No. 23-675

In the Supreme Court of the United States

OFFICIAL COMMITTEE OF ASBESTOS CLAIMANTS,
Petitioner,
v.
BESTWALL LLC, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

AMICUS BRIEF OF NORTH CAROLINA, ARIZONA, CALIFORNIA, COLORADO, CONNECTICUT, DELAWARE, ILLINOIS, MAINE, MASSACHUSETTS, MICHIGAN, MINNESOTA, MISSISSIPPI, NEVADA, NEW JERSEY, NEW MEXICO, NEW YORK, NORTH DAKOTA, OREGON, PENNSYLVANIA, RHODE ISLAND, SOUTH DAKOTA, VERMONT, WASHINGTON, WISCONSIN, AND THE DISTRICT OF COLUMBIA IN SUPPORT OF PETITIONER

JOSHUA H. STEIN
Attorney General

Ryan Y. Park
Counsel of record
Solicitor General

James W. Doggett
Deputy Solicitor General

Daniel Mosteller
Deputy General Counsel

N.C. Department of Justice
Post Office Box 629
Raleigh, NC 27602
(919) 716-6400
rpark@ncdoj.gov

(Additional counsel listed at end of brief)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Other Authorities

INTEREST OF AMICI STATES

Amici are the States of North Carolina, Arizona, California, Colorado, Connecticut, Delaware, Illinois, Maine, Massachusetts, Michigan, Minnesota, Mississippi, Nevada, New Jersey, New Mexico, New York, North Dakota, Oregon, Pennsylvania, Rhode Island, South Dakota, Vermont, Washington, Wisconsin, and the District of Columbia.[1]

The amici States have a strong interest in supporting the petition for writ of certiorari. The Fourth Circuit's decision allows tortfeasor corporations not facing financial distress to abuse the bankruptcy process. It allows them to enjoin litigation against their solvent corporate affiliates for years while States are unable to stop violations of their laws and victims receive nothing. This delay in turn allows them to unjustly limit their liability for the harms they have caused the States and their people. In fact, the device used by Respondent Georgia Pacific has already been exploited by one of the nation's most profitable corporations to enjoin claims by States. The decision below therefore undermines the amici States' authority to enforce their state laws to protect their people.

In addition, amicus the State of North Carolina has a special interest in this case because Respondent Bestwall LLC is organized under North Carolina law. North Carolina thus has an interest in ensuring that its corporate laws are not used for abusive purposes,

---

[1] Under Rule 37.2, amici affirm that all parties received timely notice of the intent to file this brief.

and that it does not become the venue of choice for such abuse. *See* N.C. Gen. Stat. §§ 57D-6-02(1), 75-9.

SUMMARY OF THE ARGUMENT

This case involves a scheme known as the "Texas Two-Step." Using this scheme, highly solvent companies seek to improperly gain the benefits of bankruptcy without having to face its corresponding burdens. Specifically, the scheme is designed to allow highly solvent corporations to access the Bankruptcy Code's coercive, nonconsensual tools—including injunctions against tort claims filed in state court—while remaining free from the burdens of bankruptcy court oversight.

Below, the Fourth Circuit effectively blessed this attempted manipulation of the bankruptcy process. Its decision threatens States' sovereign power to enforce their laws against corporate wrongdoers. It also violates the statutory bar on manufacturing federal jurisdiction, as well as statutory limits on bankruptcy jurisdiction. And it endorses an inappropriate standard for bankruptcy judges to use their equitable powers to preliminarily enjoin litigation. This Court should grant the petition and reverse these erroneous rulings.

ARGUMENT

I. The Fourth Circuit's Decision Undermines the States' Critical Role in Protecting Consumers.

A. The "Texas Two-Step" allows highly solvent companies to limit liability for their torts.

This case concerns a scheme known as the "Texas Two-Step." The scheme's first step uses Texas corporate law to effectuate a "divisional merger" that assigns a highly solvent company's tort liability to a newly formed entity that is created specifically to house that liability. *See In re LTL Mgmt., LLC*, 64 F.4th 84, 95-97 (3d Cir. 2023). At the second step, the entity holding the tort liability files for bankruptcy, leaving the bulk of the company's operations unencumbered by bankruptcy. *See id.* at 97.

The Texas Two-Step allows highly solvent companies to limit liability for torts that they committed. As the Third Circuit recently explained, the scheme's "stated goal [is] to isolate the [mass tort] liabilities in a new subsidiary so that entity [can] file for Chapter 11 without subjecting [its] entire operating enterprise to bankruptcy." *Id.* at 93; *see also* Pet. App. 3a (noting the bankruptcy in this case was intended to allow the new entity to use the Bankruptcy Code's tools "without subjecting the entire . . . enterprise to chapter 11"). This maneuver seeks to "provide [a tortfeasor] with additional leverage to negotiate a global settlement"—leverage that it could not achieve if it were required to litigate

the claims in an Article III federal court or state court. *In re Aearo Techs. LLC*, 642 B.R. 891, 912 (Bankr. S.D. Ind. 2022), *appeal filed*, No. 22-2606 (7th Cir.).

However, the Texas Two-Step only works if the solvent entity obtains a preliminary injunction—pursuant to a bankruptcy court's equitable powers—that stops tort litigation against it. *See* 11 U.S.C. § 105(a) ("The [bankruptcy] court may issue any order . . . that is necessary or appropriate to carry out the provisions of this title."). In other words, the protections of bankruptcy have minimal practical value if States and victims can continue to litigate against the solvent entity. As the decision below acknowledged, failing to obtain a preliminary injunction shielding Respondent Georgia-Pacific from tort claims would have "render[ed] the bankruptcy futile." Pet. App. 8a.

Once the injunction is in place, the tortfeasor has limited incentive to resolve the claims against it. After all, the injunction protects the company from litigation that could lead to adverse judgments negatively affecting the company's global settlement position. And unlike a bankrupt company, the solvent entity in a Texas Two-Step is free from the considerable burdens of bankruptcy court oversight. *See, e.g.*, 11 U.S.C. § 363(b)(1) (requiring oversight of bankrupt companies' use, sale, or lease of property not in the ordinary course of business); *id.* § 503(c) (requiring oversight of bankrupt companies' compensation of certain executives). Thus, for as long as the bankruptcy remains pending, the tortfeasor is effectively insulated from liability without pressure to

exit bankruptcy and regain control of its operations. For example, as a bankruptcy court in North Carolina confirmed just last month, "no progress . . . has been made in [Respondent Bestwall's case], which was filed six years ago." *In re Aldrich Pump LLC*, No. 20-30608, 2023 WL 9016506, at *11 (Bankr. W.D.N.C. Dec. 28, 2023).

Courts and commentators have sharply questioned the legality of highly solvent businesses leveraging Texas law like this in bankruptcy proceedings. Most notably, the Third Circuit recently dismissed Johnson & Johnson's Texas Two-Step bankruptcy for lack of good faith. *LTL*, 64 F.4th at 106-10. The court held that the company did not file for bankruptcy in good faith because it was not in financial distress. *Id.* at 110; *see also* Michael A. Francus, *Texas Two-Stepping Out of Bankruptcy*, 120 Mich. L. Rev. Online 38, 43 (2022) (arguing that such use of the Texas Two-Step "fits the textbook definition" of a fraudulent transfer).

B. The Fourth Circuit's holding will allow use of the Texas Two-Step to proliferate.

Below, the Fourth Circuit did not expressly rule on whether the Texas Two-Step is lawful as a matter of corporate law. Pet. App. 3a n.1. But the court's jurisdictional holdings, along with the exceedingly lenient standard that the court held governs requests to shield solvent affiliates under section 105 of the Code, will have the practical effect of ensuring that Texas Two-Step bankruptcies continue to proliferate. These holdings will also ensure that the Fourth Circuit remains the venue of choice for the Texas Two-Step. Indeed, "every debtor using the Texas Two Step

[has] filed for bankruptcy in [the Western] [D]istrict [of North Carolina]." *In re LTL Mgmt. LLC*, No. 21-30589, 2021 WL 5343945, at *6 (Bankr. W.D.N.C. Nov. 16, 2021).[2]

This has been possible because, no matter where a corporation is based, a Texas Two-Step can create a new entity formally domiciled in North Carolina that can seek bankruptcy in the Fourth Circuit. *See id.* Because the formal domicile of a corporation is easy to change, the bankruptcy venue statute allows corporations to file for bankruptcy anywhere. *See* 28 U.S.C. § 1408. For this reason, a bankruptcy practice allowed in one circuit is effectively available nationwide. *See generally* Brief of the Commercial Law League of America & the National Bankruptcy Venue Reform Committee as Amici Curiae in Support of Neither Party, *Harrington v. Purdue Pharma L.P.*, No. 23-124 (U.S. Sept. 27, 2023).

Given these realities, the decision below is all the more consequential because the Fourth Circuit has established a high bar for dismissing bankruptcy cases when the debtor's petition lacks good faith. In some circuits, the good-faith requirement limits the potential abuse of the Texas Two-Step by companies not in financial distress. *See LTL*, 64 F.4th at 106-10. But as the decision below recognized, the Fourth Circuit less rigorously scrutinizes whether a bankruptcy petition was filed in good faith. Pet. App.

---

[2] Although Texas Two-Step bankruptcies filed to date have involved asbestos liability, the decision below clears the path for future uses of the tactic outside of the asbestos context.

20a (citing *Carolin Corp. v. Miller*, 886 F.2d 693, 694 (4th Cir. 1989)). And already, a bankruptcy court in the Fourth Circuit has read the decision below to render it very difficult to dismiss a Texas Two-Step under the Fourth Circuit's good-faith test. *See Aldrich Pump*, 2023 WL 9016506, at *27-29 (citing *In re Bestwall LLC*, 71 F.4th 168, 182 (4th Cir. 2023)).

This Court should not allow the Texas Two-Step to proliferate. Nor should it wait for a petition that more squarely addresses the equitable good-faith dismissal test when this case presents straightforward statutory grounds for stopping the Texas Two-Step's abuse of the bankruptcy process. This Court "ha[s] been careful to explain that the [Bankruptcy Code] limits the opportunity for a completely unencumbered new beginning to the 'honest but unfortunate debtor.'" *Grogan v. Garner*, 498 U.S. 279, 286-87 (1991) (quoting *Loc. Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934)). Because highly solvent companies are not within that class, this Court should grant the petition to prevent abuse of the bankruptcy process through the Texas Two-Step scheme.

C. Using the Texas Two-Step to initiate bankruptcy proceedings causes significant harm to States' sovereign power to enforce their laws.

The Fourth Circuit's jurisdictional and preliminary injunction rulings in this case wrongly threaten amici States' sovereign power to enforce their civil consumer-protection and other laws.

In recent years, corporate wrongdoers have increasingly filed for bankruptcy and quickly sought preliminary injunctions barring State litigation against both the debtor and non-bankrupt related entities. *See, e.g.*, Motion for Preliminary Injunction, *In re Purdue Pharma L.P.*, Adv. Pro. No. 19-08289 (Bankr. S.D.N.Y. Oct. 11, 2019), ECF No. 2 (seeking preliminary injunction of States' civil litigation against Purdue and the non-bankrupt Sackler family that owned bankrupt Purdue Pharma). For example, Johnson & Johnson successfully employed the Texas Two-Step to preliminarily enjoin Mississippi and New Mexico from pursuing claims against it. *In re LTL Mgmt., LLC*, 645 B.R. 59, 76 n.11, 87 (Bankr. D.N.J. 2022).[3]

Such injunctions would not be possible if not for the Fourth Circuit's erroneous holdings. The decision below could therefore allow a non-Article III federal bankruptcy court to overrule a State's sovereign decision to seek redress against a non-bankrupt company in its own state court. But as this Court has held, States have inherent sovereign authority to enforce their own regulatory laws in their state courts. *See, e.g.*, *Huffman v. Pursue, Ltd.*, 420 U.S. 592, 604 (1975) (applying *Younger* abstention to a State's civil enforcement action).

---

[3] Mississippi and New Mexico were subject to this injunction even though the Bankruptcy Code exempts States' "police and regulatory power" from the automatic stay that the Code grants to bankrupt entities. 11 U.S.C. § 362(b)(4). Amici States maintain that rulings like *LTL* enjoining States from civil litigation against non-bankrupt entities are wrongly decided.

The Fourth Circuit's decision also harms States' sovereign interest in the timely resolution of claims against corporate wrongdoers. Allowing preliminary injunctions against non-debtors can thwart States' ability to quickly stop conduct that violates their laws. *See, e.g.*, Plaintiffs' Amended Motion for Preliminary Injunction, *In re MV Realty PBC, LLC*, Adv. Pro. No. 23-01211 (Bankr. S.D. Fla. Nov. 15, 2023), ECF No. 42 (seeking order from bankruptcy court to prevent seven States from obtaining preliminary injunctive relief in their state courts against debtors and non-debtor affiliates engaged in an alleged real-estate scam). Moreover, States regularly and successfully engage in direct negotiations with companies responsible for mass torts to efficiently resolve claims brought under state law. This relatively streamlined process contrasts sharply with the delays and roadblocks that States face when forced to resolve their claims through the bankruptcy process.

A particularly striking example of this phenomenon arose in the States' efforts to address the unlawful corporate conduct that gave rise to the opioid crisis. In 2021 and 2022, States and local governments entered global settlements worth approximately $50 billion with nine companies that engaged in misconduct related to the manufacturing, distribution, and dispensing of opioids.[4] Meanwhile, more than four years of bankruptcy proceedings and

---

[4] *See* Press Release, N.C. Dep't of Just., Bipartisan Coalition of Attorneys General Secures More Than $10 Billion in Opioid Funds from CVS and Walgreens: Brings total recoveries from drug industry to more than $50 billion (Dec. 12, 2022).

related appeals still have not resolved the States' claims against opioid manufacturer Purdue Pharma and its owners, the Sackler family. All that time, States and local governments have been unable to pursue litigation against the non-bankrupt Sackler family. *See In re Purdue Pharms. L.P.*, 619 B.R. 38 (S.D.N.Y. 2020) (affirming the bankruptcy court's issuance and extension of a preliminary injunction of State and local government litigation).

If corporate tortfeasors are allowed to use a Texas Two-Step bankruptcy to protect themselves from States' civil enforcement litigation, they will have less incentive to negotiate with States for timely, mutually acceptable resolutions. This Court should therefore grant review to ensure that States retain their sovereign authority to effectively enforce their laws against corporate wrongdoers.

II. The Fourth Circuit Erred by Enjoining Claims Against Reorganized Georgia-Pacific.

This Court should also grant the petition because the Fourth Circuit erred in three different ways by affirming the bankruptcy court's decision to enter an injunction shielding Respondent Georgia-Pacific from litigation. First, the injunction was based on wrongfully manufactured bankruptcy jurisdiction. Second, even under ordinary jurisdictional rules, the bankruptcy court lacked jurisdiction to enjoin claims against Georgia-Pacific. And third, the injunction exceeds the statutory powers of bankruptcy courts.

A. The Fourth Circuit erred by affirming an injunction premised on an attempt to manufacture jurisdiction.

First, review is needed because the jurisdiction for the bankruptcy court's injunction was improperly manufactured.

Under 28 U.S.C. § 1359, federal courts lack jurisdiction over civil lawsuits where "any party, by assignment or otherwise, has been improperly or collusively made or joined to invoke the jurisdiction of such court." Congress enacted the precursor to this legislation in 1875 to stop corporations from using stock transactions and asset assignments to manufacture jurisdiction in federal courts. *See* 7C Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 1830 (3d ed., rev. 2023).

Here, for a Texas Two-Step to work, Georgia-Pacific needed to win an injunction blocking litigation against it without becoming a debtor itself. *See supra* at 3-5. Thus, Georgia-Pacific devised a way to try to bring a reorganized Georgia-Pacific within the jurisdiction of a bankruptcy court that could enjoin claims against it. Specifically, it relied on 28 U.S.C. § 1334, which authorizes bankruptcy courts to exercise jurisdiction over proceedings that are "related to" a bankruptcy case. This form of jurisdiction reaches proceedings that "have an effect on [a] bankruptcy estate." *Celotex Corp. v. Edwards*, 514 U.S. 300, 307 n.5 (1995).

To try to manufacture such jurisdiction, Georgia-Pacific assigned its asbestos liabilities to a newly

formed successor, Bestwall, which then declared bankruptcy. Pet. App. 30a-31a (King, J., dissenting). Georgia-Pacific also brokered contracts between Bestwall and the reorganized Georgia-Pacific "to create the appearance of their corporate relations being inextricably intertwined," such that litigation against the new Georgia-Pacific could be said to affect Bestwall's bankruptcy. Pet. App. 36a-37a (King, J., dissenting). Without these steps, "there would have been no 'effects'" on Bestwall's bankruptcy that could have justified any injunction to protect the new Georgia-Pacific. Pet. App. 37a (King, J., dissenting).

Thus, the jurisdictional basis for the injunction protecting the new Georgia-Pacific from asbestos claims arose only because the old Georgia-Pacific carefully structured a transaction for the express purpose of creating jurisdiction. There is no real dispute on this point: Bestwall candidly admits that the goal of its restructuring was to create jurisdiction—that is, to provide a basis for jurisdiction that could allow the reorganized Georgia-Pacific to gain the benefits of bankruptcy without its burdens. Pet. App. 31a-32a, 36a-37a (King, J., dissenting); *see also Kramer v. Caribbean Mills, Inc.*, 394 U.S. 823, 828 (1969) (holding that similar admission showed that no jurisdiction existed).

The Fourth Circuit nonetheless held that this transparent maneuvering did not offend 28 U.S.C. § 1359. It reached this result in part by failing to require Bestwall, as "the party asserting jurisdiction," to satisfy its "burden" to show that its divisional merger was not designed to create jurisdiction.

Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377 (1994); *see also Lehigh Mining & Mfg. Co. v. Kelly*, 160 U.S. 327, 336-37 (1895) (applying burden in collusive-jurisdiction case).

That failure allowed the court to conclude that it was "evident" that Bestwall had not manufactured jurisdiction. Pet. App. 18a. It reasoned that, if Georgia-Pacific "had filed for bankruptcy" itself, then a bankruptcy court would have had jurisdiction to enjoin claims against it. Pet. App. 18a. But Georgia-Pacific *did not* file for bankruptcy itself. It instead created Bestwall and "improperly or collusively made" Bestwall a debtor for the sole purpose of creating jurisdiction that otherwise would not exist. 28 U.S.C. § 1359.

This arrangement patently contravenes 28 U.S.C. § 1359. Indeed, courts have repeatedly applied this statute in bankruptcy cases like this one, to ensure that transactions like Bestwall's that have "no valid business purpose" are not used to create jurisdiction that reaches "dispute[s] between non-parties to a bankruptcy proceeding."[5]

The Fourth Circuit's erroneous decision to accede to Respondents' improper manufacture of jurisdiction warrants review.

---

[5] *See, e.g.*, *In re Maislin Indus.*, 66 B.R. 614, 615 (E.D. Mich. 1986); *see also Home Ins. Co. v. Cooper & Cooper, Ltd.*, 889 F.2d 746, 750 (7th Cir. 1989); *Balzotti v. RAD Invs.*, 273 B.R. 327, 331 (D.N.H. 2002); *In re Gyncor, Inc.*, 251 B.R. 344, 352-53 (Bankr. N.D. Ill. 2000).

B. The Fourth Circuit erred by affirming an injunction issued without jurisdiction.

Second, review is also warranted because Georgia-Pacific's attempt to confer jurisdiction on the bankruptcy court was unsuccessful: Asbestos claims against the reorganized Georgia-Pacific are not "related to" Bestwall's bankruptcy. *See* 28 U.S.C. § 1334.

Lawsuits involving "third parties" like the new Georgia-Pacific can fall within a bankruptcy court's related-to jurisdiction where they "have an effect on [a] bankruptcy estate." *Celotex*, 514 U.S. at 307 n.5. Such lawsuits can do so, for example, if they would "have a direct and substantial adverse effect" on a debtor's estate, as occurs when ongoing litigation would diminish the estate by allowing a third party to reach a debtor's collateral. *Id.* at 310.

Here, however, while Bestwall must indemnify the reorganized Georgia-Pacific if it has to satisfy any asbestos judgments, *see* Pet. App. 5a, judgments against Georgia-Pacific will not drain any funds from Bestwall's estate. That is because the indemnification obligations between the new Georgia-Pacific and Bestwall are "wholly circular." Pet. App. 39a (King, J., dissenting). Specifically, if the reorganized Georgia-Pacific incurs costs that are subject to indemnification from Bestwall, Bestwall may request funds from Georgia-Pacific itself to satisfy those indemnification obligations. Pet. App. 39a (King, J., dissenting). Under this unusual circular arrangement, Bestwall's indemnification obligations are satisfied by Georgia-Pacific itself. Those obligations therefore cannot

diminish Bestwall's estate, and cannot serve as a proper basis for related-to jurisdiction. *See, e.g.*, *Aearo*, 642 B.R. at 908-12 (holding that similar circular arrangement could not serve as basis for related-to jurisdiction).

The Fourth Circuit disagreed, however. It reasoned that if the new Georgia-Pacific were "found liable" on claims, this could in turn "reduce . . . claims" against Bestwall, with the result that Bestwall might become *more* solvent. Pet. App. 14a. This reasoning again fails to appreciate the circular nature of the indemnification obligations at issue here. If Bestwall faces fewer claims, its solvency will remain unchanged, because fewer funds from Georgia-Pacific would flow into its estate to satisfy those claims. Pet App. 5a-6a.

At bottom, the Fourth Circuit's capacious understanding of related-to jurisdiction reflects the improper view that, "as many a curbstone philosopher has observed, everything is related to everything else." *Cal. Div. of Lab. Standards Enf't v. Dillingham Constr., N.A., Inc.*, 519 U.S. 316, 335 (1997) (Scalia, J., concurring). But as this Court has held, related-to "jurisdiction cannot be limitless," because Congress has only "vested 'limited authority' in bankruptcy courts." *Celotex*, 514 U.S. at 308 (quoting *Bd. of Governors, FRS v. MCorp Fin., Inc.*, 502 U.S. 32, 40 (1991)).

Review of the decision below is therefore needed to correct the Fourth Circuit's overbroad reading of the scope of related-to jurisdiction.

C. The Fourth Circuit erred by affirming an injunction without statutory basis.

Third, review is also needed because the injunction issued below lacked a proper basis in the statutory powers of bankruptcy courts. To justify enjoining claims against the new Georgia-Pacific, the bankruptcy court relied on section 105 of the Code. Pet. App. 114a.

Section 105 empowers bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Code. 11 U.S.C. § 105(a). Given this text, when courts act under section 105, they necessarily must be acting to implement some other provision of the Code, not simply "a general bankruptcy concept or objective." 2 *Collier on Bankruptcy* ¶ 105.01[1] (Richard Levin & Henry J. Sommer eds., 16th ed., rev. 2023). Recognizing this point, this Court has held that section 105 "confers authority to 'carry out' the provisions of the Code." *Law v. Siegel*, 571 U.S. 415, 421 (2014).

Below, however, the Fourth Circuit did not uphold the bankruptcy court's injunction under section 105 because it carried out some other specific provision of the Code. Rather, the court affirmed the injunction because it related to a general bankruptcy objective: Debtors may receive injunctive relief "under § 105(a)," the court held, if they can show a "realistic likelihood of successfully reorganizing." Pet. App. 25a. The court held that if debtors make that showing, they need not "show entitlement" to relief under any other Code provision. Pet. App. 25a. For that reason, the Court

declined to consider if injunctive relief was appropriate under section 105 to implement another Code provision. *See* Pet. App. 8a n.6, 25a-26a (referencing 11 U.S.C. § 362 & 524(g)).

In the Fourth Circuit's view, therefore, bankruptcy courts possess an unbounded, roving commission to grant equitable relief, so long as debtors can show some "likelihood of successfully reorganizing." Pet. App. 25a. This approach cannot be reconciled with the Code itself, which only allows equitable power to be used to "carry out [its] provisions." 11 U.S.C. § 105(a). Nor can it be reconciled with this Court's recognition that bankruptcy courts' equitable powers "must and can only be exercised within the confines of the Bankruptcy Code." *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 206 (1988).

Review of the decision below is needed to ensure that bankruptcy courts act within their circumscribed statutory authority. But at minimum, as petitioners have suggested, this Court should hold their petitions pending resolution of *Purdue Pharma*. If this Court holds that use of section 105 must always be linked to another section of Code, *see* Brief for Petitioner at 22, *Purdue Pharma*, No. 23-124 (U.S. Sept. 20, 2023); Brief of Respondent Ad Hoc Committee of Governmental & Other Contingent Litigation Claimants at 29, *Purdue Pharma*, No. 23-124 (U.S. Oct. 20, 2023), then the injunction issued below would necessarily be infirm. Vacatur and remand for further proceedings would then be needed in this case, so that the Fourth Circuit could reconsider whether injunctive relief has an independent statutory basis.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JOSHUA H. STEIN
Attorney General

Ryan Y. Park
Solicitor General
Counsel of Record

James W. Doggett
Deputy Solicitor General

Daniel Mosteller
Deputy General Counsel

NORTH CAROLINA
DEPARTMENT OF JUSTICE
Post Office Box 629
Raleigh, NC 27602
(919) 716-6400
rpark@ncdoj.gov

January 22, 2024

Additional Amici States

KRIS MAYES
Attorney General of
Arizona

ROB BONTA
Attorney General of
California

PHILIP J. WEISER
Attorney General of
Colorado

WILLIAM TONG
Attorney General of
Connecticut

KATHLEEN JENNINGS
Attorney General of
Delaware

KWAME RAOUL
Attorney General of
Illinois

AARON M. FREY
Attorney General of
Maine

ANDREA JOY
CAMPBELL
Attorney General of
Massachusetts

DANA NESSEL
Attorney General of
Michigan

KEITH ELLISON
Attorney General of
Minnesota

LYNN FITCH
Attorney General of
Mississippi

AARON D. FORD
Attorney General of
Nevada

MATTHEW J. PLATKIN
Attorney General of New
Jersey

RAÚL TORREZ
Attorney General of New
Mexico

LETITIA JAMES
Attorney General of New
York

DREW H. WRIGLEY
Attorney General of North
Dakota

ELLEN F. ROSENBLUM
Attorney General of
Oregon

CHARITY R. CLARK
Attorney General of
Vermont

MICHELLE A. HENRY
Attorney General of
Pennsylvania

ROBERT W. FERGUSON
Attorney General of
Washington

PETER F. NERONHA
Attorney General of Rhode
Island

JOSHUA L. KAUL
Attorney General of
Wisconsin

MARTY J. JACKLEY
Attorney General of South
Dakota

BRIAN L. SCHWALB
Attorney General of the
District of Columbia