No. 19-490

IN THE

Supreme Court of the United States

JONATHAN S. METCALF,

Petitioner,

v.

MICHAEL FITZGERALD, ET AL.,

Respondents.

On Petition for Writ of Certiorari to the Connecticut Supreme Court

BRIEF IN OPPOSITION

Joseph M. Musco
MUSCO & IASSOGNA
555 Long Wharf Drive,
10th Floor
New Haven, CT 06511

Brian E. Tetreault
Counsel of Record
MORRISON MAHONEY LLP
One Constitution Plaza,
10th Floor
Hartford, CT 06103
(860) 616-7640
btetreault@morrisonmahoney.com

Counsel for Respondents

QUESTION PRESENTED

Does the Bankruptcy Code preempt state-law vexatious-litigation claims arising from adversary actions in bankruptcy proceedings?

RULE 29.6 STATEMENT

Respondent Ion Bank state chartered stock bank is a wholly owned subsidiary of Ion Financial, MHC. No publicly held company owns 10% or more of Ion Bank's stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

CASES

TABLE OF AUTHORITIES
(continued)

Page(s)

CONSTITUTIONAL AND STATUTORY AUTHORITIES

OTHER AUTHORITIES

Jonathan Metcalf's bankruptcy cases did not go well for him. In his business's bankruptcy, the Trustee informed the court that Metcalf had willfully destroyed the company's financial records and misappropriated its property. In his personal bankruptcy, Ion Bank relied on the Trustee's information to object to the discharge of Metcalf's $2.1 million debt. Ion ultimately withdrew its objection, but Metcalf never argued to the bankruptcy court that Ion's adversary proceeding was frivolous. It was certainly not.

Metcalf instead waited until the bankruptcy proceedings were closed. He then filed a state vexatious-litigation suit in Connecticut court, claiming that Ion lacked probable cause and maliciously filed its discharge objection. The trial court dismissed Metcalf's complaint as preempted. The Connecticut Supreme Court affirmed. It correctly held that the federal Bankruptcy Code preempts state vexatious-litigation claims arising from an adversary proceeding in bankruptcy. The Bankruptcy Code embodies an overwhelming federal interest in national uniformity, and the Code occupies the field with a comprehensive system of remedies for abuse of bankruptcy process.

Nearly every court that has addressed the question presented has agreed. Truth is, few appellate courts have decided it. The Ninth Circuit agreed with the decision below; no Circuit has disagreed; and eleven Circuits have not addressed the issue. Only two other state supreme courts have addressed the issue; of them, one agreed with the decision below, and the other disagreed in a 5-4 opinion decided over a decade ago.

Certiorari should be denied because the conflict is exceedingly narrow; the issue arises infrequently; the

Bankruptcy Code provides enough remedies where state law is preempted; and the decision below is correct.

STATEMENT

1. Petitioner Jonathan Metcalf's business, Metcalf Paving Company, failed in 2009. The company filed for chapter 11 bankruptcy that year. *In re Metcalf Paving Co., Inc.*, No. 09-bk-32996 (Bankr. D. Conn.). At the time, the company owed Respondent Ion Bank (f/k/a Naugatuck Savings Bank) more than $2.1 million. *See Ion Bank v. Metcalf*, No. 13-ap-03006 (Bankr. D. Conn.) (Dkt. 81 ¶ 13).

The bankruptcy court converted the case to a chapter 7 liquidation on February 25, 2011. On that date, the court appointed Ronald Chorches as Chapter 7 Trustee. The court's conversion order required the company to "forthwith turn over to the chapter 7 trustee all records and property of the estate." Order at 1, Dkt. 435, No. 09-bk-32996.

According to the Trustee, however, Metcalf did not turn over all of the company's records and property. The Trustee moved for an order to show cause. The motion stated that "Jonathan Metcalf, in direct contradiction to the Conversion Order, destroyed and concealed financial records of the Debtor, potentially crippling the Trustee's ability to properly administer this estate." Motion ¶ 5, Dkt. 458, No. 09-bk-32996. It further stated that, during an inspection of the company's business on March 1, 2011, the Trustee's attorney discovered the business in the following condition:

- "three of the five computers … had had their hard drives removed," *id.* ¶ 7;

- a "shredder was completely full of shredded documents, which upon examination, appear[ed] to contain the shredded financial records of the Debtor," *id.* ¶ 8;
- "[n]o unshredded financial documents of the Debtor were located on the business premises," *id.* ¶ 8;
- "most of the vehicles and equipment of the Debtor were not on the property and could not be secured," *id.* ¶ 10; and,
- "seven cables had been cut when some item had been removed from the wall," *id.* ¶ 11.

The Trustee also stated that Metcalf received "a check made payable to 'Metcalf Paving' in the amount of $700 on February 28, 2011," which "was never provided to the Trustee or accounted for." *Id.* ¶¶ 12–13. The Trustee concluded "that the Debtor *willfully* destroyed financial documents and *willfully* removed hard drives from its computers"; "unlawfully converted and/or misappropriated property of the estate"; and "*willfully* … failed to produce assets of the Debtor." *Id.* ¶¶ 14–16.

2. Meanwhile, Metcalf's personal finances deteriorated. In August 2012, he filed for personal chapter 7 bankruptcy. *In re Jonathan Shea Metcalf*, No. 12-bk-31919 (Bankr. D. Conn.). In February 2013, Ion Bank, represented by Respondents Myles Alderman and the law firm Alderman & Alderman, filed an adversary proceeding against Metcalf in his personal bankruptcy. *Ion Bank v. Metcalf*, No. 13-ap-03006 (Bankr. D. Conn.). Ion objected to discharge of Metcalf's debts under sections 523(a)(2)(A), 523(a)(4) and 727(a)(7) of the Bankruptcy Code. A second amended complaint

relied solely on section 727(a)(7), and focused on Metcalf's conduct during the Metcalf Paving bankruptcy. Dkt. 81, No. 13-ap-03006.

Sometimes a debtor who has engaged in misconduct "in connection with another [bankruptcy] case" is not entitled to a discharge. 11 U.S.C. § 727(a)(7). For example, no discharge is warranted if the debtor, in a related bankruptcy case, has "concealed, destroyed, mutilated, falsified, or failed to keep or preserve any recorded information … from which the debtor's financial condition or business transactions might be ascertained," or if the debtor transferred or concealed "property of the estate," or if the debtor refused "to obey any lawful order of the court." 11 U.S.C. § 727(a)(2), (3), (6).

Ion's second amended complaint alleged that "during the bankruptcy case of Metcalf Paving," Metcalf did the following:

- violated the court's conversion order;
- shredded financial records;
- failed to turn over "tax returns, profit and loss statements, bank statements, and documents relating to accounts payable and receivable";
- concealed "a check in the amount of $700.00" while representing that a check for $23.31 was "the entire balance of funds in the account of Metcalf Paving";
- failed to disclose a company website; and,
- failed to provide the Trustee with certain vehicles and paving equipment. Dkt. 81 ¶¶ 20–34, No. 13-ap-03006.

Ion ultimately dismissed the adversary action during briefing on summary judgment. Ion's motion to dismiss said that the "adversary proceeding was commenced and prosecuted based on information available to the Plaintiff and its counsel, including, but not limited to, reports from an attorney representing the Chapter 7 Trustee in the converted Chapter 7 case of Metcalf Paving Company, Inc." Dkt. 139 at 1, No. 13-ap-03006. The court dismissed the adversary proceeding and entered an order discharging the debtor. Dkt. 151, No. 13-ap-03006; Dkt. 54, No. 12-bk-31919. Metcalf never argued to the bankruptcy court that Ion's adversary proceeding was frivolous, or in bad faith, or otherwise improper.

3. After the bankruptcy proceedings concluded, Metcalf sued Respondents in Connecticut state court, asserting state-law claims for vexatious litigation and unfair trade practices. Pet. App. 37a. The complaint was based on Ion's filing and prosecution of the adversary proceeding in Metcalf's personal bankruptcy. Metcalf alleged that Ion's objection to discharge "was unsupported by knowledge of facts, actual or apparent, strong enough to justify the defendants in the belief that they had lawful grounds for prosecuting Metcalf." Pet. App. 46a, ¶ 23. Thus, Metcalf alleged, Ion and its attorney engaged in vexatious litigation by filing and maintaining the adversary proceeding "without probable cause and with malicious intent." Pet. App. 54a, 59a. Metcalf also claimed that this same conduct violated the Connecticut Unfair Trade Practices Act.

The trial court dismissed Metcalf's complaint on preemption grounds, and the Connecticut Supreme Court affirmed. The state Supreme Court held that

the Bankruptcy Code preempts the "field of penalties and sanctions for abuse of the bankruptcy process." Pet. App. 13a. It based this holding on (1) Congress's comprehensive system of remedies in bankruptcy proceedings, and (2) the overwhelming "federal interest in uniformity" in bankruptcy." *Id.*

On the first point, the court reasoned that the Bankruptcy Code vests federal district courts with "exclusive jurisdiction of all cases under title 11." Pet. App. 7a. The Code then establishes a "complex, detailed, and comprehensive" system of penalties and protections for conduct during bankruptcy proceedings, which "demonstrates Congress' intent to provide uniform and centralized adjudication of all of the rights and duties of debtors and creditors alike." Pet. App. 17a (quoting *MSR Expl., Ltd. v. Meridian Oil, Inc.*, 74 F.3d 910, 911 (9th Cir. 1996)).

The Bankruptcy Code "provides a variety of remedies" for "abuse of the bankruptcy process." Pet. App. 7a. These include damages remedies for bad-faith filing of an involuntary bankruptcy petition, § 303(i), or for violating the automatic stay, § 362(k). They also include authority to dismiss petitions for unreasonable delay, § 930(a)(2); to prevent abuse of process, § 105(a); and to impose sanctions for frivolous and harassing filings, Bankruptcy Rule 9011. *Id.* The court reasoned that section 105 "broadly authorizes courts to issue *any* process, order, or judgment necessary to prevent abuse of the bankruptcy process," including abusive filing of an adversary proceeding. Pet. App. 18a. And Rule 9011 likewise authorizes various sanctions, including penalties and attorneys' fees, for filing a frivolous adversary proceeding. Pet. App. 20a.

On the second point, the court reasoned that Congress enacted the Bankruptcy Code through its constitutional power to establish "uniform Laws on the subject of Bankruptcies." U.S. Const., art. I, § 8 cl. 4. And permitting state claims for abuse of the bankruptcy process "threatens the uniformity of the bankruptcy system." Pet. App. 24a.

The substantive standards under state law, "such as probable cause, bad faith, and malicious prosecution, to name a few," "may be different from, and at odds with, the standards that have developed in the bankruptcy courts." Pet. App. 25a. In addition, "permitting state law actions would allow parties to collaterally attack the bankruptcy process, threatening the finality of the proceedings as well as the ability of the parties—debtors and creditors alike—to make a fresh start once the bankruptcy proceeding concludes." Pet. App. 26a. "The potential threat of state court actions following on the heels of a bankruptcy proceeding may well interfere with the necessary actions that creditors take within the bankruptcy process." *Id.* "For example, the threat of a state law action could deter a creditor from filing an adversary proceeding in the Bankruptcy Court challenging the discharge of a debt." *Id.* at 27a.

Separately, the court held that Metcalf's claims were preempted because they pose "an obstacle to accomplishing Congress' purpose within the Bankruptcy Code." Pet. App. 31a. Allowing a multitude of potential state claims based on conduct during bankruptcy proceedings would "hinder[] Congress' objective of uniformly defining the scope and availability of remedies for abuse of the bankruptcy process." Pet. App. 33a.

REASONS FOR DENYING THE PETITION

The Court should deny certiorari. *First*, the decision below did not create a new split, and the pre-existing conflict with a single state court does not warrant this Court's review. *Second*, the question presented lacks importance. The issue arises infrequently, as the paucity of cases cited in the petition shows. And the broad remedies that the Bankruptcy Code provides for alleged misconduct during bankruptcy diminish the importance of state remedies for the same misconduct. *Third*, the Connecticut Supreme Court correctly held that the Bankruptcy Code preempts state vexatious-litigation claims arising from adversary proceedings in bankruptcy court.

I. THE CONFLICT OF AUTHORITY IS EXCEEDINGLY NARROW.

The alleged circuit split reduces to a conflict with a single decision of a single state court (decided by a single vote). This narrow disagreement does not warrant the Court's review, especially without any clear split among the federal courts of appeals.

The petition claims that the decision below conflicts with two decisions of the Third Circuit and a 10-year-old decision of the Texas Supreme Court. But neither of the Third Circuit cases the petition cites is on point, leaving only Texas as an outlier. The petition also claims that the decision below joins the Ninth Circuit and the Supreme Courts of Ohio and Pennsylvania in holding that federal law preempts state vexatious-litigation claims arising from adversary bankruptcy proceedings. But the Ohio case is distinguishable, so the majority side of the split consists of only one federal court of appeals and one state court, aside from the decision below.

1. To begin, neither of petitioner's Third Circuit cases conflicts with the decision below. The petition opens its discussion of the Third Circuit with *U.S. Express Lines, Ltd. v. Higgins*, 281 F.3d 383 (3d Cir. 2002). But *Higgins* is not a bankruptcy case. It is a maritime case holding that Civil Rule 11 does not preempt state claims for misconduct in ordinary federal civil litigation. *Id.* at 386–87, 392. Its only purported relevance is dicta that mentions the other Third Circuit case on which the petition relies, *Paradise Hotel Corp. v. Bank of Nova Scotia*, 842 F.2d 47 (3d Cir. 1988).

Paradise Hotel is not on point, either. The state claim in *Paradise Hotel* did not arise from conduct during an adversary proceeding— the question presented here—but from the filing of an involuntary chapter 7 petition against the debtor. 842 F.2d at 52. The preemption issue is different in that context because the Bankruptcy Code includes a specific provision authorizing a debtor to recover compensatory and punitive damages against anyone who files an involuntary petition "in bad faith." 11 U.S.C. § 303(i). To be sure, the correct outcome as to both adversary proceedings and involuntary petitions is that federal law preempts state vexatious-litigation claims. But that does not mean the issues are identical. Indeed, the petition carefully defines the question presented as whether the Bankruptcy Code preempts state claims "arising from adversary actions."

The reasoning of *Paradise Hotel* makes that case inapposite as well. The court never discussed or even cited federal preemption law. 842 F.2d at 52. The court did hold that section 303(i) is not the exclusive

remedy for the improper filing of an involuntary bankruptcy petition, and that a state malicious-prosecution claim could proceed. But the opinion's cursory reasoning turned on the notion that the federal damages remedy under section 303(i) was no longer available after the debtor converted the involuntary chapter 7 petition to a voluntary chapter 11 petition. *Id.*

That leaves only the 5-4 majority in *Graber v. Fuqua*, 279 S.W.3d 608 (Tex. 2009), as the lone opinion in disagreement with the decision below. The alleged conflict is thus based on a single vote in a single state court. *Graber* in fact underscores the narrowness of the conflict by distinguishing the circumstances of *Paradise Hotel*. The majority emphasized that its holding applied only to adversary proceedings, reasoning that the preemption question for an adversary proceeding is "very different" than for the filing of an involuntary petition, as in *Paradise Hotel*. *Id.* at 615. That is not to say the *Graber* majority was correct, only that the only question at stake here involves an adversary proceeding.

2. The other side of the split is also narrower than petitioner claims. The decision below is not on all fours with *PNH, Inc. v. Alfa Laval Flow, Inc.*, 958 N.E.2d 120, 121 (Ohio 2011). Here, the bankruptcy debtor (Metcalf) filed a state vexatious-litigation claim based on a creditor's filing of an adversary proceeding. In *PNH*, by contrast, neither the plaintiff nor the defendant in the state suit was the bankruptcy debtor. Both parties were creditors, and one creditor asserted "abuse of process and tortious interference" claims based on another creditor's conduct during an adversary proceeding. *See id.* at 128 (Lazinger, J., dissenting) ("neither party is the bankruptcy debtor," and

"the cause of action is brought … for allegedly improper actions taken by a nondebtor against another nondebtor").

The preemption question in that context is different. When the debtor is not a party to the state suit, resolution of that suit cannot affect the bankruptcy estate, and it cannot affect the fresh start the bankruptcy code guarantees to post-discharge debtors. *PNH* may well be correct, and the Bankruptcy Code may well preempt state claims between two creditors for conduct during adversary proceedings. The important point here, however, is that *PNH* did not address circumstances where a *debtor* brings a state claim based on a creditor's conduct during an adversary proceeding.

Because *PNH* did not address the question presented, the only cases aligned with the decision below are *MSR Exploration, Ltd. v. Meridian Oil, Inc.*, 74 F.3d 910, 911 (9th Cir. 1996), and *Stone Crushed Partnership v. Kassab, Archbold, Jackson & O'Brien*, 908 A.2d 875 (Pa. 2006).

3. The alleged conflict thus boils down to the Ninth Circuit and two state courts on one side, and a single state court on the other. There is no conflict among federal courts of appeals. Indeed, among federal appellate courts, only the Ninth Circuit has squarely addressed the question presented. Also yet to weigh in are 48 state supreme courts. This Court should not expend its resources to resolve an issue that only a few courts have addressed, and to resolve a narrow conflict created more than a decade ago by a slim majority of the members of a single state court.

II. THE QUESTION PRESENTED IS UNIMPORTANT.

The question presented is also not important enough to warrant this Court's resources. *First*, the issue arises infrequently, especially in federal courts. The petition identifies only six appellate cases decided since 1988 that it claims have addressed the question presented. And, as discussed above, only three of them actually address it, aside from the decision below. Among the federal courts of appeals, only the Ninth Circuit has addressed it. The lone case in conflict, *Graber*, is over a decade old, and this Court promptly denied certiorari there without even calling for a response to the petition. *See Graber v. Fuqua*, 558 U.S. 880 (2009). The *Graber* court itself noted that "very few courts have addressed the particular issue confronting the Court today," and that the "majority of cases … involve involuntary petitions or automatic stays, not adversary proceedings." 279 S.W.3d at 620 n.13; *see, e.g.*, *E. Equip. & Servs. Corp. v. Factory Point Nat. Bank, Bennington*, 236 F.3d 117, 121 (2d Cir. 2001) (per curiam) ("the federal Bankruptcy Code preempts any state law claims for a violation of the automatic stay").

Second, the question of state remedies lacks practical importance because of the availability of federal remedies in the Bankruptcy Code. "The authority bestowed on bankruptcy courts by federal law arms them with a broad array of remedies to regulate the conduct of parties, issue injunctive relief, and award sanctions and damages for maliciously initiating proceedings." 279 S.W.3d at 625 (Wainwright, J., dissenting); *see*

also Meridian Oil, 74 F.3d at 915 ("Congress did provide a number of remedies designed to preclude the misuse of the bankruptcy process").

Some of these remedies apply to misconduct during all adversary proceedings. For example, section 105(a) of the Bankruptcy Code authorizes any remedies "necessary or appropriate to carry out the provisions" of the Code. 11 U.S.C. § 105(a). *See, e.g.*, *In re Volpert*, 110 F.3d 494, 500 (7th Cir. 1997) (under section 105(a), "bankruptcy courts may punish an attorney who unreasonably and vexatiously multiplies the proceedings before them"); *In re Dyer*, 322 F.3d 1178, 1193 (9th Cir. 2003) (holding that section 105(a) authorizes "compensatory damages" and "attorney fees," but not "serious punitive sanctions").

Likewise, Bankruptcy Rule 9011 authorizes sanctions, such as an award of attorney's fees or "an order to pay a penalty into court," for filings lacking foundation in law or fact. *See, e.g.*, *In re Rosage*, 189 B.R. 73, 82 (Bankr. W.D. Pa. 1995) (imposing sanctions under Rule 9011 for a creditor's filing of an untimely adversary proceeding).

Bankruptcy courts also "possess inherent power to sanction abusive litigation practices." *Law v. Siegel*, 571 U.S. 415, 421 (2014) (internal quotation marks and alteration omitted). This, too, empowers bankruptcy courts to ensure that debtors and creditors alike obtain remedies for all manner of misconduct during adversary proceedings.

The availability of these remedies lessens the need for remedies under state law. Of course, some state laws may provide additional remedies unavailable under the Bankruptcy Code. But the federal interest in uniformity of bankruptcy proceedings outweighs the

need to supplement federal remedies with a 50-state patchwork of claims for vexatious litigation, tortious interference, deceptive business practices, and the like.

As things now stand, nearly all courts to address the question presented have correctly held that these federal bankruptcy remedies are sufficient. Only one state supreme court permits supplemental state remedies. Though that decision is wrong, the aberration in one state is insufficiently important to justify this Court's review.

III. THE CONNECTICUT SUPREME COURT'S DECISION IS CORRECT.

Finally, the Connecticut Supreme Court correctly held that Metcalf's state claims are preempted. Federal bankruptcy law occupies the field of debtors' remedies for abusive litigation during an adversary proceeding. This follows from the powerful interest in uniformity under federal bankruptcy law, and from the comprehensive scheme of remedies Congress has provided in the Bankruptcy Code. For these same reasons, permitting debtors to bring state vexatious-litigation claims arising from adversary bankruptcy proceedings would pose an obstacle to Congress's objective of establishing a uniform system of bankruptcy remedies.

1. The federal interest in uniformity is deeply rooted in bankruptcy law. Disuniform state laws impelled those at the Philadelphia Convention to authorize "uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const., art I, § 8, cl. 4. As Madison explained: "The power of establishing uniform laws of bankruptcy … will prevent so many frauds where the parties or their property may

lie or be removed into different States, that the expediency of it seems not likely to be drawn into question." Federalist 42, at 239 (James Madison) (Clinton Rossiter ed., 1961).

Under this constitutional authority, Congress long ago established a comprehensive and exclusive system of bankruptcy. The 1898 Bankruptcy Act preempted the field of bankruptcy law generally. *Int'l Shoe Co. v. Pinkus*, 278 U.S. 261, 266 (1929) (state laws that "relate to the subject of bankruptcies are within the field entered by Congress when it passed the Bankruptcy Act, and therefore such provisions must be held to have been superseded"). "The national purpose to establish uniformity necessarily excludes state regulation" related to bankruptcy. *Id.* at 265. Any other rule would create "intolerable inconsistencies and confusion," which is clear even "without comparison in detail of the provisions of the Bankruptcy Act with those of [state law]." *Id.* In short, states simply "may not pass or enforce laws to interfere with or complement the Bankruptcy Act or to provide additional or auxiliary regulations." *Id.*

Congress has implemented its current uniform bankruptcy system by vesting federal district courts with "original and exclusive jurisdiction of all cases under title 11." 28 U.S.C. § 1334(a). At the start of a bankruptcy case, all legal proceedings against the debtor or the estate "are automatically stayed and subjugated to the bankruptcy proceeding." *Graber*, 279 S.W. 3d at 623 (Wainwright, J., dissenting). This exclusive jurisdiction, coupled with the automatic stay, enables federal bankruptcy courts to oversee "the adjustment of rights and duties" between creditors and debtors, and the conduct of the parties during the

bankruptcy process itself, all of which is "uniquely and exclusively federal." *Meridian Oil*, 74 F.3d at 914.

Allowing state vexatious-litigation claims based on conduct during adversary proceedings would interfere with this exclusive federal system. No longer would federal bankruptcy courts determine whether a creditor's claim is justified or frivolous; state courts would do so instead, under a patchwork of standards ranging from bad faith to lack of probable cause to malicious intent to untold others. This would create perverse incentives: "Even the mere possibility of being sued in tort in state court could in some instances deter persons from exercising their rights in bankruptcy." *Meridian Oil*, 74 F.3d at 916. And the potential problems are endless. "Debtors' petitions, creditors' claims, disputes over reorganization plans, disputes over discharge, and innumerable other proceedings, would all lend themselves to claims of malicious prosecution." *Id.* at 914. This would "gravely affect the already complicated processes of the bankruptcy court." *Id.*

2. Congress has also enacted a comprehensive system of penalties and remedies for bankruptcy proceedings. This underscores that Congress not only wanted uniformity in bankruptcy generally, but intended specifically to preempt the field of remedies for improper conduct by creditors or debtors during bankruptcy proceedings. *See Ingersoll-Rand Co. v. McClendon*, 498 U.S. 133, 144 (1990) (ERISA's "comprehensive civil enforcement scheme" preempts state remedies).

To begin, Congress provided express damages remedies for specific types of misconduct by creditors. Section 303(i) authorizes both punitive and compensatory damages against any creditor who files an involuntary bankruptcy petition "in bad faith." 11 U.S.C. § 303(i).

Likewise, section 362(k) authorizes both punitive and compensatory damages for any individual "injured by any willful violation" of the automatic stay. § 362(k).

Congress also provided specific penalties against abusive debtors. The bankruptcy court "may dismiss a case filed by an individual debtor" under chapter 7, or may convert the case to another chapter, "if it finds that the granting of relief would be an abuse" of the Bankruptcy Code. § 707(a)-(b). So too for petitions filed under chapters 9 and 11. §§ 930, 1112. In each provision, Congress included detailed requirements for considering whether dismissal or conversion is proper.

Last, as mentioned above, section 105(a) and Bankruptcy Rule 9011 authorize a bevy of remedies available in all bankruptcy proceedings. Lower courts have held that these provisions authorize attorney fees, costs, and even damages. *See, e.g.*, *In re Volpert*, 110 F.3d at 500 (under section 105, "bankruptcy courts may punish an attorney who unreasonably and vexatiously multiplies the proceedings before them"); *id.* at 501 n.11 (under Bankruptcy Rule 9011, "a bankruptcy court may sanction parties who file documents in bad faith"); *Jove Eng'g, Inc. v. IRS*, 92 F.3d 1539, 1554 (11th Cir. 1996) (section 105 "encompasses *any* type of order, whether injunctive, compensative or punitive, as long as it is 'necessary or appropriate to carry out the provisions of' the Bankruptcy Code"); *Graber*, 279 S.W. 3d at 625 (Wainright, J., dissenting) ("Sections 105(a) and 362(k) and rule 9011 provide effective remedies under federal law and authority for bankruptcy courts to enjoin violations of law and to award damages to debtors harmed by bad faith and abusive conduct in bankruptcy proceedings.").

These various provisions reveal a comprehensive system of remedies that displaces state law. When Congress saw fit to authorize specific damages remedies, it did so expressly. In other circumstances, such as for the frivolous filing of an adversary proceeding, Congress thought it sufficient to provide bankruptcy courts with general remedial power under section 105 and Rule 9011. In neither instance did Congress leave it to state courts to oversee the conduct of litigants during federal bankruptcy proceedings. *See Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987) ("The policy choices reflected in the inclusion of certain remedies and the exclusion of others under the federal scheme would be completely undermined if ERISA-plan participants and beneficiaries were free to obtain remedies under state law that Congress rejected.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

Joseph M. Musco
MUSCO & IASSOGNA
555 Long Wharf Drive,
10th Floor
New Haven, CT 06511

Brian E. Tetreault
Counsel of Record
MORRISON MAHONEY LLP
One Constitution Plaza,
10th Floor
Hartford, CT 06103
(860) 616-7640
btetreault@morrisonmahoney.com

December 16, 2019

Counsel for Respondents