No. 25-_____

IN THE
Supreme Court of the United States

OFFICIAL COMMITTEE OF ASBESTOS CLAIMANTS OF BESTWALL LLC,
Petitioner,

v.

BESTWALL LLC,
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

Wealthy conglomerate Georgia-Pacific contrived a way to sequester its asbestos liabilities in bankruptcy. It split itself in two, placing its asbestos liabilities with one new entity designed for bankruptcy ("Bestwall"), while enabling another new entity to operate outside of bankruptcy ("New GP"). Bestwall then filed a voluntary Chapter 11 petition in North Carolina, where it conceded that funding from New GP enables it to pay any conceivable current and future liabilities.

The bankruptcy court refused to dismiss Bestwall's bankruptcy for lack of good faith under 11 U.S.C. § 1112(b)(1). It found that Bestwall's ability to pay all its liabilities meant its petition was not "objectively futile" under Fourth Circuit precedent, and it refused to consider Bestwall's subjective bad faith. The court later refused to dismiss Bestwall's bankruptcy for lack of subject-matter jurisdiction and again refused to dismiss for lack of good faith. The court recognized that Bestwall's conceded ability to pay its debts presented a jurisdictional question under the Constitution's Bankruptcy Clause, art. I, § 8, cl. 4, but it concluded that the Clause imposed no jurisdictional limit on Bestwall's bankruptcy. A divided Fourth Circuit panel affirmed, and a sharply divided *en banc* court denied rehearing. The question presented is:

Whether a debtor with a conceded ability to pay all liabilities now and in the foreseeable future properly can invoke bankruptcy protection.

PARTIES TO THE PROCEEDINGS

Petitioner Official Committee of Asbestos Claimants of Bestwall LLC is a court-appointed fiduciary representing the interests of asbestos claimants in the bankruptcy court proceedings and was the appellant in the court of appeals proceedings.

Respondent Bestwall LLC is the debtor in the bankruptcy court proceedings and was the appellee in the court of appeals proceedings.

Wilson Buckingham and Angelika Weiss are claimants in the bankruptcy court proceedings whose motion to dismiss was denied. The bankruptcy court denied their subsequent motion for certification of direct appeal to the Fourth Circuit (Bankr. W.D.N.C. No. 17-31795, ECF No. 3358), and there presently is a renewed request for certification of direct appeal pending before the district court (W.D.N.Y. No. 24-cv-00042, ECF No. 51); they did not participate in the court of appeals proceedings below and thus are not respondents in the proceedings before this Court.

Georgia-Pacific LLC was an appellee in prior district court proceedings and an appellee in prior court of appeals proceedings, but is no longer participating in these proceedings.

Sander L. Esserman, in his capacity as Future Claimants' Representative, was an appellant in prior district court proceedings and an appellant in prior court of appeals proceedings, but did not participate in the bankruptcy court proceedings or court of appeals proceedings regarding the motion to dismiss at issue and thus is not a respondent in the proceedings before this Court.

RELATED CASES

Related Decisions Under Review

In re Bestwall LLC, 605 B.R. 43 (Bankr. W.D.N.C. July 29, 2019) (No. 17-31795, Adv. Proceeding No. 17-03105) (denying motion to dismiss or, alternatively, for change of venue)

In re Bestwall LLC, 658 B.R. 348 (Bankr. W.D.N.C. Feb. 21, 2024) (No. 17-31795, Adv. Proceeding No. 17-03105) (denying motions to dismiss and for reconsideration)

Bestwall LLC v. Official Comm. of Asbestos Claimants of Bestwall LLC, 148 F.4th 233 (4th Cir. Aug. 1, 2025) (No. 24-1493) (affirming bankruptcy court)

Bestwall LLC v. Official Comm. of Asbestos Claimants of Bestwall LLC, 157 F.4th 579 (4th Cir. Oct. 30, 2025) (No. 24-1493) (denying rehearing *en banc*)

Related Decisions Previously Under Review

In re Bestwall LLC, 606 B.R. 243 (Bankr. W.D.N.C. July 29, 2019) (No. 17-31795, Adv. Proceeding No. 17-03105)

In re Bestwall LLC, 2022 WL 67469 (W.D.N.C. Jan. 6, 2022) (No. 3:20-cv-103-RJC)

In re Bestwall LLC, 2022 WL 68763 (W.D.N.C. Jan. 6, 2022) (No. 3:20-cv-105-RJC)

In re Bestwall LLC, 71 F.4th 168 (4th Cir. June 20, 2023) (Nos. 22-1127(L) & 22-1135), *reh'g denied* (4th Cir. Aug. 7, 2023), *cert. denied*, 144 S. Ct. 2519 & 2520 (U.S. May 13, 2024) (Nos. 23-675 & 23-702)

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Petitioner Official Committee of Asbestos Claimants of Bestwall LLC petitions for a writ of certiorari to review the Fourth Circuit's judgment in this case.

OPINIONS BELOW

The Fourth Circuit's opinion (App.1a-46a) is reported at 148 F.4th 233. The orders of the bankruptcy court (App.47a-106a, App.107a-124a) are reported at 658 B.R. 348 and 605 B.R. 43, respectively.

JURISDICTION

The Fourth Circuit entered judgment on August 1, 2025, and denied a petition for rehearing *en banc* on October 30, 2025. App.125a-140a. On January 23, 2026, Chief Justice Roberts extended the time for filing a petition for a writ of certiorari to and including February 20, 2026. App.146a. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Bankruptcy Clause of the U.S. Constitution, art. I, § 8, cl. 4, provides:

> The Congress shall have Power . . . [t]o establish . . . uniform Laws on the subject of Bankruptcies throughout the United States[.]

Relevant provisions of the Bankruptcy Code (11 U.S.C.) are reproduced at App.141a-145a.

INTRODUCTION

Georgia-Pacific is a thriving conglomerate worth tens of billions of dollars. It concocted this bankruptcy to remove its asbestos liabilities from the tort system, delay justice for asbestos plaintiffs, and keep its assets and highly lucrative business outside the transparency requirements and restrictions accompanying bankruptcy. In 2017, it pioneered a controversial scheme, now known as the "Texas Two-Step," that

separated its valuable business operations from its asbestos liabilities. The first step was for Georgia-Pacific to split into two new entities: New GP, which received most of the profitable assets and business operations; and Bestwall, which received the asbestos liabilities, token assets, and a funding commitment from New GP. The second step was for Bestwall to declare bankruptcy in its forum of choice and obtain an injunction halting all asbestos lawsuits against itself, as well as New GP and other non-debtor affiliates. This scheme has blocked all asbestos litigation against Georgia-Pacific and its affiliates for eight years and counting.

This appeal presents the exceptionally important question whether an entity with a conceded ability to timely pay all current and anticipated liabilities can wield bankruptcy's unique powers against its creditors. The answer is "no." The Fourth Circuit's contrary conclusion conflicts with the decisions of other circuits, this Court's precedents, and the Constitution's Bankruptcy Clause.

First, bankruptcy courts can dismiss Chapter 11 petitions for lack of good faith under 11 U.S.C. § 1112(b)(1). That power "ensures that the Bankruptcy Code's careful balancing of interests is not undermined by petitioners whose aims are antithetical to the basic purposes of bankruptcy." *In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 119 (3d Cir. 2004). "[T]he bankruptcy laws were enacted to protect" the "class of 'honest but *unfortunate* debtors.'" *Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 374 (2007) (quoting *Grogan v. Garner*, 498 U.S. 279, 287 (1991)) (emphasis added; cleaned up). Given that objective, "financial distress" plays a "central role" in the good-faith inquiry conducted by most circuits. *In re LTL Mgmt., LLC*, 64 F.4th 84, 103

(3d Cir. 2023). "[I]f a petitioner has no need to rehabilitate or reorganize, its petition cannot serve the rehabilitative purpose for which Chapter 11 was designed." *Integrated Telecom*, 384 F.3d at 122.

By contrast, the Fourth Circuit applies a two-pronged test not followed in any other circuit. Its test requires a showing of both the "objective futility" of the debtor's reorganization effort and the debtor's "subjective bad faith." *Carolin Corp. v. Miller*, 886 F.2d 693, 700-01 (4th Cir. 1989). Entities like Bestwall that timely can pay all current and future debts easily satisfy the objective-futility prong because they have the resources to reorganize. The Fourth Circuit has permitted bankruptcy courts to apply its two-prong test sequentially: if the bankruptcy court rules out the objective futility of the debtor's reorganization effort, it can then ignore the debtor's subjective bad faith. By blessing wealthy debtors and ignoring their subjective bad faith, no matter how egregious, Fourth Circuit law conflicts with other circuit law, incentivizes forum-shopping by financially healthy companies, egregiously protracts bankruptcy proceedings, and upends the principle that bankruptcy is only for the honest but unfortunate debtor.

Second, the Bankruptcy Clause of the Constitution authorizes Congress to establish "uniform Laws on the subject of Bankruptcies." Art. I, § 8, cl. 4. That language, understood in light of history and tradition, limits the use of bankruptcy's unique powers and remedies to debtors that actually are bankrupt—*i.e.*, debtors unwilling or unable to pay their debts. As Justice Story described, "a law on the subject of bankruptcies" is "a law making provisions for cases of *persons failing to pay their debts*." 2 Joseph Story, *Commentaries on the Constitution* § 1113, at 50 n.3

(Thomas M. Cooley ed., 4th ed. 1873) (emphasis added). And as this Court has explained, bankruptcy is "the 'subject of the relations between an *insolvent* or *nonpaying* or *fraudulent* debtor and his creditors.'" *Central Virginia Cmty. Coll. v. Katz*, 546 U.S. 356, 371 (2006) (quoting *Wright v. Union Cent. Life Ins. Co.*, 304 U.S. 502, 513-14 (1938)) (emphases added).

The Fourth Circuit erred in refusing to enforce these limitations against Bestwall. It repeatedly has refused to align its statutory good-faith test with other circuits. Compounding its error, the Fourth Circuit rendered an erroneously broad constitutional ruling on the scope of the Bankruptcy Clause in this case. A divided panel held that bankruptcy courts have jurisdiction over any petition filed under the Bankruptcy Code, regardless of the debtor's ability to pay. As the dissent forcefully explained, that unprecedented endorsement of unlimited bankruptcy jurisdiction runs afoul of the Constitution, while giving profitable companies free rein to exploit bankruptcy as a litigation strategy against their tort victims or other creditors. App.44a-46a (King, J., dissenting). A divided *en banc* court voted 8-6 against rehearing the case to align Fourth Circuit law with other circuits.

The Fourth Circuit's wide-open conception of bankruptcy warrants this Court's review. Its counterintuitive good-faith standard and its sweeping Bankruptcy Clause holding transform bankruptcy and "allow the extraordinary powers of the bankruptcy court . . . to be deployed against" any disfavored creditor by any debtor, no matter how wealthy. App.30a (King, J., dissenting). If left undisturbed, that result gives sophisticated entities a roadmap to weaponize "our Nation's bankruptcy system . . . against tort victims as a tool for delay and leverage." App.25a (King, J., dissenting).

STATEMENT

A. Bestwall's Bankruptcy

1. Georgia-Pacific is a multi-billion-dollar corporation that makes paper, building, and chemical products. C.A.App.600, 603. Along with famous brands like Brawny, Angel Soft, and Dixie, Georgia-Pacific also sold products for decades that exposed people to asbestos. C.A.App.600, 603, 647-651. Many of its victims have mesothelioma, a fatal disease caused almost exclusively by asbestos exposure. App.25a-26a (King, J., dissenting).

The costs of litigating and paying asbestos claims were well within Georgia-Pacific's vast means. C.A.App.1688. As of 2017, it was worth $20.7 billion, while litigating and paying asbestos claims cost it no more than $200 million annually. C.A.App.458, 2147. Notwithstanding the asbestos litigation it faced, Georgia-Pacific was able to pay its parent company, Koch Industries, a $2 billion dividend in the year before Bestwall's bankruptcy filing. C.A.App.1688.

Georgia-Pacific nevertheless devised a scheme in 2017, now commonly called the "Texas Two-Step," to separate its business assets from its asbestos liabilities and to segregate those liabilities in bankruptcy. Georgia-Pacific moved to Texas by converting from a Delaware to a Texas LLC, where it employed a divisional merger under Texas law to split itself in two: New GP, which kept almost all the assets and operations of Georgia-Pacific ("Old GP"); and Bestwall, which received Old GP's asbestos liabilities, token assets, and a funding agreement with New GP. C.A.App.432-446, 604-605, 799-800; Tex. Bus. Orgs. Code § 1.002(55)(A).

Bestwall's funding agreement with New GP granted it full access to the total value of New GP's assets,

whether Bestwall is in or out of bankruptcy. C.A.App.437. Indeed, Bestwall concedes it is "able to pay any conceivable liabilities now and in the foreseeable future." App.92a. The agreement gives Bestwall "the same ability to fund asbestos claims that Old GP had," and it does not impose "any corresponding repayment obligation" on Bestwall. C.A.App.607.

New GP always has remained fully able "to provide any needed funding" to Bestwall. C.A.App.1736. Since Bestwall's bankruptcy began, New GP's value has grown to around $28 billion, an increase of more than $7 billion, even as it has paid billions in shareholder dividends. C.A.App.2157 ($3.5 billion dividend in 2023); Bankr. Doc. 3690[1] at 3 ($3.6 billion dividend in 2024).

2. Soon after its creation in 2017, Bestwall filed a voluntary Chapter 11 bankruptcy petition in the Western District of North Carolina and obtained an automatic stay. C.A.App.386-402; 11 U.S.C. § 362. It thereby consolidated Old GP's asbestos-related litigation into a single, federal forum of its choice. Bestwall's bankruptcy filing also obtained protections for the entire Georgia-Pacific enterprise that were possible only through bankruptcy, through a preliminary injunction barring all current and future asbestos plaintiffs from litigating against New GP and its affiliates. *See In re Bestwall LLC*, 606 B.R. 243 (Bankr. W.D.N.C. 2019), *aff'd*, 71 F.4th 168 (4th Cir. 2023), *cert. denied*, 144 S. Ct. 2519 & 2520 (2024). But because only Bestwall is the debtor, New GP escaped the burdens a debtor normally bears, including: submitting to the bankruptcy court's control, publicly

[1] References to "Bankr. Doc." are to the bankruptcy court docket entries in No. 17-31795.

disclosing its financial dealings, and restricting its equity owners' ability to extract money before paying creditors. *See* 11 U.S.C. §§ 363(b)-(c), 1129(b)(2); Fed. R. Bankr. P. 1007; 28 C.F.R. § 58.8. In short, Georgia-Pacific "placed its tort liabilities to thousands of workers behind a wall of bankruptcy protection, without itself undergoing the scrutiny, transparency, or risk that bankruptcy typically entails." App.24a (King, J., dissenting).

Insulated by bankruptcy's automatic stay, Bestwall has paid zero dollars to asbestos claimants since its bankruptcy began. In 2017, Bestwall represented that there were approximately 64,000 asbestos claimants, 22,000 of whom had active claims and 13,300 of whom were on "inactive" dockets. C.A.App.460, 611. Those claimants—Georgia-Pacific's tort victims—are the only creditors subject to Bestwall's bankruptcy stay, and nearly 25,000 of them have died during this bankruptcy proceeding with their claims unresolved. App.29a (King, J., dissenting). At least another 21,300 would have pursued compensation from Old GP but for the bankruptcy stay. App.27a n.2 (King, J., dissenting). By contrast, Georgia-Pacific's other creditors have continued to be paid in the ordinary course, unrestricted to bankruptcy court if disputes with the company arise, while its owners continue to receive billions in dividends.

3. Bestwall's bankruptcy now is in its ninth year, and any attempt by Bestwall to confirm a plan remains far off. At Bestwall's urging—and after rejecting a plan proposed by the creditors—the bankruptcy court is undertaking an advisory estimation of Bestwall's current and future mesothelioma claims after another multi-year process. *See* 11 U.S.C. § 502(c); Bankr. Doc. 1577 at 2. The court's current schedule calls for

fact discovery through November 2026, expert discovery through August 2027, and a multi-week estimation trial in November 2027. Bankr. Doc. 3808.

Yet estimations are not binding on creditors. *See* 11 U.S.C. § 524(g)(2)(B)(ii)(IV)(bb) (requiring 75% claimant approval for reorganization plan in asbestos context). Thus, this time-consuming process will not shorten the complex plan confirmation process to follow. Even after estimation, it can take years for a reorganization plan to be negotiated and confirmed. *See*, *e.g.*, *In re Garlock Sealing Techs. LLC*, 2017 WL 2539412, at *9 (W.D.N.C. June 12, 2017) (confirming plan four years after estimation trial).

B. The Motions To Dismiss

1. The bankruptcy court appointed an Official Committee of Asbestos Claimants to represent the interests of the asbestos plaintiffs that Bestwall forced into the bankruptcy process. In 2018, the Committee moved to dismiss for lack of good faith under § 1112(b)(1), which the court denied. App.107a-108a.

The court applied the Fourth Circuit's good-faith standard, under which a movant must demonstrate that "the bankruptcy reorganization is both (i) objectively futile *and* (ii) filed in subjective bad faith." App.112a (citing *Carolin*, 886 F.2d at 700-01) (emphasis by bankruptcy court). The court found that "Bestwall has the full ability to meet all of its obligations (whatever they may be) through its assets and New GP's assets, which are available through the Funding Agreement, and to continue as a going concern." App.114a (citation omitted). Applying *Carolin*'s objective-futility prong, the court concluded that Bestwall's abundant resources meant that its bankruptcy petition was "not objectively futile and dismissal [wa]s not appropriate." App.117a. It therefore found it

unnecessary to consider Bestwall's "subjective bad faith." *Id.*

Acknowledging the "far reaching practical implications" of its decision, the court certified its decision for direct appeal to the Fourth Circuit. Bankr. Doc. 987 at 4; *see* 28 U.S.C. § 158(d)(2). The Fourth Circuit, however, did not permit the appeal. *Official Comm. of Asbestos Claimants of Bestwall, LLC v. Bestwall LLC*, 2019 WL 13512209, at *1 (4th Cir. Nov. 14, 2019).[2]

2. In 2023, the Committee moved to dismiss for lack of subject-matter jurisdiction because Bestwall's bankruptcy exceeded the Bankruptcy Clause's limits. *See* Bankr. Doc. 2925. The Committee argued that "Bestwall's economic health and ability to timely and fully pay all its creditors" meant that it was not bankrupt "as that word was understood by the drafters of the Constitution and the delegates ratifying the Constitution." *Id.* at 2. The Committee also urged the bankruptcy court again to conclude that the petition was filed in bad faith given that Bestwall did not face "any real financial distress." *Id.* at 25.

The bankruptcy court denied the Committee's motion. App.47a-48a. The court found again that Bestwall was "able to pay any conceivable liabilities now and in the foreseeable future." App.92a. With respect to the Committee's statutory argument, the

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[2] The bankruptcy court's preliminary injunction protecting Bestwall and New GP from asbestos litigation was appealed separately. In that appeal, the Fourth Circuit explained that *Carolin*'s good-faith standard was "more comprehensive" than other circuits' tests. *In re Bestwall LLC*, 71 F.4th 168, 182 (4th Cir. 2023), *cert. denied*, 144 S. Ct. 2519 & 2520 (2024). Even though the question of dismissal for lack of good faith was not presented in that appeal, the court faulted the Committee for "ma[king] no showing to [the Fourth Circuit] of either required element" under *Carolin*. *Id.*

court "decline[d] to reconsider its earlier [good-faith] rulings." App.67a. However, it observed that "[t]he absence of financial distress ironically helps a debtor avoid a bad faith dismissal in this circuit," and it suggested that "[t]his case may provide a basis for the Fourth Circuit to reexamine its standard for good faith." App.103a n.37.

The court then rejected the Committee's constitutional argument. Although the court correctly understood that Bestwall's ability to pay all its debts raised a question of "constitutional subject matter jurisdiction" under the Bankruptcy Clause, App.68a, App.71a, it incorrectly held that "subject matter jurisdiction for bankruptcy extends to all cases filed under the Bankruptcy Code," App.104a. Therefore, the court concluded, the Bankruptcy Clause does not impose a jurisdictional limit on "a debtor without financial distress." App.105a.

The court certified its denial of the Committee's motion to the Fourth Circuit. C.A.App.2204. The court found that the jurisdictional and good-faith issues were matters of public importance with "ramifications" for "tens of thousands of claimants." Bankr. Doc. 3354 at 77-78. The court also stated its "desire for the Fourth Circuit to consider the good faith question in the context of these cases" and its "regret" at the Fourth Circuit's previous refusal "to take the issue on direct appeal." *Id.* at 75-76. It emphasized the public's interest in appellate review of "whether this case was filed in good faith under *Carolin* and the Fourth Circuit's dismissal standard." *Id.* at 77.

3. The Fourth Circuit granted permission to appeal, C.A.App.2205, and a divided panel affirmed, App.2a. Regarding dismissal for lack of good faith under § 1112(b)(1), the panel majority ignored the

Committee's arguments under *Carolin*. But in a footnote, it reiterated that the Fourth Circuit's standard is "'one of the most stringent articulated by the federal courts.'" App.6a n.7 (quoting App.112a).

Instead, the panel majority concluded that Article III grants "judicial power over all cases arising under the laws of the United States," and "[t]he Bankruptcy Code is a law of the United States." App.9a. Because the Code is a federal statute, it must follow that all "petitions for relief under the Bankruptcy Code"—even those filed by debtors with a concededly complete ability to pay their debts—are jurisdictionally proper under the Constitution. App.2a, App.8a-9a. The panel majority identified no other limit to bankruptcy jurisdiction.

Judge King dissented. He observed that Bestwall was not "a debtor in distress," but rather "a vehicle engineered by Georgia-Pacific" to "impose a federal forum and automatic stay over thousands of state law tort claims" filed by Old GP's asbestos victims. App.42a-43a. Judge King thus would have held that "the Constitution's limited delegation of power under the Bankruptcy Clause" does not extend to "parties who are not actually bankrupt." App.24a-25a, App.29a-30a. Georgia-Pacific's bankruptcy scheme was "a far cry from the bankruptcy system that the Founders envisioned when they constitutionally authorized Congress to create 'uniform Laws on the subject of Bankruptcies.'" App.24a-25a (quoting Art. I, § 8, cl. 4). Interpreting the Bankruptcy Clause "to sanction an artificial bankruptcy proceeding devoid of any real financial distress" would permit any "rich and powerful" defendant to "invoke federal bankruptcy jurisdiction," "suppress the tort claims of sick and dying victims," and "evade responsibility" for the harms it caused. App.45a.

4. The Committee urged the *en banc* Fourth Circuit to correct the panel's erroneous decisions on the good-faith standard and the scope of jurisdiction under the Bankruptcy Clause. But the court divided 8-6 against further review. App.126a. Judge King again dissented, arguing that Georgia-Pacific's "sham" bankruptcy scheme was "repugnant" to the "history and tradition" of American bankruptcy law. App.136a. The court's decision to allow "bankruptcy proceeding[s] involving fully-solvent corporate entities who lack any semblance of financial distress" meant "[d]rastically departing from Article I's foundational moorings." App.130a-131a.

REASONS FOR GRANTING THE PETITION

I. THE FOURTH CIRCUIT'S DECISION CREATES CONFLICT OVER WHETHER DEBTORS WITH THE FULL ABILITY TO PAY THEIR DEBTS MAY TAKE ADVANTAGE OF BANKRUPTCY

The Fourth Circuit has created a unique and erroneous legal standard that incentivizes forum-shopping by wealthy entities seeking to evade their tort and commercial liabilities. Bankruptcy courts' primary tool to police abuses of bankruptcy and forum-shopping is 11 U.S.C. § 1112(b)(1), which authorizes courts to dismiss bankruptcy petitions for "cause," including those filed in bad faith by financially wealthy entities. The Bankruptcy Clause also limits "[b]ankruptcies" to proceedings involving actually bankrupt debtors, *i.e.*, those unwilling or unable to pay their debts. Art. I, § 8, cl. 4.

Unlike in any other circuit, Fourth Circuit courts have interpreted § 1112(b)(1) to authorize non-bankrupt debtors to file for bankruptcy. Rather than correct that interpretation, the Fourth Circuit

compounded the error by issuing an unprecedented constitutional ruling that renders the Bankruptcy Clause jurisdictionally limitless, covering any petition filed by non-bankrupt debtors. This Court should grant review to correct course.

A. The Fourth Circuit's Good-Faith Standard Conflicts With Other Circuits

Section 1112(b)(1) authorizes courts to dismiss bankruptcy petitions "for cause." Circuit courts—including the Fourth Circuit—agree that lack of good faith amounts to "cause." *See*, *e.g.*, *In re LTL Mgmt., LLC*, 64 F.4th 84, 100 (3d Cir. 2023) ("lack of good faith constitutes 'cause'"); *In re Charfoos*, 979 F.2d 390, 392 (6th Cir. 1992) ("It is well-settled that even though Chapter 11 does not expressly so state, bad faith may serve as a ground for dismissal of a petition."); *Carolin Corp. v. Miller*, 886 F.2d 693, 698 (4th Cir. 1989) ("a good faith filing requirement is implicit in . . . the bankruptcy code"); *see also Marrama v. Citizens Bank of Massachusetts*, 549 U.S. 365, 373-74 (2007) (interpreting "cause" in analogous Chapter 13 provision, § 1307(c), to permit dismissal for "bad-faith conduct"); *id.* at 378 (Alito, J., dissenting) (counting § 1112(b) among Bankruptcy Code's "express means to redress a debtor's bad faith").

Dismissing petitions of debtors that lack good faith reflects longstanding bankruptcy principles. *See* 7 *Collier on Bankruptcy* ¶ 1112.07 (16th ed. 2022) ("[T]he requirement of good faith has been held to be an implicit condition to the filing and maintenance of a bankruptcy case for over a century."); *In re Little Creek Dev. Co.*, 779 F.2d 1068, 1071 (5th Cir. 1986) ("Every bankruptcy statute since 1898 has incorporated literally, or by judicial interpretation, a standard of

good faith for the commencement, prosecution, and confirmation of bankruptcy proceedings.").

The court below characterized the Circuit's good-faith test as particularly "stringent" and not in alignment with other circuits. App.6a n.7; *see also In re Bestwall LLC*, 71 F.4th 168, 182 (4th Cir. 2023) (describing its standard as "more comprehensive" than other circuits), *cert. denied*, 144 S. Ct. 2519 & 2520 (2024). In the Fourth Circuit, a petition can be dismissed only if (1) the debtor's reorganization is "objectively futile" and (2) the petition was filed with "subjective bad faith." *Carolin*, 886 F.2d at 700-01.

As this case illustrates, however, Fourth Circuit courts apply this test by concluding that the reorganization of non-bankrupt entities like Bestwall is not futile because they are financially viable, which in turn leads the courts to ignore the debtor's subjective bad faith altogether. By declining to correct that analysis, the Fourth Circuit thus permits a non-bankrupt debtor like Bestwall to establish good faith simply by demonstrating wealth: a debtor's concession that it "has the resources with which to reorganize" prevents dismissal and forecloses any consideration of its subjective bad faith. In other words, the more money a debtor has, the more entitled to bankruptcy protection. App.117a; *see also*, *e.g.*, *In re Auto Money North LLC*, 650 B.R. 245, 260-61 (Bankr. D.S.C. 2023) (denying dismissal under *Carolin*'s objective-futility prong, even though debtor showed "subjective bad faith" and was "so financially healthy that there was essentially nothing to reorganize").

The Fourth Circuit's good-faith standard is squarely contrary to the Third Circuit's standard. In the Third Circuit, a lack of financial distress requires dismissal: "a debtor who does not suffer from financial distress

cannot demonstrate its Chapter 11 petition serves a valid bankruptcy purpose supporting good faith." *LTL,* 64 F.4th at 101. The Third Circuit thus regards the Fourth Circuit's test as much more permissive to dubious bankruptcy filings. *Id.* at 98 n.8. This case unquestionably would have been decided differently under the Third Circuit's standard.[3]

Fourth Circuit law also conflicts with First, Fifth, Eighth, Ninth, and Eleventh Circuit cases, under which Bestwall's conceded ability to timely pay all current and future debts would mean it lacks a valid reorganization purpose and dismissal is warranted. *See*, *e.g.*, *In re Dixie Broad., Inc.*, 871 F.2d 1023, 1027 (11th Cir. 1989) (affirming dismissal where "[i]t d[id] not appear that [debtor] was in financial distress" and debtor "did not have financial problems"); *In re Marsch*, 36 F.3d 825, 829 (9th Cir. 1994) (per curiam) (bad faith where debtor "had the financial means to pay" its obligations); *In re Cedar Shore Resort, Inc.*, 235 F.3d 375, 380 (8th Cir. 2000) (same, where debtor was "doing well" and "poised to turn a profit," "not in dire financial straits"); *In re Capitol Food Corp. of Fields Corner*, 490 F.3d 21, 25 (1st Cir. 2007) (denying dismissal because debtor's "*present* need for chapter 11 protection to avoid business disruption and economic dismemberment" exhibited requisite "financial distress"); *In re Antelope Techs., Inc.*, 431 F. App'x 272,

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[3] The bankruptcy court's brief reference to Bestwall's financial distress does not eliminate the conflict. The court reasoned that Bestwall faced "'sufficient financial distress'" from "'[t]he volume of current asbestos claims that [it] faced as of the Petition Date, coupled with the projected number of claims to be filed through 2050 and beyond.'" App.50a (quoting App.113a-114a). This ignores New GP's vast wealth and conflicts with the Third Circuit's holding that financial distress "must be immediate enough to justify a filing." *LTL*, 64 F.4th at 102.

275 (5th Cir. 2011) (per curiam) (affirming dismissal where "the purpose of the petition was not primarily to reorganize or respond to financial crisis but instead was to gain unfair advantage in [a] shareholder derivative action").[4]

Accordingly, the Fourth Circuit's anomalous precedent makes it a haven for wealthy debtors. It is "not by coincidence" that "debtors formed by divisional mergers and bearing substantial asbestos liability seem to prefer filing in the Fourth Circuit." *LTL*, 64 F.4th at 98 n.8.

B. The Fourth Circuit's Limitless Conception Of Bankruptcy Jurisdiction Conflicts With This Court's Precedents And The Bankruptcy Clause

Instead of correcting its good-faith standard, the Fourth Circuit constitutionalized its wide-open conception of bankruptcy by adopting an unprecedented jurisdictional ruling. The Fourth Circuit's view conflicts with the original meaning of the Constitution's Bankruptcy Clause and this Court's decisions. It is also in tension with D.C. and Ninth Circuit precedent.

1. "Federal courts are courts of limited jurisdiction," possessing "only that power authorized by Constitution and statute." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994). Congress's jurisdiction-conferring statutes therefore must exist "'[w]ithin constitutional bounds.'" *United States v. Denedo*, 556 U.S. 904, 912 (2009) (quoting *Bowles v. Russell*, 551 U.S. 205, 212 (2007)). As relevant here,

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[4] In the context of a sanctions ruling, the Second Circuit has held that, although "a debtor need not be *in extremis*" to enter bankruptcy, it must be "encountering financial stress at the time it filed its petition." *In re Cohoes Indus. Terminal, Inc.*, 931 F.2d 222, 228 (2d Cir. 1991).

the Bankruptcy Clause authorizes Congress to "establish . . . uniform Laws on the subject of Bankruptcies." Art. I, § 8, cl. 4. Congress in turn has conferred bankruptcy jurisdiction on district courts and, through their referral, on bankruptcy courts. *See* 28 U.S.C. § 1334; *Stern v. Marshall*, 564 U.S. 462, 473 (2011).

2. The Fourth Circuit's conclusion that all "petitions for relief under the Bankruptcy Code" are jurisdictionally proper under the Constitution—regardless of the debtor's conceded ability to pay all its debts, *see* App.2a, App.8a-9a—conflicts with the Bankruptcy Clause. History and tradition make clear that "Congress' power under the Bankruptcy Clause 'contemplates an adjustment of *a failing debtor's* obligations.'" *Railway Lab. Execs.' Ass'n v. Gibbons*, 455 U.S. 457, 466 (1982) (quoting *Continental Illinois Nat'l Bank & Tr. Co. of Chicago v. Chicago, R.I. & P. Ry. Co.*, 294 U.S. 648, 673 (1935)) (emphasis added; cleaned up).

When the Bankruptcy Clause was adopted, laws on the subject of bankruptcy regulated the relationship between creditors and actually bankrupt debtors, *i.e.*, those unwilling or unable to pay their debts. English and American approaches shared that common trait: "They all provided for a collective proceeding" involving "debtors who demonstrated an inability or . . . an unwillingness to repay their creditors," but "[t]hey did not apply to debtors who repaid their debts." Thomas E. Plank, *The Constitutional Limits of Bankruptcy*, 63 Tenn. L. Rev. 487, 526 (1996).

The American colonies experimented with varying approaches but remained focused on the "impecunious debtor" who was imprisoned "because of an inability to pay a debt." 1 *Collier on Bankruptcy* ¶ 20.01[1] (16th ed. 2024). The colonies' Founding-era statutes

all were predicated on the "debtor's factual inability to satisfy his outstanding obligations." App.37a (King, J., dissenting).

The preexisting "patchwork" of "schemes for discharging debtors and their debts," *Central Virginia Cmty. Coll. v. Katz*, 546 U.S. 356, 365-66 (2006), prompted the Constitutional Convention to empower Congress to adopt "uniform" federal law "on the subject of Bankruptcies," art. I, § 8, cl. 4. Although extant bankruptcy laws varied, the use of the word "[b]ankruptc[y]" "meant *something*—otherwise, there would have been no reason to write it down." *Cf. Ramos v. Louisiana*, 590 U.S. 83, 89 (2020).

Consistent with Founding-era laws and practices, contemporaneous sources made clear that bankruptcy meant a proceeding involving an actually bankrupt debtor. It did not include a debtor like Bestwall with a conceded ability to pay all debts, which sought out bankruptcy to gain leverage over its creditors, not because it needed to reorganize. Dictionaries defined a "bankrupt" debtor as one "who cannot pay his debts." *E.g.*, William Perry, *The Royal Standard English Dictionary* 51 (1777); App.134a n.3 (King, J., dissenting). And as Justice Story put it in his *Commentaries*, "a bankrupt law" is "a law for the benefit and relief of creditors and their debtors, in cases in which the latter are *unable or unwilling to pay their debts*." 2 Story, *Commentaries on the Constitution* § 1113, at 50 n.3 (emphasis added). Therefore, "a law on the subject of bankruptcies, in the sense of the Constitution, is a law making provisions for cases of *persons failing to pay their debts*." *Id.* (emphasis added).

3. This Court's decisions regarding post-ratification bankruptcy legislation confirm that historical limitation. In *Continental Illinois*, for example, this Court

held that a provision of the 1898 Act extending bankruptcy relief to a railroad corporation "unable to meet its debts as they mature" was a law "on the subject of bankruptcies" under the Bankruptcy Clause because it concerned "a failing debtor's obligations." 294 U.S. at 672-73. In so holding, the Court explicitly rejected the notion that the Bankruptcy Clause "has no limitations." *Id.* at 669; *see also* Charles J. Tabb, *The Bankruptcy Clause, the Fifth Amendment, and the Limited Rights of Secured Creditors in Bankruptcy*, 2015 U. Ill. L. Rev. 766, 767 (noting that this Court has upheld Congress's bankruptcy legislation, provided that "the law deal[s] with the relations between a debtor and its creditors, *when the debtor is having difficulty paying its debts*") (emphasis added).

Similarly, nearly a century ago, this Court concluded that the "development of bankruptcy legislation has been towards relieving the honest debtor from *oppressive indebtedness*." *Wright v. Union Cent. Life Ins. Co.*, 304 U.S. 502, 513-14 (1938) (emphasis added). The "subject of bankruptcies" thus gradually has extended to cover different classes of debtors, including corporations, but it has always remained consistent with its historical understanding: the "subject of bankruptcies" is "'the subject of the relations between an *insolvent* or *nonpaying* or *fraudulent* debtor, and his creditors.'" *Id.* (quoting *In re Reiman*, 20 F. Cas. 490, 496 (S.D.N.Y. 1874) (No. 11,673)) (emphases added); *see Katz*, 546 U.S. at 370-71 (same). "[A] debtor at risk of nonpayment of creditors (that imperils the viability of a business debtor) has always been an integral definitional feature of 'the subject of Bankruptcies.'" Ralph Brubaker, *Assessing the Legitimacy of the "Texas Two-Step" Mass Tort Bankruptcy (Part III): The Constitutional Limits of the Bankruptcy Power*, 44 Bankr. Law Letter No. 10, at 6 (Oct. 2024).

4. Bestwall undisputedly does not meet that historical test. The bankruptcy court repeatedly found, and Bestwall repeatedly conceded, that Bestwall is "able to pay any conceivable liabilities now and in the foreseeable future." App.92a; *see* App.114a (similar). Because Bestwall is not a "failing" debtor, *Continental Illinois*, 294 U.S. at 673, suffering from "oppressive indebtedness," *Wright*, 304 U.S. at 514, it does not belong in bankruptcy.

Neither the Fourth Circuit nor Bestwall offered a single historical example supporting the constitutionality of Bestwall's bankruptcy filing. By agreeing with Bestwall, the court ignored "history and tradition" and erroneously relied on policy alone. App.44a (King, J., dissenting).

5. The Fourth Circuit's conclusion also conflicts with this Court's decisions and D.C. Circuit precedent regarding Article I's analogous limits on military jurisdiction. *See Solorio v. United States*, 483 U.S. 435 (1987); *McElroy v. U.S. ex rel. Guagliardo*, 361 U.S. 281 (1960); *Kinsella v. U.S. ex rel. Singleton*, 361 U.S. 234 (1960); *Reid v. Covert*, 354 U.S. 1 (1957) (plurality); *U.S. ex rel. Toth v. Quarles*, 350 U.S. 11 (1955); *Larrabee v. Del Toro*, 45 F.4th 81, 88 (D.C. Cir. 2022).

Those cases arose under the Uniform Code of Military Justice ("UCMJ"), and there was "no question but that Clause 14 [in Article I, § 8] grants the Congress power to adopt" the UCMJ. *Singleton*, 361 U.S. at 247. But this Court "repeatedly declined to defer" to Congress's decision to "extend court-martial jurisdiction," instead applying the Constitution's jurisdictional limitations by looking to history and tradition, as Judge Rao has explained for the D.C. Circuit. *Larrabee*, 45 F.4th at 87-88 (describing *Toth*, *Reid*, and their progeny). Congress's power "to make all

rules necessary and proper to govern and regulate those persons who are serving in the 'land and naval Forces'" could not "operate to extend military jurisdiction" beyond historical meaning of the phrase "land and naval Forces." *Reid*, 354 U.S. at 19-21 (plurality).

In other words, "[Congress] does not possess the anterior authority to define which persons may be constitutionally court-martialed." *Larrabee*, 45 F.4th at 87. Instead, whether the military courts properly exercised jurisdiction poses "'a structural question of subject matter jurisdiction'" under the Constitution. *Id.* at 86-87 (quoting *Al Bahlul v. United States*, 840 F.3d 757, 760 n.1 (D.C. Cir. 2016) (*en banc*) (Kavanaugh, J., concurring)).[5] That is especially so because Article I military courts implicate "summary procedures" with "less emphasis . . . on protecting the rights of the individual than . . . civilian courts." *Reid,* 354 U.S. at 35-36 (plurality). "Every extension of military jurisdiction is an encroachment on the jurisdiction of the civil courts, and, more important, acts as a deprivation of the right to jury trial and of other treasured constitutional protections." *Id.* at 21.[6]

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[5] This Court undertakes similar inquiries to determine the limits of "admiralty and maritime Jurisdiction" under Article III and 28 U.S.C. § 1333. *See*, *e.g.*, *Jerome B. Grubart, Inc. v. Great Lakes Dredge & Dock Co.*, 513 U.S. 527, 529 (1995) (considering whether claims regarding flooding of riverfront buildings, caused by driving of piles into riverbed, was within federal admiralty jurisdiction); *Executive Jet Aviation, Inc. v. City of Cleveland*, 409 U.S. 249, 250 (1972) (same, regarding negligence suit about plane crash that sank into Lake Erie).

[6] This Court's Eleventh Amendment jurisprudence also confirms that constraints on federal courts' jurisdiction exist elsewhere in the Constitution's broader structure, beyond Article III. *See*, *e.g.*, *Kimel v. Florida Bd. of Regents*, 528 U.S. 62, 73 (2000).

So, too, here: the Fourth Circuit's holding extends "the subject of Bankruptcies" well beyond its original meaning. Art. I, § 8, cl. 4. Because the Framers understood that bankruptcy would displace claim resolution from state courts to federal courts, they intended to limit that displacement to debtors unwilling or unable to pay. *See Katz*, 546 U.S. at 369 n.9 (discussing "singular nature of bankruptcy courts' jurisdiction"); *cf. Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 838 (1999) ("the inadequacy of the [assets] to pay all the claims" is what justifies "limit[ing] . . . an early feast to avoid a later famine"). Failing to police encroachment here threatens worse in the future. Even "'[s]light encroachments create new boundaries from which legions of power can seek new territory to capture.'" *Stern*, 564 U.S. at 503 (quoting *Reid*, 354 U.S. at 39 (plurality)).

6. The Fourth Circuit's constitutional holding is also in tension with Ninth Circuit precedent. As noted, the Fourth Circuit addressed subject-matter jurisdiction with a simple syllogism: Article III grants "judicial power over all cases arising under the laws of the United States," and "[t]he Bankruptcy Code is a law of the United States." App.9a. That simplistic view ended its analysis. The Ninth Circuit, by contrast, has recognized that "Congress is not free to define the contours of bankruptcy without any limitations." *In re Marshall*, 721 F.3d 1032, 1045, 1053 (9th Cir. 2013) (adopting bankruptcy court opinion). Although it rejected "solven[cy], whether in the balance sheet sense or in the liquidity sense," as the appropriate test—a test not proposed by the Committee in this case—the Ninth Circuit held that "the bankruptcy terrain clearly must have some bounda-

ries." *Id.* at 1053, 1069. The debtors' genuine financial problems, *id.* at 1048-49, meant they fell within those bounds. The Fourth Circuit's unwillingness to enforce any bounds, in construing Congress's enactments in the Bankruptcy Code as totally permissive to debtor filings, cannot be reconciled with the Ninth Circuit's view.

II. THE FOURTH CIRCUIT'S DECISION IS INCORRECT

A. Debtors Fully Able To Pay All Their Liabilities Do Not Enter Bankruptcy In Good Faith

The Fourth Circuit's outlier good-faith standard is contrary to the text, structure, and purpose of § 1112. The Fourth Circuit's continued refusal to correct its good-faith standard warrants this Court's intervention.

1. Section 1112(b) of the Bankruptcy Code authorizes a court to dismiss a bankruptcy case for "cause." 11 U.S.C. § 1112(b)(1). The statute provides that "the term 'cause' includes" a non-exhaustive list of grounds. *Id.* § 1112(b)(4). Although not expressly listed, good faith appropriately constitutes "cause," because the Code's rules of construction provide that the term "includes" is "not limiting." *Id.* § 102(3); *cf. Marrama*, 549 U.S. at 373-74 (construing analogous Chapter 13 provision to permit dismissal for bad faith). And lack of good faith is consistent with the forms of debtor malfeasance that the statute does list. *E.g.*, 11 U.S.C. § 1112(b)(4)(B) ("gross mismanagement of the estate"), (E) ("failure to comply with an order of the court").

Notably, however, the statute already lists "the absence of a reasonable likelihood of rehabilitation" as a ground for dismissal. *Id.* § 1112(b)(4)(A). The Fourth

Circuit's "objective futility" test makes good faith a nullity in light of this statutory text and structure: because the statute already lists the futility of a reorganization as a ground for dismissal, "[r]equiring objective futility in addition to bad faith would render the good faith doctrine a useless appendage to the statutory grounds listed in § 1112(b)." *Cedar Shore*, 235 F.3d at 381 (cleaned up); *see* 7 *Collier on Bankruptcy* ¶ 1112.07[5][a] (criticizing *Carolin* for same reason).

To be sure, futility can be a factor demonstrating a debtor's bad faith. For instance, in *Carolin* itself, the debtor was a shell entity created to keep control of a disputed property away from a secured creditor's foreclosure effort. 886 F.2d at 695-96. The debtor's owners lacked "any bona fide intent to rehabilitate the business" that had operated at the property, which itself was severely damaged by fire. *Id.* The debtor therefore showed "no realistic chance to rehabilitate its business successfully," which indicated that "its purpose in filing was to delay and frustrate its principal creditor rather than to rehabilitate a distressed but viable business." *Id.* at 702, 704. That is, the debtor lacked the means to reorganize, so it was futile even to try. But here, the fact that Bestwall has full funding from its non-debtor parent was deemed conclusive proof of its good faith, preventing consideration of any other facts or circumstances—including Bestwall's subjective bad faith. *See* App.117a (pretermitting issue of Bestwall's subjective bad faith due to its abundant resources).

2. The Fourth Circuit's standard also upends the congressional objectives animating § 1112(b). Bankruptcy law exists to protect "the class of honest but unfortunate debtors." *Marrama*, 549 U.S. at 374

(cleaned up). Good-faith dismissals enforce that core limitation of bankruptcy law. They "prevent[] abuse of the bankruptcy process by debtors whose overriding motive is to delay creditors without benefitting them in any way or to achieve reprehensible purposes," while "protect[ing] the jurisdictional integrity of the bankruptcy courts by rendering their powerful equitable weapons . . . available only to those debtors and creditors with 'clean hands.'" *Little Creek*, 779 F.2d at 1072.

In the Fourth Circuit, debtors like Bestwall can establish their good faith by virtue of their healthy financial condition and avoid any further inquiry into their bad faith, guaranteeing the absurd result that, the richer a debtor is, the easier it can defeat a good-faith challenge to its bankruptcy filing. The Fourth Circuit's approach therefore overrides Congress's intent to afford relief only to honest but unfortunate debtors, enabling the abuses of the bankruptcy system that the good-faith requirement exists to prevent.

B. Debtors Fully Able To Pay All Their Liabilities Are Beyond The Scope Of The Bankruptcy Clause

1. The Fourth Circuit erred by adopting a limitless view of the Bankruptcy Clause rather than correcting the bankruptcy court's statutory good-faith ruling. Taking up the statutory good-faith issue would have enabled the Fourth Circuit to avoid rendering a consequential ruling on the constitutional scope of bankruptcy jurisdiction. *See Escambia Cnty. v. McMillan*, 466 U.S. 48, 51 (1984) (per curiam) (explaining that courts should not "decide a constitutional question if there is some other ground upon which to dispose of the case") (citing *Ashwander v. Tennessee Valley Auth.*, 297 U.S. 288, 347 (1936)

(Brandeis, J., concurring)). Because the case could "be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law," the court should have "decide[d] only the latter." *Ashwander*, 297 U.S. at 347 (Brandeis, J., concurring).

2. More fundamentally, the Fourth Circuit erred in its interpretation of the Bankruptcy Clause. The court reasoned that Article III grants "judicial power over all cases arising under the laws of the United States," and "[t]he Bankruptcy Code is a law of the United States," so Bestwall's bankruptcy was jurisdictionally proper. App.9a. The "central flaw" in this reasoning is the "assumption that Congress's broad grant of jurisdiction under 28 U.S.C. § 1334 can override the Constitution's more limited delegation of power under the Bankruptcy Clause." App.29a-30a (King, J., dissenting).

A challenge to subject-matter jurisdiction under the Constitution cannot be resolved simply by reference to a statute. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 426 (2021) ("Congress's creation of a statutory prohibition or obligation and a cause of action does not relieve courts of their responsibility to independently decide whether a plaintiff has suffered a concrete harm under Article III"); *Stern*, 564 U.S. at 469 (holding that bankruptcy court had "statutory authority" but not "constitutional authority" to decide debtor's counterclaim against creditor). That is, a statute is not "consistent with the Bankruptcy Clause" merely because it is "labeled a 'bankruptcy' law." *Katz*, 546 U.S. at 378 n.15.

If the Fourth Circuit's reasoning sufficed, this Court's decisions in *Toth*, *Reid*, *Singleton*, and *Guagliardo*—holding that military jurisdiction over

those defendants exceeded Article I limits—would have come out the other way. Each concerned the scope of military tribunals' jurisdiction under the UCMJ. *See Guagliardo*, 361 U.S. at 282; *Singleton*, 361 U.S. at 235; *Reid*, 354 U.S. at 3 (plurality); *Toth*, 350 U.S. at 13 & n.2. Under the Fourth Circuit's view, the analysis would have ended there. But this Court went further, considering whether jurisdiction under the UCMJ was consistent with the Constitution's grant of authority to Congress under Clause 14 of Article I, § 8. *See Toth*, 350 U.S. at 14. This case calls for the same analysis, just under Clause 4, rather than Clause 14.

3. The Fourth Circuit mischaracterized the nature of the Committee's jurisdictional challenge, stating that "[w]hat the Committee's argument really does is convert a challenge to the Bankruptcy Code's constitutionality into a jurisdictional question." App.11a. This logic rested on a misunderstanding of *Reid*, which the Fourth Circuit cast as "a vestige of an era in which jurisdictional arguments and phrases were used more liberally." App.14a-15a.

This Court confirmed that *Toth*, *Reid*, and their progeny evaluated the subject-matter jurisdiction of military courts. *See Solorio*, 483 U.S. at 437 (petitioner who moved to dismiss court-martial "on the ground that the court lacked jurisdiction"); *Guagliardo*, 361 U.S. at 282-84 (habeas petitioner who argued that "the military authorities had no jurisdiction to try him by court-martial"); *Singleton*, 361 U.S. at 236 (habeas petitioner who "challenged the jurisdiction of the court-martial"); *Reid*, 354 U.S. at 4 (plurality) (habeas petitioner who argued that "the court-martial was without jurisdiction"); *Toth*, 350 U.S. at 20 (scrutinizing "congressional power

to expand military jurisdiction"); *see also Larrabee*, 45 F.4th at 87; *cf. Parisi v. Davidson*, 405 U.S. 34, 44-45 (1972) (upholding district court's jurisdiction over conscientious objector's habeas petition because court-martial had no jurisdiction to consider objector's claim).

Side-stepping this authority, the Fourth Circuit relied on inapposite case law that did not discuss military or bankruptcy jurisdiction, but merely clarified that some statutes "should not be described as jurisdictional" because they are "claim-processing rules" subject to equitable tolling. *E.g.*, *Henderson ex rel. Henderson v. Shinseki*, 562 U.S. 428, 435 (2011); *see* App.15a. Elsewhere, the court similarly relied on inapposite cases establishing that some provisions of the Bankruptcy Code are not jurisdictional. App.14a n.13.

The Fourth Circuit also mischaracterized the Committee's argument as non-jurisdictional by citing *United States v. Lopez*, 514 U.S. 549 (1995), concerning a Commerce Clause challenge to a federal gun-possession offense, and *City of Boerne v. Flores*, 521 U.S. 507 (1997), concerning the constitutionality of the Religious Freedom Restoration Act of 1993. App.11a-12a. Unlike this case, those cases were not "jurisdictional" challenges; they did not contest the "prescriptions delineating the classes of cases (subject-matter jurisdiction) [or] the persons (personal jurisdiction) falling within a court's adjudicatory authority." *Kontrick v. Ryan*, 540 U.S. 443, 455 (2004). In any case, when the authority of a court to conduct a proceeding is at issue, as here, the question of the constitutionality of Congress's enactment and the question of the court's adjudicatory authority merge. *See Stern*, 564 U.S. at 469. A proceeding that

Congress cannot authorize under Article I is a proceeding that a federal court cannot hear under Article III.

In sum, as the dissent aptly put it, "[b]y declining to squarely address whether Bestwall's petition satisfies the Bankruptcy Clause's jurisdictional limits, the [Fourth Circuit] permit[ted] bankruptcy jurisdiction to be extended to parties who are not actually bankrupt—and, in doing so, open[ed] the courthouse doors to a new kind of forum shopping by solvent corporations." App.30a (King, J., dissenting).

III. THE PETITION POSES AN EXCEPTIONALLY IMPORTANT QUESTION THAT ONLY THIS COURT CAN RESOLVE

This case presents a question of exceptional importance, as the bankruptcy court recognized in certifying the Committee's appeal. *See* Bankr. Doc. 3354 at 75-77. The Fourth Circuit's unprecedented, limitless conception of bankruptcy applies to "all debtors," App.8a, making it the proverbial fish that swallows the ocean: if left undisturbed, any wealthy person, entity, or corporation could concoct a bankruptcy in the Fourth Circuit to evade its tort or commercial liabilities and single out disfavored creditors for adverse treatment. Along with its continued refusal to reevaluate its good-faith standard, the Fourth Circuit's sweeping constitutional ruling will invite wealthy debtors like Bestwall to continue exploiting the bankruptcy system there.

The Third Circuit already has noted that debtors "seem to prefer filing in the Fourth Circuit." *LTL*, 64 F.4th at 98 n.8. Many commentators have noted this forum-shopping problem as well. *See*, *e.g.*, Richard L. Epling, *Where Do We Go After* Purdue Pharma*?*, 34 Norton J. Bankr. L. & Prac. Art. 1, at [8] (Feb. 2025)

("[I]t is plain that debtors could continue to file cases structured like *LTL* in other jurisdictions like the Fourth Circuit so long as the case is not 'objectively futile' of any possible reorganization regardless of financial distress[.]"); Michael A. Francus, *Designing Designer Bankruptcy*, 102 Tex. L. Rev. 1205, 1233 (2024) (predicting that Bestwall-style debtors will "continu[e] to forum shop to jurisdictions that do not impose a financial distress requirement"); Laura N. Coordes & Joan N. Feeney, *The History of Bankruptcy Venue Choices and the Evolution of Magnet Courts for Chapter 11 Cases*, 36 Cal. Bankr. J. 333, 357 (2024) ("Favorable precedent, in particular the Fourth Circuit's recent decision in *Bestwall*, helps explain why the WDNC is a magnet court for asbestos debtors.").

Other corporate tortfeasors besides Georgia-Pacific already have been exploiting divisional mergers and bankruptcy filings to isolate tort claimants in the bankruptcy courts of the Fourth Circuit. *See In re Aldrich Pump LLC*, No. 20-30608 (Bankr. W.D.N.C.); *In re DBMP LLC*, No. 20-30080 (Bankr. W.D.N.C.); *In re Murray Boiler LLC*, No. 20-30609 (Bankr. W.D.N.C.); *cf. In re LTL Mgmt. LLC*, No. 21-30589 (filed in Bankr. W.D.N.C. but later transferred to D.N.J.). The Fourth Circuit's *en banc* denial here means follow-on cases never will be corrected, absent this Court's review. Left unaddressed, the decision below will invite more of these abuses.

Only this Court can correct course. It has "the last word on every important issue under the Constitution and the statutes of the United States." *Stutson v. United States*, 516 U.S. 163, 177 (1996) (Rehnquist, J., concurring in part). The Fourth Circuit has made clear that it will not align itself with the rest of the country by revising lower courts' application of its

good-faith standard or by interpreting the Bankruptcy Clause consistently with its history and tradition. *See infra* pp. 32-33. It falls to this Court to resolve these issues and put an end to the forum-shopping that the Fourth Circuit's decisions encourage.

Venue transfer is not a solution to the forum-shopping problem. Bankruptcy venue principles are unusually solicitous of debtors' choices. *See* Anthony J. Casey & Joshua C. Macey, *Bankruptcy Shopping: Domestic Venue Races and Global Forum Wars*, 37 Emory Bankr. Devs. J. 463, 478-79 (2021) ("[L]iberal venue rules make [forum-shopping] especially easy for bankruptcy cases."). And new entities created for Bestwall-style schemes can be incorporated or domiciled anywhere. *See* App.118a (denying transfer of Bestwall's bankruptcy because Bestwall made North Carolina its domicile three months before entering bankruptcy and a "debtor's choice of forum is to be accorded substantial weight and deference") (cleaned up).

IV. THIS CASE IS A PROPER VEHICLE FOR RESOLVING THE QUESTION PRESENTED

The bankruptcy court found, and Bestwall concedes, that it timely can pay all its liabilities now and in the foreseeable future. App.92a; App.114a. That finding, coupled with the purely legal question at issue, makes this appeal a proper vehicle for the Court to consider the implications of Bestwall's abundant financial resources for the good-faith analysis under § 1112(b) and for the interpretation of the Bankruptcy Clause's reach.

The certification of the bankruptcy court's order put the issue of Bestwall's good faith before the Fourth Circuit. *See Yamaha Motor Corp., U.S.A. v. Calhoun*, 516 U.S. 199, 205 (1996) ("appellate jurisdiction

applies to the *order* certified to the court of appeals," including "any issue fairly included within [it]").

The Fourth Circuit's continued refusal to clarify or correct its good-faith standard warrants this Court's review. In this case alone, the Fourth Circuit has declined to correct course on multiple occasions. *See Official Comm. of Asbestos Claimants of Bestwall, LLC v. Bestwall LLC*, 2019 WL 13512209, at *1 (4th Cir. Nov. 14, 2019) (denying permission to appeal statutory ruling); App.7a n.7 (noting statutory test but declining to address the Committee's statutory arguments); App.126a (denying *en banc* rehearing). The court has declined the opportunity in other proceedings as well. *See Official Comm. of Asbestos Pers. Inj. Claimants v. Aldrich Pump LLC*, No. 24-128 (4th Cir. Apr. 17, 2024) (denying petition to appeal).

Waiting for further percolation is unwarranted. The Fourth Circuit has created a unique legal quagmire through its continued refusal to reevaluate its good-faith standard and its limitless interpretation of the Bankruptcy Clause. Because the propriety of a wealthy debtor's bankruptcy is an issue from the commencement of the proceeding, the issue will be raised, decided, and appealed in an interlocutory posture. In that posture, the bankruptcy court and the court of appeals are gatekeepers that must agree to certify the appeal. *See* 28 U.S.C. § 158(d)(2). Yet the Fourth Circuit consistently has deflected challenges to its good-faith and jurisdictional rulings. Judges in the Fourth Circuit have been denying leave to appeal as well, viewing *Carolin*'s "rigorous" standard as "controlling." *Official Comm. of Asbestos Claimants v. Semian*, --- F. Supp. 3d ---, 2025 WL 3163103, at *6 (W.D.N.C. Nov. 12, 2025); *see also Official Comm. of Asbestos Claimants v. Bestwall LLC*, 2023 WL

7361075, at *5-6 (W.D.N.C Nov. 7, 2023) (denying leave to appeal 2019 dismissal ruling because "the controlling question of law [already] was decided in *Carolin*").

Giving the Fourth Circuit more time is not likely to resolve the circuit split. The other circuit courts also are unlikely to emulate the Fourth Circuit's approach. Indeed, all evidence points to the contrary: in accordance with the great weight of circuit authority, recent bankruptcy court decisions outside the Fourth Circuit have continued to make the debtor's financial distress a critical part of the good-faith analysis. *See In re Bedmar, LLC*, 2025 WL 2496260, at *14-15, *23 (Bankr. D. Del. Aug. 29, 2025) (granting dismissal where Chapter 11 debtor's financial distress was "manufactured" as part of scheme "concocted . . . for the benefit of its shareholders"); *In re Little*, 657 B.R. 873, 879-81 (Bankr. D. Idaho 2024) (granting dismissal where Chapter 11 debtors were "in stable financial condition" and future expenses were "speculative"); *In re Aearo Techs. LLC*, 2023 WL 3938436, at *20 (Bankr. S.D. Ind. June 9, 2023) (granting dismissal of Bestwall-type scheme where debtor was "not presently suffering financial problems of the type that warrants Chapter 11 relief"), *appeal dismissed*, 2024 WL 5277357 (7th Cir. July 11, 2024); *In re Roman Catholic Church of Archdiocese of New Orleans*, 632 B.R. 593, 612 (Bankr. E.D. La. 2021) (denying dismissal based on extensive record detailing debtor's "financial distress").

The Fourth Circuit's suggestion that the Committee "may have another chance" to raise its good-faith argument on appeal, possibly after plan confirmation, misses the mark. App.16a. Confirmation will be years from now, even more removed from the time of Bestwall's filing in 2017 than this appeal already is.

In the meantime, further delay will deepen the irreparable harm that Georgia-Pacific's asbestos victims already have endured. The Committee represents tens of thousands of asbestos claimants who have passed away in the eight years this bankruptcy has been pending, and more will die as it goes on. As Judge King observed in his dissent, "[t]he human cost of this bankruptcy delay cannot be overstated." App.29a.

Future developments in Bestwall's bankruptcy proceedings also will not shed greater light on the good-faith and jurisdictional questions. It is undisputed that Bestwall and Georgia-Pacific had no financial distress as of Bestwall's filing. The billions of dollars in dividends and increased shareholder equity that Georgia-Pacific has amassed during this bankruptcy confirm its financial health beyond doubt.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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