No. 21-1047

In the Supreme Court of the United States

ANNICK ROY, et al.,
Petitioners,

v.

CANADIAN PACIFIC RAILWAY CO.,
Respondent.

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

PETITIONERS' REPLY BRIEF

TED A. MEYERS
PETER J. FLOWERS
CRAIG D. BROWN
MEYERS & FLOWERS LLC
3 N. 2nd Street
St. Charles, IL 60174
(603) 232-6333

MITCHELL A. TOUPS
WELLER, GREEN, TOUPS & TERRELL, LLP
P.O. Box 350
Beaumont, TX 77704
(409) 838-0101

MATTHEW W.H. WESSLER
Counsel of Record
GREGORY A. BECK
GUPTA WESSLER, PLLC
2001 K Street, NW
Suite 850 North
Washington, DC 20006
(202) 888-1741
matt@guptawessler.com

JASON C. WEBSTER
THE WEBSTER LAW FIRM
6200 Savoy, Suite 515
Houston, TX 77036
(713) 581-3900

Counsel for Petitioners

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PETITIONERS' REPLY

This case presents a circuit split on the meaning of a statutory term of art central to the complex framework of statutes and rules that make up the nation's bankruptcy scheme. As our petition explained (at 13), a majority of circuits have read the phrase "cases under title 11" as narrowly limited to a "bankruptcy petition itself." The First Circuit, however, radically diverged from that established meaning, adopting instead a "broad reading" of the phrase that includes not just cases that are themselves "under title 11," but also those that are merely "*related to*" such a case. App. 11a.

Those widely divergent readings of identical statutory language—one tightly constrained to bankruptcy petitions and the other broadly extending even to ordinary civil litigation—create an irreconcilable circuit split on the meaning of a key bankruptcy term of art. That split calls into question the very concept of a bankruptcy "case," risking unpredictable consequences that span the U.S. Code. On top of that, the First Circuit's decision to tie the bankruptcy rules' scope to the notoriously vague contours of "related to" bankruptcy jurisdiction makes it impossible to predict with certainty the body of procedural rules that govern a particular case. The inevitable result will be shifting and uncertain procedural rules, jurisdictional traps for the unwary, and incentives for gamesmanship and abuse.

That intolerable situation cries out for this Court's immediate intervention. Only this Court is in the position to resolve the uncertainty that the First Circuit's decision created. The Court should grant certiorari to do so here.

I. The First Circuit's reading of "cases under title 11" cannot be reconciled with other circuits' interpretation of that phrase.

A. In opposing certiorari, Canadian Pacific does not deny the far-reaching consequences of the First Circuit's decision, instead distancing itself from the most extreme aspects of the court's reasoning. Unlike the First Circuit, Canadian Pacific acknowledges (at 9, 15) that Congress used "cases under title 11," at least in some contexts, to mean the "bankruptcy petition itself." At the same time, however, it insists (at 11) that the exact same phrase, as used in Bankruptcy Rule 1001, "naturally encompasses *all* proceedings in federal court by virtue of federal bankruptcy jurisdiction"—regardless of whether the case is a bankruptcy petition or is brought "under title 11." On that improbable reading, Canadian Pacific argues (at 8) that the First Circuit's reading of "cases under title 11" in Rule 1001 cannot conflict with interpretations of the same phrase in other bankruptcy provisions.

The First Circuit, however, did not follow Canadian Pacific's approach. Far from basing its reading of "cases under title 11" on the plain text of Rule 1001, the court barely addressed the rule's language. Of its twenty-four-page opinion on the meaning of "cases under title 11," the court devoted just one paragraph to that language. App. 12a. Even then, it concluded only that the language was "not dispositive" of the phrase's meaning. *Id.*

Nor did the court make any attempt to distinguish the meaning of "cases under title 11" in Rule 1001 from its meaning in the broader bankruptcy scheme. Quite the opposite: It *derived* its reading of Rule 1001 from Congress's language and purpose in its creation of the overall bankruptcy system. It did so in several ways.

The court's primary holding was that the phrase "cases under title 11," as used in Rule 1001, encompasses "cases that have come within the federal district court's jurisdiction" under 28 U.S.C. § 1334(b) "as cases 'related to' a pending bankruptcy proceeding." App. 3a; *see also* App. 20a (holding that the language of Rule 1001 includes cases "under section 1334(b)'s 'related to' jurisdiction"). Under that holding, Rule 1001 and section 1334 are intertwined: whether Rule 1001 applies the bankruptcy rules to a case turns on whether the case falls within the scope of section 1334's bankruptcy jurisdiction. Moreover, the court reached that holding, in large part, based on what it saw as the "efficiency goals" animating Congress's design of section 1334 and the broader "bankruptcy system." App. 15a. The court saw its rule as accomplishing Congress's intent "to put everything in the same place" and thus to "facilitate[] the efficient disposition of claims." App. 15a.

The court found "[f]urther support for a broad reading of … the phrase 'under title 11'" in 28 U.S.C. § 157, in which Congress set forth the relative authorities of district and bankruptcy judges. App. 13a. As the court recognized, the language of section 157 is "[i]n line with" section 1334's jurisdictional categories. App. 10a. Both sections distinguish between "cases under title 11" and proceedings "related to a case under title 11." App. 10 n.3; *see also In re Wood*, 825 F.2d 90, 96 (5th Cir. 1987) (noting that the language of section 157 is "taken from" the "categories of jurisdiction" in section 1334). That language, the court held, "strongly suggests that the procedural aspects of … 'related to' cases adjudicated in federal district courts are governed by the Bankruptcy Rules." App. 12a. And the drafters of Rule 1001, it held, "must have been aware" of that statutory meaning when

they extended the bankruptcy rules to "cases under title 11." App. 12a.

In short, the First Circuit based its reading of "cases under title 11" not on Rule 1001 itself, but on its interpretation of the statutory text and purposes of section 1334, section 157, and Congress's purpose in creating the larger "bankruptcy system." Indeed, the meaning that the court attributed to the phrase is more an interpretation of those statutes than it is of Rule 1001. As a consequence, the First Circuit's reading of "cases under title 11" unquestionably conflicts with the decisions of courts that have attributed a different meaning to the phrase in those contexts. *See* Pet. 13.

B. Canadian Pacific's only argument that the meaning of "cases under title 11" varies by context is not a plausible one. Canadian Pacific claims that section 1334, by including separate references to "cases under title 11" and "related to" proceedings, "makes clear" that the proceedings are not included in "cases under title 11." Opp. 16. In contrast, it argues, Rule 1001's reference to only "cases under title 11" instead "makes clear" that those proceedings *are* included. *Id.*

That gets things exactly backwards. When "Congress includes particular language in one section of a statute but omits it in another," the omission ordinarily means that "Congress act[ed] intentionally" in doing so. *Keene Corp. v. United States*, 508 U.S. 200, 208 (1993). Rule 1001's omission of "related to" proceedings thus cannot reasonably be read to suggest that the rule *includes* those proceedings. On the contrary, the omission "only underscores" the Court's "duty to refrain from reading a phrase into" a rule when the rule itself "has left it out." *Id.*

Canadian Pacific's reading suffers from an even more serious problem. Congress used that precise phrase in hundreds of provisions throughout the bankruptcy statutes and rules, and even Canadian Pacific is forced to admit that—at least in some of those provisions—Congress used the phrase to mean the "bankruptcy petition itself." Opp. 9, 15. Under the "normal rule of statutory construction," "identical words used in different parts of the same act are intended to have the same meaning." *Sullivan v. Stroop*, 496 U.S. 478, 484 (1990). "Congress is presumed to know the meaning of the words it uses, especially in highly complex and intricate statutory schemes" like the one here. *United States v. Sotelo*, 436 U.S. 268, 286–87 (1978). Canadian Pacific's argument is particularly implausible here, where Congress used the phrase as a term of art that "consistently . . . denotes the original bankruptcy case filed under Title 11." *Christo v. Padgett*, 223 F.3d 1324, 1332 (11th Cir. 2000).

II. No plausible reading of Rule 1001 supports Canadian Pacific's novel interpretation.

Canadian Pacific devotes the bulk of its opposition to defending the First Circuit's holding that Rule 1001 extends the bankruptcy rules to "related to" cases like this one. Even if Canadian Pacific were right about that, it would not reduce the urgency of this Court's review. Regardless of how the Court resolves that question, its decision in this case would serve the important purpose of ending the uncertainty that the First Circuit's decision created over which set of rules govern cases like this one. Indeed, given the importance of clear and predictable procedural rules, the Court's resolution of that

uncertainty would likely be as important as the substance of the rule it ultimately adopts.

In any event, none of Canadian Pacific's arguments on the meaning of "cases under title 11" presents a plausible reading of Rule 1001—much less a reading strong enough to overcome an established term of art.

A. Canadian Pacific relies on the second sentence of Rule 1001, which states the rules' purpose of securing "the just, speedy, and inexpensive determination of every case and proceeding." That language, it argues (at 11), shows that the rules must govern not just "cases under title 11," but also the "bankruptcy proceedings that comprise sub-actions in such a case." But we have never argued otherwise. Everything that occurs in the bankruptcy court within a "case under title 11" is a "proceeding" within that case that is also governed by the bankruptcy rules. *See In re Caldor Corp.*, 303 F.3d at 168. That much is common sense: Just as a civil case is made up of constituent motions and hearings, a bankruptcy case is made up of the proceedings that are part of that bankruptcy case.

Canadian Pacific goes too far, however, when it asserts—without authority—that a "case under title 11" also includes proceedings that are merely "related to" a bankruptcy case. Opp. at 11. Such a proceeding, under section 1334(b)'s taxonomy, cannot have arisen in a bankruptcy case and therefore cannot be a "proceeding" in that case. The ordinary meaning of "case" includes the proceedings within *that case*. It does not, however, include proceedings in a *different* case that it happens to be "related to."

Contrary to Canadian Pacific's claim, that conclusion is consistent with the Advisory Committee's notes to Rule 1001, which explain that the bankruptcy rules are

"applicable to cases and proceedings *under title 11*"—that is, to bankruptcy petitions themselves and core bankruptcy proceedings. Bankruptcy Rule 1001, advisory committee note (emphasis added). That language suggests, as Canadian Pacific points out (at 12), that the bankruptcy rules "encompass related proceedings that are part of the same overall bankruptcy." Conspicuously absent, however, is any suggestion that the bankruptcy rules likewise apply to proceedings that are *not* part of a bankruptcy case, but merely "related to" one.

B. Canadian Pacific also relies on Rule 7001, which defines "adversary proceedings" in bankruptcy cases to include "proceeding[s] to determine a claim or cause of action removed under 28 U.S.C. § 1452." But even the courts that have adopted Canadian Pacific's reading of the bankruptcy rules recognize that Rule 7001 applies "only if the Bankruptcy Rules, rather than the Federal Rules of Civil Procedure, apply to the … lawsuit." *Phar-Mor, Inc. v. Coopers Lybrand*, 22 F.3d 1228, 1236 (3d Cir. 1994); *see also Diamond Mortg. Corp. of Ill. v. Sugar*, 913 F.2d 1233, 1241 (7th Cir. 1990) (noting that a court need apply Part VII only after it "determines that application of the Bankruptcy Rules is appropriate"). That conclusion does not mean, as Canadian Pacific argues, that Rule 7001 is "trumped by" Rule 1001. It merely recognizes that, if a case does not fall within the scope of the bankruptcy rules, Rule 7001 never comes into play.

III. This case cleanly presents the question presented.

With no credible defense of the First Circuit's decision, Canadian Pacific argues (at 18) that this case is a "poor vehicle" for resolving the scope of the bankruptcy rules. But the case could not more cleanly present that issue. Resolving it would require this Court to decide a

single legal question on the meaning of a statutory term of art. The parties fully briefed the issue both in the district court and on appeal, and the First Circuit devoted the entirety of its published opinion to resolving it. There is no good reason why the Court should not take this opportunity to decide this important issue.

Canadian Pacific's arguments to the contrary are not remotely relevant to the case as it comes to this Court. It first argues (at 16) is that the plaintiffs "effectively invited the asserted error below." That argument is puzzling. The plaintiffs argued vigorously in the district court and on appeal that the civil rules, not the bankruptcy rules, governed the time for filing their post-judgment motion. Dkt. 37 at 1–5. Canadian Pacific is thus flatly wrong (at 10) that this is a "newfound position for petitioners."

Indeed, Canadian Pacific never claims that the plaintiffs waived the issue by failing to raise it at the appropriate times below. Instead, it suggests (at 16) that the plaintiffs "should be estopped" from making the argument here because it purportedly conflicts with an earlier argument on a different motion. There is no such conflict. Although the plaintiffs relied (in the alternative) on Bankruptcy Rule 7004's provision for nationwide service of process in opposing Canadian Pacific's motion to dismiss, they did so because the bankruptcy court had *already* held that Canadian Pacific was adequately served under that rule. That is a far cry from arguing that the bankruptcy rules govern this case. And even if Canadian Pacific were correct that there is some tension in the petitioners' arguments across different motions, it failed to make that argument below. Canadian Pacific's argument is thus itself waived. *See Engle v. Isaac*, 456 U.S. 107, 126 n.26 (1982).

Canadian Pacific also argues (at 18) that this Court's resolution of the first question presented would "have no effect on the outcome" of this case because, even if the First Circuit had jurisdiction, it would have affirmed on the merits. The plaintiffs explained at length in their merits briefing below why Canadian Pacific is wrong. The First Circuit, however, never reached those issues because its decision to apply the bankruptcy rules ended the case. App. 3a. This Court likewise may resolve that outcome-determinative issue without reaching the merits issues that Canadian Pacific raises. The availability of "alternative ground[s]" for affirmance, this Court has explained, "does not prevent [the Court] from reviewing the ground exclusively relied upon by the courts below." *See Perry* v. *Thomas*, 482 U.S. 483, 492 (1987).

IV. The separate question of Rule 9023's applicability to appeals from district courts independently warrants review.

The First Circuit's application of Bankruptcy Rule 9023 to this case exemplifies the illogical consequences of applying rules designed for bankruptcy cases to ordinary civil litigation. As the Advisory Committee's note to Rule 9023 explains, the rule's 14-day period for post-judgment motions is designed to match the 14-day period for appealing the judgment of a bankruptcy court. The civil rules, in contrast, provide a 28-day period motions period corresponding with the longer 30-day period for appeals under Federal Rule of Appellate Procedure 4. But the First Circuit's application of Rule 9023 to the plaintiffs' case resulted in a mismatch of those rules, subjecting the plaintiffs to the 14-day motions period of a bankruptcy case but the 30-day appeals period of ordinary civil litigation. That incongruity creates an unanticipated trap

for the unwary while advancing the interests of neither set of rules.

More importantly, the court's erroneous application of Rule 9023 also creates a clean circuit split with decisions of the Fifth, Sixth, and D.C. Circuits, each of which has held that the rule governs only post-judgment motions in appeals from a bankruptcy court. *See In re Butler, Inc.*, 2 F.3d 154, 155 (5th Cir. 1993); *In re Bli Farms, P'ship*, 465 F.3d 654, 658 (6th Cir. 2006); *see also English-Speaking Union v. Johnson*, 353 F.3d 1013, 1019 (D.C. Cir. 2004).

In an attempt to escape those decisions, Canadian Pacific reads them narrowly (at 20–21) to restrict Rule 9023's application in a district court only when the court is sitting as a court of appeals in a bankruptcy case. But the decisions are not so easily limited. As the Fifth Circuit wrote, "Bankruptcy Rule 9023 … applies only to appeals *from the bankruptcy court to the district court*." *In re Butler*, 2 F.3d at 155; *see also English-Speaking Union*, 353 F.3d at 1019 (explaining that Rule 9024 is designed to apply "only to bankruptcy court proceedings"). And the plain language of the bankruptcy rules bears that out. Bankruptcy Rule 8002 expressly states that a Rule 9023 motion tolls the appeals period if timely filed "*in the bankruptcy court*." Fed. R. Bankr. P. 8002(b)(1) (emphasis added). Likewise, the Advisory Committee's note to Rule 9024 (the bankruptcy analogue to Federal Rule of Civil Procedure 60) states that the rule applies to "orders of the *bankruptcy court*." Fed. R. Bankr. P. 9023, 1983 Advisory Comm. Note (emphasis added). Canadian Pacific has no response to those clear rules.

The logic of these decisions also equally applies here. The only difference between the context of those cases and this one is the post-judgment rule that applies in place of

Rule 9023. In an appeal from a district court sitting as a bankruptcy court of appeals, Federal Rule of Appellate Procedure 6(b)(2)(A) provides that post-judgment motions are governed by Bankruptcy Rule 8022. In contrast, an appeal from a district court exercising its original bankruptcy jurisdiction under section 1334, as the district court was here, Federal Rule of Appellate Procedure 6(a) provides instead that the appeal "is taken as any other civil appeal under these rules." Accordingly, post-judgment motions can be filed—as in any other civil case—under the 28-day time period provided by Rule 59. *See* Fed. R. App. P. 4(a)(4)(A). That is the rule that the court of appeals should have applied here. Its decision to instead apply Rule 9023 creates a circuit split that independently warrants this Court's review.

CONCLUSION

The petition for certiorari should be granted.

Respectfully submitted,

MATTHEW W.H. WESSLER
Counsel of Record
GREGORY A. BECK
GUPTA WESSLER, PLLC
2001 K Street, NW
Suite 850 North
Washington, DC 20006
(202) 888-1741
matt@guptawessler.com

TED A. MEYERS
PETER J. FLOWERS
CRAIG D. BROWN

MEYERS & FLOWERS LLC
3 N. 2nd Street
St. Charles, IL 60174
(603) 232-6333

MITCHELL A. TOUPS
WELLER, GREEN, TOUPS & TERRELL, LLP
P.O. Box 350
Beaumont, TX 77704
(409) 838-0101

JASON C. WEBSTER
THE WEBSTER LAW FIRM
6200 Savoy, Suite 515
Houston, TX 77036
(713) 581-3900

Counsel for Petitioners

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