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## Non-Uniformity is the New Uniformity: Inconsistent Quarterly Fees and Why the Bankruptcy Administrator System Must Go

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**NON-UNIFORMITY IS THE NEW UNIFORMITY:  
INCONSISTENT QUARTERLY FEES AND WHY THE  
BANKRUPTCY ADMINISTRATOR SYSTEM MUST GO**

ABSTRACT

*The Bankruptcy Clause's call for uniformity is one of the more mysterious and unstudied constitutional constraints on bankruptcy, yet it is an ever-present policy consideration. It is a flexible guidepost that functions as a minor constraint on bankruptcy law. However, courts have recently allowed this guidepost to bend too much. When the courts upheld a split bankruptcy administration system as constitutionally uniform, it set the stage for needless, avoidable litigation. The most recent examples of such needless litigation are the Supreme Court cases of Siegel v. Fitzgerald and Office of the United States Trustee v. John Q. Hammons Fall 2006, LLC.*

*This Comment analyzes the Bankruptcy Uniformity Clause's history, the need for its enactment, and its evolution. It also analyzes the circuit split leading to Siegel and John Q. Hammons and the motivations behind the Siegel decision. Next, this Comment examines remedies in post-Siegel cases, and where the future of Bankruptcy Uniformity Clause jurisprudence may be headed.*

*Finally, this Comment argues that the existence of a dual-scheme United States Trustee and Bankruptcy Administrator system is unconstitutional. This Comment proposes that Alabama and North Carolina join the other forty-eight states in the U.S. Trustee system to avoid pointless litigation like Siegel and John Q. Hammons.*

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## INTRODUCTION

In bankruptcy, problems arise when some parties are unfairly burdened compared to others.<sup>1</sup> Bankruptcy proceedings are meant to treat similarly situated creditors in similar ways, and bankruptcy is intended to ensure that the “honest but unfortunate debtor” can obtain relief from their obligations.<sup>2</sup> Given these ideas, one would find it curious that bankruptcy cases in forty-eight states are administered by one system, the U.S. Trustee (the “UST”) system, and cases in the other two states are administered by another, the Bankruptcy Administrator (the “BA”) system.<sup>3</sup> Originally, bankruptcy proceedings were overseen by bankruptcy referees, essentially an earlier version of modern-day bankruptcy judges, but with much more administrative case duties.<sup>4</sup> However, in 1978, Congress launched a pilot program of the UST system to be “the watchdog over the bankruptcy process.”<sup>5</sup> The BA system was created by Congress in 1986 to oversee the administration of bankruptcy proceedings and monitor the parties in bankruptcy in Alabama and North Carolina, because those states resisted the UST system.<sup>6</sup>

The conflict between these dueling systems escalated when Congress passed the Bankruptcy Judgeship Act of 2017 (the “2017 Act”).<sup>7</sup> For states whose cases are administered by the UST system, this Act *mandated* a temporary increase in debtor’s quarterly fees; the 2017 Act merely *permitted* this same increase in the two states whose cases are administered by the BA system.<sup>8</sup> Congress scrambled to fix this quarterly-fee discrepancy through the 2020 Bankruptcy

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<sup>1</sup> *In re Glenn*, 345 B.R. 831, 836 (Bankr. N.D. Ohio 2006) (“It is a basic facet of bankruptcy law that similarly situated creditors are entitled to be treated equally.”).

<sup>2</sup> 7 COLLIER ON BANKRUPTCY ¶ 1100.01 (16th ed. 2023) (“The primary policies and principles underlying the Bankruptcy Code[] include equality of distribution among creditors of equal priority in order to prevent a race to the courthouse to dismember the debtor, ensuring that any plan of reorganization is fair and equitable as between classes of creditors . . . .”); *see, e.g.*, *Glenn*, 345 B.R. at 836.

<sup>3</sup> For a detail-oriented overview of the UST and BA systems, *see* Rafael I. Pardo & Kathryn A. Watts, *The Structural Exceptionalism of Bankruptcy Administration*, 60 UCLA L. REV. 384, 394–99 (2012).

<sup>4</sup> *See* George W. Kuney, *Hijacking Chapter 11*, 21 EMORY BANKR. DEV. J. 19, 33–37 (2004) (describing the role and evolution of the bankruptcy referees and bankruptcy administration).

<sup>5</sup> *About the United States Trustee Program*, U.S. TR. PROGRAM (Dec. 4, 2023), <https://www.justice.gov/ust/about-program>; *see* Karen M. Gebbia, *The Keepers of the Code: Evolution of the Bankruptcy Community*, 91 AM. BANKR. L.J. 183, 240 (2017).

<sup>6</sup> *See Trustees and Administrators*, U.S. COURTS, <https://www.uscourts.gov/services-forms/bankruptcy/trustees-and-administrators> (last visited May 15, 2024).

<sup>7</sup> Bankruptcy Judgeship Act of 2017, Pub. L. No. 115–72, § 1004, 131 Stat. 1224 (amended 2021); *see* *Pidcock v. United States (In re ASPC Corp.)*, 631 B.R. 18, 26 (Bankr. S.D. Ohio 2021).

<sup>8</sup> *See* 28 U.S.C. § 1930(b) (“The Judicial Conference of the United States *may* prescribe additional fees in cases under title 11 of the same kind as the Judicial Conference prescribes under section 1914(b) of this title [28 USCS § 1914(b)].”) (emphasis added).

Administration Improvement Act. Unfortunately, the 2017 Act had already resulted in certain debtors' quarterly fees increasing by up to 833%.<sup>9</sup> As expected, many debtors did not appreciate the extra fees and brought suit.<sup>10</sup>

This Comment analyzes the effects of this litigation on the dual UST and BA systems. The United States Supreme Court addressed the constitutional conflict inherent in these systems but balked on the question of remedies for the wronged debtors.<sup>11</sup> Part I of this Comment discusses the background of the Bankruptcy Uniformity Clause (the "Uniformity Clause" or the "Clause") and its role in bankruptcy jurisprudence. Part II explains the difference between the UST and BA systems and how problems with the quarterly fees arose, and delves into the cases that led to *Siegel v. Fitzgerald*. Finally, Part III analyzes the proposed remedies by different circuits post-*Siegel* and where the law may be heading.<sup>12</sup> Ultimately, this Comment advocates for abolishing the arbitrary, two-tiered split in the bankruptcy system.<sup>13</sup>

As courts have alluded, the split between the UST and BA districts is not only arbitrary and political but also facially unconstitutional and should be abolished for a more functional and uniform system.<sup>14</sup> Congress could easily make this change by mandating the UST system in all fifty states. Circuit courts and the Supreme Court have recently hinted that the dual-system approach may violate the Bankruptcy Uniformity Clause but have not yet explicitly held so.<sup>15</sup>

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<sup>9</sup> See *Siegel v. Fitzgerald*, 596 U.S. 464, 478 (2022) ("[A] geographical disparity meant that petitioner paid over \$500,000 more in fees compared to an identical debtor in North Carolina or Alabama."); Bankruptcy Administrative Improvement Act, Pub. L. No. 116-325, 134 Stat. 5086 (effective Jan. 12, 2021).

<sup>10</sup> See, e.g., *U.S. Tr. Region 21 v. Bast Amron LLP (In re Mosaic Mgmt. Grp., Inc.)*, 22 F.4th 1291 (11th Cir. 2022), *vacated*, 142 S. Ct. 2862; *John Q. Hammons Fall 2006, LLC v. Off. U.S. Tr. (In re John Q. Hammons Fall 2006, LLC)*, 15 F.4th 1011 (10th Cir. 2021); *Clinton Nurseries of Md., Inc. v. Harrington (In re Clinton Nurseries, Inc.)*, 998 F.3d 56 (2d Cir. 2021); *Siegel v. Fitzgerald (In re Circuit City Stores, Inc.)*, 996 F.3d 156 (4th Cir. 2021); *Hobbs v. Buffets LLC (In re Buffets, LLC)*, 979 F.3d 366 (5th Cir. 2020).

<sup>11</sup> *Siegel*, 596 U.S. at 480-81.

<sup>12</sup> *John Q. Hammons*, 15 F.4th 1011 (providing refund as a remedy); *Clinton Nurseries, Inc. v. Harrington (In re Clinton Nurseries, Inc.)*, 53 F.4th 15 (2d Cir. 2022) (providing refund as a remedy); *Acadiana Mgmt. Grp., LLC v. United States*, No. 2021-1941, 2022 U.S. App. LEXIS 25950 (Fed. Cir. Sept. 16, 2022) (remanding case).

<sup>13</sup> See Dan J. Schulman, *The Constitution, Interest Groups, and the Requirements of Uniformity: The United States Trustee and the Bankruptcy Administrator Programs*, 74 NEB. L. REV. 91, 119-120 (1995).

<sup>14</sup> See, e.g., *Buffets*, 979 F.3d at 384-85 (Clement, J., concurring in part and dissenting in part) ("Two laws are not a uniform law, so I would hold that the permanent division of the country into UST districts and BA districts violates the Bankruptcy Clause . . .").

<sup>15</sup> See *Circuit City*, 996 F.3d at 171 ("In 1994, the United States Court of Appeals for the Ninth Circuit, facing arguments much like those presented to us, ruled that the lack of quarterly fees in Bankruptcy Administrator districts violated the United States Constitution's Bankruptcy Clause . . ."); *St. Angelo v.*

If Congress fails to act, the Supreme Court should use the earliest viable case challenging the system—ideally *Office of the United States Trustee v. John Q. Hammons Fall 2006, LLC*—to correct this wrong and prevent future discrepancies that cause avoidable, unnecessary litigation.

## I. BACKGROUND: THE BANKRUPTCY UNIFORMITY CLAUSE

To understand the issue of non-uniform quarterly fees, it is crucial to set the background for how the dispute was even made possible. Part I.A discusses the history and evolution of the call for uniformity in the Bankruptcy Clause. Part I.B briefly details more recent attempts at understanding the Uniformity Clause.

### A. *The History and Shaping of the Bankruptcy Uniformity Clause*

The Uniformity Clause authorizes Congress to establish uniform bankruptcy laws, aimed at ensuring a consistent, predictable, and constitutional bankruptcy process across the country.<sup>16</sup> Moreover, the Uniformity Clause has played a significant role in developing the U.S. bankruptcy system. The first federal bankruptcy law was enacted in 1800,<sup>17</sup> just over a decade after the ratification of the Constitution. However, the United States did not have a durable set of bankruptcy laws until nearly 1900.<sup>18</sup> Since then, subsequent laws have refined and expanded the bankruptcy process.<sup>19</sup> Through it all, the Uniformity Clause has existed as a cornerstone of the system, helping to ensure that bankruptcy proceedings are conducted fairly and consistently.<sup>20</sup> The shaping of early bankruptcy law was not without strife, but many of those issues fall outside the scope of this Comment.<sup>21</sup> As a result of the unsteady process of drafting and implementing bankruptcy law, there have been several challenges to the Bankruptcy Uniformity Clause, as a narrow reading of it would limit Congress's

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Victoria Farms, Inc., 38 F.3d 1525, 1529–31 (9th Cir. 1994). Both courts briefly opined on the issue, but declined to make a ruling on it.

<sup>16</sup> U.S. CONST. art. I, § 8, cl. 4.

<sup>17</sup> See, e.g., *Hanover Nat'l Bank v. Moyses*, 186 U.S. 181, 184 (1902) (“By the fourth clause of section eight of article I of the Constitution the power is vested in Congress ‘to establish . . . uniform laws on the subject of bankruptcies throughout the United States.’ This power was first exercised in 1800.”).

<sup>18</sup> See *Gebbia*, *supra* note 5, at 204–11.

<sup>19</sup> See 4 COLLIER ON BANKRUPTCY ¶ 522.LH (16th ed. 2023).

<sup>20</sup> See *In re Reese*, 91 F.3d 37, 39 (7th Cir. 1996) (“[T]he [uniformity] clause forbids only two things. The first is arbitrary regional differences in the provisions of the Bankruptcy Code. The second is private bankruptcy bills—that is, bankruptcy laws limited to a single debtor—or the equivalent.”); *MF Glob. Holdings Ltd. v. Harrington (In re MF Glob. Holdings Ltd.)*, 615 B.R. 415, 446 (Bankr. S.D.N.Y. 2020).

<sup>21</sup> For a comprehensive discussion on the lead up to the 1994 bankruptcy laws, see Charles J. Tabb, *The History of the Bankruptcy Laws in the United States*, 3 AM. BANKR. INST. L. REV. 5 (1995).

ability to enact bankruptcy laws.<sup>22</sup> However, even in 1935, courts were suggesting that the Uniformity Clause should be interpreted to consider more “modern” economic conditions.<sup>23</sup> Not much has changed.

The Uniformity Clause states: “The Congress shall have the power . . . To establish . . . uniform Laws on the subject of Bankruptcies throughout the United States.”<sup>24</sup> The Uniformity Clause could have been read narrowly, but courts have not interpreted the Clause as a “straitjacket,” and instead have treated it with more flexibility than one may expect.<sup>25</sup> Under the Court’s modern interpretation of the Clause, the uniformity requirement does not “forbid[] Congress [from] distinguish[ing] among classes of debtors.”<sup>26</sup> In addition, lower courts have defined the scope of uniformity as “geographical and not personal.”<sup>27</sup> It also does not prohibit Congress from incorporating non-uniform state laws into the Bankruptcy Code (the “Code”).<sup>28</sup> Where federal bankruptcy law has not spoken, courts have determined that gap-filling state laws do not violate uniformity.<sup>29</sup>

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<sup>22</sup> See *Blanchette v. Conn. Gen. Ins. Corps. (Reg’l Rail Reorganization Act Cases)*, 419 U.S. 102, 159 (1974).

<sup>23</sup> See, e.g., *Cont’l Ill. Nat’l Bank & Tr. Co. v. Chi., Rock Island & Pac. Ry. Co.*, 294 U.S. 648, 671 (1935).

<sup>24</sup> U.S. CONST. art. I, § 8, cl. 4.

<sup>25</sup> *Granfinanciera v. Nordberg*, 492 U.S. 33, 89 (1989).

One of that period’s leading constitutional historians expressed the same view, saying that the Framers of the Bankruptcy Clause “clearly understood that they were not building a straight-jacket to restrain the growth and shackle the spirits of their descendants for all time to come,” but rather, were attempting to devise a scheme “which, while firm, was nevertheless to be flexible enough to serve the varying social needs of changing generations.” . . . Today, the Court ignores these lessons and places a straitjacket on Congress’ power under the Bankruptcy Clause: a straitjacket designed in an era, as any reader of Dickens is aware, that was not known for its enlightened thinking on debtor-creditor relations.

*Id.* (citation omitted) (quoting CHARLES WARREN, *BANKRUPTCY IN UNITED STATES HISTORY* 4 (1935)).

<sup>26</sup> *Ry. Lab. Execs.’ Ass’n v. Gibbons*, 455 U.S. 457, 469 (1982).

<sup>27</sup> *Hanover Nat’l Bank v. Moyses*, 186 U.S. 181, 188 (1902).

<sup>28</sup> *Gibbons*, 455 U.S. at 469 (quoting *Stellwagen v. Clum*, 245 U.S. 605, 613 (1918)). Bankruptcy law “may recognize the laws of the State in certain particulars, although such recognition may lead to different results in different States,” while still being considered uniform. See also *Siegel v. Fitzgerald*, 596 U.S. 464, 467–68 (2022).

<sup>29</sup> See, e.g., *Butner v. United States*, 440 U.S. 48, 54 n.9 (1979) (quoting *Stellwagen*, 245 U.S. at 613) (“Notwithstanding this requirement as to uniformity the bankruptcy acts of Congress may recognize the laws of the state in certain particulars, although such recognition may lead to different results in different States. For example, the Bankruptcy Act recognizes and enforces the laws of the states affecting dower, exemptions, the validity of mortgages, priorities of payment and the like. Such recognition in the application of state laws does not affect the constitutionality of the Bankruptcy Act, although in these particulars the operation of the act is not alike in all the states.”); Lawrence Ponoroff & Stephen Knippenberg, *Debtors Who Convert Their Assets on the Eve of Bankruptcy: Villains or Victims of the Fresh Start?*, 70 N.Y.U. L. Rev. 235, 253 n.77 (1995) (describing that courts do not read these state laws in a way that violates the Uniformity Clause). But see generally Judith Schenck Koffler, *The Bankruptcy Clause and Exemption Laws: A Reexamination of the Doctrine of Geographic*

Historically, the Supreme Court has said that “[t]he subject of bankruptcies is incapable of final definition.”<sup>30</sup> More recently, however, the Court has defined “bankruptcy” as the “subject of the relations between an insolvent or nonpaying or fraudulent debtor and his creditors, extending to his and their relief.”<sup>31</sup> The Court has repeatedly emphasized that the Uniformity Clause’s language, embracing “Law[s] on the subject of Bankruptcies,” is to be broadly read.<sup>32</sup> Without defining the full scope of the Clause, the Supreme Court has interpreted it to have “granted plenary power to Congress over the whole subject of ‘bankruptcies’” and observed that the “language used” did not limit the scope of Congress’s authority.<sup>33</sup>

The Supreme Court has only drawn the boundaries of the Uniformity Clause a few times.<sup>34</sup> In 1902, the Court examined the Clause in *Hanover National Bank v. Moyses*. It explained the importance of the Clause and the type of laws that led to the need for its existence.<sup>35</sup> In England, early bankruptcy acts often applied only to traders and merchants, and were largely broken into two categories: bankruptcy laws and insolvency laws.<sup>36</sup> Bankruptcy laws typically referred to laws that would discharge a contract. In contrast, insolvency laws would “liberate the person of the debtor,” for example by releasing a debtor from debtors’ prison but not necessarily discharging the debtor’s obligation.<sup>37</sup>

In those times, insolvency laws were to be invoked by the imprisoned debtor, and bankruptcy laws were reserved for creditors.<sup>38</sup> The colonies, however, never followed this distinction and accordingly, “no laws were ever passed in America by the colonies or States, which had the technical denomination of ‘bankrupt

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*Uniformity*, 58 N.Y.U. L. Rev. 22 (1983) (arguing that allowing state exemption laws to take the place of a uniform federal opt-out scheme patently violates uniformity).

<sup>30</sup> *Wright v. Union Cent. Life Ins. Co.*, 304 U.S. 502, 513 (1938).

<sup>31</sup> *Gibbons*, 455 U.S. at 466 (quoting *Wright*, 304 U.S. at 513–14).

<sup>32</sup> *Stiegel*, 596 U.S. at 473; *U.S. Tr. Region 21 v. Bast Amron LLP (In re Mosaic Mgmt. Grp.)*, 22 F.4th 1291, 1307–08 (11th Cir. 2022), *vacated*, 142 S. Ct. 2862; *see Moyses*, 186 U.S. at 187 (“The framers of the Constitution were familiar with Blackstone’s Commentaries, and with the bankrupt laws of England, yet they granted plenary power to Congress over the whole subject of ‘bankruptcies,’ and did not limit it by the language used.”).

<sup>33</sup> *Moyes*, 186 U.S. at 187.

<sup>34</sup> *See Moyses*, 186 U.S. 181; *Reg’l Rail Reorganization Act Cases*, 419 U.S. 102 (1974); *Gibbons*, 455 U.S. 457.

<sup>35</sup> *See Moyses*, 186 U.S. at 185–91.

<sup>36</sup> *Id.* at 185 (quoting 3 JOSEPH STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES § 1111 (1833)).

<sup>37</sup> *Id.* (quoting 3 JOSEPH STORY, at § 1111).

<sup>38</sup> *Id.* (quoting 3 JOSEPH STORY, at § 1111).



laws.”<sup>39</sup> The states made no distinction and instead passed an amalgamation of the insolvency and bankruptcy laws found in England.<sup>40</sup>

It is clear that a problem would have existed had the states followed the English tradition of separating bankruptcy and insolvency laws. In a 1902 case, a judge for a Missouri district court gave an illustrative commentary on the bounds of the word “bankruptcy” and the Bankruptcy Clause as a whole:

The ideas attached to the word in this connection, are numerous and complicated; they form a subject of extensive and complicated legislation; of this subject, Congress has general jurisdiction; and the true inquiry is—to what limits is that jurisdiction restricted? I hold, it extends to all cases where the law causes to be distributed, the property of the debtor among his creditors; this is its least limit. Its greatest, is the discharge of a debtor from his contracts. And all intermediate legislation, affecting substance and form, but tending to further the great end of the subject—distribution and discharge—are in the competency and discretion of Congress. With the policy of a law, letting in all classes,—others as well as traders; and permitting the bankrupt to come in voluntarily, and be discharged without the consent of his creditors, the courts have no concern; it belongs to the lawmakers.<sup>41</sup>

In the 1800s, with few national guiding bankruptcy acts or laws, states could still fashion their own binding insolvency laws.<sup>42</sup> However, the States remained powerless to effectuate the discharge of obligations between parties without the consent of both parties to an insolvency proceeding.<sup>43</sup> Therefore, the Bankruptcy Clause is an immensely powerful tool for Congress, giving them “the power to impair the obligation of contracts,” a power that the States could never invoke.<sup>44</sup>

The singular exception courts have recognized to the Bankruptcy Uniformity Clause is the “geographically isolated problems” exception.<sup>45</sup> Under this

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<sup>39</sup> *Id.* (quoting 3 JOSEPH STORY, at § 1111).

<sup>40</sup> *Id.* (quoting 3 JOSEPH STORY, at § 1111).

<sup>41</sup> *Id.* at 186 (quoting *Nelson v. Carland*, 42 U.S. 265, 280–81 (1843)). The underlying *Carland* case was actually dismissed for want of jurisdiction, and, in strange and archaic fashion, the Court appended the proceeding of *In re Klien* into the *Carland* opinion. Therefore, it is true that the quoted language comes from the *Carland* case, but is more properly attributed to *In re Klien*.

<sup>42</sup> *See id.* at 187.

<sup>43</sup> *See id.* at 187–88; *see also* U.S. CONST. art. I, § 10, cl. 1 (“No State shall . . . pass any . . . Law impairing the obligation of contracts . . .”).

<sup>44</sup> *Id.* at 188.

<sup>45</sup> *See Reg'l Rail Reorganization Act Cases*, 419 U.S. 102, 159 (1974) (quoting *In re Penn Cent. Transp. Co.*, 384 F.Supp. 895, 915 (Reg'l Rail Reorg. Ct. 1974)) (“[T]he uniformity clause was not intended ‘to hobble

exception, even explicitly non-uniform rules have been held constitutional, like in the *Regional Rail Reorganization Act Cases* (the “3R Act Cases”).<sup>46</sup> In the *3R Act Cases*, the Court held that a statute that applied only to certain regional railroads was valid under the Uniformity Clause because no railroad bankruptcies were pending beyond the geographic area affected by the statute.<sup>47</sup>

### 1. *The Regional Rail Reorganization Act Cases*

In the *3R Act Cases*, the Supreme Court heard a challenge to a Pennsylvania district court’s judgment that the Regional Rail Reorganization Act of 1973 (the “Regional Rail Act”) was unconstitutional in part.<sup>48</sup> The backdrop of the case was a severe crisis in the railroad industry, when eight Northeastern and Midwestern regional railroads underwent bankruptcy reorganization proceedings.<sup>49</sup> As a result, Congress decided that the solution to the crisis was to enact the Regional Rail Act, which consolidated the railroads into a single private railroad corporation.<sup>50</sup> The Regional Rail Act required each of these eight railroads to consolidate according to this plan unless they could: establish a plan to reorganize successfully on their own, in a timely manner, and if it served the public interest.<sup>51</sup> The Regional Rail Act also created the United States Railway Association, a new government-owned corporation designed to develop the consolidation plan for a “financially self-sustaining rail service system.”<sup>52</sup>

The largest of the eight railroad entities sued to invalidate this Act and the proposed plan on the grounds that the Regional Rail Act violated the Uniformity Clause due to the Act’s region- and industry-specific regulations.<sup>53</sup> Since the Act was operative to only the regional railroads defined by the statute, the railroad

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Congress by forcing it into nationwide enactments to deal with conditions calling for remedy only in certain regions.”).

<sup>46</sup> See *Reg’l Rail Reorganization Act Cases*, 419 U.S. 102.

<sup>47</sup> See *St. Angelo v. Victoria Farms, Inc.*, 38 F.3d 1525, 1531 (9th Cir. 1994). Compare *Reg’l Rail Reorganization Act Cases*, 419 U.S. at 159–60 (upholding a seemingly non-uniform statute because no other railroad proceedings were pending), with *Ry. Lab. Execs.’ Ass’n v. Gibbons*, 455 U.S. 457, 471 (1982) (refusing to uphold a statute that applies only to one debtor and can be enforced only by the one bankruptcy court having jurisdiction over that debtor).

<sup>48</sup> The Supreme Court ultimately determined that the district court erred and held that the Act was constitutional. *Reg’l Rail Reorganization Act Cases*, 419 U.S. at 161.

<sup>49</sup> *Id.* at 108.

<sup>50</sup> See *id.* at 111.

<sup>51</sup> See *id.* at 109.

<sup>52</sup> *Id.* at 111 (quoting 45 U.S.C. § 716 (a)(1)).

<sup>53</sup> *Id.* at 117–18. While the Uniformity Clause challenge was far from the only challenge to the Act, it is the only one the Court dove into with clear implications for the Bankruptcy Power established by the Constitution.

companies argued that the Act must—by definition—be considered geographically non-uniform.<sup>54</sup> Previously in *Moyses*, the Court expressed that the uniformity referred to in the Constitution should be geographically applied.<sup>55</sup>

The *3R Act Cases* Court read the Bankruptcy Clause more expansively than it had previously done.<sup>56</sup> In an opinion penned by Justice Brennan, the Supreme Court rejected the railroad companies' argument.<sup>57</sup> The Court was inclined to give the constitutional grant of power a high level of flexibility due to emerging modern economic conditions.<sup>58</sup> The Court decided that the Regional Rail Act that treated the railroad bankruptcies as "a distinctive and special problem" did not put it outside the range of power granted by the Constitution.<sup>59</sup> The majority declined to hold the Regional Rail Act unconstitutional because it believed the minimum standards established by the Uniformity Clause were simply that an act would "apply equally to all creditors and all debtors."<sup>60</sup> According to the Court, the Act clearly did, so it did not run afoul of these constitutional minimums.<sup>61</sup> In addition, the Court pointed to other "'uniform' provisions of the Constitution" in its analysis, deciding that the Uniformity Clause should operate similarly.<sup>62</sup> Finally, the Court found it essential that the Regional Rail Act also had a specified "evil to be remedied."<sup>63</sup> The Act covered the reorganization of all the railroads defined by statute; no other railroad reorganizations were pending or existed at that time.<sup>64</sup> This meant the Regional Rail Act was

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<sup>54</sup> *Id.* at 158.

<sup>55</sup> *Hanover Nat'l Bank v. Moyses*, 186 U.S. 181, 188 (1902).

<sup>56</sup> *See Reg'l Rail Reorganization Act Cases*, 419 U.S. at 159–61.

<sup>57</sup> *See Reg'l Rail Reorganization Act Cases*, 419 U.S. 102. Justice Brennan later joined the concurring opinion in *Ry. Lab. Execs.' Ass'n v. Gibbons*, discussed in Part I.A.2. This is significant because the *3R Act Cases* opinion gives a preview of the result in *Gibbons*, which presents the idea for a "national interest" exception to the Bankruptcy Clause. *Ry. Lab. Execs.' Ass'n v. Gibbons*, 455 U.S. 457, 474 (1982) (Marshall, J., concurring).

<sup>58</sup> *Reg'l Rail Reorganization Act Cases*, 419 U.S. at 158–59 (quoting *Cont'l Ill. Nat'l Bank & Tr. Co. v. Chi., Rock Island & Pac. Ry. Co.*, 294 U.S. 648, 671 (1935)) ("Section 77 was upheld against a like challenge on the ground of the 'capacity of the bankruptcy clause to meet new conditions as they have been disclosed as a result of the tremendous growth of business and development of human activities from 1800 to the present day.'").

<sup>59</sup> *Id.* at 159.

<sup>60</sup> *Id.* at 160.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.* at 160–61. In a tax uniformity case involving a passenger tax for those who entered at a US port from a foreign port, the court upheld the tax as uniform because: "The tax is uniform when it operates with the same force and effect in every place where the subject of it is found. The tax in this case . . . is uniform and operates precisely alike in every port of the United States where such passengers can be landed." *Id.* (quoting *Edye v. Robertson (Head Money Cases)*, 112 U.S. 580, 594 (1884)).

<sup>63</sup> *Id.* at 161.

<sup>64</sup> *Id.* at 159–60.

technically uniform among all the entities it would have reached, regardless of the statutory limitation.<sup>65</sup> For these reasons, the Court in the *3R Act Cases* held that the Regional Rail Act was constitutional<sup>66</sup> and thus redefined the bounds of the Bankruptcy Uniformity Clause.

In his dissent to the *3R Act Cases*, Justice Stewart joined Justice Douglas's sprawling opinion that the Act was unconstitutional,<sup>67</sup> with the differing view that the Regional Rail Act would not comport with the Uniformity Clause.<sup>68</sup> In pointing back to the *Moyses* case, the two Justices were adamant that: "The Constitutional requirement of uniformity is a requirement of geographic uniformity. It is wholly satisfied when existing obligations of a debtor are treated alike by the bankruptcy administration throughout the country regardless of the State in which the bankruptcy court sits."<sup>69</sup> Because the Act explicitly confined itself to the "midwest and northeast region of the United States," it would never apply to any railroad reorganizations outside of that region, even if they were to occur at the exact same time.<sup>70</sup> As a result, the dissent determined that including a limited operative geographic area in the Act would, in itself, dissimilarly treat similar debtors.<sup>71</sup> Therefore, the dissent concluded that the Regional Rail Act, which provides for debtors of the same class to be treated differently based on region, would never satisfy the Uniformity Clause.<sup>72</sup>

## 2. Railway Labor Executives' Association v. Gibbons

In *Railway Labor Executives' Association v. Gibbons*, the Court considered the constitutionality of the Rock Island Transition and Employee Assistance Act ("RITA"). As RITA was passed, Rock Island & Pacific Railroad Co. ("Rock Island") had failed to reorganize and was on the verge of liquidation.<sup>73</sup> RITA explicitly required the Rock Island Rail Trustee to make employee protection payments and established that the payments would be regarded as administrative expenses in Rock Island's bankruptcy.<sup>74</sup> Rock Island sought to enjoin the

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<sup>65</sup> See *id.* at 160–61.

<sup>66</sup> See *Reg'l Rail Reorganization Act Cases*, 419 U.S. 102.

<sup>67</sup> See *id.* at 161–62 (Douglas, J., dissenting).

<sup>68</sup> See *id.* at 185.

<sup>69</sup> *Id.* at 180 (quoting *Vanston Bondholders-Protective Comm. v. Green*, 329 U.S. 156, 172–73 (1946) (Frankfurter, J., concurring)).

<sup>70</sup> *Id.* at 181–82.

<sup>71</sup> See *id.* at 184.

<sup>72</sup> *Id.*

<sup>73</sup> *Ry. Lab. Execs.' Ass'n v. Gibbons*, 455 U.S. 457, 459–61 (1982).

<sup>74</sup> *Id.* at 461–63; See *United States v. Ginley (In re Johnson)*, 901 F.2d 513, 516–17 (6th Cir. 1990). ("The allowance of administrative expenses is governed by 11 U.S.C. § 503. Section 503 provides that certain expenses

requirement of these payments, as they had already determined they would not be able to effectuate a reorganization and instead were looking to liquidate the rail lines entirely.<sup>75</sup>

In determining whether RITA was constitutional, the Court first decided if the law was passed under the grant of power by the Uniformity Clause or instead by the Commerce Clause.<sup>76</sup> The Court noted that if the Commerce Clause allows Congress to establish bankruptcy laws, it “would eradicate from the Constitution a limitation on the power of Congress to enact bankruptcy laws.”<sup>77</sup> Thus, the Court determined that the Uniformity Clause was more appropriate in this case.<sup>78</sup>

The Court started with the text of RITA. RITA imposed upon Rock Island “the duty to pay large sums of money to its displaced employees, and then establishe[d] a mechanism through which these ‘obligations’ [were] to be satisfied.”<sup>79</sup> In doing so, Congress spoke to how the railroad’s estate would be distributed to its creditors, a use of power consistent with an action pursuant to the Uniformity Clause.<sup>80</sup> As the Court explained, Congress’s intentions were manifest: “[I]t is the intention of Congress that employee protection be imposed in bankruptcy proceedings involving major rail carriers, for to do otherwise would be to promote liquidations, to the detriment of the employees and the public interest.”<sup>81</sup> Because of the Bankruptcy Clause’s uniformity requirement, the grant of power under it is different and exclusive from the grant of power in the Commerce Clause.<sup>82</sup> While the Court echoed James Madison’s observations in the *Federalist Papers* that the two clauses are intertwined in many ways,<sup>83</sup> it

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incurred to preserve the estate during the pendency of the bankruptcy proceedings may be allowed. Administrative expense status is important because these claims are first priority unsecured claims under 11 U.S.C. § 507(a)(1) and are paid before all other unsecured creditors.” (footnote omitted); *see also* Bland v. Farmworker Creditors, 308 B.R. 109, 112 (S.D. Ga. 2003) (“Higher priority (*e.g.*, secured) creditors tend to get their claims (also known as ‘liens’ on the debtor estate’s property) paid first, while lower priority (*e.g.*, unsecured) creditors can wind up with less, if anything. Hence, creditors filing claims against the bankruptcy estate will want to claim a high peg on the re-payment priority pole.”).

<sup>75</sup> *See Gibbons*, 455 U.S. at 463.

<sup>76</sup> *Id.* at 465.

<sup>77</sup> *Id.* at 468–69.

<sup>78</sup> *Id.* at 466–69.

<sup>79</sup> *Id.* at 467.

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 468 (quoting H.R. REP. NO. 96-1430, at 138–39 (1980) (Conf. Rep.)).

<sup>82</sup> *See id.* at 468–69.

<sup>83</sup> *Id.* at 465–66 (quoting THE FEDERALIST NO. 42, at 285 (James Madison) (N.Y. Heritage Press 1945)) (“[The] power of establishing uniform laws of bankruptcy is so intimately connected with the regulation of commerce . . . that the expediency of it seems not likely to be drawn into question.”).

determined that RITA was an exercise of Congress's Bankruptcy Clause power.<sup>84</sup>

Ultimately, the Court concluded that “RITA is not a response either to the particular problems of major railroad bankruptcies or to any geographically isolated problem: it is a response to the problems caused by the bankruptcy of *one* railroad.”<sup>85</sup> As a result, the Court could not shy away from striking down RITA as an unconstitutional use of the Bankruptcy Clause power.<sup>86</sup> Prior to that point, the Supreme Court had never held a bankruptcy law unconstitutional because it failed to meet the requirements of the Uniformity Clause.<sup>87</sup>

The Court remarked that even if RITA would have created sound or smart policy, the limitation of uniform bankruptcy laws does not allow a law to be applied to one debtor in only one jurisdiction.<sup>88</sup> In short, RITA had to be struck down because “[t]he employee protection provisions of RITA therefore [could not] be said to ‘apply equally to all creditors and all debtors.’”<sup>89</sup> The Court’s determination was heavily fact-dependent, given that RITA was quite literally targeted at only Rock Island—evidenced by the name of the Act.<sup>90</sup> The Court further limited the potential ramifications of its decision by pronouncing that cases like the *3R Act Cases* remain good law, noting that it had “upheld bankruptcy laws that apply to a particular industry in a particular region.”<sup>91</sup>

In the *3R Act Cases*, Congress was permitted to treat railroads differently and with more deference than they would with regular debtors. However, even with *Gibbons* being a railroad case, the circumstances were markedly different, warranting the Court to strike down the provisions of this law.<sup>92</sup> RITA targeted one railroad in particular, burdening no other railroads or their employees.<sup>93</sup> In the *3R Act Cases*, the Regional Rail Act applied to all then-pending railroad

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<sup>84</sup> See *id.* at 466–69.

<sup>85</sup> *Id.* at 470 (emphasis in original).

<sup>86</sup> *Id.* at 471.

<sup>87</sup> *Id.* at 469.

<sup>88</sup> *Id.* at 471.

<sup>89</sup> *Id.* (quoting *Reg'l Rail Reorganization Act Cases*, 419 U.S. 102, 160 (1974)).

<sup>90</sup> *Id.* at 471 n.12 (“By its very terms, RITA applies only to the Rock Island. Thus, we have no occasion to review a bankruptcy law which defines by identifying characteristics a particular class of debtors.”) (citations omitted). Because the acronym “RITA” tends to obscure the Act’s name, it is important to remember that the full name of the challenged Act was the “Rock Island Railroad Transition and Employee Assistance Act.” *Id.* at 461. Had Congress been mindful of the Uniformity Clause when drafting RITA, they would not have named the Act after a singular debtor.

<sup>91</sup> See *id.* at 473.

<sup>92</sup> See *id.* at 470.

<sup>93</sup> *Id.*

reorganizations,<sup>94</sup> while in *Gibbons*, RITA applied only to Rock Island even though there were other railroads reorganizing at the time.<sup>95</sup>

In Justice Marshall's concurrence, he wrote that he would have added a brand-new exception to the Uniformity Clause into the constitutional grant of power.<sup>96</sup> While the concurrence agreed that RITA violated the Uniformity Clause, it felt that the Clause should be even more flexible than the majority's reading.<sup>97</sup> The concurrence would have allowed a bankruptcy act to apply to a limited class or single debtor if the act both "serves a national interest apart from the economic interests of that debtor or class, and if the identified national interest justifies Congress' failure to apply the law to other debtors."<sup>98</sup> Justice Marshall claimed that the *3R Act Cases* articulated this national interest exception and suggested that applying a bankruptcy act to one railroad and not eight should not in itself doom the act if there were legitimate reasons for doing so.<sup>99</sup> Regardless, the concurrence concluded that no legitimate reasons existed (or at least were not delineated in enough detail by Congress) in this circumstance and agreed with striking down RITA despite its national interest exception.<sup>100</sup> The test articulated by the concurrence would have likely further eroded the façade of "uniform" bankruptcy administration by allowing facially disuniform laws to go into effect if they could simply show a good enough reason to.<sup>101</sup> That type of analysis and treatment of the Clause would have squarely violated the principles of the uniformity constraint and left it toothless.

#### B. *Seeking a Concrete Definition of the Uniformity Clause*

To create a concrete definition of the Bankruptcy Uniformity Clause, one must establish a specific understanding of the terms "bankruptcy" and "uniformity." Although this requires a historical assessment of these terms, it is also necessary to acknowledge that the general arc of bankruptcy policy has been towards relieving the honest debtor from oppressive indebtedness and permitting them to start anew.<sup>102</sup> Courts recognize that the modern scope of bankruptcy is

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<sup>94</sup> *Id.* at 469–70.

<sup>95</sup> *Id.* at 470.

<sup>96</sup> *See id.* at 473–74 (Marshall, J., concurring).

<sup>97</sup> *See id.*

<sup>98</sup> *See id.* at 474.

<sup>99</sup> *See id.* at 475–77 (discussing the applicability of the *3R Act Cases* in every instance).

<sup>100</sup> *See id.* at 474.

<sup>101</sup> *See id.*

<sup>102</sup> As cases have shown in the past, "[t]he principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the 'honest but unfortunate debtor.'" *Myka Ventures, Inc. v. Christian (In re Christian)*, 615 B.R. 240, 245 (Bankr. M.D. Tenn. 2020) (quoting *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007)).

not limited to the historical notions of bankruptcy laws in England or the early United States.<sup>103</sup> One of the key effects of a modern bankruptcy law is “a general execution issued in favor of all the creditors of the bankrupt, reaching all his property” and using the liquidation of that property to pay his debts.<sup>104</sup> A rule that does this in the same fashion throughout the United States would then be considered “uniform” within the meaning of the terms used in the Constitution.<sup>105</sup>

It is hard to square this meaning of uniformity with the current UST and BA divide. The *Moses* Court’s remarks on the proper scope of the bankruptcy administrative system underline the absurdity of the current state of affairs: “We . . . hold that the system is, in the constitutional sense, uniform throughout the United States, when the trustee takes in *each state* whatever would have been available to the creditors if the bankrupt law had not been passed.”<sup>106</sup> Under the current UST and BA system split, the trustee cannot take in “each state whatever would have been available”—which is inherently fractious and non-uniform. While, initially, the Bankruptcy Clause’s uniformity requirement was drafted to prohibit Congress from enacting private bankruptcy laws, the understanding of “uniformity” within the Clause is vastly expanded today.<sup>107</sup>

The current state of Uniformity Clause jurisprudence relies too heavily on the recent expansion of the understanding of “uniformity.” The modern understanding of “bankruptcy” has eliminated the unnecessary distinction between “bankruptcy” and “insolvency” laws, which is a positive improvement for debtors who can now receive a discharge, and, importantly, is constitutional. A return to the historical conception of “uniformity” is necessary to comply with the Constitution’s intention and to eliminate the facially unconstitutional UST and BA dual system split.

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<sup>103</sup> See *Hanover Nat’l Bank v. Moses*, 186 U.S. 181, 187 (1902) (“The framers of the Constitution were familiar with Blackstone’s Commentaries, and with the bankrupt laws of England, yet they granted plenary power to Congress over the whole subject of ‘bankruptcies,’ and did not limit it by the language used.”).

<sup>104</sup> *In re Butcher*, 189 B.R. 357, 371 (Bankr. D. Md. 1995) (quoting *Moses*, 186 U.S. at 190).

<sup>105</sup> *Moses*, 186 U.S. at 189–90.

<sup>106</sup> *Id.* at 190 (emphasis added).

<sup>107</sup> See HENRY C. BLACK, *CONSTITUTIONAL PROHIBITIONS 6* (Cambridge, John Wilson & Son, University Press 1887). During the early history of the United States, states discriminated against British creditors and debtors. In legal proceedings against British creditors in American courts, the courts did not apply American laws or principles on bankruptcy, but instead those of England. As a result, often neither party was able to benefit from American bankruptcy laws. *Devisme v. Martin*, 1794 Va. LEXIS 9, at \*1–2 (Va. Sept. 1, 1794).



## II. THE BANKRUPTCY ADMINISTRATOR AND U.S. TRUSTEE SPLIT

Part II.A provides an overview of the split system between the UST and BA and how it came to be. Part II.B evaluates the early court interpretations of the UST-BA dual-system split. Part II.C reviews the uneven quarterly fees set by Congress, and the subsequent fix. Part II.D explores the circuit split that uneven quarterly fees have created. Part II.E reviews *Siegel v. Fitzgerald* and the various remedies crafted by courts on remand.

### A. *The History of The UST and BA Systems*

Under the Bankruptcy Reform Act of 1978, Congress established the U.S. Trustee program in eighteen judicial districts for an experimental period.<sup>108</sup> The program was created to outsource some of the administrative burdens faced by bankruptcy judges, to eliminate the appearance of bias arising from the close relationship that existed between judges and trustees, and to address the appearance of impropriety and cronyism stemming from these relationships.<sup>109</sup> In districts where the pilot program was implemented, judges were relieved of their administrative tasks in the case, and those tasks were given to the executive branch, specifically to the U.S. Trustee's office, to help facilitate those goals.<sup>110</sup>

Initially, the pilot program was set to end in 1984, but the deadline received several extensions. In 1986, after successful performance and positive reports, Congress expanded the pilot program into a lasting and permanent fixture of the bankruptcy system.<sup>111</sup> Under the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (the "1986 Act"), Congress grew the UST program to include every state—except North Carolina and Alabama.<sup>112</sup> In contrast with the other forty-eight states, North Carolina and Alabama could vote to opt-in to the UST program early, with the caveat that they were required to implement the program by October 1, 1992.<sup>113</sup> Although Congress had an explanation for its choice to phase in the program over two years for the other forty-eight states in a report accompanying the 1986 Act, it made no mention of the separate provisions governing North Carolina and Alabama.<sup>114</sup> Despite the

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<sup>108</sup> Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549.

<sup>109</sup> H.R. REP. NO. 99-764, at 18 (1986).

<sup>110</sup> *Id.*

<sup>111</sup> *See id.* at 19.

<sup>112</sup> *See* Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986, 99 Pub. L. No. 99-554, §§ 301–02, 100 Stat. 3088, 3118–24.

<sup>113</sup> *See* *Siegel v. Fitzgerald*, 596 U.S. 464, 469 (2022).

<sup>114</sup> *See id.*

intervening thirty-two years since North Carolina and Alabama were supposed to implement the UST system, these two states continue to be overseen by the Bankruptcy Administrator system.<sup>115</sup>

The BA system is overseen by the judicial branch's Administrative Office of the United States Courts, which in turn is supervised by the Judicial Conference of the United States.<sup>116</sup> Unlike the UST program, the BA program is not self-funding; it uses fees appropriated to the judicial branch through the Judicial Conference.<sup>117</sup> North Carolina and Alabama received an exemption from participating in the UST program as part of what has been described as "an arbitrary political relic."<sup>118</sup> The original split resulted in debtors in BA districts not having to pay quarterly fees, but that was quickly ruled unconstitutional.<sup>119</sup> Some judges suggest that the split was nothing more than the "result of successful lobbying by bankruptcy judges and senators [in] the six federal judicial districts in North Carolina and Alabama."<sup>120</sup>

To better advocate that the UST system is the system that should finish the nationwide takeover that it started, one must first dive into the system's function. Congress created the UST not only to continue the economic viability of the bankruptcy system but also to streamline judicial caseload and to cut down on *ex parte* communications.<sup>121</sup> The broader goal was to eliminate even the scantest appearance of judicial bias and to refocus judges on more important judicial functions than bankruptcy case management.<sup>122</sup> In addition, Congress created UST regional offices that could adapt to geographically specific concerns.<sup>123</sup> Congress's intent for the UST program was clear:

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<sup>115</sup> *Id.*

<sup>116</sup> See Siegel v. Fitzgerald (*In re* Circuit City Stores, Inc.), 996 F.3d 156, 160 (4th Cir. 2021).

<sup>117</sup> Compare 28 U.S.C. § 589(a), with 28 U.S.C. § 1930(a)(7).

<sup>118</sup> See Hobbs v. Buffets, LLC (*In re* Buffets, LLC), 979 F.3d 366, 383 (5th Cir. 2020) (Clement, J., dissenting). Alabama and North Carolina had strong objections to being added to the UST system and were exempted, the rationale for which remains weak and arbitrary. See *The United States Trustee System: Hearing on S. 1961 Before the Subcomm. On Cts. Of the S. Comm. on the Judiciary*, 99th Cong. 129–30 (1986) (statement of James Hancock, U.S. Dist. J. for the N.D. Ala.).

<sup>119</sup> See generally *St. Angelo v. Victoria Farms, Inc.*, 38 F.3d 1525, 1532 (9th Cir. 1994) ("In the absence of any evidence that Congress was addressing a geographically isolated problem or some other legitimate concern, we are required to hold that its decision to ignore the Uniformity Clause in enacting section 317(a) renders that section unconstitutional.")

<sup>120</sup> *In re* John Q. Hammons Fall 2006, LLC, 618 B.R. 519, 522 (Bankr. D. Kan. 2020).

<sup>121</sup> See ABT ASSOCIATES, EVALUATION OF THE U.S. TRUSTEE PILOT PROGRAM FOR BANKRUPTCY ADMINISTRATION: FINDINGS AND RECOMMENDATIONS 1 (1983).

<sup>122</sup> See *id.*

<sup>123</sup> *Id.* at 12.

Bankruptcy judges administer the present bankruptcy system and are responsible for the administration of individual bankruptcy cases. Their administrative, supervisory, and clerical functions in these matters are in addition to their judicial duties in bankruptcy cases. . . . [T]he inconsistency between the judicial and administrative roles of the bankruptcy judges . . . places him in an untenable position of conflict, and seriously compromises his impartiality as an arbiter of bankruptcy disputes.<sup>124</sup>

Though the early UST system was not perfect, an independent commission was tasked with studying the UST program and reporting its findings to the Attorney General.<sup>125</sup> The commission worked adamantly to improve the program with two key bankruptcy principles in mind.<sup>126</sup> First, the commission was confident that a uniform national policy would result in more effective bankruptcy administration.<sup>127</sup> Second, the commission ensured that “like cases should be treated alike.”<sup>128</sup> These two principles demanded a truly national scope for the UST system to make a uniform nationwide policy, so the commission recommended an expansion of the pilot program to a full-blown national system.<sup>129</sup>

To facilitate this expansion, the UST system opened several regional offices and set out the administrative and fiduciary duties and liabilities of the U.S. Trustees.<sup>130</sup> In general, Trustees could be liable for intentional or explicit breaches of duty, but they would not be liable in their official capacity for most duties.<sup>131</sup> Therefore, Trustees were now held to a fair standard for an equitable

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<sup>124</sup> H.R. REP. NO. 95-595, at 88, 89 (1997).

<sup>125</sup> E1 COLLIER ON BANKRUPTCY A (16th ed. 2023) (“Pursuant to the 1978 Reform Act, the Attorney General was directed to submit a report not later than January 3, 1984 to Congress, the President, and the Judicial Conference on the feasibility, cost, and effectiveness of the program, along with recommendations as to its implementation in all federal judicial districts. Pursuant to that directive, a contract to perform an in depth study of the pilot program was awarded to an independent evaluator, Abt Associates, Inc. The study concluded that the program had been successful insofar as case administration within the pilot districts was more effective than in the non-pilot districts. The Abt Report recommended nationwide expansion of the program on a regional basis, within the Department of Justice.”) (footnotes omitted).

<sup>126</sup> See G COLLIER ON BANKRUPTCY 4 (16th ed. 2023).

<sup>127</sup> See ABT ASSOCIATES, *supra* note 121, at 256–57, 259.

<sup>128</sup> G COLLIER, *supra* note 126, ¶ 3.3.3.

<sup>129</sup> Siegel v. Fitzgerald, 596 U.S. 464, 468 (2022) (“In 1986, Congress sought to make the pilot Trustee Program permanent and to expand it nationwide, but met resistance from stakeholders in North Carolina and Alabama.”).

<sup>130</sup> See ABT ASSOCIATES, *supra* note 121, at 4–6.

<sup>131</sup> See Berry v. Kalyna, 7 F. App’x 624, 626 (9th Cir. 2001) (quoting Mullis v. U.S. Bankr. Ct., 828 F.2d 1385, 1390 (9th Cir. 1987)) (“A court-appointed bankruptcy trustee enjoys the same immunity as does the judge who appointed him unless ‘he acts in the clear absence of all jurisdiction.’”).

and just proceeding of cases.<sup>132</sup> All of this was done in an effort to rebuild confidence in the bankruptcy system and reduce the appearance of self-dealing or biased judges.<sup>133</sup>

*B. Early Court Interpretations of the UST and BA Split*

Since then, many courts have opined that either the dual system is constitutional or have avoided ruling on the question at every juncture.<sup>134</sup> However, the Ninth Circuit bucked this trend in *St. Angelo v. Victoria Farms*.<sup>135</sup> In *St. Angelo*, the court was asked to decide the value of an estate and what fees needed to be paid, but never actually reached the issue because of a Uniformity Clause challenge.<sup>136</sup> The debtor, Victoria Farms, asserted that the 1986 Act was unconstitutionally non-uniform because the Trustee system and the statute setting its fees were only present in forty-eight states, warranting a ruling that the entire statute was unconstitutional.<sup>137</sup> The creditor, St. Angelo, argued that the 1986 Act that created the UST system served a merely administrative role and was therefore not a “bankruptcy” law subject to the Uniformity Clause.<sup>138</sup> St. Angelo failed to persuade the court, which held that the Trustee system fell within the definition of a bankruptcy law.<sup>139</sup>

After finding that the law fell within the purview of the Uniformity Clause, the court then ascertained whether it ran afoul of the Clause.<sup>140</sup> The court established the now oft-repeated minimum standard that: “A bankruptcy law may have different effects in various states due to dissimilarities in state law as long as the federal law itself treats creditors and debtors alike.”<sup>141</sup> The Ninth Circuit determined that the 1986 Act did not meet that standard. No state law discrepancy was apparent; instead, the problem was baked into the Trustee system’s creation when it failed to expand to a uniform fifty-state program.<sup>142</sup> The *St. Angelo* court’s decision used the same principles as past cases dealing with the Uniformity Clause, but reached a different conclusion by holding that

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<sup>132</sup> See G COLLIER, *supra* note 126, ¶ 3.3.2 (discussing personal liability and ethical standards for U.S. Trustees).

<sup>133</sup> *See id.*

<sup>134</sup> *See infra* note 260.

<sup>135</sup> *St. Angelo v. Victoria Farms*, 38 F.3d 1525 (9th Cir. 1994).

<sup>136</sup> *Id.* at 1528–29.

<sup>137</sup> *Id.* at 1529.

<sup>138</sup> *Id.* at 1530.

<sup>139</sup> *See id.* at 1529–33.

<sup>140</sup> *See id.* at 1532–33.

<sup>141</sup> *Id.* at 1531.

<sup>142</sup> *See id.* at 1531–33.

because the law does not even apply uniformly to a defined class of debtors, it must be non-uniform.<sup>143</sup> However, this court's conclusion was undercut by the caveat that judicial restraint forbade the court from deeming the whole system unconstitutional.<sup>144</sup> Instead, it decided to strike a section of that statute that set fees to ensure that all fees across both systems remained constant.<sup>145</sup>

### C. *Bankruptcy Quarterly Fees Set by Statute*

28 U.S.C. § 1930 sets quarterly fees for bankruptcy proceedings.<sup>146</sup> 28 U.S.C. § 1930(a) sets forth the filing fees to be paid.<sup>147</sup> Section 1930(a)(6) sets the fee structure for all districts which are part of the UST system.<sup>148</sup> In contrast, section 1930(a)(7) sets the fees for BA districts.<sup>149</sup> Section 1930(a)(6) provides that the quarterly fees paid during the pendency of a chapter 11 case will continue after confirmation of a plan “until the case is converted or dismissed, whichever occurs first.”<sup>150</sup> Although section 1930(a)(6)(A) does not provide that such fees will cease upon the closing of the case, the United States Trustees have taken the position that they will not seek collection of this fee after entry of a final decree.<sup>151</sup>

The fee computation for each debtor is based on the amount of disbursements made while a chapter 11 case is pending.<sup>152</sup> Because the otherwise expansive Code does not define what a “disbursement” is, courts have decided that disbursement has its “ordinary and common meaning,” rendering the definition incredibly broad.<sup>153</sup> Disbursements then tend to include all expenses paid by a debtor, including those made as part of the debtor's day-to-day, post-

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<sup>143</sup> See *id.* at 1531 (“In this case, however, Congress has provided no indication that the exemption in question was intended to deal with a problem specific to North Carolina and Alabama, nor can we discern such a purpose in the structure of the statute or the legislative history of the amendment.”).

<sup>144</sup> *Id.* at 1532.

<sup>145</sup> *Id.* at 1535 (“Because we can remedy the constitutional infirmity merely by striking down the 1990 amendments, we do not invalidate the U.S. Trustee system in general or the fee structure of 28 U.S.C. § 1930 in particular.”).

<sup>146</sup> 28 U.S.C. § 1930 (showing the quarterly fee schedule based on dollar amount of disbursements).

<sup>147</sup> 28 U.S.C. § 1930(a).

<sup>148</sup> See 28 U.S.C. § 1930(a)(6).

<sup>149</sup> 28 U.S.C. § 1930(a)(7).

<sup>150</sup> 28 U.S.C. § 1930(a)(6)(A).

<sup>151</sup> See U.S. Dep't of Just., Exec. Off. for U.S. Trs., U.S. Tr. Program Pol'y and Prac. Manual § 3-9.4 (2016); *cf.* FED. R. BANKR. P. 3022 (“Entry of a final decree closing a chapter 11 case should not be delayed solely because the payments required by the plan have not been completed.”).

<sup>152</sup> See *Cranberry Growers Coop. v. Layng*, 930 F.3d 844, 849 (7th Cir. 2019).

<sup>153</sup> See *In re Sgaverdea*, 377 B.R. 308, 314 (Bankr. D.N.M. 2007).

confirmation operations,<sup>154</sup> regardless of whether the source of the payments is the estate or debtor.<sup>155</sup> Since “disbursements” is read so broadly,<sup>156</sup> legislation increasing fees based on the calculation of these disbursements could potentially enact a significant change in the fees debtors face. In addition, an increase in fees could also be detrimental to a chapter 11 debtor’s plan for a successful reorganization because failing to pay one’s quarterly fees explicitly justifies a bankruptcy court to dismiss or convert a chapter 11 case.<sup>157</sup> Because of the inherent problems in even small raises in fees, the Bankruptcy Judgeship Act of 2017 and its changes to the fee and disbursement amounts created a dilemma for Congress and the courts.<sup>158</sup>

### *1. Congress Messes Up the Whole System by Permitting an Uneven Fee Structure*

Section 1004(a) of the 2017 Act stipulated:

During each of fiscal years 2018 through 2022, if the balance in the United States Trustee System Fund as of September 30 of the most recent full fiscal year is less than \$200,000,000, the quarterly fee payable for a quarter in which disbursements equal or exceed \$1,000,000 shall be the lesser of 1 percent of such disbursements or \$250,000.<sup>159</sup>

The prior maximum fee was \$30,000 for each quarter in which disbursements totaled more than \$30,000,000.<sup>160</sup> This was an astounding increase for those debtors in the highest disbursement bracket, and still a sizable one for those in lower brackets too. These new temporary quarterly fees were mandatory in the UST system but permissive in the BA districts. As a result of their permissive

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<sup>154</sup> *Layng*, 930 F.3d at 853 (“In sum, ‘disbursements’ has been interpreted broadly to mean all payments by or on behalf of the debtor.”). More specifically, disbursements includes “payments ‘made in the ordinary course of business,’ whether made to secured or unsecured creditors,” as well as any payments made on behalf of a debtor, including lines of credit. *Id.* at 850 (internal citations omitted).

<sup>155</sup> See *Sgaverdea*, 377 B.R. at 314; *In re Charter Behav. Health Sys., LLC*, 292 B.R. 36, 45 (Bankr. D. Del. 2003) (determining that all of the debtor’s disbursements, not simply those to creditors under the plan or reorganization, must be included in the calculation of quarterly fee liability).

<sup>156</sup> See *St. Angelo v. Victoria Farms*, 38 F.3d 1525, 1534 nn.10–11 (9th Cir. 1994).

<sup>157</sup> *Ziehl v. Vara (In re TWC Liquidation Tr., LLC)*, Nos. 18-10601 (MFW), 22-50476, 2023 Bankr. LEXIS 2260, at \*40 (Bankr. D. Del. Sept. 14, 2023) (quoting *Siegel v. U.S. Tr. Program (In re Circuit City Stores, Inc.)*, Nos. 08-35653-KRH, 19-03091-KRH, 2022 Bankr. LEXIS 3544, at \*15 (Bankr. E.D. Va. Dec. 15, 2022)).

<sup>158</sup> See *supra* note 10 and accompanying text.

<sup>159</sup> Bankruptcy Judgeship Act of 2017, Pub L. No. 115–72, § 1004, 131 Stat. 1224 (amended 2021); *Siegel v. Fitzgerald*, 596 U.S. 464, 470 (2022).

<sup>160</sup> Consolidated Appropriations Act, 2008, Pub L. No. 110-161, § 213, 121 Stat. 1844, 1914; *Siegel*, 596 U.S. at 470.

status, the Judiciary Committee was in control of the fee-setting for the BA districts and did not immediately adopt them.<sup>161</sup>

The increase in chapter 11 quarterly fees imposed under the 2017 Act resulted in a line of cases concluding with *Siegel v. Fitzgerald*.<sup>162</sup> When crafting the 2017 Act, it is likely Congress envisioned an increase in quarterly fees in all chapter 11 cases pending as of January 1, 2018, not just in UST districts.<sup>163</sup> However, the 2017 Act amended only 28 U.S.C. § 1930(a)(6), which governs quarterly fees in chapter 11 cases filed in UST districts.<sup>164</sup> 28 USC § 1930(a)(7), which governs quarterly fees imposed by the Judicial Conference in chapter 11 cases in the BA districts, remained unaltered by the 2017 Act.<sup>165</sup>

## 2. Congress Fixes the Quarterly Fee Problem

In 2020, Congress passed a modification to section 1930 that mandated equal fees in UST and BA districts as part of a larger bankruptcy act—the Bankruptcy Administration Improvement Act of 2020 (the “2020 Act”).<sup>166</sup> This new amendment to section 1930 set the allocation structure for quarterly user fees for 2021–2026.<sup>167</sup> By clearly mandating the fix in the UST and the BA systems, the 2020 Act prevented future non-uniformity in the quarterly fees between the two systems.<sup>168</sup> Unfortunately, the damage was already done during the six-month window when many chapter 11 debtors were greatly over-charged in the UST system compared to those in the BA system.<sup>169</sup>

While this change was the primary reason for a slew of non-uniformity cases, it is important to know other changes that the 2020 Act also made. First, \$5.4

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<sup>161</sup> *Siegel*, 596 U.S. at 470–71 (“Despite the Judicial Conference’s standing order, and unlike with previous fee increases, the six districts in the two States participating in the Administrator Program did not immediately adopt the 2017 fee increase.”).

<sup>162</sup> *See, e.g., id.* at 472.

<sup>163</sup> *See* 1 COLLIER ON BANKRUPTCY ¶ 9.06 (16th ed. 2023).

<sup>164</sup> *See* Additional Supplemental Appropriations for Disaster Relief Requirements Act of 2017, Pub. L. No. 115-72, 131 Stat. 1224, 1232.

<sup>165</sup> *See id.*; 28 U.S.C. § 1930(a)(7)

<sup>166</sup> *Clinton Nurseries of Md., Inc. v. Harrington (In re Clinton Nurseries, Inc.)*, 998 F.3d 56, 59 (2d Cir. 2021).

<sup>167</sup> Bankruptcy Administration Improvement Act of 2020, Pub. L. No. 116-325, § 3(a), 134 Stat. 5086, 5087 (2021). (“The fee shall be the greater of—(I) 0.4 percent of disbursements or \$250 for each quarter in which disbursements total less than \$1,000,000; and (II) 0.8 percent of disbursements but not more than \$250,000 for each quarter in which disbursements total at least \$1,000,000.”) (internal quotation marks omitted).

<sup>168</sup> *See Clinton Nurseries*, 998 F.3d at 59.

<sup>169</sup> *See id.* at 61.

million was to be deposited to the Treasury general fund<sup>170</sup> out of the quarterly fees collected.<sup>171</sup> Next, a newly established chapter 7 Trustee Fund was created to help fund chapter 7 trustees, who often deal with converted cases.<sup>172</sup> Lastly, a discretionary provision gave the UST fund any remaining fees that were collected but not already allocated elsewhere to help fund the program.<sup>173</sup> Again, the primary “evil” the 2017 Act was designed to remedy was a financially fraught UST system.<sup>174</sup> Therefore, it is little surprise that the 2020 Act struck to the heart of that issue. While Congress did the bare minimum by bringing the fee structure back into uniformity, it remains to be seen if this uniform fee structure continues and if the shortfall of UST funds will be accounted for.

#### D. *Occasioning Siegel v. Fitzgerald*

Despite Congress’s fix of the quarterly fee discrepancy, the damage was already done in the three years between the 2017 and 2020 Acts, and as a result, litigation on the subject was underway.<sup>175</sup> Eventually, circuit courts became almost evenly split on whether what appears to be a facially disuniform fee structure was constitutional under the Uniformity Clause.<sup>176</sup>

##### 1. *Constitutional: One Side of the Split*

This Comment next discusses three cases in which courts of appeal determined that the 2017 Act was constitutional under the Uniformity Clause.

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<sup>170</sup> The Treasury general fund is an account where monies go for holding while awaiting specific spending or disbursement at a later date. See *The General Fund*, U.S. DEP’T TREASURY (Mar. 30, 2023), <https://fiscal.treasury.gov/general-fund/> (“As ‘America’s Checkbook,’ the General Fund of the Government consists of assets and liabilities used to finance the daily and long-term operations of the U.S. Government as a whole. It also includes accounts used in management of the budget of the U.S. Government.”).

<sup>171</sup> Bankruptcy Administration Improvement Act § 3(a)(2).

<sup>172</sup> *Id.* §§ 2(a)(4)(A), 3(b).

<sup>173</sup> *Id.* § 3(b).

<sup>174</sup> *Id.* § 2(a)(4)(A); *In re John Q. Hammons Fall 2006*, 618 B.R. 519, 525 (Bankr. D. Kan. 2020).

<sup>175</sup> See *supra* note 10.

<sup>176</sup> See *Siegel v. Fitzgerald*, 596 U.S. 464, 473 n.1 (2022) (citing *John Q. Hammons Fall 2006, LLC v. Off. U.S. Tr. (In re John Q. Hammons Fall 2006, LLC)*, 15 F.4th 1011 (10th Cir. 2021) (holding that the 2017 Act is unconstitutional); *Clinton Nurseries of Md., Inc. v. Harrington (In re Clinton Nurseries, Inc.)*, 998 F.3d 56 (2d Cir. 2021) (same); *U.S. Tr. Region 21 v. Bast Amron LLP (In re Mosaic Mgmt. Group, Inc.)*, 22 F.4th 1291 (11th Cir. 2022) (holding that the 2017 Act is constitutional); *Siegel v. Fitzgerald (In re Circuit City Stores, Inc.)*, 996 F.3d 156 (4th Cir. 2021) (same); *Hobbs v. Buffets, LLC (In re Buffets, LLC)*, 979 F.3d 366 (5th Cir. 2020) (same)).



a. *The Fifth Circuit*

The Fifth Circuit in *In re Buffets, LLC* ruled that the temporary fee increase in UST districts and not in BA districts was not a violation of the Uniformity Clause.<sup>177</sup> Buffets, LLC, a nationwide company with several affiliates that offer buffet-style dining establishments, filed for chapter 11 in a UST district.<sup>178</sup> Their plan was confirmed in 2017, but their case was pending when the temporary fee increase was enacted in 2018.<sup>179</sup> Buffets fell into the heightened disbursement range required by the 2017 Act for three quarters but refused to make the elevated payments.<sup>180</sup> Subsequently, Buffets challenged the constitutionality of the increased fees.<sup>181</sup> The Fifth Circuit acknowledged that the Uniformity Clause is not only incredibly under-studied but also that it has contributed to confusion regarding its modern application and meaning, including whether the BA and UST district split is constitutional.<sup>182</sup> The court referred to foundational Uniformity Clause cases and decided that the fee increase did not violate the Uniformity Clause.<sup>183</sup> The court likened the fee increase to the *3R Act Cases*, where Congress addressed a bankruptcy problem related only to railroads, which was held constitutional.<sup>184</sup> As a result, the court held that Congress's decision to act only in the under-funded UST districts was not an arbitrary distinction, so the 2017 Act was permissible under the geographically isolated problems exception.<sup>185</sup> Interestingly, the court teased that if Buffets had claimed that the UST and BA split system was itself unconstitutional in its pleadings, the ruling could have been different; however, the Fifth Circuit ruled on the narrower issue that the fee increase alone was constitutional.<sup>186</sup>

The dissent was much more focused on the grand split system between the UST and BA districts and reasoned that because this system itself was non-uniform, the 2017 Act could not survive.<sup>187</sup> In particular, the dissent mentioned that the only reason the two-tiered bankruptcy system exists is political strife and because a mischievous Congressman slipped a permanent exemption for

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<sup>177</sup> *Buffets*, 979 F.3d at 370.

<sup>178</sup> *Id.* at 372.

<sup>179</sup> *Id.*

<sup>180</sup> *Id.*

<sup>181</sup> *Id.*

<sup>182</sup> *Id.* at 376–77.

<sup>183</sup> *See id.* at 377–78 (listing cases).

<sup>184</sup> *Id.* at 378 (citing *Reg'l Rail Reorganization Act Cases*, 419 U.S. 102, 160–61 (1974)).

<sup>185</sup> *Id.* (quoting *Reg'l Rail Reorganization Act Cases*, 419 U.S. at 159).

<sup>186</sup> *See id.* at 379.

<sup>187</sup> *Id.* at 383 (Clement, J., concurring in part and dissenting in part).

Alabama and North Carolina into an unrelated bill—just the type of behavior the Constitution is meant to prohibit.<sup>188</sup> The dissent showed much less restraint than the majority and would have ruled that the whole two-tiered system was unconstitutional.<sup>189</sup>

*b. The Eleventh Circuit*

The Eleventh Circuit also found the fee increase to be constitutionally sound in *United States Trustee Region 21 v. Bast Amron LLP (In re Mosaic Management Group, Inc.)*.<sup>190</sup> In 2008, Mosaic Management, a company that bought and sold life insurance policies, filed for chapter 11 in a UST district.<sup>191</sup> The company finally received approval for a plan in early 2017 that would transfer substantially all of its assets to a trust.<sup>192</sup> In late 2017, when the temporary fee increase passed, the value of the distributions of the trust required Mosaic to pay “3.5 times more” in fees than if their case was proceeding in a BA district.<sup>193</sup> Despite Mosaic’s argument to the contrary, the court decided that the 2017 Act would apply to it and then analyzed the Act’s constitutionality under the Uniformity Clause.<sup>194</sup>

The Eleventh Circuit reiterated that the Uniformity Clause is not an inflexible straitjacket on Congressional action but rather a flexible clause to which perfect uniformity need not be reached.<sup>195</sup> In finding the 2017 Act permissible, the court explained that the “shall” and “may” distinction between the UST and BA districts’ implementation of the fee increase did not violate

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<sup>188</sup> *Id.* at 384 (“For no better reason than political influence, debtors in two states enjoy a system subject to lower fees than those in the other forty-eight states. This is the type of ‘regionalism’ the Uniformity Clause was intended to prevent.”) (internal quotation marks omitted).

<sup>189</sup> *Id.* at 383. Judge Clement railed against the substantive results of the split and said: “Grouping debtors into UST and BA districts is itself an arbitrary regional difference. It results in Buffets’ being required to pay substantially higher fees to the trustee overseeing its bankruptcy than an otherwise identically situated debtor in North Carolina or Alabama would.” Judge Clement was willing to make a far more dramatic ruling: “Two laws are not a uniform law, so I would hold that the permanent division of the country into UST districts and BA districts violates the Bankruptcy Clause and would order Buffets to pay the lower fee.” *Id.* at 384–85.

<sup>190</sup> *U.S. Tr. Region 21 v. Bast Amron LLP (In re Mosaic Mgmt. Grp., Inc.)*, 22 F.4th 1291 (11th Cir. 2022), *vacated*, 142 S. Ct. 2862.

<sup>191</sup> *Mosaic*, 22 F.4th at 1294–95.

<sup>192</sup> *Id.* at 1295.

<sup>193</sup> *Id.* at 1295 n.1, 1296.

<sup>194</sup> *Id.* at 1303, 1309. Technically, the debtor made two requests of the court: (1) how much it owed in fees under the 2017 Act, and (2) whether it was entitled to reimbursement for any payment over the amount it would have owed before the enactment of the 2017 Act. In effect, the debtor was concerned with the retroactive application of the 2017 Act to their plan which was operative prior to when the 2017 Act became effective.

<sup>195</sup> *Id.* at 1304, 1308–09.

uniformity.<sup>196</sup> Instead, the court said, Congress merely chose different vehicles for the statute's implementation.<sup>197</sup> The court assessed the legislative history of the 2017 Act and highlighted Congress's expectation that the fees would be implemented uniformly.<sup>198</sup> The court also found it persuasive that Congress fixed the disuniformity through amendment with the 2020 Act.<sup>199</sup> For those reasons, the court concluded that the 2017 Act was in accordance with the Bankruptcy Uniformity Clause and that the heightened fees should stand.<sup>200</sup>

*c. The Fourth Circuit: Preceding Siegel*

The Fourth Circuit was the last to hold that the 2017 Act was constitutional, in *Siegel v. Fitzgerald (In re Circuit City Stores)*.<sup>201</sup> This case preceded the Supreme Court's ruling in *Siegel v. Fitzgerald*.<sup>202</sup> At the Fourth Circuit, the liquidating trustee of Circuit City, a chain of U.S.-based electronic retail stores, appealed its liability on the temporarily increased quarterly fees enacted in 2017.<sup>203</sup> While Circuit City filed for bankruptcy in 2008 and had a chapter 11 liquidation plan confirmed in 2010, its case was still pending in 2018.<sup>204</sup> The trustee initially accepted the steeper fees but quickly soured on them and filed suit, alleging that the increased fee was unconstitutional.<sup>205</sup> In its Uniformity Clause analysis, the court parroted much of the Fifth Circuit's reasoning that the unequal application between UST and BA districts was not "arbitrary."<sup>206</sup> The

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<sup>196</sup> *Id.* at 1326.

<sup>197</sup> *Id.* at 1326 ("That is, the flexible approach to bankruptcy uniformity means that Congress could merely amend the fee schedule in 28 U.S.C. § 1930(a)(6), directly applicable to UST districts, with the understanding that the new schedule would apply through § 1930(a)(7) to BA districts.")

<sup>198</sup> *Id.* at 1317–21.

<sup>199</sup> *Id.*

Importantly, in requesting an increase in fees in 2017, neither the Judicial Conference, nor the U.S. Trustee program, conveyed a concern about uniformity or a desire to increase fees in a new way that would disregard the prior 17 years of equal quarterly fee collection in the country. In other words, the 2017 Amendment simply amended § 1930(a)(6)—which facially applied only to the UST districts, but Congress reasonably expected § 1930(a)(6) to actually operate in tandem with § 1930(a)(7) to increase fees in all bankruptcy districts—just as had been done with respect to the 2007 Amendment.

*Id.* at 1317.

<sup>200</sup> *Id.* at 1325–26.

<sup>201</sup> *Siegel v. Fitzgerald (In re Circuit City Stores, Inc.)*, 996 F.3d 156 (4th Cir. 2021).

<sup>202</sup> *Siegel v. Fitzgerald*, 596 U.S. 464 (2022).

<sup>203</sup> *Circuit City*, 996 F.3d at 159.

<sup>204</sup> *Id.* at 162.

<sup>205</sup> *Id.*

<sup>206</sup> *Id.* at 166 (first citing *Hobbs v. Buffets, LLC (In re Buffets, LLC)*, 979 F.3d 366, 377, 378 (5th Cir. 2020); and then citing *Reg'l Rail Reorganization Act Cases*, 419 U.S. 102, 159–61 (1974)).

court explained, “Congress has provided a solid fiscal justification for its challenged action: to ensure that the U.S. Trustee program is sufficiently funded by its debtors rather than by the taxpayers.”<sup>207</sup>

The Supreme Court eventually came to the opposite conclusion.<sup>208</sup> Judge Quattlebaum issued a strong dissent which foreshadowed the Court’s eventual holding.<sup>209</sup> The dissent was focused mainly on attacking the large-scale, two-tiered fee system.<sup>210</sup> As established, the two systems arose by congressional accident (or sleight-of-hand), and in most regards, they are the same except for their funding and oversight mechanisms.<sup>211</sup> As a result, the dissent criticized allowing creditors in one system to receive more or less money than the creditors in another system.<sup>212</sup> Judge Quattlebaum bluntly rebuffed the majority: “However, no matter how you slice it, uniform means not different. That was true when the Constitution was drafted, and it is still true today. Thus, for the reasons stated above, I would find that the amended quarterly fee statute is unconstitutionally non-uniform.”<sup>213</sup>

## 2. *Unconstitutional: The Other Side of the Split*

Having reviewed the side of the circuit split which upheld the two-tiered system, this Comment now turns to the other side. Importantly, the following cases align with the Supreme Court’s eventual ruling in *Siegel* and foreshadow themes and arguments that are implemented there.

### a. *The Tenth Circuit*

In *In re John Q. Hammons Fall 2006, LLC*, the Tenth Circuit decided that the 2017 Act was constitutionally invalid under the Uniformity Clause.<sup>214</sup> There,

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<sup>207</sup> *Id.* at 166–67.

<sup>208</sup> *Siegel v. Fitzgerald*, 596 U.S. 464 (2022).

<sup>209</sup> *Circuit City*, 996 F.3d at 169 (Quattlebaum, J., concurring in part and dissenting in part).

<sup>210</sup> *Id.*

Make no mistake about it. We have two types of bankruptcy courts in the United States. Forty-eight states operate as part of the United States Trustee Program under which United States Trustees aid the courts in the administration and management of bankruptcy cases. But two states—Alabama and North Carolina—operate under a different system. They use Bankruptcy Administrators rather than United States Trustees.

<sup>211</sup> *See Siegel*, 596 U.S. at 479.

<sup>212</sup> *Circuit City*, 996 F.3d at 171 (Quattlebaum, J., concurring in part and dissenting in part).

<sup>213</sup> *Id.* at 175.

<sup>214</sup> *John Q. Hammons Fall 2006, LLC v. Off. U.S. Tr. (In re John Q. Hammons Fall 2006, LLC)*, 15 F.4th 1011 (10th Cir. 2021).

the debtors filed for bankruptcy in 2016.<sup>215</sup> By 2019, the debtors had paid over \$2.5 million more in quarterly fees than they would have if they filed in a BA district instead of a UST district.<sup>216</sup> The court noted that the difference between “may” and “shall” in the text of the 2017 Act allowed a permissive increase in quarterly fees in BA districts, but the 2020 Act made such fees mandatory in BA districts.<sup>217</sup>

With the clear and distinct language being persuasive to its reasoning, the court held that “the 2017 Amendment is unconstitutionally nonuniform, because it allows higher quarterly disbursement fees on Chapter 11 debtors in Trustee districts than charged to equivalent debtors in Bankruptcy Administrator districts.”<sup>218</sup> The court distinguished its view from other circuits and opined that even when an act applies in a geographically uniform manner, it must also uniformly apply to a defined class of debtors.<sup>219</sup> Though the UST and BA systems arguably fell under the geographically isolated problem exception, the systems did not uniformly apply to a defined class of debtors.<sup>220</sup> Cases in UST and BA districts receive the same treatment, except when it comes to quarterly fees. This subtle difference was enough to violate the Bankruptcy Uniformity Clause, and the increased fees were, therefore, unacceptable.<sup>221</sup> As the court pointed out, “[n]othing distinguishes Alabama and North Carolina from the forty-eight other states in bankruptcy-administration matters.”<sup>222</sup>

The dissent felt it was inappropriate to address the broader UST and BA split.<sup>223</sup> Acknowledging the unique funding structure between the two systems, the dissent was more willing to apply the geographically isolated problem exception to the 2017 Act.<sup>224</sup> While it recognized that the system may be broken,

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<sup>215</sup> *Id.* at 1018.

<sup>216</sup> *Id.*

<sup>217</sup> *Id.* at 1022 (citing *Lopez v. Davis*, 531 U.S. 230, 241 (2001)) (noting that the use of “may” instead of “shall” by Congress in the same section of an act is significant).

<sup>218</sup> *Id.* at 1023.

<sup>219</sup> *Id.* at 1025.

<sup>220</sup> *See id.* at 1024.

<sup>221</sup> “The Bankruptcy Clause precludes increasing fees based just on the location of the bankruptcy court.” *Id.* at 1025.

<sup>222</sup> *Id.*

<sup>223</sup> *Id.* at 1026 (Bacharach, J., dissenting) (“Given the failure to preserve that challenge, we must consider the constitutionality of the 2017 amendment rather than the dual system of the U.S. trustees and bankruptcy administrators.”).

<sup>224</sup> *See Id.* at 1026–27.

the dissent reflected many other court’s reticence to address the broader two-system approach out of judicial restraint.<sup>225</sup>

*b. The Second Circuit*

In *Clinton Nurseries of Maryland, Inc v. Harrington (In re Clinton Nurseries, Inc.)*, the Second Circuit also held that the 2017 Act was constitutionally impermissible under the Uniformity Clause.<sup>226</sup> Clinton Nurseries, a company in the business of growing flowers, trees, grass, and other greenery, filed for chapter 11 at the end of 2017 in a UST district.<sup>227</sup> Clinton Nurseries paid the increased fees from the first quarter of 2018 to the second quarter of 2019. However, the company sought to avoid the heightened fees and requested a refund—arguing that the 2017 Act was unconstitutional.<sup>228</sup> Shortly between the original case and Clinton Nurseries’ appeal, Congress passed the 2020 Act that fixed the fee discrepancy by mandating it across all districts.<sup>229</sup> The court recognized that while the 2020 Act should provide greener pastures, the question remained whether Clinton Nurseries was unconstitutionally charged extra fees under the 2017 Act.<sup>230</sup>

The court’s analysis mirrored other cases. It first addressed whether the statute itself was uniform, and then considered whether the geographically isolated problem exception applied.<sup>231</sup> As in *John Q. Hammons*, the court examined the simple difference between the words “shall” and “may,” which allowed BA districts to choose between uniformity and disuniformity—those districts chose the latter.<sup>232</sup> In addition, the court followed the Tenth Circuit<sup>233</sup>

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<sup>225</sup> *Id.* at 1027.

Perhaps there shouldn’t be two separate systems, but the debtors forfeited their challenge to the existence of two separate systems. If we put aside that forfeited challenge, we have little reason to question Congress’s approach. The dual systems created different financial needs, and Congress decided to raise fees in the jurisdictions creating the budget shortfall. That approach wasn’t arbitrary and didn’t violate the Bankruptcy Clause.

*Id.*

<sup>226</sup> *Clinton Nurseries of Md., Inc. v. Harrington (In re Clinton Nurseries, Inc.)*, 998 F.3d 56, 59 (2d Cir. 2021).

<sup>227</sup> *Id.* at 61.

<sup>228</sup> *See id.* at 62.

<sup>229</sup> *Id.*

<sup>230</sup> *Id.* at 63–64.

<sup>231</sup> *Id.* at 65.

<sup>232</sup> *Id.* at 66; *John Q. Hammons Fall 2006, LLC v. Off. U.S. Tr. (In re John Q. Hammons Fall 2006, LLC)*, 15 F.4th 1011, 1022–23 (10th Cir. 2021).

<sup>233</sup> *See supra* notes 214–225.

and ruled that the geographically isolated problem exception did not apply.<sup>234</sup> Even if the geographically isolated problem exception were applied, the two-tiered system would treat identical debtors differently solely by virtue of where they filed.<sup>235</sup> In the aftermath of this circuit split, the Supreme Court quickly granted certiorari to *Siegel v. Fitzgerald* to deal with the inconsistent rulings.<sup>236</sup>

### E. Overcharged: *Siegel v. Fitzgerald and Its Progeny*

This section analyzes the Supreme Court's decision in *Siegel v. Fitzgerald* resolving the circuit courts' staunchly divided opinions and a new grant of certiorari on the issue of remedies.

#### I. *Siegel v. Fitzgerald*

In *Siegel v. Fitzgerald*, the Supreme Court resolved the previously discussed circuit split on quarterly fees.<sup>237</sup> Despite contentious debate in lower courts, Justice Sotomayor wrote the opinion for a unanimous nine-to-zero decision.<sup>238</sup> The *Siegel* Court ruled that while the Uniformity Clause is not entirely prohibitive, it does at least prohibit "arbitrary, disparate treatment of similarly situated debtors based on geography."<sup>239</sup> While the increase in fees from the 2017 Act was temporary, the Court remarked that it was a significant increase for the largest chapter 11 cases.<sup>240</sup> As mentioned in lower courts, the Judicial Conference had a history of raising the fees in BA districts to the same extent as those in the UST districts.<sup>241</sup> However, following the 2017 Act, BA districts broke this trend and declined to raise fees alongside UST districts; BA districts only raised fees when Congress forced the issue in the 2020 Act.<sup>242</sup>

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<sup>234</sup> See *Clinton Nurseries*, 998 F.3d at 67.

<sup>235</sup> *Id.* at 69.

<sup>236</sup> *Siegel v. Fitzgerald*, 596 U.S. 464, 473 (2022).

<sup>237</sup> *Id.*

<sup>238</sup> *Id.* at 466.

<sup>239</sup> *Id.* at 478 ("In sum, our precedent provides that the Bankruptcy Clause offers Congress flexibility, but does not permit the arbitrary, disparate treatment of similarly situated debtors based on geography."); see also *Hanover Nat'l Bank v. Moyses*, 186 U.S. 181, 187 (1902); *Ry. Lab. Execs.' Ass'n v. Gibbons*, 455 U.S. 457, 468–69 (1982); *Reg'l Rail Reorganization Act Cases*, 419 U.S. 102 (1974). All these cases support the idea that the Bankruptcy Uniformity Clause is flexible, but does not permit the arbitrary, disparate treatment of similarly situated debtors based on geography.

<sup>240</sup> *Siegel*, 596 U.S. at 470 ("For those debtors, the maximum fee was increased from \$30,000 a quarter to \$250,000 a quarter. The statute provided that the fee raise would become effective in the first quarter of 2018 and would last only through 2022.") (citation omitted).

<sup>241</sup> See *id.* at 470–71.

<sup>242</sup> *Id.* at 470.

The 2017 Act violated the Uniformity Clause because the increased fees did not apply to debtors in all parts of the country.<sup>243</sup> The Court found no real dispute as to whether the statute was geographically disuniform.<sup>244</sup> It reasoned that because the fee increase treated seemingly identical debtors differently, this case did not fall under the previously recognized geographically isolated problem exception.<sup>245</sup> Although the Court acknowledged that the UST and BA district split itself was arbitrary, the Court declined to consider the constitutionality of the dual bankruptcy system as a whole.<sup>246</sup> The Court limited its ruling to the fee divide in the 2017 Act and concluded that “[u]nder the specific circumstances present here, the non-uniform fee increase violated the uniformity requirement.”<sup>247</sup> Unfortunately, the Court did not suggest a remedy for debtors wronged by the unconstitutional fees.<sup>248</sup> *Siegel* was thus remanded back to the lower court for a determination on remedies.

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<sup>243</sup> *Id.* at 476.

The only difference between the States in which the fee increase applied and the States in which it was not required was the desire of those two States not to participate in the Trustee Program. The historical record therefore provides no support for respondent’s argument that the uniformity requirement does not apply where Congress sets different fee structures with different funding mechanisms for debtors in different bankruptcy districts.

*Id.*

<sup>244</sup> *Id.* at 478 (“[T]here is no dispute that the 2017 Act’s fee increase was not geographically uniform. The only remaining question is whether Congress permissibly imposed nonuniform fees because it was responding to a funding deficit limited to the Trustee Program districts.”).

<sup>245</sup> *Id.* at 479–80.

<sup>246</sup> *Id.* at 479 (“Congress itself ha[s] arbitrarily separated the districts into two different systems with different cost funding mechanisms, requiring Trustee Program districts to fund the Program through user fees while enabling Administrator Program districts to draw on taxpayer funds by way of the Judiciary’s general budget.”). However, the Court noted that it “does not today address the constitutionality of the dual scheme of the bankruptcy system itself, only Congress’ decision to impose different fee arrangements in those two systems.” *Id.* at 480.

<sup>247</sup> *Id.* at 478.

<sup>248</sup> *Siegel*, 596 U.S. 464. In *Siegel*, the court stated:

The parties dispute the appropriate remedy. Petitioner seeks a full refund of fees that it paid during the nonuniform period. Respondent argues that any remedy should apply only prospectively, or should result in a fee increase for debtors who paid less in the Administrator Program districts. The parties raise a host of legal and administrative concerns with each of the remedies proposed, including the practicality, feasibility, and equities of each proposal; their costs; and potential waivers by nonobjecting debtors.

*Id.* at 480–81.



## 2. Remedies Post-Siegel

Post-*Siegel* courts have had to address the question of remedies without any Supreme Court guidance.<sup>249</sup> In its earlier ruling, the Tenth Circuit remedy was to refund the overcharged fees.<sup>250</sup> After *Siegel*, the Tenth Circuit quickly reinstated its previously vacated ruling; however, it remanded the case to the Bankruptcy Court of the District of Kansas to determine the *extent* of the overcharged fees.<sup>251</sup> In a similar sequence of events, the Second Circuit determined that a refund was the appropriate remedy.<sup>252</sup>

More recently, both the Ninth and Eleventh Circuits have addressed post-*Siegel* remedies.<sup>253</sup> The Eleventh Circuit decided that a refund of the excess fees is the appropriate remedy.<sup>254</sup> The Ninth Circuit specifically referenced the Eleventh Circuit's decision and agreed that a refund is the correct remedy.<sup>255</sup> The Ninth Circuit stressed that, although the 2020 Act provides only prospective relief, due process required some remedy to apply retroactively to the overcharged fees.<sup>256</sup>

Even though many circuits have ordered a refund as the appropriate remedy, the Supreme Court granted certiorari to the prolonged Tenth Circuit case, *John Q. Hammons*, to finally decide the proper remedy.<sup>257</sup> It remains a wonder why the Court has now chosen to revisit the issue it could have fully settled last term in *Siegel*. Hopefully, this is a signal that the Court is ready to solve the fundamental issue: *dual systems*, not merely dual fees. Some parties in the *Siegel* briefs proposed that chapter 11 debtors in the BA system pay fees like debtors

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<sup>249</sup> See e.g., *USA Sales, Inc. v. Off. U.S. Tr.*, 76 F.4th 1248 (9th Cir. 2023); *U.S. Tr. Region 21 v. Bast Amron LLP (In re Mosaic Mgmt. Grp., Inc.)*, 71 F.4th 1341 (11th Cir. 2023).

<sup>250</sup> *John Q. Hammons Fall 2006 LLC v. Off. U.S. Tr. (In re John Q. Hammons Fall 2006 LLC)*, 15 F.4th 1011, 1026 (10th Cir. 2021).

<sup>251</sup> *Off. U.S. Tr. v. John Q. Hammons Fall 2006, LLC (In re John Q. Hammons Fall 2006, LLC)*, No. 20-3203, 2022 U.S. App. LEXIS 22859 (10th Cir. Aug. 15, 2022).

<sup>252</sup> See *Clinton Nurseries, Inc. v. Harrington (In re Clinton Nurseries, Inc.)*, 53 F.4th 15, 29 (2d Cir. 2022).

<sup>253</sup> *USA Sales, Inc.*, 76 F.4th 1248; *U.S. Tr. Region 21 v. Bast Amron LLP (In re Mosaic Mgmt. Grp., Inc.)*, 71 F.4th 1341 (11th Cir. 2023).

<sup>254</sup> *U.S. Tr. Region 21 v. Bast Amron LLP (In re Mosaic Mgmt. Grp., Inc.)*, 71 F.4th 1341, 1353–54 (11th Cir. 2023) (explaining that *Reich v. Collins*, 513 U.S. 106 (1994), *Newsweek, Inc. v. Fla. Dep't of Revenue*, 522 U.S. 442 (1998), *Iowa-Des Moines Nat'l Bank v. Bennett*, 284 U.S. 239 (1931), and *McKesson Corp. v. Div. of Alcoholic Bevs. & Tobacco*, 496 U.S. 18 (1990), provide the basis for the court's reasoning).

<sup>255</sup> See *USA Sales, Inc.*, 76 F.4th at 1253.

<sup>256</sup> See *id.* at 1256.

<sup>257</sup> *John Q. Hammons Fall 2006 LLC v. Off. U.S. Tr. (In re John Q. Hammons Fall 2006 LLC)*, 15 F.4th 1011 (10th Cir. 2021), *cert. granted*, 2216 L. Ed. 2d 1312.

in the UST system.<sup>258</sup> Now, unsurprisingly, the U.S. Trustee contends that the passage of the 2020 Act was remedy enough and that no refunds are needed.<sup>259</sup>

### III. SOLUTION: DISMANTLING THE DUAL SYSTEM

But for the two-tiered bankruptcy system, incongruent quarterly fees would not exist, as a uniform fee would apply to all districts. Maintaining two systems has created several problems with adhering to the Uniformity Clause. For constitutionality and common sense, North Carolina and Alabama should join the other forty-eight states in the UST system. Congress has shown no urgency to consolidate these systems and courts have only flirted with striking them down—even the Supreme Court has been incredibly reluctant to address the split.<sup>260</sup> One of these bodies needs to act soon to avoid further needless litigation.

#### A. Congress Should Abolish the Bankruptcy Administrator System

It is high time to get rid of the BA system and honor the Uniformity Clause.<sup>261</sup> Some have said that the UST System should be abolished instead, and have presented evidence that the BA system is more suited to control bankruptcy proceedings.<sup>262</sup> However, such criticisms are based on an outdated analysis of an early UST system. The UST system provides for an economical and efficient bankruptcy administration overseen by a party specifically created to make the

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<sup>258</sup> Brief for Respondent at 47 n.7, *Siegel v. Fitzgerald*, 596 U.S. 464 (2022) (No. 21-441).

<sup>259</sup> See Reply Brief for Petitioner at 1–2, *Off. U.S. Tr. v. John Q. Hammons Fall 2006, LLC*, 2023 U.S. LEXIS 2959 (Sept. 29, 2023) (No. 22-1238).

[A refund remedy of the UST fees] is manifestly contrary to congressional intent, as measured either by the prospective-only remedy that Congress in fact adopted or by the equally constitutional leveling-down remedy that would now collect an increased fee from a much smaller number of debtors and therefore preserve Congress's intention that the U.S. Trustee Program be sustained by user fees instead of taxpayer funds.

*Id.*

<sup>260</sup> See *John Q. Hammons*, 15 F.4th at 1027; *St. Angelo v. Victoria Farms*, 38 F.3d 1525, 1531–32 (9th Cir. 1994); *Siegel v. Fitzgerald*, 596 U.S. 464, 480 (2022).

<sup>261</sup> This argument has been made in opinions, court filings, and secondary literature. See, e.g., *St. Angelo*, 38 F.3d at 1535; Brief for Petitioner at 33, *Siegel*, 596 U.S. 464 (No. 21-441); Megan Barney, Comment, *Bankruptcy Uniformity: How the 2017 Fee Increase Litigation Applies to the Dual Bankruptcy System*, 6 BUS. & FIN. L. REV. 321 (2023) (arguing that the dual bankruptcy system should be abolished to reform bankruptcy uniformity).

<sup>262</sup> See Peter C. Alexander, *A Proposal to Abolish the Office of The United States Trustee*, 30 U. MICH. J.L. REFORM 1 (1996) (arguing that the Bankruptcy Administrator system is the superior system and that the Trustee System should be the one abolished instead).

bankruptcy experience better for all parties and the public.<sup>263</sup> While the UST system experienced a rocky start, it has stood the test of time, improved, and emerged as a well-run system.<sup>264</sup> The UST was created to avoid many of the problems inherent in the prior system, such as the fear of “cronyism,” biased conduct, and the need for a self-funding system.<sup>265</sup> While the UST system is not perfect, far more time, energy, and resources, such as Congressional hearings and studies, have gone toward making the UST system as effective and productive in the administration of bankruptcy proceedings as possible.<sup>266</sup>

On the other hand, the BA system was simply a relic of local pressure in Alabama and North Carolina, which has not received the same attention and reform as the UST system.<sup>267</sup> The sheer fact that the UST system has been operating successfully in forty-eight different states since 1996, while the BA system has only operated at the scale of two states, is itself a reason why the UST system is the best option.<sup>268</sup> Additionally, a 1996 report by over ninety highly regarded bankruptcy lawyers, recommended a full expansion of the UST system to all fifty states to improve bankruptcy administration.<sup>269</sup> That report’s suggestion applies with as much force today as it did in 1996. Any remedy other than the permanent replacement of the BA system with an expanded UST system would be a complete step in the opposite direction, taking the investments made

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<sup>263</sup> See *About the United States Trustee Program*, *supra* note 5 (“To further the public interest in the just, speedy and economical resolution of cases filed under the Bankruptcy Code, the Program monitors the conduct of bankruptcy parties and private estate trustees, oversees related administrative functions, and acts to ensure compliance with applicable laws and procedures. It also identifies and helps investigate bankruptcy fraud and abuse in coordination with United States Attorneys, the Federal Bureau of Investigation, and other law enforcement agencies. . . . ‘The mission of the United States Trustee Program is to promote the integrity and efficiency of the bankruptcy system for the benefit of all stakeholders—debtors, creditors, and the public.’”).

<sup>264</sup> G COLLIER, *supra* note 126, ¶ 3.3.1.

<sup>265</sup> See H. R. REP. NO. 99-764, at 18 (1986).

<sup>266</sup> See Schulman, *supra* note 13, at 120–22.

<sup>267</sup> See *supra* Part II.A; see *Hobbs v. Buffets, LLC (In re Buffets, LLC)*, 979 F.3d 366, 383 (5th Cir. 2020) (Clement, J., dissenting). Alabama and North Carolina had strong objections to being added to the UST system and were exempted, the rationale for which remains weak and arbitrary; see also Pardo & Watts, *supra* note 3, at 395–96 (“In creating the UST Program, Congress excluded all federal judicial districts located in Alabama and North Carolina . . . . This geographical carveout, which resulted in the BA Program operating in Alabama and North Carolina and the UST Program operating everywhere else, appears to have been the product of political compromise.”) (citations omitted).

<sup>268</sup> See *supra* notes 114–115 and accompanying text.

<sup>269</sup> REPORT OF THE UNITED STATES DEPARTMENT OF JUSTICE BANKRUPTCY WORKING GROUP i, 73 (1996), <https://govinfo.library.unt.edu/nbrcreport/f2.pdf> (“Given the lack of clarity on Article I’s uniformity requirement and the doubts raised about the justification for maintaining both the USTP and the Bankruptcy Administrator programs, additional challenges to the constitutionality of this dual system seems likely. In any event, maintaining a special system of bankruptcy administration for just six of the nation’s 94 judicial districts is imprudent. No articulated policy justifies maintaining the Bankruptcy Administrator program, and its continued existence threatens only to inspire additional constitutional challenge.”).

in the UST program for granted. The current arrangement is not viable. It results in repeated and easily avoidable litigation, such as *Siegel* and *John Q. Hammons*, due to the inability of Congress and the Judicial Conference to keep the two systems in parity.<sup>270</sup>

### B. *The Supreme Court Should Force Congress's Hand*

A recent commenter on the split system advocated for Congress to expand the UST system nationwide.<sup>271</sup> While this Comment wholeheartedly agrees with that solution, this Comment proposes an alternative. If Congress does not make the necessary changes, the Supreme Court should capitalize on its first chance to strike down the current split system. Unfortunately, many of the pre-*Siegel* cases would have been perfect vehicles for such a decision, yet pushing for the system to be abolished would make no sense to those debtors now, as they likely just want to receive a refund of their fees.

Even with the Supreme Court granting certiorari to *John Q. Hammons*, the Court is likely to only decide the remedies issue and not fix the dual bankruptcy system.<sup>272</sup> Supposing the Court punts yet again, another case on remand called *Acadiana Management Group, LLC v. United States* questions the legality of the split system and is a golden opportunity to resolve the split once and for all.<sup>273</sup>

However, a practical consideration necessitating judicial restraint is: what is the Court to do if it were to abolish the system? The Court would not be able to pick and choose which system gets to stay.<sup>274</sup> Therefore, if the Court found the dual-system approach unconstitutional, then it may have to invalidate the statute

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<sup>270</sup> *Siegel v. Fitzgerald*, 596 U.S. 464 (2022); *John Q. Hammons Fall 2006 LLC v. Off. U.S. Tr.* (*In re John Q. Hammons Fall 2006 LLC*), 15 F.4th 1011 (10th Cir. 2021), *cert. granted*, 2216 L. Ed. 2d 1312.

<sup>271</sup> See generally Barney, *supra* note 262 (advocating for an expanded UST system).

<sup>272</sup> Brief for Respondent in Opposition at \*5–6, *Off. U.S. Tr. v. John Q. Hammons Fall 2006, LLC*, 2023 U.S. LEXIS 2959 (Sept. 29, 2023) (No. 22-1238).

<sup>273</sup> See generally Brief for Appellee, *Acadiana Mgmt. Grp., LLC v. United States*, 2022 U.S. App. LEXIS 25950 (Fed. Cir. Sept. 16, 2022) (No. 2021-1941); Brief for Appellant, *Acadiana*, 2022 U.S. App. LEXIS 25950 (No. 2021-1941).

<sup>274</sup> Transcript of Oral Argument at 5, *In re John Q. Hammons Fall 2006, LLC*, 15 F.4th 1011 (10th Cir. 2021) (No. 20-3203) (Judge Bacharach: “May I just jump ahead to ask you, what is the inevitable remedy that you are asking, that we declare that—that this discrepancy is unconstitutional, do we pick sides and declare that you ought to go with the Trustee Program rather than the Administrator Program, do we avoid that, say it’s unconstitutional but we’re not going to declare the Bankruptcy Code unconstitutional, we’re simply going to give money relief in this case? What is the remedy that you ask for and what is the remedies that we have available to us?”).

that powers *both* systems.<sup>275</sup> The Court would be forced to decide if it should throw all of bankruptcy into temporary chaos or continue to support the unconstitutional status quo.<sup>276</sup>

The Court should not let this conundrum restrain it. The best solution is to employ “remedial delay,” which would allow the dual system to persist for a short period—giving Congress a specific deadline to remedy the issue—before the systems are both automatically invalidated if the constitutional infirmity remains.<sup>277</sup> This would give a clear and pressing directive to Congress that would almost certainly lead to action. Without any such motivation, the chance that Congress takes up the issue anytime soon appears incredibly low. While a congressional fix remains the best solution, the Court should not shy away from doing its job to strike down constitutional violations, no matter how inconvenient the consequences.

#### CONCLUSION

Despite the Bankruptcy Uniformity Clause’s straightforward directives, the unconstitutional UST and BA split system lives on. Congress or the Supreme Court should strike down the dual system to make good on the call for uniformity. This would not only resolve the issues that necessitated *Siegel*, but would help prevent future litigation from knocking on the High Court’s door.

The history of the Uniformity Clause shows it is an oft-misunderstood provision that can be fatal to legislation if not fully considered. Its traditional

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<sup>275</sup> 28 U.S.C. § 1930 governs the structure of UST and BA filing and quarterly fees. 28 U.S.C. § 1930. Transcript of Oral Argument at 4–5, John Q. Hammons, 15 F.4th 1011 (No. 20-3203) (Appellee: “Section 1930(a)(6) is the statute that caused this injury, but it is inextricably intertwined with a larger constitutional issue. Debtors in 48 of the 50 states operate under the U.S. Trustee Program. Debtors in Alabama and North Carolina do not. They operate under the Banker [sic] Administrator Program. 1930(a)(6) only applies to U.S. Trustee Districts and does not apply to BA Districts.”).

<sup>276</sup> Transcript of Oral Argument at 6, John Q. Hammons, 15 F.4th 1011 (No. 20-3203) (Judge Bacharach: “Do we just dangle then, we just say [the BA and UST split is] unconstitutional, but we’re not going to enjoin one statute or the other or, God forbid, the entire Bankruptcy Code, we’re simply going to give you your money and the next guy will get his money and the next guy will get his money and pretty soon Congress will say this is enough and they’ll remedy it?”).

<sup>277</sup> Cf. Tonja Jacobi, *Sharing the Love: The Political Power of Remedial Delay in Same-Sex Marriage Cases*, 15 L. & SEXUALITY 11, 18 (2006) (quoting *Baker v. State*, 744 A.2d 864, 886–87 (Vt. 1999)) (“ . . . the court nevertheless refused to grant an immediate remedy, stating that ‘[w]e do not purport to infringe upon the prerogatives of the [l]egislature to craft an appropriate means of addressing this constitutional mandate.’ Instead, the court left the statutory prohibition in place ‘for a reasonable period of time to enable the [l]egislature to consider and enact implementing legislation.’”) (alterations in original). See generally Holning Lau, *Comparative Perspectives on Strategic Remedial Delays*, 91 TUL. L. REV. 259 (2016) (explaining the usefulness of remedial delays).

purpose of preventing private bankruptcy bills has evolved, and now the Uniformity Clause is a flexible and useful tool that allows for important state-level variances that are incredibly necessary for the functioning of our bankruptcy system. This Comment does not advocate that the Uniformity Clause be more narrowly read, as the current reading is apt and functional. However, the split UST and BA system exceeds the Clause's flexible bounds. The dual system is unconstitutional because it is disuniform in name and function. Whether Congress or the Supreme Court provides the remedy, what ought to be done is clear: the dual system needs to go.

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