No. 24A445

In the
Supreme Court of the United States

TIMOTHY L. BLIXSETH,
Petitioner,

v.

STATE OF MONTANA DEPARTMENT OF REVENUE,
Respondent.

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

PETITION FOR WRIT OF CERTIORARI

Nathan A. Schultz
LAW OFFICE OF
NATHAN A. SCHULTZ, P.C.
10621 Craig Road
Traverse City, MI 49686
(310) 429-7128
nschultzesq@gmail.com

Nicholas Lyskin
FOX ROTHSCHILD LLP
999 Peachtree Street NE
Atlanta, GA 30309
(310) 598-4182
nlyskin@foxrothschild.com

Matthew Nis Leerberg
Counsel of Record
Nathan W. Wilson
FOX ROTHSCHILD LLP
434 Fayetteville Street
Suite 2800
Raleigh, NC 27601
(919) 755-8759
mleerberg@foxrothschild.com
nwilson@foxrothschild.com

Counsel for Petitioner

*Gibson*Moore Appellate Services, LLC
206 East Cary Street ♦ Richmond, VA 23219
804-249-7770 ♦ www.gibsonmoore.net

QUESTIONS PRESENTED

In 11 U.S.C. § 303, Congress enabled creditors to force alleged debtors into bankruptcy involuntarily. Recognizing the reputational and financial harm this could inflict on alleged debtors, Congress further provided in section 303(i) that creditors who file meritless petitions are liable for any damages they cause.

Congress knew that individual states might invoke the involuntary bankruptcy procedures. Indeed, states often appear as creditors in bankruptcy proceedings, defending their interests and benefiting from the uniform system Congress designed. Here, Congress decided it was only fair that states should bear responsibility for their own misconduct in involuntary bankruptcy actions, just like any other creditor. To that end, 11 U.S.C. § 106(a) prohibits states from asserting sovereign immunity to escape section 303(i) damages.

In its opinion below, the Ninth Circuit broke that system. Despite Congress's constitutional authority over bankruptcy in Article I, the Ninth Circuit joined the Fourth, Fifth, Seventh, and Tenth Circuits in holding that section 106(a) is unconstitutional in nearly all respects. Meanwhile, the First, Second, Third, and Sixth Circuits have indicated that section 106(a) is constitutional, at least in some scenarios. This Court has taken up the question of when section 106(a) is constitutional three times before but ended up resolving those cases on other grounds each time. The time is now ripe for this Court to address this circuit split and resolve the following question:

Whether the Eleventh Amendment prevents Congress from authorizing citizens to collect damages against states that force citizens into bankruptcy with meritless involuntary bankruptcy petitions.

RELATED PROCEEDINGS

This case arises from the following proceedings:

- U.S. Court of Appeals for the Ninth Circuit, No. 22-60046, *Mont. Dep't Revenue v. Blixseth (In re Blixseth)*, judgment entered August 14, 2024, rehearing denied September 30, 2024.
- U.S. Bankruptcy Appellate Panel for the Ninth Circuit, No. 22-1160, *Mont. Dep't Revenue v. Blixseth (In re Blixseth)*, judgment entered dismissing appeal on November 15, 2022.
- U.S. Bankruptcy Court for the District of Nevada, No. 21-01274, *Mont. Dep't Revenue v. Blixseth (In re Blixseth)*, order denying motion to dismiss entered July 27, 2022.
- U.S. Bankruptcy Court for the District of Nevada, No. 11-15010, *In re Blixseth*, order dismissing case entered June 3, 2021.

Other related proceedings include the following:

- U.S. Court of Appeals for the Ninth Circuit, No. 18-15064, *Mont. Dep't of Revenue v. Blixseth*, opinion affirming in part and remanding entered November 26, 2019.
- U.S. District Court for the District of Nevada, No. 13-CV-01324 *Mont. Dep't of Revenue v. Blixseth*, order granting motion to dismiss entered December 15, 2017.
- U.S. Bankruptcy Appellate Panel for the Ninth Circuit, No. 11-1305, *In re Blixseth*, opinion reversing dismissal entered December 17, 2012.

TABLE OF CONTENTS

Page:

TABLE OF AUTHORITIES

Page(s):

Cases:

Statutes:

Constitutional Provisions:

Other Authorities:

PETITION FOR A WRIT OF CERTIORARI

Timothy L. Blixseth respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit in this matter.

INTRODUCTION

The Ninth Circuit's decision below enables states to weaponize bankruptcy proceedings against their own citizens. Under its reasoning, states can now use meritless bankruptcy petitions to force citizens into involuntary bankruptcy proceedings and then assert sovereign immunity to escape any liability for the damages they cause. Given that the Fourth, Fifth, Seventh, and Tenth Circuits have adopted similar reasoning, the consequences of the Ninth Circuit's decision are likely to be felt across the nation.

Congress attempted to prevent this. It enacted a statutory scheme explicitly authorizing citizens to collect damages against states that file frivolous bankruptcy petitions. *See* 11 U.S.C. §§ 106(a), 303(i). The threat of damages provides a necessary disincentive to all creditors, but especially to states who could otherwise use the powerful tool of involuntary bankruptcy to achieve political ends.

The First, Second, Third, and Sixth Circuit have all recognized or indicated section 106(a)'s constitutionality. But the Ninth Circuit disagreed, aligning itself with the wrong side of an ongoing circuit split by holding that the Eleventh Amendment denies Congress the power to ensure uniformity of treatment between state and private creditors in involuntary bankruptcy actions. *See Mont. Dep't Revenue v. Blixseth (In re Blixseth)*, 112 F.4th 837,

847-48 (9th Cir. 2024). Consequently, Montana escaped liability for the millions of dollars of damages it caused Mr. Blixseth.

That decision was flawed for two primary reasons:

First, it ignores how waiver works, particularly in the bankruptcy context. Even the mere filing of a proof of claim in an ongoing bankruptcy action waives a state's sovereign immunity "respecting the adjudication of th[at] claim." *See Gardner v. New Jersey*, 329 U.S. 565, 574 (1947). Yet according to the Ninth Circuit, if a state is the one to initiate the entire bankruptcy proceeding in the first place, it does not waive sovereign immunity. That ruling cannot be squared with *Gardner*.

Second, the Ninth Circuit held that Congress lacks authority under Article I's Bankruptcy Clause to ensure that states are treated the same as any other creditor filing an involuntary bankruptcy petition. This too contravenes this Court's precedents, which recognize Congress's ability "to ensure uniformity in treatment of state and private creditors" in bankruptcy actions. *Cent. Virginia Cmty. Coll. v. Katz*, 546 U.S. 356, 376 n.13 (2006). In finding section 106(a) unconstitutional, the Ninth Circuit adopted an overly narrow view of this Court's precedents and wrongfully damaged the careful system Congress designed.

The result of the Ninth Circuit's decision is that there is now no disincentive preventing states from filing meritless involuntary bankruptcy petitions to harass their political enemies. Congress set up a balanced system. But the Ninth Circuit eliminated the checks Congress interposed, leaving the involuntary bankruptcy process skewed against

citizens and in favor of state power. This decision was based on flawed reasoning and poses dangerous consequences going forward. This Court should allow review and correct it.

Alternatively, this Court could just summarily reverse. Montana's counsel admitted in open court that the state had waived its immunity. (*See* App. at 152a-156a). If, for whatever reason, this Court prefers to leave the circuit split for another day, summary reversal is an appropriate alternative given that the state lawyer's waiver of sovereign immunity is, indeed, a waiver of sovereign immunity.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-19a) is reported at 112 F.4th 837 (9th Cir. 2024). That opinion reversed an unpublished order issued by the bankruptcy appellate panel (Pet. App. 20a-21a), which dismissed Montana's appeal as premature. The court of appeals' opinion further reversed the bankruptcy court's order denying Montana's motion to dismiss (Pet. App. 68a-100a), which is also unreported.

JURISDICTION

The Ninth Circuit issued its opinion reversing the district court's order on August 14, 2024. Pet. App. 1a. On August 28, 2024, Mr. Blixseth filed a motion for reconsideration en banc. Pet. App. 50a. On September 30, 2024, the Ninth Circuit denied the petition. Pet. App. 50a. On November 4, 2024, this Court extended the deadline to file this petition until February 27, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution, Article I, Section 8 and the Eleventh Amendment are reproduced at Pet. App. 58a-59a. The relevant portions of 11 U.S.C. §§ 106 & 303 are reproduced at Pet. App. 51a-57a.

STATEMENT OF THE CASE

The State of Montana and two other states filed an involuntary Chapter 7 petition against Mr. Blixseth in April 2011. Pet. App. 157a-160a. Barely two weeks later, the other two states, California and Idaho, withdrew from the involuntary bankruptcy case and took no further part in the action. *Id.* at 127a ¶ 37. The State of Montana, on the other hand, continued pursuing the case for over 10 more years, until it was ultimately dismissed in favor of Mr. Blixseth. *Id.* at 22a-40a, 48a-49a.

a. Montana forces Mr. Blixseth into involuntary bankruptcy with a meritless petition.

Montana targeted Mr. Blixseth for a tax audit and allegedly discovered a deficiency. *Id.* at 119a ¶ 8, 138a-39a ¶¶ 88-89. Mr. Blixseth disputed that allegation and attempted to correct it by appealing to the Montana State Tax Appeals Board. *Id.* at 120a-21a ¶¶ 13-14. But rather than resolve the matter through the proper tax procedures, Montana instead decided to file an involuntary bankruptcy petition against Mr. Blixseth, alleging that he owed $219,258. *Id.* at 158a; *see also id.* at 125a ¶ 21.

Montana had a problem, however. By law, a single creditor cannot force a citizen into involuntary bankruptcy all on its own. *See* 11 U.S.C. § 303(b). So

Montana had to find two additional creditors to join it in a petition. Montana found those two creditors in California and Idaho, whose combined alleged tax deficiency of $2,104,871 dwarfed Montana's claim. *See* Pet. App. 158a.

Montana faced another problem. Under section 303(b)(1), creditors cannot petition for involuntary bankruptcy if the debt in question is subject to a bona fide dispute. *See* 11 U.S.C. § 303(b)(1). In April 2011 when Montana filed its involuntary bankruptcy petition, Mr. Blixseth was actively litigating his tax dispute before the Montana State Tax Appeals Board. Pet. App. 125a ¶ 21. Yet Montana filed the involuntary bankruptcy petition anyway. *Ibid.* That filing irreparably damaged Mr. Blixseth's reputation and imposed significant personal, professional, and financial consequences. *Id.* at 135a-38a ¶¶ 72-86.

b. Montana delays dismissal of the meritless petition for over a decade.

California and Idaho quickly settled their claims once Mr. Blixseth contested the petition. *Id.* at 126a ¶ 33. As a result, even before the first hearing occurred, there was only one creditor remaining—Montana.[1] *Id.* at 153a. Recognizing the absence of the requisite number of creditors, the Bankruptcy Court closely questioned Montana about the liability it was risking in maintaining the action. *Id.* at 152a-56a. The discussion concluded:

---

[1] Later, another creditor, Yellowstone Club Liquidating Trustee (YCLT) temporarily joined the involuntary petition. Pet. App. 5a. But there were still fewer than three creditors, as required by statute at the time of filing. *Ibid.*

> THE COURT: . . . I just want to [be] clear up front that it is my view at this point that, as you have stated, by commencing an action in this court, not only have they submitted to the jurisdiction of this Court, but they have waived whatever sovereign immunity they might have with respect to damages, fines, or penalties that might accrue because of actions taken in this Court.
>
> MONTANA'S COUNSEL: I believe that's correct, Your Honor.

Id. at 154a; *see also Blixseth*, 112 F.4th at 842.

Eventually, the bankruptcy court dismissed Montana's claim because it was subject to a bona fide dispute and the petition lacked three creditors. Pet. App. 5a. Montana appealed and obtained a stay, delaying Mr. Blixseth's ability to move forward with damages under section 303(i). *Id.* at 35a-37a.

By the time the appeal worked its way up through the appellate system and back down to the district court for a final dismissal, it was June 2021. *Id.* at 88a. At that point, Mr. Blixseth had been defending against a meritless bankruptcy action for over a decade. *See id.* at 68a-88a. Montana's accusations had cost his businesses millions of dollars, ruined his personal and professional reputation, and even impacted his health. *Id.* at 135a-38a ¶¶ 72-86. Finally, however, the stay was resolved, and Mr. Blixseth was free to seek damages against Montana for the harm it caused. *Id.* at 88a.

c. The bankruptcy court permits Mr. Blixseth to seek damages against Montana for its meritless claim.

On December 23, 2021, Mr. Blixseth brought his claims for damages against Montana under section 303(i)(1)-(2). *Id.* at 117a-18a, 145a. Montana responded by filing a motion to dismiss, claiming it had sovereign immunity. *Id.* at 102a-03a. The bankruptcy court denied the motion, allowing Mr. Blixseth to proceed on everything except punitive damages. *Id.* at 100a. Montana appealed that order to the BAP for the Ninth Circuit. *Id.* at 60a-65a. The BAP dismissed the appeal for lack of jurisdiction (*id.* at 20a-21a), and Montana appealed to the Ninth Circuit Court of Appeals, arguing sovereign immunity barred Mr. Blixseth's claims under section 303(i). Pet. App. 4a.

d. The Court of Appeals Decision

Exercising jurisdiction under 28 U.S.C. § 158(d)(1), the Ninth Circuit held that sovereign immunity shielded Montana from Mr. Blixseth's section 303(i) claims. *Blixseth*, 112 F.4th at 841, 848. The Ninth Circuit disagreed with the bankruptcy court that, when Montana filed the involuntary bankruptcy petition, it voluntarily invoked the jurisdiction of the bankruptcy court over both its petition and resulting damages claims. *Id.* at 844. The Ninth Circuit further held that if a state wants to waive sovereign immunity, it can only do so by statute. *Id.* at 844-45. Finally, it held that the bankruptcy court improperly relied on section 106(a) as a basis for ruling that Montana waived sovereign immunity. *Id.* at 847-48.

REASONS FOR GRANTING THE PETITION

The Ninth Circuit's decision warrants this Court's review. For over three decades, the circuits have been confused about the constitutionality of section 106(a). The Fourth, Fifth, Seventh, Ninth, and Tenth Circuits have held that the Eleventh Amendment renders section 106(a) blanketly unconstitutional. The First, Second, Third, and Sixth Circuits, on the other hand, either recognize or indicate that section 106(a) can be applied consistently with the Constitution. In each of three previous cases, this Court granted certiorari to resolve this reoccurring question, only to have subsequent developments prevent this Court from definitively resolving the issue. No longer. This case presents the ideal vehicle to clarify section 106(a)'s constitutionality and restore balance to the important checks Congress integrated into section 303's involuntary bankruptcy scheme.

I. Reviewing section 106(a)'s constitutionality is necessary to resolve a growing circuit split.

Congress enacted section 106(a) to ensure the uniform treatment of private creditors and governmental units—including states. *See* 11 U.S.C. §§ 101(27), 106(a). Section 106(a) works by identifying specific bankruptcy statutes, like section 303, under which states can be liable for damages. *See* 11 U.S.C. § 101(a)(1). But since the Eleventh Amendment restricts federal jurisdiction over suits "commenced or prosecuted against one of the United States," the circuits have struggled to determine when states can be liable under section 106(a). *See* U.S. Const. amend. XI.

At present, five circuits have held that section 106(a) is blanketly unconstitutional under the Eleventh Amendment.

- The Fourth Circuit held that "Congress is not empowered to use Article I authority, specifically the Bankruptcy Clause, to circumvent the Eleventh Amendment's restriction on federal jurisdiction." *Schlossberg v. Md., Comptroller of the Treasury (In re Creative Goldsmiths of Washington, D.C., Inc.)*, 119 F.3d 1140, 1147 (4th Cir. 1997) (finding section 106(a) to be "unconstitutional and ineffective"). *Cf. Carpenters Pension Fund of Balt. v. Md. Dep't of Health & Mental Hygiene*, 721 F.3d 217, 222 n.3 (4th Cir. 2013) (expressing some "doubt[]" on the reasoning of *Goldsmiths* and its progeny following *Katz* but not overruling it).
- The Fifth Circuit likewise ruled as a blanket matter that "Section 106(a) of the Bankruptcy Code is unconstitutional." *Dep't of Transp. and Dev. v. PNL Asset Mgmt. Co. (In re Fernandez)*, 130 F.3d 1138, 1139 (5th Cir. 1997); *see also Zayler v. Dep't of Agric. (In re Supreme Beef Processors, Inc.)*, 468 F.3d 248, 256 (5th Cir. 2006) (agreeing with the Tenth Circuit that Section 106 as a whole does not "constitute[] a complete waiver of sovereign immunity").
- The Seventh Circuit, meanwhile, "conclude[d] that Congress lacked authority under Article I of the Constitution to abrogate state sovereign immunity by enacting [s]ection 106(a) of the Bankruptcy Code." *Nelson v. La Crosse Cnty. Dist. Atty.*, 301 F.3d 820, 838 (7th Cir. 2002);

see also Vill. of Rosemont v. Jaffe, 482 F.3d 926, 938 (7th Cir. 2007) (holding that though "the Supreme Court disagreed in *Katz* with our reasoning on the Eleventh Amendment point," *Nelson*'s other reasons for finding section 106 unconstitutional "remain[ed] sound").

- The Ninth Circuit, as reflected in the opinion below, maintains that section 106 is unconstitutional. *See Blixseth*, 112 F.4th at 845 (reaffirming its prior holding that section "106(a) is 'an unconstitutional assertion of Congress's power.'" (quoting *Mitchell v. Franchise Tax Bd. (In re Mitchell)*, 209 F.3d 1111, 1120 (9th Cir. 2000))).
- The Tenth Circuit agrees. *Straight v. Wyo. Dep't of Transp. (In re Straight)*, 248 B.R. 403, 416 (B.A.P. 10th Cir. 2000) (holding that section "106(a) was not enacted pursuant to a valid exercise of power if premised on art. I, § 8 of the Constitution"). To be fair, the Tenth Circuit may be reconsidering the reasoning of *Straight*. *See Mojsilovic v. Oklahoma ex rel. Bd. of Regents for Univ. of Okla.*, 841 F.3d 1129, 1134 (10th Cir. 2016) ("[T]o the extent ancillary bankruptcy orders do implicate sovereign immunity, the evolution of the Bankruptcy Clause indicates the States agreed in ratifying the Constitution not to assert their immunity in bankruptcy proceedings."). But it has yet to officially depart from *Straight*'s reasoning.

Meanwhile, four other circuits have recognized that section 106 can be constitutional in some circumstances:

- The First Circuit reasoned that section 106 was constitutional where Congress "effectively condition[ed] a state's participation in a federal program on a state's consent to federal jurisdiction," including the waiver of its immunity. *WJM, Inc. v. Mass. Dep't of Pub. Welfare*, 840 F.2d 996, 1003 (1st Cir. 1988), a*brogated on other grounds by Reopell v. Massachusetts*, 936 F.2d 12, 15 (1st Cir. 1991).
- The Second Circuit adopted the First Circuit's reasoning, likewise recognizing that there is "no constitutional barrier to a waiver of Eleventh Amendment immunity as provided in § 106(a)." *995 Fifth Ave. Assocs. v. N.Y. State Dep't of Tax'n & Fin. (In re 995 Fifth Ave. Assocs.)*, 963 F.2d 503, 508 (2d Cir. 1992) (holding that "the State of New York, by filing an administrative expense claim for $2,137,496.76, waived its Eleventh Amendment immunity with respect to the $2,608,603.80 in gains tax paid by the debtor"); *see also Ossen v. Dep't of Soc. Servs. (In re Charter Oak Assocs.)*, 361 F.3d 760, 766, 768-69 (2d Cir. 2004) (declining to reexamine whether section "106(a) passes constitutional muster" and, further, finding permissive counterclaims under section 106(c) to be within Congress's constitutional authority).
- The Third Circuit, while not explicitly addressing section 106(a)'s constitutionality, held that California's participation in a bankruptcy proceeding waived sovereign immunity such that a debtor could bring an inverse condemnation claim against California. *Davis v. California (In re Venoco LLC)*, 998

F.3d 94, 108 (3d Cir. 2021). In reaching that decision, the Third Circuit announced that its prior decision that section 106(a) was unconstitutional had been "displaced" by *Katz*. *Id.* at 102 (citing *In re Sacred Heart Hosp. of Norristown*, 133 F.3d 237, 242-43 (3d Cir. 1998), *as amended* (Feb. 19, 1998)).

- Finally, the Sixth Circuit recognized that Congress had authority to enact section 106(a) under "Article I, section 8 of the Constitution." *Hood v. Tenn. Student Assistance Corp. (In re Hood)*, 319 F.3d 755, 758 (6th Cir. 2003), *aff'd and remanded sub nom. Tenn. Student Assistance Corp. v. Hood*, 541 U.S. 440 (2004) (declining to reach the section 106(a) issue); *see also Schultz v. United States*, 529 F.3d 343, 354 (6th Cir. 2008) (reaffirming the reasoning of *Hood* and incorporating the similar reasoning of *Gray v. Fla. State Univ. (In re Dehon, Inc.)*, 327 B.R. 38 (Bankr. D. Mass. 2005)).

Given this significant split, the lower courts would greatly benefit from this Court's clarification that section 106(a) can be constitutionally applied, particularly to section 303(i) damages claims.

That clarification is all the more appropriate given that this Court has thrice been unable to resolve the issue because of vehicle problems. In *Hoffman v. Connecticut Department of Income Maintenance*, 492 U.S. 96 (1989) (plurality), the Supreme Court found that the previous version of section 106 had not properly abrogated the Eleventh Amendment, and thus Congress's power to do so was not at issue. *Id.* at 104. Then in *Hood* this Court again was unable to reach section 106's constitutionality because it found

that "a proceeding initiated by a debtor to determine the dischargeability of a student loan debt is not a suit against the State for purposes of the Eleventh Amendment." 541 U.S. at 443. Finally, in *Katz*, this Court once more "granted certiorari to consider the question left open by [its] opinion in *Hood*: whether [Congress's] attempt to abrogate state sovereign immunity in 11 U.S.C. § 106(a) is valid." 546 U.S. at 361 (citation and footnote omitted). Yet *Katz* too was unable to settle the question because "the enactment of [section 106(a)] was not necessary to authorize the Bankruptcy Court's jurisdiction over the[] preference avoidance proceedings" that were at issue in the case. *Id.* at 362.

As a result, the lower courts have been left without clarity on section 106(a)'s constitutionality for over three decades. The time is ripe for this Court to review the issue and resolve the question once and for all.

II. Those circuits holding section 106(a) unconstitutional are denying Congress its constitutional authority.

In holding that section 106(a) violates the Eleventh Amendment in all circumstances, the Ninth Circuit and those circuits that agree with it have improperly overlooked two of section 106(a)'s constitutional applications. In so doing, the circuits have ignored this Court's instructions to "accord a strong presumption of constitutionality to Acts of Congress." *See United States v. Five Gambling Devices*, 346 U.S. 441, 449 (1953).

First, a state by its own actions can waive Eleventh Amendment immunity and consent to suit in federal court. *See Atascadero State Hosp. v.*

Scanlon, 473 U.S. 234, 238 (1985). This is known as the "litigation waiver" theory. *Fla. Dep't of Revenue v. Diaz (In re Diaz)*, 647 F.3d 1073, 1082 (11th Cir. 2011). Thus, section 106(a) is valid to the extent it authorizes claims where a state's own actions will necessarily demonstrate a waiver of sovereign immunity.

Second, certain provisions of the Constitution authorize Congress to impose federal jurisdiction upon states, regardless of the Eleventh Amendment. *See Green v. Mansour*, 474 U.S. 64, 68 (1985). This is known as the "consent by ratification" theory, because the states' ratification of the Constitution constituted a voluntary waiver of sovereign immunity as to actions arising from those provisions. *Diaz*, 647 F.3d at 1083-84. One such provision is the Bankruptcy Clause. *See Katz*, 546 U.S. at 378.

While section 106(a) identifies many different bankruptcy code provisions under which states are subject to suit, *see* 11 U.S.C. § 106(a)(1), this Court need not address all of them here. Addressing section 303(i) alone would give the circuits necessary guidance as to how to properly evaluate section 106(a)'s constitutionality in other various scenarios. In that regard, the interplay between sections 106(a) and section 303(i) provides a particularly fruitful vehicle because, whether evaluated under the litigation waiver theory or the consent-by-ratification theory, section 106(a)'s application to section 303(i) is constitutional.

A. The Ninth Circuit ignored longstanding principles of waiver in allowing Montana to invoke federal jurisdiction to bankrupt a citizen and then hide behind sovereign immunity to escape damages.

Section 106(a), as applied through section 303(i), is constitutional because a state necessarily waives its sovereign immunity by filing an involuntary bankruptcy petition. This Court has long recognized a state's ability to waive its own sovereign immunity through its affirmative litigation conduct, particularly in the bankruptcy context. In finding no litigation waiver here, the Ninth Circuit misconstrued past precedent from this Court and overlooked a key way that section 106(a) can be constitutional.

"Although a state may not be sued without its consent, such immunity is a privilege which may be waived." *Gunter v. Atlantic Coast Line R. Co.*, 200 U.S. 273, 284 (1906). "[H]ence, where a state voluntarily become[s] a party to a cause, and submits its rights for judicial determination, it will be bound thereby, and cannot escape the result of its own voluntary act by invoking the prohibitions of the 11th Amendment." *Ibid.*; *see also Clark v. Barnard*, 108 U.S. 436, 447-48 (1883).

In *Clark*, for instance, the state of Rhode Island voluntarily intervened in a federal bankruptcy action as "a claimant of the fund." 108 U.S. at 447. After the bankruptcy court awarded the funds to a different creditor, Rhode Island belatedly attempted to assert sovereign immunity so as not to be bound by that judgment. *Ibid.* By then, it was too late. Eleventh Amendment immunity, this Court recognized, "is a

personal privilege" which a state "may waive at pleasure." *Ibid.* Specifically, in a suit where "a state ha[s] sufficient interest to entitle it to become a party defendant, its appearance in a court of the United States" constitutes "a voluntary submission to its jurisdiction." *Ibid.* And once a state chooses to execute such a voluntary waiver, it remains subject to the federal court's jurisdiction over the matter "to the full extent required for its complete determination." *Id.* at 448.

This Court reiterated this principle a half century later in *Gardner*. 329 U.S. at 574. There, New Jersey filed a proof of claim in a bankruptcy action alleging that the debtor owed it unpaid taxes. *Id.* at 570. The debtor disputed the amount of taxes New Jersey claimed, and petitioned the bankruptcy court to adjudicate how much was actually owed. *Id.* at 571. At that point, New Jersey reversed course and attempted to extricate itself from the bankruptcy court's jurisdiction, arguing that adjudication of the petition would violate its Eleventh Amendment immunity. *Ibid.*

This Court rejected that two-faced maneuver. "It is traditional bankruptcy law," this Court noted, "that he who invokes the aid of the bankruptcy court by offering a proof of claim and demanding its allowance must abide the consequences of that procedure." *Id.* at 573. Following this reasoning, when "the State becomes the actor and files a claim against the fund it waives any immunity which it otherwise might have had respecting the adjudication of the claim." *Id.* at 574.

To hold otherwise, this Court explained, would break the system Congress designed. *Id.* at 573.

After all, the filing of a proof of claim is "prima facie evidence of its validity." *Ibid.* But if that validity could not be questioned, then there would be nothing stopping "unmeritorious or excessive claims" from "dilut[ing] the participation of the legitimate claimants." *Ibid.* Thus, bankruptcy courts need to be able to adjudicate the validity of claims, even if those claims are brought by states. As this Court put it: "If a state desires to participate in the assets of a bankrupt, she must submit to appropriate requirements by the controlling power; otherwise, orderly and expeditious proceedings would be impossible and a fundamental purpose of the Bankruptcy Act would be frustrated." *Id.* at 574 (quoting *New York v. Irving Tr. Co.*, 288 U.S. 329, 333 (1933)).

Applying that logic, states cannot invoke a federal court's jurisdiction by filing an involuntary bankruptcy petition and then escape section 303(i) damages by asserting sovereign immunity once the case doesn't go their way. If merely filing a proof of claim in an ongoing bankruptcy action is sufficient to waive sovereign immunity, then the far more involved process of *initiating* an entire involuntary bankruptcy action must waive it as well. By rejecting this clear logic, the Ninth Circuit has now created the exact problem this Court foresaw in *Gardner*—incentivizing the filing of "unmeritorious or excessive claims," which harm not only "legitimate claimants" but also the debtors. *Id.* at 573.

This holding runs contrary to this Court's explanation of Eleventh Amendment immunity. The "rule governing voluntary invocations of federal jurisdiction has rested upon the problems of inconsistency and unfairness" that would result if

states could invoke federal jurisdiction when it suited them but then assert sovereign immunity when it did not to escape any negative consequences. *Lapides v. Bd. of Regents of Univ. Sys. of Georgia*, 535 U.S. 613, 622 (2002). "[N]either those who wrote the Eleventh Amendment nor the States themselves (insofar as they authorize litigation in federal courts) would intend to create that unfairness." *Ibid.*; *see also Wisconsin Dep't of Corr. v. Schacht*, 524 U.S. 381, 393 (1998) (Kennedy, J., concurring) ("[L]aw usually says a party must accept the consequences of its own acts."). Yet that is exactly what the Ninth Circuit allowed below.

The Ninth Circuit's reasoning cannot be justified just because section 303(i) damages do not arise until after the involuntary bankruptcy claim is dismissed. A bankruptcy proceeding is "but one suit. The several motions made and acts done in the bankrupt[cy] court in the progress of the cause are not distinct suits at law or in equity, but parts of one suit in bankruptcy, from which they cannot be separated." *Wiswall v. Campbell*, 93 U.S. 347, 348 (1876). Thus, as this Court recognized in *Clark*, once the state waives sovereign immunity, it waives it for a "complete determination" of the matter. 108 U.S. at 448. And that includes resolution of not just the state's claim, but also all "matter[s] ancillary to a decree rendered in a cause over which [the bankruptcy court] has jurisdiction." *Gunter*, 200 U.S. at 292. A section 303(i) claim is simply an ancillary part of the involuntary bankruptcy proceeding, providing bankruptcy courts the necessary authority to police their dockets and prevent abuses of the system Congress designed.

Nor does the fact that section 303(i) includes a cost to the state change this analysis. Within the Eleventh Amendment, there is a "presumed recognition of the judicial need to avoid inconsistency, anomaly, and unfairness." *Lapides*, 535 U.S. at 620. Thus, the principle of voluntary waiver "remains sound as applied to suits for money damages." *Ibid.* A state's "preference or desire" for the "selective use of 'immunity' to achieve litigation advantages" does not trump the fundamental fairness of treating all creditors the same. *Ibid.*

Put differently, the imposition of section 303(i) damages is no different than any other monetary penalty that bankruptcy courts use to control party behavior. In the proof of claim context, courts recognize that the state's waiver of sovereign immunity extends to penalties and sanctions resulting from its actions in the case. *Fla. Dep't of Revenue v. Omine (In re Omine)*, 485 F.3d 1305, 1314-15 (11th Cir. 2007), *withdrawn pursuant to settlement*, No. 06-11655-II, 2007 WL 6813797 (11th Cir. June 26, 2007). A creditor that violates a bankruptcy court's automatic stay, for instance, cannot escape an attorney's fee sanction merely because it happens to be a state. *Id.* at 1319; *see also Ga. Dep't of Revenue v. Burke (In re Burke)*, 146 F.3d 1313, 1319-20 (11th Cir. 1998) (upholding bankruptcy court's award of "attorneys' fees and costs incurred by the debtors" in remedying the state's violation of the bankruptcy court's automatic stay); *Fla. Dep't of Revenue v. Rodriguez (In re Rodriguez)*, 367 F. App'x 25, 30 (11th Cir. 2010) (unpublished) (affirming the bankruptcy court's fine against a state as part of a contempt adjudication).

But according to the Ninth Circuit, bankruptcy courts suddenly lack this authority when states file involuntary bankruptcy petitions, as opposed to proofs of claim. Not so. All the reasons for permitting ancillary federal jurisdiction over states' proofs of claim apply with even greater force when states initiate an entire bankruptcy action from its conception. *See, e.g.*, *Montana v. Goldin (In re Pegasus Gold Corp.)*, 394 F.3d 1189, 1196 (9th Cir. 2005) ("The rationale underlying proof of claim waiver of immunity also presupposes that the state will be able to determine ex ante whether it will be opening itself up to a counterclaim by electing to participate in the bankruptcy estate."); *see also In re Caucus Distributors, Inc.*, 106 B.R. 890, 930 (Bankr. E.D. Va. 1989) (indicating that "an alleged debtors' request for costs and fees under 11 U.S.C. § 303(i)" would be permitted against a state that filed a meritless involuntary bankruptcy petition).

Congress made clear in section 106(a) that sovereign immunity cannot prevent a section 303(i) damages claim if an involuntary bankruptcy petition gets dismissed as meritless. *See* 11 U.S.C. § 106(a). Based on the fundamental principles of sovereign immunity waiver as expounded by this Court, that statutory arrangement does not violate the Eleventh Amendment. This Court should allow review to correct the Ninth Circuit's contrary decision and restore the carefully balanced system Congress designed.

B. Congress possesses Article I authority to make states amenable to damages for filing meritless involuntary bankruptcy petitions.

The Ninth Circuit's opinion requires this Court's review for an additional reason. Even without resorting to the litigation-waiver theory, Congress still has Article I authority to make states "amenable to [damages] proceedings" regardless. *See Katz*, 546 U.S. at 379. The Ninth Circuit's holding that section 106 is unconstitutional incorrectly limited Congress's constitutional power and upset the carefully balanced statutory scheme Congress designed. In doing so, the Ninth Circuit reaffirmed its misalignment in a circuit split that has been begging this Court's review for over three decades. This Court should grant certiorari so it can correct this dangerous precedent, provide clarity to the lower courts, and ensure Congress's lawful power is not improperly abridged.

The five circuits that have held section 106(a) to be blanketly unconstitutional missed the Framers' intent. As the Sixth Circuit explained, none of these circuits "address[ed] Congress's Bankruptcy Clause powers as understood in the plan of the Convention." *Hood*, 319 F.3d at 761-62. Under that plan, the states agreed to "'alienat[e]' their sovereignty" in a few select circumstances, including naturalization and bankruptcy. *Id.* at 765-66 (quoting *The Federalist No. 81* (Alexander Hamilton)); *see also Dehon*, 327 B.R. at 54-55 ("Since the Framers' express intent was to alienate State sovereign immunity from suit when Congress exercises its power over naturalization, it must be deduced that the Framers intended to alienate States' sovereign immunity with respect to the bankruptcy power as well.").

This relinquishment of sovereign immunity was necessary for bankruptcy laws to be uniform—the entire point of the Bankruptcy Clause's enactment in the first place. *Hood*, 319 F.3d at 764-65; *see also Dehon*, 327 B.R. at 53 (noting "the Framers' conviction that uniform bankruptcy laws were necessary to a national economy and to protect creditors" (citing *The Federalist No. 42* (James Madison) ("[T]he power of establishing uniform laws of bankruptcy is so intimately connected with the regulation of commerce, and will prevent so many frauds where the parties or their property may lie or be removed into different States, that the expediency of it seems not likely to be drawn into question.")).

Unsurprisingly, then, even after the Eleventh Amendment's ratification this Court recognized that under the "peculiar terms of the grant" in the Bankruptcy Clause, "Congress is not authorized merely to pass laws, the operation of which shall be uniform, but to establish uniform laws on the subject throughout the United States." *Sturges v. Crowninshield*, 17 U.S. (4 Wheat.) 122, 193-94 (1819). Thus, in *Chapman v. Brewer*, 114 U.S. 158 (1885), this Court held that while normally federal courts lacked authority to award injunctions over state courts, a federal court had that authority when it was in furtherance of a bankruptcy proceeding. *Id.* at 171-72.

The Sixth Circuit's analysis in *Hood* comports with this Court's guidance. As far back as 1906, this Court held it "undoubted" that Congress's bankruptcy authority created an exception to the Eleventh Amendment—at least for the purposes of staying state court proceedings. *Gunter*, 200 U.S. at 291. And most recently, in *Katz*, this Court agreed with the

Sixth Circuit that the "history of the Bankruptcy Clause, the reasons it was inserted in the Constitution, and the legislation both proposed and enacted under its auspices immediately following ratification of the Constitution," demonstrate that it "authorize[d] limited subordination of state sovereign immunity in the bankruptcy arena." *Id.* at 362-63. That "was as true in the 18th century as it is today." *Id.* at 362. This Court even cited the bankruptcy court's decision in *Dehon* favorably, just as the Sixth Circuit did. *See id.* at 373 (citing *Dehon* for its "collecti[on of] historical materials"). Accordingly, while this court has never squarely addressed section 106(a)'s constitutionality, there is good reason to conclude "that the Supreme Court would hold, in the context of a given bankruptcy case under title 11 of the United States Code, that section 106(a)" is "constitutionally valid." *Arnold v. Sallie Mae Servicing Corp. (In re Arnold)*, 255 B.R. 845, 854 (Bankr. W.D. Tenn. 2000) (reaching that conclusion in the context of section 106(a)'s application to section 523(a)(8)).

Given this historical understanding, those circuits that have found 106(a) to be unconstitutional in all circumstances are wrong. Congress's jurisdiction over bankruptcy "does not implicate States' sovereignty to nearly the same degree as other kinds of jurisdiction." *Katz*, 546 U.S. at 362. As a result, while not technically an "abrogation" of sovereign immunity, section 106(a) is a constitutional "determin[ation] that States should be amenable to" certain bankruptcy proceedings. *Id.* at 379.

This very case presents a helpful illustration of when Congress has authority to make that determination. While "the principal focus of the

bankruptcy proceedings is and was always the res, some exercises of bankruptcy courts' powers—issuance of writs of habeas corpus included—unquestionably involved more than mere adjudication of rights in a res." *Id.* at 378. Here too, Congress's authority to require states pay the damages caused by wrongfully filing a bankruptcy petition against a res likewise involves more than mere adjudication of the parties' rights in the res itself. That poses no constitutional problems, however. *See id.* Under this Court's precedent, Congress has authority not just over the bankruptcy res, but also all matters "ancillary to the bankruptcy courts' *in rem* jurisdiction." *Id.* at 372. Eleventh Amendment immunity cannot supplant that. *See id.* at 378; *see also id.* at 372 ("In ratifying the Bankruptcy Clause, the States acquiesced in a subordination of whatever sovereign immunity they might otherwise have asserted in proceedings necessary to effectuate the *in rem* jurisdiction of the bankruptcy courts.").

That is why, for example, this Court found in *Gardner* that when a state files a proof of claim it cannot assert sovereign immunity to prevent the claim from being "reduced in part" or otherwise "adjudicat[ed]." 329 U.S. at 574. Indeed, going one step further, this Court has held that the Bankruptcy Clause authorizes courts to dispose of property that a state has a tax lien on and set the priority of that lien, even where the state never voluntarily subjected itself to the bankruptcy court's jurisdiction. *Van Huffel v. Harkelrode*, 284 U.S. 225, 227-28 (1931). Likewise, in *Hood*, this Court recognized that Congress's bankruptcy jurisdiction extended to the discharge of a student loan debt owned by the state,

regardless of whether the state consents to that discharge. 541 U.S. at 451. And then in *Katz*, this Court further recognized that Congress could authorize bankruptcy courts to recover preferential transfers from states without violating the Eleventh Amendment. *See Katz*, 546 U.S. at 371-73. At the founding, "as now, the jurisdiction of courts adjudicating rights in the bankrupt estate included the power to issue compulsory orders to facilitate the administration and distribution of the res." *Id.* at 362. If the Court had held otherwise in any of these cases then states would receive preferential treatment, contradicting Congress's "mandate to enact 'uniform' laws." *Id.* at 376 n.13. Instead, as these cases show, Congress has "robust" power under the Bankruptcy Clause. *Ibid.*

Thus, when Congress made explicit in section 106 that states are liable for damages under section 303(i) just like any other creditor, Congress acted well within its bankruptcy power. That authority includes not just power over the res, but power over proceedings "ancillary" to "effectuate the *in rem* jurisdiction of the bankruptcy court." *Id.* at 373, 378. Here, the 303(i) damages procedure is a necessary ancillary part of an involuntary bankruptcy proceeding. By filing an involuntary bankruptcy petition, a state forces an unwilling citizen—and his property—into bankruptcy court. *See Chapter 11 Reorganizations* § 6:10 (2d ed.) Westlaw (database updated February 2025). The citizen, in turn, faces "public embarrassment, loss of credit standing, and inability to transfer assets and carry on business as usual." Susan Heath Sharp & Matthew B. Hale, *Involuntary Bankruptcy: A Powerful Weapon, But Use Extreme Caution!*, Fed. Law. Aug. 2018, at 8. As a

result, the involuntariness of the action can damage the res in ways beyond that of a voluntary bankruptcy proceeding. Forcing creditors to compensate for any unnecessary damage caused by a meritless petition is thus necessary to protect the res. In that respect, section 303(i)'s damages provision is materially similar to the procedure this Court already approved in *Katz*—forcing a state to pay back a wrongful preferential transfer. 546 U.S. at 371-73; *see also Slayton v. White (In re Slayton)*, 409 B.R. 897, 903-04 (Bankr. N.D. Ill. 2009) ("Injunctive relief, damages, and attorneys' fees, though seemingly in personam remedies, are ancillary to the Slaytons' *in rem* proceeding because those remedies serve as mechanisms for enforcement of the discharge.").

It also provides bankruptcy courts a necessary tool "to avoid injustice and abuse" of involuntary bankruptcy proceedings. *See* Sharp & Hale, *supra*, at 8. Bankruptcy courts cannot lose this authority just because a creditor is a state. As discussed above, bankruptcy courts have authority to police "unmeritorious or excessive claims" from both individual creditors *and* states. *Gardner*, 329 U.S. at 573. This ensures that states do not gain an advantage over other creditors by being able to pursue more aggressive, or even abusive, litigation tactics without fear of consequences. To the contrary, "state officials who have violated a bankruptcy discharge injunction or automatic stay" should be "subject to contempt sanctions to the same extent as any other creditor who has violated a bankruptcy court order. *Goldberg v. Ellett (In re Ellett)*, 254 F.3d 1135, 1147 (9th Cir. 2001); *In re Rothman*, 76 B.R. 38, 41 (Bankr. E.D.N.Y. 1987) (ordering state tax official to show cause why he should not be held in contempt

for violating bankruptcy court's discharge injunction). Yet following the Ninth Circuit's decision below, it's unclear to what extent—if any—bankruptcy courts can hold states accountable for improper conduct.

This further denies Congress its core bankruptcy "power to enact bankruptcy laws the purpose and effect of which are to ensure uniformity in treatment of state and private creditors." *Katz*, 546 U.S. at 376 n.13. Damages are necessary to effectuate proper use of the involuntary bankruptcy procedure, and Congress needs to make that system uniform. As this Court recent explained in the context of section 106(a), to "facilitate the Code's orderly and centralized debt-resolution process, these provisions' basic requirements generally apply to all creditors." *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, 391 (2023) (cleaned up). Accordingly, "Courts can also enforce these requirements against any kind of noncompliant creditor—whether or not the creditor is a 'governmental unit'—by virtue of § 106(a)." *Ibid.* To hold otherwise "risks upending the policy choices that the Code embodies in this regard." *Ibid.* Here too, section 106(a) works together with section 303(i) to facilitate "orderly and expeditious proceedings," *Gardner*, 329 U.S. at 574, by holding all parties accountable for frivolous claims. Rendering 303(i) unconstitutional as applied to the states undermines that balance and denies Congress is constitutional authority to maintain a uniform bankruptcy system.

* * *

Congress's ability to hold states amenable to damages in certain bankruptcy actions under section 106(a) has escaped this Court's review several times.

Meanwhile, the circuits have been unable to reach a consensus and are in dire need of this Court's guidance. The decision below presents an ideal vehicle to provide such guidance and restore balance and uniformity to the delicate system of involuntary bankruptcy that Congress designed.

III. Certiorari is further warranted because of the practical consequences of the decision below

Practical considerations further demonstrate why this case is the ideal vehicle for clarifying section 106(a)'s constitutionality.

Congress engaged in a careful "balancing of interests" to create an involuntary bankruptcy system that "seeks to prevent improper involuntary petition filings." *NMSBPCSLDHB, L.P. v. Integrated Telecom Express, Inc.* (*In re Integrated Telecom Express, Inc.*), 384 F.3d 108, 119 (3d Cir. 2004). The consequences to involuntary debtors are, after all, severe. Mr. Blixseth's involuntary bankruptcy cost millions in damages and devastated his personal and professional reputation. Pet. App. 135a-38a ¶¶ 72-86. These harms are not uncommon. *See* Sharp & Hale, *supra*, at 8; *Chapter 11 Reorganizations*, *supra*, § 6:10.

Within this carefully balanced system, section 303(i) plays an important role. "[A]n award of attorneys' fees and costs serves to discourage the filing of involuntary petitions to force debtors to pay on a disputed debt." *Crest One Spa v. TPG Troy, LLC (In re TPG Troy, LLC)*, 793 F.3d 228, 235 (2d Cir. 2015) (citing *In re Kidwell*, 158 B.R. 203, 213 (Bankr. E.D. Cal. 1993) ("[T]he operative principle [behind section 303(i) is] that one who swats at the hornet had best kill it."")). Without the risk of 303(i) damages,

would-be creditors lack a sufficient disincentive to deter them from invoking the powerful tool of involuntary bankruptcy to resolve otherwise simple debt disputes. One need only look to the example of Montana in this case which, rather than complete its disputed tax audit in the proper venue, instead attempted to bypass it by invoking a more powerful bankruptcy action against Mr. Blixseth. Pet. App. 125a ¶ 21.

That is not the system Congress designed. Instead, "any petitioning creditor in an involuntary case . . . should expect to pay the debtor's attorney's fees and costs if the petition is dismissed." *Higgins v. Vortex Fishing Sys., Inc.*, 379 F.3d 701, 707 (9th Cir. 2004) (quoting *Kidwell*, 158 B.R. at 217). To balance out the extreme consequences of involuntary bankruptcy on alleged debtors, the debtor's "motion for attorney's fees and costs under § 303(i)(1) raises a rebuttable presumption that reasonable fees and costs are authorized." *Ibid.*

Moreover, section 106(a) plays an important role in maintaining this system as "[s]tate governmental units are among the largest creditors who appear in the bankruptcy courts." *Dehon*, 327 B.R. at 49 n. 19 (cleaned up). Removing the threat of section 303(i) consequences will have a significant impact on how states assess the risks of proceeding with involuntary bankruptcy petition—and not for the better. In recent years, America has unfortunately witnessed a rise in state litigation that critics justifiably suspect to be driven by political motivations.[2] State-initiated

---

[2] *See, e.g.*, James D. Zirin, *Trump Will Turn America's Justice System into a Tool of Political Revenge*, THE HILL (Dec. 18, 2024), https://thehill.com/opinion/judiciary/5045393-trump-will-

prosecutions and lawsuits have had a meaningful impact on the modern political landscape.[3] But the rise of litigation for purely political purposes is dangerous to American democracy. Federalist Soc'y, *Welcome & Opening Remarks and Showcase Panel I*, YouTube (Nov. 14, 2024), https://www.youtube.com/watch?v=WJWdfIHgg8M (Judge Andrew Oldham: "But one thing that is beyond reasonable debate is that people should not be prosecuted on the basis of their politics or on their status as a political candidate."). This case presents this Court an ideal opportunity to not only clarify section 106(a)'s meaning, but also to restore balance to the involuntary bankruptcy system before it too becomes another weapon in the arsenal of modern lawfare.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

---

turn-americas-justice-system-into-a-tool-of-political-revenge/; Staff of H.R. Committee on the Judiciary, 118th Cong., Interim Rep., *An Anatomy of a Political Prosecution: The Manhattan District Attorney's Office's Vendetta Against President Donald J. Trump* 1-3 (Comm. Print 2024); Staff of H.R. Committee on Oversight and Government Reform, 113th Cong., *How Politics Led the IRS to Target Conservative Tax-Exempt Applicants for their Political Beliefs* iii (Comm. Print 2014).

[3] *See* Eric Posner, *Prosecutions and Politics Don't Mix*, Project Syndicate (Jul. 29, 2024), https://www.project-syndicate.org/commentary/kamala-harris-prosecutor-line-could-backfire-like-the-trump-prosecutions-by-eric-posner-2024-07.

Respectfully submitted,

/s/ Matthew Nis Leerberg

Matthew Nis Leerberg
Counsel of Record
Nathan W. Wilson
FOX ROTHSCHILD LLP
434 Fayetteville Street, Suite 2800
Raleigh, NC 27601
(919) 755-8759
mleerberg@foxrothschild.com
nwilson@foxrothschild.com

Nathan A. Schultz
LAW OFFICE OF NATHAN A. SCHULTZ, P.C.
10621 Craig Road
Traverse City, MI 49686
(310) 429-7128
nschultzesq@gmail.com

Nicholas Lyskin
FOX ROTHSCHILD LLP
999 Peachtree Street NE
Atlanta, GA 30309
(310) 598-4182
nlyskin@foxrothschild.com

Counsel for Petitioner