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 RESPONDENT

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QUESTION PRESENTED

Whether Section 1004(a) of the Bankruptcy Judgeship Act of 2017, Pub. L. No. 115-72, Div. B, 131 Stat. 1232 (28 U.S.C. 1930(a)(6)(B) (2018)), which amended the schedule of quarterly fees payable to the United States Trustee in certain bankruptcy cases, contravened Congress's constitutional authority to "establish * * * uniform Laws on the subject of Bankruptcies," U.S. Const. Art. I, § 8, Cl. 4, because it was initially applied only in the 88 federal judicial districts that have United States Trustees but not in the 6 districts that have Bankruptcy Administrators.

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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. The petition was granted on January 10, 2022. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Bankruptcy Clause of the United States Constitution provides in pertinent part that "The Congress

shall have Power * * * [t]o establish * * * uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const. Art. I, § 8, Cl. 4.

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

> 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.".

Other pertinent constitutional and statutory provisions are set forth in the appendix to this brief. App., *infra*, 1a-10a.

STATEMENT

1. a. Federal bankruptcy cases require substantial oversight and administrative support. The United States Trustee (UST) Program, a component of the U.S. Department of Justice, performs administrative, regulatory, and enforcement functions that promote the integrity and efficiency of the bankruptcy system, such as appointing and monitoring the private trustees who administer debtors' estates, monitoring the progress of bankruptcy cases, and monitoring cases for signs of

fraud. See 28 U.S.C. 586 (2018 & Supp. I 2019). The program permits bankruptcy judges to focus on judicial matters, while the U.S. Trustees serve as "bankruptcy watch-dogs to prevent fraud, dishonesty, and overreaching in the bankruptcy arena." H.R. Rep. No. 595, 95th Cong., 1st Sess. 88, 101 (1977).

The UST Program began in 1978 as a congressionally created pilot program in 18 federal judicial districts. Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 408, 92 Stat. 2686-2687. Previously, administrative functions in bankruptcy cases were performed directly by bankruptcy judges, Judicial Branch staff, and private trustees appointed by the bankruptcy judge presiding in each case. See *Dunivent* v. *Schollett (In re Schollett)*, 980 F.2d 639, 641 (10th Cir. 1992). The pilot program was a response to concerns that bankruptcy judges had become "burdened * * * with unnecessary administrative obligations," *ibid.*, and that private trustees had become unduly beholden to the judges who appointed them, "creat[ing] an improper appearance of favoritism, cronyism, and bias" that "eroded the public confidence in the bankruptcy system." H.R. Rep. No. 764, 99th Cong., 2d Sess. 17-18 (1986); see 1 *Collier on Bankruptcy* ¶ 6.34, at 6-89 to 6-97 (Richard Levin & Henry J. Sommer eds., 16th ed. 2021).

The pilot program drew praise, and various stakeholders urged Congress to expand it nationwide. See *The United States Trustee System: Hearing Before the Subcomm. on Courts of the Senate Comm. on the Judiciary on S. 1961*, 99th Cong., 2d Sess. (1986) (*1986 Senate Hearing*). Federal district court judges from Alabama and North Carolina, however, testified in opposition to the UST Program, as did the North Carolina Bar Association. See *1986 Senate Hearing* 129 (testimony

by Judge James Hancock (N.D. Ala.)); *id.* at 182-194, 225 (Judge Thomas Moore (E.D.N.C.), noting opposition of judges in all three districts of North Carolina); *id.* at 199-210, 226 (statement of Algernon L. Butler, Jr., chairman of the North Carolina Bar Association's bankruptcy section). In enacting legislation in 1986 that made the UST Program permanent, Congress accommodated the six districts in those two States, authorizing them to opt out by using a parallel program of judicially appointed bankruptcy administrators known as the Bankruptcy Administrator (BA) Program. See Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (1986 Act), Pub. L. No. 99-554, §§ 111-115, 302(d)(3), 100 Stat. 3090-3095, 3121-3123 (28 U.S.C. 581 note).

Congress initially provided that the six districts would be required to join the UST Program no later than October 1, 1992. 1986 Act § 302(d)(3)(A), 100 Stat. 3121-3122. In response to those districts' continuing opposition to the UST Program, however, the Judicial Conference of the United States urged Congress to permit them to operate indefinitely under the BA Program. See Judicial Conference of the U.S., *Report of the Proceedings of the Judicial Conference of the United States* 13 (Mar. 13, 1990), https://go.usa.gov/xFVfK; U.S. Gen. Accounting Office, *Bankruptcy Administration: Justification Lacking for Continuing Two Parallel Programs* 39-43 (Sept. 1992), https://go.usa.gov/xFFq7. The National Bankruptcy Review Commission—whose members were appointed by the President, the Chief Justice, and congressional leadership—rejected proposals to "eliminate the Judiciary's highly successful Bankruptcy Administrator Program by incorporating it into the UST system." 1 National Bankruptcy Review

Commission Final Report, *Bankruptcy: The Next Twenty Years* 1039 (Oct. 20, 1997) (statement of Commissioners Jeffery J. Hartley and John A. Gose).

In light of those recommendations, Congress suspended the deadline for the six judicial districts to join the UST Program, first by postponing it for ten years, and later by eliminating it altogether. See Federal Courts Study Committee Implementation Act of 1990, Pub. L. No. 101-650, Tit. III, § 317, 104 Stat. 5115 (extending deadline to October 1, 2002); Federal Courts Improvement Act of 2000 (2000 Act), Pub. L. No. 106-518, § 501, 114 Stat. 2421-2422 (repealing deadline). Under current law, each of the six districts may individually elect to join the UST Program upon a majority vote of the bankruptcy judges and chief district judge in that district. See 1986 Act § 302(d)(3), 100 Stat. 3121-3123 (28 U.S.C. 581 note).

b. Although the UST and BA programs perform materially identical functions from the perspective of the debtor, they have different structures and distinct funding sources. See Pet. App. 6a. The Judiciary's "general budget" funds the BA program. *Ibid.* And, although the UST Program is housed in the Department of Justice, Congress designed the UST Program to be "self-funding" and "paid for by the users of the bankruptcy system—not by the taxpayer." H.R. Rep. No. 764, 99th Cong., 2d Sess. 22 (1986). To that end, Congress's annual appropriations for the UST Program are offset by user fees paid into the United States Trustee System Fund (UST Fund), 28 U.S.C. 589a (2018 & Supp. II 2020). The UST Fund derives revenue from various sources—most significantly, the quarterly fees paid by some debtors in cases filed under Chapter 11 of the Bankruptcy Code, 11 U.S.C. 1101 *et seq.* See 28 U.S.C.

589a(b)(5). Specifically, Congress has directed that in those cases a "quarterly fee shall be paid to the United States trustee * * * for each quarter (including any fraction thereof) until the case is converted or dismissed, whichever occurs first." 28 U.S.C. 1930(a)(6)(A) (Supp. I 2019).

In a Chapter 11 case, the quarterly fees required by Section 1930(a)(6) are graduated according to the amount of "disbursements"—payments to creditors, suppliers, and others—made by or on behalf of the debtor. See, *e.g.*, *Walton* v. *Jamko, Inc. (In re Jamko, Inc.)*, 240 F.3d 1312, 1313 (11th Cir. 2001). For example, under the fee schedule in effect before 2018, the fee was $325 "for each quarter in which disbursements total less than $15,000"; it was $650 "for each quarter in which disbursements total $15,000 or more but less than $75,000"; and so on. 28 U.S.C. 1930(a)(6) (2012). Before 2018, the maximum possible quarterly fee was $30,000, which applied to Chapter 11 cases with quarterly disbursements of more than $30 million. *Ibid.*

The 1986 Act imposed Chapter 11 quarterly fees in the 88 UST districts but not in the 6 BA districts. See § 302(e), 100 Stat. 3123. In the mid-1990s, a divided panel of the Ninth Circuit opined that having two distinct programs for supervising the administration of bankruptcy cases with different fees violated the uniformity requirement of the Bankruptcy Clause; on that basis, the court purported to invalidate the provision of the statute that extended the deadline for the six BA districts to join the UST Program. See *St. Angelo* v. *Victoria Farms, Inc.*, 38 F.3d 1525, 1532-1533 (1994), amended, 46 F.3d 969 (1995).

After the *Victoria Farms* decision, Congress again amended the statutory framework, but it did not elimi-

nate the BA program as the Ninth Circuit had essentially provided. Adopting a proposal of the Judicial Conference, Congress instead amended Section 1930(a) by adding a new paragraph (7), which provided that "[i]n 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 * * * to pay fees equal to those imposed by paragraph (6) of this subsection." 2000 Act § 105, 114 Stat. 2412 (enacting 28 U.S.C. 1930(a)(7) (2000)); see *Multidistrict, Multiparty, Multiforum Trial Jurisdiction Act of 1999 and Federal Courts Improvement Act of 1999: Hearing Before the Subcomm. on Courts and Intellectual Property of the House Comm. on the Judiciary on H.R. 2112 and H.R. 1752*, 106th Cong., 1st Sess. 26 (1999) (noting the Judicial Conference's determination that "implementing the establishment of chapter 11 quarterly fees in the bankruptcy administrator districts would eliminate any *Victoria Farms* problem"); Judicial Conference of the U.S., *Report of the Proceedings of the Judicial Conference of the United States* 45 (Sept./Oct. 2001) (*2001 JCUS Report*), https://www.uscourts.gov/sites/default/files/2001-09_0.pdf. Congress directed that the quarterly fees collected in BA districts be deposited in a fund that offsets appropriations to the Judicial Branch, from which the BA program is also funded. See 28 U.S.C. 1930(a)(7), 1931 (2000). Having avoided any uniformity problem in that way, Congress authorized the indefinite continuation of the BA Program in the six judicial districts that employed it. See 2000 Act § 501, 114 Stat. 2421-2422.

Acting under Section 1930(a)(7) in October 2001, the Judicial Conference issued a standing order directing the BA districts to impose quarterly fees "in the amounts

specified in 28 U.S.C. § 1930, as those amounts may be amended from time to time." *2001 JCUS Report* 46.

c. During the UST Program's first few decades, Congress's appropriations for it were fully offset by fees deposited in the UST Fund, and the Program's costs were borne by bankruptcy users and not taxpayers. In the mid-2010s, however, those deposits substantially decreased, and by Fiscal Year 2017, the balance in the UST Fund had fallen to the point that the Program's costs would no longer be fully met by user fees, requiring reliance on taxpayer funds. See H.R. Rep. No. 130, 115th Cong., 1st Sess. 7 (2017); Pet. App. 7a.

Concerned about that impending burden on taxpayers, Congress bolstered the Fund by temporarily increasing quarterly fees in larger Chapter 11 cases. Accordingly, the Bankruptcy Judgeship Act of 2017 (2017 Act), Pub. L. No. 115-72, Div. B, 131 Stat. 1229, amended the quarterly-fee statute by adding the following subparagraph to Section 1930(a)(6):

> (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.

§ 1004(a), 131 Stat. 1232 (28 U.S.C. 1930(a)(6)(B) (2018)). The increased fees took effect in the first quarter of 2018. See § 1004(c), 131 Stat. 1232.

Despite the Judicial Conference's 2001 standing order imposing quarterly fees in BA districts "in the amounts specified in 28 U.S.C. § 1930, as those amounts may be amended from time to time," *2001 JCUS Report* 46, the six BA districts did not implement the amended

fee schedule by the beginning of 2018. In response, the Executive Committee of the Judicial Conference, acting on an expedited basis, ordered the BA districts to implement the amended fee schedule, but it did so only for "cases filed on or after" October 1, 2018. Judicial Conference of the U.S., *Report of the Proceedings of the Judicial Conference of the United States* 11 (Sept. 13, 2018), https://www.uscourts.gov/sites/default/files/2018-09_proceedings.pdf; see *id.* at 11-12.

d. After some courts held that the 2017 Act was unconstitutionally non-uniform based on their view that Congress had authorized different fees in BA and UST districts, see, *e.g.*, *In re Buffets, LLC*, 597 B.R. 588, 594 (Bankr. W.D. Tex. 2019), rev'd and remanded, 979 F.3d 366 (5th Cir. 2020), Congress enacted clarifying legislation that struck the word "may" from Section 1930(a)(7) and replaced it with "shall." Bankruptcy Administration Improvement Act of 2020 (2020 Act), Pub. L. No. 116-325, § 3(d)(2), 134 Stat. 5088. As amended, the text of Section 1930(a)(7) now provides that, for BA districts, the "Judicial Conference of the United States *shall* require the debtor in a case under chapter 11 * * * to pay fees equal to those imposed by paragraph (6) of this subsection." 28 U.S.C. 1930(a)(7) (Supp. II 2020) (emphasis added). An express legislative finding explained that the change was intended to "confirm the longstanding intention of Congress that quarterly fee requirements remain consistent across all Federal judicial districts." 2020 Act § 2(a)(4)(B), 134 Stat. 5086.

The 2020 Act also amended the fee schedule, retaining the $250,000 maximum quarterly fee while slightly reducing the fees payable by large debtors that do not hit that ceiling. As of April 2021, the quarterly fee for Chapter 11 debtors with quarterly disbursements of

$1 million or more was accordingly "0.8 percent of disbursements but not more than $250,000." 28 U.S.C. 1930(a)(6)(B)(ii)(II) (Supp. II 2020); see 2020 Act § 3(e)(2)(B)(ii), 134 Stat. 5089 (effective date).

2. a. Circuit City Stores, Inc. and its affiliates (collectively Circuit City) operated a chain of consumer-electronics retail stores. Pet. App. 9a. In 2008, Circuit City filed for Chapter 11 bankruptcy protection in the Eastern District of Virginia, a district within the UST Program. *Ibid.* In 2010, the bankruptcy court confirmed Circuit City's plan of liquidation, under which petitioner (the private trustee responsible for administering the liquidating trust formed under Circuit City's plan) was authorized to collect, administer, distribute, and liquidate the estate's remaining assets. *Id.* at 29a-30a. The confirmed plan requires 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." *Id.* at 30a (quoting C.A. App. 110).

Circuit City's bankruptcy case remained pending as of January 2018, when the 2017 amendment to the quarterly-fee schedule took effect. Pet. App. 9a. Thereafter, in each quarter in which Circuit City reported quarterly disbursements over $1 million, petitioner was required to pay an increased quarterly fee. See *ibid.*

b. Petitioner initially paid the increased fees without objection. Pet. App. 9a. In March 2019, however, petitioner filed a motion in bankruptcy court asserting, in part, that the amended statute was unconstitutionally non-uniform because the statutory fee increase was implemented differently in BA districts than in UST districts. *Id.* at 10a. The bankruptcy court promptly held a hearing. *Id.* at 44a.

After construing petitioner's motion as a complaint that initiated an adversary proceeding, see Pet. App. 46a-47a & n.19, the bankruptcy court granted petitioner's motion in relevant part. *Id.* at 38a-55a. The court agreed with petitioner's constitutional challenge, holding that the 2017 amendment to Section 1930(a)(6) was "unconstitutionally non-uniform." *Id.* at 53a. As a remedy, the court directed that the quarterly fees petitioner owed "since January 1, 2018" be determined using "the prior version of the statute." *Id.* at 54a.

3. On direct appeal from the bankruptcy court to the court of appeals under 28 U.S.C. 158(d)(2), a divided panel of the court of appeals affirmed in part and reversed in part. Pet. App. 1a-23a.

As relevant here, the court of appeals held that the 2017 amendment was constitutional. Pet. App. 13a-18a. The court concluded that even a statutorily authorized divergence in fees across the UST and BA programs would not present a problem because the Bankruptcy Clause's "uniformity requirement does not deny Congress the power to enact legislation that resolves regionally isolated problems." *Id.* at 17a. The court noted that in the *Regional Rail Reorganization Act Cases*, 419 U.S. 102 (1984), this Court had "allowed Congress to establish a special court and enact statutes to benefit bankrupt rail carriers" in specific geographical regions because "the only railroads facing [a particular] problem" were in those regions. Pet. App. 17a. Here, the court of appeals concluded, Congress confronted "a U.S. Trustee problem," *ibid.*, and it could "reasonably solve[]" that problem "with fee increases in the underfunded districts," *id.* at 18a. The court further observed that, even if Congress had lacked an adequate justification for its earlier decisions to allow separate UST and

BA districts to persist, the 2017 Act "does not suffer from any such shortcoming" because it is supported by "a solid fiscal justification." *Ibid.*[1]

b. Judge Quattlebaum dissented in relevant part. Pet. App. 23a-37a. He rejected the U.S. Trustee's argument that "the Constitution's uniformity requirement only applies to substantive bankruptcy laws," *id.* at 31a-32a, and took the view that the amended fee statute was not uniform because Section 1930(a)(7) at relevant times provided that the Judicial Conference "may" require payment in BA districts of "fees equal to those imposed" in UST districts, *id.* at 33a-35a. He also disagreed with the majority's conclusion that different fee collections in the UST and BA districts could be justified by the "unique budgetary challenges" facing each program. *Id.* at 35a. And, although Judge Quattlebaum observed that "the constitutionality of the two types of bankruptcy systems is not before the court," he expressed skepticism about Congress's decision to allow two separate programs. *Id.* at 36a; see *id.* at 35a-36a.

SUMMARY OF ARGUMENT

The court of appeals sustained the 2017 Act on the ground that Congress's power under the Bankruptcy Clause would allow it to impose unequal fees to address a specific funding problem in the districts that participate in the UST Program. The court's judgment is correct for that reason and for additional reasons that the court had no need to reach. Petitioner's contrary view rests on an interpretation that would make the uni-

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[1] The court of appeals also held that the 2017 Act does not implicate the uniformity requirement of the Taxing and Spending Clause (U.S. Const. Art. I, § 8, Cl. 1) because it imposes a "user fee[]" rather than a "tax." Pet. App. 13a-14a. Petitioner does not challenge that determination in this Court. See Pet. I.

formity requirement simultaneously expansive in reach and difficult to satisfy, rendering it incompatible with established historical and modern practice.

A. The Bankruptcy Clause authorizes Congress "[t]o establish * * * uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const. Art. I, § 8, Cl. 4. At the Founding, the reference to uniformity was primarily understood as a grant of power to Congress to establish a nationwide bankruptcy system. Under this Court's decisions, the uniformity requirement establishes only a modest restriction on Congress's authority to enact substantive bankruptcy law.

This Court has never suggested that the uniformity requirement limits legislation that Congress enacts to address administrative aspects of the bankruptcy system. And early congressional practice provides powerful evidence to the contrary. Under the first two federal bankruptcy laws, enacted in 1800 and 1841, Congress provided for district-by-district variation as to administrative matters. In doing so, it specifically permitted the judges in each district to set the fees paid for bankruptcy services, even though variations in those fees affected the size of the estates ultimately available for distribution to creditors.

Modern practice likewise illustrates that matters of bankruptcy administration need not be uniform. The laws that undergird the bankruptcy-administration system contemplate significant variations in deference to local judicial preference, including as to financial matters. Imposing a uniformity condition on an auxiliary provision that does not itself address the "subject of Bankruptcies" has no basis in constitutional text, history, or practice.

In any event, Congress was also authorized to enact and fund the UST Program as necessary and proper to its authority "[t]o constitute Tribunals inferior to the supreme Court," U.S. Const. Art. I, § 8, Cl. 9. Because the UST Program fosters the fair and efficient functioning of the bankruptcy courts, it falls within Congress's authority to enact legislation conducive to and adapted to the due administration of justice in federal courts.

B. Petitioner's constitutional challenge fails for the additional reason that Congress did not authorize a fee disparity between UST and BA districts. When Congress amended the fee schedule in Section 1930(a)(6), Section 1930(a)(7) authorized the Judicial Conference to impose in the BA districts fees "equal to those imposed" in UST districts. 28 U.S.C. 1930(a)(7) (2018); see 2000 Act § 105, 114 Stat. 2412. It did not authorize the imposition of lower fees in the BA districts, and the fact that the BA districts nonetheless imposed lower fees for a period after the amendment does not render Congress's fee increase unconstitutional.

Even assuming that Section 1930(a)(7) conferred discretion by saying that the Judicial Conference "may" impose equal fees, that discretion extended only to the threshold decision as to whether to impose fees in the BA districts at all. Congress knew in 2017 that the Judicial Conference had previously exercised that discretion in its 2001 standing order, which had directed that quarterly fees be imposed in the BA districts "in the amounts specified" in Section 1930 "as those amounts may be amended from time to time." 2001 *JCUS Report* 46.

To the extent that the presence of the word "may" in Section 1930(a)(7) would nonetheless render the 2017 Act unconstitutional, the Court should interpret the Act

as requiring the imposition of equal fees. In the particular circumstances of this case, the full *corpus juris*—including Congress's subsequent enactment clarifying its longstanding intention to require equal fees, see *Branch* v. *Smith*, 538 U.S. 254, 281 (2003) (plurality opinion)—as well as considerations of constitutional avoidance, support reading Section 1930(a)(7) to mandate equal fees if doing so is necessary to avoid a constitutional problem.

C. Even if the fee disparity that arose after the 2017 Act could be ascribed to Congress, the UST-specific legislation is constitutional. The law, which increased fees in 88 of 94 federal judicial districts, was not a private bill that affected the rights and obligations of a single debtor.

Nor was the 2017 Act geographically non-uniform, which, as this Court has made clear in the taxation uniformity context, occurs when laws draw geographical distinctions on their face. *United States* v. *Ptasynski*, 462 U.S. 74, 84 (1983). The fee increase applied to all users of the UST Program, and that program-based distinction satisfied the uniformity requirement even though the UST Program "is found" only in "portions of the United States." *Ibid.*

Even if the classification were defined in geographical terms, it would fall within Congress's broad flexibility to enact bankruptcy legislation for certain regions of the country, as long as the enactment bears a rational relationship to a problem specific to those regions. In responding to a budget shortfall in the UST Program, Congress was entitled to enact a fee increase on users of that program.

Petitioner would tie Congress's hands to remedy the UST-specific funding shortfall because the existence of

two programs of bankruptcy administration is itself a result of federal law. But Congress does not lose authority to legislate solutions to problems that can be traced to federal law. Nor can petitioner pivot to a far broader constitutional challenge, arguing that the existence of two bankruptcy administration programs is itself unconstitutional, because that claim was not raised or considered below and is outside the scope of the question presented.

D. Even if petitioner's constitutional argument had merit, the remedy he seeks—a refund of the fee increase imposed by the 2017 Act throughout the vast majority of the country—would not be warranted. That remedy would effectively invalidate the relevant provision of the 2017 Act, potentially forcing taxpayers to bear $324 million that Congress intended to impose on users of the UST program. There can be no serious question that Congress would instead choose to eliminate the narrow exception from the fee increase that (under petitioner's view) Congress inadvertently authorized in the handful of BA districts, rather than undo the fee increase that it specifically adopted in the 88 UST districts responsible for more than 97% of Chapter 11 filings. Nor is petitioner correct that a backward-looking remedy is required, when petitioner was not precluded from challenging the increased fees before paying them. Accordingly, purely prospective relief—or, at most, a fee increase for underpaying debtors in the few BA districts—would be the appropriate remedy.

ARGUMENT

CONGRESS DID NOT EXCEED ITS CONSTITUTIONAL AUTHORITY IN ENACTING SECTION 1004(A) OF THE 2017 BANKRUPTCY JUDGESHIP ACT

For decades, Congress has imposed a quarterly fee on some Chapter 11 debtors under 28 U.S.C. 1930 to make the UST bankruptcy-administration program self-funding. Between 2000 and 2021, Congress provided that the Judicial Conference may impose equal fees on Chapter 11 debtors in BA districts. The Judicial Conference exercised that authority shortly after it received it, issuing a standing order in 2001 imposing fees in BA districts in the amounts Congress sets for the UST districts; the BA districts subsequently charged identical fees as the UST districts, including after Congress amended the UST fee schedule in 2007. In the 2017 Act, at issue here, Congress simply imposed another amendment to the UST fee schedule. But this time, the BA districts waited nine months before implementing a parallel fee increase, and did not apply the increase to previously pending cases.

That series of events did not render the 2017 Act unconstitutional. If the Court nonetheless finds a constitutional violation, a determination that Congress inadvertently authorized an exception from the amended fee schedule in the handful of districts that accounted for fewer than 3% of Chapter 11 filings in 2018 would not justify invalidating Congress's deliberate fee increase for the other 97%. Congress would have cured any impermissible inequality by modestly extending the fee increase to the outlier districts rather than repealing it everywhere else.

A. The Bankruptcy Uniformity Requirement Does Not Restrict Congress's Authority To Set User Fees For The U.S. Trustee Program

The uniformity requirement of the Bankruptcy Clause limits substantive bankruptcy law, but it has no application to the fee provision at issue here, which addresses bankruptcy administration.

1. The Bankruptcy Clause authorizes Congress "[t]o establish * * * uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const. Art. I, § 8, Cl. 4. From the outset, the uniformity provision of the Bankruptcy Clause was understood principally as a grant of authority to Congress. See *Sturges* v. *Crowninshield*, 17 U.S. (4 Wheat.) 122, 193-194 (1819) (Marshall, C.J.); *The Federalist No. 42*, at 287 (James Madison) (Jacob E. Cooke ed., 1961) (noting "[t]he power of establishing uniform laws of bankruptcy"); see also Randolph J. Haines, *The Uniformity Power: Why Bankruptcy Is Different*, 77 Am. Bankr. L.J. 129, 166-167 (2003). That grant of authority responded to the "difficulties posed by th[e] patchwork of insolvency and bankruptcy laws" in various States under which "the uncoordinated actions of multiple sovereigns[] each la[id] claim to the debtor's body and effects according to different rules." *Central Va. Cmty. Coll.* v. *Katz*, 546 U.S. 356, 366 (2006). The patchwork of substantive state laws resulted in "rampant injustice," such as when States "refus[ed] to respect one another's discharge orders." *Id.* at 377. It also threatened to hinder the development of interstate commerce. See *The Federalist No. 42*, at 287. Congress needed the power of establishing uniform bankruptcy laws to redress or prevent "offensive forms" of interstate discrimination. 3 Joseph Story, *Commentaries on the Constitution of the United*

States § 1102, at 7 (1833); see Kurt H. Nadelmann, *On the Origin of the Bankruptcy Clause*, 1 Am. J. Legal Hist. 215, 227-228 (1957).

In addition to empowering Congress to create a federal bankruptcy system, the term "uniform" imposed an "affirmative limitation or restriction upon Congress's power." *Railway Labor Execs.' Ass'n* v. *Gibbons*, 455 U.S. 457, 468 (1982). In particular, before the drafting of the Constitution, some States passed private acts to relieve individual debtors, which made impossible "[u]niformity among state debtor insolvency laws." *Id.* at 472; see Nadelmann, 1 Am. J. Legal Hist. at 221-223. The uniformity provision "prohibit[ed] Congress from enacting private bankruptcy laws." *Gibbons*, 455 U.S. at 472. This Court has further suggested that the uniformity provision also precludes arbitrary geographical distinctions. See *Regional Rail Reorganization Act Cases*, 419 U.S. 102, 158-161 (1974).

2. The Bankruptcy Clause directly addresses "the subject of Bankruptcies," U.S. Const. Art. I, § 8, Cl. 4—that is, laws regulating "relations between an insolvent or nonpaying or fraudulent debtor and his creditors." *Gibbons*, 455 U.S. at 466 (citation omitted); see *Northern Pipeline Constr. Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50, 71 (1982) (plurality opinion) ("the core of the federal bankruptcy power" is "the restructuring of debtor-creditor relations").

In addition, Congress's power to enact substantive bankruptcy laws is augmented by its auxiliary power under the Necessary and Proper Clause "[t]o make all Laws which shall be necessary and proper for carrying into Execution" its enumerated powers, U.S. Const. Art. I, § 8, Cl. 18. See *Wright* v. *Union Cent. Life Ins. Co.*, 304 U.S. 502, 513 (1938). The Necessary and Proper

Clause thus allows Congress to enact "all intermediate legislation, affecting substance and form, but tending to further the great end of the subject [of bankruptcy]—distribution and discharge." *Hanover Nat'l Bank* v. *Moyses*, 186 U.S. 181, 186 (1902) (quoting *In re Klein*, 42 U.S. (1 How.) 277 note, 281 (C.C.D. Mo. 1843) (Catron, Circuit Justice)); see also *In re Reiman*, 20 F. Cas. 490, 494 (S.D.N.Y. 1874) (No. 11,673) (Blatchford, J.) (quoting the same passage from *Klein* and explaining it as resting on the combination of the Bankruptcy Clause and the Necessary and Proper Clause). The bankruptcy uniformity constraint has never been understood as a restriction on the auxiliary laws that help create an effective bankruptcy system but do not themselves regulate debtor-creditor relations. Rather, both early historical and modern practice establish that such auxiliary laws may authorize variations between judicial districts.

a. Congress enacted the Nation's first two bankruptcy laws in 1800 and 1841. See *Moyses*, 186 U.S. at 184. Each law provided nationwide uniformity on matters of debtor-creditor relations, while allowing district-by-district variation as to matters of bankruptcy administration generally—and specifically as to the fees paid by debtors.

In the 1800 Act, Congress established a bankruptcy system that provided consistent nationwide rules as to the conditions that made a debtor a bankrupt, the property that composed the estate, the effect of the transactions distributing the bankrupt's property, the priority of the creditors, and discharge. See An Act To Establish an Uniform System of Bankruptcy Throughout the United States (1800 Act), ch. 19, 2 Stat. 19. But the fee that the estate paid to the judicial officers overseeing

the bankruptcy proceedings could vary from district to district. Those officers, called "commissioners," were entitled to "compensation [for] services to be rendered" in administering the bankruptcy estate, which, along with other expenses, was paid "out of the first monies arising from the bankrupt's estate." §§ 5-6, 46-47, 2 Stat. 23, 33. Congress specified "[t]hat the district judges, in each district respectively, shall fix a rate of allowance to be made to the commissioners of bankruptcy." § 47, 2 Stat. 33. Thus, the first federal bankruptcy law provided for a fee that reduced the value of the estate available to creditors, and it allowed the amount of that fee (*i.e.*, the "rate of allowance") to vary between districts.

The 1841 Act likewise provided for nationwide uniformity on substantive matters, while permitting variation on matters of procedure. See An Act To Establish a Uniform System of Bankruptcy Throughout the United States (1841 Act), ch. 9, 5 Stat. 440. In particular, the 1841 Act charged the "district court[s] in each district" with the "duty * * * from time to time, to prescribe suitable rules and regulations, and forms of proceedings, in all matters of bankruptcy," subject to revision "by the circuit court of the same district." § 6, 5 Stat. 445-446. And, like its predecessor, the 1841 Act contemplated variation in bankruptcy fees, requiring the district courts "from time to time, [to] prescribe a tariff or table of fees and charges to be taxed by the officers of the court or other persons, for services under this act." § 6, 5 Stat. 446. The fees imposed by the district courts under that authority varied widely. For routine cases under the 1841 Act, the average fees in different districts varied from $15 to $50 per applicant, and the disparities only increased in complex cases. See

Edward J. Balleisen, *Vulture Capitalism in Antebellum America: The 1841 Federal Bankruptcy Act and the Exploitation of Financial Distress*, 70 Bus. Hist. Rev. 473, 483 (1996). The congressionally authorized disparities were so significant that "[i]n some federal districts"—but not others—"creditors received less money from dividends than clerks, newspapers, and other bankruptcy placemen earned from fees." *Id.* at 482.

That early congressional and judicial practice provides "contemporaneous and weighty evidence" that the uniformity constraint does not apply to matters of procedure, and particularly to bankruptcy fees. *Alden* v. *Maine*, 527 U.S. 706, 743-744 (1999) (citation omitted).

b. Modern congressional practice likewise indicates that bankruptcy administration need not be uniform. Indeed, district-by-district variations in bankruptcy administration are far from uncommon.

The current bankruptcy system is based upon the Bankruptcy Reform Act of 1978, which provides for bankruptcy cases to be resolved within each of the 94 federal judicial districts. See 28 U.S.C. 81-132. Federal bankruptcy law is thus "administered almost exclusively through adjudication in the courts," rather than through a single nationwide tribunal or agency. Rafael I. Pardo & Kathryn A. Watts, *The Structural Exceptionalism of Bankruptcy Administration*, 60 UCLA L. Rev. 384, 386 (2012).

Many current laws governing bankruptcy proceedings authorize or contemplate significant variations in, and deference to, local judicial practices and preferences. To take a few examples, a district court may (but need not) refer cases to a bankruptcy court, 28 U.S.C. 157(a); it may (but need not) withdraw that reference at any time, 28 U.S.C. 157(d); it may (but need not) partic-

ipate in the bankruptcy appellate panel for its circuit, assuming the court of appeals itself has exercised the option to create one, 28 U.S.C. 158(b)(1) and (6); and it may promulgate local rules that differ from those of other courts, see Fed. R. Bankr. P. 8026(a), 9029(a)(1). Many judges also impose chambers-specific requirements. The enforcement of those local rules affects bankruptcy cases in many ways. See Fed. R. Bankr. P. 9029(a)(2) (contemplating the enforcement of "[a] local rule imposing a requirement of form * * * in a manner that causes a party to lose rights" in the event of a "[]willful failure to comply with the requirement"); Fed. R. Bankr. P. 9029(b) (contemplating that a judge may impose a "sanction or other disadvantage" on a litigant for failure to comply with the judge's procedures so long as the alleged violator had "actual notice of the requirement").

The varied rules of local practice commonly extend to financial matters that ultimately affect how much money will be available for distribution to different classes of creditors. As particularly relevant here, some districts allow bankruptcy judges to set chambers-specific amounts for what will constitute a presumptively reasonable fee for professionals. See, *e.g.*, U.S. Bankr. Ct., District of South Carolina, *Fee Amounts Pursuant to SC LBR 2016-1 for Judge Burris* (Apr. 4, 2017), https://www.scb.uscourts.gov/news/fee-amounts-pursuant-sc-lbr-2016-1-judge-burris; *In re Compensation of Debtor's Counsel in Chapter 13 Cases*, Standing Order, No. 19-2 (Bankr. E.D. Va. Feb. 26, 2019) (setting "prescribed level of compensation" for attorneys in Chapter 13 cases). Federal law also permits district courts and bankruptcy courts to waive certain fees for particular debtors or creditors "in accordance with Ju-

dicial Conference policy," even if other district courts would not allow the same waivers. 28 U.S.C. 1930(f)(3).

That variation between districts as to matters of procedure has extended to the program of administration in particular districts. As discussed above (see p. 3, *supra*), in 1978, Congress created the UST Program as a pilot program in 18 federal judicial districts. See *United States Trustee* v. *Prines (In re Prines)*, 867 F.2d 478 (8th Cir. 1989) (rejecting Equal Protection Clause challenge to the staggered implementation). And, when Congress expanded the UST Program, it accommodated the Judicial Conference's request for continued authorization to use BAs in six districts. See pp. 4-5, *supra.*

c. The historical and modern congressional practice comports with this Court's decisions. The Court has invalidated only one law under the uniformity provision of the Bankruptcy Clause. That law governed the substance of creditor-debtor relations, imposing a new obligation on a debtor "to pay large sums of money" to a particular set of creditors and specifically giving that obligation "priority over the claims" of other creditors. *Gibbons*, 455 U.S. at 467. Every decision of this Court that petitioner cites as addressing the bankruptcy uniformity requirement likewise addressed substantive bankruptcy laws. See *Regional Rail Reorganization Act Cases*, 419 U.S. at 109-110 (act governing the reorganization of a particular class of debtors and specifying the rights and obligations of those debtors to their creditors); *Moyses*, 186 U.S. at 189 (provision regarding what property may be exempted from the bankruptcy estate); see also *Vanston Bondholders Protective Comm.* v. *Green*, 329 U.S. 156, 162 (1946) (addressing

permissibility of relying on state law in determining the allowance of a particular claim).

d. In light of the foregoing principles, the uniformity requirement is not implicated by the fee provision at issue here. That provision is not part of the "subject of Bankruptcies" because it does not alter the substance of debtor-creditor relations by, for example, defining what property is included in or exempt from the estate, setting priority for a particular claim, or describing the scope or effect of discharge. See *Gibbons*, 455 U.S. at 466; see also, *e.g.*, 11 U.S.C. 507, 522, 523, 524. While the fee provision is "important to a complete and effective bankrupt system," such that Congress had the power to enact it as necessary and proper to its substantive bankruptcy power, *United States* v. *Fox*, 95 U.S. 670, 672 (1878), the uniformity requirement is not implicated. See S. Rep. No. 168, 103d Cong., 1st Sess. 61 (1993) (1993 Senate Report) (Statement of the National Bankruptcy Conference explaining that implementing the UST program on a pilot basis did not raise constitutional concerns because "it dealt with administrative aspects of the bankruptcy system" rather than creating "a substantive bankruptcy law"). Just like the fee provisions in Congress's earliest bankruptcy acts, therefore, the quarterly fees for Chapter 11 debtors may vary by district without running afoul of the Bankruptcy Clause.

3. The fee provision at issue here was also within Congress's power regardless of whether it was uniform because it is independently supported by Congress's power to enact and fund programs that assist the federal courts with the fair and efficient resolution of bankruptcy cases. The Constitution gives Congress the enumerated power "[t]o constitute Tribunals inferior to the

supreme Court," U.S. Const. Art. I, § 8, Cl. 9. The quarterly fees provision is "necessary and proper," U.S. Const. Art. I, § 8, Cl. 18, for carrying into execution Congress's power to create lower federal courts and to assure that those tribunals may fairly and efficiently exercise "[t]he judicial Power of the United States," Art. III, § 1.

Pursuant to statute, bankruptcy courts are "unit[s] of the district court," 28 U.S.C. 151, and bankruptcy judges are "judicial officers" of district courts, 28 U.S.C. 152(a)(1). Bankruptcy judges are appointed by Article III courts after considering each district's "need[s]" as evaluated by the Judicial Conference. 28 U.S.C. 152(b)(2); see 28 U.S.C. 152(a)(1). Each district court determines whether to refer a bankruptcy case to a bankruptcy judge and may withdraw a proceeding (or part of a proceeding). 28 U.S.C. 157(a) and (d). In short, Congress has authorized creation of bankruptcy courts "to assist Article III courts in their work." *Wellness Int'l Network, Ltd.* v. *Sharif*, 575 U.S. 665, 668 (2015).

A statutory provision that is "'conducive to the due administration of justice'" in federal court, and is "'plainly adapted'" to that end, "is necessary and proper for carrying into execution Congress's [inferior-tribunals] power." *Jinks* v. *Richland County*, 538 U.S. 456, 462 (2003) (citation omitted). The bankruptcy-court system is conducive and adapted to the due administration of justice in federal court. Indeed, this Court has observed that, without the assistance of the bankruptcy courts, "the work of the federal court system would grind nearly to a halt." *Sharif*, 575 U.S. at 668. And the UST program, just like the corresponding BA program, is critical to the efficient and fair admin-

istration of bankruptcy proceedings. See pp. 2-5, *supra*.[2] Because Congress had authority to create and fund the UST program as an auxiliary to its enumerated inferior-tribunals power—even if it also had authority to create and fund the program in support of its enumerated bankruptcy power—the fee provision is constitutional regardless of its uniformity.[3]

4. Petitioner's arguments to the contrary are unavailing.

Petitioner notes (Br. 24) that the Bankruptcy Clause gives Congress a "broad and capacious" power to enact legislation related to bankruptcy. But the relevant question is not the scope of Congress's power to act; it is the scope of the uniformity limitation on that power. Petitioner offers no historical support for the proposition that the Framers would have been concerned with variations between judicial districts as to matters of bankruptcy administration. Indeed, early congres-

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[2] Unlike the BA program, the UST program is not housed within the Judicial Branch. See 28 U.S.C. 586 (2018 & Supp. I 2019). But the two programs perform similar functions and thereby equally support the Article III and bankruptcy courts in their respective districts. See p. 5, *supra*. Similarly, Congress has given the United States Marshals Service (located within the Executive Branch) the responsibility for securing inferior federal courts, see 28 U.S.C. 561(a), 566(a) and (i), while simultaneously authorizing the Marshal of the Supreme Court (located within the Judicial Branch) to protect this Court, see 28 U.S.C. 672; 40 U.S.C. 6102(a), 6121(a).

[3] In *Gibbons*, the Court cautioned against allowing Congress to enact nonuniform substantive bankruptcy laws under the Commerce Clause because doing so would "eradicate from the Constitution" the uniformity requirement. See 455 U.S. at 469. But many laws that relate to bankruptcy do not fall within Congress's inferior-tribunal authority. For that reason, allowing Congress to enact nonuniform laws as necessary and proper to that authority does not present the same concern, and petitioner does not suggest otherwise.

sional practice—specifically with respect to fees—is to the contrary. See pp. 20-22, *supra*.

Similarly, petitioner is mistaken in emphasizing that the 2017 Act relates to and "affects" bankruptcy proceedings. Br. 25; see, *e.g.*, *Clinton Nurseries, Inc.* v. *Harrington (In re Clinton Nurseries, Inc.)*, 998 F.3d 56, 64 (2d Cir. 2021) (observing that Section 1930 is entitled "Bankruptcy fees"), petition for cert. pending, No. 21-1123 (filed Feb. 14, 2022). That is not the touchstone of whether the law triggers the restraints imposed by the uniformity requirement. See pp. 19-25, *supra*. More specifically, petitioner contends (Br. 25) that the 2017 Act is subject to the uniformity requirement because the payment of fees is a prerequisite to plan confirmation and—because fees have administrative-priority status—a fee increase "directly reduces the funds available" to creditors. History again refutes that inference: Fees for bankruptcy commissioners and other officials also reduced the funds available to creditors under the 1800 and 1841 Bankruptcy Acts, yet Congress left it to the courts in each district to set those fees, which could therefore vary from district to district. See 1800 Act § 46, 2 Stat. 33; 1841 Act § 5, 5 Stat. 444. Nor is petitioner correct in suggesting that any law that reduces the amount available to creditors becomes a substantive bankruptcy law subject to a geographical uniformity requirement. Many kinds of legal obligations, including claims for contributions to an employee benefit plan and taxes, are given heightened priority in bankruptcy. See 11 U.S.C. 507. Changes to the laws defining those underlying obligations can have predictable effects on the distribution of a debtor's estate. But that does not mean that those laws are enacted under the Bankruptcy Clause or that they must be incorpo-

rated into bankruptcy proceedings in ways that avoid state-by-state variation. To the contrary, this Court long ago countenanced state-by-state variations in exemptions (which affect the size of the estate). See *Moyses*, 186 U.S. at 190.

Petitioner next contends that the 2017 Act has to be a law "on the subject of Bankruptcies," U.S. Const. Art. I, § 8, Cl. 4, rather than one that is "necessary and proper" to Congress's bankruptcy power, on the theory that a law is not "proper" under the Necessary and Proper Clause if it "evade[s] the express textual precondition[s] on [the] enumerated power." Br. 26; see Br. 25-26. Petitioner is mistaken in assuming that every limit on an enumerated power applies to the incidental laws that Congress is permitted to enact under the Necessary and Proper Clause in service of that power. For example, the Necessary and Proper Clause permits Congress to regulate "intrastate activities that do not themselves substantially affect interstate commerce" and therefore fall outside the textual limitations of the Commerce Clause. *Gonzales* v. *Raich*, 545 U.S. 1, 35 (2005) (Scalia, J., concurring in the judgment); see *id.* at 34-35; see also *United States* v. *Coombs*, 37 U.S. (12 Pet.) 72, 78 (1838). In any event, the 2017 Act's fee increase did not evade the bankruptcy uniformity requirement, both because bankruptcy-administrative matters are not so constrained and because Congress's legislation for the UST and BA Programs reflects repeated efforts to avoid even an arguable uniformity problem. See pp. 6-7, 9, *supra*. And, even if the Bankruptcy Clause's uniformity requirement would have limited the fee provision, petitioner offers no response to the argument—advanced in the government's certiorari-stage response (Br. 13-14)—that Congress

had the independent power to enact the fee provision as necessary and proper to its power to establish inferior tribunals. See pp. 25-27, *supra*.

Petitioner acknowledges the myriad examples of district-by-district variations in laws governing modern bankruptcy administration, but suggests that most of those provisions would "simply pass muster" under the uniformity requirement. Br. 26 (emphasis omitted). As an initial matter, that assertion is inconsistent with the vise-like grip that petitioner would give the uniformity requirement in arguing (Br. 20-23) that it prohibits Congress from enacting the fee increase. And while petitioner suggests that the uniformity requirement is satisfied as long as every local actor faces "an identical choice," Br. 26, petitioner does not explain why the disparities that result when those actors exercise their discretion in different ways—including by setting disparate fees in different districts, see pp. 23-24, *supra*—are any less offensive to his understanding of the Bankruptcy Clause. Finally, petitioner asserts (Br. 26) that those variations, unlike the ones at issue here, would have no "apparent impact on any ordinary Article III interest." But the rules can affect substantive interests, whether by subjecting debtors to sanctions, see, *e.g.*, Fed. R. Bankr. P. 9029(b), or by affecting the very types of financial interests at issue here. See pp. 23-24, *supra*. In short, petitioner's position cannot be reconciled with current practice, any more than it can be reconciled with the approach that Congress took with respect to bankruptcy fees in the Constitution's first half-century.

B. The Statutory Regime For Quarterly Fees Was At All Relevant Times Facially Uniform Throughout The United States

Even if the bankruptcy uniformity requirement extends to laws governing the amount of user fees for bankruptcy administration, the statutory regime for quarterly fees was facially uniform throughout the United States at all relevant times.

1. Both before and after the 2017 Act, Section 1930(a)(6) mandated a graduated fee schedule that applied in all UST districts, with the specific amounts varying over time. Compare 28 U.S.C. 1930(a)(6) (2012), with 28 U.S.C. 1930(a)(6) (Supp. II 2020). The 2017 Act altered the fee schedule in Section 1930(a)(6), but it did not amend Section 1930(a)(7), which provided, from the 2000 Act until the 2020 Act, that the Judicial Conference "may require the debtor" in BA districts "to pay fees equal to those imposed by paragraph (6) of this subsection." 2000 Act § 105, 114 Stat. 2412; 28 U.S.C. 1930(a)(7) (2018); see 2017 Act § 1004(a), 131 Stat. 1232. Accordingly, the 2017 Act itself did not authorize any departure from what had become established as uniform fees.

The statutory structure contemplated that any fees in the BA districts would be equal to those in UST districts. Section 1930 did not empower the Judicial Conference to charge fees in any amount it wished; rather, to the extent that the Judicial Conference imposed any fees at all, it was authorized to charge only fees "equal to those imposed" in UST districts. 28 U.S.C. 1930(a)(7) (2018).

Section 1930(a)(7) did use the auxiliary verb "may" (until it was replaced with "shall" by a clarifying amendment in the 2020 Act). To the extent that that verb con-

ferred discretion on the Judicial Conference, but see pp. 32-34, *infra*, that discretion related only to the threshold decision about whether to impose any fees in the BA districts. When Congress acted in 2017, it knew that such fees had already been imposed in BA districts by the Judicial Conference's 2001 standing order, which had specifically directed that quarterly 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*." *2001 JCUS Report* 46 (emphasis added). Thus, when Congress amended the fee schedule in 2007, see Department of Justice Appropriations Act, 2008, Pub. L. No. 110-161, Div. B, Tit. II, § 213(a), 121 Stat. 1914, the BA districts immediately implemented the increase under the standing order. See *United States Trustee Region 21* v. *Bast Amron LLP (In re Mosaic Mgmt. Grp., Inc.)*, 22 F.4th 1291, 1315 & n.21 (11th Cir. 2022) (*Mosaic*).

Despite the statutory requirement of equal fees, the pre-existing standing order, and previous practice, the BA districts did not immediately implement the 2017 Act's fee increase, which resulted in lower fees in BA districts. But nothing about the 2017 Act or Section 1930 had authorized that disparity. And, because the Bankruptcy Clause "imposes its limited constraint on *congressional* power," *Mosaic*, 22 F.4th at 1320 (emphasis added); see U.S. Const. Art. I, § 8, Cl. 4, that series of events cannot render the underlying Act of Congress unconstitutional.

2. To the extent that the presence of the word "may" in Section 1930(a)(7) would render the 2017 Act unconstitutional under the theory that it authorized the possibility of unequal fees, the Court should interpret the

two provisions as having required the ongoing imposition of equal fees.

To be sure, this Court has "repeatedly observed" that "the word 'may' *clearly* connotes discretion." *Opati* v. *Republic of Sudan*, 140 S. Ct. 1601, 1609 (2020) (citation and internal quotation marks omitted). But in the particular circumstances of this case, considerations of constitutional avoidance, combined with the context and purpose of the provision, establish that the best reading of Section 1930(a)(7) is that Congress intended the imposition of equal fees.

As explained above (see pp. 6-7, *supra*), Congress enacted Section 1930(a)(7) in response to *St. Angelo* v. *Victoria Farms, Inc.*, 38 F.3d 1525, 1532-1533 (1994), amended, 46 F.3d 969 (9th Cir. 1995), which found unconstitutional the authorization of two programs with divergent fee requirements. Congress determined—consistent with the recommendation of the Judicial Conference itself—that Section 1930(a)(7) would cure any unconstitutional lack of uniformity in fees. That judgment warrants respect. See *Fullilove* v. *Klutznick*, 448 U.S. 448, 472-473 (1980) (plurality opinion).

Moreover, both that background and Congress's subsequent actions form the "context of the *corpus juris*" in which Section 1930(a)(7) must be read. *Branch* v. *Smith*, 538 U.S. 254, 281 (2003) (plurality opinion). In 2020, after some courts interpreted "may" as conferring discretion on the Judicial Conference about the fee increase in BA districts, both Houses of Congress unanimously approved technical legislation striking the word "may" from Section 1930(a)(7) and replacing it with "shall." See 2020 Act § 3(d)(2), 134 Stat. 5088. An express legislative finding explained that the purpose of that change was to "confirm the longstanding intention

of Congress that quarterly fee requirements remain consistent across all Federal judicial districts." § 2(a)(4)(B), 134 Stat. 5086. As Justice Scalia's opinion for the plurality in *Branch* explained: "if it can be gathered from a subsequent statute *in pari materia*, what meaning the legislature attached to the words of a former statute, they will amount to a legislative declaration of its meaning, and will govern the construction of the first statute." 538 U.S. at 281 (quoting *United States* v. *Freeman*, 44 U.S. (3 How.) 556, 564-565 (1845)). In that way, the 2020 Act—which is a subsequent statute on the same subject that specifically addresses the meaning that Congress attached to the words of a former statute—"sheds light upon the meaning" (*ibid.*) of the earlier-enacted Section 1930(a)(7), reinforcing that Congress intended to require equal fees.

Given that context, Section 1930(a)(7) was at least ambiguous as to whether the Judicial Conference had authority to impose unequal fees before the 2020 Act. If the Court determines that such discretion would violate the uniformity requirement, it should construe the imposition of equal fees as a mandatory requirement in light of the "presumption of constitutionality," which instructs that "courts should, if possible, interpret ambiguous statutes to avoid rendering them unconstitutional." *United States* v. *Davis*, 139 S. Ct. 2319, 2332 n.6 (2019); see *ibid.* (distinguishing this principle from the "more debated" "constitutional doubt canon").

3. Petitioner's arguments to the contrary are unavailing. He primarily contends (Br. 28) that the statutory scheme allowed the imposition of lower fees in the BA districts because "the permission here to impose fees 'equal' to those imposed in trustee districts is best read as a *ceiling*, not a floor," such that the fees may

"'equal' (*but not exceed*) the fees under Section 1930(a)(6)." Br. 28. That reading, however, is irreconcilable with the plain meaning of "equal"—which is "the same," not "no more than" or "anything up to." See *Webster's Third New International Dictionary of the English Language* 766 (2002) ("of the same measure, quantity, amount, or number as another"); *American Heritage Dictionary of the English Language* 602 (4th ed. 2000) ("[h]aving the same quantity, measure, or value as another"); 5 *Oxford English Dictionary* 346 (2d ed. 1989) ("Identical in amount; neither less nor greater than the object of comparison."). Contorting the meaning of "equal" to authorize the very disparity that petitioner contends is unconstitutional would invert the presumption of constitutionality, disregard Congress's considered decision to adopt Section 1930(a)(7) to prevent any uniformity problem, and contravene Congress's "longstanding intention * * * that quarterly fee requirements remain consistent across all Federal judicial districts." 2020 Act § 2(a)(4)(B), 134 Stat. 5086.[4]

Petitioner further suggests (Br. 28) that even if the statutory scheme did require an immediate fee increase in BA districts, the permissive language itself still created a constitutional problem. Under that view, even in

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[4] The drafting history indicates that Congress's use of the term "equal" was deliberate. The Judicial Conference had determined that any problem under the Ninth Circuit's *Victoria Farms* decision could be avoided by authorizing BA districts to charge fees "comparable to those in effect in United States trustee districts." Judicial Conference of the U.S., *Report of the Proceedings of the Judicial Conference of the United States* 10 (Mar. 12, 1996), https://go.usa.gov/xFVf5. When implementing legislation was introduced, the bill, like the enacted version, referred to fees "equal to those imposed" in UST districts. H.R. 2294, § 205, 105th Cong., 1st Sess. (July 30, 1997).

2001-2017, when fees were in fact equal across districts, the Judicial Conference's unexercised authority to decline to impose fees made the regime unconstitutional. But there is no reason to conclude that a merely hypothetical lack of uniformity violates the Bankruptcy Clause. In any event, to the extent that the existence of discretion about whether to impose equal fees or no fees in BA districts would create a constitutional problem, the Court should interpret the statute to have required the imposition of equal fees.

C. Even If The Fee Disparity Could Be Attributed To Congress, That Disparity Did Not Violate The Uniformity Requirement

Even if the uniformity requirement imposes a constraint on the administrative-fee measure at issue here, and even if the disparity in fee amounts that arose after the 2017 Act could be ascribed to the statutory scheme, that disparity still did not violate the uniformity requirement.

1. This Court has only once held a statute invalid based on the bankruptcy uniformity requirement—and it did so on the ground that the statute was a "private bill" that determined the relations between one debtor and its creditors, rather than governing "a defined class of debtors." *Gibbons*, 455 U.S. at 471, 473. In finding that law unconstitutional, the Court emphasized that "the Bankruptcy Clause's uniformity requirement was drafted in order to prohibit Congress from enacting private bankruptcy laws." *Id.* at 472.

This Court has never invalidated a bankruptcy law based on a geographical disuniformity, and, as the National Bankruptcy Conference summarized in 1993, the Court's reasoning has suggested that the Bankruptcy Clause requires only "a minim[al] degree of uniformity

in terms of geographical application." 1993 Senate Report 62; see *Regional Rail Reorganization Act Cases*, 419 U.S. at 159-161. In *Gibbons*, the Court explained that its decision invalidating a law specific to a single debtor did not alter its flexible approach to questions of geographical uniformity. See 455 U.S. at 473. The uniformity requirement, the Court reiterated, "is not a straitjacket" for Congress and "does not impair Congress' ability under the Bankruptcy Clause to define classes of debtors and to structure relief accordingly," including by enacting "bankruptcy laws that apply to a particular industry in a particular region." *Id.* at 469, 473. Accordingly, even when enacting substantive bankruptcy laws, Congress may "solve 'the evil to be remedied'" with legislation that is tailored to the scope of the problem that Congress has encountered. *Regional Rail Reorganization Act Cases*, 419 U.S. at 161.

2. The 2017 Act is consistent with this Court's understanding of the bankruptcy uniformity requirement.

a. As an initial matter, the 2017 Act did not define the scope of the fee increase in terms of geography. Instead, it amended the amount of the fees that Section 1930(a)(6) specified "shall be paid to the United States trustee," 28 U.S.C. 1930(a)(6) (2018); see 2017 Act § 1004(a), 131 Stat. 1232, while Section 1930(a)(7) addressed the "equal" fees to be imposed "[i]n districts that are not part of a United States trustee region." 28 U.S.C. 1930(a)(7) (2018). On its face, the statutory scheme makes no reference to geography, instead defining the applicability of each provision based on whether the administration of a debtor's bankruptcy case is supervised by a U.S. Trustee. As the court of appeals observed, that is a "program-specific distinction that only indirectly has a geographic impact." Pet.

App. 17a-18a; accord *Hobbs* v. *Buffets, L.L.C. (In re Buffets, L.L.C.)*, 979 F.3d 366, 378-379 (5th Cir. 2020).

Under the Taxing and Spending Clause—which mandates that certain taxes "shall be uniform throughout the United States," U.S. Const. Art. I, § 8, Cl. 1—this Court has explained that the uniformity requirement "is satisfied" "[w]here Congress defines the subject * * * in nongeographic terms." *United States* v. *Ptasynski*, 462 U.S. 74, 84 (1983). That is so even when the "subject of the tax is found" only in certain "portions of the United States." *Ibid.*; see *Head Money Cases*, 112 U.S. 580, 594 (1884). The same is true for the quarterly-fee increase at issue here. Because the fee schedule applied to every Chapter 11 debtor whose case was supervised by a U.S. Trustee, the uniformity requirement was "satisfied," even though the cases under UST supervision were "found" only in certain portions of the United States.

b. Even if the fee increase were considered as being defined in terms of geography rather than the applicable bankruptcy-administration program, it would pass muster. A uniformity requirement does not "prohibit all geographically defined classifications." *Ptasynski*, 462 U.S. at 84. The requirement "was not intended to hobble Congress by forcing it into nationwide enactments to deal with conditions calling for remedy only in certain regions." *Regional Rail Reorganization Act Cases*, 419 U.S at 159 (citation and internal quotation marks omitted). Thus, in the *Regional Rail Reorganization Act Cases*, this Court upheld a substantive bankruptcy law that "operate[d] only in a single statutorily defined region" because Congress was fashioning legislation "to resolve geographically isolated problems." *Id.* at 158-159, 161. And in *Ptasynski*, the Court upheld

a statute that exempted a "geographically defined class of oil" from taxation applicable to oil from other locations, finding that "identifying the class in terms of its geographic boundaries" was permissible because it was grounded in a relevant difference about the region (namely, its "unique climatic and geographic conditions"). 462 U.S. at 75, 78, 86.

Here, Congress was addressing a funding shortfall in the UST Program, and it did so by raising fees in UST districts when "the balance in the United States Trustee System Fund" for a particular fiscal year fell below a certain threshold. 2017 Act § 1004(a), 131 Stat. 1232. Imposing fees on the users of the UST program when the program's fund balance fell below a certain amount squarely addressed "the evil to be remedied." *Regional Rail Reorganization Act Cases*, 419 U.S at 161. Treating users of the UST Program as a class therefore had "a solid fiscal justification" corresponding to the relevant problem, Pet. App. 18a, and fell within the broad flexibility that the Constitution grants Congress.

3. The two courts of appeals that have held to the contrary have relied on this Court's statement in *Gibbons* that "'to survive scrutiny under the Bankruptcy Clause, a law must at least apply uniformly to a defined class of debtors,'" reasoning that the fee increase is not uniform as to "the class of debtors whose disbursements exceed $1 million." *Clinton Nurseries*, 998 F.3d at 68-69 (quoting *Gibbons*, 455 U.S. at 473) (brackets omitted); see *John Q. Hammons Fall 2006, LLC* v. *Office of the United States Trustee (In re John Q. Hammons Fall 2006, LLC)*, 15 F.4th 1011, 1024-1025 (10th Cir. 2021), petition for cert. pending, No. 21-1078 (filed Feb. 2, 2022). But those decisions misread *Gibbons*, which held that a private bill that applies "only to one debtor"

rather than a broader "class" violates the uniformity requirement because it constitutes a private bill. 455 U.S. at 470-471. The Second and Tenth Circuits did not (and could not) view the 2017 Act as a private bill; instead, they simply took the view that the "relevant class" is large debtors rather than those debtors that use the UST Program. *John Q. Hammons*, 15 F.4th at 1025; see *Clinton Nurseries*, 998 F.3d at 68. That reasoning, however, runs afoul of the Court's explanation that *Gibbons* "does not impair Congress' ability under the Bankruptcy Clause to define classes of debtors and to structure relief accordingly." 455 U.S. at 473. Here, Congress chose to define a class of debtors based on the program that supervises the administration of their cases. It was Congress's prerogative to do so.

Petitioner does not meaningfully defend those courts' reasoning. Instead, he contends (Br. 30) that Congress is empowered to address "*natural* problems"—by which he apparently means those that arise entirely independent of federal law, Br. 20-23, 30. Petitioner identifies no support for that novel proposition. And it is common to consider the effects of other federal laws as sound reasons for Congress to authorize different treatment, even in areas where this Court's review of Congress's justifications is substantially more searching than what would be appropriate here. Thus, for instance, this Court found that the statutory exclusion of women from the military draft was "justif[ied]" by another statute restricting women's participation in combat. *Rostker* v. *Goldberg*, 453 U.S. 57, 76, 79 (1981). There is no sound basis to conclude that whenever a real-world difference (here, a funding shortfall in UST districts) can be traced to a prior legislative choice, Congress loses the ability to legislate tailored solutions to the problem—such

that, for instance, the *Regional Rail Reorganization Act Cases* would have come out differently if the regional railroads' financial woes could be traced to a demanding federal regulatory regime. See 419 U.S. at 159.

Petitioner also asserts (Br. 4) that "indistinguishable debtors should not pay different fees because their bankruptcies arise in different States." But that argument cannot be reconciled with Congress's early bankruptcy enactments, which provided for precisely such variation in fees. See pp. 20-22, *supra*. Nor can it be reconciled with this Court's longstanding recognition that "the bankruptcy acts of Congress may recognize the laws of the State in certain particulars, although such recognition may lead to different results in different states." *Stellwagen* v. *Clum*, 245 U.S. 605, 613 (1918). In short, no obstacle prevented Congress from targeting a funding shortfall in the UST Program by imposing increased fees on that program's users.

4. Perhaps recognizing the obvious connection between the need to fund a bankruptcy-administration program and the imposition of user fees specific to that program, petitioner ultimately, but only briefly, contends (Br. 33) that the existence of "the BA system itself" is unconstitutional.

The Court should not address that broader question for multiple reasons. First, petitioner did not advance that claim below. See Pet. App. 36a (Quattlebaum, J., concurring in part and dissenting in part) (observing that "the constitutionality of the two types of bankruptcy systems is not before the court"). Second, the continued operation of the BA program in Alabama and North Carolina is authorized not by the 2017 Act or the quarterly-fee statute, but by a distinct set of statutory

provisions enacted at different times. See p. 5, *supra*. The validity of those distinct provisions is outside the scope of the question presented. See Pet. I; see also Sup. Ct. R. 14.1(a); *United States* v. *Palomar-Santiago*, 141 S. Ct. 1615, 1621 n.2 (2021). Third, no court has addressed the question of the constitutionality of the BA program since the 2000 Act authorized "equal" fees in the BA districts. 28 U.S.C. 1930(a)(7) (2000). This Court's practice is ordinarily to await "thorough lower court opinions to guide [its] analysis of the merits." *Zivotofsky* v. *Clinton*, 566 U.S. 189, 201 (2012); see *Lucia* v. *SEC*, 138 S. Ct. 2044, 2051 n.1 (2018). That course is particularly appropriate here given the "immense implications of venturing into a complex inquiry that could lead to the nullifying of an important feature of bankruptcies across the country that has existed for decades." *Mosaic*, 22 F.4th at 1306.

Even if the Court were to reach the question of the permissibility of two separate programs of bankruptcy administration, petitioner's cursory submission on the merits is unpersuasive. He identifies no material lack of uniformity that arose from having two programs—apart from the sometimes-differing amounts of fees for Chapter 11 debtors. Yet he acknowledges (Br. 32) that equal fees are now "mandatory in all districts" under the 2020 Act. There is accordingly no constitutional reason for the Court to invalidate the parallel programs that Congress retained upon the requests and recommendations of the Judicial Conference and members of the National Bankruptcy Review Commission. See pp. 4-5, *supra*.[5]

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[5] To the extent that petitioner's argument turns on the view that the government has "admitted" that Congress's decision to permit BA districts "was politically motivated" and driven by "regional-

D. If Unequal Fees Are Unconstitutional, Refunding The Fee Increase That Congress Imposed In The Vast Majority Of Districts Is Not The Appropriate Remedy

Even if petitioner's constitutional challenge to the disparity in quarterly fees had merit, refunding a portion of the quarterly fees paid on behalf of the estate in this case would not be the appropriate remedy. The bankruptcy court concluded that the fees petitioner owes "must be determined based on the [pre-2018] version of the statute." Pet. App. 54a. When determining the proper remedy for unconstitutionally discriminatory treatment, however, a court "must adopt the remedial course Congress likely would have chosen 'had it been apprised of the constitutional infirmity.'" *Sessions* v. *Morales-Santana*, 137 S. Ct. 1678, 1701 (2017) (quoting *Levin* v. *Commerce Energy, Inc.*, 560 U.S. 413, 427 (2010)). Congressional intent determines whether the appropriate remedy should be the "extension or invalidation of the unequally distributed benefit or burden, or some other measure." *Levin*, 560 U.S. at 426. Deciding whether to remove or extend a benefit depends on the "intensity of [Congress's] commitment to

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ism," Pet. Br. 22 & n.6, that premise is mistaken. As the government has argued in a pending court of appeals case, Congress enacted the dual system in deference to the preferences of the judges in the respective districts. See Gov't C.A. Br. at 33-42, *Acadiana Management Grp., LLC* v. *United States*, No. 2021-1941 (Fed. Cir. Nov. 5, 2021); see also pp. 3-5, *supra*. Petitioner identifies nothing in the history or purpose of the uniformity requirement that would justify stripping Congress of the ability to accommodate reasonable requests for flexibility in matters of administration. Nor is it plausible that the defense of the BA program in the 1990s by the Judicial Conference and the rejection of a proposal to eliminate the program by the National Bankruptcy Review Commission were motivated by "regionalism." Pet. Br. 22 n.6.

the residual policy" and "the degree of potential disruption of the statutory scheme that would occur by extension as opposed to abrogation.'" *Morales-Santana*, 137 S. Ct. at 1700 (citations omitted). Thus, in *Morales-Santana*, the Court declined to "extend favorable treatment" from a small group to the "substantial majority," noting that that result would transform the "exception" into the "general rule." *Id.* at 1701. And in another recent "equal-treatment case," the Court "sever[ed]" the "relatively narrow" government-debt exception to a "broad robocall restriction." *Barr* v. *American Ass'n of Political Consultants, Inc.*, 140 S. Ct. 2335, 2354, 2355 (2020).

Here, there can be little question that Congress would have chosen to extend the higher fees to the handful of BA districts rather than to lose altogether the increased fees it had directly applied within the 88 judicial districts that would account for more than 97% of the Chapter 11 filings made in 2018. See *U.S. Bankruptcy Courts—Business and Nonbusiness Cases Commenced, by Chapter of the Bankruptcy Code, During the 12-Month Period Ending December 31, 2018*, Tbl. F-2, https://www.uscourts.gov/sites/default/files/data_tables/bf_f2_1231.2018.pdf. The fee increase served an important purpose: averting a looming shortfall in the UST Fund that threatened to impose substantial financial impacts upon taxpayers. Requiring a refund for debtors in UST districts would potentially inflict on taxpayers approximately $324 million in fees that Congress unequivocally sought to impose on the users of the UST Program. That result would inappropriately "extend the special treatment Congress inadvertently afforded to creditors in the Bankruptcy Administrator districts, despite its manifest intent to raise

the fees in all districts." *Mosaic*, 22 F.4th at 1330 (Brasher, J., concurring in the result). Using that accidental "congressional generosity" to vitiate the general funding provision would convert a narrow exception "into something unanticipated and obviously undesired by the Congress." *Rogers* v. *Bellei*, 401 U.S. 815, 835 (1971).

Any doubt on that score has been dispelled by Congress's later actions. When Congress learned of the divergent implementation in the BA districts, it did not revoke the amended fee schedule in Section 1930(a)(6) or direct refunds to debtors in UST districts. Instead, it enacted clarifying legislation that specifically reaffirmed "the longstanding intention of Congress that quarterly fee requirements remain consistent across all Federal judicial districts." 2020 Act § 2(a)(4)(B), 134 Stat. 5086. Moreover, it did so while imposing fees for the largest debtors that remained substantially above the levels in place before the 2017 amendment. See § 3(d)(1), 134 Stat. 5088.[6]

In these circumstances, the remedy that Congress would have selected is unusually clear: an equal fee increase in all 94 districts, rather than no fee increase anywhere. Accordingly, the normal relief would be for the Court to invalidate the exception from the fee increase for the 6 BA districts. See *Morales-Santana*, 137 S. Ct. at 1701 ("prospectively" invalidating the exception); see

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[6] Petitioner suggests that "Congress elected against 'leveling down,'" Br. 32 (emphasis omitted), because the 2020 Act did not direct the retrospective collection of additional fees from debtors in BA districts. But the absence of a backward-looking correction indicates only that Congress saw no need for retrospective equality, not that it would prefer to issue refunds in the vast majority of districts rather than collect additional fees in a handful of them.

American Ass'n of Political Consultants, 140 S. Ct. at 2356 (same). But Congress has already solved the problem prospectively in the 2020 Act, ensuring nationwide uniformity in fees between the UST and BA districts, and applying an equal fee regime to both pending and newly filed cases. See 28 U.S.C. 1930(a)(6) and (7) (Supp. II 2020). In labeling that prospective equality a "non-remedy," Pet. Br. 31, petitioner suggests that Congress's prospective solution entitles him to broader relief for the interregnum. But that subverts the Judiciary's remedial inquiry, which seeks to provide a stopgap before Congress can act. See *Morales-Santana*, 137 S. Ct. at 1701. Here, Congress's action to narrow the size of the potential gap does not authorize the Court to invalidate the 2017 Act in a broader fashion that would contravene Congress's preferred remedy.

Petitioner contends (Br. 31) that "a prospective fix is inadequate when a party seeks redress for *past* unequal treatment." But *Morales-Santana* is to the contrary. The plaintiff there asked for a retrospective remedy: to be deemed a citizen from birth as redress for the past unequal treatment of his father. 137 S. Ct. at 1698. But this Court awarded prospective relief only, conferring no benefit on Morales-Santana for his meritorious constitutional challenge. See *id.* at 1701; see also, *e.g.*, *Comptroller of the Treasury of Maryland* v. *Wynne*, 575 U.S. 542, 569 (2015) (allowing the State the flexibility to cure an impermissibly unequal tax by implementing a remedy "that would not help the [challengers] at all") (citation omitted). The cases that petitioner cites (Br. 31) about granting a remedy "in the relevant time period" are inapposite, and were not based on a distinction between "declaratory or injunctive relief" and "monetary damages." Instead, those cases hold that,

where a State provides no pre-collection opportunity to challenge a tax, due-process principles require "meaningful backward-looking relief"; but where a "predeprivation hearing" is available, purely forward-looking relief is permissible. *Harper* v. *Virginia Dep't of Taxation*, 509 U.S. 86, 101 (1993) (citations omitted); see *McKesson Corp.* v. *Division of Alcoholic Beverages & Tobacco*, 496 U.S. 18, 31 (1990). Those principles were fully satisfied here: Petitioner had a meaningful opportunity to challenge his user fees before paying them. In fact, he raised his constitutional challenge during the pendency of his bankruptcy case, see Pet. App. 43a, 47a, 54a-55a; pp. 10-11, *supra*, and stopped paying quarterly fees for a two-year period while the dispute was pending below. Nor does this case involve the kind of "comparative economic disadvantage" that concerned this Court in cases involving taxation of commercial activities. *McKesson*, 496 U.S. at 43; see, *e.g.*, *Iowa-Des Moines Nat'l Bank* v. *Bennett*, 284 U.S. 239 (1931). Petitioner does not compete against other debtors undergoing bankruptcy and so suffers no competitive disadvantage from any difference in fees. In short, no doctrine forecloses the normal operation of this Court's remedial inquiry.[7]

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[7] If some retrospective elimination of the disparity were required, the appropriate course would be to direct the Judicial Conference to increase fees on debtors in BA districts for the relevant period. See *Mosaic*, 22 F.4th at 1330 (Brasher, J., concurring in the result). Such a remedy could be implemented consistent with the due-process rights of debtors in BA districts, see *McKesson*, 496 U.S. at 41 n.23, particularly because fees in the BA districts were already supposed to be "equal to those imposed" in UST districts, 28 U.S.C. 1930(a)(7) (2018). Although petitioner resists such a remedy based on potential practical difficulties, see Pet. Br. 32, the Court's decision in *McKesson* (on which petitioner relies) recognized that, even

Where the remedy that Congress would have chosen for a constitutional violation is clear, "a court cannot 'use its remedial powers to circumvent the intent of the legislature.'" *Ayotte* v. *Planned Parenthood*, 546 U.S. 320, 330 (2006) (citation omitted). The Court should reject petitioner's request to adopt a remedy that is "demonstrably at odds with Congress's intent." *Mosaic*, 22 F.4th at 1328 (Brasher, J., concurring in the result).

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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if it is not "perfectly successful," "a good-faith effort to administer and enforce" a retroactive collection from those who made lower payments can "constitute adequate relief" for differential treatment. 496 U.S. at 41 n.23. That principle is particularly salient here, where the increased fees would need to be sought from only a miniscule fraction of Chapter 11 debtors (*i.e.*, the largest debtors among fewer than 3% of Chapter 11 debtors nationwide).

APPENDIX

1. U.S. Const. Art. I, § 8 provides in pertinent part:

The Congress shall have Power * * *

* * * * *

[4] To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

* * * * *

[9] To constitute Tribunals inferior to the supreme Court;

* * * * *

[18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

2. 28 U.S.C. 1930(a) (2012) provided in pertinent 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:

* * * * *

(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 un-

der 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 de-

posited as offsetting receipts to the fund established under section 1931 of this title and shall remain available until expended.

* * * * *

3. 28 U.S.C. 1930(a) (2018) provided in pertinent 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:

* * * * *

(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. * * *

(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.

* * * * *

4. Bankruptcy Administration Improvement Act of 2020, Pub. L. No. 116-325, 134 Stat. 5086, provides in pertinent part:

* * * * *

SEC. 2. FINDINGS AND PURPOSE.

(a) FINDINGS.—Congress finds the following:

(1) Because of the importance of the goal that the bankruptcy system is self-funded, at no cost to the taxpayer, Congress has closely monitored the funding needs of the bankruptcy system, including by requiring periodic reporting by the Attorney General regarding the United States Trustee System Fund.

(2) Congress has amended the various bankruptcy fees as necessary to ensure that the bankruptcy system remains self-supporting, while also fairly allocating the costs of the system among those who use the system.

(3) Because the bankruptcy system is interconnected, the result has been a system of fees, including filing fees, quarterly fees in chapter 11 cases, and other fees, that together fund the courts, judges, United States trustees, and chapter 7 case trustees necessary for the bankruptcy system to function.

(4) This Act and the amendments made by this Act—

(A) ensure adequate funding of the United States trustees, supports the preservation of existing bankruptcy judgeships that are urgently needed to handle existing and anticipated increases in business and consumer caseloads, and provides long-overdue additional compensation for chapter 7 case trustees whose caseloads include chapter 11 reorganization cases that were converted to chapter 7 liquidation cases; and

(B) confirm the longstanding intention of Congress that quarterly fee requirements remain consistent across all Federal judicial districts.

(b) PURPOSE.—The purpose of this Act and the amendments made by this Act is to further the longstanding goal of Congress of ensuring that the bankruptcy system is self-funded, at no cost to the taxpayer.

SEC. 3. UNITED STATES TRUSTEE SYSTEM FUND; BANKRUPTCY FEES.

(a) DEPOSITS OF CERTAIN FEES FOR FISCAL YEARS 2021 THROUGH 2026.—Notwithstanding section 589a(b) of title 28, United States Code, for each of fiscal years 2021 through 2026—

(1) the fees collected under section 1930(a)(6) of such title, less the amount specified in subparagraph (2), shall be deposited as specified in subsection (b); and

(2) $5,400,000 of the fees collected under section 1930(a)(6) of such title shall be deposited in the general fund of the Treasury.

(b) UNITED STATES TRUSTEE SYSTEM FUND.—Section 589a of title 28, United States Code, is amended by adding at the end the following:

"(f)(1) During each of fiscal years 2021 through 2026 and notwithstanding subsections (b) and (c), the fees collected under section 1930(a)(6), less the amount specified in paragraph (2), shall be deposited as follows, in the following order:

"(A) First, the amounts specified in the Department of Justice appropriations for that fiscal year, shall be deposited as discretionary offsetting collections to the "United States Trustee System Fund", pursuant to subsection (a), to remain available until expended.

"(B) Second, the amounts determined annually by the Director of the Administrative Office of the United States Courts that are necessary to reimburse the judiciary for the costs of administering payments under section 330(e) of title 11, shall be deposited as mandatory offsetting collections to the 'United States Trustee System Fund', and transferred and deposited into the special fund established under section 1931(a), and notwithstanding subsection (a), shall be available for expenditure without further appropriation.

"(C) Third, the amounts determined annually by the Director of the Administrative Office of the United States Courts that are necessary to pay trustee compensation authorized by section 330(e)(2) of title 11, shall be deposited as mandatory offsetting collections to the 'United States Trustee System Fund', and transferred and deposited into the Chapter 7 Trustee Fund established under section 330(e)

of title 11 for payment to trustees serving in cases under chapter 7 of title 11 (in addition to the amounts paid under section 330(b) of title 11), in accordance with that section, and notwithstanding subsection (a), shall be available for expenditure without further appropriation.

"(D) Fourth, any remaining amounts shall be deposited as discretionary offsetting collections to the 'United States Trustee System Fund', to remain available until expended.

"(2) Notwithstanding subsection (b), for each of fiscal years 2021 through 2026, $5,400,000 of the fees collected under section 1930(a)(6) shall be deposited in the general fund of the Treasury.".

(c) COMPENSATION OF OFFICERS.—Section 330 of title 11, United States Code, is amended by adding at the end the following:

"(e)(1) There is established a fund in the Treasury of the United States, to be known as the 'Chapter 7 Trustee Fund', which shall be administered by the Director of the Administrative Office of the United States Courts.

"(2) Deposits into the Chapter 7 Trustee Fund under section 589a(f)(1)(C) of title 28 shall be available until expended for the purposes described in paragraph (3).

"(3) For fiscal years 2021 through 2026, the Chapter 7 Trustee Fund shall be available to pay the trustee serving in a case that is filed under chapter 7 or a case that is converted to a chapter 7 case in the most recent fiscal year (referred to in this subsection as a 'chapter 7 case') the amount described in paragraph (4) for the

chapter 7 case in which the trustee has rendered services in that fiscal year.

"(4) The amount described in this paragraph shall be the lesser of—

"(A) $60; or

"(B) a pro rata share, for each chapter 7 case, of the fees collected under section 1930(a)(6) of title 28 and deposited to the United States Trustee System Fund under section 589a(f)(1) of title 28, less the amounts specified in section 589a(f)(1)(A) and (B) of title 28.

"(5) The payment received by a trustee under paragraph (3) shall be paid in addition to the amount paid under subsection (b).

"(6) Not later than September 30, 2021, the Director of the Administrative Office of the United States Courts shall promulgate regulations for the administration of this subsection.".

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

(1) by striking paragraph (6)(B) and inserting the following:

"(B)(i) During the 5-year period beginning on January 1, 2021, 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 open and reopened case under chapter 11 of title 11, other than under subchapter V, for each quarter (including any fraction thereof) until the case is closed, converted, or dismissed, whichever occurs first.

"(ii) The fee shall be the greater of—

"(I) 0.4 percent of disbursements or $250 for each quarter in which disbursements total less than $1,000,000; and

"(II) 0.8 percent of disbursements but not more than $250,000 for each quarter in which disbursements total at least $1,000,000.

"(iii) The fee shall be payable on the last day of the calendar month following the calendar quarter for which the fee is owed."; and

(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.—

(A) COMPENSATION OF OFFICERS.—The amendments made by subsection (c) shall apply to any case filed on or after the date of enactment of this Act—

(i) under chapter 7 of title 11, United States Code; or

(ii)(I) under chapter 11, 12, or 13 of that title; and

(II) converted to a chapter 7 case under that title.

(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.

* * * * *