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

REPLY BRIEF FOR PETITIONER

NATALIE D. RAMSEY
THOMAS J. DONLON
MICHAEL ENRIGHT
DAVIS LEE WRIGHT
ROBINSON & COLE LLP
1201 North Market Street
Suite 1406
Wilmington, Delaware 19801
(302) 516-1700

DAVID C. FREDERICK
Counsel of Record
ALEJANDRA ÁVILA
MATTHEW N. DRECUN
SCOTT T. MACGUIDWIN
KELLOGG, HANSEN, TODD, FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
(202) 326-7900
(dfrederick@kellogghansen.com)

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Uniquely among the circuits, the Fourth Circuit construes the Bankruptcy Code's good-faith standard to facilitate a wealthy debtor's "bankruptcy" because its resources enhance a reorganization's likelihood of success. No other circuit accepts that standard. In this case, the Fourth Circuit dodged revisiting Circuit precedent despite the bankruptcy court's entreaties for coherent guidance. Bankruptcy should be for the bankrupt, but abundant resources "ironically help[] a debtor avoid a bad faith dismissal" in the Fourth Circuit, as the bankruptcy court noted. App.103a n.37. That statutory determination would not require resolution of constitutional issues. Opp.18.

The Committee then objected to Bestwall's Chapter 11 case as falling outside the Constitution's historic meaning of a "bankruptcy." But the Fourth Circuit held that any filing under the Bankruptcy Code falls within Article III's jurisdiction, so it avoided addressing the Constitution's meaning of "bankruptcy." Thus, a "debtor" paying *billions* in shareholder dividends can shunt innumerable dying asbestos victims into a bankruptcy process Bestwall has no incentive to end.

Bestwall cites no other circuit's law accepting such a bizarre outcome, instead mischaracterizing asserted procedural holdings as creating supposed vehicle problems. But it nowhere denies that both statutory and constitutional features in the question presented are properly before this Court right now.

Bestwall offers no substantive limits on a wealthy entity's utilization of bankruptcy. Like any other Chapter 11 petition, asbestos-driven bankruptcies require genuine financial distress that Bestwall concedes it lacks. *See*, *e.g.*, *In re Johns-Manville Corp.*, 36 B.R. 727, 740 (Bankr. S.D.N.Y. 1984) (asbestos debtor had "highly precarious financial position"

and faced "economic dismemberment" outside bankruptcy). Absent this Court's review, sophisticated entities will continue misusing bankruptcy as "a tool for delay and leverage" against tort victims. App.25a (King, J., dissenting).

ARGUMENT

I. DEBTORS FULLY ABLE TO PAY ALL THEIR LIABILITIES DO NOT ENTER BANKRUPTCY IN GOOD FAITH

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

The Fourth Circuit's standard squarely conflicts with other circuits' standards, which require dismissal absent financial distress. *See In re LTL Mgmt., LLC*, 64 F.4th 84, 101 (3d Cir. 2023); Pet.15 (collecting other circuit cases dismissing bankruptcies based on debtors' healthy financial condition).

Bestwall does not meaningfully dispute the circuits are divided. Fourth Circuit courts regard the Circuit's standard as "one of the most stringent articulated by the federal courts," App.6a n.7; "stringent" meaning harder for creditors to dismiss bad-faith filings (Pet.14). The Third Circuit has noted debtors "prefer filing in the Fourth Circuit" because of the split. *LTL*, 64 F.4th at 98 n.8. Bestwall also does not dispute its position would fail in the First, Second, Third, Fifth, Eighth, Ninth, and Eleventh Circuits. *Compare* Opp.27 *with* Pet.15-16 & n.3 (collecting cases identifying absence of financial distress as cause for dismissal). Bestwall concedes (Opp.27) the Fourth Circuit does not "*requir[e]* a debtor to have a particular financial condition ('distress' or otherwise)."

Bestwall deflects by asserting (Opp.27) all circuits consider the debtor's "financial condition."[1] But the Fourth Circuit's outlier two-part test prevents dismissal when a debtor *concedes* its healthy financial state. Pet.14. Bestwall admits it can pay all conceivable debts, while Georgia-Pacific generates billions in shareholder dividends yearly outside bankruptcy. Pet.6; App.70a n.14, 92a, 113a-114a. That concession would yield bad-faith dismissal elsewhere.

Bestwall and *LTL* are virtually identical bankruptcies that yielded opposite outcomes. In both, wealthy conglomerates used Texas Two-Step maneuvers to isolate only asbestos claimants in bankruptcy. Yet the Fourth Circuit permitted Bestwall to stay in bankruptcy, while the Third Circuit ordered a similar petition dismissed for bad faith because the debtor was not in financial distress. *LTL*, 64 F.4th at 110.

Circuits also divide on how to consider the debtor's "financial condition." Pet.13-16. As Bestwall concedes (Opp.29), the Fourth Circuit merely asks whether the debtor faces liabilities it wishes to adjust in bankruptcy. In the Fourth Circuit alone, a non-bankrupt debtor facing large liabilities need only invoke the Bankruptcy Code, regardless of ability to pay. The Third Circuit rejected that position. *See LTL*, 64 F.4th at 108 (holding debtor lacked good faith, despite large volume of tort claims, because it remained "highly solvent with access to cash to meet comfortably its liabilities as they came due for the foreseeable future"); *id.* at 102 (financial distress "must be immediate enough to justify a filing").

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[1] Bestwall argued below that financial distress "formed no part of the Court's good-faith test." Bestwall C.A. Br. 51-52.

Bestwall's arguments (Opp.27-28) under *Carolin* and *Premier* fail. Bestwall claims (Opp.27) the Fourth Circuit "considered" the debtor's financial condition in *Carolin*, "a shell corporation" with no "ongoing business." *Carolin Corp. v. Miller*, 886 F.2d 693, 703 (4th Cir. 1989). But the *Carolin* debtor could not pay its debts; Bestwall concedes it can. That fact warrants dismissal. *See* Committee C.A. Br. 43-45. The Committee also invoked *Premier*, which affirmed dismissal of a petition by a debtor with no "financial difficulties." *In re Premier Auto. Servs., Inc.*, 492 F.3d 274, 280 (4th Cir. 2007); Bankr. W.D.N.C. No. 17-31795, ECF No. 495, at 14, 16, 21. The Fourth Circuit *rejected* those arguments, creating a split only this Court can resolve. App.6a-7a & n.7; *see also Herlihy v. DBMP, LLC*, 167 F.4th 142, 164 (4th Cir. 2026) (King, J., dissenting) (quoting W.D.N.C. bankruptcy judge who considered it "a waste of everyone's time" to revisit "rehashe[d]" argument that "*Premier* is the standard").

Nor was § 524(g) intended to displace the Code's good-faith requirement, as Bestwall suggests (Opp.28-29, 32-33). Congress enacted that provision when asbestos debtors faced "a similarly overwhelming liability" to the Manville proceedings. H.R. Rep. No. 103-835, at 41 (1994). Access to § 524(g) "assume[s] the existence of a valid bankruptcy, which, in turn, assumes a debtor in financial distress." *In re Integrated Telecom Express, Inc.*, 384 F.3d 108, 128 (3d Cir. 2004). The text limits application to debtors whose "future demands" are "likely to threaten the plan's purpose." 11 U.S.C. § 524(g)(2)(B)(ii)(III). Without sufficient financial distress, a debtor's "desire to take advantage of the protections of the Code," including § 524(g), "cannot establish *good* faith." *In re 15375 Mem'l Corp. v. Bepco, L.P.*, 589 F.3d 605, 620 (3d Cir. 2009). Otherwise, anyone would file.

Bestwall's good-faith position (Opp.30-31), therefore, is bankruptcy courts should not dismiss Chapter 11 petitions *at all*. That position cannot be correct. *Cf.* Pet.23-25.

B. Bestwall's Procedural Objections To The Good-Faith Issue Lack Merit

1. Bestwall admits (Opp.25-26) the Committee presented the good-faith issue to the Fourth Circuit, but complains about *how* the Committee articulated its argument. That is not waiver. "'[O]nce a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below.'" *Citizens United v. FEC*, 558 U.S. 310, 330-31 (2010) (quoting *Lebron v. National R.R. Passenger Corp.*, 513 U.S. 374, 379 (1995)). A litigant "generally possesses the ability to frame the question to be decided in any way he chooses, without being limited to the manner in which the question was framed below." *Yee v. City of Escondido*, 503 U.S. 519, 535 (1992).

Similarly, Bestwall concedes (Opp.25) the court addressed the Fourth Circuit's statutory standard. App.6a n.7. The court's failure to meaningfully address the Committee's preserved arguments that the *Carolin* standard is flawed confirms the Circuit's entrenched position only this Court can correct.

2. Bestwall next argues incorrectly (Opp.24-25) the Committee's "argument is barred by the law-of-the-case doctrine" and was "the *sole ground*" for the bankruptcy court's decision. The court refused bad-faith dismissal in 2024 because it believed *Carolin* foreclosed it. App.102a-103a n.37. The court lamented the *Carolin* test, compared it to *LTL*, and suggested "[t]his case may provide a basis for the Fourth Circuit to reexamine its standard for good faith." *Id.* The

Fourth Circuit's refusal to reconsider *Carolin* requires this Court's review.

Certification of the bankruptcy court's order then properly 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]"). *Dillon v. BMO Harris Bank, N.A.*, 787 F.3d 707 (4th Cir. 2015), does not hold otherwise. Indeed, it reversed a district court treating later motions only as reconsideration motions "without considering their merits." *Id.* at 716; *cf. Doe v. Mast*, --- F.4th ---, 2026 WL 1084445, at *3 (4th Cir. Apr. 22, 2026) (permitting interlocutory consideration of issues raised in 2022 order in appealed 2024 order).

Bestwall also incorrectly asserts (Opp.25) the Committee did not contest the law-of-the-case doctrine below. The Committee explained that "doctrine is not an 'inexorable command,' and Bestwall's and the bankruptcy court's reading of *Carolin* [wa]s 'clearly erroneous and would work manifest injustice.'" Committee C.A. Reply Br. 27 (citation omitted).[2] The Fourth Circuit was "not bound by district court rulings under the law-of-the-case doctrine." *Musacchio v. United States*, 577 U.S. 237, 245 (2016). "An appellate court's function *is* to revisit matters decided in the trial court." *Id.* That distinguishes *Christianson v. Colt Industries Operating Corp.*, 486 U.S. 800, 816 (1988), which concerned law-of-the-case principles between "coordinate court[s]," not between an appellate court and a trial court.

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[2] Bestwall itself waived this argument by failing to argue waiver in its appellate brief. *See Jordan v. Large*, 27 F.4th 308, 312 n.4 (4th Cir. 2022).

II. THE FOURTH CIRCUIT'S UNBOUNDED BANKRUPTCY JURISDICTION IS INCONSISTENT WITH THE BANKRUPTCY CLAUSE'S TEXT AND HISTORY

A. The Bankruptcy Clause Limits Jurisdiction To Actually Bankrupt Debtors

The throughline of bankruptcy law's history and tradition—from pre-Founding antecedents to the current Code—is that bankruptcy developed "towards relieving the honest debtor from *oppressive indebtedness*." *Wright v. Union Cent. Life Ins. Co.*, 304 U.S. 502, 513-14 (1938) (emphasis added); *see* Pet.17-19. Early sources describe bankruptcy proceedings as involving debtors "unable or unwilling to pay their debts." Pet.17-19. Bankruptcy statutes adhere to that standard by addressing only "a failing debtor's obligations." *Continental Illinois Nat'l Bank & Tr. Co. of Chicago v. Chicago, R.I. & P. Ry. Co.*, 294 U.S. 648, 672-73 (1935) (upholding reorganization provision for railroads that are "insolvent or unable to meet [their] debts"); *accord Railway Lab. Execs.' Ass'n v. Gibbons*, 455 U.S. 457, 466 (1982). The Fourth Circuit ignored that history, holding all "petitions for relief under the Bankruptcy Code" are jurisdictionally proper under the Constitution, regardless of the debtor's conceded ability to pay. App.2a, 8a-9a; *see* Pet.25-27.

This Court's decisions and D.C. Circuit case law on Article I's analogous military jurisdiction limits illustrate the error. Pet.20-22. This Court "has repeatedly declined to defer" to Congress's decision to "extend court-martial jurisdiction" to particular classes of cases. *Larrabee v. Del Toro*, 45 F.4th 81, 87-88 (D.C. Cir. 2022) (Rao, J.). *Larrabee*, for instance, addressed Congress's "anterior authority to define" military jurisdiction. 45 F.4th at 87. It concerned Article I

power and encroachment on Article III, just as this case concerns Article I power and encroachment on state-court civil jurisdiction. Pet.26-27; *contra* Opp.15.

As here, those cases posed "'a structural question of subject matter jurisdiction.'" *Larrabee*, 45 F.4th at 86-87 (quoting *Bahlul v. United States*, 840 F.3d 757, 760 n.1 (D.C. Cir. 2016) (*en banc*) (Kavanaugh, J., concurring)). Notwithstanding the UCMJ's enactment, Congress could not "extend" jurisdiction beyond the "plain evident meaning" of Article I's authorizing clause. *Reid v. Covert*, 354 U.S. 1, 8 n.7, 19-21 & n.37 (1957) (plurality).[3]

B. Bestwall's Contrary Arguments Lack Merit

1. Bestwall first argues (Opp.12-13) a non-bankrupt debtor poses only a non-jurisdictional question of debtor eligibility, not a jurisdictional question of the Bankruptcy Clause's scope. But even the bankruptcy court and the Fourth Circuit disagreed. App.9a-10a, 71a. Moreover, none of Bestwall's cases (Opp.13-14) involved the Bankruptcy Clause question of a non-bankrupt debtor able to pay all its debts. Two merely concerned which persons within a corporation have the statutory authority to file. *See In re Whittaker*

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[3] Bestwall overemphasizes Article III and downplays Article I (Opp.19) in looking for the magic words "subject-matter jurisdiction" in *Reid*. But *Reid* followed *U.S. ex rel. Toth v. Quarles*, 350 U.S. 11 (1955), in which this Court policed Congress's "expansion of court-martial jurisdiction" because it "necessarily encroache[d] on the jurisdiction of federal courts." *Id.* at 15. These decisions concerned "the classes of cases" military tribunals could adjudicate, not merely "the persons" they could try. *See Kontrick v. Ryan*, 540 U.S. 443, 455 (2004) (distinguishing subject-matter from personal jurisdiction); *Solorio v. United States*, 483 U.S. 435, 439, 450-51 (1987) (deciding "proper exercise of court-martial jurisdiction," reviewing Article I's text and history).

Clark & Daniels Inc., 152 F.4th 432 (3d Cir. 2025), *on reh'g*, --- F.4th ---, 2026 WL 1131929, at *8 (3d Cir. Apr. 27, 2026) (board versus court-appointed receiver); *In re Parks Diversified, L.P.*, 168 F.4th 1188, 1193 (9th Cir. 2026) (general partners).

Bestwall refers (Opp.13-14) to the Fourth Circuit's footnote 13, but those cases likewise do not concern the Bankruptcy Clause's scope. App.14a; *see*, *e.g.*, *In re Zarnel*, 619 F.3d 156, 158, 169-70 (2d Cir. 2010) (credit-counseling requirements); *In re Trusted Net Media Holdings, LLC*, 550 F.3d 1035, 1041-43 (11th Cir. 2008) (*en banc*) (three-petitioning-creditor requirement for involuntary petition); *In re Marlar*, 432 F.3d 813, 814 (8th Cir. 2005) (per curiam) (involuntary debtor's status as farmer). Each construed statutory prerequisites to determine whether they are jurisdictional. *Cf. Arbaugh v. Y&H Corp.*, 546 U.S. 500, 503 (2006). None addresses the constitutional power to conduct the proceeding.

2. Bestwall next argues (Opp.16) that Congress's conferral of bankruptcy jurisdiction through 28 U.S.C. § 1334 "ends the jurisdictional inquiry." As with good faith, Bestwall contemplates no functional limit on the Bankruptcy Clause's scope. If merely enacting a "bankruptcy" statute conferred jurisdiction, Congress's bankruptcy power would overrun whole fields of state law. A statute isn't "consistent with the Bankruptcy Clause" merely because it's "labeled a 'bankruptcy' law." *Central Virginia Cmty. Coll. v. Katz*, 546 U.S. 356, 378 n.15 (2006). As with every word in the Constitution, "Bankruptcies" had a meaning at ratification that must be respected, even today.

Bestwall cannot persuasively minimize *In re Marshall*, 721 F.3d 1032 (9th Cir. 2013) (adopting bankruptcy court opinion). Although *Marshall* rejected

insolvency as the test for "the constitutional invocation of federal bankruptcy jurisdiction," it held "the bankruptcy terrain clearly must have some boundaries." *Id.* at 1053 (citing *Continental Illinois*, 294 U.S. at 669-70).

Bestwall misreads the case law by contending (Opp.22) Congress's power is plenary whenever distributing debtors' property to creditors. One case merely accepted that an administrative bankruptcy fee was within "the subject of Bankruptcies," *Siegel v. Fitzgerald*, 596 U.S. 464, 473-74 (2022), while the other upheld extending bankruptcy to "voluntary petitions" and to debtors "other[] than traders," *Hanover Nat'l Bank v. Moyses*, 186 U.S. 181, 187 (1902). Neither supports extending bankruptcy to include financially sound debtors.

3. Bestwall elides petitioner's point (Pet.26) that a constitutional challenge to subject-matter jurisdiction cannot be resolved simply by referencing a statute. *See Stern v. Marshall*, 564 U.S. 462, 469 (2011) (holding bankruptcy court had "statutory authority" but not "constitutional authority" to decide debtor's counterclaim against creditor); App.29a-30a (King, J., dissenting). Courts retain "responsibility to independently decide" their jurisdiction. *TransUnion LLC v. Ramirez*, 594 U.S. 413, 426 (2021).

Instead, Bestwall urges that federal jurisdiction is "'defined and limited'" by Article III. Opp.16 (quoting *Flast v. Cohen*, 392 U.S. 83, 94 (1968)). Of course it is. But under the Fourth Circuit's reading, every Bankruptcy Code filing is a federal question unconstrained by constitutional limits. This Court's Eleventh Amendment jurisprudence rejects that view. *See*, *e.g.*, *Kimel v. Florida Bd. of Regents*, 528 U.S. 62, 73 (2000). Bestwall's mistaken insistence that only Article III

imposes jurisdictional limitations is its lone basis (Opp.18) for disregarding *Stern*, where this Court held a statute could not supersede constitutional limits on bankruptcy courts. Pet.26.

Bestwall's other cases (Opp.12) are inapposite. One case merely noted that state statutes don't ordinarily limit federal-court jurisdiction. *Williams v. Duke Energy Int'l, Inc.*, 681 F.3d 788, 798 (6th Cir. 2012). Two others addressed standing. *In re Special Grand Jury 89-2*, 450 F.3d 1159, 1169-70 (10th Cir. 2006); *Tarsney v. O'Keefe*, 225 F.3d 929, 934 (8th Cir. 2000). Two others interpreted whether a statute of limitations was a claim-processing rule. *Guerra v. Consolidated Rail Corp.*, 936 F.3d 124, 131 (3d Cir. 2019); *FLRA v. U.S. Dep't of Com.*, 962 F.2d 1055, 1058-59 (D.C. Cir. 1992). None addresses or endorses Bestwall's view that only Article III imposes jurisdictional limitations.

Relatedly, Bestwall argues (Opp.13, 16-17) Article I challenges pose only "merits" issues, citing criminal Commerce Clause cases. But Congress indisputably can empower federal courts to adjudicate criminal offenses. The cases did not address the offense's scope, only whether Congress could criminalize particular conduct. Bestwall's scheme, by contrast, concerns what is a proper "bankruptcy" and whether Congress may empower courts to adjudicate it.

III. THIS CASE ENABLES THIS COURT TO ADDRESS A CRITICAL ISSUE

The Fourth Circuit repeatedly has refused to reconsider or clarify its good-faith precedent. Pet.32. With every passing day, civil litigation remains halted, Georgia-Pacific's business remains uninterrupted, and fewer claimants live to litigate their claims. Public Justice Br. 4-6, 13-16. Resolving this

circuit conflict is vitally important. Asbestos Creditors' Committees Br. 15-19.

The Fourth Circuit's 8-6 *en banc* denial confirms that Circuit will not align with other courts absent this Court's review. The majority adheres to a standard that—as applied—is rejected in virtually every other circuit. That failure warrants plenary review and reversal.

Bestwall gives only passing attention (Opp.36-37) to the widely acknowledged forum-shopping problem the Fourth Circuit's anomalous precedent creates. Pet.29-30. That Circuit "has become the 'safe haven' for ultra-wealthy corporations seeking to evade asbestos-related civil tort liability." *Herlihy*, 167 F.4th at 154 (King, J., dissenting); *see LTL*, 64 F.4th at 98 n.8. Fourth Circuit law is set; further percolation serves no purpose. Professor Rave Br. 4-6 (describing debtors' "virtually unlimited choice of venue"). Wealthy debtors already follow Bestwall's footsteps in the Fourth Circuit. Public Justice Br. 22-24. Because the Fourth Circuit's approach uniquely favors wealthy debtors using bankruptcy, this Court should grant certiorari to restore national uniformity to bankruptcy laws.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

NATALIE D. RAMSEY
THOMAS J. DONLON
MICHAEL ENRIGHT
DAVIS LEE WRIGHT
ROBINSON & COLE LLP
1201 North Market Street
Suite 1406
Wilmington, Delaware 19801
(302) 516-1700

DAVID C. FREDERICK
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ALEJANDRA ÁVILA
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SCOTT T. MACGUIDWIN
KELLOGG, HANSEN, TODD,
FIGEL & FREDERICK, P.L.L.C.
1615 M Street, N.W.
Suite 400
Washington, D.C. 20036
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