act; and (ii) the dismissal of this adversary proceeding [Docket No. 22].

4. The Plan Trustees filed their response on November 27, 2018 [Docket No. 25]. Included in the response is a cross-motion for judgment on the pleadings pursuant to Federal Rules of Civil Procedure 12(c) and 56 [Docket No. 25].

5. The Court conducted a hearing on the motions on November 29, 2018. After hearing arguments, the Court requested that the parties jointly submit the briefs filed before the Eleventh Circuit in a pending appeal on the identical issue involving Walter Energy, Inc.[3] The joint submission of the parties is filed

[3] After the conclusion of the November 29, 2018 hearing, the Eleventh Circuit issued its opinion finding that Walter Energy's obligations under the Coal Act are subject to § 1114. *See UMWA Combined Benefit Fund, et al v. Andre M. Toffel, as Chapter 7 Trustee for Walter Energy, Inc., et al.*, 2018 WL 6803736 (11th Cir. 2018).

at Docket No. 47. In addition, and in recognition of the importance of the issue presented, the Court, *sua sponte*, raised the issue of a direct appeal of this ruling to the Fifth Circuit Court of Appeals. By joint notice filed at Docket No. 49, the parties indicated a preference that the Court certify its ruling for direct appeal pursuant to 28 U.S.C. 158(d)(2).

Jurisdiction and Authority

6. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. § 1334(a). This proceeding is a core proceeding arising under title 11 pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (O). The Court has constitutional authority to enter a final judgment in this proceeding under the Supreme Court's holding in *Stern v. Marshall*, 131 S.Ct. 2594 (2011). No party asserts that the Court lacks the requisite jurisdiction or authority to issue a final judgment.

Legal Standard

7. Rule 12(c) of the Federal Rules of Civil Procedure, as made applicable in this adversary proceeding by FED. R. BANKR. P. 7012(b), provides that "[a]fter pleadings are closed – but early enough not to delay trial – a party may move for judgment on the pleadings." FED. R. CIV. P. 12(c). "A motion brought pursuant to FED. R. CIV. P. 12(c) is designed to dispose of cases where the material facts are not in dispute and a judgment on the merits can be rendered by looking to the substance of the pleadings and any judicially noticed facts." *Great Plains Trust Co. v. Morgan Stanley Dean Witter & Co.*, 313 F.3d 305, 312 (5th Cir. 2002) (*citing Herbert Abstract Co., v. Touchstone Props., Ltd.*, 914 F.2d 74,76 (5th Cir. 1990)). In deciding a motion under Rule 12(c), the Court "must look

only to the pleadings and accept all allegations contained therein as true. Pleadings should be construed liberally, and judgment on the pleadings is appropriate only if there are no disputed issues of material fact and only questions of law remain." *Brittan Communications Intern. Corp. v. Southwestern Bell Tel. Co.*, 313 F.3d. 899, 904 (5th Cir. 2002) (citations omitted). In addition to the pleadings, the Court "may take into account documents incorporated into the complaint by reference or integral to the claim, items subject to judicial notice, matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint whose authenticity is unquestioned." *Myeres v. Trexton, Inc.*, 540 Fed. Appx. 408, 409 (5th Cir. 2013) (citations omitted).

8. When presented with a motion under Rule 12(c), the parties may offer matters outside the pleadings. FED. R. CIV. P. 12(d). If these matters are not excluded, the Court is required to treat the motion as a motion for summary judgment under Rule 56. *Id.* Under these circumstances, the Court is required to give all parties "a reasonable opportunity to present all the material that is pertinent to the motion." *Id.* The Court declines to treat the parties' competing Rule 12(c) motions as motions under FED. R. CIV. P. 56. The Court has limited its analysis to the pleadings and other permitted matters in accordance with the standard defined by the Fifth Circuit.

The Coal Act

9. The Coal Act was the byproduct of a "a lengthy strike that followed Pittson Coal Company's refusal to

sign the 1988 NBCWA[4]." *Eastern Enterprises v. Apfel*, 524 U.S. 498, 511 (1998). The strike led to the creation of the Advisory Commission on United Mine Workers of America Retiree Health Benefits (the "Coal Commission"). *Id.* The Coal Commission was charged with making a recommendation regarding medical benefits for retirees that were originally covered under benefit trusts which preceded the Coal Act. *Id.*

10. After legislation incorporating the Coal Commission's recommendations was vetoed by President Bush, Congress passed the Coal Act. *Id.* at 513. (citations omitted). As the Supreme Court explained:

> The Coal Act merged the 1950 and 1974 Benefit Plans into a new multiemployer plan called the United Mine Workers of America Combined Benefit Fund (Combined Fund). See 26 U.S.C. §§ 9702(a)(1), (2). The Combined Fund provides 'substantially the same' health benefits to retirees and their dependents that they were receiving under the 1950 and 1974 Benefit Plans. See §§ 9703(b)(1), (f). It is financed by annual premiums assessed against 'signatory coal operators,' i.e., coal operators that signed any NBCWA or any other agreement requiring contributions to the 1950 or 1974 Benefit Plans. See §§ 9701(b)(1), (3); 9701(c)(1). Any signatory operator who 'conducts or derives revenue from any business activity, whether or not in the coal industry,' may be liable for those premiums. §§ 9706(a), 9701(c)(7). Where a signatory is no

[4] The National Bituminous Coal Wage Agreement.

> longer involved in any business activity, premiums may be levied against 'related person[s],' including successors in interest and businesses or corporations under common control. §§ 9706(a), 9701(c)(2)(A).

Id. at 514. The stated purpose of the Coal Act was "to identify persons most responsible for [1950 and 1974 Benefit Plan] liabilities in order to stabilize plan funding and allow for the provision of health care benefits to ... retirees." *Id.* (citations omitted).

Section 1114 of the Bankruptcy Code

11. In 1988 Congress passed the Retiree Benefits Bankruptcy Protection Act of 1988 (the "Retiree Benefits Act") which added § 1114 to the Bankruptcy Code. *See generally*, 7 COLLIER ON BANKRUPTCY ¶ 1114.01 [1], at 1114-7 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). The Retiree Benefits Act was a legislative reaction to a growing number of bankruptcy cases that drew a distinction between collective bargaining agreements covered by § 1113 of the Bankruptcy Code and "retiree benefits" which resulted in the unilateral rejection those retiree benefits. 7 COLLIER ON BANKRUPTCY ¶ 1114.10[2][a], [b], at 1114-39-43 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.); *see also In re Certified Air Technologies, Inc.*, 300 B.R. 355, 370 (Bankr. C.D. Ca. 2003). The most often cited example as the impetus for § 1114 was the suspension of medical benefits to approximately 78,000 former employees by LTV Corporation after filing bankruptcy.[5]

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[5] *In re LTV Corp.*, No. 86 B 11402 (Bankr. S.D.N.Y. July 17, 1986).

12. Section 1114 was meant to be a protective mechanism for retiree benefits when an employer enters bankruptcy. Specifically, § 1114 provides an organized framework for the negotiation of retiree benefits between a debtor-employer and an authorized representative of the retirees. *See* 11 U.S.C. § 1114(f). If the debtor makes a proposal in accordance with § 1114(f) and that proposal is not accepted without good cause, the Court *shall* enter an order that provides for the *modification* of retiree benefits under certain *limited* circumstances. 11 U.S.C. § 1114(g) (emphasis added).

13. As previously mentioned, the sole issue before the Court is whether the Debtors' Coal Act obligations are "retiree benefits" subject to § 1114. The issues of whether (i) the Debtors can satisfy their obligations under § 1114(f); and (ii) modification of "retiree benefits" is appropriate are left for another day.

Rules of Statutory Construction

14. Where Congress has not expressly limited the applicability of one statute within the context of another, the Court must apply the rules of statutory construction to determine the interaction of two statutes. "[C]ourts are not at liberty to pick and choose among congressional enactments, and when two statutes are capable of co-existence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective." *Morton v. Mancari*, 417 U.S. 535, 551 (1974).

15. "In determining the scope of a statute, a court must begin with the statutory language itself. When the terms of the statute are clear, the statutory language is controlling, absent exceptional circumstances." *In re Westmoreland Coal Co.*, 213 B.R. 1, 18

(1997); *see also Fidelity Savings & Inv. Co. v. New Hope Baptist*, 880 F.2d. 1172, 1175 (10th Cir. 1989). Moreover, "[i]t is a basic principle of statutory construction that a statute dealing with a narrow, precise, and specific subject is not submerged by a later enacted statute covering a more generalized spectrum. 'Where 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.' " *Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 153 (1976) (citing *Morton v. Mancari*, 417 U.S. 535, 550–551 (1974)).

16. Section 1114 of the Bankruptcy Code was enacted in 1988 and the Coal Act in 1992. The Coal Act generally covers the health and death benefits that must be provided to retired mine workers and their beneficiaries. Section 1114 deals with the limited instance where the retirees' former employer is a debtor in a chapter 11 bankruptcy and a modification of benefits is necessary to effect a reorganization. The Court finds that the Coal Act is the more general statute, and § 1114 of the Bankruptcy Code is the more specific. The application of § 1114 does not deprive the Coal Act of any meaning nor do the two statutes conflict. If Congress had desired to impose a different scheme or limit the Court's authority to modify retiree benefits under the Coal Act, it could have easily done so. *See In re Horizon Nat. Resources Co.*, 316 B.R. 268, 279 (Bankr. E.D. Ky. 2004); *In re Lady H Coal Co.*, 199 B.R. 595, 603 (S.D. Va. 1996).

Analysis

17. The parties do not dispute the relevant facts. The Debtors are subject to the Coal Act. Under the Coal Act, the Debtors are obligated to pay premiums into (i) United Mine Workers of America Combined

Benefit Fund (the "Combined Fund") and (ii) the United Mine Workers of America 1992 Benefit Plan (the "1992 Plan") based on the number of existing retirees assigned to them as signatory operators under each of the plans. The Debtors are further obligated to post security in favor of the 1992 Plan in an amount equal to one year of premiums based on a historical three-year average. Finally, the Debtors are required to maintain an Individual Employer Plan (the "IEP") for certain retirees. Accepting these facts as true, the Plan Trustees make a series of legal arguments that Coal Act obligations are excluded from the operation of § 1114. The Court will address each of the arguments below.

Whether § 1114 Applies to Statutorily Created Benefits.

18. Under the Coal Act, coal operators are required to provide certain benefits to their retirees. First, operators must pay premiums into the Combined Fund and the 1992 Plan based on the number of operator-assigned beneficiaries enrolled in each of these plans. 26 U.S.C. §§ 9704(a); 9712(d)(1)(A). Second, operators must continue to provide benefits to certain retirees under an individual employer plan ("IEP") so long as the operator remains in business. 26 U.S.C. § 9711(a). Finally, operators must post security in the form of a bond, letter of credit, or cash escrow, in favor of the trustees of the 1992 Plan, in an amount equal to one year of premium liability based on a historical three-year average. 26 U.S.C. § 9711(c)(3). The Plan Trustees assert that § 1114 does not apply to these obligations because they are statutorily mandated.

19. Section 1114(a) states that:

> [f]or purposes of this section, the term "retiree benefits" means *payments to any entity* or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death *under any plan, fund, or program* (through the purchase of insurance or otherwise) *maintained or established in whole or in part* by the debtor prior to filing a petition commencing a case under this title."

11 U.S.C. § 1114(a) (emphasis added). To reach their conclusion, the Plan Trustees must necessarily insert a limitation on "retiree benefits" to restrict application of the statute to "contractual retiree benefits." Neither the parties nor the Court may intrude on this legislative function. In *In re Horizon Nat. Resources Co.*, the Court noted that "the statutory definition makes no distinction between contractual and non-contractual benefits" and that "benefits provided pursuant to the Coal Act constitute 'retiree benefits' within the meaning of § 1114 of the Bankruptcy Code." 316 B.R. 268, 275–76 (Bankr. E.D. Ky. 2004). The Court finds this analysis persuasive and consistent with the applicable rules of statutory construction.

20. The text of § 1114 is unambiguous. The definition of "retiree benefits" contains no limitation to suggest that Congress intended for contractual benefits to be treated any differently than statutorily created ones. To the contrary, the express language of § 1114 contemplates benefits emanating from multiple origins. *See* 11 U.S.C. § 1114(b)(1). The Court finds that

the Debtors' Coal Act obligations are "retiree benefits" under § 1114.

Whether the Debtors' Payment of Premiums Constitutes "Maintenance in Part."

21. The Plan Trustees next assert that neither the Combined Fund nor the 1992 Plan are plans "maintained or established in whole or in part" by the Debtors. While acknowledging that, with one exception, all current precedent has overruled this argument, the Plan Trustees assert that each of these decisions inappropriately relied upon prior wrongfully-decided decisions. For this Court, the ultimate question is whether the payment of premiums to a benefit program constitutes an act to maintain that program in part?

22. Neither the term "maintenance" nor the phrase "maintenance in part" are defined under the Bankruptcy Code. Likewise, the Court has not been directed to, nor has it been able to locate, any legislative history evidencing Congressional intent to give special meaning to these words. "The Fifth Circuit has instructed that "[f]inding no statutory definition and nothing in the entire statutory scheme or legislative history to indicate a contrary intent, we abide by the canon that words in a statute are to be given their 'ordinary, everyday' meaning." *In re DP Partners, Ltd. Partnership*, 106 F.3d 667, 673 (5th Cir. 1997) (*citing Crane v. Commissioner*, 331 U.S. 1, 6 (1947)).

23. Black's Law Dictionary defines the verb "maintain" as "... other acts to prevent a decline, lapse or cessation from existing state or condition; bear the expense of; carry on; commence; continue; furnish means for subsistence or existence of ...." *Maintain*,

BLACK'S LAW DICTIONARY (6th ed. 1990). MERRIAM-WEBSTER DICTIONARY defines "maintain" as "to keep in an existing state; preserve from failure or decline; to support or provide for; to sustain." *Merriam-Webster Dictionary*, (December 14, 2018, 2:29 P.M.), https://www.merriam-webster.com/dictionary/maintain. Indeed, the Plan Trustees' entire premise in this adversary is to compel the Debtors or their successor to continue to pay the required premiums so that retirees will continue to receive their benefits. From a practical perspective, to suggest that the Debtors' payment of premiums under the Coal Act does not operate to at least partially maintain the underlying benefit programs is to suggest that a table can stand without its legs. The Court finds equally persuasive the learned opinions of those courts that have previously addressed the issue. *In re Walter Energy, Inc.*, 542 B.R. 859 (Bankr. N.D. Ala. 2015), *aff'd*, *UMWA 1974 Pension Plan v. Walter Energy, Inc.*, 579 B.R. 603 (N.D. Ala. 2016), *aff'd*, *UMWA Combined Benefit Fund, et al v. Andre M. Toffel, as Chapter 7 Trustee for Walter Energy, Inc.*, 2018 WL 6803736 (11th Cir. 2018); *In re Horizon Natural Resources Co.*, 316 B.R. 268 (Bankr. E.D. Ky. 2004).

24. In an analogous situation, the United States District Court for the Southern District of New York opined on whether certain school district benefit plans were "established" and "maintained" by the town or school district. *Feinstein v. Lewis*, 477 F. Supp. 1256, 1260 (S.D.N.Y. 1979), *aff'd*, 622 F.2d 573 (2d Cir. 1980). In that situation, the District Court held that "[a]lthough the Plans are jointly administered by the Union and the employers through the board of trustees, they are *exclusively funded and*

hence 'maintained' by the employers." *Id.* (emphasis added).

25. The Court has considered the decision issued in *Buckner v. Westmoreland Coal Co. (In re Westmoreland Coal Co.).* 213 B.R. 1 (Bankr. D. Co. 1997). In that case, the Court specifically noted that it was not presented with the issue of whether § 1114 applied to Coal Act obligations; rather, the issue was limited to whether an asserted claim under § 1114(e)(2) was entitled to administrative priority. *Id.* at 17–18. In its analysis, the Court stated that "I find nothing in the legislative history indicating that Congress intended § 1114 to apply to statutorily-imposed obligations or to benefits paid by an insurer following prepetition termination of a debtor's self-funded plan." *Id.* at 19. The *Buckner* court's statement was dicta and its analysis was not in accord with accepted cannons of statutory construction. To the extent applicable to the instant situation, the Court rejects the reasoning of the *Buckner* court.

26. For the foregoing reasons, the Court finds that the payment of premiums and other value by the Debtors constitute maintenance in part of the Combined Fund and the 1992 Plan. The Plan Trustees' arguments to the contrary are rejected.

27. The Plan Trustees concede that the IEP is "maintained" by the Debtors but argue that this obligation should nonetheless be excluded from the definition of "retiree benefits" under § 1114(a). The Plan Trustee assert that although the IEP fits within the plain meaning of § 1114(a), it is absurd to think that private parties can negotiate a statutory obligation. This argument ignores the obvious. Section 1114 is a federal statute that authorizes the negotiation process. Moreover, this argument is premature. The only

question before the Court is whether the Debtors' Coal Act obligations fall within § 1114(a). The Court rejects the Plan Trustees' absurdity argument.

Whether the Posting of a Bond is a Form of Payment

28. As an argument in the alternative, the Plan Trustees assert that the posting of a bond in favor of the 1992 Plan does not constitute "payment" and is therefore excluded from § 1114. As an initial matter, the Plan Trustees offer no basis that would suggest that a coal operator's obligations under the Coal Act are severable. Second, the bond is for a year's worth of benefit premiums and are subject to the same analysis as the premiums themselves. Third, a simple commercial analysis yields a consistent answer. A bond is nothing more than a simple contract. It binds the obligor to pay a sum certain upon the occurrence of an event. *See generally*, 12 AM. JUR. 2d. Bonds § 1. That obligation to pay is no different that the annual obligation to pay the calculated premium. The Court finds that the posting of security, in the form of a bond in favor of the 1992 Plan is a form of payment within the meaning of § 1114(a).

Futility of IEP Modification

29. The Plan Trustees argue that if the IEP is found to be a "retiree benefit" under § 1114(a), it would yield a futile result within the statutory schemes. The argument is a house of cards that cannot stand. The argument goes as follows:

> (i) If the Court allows the modification of the IEP under § 1114(g), it would result in an increase of premiums due under the 1992 Plan in a proportional amount.

(ii) Since the premiums due under the 1992 Plan are taxes and not subject to § 1114(a), the Debtors would be liable for those premiums under the 1992 Plan.

(iii) The application would yield a futile result.

First, the Court is not deciding whether any modification is appropriate. Second, paragraph (ii) assumes a legal status unsupported by applicable law. Third, paragraph (iii) is a conclusion unsupported by any legitimate argument or statutory language. This argument is not well-received and is rejected.

Whether Coal Act Premiums are Federal Taxes Subject to the Anti-Injunction Act

30. The Plan Trustees' final argument is that the benefit premiums due under the Coal Act are federal taxes subject to the Anti-Injunction Act. In support of their position, the Plan Trustees cite to a string of decisions issued between 1995 and 1998. *See In re Chateaugay Corp.*, 53 F.3d 478 (2nd Cir. 1995); *Adventure Resources, Inc. v. Holland*, 137 F.3d 786 (4th Cir. 1998); *In re Sunnyside Coal Co.*, 146 F.3d 1273 (10th Cir. 1998); *Carbon Fuel Co. v. USX Corp.*, 100 F.3d 1124 (4th Cir. 1996); *Lindsey Coal Min. Co. v. Chater*, 90 F.3d 688 (3rd Cir. 1996); *In re Leckie Smokeless Coal Co.*, 99 F.3d 573 (4th Cir. 1996).

31. The Plan Trustees' reliance on these decisions is problematic for several reasons. First, although the *Chateaugay* decision is a foundation for the subsequent cases, it concerned the allowance of a claim in a bankruptcy case filed in 1986—a date prior to the enactment of both § 1114[6] and the Coal Act. *See In re*

[6] Section 1114 was applicable to bankruptcy cases commenced after June 16, 1988.

Chateaugay Corp., 53 F.3d 478 (2nd Cir. 1995). Second, these decisions all predate the Supreme Court's decision in *National Fed'n of Indep. Business v. Sebelius*, 567 U.S. 519 (2012) ("*NFIB*")—a controlling decision that directly addresses the application of the Anti-Injunction Act to another federal statute. Finally, none of the post-*Chateaugay* decisions concern the application of § 1114 in a chapter 11 bankruptcy proceeding.

32. The Anti-Injunction Act ("AIA") states that "no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against who, such tax was assessed." 26 U.S.C. § 7421(a). The Supreme Court has found "the principal purpose of this language to be the protection of the Government's need to assess and collect taxes as expeditiously as possible..." *Bob Jones Univ. v. Simon*, 416 U.S. 725, 736 (1974). "The statute applies to 'any tax' and precludes attempts to impede the raising of revenues to fund governmental and government-sponsored endeavors." *UMWA Combined Benefit Fund v. Walter Energy, Inc.*, 551 B.R. 631, 637–38 (N.D. Ala. 2016) (citing *Alexander v. Ams. United Inc.*, 416 U.S. 752, 760 (1974)).

33. In *NFIB*, the Supreme Court addressed the characterization of the Affordable Care Act's ("ACA") individual mandate. Specifically, the Supreme Court was asked to decide whether the individual mandate was "tax" and thus subject to the Anti-Injunction Act ("AIA") or a "penalty." *NFIB* at 543. The Supreme Court opined that "[t]he Anti-Injunction Act applies to suits 'for the purpose of restraining the assessment or collection of any *tax*.' " *Id.* Citing 26 U.S.C. § 7421(a) (emphasis in original). It concluded that

"Congress, however, chose to describe the '[s]hared responsibility payment' imposed on those who forgo health insurance not as a 'tax,' but as a 'penalty.' There is no immediate reason to think that a statute applying to 'any tax' would apply to a 'penalty.' " *Id.* (citations omitted). "Congress's decision to label this exaction a 'penalty' rather than a 'tax' is significant because the Affordable Care Act describes many other exactions it creates as 'taxes.' Where Congress uses certain language in one part of a statute and different language in another, it is generally presumed that Congress acts intentionally." *Id.* at 544. (citations omitted).

34. In *Walter Energy*, the District Court applied this logic to Coal Act obligations. In upholding a sale of the Debtor's assets free and clear of future Coal Act obligations, the District Court found that Congress's choice of the term "premiums" versus "tax" was fatal to the assertion that the Anti-Injunction Act applied. *UMWA Combined Benefit Fund v. Walter Energy, Inc.*, 551 B.R. 631 (S.D. Ala. 2016). The Court further notes that the Coal Act is embodied within Title 26, otherwise known as the Internal Revenue Code. While at first blush, this fact might lend support to the Plan Trustees' argument, a careful analysis leads to the opposite conclusion. Under Title 26, the, the first five subtitles are titled "Income *Taxes*; Estate and Gift *Taxes*; Employment *Taxes*; Miscellaneous Excise *Taxes*; and Alcohol, Tobacco, and Certain Other Excise *Taxes.*" *See*, 26 U.S.C. Subt. A-E. (emphasis added). The Coal Act is Subtitle J which is titled "Coal Industry Health Benefits." 26 U.S.C. Subt. J.

35. The word "tax" does not appear within the heading of Subtitle J. Interestingly, the word "tax"

does appear elsewhere in Subtitle J. It appears in § 9702 to describe the tax treatment of Combined Fund as a tax-exempt organization. 26 U.S.C. § 9702(a)(4). It appears in § 9705 to describe the treatment of the transfer of funds from the prior benefit plans to the newly created Combined Fund. 26 U.S.C. § 9705 (a)(4)–(5). Finally, it appears in § 9707 to describe the treatment of penalties imposed by that section. 26 U.S.C. § 9707(f). It is undeniable that Congress understood how to call something a tax when they meant for that thing to be a tax within Title 26. Under the dictate of *NFIB*, the Court must therefore presume that Congress acted intentionally in labeling Coal Act obligations as "premiums." The Court therefore finds that the Debtors' obligations under the Coal Act are not taxes subject to the Anti-Injunction Act.

Direct Certification to the Fifth Circuit Court of Appeals

36. In response to the Court's inquiry, the parties filed a joint notice at Docket No. 49 requesting the Court to certify this decision to the Fifth Circuit Court of Appeals, regardless of the outcome. The Court finds that this decision involves a matter of public importance and that no controlling decision has been issued by the Fifth Circuit Court of Appeal or the United States Supreme Court. The Court further finds that the resolution of this adversary proceeding will materially advance the underlying bankruptcy case—a case whose outcome affects thousands of citizens and has a material impact on the national economy. The Court certifies this judgment for direct appeal to the Fifth Circuit Court of Appeals pursuant to 28 U.S.C. § 158(d)(2)(A)(i) and (iii).

Conclusion

37. For the reasons set forth above, the Court concludes that Debtors' obligations under the Coal Act are subject to Section 1114 of the Bankruptcy Code. The Court will grant the Debtors' Motion for Relief under Rule 12(c). The Court denies the Plan Trustees' Motion for Relief under Rule 12(c) and Rule 56. A judgment consistent with this opinion will issue separately. The Court further certifies its judgment for direct appeal to the Fifth Circuit Court of Appeals pursuant to 28 U.S.C. §§ 158(d)(2)(A)(i) and (iii).

STATUTORY ADDENDUM

11 U.S.C. § 1114

Payment of insurance benefits to retired employees

(a) For purposes of this section, the term "retiree benefits" means payments to any entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise) maintained or established in whole or in part by the debtor prior to filing a petition commencing a case under this title.

(b)

(1) For purposes of this section, the term "authorized representative" means the authorized representative designated pursuant to subsection (c) for persons receiving any retiree benefits covered by a collective bargaining agreement or subsection (d) in the case of persons receiving retiree benefits not covered by such an agreement.

(2) Committees of retired employees appointed by the court pursuant to this section shall have the same rights, powers, and duties as committees appointed under sections 1102 and 1103 of this title for the purpose of carrying out the purposes of sections 1114 and 1129(a)(13) and, as permitted by the court, shall have the power to enforce the rights of persons under this title as they relate to retiree benefits.

(c)

(1) A labor organization shall be, for purposes of this section, the authorized representative of those persons receiving any retiree benefits covered by any collective bargaining agreement to which that labor

organization is signatory, unless (A) such labor organization elects not to serve as the authorized representative of such persons, or (B) the court, upon a motion by any party in interest, after notice and hearing, determines that different representation of such persons is appropriate.

(2) In cases where the labor organization referred to in paragraph (1) elects not to serve as the authorized representative of those persons receiving any retiree benefits covered by any collective bargaining agreement to which that labor organization is signatory, or in cases where the court, pursuant to paragraph (1) finds different representation of such persons appropriate, the court, upon a motion by any party in interest, and after notice and a hearing, shall appoint a committee of retired employees if the debtor seeks to modify or not pay the retiree benefits or if the court otherwise determines that it is appropriate, from among such persons, to serve as the authorized representative of such persons under this section.

(d) The court, upon a motion by any party in interest, and after notice and a hearing, shall order the appointment of a committee of retired employees if the debtor seeks to modify or not pay the retiree benefits or if the court otherwise determines that it is appropriate, to serve as the authorized representative, under this section, of those persons receiving any retiree benefits not covered by a collective bargaining agreement. The United States trustee shall appoint any such committee.

(e)

(1) Notwithstanding any other provision of this title, the debtor in possession, or the trustee if one has been appointed under the provisions of this chapter (hereinafter in this section "trustee" shall

include a debtor in possession), shall timely pay and shall not modify any retiree benefits, except that—

(A) the court, on motion of the trustee or authorized representative, and after notice and a hearing, may order modification of such payments, pursuant to the provisions of subsections (g) and (h) of this section, or

(B) the trustee and the authorized representative of the recipients of those benefits may agree to modification of such payments,

after which such benefits as modified shall continue to be paid by the trustee.

(2) Any payment for retiree benefits required to be made before a plan confirmed under section 1129 of this title is effective has the status of an allowed administrative expense as provided in section 503 of this title.

(f)

(1) Subsequent to filing a petition and prior to filing an application seeking modification of the retiree benefits, the trustee shall—

(A) make a proposal to the authorized representative of the retirees, based on the most complete and reliable information available at the time of such proposal, which provides for those necessary modifications in the retiree benefits that are necessary to permit the reorganization of the debtor and assures that all creditors, the debtor and all of the affected parties are treated fairly and equitably; and

(B) provide, subject to subsection (k)(3), the representative of the retirees with such relevant information as is necessary to evaluate the proposal.

(2) During the period beginning on the date of the making of a proposal provided for in paragraph (1), and ending on the date of the hearing provided for

in subsection (k)(1), the trustee shall meet, at reasonable times, with the authorized representative to confer in good faith in attempting to reach mutually satisfactory modifications of such retiree benefits.

(g) The court shall enter an order providing for modification in the payment of retiree benefits if the court finds that—

(1) the trustee has, prior to the hearing, made a proposal that fulfills the requirements of subsection (f);

(2) the authorized representative of the retirees has refused to accept such proposal without good cause; and

(3) such modification is necessary to permit the reorganization of the debtor and assures that all creditors, the debtor, and all of the affected parties are treated fairly and equitably, and is clearly favored by the balance of the equities;

except that in no case shall the court enter an order providing for such modification which provides for a modification to a level lower than that proposed by the trustee in the proposal found by the court to have complied with the requirements of this subsection and subsection (f): *Provided, however*, That at any time after an order is entered providing for modification in the payment of retiree benefits, or at any time after an agreement modifying such benefits is made between the trustee and the authorized representative of the recipients of such benefits, the authorized representative may apply to the court for an order increasing those benefits which order shall be granted if the increase in retiree benefits sought is consistent with the standard set forth in paragraph (3): *Provided further*, That neither the trustee nor the authorized representative is precluded from making more than

one motion for a modification order governed by this subsection.

(h)

(1) Prior to a court issuing a final order under subsection (g) of this section, if essential to the continuation of the debtor's business, or in order to avoid irreparable damage to the estate, the court, after notice and a hearing, may authorize the trustee to implement interim modifications in retiree benefits.

(2) Any hearing under this subsection shall be scheduled in accordance with the needs of the trustee.

(3) The implementation of such interim changes does not render the motion for modification moot.

(i) No retiree benefits paid between the filing of the petition and the time a plan confirmed under section 1129 of this title becomes effective shall be deducted or offset from the amounts allowed as claims for any benefits which remain unpaid, or from the amounts to be paid under the plan with respect to such claims for unpaid benefits, whether such claims for unpaid benefits are based upon or arise from a right to future unpaid benefits or from any benefits not paid as a result of modifications allowed pursuant to this section.

(j)No claim for retiree benefits shall be limited by section 502(b)(7) of this title.

(k)

(1) Upon the filing of an application for modifying retiree benefits, the court shall schedule a hearing to be held not later than fourteen days after the date of the filing of such application. All interested parties may appear and be heard at such hearing. Adequate notice shall be provided to such parties at least ten days before the date of such hearing. The court may extend the time for the commencement of such hearing for a period not exceeding seven days

where the circumstances of the case, and the interests of justice require such extension, or for additional periods of time to which the trustee and the authorized representative agree.

(2) The court shall rule on such application for modification within ninety days after the date of the commencement of the hearing. In the interests of justice, the court may extend such time for ruling for such additional period as the trustee and the authorized representative may agree to. If the court does not rule on such application within ninety days after the date of the commencement of the hearing, or within such additional time as the trustee and the authorized representative may agree to, the trustee may implement the proposed modifications pending the ruling of the court on such application.

(3) The court may enter such protective orders, consistent with the need of the authorized representative of the retirees to evaluate the trustee's proposal and the application for modification, as may be necessary to prevent disclosure of information provided to such representative where such disclosure could compromise the position of the debtor with respect to its competitors in the industry in which it is engaged.

(l) If the debtor, during the 180-day period ending on the date of the filing of the petition—

(1) modified retiree benefits; and

(2) was insolvent on the date such benefits were modified;

the court, on motion of a party in interest, and after notice and a hearing, shall issue an order reinstating as of the date the modification was made, such benefits as in effect immediately before such date unless the court finds that the balance of the equities clearly favors such modification.

(m) This section shall not apply to any retiree, or the spouse or dependents of such retiree, if such retiree's gross income for the twelve months preceding the filing of the bankruptcy petition equals or exceeds $250,000, unless such retiree can demonstrate to the satisfaction of the court that he is unable to obtain health, medical, life, and disability coverage for himself, his spouse, and his dependents who would otherwise be covered by the employer's insurance plan, comparable to the coverage provided by the employer on the day before the filing of a petition under this title.

26 U.S.C. § 7421

Prohibition of suits to restrain assessment or collection

(a) Except as provided in sections 6015(e), 6212(a) and (c), 6213(a), 6232(c), 6330(e)(1), 6331(i), 6672(c), 6694(c), 7426(a) and (b)(1), 7429(b), and 7436, no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court by any person, whether or not such person is the person against whom such tax was assessed.

26 U.S.C. § 9701

§ 9701. Definitions of general applicability

Effective: March 23, 2018

(a) Plans and funds.—For purposes of this chapter—

(1) UMWA Benefit Plan.—

(A) In general.—The term "UMWA Benefit Plan" means a plan—

(i) which is described in section 404(c), or a continuation thereof; and

(ii) which provides health benefits to retirees and beneficiaries of the industry which maintained the 1950 UMWA Pension Plan.

(B) 1950 UMWA Benefit Plan.—The term "1950 UMWA Benefit Plan" means a UMWA Benefit Plan, participation in which is substantially limited to individuals who retired before 1976.

(C) 1974 UMWA Benefit Plan.—The term "1974 UMWA Benefit Plan" means a UMWA Benefit Plan, participation in which is substantially limited to individuals who retired on or after January 1, 1976.

(2) 1950 UMWA Pension Plan.—The term "1950 UMWA Pension Plan" means a pension plan described in section 404(c) (or a continuation thereof), participation in which is substantially limited to individuals who retired before 1976.

(3) 1974 UMWA Pension Plan.—The term "1974 UMWA Pension Plan" means a pension plan described in section 404(c) (or a continuation thereof), participation in which is substantially limited to individuals who retired in 1976 and thereafter.

(4) 1992 UMWA Benefit Plan.—The term "1992 UMWA Benefit Plan" means the plan referred to in section 9712.

(5) Combined Fund.—The term "Combined Fund" means the United Mine Workers of America Combined Benefit Fund established under section 9702.

(b) Agreements.—For purposes of this section—

(1) Coal wage agreement.—The term "coal wage agreement" means—

(A) the National Bituminous Coal Wage Agreement, or

(B) any other agreement entered into between an employer in the coal industry and the United Mine

Workers of America that required or requires one or both of the following:

(i) the provision of health benefits to retirees of such employer, eligibility for which is based on years of service credited under a plan established by the settlors and described in section 404(c) or a continuation of such plan; or

(ii) contributions to the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, or any predecessor thereof.

(2) Settlors.—The term "settlors" means the United Mine Workers of America and the Bituminous Coal Operators' Association, Inc. (referred to in this chapter as the "BCOA").

(3) National Bituminous Coal Wage Agreement.—The term "National Bituminous Coal Wage Agreement" means a collective bargaining agreement negotiated by the BCOA and the United Mine Workers of America.

(c) Terms relating to operators.—For purposes of this section—

(1) Signatory operator.—The term "signatory operator" means a person which is or was a signatory to a coal wage agreement.

(2) Related persons.—

(A) In general.—A person shall be considered to be a related person to a signatory operator if that person is—

(i) a member of the controlled group of corporations (within the meaning of section 52(a)) which includes such signatory operator;

(ii) a trade or business which is under common control (as determined under section 52(b)) with such signatory operator; or

(iii) any other person who is identified as having a partnership interest or joint venture with a signatory operator in a business within the coal industry, but only if such business employed eligible beneficiaries, except that this clause shall not apply to a person whose only interest is as a limited partner.

A related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii).

(B) Time for determination.—The relationships described in clauses (i), (ii), and (iii) of subparagraph (A) shall be determined as of July 20, 1992, except that if, on July 20, 1992, a signatory operator is no longer in business, the relationships shall be determined as of the time immediately before such operator ceased to be in business.

(3) 1988 agreement operator.—The term "1988 agreement operator" means—

(A) a signatory operator which was a signatory to the 1988 National Bituminous Coal Wage Agreement,

(B) an employer in the coal industry which was a signatory to an agreement containing pension and health care contribution and benefit provisions which are the same as those contained in the 1988 National Bituminous Coal Wage Agreement, or

(C) an employer from which contributions were actually received after 1987 and before July 20, 1992, by the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan in connection with employment in the coal industry during the period covered by the 1988 National Bituminous Coal Wage Agreement.

(4) Last signatory operator.—The term "last signatory operator" means, with respect to a coal industry retiree, a signatory operator which was the most recent coal industry employer of such retiree.

(5) Assigned operator.—The term "assigned operator" means, with respect to an eligible beneficiary defined in section 9703(f), the signatory operator to which liability under subchapter B with respect to the beneficiary is assigned under section 9706.

(6) Operators of dependent beneficiaries.—For purposes of this chapter, the signatory operator, last signatory operator, or assigned operator of any eligible beneficiary under this chapter who is a coal industry retiree shall be considered to be the signatory operator, last signatory operator, or assigned operator with respect to any other individual who is an eligible beneficiary under this chapter by reason of a relationship to the retiree.

(7) Business.—For purposes of this chapter, a person shall be considered to be in business if such person conducts or derives revenue from any business activity, whether or not in the coal industry.

(8) Successor in interest.—

(A) Safe harbor.—The term "successor in interest" shall not include any person who—

(i) is an unrelated person to an eligible seller described in subparagraph (C); and

(ii) purchases for fair market value assets, or all of the stock, of a related person to such seller, in a bona fide, arm's-length sale.

(B) Unrelated person.—The term "unrelated person" means a purchaser who does not bear a relationship to the eligible seller described in section 267(b).

(C) **Eligible seller.**—For purposes of this paragraph, the term "eligible seller" means an assigned operator described in section 9704(j)(2) or a related person to such assigned operator.

(d) **Enactment date.**—For purposes of this chapter, the term "enactment date" means the date of the enactment of this chapter.