No. 10-179

In The
Supreme Court of the United States

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

Petitioner,

v.

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

Respondent.

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

BRIEF OF NATIONAL ASSOCIATION OF BANKRUPTCY TRUSTEES AS AMICUS CURIAE IN SUPPORT OF PETITIONER

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STATEMENT OF INTEREST OF NABT AS *AMICUS CURIAE*[1]

The National Association of Bankruptcy Trustees (NABT) is a non-profit professional association formed in 1982 to address the needs of chapter 7 bankruptcy trustees throughout the country, and to promote the effectiveness of the bankruptcy system as a whole. There are approximately 1,200 bankruptcy trustees currently receiving new cases, and approximately 900 of them are NABT members. In forty-eight states and the federal territories, the United States Trustee has the responsibility for appointing chapter 7 panel trustees pursuant to 28 U.S.C. § 586(a)(1).[2]

The United States Trustee appoints a bankruptcy trustee in every chapter 7 case. The trustee has primary responsibility for all aspects of case administration. In cases where there are assets, and a

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[1] Undersigned counsel authored this brief in its entirety, and no other person or entity, other than NABT, has made any monetary contribution to the preparation or submission of this brief. Consent of all parties to the submission of *amicus curiae* briefs has been lodged with the Clerk of the Court.

[2] Pursuant to 28 U.S.C. § 581, the United States Trustee program operates in most of the nation. In North Carolina and Alabama the responsibilities of the United States Trustee program remain with the Bankruptcy Court. See Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, Pub. L. No. 99-554, 100 Stat. 3119, § 302(d)(3) (excluding North Carolina and Alabama from changes made to the Bankruptcy Code in conjunction with the expansion of the United States Trustee program elsewhere in that legislation).

prospect for distribution to creditors,[3] this includes review and objection to proofs of claim, and, if warranted, filing objections and counterclaims thereto.

This appeal addresses the issue of whether 28 U.S.C. § 157(b)(2)(C) violates Article III of the Constitution by conferring upon bankruptcy courts core jurisdiction to adjudicate compulsory counterclaims to creditors' proofs of claim filed in bankruptcy cases. The NABT supports the Petitioner's position that adjudication of compulsory counterclaims falls under the bankruptcy court's core jurisdiction and that Congress' grant of core jurisdiction to non-Article III judges is constitutional.

This Court's decision is important because it will affect the ability of trustees throughout the country to efficiently and cost-effectively administer chapter 7 cases in accordance with their fiduciary mandates under the Bankruptcy Code. The adjudication in a single forum of a creditor's proof of claim and any compulsory counterclaim to that proof of claim is vital to chapter 7 trustees' ability to effec-

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[3] Generally, about 5 to 10% of chapter 7 cases are "asset" cases. In FY 2009, there were 961,025 chapter 7 cases filed; for that period there were 50,530 chapter 7 asset cases closed with $2.46 billion distributed to creditors by trustees. See United States Trustee Program Annual Report of Significant Accomplishments for Fiscal Year 2009, http://www.justice.gov/ust/eo/public_affairs/annualreport/docs/ar2009.pdf. In FY 2008, 659,568 chapter 7 cases were filed, with 69,338 asset cases closed and $3.04 billion distributed to creditors by trustees. See United States Trustee Program Annual Report of Significant Accomplishments for Fiscal Year 2008, http://www.justice.gov/ust/eo/public_affairs/annualreport/docs/ar2008.pdf.

tively and efficiently perform their duties under the Bankruptcy Code.

The duties of chapter 7 trustees are generally defined in 11 U.S.C. § 704. In addition, chapter 7 trustees follow a substantial handbook issued by the Executive Office for United States Trustees.[4] The UST Handbook governs, in varying levels of detail, a wide variety of practices and procedures pertaining to chapter 7 cases. Under § 704, as elaborated upon in the UST Handbook, trustees are duty-bound to close a bankruptcy estate as expeditiously as is compatible with the best interests of the estate.[5]

This Court's rejection of a bankruptcy judge's authority to adjudicate compulsory counterclaims would require trustees to litigate objections to creditors' claims and compulsory counterclaims asserted against them in the already busy district courts. Or, it could require that trustees undertake two separate proceedings: litigation of objections to the claims in the bankruptcy court and then a second action in the district court seeking affirmative recovery by the estate for any compulsory counterclaim to such proofs of claim.

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[4] See Handbook for Chapter 7 Trustees, www.justice.gov/ust/eo/private_trustee/library/chapter07/docs/ch7_handbook/ch7_handbook_pii_2010 ("UST Handbook").

[5] See 11 U.S.C. § 704(a)(1); see also UST Handbook at pp. 6-1, 8-42. As stated in the UST Handbook: "Delays in case closure diminish returns to creditors, undermine the creditors' and public's confidence in the bankruptcy system, increase the trustee's exposure to liabilities, raise the costs of administration, and, in cases involving non-dischargeable tax liabilities, expose the debtor to increased penalties and interest. Delays also give rise to public criticism of the bankruptcy process." *Id.* at 8-42.

Moving the claims-allowance process to the district courts, or requiring two separate proceedings, rather than completing the claims-allowance process in the bankruptcy court, would place further burdens upon the courts and trustees – already challenged with additional administrative burdens under BAPCPA.[6] The end result would be diminished and delayed returns to creditors and exposure of the bankruptcy estate and debtors to increased costs. Thus, the NABT supports the position of Petitioner and files this *pro bono amicus* brief to assist the Court in recognizing the practical impact of its ruling on bankruptcy trustees and the estates they administer.

SUMMARY OF ARGUMENT

Chapter 7 trustees, as the fiduciaries responsible for the administration of all chapter 7 bankruptcy cases, are charged with preserving and promoting the system's integrity by, among other things, efficiently administering their bankruptcy cases. This includes objecting to objectionable claims and prosecuting counterclaims against parties filing claims against the estate. See 11 U.S.C.

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[6] Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23. (BAPCPA). Under BAPCPA, trustees are now responsible for giving notices to child support claimants. 11 U.S.C. § 704(a)(10), (c). If the debtor had an employee benefits plan, the trustee now assumes the responsibilities of the plan administrator under the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002. See 11 U.S.C. § 704(a)(11). In health care cases, trustees are responsible for maintaining and disposing of patient medical records, and must use all reasonable and best efforts to transfer patients to other appropriate health care facilities. See 11 U.S.C. § 704(a)(12), § 351.

§§ 704(a)(1), 704(a)(5), 502(b), 502(d), and 558; 28 U.S.C. § 157(b), (c).

Allowing bankruptcy courts to enter final judgments through a unitary claims-allowance process – with a single adjudication of creditors' proofs of claim and any compulsory counterclaims the estate has in defense of such claims – promotes administrative efficiency. Moreover, such a unitary process does not unconstitutionally vest bankruptcy judges with Article III powers. Rather, it represents an easily administrable jurisdictional scheme replete with constitutional safeguards. This jurisdictional framework,[7] in turn, supports a constitutional adjudication for creditors filing claims in bankruptcy cases – seeking payment from bankruptcy estates.

ARGUMENT

I. BANKRUPTCY TRUSTEES REQUIRE A UNITARY CLAIMS ALLOWANCE PROCESS IN ORDER TO EFFICIENTLY ADMINISTER THEIR CASES.

In order to partake in a monetary distribution from a bankruptcy estate, a creditor must file a proof of claim. 11 U.S.C. § 501. If a creditor files a proof of claim and no objection is made, then the proof of claim is deemed allowed. 11 U.S.C. § 502(a). If an objection is filed, the bankruptcy court must determine whether the claim should be allowed, and if so, in what amount. 11 U.S.C. § 502(b); 28 U.S.C. § 157(b)(2)(B) and (C).

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[7] See Bankruptcy Amendments and Federal Judgeship Act of 1984, Pub. L. No. 98-353, 98 Stat. 333 (1984 Act).

As with claims made in other judicial proceedings, a trustee must evaluate whether there is a compulsory counterclaim to a creditor's claim, and if so, she *must* assert it in the objection to claim proceeding. See Fed. R. Bankr. P. 7013. If a compulsory counterclaim is not asserted in the objection to claim proceeding, then, as in other judicial proceedings, the claim will be forever barred. See Charles Alan Wright et al., 6 Fed. Prac. & Proc. Civ. § 1401 (3d ed.).

As illustrated by the magnitude of asset cases that trustees administer, and corresponding claims objections they undertake in their administration of these cases, it is essential that the claims allowance/disallowance process be efficient. Congress recognized this in enacting 28 U.S.C. § 157(b)(2)(B) and (C), which confers core jurisdiction on bankruptcy courts to adjudicate all issues integral to the claims allowance/disallowance process. This includes adjudication of compulsory counterclaims against parties filing proofs of claim in bankruptcy cases. 28 U.S.C. § 157(b)(2)(C).

Indeed, the efficient administration of bankruptcy cases was a primary goal of the 1984 Act, wherein Congress sought to ensure that the core jurisdiction delineated in § 157(b) would be construed as broadly as possible in order to foster the goal of administrative efficiency. See *In re CBI Holdings Co.*, 529 F.3d 432, 459-460 (2d Cir. 2008). This legislative purpose of the 1984 Act comports with this Court's long-standing view concerning the need for efficiency in bankruptcy proceedings. See *Katchen v. Landy*, 382 U.S. 323, 328 (1966)("a chief purpose of the bankruptcy laws is to secure a prompt and effec-

tual administration and settlement of the estate"); *Bailey v. Glover*, 88 U.S. (21 Wall.) 342, 346-47 (1874); Cf. *Commodity Futures Trading Comm'n v. Schor*, 478 U.S. 833, 851, 855 (1986) (*Schor*) (admonishing "formalistic and unbending rules" that "unduly restrict Congress' ability to take needed and innovative action pursuant to its Article I powers"; holding CFTC constitutionally authorized to adjudicate compulsory counterclaims so as to promote "inexpensive and expeditious" claims resolution process).

As highlighted by the *Amici* Professors in their brief supporting Petitioner, this Court recently stressed the importance of administrative ease and efficiency in *Hertz v. Friend*, ---U.S.---, 130 S. Ct. 1181, 1193 (2010). There, this Court chided jurisdictional complexity and administrative inefficiency, saying:

> [A]dministrative simplicity is a major virtue in a jurisdictional statute. . . . Complex jurisdictional tests complicate a case, eating up time and money as the parties litigate, not the merits of their claims, but which court is the right court to decide those claims. . . . Complex tests produce appeals and reversals, encourage gamesmanship, and, again, diminish the likelihood that results and settlements will reflect a claim's legal and factual merits. Judicial resources too are at stake.

Id. at 1193.

Nonetheless, the Ninth Circuit opines that compulsory counterclaims must undergo a second-tier analysis to determine whether they are core or non-core, seemingly expunging § 157(b)(2)(C) from the bankruptcy court's jurisdictional ambit. This two-step analysis contravenes the language of § 157(b)(2)(C) and the congressional intent behind it. On the contrary, it creates a complex jurisdictional test that would eat up time and deplete estate and judicial resources. This Court has consistently reproached such overly formalistic rules that unduly restrict Congress' exercise of Article I powers to create simple jurisdictional schemes that provide due process and promote judicial efficiency. See *Schor*, 478 U.S. at 851, 855; *Thomas v. Union Carbide Agricultural Products Co.*, 473 U.S. 568, 586-589 (1985); *Crowell v. Benson*, 285 U.S. 22, 53-54 (1932). The same rationale applies here.

II. THE CLAIMS ALLOWANCE PROCESS UNDER THE PRESENT JURISDICTIONAL SCHEME IS CONSTITUTIONAL – ALLOWING BANKRUPTCY JUDGES TO FINALLY ADJUDICATE COMPULSORY COUNTERCLAIMS TO PROOFS OF CLAIM.

In this bankruptcy case, the creditor[8] filed a proof of claim and a separate adversary proceeding, to which the debtor[9] objected and filed a counter-

[8] The creditor is Pierce Marshall; his probate estate is Respondent herein.

[9] The debtor is Vickie Lynn Marshall; her probate estate is Petitioner herein.

claim.[10] The bankruptcy court ruled that the debtor's counterclaim was compulsory – arising out of the same transactions and occurrences as the creditor's proof of claim. Thereafter, and before a ruling by the state court, the bankruptcy court rendered decisions against the creditor on his adversary complaint and in favor of the debtor on her counterclaim – awarding significant damages to the debtor's bankruptcy estate.[11]

This procedural scenario follows a standard course for prosecuting compulsory counterclaims to creditors' proofs of claim, as outlined in Argument I above. The Bankruptcy Code (as amended by the 1984 Act) and this Court's jurisprudence before and after its *Marathon*[12] decision, instructs that under this scenario, the bankruptcy court constitutionally rendered the first final judgment regarding the debtor's counterclaim against the creditor's proof of claim. *In re Marshall*, 253 B.R. 550 (Bankr. C.D.Cal. 2000).

Before *Marathon*, this Court acknowledged that the equitable claims-allowance process in bankruptcy proceedings included final adjudication of

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[10] See Brief of Petitioner (Pet. Br.), Statement of the Case, Bankruptcy Proceedings. Pet. Br. pp. 2-5.

[11] Respondent commenced a non-dischargeability complaint under 11 U.S.C. § 523(a)(2)(6) (willful and malicious injury) and filed a proof of claim attaching the complaint. Petitioner filed counterclaims to Respondent's proof of claim. *Id*. See also *Marshall v. Marshall*, 547 U.S. 293, 294 (2006).

[12] *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, 458 U.S. 50 (1982) (*Marathon*). For discussion of *Marathon,* see Prof. Br. pp. 8-11.

compulsory counterclaims to proofs of claim. See *Katchen v. Landy*, 382 U.S. 323 (1966). After *Marathon*, this Court affirmed its rationale that by submitting proofs of claims in bankruptcy cases, creditors subject themselves to the bankruptcy court's equitable power,[13] including waiver of jury-trial rights and final adjudication of preferences and fraudulent conveyances. See *Granfianciera v. Nordberg*, 492 U.S. 33 (1989); *Langenkamp v. Culp*, 492 U.S. 42 (1990).

Thus, this Court's decisions in *Katchen*, *Granfinanciera* and *Langenkamp* fortify the constitutionality of Congress' grant of authority to bankruptcy judges to finally adjudicate compulsory counterclaims to proofs of claim.[14] Therefore – inasmuch as Petitioner's counterclaim to Respondent's proof of claim was compulsory – the bankruptcy judge was empowered to adjudicate it.

CONCLUSION

Based on the foregoing, the National Association of Bankruptcy Trustees, as *Amicus Curiae* for Petitioner, requests that the decision of the Ninth Circuit Court of Appeals be reversed.

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[13] See *Young v. United States*, 535 U.S. 43, 50 (2002) citing *Pepper v. Litton*, 308 U.S. 295, 304 (1939) (recognizing that the Bankruptcy Code incorporates traditional equitable principles). For discussion of the development of the bankruptcy court's equitable jurisdiction, see Prof. Br. pp. 6, 24-27.

[14] For discussion of constitutional safeguards to non-Article III bankruptcy judges adjudicating compulsory counterclaims under the present jurisdictional system, see Prof. Br. pp. 11-17.

Respectfully submitted,

NATIONAL ASSOCIATION
OF BANKRUPTCY TRUSTEES

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