No. _____

IN THE
Supreme Court of the United States

Roee Kiviti *et al.*,
Petitioners,
v.
Naveen Bhatt,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Petitioners Roee Kiviti and Adiel Kiviti filed a two-count complaint against Respondent Naveen Bhatt, in connection with Respondent's bankruptcy, to (i) fix and liquidate Respondent's debt to Petitioners; and (ii) determine that debt to be nondischargeable. When the nondischargeability count was dismissed, the parties stipulated to dismiss the monetary claim, which had become moot on account of Respondent receiving a discharge. Under Fourth Circuit precedent, the voluntary dismissal of a "doomed" cause of action acts as the entry of a final order for purposes of facilitating appellate review. *Affinity Living Grp., LLC v. StarStone Specialty Ins. Co.*, 959 F.3d 634, 638 (4th Cir. 2020). On appeal, the Fourth Circuit held Petitioners' damages claim was not "doomed" because the doctrine of mootness does not apply to bankruptcy courts, since bankruptcy courts are not Article III courts and, as such, are not bound by the case-or-controversy requirement of Article III of the Constitution.

The question presented is:

Whether bankruptcy courts are bound by the case-or-controversy requirement of Article III of the Constitution.

PARTIES TO THE PROCEEDING

1. Petitioners Roee Kiviti and Adiel Kiviti were the plaintiffs in the bankruptcy court and the appellants below.

2. Respondent Naveen Bhatt was the defendant in the bankruptcy court and the appellee below.

RELATED PROCEEDINGS

United States Court of Appeals (4th Cir.):

Kiviti v. Bhatt, No. 22-1216, 80 F.4th 520 (Sep. 14, 2023) (opinion below)

Kiviti v. Bhatt, No. 22-1216 (Oct. 11, 2023) (order denying rehearing and rehearing en banc)

United States District Court (E.D. Va.):

Kiviti v. Bhatt, No. 1:21-cv-909, 2022 WL 636102 (Feb. 9, 2022) (order affirming ruling of bankruptcy court)

United States Bankruptcy Court (E.D. Va.):

Kiviti v. Bhatt, No. 21-01018 (Aug. 9, 2021) (notice of dismissal)

Kiviti v. Bhatt, No. 21-01018 (May 20, 2021) (order granting in part, and denying in part, motion to dismiss)

In re Bhatt, No. 20-12637 (Mar. 8, 2021) (discharge of debtor)

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PETITION FOR A WRIT OF CERTIORARI

Roee Kiviti and Adiel Kiviti respectfully petition for a writ of certiorari to the United States Court of Appeals for the Fourth Circuit in this case.

OPINIONS BELOW

The Fourth Circuit's opinion (Pet. App. 1a) is reported at 80 F.4th 520. The Fourth Circuit's order denying rehearing (Pet. App. 32a) is unreported. The Eastern District of Virginia's order (Pet. App. 24a) is unreported but available at 2022 WL 636102. The order of the bankruptcy court (Pet. App. 29a) is unreported.

JURISDICTION

The Fourth Circuit issued its decision on September 14, 2023. A timely petition for rehearing and rehearing en banc was denied on October 11, 2023. This Court has jurisdiction pursuant to the allowances of 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. U.S. Constitution, art. iii, § 2, cl. 1.

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to

> Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States,—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

2. 28 U.S.C. § 151

> In each judicial district, the bankruptcy judges in regular active service shall constitute a unit of the district court to be known as the bankruptcy court for that district. Each bankruptcy judge, as a judicial officer of the district court, may exercise the authority conferred under this chapter with respect to any action, suit, or proceeding and may preside alone and hold a regular or special session of the court, except as otherwise provided by law or by rule or order of the district court.

3. 28 U.S.C. § 152(a)(1)

> . . . Bankruptcy judges shall serve as judicial officers of the United States district court established under Article III of the Constitution.

4. 28 U.S.C. § 157(a)

> Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title

11 shall be referred to the bankruptcy judges for the district.

5. 28 U.S.C. § 158(a)

The district courts of the United States shall have jurisdiction to hear appeals (1) from final judgments, orders, and decrees . . . of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title.

STATEMENT OF THE CASE

I. Introduction

In the decision below, the Fourth Circuit holds that bankruptcy courts may hear and adjudicate moot cases because bankruptcy courts are not bound by the case-or-controversy requirement of Article III. This holding is in conflict with the rulings of other courts of appeal, creating a split of authorities that can be resolved only by this Court.

The Fourth Circuit decision is facially problematic for three reasons. First, if bankruptcy judges "constitute a unit of the district court," 28 U.S.C. § 151, the power of bankruptcy judges is necessarily confined by the same limitations as the judicial power of district judges. Second, if bankruptcy judges are permitted to rule on moot matters, while district courts, circuit courts and this Court cannot entertain such cases, a paradigm is created whereby bankruptcy courts are imbued with the ability to enter final judgments not subject to appellate review. Third, there is no jurisdictional basis for bankruptcy courts to adjudicate matters other than those referred—and reviewable—by district courts.

This Court has found that "…allowing Article I adjudicators to decide claims submitted to them by consent does not offend the separation of powers so long as Article III courts retain supervisory authority over the process." *Wellness Int'l Network, Ltd. v. Sharif*, 575 U.S. 665, 678 (2015). Yet the Fourth Circuit holding in this case creates a scenario whereby Article I courts are permitted to operate outside the "supervisory authority" of Article III courts.

Palpable import attaches to clarifying the constitutional parameters of bankruptcy court jurisdiction. The mootness doctrine has long served as a check on the breadth of cases heard by district courts, circuit courts, and this Court. A circuit split now exists whereby the Third, Sixth, Seventh, Eighth and Ninth Circuits—alongside the bankruptcy appellate panel of the Tenth Circuit—have made clear that cases pending before bankruptcy courts are subject to the rigors of Article III standing, while the Fourth and Fifth Circuits have reasoned that bankruptcy courts are unmoored to the limitations of Article III.

II. Facts and Procedural Background.

Roee Kiviti and Adiel Kiviti ("Messrs. Kiviti" or "Petitioners") hired Naveen Bhatt ("Mr. Bhatt" or "Respondent") to perform home renovation work in the District of Columbia. Pet. App. 2a. Mr. Bhatt represented that he was a licensed home contractor when, in fact, he was not. Pet. App. 3a. The Petitioners accordingly brought suit against Mr. Bhatt, under a District of Columbia law requiring unlicensed contractors to disgorge monies received from consumers. Pet. App. 26a. Before judgment could be entered, Mr. Bhatt petitioned for relief in the United States Bankruptcy Court for the Eastern District of Virginia. Pet. App. 3a.

In connection with Mr. Bhatt's bankruptcy, Messrs. Kiviti filed a two-count adversary proceeding, seeking to (i) fix and liquidate Mr. Bhatt's debt to Messrs. Kiviti; and (ii) determine that debt to be nondischargeable pursuant to Section 523(a)(2)(A) of the Bankruptcy Code. Pet. App. 5a.

The bankruptcy court dismissed the Petitioners' claim to establish Mr. Bhatt's debt to be nondischargeable, but left intact the claim to fix and liquidate the debt. Pet. App. 5a. With Mr. Bhatt being granted a discharge by the bankruptcy court, the reduction to judgment of a discharged debt became a moot consideration. Not seeing the economy in litigating a moot issue, the Petitioners and Respondent stipulated to dismissal of the remaining cause of action, so as to permit appellate review of the claim to determine the debt to be nondischargeable. Pet. App. 6a.

The district court affirmed the bankruptcy court on the merits. Pet. App. 24a. An appeal was then taken to the Fourth Circuit, which has interpreted this Court's holding in *Microsoft Corp. v. Baker*, 582 U.S. 23 (2017) to permit parties to stipulate to dismissal of "doomed" claims, so as to effectuate appellate review of underlying orders. *Affinity Living Grp.,* 959 F.3d at 638.

The Fourth Circuit held there to be an absence of appellate jurisdiction since, while the proceeding in the bankruptcy court was rendered moot by the dismissal of Messrs. Kiviti's claim to determine the Respondent's debt nondischargeable, "[m]ootness is an Article III doctrine, and bankruptcy courts are not Article III courts." *Kiviti v. Bhatt*, 80 F.4th 520, 532 (4th Cir. 2023).

REASONS FOR GRANTING THE PETITION

There exists a circuit split as to whether bankruptcy courts are subject to the Article III limitations of district courts. *Compare Kiviti*, 80 F.4th at 532 (opinion below), *and Matter of Highland Capital Mgmt., L.P.*, 74 F.4th 361, 366 (5th Cir. 2023) (holding bankruptcy courts are not bound by traditional rules of judicial standing), *with In re Res. Tech. Corp.*, 624 F.3d 376, 382 (7th Cir. 2010) ("Article III's standing requirements apply to proceedings in bankruptcy courts just as they do to proceedings in district courts.") (citing *In re FedPak Sys., Inc.*, 80 F.3d 207, 213 (7th Cir. 1996)), *and In re Glob. Indus. Techs., Inc.*, 645 F.3d 201, 210 (3d Cir. 2011) (finding Article III standing to be a prerequisite to objecting to plan confirmation in a bankruptcy court), *and In re Farmland Indus., Inc.*, 639 F.3d 402, 405 (8th Cir. 2011) (holding Article III standing to govern bankruptcy courts), *and In re Thorpe Insulation Co.*, 677 F.3d 869, 884 (9th Cir. 2012) (finding bankruptcy litigants "must satisfy Article III constitutional requirements"), *and Stevenson v. J.C. Bradford & Co. (In re Cannon)*, 277 F.3d 838, 853 (6th Cir. 2002) (applying Article III standing analysis to a bankruptcy proceeding).

Only this Court can resolve this split and such resolution should be in accord with the position of the Third, Sixth, Seventh, Eighth, and Ninth Circuits. Permitting bankruptcy courts to hear cases otherwise devoid of Article III justiciability is not merely at odds with the statutory creation of bankruptcy courts as "a unit of the district court," 28 U.S.C. § 151, but also creates a constitutionally-fraught framework whereby Article I courts are operating in a vacuum

free of substantive appellate review and devoid of any jurisdictional foundation.

Certiorari is necessary in this case not merely to resolve a circuit split but, too, to ensure the holding of *Wellness Int'l Network* is not undermined by bankruptcy courts rendering unappealable rulings in moot cases.

I. There is a Circuit Split as to Whether Bankruptcy Courts are Subject to Article III Limitations

As indicated *supra*, there are five circuit courts holding in favor of Article III limitations being applicable to bankruptcy courts and two circuit courts holding against such limitations. Complicating matters, one of the circuits holding against the applicability of Article III (the Fifth Circuit) has done so only in furtherance of a line of cases noting the uncontroversial proposition that bankruptcy courts have narrower jurisdictional reaches than district courts, whereas the Fourth Circuit ruling in this case invites a broader jurisdictional reach. This Court's intervention is required to resolve this growing conflict.

The Seventh Circuit considered this issue in 2010, when a landfill owner objected to the assumption and assignment of an agreement to which it was a party. *In re Res. Tech.*, 624 F.3d at 381. The bankruptcy court ruled in favor of the landfill owner, denying a trustee's motion to assign the subject contract. *Id.* On appeal, the would-be assignee challenged the landfill owner's standing to object to the proposed agreement. *Id.* at 382. The Seventh Circuit rejected this contention, noting bankruptcy courts to be subject to

Article III standing requirements, albeit with additional limiting constraints:

> This argument makes little sense. Article III's standing requirements apply to proceedings in bankruptcy courts just as they do to proceedings in district courts. However, "[b]ankruptcy standing is narrower than Article III standing." Standing to object to a proposed bankruptcy order requires that the objector "have a pecuniary interest in the outcome of the bankruptcy proceedings." Although Allied did not have any ownership interest in the landfills in the 1990s when the RTC gas-to-energy contracts were signed, by the time of the bankruptcy, it was the owner by succession and was identified by the trustee as RTC's contract partner in three of the agreements.

Id. at 382–83 (citing *In re FedPak Sys.*, 80 F.3d at 213; quoting *In re Cult Awareness Network, Inc.*, 151 F.3d 605, 607 (7th Cir. 1998)).

The Eighth Circuit followed suit a year later, finding the dismissal of an appellant's adversary complaint was proper when the party had "not established an injury traceable to the appellees' actions." *In re Farmland Indus.*, 639 F.3d at 405. In so doing, the Eighth Circuit expressly invoked traditional Article III analysis, quoting the Seventh Circuit in holding "Article III's standing requirements apply to proceedings in bankruptcy courts just as they do to proceedings in district courts." *Id.* at 405 (quoting *In re Res. Tech.*, 624 F.3d at 382).

In 2012, the Ninth Circuit concluded similarly in an appeal brought by multiple insurance companies that were "denied standing to challenge" a debtor's plan of reorganization. *In re Thorpe Insulation*, 677 F.3d at 876. In addressing the insurers' challenge, the Ninth Circuit held that "[t]o have standing in bankruptcy court, Appellants must meet three requirements: (1) they must meet statutory 'party in interest' requirements under § 1109(b) of the bankruptcy code; (2) they must satisfy Article III constitutional requirements; and (3) they must meet federal court prudential standing requirements." *Id.* at 884.

The *Thorpe Insulation* Court found the appellants to satisfy the "party in interest" rigor and, as such, the circuit court proceeded to analyze the facts of the case in the prism of Article III requirements, noting that "[t]o have constitutional standing under Article III, the party seeking standing must demonstrate an injury in fact that is traceable to the challenged action and that is likely to be redressed by a favorable decision." *Id.* at 887 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)).

A year prior, the Third Circuit reasoned similarly in addressing a challenge to the confirmation of a plan of reorganization, also brought by various insurance companies. *In re Glob. Indus. Techs.*, 645 F.3d at 203. Undertaking analysis comparable to that of the *Thorpe Insulation* Court, the Third Circuit observed: "To object to the confirmation of a reorganization plan in bankruptcy court, a party must, in the first instance, meet the requirements for standing that litigants in all federal cases face under Article III of the Constitution." *Id.* at 210.

In an unpublished opinion, the Sixth Circuit reached a comparable conclusion in 2017, citing a former (published) case for the proposition that ". . . the case-or-controversy requirements of Article III apply to adversary proceedings brought in bankruptcy courts, even though bankruptcy courts are not Article III courts themselves." *In re Rosenfeld*, 698 F. App'x 300, 303 (6th Cir. 2017) (citing *In re Cannon*, 277 F.3d at 852–54).

The Fifth Circuit was long the sole circuit court to hold against the weight of the foregoing authorities, albeit in the context of disclaiming Article III standing analysis in furtherance of subjecting bankruptcy courts to a narrower allowance. In 2004, that court found that "[b]ankruptcy courts are not authorized by Article III of the Constitution, and as such are not presumptively bound by traditional rules of judicial standing." *In re Coho Energy Inc.*, 395 F.3d 198, 202 (5th Cir. 2004) (citing *Rohm & Hass Texas, Inc. v. Ortiz Bros. Insulation*, 32 F.3d 205, 210, n. 18 (5th Cir. 1994)). The Fifth Circuit would reaffirm this position in 2023. *Highland Cap. Mgmt.*, 74 F.4th at 366.

The Fourth Circuit opinion in this case thusly stands as (i) being at odds with the Article III analysis of the Third, Sixth, Seventh, Eighth, and Ninth Circuits; and (ii) adhering to the same underlying philosophy—non-Article III courts are not bound by Article III standards—as the Fifth Circuit; but (iii) departing from the Fifth Circuit application of that philosophy, by finding the absence of Article III limitations creates a broader—not narrower—jurisdictional field, inclusive of the consideration of moot cases.

A circuit split is now extant, with the permissible scope of bankruptcy dockets varying by circuit and with Fourth Circuit debtors and creditors encountering the prospect of litigating moot matters before bankruptcy courts. A grant of certiorari is appropriate to resolve this discord.

II. The Ruling Below Affords Bankruptcy Courts Powers Outside the Scope of Appellate Review

Time and again, this Court has been called upon to address the peculiar tension between bankruptcy courts being statutorily-vested with the power to hear and adjudicate referred cases but being non-Article III courts that lack "judicial Power." U.S. Constitution, art. iii, § 2, cl. 1; *Stern v. Marshall*, 564 U.S. 462, 503 (2011); *N. Pipeline Const. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 57 (1982); *Wellness Int'l Network*, 575 U.S. at 669. The delicate balance realized by these holdings is a system wherein bankruptcy judges are permitted to enter certain judgments subject to appellate review by district courts, 28 U.S.C. §§ 157–158, while otherwise being restricted to submitting "proposed findings of fact and conclusions of law to the district court," 28 U.S.C. § 157(c)(1).

This Court has made clear that allowing bankruptcy courts to enter final judgments—even in cases submitted to such courts by consent—is constitutionally permissible only "so long as Article III courts retain supervisory authority over the process." *Wellness Int'l Network*, 575 U.S. at 678.

The Fourth Circuit's ruling below fundamentally upends the delicate balance reached in *Stern* and *Wellness Int'l Network*, while violating the

"supervisory authority" mandate of the latter case. If bankruptcy courts are permitted to hear moot cases, such proceedings will necessarily be beyond the appellate review of district courts, circuit courts, and this Court. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67 (1997) ("To qualify as a case fit for federal-court adjudication, 'an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.' ") (quoting *Preiser v. Newkirk*, 422 U.S. 395, 401 (1975) (quoting *Steffel v. Thompson*, 415 U.S. 452, 459, n. 10 (1974))); *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013) ("A case becomes moot—and therefore no longer a 'Case' or 'Controversy' for purposes of Article III—'when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome.' No matter how vehemently the parties continue to dispute the lawfulness of the conduct that precipitated the lawsuit, the case is moot if the dispute 'is no longer embedded in any actual controversy about the plaintiffs' particular legal rights.' ") (quoting *Murphy v. Hunt*, 455 U.S. 478, 481 (1982); *Alvarez v. Smith*, 558 U.S. 87, 93 (2009)).

The facts of this case demonstrate the perils of allowing bankruptcy courts to enter final judgments in moot matters, alongside the added perils of so allowing without the backstop of appellate review. Under the Fourth Circuit's ruling, Messrs. Kiviti could have accepted the bankruptcy court's finding that any debt owed them by Mr. Bhatt is dischargeable but nonetheless advanced their efforts to obtain a money judgment. Such an effort would cause Mr. Bhatt—already a debtor in bankruptcy—to expend significant time and resources defending

allegations of grift and regulatory noncompliance. And Mr. Bhatt would then be wholly deprived of any opportunity for appellate review of the ensuing judgment, no matter the errors that might underlie the bankruptcy court's ultimate holding.

As discussed further *infra*, Congress has specifically provided for the orders of bankruptcy courts to be subject to the appellate review of district courts. 28 U.S.C. §§ 157–158. In the unique prism of bankruptcy cases, however, this statutory scheme is not merely a legislative mechanism that permits review of orders and judgments but, more importantly, a constitutionally-necessary mechanism that makes viable the referral of bankruptcy cases to Article I courts. The Fourth Circuit's holding in this case offends that appellate mechanism and is thusly meritorious of review by this Court.

III. Bankruptcy Courts are Limited to Hearing Matters Otherwise Justiciable by District Courts

a. Bankruptcy Dockets are Referred Only by District Courts

While federal law provides that cases may be referred to bankruptcy judges, 28 U.S.C. § 157(a), no statutory or constitutional provision actually affords bankruptcy judges any caseload whatsoever. Rather, cases are referred by district courts, to bankruptcy courts, per a discretionary mechanism. And while that mechanism has become de facto automatic by way of a series of standing orders of referral, the propriety of those referrals still turns on maintenance of three coexistent realities: (i) district courts have original jurisdiction over bankruptcy cases; (ii) district courts

may refer such matters to bankruptcy courts; and (iii) district courts may withdraw that reference—*sua sponte* or at the request of a party in interest—at any time. The Fourth Circuit's holding, however, creates a paradigm that would frustrate these three legally-required realities

District courts "have original and exclusive jurisdiction of all cases under title 11." 28 U.S.C. § 1334(a). District courts equally enjoy "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. § 1334(b). In exercising that jurisdiction, "[e]ach district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district." 28 U.S.C. § 157(a).

The referrals that occur pursuant to the foregoing mechanism are analogous to the referrals through which magistrate judges exercise jurisdiction over suits brought in the district courts:

> Bankruptcy judges, like magistrate judges, "are appointed and subject to removal by Article III judges." They "serve as judicial officers of the United States district court," and collectively "constitute a unit of the district court" for that district. Just as "[t]he 'ultimate decision' whether to invoke [a] magistrate [judge]'s assistance is made by the district court," bankruptcy courts hear matters solely on a district court's reference, which the district court may withdraw *sua sponte* or at the request of a party.

Wellness Int'l Network, 575 U.S. at 679 (quoting 28 U.S.C. §§ 151, 152, 157; *Peretz v. United States*, 501 U.S. 923, 937 (1991)).

The notion that cases begin in the district courts, and may have their reference recalled by the district court at any time, is critical to the mechanism through which bankruptcy judges are able to adjudicate matters without offending constitutional separation of powers principles. The Ninth Circuit has analogized this construct to the use of magistrate judges: "Allowing magistrate judges 'to decide claims submitted to them by consent' thus preserves the separation of powers between the legislative and judicial branches 'so long as Article III courts retain supervisory authority over the process.' " *Ashker v. Newsom*, 968 F.3d 975, 981 (9th Cir. 2020) (quoting *Wellness Int'l Network*, 575 U.S. at 678).

If bankruptcy courts are able to adjudicate moot cases, the preservation of the separation of powers risks erosion, as bankruptcy courts will be able to address matters necessarily beyond the scope of district courts' referral, for which district courts cannot withdraw that referral. Since a district court is not permitted to hear a moot case either directly or on appeal, *Arizonans for Official English*, 520 U.S. at 67, district courts also cannot (i) refer a moot case to a bankruptcy court; (ii) withdraw the reference of a moot case to a bankruptcy court; or (iii) review a bankruptcy court's adjudication of a moot case.

b. Bankruptcy Courts Have No Independent Jurisdiction

Since the whole of a bankruptcy court's docket emanates from the statutory referral mechanism, 28

U.S.C. § 157, a bankruptcy court is without any power except for that referred by a district court. Bankruptcy courts do not enjoy independent authority under any statutory provision, nor are they so imbued with authority pursuant to any constitutional allowance. This is why bankruptcy courts are properly characterized as "units" of district courts, *Wellness Int'l Network*, 575 U.S. at 679; but for the referral of cases from district courts, bankruptcy courts would be without any function whatsoever.

This Court has held Section 157 "does not implicate questions of subject matter jurisdiction." *Stern*, 564 U.S. at 480 (citing 28 U.S.C. § 157(c)(2)). *See also Houck v. Substitute Tr. Servs., Inc.*, 791 F.3d 473, 482 (4th Cir. 2015) ("§ 157 is little more than a traffic regulator, directing where adjudication of bankruptcy matters can take place. . .").

Yet if Section 157 does not confer independent subject matter jurisdiction on bankruptcy courts, there is no statutory or constitutional mechanism through which bankruptcy courts may hear cases other than those referred by the district courts. As observed by this Court in the context of an arbitration dispute, federal courts must have some "independent basis for federal jurisdiction" before they are permitted to act on a matter. *Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 26, n. 32 (1983). *See also Ex parte Reed*, 100 U.S. 13, 23 (1879) (". . . there must be jurisdiction to give the judgment rendered, as well as to hear and determine the cause. If a magistrate having authority to fine for assault and battery should sentence the offender to be imprisoned in the penitentiary, or to suffer the punishment prescribed for homicide, his judgment

would be as much a nullity as if the preliminary jurisdiction to hear and determine had not existed. Every act of a court beyond its jurisdiction is void.") (citing *Cornett v. Williams*, 87 U.S. 226 (1873); *Windsor v. McVeigh*, 93 U.S. 274 (1876); 7 William Wait, *A Treatise Upon Some of the General Principles of the Law Whether of a Legal, or of an Equitable Nature, Including Their Relations and Application to Actions and Defenses in General* 181 (Albany, William Gould & Son 1877)); *Windsor*, 93 U.S. at 282 ("All courts, even the highest, are more or less limited in their jurisdiction. . .").

Disagreeing with the opinion below in this case, the Bankruptcy Appellate Panel for the Tenth Circuit has expounded upon this core reality, recognizing that bankruptcy courts do not have jurisdiction to hear matters beyond those referred by district courts:

> This conclusion, which does not recognize the derivative nature of bankruptcy court jurisdiction, is predicated on the view that after a district court refers a case or proceeding to a bankruptcy court over which the district court had jurisdiction at the time of referral, § 157 is a separate grant of jurisdiction to the bankruptcy court over the referred case or proceeding not limited by Article III constraints. But as the Fourth Circuit itself recognized in *Houck*, citing and quoting *Stern v. Marshall*, § 157 does not grant any jurisdiction to bankruptcy courts.

In re Pettine, No. BAP 23-013, 2023 WL 7648619, at *10 (10th Cir. BAP (Colo.) Nov. 15, 2023) (citing *Houck*, 791 F.3d at 482 (quoting *Stern*, 564 U.S. at 131)).

This critique has been further amplified by Professor Kenneth Klee, former Associate Counsel to the Committee on Judiciary of the House of Representatives, and one of the principal draftsmen of the Bankruptcy Code, in analysis of the Fourth Circuit's opinion in this case: "Because the bankruptcy court is not actually a court at all but is a unit of the United States District Court, it is inconceivable to me that the jurisdiction of a non-tenured judge could be greater than that of a tenured judge. The jurisdiction is derivative." American Bankruptcy Institute, *Fourth Circuit: Bankruptcy Courts Aren't Bound by Article III's Case or Controversy Requirements*, Rochelle's Daily Wire (Sep. 19, 2023), https://abi.org/newsroom/daily-wire/fourth-circuit-bankruptcy-courts-aren%E2%80%99t-bound-by-article-iii%E2%80%99s-case-or.

If a bankruptcy court conducts only that business referred by a district court, that business is necessarily derivative of—and coterminous with—the jurisdictional reaches of the referring district court. A district court can no more refer a bankruptcy court a case, with leave to entertain the controversy even once moot, than a district court can charge a magistrate judge with the adjudication of a political question, a non-diverse suit devoid of a federal question, or a fully diverse suit where the amount in controversy is less than $75,000.00.

Statutorily and constitutionally, bankruptcy courts are grantees, vested with the cases bestowed by district courts as grantors. The Fourth Circuit ruling is dependent upon a grantee being capable of receiving something more than what a grantor has to give, since district courts have no power to adjudicate

moot cases and thusly lack the ability to bestow such a power upon their wholly-derivative statutory "units," 28 U.S.C. § 151.

CONCLUSION

For the reasons set forth herein, this petition for a writ of certiorari should be granted.

Respectfully Submitted,

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