No. 13-935

In the Supreme Court of the United States

WELLNESS INTERNATIONAL NETWORK, LIMITED, ET AL., PETITIONERS

v.

RICHARD SHARIF

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

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE SUPPORTING PETITIONERS

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QUESTIONS PRESENTED

1. Whether, consistent with Article III of the United States Constitution and *Stern* v. *Marshall*, 131 S. Ct. 2594 (2011), a bankruptcy judge may enter final judgment on a request for a declaration that particular property in the debtor's possession is property of the estate under 11 U.S.C. 541.

2. Whether a litigant may consent to the entry of final judgment by a bankruptcy judge and thereby waive any constitutional right to have a claim adjudicated by an Article III court, and, if so, whether implied consent may suffice.

TABLE OF CONTENTS

Table of Contents—Continued: Page

TABLE OF AUTHORITIES

Cases:

Cases—Continued: Page

Cases—Continued: Page

Constitution, statutes, and rules:

Statutes and rules—Continued: Page

Statutes and rules—Continued: Page

Miscellaneous: Page

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INTEREST OF THE UNITED STATES

The United States has a substantial interest in this case because the Court's decision is likely to affect the allocation of authority between bankruptcy and district courts in the disposition of bankruptcy cases. United States Trustees—who are Department of Justice officials appointed by the Attorney General—are charged with supervising the administration of bankruptcy cases. See 28 U.S.C. 581-589a; 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 an interest in defending the constitutionality of a statutory framework that, in certain instances, permits a bankruptcy

judge to enter final judgment "with the consent of all the parties to the proceeding." 28 U.S.C. 157(c)(2).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in the appendix to this brief. App., *infra*, 1a-25a.

STATEMENT

1. a. A person may commence a voluntary bankruptcy case by filing a petition in bankruptcy court. 11 U.S.C. 301(a). The filing of the petition creates a bankruptcy "estate" generally comprising "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. 541(a). The debtor must promptly file a "schedule of assets and liabilities," a "schedule of current income and current expenditures," and a "statement of the debtor's financial affairs." 11 U.S.C. 521(a)(1)(B)(i)-(iii); Fed. R. Bankr. P. 1007(b), 1008.

In a liquidation proceeding under Chapter 7 of the Bankruptcy Code, a trustee for the estate will be selected. 11 U.S.C. 701, 702. The debtor must then "surrender to the trustee all [non-exempt] property of the estate" and records "relating to property of the estate." 11 U.S.C. 521(a)(4). After taking custody of the estate property, the trustee will liquidate it and disburse the proceeds to creditors in accordance with their rights and priorities under the Code. 11 U.S.C. 507, 704, 726. The court may thereafter discharge the debtor from further responsibility for his debts. 11 U.S.C. 727.

The court in a Chapter 7 case may deny a discharge, however, if the debtor, "with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of the property," has "transferred, removed, destroyed, mutilated, or concealed" the "property of the debtor" or "property of the estate." 11

U.S.C. 727(a)(2). The court likewise may deny a discharge if the debtor unjustifiably conceals or fails to keep or preserve records pertaining to his financial condition or business transactions (11 U.S.C. 727(a)(3)); withholds from the trustee recorded information related to the debtor's property or financial affairs (11 U.S.C. 727(a)(4)(D)); knowingly and fraudulently makes a false oath or account in connection with the bankruptcy case (11 U.S.C. 727(a)(4)(A)); or (with exceptions not relevant here) refuses to obey any lawful court order (11 U.S.C. 727(a)(6)(A)). The court may also impose a variety of sanctions for discovery misconduct in an adversary proceeding, including the entry of "a default judgment against the disobedient party" or a determination that alleged "facts be taken as established." Fed. R. Bankr. P. 7037; Fed. R. Civ. P. 37(b)(2)(A)(i) and (vi).

b. Bankruptcy judges are "judicial officers of the United States district court," who are appointed to 14-year terms by the courts of appeals and are removable for cause only by judicial councils. 28 U.S.C. 152(a)(1) and (e). In *Northern Pipeline Construction Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50 (1982), the Court recognized that "the core of the federal bankruptcy power," which had long been exercised by non-Article-III decisionmakers, was "the restructuring of debtor-creditor relations." *Id.* at 71 (plurality opinion). It "distinguished" that core power "from the adjudication of state-created private rights," *ibid.*, and it held 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 ordinary appellate review." *Thomas* v.

Union Carbide Agric. Prods. Co., 473 U.S. 568, 584 (1985).

Congress responded to *Northern Pipeline* by enacting the Bankruptcy Amendments and Federal Judgeship Act of 1984 (1984 Act), Pub. L. No. 98-353, 98 Stat. 333. The 1984 Act vests in federal district courts original (and sometimes exclusive) jurisdiction over all bankruptcy cases and related civil proceedings. 28 U.S.C. 1334(a) and (b). It provides, however, that a district court may refer such a case or proceeding to a bankruptcy judge in its district and may, at any time, withdraw such a reference "in whole or in part," either "on its own motion or on timely motion of any party." 28 U.S.C. 157(a) and (d).

The 1984 Act also sought to codify *Northern Pipeline*'s distinction between "[c]ore" bankruptcy proceedings and "[n]on-core" proceedings. 28 U.S.C. 157(b)(2) and (4). The Act's definition of core proceedings includes, *inter alia*, "matters concerning the administration of the estate," "orders to turn over property of the estate," "objections to discharges," and "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." 28 U.S.C. 157(b)(2)(A), (E), (J), and (O). When the reference in a core proceeding has not been withdrawn, the bankruptcy judge may "enter appropriate orders and judgments," which are subject to appellate review in the district court. 28 U.S.C. 157(b)(1), 158. In a non-core proceeding, by contrast, the bankruptcy judge may enter judgment only "with the consent of all the parties to the proceeding." 28 U.S.C. 157(c)(2). Absent such consent, the bankruptcy judge may "hear" a non-core proceeding and

"submit proposed findings of fact and conclusions of law to the district court," which may then enter "any final order or judgment" after "de novo" review in light of the parties' "timely and specific[] object[ions]." 28 U.S.C. 157(c)(1).

The Court has held that some proceedings defined as "core" under the statute cannot, consistent with Article III, be finally adjudicated by a bankruptcy judge without the parties' consent. See *Executive Benefits Ins. Agency* v. *Arkison*, 134 S. Ct. 2165, 2170 & n.4, 2172 (2014). Such claims are commonly known as "*Stern* claims," *id.* at 2170, after the Court's decision in *Stern* v. *Marshall*, 131 S. Ct. 2594 (2011). The Court in *Stern* held that, although the statutory definition of core proceedings includes "counterclaims by the estate against persons filing claims against the estate," 28 U.S.C. 157(b)(2)(C), the bankruptcy judge lacks constitutional authority to enter final judgment on a state-law counterclaim over the creditor's objection if resolution of the counterclaim would require factual and legal determinations that would not otherwise be made in the course of resolving objections to the creditor's proof of claim. 131 S. Ct. at 2608-2620.

2. This case arises out of petitioners' efforts to collect a judgment ordering respondent to pay petitioners more than $655,000 in attorney's fees. Pet. App. 95a.

a. In 2008, a district court entered the fee award as a sanction for respondent's long-running misconduct in litigation with petitioners. Pet. App. 4a-6a. By February 2009, petitioners' attempts to collect on the award had been so frustrated that the district court held respondent in contempt and released him only upon his promise to respond to discovery. *Id.* at 6a.

b. Respondent ignored that order and, two weeks later, filed a voluntary petition under Chapter 7 of the Bankruptcy Code. Pet. App. 6a. He identified petitioners as creditors, and they filed a proof of claim. *Id.* at 6a-7a. Petitioners found a 2002 loan application in which respondent had declared that he owned businesses, real property, and financial accounts with a collective value of more than $5 million—none of which he had disclosed in the attorney's-fee litigation. *Id.* at 7a. Petitioners and the Chapter 7 trustee requested documentation relating to those assets. *Ibid.* Rather than provide the documents, respondent stated that he had lied on the loan application and that the listed assets were actually owned by a trust established by his mother, Soad Wattar, for which respondent claimed to be the trustee. *Ibid.*

Petitioners requested documents evidencing the formation and funding of the Soad Wattar trust, but respondent again failed to comply. Pet. App. 72a. Pursuant to 11 U.S.C. 521(a) and 542(a), the Chapter 7 trustee then sought a court order directing respondent to turn over all documents relating to the trust and its assets. Pet. App. 72a. The bankruptcy court issued the order, but respondent did not comply. *Ibid.*

c. In August 2009, petitioners initiated an adversary proceeding in the bankruptcy court against respondent "individually and as trustee of the Soad Wat[t]ar trust." J.A. 23 (capitalization altered); see Pet. App. 72a-73a. Petitioners described respondent's history of failing to cooperate with discovery, and they specifically focused on his refusal "to provide any documents evidencing the formation or funding of" the Soad Wattar trust. J.A. 12. "The first four counts of [petitioners'] complaint sought to prevent discharge of [respondent's] debts."

Pet. App. 45a; see J.A. 13-19. Count I alleged that respondent, with the intent to deceive, had concealed property that he previously claimed to own by claiming that it was owned by the Soad Wattar trust. J.A. 13-14. Petitioners alleged that the trust was "organized and operated as a mere tool or business conduit of" respondent, and that there was "such unity between" respondent and the alleged trust that "continuing to recognize their separateness would sanction a fraud or promote injustice." J.A. 14-15. In Count V, petitioners requested a "declaratory judgment that the Soad Wattar Living Trust is the alter ego of [respondent] and that all assets of the trust should be treated as part of [the bankruptcy] estate." J.A. 21.

Respondent admitted that the action was a core proceeding under 28 U.S.C. 157(b)(2)(J), which applies to objections to discharge. J.A. 24. Respondent's motion to dismiss stated—for purposes of multiple counts of the complaint, including the alter-ego count—that the trust property was "not property of the estate." 09-770 Bankr. Ct. Doc. 16, at 5, 10, 11 (Dec. 3, 2009). Respondent's answer urged the bankruptcy court to "find that the Soad Wattar Living Trust is not property of the estate." J.A. 44.

d. In July 2010, the bankruptcy court denied respondent a discharge and entered a default judgment in favor of petitioners on all five counts of the complaint, as a sanction for respondent's failures to "carr[y] out his discovery obligations." Pet. App. 120a. With respect to the declaratory-judgment count, the court stated that the Soad Wattar trust was respondent's alter ego "because [respondent] treats its assets as his own property and it would be unjust to allow [him] to

maintain that the trust is a separate entity." *Id.* at 119a.

3. Respondent appealed the bankruptcy court's order to the district court, which affirmed. Pet. App. 69a-91a.

a. The district court held that the bankruptcy court had not abused its discretion in entering a default judgment for respondent's failure to comply with court-ordered discovery. Pet. App. 84a-90a. The court noted that, under the applicable rules of procedure, a default judgment may be an appropriate sanction against a party who breaches an order compelling answers to discovery and displays willfulness, bad faith, or fault. *Id.* at 84a. The district court found numerous deficiencies in respondent's discovery responses and concluded that the record amply supported the bankruptcy court's implicit finding of willfulness and bad faith. *Id.* at 89a-90a.

b. The district court also rejected respondent's contention—raised for the first time in a request for supplemental briefing—that, in light of *Stern*, the bankruptcy court lacked jurisdiction to enter judgment on petitioners' adversary complaint. Pet. App. 90a-91a. The court denied the request as untimely, noting that *Stern* had been decided a month and a half before respondent filed his opening brief. *Id.* at 91a.

4. The court of appeals affirmed in part and reversed in part. Pet. App. 1a-66a.

a. The court of appeals held that it was required to resolve respondent's constitutional objection to the bankruptcy court's entry of final judgment, even though that objection had not been raised in a timely fashion. Pet. App. 34a-45a. The court concluded that, although the *Stern* objection did not concern the bankruptcy

court's subject-matter jurisdiction, it was premised on a structural, separation-of-powers principle that cannot be waived by litigants. *Id.* at 34a-42a.

b. On the merits, the court of appeals held that the bankruptcy court had constitutional authority to decide the first four counts of petitioners' adversary complaint, which opposed respondent's request for discharge under 11 U.S.C. 727. Pet. App. 45a. The court reasoned that petitioners' objections to discharge stemmed from federal bankruptcy law, not state law, and that questions of dischargeability are central to the restructuring of the debtor-creditor relationship. *Id.* at 45a-46a. The court of appeals concluded, however, that Count V of petitioners' complaint asserted "a state-law claim between private parties that is wholly independent of federal bankruptcy law and is not resolved in the claims-allowance process." *Id.* at 51a. It held that the bankruptcy court lacked authority to enter default judgment declaring the trust to be respondent's alter ego. *Ibid.*

SUMMARY OF ARGUMENT

I. Consistent with Article III, a bankruptcy court may decide matters that stem from bankruptcy itself and are "integral to the restructuring of the debtor-creditor relationship." *Stern* v. *Marshall*, 131 S. Ct. 2594, 2617 (2011) (citation omitted). At least in the absence of the parties' consent, however, the bankruptcy court may not enter final judgment on state-law tort or contract actions that could augment the bankruptcy estate but otherwise "exist[] without regard to any bankruptcy proceeding." *Id.* at 2618.

A. In this case, the bankruptcy court's declaratory judgment that certain assets were property of the es-

tate at the commencement of the proceeding was not a determination reserved to Article III judges.

1. The bankruptcy estate was "create[d]," upon the filing of respondent's bankruptcy petition, by operation of the Bankruptcy Code. 11 U.S.C. 541(a). Establishing the extent of the estate in that *in rem* proceeding was inescapably central to the restructuring of the debtor-creditor relationship and stemmed from the bankruptcy itself, not from state law. By holding that such a foundational determination lies beyond bankruptcy judges' powers, the Seventh Circuit dramatically departed from the established division of labor between bankruptcy and district judges.

2. The bankruptcy court's authority to determine that putative trust assets were property of the estate was especially clear in this case, because there is no dispute that the court validly denied respondent a discharge under 11 U.S.C. 727 for concealing property of the estate. That denial rested on a determination that the assets were property of the estate for reasons that materially duplicated the premises of petitioners' alter-ego claim.

B. The alter-ego determination did not augment the estate, because it merely established what property was attributable to the debtor when the bankruptcy proceeding began. The court of appeals also erred in assuming that the alter-ego determination was ultimately controlled by state property law. Such determinations are equitable in nature, and, because they ensure fair and efficacious bankruptcy proceedings, are ultimately subject to a federal "rule of decision," even if that rule generally incorporates state alter-ego law to the extent that it does not frustrate the objectives of

federal bankruptcy law. *United States* v. *Kimbell Foods, Inc.*, 440 U.S. 715, 728 (1979).

II. Even if a timely objection could have precluded the bankruptcy court from adjudicating petitioners' alter-ego claim, respondent's implied consent to bankruptcy-court adjudication both legitimated that court's decision and disentitled respondent to relief on appeal.

A. In a bankruptcy proceeding, the right to a final adjudication by an Article III judge is a waivable personal interest. The division of authority between a district court and its bankruptcy judge does not implicate subject-matter jurisdiction. When identifying Article III concerns in the bankruptcy context, the Court has repeatedly referred to the presence of a party's objection. In cases involving magistrate judges, this Court and the courts of appeals have recognized that litigant consent can authorize the entry of final judgment by a non-Article III judge who is subject to sufficient control by Article III judges.

Consent to bankruptcy-judge adjudication may properly be inferred from litigation conduct. Here, respondent filed a bankruptcy petition and never sought to withdraw the reference to the bankruptcy judge. He also repeatedly urged the bankruptcy judge to decide, on the merits, that the disputed assets were not property of the estate.

B. Even if respondent's consent did not cure any constitutional error, his failure to make a timely objection disentitled him to relief on appeal. Parties routinely forfeit constitutional rights—even structural ones—by failing to make contemporaneous objections. *United States* v. *Olano*, 507 U.S. 725, 731 (1993); *Freytag* v. *Commissioner*, 501 U.S. 868, 893-898 (1991) (Scalia, J. concurring in part and concurring in the judgment).

Here, respondent failed to make his current objection in the bankruptcy court, and he did not raise the issue in his brief on appeal in the district court, which was filed six weeks after this Court decided *Stern*. And even after the district court had rejected such a claim as untimely, respondent again failed to include a *Stern* objection in his opening brief in the Seventh Circuit. The court of appeals erred in concluding that it was obligated to consider respondent's belated constitutional objection.

ARGUMENT

I. ARTICLE III DOES NOT PRECLUDE A BANKRUPTCY JUDGE FROM DETERMINING WHETHER PARTICULAR ASSETS CONSTITUTE PROPERTY OF THE ESTATE

"Article III does not confer on litigants an absolute right to the plenary consideration of every nature of claim by an Article III court." *Commodity Futures Trading Comm'n* v. *Schor*, 478 U.S. 833, 848 (1986). In disputes concerning "public rights"—rights that are closely intertwined with a federal program that Congress has power to enact—Congress may authorize adjudication by a non-Article III entity subject to deferential review by an Article III court. See, *e.g.*, *Granfinanciera, S.A.* v. *Nordberg*, 492 U.S. 33, 54-55 (1989).

In the bankruptcy context, the Court has distinguished between private actions that "seek 'to augment the bankruptcy estate'" and public actions that "seek 'a pro rata share of the bankruptcy res.'" *Stern* v. *Marshall*, 131 S. Ct. 2594, 2618 (2011) (quoting *Granfinanciera*, 492 U.S. at 56). A non-Article III judge may resolve disputes within the latter category, which include matters that are "integral to the restructuring of the debtor-creditor relationship," or that "stem[] from

the bankruptcy itself or would necessarily be resolved in the claims allowance process." *Id.* at 2617, 2618 (citation omitted). In *Stern*, the Court concluded that a counterclaim for tortious interference was "a state tort action that exists without regard to any bankruptcy proceeding" and was "in no way derived from or dependent upon bankruptcy law." *Id.* at 2618. The Court held that the bankruptcy court in that case "lacked the constitutional authority to enter a final judgment on a state law counterclaim that is not resolved in the process of ruling on a creditor's proof of claim." *Id.* at 2620.

A. Determining The Scope Of The Property Of The Estate Stems From Bankruptcy Itself

Petitioners' adversary proceeding sought to establish that assets purportedly held in trust were actually respondent's property, and therefore property of the bankruptcy estate. That is precisely the kind of action that bankruptcy courts may decide. Determining whether particular assets are estate property is "integral to the restructuring of the debtor-creditor relationship" and "stems from the bankruptcy itself." *Stern*, 131 S. Ct. at 2617, 2618 (citation omitted).

1. Identifying the property of the estate is central to the restructuring of the debtor-creditor relationship

The filing of a petition for bankruptcy "creates an estate" that generally includes "all legal or equitable interests of the debtor in property as of the commencement of the case," "wherever located and by whomever held." 11 U.S.C. 541(a) and (a)(1). That estate may later be augmented by the trustee's recovery on claims against third parties. 11 U.S.C. 541(a)(3). By operation of federal law, however, the mere com-

mencement of the proceeding creates the estate, which provides the foundation for virtually everything that follows.

"Bankruptcy jurisdiction, at its core, is *in rem*." *Central Va. Community Coll.* v. *Katz*, 546 U.S. 356, 362 (2006). The estate is created, marshaled, and ultimately distributed to the creditors on the basis of their "hierarchically ordered claims to a pro rata share of the bankruptcy res." *Granfinanciera*, 492 U.S. at 56. Identifying the property of the estate is therefore inescapably central to the restructuring of the debtor-creditor relationship. It is a prerequisite for routine aspects of bankruptcy administration, such as permitting the trustee to use, sell, or lease the property of the estate to preserve its value during bankruptcy, 11 U.S.C. 363, and for calculating each creditor's pro-rata share of estate assets. Knowing the extent of the estate is so crucial that the debtor's concealment of estate property can be grounds for denying the discharge that often motivates the entire bankruptcy proceeding. 11 U.S.C. 727(a)(2).

The need to identify the property of the estate therefore "stems from the bankruptcy itself" (*Stern*, 131 S. Ct. at 2618), notwithstanding the fact that, "[u]nless some federal interest requires a different result," "Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law." *Butner* v. *United States*, 440 U.S. 48, 54-55 (1979); cf. 28 U.S.C. 157(b)(3) ("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."). Petitioners' assertion that particular assets were estate property, and respondent's contention that they were not estate property because he held

them merely in trust, are both rooted in Section 541. See 11 U.S.C. 541(a)(1) and (d); *Begier* v. *IRS*, 496 U.S. 53, 59 (1990) ("Because the debtor does not own an equitable interest in property he holds in trust for another, that interest is not 'property of the estate.'"). The parties' dispute is therefore quite different from the tortious-interference claim in *Stern*, which was "in no way derived from or dependent upon bankruptcy law" but instead predated the bankruptcy proceeding. 131 S. Ct. at 2618; see *Northern Pipeline Constr. Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50, 56 (1982) (plurality opinion) (state-law damages action for breaches of contract and warranty).

Accordingly, bankruptcy courts have, since *Stern*, regularly concluded that they possess the constitutional authority to determine whether an interest constitutes property of the estate as defined in Section 541.[1] The court of appeals' contrary conclusion would vitiate the Court's assurances in *Stern* that its holding about "one isolated" limit on core bankruptcy jurisdiction would not "meaningfully change[] the division of labor in the current statute." 131 S. Ct. at 2620.

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[1] See, *e.g.*, *Murphy* v. *Felice (In re Felice)*, 480 B.R. 401, 418 (Bankr. D. Mass. 2012) ("[A]n action under [Section] 541 to determine whether an interest of the debtor is property of the estate stems from the bankruptcy, affects only the debtor's property interests, and does not augment the estate."); *Velo Holdings Inc.* v. *Paymentech, LLC (In re Velo Holdings Inc.)*, 475 B.R. 367, 387 (Bankr. S.D.N.Y. 2012) (Determining whether processing agreements are property of the estate "is an essential part of administration of the bankruptcy estate and stems from the bankruptcy itself.").

2. Whether the putative trust assets were property of the estate was legitimately resolved by the bankruptcy court in ruling on Counts I-IV of petitioners' adversary complaint

The bankruptcy court's authority to determine whether purported trust assets were estate property is particularly clear on the facts of this case. *Stern* did not disturb the line of decisions represented by *Katchen* v. *Landy*, 382 U.S. 323 (1966), and *Langenkamp* v. *Culp*, 498 U.S. 42 (1990) (per curiam), which upheld the authority of bankruptcy courts to adjudicate trustees' voidable-preference claims against persons who have filed claims against the estate. See *Stern*, 131 S. Ct. at 2616-2617. Bankruptcy courts often must decide whether a voidable preference has occurred in order to determine whether a creditor's own claim should be allowed. See *ibid.* If, in the course of ruling on the creditor's claim, the bankruptcy court appropriately determines that a voidable preference has occurred, it may take the further (and largely ministerial) step of ordering that the amounts paid through the preferential transfer be returned to the estate. See *id.* at 2616.

The same principle applies here. The court below held (Pet. App. 45a-46a), and respondent has not disputed (Resp. C.A. Reply Br. 8-9), that the bankruptcy court was authorized to decide Counts I-IV of petitioners' complaint. Those counts requested that respondent be denied a discharge in light of, *inter alia*, his alleged concealment of property of the estate. Count I was devoted entirely to respondent's alleged concealment of his interest in the Soad Wattar trust assets. J.A. 13-15.

Count I specifically alleged that the trust was "organized and operated as a mere tool or business conduit of" respondent, and that there was "such unity be-

tween" respondent and the alleged trust that "continuing to recognize their separateness would sanction a fraud or promote injustice." J.A. 14-15. That objection to discharge materially duplicated the fundamental premises of the alter-ego claim in Count V. See J.A. 19-20 (alleging that the trust had been operated as a "mere tool or business conduit of" respondent, and that continuing to recognize any "separateness" between respondent and the trust "would sanction a fraud or promote injustice"). Indeed, when respondent moved to dismiss the complaint, he contended *with respect to Count I* that he held the relevant assets in trust, which prevented them from being "property of the estate." 09-770 Bankr. Ct. Doc. 16, at 4-5.

The bankruptcy court's grant of judgment for petitioners on Count I rested on its determination that the concealed trust assets were "property of the Debtor." Pet. App. 118a. The court's grant of declaratory relief under Count V likewise rested on a determination that the trust was respondent's alter ego "because [respondent] treats its assets as his own property and it would be unjust to allow [him] to maintain that the trust is a separate entity." *Id.* at 119a. To be sure, the grant of declaratory relief under Count V may ultimately have practical consequences that extend beyond the denial of discharge. The same was true in *Katchen* and *Langenkamp*, however, where the issuance of orders directing that preferential transfers be returned to the estate went beyond the disallowance of the transferees' own claims. See *Katchen*, 382 U.S. at 334-335 ("[I]t is well within the equitable powers of the bankruptcy court to order return of the preference during the summary proceedings on allowance and disallowance of claims.").

B. The Bankruptcy Court's Alter-Ego Determination Neither Augmented The Estate Nor Resolved A Purely State-Law Issue

The court of appeals acknowledged that its "analysis of the alter-ego claim [was] somewhat hampered by the [default-judgment] posture of this case," which prevented the bankruptcy court from addressing the merits (as opposed to whether judgment was an appropriate sanction for respondent's misconduct). Pet. App. 46a. On the basis of its "independent research," however, the court of appeals concluded that petitioners were effectively asserting a veil-piercing claim under Illinois common law that was "intended only to augment the bankruptcy estate." *Id.* at 46a, 48a. That analysis was misconceived.

1. An alter-ego determination in the context of Section 541 does not *augment* the estate. It merely identifies an entity that is, as the phrase itself connotes, the debtor's "second self." *Webster's Third New International Dictionary of the English Language* 63 (1993). Determining whether a nominally separate entity is the debtor's alter ego is therefore necessary to identify, as 11 U.S.C. 541(a)(1) contemplates, what property interests were attributable to "the debtor * * * as of the commencement of the case."

2. The court of appeals also erred in assuming that an alter-ego determination is ultimately controlled by state property law. That determination is instead a product of the equitable powers that federal law vests in bankruptcy judges.

a. The underlying property interests at issue in a bankruptcy proceeding are usually "created and defined by state law," "[u]nless some federal interest requires a different result." *Butner*, 440 U.S. at 55.

But bankruptcy courts retain "equity powers" that "play an important part in the administration of bankrupt estates in countless situations in which the judge is required to deal with particular, individualized problems." *Id.* at 55-56. Bankruptcy courts are authorized to "issue any order, process, or judgment that is necessary or appropriate to carry out" the Bankruptcy Code. 11 U.S.C. 105(a). While that power must "be exercised within the confines of" the Code, *Law* v. *Siegel*, 134 S. Ct. 1188, 1194 (2014) (quoting *Norwest Bank Worthington* v. *Ahlers*, 485 U.S. 197, 206 (1988)), bankruptcy courts may apply equitable principles in determining pursuant to Section 541 whether particular assets were the debtor's property, and therefore became property of the estate when the bankruptcy case commenced.

Alter-ego or veil-piercing decisions are rooted in equity. See *Bangor Punta Operations, Inc.* v. *Bangor & Aroostook R.R.*, 417 U.S. 703, 713 (1974) ("courts of equity, piercing all fictions and disguises, will deal with the substance of the action"); see also *Pepper* v. *Litton*, 308 U.S. 295, 307-309, 312 (1939) (noting that, when "sit[ting] as a court of equity" and ruling on the allowance of claims, a bankruptcy court has a "duty" to "undo" conduct through which a corporate officer seeks to defraud the creditors by using the debtor "merely as a corporate pocket"). Long before the current Bankruptcy Code was enacted, alter-ego determinations were recognized as being within the equitable powers of bankruptcy judges' non-Article III predecessors.

In *Sampsell* v. *Imperial Paper & Color Corp.*, 313 U.S. 215 (1941), for example, the bankruptcy referee determined that a family corporation was "'nothing but a sham and a cloak' devised by [the debtor] * * * for the purpose of hindering, delaying and defrauding his

creditors." *Id.* at 217. The referee accordingly ordered that the property of the corporation be treated as property of the bankruptcy estate, to be administered by the trustee for the benefit of the creditors. *Ibid.* In sustaining the referee's order, this Court held that "[t]here can be no question but that the jurisdiction of the bankruptcy court was properly exercised by summary proceedings," and that the corporation could not "insist on a plenary suit" before the district court. *Id.* at 218. Under the Code, courts have continued to exercise the equitable power to treat nominally separate entities as debtors' alter egos.[2]

b. To be sure, federal courts implementing federal statutes have often looked to state law when engaging in alter-ego analysis, and any differences between state and federal alter-ego law are often irrelevant in practice. See, *e.g.*, *United States* v. *Bestfoods*, 524 U.S. 51, 63 n.9 (1998) (finding it unnecessary to determine whether, for purposes of federal environmental statute, "courts should borrow state law, or instead apply a federal common law of veil piercing"). A State's more "restrictive law of veil piercing," however, should not be "allowed to undermine the effectiveness of a federal

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[2] See, *e.g.*, *In re Bonham*, 229 F.3d 750, 765 (9th Cir. 2000) (explaining that "the equitable power" to effect a substantive consolidation of nominally distinct corporations "undoubtedly survived enactment of the Bankruptcy Code"); see also *In re Owens Corning*, 419 F.3d 195, 207-209 (3d Cir. 2005) (collecting cases holding that bankruptcy courts may make cumulative pool of assets available to satisfy creditors' claims where equity warrants disregarding corporate entities' separate legal identities), cert. denied, 547 U.S. 1123 (2006). Although most such cases have involved corporations, a trust is also voidable where recognizing its validity would be contrary to public policy. See Restatement (Third) of Trusts § 29 cmt. f, at 56-57 (2003).

statute." *Illinois Bell Tel. Co.* v. *Global NAPs Ill., Inc.*, 551 F.3d 587, 598 (7th Cir. 2008). When a bankruptcy court looks to state law in this context, it is vindicating the federal interests in fair and efficacious bankruptcy proceedings. Alter-ego questions are therefore decided under a "federal rule of decision," even if that rule incorporates state law to the extent that it does not "frustrate specific objectives of the federal program[]." *United States* v. *Kimbell Foods, Inc.*, 440 U.S. 715, 728 (1979); see *Kamen* v. *Kemper Fin. Servs., Inc.*, 500 U.S. 90, 97-98 (1991) ("any common law rule necessary to effectuate a private cause of action under [a federal] statute is necessarily federal in character," even when it incorporates state-law standards).

II. RESPONDENT'S IMPLIED CONSENT TO ADJUDICATION BY THE BANKRUPTCY COURT PROVIDED AN INDEPENDENT CONSTITUTIONAL JUSTIFICATION FOR THAT COURT'S ENTRY OF JUDGMENT

For the foregoing reasons, the bankruptcy court could constitutionally have entered judgment on Count V of petitioners' complaint with or without respondent's consent. But even if *Stern* would otherwise have precluded the bankruptcy court from taking that step, the court of appeals erred in concluding that "a litigant may not waive" a *Stern* objection. Pet. App. 45a. Respondent's implied consent to bankruptcy-court adjudication both legitimated the bankruptcy court's conduct and disentitled respondent to relief on appeal.

A. In A Bankruptcy Proceeding, The Right To A Final Adjudication By An Article III Judge Is A Waivable Personal Interest

In *Schor*, the Court held that "Article III, § 1's guarantee of an independent and impartial adjudication by

the federal judiciary of matters within the judicial power of the United States * * * serves to protect primarily personal, rather than structural, interests." 478 U.S. at 848. The Court further explained that, "as a personal right, Article III's guarantee of an impartial and independent federal adjudication is subject to waiver, just as are other personal constitutional rights that dictate the procedures by which civil and criminal matters must be tried." *Id.* at 848-849. The Court observed, however, that Article III "also serves as an inseparable element of the constitutional system of checks and balances" by "preventing the encroachment or aggrandizement of one branch at the expense of the other." *Id.* at 850 (citations and internal quotation marks omitted). It recognized that, "[t]o the extent that this structural principle is implicated in a given case, the parties cannot by consent cure the constitutional difficulty." *Id.* at 850-851.

The right to insist on adjudication by an Article III judge in a bankruptcy proceeding is "primarily personal." *Schor*, 478 U.S. at 848. Thus, even assuming that respondent was entitled to insist that the alter-ego claim be decided by an Article III judge, he could also validly consent to its resolution by the bankruptcy court.

1. The division of tasks between a district court and its bankruptcy judge does not implicate subject-matter jurisdiction, which is vested in the district court

Respondent argued below (Resp. C.A. Reply Br. 15-16) that a bankruptcy court lacks "jurisdiction" over *Stern* claims. The court of appeals correctly rejected that contention. Pet. App. 33a-34a.

Bankruptcy judges have been given no jurisdiction of their own; their authority depends entirely on a dis-

trict court's reference of a case or proceeding within *its* jurisdiction. 28 U.S.C. 157(a) and (b). Although the Constitution and the statute limit the district courts' authority to seek assistance from bankruptcy judges, those limits do not implicate the subject-matter jurisdiction of either tribunal. See *Stern*, 131 S. Ct. at 2607. Rather, in this context, the better analogy is to "a defect in jurisdiction over the person," where waiver is eminently possible. *Pacemaker Diagnostic Clinic of Am., Inc.* v. *Instromedix, Inc.*, 725 F.2d 537, 543 (9th Cir.) (en banc) (Kennedy, J.) (drawing that analogy in the context of referrals, with consent, to magistrate judges), cert. denied, 469 U.S. 824 (1984).

2. In bankruptcy and similar contexts, the Court has relied on timely objections to trigger enforcement of a party's right to an Article III decisionmaker

In the absence of a timely objection, this Court has never found a violation of a litigant's constitutional right to an Article III decisionmaker.

a. When discussing bankruptcy practice, the Court has repeatedly recognized the importance of a party's objection. In *Schor*, the Court explained that "the absence of consent to an initial adjudication before a non-Article III tribunal was relied on as a significant factor in determining [in *Northern Pipeline*] that Article III forbade such adjudication." 478 U.S. at 849; see *Northern Pipeline*, 458 U.S. at 80 n.31 (plurality opinion); *id.* at 91 (Rehnquist, J., concurring in the judgment); *id.* at 95 (White, J., dissenting). And in *Thomas* v. *Union Carbide Agricultural Products Co.*, 473 U.S. 568 (1985), the Court gave the following description of what *Northern Pipeline* had "establishe[d]": "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 ordinary appellate review." *Id.* at 584 (emphasis added). The Court in *Stern* quoted and endorsed that description, saying: "Substitute 'tort' for 'contract,' and that statement directly covers this case." 131 S. Ct. at 2615; cf. *Executive Benefits Ins. Agency* v. *Arkison*, 134 S. Ct. 2165, 2170 (2014) (explaining that, before 1978, "[p]roceedings to augment the bankruptcy estate * * * implicated the district court's plenary jurisdiction and were not referred to the bankruptcy courts *absent both parties' consent*") (emphasis added).

The Court's articulations of the limits on bankruptcy-court authority have thus consistently made reference to the presence or absence of litigant consent.

b. The Federal Magistrates Act, 28 U.S.C. 631 *et seq.*, provides that, "[u]pon the consent of the parties, a full-time United States magistrate judge * * * may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves." 28 U.S.C. 636(c)(1). Like bankruptcy judges, magistrate judges are appointed for a limited term and thus lack Article III's tenure protections. See 28 U.S.C. 631(e). In *Roell* v. *Withrow*, 538 U.S. 580 (2003), the Court held that the litigants' consent enabled a magistrate judge to enter final judgment in a damages action under 42 U.S.C. 1983. 538 U.S. at 581, 591. Recognizing that the statutory framework was "meant to preserve a litigant's [constitutional] right to insist on trial before an Article III district judge," the Court concluded that "the Article III right is substantially honored" when the parties are "made aware of the need for consent and the right

to refuse it" and still "voluntarily appear[]" before the magistrate judge for trial. *Id.* at 588, 590. The Court likewise treated the presence or absence of the parties' consent as decisive when determining whether Article III permits a magistrate judge to preside over *voir dire* in a felony case. See *Gonzalez* v. *United States*, 553 U.S. 242, 246 (2008).

The courts of appeals have uniformly held that, if the litigants consent, a magistrate judge may constitutionally enter final judgment in a case otherwise reserved to an Article III judge. In *Pacemaker Diagnostic Clinic*, for example, the Ninth Circuit recognized that the right to an adjudication by an Article III judge is "personal to the parties" and "may be waived." 725 F.2d at 542. With respect to separation-of-powers considerations, it further determined that Congress had not attempted to confer expanded subject-matter jurisdiction upon an Article III court; that no other branch of government was attempting to arrogate power from the judiciary to itself; and that the judiciary maintained constitutionally sufficient supervisory and managerial authority over the magistrate system, including the power to control which matters could be decided by magistrates and to conduct appellate review of magistrates' decisions. *Id.* at 543-546; see 12 Charles Alan Wright et al., *Federal Practice and Procedure* § 3071.1, at 398 n.18 (2d ed. 1997) (citing cases from 11 other circuits upholding the constitutionality of referrals to magistrate judges). The same analysis applies to bankruptcy judges.

c. The Federal Arbitration Act (FAA), 9 U.S.C. 1 *et seq.*, provides another useful analogue. The FAA reflects Congress's effort "to ensure judicial enforcement of privately made agreements to arbitrate." *Dean*

Witter Reynolds Inc. v. *Byrd*, 470 U.S. 213, 219 (1985). The FAA thus treats litigant consent as a legitimate basis for use of an alternative decisionmaker in situations where the parties would otherwise have a right to an Article III judge. The Court has repeatedly enforced the FAA without suggesting that Congress, by facilitating the consensual use of non-Article III adjudicators, has encroached on the province of the Judicial Branch. In discussing the significance of litigant consent to adjudication by a non-Article III tribunal, the Court in *Schor* observed that, "just as Congress may encourage parties to settle a dispute out of court or resort to arbitration without impermissible incursions on the separation of powers, Congress may make available a quasi-judicial mechanism through which willing parties may, at their option, elect to resolve their differences." 478 U.S. at 855.[3]

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[3] Arbitrators do differ from bankruptcy judges in meaningful respects. *Inter alia*, bankruptcy judges are officials of the federal government, while arbitrators are private actors. Thus, while the FAA simply mandates enforcement of private agreements to arbitrate, Congress has created the office of bankruptcy judge and has specified the process by which such judges are selected and assigned to particular cases. Cf. *Katz* v. *Cellco P'ship d/b/a Verizon Wireless*, No. 12 CV 9193 (VB), 2013 WL 6621022, at *9-*11 (S.D.N.Y. Dec. 12, 2013) (relying partly on same distinction in rejecting Article III challenge to enforcement of arbitration agreement under the FAA). That difference would have particular salience if bankruptcy judges were subject to executive- or legislative-branch control. Bankruptcy judges, however, are appointed and removable only by Article III judges, and the scope of their responsibilities in any individual case is likewise controlled by the district court. See pp. 27-28, *infra*.

3. Bankruptcy-judge adjudications do not raise sufficient separation-of-powers concerns to render the Article III right nonwaivable

The Court in *Schor* referred to a nonwaivable "structural" component of Article III. 478 U.S. at 850-851. Contrary to the court of appeals' conclusion (see Pet. App. 41a-42a), however, neither *Schor* nor *Stern* suggests that a bankruptcy court's entry of final judgment with the litigants' consent violates that structural principle. As discussed above (pp. 23-24, *supra*), *Stern* referred to the absence of litigant consent in its restatement of the governing Article III principle, and the Court explained that the creditor there "did not truly consent to resolution" by the bankruptcy judge of the counterclaim against him. 131 S. Ct. at 2614-2615. Thus, "[t]he constitutional bar" articulated and applied in *Stern* (*id.* at 2619) precluded adjudication of the state-law counterclaim by a non-Article III judge in the *absence* of the parties' consent.

The impingement on the judiciary in this case is manifestly less threatening than the regime at issue in *Schor*, which was held not to violate Article III even though it permitted an executive-branch agency to adjudicate common-law counterclaims. 478 U.S. at 850-857. Bankruptcy judges are "judicial officers of the United States district court," appointed by courts of appeals, and removable for cause by councils of Article III judges. 28 U.S.C. 152(a)(1) and (e), 332(a)(1). In every case, their authority depends entirely on a reference from a district court, which can be withdrawn, and their decisions are subject to appellate review by Article III judges. 28 U.S.C. 157(a) and (d), 158; cf. *Peretz* v. *United States*, 501 U.S. 923, 937 (1991) (finding no nonwaivable "structural protections" in the context of

magistrate judges because, *inter alia*, they are "appointed and subject to removal by Article III judges" and "[t]he 'ultimate decision' whether to invoke the magistrate's assistance is made by the district court, subject to veto by the parties") (citation omitted). Bankruptcy judges' authority to enter final judgment therefore does not risk "the encroachment or aggrandizement of one branch at the expense of the other" that would warrant making it nonwaivable by the parties. *Schor*, 478 U.S. at 850 (quoting *Buckley* v. *Valeo*, 424 U.S. 1, 122 (1976) (per curiam)).

When a bankruptcy court enters final judgment on a contested matter, some aspects of its decision may be subject to deferential rather than de novo review on appeal. See Fed. R. Bankr. P. 8013 ("Findings of fact * * * shall not be set aside unless clearly erroneous."); Pet. App. 84a. The Court recognized long ago, however, that Article III judges may, with the parties' consent, authorize a non-Article III decisionmaker to make findings subject to limited review. In *Kimberly* v. *Arms*, 129 U.S. 512 (1889), the Court explained that a district court cannot "refer the entire decision of [an equity] case to a [master] without the consent of the parties," but, *with* the parties' consent, a referral order may authorize a master to make "findings, like those of an independent tribunal, [that] are to be taken as presumptively correct" and reviewed only for "manifest error." *Id.* at 524; see *Heckers* v. *Fowler*, 69 U.S. (2 Wall.) 123, 127, 133 (1865) (affirming judgment in breach-of-covenant action that, pursuant to the parties' agreement, was entered by the clerk of the United States Circuit Court for the Southern District of New York on the basis of a referee's report "as if the cause had been tried before the court").

4. The parties' consent to bankruptcy-judge adjudication may be inferred from their litigation conduct

Because the court of appeals found that an Article III challenge to bankruptcy-judge adjudication of a *Stern* claim could not be waived, it did not address what form consent would need to take. Pet. App. 45a.[4] One of the questions on which this Court granted certiorari, however, includes the subsidiary question "whether implied consent based on a litigant's conduct is sufficient to satisfy Article III." Pet. iii (third question presented). As the Ninth Circuit concluded in *Executive Benefits Insurance Agency* v. *Arkison (In re Bellingham Ins. Agency, Inc.)*, 702 F.3d 553 (2012), aff'd on other grounds, 134 S. Ct. 2165 (2014), a litigant's consent to bankruptcy-court adjudication may properly be inferred when the litigant "was aware of its right to seek withdrawal of the reference but opted instead to litigate before the bankruptcy court." *Id.* at 569.

a. This Court's decisions support the validity of implied consent to adjudication by a non-Article III decisionmaker. The Court in *Schor* concluded that "an effective waiver" of the Article III right would exist even if there were "no evidence of an express waiver." 478 U.S. at 849. In the magistrate-judge context, the Court has inferred consent from the parties' litigation conduct even when the relevant Federal Rule of Civil Procedure (but not the governing statute) required express consent in writing. *Roell*, 538 U.S. at 586-587.

Under the Bankruptcy Code, "any party" may request that the district court withdraw the reference to

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[4] The Seventh Circuit has since stated that the decision below was limited to instances of forfeiture rather than "express and mutual waiver." *Peterson* v. *Somers Dublin Ltd.*, 729 F.3d 741, 747 (2013).

the bankruptcy court "for cause shown." 28 U.S.C. 157(d). And while a bankruptcy court's authority in non-core proceedings is ordinarily limited to submitting "proposed findings of fact and conclusions of law to the district court," 28 U.S.C. 157(c)(1), the court is authorized by statute to enter final judgment in such matters "with the consent of all the parties to the proceeding," 28 U.S.C. 157(c)(2). While Section 157(c) does not literally apply to proceedings that are "core" proceedings under the statute, this Court recently held that, when a statutorily core proceeding "may not, as a constitutional matter, be adjudicated as such," then "[t]he statute permits *Stern* claims to proceed as non-core within the meaning of § 157(c)." *Executive Benefits Ins. Agency* v. *Arkison*, 134 S. Ct. 2165, 2172-2173 (2014).

b. Respondent initiated a bankruptcy proceeding and never filed a motion to withdraw the reference to the bankruptcy court. Instead, he sought to have petitioners' alter-ego claim dismissed on the merits, asking the bankruptcy judge to find—for purposes of multiple counts of the complaint, including the count now at issue—that the trust property was "not property of the estate." See p. 7, *supra*; see also J.A. 44 (Answer: "Wherefore the debtor defendant asks * * * that the court find that the Soad Wattar Living Trust is not property of the estate.").[5]

Respondent has suggested (Br. in Opp. 9-11) that he could not have *knowingly* waived a constitutional right to request that the district court rule on Count V of the adversary complaint until *Stern* was decided. But the principal building blocks of *Stern*'s reasoning were

[5] In the bankruptcy court, respondent admitted that the court had jurisdiction and that the adversary proceeding was "a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(J)." J.A. 24.

contained in the Court's 1989 decision in *Granfinanciera*, which is why the parties in *Stern* had been litigating about the question for more than a decade. See *Stern*, 131 S. Ct. at 2601-2602, 2614. In any event, this Court has not treated perfect foreknowledge of the law as a prerequisite to constitutionally valid consent. See *Brady* v. *United States*, 397 U.S. 742, 757 (1970) (holding that "a voluntary plea of guilty intelligently made in the light of the then applicable law does not become vulnerable because later judicial decisions indicate that the plea rested on a faulty [legal] premise" about the potential penalty).

B. Even If Respondent's Consent Did Not Legitimate The Entry Of Judgment By The Bankruptcy Court, His Failure To Assert A Timely Objection Disentitled Him To Relief On Appeal

"'No procedural principle is more familiar to this Court than that a constitutional right,' or a right of any other sort, 'may be forfeited * * * by the failure to make timely assertion of the right before a tribunal having jurisdiction to determine it.'" *United States* v. *Olano*, 507 U.S. 725, 731 (1993) (quoting *Yakus* v. *United States*, 321 U.S. 414, 444 (1944)). In some circumstances, the effect of a litigant's agreement is that no error occurs at all. See *Olano*, 507 U.S. at 733 (explaining that, "[b]ecause the right to trial is waivable, and because the defendant who enters a valid guilty plea waives that right, his conviction without a trial is not 'error'"). In other instances, a trial judge may be legally forbidden to take particular action, even when the parties affirmatively request that he do so. See *Freytag* v. *Commissioner*, 501 U.S. 868, 896 (1991) (Scalia, J., concurring in part and concurring in the judgment) (if both parties urge a judge "to disregard a structural

limitation upon his power," "the judge must tell them no"). But even in that category of cases, a litigant's failure to assert a contemporaneous objection will often prevent him from obtaining after-the-fact relief on appeal. See *ibid.* (distinguishing whether a litigant's consent has a "*legitimating* effect" from whether "a judgment already rendered [must] be set aside because of an alleged structural error to which the losing party did not properly object"); *Stern*, 131 S. Ct. at 2608 (noting the "particularly severe" consequences that arise when a litigant is permitted to "remain[] silent about his objection and belatedly rais[e] the error only if the case does not conclude in his favor") (citation and internal quotation marks omitted). Thus, even if respondent's implied consent to the bankruptcy court's entry of final judgment did not *authorize* the court to exercise that power, it deprived respondent of any entitlement to reversal on appeal.

In this case, respondent's failure to abide by ordinary contemporaneous-objection requirements was particularly flagrant. Although *Stern* was decided more than six weeks before respondent filed his appellate brief in the district court, that brief did not dispute the bankruptcy court's authority to decide the alter-ego count of petitioners' adversary action. Pet. App. 90a-91a. And even after the district court rejected as untimely his attempt to introduce the question through supplemental briefing, respondent again failed to include a *Stern* objection in his opening brief in the court of appeals. Instead, he waited until his reply brief to devote more than nine pages to the issue. See Resp. C.A. Reply Br. 9-18.

To be sure, appellate courts may under rare circumstances correct even non-jurisdictional errors despite

the absence of a timely objection. See, *e.g.*, *Olano*, 507 U.S. at 731 (discussing Federal Rule of Criminal Procedure 52(b)). In this case, however, the court of appeals did not identify any extraordinary circumstance that would justify taking that step. Nor did the court describe its decision to entertain respondent's Article III challenge on appeal as an exercise of discretion. Rather, the court appeared to assume that, if respondent's constitutional challenge was not waivable in the "legitimating" sense described above—*i.e.*, if respondent's consent did not provide a constitutionally valid basis for the bankruptcy court's entry of judgment on Count V, see Pet. App. 31a-45a—then the court was *obligated* to entertain that challenge on appeal. See *id.* at 45a ("[W]e hold that under current law a litigant may not waive an Article III, § 1, objection to a bankruptcy court's entry of final judgment in a core proceeding. We thus turn to consider [respondent's] constitutional objection to the bankruptcy court's authority, despite the fact that he waited so long to assert it."). That was error. See *Freytag*, 501 U.S. at 894 (Scalia, J., concurring in part and concurring in the judgment) (agreeing that "appellate courts may, in truly exceptional circumstances, exercise discretion to hear forfeited claims," but finding "no basis for the assertion that the structural nature of a constitutional claim in and of itself constitutes such a circumstance").[6]

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[6] In no event should this Court affirm the aspect of the court of appeals' decision that directs the district court to withdraw the reference from the bankruptcy court and "set a new discovery schedule." Pet. App. 53a-54a. This Court's intervening decision in *Executive Benefits* establishes that, if the Code defines a particular proceeding as core but Article III precludes entry of final judgment by the bankruptcy court, the bankruptcy judge's deci-

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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sion may be treated as proposed findings of fact and conclusions of law. 134 S. Ct. at 2173-2175.

APPENDIX

1. 11 U.S.C. 105(a) provides:

Power of court

(a) The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

2. 11 U.S.C. 541 provides:

Property of the estate

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property as of the commencement of the case.

(2) All interests of the debtor and the debtor's spouse in community property as of the commencement of the case that is—

(A) under the sole, equal, or joint management and control of the debtor; or

(B) liable for an allowable claim against the debtor, or for both an allowable claim against the

debtor and an allowable claim against the debtor's spouse, to the extent that such interest is so liable.

(3) Any interest in property that the trustee recovers under section 329(b), 363(n), 543, 550, 553, or 723 of this title.

(4) Any interest in property preserved for the benefit of or ordered transferred to the estate under section 510(c) or 551 of this title.

(5) Any interest in property that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days after such date—

(A) by bequest, devise, or inheritance;

(B) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or

(C) as a beneficiary of a life insurance policy or of a death benefit plan.

(6) Proceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case.

(7) Any interest in property that the estate acquires after the commencement of the case.

(b) Property of the estate does not include—

(1) any power that the debtor may exercise solely for the benefit of an entity other than the debtor;

(2) any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease before the commencement of the case under this title, and ceases to include any interest of the debtor as a lessee under a lease of nonresidential real property that has terminated at the expiration of the stated term of such lease during the case;

(3) any eligibility of the debtor to participate in programs authorized under the Higher Education Act of 1965 (20 U.S.C. 1001 et seq.; 42 U.S.C. 2751 et seq.), or any accreditation status or State licensure of the debtor as an educational institution;

(4) any interest of the debtor in liquid or gaseous hydrocarbons to the extent that—

(A)(i) the debtor has transferred or has agreed to transfer such interest pursuant to a farmout agreement or any written agreement directly related to a farmout agreement; and

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 544(a)(3) of this title; or

(B)(i) the debtor has transferred such interest pursuant to a written conveyance of a production payment to an entity that does not participate in the operation of the property from which such production payment is transferred; and

(ii) but for the operation of this paragraph, the estate could include the interest referred to in clause (i) only by virtue of section 365 or 542 of this title;

(5) funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but—

(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or step-grandchild of the debtor for the taxable year for which funds were placed in such account;

(B) only to the extent that such funds—

(i) are not pledged or promised to any entity in connection with any extension of credit; and

(ii) are not excess contributions (as described in section 4973(e) of the Internal Revenue Code of 1986); and

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000;

(6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of the filing of the petition in a case under this title, but—

(A) only if the designated beneficiary of the amounts paid or contributed to such tuition program was a child, stepchild, grandchild, or

step-grandchild of the debtor for the taxable year for which funds were paid or contributed;

(B) with respect to the aggregate amount paid or contributed to such program having the same designated beneficiary, only so much of such amount as does not exceed the total contributions permitted under section 529(b)(6) of such Code with respect to such beneficiary, as adjusted beginning on the date of the filing of the petition in a case under this title by the annual increase or decrease (rounded to the nearest tenth of 1 percent) in the education expenditure category of the Consumer Price Index prepared by the Department of Labor; and

(C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000;

(7) any amount—

(A) withheld by an employer from the wages of employees for payment as contributions—

(i) to—

(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income as defined in section 1325(b)(2); or

(ii) to a health insurance plan regulated by State law whether or not subject to such title; or

(B) received by an employer from employees for payment as contributions—

(i) to—

(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income, as defined in section 1325(b)(2); or

(ii) to a health insurance plan regulated by State law whether or not subject to such title;

(8) subject to subchapter III of chapter 5, any interest of the debtor in property where the debtor pledged or sold tangible personal property (other than securities or written or printed evidences of indebtedness or title) as collateral for a loan or advance of money given by a person licensed under law to make such loans or advances, where—

(A) the tangible personal property is in the possession of the pledgee or transferee;

(B) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and

(C) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law, in a timely manner as provided under State law and section 108(b); or

(9) any interest in cash or cash equivalents that constitute proceeds of a sale by the debtor of a money order that is made—

(A) on or after the date that is 14 days prior to the date on which the petition is filed; and

(B) under an agreement with a money order issuer that prohibits the commingling of such proceeds with property of the debtor (notwithstanding that, contrary to the agreement, the proceeds may have been commingled with property of the debtor),

unless the money order issuer had not taken action, prior to the filing of the petition, to require compliance with the prohibition.

Paragraph (4) shall not be construed to exclude from the estate any consideration the debtor retains, receives, or is entitled to receive for transferring an interest in liquid or gaseous hydrocarbons pursuant to a farmout agreement.

(c)(1) Except as provided in paragraph (2) of this subsection, an interest of the debtor in property becomes property of the estate under subsection (a)(1), (a)(2), or (a)(5) of this section notwithstanding any provision in an agreement, transfer instrument, or applicable nonbankruptcy law—

(A) that restricts or conditions transfer of such interest by the debtor; or

(B) that is conditioned on the insolvency or financial condition of the debtor, on the commencement of a case under this title, or on the appointment of or taking possession by a trustee in a case under this title or a custodian before such commencement, and that effects or gives an option to effect a forfeiture, modification, or termination of the debtor's interest in property.

(2) A restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable nonbankruptcy law is enforceable in a case under this title.

(d) Property in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest, such as a mortgage secured by real property, or an interest in such a mortgage, sold by the

debtor but as to which the debtor retains legal title to service or supervise the servicing of such mortgage or interest, becomes property of the estate under subsection (a)(1) or (2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.

(e) In determining whether any of the relationships specified in paragraph (5)(A) or (6)(A) of subsection (b) exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child has as the child's principal place of abode the home of the debtor and is a member of the debtor's household) shall be treated as a child of such individual by blood.

(f) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.

3. 11 U.S.C. 727(a) provides:

Discharge

(a) The court shall grant the debtor a discharge, unless—

(1) the debtor is not an individual;

(2) the debtor, with intent to hinder, delay, or defraud a creditor or an officer of the estate charged with custody of property under this title, has transferred, removed, destroyed, mutilated, or concealed, or has permitted to be transferred, removed, destroyed, mutilated, or concealed—

(A) property of the debtor, within one year before the date of the filing of the petition; or

(B) property of the estate, after the date of the filing of the petition;

(3) the debtor has concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information, including books, documents, records, and papers, from which the debtor's financial condition or business transactions might be ascertained, unless such act or failure to act was justified under all of the circumstances of the case;

(4) the debtor knowingly and fraudulently, in or in connection with the case—

(A) made a false oath or account;

(B) presented or used a false claim;

(C) gave, offered, received, or attempted to obtain money, property, or advantage, or a promise

of money, property, or advantage, for acting or forbearing to act; or

(D) withheld from an officer of the estate entitled to possession under this title, any recorded information, including books, documents, records, and papers, relating to the debtor's property or financial affairs;

(5) the debtor has failed to explain satisfactorily, before determination of denial of discharge under this paragraph, any loss of assets or deficiency of assets to meet the debtor's liabilities;

(6) the debtor has refused, in the case—

(A) to obey any lawful order of the court, other than an order to respond to a material question or to testify;

(B) on the ground of privilege against self-incrimination, to respond to a material question approved by the court or to testify, after the debtor has been granted immunity with respect to the matter concerning which such privilege was invoked; or

(C) on a ground other than the properly invoked privilege against self-incrimination, to respond to a material question approved by the court or to testify;

(7) the debtor has committed any act specified in paragraph (2), (3), (4), (5), or (6) of this subsection, on or within one year before the date of the filing of the petition, or during the case, in connection with another case, under this title or under the Bankruptcy Act, concerning an insider;

(8) the debtor has been granted a discharge under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within 8 years before the date of the filing of the petition;

(9) the debtor has been granted a discharge under section 1228 or 1328 of this title, or under section 660 or 661 of the Bankruptcy Act, in a case commenced within six years before the date of the filing of the petition, unless payments under the plan in such case totaled at least—

(A) 100 percent of the allowed unsecured claims in such case; or

(B)(i) 70 percent of such claims; and

(ii) the plan was proposed by the debtor in good faith, and was the debtor's best effort;

(10) the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter;

(11) after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply with respect to a debtor who is a person described in section 109(h)(4) or who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional courses under this section (The United States trustee (or the bankruptcy administrator, if any) who makes a determination de-

scribed in this paragraph shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.); or

(12) the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is reasonable cause to believe that—

(A) section 522(q)(1) may be applicable to the debtor; and

(B) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).

4. 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.

5. 28 U.S.C. 158 provides:

Appeals

(a) The district courts of the United States shall have jurisdiction to hear appeals[1]

(1) from final judgments, orders, and decrees;

(2) from interlocutory orders and decrees issued under section 1121(d) of title 11 increasing or reducing the time periods referred to in section 1121 of such title; and

(3) with leave of the court, from other interlocutory orders and decrees;

and, with leave of the court, from interlocutory orders and decrees, of bankruptcy judges entered in cases and proceedings referred to the bankruptcy judges under section 157 of this title. An appeal under this subsection shall be taken only to the district court for the judicial district in which the bankruptcy judge is serving.

(b)(1) The judicial council of a circuit shall establish a bankruptcy appellate panel service composed of bankruptcy judges of the districts in the circuit who are appointed by the judicial council in accordance with paragraph (3), to hear and determine, with the consent of all the parties, appeals under subsection (a) unless the judicial council finds that—

(A) there are insufficient judicial resources available in the circuit; or

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[1] So in original. Probably should be followed by a dash.

(B) establishment of such service would result in undue delay or increased cost to parties in cases under title 11.

Not later than 90 days after making the finding, the judicial council shall submit to the Judicial Conference of the United States a report containing the factual basis of such finding.

(2)(A) A judicial council may reconsider, at any time, the finding described in paragraph (1).

(B) On the request of a majority of the district judges in a circuit for which a bankruptcy appellate panel service is established under paragraph (1), made after the expiration of the 1-year period beginning on the date such service is established, the judicial council of the circuit shall determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(C) On its own motion, after the expiration of the 3-year period beginning on the date a bankruptcy appellate panel service is established under paragraph (1), the judicial council of the circuit may determine whether a circumstance specified in subparagraph (A) or (B) of such paragraph exists.

(D) If the judicial council finds that either of such circumstances exists, the judicial council may provide for the completion of the appeals then pending before such service and the orderly termination of such service.

(3) Bankruptcy judges appointed under paragraph (1) shall be appointed and may be reappointed under such paragraph.

(4) If authorized by the Judicial Conference of the United States, the judicial councils of 2 or more circuits may establish a joint bankruptcy appellate panel comprised of bankruptcy judges from the districts within the circuits for which such panel is established, to hear and determine, upon the consent of all the parties, appeals under subsection (a) of this section.

(5) An appeal to be heard under this subsection shall be heard by a panel of 3 members of the bankruptcy appellate panel service, except that a member of such service may not hear an appeal originating in the district for which such member is appointed or designated under section 152 of this title.

(6) Appeals may not be heard under this subsection by a panel of the bankruptcy appellate panel service unless the district judges for the district in which the appeals occur, by majority vote, have authorized such service to hear and determine appeals originating in such district.

(c)(1) Subject to subsections (b) and (d)(2), each appeal under subsection (a) shall be heard by a 3-judge panel of the bankruptcy appellate panel service established under subsection (b)(1) unless—

(A) the appellant elects at the time of filing the appeal; or

(B) any other party elects, not later than 30 days after service of notice of the appeal;

to have such appeal heard by the district court.

(2) An appeal under subsections (a) and (b) of this section shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of

appeals from the district courts and in the time provided by Rule 8002 of the Bankruptcy Rules.

(d)(1) The courts of appeals shall have jurisdiction of appeals from all final decisions, judgments, orders, and decrees entered under subsections (a) and (b) of this section.

(2)(A) The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district court, or the bankruptcy appellate panel involved, acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that—

(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

(iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken;

and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

(B) If the bankruptcy court, the district court, or the bankruptcy appellate panel—

(i) on its own motion or on the request of a party, determines that a circumstance specified in clause (i), (ii), or (iii) of subparagraph (A) exists; or

(ii) receives a request made by a majority of the appellants and a majority of appellees (if any) to make the certification described in subparagraph (A);

then the bankruptcy court, the district court, or the bankruptcy appellate panel shall make the certification described in subparagraph (A).

(C) The parties may supplement the certification with a short statement of the basis for the certification.

(D) An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal is pending, issues a stay of such proceeding pending the appeal.

(E) Any request under subparagraph (B) for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.

6. 28 U.S.C. 636(b)-(c) provides:

Jurisdiction, powers, and temporary assignment

* * * * *

(b)(1) Notwithstanding any provision of law to the contrary—

(A) a judge may designate a magistrate judge to hear and determine any pretrial matter pending before the court, except a motion for injunctive relief,

for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. A judge of the court may reconsider any pretrial matter under this subparagraph (A) where it has been shown that the magistrate judge's order is clearly erroneous or contrary to law.

(B) a judge may also designate a magistrate judge to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial[1] relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement.

(C) the magistrate judge shall file his proposed findings and recommendations under subparagraph (B) with the court and a copy shall forthwith be mailed to all parties.

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept,

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[1] So in original. Probably should be "post-trial".

reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge may also receive further evidence or recommit the matter to the magistrate judge with instructions.

(2) A judge may designate a magistrate judge to serve as a special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States district courts. A judge may designate a magistrate judge to serve as a special master in any civil case, upon consent of the parties, without regard to the provisions of rule 53(b) of the Federal Rules of Civil Procedure for the United States district courts.

(3) A magistrate judge may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.

(4) Each district court shall establish rules pursuant to which the magistrate judges shall discharge their duties.

(c) Notwithstanding any provision of law to the contrary—

(1) Upon the consent of the parties, a full-time United States magistrate judge or a part-time United States magistrate judge who serves as a full-time judicial officer may conduct any or all proceedings in a jury or nonjury civil matter and order the entry of judgment in the case, when specially designated to exercise such jurisdiction by the district court or courts he serves. Upon the consent of the parties, pursuant to their specific written request, any other part-time magistrate judge may exercise such jurisdiction, if such magistrate judge meets the bar

membership requirements set forth in section 631(b)(1) and the chief judge of the district court certifies that a full-time magistrate judge is not reasonably available in accordance with guidelines established by the judicial council of the circuit. When there is more than one judge of a district court, designation under this paragraph shall be by the concurrence of a majority of all the judges of such district court, and when there is no such concurrence, then by the chief judge.

(2) If a magistrate judge is designated to exercise civil jurisdiction under paragraph (1) of this subsection, the clerk of court shall, at the time the action is filed, notify the parties of the availability of a magistrate judge to exercise such jurisdiction. The decision of the parties shall be communicated to the clerk of court. Thereafter, either the district court judge or the magistrate judge may again advise the parties of the availability of the magistrate judge, but in so doing, shall also advise the parties that they are free to withhold consent without adverse substantive consequences. Rules of court for the reference of civil matters to magistrate judges shall include procedures to protect the voluntariness of the parties' consent.

(3) Upon entry of judgment in any case referred under paragraph (1) of this subsection, an aggrieved party may appeal directly to the appropriate United States court of appeals from the judgment of the magistrate judge in the same manner as an appeal from any other judgment of a district court. The consent of the parties allows a magistrate judge designated to exercise civil jurisdiction under paragraph

(1) of this subsection to direct the entry of a judgment of the district court in accordance with the Federal Rules of Civil Procedure. Nothing in this paragraph shall be construed as a limitation of any party's right to seek review by the Supreme Court of the United States.

(4) The court may, for good cause shown on its own motion, or under extraordinary circumstances shown by any party, vacate a reference of a civil matter to a magistrate judge under this subsection.

(5) The magistrate judge shall, subject to guidelines of the Judicial Conference, determine whether the record taken pursuant to this section shall be taken by electronic sound recording, by a court reporter, or by other means.

7. 28 U.S.C. 1334(a)-(b) provides:

Bankruptcy cases and proceedings

(a) Except as provided in subsection (b) of this section, the district courts shall have original and exclusive jurisdiction of all cases under title 11.

(b) Except as provided in subsection (e)(2), and notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.