

23-824 UNITED STATES V. MILLER

DECISION BELOW: 71 F.4th 1247

LOWER COURT CASE NUMBER: 21-4135

QUESTION PRESENTED:

The Bankruptcy Code permits a bankruptcy trustee to avoid any prepetition transfer of the debtor's property that would be voidable "under applicable law" outside bankruptcy by an actual unsecured creditor of the estate. 11 U.S.C. 544(b)(1). The applicable law may be state law. Elsewhere, the Code abrogates the sovereign immunity of all governmental units "to the extent set forth in this section with respect to" various sections of the Code, including Section 544. 11 U.S.C. 106(a)(1). The court of appeals below joined a circuit split in holding that Section 106(a)(1) permits a bankruptcy trustee to avoid a debtor's tax payment to the United States under Section 544(b), even though no actual creditor could have obtained relief outside of bankruptcy in light of sovereign immunity, the Supremacy Clause, and the Appropriations Clause. The question presented is as follows:

Whether a bankruptcy trustee may avoid a debtor's tax payment to the United States under Section 544(b) when no actual creditor could have obtained relief under the applicable state fraudulent-transfer law outside of bankruptcy.

CERT. GRANTED 6/24/2024