No. 20-880

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

REPLY BRIEF

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REPLY BRIEF

I. Courts Are Divided Over How The *South Carolina* v. *Regan* Exception Applies To Discretionary Relief From Taxes.

Because *South Carolina* v. *Regan* was a "unique suit," *Hibbs* v. *Winn*, 542 U.S. 88, 103 n.6 (2004), the courts of appeals are split over the scope of the exception it carved out of the AIA's jurisdictional bar—specifically, over whether the exception applies to litigants seeking discretionary relief from a tax they don't want to pay. The Sixth, Seventh, Eighth, and Ninth Circuits hold that the exception is available only to litigants objecting to the validity of a tax. Below, the Fifth Circuit joined the Fourth, Eleventh, and D.C. Circuits in holding the exception is available to litigants who aren't objecting to the validity of a tax. See Pet. 16–19.

Only this Court can resolve that split because it turns, in part, on which camp has the better reading of *South Carolina* v. *Regan*. The Fifth Circuit and others in the broad-exception camp find support in the opinion's broadly worded sentences; *e.g.*, "In sum, the Act's purpose and the circumstances of its enactment indicate that Congress did not intend the Act to apply to actions brought by aggrieved parties for whom it has not provided an alternative remedy." Pet. App. 16 (quoting *South Carolina* v. *Regan*, 465 U.S. 367, 378 (1984)). Courts in the narrow-exception camp find support in the opinion's narrowly worded sentences; *e.g.*, "[W]e hold that the Act 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.

Respondents are similarly confused: though they endorse the Fifth Circuit's reliance on *Regan*'s broadly worded sentences, Respondents ultimately admit that the narrowly worded sentences are what "*Regan* held." Opp. 30.

Respondents contend that the Sixth and D.C. Circuit decisions are unrelated to this split because they are non-bankruptcy cases. See Opp. 17–18. Though bankruptcy cases often present questions about the AIA—many broad Bankruptcy Code definitions and provisions encompass or apply to taxes—the AIA is generally applicable, so questions about the scope of the *South Carolina* v. *Regan* exception to the AIA often arise in non-bankruptcy cases, too. For their part, lower courts wrestling with the exception cite bankruptcy and non-bankruptcy precedents alike. See, *e.g.*, *Judicial Watch, Inc.* v. *Rosetti*, 317 F.3d 401, 408 n.3 (CA4 2003).

Respondents also contend that the bankruptcy cases Petitioners cite do not conflict and can be reconciled. See Opp. 15–17. The two distinctions Respondents propose, however, do not undermine the split:

- Respondents note that the *government* usually invokes the AIA, whereas Petitioners are *private entities*. Opp. 16. But, as a jurisdictional bar, the AIA limits courts, not the litigants who may question a court's jurisdiction. See Pet. 18–19. What's more, no matter who invokes the AIA during bankruptcy, it is always the private debtor who invokes the *South Carolina* v. *Regan* exception.

- Respondents also note that Section 1114 was not at issue in the Seventh, Eighth, and Ninth Circuits' decisions that construed the exception narrowly. See Opp. 16–17. But, for AIA purposes, Section

1114 is not unique. It is one of many Bankruptcy Code provisions that debtors claim can interfere with non-bankruptcy rights, including (potentially) the right of a tax collector. As in this case, the debtors in those cases claimed that, because of *South Carolina* v. *Regan*, the court could use these provisions to shield them from having to pay valid taxes during bankruptcy.[1]

Respondents suggest that the split over *South Carolina* v. *Regan* isn't implicated here because their request for Section 1114 relief challenges the validity of their Coal Act assessments. See Opp. 16. Respondents never made this suggestion before now, and it lacks merit. Respondents complied with the Act for decades before their Chapter 11 petitions, during which time Respondents could have raised any validity objections in a tax-refund action. See *Pittston Co.* v. *United States*, 199 F.3d 694, 702–04 (CA4 1999). Respondents did not do so because they never have had validity objections—not even during bankruptcy. Section 1114 relief is discretionary relief; Respondents invoked Section 1114 because it vests a bankruptcy court with discretion to eliminate *valid* and *lawful* obligations. See 11 U.S.C. § 1114(g). And so the

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[1] Respondents misstate that the Fourth Circuit adopted the broader view of the *South Carolina* v. *Regan* exception "in the § 1114 context." Opp. 18. The Fourth Circuit adopted that view in a case involving a free-and-clear sale under Section 363(f). See *In re Leckie Smokeless Coal Co.*, 99 F.3d 573 (CA4 1996)). The Court should not discount the non-Section 1114 cases *supporting Petitioners* while simultaneously counting the non-Section 1114 cases *supporting Respondents*. The Court should count them all because the scope of the *South Carolina* v. *Regan* exception does not change or depend on context.

Fifth Circuit rightly saw that Respondents were seeking *discretionary* relief and could proceed, notwithstanding the AIA, only if the *South Carolina* v. *Regan* exception is "not limit[ed] … to validity challenges." Pet. App. 16. The split over that question is directly implicated here.

Petitioners are not asking the Court to overrule *South Carolina* v. *Regan*, as Respondents intimate. See Opp. 14. Petitioners are asking the Court to confirm that this case is nothing like that case and to reverse the Fifth Circuit's *extension* of the *South Carolina* v. *Regan* exception to a much more common setting. Petitioners' question presented, therefore, asks whether the exception is "available to debtors who want to avoid paying a tax for reasons unrelated to the tax's validity." Pet. i; *see* Pet. 11, 15 (asking "whether and how" the exception applies in lower courts). To answer that question, the Court must grapple with the peculiar procedural posture of *South Carolina* v. *Regan*, the contradictory ways the opinion phrases its holding, and later decisions reigning in judge-made, equitable exceptions to jurisdictional statutes. See Pet. 11–15. Those issues are all fair game, and Respondents' assertion (Opp. 14) that Petitioners didn't raise those issues below is false. See Petitioners' CA5 Br. 56–57; Petitioners' CA5 Reply 29–30.

II. Courts Are Divided Over Whether The AIA Protects Coal Act Premiums.

For almost thirty years, courts of appeals consistently held that Coal Act premiums are federal taxes—for purposes of the AIA, the Bankruptcy Code, and all other federal statutes. See Pet. 21–27. Yet in the past two-and-a-half years, the Fifth and Eleventh Circuits

split from the rest and held that 1992 Plan premiums are *not* taxes for AIA purposes.

Respondents' answers to this split are variations on one theme—that *NFIB* fundamentally changed how to decide whether the AIA protects an exaction. See Opp. 32–34. Respondents thus conclude that non-AIA cases are distinguishable and that the Fourth Circuit's holding that Coal Act premiums are taxes for AIA purposes (*Leckie*) didn't survive *NFIB*. See *ibid.*

Petitioners anticipated that Respondents would argue that *NFIB* adopted a label-only test for the AIA. See Pet. 22–26. Respondents fail to engage with Petitioners' pre-buttals and, indeed, with *NFIB* itself, where the Court recognized that an exaction *not* labeled a "tax" can "nonetheless be treated as a tax for purposes of the [AIA]." *NFIB* v. *Sebelius*, 567 U.S. 519, 544 (2012).

Outside the Fifth and Eleventh Circuits, *NFIB* has not been revolutionary. The D.C. Circuit found that *NFIB* "did not recognize or carve out a new exception to the Anti-Injunction Act." *Fla. Bankers Ass'n* v. *Dep't of Treasury*, 799 F.3d 1065, 1071 (CADC 2015). Likewise, courts applying the AIA's cousin, the Tax Injunction Act, haven't adopted a label-only approach after *NFIB*. The Second Circuit, in fact, rejected it. See *Ass'n for Accessible Medicines* v. *James*, 974 F.3d 216, 226 (CA2 2020); see also Appellees' Br. 2, 21, *Ass'n for Accessible Medicines* v. *James*, 2019 WL 3543504 (CA2, filed July 31, 2019) (relying on *NFIB* and arguing for a label-only approach to the Tax Injunction Act).

Nor has the Fourth Circuit cast doubt on *Leckie* after *NFIB*. See Opp. 33–34. In *Electrical Welfare Trust Fund*, the appellants didn't propose a label-only

test; they argued that an exaction's label *doesn't matter*. The Fourth Circuit rejected that extreme position as inconsistent with *NFIB*—not because *NFIB* held that labels are dispositive, but because *NFIB* held that "Congress's denominations do obviously matter." *Elect. Welfare Tr. Fund* v. *United States*, 907 F.3d 165, 169 (CA4 2018). Then, instead of employing a label-only test, the Fourth Circuit employed a statute-taken-as-a-whole test, considering the exaction's label *alongside structural and contextual clues*. See *id.* at 168–170. Addressing *Leckie* directly, the Fourth Circuit didn't say that *NFIB* eclipsed *Leckie*. The Fourth Circuit confirmed that *Leckie* is consistent with a whole-statute analysis of the Coal Act because "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." *Id.* at 169 n.*. The Fourth Circuit's observation that *NFIB* "would control" if its "mode of analysis" were different from *Leckie*'s, *ibid.*, is an irrelevant truism—the two decisions' modes of analysis don't conflict.

A further indictment of the decision below is that the Fifth Circuit did *not* use the label-only approach for Combined Fund premiums; it did so only for 1992 Plan premiums. See Pet. 26. Respondents contend that this Court must review that issue, too. See Opp. 24. Technically, it's splitless: like the Eleventh Circuit in *Walter*, the Fifth Circuit *assumed* that Combined Fund premiums are taxes (because the penalties for not paying Combined Fund premiums are clearly taxes) and so aligned with the *holdings* of the Second,

Fourth, and Tenth Circuits.[2] Though this Court does not ordinarily review splitless assumptions in lower-court decisions, depending on what happens in *CIC Services*, the Court could consider whether Combined Fund premiums and 1992 Plan premiums are taxes for AIA purposes, as Petitioners already explained. See Pet. 21 n.4.

III. This Case Is A Good Vehicle For Resolving Both Questions Presented.

Respondents allege a number of obstacles to granting the petition. None is a real vehicle problem.

Nonmutual collateral estoppel is irrelevant. See Opp. 19. The Fifth Circuit correctly held that Petitioners' loss on these "unmixed" questions of law in *Walter* did not preclude the Fifth Circuit from fulfilling its duty of developing the law. See Pet. App. 7–8. Respondents concede (Opp. 20) this Court has affirmed this rule for decades, and it has become blackletter law. See RESTATEMENT (SECOND) JUDGMENTS § 29(7); 18 WRIGHT & MILLER, FED. PRAC. & PROC. § 4425; see, *e.g.*, *Pharm. Care Mgmt. v. District of Columbia*, 522 F.3d 443, 446 (CADC 2008) (collecting this Court's decisions). Respondents cite no contrary decision holding that a private party whose interpretation of jurisdictional statutes fails in one circuit cannot propose that interpretation in another circuit. The very idea is offensive to the rule that litigants can neither waive nor confer federal jurisdiction. See *United States* v. *Cotton*, 535 U.S. 625, 630 (2002). In all events, Respondents forfeited collateral estoppel (an

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[2] Petitioners did not "mischaracterize the Fifth Circuit's decision on this point." Opp. 25. Petitioners clearly stated: "The Fifth Circuit stopped short of holding that the AIA covers Combined Fund premiums" and "only *assumed* it." Pet. 11.

affirmative defense) when they failed to raise it their answer, and they waived it when they joined Petitioners' motion for an immediate appeal to the Fifth Circuit. That court's decisive rejection of the defense didn't undo Respondents' forfeiture or waiver.

Other of Respondents' objections stem from a mischaracterization of this case's relationship to Respondents' bankruptcy proceedings generally and their Section 1114 effort specifically:

- Respondents insist that their Chapter 11 petitions are not, under the AIA, "suits" to "restrain the assessment or collection of any tax." Opp. 21–23. The relevant suits, however, are their requests for Section 1114 relief. Every court that has applied the AIA in bankruptcy cases has done so, not vis-à-vis bankruptcy *petitions*, but vis-à-vis discrete bankruptcy *disputes* (under Sections 105, 362, 363, and 1114), because a "bankruptcy case involves an aggregation of individual controversies, many of which would exist as stand-alone lawsuits but for the bankrupt status of the debtor," *Bullard* v. *Blue Hills Bank*, 575 U.S. 496, 501 (2015). The word "suit" has long encompassed such disputes, see *Cohens* v. *Virginia*, 19 U.S. 264, 408 (1821), and a Section 1114 proceeding has all the trappings of a "suit": it is an adversarial contest where a court can permanently terminate a debtor's non-bankruptcy obligations. See 11 U.S.C. § 1114(e), (g). Because Coal Act exactions are "taxes," Respondents' Section 1114 effort is a "suit" to "restrain the assessment or collection of any tax." See Pet. App. 9–10.

- The declaratory-judgment posture of this case raises no "additional problems." Opp. 23–24. Unlike the AIA, the Declaratory Judgment Act isn't jurisdictional. See *Skelly Oil Co.* v. *Phillips Petroleum Co.*, 339 U.S. 667, 671 (1950). So, the DJA's limitation on

declaratory judgments "with respect to Federal taxes," 28 U.S.C. § 2201(a), isn't jurisdictional—meaning, it's waivable.[3] And Respondents waived it here: they failed to raise it in either lower-court proceeding (which explains why the Fifth Circuit relegated it to a footnote, see Pet. App. 10 n.7). Had Respondents objected, the most that would have happened is that Petitioners would have had to wait to raise the AIA defensively in response to Respondents' Section 1114 motion—same as Petitioners did in *Walter*. That would have increased the time pressures, but in the end, the parties would be right where they are now.

None of the alleged vehicle problems relates to the substance of the questions presented, which were fully litigated in, and actually decided by, both lower courts. The number of pages the issues occupied in the Fifth Circuit briefs (putting aside that Respondents miscount them) says nothing about how "thoroughly" the issues were "ventilated." Opp. 27. This case presented *several* important questions of law the Fifth Circuit had not yet answered, and Respondents' misleading statistics are just an unfair effort to penalize Petitioners' proper decision not to seek further review of the lower court's answers to splitless questions about the scope of Section 1114.

The two questions presented—no matter the order in which the Court answers them, see Opp. 25–26

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[3] When a declaratory-judgment action seeks to *restrain collection* of a tax, the AIA's jurisdictional bar applies in addition to the DJA's remedial limitations. The AIA doesn't bar Petitioners' declaratory-judgment action because, as Respondents concede, Petitioners aim to "compel" payment of taxes. Opp. 16.

n.3—are not "of insufficient and diminishing importance," Opp. 28. Respondents infer from the Coal Act's age (almost 30 years) that issues affecting the Act mustn't be important. See *ibid.* Hardly. More than 100 operators still pay Coal Act premiums. More than 12,000 retirees and spouses receive Coal Act benefits directly from the Funds, and another 10,000 receive Coal Act benefits from operators (beneficiaries who could be dumped into the 1992 Plan if operators shuttered their private plans, as Respondents accomplished via Section 1114). The Coal Act Funds spend $120 million on healthcare benefits annually, and the federal government's share of those expenditures—already in excess of $100 million—is growing and will continue growing if operators' Coal Act obligations can be eliminated during bankruptcy.

This case illustrates why the AIA is critical to protecting Coal Act obligations during bankruptcy. For some Respondents, this isn't their first bankruptcy since the Coal Act. *See* Decl. of Jeffrey S. Stein at 9, ¶¶ 24–25*, In re Westmoreland Coal Co., et al.*, No. 18-35672 (Bankr. S.D. Tex.) (ECF No. 54). Yet despite their earlier bankruptcies, Respondents' Coal Act obligations remained intact because everyone recognized that they are taxes *for all purposes*. After *Walter*'s surprising holding, however, Respondents finally had a way to escape their Coal Act obligations. And after *Westmoreland*'s successful escape, an even larger operator (Murray Energy Holdings Co.) invoked Section 1114 to eliminate its Coal Act obligations, over Petitioners' AIA objections.[4] See Objection

[4] There was no appeal—proving Petitioners' contention (and disproving Respondents') that the exigencies of bankruptcy limit the opportunities for this Court to answer the questions presented. See Pet. 28–29; Opp. 30.

of the UMWA 1992 Benefit Plan at 17–18, ¶¶ 44–46, *In re Murray Energy Holdings Co.*, No. 19-56885 (Bankr. S.D. Ohio) (ECF No. 299). But if this Court agrees with Petitioners, the AIA will snuff out Section 1114's threat to the Coal Act.

Respondents inflate Section 1114's importance when they say that extinguishing Coal Act obligations avoids "disastrous consequences" like liquidation. Opp. 31. From the Act's inception, covered operators have gone in and out bankruptcy—just as Respondents did twice in the '90s. Then and now, Section 1114 relief from Coal Act obligations wasn't necessary to "save jobs," Opp. 1, and such relief wasn't the difference between reorganization and liquidation.

The Coal Act may be "unusual," and it may be "unique." Opp. 29. And in every prior Coal Act case this Court has heard, those features have weighed *in favor of* certiorari, not *against* it. See Pet. 27 n.5. The splits here are real and important.

CONCLUSION

The Court should grant the petition.

Respectfully submitted,

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