No. 22-772

IN THE

Supreme Court of the United States

ULTRA PETROLEUM CORP., ET AL.,

Petitioners,

v.

AD HOC COMMITTEE OF OPCO UNSECURED CREDITORS, ET AL.,

Respondents.

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Respondents loaned Petitioners $1.46 billion via long-term, fixed-rate notes. If Petitioners repaid principal before maturity, they could owe damages, called a Make-Whole Amount. And if amounts were not paid when due, Petitioners could owe interest, at the contract default rate and running from the due date. Petitioners' bankruptcy accelerated the notes, and although Petitioners became solvent during bankruptcy, they refused to pay Respondents anything except principal and a nominal amount of post-petition interest, choosing instead to return capital to equity holders. In step with all circuits addressing the question, the Fifth Circuit held that the common-law Solvent-Debtor Rule survived the enactment of every bankruptcy law and requires solvent debtors, before distributing value to their equity holders, to pay creditors everything they contracted to pay. The question the petition presents is:

1. Whether solvent debtors must pay Make-Whole Amounts and post-petition interest at the contract default rate.

Although the Court should deny the petition, if the Court grants, it should answer two questions that are intertwined with the question the petition presents.

2. Whether the court of appeals erred in concluding that the Make-Whole Amount is unmatured interest or its economic equivalent, disallowable under 11 U.S.C. § 502(b)(2).
3. Whether a creditor whose claim is partially disallowed upon confirmation of a plan of reorganization is unimpaired for purposes of 11 U.S.C. § 1124(1) and ineligible to vote on the plan.

CORPORATE DISCLOSURE STATEMENTS

The Respondents filing this brief in opposition are (1) the twenty-one OpCo Noteholders, who were appellees in the court of appeals, and (2) Allstate Life Insurance Company and Wilton Reassurance Life Company of New York, as successor to Allstate Life Insurance Company of New York, who were appellees in the court of appeals. Pursuant to Rule 29.6, Respondents state as follows:

<u>Allianz Life Insurance Company of North America</u> is a wholly owned subsidiary of Allianz of America, Inc., which in turn is a wholly owned subsidiary of Allianz SE. Allianz SE is a publicly listed German corporation. No publicly held corporation owns 10% or more of Allianz SE's stock.

<u>Allstate Life Insurance Company</u> is an Illinois company, whose ultimate parent company at the time of the filing of this suit was The Allstate Corporation, which is a Delaware corporation. The stock of The Allstate Corporation is publicly traded. No publicly held corporation owns 10% or more of the stock of The Allstate Corporation. Since the time of the filing of this suit, Allstate Life Insurance Company is now a wholly owned subsidiary of Everlake US Holdings Company. Everlake US Holdings Company is an affiliate of an investment fund associated with Blackstone Inc. The stock of Blackstone Inc is publicly traded. To Blackstone Inc.'s knowledge, no publicly held corporation holds 10% or more of the stock of Blackstone Inc. Allstate Life Insurance Company now operates under the name Everlake Life Insurance Company.

<u>CM Life Insurance Company</u> is a wholly owned subsidiary of Massachusetts Mutual Life Insurance Company ("Mass Mutual"), a mutual life insurance

company owned by its policyholders. Mass Mutual has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

JHL Capital Group Master Fund LP is a limited partnership. It has no parent corporation, and no publicly held corporation owns 10% or more of its equity.

John Hancock Life Insurance Company (U.S.A.) is a wholly owned subsidiary of The Manufacturers Investment Corporation, which is a wholly owned subsidiary of John Hancock Financial Corporation, which is a wholly owned subsidiary of Manulife Holdings (Alberta) Limited, which is a wholly owned subsidiary of The Manufacturers Life Insurance Company, which in turn is a wholly owned subsidiary of Manulife Financial Corporation ("Manulife"), a publicly traded corporation. No publicly held corporation owns 10% or more of Manulife's stock.

John Hancock Life Insurance Company of New York is a wholly owned subsidiary of John Hancock Life Insurance Company (U.S.A.), which is a wholly owned subsidiary of The Manufacturers Investment Corporation, which is a wholly owned subsidiary of John Hancock Financial Corporation, which is a wholly owned subsidiary of Manulife Holdings (Alberta) Limited, which is a wholly owned subsidiary of The Manufacturers Life Insurance Company, which in turn is a wholly owned subsidiary of Manulife Financial Corporation ("Manulife"), a publicly traded corporation. No publicly held corporation owns 10% or more of Manulife's stock.

John Hancock Life & Health Insurance Company, successor by merger to John Hancock Life Insurance Company of Vermont, is a wholly owned subsidiary of John Hancock Life Insurance Company (U.S.A.),

which is a wholly owned subsidiary of The Manufacturers Investment Corporation, which is a wholly owned subsidiary of John Hancock Financial Corporation, which is a wholly owned subsidiary of Manulife Holdings (Alberta) Limited, which is a wholly owned subsidiary of The Manufacturers Life Insurance Company, which in turn is a wholly owned subsidiary of Manulife Financial Corporation ("Manulife"), a publicly traded corporation. No publicly held corporation owns 10% or more of Manulife's stock.

JPMorgan Chase Bank as Directed Trustee for the SBC Master Pension Trust has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

Massachusetts Mutual Life Insurance Company is a mutual life insurance company owned by its policyholders. It has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

MCP Holdings Master LP is a limited partnership. It has no parent corporation, and no publicly held corporation holds 10% or more of its equity.

Monarch Alternative Solutions Master Fund Ltd is a wholly owned subsidiary of Monarch Alternative Solutions Fund Ltd ("Monarch Alternative Solutions"), which has no parent corporation. No publicly held corporation holds 10% or more of the stock of Monarch Alternative Solutions.

Monarch Capital Master Partners III LP is a limited partnership. It has no parent corporation, and no publicly held corporation holds 10% or more of its equity.

Monarch Debt Recovery Master Fund Ltd has no parent corporation, and no publicly held corporation holds 10% or more of its equity.

Monarch Master Funding Ltd is a wholly owned subsidiary of Monarch Master Funding Ltd Star Trust ("Monarch Star Trust"). Monarch Star Trust has no parent corporation, and no publicly held corporation holds 10% or more of its equity.

PSAM Worldarb Master Fund Ltd. has no parent corporation, and no publicly traded corporation owns 10% or more of its stock.

Rebound Portfolio Ltd. has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

The Lincoln National Life Insurance Company is a wholly owned subsidiary of Lincoln National Corporation ("Lincoln National"), a publicly traded corporation. No publicly held corporation owns 10% or more of Lincoln National's stock.

The Manufacturers Life Insurance Company (Bermuda Branch) is a wholly owned subsidiary of Manulife Financial Corporation ("Manulife"), a publicly traded corporation. No publicly held corporation owns 10% or more of Manulife's stock.

United Services Automobile Association is a member-owned association that has no parent corporation and is not publicly traded.

USAA Casualty Insurance Company is a wholly owned subsidiary of United Services Automobile Association ("USAA"), a member-owned association that has no parent corporation and is not publicly traded.

USAA Life Insurance Company is a wholly owned subsidiary of United Services Automobile Association ("USAA"), a member-owned association that has no parent corporation and is not publicly traded.

Wilton Reassurance Life Company of New York, successor in interest to Allstate Life Insurance Company of New York. Allstate Life Insurance Company of New York is a New York company, whose ultimate parent company at the time of the filing of this suit was The Allstate Corporation, which is a Delaware corporation. The stock of The Allstate Corporation is publicly traded. No publicly held corporation owns 10% or more of the stock of The Allstate Corporation. Since the time of the filing of this suit, Allstate Life Insurance Company of New York is now a wholly owned subsidiary of Wilton Reassurance Company, a Minnesota company. Allstate Life Insurance Company of New York was merged with and into affiliate Wilton Reassurance Life Company of New York. Wilton Reassurance Company is a wholly-owned subsidiary of Wilton Re US Holdings, Inc., a holding company organized under the laws of Delaware, with the ultimate controlling parent being Wilton Re Ltd., a Nova Scotia company. No publicly held corporation holds 10% or more of the stock of Wilton Re Ltd.

YF Life Insurance International Limited, a Hong Kong life insurance company (formerly known as MassMutual Asia Limited), is majority owned by Yunfeng Financial Group Limited, a publicly listed company in Hong Kong ("YF Group"). No publicly held corporation owns 10% or more of YF Group's stock.

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BRIEF IN OPPOSITION

Petitioners are among the few lucky debtors whose fortunes turn during bankruptcy. Oil prices skyrocketed during Petitioners' reorganization proceedings, and Petitioners became "massively solvent," App. 3, able to pay their debts in full. Yet that serendipitous turn does not satisfy Petitioners. They ask this Court for a windfall. They argue the Bankruptcy Code allows them to distribute to equity holders the $387 million that they were contractually obligated to pay Respondents; that they would have paid but for their Chapter 11 petitions; and that, thanks to their solvency, they can afford to pay.

Both lower courts rejected Petitioners' manifestly inequitable argument, as did the Ninth Circuit (in an analogous case) and the Second and Sixth Circuits (in different contexts). Before returning capital to equity holders, solvent debtors must pay creditors everything they promised to pay, with interest, in accordance with the longstanding Solvent-Debtor Rule. See *Am. Iron & Steel Mfg. Co.* v. *Seaboard Air Line Ry.*, 233 U.S. 261, 266 (1914) ("[I]f, as a result of good fortune or good management, the estate proved sufficient to discharge the claims in full, interest as well as principal should be paid."); *Vanston Bondholders Protective Comm.* v. *Green*, 329 U.S. 156, 164–165 (1946) ("But where an estate was ample to pay all creditors and to pay interest even after the petition was filed, equitable considerations were invoked to permit payment of this additional interest to the secured creditor rather than to the debtor."); *In re Chicago, Milwaukee, St. Paul & Pac. R.R. Co.*, 791 F.2d 524, 530 (CA7 1986) ("[W]hen the debtor is solvent the judicial task is to give each creditor the measure of his

contractual claim, no more and no less."). Every appellate court to consider arguments like Petitioners' has held that the Bankruptcy Code does not abrogate the Solvent-Debtor Rule.

Without a circuit split for the Court to resolve, Petitioners frame this case as an example of activist judges flouting textualist first principles. See Pet. 2 ("The divided decision defies both the Code and basic rules of statutory interpretation, and demands correction."); Pet. 36 ("[R]eview is warranted to make clear that this Court's cases do not compel a bankruptcy exception to textualism."); Pet. 36–37 ("[T]he decision below is wrong * * * for the method of statutory interpretation that allowed it to reach [its] holding * * *."). Petitioners misstate what the lower court judges did. Every judge on the panel below agreed on the governing framework. Writing for the majority, Judge Elrod, joined by Judge Jolly, began by noting that "abrogation of a prior bankruptcy practice generally requires an 'unmistakably clear' statement on the part of Congress." App. 27 (quoting *Cohen* v. *de la Cruz*, 523 U.S. 213, 221–222 (1998)). In his "respectful[] dissent," Judge Oldham agreed that an "unmistakably clear" Code provision "overrides * * * prior practice," whereas a "prior practice survives" if "the Code is *not* unmistakably clear." App. 41 (citing *Cohen*). The lower court's application of a settled legal framework to a particular statutory provision in a rare situation does not warrant further review.

To make the situation seem significant, Petitioners insist that the question whether solvent debtors can withhold amounts they lawfully owe creditors is "critically important" (Pet. 1, 11, 37) and "recurring" (Pet. 1, 3, 34, 37). The facts do not bear that out. Truly solvent debtors are truly rare. See App. 2. Even

though the Code was enacted 45 years ago, most appellate decisions addressing the Solvent-Debtor Rule's application to interest payments were handed down in the past year. Older appellate decisions Petitioners cite, see Pet. 28, 33, say nothing contrary. Petitioners manufacture a conflict between the Fifth and Ninth Circuits and more than a dozen *bankruptcy* courts, see Pet. 29–31, none of which demonstrates a cert-worthy conflict among the *courts of appeals*.

This case also is a poor vehicle for answering the single question Petitioners present, which zeroes-in on the Solvent-Debtor Rule and asks generally whether the Code abrogates it. The question is more nuanced. The question is not whether the Code *writ large* abrogates the Rule, but whether *particular* Code provisions abrogate particular applications of the Rule. On the Fifth Circuit's view, this case involves two types of payments—claims *for* interest and post-petition interest *on* allowed claims—each of which implicates different Code provisions. Thus, the court of appeals analyzed them separately and concluded that, in solvent-debtor cases, 11 U.S.C. § 502(b)(2) does not disallow claims for interest and 11 U.S.C. § 1124(1) is not satisfied by paying unimpaired creditors post-petition interest at the federal judgment rate.

In this case, moreover, Petitioners' one question presented follows two threshold questions that must be decided first.

- The question whether the Solvent-Debtor Rule preserves Respondents' claims for a Make-Whole Amount can be answered only if the Make-Whole Amount constitutes "unmatured interest" and is thus potentially disallowed under 11 U.S.C. § 502(b)(2). Petitioners acknowledge this in their

question presented. See Pet. *i* (asking whether the Rule "allows creditors in solvent-debtor cases *to recover amounts that the Code disallows*") (emphasis added). The bankruptcy court correctly held that 11 U.S.C. § 502(b)(2) would *not* disallow Respondents' claims for a Make-Whole Amount because the amount is not unmatured interest. The Fifth Circuit disagreed because it applied an "economic-equivalency" test that no other court of appeals applies, relying on facts that other courts have rejected as evidencing that a payment is unmatured interest.

- The questions about the vitality of the Solvent-Debtor Rule and the character of the Make-Whole Amount arise only because of how the Fifth Circuit resolved the first appeal in this case. The court held that a plan of reorganization that implements the Code's disallowance provisions does not impair a creditor's "legal, equitable, and contractual rights" for purposes of 11 U.S.C. § 1124(1). Had the Fifth Circuit interpreted 11 U.S.C. § 1124(1) as the bankruptcy court did, none of the other questions would have surfaced.

The petition falls short of this Court's standards for review and should be denied. If the Court does grant, it should clearly state that it is taking up the two threshold questions as well.[1]

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1 Because Respondents were fully vindicated by the court of appeals' affirmance of the bankruptcy court's judgment, no conditional cross-petition for certiorari is necessary for the Court to answer these alternative grounds for affirmance.

COUNTERSTATEMENT OF THE CASE

1. The financial products at issue in this case are long-term, fixed-rate notes. Long-term, fixed-rate notes are attractive to borrowers who want to lock-in an interest rate for a period of time significantly longer than bank term loans (up to 15 years or more) and thus minimize their exposure to the risks of variable, short-term rates. Long-term, fixed-rate notes are attractive to lenders, like the Respondents filing this brief, who have special investment needs. Respondents, most of which are insurance companies, develop and sell annuities and other products that contractually oblige Respondents to pay their customers fixed returns. To meet those contractual obligations, Respondents require investments with steady cash flows and minimal risk of disruption.

Long-term, fixed-rate notes provide lenders steady cash flows, but they present a risk of disruption. When market rates drop below the notes' fixed rate, a borrower can refinance the notes by issuing new notes at a lower rate and repaying the old notes. Although noteholders are paid back their principal, they suffer harm when they irreplaceably lose an above-market-rate investment.

To compensate noteholders for that harm, it is common for borrowers of long-term, fixed-rate loans to commit to pay liquidated damages, called a Make-Whole Amount, if they repay principal prematurely. The Make-Whole Amount is conditional; whether the borrower must pay it, and how much, depend on the spread between the notes' fixed rate and an agreed-upon variable rate at the time of repayment. (For the benchmark rate in this case, the parties designated a treasury security rate plus 50 basis points.) At the time of repayment, if the variable benchmark rate is

greater than the notes' fixed rate, the Make-Whole Amount is *zero*: early repayment causes no harm when noteholders can likely reinvest the repaid principal at prevailing rates and obtain returns at least as good as the returns they would have obtained under the original notes. But if the variable benchmark rate is *less* than the notes' fixed rate, early repayment can cause harm—the loss of an above-market-rate investment. In that circumstance, the Make-Whole Amount approximates the additional sum noteholders would need to invest at prevailing rates, along with the repaid principal, to obtain the returns they would have obtained under the original notes. The greater the spread between the benchmark rate and the fixed rate, the greater the harm to noteholders and the greater the Make-Whole Amount. See App. 69. Both lower courts correctly held that a Make-Whole Amount is not a penalty—it protects the parties' contractual arrangement—and that contracts requiring a Make-Whole Amount are routinely enforced. See App. 33–35; App. 62–63; see also App. 165–172.

Before Petitioners filed Chapter 11 petitions, Respondents held $1.46 billion of notes issued by OpCo, a Petitioner in this case. The notes were long-term, fixed-rate notes, and provided for the possibility of a Make-Whole Amount. Under the parties' contracts, if the notes were accelerated, OpCo would owe default interest—2% above the contract rate—on all amounts due under the notes (including the Make-Whole Amount, if any), accumulating from the date of acceleration until payment in full. See App. 5–7.

2. As the price of oil plummeted, Petitioners became insolvent and filed Chapter 11 petitions to reorganize in 2016. Their filings constituted a default on

the notes, which automatically accelerated all obligations under the notes. Because the benchmark rate then was sufficiently lower than the notes' fixed rates, Respondents were entitled to a Make-Whole Amount. Respondents and other similarly situated creditors filed proofs of claim for (1) $1.46 billion in principal, (2) $201 million in Make-Whole, and (3) default interest on those amounts, running from the petition date until payment. See App. 4–7.

Petitioners' insolvency proved temporary. During the bankruptcy proceedings, the price of oil nearly tripled. See App. 107. Awash with cash, Petitioners proposed a plan of reorganization that paid Respondents' claims for principal ($1.46 billion) and post-petition interest—hundreds of millions of dollars *less* than they were contractually obligated to pay. Petitioners' proposed plan did not pay Respondents' claims for the Make-Whole Amount and proposed to pay post-petition interest only at the federal judgment rate, much lower than the contract default rate. Even so, Petitioners maintained that Respondents were unimpaired and thus "conclusively presumed to have accepted the plan," 11 U.S.C. § 1126(f). See App. 107–108. Respondents countered that they were not unimpaired because the plan did not "leave[] unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest." 11 U.S.C. § 1124(1).

Rather than delay confirmation of the plan while the courts resolved the parties' dispute over impairment, Petitioners set aside $400 million to pay Respondents if the courts ultimately upheld Respondents' position. The bankruptcy court accepted the set-aside and confirmed the plan that deemed Respondents unimpaired (meaning Respondents had no right

to vote to accept or reject the plan). See App. 5. In a post-confirmation decision, the court ruled that Respondents could be unimpaired only if the plan paid them everything to which they are entitled under state law—including the Make-Whole Amount and post-petition interest at the contract default rate. See App. 153–179.

The Fifth Circuit vacated. See App. 138–152.[2] A creditor is impaired if "the plan" alters the creditor's rights. 11 U.S.C. § 1124(1). The panel held that a creditor who, because of Code provisions that disallow a claim, is paid less than everything to which it is entitled under state law is not impaired *by the plan*; it is impaired *by the Code*. The court rejected Respondents' contention that this is a false dichotomy—*i.e.*, that disallowance *under the Code* is an impairment *by the plan* because the Code's disallowance provisions have no effect unless and until a plan embodying them is confirmed. See App. 116–117. The court of appeals remanded for the bankruptcy court to decide whether the Code disallows claims for the Make-Whole Amount and whether Respondents were owed post-petition interest on their allowed claims at the contract default rate.

3. On remand, the bankruptcy court again held that Respondents could be unimpaired only if Petitioners paid the Make-Whole Amount and post-petition interest at the contract default rate—because the Code does not disallow the Make-Whole Amount and because a solvent debtor cannot pay an unimpaired creditor post-petition interest at the federal judgment rate when its contract default rate is higher.

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2 On rehearing, the panel withdrew its original opinion (App. 105–137) and replaced it with the one discussed here.

As to the Make-Whole Amount, the bankruptcy court held that it is not unmatured interest and is therefore outside the reach of 11 U.S.C. § 502(b)(2). See App. 60 ("The Make-Whole Amount is not interest because it does not compensate the Note Claimants for OpCo's use or forbearance of the Note Claimants' money; it compensates the Note Claimants for OpCo's breach of a promise to use money."); App. 68 ("The Make-Whole Amount compensates the Note Claimants for the cost of reinvesting in a less favorable market."); App. 77 ("The Make-Whole Amount does not compensate the Note Claimants for 'the delay and risk involved' with lending money." (citation omitted)). The bankruptcy court relied on several facts: the Make-Whole Amount can equal zero (App. 70); it does not accrue over time (*ibid.*); and it is fixed when it becomes due (App. 71). The court explained how the Make-Whole Amount is like a fee noteholders must pay to secure new notes that generate returns commensurate with OpCo's original notes, and the court relied on Petitioners' admission that such a fee is not unmatured interest. See App. 72–74. "The Make-Whole Amount does not become the economic equivalent of unmatured interest merely because the Make-Whole formula references interest rates. The differential between the contractual interest rate and the reinvestment interest rate is the logical measure of a noteholder's damages." App. 80.

As to the rate of post-petition interest on Respondents' allowed claims, the bankruptcy court held that, because of the Solvent-Debtor Rule, Petitioners owed post-petition interest on all amounts due under the notes (including principal and the Make-Whole Amount), calculated using the contract default rate, not the federal judgment rate. See App. 83–104. Alt-

hough debtors normally do not accrue and pay interest on unsecured claims during bankruptcy, solvent debtors are different and, as a matter of equity, must pay creditors all interest they contracted to pay. Tracing the Solvent-Debtor Rule from common law to present, the bankruptcy court held that it survived every bankruptcy enactment and that nothing in the text or history of the Bankruptcy Code suggests "that Congress intended to defang the solvent-debtor exception" in 1978. See App. 84–90. On the contrary, 11 U.S.C. § 1124(1) expressly preserves the "legal, equitable, and contractual rights" of unimpaired creditors, including the Solvent-Debtor Rule. See App. 99–101. The court rejected Petitioners' argument that 11 U.S.C. § 1129(a)(7) abrogates the Solvent-Debtor Rule; that provision sets a *floor* on post-petition interest and then only for *impaired* creditors, not *unimpaired* creditors like Respondents. See App. 96–98.

4. In a 2–1 decision, the Fifth Circuit (Judge Elrod, joined by Judge Jolly) affirmed.

As to the Make-Whole Amount, the court of appeals disagreed with the bankruptcy court's characterization and held that it is the "economic equivalent" of unmatured interest. See App. 11–18. Paradoxically, the court opined that the Make-Whole Amount "compensates [Respondents] for the *future* use of their money, albeit use that will never actually occur because of Ultra's default." App. 11. Although the court acknowledged that the Make-Whole Amount "*does* constitute well-tailored liquidated damages" insofar as "it pays out only when and to the extent that the Creditors are actually harmed," the court ignored this as a mere "label." App. 14; see App. 18 (asserting that the Make-Whole Amount is *both* liquidated damages *and* unmatured interest). In the court's view, the

Make-Whole Amount is interest because the formula for calculating it uses interest rates as inputs. See App. 15–16. The court incorrectly stated, however, that the formula "yields *precisely* the 'economic equivalent' of [Respondents'] unmatured interest," App. 16—when the formula generates something else entirely, see pp. 5–6, *supra* (explaining how the formula calculates the additional sum that Respondents could invest at prevailing rates, along with the notes' principal, to replace OpCo's above-market-rate notes).

Despite characterizing the Make-Whole Amount differently from the bankruptcy court, the court of appeals still held that the Amount was not disallowed because the Code provision disallowing claims for unmatured interest, 11 U.S.C. § 502(b)(2), does not clearly abrogate the Solvent-Debtor Rule. See App. 19–33. "[A]brogation of a prior bankruptcy practice generally requires an 'unmistakably clear' statement on the part of Congress; any ambiguity will be construed in favor of prior practice." App. 27 (quoting *Cohen*, 523 U.S. at 221–222). In 11 U.S.C. § 502(b)(2), "Congress has not explicitly addressed claims for unmatured interest owed by solvent debtors." App. 31. The court held that 11 U.S.C. § 502(b)(2) perpetuates the long-running rule that, once a bankruptcy petition is filed, interest stops accruing on claims against insolvent debtors. See App. 28. The court further held, just as this Court and many lower courts had held, that because earlier bankruptcy acts' analogs to 11 U.S.C. § 502(b)(2) did not abrogate the Solvent-Debtor Rule, neither does 11 U.S.C. § 502(b)(2). See App. 29.

As to post-petition interest, the court of appeals affirmed and adopted the bankruptcy court's reason-

ing. See App. 35–40. Petitioners' argument that Respondents were entitled to post-petition interest only at the federal judgment rate "depends on a series of statutory inferences," stemming from the Code's treatment of the *floor* for interest owed to *impaired* creditors. App. 36. But "[a]s to *unimpaired* creditors, the Code does not itself say" what the rate must be. *Ibid.* In light of Congress's insistence that unimpaired "creditors' 'legal, equitable, and contractual' rights must remain 'unaltered,'" the court of appeals agreed that the Solvent-Debtor Rule fits comfortably within the Code. App. 39 (quoting 11 U.S.C. § 1124(1)).

Judge Oldham respectfully dissented. See App. 41–49. He agreed that the Solvent-Debtor Rule would survive unless the Code was "unmistakably clear" in abrogating it. App. 41. In his view, 11 U.S.C. § 502(b)(2)'s disallowance of claims for unmatured interest is unmistakably clear, and he disagreed with the majority that 11 U.S.C. § 502(b)(2) is analogous to provisions in earlier bankruptcy statutes. See App. 42–48. In his view, "[t]he Make-Whole Amount should be barred." App. 49. Although Judge Oldham also dissented on post-petition interest, *ibid.*, he did not state why or otherwise address the majority's interpretation of 11 U.S.C. § 1124(1).

REASONS FOR DENYING THE PETITION

I. The courts of appeals are not divided over the answer to the question presented.

Petitioners' single question presented obscures that Petitioners actually seek review of two distinct holdings of the Fifth Circuit—*first*, the holding that 11 U.S.C. § 502(b)(2) does not disallow Respondents' claims for the Make-Whole Amount because 11 U.S.C. § 502(b)(2) does not abrogate the Solvent-Debtor Rule

(App. 23–32), and *second*, the holding that Respondents are entitled to post-petition interest at the contract default rates because the Solvent-Debtor Rule is an equitable right enforceable via 11 U.S.C. § 1124(1) (App. 36–40).[3] Both holdings are splitless and do not deserve further review by this Court.

The Fifth Circuit's first holding on Make-Whole is splitless because the Fifth Circuit is the only court of appeals to address the question. No other appellate court has considered whether, in the case of a solvent debtor, 11 U.S.C. § 502(b)(2) disallows claims for a Make-Whole Amount (which the court of appeals treated as a claim for unmatured interest[4]); indeed, no other court of appeals has considered whether 11 U.S.C. § 502(b)(2) disallows *any* claim for unmatured interest when a debtor is solvent. Other appellate courts addressing the Solvent-Debtor Rule's application to different payments have mentioned 11 U.S.C. § 502(b)(2), but only to illustrate that the Code codifies the common-law rule that "interest ceases to accrue on a claim once a debtor has filed for bankruptcy." *In re PG&E Corp.*, 46 F.4th 1047, 1053

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3 Petitioners dedicate only a few pages to the Fifth Circuit's holding about the appropriate rate for calculating the post-petition interest a solvent debtor owes unimpaired creditors. See Pet. 19–23. Petitioners presume their question presented encompasses review of that holding, but as written, it does not. The Petition asks the Court to decide whether the Solvent-Debtor Rule "allows creditors * * * to recover amounts that the Code *disallows*." Pet. *i* (emphasis added). "Disallowance" is a term of art, which refers to provisions, like 11 U.S.C. § 502, that explicitly "disallow" certain claims. Petitioners have never contended that the Code "disallows" paying Respondents post-petition interest, let alone "disallows" paying it at the contractual default rate.

4 Respondents' primary argument was and still is that Make-Whole is not unmatured interest. See pp. 21–25, *infra*.

(CA9 2022) *petition for cert. filed*, No. 22-733 (S. Ct. Nov. 23, 2022); see *id.* at 1058 ("Section 502(b)(2) * * * codif[ies] the long-standing rule that interest as part of a claim stops accruing once a bankruptcy petition is filed."); *In re LATAM Airlines Grp. S.A.*, 55 F.4th 377, 383 (CA2 2022) ("Under the Bankruptcy Code, the rule against post-petition interest is codified at 11 U.S.C. § 502(b)(2).").

The Fifth Circuit's second holding on the appropriate rate for post-petition interest owed to unimpaired creditors also is splitless because the three other courts of appeals that addressed that question have reached the same conclusion as the Fifth Circuit.

- The Sixth Circuit holds that creditors of a solvent debtor are entitled to post-petition interest at contract rates rather than at the federal judgment rate. See *In re Dow Corning Corp.*, 456 F.3d 668, 678–680 (CA6 2006).
- Relying on *Dow Corning*, the Ninth Circuit holds that solvent debtors owe unimpaired creditors post-petition interest at contract rates. See *PG&E*, 46 F.4th at 1056, 1061, 1064. Like the Fifth Circuit, the Ninth Circuit held that the Code is "silent" about post-petition interest owed to unimpaired creditors of solvent debtors. *Id.* at 1056. Compare App. 36 ("The question remains: how much [post-petition interest]? As to *unimpaired* creditors, the Code does not itself say."). Also like the Fifth Circuit, the Ninth Circuit held that 11 U.S.C. § 1124(1)'s protection of unimpaired creditors' "equitable" rights preserves their right to post-petition interest at contract rates in accordance with the Solvent-Debtor Rule. See *PG&E*, 46 F.4th at 1058 ("[C]reditors like plain-

tiffs continue to possess an 'equitable right' to bargained-for postpetition interest when a debtor is solvent." (citing 11 U.S.C. § 1124(1))). Compare App. 39 ("And as a matter of equity, creditors are entitled to contractually specified rates of interest 'on' their claims when a solvent debtor is fully capable of paying up." (discussing 11 U.S.C. § 1124(1))).[5]

- The Second Circuit recently issued a complementary opinion on post-petition interest in solvent-debtor cases. See *LATAM*, 55 F.4th 377. Like the Fifth and Ninth Circuits, the Second Circuit holds that "Section 1124(1) * * * does protect a creditor's 'equitable rights,'" including "whatever survives of the solvent-debtor exception." *Id.* at 387. Because the debtor in that case was insolvent, however, the Second Circuit affirmed that the creditors in that case were not entitled to post-petition interest at contract rates. See *id.* at 389.

No appellate court addressing a Make-Whole Amount (only the Fifth Circuit) or the appropriate rate for post-petition interest (the Second, Fifth,

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5 Petitioners assert that the Fifth Circuit opinion "conflicts with" an older Ninth Circuit decision, *In re Cardelucci*, 285 F.3d 1231 (CA9 2002), which (supposedly) "limit[ed] creditors in other solvent-debtor cases to post-petition interest at the federal judgment rate," Pet. 31. Petitioners fail to tell the Court that *PG&E* addresses *Cardelucci* at length and explains why *Cardelucci* is irrelevant in a case like this one: "*Cardelucci* interpreted language from a specific statutory provision—§ 726(a)(5)—*that does not apply to unimpaired claims*. * * * *Cardelucci* merely held that the phrase 'interest at the legal rate' in § 726(a)(5) refers to the federal judgment rate. But this holding does not answer what rate of interest is required where § 726(a)(5) does not apply—including for unimpaired claims." *PG&E*, 46 F.4th at 1057 (emphasis added) (citations omitted).

Sixth, and Ninth Circuits) has held that the Code abrogates the Solvent-Debtor Rule. Even in cases involving claims for other amounts, no appellate court has held that the Code abrogates the Solvent-Debtor Rule. See *Gencarelli* v. *UPS Cap. Bus. Credit*, 501 F.3d 1, 4, 7 (CA1 2007) (addressing contractual penalties and holding that, "[w]hen the debtor is solvent, the bankruptcy rule is that where there is a contractual provision, valid under state law, * * * the bankruptcy court will enforce the contractual provision" (citation omitted)); *Dow Corning*, 456 F.3d at 682–683 (addressing attorneys' fees and holding that "unsecured creditors may recover their attorneys' fees, costs and expenses from the estate of a solvent debtor where they are permitted to do so by the terms of their contract and applicable non-bankruptcy law").[6]

Instead of alleging a conflict among the courts of appeals, Petitioners capaciously allege "growing confusion" about the Solvent-Debtor Rule. Pet. 28. But the opinions Petitioners collect to illustrate the supposed confusion are from bankruptcy and district courts. See Pet. 29–30. Even the one appellate opinion Petitioners cite, *In re PPI Enters.*, 324 F.3d 197 (CA3 2003), is cited, not for what *it* held, but because it "affirmed the *bankruptcy court's* determination that the Code applied to limit a landlord's claim [for rent]

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6 Petitioners mischaracterize the First and Sixth Circuits as holding that the Solvent-Debtor Rule "could *not* override the explicit disallowance provisions of the Code." Pet. 32–33. In the cited cases, however, the courts addressed the scope of the Solvent-Debtor Rule. The First Circuit held that the Rule does not require a solvent debtor to pay claims that are unenforceable under state law. See *Gencarelli*, 501 F.3d at 4. And the Sixth Circuit held that the Rule does not require a solvent debtor to pay excessive attorneys' fees. See *Dow Corning*, 456 F.3d at 680.

against a solvent debtor," Pet. 29 (emphasis added). Petitioners acknowledge that the Third Circuit in *PPI* did not "separately discuss the solvency issue." Pet. 29. The issue was not presented, so the court of appeals had no occasion to consider whether or to what extent the Solvent-Debtor Rule applies to rent claims. See *PPI*, 324 F.3d at 207–210.

The only "confusion" here is that which Petitioners themselves create by mischaracterizing the harmonious views of the courts of appeals. This case is unworthy of additional review.

II. The Fifth Circuit did not misapply the Court's precedents on how to reconcile the Bankruptcy Code with pre-Code practices.

Without a circuit split for the Court to resolve, Petitioners argue that further review is warranted because the Fifth Circuit misapplied the Court's precedents. See Pet. 13–23, 36. Yet Petitioners do not allege a *direct* conflict between the lower-court decision and this Court's decisions. No decision of this Court has decided whether any part of the current Bankruptcy Code abrogates any application of the Solvent-Debtor Rule, whether a solvent debtor must pay Make-Whole Amounts, or whether a solvent debtor owes unimpaired creditors post-petition interest based on the low federal judgment rate or their contracts' high, default rate. Instead, Petitioners allege an abstract, methodological conflict—that the lower court "deviate[d] from bedrock principles of statutory construction" articulated by this Court. Pet. 11. This is the Petition's dominant theme. See Pet. 1 ("That holding cannot be reconciled * * * with settled principles of statutory interpretation."); Pet. 3 ("This Court should grant review now, reaffirm the controlling principles of statutory interpretation that the decision below

disregards * * *."); Pet. 12 ("The question presented is also extraordinarily important, implicating not only significant sums but fundamental principles of bankruptcy law and statutory interpretation."); Pet. 27–28 ("There is simply no reason to allow this notion of a bankruptcy-code exception to ordinary principles of statutory construction to fester.").

Yet when one reads the Fifth Circuit's opinion, one does not see appellate judges defying the rules of interpretation or, "[w]orse still," blaming this Court for an "anomalous result." Pet. 1. All three judges on the panel below *agreed* on the rules of interpretation and endeavored to apply them *faithfully*: "abrogation of a prior bankruptcy practice generally requires an 'unmistakably clear' statement on the part of Congress." App. 27 (quoting *Cohen*, 523 U.S. at 221–22); see App. 41 (Oldham, J., dissenting) (a "prior practice survives" if "the Code is *not* unmistakably clear" (citing *Cohen*)); *ibid.* ("I recognize that the majority is attempting to *faithfully* apply confusing Supreme Court precedent in a difficult case.") (emphasis added). All three judges also agreed that the Solvent-Debtor Rule is a longstanding bankruptcy practice with origins in the common law, endorsed by this Court, that survived earlier bankruptcy enactments, and that therefore is shielded by the clear-statement rule. See App. 20–23; App. 44.

The point of disagreement among the lower court judges was narrow—whether 11 U.S.C. § 502(b)(2) passes or fails the clear-statement rule. To the majority, it mattered that this Court and other courts had held that the Solvent-Debtor Rule survived even when the text of pre-Code bankruptcy statutes seemingly foreclosed it; "[c]onsidered in the context of what came before, the text of § 502(b)(2) hardly constitutes

an unambiguous—let alone explicit—change in bankruptcy practice." App. 31. Accord *PG&E*, 46 F.4th at 1058 (holding that 11 U.S.C. § 502(b)(2) "effectively restates its predecessor provision"). By contrast, Judge Oldham discounted history and precedent because, in his view, the text of the old statutes was less clear than 11 U.S.C. § 502(b)(2). See App. 42–48. The judges' nuanced disagreement over the result of applying the clear-statement rule to a single Bankruptcy Code provision is not a rejection of this Court's statutory interpretation precedents.

Petitioners insist that, "[f]or much the same reasons, the panel majority erred by invoking the same purported solvent-debtor exception from pre-Code practice to hold that respondents were entitled to obtain post-petition interest at their contractual default rates rather than the federal judgment rate." Pet. 19. Yet not even a page later, Petitioners concede that the Fifth Circuit's second holding (on post-petition interest) is fundamentally and logically distinct from its first holding (on the Make Whole Amount) because "there is no separate Code provision explicitly requiring post-petition interest at the federal-judgment rate to render Chapter 11 creditors unimpaired in solvent-debtor cases." Pet. 20–21. Just so. The panel majority may have thought that applying the clear-statement rule to 11 U.S.C. § 502(b)(2) and the Make-Whole Amount was a "close call," App. 19, but expressed no hesitation with applying the clear-statement rule to Respondents' request for post-petition interest. The Code says nothing whatsoever about which interest rate to use to calculate post-petition interest solvent debtors owe unimpaired creditors, see App. 38–39, as Petitioners concede, see Pet. 20–21. So, it is no surprise that Petitioners do not mention the clear-statement rule when attacking the majority's holding that

solvent debtors must pay unimpaired creditors post-petition interest at contract default rates. See Pet. 19–23. Nor do they endorse Judge Oldham's position on that issue—presumably because his dissent says nothing about how the clear-statement rule does or does not affect that issue. See App. 41–49.[7]

In the end, Petitioners are not asking the Court to correct the lower court's deviation from this Court's precedents. Petitioners are asking the Court to overrule its precedents and a venerable clear-statement rule. Petitioners constantly scare-quote this "substantive canon" of interpretation, Pet. 2, 9, 11, 13, 14, and go so far as to accuse the majority of "imagin[ing]" it, Pet. 16. But this clear-statement rule has a long and vibrant lineage, see App. 27 (collecting cases), and is a close cousin of the equally longstanding rule that, "to abrogate a common-law principle, the statute must 'speak directly' to the question addressed by the common law," *United States* v. *Texas*, 507 U.S. 529, 534 (1993) (citation omitted). There would be serious doctrinal damage if, 45 years after the Bankruptcy Code's enactment, the Court were to throw out the clear-statement rule that it and lower courts have regularly applied.

III. This case is a bad vehicle for answering the question presented because two other questions precede it.

Petitioners' question presented does not deserve further review. It challenges two discrete holdings of

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7 Insofar as Petitioners now argue that 11 U.S.C. § 502(b)(2) disallows post-petition interest on allowed claims, that argument is waived, for it contradicts their admission that Respondents are owed post-petition interest. See Petrs. CA Br. 38, 42.

the court of appeals—the holding allowing Respondents' claims for the Make-Whole Amount and the holding determining the rate for post-petition interest Petitioners owe on Respondents' allowed claims. It does not implicate any circuit split. And it is not even the main question in this case. Two other questions are threshold questions, and the Court cannot fairly answer Petitioners' question without answering those questions first.

A. The Code does not disallow the Make-Whole Amount because it is not unmatured interest.

The primary focus of the Petition is the court of appeals' holding that creditors of a solvent debtor can recover unmatured interest notwithstanding 11 U.S.C. § 502(b)(2)'s disallowance of such claims—*i.e.*, the holding that 11 U.S.C. § 502(b)(2) does not clearly abrogate the Solvent-Debtor Rule. See Pet. 13–19. Thus, a threshold question is whether a claim for a Make-Whole Amount "is for unmatured interest," as that term is used in 11 U.S.C. § 502(b)(2).

Petitioners' question presented necessarily encompasses this threshold question. See Pet. *i* (asking whether the Rule "allows creditors in solvent-debtor cases *to recover amounts that the Code disallows*") (emphasis added). Yet the Petition avoids it except to note that all three appellate judges answered the question against Respondents. See Pet. 8, 12, 13. This Court should not take their answer for granted. The bankruptcy court had the better of it—the Make-Whole Amount is not unmatured interest—and in disagreeing with that court's conclusion, the Fifth Circuit made a significant mistake and approached the issue in a way that is in serious tension with the way other courts approach 11 U.S.C. § 502(b)(2).

In the decision below, the court of appeals articulated two tests for deciding whether a claim "is for unmatured interest" for purposes of 11 U.S.C. § 502(b)(2)—(1) if "it compensates Creditors for the *future* use of their money, albeit use that will never actually occur," or (2) if it is the "economic equivalent" of such compensation. See App. 10–18. The court asserted that the Make-Whole Amount qualified as unmatured interest under both tests. See *ibid.*

But as to the first test—whether the Make-Whole Amount is unmatured interest—the court of appeals made a significant mistake. The court mischaracterized the Make-Whole Amount as "nothing more than a lender's unmatured interest, rendered in today's dollars." App. 10; cf. App. 15 (comparing Make-Whole to a hypothetical "Fake-Whole" that is the sum of all future interest payments owed under the notes). The Make-Whole Amount is *not* the sum of the net present values of all future interest a borrower owes under long-term, fixed-rate notes. See App. 55 (explaining the formula); see also pp. 5–6, *supra*. If it were, the Make-Whole Amount would always be a positive number, because the net present value of a future payment is necessarily a positive number. The Make-Whole Amount, however, can "equal zero dollars," App. 68, because it is not merely future interest discounted back to a present value. The Make-Whole Amount measures the damages a noteholder incurs as a result of the borrower's early repayment of an above-market-rate investment.[8]

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8 An example illustrates the court's error. Assume a borrower owes a Make-Whole Amount on a $100 note with a 10% fixed rate and one year left on its term. The court of appeals viewed

(footnote continued on next page)

The court of appeals tacitly acknowledged the weakness of its assertion that the Make-Whole Amount is itself for unmatured interest. See App. 12–13. Thus, the court relied primarily on its view that 11 U.S.C. § 502(b)(2) disallows more than claims for unmatured interest. "In our circuit, we evaluate whether a claim is disallowed under § 502(b)(2) based on whether the claim is for the 'economic equivalent of unmatured interest'—not simply whether the claim is itself for 'unmatured interest.'" App. 13 (citing *Tex. Com. Bank, N.A.* v. *Licht (In re Pengo Indus., Inc.)*, 962 F.2d 543, 546 (CA5 1992)).

No other court of appeals has expanded 11 U.S.C. § 502(b)(2) in this way. Other courts hold that 11 U.S.C. § 502(b)(2) disallows claims that are for unmatured interest—nothing more, nothing less. See *LTV Corp.* v. *Valley Fid. Bank & Tr. Co. (In re Chateaugay Corp.)*, 961 F.2d 378, 380–81 (CA2 1992); *Thrifty Oil Co.* v. *Bank of Am. Tr. & Sav. Ass'n*, 322 F.3d 1039, 1047 (CA9 2003) ("Where the specific characteristics of a transaction create uncertainty as to whether a claim includes unmatured interest, federal courts do not base their decisions on economic theories of interest."). That is, after all, what the statute says; it disallows a claim that "*is* for unmatured interest." 11 U.S.C. § 502(b)(2) (emphasis added).

In applying its economic-equivalency test, the Fifth Circuit assumed away the features of the Make-

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the Make-Whole Amount as the net present value *of the $10 interest payment*, which always will be a positive number. But the Make-Whole Amount represents the additional sum the lender would need to reinvest *along with the $100 principal* at prevailing rates in order to earn $10 in a year's time. Thus, the Make-Whole Amount can be zero dollars when the benchmark rate is close to or exceeds the note's 10% fixed rate.

Whole Amount that distinguish it from unmatured interest. The Make-Whole Amount fluctuates with movements in the agreed-upon benchmark rate. It approximates the additional sum (above repaid principal) a lender needs to invest at prevailing rates in order to replace a valuable, above-market-rate investment. Neither party can predict *whether* the borrower will owe a Make-Whole Amount or *how much* it will be. These features confirm the bankruptcy court's finding that the Make-Whole Amount does not compensate a lender for the future use of its money; the Make-Whole Amount compensates a lender for damage to its investment portfolio. In addressing a different type of payment (termination damages owed under an interest-rate swap agreement), the Ninth Circuit held that these features—features the Fifth Circuit's application of its economic-equivalency test caused it to ignore—proved that the payment was not unmatured interest. See *Thrifty*, 322 F.3d at 1048–1050.[9]

The bankruptcy court rightly recognized that 11 U.S.C. § 502(b)(2) does not disallow a lender's

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9 The panel mentioned *Thrifty* only cursorily and incorrectly distinguished it as holding that swap termination damages are not unmatured interest simply because swap counterparties do not have to make loans. See App. 10, 18. Swap counterparties may not *have to* make loans, but the counterparties in *Thrifty* had made loans and had based their swaps on those loans. See *Thrifty*, 322 F.3d at 1050 ("[I]n this case BofA provided both the loan and the three interest rate swaps, an arrangement that creates a theoretical possibility that the periodic swap payments form part of BofA's compensation for the risk and delay associated with the term loan. The question therefore becomes whether, or under what circumstances, BofA's dual role as lender and swap dealer converts GWR's periodic swap payments from derivative cash flows into interest on the term loan.").

claim for damages caused by the borrower's default at a time when market rates are lower than a contract rate. See App. 60–83. Because Petitioners overlook this key premise of their question presented, the Court should deny the petition. But if the Court grants the petition, the Court must make clear that it will answer this question first.

B. Petitioners' plan impaired Respondents' rights even if the Code abrogates some or all of the Solvent-Debtor Rule.

The Solvent-Debtor Rule became a material issue in this case only after the court of appeals vacated the bankruptcy court's original decision on impairment. See App. 111–117. That vacatur rests on a legal error. Because the question presented arises only as a result of that legal error, the Court should decline to take up the question in this case (assuming for argument's sake that the question was cert-worthy) and wait for a case that presents the question cleanly. Alternatively, if the Court grants, it should reconsider the court of appeals' holding on impairment before answering Petitioners' question presented.

Under 11 U.S.C § 1124(1), a "class of claims" is presumptively "impaired" (and thus permitted to vote on a proposed plan of reorganization) "unless * * * the plan * * * leaves unaltered the legal, equitable, and contractual rights to which such claim or interest entitles the holder of such claim or interest." Petitioners argued that Respondents are unimpaired even though Petitioners' plan did not propose to pay the Make-Whole Amount or post-petition interest at the contract default rate. On Petitioners' view, accepted by the court of appeals, a plan that pays creditors only the amounts they are "allowed" under 11 U.S.C. § 502

"leaves" the creditor's "legal, equitable, and contractual rights" "unaltered." Put differently, the Fifth Circuit held that disallowance of a claim under 11 U.S.C. § 502 is "impairment *by the Code*," whereas 11 U.S.C. § 1124(1) speaks of "impairment *by the plan*." See App. 116 (emphases added) (discussing *PPI*, 324 F.3d at 204).

The Fifth Circuit, same as three other circuits, made a mistake of law. It implicitly inserted the adjective "allowed" into 11 U.S.C. § 1124(1)—*i.e.*, "unless the plan leaves unaltered the legal, equitable, and contractual rights to which such [*allowed*] claim * * *"—whereas Congress did not impose any such qualification. The Fifth Circuit reasoned that "the broader statutory context" supported its view and that, along with state law, the Code's disallowance provisions "define[] the scope of the right." App. 114. But the Code defines the word "claim" as a "right to payment," 11 U.S.C. § 101(5), and those rights are defined by *nonbankruptcy* law. See *Travelers Cas. & Sur. Co. of Am.* v. *Pac. Gas & Elec. Co.*, 549 U.S. 443, 451 (2007) ("[W]hen the Bankruptcy Code uses the word 'claim'—which the Code itself defines as a 'right to payment,' 11 U.S.C. § 101(5)(A)—it is usually referring to a right to payment recognized under state law."). And this Court has held that 11 U.S.C. § 502 does "not discuss the scope of the term 'claim'" but only "restate[s] the Bankruptcy Code's system for determining whether a claim will be allowed." *Midland Funding, LLC* v. *Johnson*, 581 U.S. 224, 230 (2017).

Furthermore, the dichotomy the Fifth Circuit presumed—Code impairment versus plan impairment—is illusory. The Code's disallowance provisions are not self-effectuating; they require confirmation of a plan.

11 U.S.C. § 502 does not alter a creditor's "legal, equitable, and contractual rights" apart from the confirmation of a plan of reorganization, which is what discharges the debtor from "any debt that arose before the date of such confirmation" and what leaves creditors with only the payments they receive pursuant to the plan. 11 U.S.C. § 1141(d)(1)(A). If no plan is confirmed, any purported disallowance is a nullity; the creditor's nonbankruptcy rights remain unchanged. The Fifth Circuit recognized that this is how the Code operates, see App. 116–117, but nonetheless insisted, *ipse dixit*, that "[w]here a plan refuses to pay funds disallowed by the Code, the Code—not the plan—is doing the impairing," App. 117.

Respondents acknowledge that, although the bankruptcy court originally ruled in favor of Respondents on the meaning of 11 U.S.C. § 1124(1), the issue is not the subject of an appellate-level circuit split. See *LATAM*, 55 F.4th at 384 (collecting cases). But if the Court resolves to review Petitioners' splitless question, it should review this splitless question as well. It presents a pure question of law and would, if answered Respondents' way, obviate Petitioners' question presented entirely.

CONCLUSION

The Court should deny the petition. If the Court grants the petition, the Court should make clear that it will answer the two additional questions presented.

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