No. 14-1455

In the Supreme Court of the United States

FRED MARTIN MOTOR COMPANY, PETITIONER

v.

SPITZER AUTOWORLD AKRON, LLC, ET AL.

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

REPLY BRIEF FOR THE PETITIONER

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

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As petitioner has explained, this case presents a vitally important constitutional question implicating the separation of powers and the uniform application of the bankruptcy laws: *viz.*, whether Congress has the power to reopen the final order of a bankruptcy court and to permit a private arbitrator to reverse that order. Two sets of respondents have filed briefs in opposition to the petition for certiorari: Spitzer Autoworld Akron, which filed a brief in the Sixth Circuit extensively addressing the question presented here, and a group led by Fox Hills Motor Sales, which did not. In their briefs in opposition, respondents offer only the weakest defense of the Sixth Circuit's spare reasoning on the question present-

ed here. And respondents do not dispute the basic premise of petitioner's argument: that Congress enacted Section 747 for the specific purpose of providing targeted relief to dealers that were terminated by final orders of the bankruptcy courts in the Chrysler and General Motors bankruptcies.

This Court should grant review and reverse the Sixth Circuit's deeply flawed decision upholding Section 747. At a minimum, before the Court acts on this petition, it should call for a response from the United States, which intervened in the lower courts to defend the constitutionality of Section 747, so as to ensure that the Court has the full range of perspectives on the question presented here.

A. By Reopening The Final Order Of A Federal Bankruptcy Court And Permitting A Private Arbitrator To Reverse It, Section 747 Is Unconstitutional

By reopening the final order of a federal bankruptcy court, Section 747 contravened the "fundamental principle," rooted in the constitutional separation of powers, that Congress may not "depriv[e] judicial judgments of the conclusive effect that they had when they were announced." *Plaut* v. *Spendthrift Farm, Inc.*, 514 U.S. 211, 219, 228 (1995). And it contravened another fundamental constitutional principle by vesting review of the bankruptcy court's order in a private arbitrator. See *id.* at 217-218. Respondents do not contest those fundamental principles, nor do they dispute that Section 747 reverses the effects of the bankruptcy court's order here. The contentions respondents do make in defense of Section 747 are uniformly invalid.

1. Respondents primarily contend that, because Section 747 does not *literally* reopen the bankruptcy court's order (as did the statute at issue in *Plaut*), it does not violate the separation of powers. See Spitzer Br. in Opp.

5-6; Fox Hills Br. in Opp. 10-13. But this Court's separation-of-powers jurisprudence does not turn on such formalities. Rather, it focuses on the power of a particular branch of government, and, in so doing, necessarily takes into account the *effects* of a branch's action. The Court made that clear in *Plaut* itself, where it characterized "[t]he separation-of-powers violation here" as "consist[ing] of depriving judicial judgments of the conclusive effect that they had when they were announced." 514 U.S. at 228.

In enacting Section 747, Congress plainly targeted the effects of the orders of the bankruptcy courts in the Chrysler and General Motors bankruptcies. The language of the statute—and, as respondents freely concede, the legislative history, see, *e.g.*, Fox Hills Br. in Opp. 5-6—both demonstrate that Congress sought to reopen, and provide a mechanism for reversing, those orders. In the Chrysler bankruptcy, the bankruptcy court first authorized Chrysler to reject its franchise agreements with some 789 dealers and then, over the objections of those dealers, allowed Chrysler to transfer its assets to a new entity, Chrysler Group LLC, "free and clear" of any obligations to them. Pet. App. 4a, 7a. Section 747, however, gave the terminated dealers exactly what the bankruptcy court had denied them: the right to seek reinstatement to the Chrysler dealership network. That is the crux of the constitutional infirmity here.

Respondents contend that the fact that the "old" Chrysler and the "new" Chrysler were distinct corporate entities "fatally undermines the petition." Fox Hills Br. in Opp. 2; see *id.* at 10-13, 16-17; Spitzer Br. in Opp. 7. Again, however, that is the very definition of elevating form over function. Respondents concede, as they must, that the "new" Chrysler is simply the corporate successor to the "old" Chrysler. See Spitzer Br. in Opp. 1-2;

Fox Hills Br. in Opp. 4-5. And more broadly, any distinction between the two Chrysler entities does not affect the separation-of-powers inquiry, which focuses on the limits of Congress's power vis-à-vis the federal judiciary and the effects of Congress's action. Congress itself elided any distinction between the two entities by granting arbitration rights against the "new" Chrysler only to dealers whose contracts with the "old" Chrysler had been terminated. See Pet. App. 95a-96a. Just as Congress treated the formalities of corporate law as irrelevant, so too should this Court in determining whether Congress "exceed[ed] the outer limits of its power." *INS* v. *Chadha*, 462 U.S. 919, 951 (1983).

Finally on this note, respondents assert that *Plaut* is inapplicable because Section 747 does not "require [a] court to do anything." Spitzer Br. in Opp. 6; see Fox Hills Br. in Opp. 14, 17-18. Section 747, however, not only reopens the final judgment of a federal court; it takes the case *out* of federal court altogether and puts it in the hands of a private arbitrator. See Pet. 16-17. Respondents are therefore correct that Section 747 is distinguishable from the statute in *Plaut*—but in a way that makes it more offensive, not less, to the separation of powers.

2. Parroting the Sixth Circuit's flawed reasoning, respondents next contend that Section 747 merely provided "prospective relief" and was therefore constitutional under the exception to the *Plaut* separation-of-powers principle set out in *Miller* v. *French*, 530 U.S. 327 (2000). See Spitzer Br. in Opp. 7; Fox Hills Br. in Opp. 13-15, 16 n.2. The analogy to *Miller* is flawed for all the reasons stated in the petition, see Pet. 14-16, and more besides.

To begin with, Section 747 cannot be said to have afforded "prospective relief" in the sense this Court in-

tended in *Miller*: *i.e.*, by altering the prospective effect of a remedial injunction. See Spitzer Br. in Opp. 7; Fox Hills Br. in Opp. 13-15. Instead, Section 747 reached into the past by reopening, and providing a mechanism for reversing, the very issue that the bankruptcy court had finally decided. If that relief could be classified as "prospective," the *Miller* exception would displace the *Plaut* rule, because any relief granted by Congress that nullified the effects of a court order would qualify as "prospective."

In a related vein, and contrary to respondents' suggestion (Fox Hills Br. in Opp. 16 n.2), the bankruptcy court's order did not constitute a "remedial injunction" in the first place. *Miller*, 530 U.S. at 347. While the bankruptcy court retained the authority to *enforce* its order, see *In re Old Carco LLC*, 406 B.R. 180, 213 (Bankr. S.D.N.Y. 2009), that is a far cry from the "continuing supervisory jurisdiction" exercised by a district court when it grants injunctive relief in a conditions-of-confinement action. *Miller*, 530 U.S. at 347. Indeed, by the time Congress enacted Section 747, the bankruptcy court's order terminating the dealers' contracts did not even require enforcement, because, by respondents' own admission, "old" Chrysler "shut its doors for good" shortly after the order was issued. Fox Hills Br. in Opp. 1.

Also contrary to respondents' suggestion (Fox Hills Br. in Opp. 16 n.2), Section 747 did not "change[] the law underlying a judgment awarding prospective relief." *Miller*, 530 U.S. at 347. Unlike in *Miller*, where Congress passed a law that substantively altered district courts' authority to enter and terminate prospective relief, Congress here passed a law whose sole effect was retroactively to reopen the bankruptcy court's approval of the dealers' termination. Section 747 did not alter the authority of bankruptcy courts to enter final orders ter-

minating contracts (or otherwise alter the underlying substantive law). *Miller* is thus inapposite here, and the Sixth Circuit erred by refusing to apply the separation-of-powers principle articulated in *Plaut*.

3. The Fox Hills respondents—but not respondent Spitzer—argue that the *Plaut* separation-of-powers principle does not apply where the order in question was entered by a bankruptcy court and not appealed to an Article III court. See Fox Hills Br. in Opp. 15-16. But the Fox Hills respondents do not dispute that the bankruptcy court's order was final (in the sense of being unreviewable) by the time Congress enacted Section 747, nor do they contend that the order was outside the court's power to enter. And where a bankruptcy court's order has "achieved finality," that order, no less than an order from an Article III court, "becomes the last word of the judicial department with regard to a particular case or controversy." *Plaut*, 514 U.S. at 227.

As the Fox Hills respondents correctly note, the order at issue here was not appealed, and it was therefore never reviewed by an Article III court. See Fox Hills Br. in Opp. 15. But that cannot be the dispositive consideration in determining whether Congress may reopen a bankruptcy court's order. The *Plaut* separation-of-powers principle applies whenever a federal court's order has become final—*i.e.*, when all appeals have been either exhausted or forgone. See 514 U.S. at 227. Taken to its logical conclusion, respondents' argument would mean that all decisions by bankruptcy courts that have not been appealed to Article III courts may be reopened by Congress at any time. As the terminated dealers did here, a party aggrieved by a bankruptcy court's decision could choose whether to go to an appellate court or to Congress instead. Such a rule not only would violate the *Plaut* separation-of-powers principle, but would raise

serious concerns under the Bankruptcy Clause, which further protects the orders of bankruptcy courts from legislative interference. See *Railway Labor Executives' Ass'n* v. *Gibbons*, 455 U.S. 457, 471 (1982).

By reopening two specific final orders of bankruptcy courts and targeting two particular debtors, Congress blatantly disregarded fundamental constitutional principles. This Court should grant review and reverse the Sixth Circuit's decision upholding Section 747.

B. The Question Presented Is An Exceptionally Important One That Merits The Court's Review In This Case

Perhaps recognizing the difficulty of defending the Sixth Circuit's reasoning on its own terms, respondents contend that the question presented nevertheless does not warrant further review in this case. Those contentions are individually and collectively insubstantial.

1. Respondent Spitzer suggests, but stops short of affirmatively arguing, that petitioner somehow forfeited its right to challenge the constitutionality of Section 747 by failing to raise that challenge sooner. See Spitzer Br. in Opp. 4-5, 8-9. That suggestion verges on the frivolous. Because of petitioner's interest in the resolution of respondent Spitzer's status, Chrysler named petitioner as a defendant when it initially filed suit in this case. In response to Chrysler's complaint, petitioner timely filed a cross-claim seeking a declaration that Section 747 is unconstitutional. See Pet. 8. And for this Court's purposes, the key point is that the question of the constitutionality of Section 747 was indisputably pressed before, and passed upon by, the Sixth Circuit. See, *e.g.*, *Youakim* v. *Miller*, 425 U.S. 231, 234 (1976) (per curiam).

2. The Fox Hills respondents contend that petitioner lacks standing. See Fox Hills Br. in Opp. 21-23. Notably, the United States did not object to petitioner's

standing below, and respondent Spitzer, the sole party to raise a standing objection below, abandons that objection here. And wisely so, because any standing objection plainly lacks merit. The Sixth Circuit correctly recognized that "[t]he increase in direct competition caused by the possible entrance of [respondent Spitzer], as mandated by the § 747 arbitration, causes [petitioner] a cognizable economic injury." Pet. App. 34a. And it also correctly recognized that "holding § 747 to be unconstitutional would redress the injury by nullifying the arbitration decision" and thereby enabling the exclusion of petitioner's competitor, Spitzer, from the Chrysler dealership network. *Ibid.* For those reasons, petitioner comfortably satisfies the requirements for Article III standing here.

3. Finally, respondent Spitzer contends that the Court should deny review because the question presented is "of no importance to anyone except petitioner." Spitzer Br. in Opp. 8. That is obviously untrue, if for no other reason than that the question presented is of evident importance to the respondents that are so vigorously opposing this Court's review—including the Fox Hills respondents, which did not even independently address the question presented here in their briefs below.

In any event, the mere fact that the question presented affects only a discrete number of parties is no reason to deny review here, any more than it was in *Plaut*. Indeed, the limited applicability of Section 747 directly results from the fact that it is a bespoke statute, targeted at just two cases—the proceedings in the Chrysler and General Motors bankruptcies. That feature of Section 747, of course, is the very feature that makes it so egregiously unconstitutional. And while respondents contend that the enactment of Section 747 was "simply the democratic process at work," Fox Hills Br.

in Opp. 5, that says more about the state of the democratic process than it does about the separation of powers. As to the latter, it is emphatically the role of this Court to guard against encroachments by Congress on the coordinate branches of government—regardless of whether those encroachments are "innocuous" or, as in this case, brazen. See *Metropolitan Washington Airports Authority* v. *Citizens for Abatement of Aircraft Noise, Inc.*, 501 U.S. 252, 277 (1991).

* * * * *

"[O]ne of [the Court's] most vital functions" is "to police with care the separation of the governing powers." *Public Citizen* v. *Department of Justice*, 491 U.S. 440, 468 (1989) (Kennedy, J., concurring in the judgment). The Court should grant the petition for certiorari in this case and decide whether Congress has the power to reopen the final order of a bankruptcy court and to permit a private arbitrator to reverse that order. At a minimum, before acting on the petition, the Court should call for a response from the United States, in light of its obvious stake in the constitutionality of the statute at issue here.

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The petition for a writ of certiorari should be granted.

Respectfully submitted.

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