No. 21-441

In the Supreme Court of the United States

ALFRED H. SIEGEL, TRUSTEE OF THE CIRCUIT CITY STORES, INC. LIQUIDATING TRUST, PETITIONER

v.

JOHN P. FITZGERALD, III, ACTING UNITED STATES TRUSTEE FOR REGION 4

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE PETITIONER

DANIEL L. GEYSER
Counsel of Record
BEN L. MESCHES
KELLI BILLS
HAYNES AND BOONE, LLP
2323 Victory Avenue, Ste. 700
Dallas, TX 75219
(303) 382-6219
daniel.geyser@haynesboone.com

ANGELA M. OLIVER
HAYNES AND BOONE, LLP
800 17th Street, N.W., Ste. 500
Washington, DC 20006

JEFFREY N. POMERANTZ
ANDREW W. CAINE
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

ROBERT J. FEINSTEIN
PACHULSKI STANG ZIEHL & JONES LLP
780 Third Ave., 34th Floor
New York, NY 10017

QUESTION PRESENTED

This case presents an important question regarding the constitutionality of a federal statute governing the quarterly fees in large Chapter 11 bankruptcies.

The Bankruptcy Clause authorizes Congress to "establish * * * uniform Laws on the subject of Bankruptcies throughout the United States." Notwithstanding this directive, Congress has divided the nation's bankruptcy courts into two distinct programs: 88 judicial districts operate under the U.S. Trustee program, and 6 judicial districts (all in North Carolina and Alabama) operate under the Bankruptcy Administrator program. Each program generally performs similar tasks, and each program—until recently—imposed the same quarterly fees on Chapter 11 debtors in their districts.

In the Bankruptcy Judgeship Act of 2017, however, Congress adopted a five-year increase in quarterly fees paid only in U.S. Trustee districts—increasing the maximum fee from $30,000 to $250,000 for all pending cases. 28 U.S.C. 1930(a)(6)(B) (2018). That same increase was not imposed in Administrator districts until nine months later, and it applied only to cases filed after that date. The result is a wide disparity in fees paid by identically situated debtors based solely on the geographic location of their bankruptcy. The total difference exceeds $100 million in aggregate fees in Chapter 11 cases nationwide.

In the decision below, the Fourth Circuit joined the Fifth Circuit (each over dissents) in upholding these nonuniform fees; other circuits have since rejected those decisions and declared the 2017 Act unconstitutional.

The question presented is:

Whether the Bankruptcy Judgeship Act violates the uniformity requirement of the Bankruptcy Clause by increasing quarterly fees solely in U.S. Trustee districts.

TABLE OF CONTENTS

Page

Opinions below 1
Jurisdiction 1
Constitutional and statutory provisions involved 2
Introduction 3
Statement 4
  A. Statutory background 4
  B. Facts and procedural history 10
Summary of argument 15
Argument 18
  I. The 2017 Act's quarterly fee increase violates the Bankruptcy Clause's uniformity requirement 18
    A. The 2017 Act is deficient under any plausible definition of "uniformity" 18
    B. The government's attempt to excuse the Act's obvious lack of uniformity is unavailing 23
    C. The proper remedy is a full refund of fees—prospective relief cannot redress a past constitutional monetary injury 31
  II. The 2017 Act is also impermissibly non-uniform because Congress's dual system itself is impermissibly non-uniform 33
Conclusion 34
Appendix — Statutory provisions 1a

TABLE OF AUTHORITIES

Cases:

Allegheny Pittsburg Coal Co. v. *County Comm'n of Webster Cty.*, 488 U.S. 336 (1989) 32

Page

Cases—continued:

Blanchette v. *Connecticut Gen. Ins. Corp.*, 419 U.S. 102 (1974) 19
Buffets, LLC, *In re*, 979 F.3d 366 (5th Cir. 2020) ......*passim*
Central Va. Cmty. Coll. v. *Katz*, 546 U.S. 356 (2006) 24
Clinton Nurseries, Inc., *In re*, 998 F.3d 56 (2d Cir. 2021) ....*passim*
Cranberry Growers Coop., *In re*, 930 F.3d 844 (7th Cir. 2019)....................8, 10
Hanover Nat'l Bank v. *Moyses*, 186 U.S. 181 (1902) 23, 24
Harper v. *Virgina Dep't of Taxation*, 509 U.S. 86 (1993) 31
Iowa-Des Moines Nat'l Bank v. *Bennett*, 284 U.S. 239 (1931)....................31
John Q. Hammons Fall 2006, LLC, *In re*, 15 F.4th 1011 (10th Cir. 2021) 5, 20, 22
John Q. Hammons Fall 2006, LLC, *In re*, 618 B.R. 519 (Bankr. D. Kan. 2020)....................5
Lopez v. *Davis*, 531 U.S. 230 (2001) 28
Martin v. *Franklin Capital Corp.*, 546 U.S. 132 (2005)....................28
McKesson Corp. v. *Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18 (1990) 31
MF Glob. Holdings Ltd., *In re*, 615 B.R. 415 (Bankr. S.D.N.Y. 2020) 24, 25
Mosaic Mgmt. Grp., Inc., *In re*, 22 F.4th 1291 (11th Cir. 2022).................... 20, 24, 29, 30
Mosaic Mgmt. Grp., Inc., *In re*, 614 B.R. 615 (Bankr. S.D. Fla. 2020)....................25
National Fed'n Indep. Bus. v. *Sebelius*, 567 U.S. 519 (2012)....................26
Printz v. *United States*, 521 U.S. 898 (1997) 26
Reese, *In re*, 91 F.3d 37 (7th Cir. 1996) 19
Russello v. *United States*, 464 U.S. 16 (1983) 27

Page

Cases—continued:

Ry. Labor Execs.' Ass'n v. *Gibbons*,
455 U.S. 457 (1982)....................18, 25
Salinas v. *United States R.R. Ret. Bd.*,
141 S. Ct. 691 (2021) 28
Sessions v. *Morales-Santana*, 137 S. Ct. 1678 (2017) 31
St. Angelo v. *Victoria Farms, Inc.*, 38 F.3d 1525
(9th Cir. 1994)....................*passim*
United States v. *Ptasynski*, 462 U.S. 74 (1983)....................19
Vanston Bondholders Protective Comm. v. *Green*,
329 U.S. 156 (1946)....................*passim*
Wright v. *Union Cent. Life Ins. Co.*,
304 U.S. 502 (1938)....................24

Constitution and statutes:

U.S. Const. Art. I, § 8, Cl. 4 ....*passim*
U.S. Const. Art. I, § 8, Cl. 18 25
Bankruptcy Judgeship Act of 2017, Pub. L. No. 115-72,
Div. B, § 1004(a), 131 Stat. 1232 (2017 Act) ....*passim*
Pub. L. No. 99-554, Tit. III (1986) ....*passim*
§ 302(d)(3)(A), 100 Stat. 3121-3122 6
§ 302(d)(3)(E), 100 Stat. 3122 6
§ 302(d)(3)(I), 100 Stat. 3123....................6
Pub. L. No. 101-650, Tit. III, § 317(a) (1990)....................6
Pub. L. No. 106-518 (2000):....................7
Tit. I, § 105, 114 Stat. 2411-2412 7
Tit. V, § 501, 114 Stat. 2421-2422 6
Pub. L. No. 116-260, Div. B, Tit. II, § 218 (2020)....................9
Pub. L. No. 116-325 (2021):....................*passim*
28 U.S.C. 158(d)(2) 12
28 U.S.C. 1930....................*passim*
28 U.S.C. 1930(a)(6) 7
28 U.S.C. 1930(a)(6)(A) (2018) 8
28 U.S.C. 1930(a)(6)(B) (2018) 2
28 U.S.C. 1930(a)(7) (2018)....................2

Page

Statute—continued:

28 U.S.C. 1254(1) 1

Miscellaneous:

CBO Cost Estimate, *H.R. 2266: Bankruptcy Judgeship Act of 2017* (May 18, 2017) 9
H.R. Rep. No. 595, 95th Cong., 1st Sess. (1977) 5
H.R. Rep. No. 764, 99th Cong., 2d Sess. (1986) 4, 5, 7
Report of the Proceedings of the Judicial Conference of the United States (Sept. 13, 2018) <https://tinyurl.com/2018-jud-conf-report> 9
Report of the Proceedings of the Judicial Conference of the United States (Sept./Oct. 2001) <https://tinyurl.com/2001-jud-conf-report> 7
Dan J. Schulman, *The Constitution, Interest Groups, and the Requirements of Uniformity: The United States Trustee and the Bankruptcy Administrator Programs*, 74 Neb. L. Rev. 91 (1995)...20
U.S. General Accounting Office, *Bankruptcy Administration: Justification Lacking for Continuing Two Parallel Programs*, No. GAO/GGD-92-133 (Sept. 1992) <https://tinyurl.com/GAO-92-133> 4, 6

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-37a) is reported at 996 F.3d 156. The opinion of the bankruptcy court (Pet. App. 38a-55a) is reported at 606 B.R. 260.

JURISDICTION

The judgment of the court of appeals was entered on April 29, 2021. The petition for a writ of certiorari was filed on September 20, 2021, and granted on January 10, 2022.[1] The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

[1] The deadline for filing the petition was "extended to 150 days" under this Court's orders of March 19, 2020, and July 19, 2021.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Bankruptcy Clause of the United States Constitution, Article I, Section 8, Clause 4, provides:

> The Congress shall have Power * * * To establish * * * uniform Laws on the subject of Bankruptcies throughout the United States.

Section 1004(a) of the Bankruptcy Judgeship Act of 2017, Pub. L. No. 115-72, Div. B, § 1004(a), 131 Stat. 1232 (2017 Act), provides in relevant part:

> During each of fiscal years 2018 through 2022, if the balance in the United States Trustee System Fund as of September 30 of the most recent full fiscal year is less than $200,000,000, the quarterly fee payable for a quarter in which disbursements equal or exceed $1,000,000 shall be the lesser of 1 percent of such disbursements or $250,000.

28 U.S.C. 1930(a)(6)(B) (2018).

During the relevant periods here, Section 1930(a)(7) of Title 28 of the United States Code provided in relevant part:

> In districts that are not part of a United States trustee region as defined in section 581 of this title, the Judicial Conference of the United States may require the debtor in a case under chapter 11 of title 11 to pay fees equal to those imposed by paragraph (6) of this subsection * * * .

28 U.S.C. 1930(a)(7) (2018).

Other relevant statutory provisions are reproduced in the appendix to this brief (Pet. App. 1a-9a).

INTRODUCTION

This case presents a significant constitutional question under the Bankruptcy Clause that has squarely divided the lower courts.

Notwithstanding the Constitution's directive to "establish * * * uniform Laws on the subject of Bankruptcies throughout the United States," Congress has divided the nation's bankruptcy courts into two categories: U.S. Trustee districts (covering 48 States) and Bankruptcy Administrator districts (covering North Carolina and Alabama).

In the Bankruptcy Judgeship Act of 2017, Congress imposed a massive increase in Chapter 11 quarterly fees in Trustee districts—increasing the maximum fee from $30,000 to $250,000 (an 833% increase) for all pending and future cases. Pub. L. No. 115-72, Div. B, § 1004(a), 131 Stat. 1232 (codified at 28 U.S.C. 1930(a)(6)(B) (2018)). While these new fees were mandatory in Trustee districts, the fees were merely permissive in Administrator districts (28 U.S.C. 1930(a)(7) (2018))—where the same increase was not imposed for a full nine months, and even then applied only prospectively (starting with cases filed on October 1, 2018). Thus, a debtor in North Carolina or Alabama who filed for bankruptcy before October 2018 would never be charged the fee increase, no matter how long its bankruptcy remained pending, whereas qualifying debtors in Trustee districts were immediately assessed the increased fees—even in cases filed well before the 2017 Act, and for the full duration of their bankruptcies. This disparity has left identically situated debtors paying drastically different fees based solely on the happenstance of where their bankruptcy was filed.

In a 2-1 decision below, the Fourth Circuit nevertheless held the 2017 Act does not violate the Bankruptcy Clause. The court of appeals was mistaken. The 2017 Act

reflects a clear and obvious uniformity violation, and Congress has no legitimate justification for the arbitrary treatment.

Because indistinguishable debtors should not pay different fees because their bankruptcies arise in different States, the judgment below should be reversed.

STATEMENT

A. Statutory Background

1. a. In 1978, Congress established a U.S. Trustee Pilot Program to address systemic problems in bankruptcy-case administration. See H.R. Rep. No. 764, 99th Cong., 2d Sess. 17-18 (1986). Before that time, bankruptcy courts handled both the judicial and administrative functions in every bankruptcy. This dual role often placed bankruptcy courts "in an untenable position of conflict and seriously compromised their impartiality as arbiters of disputes." U.S. General Accounting Office, *Bankruptcy Administration: Justification Lacking for Continuing Two Parallel Programs*, No. GAO/GGD-92-133, at 15 (Sept. 1992) (GAO Report) <https://tinyurl.com/GAO-92-133>. Bankruptcy courts, for example, would often appoint private trustees to administer estates in "the very same" cases before them—leaving trustees "reluctant to take positions contrary to the judges who appointed the trustee, even though a trustee was supposed to be an impartial administrator of the estate." H.R. Rep. No. 764, *supra*, at 18. Congress found "[t]his awkward relationship between trustees and judges created an improper appearance of favoritism, cronyism, and bias," and "eroded the public confidence in the bankruptcy system." *Id.* at 17-18.

To address these issues, Congress "sought to separate the administrative duties in bankruptcy from the judicial tasks, leaving the bankruptcy judges free to resolve disputes untainted" by an administrative role. H.R. Rep. No.

764, *supra*, at 18. It assigned key administrative functions to U.S. Trustees, and it housed the U.S. Trustee program in the Department of Justice. *Ibid.* As Congress explained, this placement in the Executive Branch promoted both "the separation of administrative from judicial functions" and "the independence of the U.S. Trustees." *Ibid.* In short, it was "the soundest approach": "it render[ed] the separation of administrative and judicial functions complete, and place[d] the administrative duties in bankruptcy in the Branch of Government most capable of executing the laws." H.R. Rep. No. 595, 95th Cong., 1st Sess. 115 (1977).

In making this determination, Congress specifically rejected the alternative of "placing the program in the judicial branch under the supervision of the Administrative Office for U.S. Courts." H.R. Rep. No. 764, *supra*, at 18. Congress noted that placing the "program in the judicial branch * * * could foster the same appearances of favoritism and impropriety in the bankruptcy system" that the Trustee program "sought to eliminate." *Id.* at 20-21. Indeed, as Congress found, "housing the Program outside the judicial branch is the single most essential requirement to a successful program." *Id.* at 20.

b. In 1986, Congress declared the pilot program a success, and formally established the U.S. Trustee program nationwide—with two notable exceptions. In North Carolina and Alabama, politicians and bankruptcy judges resisted joining the Trustee program, and instead opted for a so-called Bankruptcy Administrator program. See Pub. L. No. 99-554, Tit. III, § 302(d)(3)(I), 100 Stat. 3123 (1986); see also, *e.g.*, *In re John Q. Hammons Fall 2006, LLC*, 618 B.R. 519, 522 (Bankr. D. Kan. 2020) (attributing the exception to "successful lobbying by bankruptcy judges and senators" in "North Carolina and Alabama") (citation omitted). This distinct program would perform the same

general functions, but under a different arrangement: while the Trustee program was lodged in the Department of Justice, the Administrator program was lodged in the judicial branch under the Judicial Conference.

Because this exemption was designed to be temporary, North Carolina and Alabama were given limited extensions for joining the Trustee program. Pub. L. No. 99-554, *supra*, § 302(d)(3)(A), (E). But Congress later extended the deadline for ten years and then eliminated it outright—"when a North Carolina congressman tucked a permanent exemption from the UST Program into an unrelated bill during the November 2000 lame duck session." *In re Buffets, LLC*, 979 F.3d 366, 383 (5th Cir. 2020) (Clement, J., dissenting); see also Pub. L. No. 101-650, Tit. III, § 317(a) (1990) (10-year extension); Pub. L. No. 106-518, Tit. V, § 501, 114 Stat. 2421-2422 (2000) (outright elimination). With that exemption permanent, the nation's judicial districts were left divided into two distinct categories: 88 judicial districts in 48 States were in the Trustee program, while the remaining 6 districts in North Carolina and Alabama were in the Administrator program.

In studying the division in 1992, the GAO concluded there was no reason for two separate programs to exist, and it recommended the Administrator program should be eliminated. See GAO Report, *supra*, at 18 ("[o]fficials from both the EOUST and AO agreed that it makes no sense to divide the case administration duties in bankruptcy between two programs as it is now"; "[w]e could not find any justification for continuing two separate programs"). Yet Congress left the dual system in place, and this non-uniform scheme persists today.

2. Although each program has always operated similarly, debtors in Trustee districts initially faced unequal costs: additional fees. Ever since the Trustee program's

inception, Congress has imposed quarterly fees for Chapter 11 debtors with the aim of leaving the program "self-funded." H.R. Rep. No. 764, *supra*, at 25; see 28 U.S.C. 1930(a)(6). Congress, however, initially chose not to impose the same fees in Administrator districts; the funding for that separate program instead came from the judiciary's general budget. *Buffets*, 979 F.3d at 371.

That disparity was eventually challenged on constitutional grounds by debtors in the Trustee program. The dispute reached the Ninth Circuit in 1994, and the court of appeals held the unequal treatment violated the Bankruptcy Clause: "because creditors and debtors in states other than North Carolina and Alabama are governed by a different, more costly system for resolving bankruptcy disputes, it is clear that 28 U.S.C. § 1930 * * * does not apply uniformly to a defined class of debtors," "render[ing] that section unconstitutional." *St. Angelo* v. *Victoria Farms, Inc.*, 38 F.3d 1525, 1531-1532 (9th Cir. 1994) (citation omitted).

Congress responded to that decision by amending the quarterly fee statute. But rather than subjecting all debtors to a unitary fee provision, it instead tacked on a new subsection granting the Judicial Conference *discretion* to impose fees in Administrator districts: "In districts that are not part of a United States trustee region," "the Judicial Conference of the United States may require the debtor in a case under chapter 11 of title 11 to pay fees equal to those imposed by" Section 1930(a)(6). Pub. L. No. 106-518, *supra*, at Tit. I, § 105, 114 Stat. 2411-2412 (codified at 28 U.S.C. 1930(a)(7)).

A year later, the Judicial Conference invoked that new authority to impose equal fees in Administrator districts. See Report of the Proceedings of the Judicial Conference of the United States 45-46 (Sept./Oct. 2001) <https://tinyurl.com/2001-jud-conf-report> (authorizing "such fees

be imposed in bankruptcy administrator districts in the amounts specified in 28 U.S.C. § 1930, as those amounts may be amended from time to time"). Each program then charged uniform fees for over a decade.

3. a. The period of uniform fees ended approximately 15 years later when Congress passed the Bankruptcy Judgeship Act of 2017, Pub. L. No. 115-72, Div. B, § 1004(a), 131 Stat. 1232.

In the 2017 Act, Congress sought to address a funding shortfall in the Trustee program.[2] It imposed a five-year increase in quarterly fees for Chapter 11 debtors in Trustee districts for any year where the balance of the Trustee fund dipped below a threshold amount ("$200,000,000"). 28 U.S.C. 1930(a)(6)(B) (2018). The heightened fee was tied to a debtor's "disbursements" and based on a sliding scale; any debtor spending over $1 million in a quarter had to pay "the lesser of 1 percent of such disbursements or $250,000." *Ibid.* While Congress left the term "disbursement" undefined, courts have consistently understood the term to cover any money spent by the debtor for any reason—including ordinary business expenses. *E.g.*, *In re Cranberry Growers Coop.*, 930 F.3d 844, 850 (7th Cir. 2019). The new fee provision thus reaches virtually every large Chapter 11 bankruptcy.

The 2017 Act dramatically increased quarterly fees for Chapter 11 debtors: it supplanted a different scale that capped out at $30,000 per quarter (an 833% increase), and resulted in Chapter 11 debtors nationwide paying multiples of their previous fees. Compare 28 U.S.C. 1930(a)(6)(A) (2018), with 28 U.S.C. 1930(a)(6)(B) (2018).

[2] Although Congress purportedly designed the fee to pay for the funding shortfall, it also allocated 2% of all amounts collected to the general treasury fund. See Pub. L. No. 115-72, *supra*, at § 1004(b), 131 Stat. 1232.

Congress also imposed the fee immediately for all pending cases, with an effective date of January 1, 2018. Pub. L. No. 115-72, *supra*, at § 1004(c). The Congressional Budget Office estimated that the new fees would generate over $144 million in revenue in the first year alone—reallocating funds from the estate that would otherwise go to creditors or back to the debtor. CBO Cost Estimate, *H.R. 2266: Bankruptcy Judgeship Act of 2017*, at 5-6 (May 18, 2017) (reproduced at C.A. App. 280-285).[3]

Critically here, the 2017 Act's increase targeted only Trustee districts; Congress did not extend the provision to Administrator districts or amend Section 1930(a)(7) to mandate an equivalent increase. The fees in Administrator districts thus remained permissive only and subject to the Judicial Conference's discretion.

b. The Judicial Conference met later in 2018 and exercised its discretionary authority to impose the same increased fees in Administrator districts. Report of the Proceedings of the Judicial Conference of the United States 11-12 (Sept. 13, 2018) <https://tinyurl.com/2018-jud-conf-report> (authorizing "quarterly fees in chapter 11 cases filed in bankruptcy administrator districts in the amounts specified in 28 U.S.C. § 1930(a)(6)(B) for cases filed on or after October 1, 2018").

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[3] The Trustee fund's balance has remained below the threshold since the Act's effective date, resulting in increased fees every quarter since January 2018. Congress later amended Section 1930(a)(6)(B) to extend the duration of the increase (from 2021 to 2026); to increase the funding trigger from $200 million to $300 million; and eventually to eliminate the funding trigger altogether—thus ensuring the heightened fees would remain in effect. See Pub. L. No. 116-325, § 3(d)(1), 134 Stat. 5088 (2021) (fee extension and elimination of balance threshold); Pub. L. No. 116-260, Div. B, Tit. II, § 218 (2020) (balance increase from $200 million to $300 million).

But as its terms make clear, that increase departed from fees imposed in Trustee districts in two key respects: (i) it applied for the first time on "October 1, 2018," thus guaranteeing at least nine months of non-uniform treatment between the two programs; and (ii) the Judicial Conference directed the fee to apply only prospectively ("on or after")—so that any bankruptcy filed in North Carolina or Alabama before October 2018 would never be subject to the fee, no matter how long the bankruptcy remained pending (see *Cranberry Growers*, 930 F.3d at 855); in a Trustee district, by contrast, an identically situated debtor would be charged indefinitely until the bankruptcy closed. This latter change ensured years of unequal treatment between the two programs.

4. In 2021, Congress again amended the fee statute, this time replacing the Judicial Conference's discretion with a mandatory command: while the prior version of Section 1930(a)(7) provided the Judicial Conference "may" impose equal fees in Administrator districts, the new version instructed that the Judicial Conference "shall" impose equal fees. Pub. L. No. 116-325, *supra*, at § 3(d)(2), 134 Stat. 5088.

Congress directed the change to apply to all future quarters, but it did not impose retroactive increases for the years-long period where fees were non-uniform under the 2017 Act. See Pub. L. No. 116-325, *supra*, at § 3(e)(2)(B), 134 Stat. 5089. Even under the amended version of Section 1930(a), Congress thus codified the disparate treatment between Trustee and Administrator districts at the core of this case.

B. Facts And Procedural History

1. For decades, Circuit City Stores, Inc., operated a nationwide chain of consumer-electronic retail stores. Pet. App. 9a. In 2008, Circuit City filed for Chapter 11 bank-

ruptcy in the Eastern District of Virginia, which is a Trustee district. *Ibid.* Two years later, the bankruptcy court confirmed Circuit City's joint-liquidation plan, formed a liquidation trust, and appointed petitioner as the liquidation trustee—tasked with "collect[ing], administer[ing], distribut[ing], and liquidat[ing] all of [Circuit City's] remaining assets." *Id.* at 39a-40a. The plan required petitioner to "'pay quarterly fees to the U.S. Trustee until the Chapter 11 Cases are closed or converted and/or the entry of final decrees.'" *Ibid.*

Circuit City's bankruptcy was still pending on the 2017 Act's effective date. In the prior seven years, petitioner paid "approximately $833,000 in quarterly fees." Pet. App. 48a-49a. "In the first three quarters of 2018 alone, [petitioner] paid approximately $632,000" under the Act. *Id.* at 48a. "Without the increased quarterly fees, [petitioner] would have paid $56,400—a difference of approximately $575,600." *Id.* at 30a. Circuit City's disbursements continued to exceed the Act's threshold in other quarters.

Petitioner challenged the 2017 Act on multiple grounds, including its non-uniformity under the Bankruptcy Clause. Pet. App. 43a-44a.[4]

2. As relevant here, the bankruptcy court declared the Act "unconstitutionally non-uniform" under the Bankruptcy Clause. Pet. App. 53a. As the court explained, "the

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[4] Petitioner also challenged the Act as impermissibly retroactive, given the drastic fee increase after plan confirmation. Pet. App. 10a. While this theory would potentially excuse payment of the Act's fees for any case pending before the Act went into effect, it would not resolve any challenge to fees incurred by debtors filing in the nine-month period between January and October 2018 (as the Act *predated* those cases). Petitioner is advancing only the Bankruptcy Clause challenge before this Court, but if this Court rejects petitioner's challenge, this alternative theory would remain available to other parties in ongoing litigation.

Bankruptcy Clause requires bankruptcy laws to be geographically uniform" and to "'apply uniformly to a defined class of debtors.'" *Id.* at 54a. Yet "[f]or the first three quarters of 2018, newly adopted section 1930(a)(6)(B) increased quarterly fees assessed against chapter 11 debtors in only 88 of the 94 federal judicial districts throughout the country." *Id.* at 52a. Indeed, "[h]ad the Debtors filed their chapter 11 bankruptcy petitions a mere 140 miles south in Raleigh, North Carolina, the Debtors would be paying substantially lower quarterly fees than they are paying now." *Id.* at 53a (footnote omitted).

The court concluded that "[a]s the [Act] does not apply uniformly both to chapter 11 debtors with pending cases in BA districts and to chapter 11 debtors with pending cases in U.S. Trustee districts, it is unconstitutional under the Bankruptcy Clause." Pet. App. 54a. It thus declared that "[t]he quarterly fees due and payable by [petitioner] since January 1, 2018, must be determined based on the prior version of the statute." *Ibid.*

3. The parties' jointly sought a direct appeal under 28 U.S.C. 158(d)(2), certifying that the order "'involves a matter of public importance'" and "'a question of law as to which there is no controlling decision.'" Pet. App. 61a.

4. The Fourth Circuit granted the joint petition (Pet. App. 57a-58a), and a divided panel reversed (*id.* at 1a-37a).

a. The majority found "no constitutional uniformity problem posed by the 2017 Amendment." Pet. App. 14a. While the majority flagged "[a]t least" a 6-4 split among lower courts (*id.* at 15a n.9), it adopted the Fifth Circuit's view that "the Bankruptcy Clause forbids only 'arbitrary' geographic differences," and "when Congress determined that it needed to remedy a shortfall in funding for the Trustee districts, it was entitled to 'solve the evil to be remedied with a fee increase in just the underfunded districts.'" *Id.* at 17a. In so concluding, the majority conceded

that the Act "may render it more expensive for some debtors in Virginia—as opposed to North Carolina or Alabama—to go through Chapter 11 proceedings." *Id.* at 18a. But it ultimately found this was "simply a byproduct of Virginia's use of the Trustee program," and the 2017 Act fairly addressed a "'geographically isolated problem[].'" *Id.* at 15a, 18a.

As the majority concluded, "[b]ecause only those debtors in Trustee districts use the U.S. Trustees, Congress reasonably solved the shortfall problem with fee increases in the underfunded districts." Pet. App. 18a. It accordingly held that "the 2017 Amendment does not contravene the [Bankruptcy Clause's] uniformity mandate," and "revers[ed]" the bankruptcy court's ruling that "the 2017 Amendment is unconstitutionally nonuniform." *Id.* at 18a, 23a.

b. Judge Quattlebaum dissented. Pet. App. 23a-37a.

He initially noted that "[w]e have two types of bankruptcy courts in the United States," and "Chapter 11 debtors in districts that employ the United States Trustees pay materially more in quarterly fees than similarly situated debtors in districts that employ Bankruptcy Administrators." Pet. App. 23a-24a. In his view, "a faithful application of the Constitution's Bankruptcy Clause renders the statutory scheme permitting these different quarterly fees unconstitutional." *Id.* at 24a.

As Judge Quattlebaum explained, the dual systems are "candidly and unapologetically nonuniform"—"Alabama and North Carolina's refusal to participate in the Trustee Program is not based on any unique attributes of those states." Pet. App. 26a. And the 2017 Act's disparate treatment has "led to vastly disparate fees paid by similarly situated debtors in different districts." *Id.* at 29a. "Simply put," he explained, "the imposition of quarterly

fees in the two bankruptcy systems is not uniform." *Id.* at 31a.

He then rejected the government's efforts to excuse "this obvious lack of uniformity." Pet. App. 31a. He first identified "several problems" with the government's theory that the 2017 Act was "not a substantive bankruptcy law"—despite "regularly lead[ing] to similarly situated debtors paying *more* in fees and *less* to creditors in Trustee Program districts than they would in Bankruptcy Administrator districts." *Id.* at 31a-33a. "Certainly," he reasoned, "statutes that alter the amounts similarly situated creditors receive based on geography are sufficiently substantive to implicate the Bankruptcy Clause." *Id.* at 33a.

Next, he refuted the government's assertion that "§ 1930(a)(6)(B) and (a)(7) are actually uniform," calling it "at odds with reality." Pet. App. 34a-35a. Contrary to the government's view, fees under Section 1930(a)(7) were *not* "mandatory": "the unambiguous language of § 1930(a)(7) prior to the Act vested the Judicial Conference with discretion to assess increased quarterly fees." *Id.* at 34a. As Judge Quattlebaum concluded, "[i]f the operative version of § 1930(a)(7) used the word 'shall' rather than 'may,' this would be an entirely different case." *Id.* at 33a.

Finally, he rejected the government's argument that the 2017 Act's uneven treatment is not based on "geography" but "the unique budgetary challenges confronting the Trustee Program." Pet. App. 35a. As Judge Quattlebaum explained, there was nothing "geographical in nature" about those problems: "those districts only face the budgetary problems because Congress treated them differently in the first place"—"[a]nd Congress did that purely based on geography." *Ibid.* And while the Bankruptcy Clause's uniformity provision "'was not intended to hobble Congress by forcing it into nationwide enactments to deal with conditions calling for remedy only in certain

regions,'" "it is a necessary safeguard to prevent laws from arbitrarily damaging creditors and debtors as a result of regionalism." 36a.

In sum, Judge Quattlebaum concluded, "no matter how you slice it, uniform means not different." Pet. App. 36a. He accordingly would have affirmed the holding below "that § 1930(a)(6)(B) violates the Bankruptcy Clause." 31a.

SUMMARY OF ARGUMENT

I. The 2017 Act violates the uniformity requirement of the Bankruptcy Clause by increasing quarterly fees solely in Trustee districts.

A. The Bankruptcy Clause authorizes Congress to establish uniform bankruptcy laws throughout the United States. While that condition permits significant legislative flexibility, it does not permit Congress to draw artificial lines based solely on the happenstance of geography. Congress must legislate evenly among similarly situated debtors, and it must apply the same rules to similarly situated regions. The Constitution does not permit non-uniform treatment of indistinguishable debtors or arbitrary regional differences in bankruptcy legislation.

The 2017 Act violates these foundational rules. Rather than treating all similarly situated debtors alike, Congress drew lines based on location alone. Debtors in 48 States faced immediate and steep increases in quarterly fees, while debtors in North Carolina and Alabama were ultimately afforded a nine-month grace period—followed by full protection for anyone who filed bankruptcy before the Administrator increase went into effect.

This non-uniform treatment has no legitimate justification. Congress did not even purport to draw lines based on any ordinary material criteria; the lines were drawn solely based on the nation's preexisting division into two

(non-uniform) bankruptcy systems. This Court has not previously allowed non-uniform legislation based on purely artificial legislative distinctions—and the distinction here (the existence of the dual UST/BA system) is itself a non-uniform "Law." Just as Congress could not impose this kind of variant treatment in a single legislative Act, there is no reason it can accomplish the same objective by splitting its work into two separate enactments. There is simply no theory of constitutional uniformity that authorizes different fees for identically situated debtors based exclusively on the State in which their bankruptcy is filed.

B. The government offers three theories to shield this (admittedly) non-uniform treatment. Each attempt fails.

1. The government is incorrect that the 2017 Act is not a "Law[] on the subject of Bankruptcies." The Bankruptcy Clause's plain text has a broad sweep, and the 2017 Act fits comfortably within it. That act regulates bankruptcy fees for a bankruptcy trustee in a bankruptcy case. Because those fees are paid from the debtor's estate, the Act directly affects the distribution of the estate's assets—a core bankruptcy function. Any amounts paid in fees are not paid to cover claims or support a restructuring, and a bankruptcy plan cannot be approved until those fees are satisfied. There is no serious dispute that the 2017 Act is bound by the Bankruptcy Clause's uniformity provision.

2. The government is likewise mistaken that the statutory scheme was always uniform—and that Congress demanded equal fees in all districts despite granting the Judicial Conference discretion to impose BA fees or not. The statutory scheme means what it says: while the increased fees "shall" be imposed in Trustee districts, the same fees only "may" be imposed in Administrator dis-

tricts. The Judicial Conference exercised that very discretion in delaying the fee's implementation and restricting any increase to future cases.

When Congress uses different words in interlocking provisions of the same section, it does not intend those words to mean the same thing. Congress did not eliminate the Judicial Conference's discretion until it amended Section 1930(a)(7) in 2021—well after the relevant period in this case. There is no basis for judicially redlining the provision to implement the 2021 Act years before it was passed.

3. Nor can the government justify the variance in fees by pointing to the need to fund the UST system. The uniformity requirement permits rational legislative distinctions based on real-world differences between regions, debtors, or industries. But it does not permit *artificial* lines created by Congress itself. If debtors are identically situated, there are entitled to identical treatment—there is no authority for exacting non-uniform costs based on geography alone.

C. Contrary to the government's contention, it cannot avoid a meaningful remedy by promising not to engage in future non-uniform conduct. The government does indeed have the option to "level down" and impose heightened fees on a favored class—rather than return those heightened fees to the injured party. But that remedy is constitutionally adequate only where Congress evens out the fees during the *relevant* period—the full time in which the fees were incurred. The government simply confuses cases seeking prospective or declaratory relief with those seeking monetary refunds based on past unconstitutional treatment.

Because the government assuredly realizes that it has no realistic means of hunting down all BA debtors who escaped higher fees over a period of years—and somehow

collecting those fees post-hoc, even after many bankruptcies have long concluded—it has one viable option: refund the fees it unlawfully extracted under a non-uniform bankruptcy law.

II. The constitutional defects in the 2017 Act can independently be addressed by striking down the dual UST/BA system itself. While unnecessary to the disposition, this Court has the option to resolve this issue by terminating the longstanding, arbitrary exemption for two States from a trustee system that adequately serves the rest of the country. The government has yet to identify any legitimate basis for preserving the Administrator program; this case presents an opportunity to restore true uniformity on a national scale.

ARGUMENT

I. THE 2017 ACT'S QUARTERLY FEE INCREASE VIOLATES THE BANKRUPTCY CLAUSE'S UNIFORMITY REQUIREMENT

A. The 2017 Act Is Deficient Under Any Plausible Definition Of "Uniformity"

1. The Bankruptcy Clause authorizes Congress to "establish * * * uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const. Art. I, § 8, Cl. 4. This grant of power comes with significant flexibility, but Congress is required to respect the Clause's "affirmative limitation[s]" and "restriction[s]." *Ry. Labor Execs.' Ass'n* v. *Gibbons*, 455 U.S. 457, 468 (1982). As its plain text confirms, "bankruptcy laws must be uniform throughout the United States." *Ibid.*; see also *Vanston Bondholders Protective Comm.* v. *Green*, 329 U.S. 156, 172 (1946) (Frankfurter, J., concurring) ("[t]he Constitutional requirement of uniformity is a requirement of geographical uniformity"). Congress cannot draw artificial lines based on "'regionalism.'" *Blanchette* v. *Connecticut Gen. Ins.*

Corp., 419 U.S. 102, 160 (1974). Its bankruptcy acts must "apply equally to all creditors and all debtors" (*ibid.*), and a debtor's "obligations" must be "treated alike * * * throughout the country regardless of the State in which the bankruptcy court sits" (*Vanston*, 329 U.S. at 172 (Frankfurter, J., concurring)).

While geographic uniformity is a mandatory condition, the Bankruptcy Clause does not require Congress to ignore real-world differences or treat unlike things alike. Congress can account for "differences that exist between different parts of the country" (*Blanchette*, 419 U.S. at 159); address "'conditions calling for a remedy only in certain regions'" (*ibid.*); tailor legislation to specific characteristics of certain industries (like railroads) presenting "distinctive and special problems" (*ibid.*); or "distinguish[] among classes of debtors" who are differently situated (*Gibbons*, 455 U.S. at 469). But "[t]o survive scrutiny under the Bankruptcy Clause, a law must at least apply uniformly to a defined class of debtors." *Id.* at 473. It cannot tolerate "arbitrary regional differences." *In re Reese*, 91 F.3d 37, 39 (7th Cir. 1996).

Uniformity, in short, requires laws to "'operate[] with the same force and effect in every place where the subject of it is found.'" *United States* v. *Ptasynski*, 462 U.S. 74, 82 (1983); see also, *e.g.*, *Blanchette*, 419 U.S. at 160 ("the Rail Act in fact operates uniformly upon all bankrupt railroads then operating in the United States and uniformly with respect to all creditors of each of these railroads").[5]

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[5] Although *Ptasynski* confronted the Constitution's Uniformity Clause (concerning "Duties, Imposts and Excises," U.S. Const. Art. I, § 8, Cl. 1) and not the Bankruptcy Clause, this Court has "looked to the interpretation of one clause in determining the meaning of the other." 462 U.S. at 83 n.13 (citing *Blanchette*, 419 U.S. at 160-161). And scholars have concluded that "the uniformity requirements in

2. The 2017 Act directly contravened these fundamental requirements. Far from "apply[ing] uniformly to a defined class of debtors" (*Gibbons*, 455 U.S. at 473), the Act *mandated* increased fees for debtors in Trustee districts while merely *permitting* those same fees for indistinguishable debtors in Alabama and North Carolina. See *In re Clinton Nurseries, Inc.*, 998 F.3d 56, 69-70 (2d Cir. 2021). The difference had nothing to do with *any* material characteristic of the debtor or debtor class. The Act did not draw any lines based on regional conditions, industry-specific issues, or any other natural distinction. On the contrary, indistinguishable debtors with identical disbursements were subject to dramatically different fees based solely on the happenstance of their location. Congress's decision to treat identically situated debtors differently—with the bankruptcy court's zip code serving as the dispositive factor—violated the core requirement of "geographical uniformity." *Vanston*, 329 U.S. at 172 (Frankfurter, J., concurring).

While this non-uniformity can be partly traced to Congress's splitting the country into separate bankruptcy systems, the variance in fees is invalid even if the underlying dual-system is not. *E.g.*, *In re John Q. Hammons Fall 2006, LLC*, 15 F.4th 1011, 1023-1025 (10th Cir. 2021); *Clinton Nurseries*, 998 F.3d at 69-70; see also *In re Mosaic Mgmt. Grp., Inc.*, 22 F.4th 1291, 1328-1329 (11th Cir. 2022) (Brasher, J., concurring in the judgment). Every time this Court has authorized Congress to draw lines in the bankruptcy context, it has always identified *some* factor apart from the legal scheme itself that justified the

both the Tax Clause and the Bankruptcy Clause seem likely to have been inserted in order to prevent regionalism." Dan J. Schulman, *The Constitution, Interest Groups, and the Requirements of Uniformity: The United States Trustee and the Bankruptcy Administrator Programs*, 74 Neb. L. Rev. 91, 103 (1995).

distinct treatment. There is no example, anywhere, of this Court authorizing Congress to artificially divide identically situated debtors and treat them non-uniformly based on Congress's own artificial distinctions. Compare, *e.g.*, *Ptasynski*, 462 U.S. at 85-86 (describing Alaska oil as "a unique class" that "merited favorable treatment" due to "the disproportionate costs and difficulties—the fragile ecology, the harsh environment, and the remote location—associated with extracting oil from this region"); *Blanchette*, 419 U.S. at 159 n.44 (explaining "railroads" "receive disparate treatment under the bankruptcy laws," as "[a] railway is a unit; it can not be divided up and disposed of piecemeal like a stock of goods").

Nor could such a rule be squared with the Bankruptcy Clause's plain text: the Constitution requires "uniform *Laws*" in this area, and the two "Laws" here (the North Carolina/Alabama exemption and the UST-only fees) together operate to produce the disuniformity. It is "inexplicable" that the Bankruptcy Clause requires Congress to "enact uniform laws on the subject of bankruptcy . . . except when Congress elects to treat debtors non-uniformly." *Clinton Nurseries*, 998 F.3d at 69 (ellipsis in original); see also *In re Buffets, LLC*, 979 F.3d 366, 382 (5th Cir. 2020) (Clement, J., dissenting) (describing the contrary view as "a flawed tautology: Congress can justify treating bankrupts differently because it has chosen to treat them differently (higher fees because different programs)"). No one thinks, for example, that Congress could have imposed this profoundly obvious type of non-uniform scheme in a single piece of legislation; it is puzzling why the government believes Congress can accomplish the identical result via *two* "[non-]uniform Laws."

Whether or not the Administrator program can survive, the disparate fees accordingly cannot: the treatment is a direct product of Congress's own "Laws"; combined,

those laws arbitrarily assigned indistinguishable debtors to different programs and imposed different fees on the different groups; and those non-uniform lines are purely artificial and of Congress's own creation: "Nothing distinguishes Alabama and North Carolina from the forty-eight other states in bankruptcy-administration matters" (*John Q. Hammons*, 15 F.4th at 1025), and the government has candidly admitted as much. See Pet. App. 26a (Quattlebaum, J., dissenting) (recognizing the government's concession that "Alabama and North Carolina's refusal to participate in the Trustee Program is not based on any unique attributes of those states").[6]

In the end, there is no coherent theory of uniformity that permits different fees for identically situated debtors only in two States. "Words have meaning," and "uniform means not different. That was true when the Constitution was drafted, and it is still true today." Pet. App. 36a-37a (Quattlebaum, J., dissenting). Yet Congress itself divided identical debtors into different categories and then charged them different fees—despite knowing full well that indistinguishable debtors also "had bankruptcy cases pending in Alabama and North Carolina." *John Q. Hammons*, 15 F.4th at 1024. Congress thus did precisely what the uniformity requirement forbids: "it substantially increased fees, potentially by millions, for one debtor but

[6] Indeed, the very fact that the artificial distinction was politically motivated implicates concerns about regionalism that animated the uniformity requirement. See, *e.g.*, *Blanchette*, 419 U.S. at 160; see also *John Q. Hammons*, 15 F.4th at 1025 ("[n]o one disputes that political maneuvering, not bankruptcy-policy considerations, led to the dual bankruptcy-administration system"); *Buffets*, 979 F.3d at 383 (Clement, J., dissenting) ("the sole reason [North Carolina and Alabama] are treated differently is regional political influence"; "the [Administrator] distinction is an arbitrary political relic").

not another 'identical in all respects save the geographic locations in which they filed for bankruptcy.'" *Ibid.*[7]

B. The Government's Attempt To Excuse The Act's Obvious Lack Of Uniformity Is Unavailing

This case is slightly unusual in that the government effectively concedes the non-uniform treatment, as the fee system was self-evidently non-uniform. See, *e.g.*, Resp. 12 (acknowledging the "unequal fees"); *id.* at 17 (admitting "the disparity in fees"). The only question is whether there is any permissible justification for the non-uniform treatment. The government asserts three theories to side-step the Bankruptcy Clause's uniformity requirement, but each is meritless.[8]

1. Contrary to the government's contention, the 2017 Act is a "Law[] on the subject of Bankruptcies"

According to the government, Congress is not constrained by the uniformity requirement because the 2017

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[7] Nor does this cast any doubt on the validity of the Bankruptcy Code's treatment of state exemptions. Congress imposed a *uniform* framework in that area, imposing the same rules and offering the same choices to every State. Any difference in implementation is a direct product of *preexisting local variations*, not federal law. See, *e.g.*, *Hanover Nat'l Bank* v. *Moyses*, 186 U.S. 181, 189-190 (1902). Here, by contrast, the 2017 Act *mandated* automatic fees in Trustee districts, while permitting different treatment in North Carolina and Alabama. The same choice was not offered uniformly on a nationwide basis, and the disparity was reflected directly on the face of the 2017 Act itself.

[8] The government notes that "this Court has only once held a statute invalid on bankruptcy uniformity grounds." Resp. 17. That may well be true, but only because it is equally rare for Congress to divide the country into two non-uniform systems (while implementing harshly different treatment of identically situated parties) without any justifiable basis. Congress cannot excuse itself from this misstep by citing its past good behavior.

Act is not a "Law[] on the subject of Bankruptcies." Resp. 13-15. In the government's view, the Act is "'an administrative funding measure, not a substantive bankruptcy law.'" *Clinton Nurseries*, 998 F.3d at 63-64. And since the government views the Bankruptcy Clause as limited to "laws regulating 'relations between an insolvent or nonpaying or fraudulent debtor and his creditors,'" it says this provision falls outside its scope. Resp. 13.

The government is wrong across the board—which is likely why it has universally lost on this question. See, *e.g.*, *Mosaic Mgmt.*, 22 F.4th at 1308 ("We, like every other court to have addressed similar arguments from the government, reject this contention."); *Clinton Nurseries*, 998 F.3d at 64 & n.6 ("The Trustee's argument has been repeatedly rejected by other courts."); *St. Angelo*, 38 F.3d at 1530-31 (holding Clause applied to fee provision); *In re MF Glob. Holdings Ltd.*, 615 B.R. 415, 446 (Bankr. S.D.N.Y. 2020) (collecting cases and observing that "every bankruptcy court that has addressed the constitutionality of the 2017 Amendment under the Bankruptcy Clause" has "concluded that the 2017 Amendment is 'on the subject of Bankruptcies'").

a. First and foremost, the government offers a cramped, unnatural reading of the Clause's plain text. The "subject of Bankruptcies" is a broad and capacious concept; it is "incapable of final definition." *Wright* v. *Union Cent. Life Ins. Co.*, 304 U.S. 502, 513-514 (1938). It extends not only to debtor-creditor relations, but also to "all intermediate legislation, *affecting substance and form*, but tending to further the great end of the subject." *Moyses*, 186 U.S. at 186 (emphasis added); see also *Central Va. Cmty. Coll.* v. *Katz*, 546 U.S. 356, 370 (2006). Put simply, "[t]he framers of the Constitution * * * granted plenary power to Congress over the whole subject of 'bankruptcies," and did not limit it by the language used." *Id.* at 187.

There is no genuine dispute that the 2017 Act falls within the Bankruptcy Clause. The 2017 Act "amends a statute, § 1930, that is literally entitled: 'Bankruptcy fees.'" *Clinton Nurseries*, 998 F.3d at 64. It dictates fees for a bankruptcy trustee in a bankruptcy case, and is paid directly out of the bankruptcy debtor's estate—limiting the funds available to both creditors and the debtor itself. See, *e.g.*, *ibid.* (explaining that the fee accordingly matches this Court's "broad definition of 'bankruptcy'"—"'the subject of the relations between * * * [a] debtor and his creditors, *extending to his and their relief*'") (quoting *Gibbons*, 455 U.S. at 466; emphasis added). The debtor's plan cannot be confirmed unless the "section 1930" fees "have been paid or the plan provides for the payment of all such fees on the effective date." 11 U.S.C. 1129(a)(12). And because fees are granted administrative priority status, any increase in fees directly reduces the funds available to "'commercial creditors, bondholders, and shareholders'"; that "'clearly'" affects "debtor-creditor relations and impacts the relief available." *Clinton Nurseries*, 998 F.3d at 64-65 (quoting *MF Glob.*, 615 B.R. at 446).

In sum, the 2017 Act directly allocates funds from the debtor's estate, and thus "'[t]he amount of the fee due to the UST directly impacts distributions to other creditors.'" *Clinton Nurseries*, 998 F.3d at 64-65 & n.8 (quoting *In re Mosaic Mgmt. Grp., Inc.*, 614 B.R. 615, 623 (Bankr. S.D. Fla. 2020)). As a matter of common parlance (and common sense), it is "'a law on the subject of bankruptcies.'" *Ibid.*

b. The government further argues that the 2017 Act merely "assist[s] in implementing Congress's other enumerated Section 8 powers," and thus stands independently under the Necessary and Proper Clause, U.S. Const. Art. I, § 8, Cl. 18. Resp. 13-14. This is wishful think-

ing. The fact that trustee fees might fall within the Bankruptcy Clause *and* be "necessary and proper" to bankruptcy administration does not remove the provision from the Bankruptcy Clause itself. See *National Fed'n Indep. Bus.* v. *Sebelius*, 567 U.S. 519, 559 (2012). And, of course, to be "necessary and proper," the law must also be *proper*—and a law attempting to evade the express textual precondition on an enumerated power is demonstrably not that. Cf., *e.g.*, *Printz* v. *United States*, 521 U.S. 898, 923-924 (1997).

The government finally suggests the trustee fees here align with other provisions "governing bankruptcy court administration" that "do not implicate any uniformity requirement." Resp. 14 (citing provisions for local rules, bankruptcy appellate panels, and withdrawing bankruptcy references). The government is confused. For one, it is far from settled that those provisions are *not* subject to the uniformity requirement—*they simply pass muster*. Each provision cited by the government provides a *uniform* framework (and an identical choice) to each local actor. And any variation in local practice would not have an apparent impact on any ordinary Article III interest. (A party, for example, is surely not prejudiced by taking an intermediate appeal to the district court instead of the BAP—when the result is available for de novo review at the circuit level.)

The 2017 Act's fees are a universe apart. Those fees exact a significant and concrete cost on debtors in a nonuniform way. The fees were mandated for 48 States but left purely optional for North Carolina and Alabama—precisely the kind of disparate treatment *not* seen in provisions permitting each region to choose for itself how to shape local practice. And the fees reallocate funds in the debtor's estate and reduce the share received by other

bankruptcy participants—something that cannot obviously be said by any provision the government identifies.

The 2017 Act thus cannot stand unless it satisfies the Bankruptcy Clause's uniformity requirement.

2. Contrary to the government's contention, Section 1930 did not impose "uniform" fees by mandating fees solely in UST districts

According to the government, "the statutory regime for quarterly fees was at all relevant times facially uniform throughout the United States" (Resp. 15-17)—and any disparity was due to the Judicial Conference's "unauthorized" delay in increasing "BA District[]" fees (*Clinton Nurseries*, 998 F.3d at 65-66). The government admits there is a "lexical distinction" between Section 1930(a)(6) (the increase "*shall*" be imposed in Trustee districts) and Section 1930(a)(7) (the increase "*may*" be imposed in Administrator districts). *Id.* at 65 (emphases added). But the government argues that courts should "ignore" that textual distinction, and instead read "both provisions as imposing * * * a mandatory obligation." *Id.* at 66 (suggesting this better reflected "Congress's intent"). In the government's view, "'[t]he failure to *implement* a fee statute consistently * * * does not render the statute itself unconstitutional.'" *Ibid.* (emphasis added).

a. The government's argument is directly at odds with the statutory text: "by the plain terms of the statute, while § 1930(a)(6) *required* application of the increase in UST Districts, § 1930(a)(7) *permitted* application of the increase in BA Districts." 998 F.3d at 65. There is no basis to "simply overlook Congress's decision to use the permissive term 'may' in § 1930(a)(7)." *Id.* at 66; see also *Russello* v. *United States*, 464 U.S. 16, 23 (1983). Indeed, Congress's choice of terminology here was unmistakable: "Congress used 'shall' in numerous other places in § 1930—and even in § 1930(a)(7) itself"—and this Court

has repeatedly "caution[ed] against ignoring contexts in which 'Congress' use of the permissive "may" * * * contrasts with the legislators' use of a mandatory "shall" in the very same section.'" *Clinton Nurseries*, 998 F.3d at 66 (quoting *Lopez* v. *Davis*, 531 U.S. 230, 241 (2001)).

Moreover, while the government is correct that Section 1930(a)(7) grants discretion to impose "equal" fees, it is wrong that this phrasing necessarily *compelled* immediate fees—contrary to Congress's conspicuous choice of the permissive "may" in the same sentence. See *Martin* v. *Franklin Capital Corp.*, 546 U.S. 132, 136 (2005) (the word "may" "clearly connotes discretion"). For one, this formulation gave the Judicial Conference the option to impose fees or not; nothing stopped Congress from *directing* the imposition of equal fees, which is what it ultimately did in 2021. Moreover, the permission here to impose fees "equal" to those imposed in trustee districts is best read as a *ceiling*, not a floor; it implied a bounded limit so the fees may "equal" (*but not exceed*) the fees under Section 1930(a)(6).

Anyway, whatever the term "equal" might mean, the government still cannot get around Congress's unambiguous choice of permissive language ("may") at the outset; Congress does not use different language in linked provisions of the same section because it wanted the provisions to mean the same thing. See *Salinas* v. *United States R.R. Ret. Bd.*, 141 S. Ct. 691, 698 (2021).

b. The plain text is reinforced by the Judicial Conference's actual practice. Indeed, it is "telling" that the Judicial Conference "apparently understood the 2017 Amendment" to mean what it said: "as authorizing, but not requiring, it to impose a fee increase in BA Districts." *Clinton Nurseries*, 998 F.3d at 67. And that very grant of discretion—coupled with the lack of *any* directive about imposing fees retroactively to cases pending before the Act's

effective date—permitted the real-world variance in fees between the UST districts and the BA districts.

It is pure fiction to blame the non-uniformity on the Judicial Conference, especially when Congress itself always had the ability to self-impose fees equally on both systems in the 2017 Act. It simply opted instead to embrace a non-uniform directive.

c. Finally, the government is wrong that Congress's subsequent 2021 Act—finally modifying Section 1930(a)(7) to replace "may" with "shall"—confirms that Section 1930(a)(7) was always mandatory. See *Clinton Nurseries*, 998 F.3d at 66 n.9 (quoting Pub. L. No. 116-325, § 2(a)(4)(B)). The "'views of a subsequent Congress form a hazardous basis for inferring the intent of an earlier one,'" especially when the 2020 Congress was "inevitably" taking into account "the constitutional quagmire" that the 2017 Act produced. *Ibid.* And this post-hoc legislative statement was inconsistent with earlier exchanges, which acknowledged the Judicial Conference's discretion—and thus the possibility that it might not act to impose equal fees. See, *e.g.*, *Mosaic Mgmt.*, 22 F.4th at 1314 (noting that "[t]he Judicial would *most likely increase*" fees to "parallel" other proposed increases") (emphasis altered).

Ultimately, "the ordinary meaning of 'may' as permissive" "outweighs Congress's subsequent statement regarding [the word's] earlier meaning"—which Congress "oddly purported to confirm in a statute" by "amend[ing] that very language." *Clinton Nurseries*, 998 F.3d at 66 n.9.

3. The government cannot justify the fee disparity by pointing to the need to fund the UST system

The government argues that the 2017 Act was not impermissibly non-uniform because it simply targeted debtors in the UST system to fund the UST system itself. See Resp. 17-18. According to the government, it is fair game to "'take into account differences that exist between different parts of the country,'" including by defining "'classes of debtors'" or applying rules "'to a particular industry in a particular region.'" *Ibid.*

As established above (Part I.A, *supra*), the government profoundly misunderstands the limited nature of this license. Congress surely can target *natural* problems in specific regions, distinguish between *relevant* classes of debtors, or craft rules for specific industries. But this Court has never said that Congress can draw *artificial* distinctions within any of those categories—much less then impose non-uniform rules for identically situated debtors based solely on geography.

That describes this case: Here, the same class of debtors is subject to arbitrary differences based exclusively on the happenstance of where they file for bankruptcy. The 2017 Act did not target a "particular industry in a particular region" (contra Resp. 18); it differentiates arbitrarily between two favored States (North Carolina and Alabama) and the rest of the country without any principled basis.

Put differently: "Congress may use the bankruptcy laws to remedy geographically isolated problems, draw distinctions among classes of debtors, or incorporate non-uniform state laws. But 'a law must *at least* apply uniformly to a defined class of debtors.'" *Mosaic Mgmt.*, 22 F.4th at 1328 (Brasher, J., concurring in the judgment).

Because this law instead ties relief to simple "'regionalism,'" it violates the uniformity requirement. *Blanchette*, 419 U.S. at 160.

C. The Proper Remedy Is A Full Refund Of Fees—Prospective Relief Cannot Redress A Past Constitutional Monetary Injury

The government finally argues that, even if petitioner's constitutional rights were violated, the proper remedy is not a "refund[]" but a simple statement of "declaratory relief." Resp. 18-20. As the government sees it, it can cure any non-uniformity by "'leveling up' or 'leveling down,'" and Congress here would have chosen to "level down"—and not refund the UST fees. *Id.* at 19.

The government is profoundly mistaken. The government does indeed have the option to "level down," but it has to redress the constitutional violation *in the relevant time period*. See, *e.g.*, *McKesson Corp.* v. *Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 31-35, 39-40 (1990); see also *Harper* v. *Virgina Dep't of Taxation*, 509 U.S. 86, 100-101 (1993). This is why it errs in invoking cases seeking declaratory or injunctive relief (rather than monetary damages) in support of its non-remedy. See, *e.g.*, *Sessions* v. *Morales-Santana*, 137 S. Ct. 1678 (2017). When all relief is forward-looking, it is relatively easy to set a prospective rule by refusing to extend future benefits. But this Court has made clear that a prospective fix is inadequate when a party seeks redress for *past* unequal treatment. *McKesson*, 496 U.S. at 35, 39-40; *Iowa-Des Moines Nat'l Bank* v. *Bennett*, 284 U.S. 239, 247 (1931). In those circumstances, the government can only "level down" by tracking down the favored class and demanding equal retrospective payments. That alone serves as a permissible substitute for full monetary relief (read: a proper refund). See *McKesson*, 496 U.S. at 43 ("only an *actual*

refund (or other retroactive adjustment of the tax burdens borne by petitioner and/or its favored competitors during the contested tax period) can bring about the [required] *nondiscrimination*"); see also *Allegheny Pittsburg Coal Co.* v. *County Comm'n of Webster Cty.*, 488 U.S. 336, 346 (1989).

Nor do we need to guess about Congress's ultimate preferences because Congress has already made its preferences clear: when amending Section 1930(a)(7) in 2021 to (finally) make fees mandatory in all districts, *it elected to apply that change prospectively only*. See Pub. L. No. 116-325, *supra,* § 3(e). We thus know that Congress elected *against* "leveling down" and imposing fees retroactively on parties in BA districts.

In any event, there is no practicable means for the government to collect post-hoc fees in BA districts now even if it so wished. Any attempt would face serious retroactivity challenges—as parties would have relied on the existing fees to structure their Chapter 11 plans and payments. As a practical matter, the government would have to trace the funds to creditors, professionals, and debtors themselves—and then initiate actions to claw-back the (newly) owed amounts. There is an obvious reason why the government itself has never suggested this as an option: it has no clear legal or practical path to unscramble the egg.

In sum, Congress may prefer to avoid responsibility for past constitutional injuries. But prospective relief cannot restore uniformity (or equal treatment) for past periods where that treatment was not equal. *E.g.*, *Iowa-Des Moines*, 284 U.S. at 247. Congress can either commit to chasing down the BA fees it lost for a period of years, or it can agree to refund the full amounts petitioner wrongly paid under a non-uniform system. In this case, a refund is the only viable option.

II. THE 2017 ACT IS ALSO IMPERMISSIBLY NON-UNIFORM BECAUSE CONGRESS'S DUAL SYSTEM ITSELF IS IMPERMISSIBLY NON-UNIFORM

The 2017 Act is also constitutionally invalid due to the fundamental lack of uniformity presented by the BA system itself.[9]

As explained above, Congress codified the existing non-uniform system based on politics alone. There was no justification for treating North Carolina and Alabama differently from the other 48 States operating with the Trustee program; the system nevertheless divides debtors into arbitrary categories for no discernible reason. The end result is unnecessary confusion and complexity, and non-uniform treatment overall—as bankruptcy cases are policed by different officials subject to different rules and policies and reporting to different entities. See, *e.g.*, *Buffets*, 979 F.3d at 382-385 (Clement, J., dissenting).

Nor would this remedy be unduly disruptive. It is past time to sweep the six outlier BA districts into the fold and restore a truly "uniform" bankruptcy system. See *St. Angelo*, 38 F.3d at 1529-1534.

[9] It is unnecessary for the Court to reach this issue in light of the independent grounds for invaliding the 2017 Act without addressing the underlying dual system. But the issue falls within the ambit of the question presented, and it offers one avenue for resolving both the present dispute and eliminating the longstanding quagmire going forward.

CONCLUSION

The judgment of the court of appeals should be reversed, and the case should be remanded for further proceedings.

Respectfully submitted.

DANIEL L. GEYSER
Counsel of Record
BEN L. MESCHES
KELLI BILLS
HAYNES AND BOONE, LLP
2323 Victory Avenue, Ste. 700
Dallas, TX 75219
(303) 382-6219
daniel.geyser@haynesboone.com

ANGELA M. OLIVER
HAYNES AND BOONE, LLP
800 17th Street, N.W., Ste. 500
Washington, DC 20006

JEFFREY N. POMERANTZ
ANDREW W. CAINE
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Blvd., 13th Floor
Los Angeles, CA 90067

ROBERT J. FEINSTEIN
PACHULSKI STANG ZIEHL & JONES LLP
780 Third Ave., 34th Floor
New York, NY 10017

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APPENDIX

APPENDIX

1. Section 1004 of the Bankruptcy Judgeship Act of 2017, Pub. L. No. 115-72, Div. B, § 1004, 131 Stat. 1232 (2017 Act), provides:

BANKRUPTCY FEES

(a) AMENDMENTS TO TITLE 28 OF THE UNITED STATES CODE.—Section 1930(a)(6) of title 28, United States Code, is amended—

(1) by striking "(6) In" and inserting "(6)(A) Except as provided in subparagraph (B), in"; and

(2) by adding at the end the following:

"(B) During each of fiscal years 2018 through 2022, if the balance in the United States Trustee System Fund as of September 30 of the most recent full fiscal year is less than $200,000,000, the quarterly fee payable for a quarter in which disbursements equal or exceed $1,000,000 shall be the lesser of 1 percent of such disbursements or $250,000.".

(b) DEPOSITS OF CERTAIN FEES FOR FISCAL YEARS 2018 THROUGH 2022.—Notwithstanding section 589a(b) of title 28, United States Code, for each of fiscal years 2018 through 2022—

(1) 98 percent of the fees collected under section 1930(a)(6) of such title shall be deposited as offsetting collections to the appropriation "United States Trustee System Fund", to remain available until expended; and

(2) 2 percent of the fees collected under section 1930(a)(6) of such title shall be deposited in the general fund of the Treasury.

(c) APPLICATION OF AMENDMENTS.—The amendments made by this section shall apply to quarterly fees payable under section 1930(a)(6) of title 28, United States Code, as amended by this section, for disbursements made in any calendar quarter that begins on or after the date of enactment of this Act.

2. 28 U.S.C. 1930 (2018) provides:

Bankruptcy fees

(a) The parties commencing a case under title 11 shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, the following filing fees:

(1) For a case commenced under—

(A) chapter 7 of title 11, $245, and

(B) chapter 13 of title 11, $235.

(2) For a case commenced under chapter 9 of title 11, equal to the fee specified in paragraph (3) for filing a case under chapter 11 of title 11. The amount by which the fee payable under this paragraph exceeds $300 shall be deposited in the fund established under section 1931 of this title.

(3) For a case commenced under chapter 11 of title 11 that does not concern a railroad, as defined in section 101 of title 11, $1,167.

(4) For a case commenced under chapter 11 of title 11 concerning a railroad, as so defined, $1,000.

(5) For a case commenced under chapter 12 of title 11, $200.

(6)(A) Except as provided in subparagraph (B), in addition to the filing fee paid to the clerk, a quarterly fee shall be paid to the United States trustee, for deposit in the Treasury, in each case under chapter 11 of title 11 for each quarter (including any fraction thereof) until the case is converted or dismissed, whichever occurs first. The fee shall be $325 for each quarter in which disbursements total less than $15,000; $650 for each quarter in which disbursements total $15,000 or more but less than $75,000; $975 for each quarter in which disbursements total $75,000 or more but less than $150,000; $1,625 for each quarter in which disbursements total $150,000 or more but less than $225,000; $1,950 for each quarter in which disbursements total $225,000 or more but less than $300,000; $4,875 for each quarter in which disbursements total $300,000 or more but less than $1,000,000; $6,500 for each quarter in which disbursements total $1,000,000 or more but less than $2,000,000; $9,750 for each quarter in which disbursements total $2,000,000 or more but less than $3,000,000; $10,400 for each quarter in which disbursements total $3,000,000 or more but less than $5,000,000; $13,000 for each quarter in which disbursements total $5,000,000 or more but less than $15,000,000; $20,000 for each quarter in which disbursements total $15,000,000 or more but less than $30,000,000; $30,000 for each quarter in which disbursements total more than $30,000,000. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.

(B) During each of fiscal years 2018 through 2022, if the balance in the United States Trustee System

Fund as of September 30 of the most recent full fiscal year is less than $200,000,000, the quarterly fee payable for a quarter in which disbursements equal or exceed $1,000,000 shall be the lesser of 1 percent of such disbursements or $250,000.

(7) In districts that are not part of a United States trustee region as defined in section 581 of this title, the Judicial Conference of the United States may require the debtor in a case under chapter 11 of title 11 to pay fees equal to those imposed by paragraph (6) of this subsection. Such fees shall be deposited as offsetting receipts to the fund established under section 1931 of this title and shall remain available until expended.

An individual commencing a voluntary case or a joint case under title 11 may pay such fee in installments. For converting, on request of the debtor, a case under chapter 7, or 13 of title 11, to a case under chapter 11 of title 11, the debtor shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, a fee of the amount equal to the difference between the fee specified in paragraph (3) and the fee specified in paragraph (1).

(b) The Judicial Conference of the United States may prescribe additional fees in cases under title 11 of the same kind as the Judicial Conference prescribes under section 1914(b) of this title.

(c) Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, an appeal or a writ of certiorari $5 shall be paid to the clerk of the court, by the appellant or petitioner.

(d) Whenever any case or proceeding is dismissed in any bankruptcy court for want of jurisdiction, such court may order the payment of just costs.

(e) The clerk of the court may collect only the fees prescribed under this section.

(f)(1) Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and is unable to pay that fee in installments. For purposes of this paragraph, the term "filing fee" means the filing fee required by subsection (a), or any other fee prescribed by the Judicial Conference under subsections (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7.

(2) The district court or the bankruptcy court may waive for such debtors other fees prescribed under subsections (b) and (c).

(3) This subsection does not restrict the district court or the bankruptcy court from waiving, in accordance with Judicial Conference policy, fees prescribed under this section for other debtors and creditors.

3. 28 U.S.C. 1930 (2016) provides in relevant part:

Bankruptcy fees

(a) The parties commencing a case under title 11 shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, the following filing fees:

(1) For a case commenced under—

(A) chapter 7 of title 11, $245, and

(B) chapter 13 of title 11, $235.

(2) For a case commenced under chapter 9 of title 11, equal to the fee specified in paragraph (3) for filing a case under chapter 11 of title 11. The amount by which the fee payable under this paragraph exceeds $300 shall be deposited in the fund established under section 1931 of this title.

(3) For a case commenced under chapter 11 of title 11 that does not concern a railroad, as defined in section 101 of title 11, $1,167.

(4) For a case commenced under chapter 11 of title 11 concerning a railroad, as so defined, $1,000.

(5) For a case commenced under chapter 12 of title 11, $200.

(6) In addition to the filing fee paid to the clerk, a quarterly fee shall be paid to the United States trustee, for deposit in the Treasury, in each case under chapter 11 of title 11 for each quarter (including any fraction thereof) until the case is converted or dismissed, whichever occurs first. The fee shall be $325 for each quarter in which disbursements total less

than $15,000; $650 for each quarter in which disbursements total $15,000 or more but less than $75,000; $975 for each quarter in which disbursements total $75,000 or more but less than $150,000; $1,625 for each quarter in which disbursements total $150,000 or more but less than $225,000; $1,950 for each quarter in which disbursements total $225,000 or more but less than $300,000; $4,875 for each quarter in which disbursements total $300,000 or more but less than $1,000,000; $6,500 for each quarter in which disbursements total $1,000,000 or more but less than $2,000,000; $9,750 for each quarter in which disbursements total $2,000,000 or more but less than $3,000,000; $10,400 for each quarter in which disbursements total $3,000,000 or more but less than $5,000,000; $13,000 for each quarter in which disbursements total $5,000,000 or more but less than $15,000,000; $20,000 for each quarter in which disbursements total $15,000,000 or more but less than $30,000,000; $30,000 for each quarter in which disbursements total more than $30,000,000. The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed.

(7) In districts that are not part of a United States trustee region as defined in section 581 of this title, the Judicial Conference of the United States may require the debtor in a case under chapter 11 of title 11 to pay fees equal to those imposed by paragraph (6) of this subsection. Such fees shall be deposited as offsetting receipts to the fund established under section 1931 of this title and shall remain available until expended.

An individual commencing a voluntary case or a joint case under title 11 may pay such fee in installments. For converting, on request of the debtor, a case under chapter 7, or 13 of title 11, to a case under chapter 11 of title 11, the debtor shall pay to the clerk of the district court or the clerk of the bankruptcy court, if one has been certified pursuant to section 156(b) of this title, a fee of the amount equal to the difference between the fee specified in paragraph (3) and the fee specified in paragraph (1).

* * * * *

4. Section 3 of the Bankruptcy Administration Improvement Act of 2020, Pub. L. No. 116-325, 134. Stat. 5088-5089 (2021), provides in relevant part:

(d) BANKRUPTCY FEES.—Section 1930(a) of title 28, United States Code, is amended—

* * * * *

(2) in paragraph (7), in the first sentence, by striking "may" and inserting "shall".

(e) APPLICABILITY.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall take effect on the date of enactment of this Act.

(2) EXCEPTIONS.—

* * * * *

(B) BANKRUPTCY FEES.—The amendments made by subsection (d) shall apply to—

(i) any case pending under chapter 11 of title 11, United States Code, on or after the date of enactment of this Act; and

(ii) quarterly fees payable under section 1930(a)(6) of title 28, United States Code, as amended by subsection (d), for disbursements made in any calendar quarter that begins on or after the date of enactment of this Act.