No. 10-179

In the Supreme Court of the United States

HOWARD K. STERN, EXECUTOR OF THE ESTATE OF VICKIE LYNN MARSHALL, PETITIONER

v.

ELAINE T. MARSHALL, EXECUTRIX OF THE ESTATE OF E. PIERCE MARSHALL

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

NEAL KUMAR KATYAL
Acting Solicitor General
Counsel of Record
TONY WEST
Assistant Attorney General
MALCOLM L. STEWART
Deputy Solicitor General
ERIC J. FEIGIN
Assistant to the Solicitor General
MICHAEL S. RAAB
ERIC FLEISIG-GREENE
Attorneys
Department of Justice
Washington, D.C. 20530-0001
SupremeCtBriefs@usdoj.gov
(202) 514-2217

QUESTIONS PRESENTED

Whether, consistent with 28 U.S.C. 157 and Article III, a bankruptcy judge may enter final judgment on a bankruptcy estate's compulsory counterclaim against a bankruptcy claimant, even when adjudication of the counterclaim requires resolution of issues that are not implicated by the claim against the estate.

TABLE OF CONTENTS

Page

Interest of the United States 1
Statement 2
Summary of argument 14
Argument:
I. The Bankruptcy Code expressly authorizes district courts to refer final decision on estate counterclaims to bankruptcy judges. 16
II. District courts' referral of final decision on compulsory counterclaims to bankruptcy judges is fully consistent with Article III of the Constitution. 22
Conclusion 33
Appendix – Statutory provisions and judicial rules 1a

TABLE OF AUTHORITIES

Cases:

Alexander v. *Hillman*, 296 U.S. 222 (1935) 26
Braniff Airways, Inc. v. *Civil Aeronautics Bd.*, 700 F.2d 214 (5th Cir.), cert. denied, 461 U.S. 944 (1983) 7
Colorado Energy Supply, Inc., 728 F.2d 1283 (10th Cir. 1984) 7
Committee of Unsecured Creditors of F S Commc'ns Corp v. *Hyatt Greenville Corp.*, 760 F.2d 1194 (11th Cir. 1985) 7
Commodities Futures Trading Comm'n v. *Schor*, 478 U.S. 833 (1985) 17, 23, 24, 30
Crowell v. *Benson*, 285 U.S. 22 (1932) 32

Cases—Continued: Page

Davis v. *Michigan Dep't of Treasury*, 489 U.S. 803 (1989) 18
Department of the Army v. *Blue Fox, Inc.*, 525 U.S. 255 (1999) 28
Dickinson v. *Zurko*, 527 U.S. 150 (1999) 32
First Nat'l Bank of Tekamah v. *Hansen*, 702 F.2d 728 (8th Cir.), cert. denied, 463 U.S. 1208 (1983) 7
Granfinanciera, S.A. v. *Nordberg*, 492 U.S. 33 (1989) 17, 24, 25, 26, 29
Katchen v. *Landy*, 382 U.S. 323 (1965) . . . . . *passim*
Kontrick v. *Ryan*, 540 U.S. 443 (2004) 17
Langenkamp v. *Culp*, 498 U.S. 42 (1990) 24
Lindquist v. *Metropolitan Bank*, 730 F.2d 1204 (8th Cir. 1984) 7
Marshall v. *Marshall*:
392 F.3d 1118 (9th Cir. 2004) 12
547 U.S. 293 (2006) 12, 17
Northern Pipeline Const. v. *Marathon Pipe Line Co.*, 458 U.S. 50 (1982) . . . . . *passim*
Oklahoma Health Servs. Fed. Credit Union v. *Webb*, 726 F.2d 624 (10th Cir. 1984) 7
Reconstruction Fin. Corp. v. *Bankers Trust Co.*, 318 U.S. 163 (1943) 30, 32
Salomon v. *Kaiser*, 722 F.2d 1574 (2d Cir. 1983) 7
Southern Constr. Co. v. *Pickard*, 371 U.S. 57 (1962) 29
Stewart v. *Stewart*, 741 F.2d 127 (7th Cir. 1984) 7
Thomas v. *Union Carbide Agric. Prods. Co.*, 473 U.S. 568 (1985) 4, 30
United States v. *Will*, 449 U.S. 200 (1980) 30

Case—Continued: Page

White Motor Corp. v. *Citibank, N.A.*, 704 F.2d 254 (6th Cir. 1983) 7

Constitution, statutes, and rules:

U.S. Const.:
Art. I, § 8, Cl. 4 2
Art. III . . . . . *passim*
§ 1 4
Amend. VII 24, 25
Bankruptcy Act, Ch. 541, 30 Stat. 544:
§ 2, 30 Stat. 545 2
§ 22a, 30 Stat. 552 2
§ 34, 30 Stat. 555 3
§ 38, 30 Stat. 555 3
Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333 7
Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat 2549 3
11 U.S.C. 106(b) 28
11 U.S.C. 307 1
28 U.S.C. 151(a) (Supp. IV 1980) 4
28 U.S.C. 152 (1976 & Supp. IV 1980) 4
28 U.S.C. 152(a) 9, 31
28 U.S.C. 152(a)(1) 9
28 U.S.C. 152(e) 31
28 U.S.C. 157 . . . . . 14, 16, 20, 21
28 U.S.C. 157(a) 8, 16, 31
28 U.S.C. 157(b)(1) . . . . . *passim*

Statutes and rules—Continued: Page

28 U.S.C. 157(b)(2) 9, 17, 19, 20, 22
28 U.S.C. 157(b)(2)(A) 22
28 U.S.C. 157(b)(2)(C) ..... *passim*
28 U.S.C. 157(b)(2)(D) 22
28 U.S.C. 157(b)(2)(E) 22
28 U.S.C. 157(b)(2)(G) 22
28 U.S.C. 157(b)(2)(H) 22
28 U.S.C. 157(b)(2)(I) 22
28 U.S.C. 157(b)(2)(J) 22
28 U.S.C. 157(b)(2)(L) 22
28 U.S.C. 157(b)(2)(N) 22
28 U.S.C. 157(b)(3) 18, 19, 20
28 U.S.C. 157(b)(5) 23
28 U.S.C. 157(c)(1) 9, 11, 15, 20, 21
28 U.S.C. 157(d) 8, 32
28 U.S.C. 158 ..... 9, 23, 32
28 U.S.C. 160 (Supp. IV 1980) 4
28 U.S.C. 581-589a (2006 & Supp. II 2008) 1
28 U.S.C. 1334 (1976 & Supp. IV 1980) 4
28 U.S.C. 1334(a)-(b) 8
28 U.S.C. 1471(b) (Supp. IV 1980) 4
28 U.S.C. 1471(c) (1976 & Supp. IV 1980) 4
28 U.S.C. 2075 3
28 U.S.C. 2403(a) 2
1973 Bankr. R.:
Rule 102 3
Rule 306(c) 3

Statutes and rules—Continued: Page

Rule 701 & Advisory cmte. note 3
Rule 803 3
Rule 810 3
Fed R. Civ. P.:
Rule 13(a) 28
Rule 13(a)(1)(A) 28
Fed. R. Bankr. P.:
Rule 7008(a) 18
Rule 7012(b) 18
Rule 7013 28
Rule 8013 32
Rule 9027(a)(1) 19
Rule 9027(e)(3) 19
Interim Bankr. R.:
§ (c)(1) 6
§ (c)(2) 6
§ (d)(2) 7, 21
§ (d)(3) 21
§ (d)(3) 21
§ (d)(3)(A) 7, 22
§ (d)(3)(B) 6, 21
§ (e)(2) 6
Sup. Ct. R. 15.2 28

Miscellaneous:

130 Cong. Rec. (1994):
p. 6241 8
p. 6242 8

Miscellaneous—Continued: Page

pp. 6241-6242 21
Bankruptcy Court Act of 1983: Hearing on H.R. 3 Before the Subcomm. on Monopolies and Commercial Law of the Comm. on the Judiciary, 98th Cong., 1st Sess. (1983) 6
Paul Bator, *The Constitution as Architecture: Legislative and Administrative Courts Under Article III*, 65 Ind. L.J. 233 (1989) 32
10 *Collier on Bankruptcy* ¶ 8013.04 (15th ed. 2010) 32
Vern Countryman, *Scrambling to Define Bankruptcy Jurisdiction: The Chief Justice, the Judicial Conference, and the Legislative Process*, 22 Harv. J. Legis. 1 (1985) 6
Memorandum from William E. Foley, Director, Administrative Office of the United States Courts (Dec. 3, 1982) 5, 6
Gen. Order 266 (C.D. Cal. Oct. 9, 1984) 9
H.R. Rep. No. 1228, 54th Cong., 1st Sess. (1896) 2
H.R. Rep. No. 595, 95th Cong., 1st Sess. (1977) 3
Judicial Conf. of United States, *Report of Proceedings* (Sept. 1982) 5
S. Rep. No. 1916, 5th Cong., 3d Sess. (1938) 2
6 Charles Alan Wright et al., *Federal Practice and Procedure* (3d ed. 2010) 29

In the Supreme Court of the United States

No. 10-179

HOWARD K. STERN, EXECUTOR OF THE ESTATE OF VICKIE LYNN MARSHALL, PETITIONER

v.

ELAINE T. MARSHALL, EXECUTRIX OF THE ESTATE OF E. PIERCE MARSHALL

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONER

INTEREST OF THE UNITED STATES

This case presents the question whether Congress has authorized, and may constitutionally authorize a district court to refer to a bankruptcy judge the final adjudication of a compulsory counterclaim by a bankruptcy estate against a creditor who has filed a claim against the estate. The United States has a substantial interest in the outcome of the case because United States trustees—who are Department of Justice officials appointed by the Attorney General—supervise the administration of bankruptcy cases. See 28 U.S.C. 581-589a (2006 & Supp. II 2008). See also 11 U.S.C. 307 ("The United States trustee may raise and may appear

and be heard on any issue in any [bankruptcy] case or proceeding."). The United States also has a substantial interest in this case because, although the court of appeals framed its holding as one of statutory construction, the court's analysis calls into question the scope of Congress's constitutional authority to authorize bankruptcy-judge adjudication of counterclaims filed by the estate. Cf. 28 U.S.C. 2403(a) (authorizing the United States to intervene in "any action, suit, or proceeding in a court of the United States * * * wherein the constitutionality of any Act of Congress affecting the public interest is drawn into question").

STATEMENT

1. Article I of the Constitution assigns to Congress the "Power * * * To establish * * * uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const. Art. I, § 8, Cl. 4. In exercising its plenary authority to regulate bankruptcy, Congress has given "special attention to the subject of making the bankruptcy laws inexpensive in their administration." *Katchen* v. *Landy*, 382 U.S. 323, 328 (1965) (quoting H.R. Rep. No. 1228, 54th Cong., 1st Sess. 2 (1896); S. Rep. No. 1916, 75th Cong., 3d Sess. 2 (1938)) (alterations omitted). To that end, it has both created specialized fora for the adjudication of bankruptcy matters and provided that such matters may be resolved summarily without a jury.

a. 1898 Bankruptcy Act, Ch. 541, 30 Stat. 544, vested district courts with original jurisdiction as "courts of bankruptcy," *id.* § 2, 30 Stat. 545, and empowered them to refer cases in whole or in part to bankruptcy "referees," *id.* § 22a, 30 Stat. 552. Those referees (later renamed "bankruptcy judges") were appointed by

district courts for two-year terms and were removable by those courts for cause. *Id.* § 34, 30 Stat. 555. They were authorized, with certain exceptions, to "perform such part of the duties * * * as are by this Act conferred on courts of bankruptcy," "subject always to a review by the [district] judge." *Id.* § 38, 30 Stat. 555.

In 1973, this Court prescribed Bankruptcy Rules pursuant to 28 U.S.C. 2075. See 411 U.S. 995. Rule 102 provided for the automatic referral of all bankruptcy proceedings to a referee, while authorizing the district court to withdraw such a reference "for the convenience of the parties or other cause" on a case-by-case basis. *Id.* at 1003-1004. The set of proceedings committed to the referee for adjudication in the first instance included "counterclaims against a creditor who files claims against the estate." *Northern Pipeline Const.* v. *Marathon Pipe Line Co.*, 458 U.S. 50, 99 (1982) (White, J. dissenting); see 1973 Bankr. R. 306(c), 701 & advisory cmte. note. Cf. *Katchen*, 382 U.S. at 336 n.12 (noting pre-1973 appellate decisions "upholding summary jurisdiction to grant affirmative relief on related counterclaims that would also be defenses to [a creditor's] claim"). Rule 803 stated that "the judgment or order of the referee shall become final" unless appealed. 411 U.S. at 1088. On appeal, the district court was required to "accept the referee's findings of fact unless clearly erroneous." 1973 Bankr. R. 810, 411 U.S. at 1090.

b. The Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549, sought to "substantially expand[]" bankruptcy jurisdiction and to enlarge the role of specialized bankruptcy fora. H.R. Rep. No. 595, 95th Cong., 1st Sess. 13 (1977). Under the 1978 Act, the power to enter final judgment in all "civil proceedings arising under title 11 or arising in or related to cases under title

11" was vested in a set of newly created "United States Bankruptcy Courts," which replaced referees. 28 U.S.C. 151(a), 1471(b) and (c) (Supp. IV 1980). Judges of those new bankruptcy courts were appointed for 14-year terms by the President, with the advice and consent of the Senate. 28 U.S.C. 152 (Supp. IV 1980). Review of bankruptcy-court judgments was solely appellate in nature. 28 U.S.C. 160, 1334 (1976 & Supp. IV 1980).

The constitutionality of the 1978 Act was challenged shortly after its enactment. In *Northern Pipeline*, a bankrupt debtor attempted to prosecute various state-law claims in bankruptcy court against a company that had never made a claim against the debtor's estate or otherwise appeared in the bankruptcy proceedings. 458 U.S. at 56-57 (plurality opinion). This Court held that the bankruptcy court's exercise of jurisdiction over that suit conflicted with the requirement of Article III, Section 1 that "[t]he judicial Power of the United States shall be vested" in judges who have life tenure and protection from salary reduction. See *id.* at 88 & n.40 (plurality opinion); *id.* at 91 (Rehnquist, J., concurring in the judgment).

As this Court subsequently explained, although a majority of the Justices in *Northern Pipeline* agreed that the 1978 Act was unconstitutional as applied to the suit before it, the "divided Court was unable to agree on the precise scope and nature of Article III's limitations." *Thomas* v. *Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 584 (1985). "The Court's holding in" *Northern Pipeline* therefore "establishes only that Congress may not vest in a non-Article III court the power to adjudicate, render final judgment, and issue binding orders in a traditional contract action arising under state law, without consent of the litigants, and subject only to ordi-

nary appellate review." *Ibid.* Nevertheless, six Justices concluded that the statutory authorization for the bankruptcy court to adjudicate the state-law contract action at issue in the case was not severable from the remainder of the 1978 Act's grant of jurisdiction to bankruptcy courts, and the Court accordingly struck down the entire jurisdictional grant as unconstitutional. *Northern Pipeline*, 458 U.S. at 88 & n.40, 91-92 (plurality opinion); *id.* at 91-92 (Rehnquist, J., concurring in the judgment). The Court stayed its judgment for approximately three months to "afford Congress an opportunity to reconstitute the bankruptcy courts or to adopt other valid means of adjudication, without impairing the interim administration of the bankruptcy laws." *Id.* at 88 (plurality opinion); *id.* at 92 (Rehnquist, J., concurring in the judgment).

c. The Judicial Conference of the United States, concerned that Congress might not act before the Court's stay expired, requested that the Director of the Administrative Office of the United States Courts (Director) propose a rule for adoption by the courts that would allow for the continued operation of the bankruptcy system consistent with *Northern Pipeline*. Judicial Conf. of United States, *Report of Proceedings* 91 (Sept. 1982). The Director responded by circulating a memorandum and proposed rule setting forth "an interim measure, by which district courts may delegate many of their bankruptcy powers to bankruptcy judges." Memorandum from William E. Foley, Director, Administrative Office of the United States Courts (Dec. 3, 1982) (Foley Memorandum), reprinted in *Bankruptcy Court Act of 1983: Hearing on H.R. 3 Before the Subcomm. on Monopolies and Commercial Law of the Comm. on the Judiciary*, 98th Cong. 1st Sess. 160 (1983)

(*1983 Subcomm. Hearing*). When Congress ultimately failed to act before this Court's stay expired, a revised version of the Director's proposed rule was adopted, "with minor local variations," by all of the courts of appeals and district courts. Vern Countryman, *Scrambling To Define Bankruptcy Jurisdiction: The Chief Justice, the Judicial Conference, and the Legislative Process*, 22 Harv. J. Legis. 1, 23 (1985).

The interim rule scaled back the jurisdiction that the 1978 Act had conferred upon bankruptcy judges. Rather than vesting bankruptcy judges with original jurisdiction over "[a]ll cases under Title 11 and all civil proceedings arising under Title 11 or arising in or related to cases under Title 11," the interim rule provided that such matters would be "referred" to bankruptcy judges by the district court. Interim Bankr. R. § (c)(1), reprinted in *1983 Subcomm. Hearing* 161-163 (reproduced in the appendix). It additionally specified that such references could be withdrawn in whole or in part by the district court "at any time on its own motion or on timely motion by a party," and that the district court could review de novo a bankruptcy judge's determinations. *Id.* § (c)(2), (e)(2).

The interim rule also precluded bankruptcy judges from entering final judgment in a class of proceedings that the Director dubbed "*Marathon* claims" and in the rule were called "related proceedings." Foley Memorandum; Interim Bankr. R. § (d)(3)(B). The rule provided that in such proceedings a bankruptcy judge would simply "submit findings, conclusions, and a proposed judgment or order to the district judge" unless the parties consented to a different allocation of authority between the bankruptcy and district judges. *Ibid.* In other referred matters, however, a bankruptcy judge

could enter final judgment. *Id.* § (d)(2). The set of proceedings in which bankruptcy courts could exercise that final-judgment authority included, *inter alia*, "counterclaims by the estate in whatever amount against persons filing claims [against] the estate." *Id.* § (d)(3)(A).

During the period that it was in effect, the interim rule was uniformly upheld against constitutional challenge by the courts of appeals. *Salomon* v. *Kaiser*, 722 F.2d 1574, 1581 (2d Cir. 1983); *Braniff Airways, Inc.* v. *Civil Aeronautics Bd.*, 700 F.2d 214, 215 (5th Cir.) (per curiam), cert. denied, 463 U.S. 1208 (1983); *White Motor Corp.* v. *Citibank, N.A.*, 704 F.2d 254, 263 (6th Cir. 1983); *Stewart* v. *Stewart*, 741 F.2d 127, 131 (7th Cir. 1984); *First Nat'l Bank of Tekamah* v. *Hansen*, 702 F.2d 728, 729 (8th Cir.), cert. denied, 463 U.S. 1208 (1983) (per curiam); *Lindquist* v. *Metropolitan Bank*, 730 F.2d 1204, 1205 (8th Cir. 1984) (per curiam); *Oklahoma Health Servs. Fed. Credit Union* v. *Webb*, 726 F.2d 624, 625 (10th Cir. 1984); *In re Colorado Energy Supply, Inc.*, 728 F.2d 1283, 1284-1285 (10th Cir. 1984); *Committee of Unsecured Creditors of F S Commc'ns Corp* v. *Hyatt Greenville Corp.*, 760 F.2d 1194, 1198-1199 (11th Cir. 1985).

d. Just over two years after this Court's decision in *Northern Pipeline*, Congress enacted the Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333, which laid the foundation for the current bankruptcy system. The primary sponsor of the 1984 Act's jurisdictional provisions explained that those provisions were intended to codify the practice under the Judiciary's interim rule:

> The solution offered by my amendment has been at work in the last 18 months under the emergency bankruptcy rule known as the model rule and has

> been upheld by five circuit courts of appeal and 24 district courts. It has proven successful. Nothing need be changed. Congressional enactment of the model rule is the purpose of my amendment, and that is all that is necessary.

130 Cong. Rec. 6241 (1984) (statement of Rep. Kastenmeier); see *id.* at 6242 (statement of Rep. Kindness) ("The Kastenmeier-Kindness amendment is essentially a legislative enactment of the emergency bankruptcy rule, the model rule that has been in effect, under which the bankruptcy courts have been operating. It has been ruled constitutional by five circuits now, every place where the question has been raised. The Supreme Court has passed up the opportunity to review those cases.").

The 1984 Act vests the district courts with original jurisdiction over bankruptcy matters. 28 U.S.C. 1334(a)-(b). It further provides that district courts "may," as under the interim rule, "provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 may be referred to the bankruptcy judges for the district." 28 U.S.C. 157(a). Under the 1984 Act (as under the interim rule), a district court "may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown." 28 U.S.C. 157(d).

Also like the interim rule, the 1984 Act authorizes bankruptcy judges to enter final judgments in some types of proceedings but not others. In particular, bankruptcy judges may enter final judgments in "all core proceedings arising under title 11, or arising in a case under title 11," that are referred to them by a district court. 28 U.S.C. 157(b)(1). Bankruptcy courts' judgments in such proceedings are subject to appellate re-

view by district courts, bankruptcy appellate panels, and circuit courts of appeals. See 28 U.S.C. 158. If a particular proceeding "is not a core proceeding but * * * is otherwise related to a case under title 11," however, a bankruptcy judge may not enter final judgment, but may instead submit proposed findings of fact and conclusions of law to the district court for de novo review. 28 U.S.C. 157(c)(1). The 1984 Act states that "[c]ore proceedings include, but are not limited to," various enumerated matters. 28 U.S.C. 157(b)(2). Those matters include "counterclaims by the estate against persons filing claims against the estate." 28 U.S.C. 157(b)(2)(C).

The 1984 Act also altered the manner in which bankruptcy judges are appointed. Those judges are no longer selected by the President (as they were under the 1978 Act), but instead are appointed by the courts of appeals for the circuits in which their judicial districts are located. 28 U.S.C. 152(a)(1). They "serve as judicial officers of the United States district court established under Article III of the Constitution." *Ibid.*

2. a. In 1996, Vickie Lynn Marshall (referred to interchangeably with the executor of her estate as "petitioner") filed for Chapter 11 bankruptcy relief in the Central District of California. Pet. App. 13. By local rule, the district court in the Central District of California "refers to the bankruptcy judges of this district, all cases under Title 11 and all proceedings under Title 11 or arising in or related to a case under Title 11." Gen. Order 266 (C.D. Cal. Oct. 9, 1984).

Petitioner's stepson, E. Pierce Marshall (referred to interchangeably with the executrix of his estate as "respondent"), filed a proof of claim in petitioner's bankruptcy case. Pet. App. 15. As construed by the courts below, that claim sought damages for alleged defama-

tory statements by petitioner and her attorneys to the effect that respondent had tortiously interfered with petitioner's rights in the estate of her recently deceased husband (respondent's father). *Id.* at 14-15 & n.11, 274-276. Petitioner answered the adversary complaint by asserting, *inter alia*, that she could not be held liable for defamation because the relevant statements were true. *Id*. at 16. Petitioner also filed a counterclaim for "tortious interference with her rights as [her late husband's] spouse." *Ibid*

The bankruptcy judge presiding over petitioner's Chapter 11 case held a trial. Pet. App. 18. It granted summary judgment for petitioner on respondent's defamation claim. *Ibid.* The bankruptcy court also found in petitioner's favor on petitioner's counterclaim, determining that respondent had tortiously interfered with petitioner's expectation in her late husband's estate. *Ibid.* The bankruptcy court determined that it had jurisdiction under 28 U.S.C. 157 to finally adjudicate the counterclaim. Pet. App. 294-296. In December 2000, it entered final judgment for petitioner in the total amount of $474,754,134. *Id.* at 301.

b. Respondent appealed to the district court. Pet. App. 24. The district court vacated the judgment on the ground that petitioner's tortious-interference counterclaim was not the type of matter on which bankruptcy judges may enter final judgment. *Id.* at 283. The district court acknowledged that the counterclaim "falls within the literal language of [28 U.S.C.] § 157(b)(2)(C)." *Id.* at 276. Based largely on perceived constitutional concerns, however, the court concluded that the counterclaim was too far attenuated from respondent's defamation claim to allow for decision by the bankruptcy judge. See *id.* at 265-283. The district court therefore treated

the bankruptcy court's ruling as a *proposed* judgment subject to the district court's own independent review. *Id.* at 284; see 28 U.S.C. 157(c)(1).

c. During the pendency of the federal-court proceedings, petitioner and respondent were also participating in Texas probate-court proceedings concerning administration of the estate of petitioner's late husband, respondent's father. Pet. App. 11-13, 20. In the state court, respondent sought a declaration that his father's will and living trust were valid. *Id.* at 11. Petitioner challenged the validity of those instruments and sought recovery from respondent for tortious interference on essentially the same theory that she pressed in the bankruptcy court. *Id.* at 11-12.

After the bankruptcy court entered judgment in her favor, petitioner voluntarily dismissed her pending claims in the Texas probate proceedings. Pet. App. 20-21. Petitioner remained a party to the Texas proceedings, however, as a defendant in a declaratory judgment action brought by respondent to determine their respective rights to the decedent's estate. *Id.* at 21. Following a lengthy trial, the jury found that the will and trust were valid, and that petitioner did not in fact have a legitimate expectation of rights in the decedent's estate. *Id.* at 22. In December 2001, the Texas probate court entered an amended judgment in favor of respondent on all claims. *Id.* at 22-23.

d. When the Texas probate court entered that judgment, the district court was in the midst of its independent review of the bankruptcy court's decision on petitioner's tortious-interference counterclaim. Pet. App. 219, 222. Relying on principles of issue preclusion and res judicata, respondent filed a motion for summary

judgment, which the district court denied. *Id.* at 217-234.

The district court proceeded to take additional evidence on petitioner's counterclaim. Pet. App. 25. In March 2002, it issued a lengthy opinion agreeing with the bankruptcy court that respondent had committed tortious interference. *Id.* at 90-214. It entered judgment in petitioner's favor, awarding a total of $88,585,534.66. *Id.* at 216.

e. Both parties appealed the district court's decision. Pet. App. 26. The court of appeals vacated the district court's judgment, holding that the probate exception to federal jurisdiction precluded the federal courts from adjudicating the case. *Marshall* v. *Marshall*, 392 F.3d 1118 (9th Cir. 2004). This Court reversed and remanded for consideration of additional issues, including the bankruptcy judge's jurisdiction to enter final judgment and respondent's arguments of issue and claim preclusion. *Marshall* v. *Marshall*, 547 U.S. 293, 315 (2006).

f. On remand, the court of appeals reversed the district court's judgment and ordered entry of judgment in favor of respondent. Pet. App. 5. The court of appeals concluded that "the Texas probate court's judgment was the earliest final judgment entered on matters relevant to this proceeding," and that "the district court erred when it did not afford preclusive effect to the Texas probate court's determination of relevant legal and factual issues." *Id.* at 65.

The court of appeals rejected petitioner's argument that the earliest final judgment in the case had in fact been issued by the bankruptcy court rather than by the probate court. In the court of appeals' view, the bankruptcy court had lacked jurisdiction to enter final judg-

ment on petitioner's counterclaim. Pet. App. 55-56. The court of appeals agreed with petitioner "that her claim is a compulsory counterclaim because the 'operative facts underlying her action' are the same as those underlying [respondent's] defamation claim." *Id.* at 47 (internal quotation marks and alterations omitted). The court concluded, however, that the counterclaim was "not a 'core proceeding arising under title 11, or arising in a case under title 11' for which the bankruptcy court is empowered to enter a final judgment." *Id.* at 65 (quoting 28 U.S.C. 157(b)(1)) (brackets omitted).

The court of appeals acknowledged that 28 U.S.C. 157(b)(2)(C) defines the term "core proceedings" to include "counterclaims by the estate against persons filing claims against the estate." Pet. App. 45. The court held, however, that a bankruptcy judge may enter final judgment only on a claim "that meets Congress' definition of a core proceeding *and* arises under or arises in title 11." *Id.* at 43. In support of that conclusion, the court of appeals expressed concern that an "overly broad construction" of the term "core proceeding" would create a potential constitutional infirmity of the sort identified in *Northern Pipeline*. *Id.* at 50.

To avoid that perceived constitutional difficulty, the court of appeals adopted a test proposed in an amicus brief, under which "a counterclaim under § 157(b)(2)(C) is properly a 'core' proceeding 'arising in a case under' the Bankruptcy Code only if the counterclaim is so closely related to the proof of claim that the resolution of the counterclaim is necessary to resolve the allowance or disallowance of the claim itself." Pet. App. 50 (brackets omitted). The court concluded that petitioner's counterclaim did not satisfy that test. *Id.* at 51. The court explained that, "[e]ven if it were shown that the state-

ments made by [petitioner's] attorneys were true," petitioner would be required to make additional showings in order to prevail on her tortious-interference claim. *Ibid.* The court concluded that, because "[n]othing in [respondent's] defamation claim puts these [additional] factual and legal questions at issue," resolution of the counterclaim was not necessary to adjudicate respondent's claim against the estate, and the counterclaim therefore was not a "core proceeding" under the test the court had adopted. See *id.* at 51-55.

SUMMARY OF ARGUMENT

The court of appeals erred in placing artificial limits on the authority of bankruptcy judges to enter final judgment on counterclaims against creditors who have filed claims against the estate. The 1984 Act continued the longstanding practice of permitting a district court to refer a bankruptcy estate's counterclaim against a creditor to an adjunct for final adjudication. Congress intended to, and did, codify that practice from the Judiciary's interim rule, which in turn approximated the procedures in place under the 1898 Act. That codification was an appropriate exercise of Congress's authority to prescribe uniform laws regulating bankruptcy. Nothing in Article III prohibits Congress from permitting a district judge to place an estate's counterclaim on equal footing with a claim that the creditor himself is pressing in front of the bankruptcy judge, particularly when the counterclaim arises from the same transaction or occurrence.

A. Section 157 of Title 28 divides proceedings that a district court may refer to a bankruptcy judge into two categories: (1) "core proceedings arising under title 11, or arising in a case under title 11," and (2) proceedings

"otherwise related to a case under title 11." 28 U.S.C. 157(b)(1) and (c)(1). Bankruptcy judges may "hear and determine" (*i.e.*, enter final judgment in) the first category of proceedings, but are allowed only to "submit proposed findings of fact and conclusions of law to the district court" in the second. *Ibid.* The statute unambiguously places all "counterclaims by the estate against persons filing claims against the estate" in the first category, by including them in the statutory definition of "core proceedings." 28 U.S.C. 157(b)(2)(C).

That statutory language neither limits the types of counterclaims that may be referred for final adjudication, nor permits courts to engraft their own limits by judicial decision. By creating a subset of "core" proceedings in which a bankruptcy court may *not* enter final judgment, the court of appeals departed from the plain text of the statute, the decisions of this Court, and the Federal Rules of Bankruptcy Procedure. Congress incorporated many of the statutory examples of "core proceedings," including counterclaims, from the list of proceedings in which bankruptcy judges could enter final judgment under the Judiciary's interim rule. In enacting the 1984 Act, Congress intended to preserve rather than to reduce the scope of bankruptcy judges' authority under that rule.

B. Congress's express authorization for bankruptcy judges to enter final judgment on estate counterclaims, in accordance with the Judiciary's preexisting practice, was fully consistent with Article III. In delineating the scope of authority that bankruptcy judges may constitutionally exercise, this Court has consistently distinguished between persons who file claims against the estate and those who do not. By invoking the assistance of the bankruptcy court and seeking a portion of the res,

respondent subjected himself to the court's authority, and the court could thereafter resolve all contested issues between respondent and the estate.

The bankruptcy court's constitutional authority in this context is particularly clear with respect to *compulsory* counterclaims. A compulsory counterclaim is by definition sufficiently tied to the initial claim that principles of sound judicial administration require the two to be decided together. Allowing the bankruptcy court to adjudicate a compulsory counterclaim does not substantially expand the bankruptcy judge's authority, and a contrary rule would entail significant delay and inefficiency.

C. In responding to this Court's decision in *Northern Pipeline*, Congress enacted various measures to ensure that bankruptcy judges function as arms of the Judiciary and independent from the political Branches. Congress installed a panoply of procedural safeguards to protect bankruptcy creditors' rights when it restructured the bankruptcy courts in the 1984 Act—including appointment and removal of bankruptcy judges by the Judiciary, as well as discretionary referral of matters from the district court to the bankruptcy judge.

ARGUMENT

I. THE BANKRUPTCY CODE EXPRESSLY AUTHORIZES DISTRICT COURTS TO REFER FINAL DECISION ON ESTATE COUNTERCLAIMS TO BANKRUPTCY JUDGES.

A. The plain text of 28 U.S.C. 157 unambiguously authorizes a bankruptcy judge, pursuant to a referral by the district court, to enter final judgment on any counterclaim brought by the estate against a person who has filed a claim against the estate. Section 157(a) permits district courts to refer to bankruptcy judges "all cases

under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11." Section 157(b)(1) permits bankruptcy courts to "hear and determine" (*i.e.*, enter final judgment on) certain of these referred matters, including "all core proceedings arising under title 11, or arising in a case under title 11." And Section 157(b)(2)(C) defines the term "[c]ore proceedings" to include, without qualification, "counterclaims by the estate against persons filing claims against the estate."

Congress's unqualified inclusion of estate "counterclaims" in the definition of "core proceedings" identifies such counterclaims as among the matters that bankruptcy courts may finally decide under Section 157(b)(1). See *Kontrick* v. *Ryan*, 540 U.S. 443, 453 (2004) (recognizing that "in cataloging core bankruptcy proceedings" in Section 157(b)(2), "Congress authorized bankruptcy courts to adjudicate" those matters); *Granfinanciera, S.A.* v. *Nordberg*, 492 U.S. 33, 50 (1989) (recognizing that Congress "designated fraudulent conveyance actions 'core proceedings,' which bankruptcy judges may adjudicate and in which they may issue final judgments, if a district court has referred the matter to them") (citations omitted); *Marshall* v. *Marshall*, 547 U.S. 293, 303 (2006) (quoting Section 157(b)(1) and explaining that a "bankruptcy court may exercise plenary power only over 'core proceedings,'" as distinct from "noncore matters"). The plain text of the statute does not permit a court, for reasons of constitutional avoidance or otherwise, to "do[] violence" to "the facially unqualified reference to counterclaim jurisdiction" by artificially limiting its scope. *Commodities Futures Trading Comm'n* v. *Schor*, 478 U.S. 833, 842 (1985).

B. The court of appeals concluded (and respondent contends) that a bankruptcy judge's authority to enter final judgment on a particular matter depends on a "two-step approach," under which the bankruptcy court may enter judgment only on "a claim that meets Congress' definition of a core proceeding *and* arises under or arises in title 11." Pet. App. 43; see Br. in Opp. 34-35. The court's analysis assumes the existence of some "core proceedings" that do *not* "aris[e] under title 11, or aris[e] in a case under title 11." 28 U.S.C. 157(b)(1). That reading is incorrect.

"It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme." *Davis* v. *Michigan Dep't of Treasury*, 489 U.S. 803, 809 (1989). The 1984 Act does not direct the bankruptcy court to engage in the second step of the "two-step approach" that the court of appeals described; it establishes no standards for determining whether a particular "core proceeding" "aris[es] under title 11, or aris[es] in a case under title 11"; and it provides no guidance as to what the bankruptcy court should do if it concludes that a "core proceeding" does not satisfy that supposed independent prerequisite. In the absence of such provisions, the "two-step approach" mandated by the court below is both procedurally and substantively unworkable.

First, Section 157(b)(3) simply instructs the bankruptcy judge, "on the bankruptcy judge's own motion or on timely motion of a party," to make the binary determination "whether a proceeding [1] is a core proceeding under this subsection or [2] is a proceeding that is otherwise related to a case under title 11." 28 U.S.C. 157(b)(3); see Fed. R. Bankr. P. 7008(a), 7012(b),

9027(a)(1) and (e)(3) (requiring filings simply to state whether a proceeding is "core" or "non-core"). Neither Section 157(b)(3) nor any other provision of the statute directs the bankruptcy judge to make the further determination whether a particular "core" proceeding "aris[es] under title 11, or aris[es] in a case under title 11." Under the court of appeals' "two-step approach," however, that further inquiry is essential to the ultimate determination whether the bankruptcy judge can enter final judgment in any "core proceeding." Had Congress intended bankruptcy judges to undertake that further inquiry, it surely would have directed them to do so.

Second, the statute provides no standards for deciding whether a particular "core" proceeding "aris[es] under title 11, or aris[es] in a case under title 11." That lack of guidance stands in stark contrast with Congress's careful specification in Section 157(b)(2) of 16 different categories of "core" proceedings. To be sure, the statute's definition of "core proceeding" is not fully comprehensive, since Section 157(b)(2) states that "[c]ore proceedings include, but are not limited to," the enumerated categories. Under the court of appeals' approach, however, the Section 157(b)(2) categories will *never* resolve the question whether the bankruptcy judge can enter judgment on a particular matter. Rather, when a particular matter falls within Section 157(b)(2), the judge will *always* be required to make the further determination whether that matter "aris[es] under title 11, or aris[es] in a case under title 11"—without any statutory guidance for doing so. That requirement would largely negate Congress's effort in Section 157(b)(2) to clarify the line between those matters that the bankruptcy judge may finally adjudicate

and those on which the judge may enter only a recommended disposition.

Third, the statute nowhere describes what authority bankruptcy judges might wield over referred proceedings that are "core" but do *not* "aris[e] under title 11, or aris[e] in a case under title 11." Section 157 contains only two subsections that tell bankruptcy judges how to dispose of proceedings that are referred to them. Section 157(b)(1) authorizes bankruptcy judges to enter final judgments on "core proceedings arising under title 11, or arising in a case under title 11," while Section 157(c)(1) authorizes them to submit proposed findings and conclusions in "a proceeding that is not a core proceeding but that is otherwise related to a case under title 11." Neither of those provisions would encompass a hypothetical "core" proceeding that does *not* "aris[e] under title 11, or aris[e] in a case under title 11." Congress's failure to specify the scope of the bankruptcy judge's authority in a proceeding of that nature strongly indicates that the statute does not contemplate any such proceedings.

The only interpretation that makes sense of the entire statute, therefore, is that the term "[c]ore proceedings" in Section 157(b)(2) is simply shorthand for the "core proceedings arising under title 11, or arising in a case under title 11" that Section 157(b)(1) authorizes bankruptcy courts to "hear and determine." Under that interpretation, the above-described incongruities disappear. To determine their authority over a referred proceeding, bankruptcy judges simply determine whether the proceeding is "core" or whether the proceeding is "otherwise related to a case under title 11" (Section 157(b)(3)). If it is the former, the bankruptcy judge may enter final judgment (Section 157(b)(1)); if it is the lat-

ter, the bankruptcy judge may only submit proposed findings and conclusions to the district court (Section 157(c)(1)). Because "counterclaims by the estate against persons filing claims against the estate" are among the matters designated as "core proceedings" by Section 157(b)(2)(C), they fall within the former category, and bankruptcy judges may enter final judgment on them.

C. The process by which Section 157(b)(2)(C) was developed confirms Congress's intent to allow bankruptcy courts, pursuant to referrals from district courts, to enter final judgment on an estate's counterclaims against bankruptcy claimants. As previously discussed (see pp. 7-8, *supra*), Congress modeled Section 157 on the interim rule that the Judicial Branch had adopted in the wake of *Northern Pipeline*. See 130 Cong. Rec. at 6241-6242. That rule, like Section 157, divided proceedings referred to bankruptcy judges into two categories: proceedings in which bankruptcy judges could only submit proposed findings and conclusions, and proceedings in which they could enter final judgment. Compare Interim Bankr. R. §§ (d)(2) and (3), with 28 U.S.C. 157(b)(1) and (c)(1).

More specifically, the interim rule provided that "[i]n related proceedings the bankruptcy judge may not enter a judgment or dispositive order, but shall submit findings, conclusions, and a proposed judgment or order to the district judge, unless the parties to the proceeding consent to entry of the judgment or order by the bankruptcy judge." Interim Bankr. R. § (d)(3)(B). The interim rule stated that "[r]elated proceedings include, but are not limited to, claims brought by the estate against parties who have not filed claims against the estate"—*i.e.*, the sorts of claims that were at issue in *Northern Pipeline Const.* v. *Marathon Pipe Line Co.*,

see 458 U.S. 50, 56 (1982) (plurality opinion)—but that "[r]elated proceedings do not include" various enumerated matters. Interim Bankr. R. § (d)(3)(A). Among the matters specifically excluded from the term "related proceedings" were "counterclaims by the estate in whatever amount against persons filing claims [against] the estate." *Ibid.* With minor variations, Congress incorporated the interim rule's list of matters that were *not* "related proceedings" into the non-exhaustive list of "core proceedings" set forth in 28 U.S.C. 157(b)(2). Compare Interim Bankr. R. § (d)(3)(A), with 28 U.S.C. 157(b)(2)(A), (C), (D), (E), (G), (H), (I), (J), (L), and (N).

Nothing in the 1984 Act's text or history suggests that Congress intended to reduce the range of matters on which bankruptcy courts could enter final judgment under the interim rule. Congress had no reason to believe that the interim rule, which had been proposed and adopted by the Judiciary and had been repeatedly upheld by the courts of appeals, was inconsistent with *Northern Pipeline* or otherwise violated Article III. See 130 Cong. Rec. at 6241-6242; p. 7, *supra*. Congress's evident intent was simply to preserve the scope of bankruptcy judges' authority under the interim rule, which broadly permitted referral of counterclaims against bankruptcy claimants to bankruptcy judges for entry of final judgment.

II. DISTRICT COURTS' REFERRAL OF FINAL DECISION ON COMPULSORY COUNTERCLAIMS TO BANKRUPTCY JUDGES IS FULLY CONSISTENT WITH ARTICLE III OF THE CONSTITUTION.

This Court's precedents "demonstrate * * * that Article III does not confer on litigants an absolute right to the plenary consideration of every nature of claim by

an Article III court." *Schor*, 478 U.S. at 848. Consistent with that principle, neither the court of appeals nor respondent has suggested that a bankruptcy judge's final adjudication of a creditor's claim against a bankruptcy estate violates Article III.[1] And neither the court of appeals nor respondent has questioned the constitutional authority of the federal *district* court to decide petitioner's state-law counterclaim as part of the bankruptcy case. The narrow constitutional question presented is whether Congress, consistent with Article III, could authorize the bankruptcy judge to enter final judgment on petitioner's counterclaim (subject to appellate review as provided in 28 U.S.C. 158) rather than simply submitting proposed findings and conclusions to the district court. Congress's authorization for the bankruptcy court to enter judgment on that matter, in accordance with the Judiciary's interim-rule procedure, is consistent with this Court's precedents and with principles of sound judicial administration.

A. The court of appeals stated that a literal reading of Section 157(b)(2)(C), as encompassing all estate counterclaims against persons who have filed claims against the estate, "would certainly run afoul of the Court's holding in [*Northern Pipeline*]." Pet. App. 46. That

[1] Respondent has, however, made the narrower argument that the bankruptcy judge lacked *statutory* authority to enter final judgment on the *particular* defamation claim here, on the ground that it is a "personal injury tort" that must be tried in district court under 28 U.S.C. 157(b)(5). Br. in Opp. 42. Respondent makes a similar argument regarding petitioner's tortious-interference counterclaim. *Id.* at 43. The court of appeals did not address those issues, and they are not within the scope of the questions on which this Court granted certiorari. To the extent that respondent's arguments were preserved below, they could be considered on remand were this Court to reverse the judgment of the court of appeals.

analysis reflects a misreading of *Northern Pipeline*. In that case, the Court held that a non-Article III bankruptcy judge could not finally adjudicate a suit filed by the debtor against a defendant who had *not* filed a claim against the estate. See 458 U.S. at 56 (plurality opinion); *id.* at 87; *id.* at 89-91 (Rehnquist, J., concurring in the judgment). But neither the plurality nor the concurring Justices disputed Justice White's statement in dissent that "if Marathon had filed a claim against the bankrupt in this case, the trustee could have filed and the bankruptcy judge could have adjudicated a counterclaim seeking the relief that is involved in these cases." *Id.* at 100-101. And the Court in *Schor* subsequently observed that "a significant factor" in *Northern Pipeline* was "the absence of consent to an initial adjudication before a non-Article III tribunal." 478 U.S. at 849.

In applying the Seventh Amendment to the bankruptcy context, the Court has sharply distinguished between persons who file claims against the estate and those who do not. In *Granfinanciera*, the Court explained that, "under the Seventh Amendment, a creditor's right to a jury trial on a bankruptcy trustee's preference claim depends upon whether the creditor has submitted a claim against the estate." 492 U.S. at 58; see *Katchen* v. *Landy*, 382 U.S. 323 (1965). The Court subsequently reiterated that a claimant against the estate is not entitled to trial by jury on a voidable-preference counterclaim because "by filing a claim against a bankruptcy estate the creditor triggers the process of 'allowance and disallowance of claims,' thereby subjecting himself to the bankruptcy court's equitable power." *Langenkamp* v. *Culp*, 498 U.S. 42, 44 (1990) (per curiam) (quoting *Granfinanciera*, 492 U.S. at 58).

In two respects, the question presented here differs from the issue discussed by this Court in *Granfinanciera* and *Langenkamp*. First, respondent does not assert a Seventh Amendment right to jury trial on petitioner's counterclaim, but rather objects to final adjudication of that counterclaim by a non-Article III judge. But there is no sound reason for a different outcome in the Article III context than in the Seventh Amendment one. Indeed, the Court in *Granfinanciera* equated the two inquiries, stating that with respect to a legal cause of action, "the question whether the Seventh Amendment permits Congress to assign its adjudication to a tribunal that does not employ juries as factfinders requires the same answer as the question whether Article III allows Congress to assign adjudication of that cause of action to a non-Article III tribunal." 492 U.S. at 53.

Second, whereas *Langenkamp*, *Granfinanciera*, and *Katchen* involved voidable-preference actions, petitioner's tortious-interference counterclaim alleges a different sort of wrong. The court of appeals attached controlling weight to that distinction. Pet. App. 49. The court reasoned that, whereas the bankruptcy court in *Katchen* was required to resolve the voidable-preference issue in order to determine whether the claimant's own claim against the estate should be allowed, see *ibid.* (citing *Katchen*, 382 U.S. at 330), disposition of petitioner's counterclaim would require resolution of additional issues beyond those posed by respondent's defamation claim against the estate, see *id.* at 55. The court of appeals read *Katchen* and *Northern Pipeline* to establish a constitutional rule, which the court imported into its construction of Section 157(b)(2)(C), that a bankruptcy court may enter final judgment on an estate counterclaim "only if the counterclaim is so closely related to

the proof of claim that the resolution of the counterclaim is necessary to resolve the allowance or disallowance of the claim itself." *Id.* at 50.

The court of appeals was correct that the factual and legal overlap between claim and counterclaim was closer in *Katchen* than in this case. The *Katchen* Court's rationale for allowing bankruptcy-court adjudication of the estate's counterclaim, however, was not limited to the voidable-preference context. Rather, the Court relied on the broader rule, which it had previously applied to receivership proceedings, that "[b]y presenting their claims [the claimants against the estate] subjected themselves to all the consequences that attach to an appearance." *Katchen*, 382 U.S. at 335 (quoting *Alexander* v. *Hillman*, 296 U.S. 222, 241 (1935)). That principle, the Court explained, "is in harmony with the rule generally followed by courts of equity that having jurisdiction of the parties to controversies brought before them, they will decide all matters in dispute and decree complete relief." *Ibid.* (quoting *Alexander*, 296 U.S. at 242). Under that approach, respondent, by submitting a claim against the estate, subjected himself to the bankruptcy court's authority to resolve the estate's counterclaim, even though that process required resolution of issues beyond those implicated by respondent's defamation claim.[2]

---

[2] The Court in *Granfinaciera*, after quoting with approval the passage from *Katchen* discussed above, distinguished the *Katchen* Court's rationale from the "waiver" theory adopted by this Court in *Schor*. See 492 U.S. at 59 n.14. The precise nature of that distinction is unclear. It is clear, however, that respondent—like the claimant in *Katchen*, and unlike the petitioner in *Schor*—has "laid claim" to a "disputed res" to be administered in the bankruptcy proceedings. *Ibid.* *Katchen*'s reasoning is therefore fully applicable here.

As in a voidable-preference case, moreover, resolution of petitioner's counterclaim is "part of the claims-allowance process" and is "integral to the restructuring of the debtor-creditor relationship through the bankruptcy court's equity jurisdiction." *Langenkamp*, 498 U.S. at 44 (emphasis omitted). The trustee's recovery of monetary awards on estate counterclaims furthers the objectives of the Bankruptcy Code by increasing the pool of assets available to creditors. Cf. *Alexander*, 296 U.S. at 242 (observing, in the receivership context, that "[n]othing is more clearly a part of the subject matter of the main suit than recovery of all that to the *res* belongs"). To be sure, *Northern Pipeline* makes clear that the interest in maximizing the estate is not a sufficient basis for requiring a stranger to the bankruptcy to appear as a defendant before a non-Article III tribunal. But once respondent invoked the assistance of the bankruptcy court by filing his own proof of claim, the bankruptcy court was authorized to "decide all matters in dispute" between respondent and the estate and to "decree complete relief." *Katchen*, 382 U.S. at 335 (quoting *Alexander*, 296 U.S. at 242).

B. Although Section 157(b)(2)(C) applies by its terms to all "counterclaims by the estate against persons filing claims against the estate," as this case comes to the Court, the constitutional question presented involves the application of Section 157(b)(2)(C) to a *compulsory* counterclaim. The court of appeals held that the overlap between respondent's claim and petitioner's counterclaim was sufficient to make the counterclaim compul-

sory, Pet. App. 47-48, and respondent did not contest that proposition in opposing certiorari.[3]

A compulsory counterclaim, by definition, "arises out of the transaction or occurrence that is the subject matter of the opposing party's claim." Fed. R. Civ. P. 13(a)(1)(A) (incorporated in relevant part by Fed. R. Bankr. P. 7013). The Federal Rules compel a party, on penalty of forfeiture, to raise any such counterclaim in its answer to the primary claim. *Ibid.* The reason behind that rule is that the court, in adjudicating the primary claim, will be required to address that transaction or occurrence in any event. See, *e.g.*, *Southern Constr.*

---

[3] In light of respondent's failure to contest the matter in his brief in opposition, the Court may appropriately decide this case on the *assumption* that petitioner's counterclaim was "compulsory" within the meaning of Federal Rule of Civil Procedure 13(a). See Sup. Ct. R. 15.2. The Court should not decide whether petitioner's counterclaim is in fact compulsory, however, since that issue is outside the questions on which the Court granted certiorari, and the standards for distinguishing between compulsory and permissive counterclaims have practical importance well beyond the application and constitutionality of Section 157(b)(2)(C). Most obviously, the determination that a counterclaim is compulsory means that a defendant's failure to assert it will be treated as a forfeiture. In addition, under the Bankruptcy Code, "[a] governmental unit that has filed a proof of claim in [a bankruptcy] case is deemed to have waived sovereign immunity with respect to a claim against such governmental unit that is property of the estate and that *arose out of the same transaction or occurrence* out of which the claim of such governmental unit arose." 11 U.S.C. 106(b) (emphasis added). The italicized language closely tracks the text of Federal Rule Civil Procedure 13(a)(1)(A). An unduly broad view of the category of claims and counterclaims that "ar[i]se out of the same transaction or occurrence" might thus effectively expand the range of counterclaims that bankruptcy estates can assert against governmental bodies, in derogation of the canon that sovereign immunity waivers must be "strictly construed." *Department of the Army* v. *Blue Fox, Inc.*, 525 U.S. 255, 261 (1999) (citation omitted).

Co. v. *Pickard*, 371 U.S. 57, 60 (1962) (rule "was designed to prevent multiplicity of actions and to achieve resolution in a single lawsuit of all disputes arising out of common matters"); see also 6 Charles Alan Wright et al., *Federal Practice and Procedure* § 1409 (3d ed. 2010) (Wright).

As we explain above, *Katchen* supports the view that, if a creditor invokes the bankruptcy court's assistance by filing a claim against the estate, it thereby subjects itself to the bankruptcy court's jurisdiction over any counterclaims the estate may file. But even if the decision is read more narrowly, the square holding of the case is that, if the overlap between the initial claim and the counterclaim is sufficiently substantial, the bankruptcy judge may adjudicate the counterclaim and may enter affirmative relief against the claimant ordering him to surrender property that rightfully belongs to the estate. See *Katchen*, 382 U.S. at 335-338. While a compulsory counterclaim need not be a precise mirror image of the primary claim, the text and judicial-economic purposes of the rule dictate that a counterclaim is "compulsory" only when the allegations at the pleading stage overlap significantly enough for joint adjudication to make sense. 6 Wright §§ 1409, 1410. When a creditor invokes "the process of allowance and disallowance of claims," *Granfinanciera*, 492 U.S. at 58 (quoting *Katchen*, 382 U.S. at 336), permitting the bankruptcy court to adjudicate a compulsory counterclaim does not substantially expand the bankruptcy judge's power. By contrast, a rule requiring a claim and compulsory counterclaim to be adjudicated separately would entail significant "delay and expense" and would "dismember a

scheme which Congress has prescribed." *Katchen*, 382 U.S. at 339.[4]

C. This case is further distinguishable from *Northern Pipeline* by virtue of the substantial structural differences between the 1978 and 1984 Bankruptcy Acts. "[T]he constitutionality of a given congressional delegation of adjudicative functions to a non-Article III body must be assessed by reference to the purposes underlying the requirements of Article III"—namely, "to safeguard litigants' 'right to have claims decided before judges who are free from potential domination by other branches of government'" and "to protect 'the role of the independent judiciary within the constitutional scheme of tripartite government.'" *Schor*, 478 U.S. at 848 (quoting *United States* v. *Will*, 449 U.S. 200, 218 (1980), and *Thomas* v. *Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 583 (1985). Congress's post-*Northern Pipeline* re-

---

[4] In *Schor*, the Court rejected an Article III challenge to the authority of the Commodities Futures Trading Commission (CFTC) to decide state-law counterclaims arising out of the same transaction or occurrence as certain federal reparations claims referred to the CFTC by statute. 478 U.S. 833. The Court recognized that such "counterclaim jurisdiction" was "necessary to make the reparations procedure workable." *Id.* at 856. It observed that it had previously upheld similar jurisdiction over state-law matters not only in *Katchen*, but also in an Article III case, *Reconstruction Fin. Corp.* v. *Bankers Trust Co.*, 318 U.S. 163, 168-171 (1943). *Schor*, 478 U.S. at 852 (explaining that, in the latter case, the Court "saw no constitutional difficulty in the initial adjudication of a state law claim by a federal agency, subject to judicial review, when that claim was ancillary to a federal law dispute"). The Court concluded "that the congressional authorization of limited CFTC jurisdiction over a narrow class of common law claims as an incident to the CFTC's primary, and unchallenged, adjudicative function does not create a substantial threat to the separation of powers." *Id.* at 854. Similar reasoning applies here.

structuring of the bankruptcy laws was consistent with both of these constitutional goals.

As to the first of those constitutional objectives, there is no "potential" for bankruptcy judges to be "dominat[ed] by other branches of government" because bankruptcy judges are insulated from both Congress and the Executive. Under the 1984 Act, bankruptcy judges are "appointed by the court of appeals of the United States for the circuit in which" their judicial district is located. 28 U.S.C. 152(a); compare *Northern Pipeline*, 458 U.S. at 53 (plurality opinion) (noting that the President appointed bankruptcy judges under the 1978 Act). They "serve as judicial officers of the United States district court established under Article III of the Constitution." 28 U.S.C. 152(a). Although there is no constitutional bar to lowering their pay, the same was true of bankruptcy referees under the 1898 Act, of whom the *Northern Pipeline* plurality observed that "the primary danger of a threat to the independence * * * came from within, rather than without, the judicial department." 458 U.S. at 80 n.31. And bankruptcy judges are removable only by the circuit judicial council, and only for cause, following a hearing. 28 U.S.C. 152(e).

As to the second goal, there is no threat to "the role of the independent judiciary within the constitutional scheme of tripartite government" because the Judiciary's employment of bankruptcy judges is entirely optional. District courts "may" refer certain bankruptcy-related matters to bankruptcy judges, but they are not required to do so. 28 U.S.C. 157(a); compare *Northern Pipeline*, 458 U.S. at 54 n.3 ("The ultimate repository of the [1978] Act's broad jurisdictional grant is the bankruptcy courts."); *id.* at 80 n.31 ("[T]he [1978] bankruptcy courts are independent of the United

States district courts.") (internal quotation marks omitted). Article III courts, moreover, exercise appellate jurisdiction over bankruptcy judges' rulings in referred matters, including de novo review of legal issues. 28 U.S.C. 157(b)(1), 158; cf. Paul Bator, *The Constitution as Architecture: Legislative and Administrative Courts Under Article III*, 65 Ind. L.J. 233, 269 (1989) ("The Constitution gives Congress wide discretion to assign the task of making the initial decision in a case arising under federal law to administrative agencies, but requires judicial review to assure the supremacy of law.").[5] And a district court always retains the authority to "withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown." 28 U.S.C. 157(d). Indeed, the district court in this case initially granted respondent's motion to withdraw the reference of the claim and counterclaim, before vacating the withdrawal and referring the matter back to the bankruptcy judge. See J.A. 123, 129-130.

---

[5] The statute itself does not prescribe a standard of review. Courts by practice review a bankruptcy judge's legal conclusions de novo, see 10 *Collier on Bankruptcy* ¶ 8013.04 (15th ed. 2010), and the current federal rules (like the 1973 rules, see p. 3, *supra*) provide that findings of fact "shall not be set aside unless clearly erroneous," Fed. R. Bankr. P. 8013. That latter standard does not violate Article III, because even in cases of private right, "there is no requirement that, in order to maintain the essential attributes of the judicial power, all determinations of fact in constitutional courts shall be made by judges." *Crowell* v. *Benson*, 285 U.S. 22, 51 (1932); see *Reconstruction Fin. Corp.*, 318 U.S. at 170 (Article III satisfied even where agency's factfinding "may not be disturbed by a court" if "supported by evidence"); see also *Dickinson* v. *Zurko*, 527 U.S. 150, 161-162 (1999) (noting that substantial-evidence review is even more deferential than clear-error review).

CONCLUSION

The judgment of the court of appeals should be vacated and the case remanded for further proceedings.

Respectfully submitted.

NEAL KUMAR KATYAL
Acting Solicitor General
TONY WEST
Assistant Attorney General
MALCOLM L. STEWART
Deputy Solicitor General
ERIC J. FEIGIN
Assistant to the Solicitor General
MICHAEL S. RAAB
ERIC FLEISIG-GREENE
Attorneys

NOVEMBER 2010

APPENDIX

1. 28 U.S.C. 157 provides:

Procedures

(a) Each district court may provide that any or all cases under title 11 and any or all proceedings arising under title 11 or arising in or related to a case under title 11 shall be referred to the bankruptcy judges for the district.

(b)(1) Bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11, referred under subsection (a) of this section, and may enter appropriate orders and judgments, subject to review under section 158 of this title.

(2) Core proceedings include, but are not limited to—

(A) matters concerning the administration of the estate;

(B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;

(C) counterclaims by the estate against persons filing claims against the estate;

(D) orders in respect to obtaining credit;

(E) orders to turn over property of the estate;

(F) proceedings to determine, avoid, or recover preferences;

(G) motions to terminate, annul, or modify the automatic stay;

(H) proceedings to determine, avoid, or recover fraudulent conveyances;

(I) determinations as to the dischargeability of particular debts;

(J) objections to discharges;

(K) determinations of the validity, extent, or priority of liens;

(L) confirmations of plans;

(M) orders approving the use or lease of property, including the use of cash collateral;

(N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate;

(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims; and

(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.

(3) The bankruptcy judge shall determine, on the judge's own motion or on timely motion of a party,

whether a proceeding is a core proceeding under this subsection or is a proceeding that is otherwise related to a case under title 11. A determination that a proceeding is not a core proceeding shall not be made solely on the basis that its resolution may be affected by State law.

(4) Non-core proceedings under section 157(b)(2)(B) of title 28, United States Code, shall not be subject to the mandatory abstention provisions of section 1334(c)(2).

(5) The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

(c)(1) A bankruptcy judge may hear a proceeding that is not a core proceeding but that is otherwise related to a case under title 11. In such proceeding, the bankruptcy judge shall submit proposed findings of fact and conclusions of law to the district court, and any final order or judgment shall be entered by the district judge after considering the bankruptcy judge's proposed findings and conclusions and after reviewing de novo those matters to which any party has timely and specifically objected.

(2) Notwithstanding the provisions of paragraph (1) of this subsection, the district court, with the consent of all the parties to the proceeding, may refer a proceeding related to a case under title 11 to a bankruptcy judge to hear and determine and to enter appropriate orders and judgments, subject to review under section 158 of this title.

(d) The district court may withdraw, in whole or in part, any case or proceeding referred under this section, on its own motion or on timely motion of any party, for cause shown. The district court shall, on timely motion of a party, so withdraw a proceeding if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.

(e) If the right to a jury trial applies in a proceeding that may be heard under this section by a bankruptcy judge, the bankruptcy judge may conduct the jury trial if specially designated to exercise such jurisdiction by the district court and with the express consent of all the parties.

2. The Interim Bankruptcy Court Rule of 1983 provides:

"THE RULE"

ADMINISTRATION OF BANKRUPTCY SYSTEM

(a) Emergency resolution

The purpose of this rule is to supplement existing law and rules in respect to the authority of the bankruptcy judges of this district to act in bankruptcy cases and proceedings until Congress enacts appropriate remedial legislation in response to the Supreme Court's decision in *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, — U.S. —, 102 S. Ct. 2858 (1982), or until March 31, 1984, whichever first occurs.

The judges of the district court find that exceptional circumstances exist. These circumstances include: (1) the unanticipated unconstitutionality of the grant of power to bankruptcy judges in section 241(a) of Public Law 95-598; (2) the clear intent of Congress to refer bankruptcy matters to bankruptcy judges; (3) the specialized expertise necessary to the determination of bankruptcy matters; and (4) the administrative difficulty of the district courts' assuming the existing bankruptcy caseload on short notice.

Therefore, the orderly conduct of the business of the court requires this referral of bankruptcy cases to the bankruptcy judges.

(b) Filing of bankruptcy papers

The bankruptcy court constituted by § 404 of Public Law 95-598 shall continue to be known as the United States Bankruptcy Court of this district. The Clerk of the Bankruptcy Court is hereby designated to maintain all files in bankruptcy cases and adversary proceedings. All papers in cases or proceedings arising under or related to Title eleven shall be filed with the Clerk of the Bankruptcy Court regardless of whether the case or proceeding is before a bankruptcy judge or a judge of the district court, except that a judgment by the district judge shall be filed in accordance with Rule 921 of the Bankruptcy Rules.

(c) Reference to bankruptcy judges

(1) All cases under Title eleven and all civil proceedings arising under Title eleven or arising in or related to cases under Title eleven are referred to the bankruptcy judges of this district.

(2) The reference to a bankruptcy judge may be withdrawn by the district court at any time on its own motion or on timely motion by a party. A motion for withdrawal of reference shall not stay any bankruptcy matter pending before a bankruptcy judge unless a specific stay is issued by the district court. If a reference is withdrawn, the district court may retain the entire matter, may refer part of the matter back to the bankruptcy judge, or may refer the entire matter back to the bankruptcy judge with instructions specifying the powers and functions that the bankruptcy judge may exercise. Any matter in which the reference is withdrawn shall be reassigned to a district judge in accordance with the court's usual system for assigning civil cases.

(3) Referred cases and proceedings may be transferred in whole or in part between bankruptcy judges within the district without approval of a district judge.

(d) Powers of bankruptcy judges

(1) The bankruptcy judges may perform in referred bankruptcy cases and proceedings all acts and duties necessary for the handling of those cases and proceedings except that the bankruptcy judges may not conduct:

(A) a proceeding to enjoin a court;

(B) a proceeding to punish a criminal contempt--

(i) not committed in the bankruptcy judge's actual presence; or

(ii) warranting a punishment of imprisonment;

(C) an appeal from a judgment, order, decree, or decision of a United States bankruptcy judge; or

(D) jury trials.

Those matters which may not be performed by a bankruptcy judge shall be transferred to a district judge.

(2) Except as provided in (d)(3), orders and judgments of bankruptcy judges shall be effective upon entry by the Clerk of the Bankruptcy Court, unless stayed by the bankruptcy judge or a district judge.

(3)(A) Related proceedings are those civil proceedings that, in the absence of a petition in bankruptcy, could have been brought in a district court or a state court. Related proceedings include, but are not limited to, claims brought by the estate against parties who have not filed claims against the estate. Related proceedings do not include: contested and uncontested matters concerning the administration of the estate; allowance of and objection to claims against the estate; counterclaims by the estate in whatever amount against persons filing claims the estate [*sic*]; orders in respect to obtaining credit; orders to turn over property of the estate; proceedings to set aside preferences and fraudulent conveyances; proceedings in respect to lifting of the automatic stay; proceedings to determine dischargeability of particular debts; proceedings to object to the discharge; proceedings in respect to the confirmation of plans; orders approving the sale of property where not arising from proceedings resulting from claims brought by the estate against parties who have not filed claims against the estate; and similar matters. A proceeding is not a related proceeding merely because the outcome will be affected by state law.

(B) In related proceedings the bankruptcy judge may not enter a judgment or dispositive order, but shall submit findings, conclusions, and a proposed judgment

or order to the district judge, unless the parties to the proceeding consent to entry of the judgment or order by the bankruptcy judge.

(e) District court review

(1) A notice of appeal from a final order or judgment or proposed order or judgment of a bankruptcy judge or an application for leave to appeal an interlocutory order of a bankruptcy judge, shall be filed within 10 days of the date of entry of the judgment or order or of the lodgment of the proposed judgment or order. As modified by section (e)2A and B of this rule, the procedures set forth in Part VIII of the Bankruptcy Rules apply to appeals of bankruptcy judges' judgments and orders and the procedures set forth in Bankruptcy Interim Rule 8004 apply to applications for leave to appeal interlocutory orders of bankruptcy judges. Modification by the district judge or the bankruptcy judge of time for appeal is governed by Rule 802 of the Bankruptcy Rules.

(2)(A) A district judge shall review:

(i) an order or judgment entered under paragraph (d)(2) if a timely notice of appeal has been filed or if a timely application for leave to appeal has been granted;

(ii) an order or judgment entered under paragraph (d)(2) if the bankruptcy judge certifies that circumstances require that the order or judgment be approved by a district judge, whether or not the matter was controverted before the bankruptcy judge or any notice of appeal or application for leave to appeal was filed; and

(iii) a proposed order or judgment lodged under paragraph (d)(3), whether or not any notice of appeal or application for leave to appeal has been filed.

(B) In conducting review, the district judge may hold a hearing and may receive such evidence as appropriate and may accept, reject, or modify, in whole or in part, the order or judgment of the bankruptcy judge, and need give no deference to the findings of the bankruptcy judge. At the conclusion of the review, the district judge shall enter an appropriate order or judgment.

(3) When the bankruptcy judge certifies that circumstances require immediate review by a district judge of any matter subject to review under paragraph (d)(2), the district judge shall review the matter and enter an order or judgment as soon as possible.

(4) It shall be the burden of the parties to raise the issue of whether any proceeding is a related proceeding prior to the time of the entry of the order of judgment of the district judge after review.

(f) Local rules

In proceedings before a bankruptcy judge, the local rules of the bankruptcy court shall apply. In proceedings before a judge of the district court, the local rules of the district court shall apply.

(g) Bankruptcy rules and title IV of Public Law 95-598

Courts of bankruptcy and procedure in bankruptcy shall continue to be governed by Title IV of Public Law 95-598 as amended and by the bankruptcy rules prescribed by the Supreme Court of the United States pursuant to 28 U.S.C. § 2075 and limited by SEC. 405(d) of

the Act, to the extent that such Title and Rules are not inconsistent with the holding of *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, — U.S. —, 102 S. Ct. 2858 (1982).

(h) Effective date and pending cases

This rule shall become effective December 25, 1982, and shall apply to all bankruptcy cases and proceedings not governed by the Bankruptcy Act of 1898 as amended, and filed on or after October 1, 1979. Any bankruptcy matters pending before a bankruptcy judge on December 25, 1982 shall be deemed referred to that judge.