No. 25-1013

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

BRIEF IN OPPOSITION

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QUESTION PRESENTED

The "asbestos-litigation crisis" has vexed claimants, companies, and courts for decades. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 597–98 (1997). Congress enacted 11 U.S.C. § 524(g) to allow companies with mass-asbestos liability to resolve it through a Chapter 11 plan that creates a trust to pay current and future claims. Bestwall LLC filed for Chapter 11 to pursue a consensual resolution under § 524(g).

Five years into the bankruptcy, the Official Committee of Asbestos Claimants moved to dismiss the case (for the third time), arguing that Bestwall lacked sufficient "financial distress" under the Bankruptcy Clause and 11 U.S.C. § 1112(b) (permitting dismissal for "cause"). But because both arguments were untimely and the latter was procedurally barred, the Committee framed its arguments as jurisdictional. The Bankruptcy Court held it had jurisdiction and denied the motion.

On direct appeal of that interlocutory order, the Fourth Circuit affirmed. It held that petitions filed "under" the Bankruptcy Code (11 U.S.C.) "arise under" federal law, which suffices for jurisdiction. It declined to reach any other issues, emphasizing that "this appeal presents only one narrow question—do federal courts have subject-matter jurisdiction over bankruptcy cases filed by debtors who may be able to pay their obligations?" Pet.App.16a. That remains the only question presented now:

Does a federal court have subject-matter jurisdiction over a case filed under Title 11 (U.S.C.), regardless of the debtor's ability to pay its creditors?

RULE 29.6 STATEMENT

Bestwall LLC is a wholly owned subsidiary of Georgia-Pacific Holdings, LLC, which is a wholly owned subsidiary of Georgia-Pacific Equity Holdings LLC, which is a wholly owned subsidiary of Koch Renewable Resources, LLC, which is a wholly owned subsidiary of Koch Companies, LLC, which is a wholly owned subsidiary of Koch, Inc. No publicly held company, either directly or indirectly, holds 10% or more interest in Bestwall LLC.

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INTRODUCTION

The Petition seeks review of questions the Fourth Circuit did not decide: whether the Constitution's Bankruptcy Clause or the Bankruptcy Code's dismissal standard (in 11 U.S.C. § 1112(b)) includes a "financial distress" requirement for a debtor to be eligible for bankruptcy relief. The Fourth Circuit's decision, however, was explicit: It did not address either of those issues. Instead, the only issue it addressed was Petitioner's argument that the Bankruptcy Clause—unlike every other enumerated congressional power—is a *jurisdictional* requirement akin to Article III standing. On that narrow question, there is no circuit split, all relevant appellate caselaw agrees with the Fourth Circuit's approach, and the Fourth Circuit was plainly correct.

Petitioner, the Official Committee of Asbestos Claimants, first sought to dismiss Bestwall LLC's case as a bad faith filing in 2018. The Bankruptcy Court denied the motion in 2019, and the District Court and Fourth Circuit declined interlocutory review. Five years later, the Committee tried again, in another motion to dismiss, arguing, for the first time, that Bestwall's financial condition effectively rendered it ineligible to file for bankruptcy under the Constitution's Bankruptcy Clause. The Committee justified this belated and successive motion by claiming its argument established a lack of subject-matter jurisdiction. Petitioner also asked the Bankruptcy Court to revisit its 2019 ruling on bad faith. The Bankruptcy Court denied this dismissal request in 2024, finding it had jurisdiction and declining to reconsider its years' old bad faith decision.

This 2024 interlocutory denial order is all that was before the Fourth Circuit here. While the Committee's argument about a debtor's ability to pay "was considered" in the 2019 order, the present order was "not about" that issue. Pet.App.8a. Instead, as the Fourth Circuit squarely held, this Petition presents just one "narrow question—do federal courts have subject-matter jurisdiction over bankruptcy cases filed by debtors who may be able to pay their obligations?" Pet.App.9a. The decision below thus did not address whether the Bankruptcy Clause requires insolvency, "financial distress," or any other financial precondition. Instead, it simply held that federal courts had subject-matter jurisdiction over Bestwall's case because it arose under federal law. That was it.

None of this warrants this Court's review. The Fourth Circuit's decision follows this Court's precedent, holding that a challenge to *Congress's authority* under Article I attacks the *merits* of the case—not a *court's jurisdiction* over it. Otherwise, every bankruptcy case and, indeed, every federal-question case would require courts to decide a threshold Article I constitutional question about jurisdiction—*sua sponte*, without regard to forfeiture or waiver. *No case* supports that startling view, just as "no court has ever accepted" that a "debtor's ineligibility for bankruptcy is jurisdictional." Pet.App.13a, 14a n.13.

Ignoring the actual decision, the Committee focuses on *merits* issues that were not decided below. It argues that Article I's reference to the "subject of Bankruptcies" requires that a debtor be "financially distressed" or "actually bankrupt" (whatever that

means). But the panel expressly did not reach this issue, and the Committee identifies no split on it. This Court has *never* invalidated a law as exceeding the scope of the "subject of Bankruptcies"—and certainly should not start in a case that does not even present the question.

Going further afield, the Committee advances another argument to impose a "financial distress" test, under § 1112(b) and the Fourth Circuit's "bad faith" dismissal standard. Again, however, the decision below did not address this issue, for good reason: It is procedurally barred. The Bankruptcy Court resolved this issue in its 2019 order and, here, just found that prior order to be the law of the case. The Committee never mentions this insurmountable barrier, did not challenge that finding on appeal, and does not purport to identify any circuit split on it. Because the merits of the § 1112(b) argument were not presented on appeal, *none* of the three opinions from the panel below—majority, concurrence, or dissent—addressed it.

In any event, § 1112 does not mention "bad faith," let alone mandate "financial distress," a term that appears nowhere in the Bankruptcy Code. And even if those requirements somehow could be imported into the statute, that would not matter in this case because the Bankruptcy Court *already found* (in its 2019 order) that Bestwall faces "sufficient financial distress" for its bankruptcy. *See* Pet.15 n.3.

Nor does the Petition raise any other important issue, as the Committee all but concedes by focusing on issues neither presented nor decided below.

The Petition should be denied.

STATEMENT OF THE CASE

A. Legal background

The "asbestos-litigation crisis" has delayed recovery for claimants, toppled companies, and bogged down courts. *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 597 (1997). In response, Congress added § 524(g) to the Bankruptcy Code (11 U.S.C.), which "allows a debtor" facing substantial asbestos claims "to address in one forum all potential asbestos claims against it." Pet.App.4a. Section 524(g) authorizes a Chapter 11 plan that funds a trust to pay claimants and (through a "channeling" injunction) directs all claims to the trust. Pet.App.4a; *In re Bestwall LLC*, 606 B.R. 243, 252–53 (Bankr. W.D.N.C. 2019). It also grants claimants special protections, including (1) appointment of a debtor-funded future claimants' representative and current-claimants' committee (11 U.S.C. §§ 503(b)(2), 1103(a)); (2) a 75% super-majority vote of a class or classes of claimants to be paid by the trust; and (3) district-court approval of the plan as "fair and equitable." § 524(g)(2)(B), (3)(A), (4), (5). Personal-injury claimants also remain "entitled … to have a jury trial." *A.H. Robins Co. v. Piccinin*, 788 F.2d 994, 1012 (4th Cir. 1986); *see* 28 U.S.C. §§ 1411(a) & 157(b)(5).

The Bankruptcy Code addresses eligibility for bankruptcy in § 109, in which "Congress took care … to specify who qualifies—and who does not qualify—as a debtor." *Toibb v. Radloff*, 501 U.S. 157, 159–61 (1991) (rejecting extra-textual requirement). For Chapter 11, Congress requires neither insolvency nor any particular financial condition—

unlike other chapters. *Compare* § 109(d) (Ch. 11), *with* § 109(c)(3) (Ch. 9, requiring insolvency for municipalities), (e) (Ch. 13, requiring individual have "regular income" and debts under specified amount).

Courts have authorized more than 60 asbestos trusts, including for many solvent companies. Pet.App.22a (Agee, J., concurring). In some cases, the solvent debtor was created through a pre-petition corporate restructuring, with the financial backing of an affiliate to resolve asbestos claims. And the claimants committee in some cases (composed of many of the same law firms representing Committee members here) "actively negotiated and support[ed]" the bankruptcy plan and § 524(g) trust. *E.g.*, *In re Paddock Enters., LLC*, 2022 WL 1746652, at *14 (Bankr. D. Del. May 31, 2022).

Ultimately, a Chapter 11 debtor employing § 524(g) must propose "in good faith" a feasible plan satisfying all its requirements. 11 U.S.C. § 1129(a)(3); *see In re Kaiser Gypsum Co.*, 135 F.4th 185 (4th Cir. 2025). And an order confirming such a plan is appealable as of right. *See Bullard v. Blue Hills Bank*, 575 U.S. 496, 502–03 (2015).

B. Procedural history

1. Bestwall's predecessor, "Old GP," for many years was a peripheral defendant in the asbestos-litigation crisis. Old GP's liability arose largely from its 1965 acquisition of Bestwall Gypsum Company, which produced a joint compound containing small amounts of chrysotile asbestos. Pet.App.3a, 109a. Old GP began facing asbestos litigation in the 1970s but was not initially a primary target. Yet by 2017, after asbestos defendants accounting for most

liability share had filed for bankruptcy and established trusts, plaintiffs' attorneys increasingly targeted Old GP. By 2017, Old GP faced more than 64,000 pending lawsuits, with tens of thousands more expected for decades to come. Pet.App.110a.

Facing this "magnitude and projected continuation" of litigation, Old GP restructured in 2017 under a decades-old provision of Texas's Business Organizations Code. Pet.App.109a. Essentially, Old GP split into two new companies, Bestwall and Georgia-Pacific LLC ("New GP"). Pet.App.110a. Bestwall received Old GP's asbestos liabilities and various assets—including an uncapped Funding Agreement that obligates New GP to backstop Bestwall's obligations, including for a § 524(g) trust. Pet.App.110a–111a.

2. After this restructuring, Bestwall filed for bankruptcy in late 2017, to "resolve mass asbestos claims through a section 524(g) trust." Pet.App.108a. Soon after, the Committee moved to dismiss for "cause" under 11 U.S.C. § 1112(b), arguing Bestwall filed in "bad faith." The Committee raised neither the Bankruptcy Clause nor any other jurisdictional challenge. To the contrary, it acknowledged the court had "subject matter jurisdiction to consider this matter" under 28 U.S.C. § 1334. Comm. Mot. to Dismiss 5, *In re Bestwall LLC*, No. 17-31795 (Bankr. W.D.N.C. Aug. 15, 2018), 2018 WL 11702966.

The Bankruptcy Court denied the motion in 2019. Pet.App.112a–117a. The court applied Fourth Circuit precedent under which "a court may dismiss a Chapter 11 filing as a bad faith filing only when the bankruptcy reorganization is both (i) objectively

futile *and* (ii) filed in subjective bad faith." Pet.App.112a (citing *Carolin Corp. v. Miller*, 886 F.2d 693 (4th Cir. 1989)). The court reasoned that the bankruptcy reorganization was not objectively futile. It noted the Committee's "agree[ment]" that "filing for Chapter 11 … need not be due to insolvency" and that resolving claims through "§ 524(g) is a valid reorganizational purpose." Pet.App.113a. And it found that Bestwall's existing and projected asbestos claims created "sufficient financial distress" for it to pursue § 524(g) relief. Pet.App.114a. The District Court and the Fourth Circuit declined interlocutory review. Pet.App.6a n.7; *see* 28 U.S.C. § 158(a), (d).

The filing of a bankruptcy case automatically stays litigation against the debtor. *See* 11 U.S.C. § 362(a). At the outset of its case, Bestwall sought a preliminary injunction to extend the automatic stay to bar plaintiffs from litigating against its affiliates the exact same claims Bestwall was seeking to resolve in its bankruptcy. The Bankruptcy Court granted this relief simultaneously with denying the motion to dismiss. *Bestwall*, 606 B.R. at 258. The Committee appealed, and the District Court affirmed. *In re Bestwall LLC*, 2022 WL 67469 (W.D.N.C. Jan. 6, 2022). The Committee appealed again, and the Fourth Circuit affirmed too—emphasizing that "bankruptcy procedures promote the equitable, streamlined, and timely resolution of claims in one central place compared to the state tort system, which can and has caused delays in getting payment for legitimate claimants." *In re Bestwall LLC*, 71 F.4th 168, 183 (4th Cir. 2023). The Committee sought rehearing en banc, which the

Fourth Circuit denied. No. 24-128 (4th Cir. May 15, 2024). The Committee also sought a writ of certiorari, which this Court denied. *Off. Comm. of Asbestos Claimants v. Bestwall LLC*, 144 S. Ct. 2519 (2024) (mem.).

Throughout Bestwall's bankruptcy, claimants and their counsel have opposed the Bankruptcy Court's discovery orders through appeals, collateral litigation, and even contempt. *See Blair v. Bestwall, LLC*, 99 F.4th 679 (4th Cir. 2024); *Bestwall LLC v. Armstrong World Indus.*, 47 F.4th 233 (3d Cir. 2022). Even so, substantial progress has occurred in the case. Bestwall funded a $1 billion qualified settlement fund for the benefit of claimants. The Bankruptcy Court has been supervising a proceeding to estimate Bestwall's asbestos liabilities to assist the parties in negotiating and confirming a consensual plan of reorganization. Third Amended Case Management Order for Estimation of the Debtor's Liability for Mesothelioma Claims, *In re Bestwall LLC*, No. 17-31795 (Bankr. W.D.N.C. May 13, 2025), Dkt. 3808.

3. In 2023, five years after its first dismissal motion, the Committee moved again to dismiss Bestwall's bankruptcy case. This time, it challenged subject-matter jurisdiction (previously conceded, *supra* Stmt.B.2) theorizing that Bestwall's bankruptcy falls outside the Constitution's Bankruptcy Clause. That clause authorizes Congress to establish "uniform Laws on the subject of Bankruptcies." U.S. Const., art. I, § 8, cl. 4. The Committee contended Bestwall was not "actually bankrupt" because it lacked "financial distress." Pet.App.7a–8a. It also asked the Bankruptcy Court

to revisit its 2019 application of *Carolin* and the standard for dismissing for bad faith. Pet.App.47a, 54a.

The Bankruptcy Court denied the motion. It held that law of the case barred reconsideration of its application of *Carolin*. Pet.App.59a–63a. Though it accepted the Committee's contention that its Bankruptcy Clause argument raised a question of "constitutional subject matter jurisdiction," it found jurisdiction, explaining that "no cases at any level" supported the Committee's view that *jurisdiction* requires "financial distress." Pet.App.68a, 86a. The Bankruptcy Court certified its interlocutory denial for direct appeal, due to the jurisdictional issue. Pet.App.8a; *see* 28 U.S.C. § 158(d)(2).

The Fourth Circuit accepted the direct appeal and affirmed. The panel understood that it "face[d] a narrow question—do federal courts have subject-matter jurisdiction over bankruptcy cases filed by debtors who may be able to pay their obligations?" Pet.App.9a. It answered *yes* because "[t]he Constitution grants Article III 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." Pet.App.9a.

It explained that "jurisdiction is determined by" 28 U.S.C. § 1334, which confers "original and exclusive jurisdiction of all cases under title 11." Pet.App.12a. A person who files for bankruptcy has brought a case *under* the Bankruptcy Code—regardless of the debtor's financial condition or whether it is "eligible for bankruptcy protection." Pet.App.13a. Put otherwise, an argument that a law

exceeds one of Congress's enumerated powers—like the Commerce Clause—is not a *jurisdictional* argument; it goes to the merits of the case. Pet.App.11a. So too with the Bankruptcy Clause, which just provides a different enumerated power. Pet.App.13a. Thus, the Fourth Circuit affirmed. Pet.App.2a, 16a.

The panel also detailed what the appeal "is not about." Pet.App.8a. *First*, the panel did not consider the scope of the Bankruptcy Clause because "that question" did not touch jurisdiction but was instead "about Congress's power … to make parties eligible for bankruptcy." Pet.App.13a. It thus did not address whether the Bankruptcy Clause requires financial distress, "actual bankruptcy," insolvency, or anything else; that was not a *jurisdictional* issue. Pet.App.13a. *Second*, the panel stated that "[t]his appeal is not about the validity of the controversial Texas two-step maneuver." Pet.App.8a. The Committee conceded this point at oral argument, acknowledging that its position "would affect all debtors." Pet.App.8a. *Third*, the panel said the appeal was not about the relevance of "a debtor's ability to pay its debts" or its "financial condition"—again, because this was not a jurisdictional question. Pet.App.2a, 8a–9a. *Fourth*, the panel understood that the appeal did not involve the bad-faith dismissal standard of *Carolin* under § 1112(b). As the panel flagged in a footnote, the Bankruptcy Court had applied that standard in its prior order, Pet.App.6a n.7; in the order at issue in this appeal, however, it simply applied the law of the case, which the Committee did not challenge. Pet.App.63a.

Judge King dissented, arguing that the Committee's Bankruptcy Clause argument "presents a fundamental threshold question of subject-matter jurisdiction." Pet.App.29a. Unlike the majority, he considered the Bankruptcy Clause's scope and argued that it permitted only debtors with "financial distress and insolvency" to pursue bankruptcy. Pet.App.46a. Unlike the majority, he also believed this issue went to the federal judiciary's "subject-matter jurisdiction." Pet.App.29a. Like the panel, however, he did not address the content or application of the statutory "bad faith" dismissal standard.

Judge Agee, concurring, "outline[d] some of the errors in the dissent's discussion of bankruptcy precedent and the ramifications of its conclusion." Pet.App.17a. He argued that the dissent's view of the Bankruptcy Clause was "unsupported" by either the historical record or precedent, adding that it would "void" whole swaths of congressionally authorized bankruptcies. Pet.App.19a, 21a.

The Committee sought rehearing en banc, which the Fourth Circuit denied by a vote of 8 to 6. Pet.App.126a. Judge King dissented from the denial, in an opinion no other judge joined. Pet.App.126a–140a.

REASONS FOR DENYING THE PETITION

I. THE FOURTH CIRCUIT'S DECISION SIMPLY AFFIRMING SUBJECT-MATTER JURISDICTION IMPLICATES NO SPLIT.

This case involves no split over a federal court's subject-matter jurisdiction. Every circuit to reach the issue understood jurisdiction to be determined by Article III and statute, wholly apart from the merits question of eligibility for bankruptcy relief. The Committee does not even purport to identify a counterexample. None exists.

A. The panel's holding that *eligibility* for bankruptcy relief is not a *jurisdictional* question conflicts with "no court."

The Fourth Circuit's narrow decision accords with all relevant appellate caselaw. Time and again, appellate courts have confirmed that the subject-matter "jurisdiction of federal courts is defined by Article III of the United States Constitution and by acts of Congress." *Williams v. Duke Energy Int'l, Inc.*, 681 F.3d 788, 798 (6th Cir. 2012); *see also, e.g.*, *Guerra v. Consol. Rail Corp.*, 936 F.3d 124, 131 (3d Cir. 2019) (jurisdiction "flows from Article III"); *In re Special Grand Jury 89-2*, 450 F.3d 1159, 1169 (10th Cir. 2006) (jurisdiction is "defined and limited by Article III of the Constitution" (quoting *Flast v. Cohen*, 392 U.S. 83, 94 (1968)); *Tarsney v. O'Keefe*, 225 F.3d 929, 934 (8th Cir. 2000) (same); *Fed. Lab. Rels. Auth. v. U.S. Dep't of Com.*, 962 F.2d 1055, 1058 (D.C. Cir. 1992) (similar).

Appellate courts thus consistently treat Article I challenges as *merits* issues. Pet.App.11a. For example, when a criminal defendant belatedly contests Congress's authority to enact a criminal statute under the Commerce Clause, appellate courts often deem the issue forfeited or waived. *E.g.*, *United States v. Yelloweagle*, 643 F.3d 1275, 1289 (10th Cir. 2011) (waived Commerce Clause challenge); *United States v. Capozzi*, 347 F.3d 327, 334 (1st Cir. 2003) (forfeited Commerce Clause challenge). The Sixth Circuit has succinctly explained why: Article I authority "goes not to [the judiciary's] power but to Congress's, so it is not a challenge to subject-matter jurisdiction." *United States v. Al-Maliki*, 787 F.3d 784, 791 (6th Cir. 2015); *see also United States v. David*, 96 F.3d 1477, 1482 (D.C. Cir. 1996) (similar). To borrow from Judge Easterbrook, "there can be no doubt that Article III permits Congress to assign federal criminal prosecutions to federal court," as it has done—and that is both "the beginning and the end of the 'jurisdictional' inquiry." *Hugi v. United States*, 164 F.3d 378, 380 (7th Cir. 1999). As the Fourth Circuit explained here, "all" circuit cases mentioning "constitutional subject matter jurisdiction" use that phrase to refer to Article III—not Article I. Pet.App.10a (collecting examples).

Similarly, "no court has ever accepted" the Committee's argument that "a debtor's ineligibility for bankruptcy is jurisdictional." Pet.App.14a n.13. By the time the Fourth Circuit published its decision below, "at least five other circuits" had "rejected" efforts to shoehorn debtor eligibility into a jurisdictional requirement. Pet.App.14a n.13 (collecting authorities). Soon after, the Third Circuit

joined this consensus, holding that an "improperly filed" bankruptcy case could be dismissed under § 1112(b) but that that does not "strip bankruptcy courts of subject matter jurisdiction." *In re Whittaker Clark & Daniels Inc*, 152 F.4th 432, 443 (3d Cir. 2025). And just last month, the Ninth Circuit similarly held that a "necessary" condition to be eligible for bankruptcy did "not impact a bankruptcy court's subject-matter jurisdiction." *In re Parks Diversified, L.P.*, 168 F.4th 1188, 1202 (9th Cir. 2026). The consensus is growing, not shrinking. Now at least seven circuits have sided with the Fourth Circuit—while still "no court" has agreed with the Committee.

B. The Committee's authorities confirm the absence of a split.

The Committee does not point to any decision holding that the Bankruptcy Clause in Article I dictates subject-matter jurisdiction. Nor are its circuit authorities otherwise at odds with the Fourth Circuit's jurisdictional holding. To the contrary, the Committee's lead case—a decision that read a "financial distress" requirement into the provision of the Bankruptcy Code authorizing dismissal of bankruptcy petitions for "cause," 11 U.S.C. § 1112(b)—explicitly found that it *did* have subject-matter jurisdiction under § 1334(a), notwithstanding its finding of an absence of financial distress. *In re LTL Mgmt., LLC*, 64 F.4th 84, 99 (3d Cir. 2023) ("The Bankruptcy Court had jurisdiction of the bankruptcy case under ... 1334(a)."). The decision below explained as much, but the Committee refuses to confront it. Pet.App.13a.

The Committee's other circuit authorities also align with the jurisdictional holding below. The Committee cites *In re Marshall,* 721 F.3d 1032 (9th Cir. 2013), and *Larrabee v. Del Toro*, 45 F.4th 81 (D.C. Cir. 2022). But *Marshall* never said jurisdiction was determined by the Bankruptcy Clause, let alone by a supposed "financial distress" requirement hidden therein. Just the opposite—it adopted the lower court's decision *rejecting* efforts to read in insolvency as "required for the constitutional invocation of federal bankruptcy jurisdiction." 721 F.3d at 1053. *Larrabee* is equally consistent with the decision below. It addressed *Article III* structural limits on military jurisdiction, saying nothing to suggest that Article I itself determines jurisdiction. 45 F.4th at 86–87. Neither decision conflicts with the Fourth Circuit's decision, which is why Judge King's dissent never mentioned either one.

II. THE FOURTH CIRCUIT CORRECTLY AFFIRMED SUBJECT-MATTER JURISDICTION.

The Fourth Circuit's jurisdictional holding was plainly correct. That is why the Committee all but ignores it and instead pivots to its novel argument on the scope of the Bankruptcy Clause. But the Fourth Circuit had no occasion to reach—and did not decide—that (untimely) merits argument, which in any event fails on its own terms.

A. The decision below correctly found jurisdiction under Article III and § 1334.

The Fourth Circuit was right to affirm jurisdiction. The Constitution grants Article III judicial power over "all Cases, in Law and Equity,

arising under ... the Laws of the United States." U.S. Const. art. III, § 2; Pet.App.9a (quoting *Royal Canin U.S.A., Inc. v. Wullschleger*, 604 U.S. 22, 28 (2025)). Congress, in turn, has conferred on district courts "original and exclusive jurisdiction of all cases under title 11." 28 U.S.C. § 1334(a)-(b); Pet.App.12a. Title 11, the Bankruptcy Code, is a law of the United States. Pet.App.9a. And Bestwall's bankruptcy is under Chapter 11 of the Bankruptcy Code. So its case both *arises under* federal law and is *under* Title 11. Pet.App.2a, 9a. This is all uncontested, and it ends the jurisdictional inquiry, as the Fourth Circuit held.

1. In the Committee's view, this jurisdictional holding somehow "conflicts with the Bankruptcy Clause." Pet.17. Not so. "The jurisdiction of federal courts is defined and limited by Article III of the Constitution." *Flast*, 392 U.S. at 94; *see also*, *e.g.*, *Ins. Corp. of Ireland v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982) (similar). But the Bankruptcy Clause, like all of the other enumerated powers in Article I, § 8, defines *Congress's* authority to regulate—not the *judiciary's* authority to adjudicate.

Any other holding would *create* a conflict with this Court's precedent and other circuits, as the Fourth Circuit explained. This Court (like the circuits) has repeatedly addressed the scope of the Bankruptcy Clause, without ever suggesting that it presents any jurisdictional question. *E.g.*, *Siegel v. Fitzgerald*, 596 U.S. 464 (2022). And this Court (like the circuits), in similar contexts, has heard challenges to Congress's Article I authority and decided them *on the merits*. For example, when this Court in *United States v.*

Lopez held that Congress exceeded its Commerce Clause authority, it did not disclaim or question jurisdiction. It affirmed a merits decision that "reversed respondent's conviction." 514 U.S. 549, 552 (1995); *see* Pet.App.11a. And it has taken the same approach for other constitutional issues outside of Article III, confirming that Article III alone determines jurisdiction. *See* Pet.App.11a (quoting *Vt. Agency of Nat. Res. v. U.S. ex rel. Stevens*, 529 U.S. 765 (2000), and *City of Boerne v. Flores*, 521 U.S. 507 (1997)).

Even the Committee admits that *Lopez* and similar cases did not involve "'jurisdictional' challenges." Pet.28. It cannot dodge these authorities by asserting, without any authority, that the Bankruptcy Clause is unique among Article I's enumerated powers. Pet.28. Nor can it avoid them with hyperbolic assertions that the decision below endorses "unlimited bankruptcy jurisdiction." Pet.4. The decision did nothing of the sort; it just recognized the correct source of those jurisdictional limits. For *all* cases, jurisdiction remains "defined and limited by Article III," rather than Article I. *Flast*, 392 U.S. at 94.

The Committee's contrary view would transform federal law and litigation, across subject matters. Much like the bankruptcy jurisdictional statute (§ 1334), the general federal-question statute (28 U.S.C. § 1331), grants jurisdiction over all civil actions "arising under" federal law. If the Committee's theory were correct, courts in *every* federal-question case (including *every* bankruptcy case, as the Committee admitted, Pet.App.8a) would *have* to resolve the scope of Congress's Article I

powers as a *jurisdictional* matter. The consequences would be drastic, especially if the "jurisdictional" issues turn on vague, atextual eligibility requirements like a party's "financial distress." Pet.15. Such a theory would mean that, in *every* case arising under federal law, courts would be obligated to (1) determine *sua sponte* at the outset whether the underlying statute accords with Article I; (2) monitor throughout whether any party has become ineligible to proceed; and (3) hear Article I challenges at any point. *Cf. Ins. Corp. of Ireland*, 456 U.S. at 702 (subject-matter jurisdiction defects cannot be waived or ignored). That cannot be and is not the law.

2. The Committee's authorities do not suggest otherwise. Rather, they address either subject-matter jurisdiction under Article III or unrelated issues under Article I. None converts an Article I question into a matter of Article III subject-matter jurisdiction as the Committee attempts to do here.

The Committee (at 17, 22, 26, 28) repeatedly cites *Stern v. Marshall*, but that case is irrelevant here. *Stern* involved a bankruptcy court's authority to exercise Article III "judicial Power." 564 U.S. 462, 469, 482–85 (2011). The Court did not even mention the Bankruptcy Clause, let alone suggest that it bore on jurisdiction. *See id.* at 469. The Committee does not raise any Article III issues, nor do any exist, including because § 524(g) requires district court approval of a plan. Moreover, the Committee's reading of the Bankruptcy Clause would apply to bankruptcy courts and district courts alike, as the Fourth Circuit noted below. *See* Pet.App.10a n.10. It is telling that the Committee never cited *Stern* in the Fourth Circuit, nor did any of the opinions below.

The Committee fares no better with its cases addressing "military jurisdiction." Pet.20. In merits briefing below, the Committee's sole military-jurisdiction case was the plurality opinion in *Reid v. Covert*, 354 U.S. 1 (1957). But *Reid* considered constitutional limits on military courts' authority to try civilians. It did not even mention "subject-matter jurisdiction." *Id.* at 5; Pet.App.14a–15a. And its references to "jurisdiction"—likely "personal jurisdiction," as the Fourth Circuit explained—are at most "a vestige of an era in which jurisdictional arguments and phrases were used more liberally than they are today." Pet.App.14a–15a.

Nor do the Committee's remaining military cases suggest that Article I defines jurisdiction. Those cases involved Article III courts policing the outer bounds of non-Article III military tribunals—a structural concern wholly absent here. Only one mentions "subject-matter jurisdiction," but its reference proves the Fourth Circuit's point. *Solorio v. United States*, 483 U.S. 435 (1987). In *Solorio*, this Court noted the petitioner's "expansive subject-matter jurisdiction test." *Id.* at 451 n.18. But his contention was that the court-martial "violates his rights under the Due Process Clause of the Fifth Amendment"—not that jurisdiction was lacking under Article III. *Id.* And because the petitioner had failed to preserve that argument, this Court "decline[d] to consider" it. *Id.* That disposition makes sense only because the issue was *not* one of subject-matter jurisdiction. *See Ins. Corp. of Ireland*, 456 U.S. at 702. And it dooms Petitioner's argument. Here too, it is telling that the dissent below did not cite the Committee's "military jurisdiction" cases.

B. The Committee's argument on the scope of the Bankruptcy Clause is not presented.

Given the Fourth Circuit's "narrow" jurisdictional holding, the decision below neither decided nor addressed the Committee's view that the Bankruptcy Clause requires "financial distress." Pet.App.16a. The panel stated explicitly that this appeal was *not* "about whether a debtor's ability to pay its debts is relevant in a bankruptcy case." Pet.App.8a. And the panel made clear that its opinion "address[es] subject-matter jurisdiction" *only*, without reaching "the merits of" the Committee's argument about the substantive scope of the Bankruptcy Clause. Pet.App.16a. It thus simply found that the Committee's argument that the Bankruptcy Clause requires financial distress was irrelevant to the court's jurisdiction. And that, in turn, means the Fourth Circuit's decision in no way "conflicts with the original meaning" of the Bankruptcy Clause. *Contra* Pet.16. It also means there is no construction or application of that provision for this Court to review, which alone makes the issue inappropriate for certiorari. *Cf. Brownback v. King*, 592 U.S. 209, 215 n.4 (2021) (Court is "a court of review, not of first view").

C. Even if the Committee's Bankruptcy Clause argument were presented, it is wrong.

In any event, even if there were a reviewable question here (there is not), the Committee is wrong. The Petition never clarifies what rule this Court should extract from the Committee's supposed

originalist methodology. It "never defines" its "vague concept of 'financial distress,'" and "no one knows" what the Committee means with its circular claim that the Bankruptcy Clause applies only to debtors who are "actually bankrupt." Pet.App.8a n.8; Pet.App.19a (Agee, J., concurring); Pet.12. Regardless, the Committee cannot import a "financial distress" requirement into the broad language of the Bankruptcy Clause.

To start, the Committee's theory is both atextual and ahistorical. The Bankruptcy Clause does not mention "financial distress," and the Committee does not cite a single Founding Era source using that vague language. Instead, the Committee relies on a handful of cherry-picked Founding Era sources, which at times define a "bankrupt" debtor as "one 'who cannot pay his debts.'" Pet.18 (quoting William Perry, *The Royal Standard English Dictionary*, 51 (1777)). At most, such documents might support an *insolvency* requirement—indeed, "unable to pay" is a *definition* of insolvency, at the Founding as now. *E.g.*, William Perry, *The Royal Standard English Dictionary*, 51 (1777). But no court has ever held that the Bankruptcy Clause requires insolvency—and numerous courts have rejected that argument. *See* Pet.22 (acknowledging this about *Marshall*); Pet.App.89a (collecting cases). In any event, the Committee *disclaims* an insolvency requirement as "a test not proposed" by it. Pet.22. That concession gives away the game as to its "original meaning" theory.

Equally fatal, the Committee's "selective focus on out-of-context English and Colonial bankruptcy law" conflicts with precedent. Pet.App.17a (Agee, J.,

concurring); *see* Pet.17–18. This Court has long held that Congress's power "under the [B]ankruptcy [C]lause is not to be limited by the English or Colonial law in force when the Constitution was adopted." *Cont'l Ill. Nat'l Bank & Tr. Co. of Chi. v. Chi. Rock Island & Pac. Ry. Co.*, 294 U.S. 648, 669 (1935). Rather, the bankruptcy power "extends to all cases where the law causes to be distributed the property of the debtor among his creditors" and to "the discharge of a debtor." *Hanover Nat'l Bank v. Moyses*, 186 U.S. 181, 186 (1902) (quoting *In re Klein*, 42 U.S. 277, 281 (Mo. Cir. 1843) (Catron, J.)). For such purposes, Congress has "plenary power," and the "'language used' did not 'limit' the scope of Congress' authority." *Siegel*, 596 U.S. at 474 (quoting *Hanover Nat'l Bank*, 186 U.S. at 187). This Court unanimously emphasized four years ago that Congress's Article I bankruptcy power "includes nothing less than the subject of the relations between a debtor and his creditors." *Id.* at 473 (citation omitted). Consistent with *Siegel*, this Court has *never* found a statute to be beyond "the subject of Bankruptcies." U.S. Const. art. I, § 8, cl. 4.

In sharp contrast, the Committee's theory, in fixating on English and Colonial law, would call into question foundational features of American bankruptcy law. For the nation's first half-century, bankruptcies were only involuntary and only for merchants and traders. Corporations could not file for bankruptcy until after the Civil War, *see* Bankruptcy Act of 1867, ch. 176, 14 Stat. 517 (1867) (repealed 1878), and they could not file for reorganization until the 1930s, *see, e.g.,* Corporate Reorganization Act of 1934, ch. 424, 48 Stat. 912, 11

U.S.C. § 207 (1934) (adding § 77B to the 1898 Act) (repealed 1978). These features have all become fixtures, and have been continued under the Bankruptcy Code, which itself is nearly 50 years old. The Committee's approach would cast doubt on all such laws. It would imperil countless consumer bankruptcy cases, since Chapters 7 and 13 contain no insolvency requirement. Pet.App.21a (Agee, J., concurring). It would also cast aside scores of bankruptcies filed by solvent companies—including Johns-Manville's, which provided the primary model for Congress in enacting § 524. *See Kane v. Johns-Manville Corp.*, 843 F.2d 636, 639 (2d Cir. 1988) ("[T]he impetus for Manville's [Chapter 11 petition] was not a present inability to meet debts but rather the anticipation of massive personal injury liability in the future.").

But there is no reason to wade into these waters, since the panel decision below did not address the scope of the Bankruptcy Clause *at all*.

III. THE COMMITTEE'S § 1112(B) ARGUMENTS ARE NOT PRESENTED AND ARE WRONG.

The Committee challenges the Bankruptcy Court's application of § 1112(b)'s supposed bar on "bad faith" bankruptcy filings. Pet.23. But that issue was not decided below either. And the Committee's § 1112(b) argument runs headlong into other procedural barriers, implicates no split, and conflicts with plain statutory text.

A. The Fourth Circuit did not address the Committee's § 1112(b) argument.

The Fourth Circuit *did not address* the § 1112(b) argument the Committee presses in its Petition.

Instead, the majority below explained that the "bad faith" dismissal standard had been applied only in a prior order in the Bestwall case, on which the Fourth Circuit denied an interlocutory direct appeal. Pet.App.6a n.7. Other than making that background observation in a footnote, the panel said nothing about § 1112(b), the "bad faith" argument, or the dismissal standard. None of those issues were presented, which is why the dissent *did not even mention* them. There is simply nothing on this topic for this Court to review. *See Brownback*, 592 U.S. at 215 n.4.

B. The Committee's § 1112(b) argument is procedurally foreclosed.

The *reason* why none of the decisions below addressed the Committee's "bad faith" argument is equally clear: It is procedurally barred in this appeal, many times over.

First, the argument is barred by the law-of-the-case doctrine, as the Bankruptcy Court held. Under that doctrine, "when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case." *Christianson v. Colt Indus. Operating Corp.*, 486 U.S. 800, 816 (1988) (citation omitted). The Bankruptcy Court applied the Fourth Circuit's "bad faith" standard in its 2019 order denying dismissal; the Fourth Circuit declined direct review; and the District Court denied leave to appeal. *Supra* Stmt.B.2. Here, the Bankruptcy Court merely found its earlier application of the dismissal standard to be law of the case and declined to revisit that decision. Pet.App.59a–63a. So, on the Committee's appeal of

the present interlocutory dismissal order, the "correctness" of the Bankruptcy Court's *prior order* was "not before" the Fourth Circuit. *Dillon v. BMO Harris Bank, N.A.*, 787 F.3d 707, 711 & n.5 (4th Cir. 2015).[1] The Petition never mentions the law of the case, even though it was the *sole ground* for deciding its statutory argument in the order on appeal.

Second, the Committee forfeited any challenge to that limited decision by failing to contest the Bankruptcy Court's law-of-the-case finding on appeal. So the Committee abandoned the only § 1112(b)-related argument it could have pressed. *See id.* Faced with the Committee's silence, none of the appellate decisions below discussed the law of the case, and none evaluated the Fourth Circuit's "bad faith" standard. Pet.App.6a n.7 (panel decision, mentioning standard only in background footnote). Taking up these questions now would require starting from scratch on an issue not presented, preserved, or decided.

Finally, the Committee failed to press any § 1112(b) challenge on appeal, except through oblique and confused references to constitutional

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[1] Where a *final judgment* has been entered, the law of the case "cannot insulate an issue from appellate review," since prior non-final orders merge into the final judgment. *Christianson*, 486 U.S. at 817; *see* Fed. R. Bankr. P. 8003(a)(4) (noting merger doctrine for appeal as of right). But here, the Fourth Circuit by granting a direct appeal merely authorized review of the interlocutory "order" denying the Committee's third motion to dismiss. 28 U.S.C. § 158(d)(2).

avoidance. Comm. Op. Br. 42–45, *In re Bestwall*, No. 24-1493 (4th Cir. Aug. 26, 2024). Even then, neither the majority nor dissent below discussed constitutional avoidance—and for good reason. That canon applies only to ambiguous statutes and otherwise "has no application." *Warger v. Shauers*, 574 U.S. 40, 50 (2014). But the only *jurisdictional* statute at issue was § 1334(a), which is unambiguous, as the Committee concedes by silence. *See* Pet.17, 26. It does not even arguably contain a "financial distress" requirement. Nor could the Fourth Circuit bypass the *jurisdictional* question by "[t]aking up the statutory good-faith issue." Pet.25. A jurisdictional issue must be "determin[ed]" at the "threshold." *Lindke v. Tomlinson*, 31 F.4th 487, 495 (6th Cir. 2022). Indeed, the jurisdictional question was the "only one" presented below. Pet.App.16a.

C. The decision below does not implicate § 1112(b), much less a split involving that provision.

Because the decision below did not apply or construe § 1112(b), it is not presented in this case and does not implicate any split. But even if the decision below *had* addressed this issue (it did not), and was *not* procedurally barred (it is), it still would not merit this Court's review. Any difference in approach among courts on this issue is narrow. And it is also beside the point, since the Committee seeks a "financial distress" test and the Bankruptcy Court already concluded that Bestwall faces "sufficient financial distress." *See* Pet.15 n.3.

1. The Committee overstates the extent to which the circuits diverge on the application of § 1112(b) in

the context of "bad faith" Chapter 11 filings, including by making a straw man of the Fourth Circuit's longstanding approach.

Every circuit to consider the question—*including the Fourth*—has held that a debtor's financial condition can, under the relevant facts, play *some* role in identifying "bad faith" as "cause" for dismissal under § 1112(b). *In re Capitol Food Corp. of Fields Corner*, 490 F.3d 21, 25 (1st Cir. 2007) (considering whether debtor faces "some type of financial distress"); *Matter of Cohoes Indus. Terminal, Inc.*, 931 F.2d 222, 228 (2d Cir. 1991) (considering whether debtor faces "financial difficulty"); *In re LTL Mgmt., LLC*, 64 F.4th 84 (3d Cir. 2023) (requiring "financial distress"); *In re Premier Auto. Servs., Inc.*, 492 F.3d 274, 280 (4th Cir. 2007) (affirming, under rule of *Carolin*, that "solvent business entity with no unsecured creditors" warranted dismissal); *Matter of Little Creek Dev. Co.*, 779 F.2d 1068, 1072 (5th Cir. 1986) (considering debtor's "financial condition"); *In re Cedar Shore Resort, Inc.*, 235 F.3d 375, 379 (8th Cir. 2000); *In re Marsch*, 36 F.3d 825, 829 (9th Cir. 1994) (per curiam); *In re Dixie Broadcasting, Inc.*, 871 F.2d 1023, 1027 (11th Cir. 1989) (all similar).

The Fourth Circuit, while not *requiring* a debtor to have a particular financial condition ("distress" or otherwise), has considered it in multiple cases, including its seminal decision in *Carolin*. 886 F.2d at 703 ("Carolin had no significant assets"); *see also id.* at 701 (requiring consideration of "totality of [the] circumstances"). The debtor's financial condition was prominent in *Premier*, which followed *Carolin*. There, the Fourth Circuit, applying *Carolin*, affirmed dismissal of a bankruptcy based in part on the

debtor's lack of "financial difficulties." 492 F.3d at 280. The court reasoned that the debtor had "no demonstrable need to reorganize" when it was not only a "solvent business entity" but also had "no unsecured creditors and few, if any, secured creditors." *Id.* (The debtor filed just to avoid eviction on an expired lease that could not be revived in bankruptcy.) And it bolstered this analysis by citing the *Third Circuit's* decision in *In re SGL Carbon Corp.*, 200 F.3d 154 (3d Cir. 1999)—the decision *LTL* favorably referred to 21 times when creating its "financial distress" standard. *Id. Premier* thus demonstrates that the Third and Fourth Circuits are not "squarely contrary" to one another in their approach to § 1112(b). Pet.14. Consistent with this, *Carolin* itself, in crafting its rule, while acknowledging some *doctrinal* divergence among the circuits, expected minimal *practical* divergence. *See* 886 F.2d at 700–01.

The Committee ignores *Premier* and mischaracterizes *Carolin*. The standard articulated and applied in these cases does not mean that "the more money a debtor has, the more entitled to bankruptcy protection." Pet.14; *see also* Amicus Brief of Senators Durbin, Whitehouse & Hawley 11. Rather, the Fourth Circuit evaluates whether (among other things) a debtor's reorganization is "objectively futile"—which necessarily considers whether the debtor is pursuing a valid reorganizational purpose. *See Carolin,* 886 F.2d at 701–02. To avoid a finding of "objective futility," having money has never been enough. The debtor must present an objectively reasonable path to a resolution under the Bankruptcy Code. So, in

applying *Carolin* back in 2019, the Bankruptcy Court found that resolving "asbestos claims through 11 U.S.C. § 524(g) is a valid reorganizational purpose." Pet.App.113a; Pet.App.6a (panel noting this). The combination of those two elementary premises—that a Chapter 11 debtor must have a valid reorganizational purpose, and that seeking relief under § 524(g) to resolve and pay asbestos claims is one such purpose—does not render the Fourth Circuit a haven for "wealthy entities seeking to evade their tort and commercial liabilities." Pet.12. *Premier* itself proves the point: In the Fourth Circuit, being solvent does not entitle a debtor to pursue bankruptcy relief; it may instead bear on why the debtor may not. 492 F.3d at 280.

2. In any event, it is far from clear whether and how the Committee's "vague" "financial distress" standard for a bad faith dismissal could affect the outcome here. Pet.App.8a n.8; *see* Pet.App.19a (Agee, J., concurring) ("no one knows" what Committee's rule would require). As the Committee admits (Pet.15 n.3), the Bankruptcy Court already found "sufficient financial distress" for Bestwall to pursue relief under § 524(g), given "[t]he volume of current asbestos claims that Bestwall faced" plus "the projected number of [future] claims." Pet.App.113a–114a.

So the Committee asks this Court to: grant certiorari; somehow stretch to address the Bankruptcy Court's *2019* dismissal order, which is not on appeal here, *never* has been adjudicated by the Fourth Circuit, and is procedurally barred; accept that § 1112(b) contains an unspecified *requirement* that a debtor have some level of

"financial distress"; and hold that the Bankruptcy Court clearly erred in finding the financial distress here "sufficient." All that is inappropriate, but only if the Court reached that last step would its review even make any difference. There is no reason to start down this procedurally improper path. *See Hodges v. United States*, 368 U.S. 139, 140 (1961) (certiorari improvidently granted where record showed petitioner was not entitled to relief regardless of how question presented was resolved); *Herb v. Pitcairn*, 324 U.S. 117, 126 (1945) (where "the same judgment would be rendered ... after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion").

D. The Committee cannot rewrite § 1112(b) to require "financial distress."

In any event, the Committee's interpretation of § 1112(b) finds no support in the statutory text. The Bankruptcy Code does not impose a threshold "good faith" eligibility requirement—much less mandate "financial distress" as necessary to meet that showing. Section 1112(b)(1) allows a court to dismiss a bankruptcy petition "for cause." Nowhere does § 1112 refer to "bad faith" (or "good faith"), and nowhere *at all* does the Bankruptcy Code refer to "financial distress."

That textual absence is decisive. *See Toibb*, 501 U.S. at 160. "Congress knew how to restrict recourse to the avenues of bankruptcy relief." *Id.* at 161. It did that primarily in *§ 109*, on eligibility to be a debtor (*id.* at 160–63)—which likewise makes no mention of needing "good faith" to file and, while imposing

financial-condition requirements for some chapters, imposed none for Chapter 11. *Supra* Stmt.A. Similarly, in § 1112(b) itself, Congress specified *sixteen* grounds on which a court may dismiss a bankruptcy for "cause"—without mentioning filing in "bad faith" or lacking "financial distress." *See* § 1112(b)(4).

In contrast, when Congress *has* wanted to impose a "good faith" requirement, it has done so expressly: The Code does this at the back end, expressly requiring that, to *confirm* a plan of reorganization, it must have been "proposed in good faith and not by any means forbidden by law." § 1129(a)(3). The *predecessor* to the Code expressly required, at the front end, that a petition be "filed in good faith"—but the *current* Code *eliminated* that requirement. *E.g.,* Bankruptcy Act of 1898, §§ 141, 146, 11 U.S.C. §§ 541, 546 (1976) (repealed) (listing circumstances in which "a petition shall be deemed not to be filed in good faith"). The change is telling in itself, and the legislative history confirms it was deliberate: The Bankruptcy Code's drafters believed a *threshold* "good faith test" should be "eliminated," including because it spawned premature, costly, and distracting litigation up front. *See* F.R. Kennedy & G.K. Smith, *Postconfirmation Issues*, 44 S.C. L. Rev. 621, 732–33 n.409 (1993) (citation modified) (minutes of the Commission on the Bankruptcy Law of the United States). It thus eliminated a front-end "good faith" requirement in favor of a back-end one at confirmation.

This Court has been "loath to infer" eligibility requirements for being a debtor, leaving that task to

Congress. *Toibb*, 501 U.S. 161. The issue the Committee raises is no different.

At the very least, any reading of § 1112(b) must account for the asbestos-litigation context—consistent with what Congress specifically recognized and authorized in § 524(g). The § 524(g) trust and channeling-injunction mechanism is available to any asbestos debtor who "is likely to be subject to substantial future demands," the amounts, numbers and timing of which "cannot be determined." § 524(g)(2)(B)(ii)(I)–(II). Indeed, just this year (after the panel decision below), the Fourth Circuit confirmed that it is "hard to argue" that an entity satisfying § 524(g)'s requirements has acted in "bad faith." *Herlihy v. DBMP, LLC*, 167 F.4th 142, 152 (4th Cir. 2026). The court explained that "[i]n enacting § 524(g), Congress recognized a different form of financial distress." *Id.* at 153.

So, even if § 1112(b) *implicitly* requires "financial distress" (as part of *implicitly* requiring "good faith"), satisfying § 524(g) should suffice. *See id.*; *see also In re Honx, Inc.*, 2022 WL 17984313, at *2 (Bankr. S.D. Tex. Dec. 28, 2022) ("Congress recognized that while an asbestos bankruptcy differs from a 'classic' bankruptcy with an insolvent or near-insolvent debtor, it is still a forward-looking solution meant to treat fairly all parties in interest. That is the hallmark purpose of chapter 11. That is not a 'bad faith' motive."). And here, as the Bankruptcy Court has indicated, Bestwall filed a bankruptcy that could result in a confirmed § 524(g) plan. *See Bestwall*, 606 B.R. at 254–55 (granting preliminary injunction and finding "no reason … to conclude … that [Bestwall]

does not have the ability to fully fund a section 524(g) trust").

The Committee does not engage with any of these textual arguments, which this Court would need to address were it to take up this statutory issue. But the Committee provides no reason for this Court to do so in the first instance, without the benefit of any analysis from the decision below—which again, did not address § 1112(b) dismissal at all.

IV. THE PETITION IMPLICATES NO IMPORTANT ISSUE.

Finally, the Petition raises no issue of importance. The Committee all but admits as much when it frames a question presented that does not even mention jurisdiction—the Fourth Circuit's sole ground of decision. Pet.i. But the Committee cannot gin up importance by distorting the decision below, complaining about delay it caused, or fretting about an imaginary forum-shopping problem.

A. The Petition mischaracterizes the decision below, raising issues not decided or even discussed.

Far from raising "a question of exceptional importance," the decision below decided nothing but a mundane jurisdictional question. Pet.29. The Committee cannot get around this by loading its Petition with distraction and distortion.

It says the decision provides "a roadmap to weaponize" bankruptcy; allows "any wealthy person" to "concoct a bankruptcy" and "evade its tort or commercial liabilities"; and suggests that Bestwall's divisional merger was a "sham." Pet.4, 12, 29. None of this is accurate. Determining that jurisdiction is

governed by Article III and § 1334 is routine. *Supra* Arg.I–II. Other legal provisions, including § 524(g) itself, may preclude the far-fetched bankruptcies the Committee describes; they just were not part of the decision here. And this appeal was "not about the validity" of Bestwall's divisional merger, as the Fourth Circuit held and the Committee itself admitted below. Pet.App.8a; *supra* Stmt.B.3.

The Committee's amici raise a smattering of arguments that even the Committee does not touch. *E.g.*, Amicus Brief of AAJ 14–19 (Seventh Amendment); Amicus Brief of Bankruptcy and Legal History Professors 17–20 (Due Process). And they likewise misrepresent the majority decision—at one point even attributing the *concurrence's* statements about the scope of the Bankruptcy Clause to the *majority*, which never opined on that question. *See* Amicus Brief of Bankruptcy and Legal History Professors at 2 (ascribing Judge Agee's reasoning in concurrence to "majority" opinion). The lengths to which the Committee and its amici go to reimagine the majority's opinion confirm the obvious: Nothing in the decision warrants this Court's attention.

B. The Committee, not Bestwall, has delayed justice.

No one disputes that the asbestos claimants deserve prompt resolution. But prompt resolution is what § 524(g) is designed to provide—and it is what the Committee's litigation strategy has obstructed. The Committee suggests that Bestwall has "delay[ed] justice for asbestos plaintiffs." Pet.1, 2, 4, 34; *cf.* Amicus Brief of Senators Durbin, Whitehouse

& Hawley 16; Amicus Brief of Public Justice 14. The truth is just the opposite.

The Committee itself is the principal cause of the delay it laments. Its serial motions to dismiss, unrelenting challenges to discovery, and repeated interlocutory appeals have prevented this case from reaching plan confirmation, after which claimants can actually begin being paid. The Committee has "relentlessly attempted to circumvent the bankruptcy proceeding," thereby "prolonging the bankruptcy process and preventing the claimants from obtaining prompt relief." *Bestwall*, 71 F.4th at 184; *see also* Pet.App.23a n.2 (Agee, J., concurring). That strategy makes sense if the Committee members' counsel aspires to "greater fees" in state court—but the Fourth Circuit has admonished that such aspirations are "not a valid reason to object to the processing of the claims in the bankruptcy proceeding." *Bestwall*, 71 F.4th at 184.

Indeed, this appeal is the second in which the Committee has tried to use "jurisdictional arguments as a back-door way to challenge" the bankruptcy itself, the first being its appeal of the preliminary injunction. *Id.* at 183. The Fourth Circuit rejected that gambit before, and this Court denied the Committee's petition for certiorari. *Off. Comm. of Asbestos Claimants*, 144 S. Ct. 2519. The Committee's recycled and unending attacks are the source of delay here.

Meanwhile, Bestwall has steadfastly sought to advance toward plan confirmation to quickly and fairly compensate claimants through a § 524(g) trust. When Bestwall filed for bankruptcy, of its 64,000

pending asbestos-related claims, 75% had been pending for ten years or more, and 55% for fifteen years or more. *Bestwall*, 71 F.4th at 183. This bankruptcy proceeding is the *only* way to ensure these claimants are paid fairly and promptly. And if the Bankruptcy Court believes Bestwall is causing delay, it has authority to address the problem. *See* § 1112(b)(4) (specified untimeliness is "cause" for dismissal, among other remedies).

Bestwall's pursuit of the congressionally authorized mechanism for resolving asbestos claims does not hamstring the Committee. Again, it already argued bad faith in its first motion to dismiss; it can try to raise a "good faith" objection at plan confirmation (one actually based in statutory language); and an order confirming a plan is appealable as of right. *Supra* Stmt.A. The issue, then, is not *whether* the Committee may press its arguments, but *when* and in *what context*. And it is the Committee's own litigation strategy, not the Fourth Circuit's jurisdictional holding, that has delayed reaching that next juncture.

C. The decision below does not incentivize forum shopping.

The Committee also insists that the decision below will "incentivize[] forum-shopping by financially healthy companies." Pet.3, 29–31; *see also* Amicus Brief of Bankruptcy and Legal History Professors 9; Amicus Brief of Public Justice 19. But that argument fares no better than its others. Again, the Fourth Circuit's jurisdictional holding—its *only* ground for affirmance—is consistent with caselaw throughout the country. *Supra* Arg.I. If debtors "prefer filing in

the Fourth Circuit," Pet.16 (citation omitted), the narrow holding below is not the reason.

Further, the lower courts have demonstrated their capacity to police venue. The Committee itself filed and lost a motion to transfer venue in this case, Pet.App.117a–118a, whereas the committee in *LTL* filed a similar motion and prevailed. *See LTL*, 64 F.4th at 97–98. Any purported forum-shopping concerns, real or imaginary, do not warrant this Court's review of a decision that presents no split, involves no error, and has nothing to do with venue.

CONCLUSION

The Petition should be denied.

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