No. 22-1238

# In the Supreme Court of the United States

OFFICE OF THE UNITED STATES TRUSTEE, PETITIONER,

*v.*

JOHN Q. HAMMONS FALL 2006, LLC, ET AL.,

RESPONDENTS.

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

## BRIEF OF *AMICUS CURIAE* THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA IN SUPPORT OF RESPONDENTS


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## INTEREST OF *AMICUS CURIAE*

The Chamber of Commerce of the United States of America is the world's largest business federation.[1] It represents approximately 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus briefs in cases, like this one, that raise issues of concern to the Nation's business community.

The Chamber has a strong interest in this case, as businesses across industries are routinely involved in bankruptcies—both as debtors and creditors. America's bankruptcy system plays a vital role in maintaining the long-term health of the Nation's economy. And when businesses are subject to unconstitutional laws that cause monetary harm, it is essential that courts supply remedies that comport with the Constitution and this Court's precedents, thereby providing stability and predictability for the Nation's business community.

## SUMMARY OF ARGUMENT

The bankruptcy system is essential to American businesses and to the workers and communities that rely on those businesses to provide jobs and opportunity. This is especially true of Chapter 11, which allows failing businesses to reorganize into once-again successful

[1] Pursuant to this Court's Rule 37.6, *amicus curiae* affirms that no counsel for a party authored this brief in whole or in part or made a monetary contribution intended to fund the preparation or submission of this brief, and that no person other than *amicus curiae*, its members, and its counsel made such a monetary contribution.

companies. Chapter 11 "create[s] value for a business's creditors, workers, investors, and communities." Elizabeth Warren & Jay L. Westbrook, *The Success of Chapter 11: A Challenge to the Critics*, 107 Mich. L. Rev. 603, 604 (2009). The American business community accordingly depends on Congress to establish uniform bankruptcy laws that treat businesses fairly and equally.

This Court has already held that the Bankruptcy Judgeship Act of 2017 did not treat businesses fairly and equally. That Act violated the Bankruptcy Clause of the Constitution because debtors in the United States Trustee ("Trustee") Program were charged higher fees than debtors in the Bankruptcy Administrator ("BA") Program. *Siegel v. Fitzgerald*, 596 U.S. 464, 468 (2022).

The question now is: what is the remedy for that past constitutional violation? The only sound, workable, and constitutionally permissible remedy is the remedy that every court to have considered this question has chosen: a full refund of all unconstitutional fees. Specifically, Respondents should have been charged fees under the fee statute in place before the Bankruptcy Judgeship Act of 2017, rather than under the unconstitutional fee structure introduced in that Act. Thus, for businesses, like Respondents, that have already paid the unconstitutional fees, the United States should issue a refund for the difference between what was actually paid and what was constitutionally owed.

The Government resists this straightforward remedy in favor of two other proposed remedies—a purely prospective remedy that is no remedy at all, and a fallback remedy that is highly unworkable at best. The Government's preferred remedy is for this Court to ignore the unequal treatment already inflicted on American businesses and merely "mandate [] equal, increased fees in [Trustee] and BA districts *going forward*." Petitioner's

Br. 11 (emphasis added). That prospective remedy does nothing to equalize the treatment of Chapter 11 debtors in Trustee and BA districts who have already paid their fees. It instead leaves debtors with no relief for excessive, non-uniform fees that this Court has already held violate the Bankruptcy Clause of the Constitution. In short, it is a remedy in name only and has no basis in this Court's precedent.

Alternatively, the Government argues that if backward-looking relief is needed (and it is), Respondents' fees should remain in the Government's coffers, and fees in BA districts should be retrospectively raised on non-parties. But that remedy would sow utter chaos into America's bankruptcy courts. It would entail retroactively increasing fees on non-parties—Chapter 11 debtors in BA districts—many of whose cases are now permanently closed. Reopening closed cases to collect enormous fees from debtors (and potentially creditors) would be wildly impractical, if not impossible. It would introduce confusion and disorder into bankruptcy courts in BA districts—affecting debtors and creditors alike—and leave debtors in Trustee districts, like Respondents here, with no relief from the Government's unconstitutional fees.

## ARGUMENT

### I. The Appropriate Remedy Must Include Retrospective Relief to Respondents and Other Businesses Who Paid Unconstitutional Fees.

#### A. This Court's precedents require equalizing treatment, which can only be accomplished through retrospective relief.

This Court has repeatedly held that the only way to remedy claims of unequal treatment in violation of the Constitution is to equalize treatment. *See, e.g.*, *Iowa-Des Moines Nat'l Bank v. Bennett*, 284 U.S. 239, 247 (1931).

This "can be accomplished by withdrawal of benefits from the favored class as well as by extension of benefits to the excluded class." *Heckler v. Matthews*, 465 U.S. 728, 740 (1984). But the lodestar is fashioning a remedy that comports with due process and actually equalizes treatment. *McKesson Corp. v. Div. of Alcoholic Beverages & Tobacco, Dep't of Bus. Regul. of Fla.*, 496 U.S. 18, 39-40 (1990). When the harm has occurred in the past and resulted in the deprivation of property—such as unlawful collection of taxes—this Court has therefore consistently chosen to remedy that violation with retrospective relief in the form of a refund. *See, e.g.*, *id. at* 22; *Mont. Nat'l Bank v. Yellowstone Cnty*, 276 U.S. 499, 504-05 (1928); *Bennett*, 284 U.S. at 247.

*McKesson* exemplifies this Court's remedial approach when entities have paid money to the government in violation of the Constitution. In *McKesson*, the Florida Supreme Court had held that Florida's liquor excise tax violated the Commerce Clause of the U.S. Constitution but denied the petitioner a tax refund—instead awarding purely prospective relief in the form of enjoining the State from giving effect to its unconstitutional tax preferences in the future. 496 U.S. at 25-26. This Court reversed. It held that the State was obligated "to provide meaningful *backward-looking relief* to rectify any unconstitutional deprivation." *Id.* at 31 (emphasis added). That could be accomplished in one of two ways: Either the State could issue a tax refund to the petitioner, or "the State may assess and collect back taxes from petitioner's competitors who benefited from the rate reductions during the contested tax period, calibrating the retroactive assessment to create *in hindsight* a nondiscriminatory scheme." *Id.* at 40 (emphasis added). And *McKesson* is no anomaly. That decision relied on a series of earlier cases, including *Montana National Bank* and *Bennett*,

both of which required retrospective relief, and its holding requiring retrospective relief has been repeatedly affirmed in the years since. *See, e.g.*, *Reich v. Collins*, 513 U.S. 106, 113-14 (1994).

The Government's only response is to argue that *McKesson* is essentially cabined to its facts—that its core principle is applicable *only* when a pre-deprivation hearing is unavailable. Petitioner's Br. at 31. That attempted distinction has no basis in any of this Court's decisions. Tellingly, neither *Bennett* nor *Montana National Bank*, upon which *McKesson* relied, suggested that the existence of a pre-deprivation remedy would have anything to do with the remedial analysis. *See Bennett*, 284 U.S. at 247; *Mont. Nat'l Bank*, 276 U.S. at 504-505. Indeed, *McKesson* itself characterized *Montana National Bank*'s core holding this way: "one forced to pay a discriminatorily high tax in violation of federal law is entitled, in addition to prospective relief, to a refund of the excess tax paid—at least unless the disparity is removed in some other manner." *McKesson*, 496 U.S. at 35. And it characterized the core remedial holding and rationale in *Bennett* in precisely the same way. *Id.* at 36. Neither of these decisions so much as hint at the remedial question turning on the opportunity for pre-deprivation review.

And post-*McKesson* cases firmly establish that any remedy for an economic injury cannot be purely prospective, as the Government proposes. For example, in *Reich*, this Court held that "meaningful backward-looking relief" was required even where the tax scheme in question *did* provide a pre-deprivation remedy procedure. 513 U.S. at 113-14. The point is that the availability of retrospective relief does not turn on the existence of a pre-deprivation remedy because "a denial … of a recovery of taxes exacted in violation of the laws or Constitution of

the United States by compulsion is itself in contravention of the Fourteenth Amendment." *Reich*, 513 U.S. at 109 (quoting *Carpenter v. Shaw*, 280 U.S. 363, 369 (1930)); *McKesson*, 496 U.S. at 34 (same).

This Court's later cases further confirm this remedial point. In *Newsweek, Inc. v. Florida Department of Revenue*, this Court soundly rejected the very interpretation of *McKesson* that the Government advances here. 522 U.S. 442, 443 (1998). There, Newsweek sought a refund for unconstitutionally collected taxes, relying on *McKesson*. *Id.* The Florida District Court of Appeal rejected Newsweek's argument, holding that "*McKesson* is distinguishable because that holding was expressly predicated upon the fact that the taxpayer had no meaningful predeprivation remedy." *Id.* This Court reversed, explaining that the Florida court's decision "failed to consider our decision in *Reich*." *Id.* This Court further explained that a state cannot provide a taxpayer with a means to dispute taxes post-deprivation, "and then declare, only after the disputed taxes have been paid, that no such remedy exists." *Id.* (quoting *Reich*, 513 U.S. at 111).

In short, this Court has time and again made clear that mere declaratory relief is not enough to remedy an unconstitutional economic deprivation. The Government has not cited a single case where this Court has approved mere prospective relief for unconstitutionally collected taxes or fees on the grounds that a pre-deprivation remedy was available. Nor has the Government cited a single case supporting a purely prospective remedy for *any* economic injury. This Court has only ever sanctioned meaningful backward-looking relief as a remedy for unconstitutionally collected taxes or fees. And that makes sense, as "[i]njunctive or declaratory relief is useless to

a person who has already been injured." *Butz v. Economou*, 438 U.S. 478, 504 (1978).

### B. Cases where there is no monetary injury cannot support a purely prospective remedy in a case about the payment of unconstitutional fees.

The Government would deny businesses across the country a refund for millions of dollars paid in unconstitutional fees because, according to the Government, "it is not true that [this Court's] jurisprudence ordinarily supplies a remedy in civil damages for every legal wrong." Petitioner's Br. at 21 (citing *Nixon v. Fitzgerald*, 457 U.S. 731, 754 n.37 (1982)). That is neither here nor there. No one doubts that some constitutional wrongs are remedied without monetary awards. But the fact that *some* constitutional violations do not require a monetary remedy does not mean that *this* violation should be left without a monetary remedy. Tellingly, the Government cannot cite a single case denying a retrospective monetary award where, as here, there is a cause of action and the asserted wrong involves a past deprivation of property in violation of the Constitution.

Without any cases involving monetary injuries supporting its position, the Government relies heavily on two recent cases that imposed purely prospective remedies on very different facts. First, the Government relies on *Sessions v. Morales-Santana*, 582 U.S. 47 (2017). There, the respondent challenged, on equal-protection grounds, the Immigration and Nationality Act, which provides a framework for obtaining U.S. citizenship for a child born abroad, when only one parent is a U.S. citizen. *Id.* at 51-52. The Act required the U.S.-citizen parent to have ten years of physical presence in the United States prior to the child's birth, but Congress created an exception for unwed U.S.-citizen mothers, whose citizenship could be

transmitted to the child if the mother had lived in the United States for only one year before the child's birth. The remedy that Morales-Santana sought was prospective in nature: U.S. citizenship. But the Court denied that remedy and instead removed the exception granted to unwed mothers and imposed the general 10-year-presence rule on all parents. *Id.* at 72.

Unlike here, however, prospective injunctive relief made perfect sense in *Morales-Santana* because the respondent himself was only requesting forward-looking relief. He wanted to become a U.S. citizen. The Court did not order the remedy that Morales-Santana wanted, but everyone agreed that the appropriate remedy was prospective in nature—indeed, it had to be given the nature of the claim, which is not amenable to monetary damages or a refund. Moreover, the remedy corrected the sex-based unequal treatment moving forward. Here, by contrast, the Government's preferred remedy would have absolutely no effect on the unequal treatment and would fly in the face of Respondents' request for retrospective relief consistent with the case law set forth in section I.A.

Second, the Government relies on *Barr v. American Association of Political Consultants, Inc.*, 140 S. Ct. 2335, 2343 (2020) (plurality opinion). But that case also does not support purely prospective relief that would leave American businesses without a meaningful remedy for the payment of unconstitutional fees. *Barr* held that a narrow content-based exception to an otherwise blanket prohibition on "robocalls" for "robocalls that are made to collect debts owed to or guaranteed by the Federal Government" violated the First Amendment. *Id.* The case did not involve monetary payments, monetary damages, or unconstitutional fees, and, as in *Morales-Santana*, the requested remedy was drastic and largely prospective: invalidating wholesale a federal law that had been on the books for nearly three decades. The Court accordingly

chose to remedy the constitutional violation by invalidating the exception for robocalls made to collect debts owed to the federal government. *Id.* at 2356.

As in *Morales-Santana*, prospective relief made sense in *Barr* because the plaintiff in that case reasonably sought only forward-looking relief. The American Association of Political Consultants wanted to be able to make robocalls for their own political and business purposes given that others could make robocalls for the purpose of collecting debts. *Id.* at 2343. There was no meaningful retrospective remedy to be had because there was no direct monetary injury (as there is with the payment of unconstitutional fees).

The fact that in some cases involving the violation of constitutional rights the remedy is purely prospective does not mean that this Court is free to abandon retrospective relief when such relief is requested, available, and would equalize past unconstitutional treatment. There is no basis to depart from the *McKesson* line of cases requiring retrospective relief in cases involving the payment of funds demanded by a state actor in violation of the Constitution in favor of cases that are so factually far afield that even the plaintiffs in those cases did not request retrospective remedies.

### C. Supposed congressional intent does not dislodge this Court's precedents outlining permissible remedial solutions.

The Government's insistence that this Court depart from its precedent and leave American businesses without a meaningful remedy is largely driven by its argument that this is what Congress wanted. Petitioner's Br. at 14-19. But even assuming that Congressional intent were the dispositive factor here, the Government's argument is incorrect. In assessing congressional intent, what counts is "the legislature's intent, *as revealed by the*

*statute at hand*," not what Congress has done since passing the statute. Br. in Opposition at 22 (quoting *Morales-Santana*, 582 U.S. at 73 (emphasis added)). Section 1930(a)(6) reveals no congressional intent regarding BA districts because it does not mention BA districts. It likewise provides no insight into how to remedy constitutional harm inflicted on debtors in Trustee districts—unless a congressional desire to charge those debtors more (in violation of the Constitution) is evidence that the Constitution provides those same debtors no remedy for Congress's actions. "The simple reality, as [this Court] assess[es] the legislative developments, is that Congress has competing interests," *Barr*, 140 S. Ct. at 2348 (plurality opinion), and there is no reason to believe that Congress intended to weigh those competing interests in a way that would require American businesses to pay millions of dollars in unconstitutional fees.

Even if Congress had intended that result, Congress may not establish remedies that run afoul of the Constitution or this Court's precedents. *See id.* at 2354 (explaining that "there can be due process, fair notice, or other independent constitutional barriers to extension of benefits or burdens"). Due process does not allow the Government to collect unconstitutional fees and then block Respondents from receiving meaningful backward-looking relief, as this Court has stressed repeatedly in the tax context. *See Reich*, 513 U.S. at 111; *McKesson*, 496 U.S. at 33-34; *Carpenter*, 280 U.S. at 377-79. It is not enough for the Government to say that Congress would prefer to spend less money to solve the problem. *See Stern v. Marshall*, 564 U.S. 462, 501 (2011) ("[T]he fact that a given law or procedure is efficient, convenient, and useful in facilitating functions of government, standing alone, will not save it if it is contrary to the Constitution." (citation omitted)). Congress might often prefer to spend less

money to fix a problem. But mere declaratory relief "does not cure the mischief" of Congress's unconstitutional fee structure. *See Mont. Nat'l Bank*, 276 U.S. at 504. When the Government violates the Constitution, supposed congressional hesitancy to fund a remedy cannot serve as a get-out-of-jail free card for the Government.

In any event, in emphasizing congressional intent as the appropriate remedial analysis, the Government ignores the most analogous cases to this dispute—cases involving the past collection of unconstitutional taxes and fees—wherein congressional intent is *not* mentioned in this Court's remedial analyses. *See, e.g.*, *id.* at 504-05; *Bennett*, 284 U.S. at 247. It is not necessary to ascertain congressional intent to remedy the deprivation of property, when the simple and obvious solution is to return what was taken. The Government likewise ignores the fact that courts generally choose remedies that "create incentives to raise [constitutional] challenges." *Lucia v. SEC*, 138 S. Ct. 2044, 2055 n.5 (2018) (cleaned up). Here, the Government's preferred remedy offers no such incentive whatsoever, as the Government's so-called remedy does not even alter the status quo moving forward.

## II. Retrospectively Raising Fees on Debtors in BA Districts Would Be Unlawful and Practically Impossible to Achieve.

Not only do this Court's precedents instruct that there must be a retrospective remedy, but they instruct that the appropriate remedy is to level up. That is, the remedy should equalize treatment between debtors in Trustee districts and debtors in BA districts by refunding all unconstitutional fees paid by debtors in Trustee districts.

The Government disagrees. It argues that, if retrospective relief is required, this Court should level down by ordering the Judicial Conference to retrospectively *increase* fees on debtors in BA districts—fees that have long been paid—even though some of those debtors may no longer exist. This is contrary to precedent, unworkable, and would violate due process.

### A. This Court has consistently employed level-up remedies to relieve past economic harm.

Even as this Court has instructed that both level-up or level-down remedies are generally available to remedy unequal treatment, it has repeatedly emphasized its strong preference for level-up remedies. *Morales-Santana*, 582 U.S. at 74 ("Ordinarily, we have reiterated, 'extension, rather than nullification, is the proper course.'" (quoting *Califano v. Westcott*, 433 U.S. 76, 89 (1979))); *Barr*, 140 S. Ct. at 2354 (plurality opinion) (same). This is especially true when the dispute involves a harm imposed in the past in the form of deprivation of property or the collection of unconstitutional fees or taxes. *See McKesson,* 496 U.S. at 22; *Bennett*, 284 U.S. at 247; *Mont. Nat'l Bank*, 276 U.S. at 504.

In that context, this Court has repeatedly held that a level-down remedy is appropriate—assuming it comports with other constitutional restrictions—*only* if the Government has taken the onus to raise the taxes or fees in question to equalize treatment. *See Bennett*, 284 U.S. at 247 (explaining that "all ground for a claim for refund would have fallen if the state, promptly upon discovery of the discrimination, had removed it by collecting the additional taxes from the favored competitors," but "it is well settled" that a taxpayer subjected to discriminatory taxation "cannot be required himself to assume the burden of seeking an increase of the taxes which the others should have

paid"); *Hillsborough Twp. v. Cromwell*, 326 U.S. 620, 623 (1946) (same); *Allegheny Pittsburgh Coal Co. v. Cnty. Comm'n of Webster Cnty.*, 488 U.S. 336, 346 (1989) ("A taxpayer in this situation may not be remitted by the State to the remedy of seeking to have the assessments of the undervalued property raised.").

Leveling up has also been the Court's clear preference when federal financial assistance benefits are at stake—another context where the unequal treatment results in economic harm and the appropriate remedy is monetary in nature. *Morales-Santana*, 582 U.S. at 74 (noting that federal financial benefits cases "[i]llustrat[e]" that "[o]rdinarily" leveling up "is the proper course") (quoting *Westcott*, 433 U.S. at 89) (citing *Califano v. Goldfarb*, 430 U.S. 199, 202-04, 213-17 (1977) (plurality opinion) (survivors' benefits); *Jimenez v. Weinberger*, 417 U.S. 628, 630-31 & n.2, 637-38 (1974) (disability benefits); *Dep't of Agric. v. Moreno*, 413 U.S. 528, 529-30, 538 (1973) (food stamps); and *Frontiero v. Richardson*, 411 U.S. 677, 678-79 & n.2, 691 & n.25 (1973) (plurality opinion) (military spousal benefits))). The Government has not offered a single case where this Court has ordered a level-down remedy for a monetary injury that occurred in the past.[2]

The Government's cases are simply inapposite. In *Morales-Santana*, the Court stressed that "[a]lthough the preferred rule in the typical case is to extend favorable

[2] There have been several cases involving monetary harm in which this Court has declined to choose a remedy, as this Court typically defers to state courts on remedial questions that implicate state law. *Levin v. Com. Energy, Inc.* 560 U.S. 413, 427 (2010) (collecting cases). This may be true where this Court reviews state court judgments on the constitutionality of state tax measures. *See id.* But the case at hand does not implicate any state law or interest. Moreover, in each of these cases, a level-down remedy was theoretically viable. Not so here.

treatment, *this is hardly the typical case*." *Id. at* 77 (emphasis added) (citation omitted). *Morales-Santana* was not "typical," because leveling up—the extension of favorable treatment—would have turned "special treatment" into "the general rule, no longer an exception." *Id.* In *Barr*, this Court reiterated its "preference for extension rather than nullification," but the Court simply severed the government-debt exception because it was "a relatively narrow exception to the broad robocall restriction." *Barr*, 140 S. Ct. at 2354-55 (plurality opinion). That narrow exception was a recently enacted amendment to a statute that had been on the books for decades.

Here, in contrast, there is no general rule and no exception. No class receives the benefit of an exemption from general rules that others must follow. The Act in question—the 2017 Amendment of Section 1930(a)(6)—did not confer any benefits at all. The Act *raised* fees on chapter 11 debtors in the Trustee program and did *nothing* to the BA program. Section 1930(a)(6) creates no exception—only a general rule. It is absurd to speak of a statute creating a "benefit" for a favored class when the statute is utterly silent as to that class.

Here, it is "not material" that "the [Government] may still have power to equalize the treatment" by ordering that debtors in BA districts to pay higher fees, because the Government has not done so. *Bennett*, 284 U.S. at 247.[3] The Respondents' "rights were violated, and the cause[] of action arose," when the Government

[3] In *Welsh v. United States*, Justice Harlan noted in his concurrence that the preference for leveling up in *Bennett* was "[b]ased on the impracticality" of the only level-down remedy available. 398 U.S. 333, 362 n.15 (1970) (Harlan, J., concurring). This concern is far more pronounced in the context of bankruptcy fees, as the bankrupt entity may no longer exist, and even if it does, it may no longer be under the supervision of the bankruptcy court.

collected substantially lower fees from debtors in BA districts. *See id.* Because the debtor "cannot be required himself to assume the burden of seeking an increase of the [fees] which the others should have paid," Respondents are entitled to a refund. *See id.*

### B. Collecting fees would cause serious harm to debtors and creditors.

Leveling down by ordering the Judicial Conference to retrospectively raise fees that have already been paid would sow chaos in bankruptcy courts—causing enormous harm to debtors and creditors. It would also entangle the Government in years of protracted and costly litigation. It would require reopening previously closed Chapter 11 cases (for debtors who are no longer under the supervision of the bankruptcy court) and imposing new, substantially increased fees on former debtors' estates. But some, or possibly many, of those bankruptcies may have failed, their cases being converted to Chapter 7 or dismissed altogether. And even for the cases that remain open, collecting fee increases of over 800% would cause serious harm to businesses, their employees, and the communities that depend on them.

These debtors and creditors would have long devised a reorganization plan that would have taken into account fees owed to the Administrator. And many others besides debtors and creditors—including lawyers, financial advisors, restructuring consultants, and investment bankers—would have relied on the known Administrator's fees, as those fees would factor into the feasibility of the reorganization plan. Retrospectively recharging fees (increased over 800%) that have already been paid could be catastrophic for these bankruptcies. It would potentially derail Chapter 11 reorganizations into Chapter 7 liquidations, harming creditors and debtors, as well as anyone who depends on the continued existence of the bankrupt

entity. This administrative quagmire would also instigate endless litigation.[4]

The Government suggests that a level-up remedy would somehow be even more difficult to achieve, as affected debtors in Trustee districts might likewise no longer exist. But this is a red herring. If this Court orders the level-up remedy of a refund, the Government will not be tasked with identifying and tracking down all similarly situated debtors in Trustee districts to hand out refunds. Rather, any debtors still in existence and entitled to relief would be able to move for relief themselves. Unlike with a level-down remedy, with a level-up remedy there is a built-in incentive for affected businesses to come forward and be made whole. This incentive necessarily makes the remedy orderly and negates any need to compel the Government or anyone else to "assume the burden of seeking an increase of the [fees] which the others should have paid." *Bennett*, 284 U.S. at 247.

In sum, the Government's proposed remedies are out of step with this Court's precedents and terrible for debtors and creditors alike. The Government's first "remedy" is for this Court to declare what Congress has already decreed—that is, to do nothing whatsoever. The Government's second choice is for this Court to sow confusion and disorder into bankruptcy proceedings. Neither course is

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[4] For example, several debtors mounted due process challenges to the 2017 Amendment on retroactivity grounds, as the Amendment imposed significant fee increases even after debtors' plans were in place. None of those challenges prevailed. *In re John Q. Hammons Fall 2006*, 15 F.4th 1011, 1020 (10th Cir. 2021), *vacated*, 142 S. Ct. 2810; *In re Circuit City Stores, Inc.*, 996 F.3d 156, 169 (4th Cir. 2021), *rev'd and remanded*, 596 U.S. 464; *In re Buffets LLC.,* 979 F.3d 366, 375 (5th Cir. 2020), *abrogated by Siegel*, 596 U.S. at 480. But here, challengers would have much stronger due process arguments, as the retroactively raised fees would have already been paid.

appropriate. The only sensible solution is to provide a real remedy. Respectfully, the Government owes Respondents a refund.

## CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted.

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