

University of Pennsylvania Carey Law School

Penn Carey Law: Legal Scholarship Repository

Prize Winning Papers

Student Papers

Fall 2021

The Bankruptcy-Standing Problem: Plaintiffs as Creditors and the Limits of Article III

Chase Hanson
University of Pennsylvania

Follow this and additional works at: https://scholarship.law.upenn.edu/prize_papers



Part of the [Civil Procedure Commons](#)

Repository Citation

Hanson, Chase, "The Bankruptcy-Standing Problem: Plaintiffs as Creditors and the Limits of Article III" (2021). *Prize Winning Papers*. 25.

https://scholarship.law.upenn.edu/prize_papers/25

This Prize Paper is brought to you for free and open access by the Student Papers at Penn Carey Law: Legal Scholarship Repository. It has been accepted for inclusion in Prize Winning Papers by an authorized administrator of Penn Carey Law: Legal Scholarship Repository. For more information, please contact biddlerepos@law.upenn.edu.

THE BANKRUPTCY-STANDING PROBLEM
PLAINTIFFS AS CREDITORS AND THE LIMITS OF ARTICLE III

Chase Hanson

Advanced Problems in Federal Procedure

Professor Catherine Struve and the Hon. Anthony J. Scirica

Fall 2021

University of Pennsylvania Carey Law School

INTRODUCTION

In *TransUnion LLC v. Ramirez*, the Supreme Court considerably amended Article III standing doctrine.¹ While not departing from the well-established three-prong standing inquiry,² the Court reshaped the criteria for measuring whether a plaintiff has suffered an injury in fact by requiring a historical common law analogue.³ While legislative judgment ostensibly still influences the injury-in-fact calculus, Congress's determination that violation of a statutory right is sufficiently injurious to warrant redress is not, by itself, enough.⁴ But even as *TransUnion* signaled a considerable shift in standing doctrine, the decision reiterated a principle familiar to federal courts: plaintiffs must have standing to pursue claims in federal court. But does this requirement apply with equal force in bankruptcy courts?

Bankruptcy courts occupy a unique position in the federal system; they are not Article III courts, but their work integrally relates to that of district courts, especially when bankruptcy cases involve a variety of claims necessitating intermittent district court intervention. Due to this tangled existence, whether plaintiffs without Article III standing may nonetheless pursue their claims against a debtor in bankruptcy remains an open question. This question is all the more important given the *TransUnion* decision and its potential to render unenforceable numerous federal causes of action that may serve as bases for claims in bankruptcy.⁵ If the same Article III constraints apply

¹ See *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190 (2021).

² See, e.g., *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992); *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

³ *TransUnion*, 141 S. Ct. at 2204–05.

⁴ *Id.* at 2205.

⁵ See generally Daniel J. Solove & Danielle Keats Citron, *Standing and Privacy Harms: A Critique of TransUnion v. Ramirez*, 101 B.C. L. REV. ONLINE 62 (2021) (cataloging various federal causes of action that likely fail the new common law analogue test articulated in *TransUnion*).

to bankruptcy courts as to federal courts staffed by Article III judges, plaintiffs may lose any opportunity to assert their statutory rights if the would-be defendant petitions for bankruptcy.

The Supreme Court’s bankruptcy court cases, Article III standing doctrine, and the Bankruptcy Code⁶ all support the conclusion that plaintiffs may pursue claims in bankruptcy court without necessarily having Article III standing.⁷ This Paper proceeds in two parts: Part I examines the muddled Supreme Court doctrine concerning bankruptcy courts’ non-Article III authority. Taken as a whole, the doctrine intimates that bankruptcy courts possess some degree of independent, non-Article III power for which they do not rely on district courts. Part II takes this non-Article III explanation of bankruptcy authority and shows that the Bankruptcy Code enables bankruptcy courts to determine the rights of creditors and debtors with respect to certain issues without Article III standing constraints. The Code empowers bankruptcy courts to recognize certain rights of parties within the bankruptcy case—rights that those parties are entitled to defend. Brief concluding remarks follow.

I. BANKRUPTCY COURTS AND THEIR STATUS

United States bankruptcy courts are not Article III courts. The last major revision of the Bankruptcy Code established bankruptcy courts as adjuncts of the district courts,⁸ to be composed of bankruptcy judges who are appointed by the court of appeals for the district in which the bankruptcy court sits, serve for fourteen-year terms, and who do not enjoy constitutional salary protection.⁹ Per the Code, bankruptcy courts “may hear and determine all cases under title 11 and

⁶ I use “Bankruptcy Code,” “Code,” and “Title 11” interchangeably throughout this paper.

⁷ This Paper means to address only federal causes of action but does not categorically foreclose the applicability of these arguments to state law causes of action as well.

⁸ 28 U.S.C. § 151.

⁹ *Id.* §§ 152(a)(1), 153(a).

all core proceedings arising under title 11, or arising in a case under title 11.”¹⁰ A bankruptcy court may exercise this power when the district court refers to it cases arising under Title 11.¹¹

While Congress, pursuant to its Article I, Section 8 powers to prescribe uniform bankruptcy laws,¹² has established bankruptcy courts to hear and determine Title 11 cases, Article III nonetheless imposes limits on what types of claims may permissibly be determined by non-Article III decisionmakers. The Supreme Court has identified several categories of claims for which the bankruptcy court cannot enter final judgment, including state law contract claims against non-creditor third parties,¹³ fraudulent conveyance claims brought by the bankruptcy trustee against non-creditor third parties,¹⁴ and compulsory state law counterclaims against a creditor.¹⁵ Beyond particular types of claims, the Court has not taken the opportunity to fully explain bankruptcy courts’ constitutional relation to Article III. But the Court has established some principles that inform the scope of bankruptcy courts’ independent authority.

A. Bankruptcy, Public Rights, and the Constitution

In *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.*, the Supreme Court undertook its most comprehensive examination of the constitutionality of modern bankruptcy courts. The dispute turned on a state law contract suit in which Northern Pipeline, which had filed a voluntary petition for bankruptcy, sought damages from Marathon, a non-creditor third party to the case.¹⁶

Under the Bankruptcy Act of 1978, bankruptcy courts were “vested with all of the ‘powers of a

¹⁰ *Id.* § 157(b)(1).

¹¹ *Id.* § 157(a), (b)(1).

¹² *See* U.S. CONST. art. I, § 8, cl. 4.

¹³ *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 71 (1982) (plurality opinion).

¹⁴ *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 56 (1989).

¹⁵ *Stern v. Marshall*, 564 U.S. 462, 482 (2011).

¹⁶ *Northern Pipeline*, 458 U.S. at 56 (plurality opinion).

court of equity, law, and admiralty,”¹⁷ and were empowered to hear all “civil proceedings arising under title 11 or arising in or related to cases under title 11.”¹⁸ Marathon objected to the bankruptcy court’s jurisdiction over this third-party state law contract claim on the ground that it violated the Constitution to vest such adjudicatory power in a non-Article III decisionmaker.¹⁹

The Court invalidated the portions of the Bankruptcy Code that enabled bankruptcy courts to adjudicate claims that traditionally had been left to common law courts.²⁰ The plurality examined whether the bankruptcy courts’ jurisdiction could be upheld under two theories: First, that bankruptcy courts are a type of legislative court that Congress may properly establish; second, that Congress’s power to prescribe uniform bankruptcy laws entails the power to establish specialized tribunals to administer those laws.²¹ To support its first argument, Northern Pipeline characterized bankruptcy as a “public right” that may permissibly be administered outside of Article III courts.²² The public rights doctrine has its basis in principles of sovereign immunity and the authority of the sovereign to attach conditions to its waiver of immunity.²³ “The . . . doctrine is grounded in a historically recognized distinction between matters that could be conclusively determined by the Executive and Legislative Branches and matters that are ‘inherently . . . judicial.’”²⁴ Generally, though, to qualify as a “public right,” the claim must be asserted by or

¹⁷ *Id.* at 54 (quoting 28 U.S.C. § 1481, *invalidated by* N. Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982))

¹⁸ *Id.* (quoting 28 U.S.C. § 1471(b), *invalidated by* N. Pipeline Constr. Co. v. Marathon Pipe Line Co., 458 U.S. 50 (1982)) (alterations omitted).

¹⁹ *Id.* at 55–56.

²⁰ *Id.* at 87.

²¹ *Id.* at 62–63.

²² *See id.* at 67–68.

²³ *Id.* at 67.

²⁴ *Id.* at 68 (quoting *Ex parte Bakelite Corp.*, 279 U.S. 438 (1929)).

against the government.²⁵ Because Northern Pipeline sued Marathon, a private entity, the public rights doctrine could not save the bankruptcy court’s jurisdiction from unconstitutionality.²⁶

But on its way to holding that the dispute in *Northern Pipeline* concerned a private right and therefore must be adjudicated by an Article III court, the plurality suggested that “the restructuring of debtor-creditor relations” could be a public right, though it did not go on to address the question directly.²⁷ The Court did hold, though, that the restructuring power lies “at the core of the federal bankruptcy power,” intimating that bankruptcy courts could adjudicate matters integral to the reorganization despite their non-Article III status.²⁸ The Court then went on to reject Northern Pipeline’s second argument—that Congress’s power to prescribe uniform bankruptcy laws could support the 1978 Act—as lacking a limiting principle to prevent Congress from relegating all disputes relating to its Article I, Section 8 powers to non-Article III decisionmakers.²⁹ All told, *Northern Pipeline*, while prompting revisions to the statutory grant of bankruptcy court jurisdiction, left unanswered exactly how much authority Congress can vest in non-Article III decisionmakers without offending the Constitution.

Granfinanciera, S.A. v. Nordberg gave further insight in the wake of *Northern Pipeline*. The issue in *Granfinanciera* did not directly address the constitutional limits of bankruptcy court authority, but rather whether fraudulent conveyance claims brought by the bankruptcy trustee against non-creditors must comply with the Seventh Amendment’s jury trial requirement.³⁰ Congress had characterized such suits as “core proceedings” in the 1978 Act which did not require

²⁵ *Id.* at 69.

²⁶ *Id.* at 71.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.* at 73–74.

³⁰ *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 36 (1989).

a jury trial. *Granfinanciera* gave the Court reason to revisit the public rights doctrine on the theory that the Seventh Amendment applies to cases at common law, meaning private rights in federal court, but not to public rights.³¹

The Court ultimately found that fraudulent conveyance claims against non-creditors are claims concerning private rights, meaning Congress may not deprive parties of their constitutional right to a jury trial.³² But in reaching this result, the Court clarified that the federal government does not need to be a party for a suit to concern public rights, departing from the Court’s statements in *Northern Pipeline*.³³ Instead, the operative question became “whether ‘Congress, acting for a valid legislative purpose pursuant to its constitutional powers under Article I, [has] create[d] a seemingly ‘private’ right that is so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution with limited involvement by the Article III judiciary.’”³⁴ So while fraudulent conveyance claims against non-creditors, by virtue of their state law origin, may fall outside of this public rights ambit, “when the same issue arises as part of the process of allowance and disallowance of claims, it is triable in equity,”³⁵ and likely lends itself to adjudication outside of Article III.³⁶ *Granfinanciera* suggested that bankruptcy restructuring may be a public right after all.

³¹ *Id.* at 51.

³² *Id.* at 51–52.

³³ *Id.* at 54 (citing *Thomas v. Union Carbide Agric. Prods.*, 473 U.S. 568 (1985)).

³⁴ *Id.* (quoting *Union Carbide*, 473 U.S. at 593–94) (alterations in original).

³⁵ *Id.* at 58 (quoting *Katchen v. Landy*, 382 U.S. 323 (1966)) (internal quotation marks omitted).

³⁶ *See id.* at 59 n.14 (“As *Katchen* makes clear, however, by submitting a claim against the bankruptcy estate, creditors subject themselves to the [bankruptcy] court’s *equitable power* to disallow those claims, even though the debtor’s opposing counterclaims are legal in nature and the Seventh Amendment would have entitled creditors to a jury trial had they not tendered claims against the estate.” (emphasis added)). *See also infra* Part I.B.

The Court arguably retreated from *Granfinanciera* in *Stern v. Marshall*.³⁷ There, for the second time in five years, the long-running case concerning Anna Nicole Smith’s claim to Texas billionaire J. Howard Marshall’s estate “drag[ged] its weary length before the Court,”³⁸ this time challenging the bankruptcy court’s authority to determine a mandatory state tort law counterclaim by the debtor against a creditor.³⁹ While 28 U.S.C. § 157(b) gave the bankruptcy court statutory jurisdiction over this type of counterclaim as a “core proceeding,”⁴⁰ the Court held that Article III prohibits Congress from delegating resolution of such state law claims to non-Article III decisionmakers.⁴¹ Importantly, the Court reined in *Granfinanciera*’s conception of the public rights doctrine, stating that it did not apply in this case because the counterclaim was “a state law action independent of the federal bankruptcy law and not necessarily resolvable by a ruling on the creditor’s proof of claim in bankruptcy.”⁴² Finding support in both *Northern Pipeline* and *Granfinanciera*, the Court insisted that these types of state law claims do not possess the intimate connection to federal regulation necessary to classify them as public rights.⁴³

The Court took great pains to describe the state of the public rights doctrine, reaffirming that it “is still the case that what makes a right ‘public’ rather than private is that the right is integrally related to particular Federal Government action,”⁴⁴ meaning “the claim at issue derives from a federal regulatory scheme, or in which resolution of the claim by an expert Government

³⁷ 564 U.S. 462 (2011).

³⁸ *Id.* at 468 (quoting CHARLES DICKENS, BLEAK HOUSE 4–5 (1891)) (internal quotation marks omitted).

³⁹ *Id.* at 470.

⁴⁰ *Id.* at 478.

⁴¹ *Id.*

⁴² *Id.* at 487.

⁴³ *Id.*

⁴⁴ *Id.* at 490–91.

agency is deemed essential to a limited regulatory objective within the agency’s authority.”⁴⁵ Making clear what *Northern Pipeline* did not hold, the Court noted that “we [the Supreme Court] did not mean to ‘suggest that the restructuring of debtor-creditor relations is in fact a public right.’”⁴⁶ How broadly this statement sweeps in practice is unclear. But the Court did not go so far as to expressly reject the public rights theory of bankruptcy. It remains possible that certain powers delegated to bankruptcy courts are constitutional exercises of non-Article III decision-making authority, like the claims allowance process.⁴⁷ Following this tripartite treatment of bankruptcy courts and public rights, it remained uncertain if and to what extent bankruptcy courts possess non-Article III adjudicatory power under the public rights doctrine. At the very least, the Court had not squarely foreclosed such a possibility for all proceedings.

Stern v. Marshall signaled a shift towards a more formalistic conception of Article III’s boundaries, reining in unconstitutional exercises of judicial power by bankruptcy courts.⁴⁸ The majority in *Stern* took care to reaffirm *Granfinanciera*’s qualification that the Court has not held that restructuring the debtor-creditor relationship is a public right.⁴⁹ But it did not flatly repudiate that possibility either. And bankruptcy courts have continued along in their seemingly-precarious constitutional state. The Court’s most recent treatment of the now-familiar contest between bankruptcy courts and Article III has, to some extent at least, shored up some traditional exercises of bankruptcy jurisdiction.

Wellness International Network v. Sharif represents the strongest implication that there exists a discrete enclave of bankruptcy court authority outside of traditional Article III strictures.

⁴⁵ *Id.* at 490.

⁴⁶ *Id.* at 492 n.7 (quoting *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33 (1989)).

⁴⁷ *See id.* at 496–97.

⁴⁸ *See* William Baude, *Adjudication Outside Article III*, 133 HARV. L. REV. 1511, 1518 (2020).

⁴⁹ *Stern*, 564 U.S. at 492 n.7.

There, the debtor Sharif filed a voluntary bankruptcy petition under Chapter 7, but allegedly fraudulently concealed assets.⁵⁰ Wellness International, a creditor, objected to the discharge of Sharif’s debt on the basis of this fraudulent concealment and sought a declaratory judgment that a trust unlisted in the petition could be brought into the bankruptcy estate.⁵¹ The bankruptcy court entered a default judgment against Sharif, declined to discharge his debts on the basis of his fraudulent concealment, and ordered the trust part of the estate.⁵² On appeal to the district court, Sharif challenged the bankruptcy court’s jurisdiction over Wellness International’s claim to augment the estate, claiming the decision was unconstitutionally made by a non-Article III decisionmaker.⁵³ The district court denied his objection as waived, but the court of appeals reversed and held that the bankruptcy court could not enter final judgment on the claim and that a debtor may not waive an objection to a so-called “*Stern*” claim.⁵⁴ At the Supreme Court, the only issue presented was whether a debtor may “consent” to non-Article III determination of a *Stern* claim.⁵⁵

The Court held that consent is a valid basis for bankruptcy jurisdiction over *Stern* claims and that Article III, as a structural limitation, does not preclude consent to non-Article III adjudication in such cases.⁵⁶ Departing from the approach in *Stern*, the majority in *Wellness International* insisted that the “question must be decided not by ‘formalistic and unbending rules,’ but ‘with an eye to the practical effect that the’ practice ‘will have on the constitutionally assigned

⁵⁰ *Wellness Int’l Network v. Sharif*, 575 U.S. 665, 671 (2015).

⁵¹ *Id.* at 672.

⁵² *Id.*

⁵³ *Id.* at 673.

⁵⁴ *Id.* at 673–74. A “*Stern*” claim refers to a claim which the bankruptcy court has the statutory authority to hear and determine, but which the Constitution prohibits a non-Article III decisionmaker from deciding, as was the case in *Stern* itself.

⁵⁵ *Id.* at 674 n.7.

⁵⁶ *Id.* at 679.

role of the federal judiciary.”⁵⁷ Analyzing the question through this lens, the Court concluded that permitting bankruptcy litigants to consent to non-Article III adjudication does not usurp the powers of Article III courts, in part because bankruptcy courts have limited jurisdiction to hear only those claims that traditionally arise incident to the bankruptcy case.⁵⁸ Moreover, “there is no indication that Congress gave bankruptcy courts the ability to decide *Stern* claims in an effort to aggrandize itself or humble the Judiciary.”⁵⁹ Congress, in establishing modern bankruptcy courts, did not attempt to subvert Article III courts’ power over these claims, but rather sought efficiency in having a specialized tribunal to hear and determine these sorts of claims in the consolidated bankruptcy case.⁶⁰

The *Wellness International* majority concluded by asserting that consent need not be express to submit to bankruptcy adjudication of *Stern* claims and that consent-by-action is sufficient.⁶¹ While holding that manifesting consent is a “deeply factbound [sic] analysis of the procedural history unique” to each case,⁶² the Court did not address the statements in its earlier cases that suggest a debtor who filed for bankruptcy or a creditor who filed a claim has impliedly consented to the bankruptcy court’s authority.⁶³ The extent to which consent attaches by virtue of these or other actions remains uncertain. But at minimum it follows that if bankruptcy courts may exercise jurisdiction over non-core claims by party consent, such implied consent must function

⁵⁷ *Id.* at 678 (quoting *CFTC v. Schor*, 478 U.S. 883 (1986)).

⁵⁸ *Id.* at 679.

⁵⁹ *Wellness Int’l*, 575 U.S. at 679.

⁶⁰ *See id.* at 679–81.

⁶¹ *Id.* at 683–84.

⁶² *Id.* at 685.

⁶³ *See Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 59 n.14 (“[B]y submitting a claim against the bankruptcy estate, creditors subject themselves to the court’s equitable power to disallow those claims.”). *See also Langenkamp v. Culp*, 498 U.S. 42, 44 (1990) (per curiam).

with equal or greater force in core proceedings, suggesting that bankruptcy courts do enjoy an enclave of legitimate, constitutionally permissible non-Article III authority.

B. What is Left for Bankruptcy Courts?

Although Article III limits which claims may be determined by bankruptcy courts, the Supreme Court has impliedly affirmed bankruptcy courts' power to exercise non-Article III authority over proceedings "integral to the restructuring of the debtor-creditor relationship,"⁶⁴ namely, the claims allowance process.⁶⁵ In *Langenkamp v. Culp*, the Court addressed whether a creditor who has filed a claim against the debtor is entitled to a jury trial for a voidable preference claim brought by the bankruptcy trustee. Holding that no such jury trial right exists, the Court appeared to endorse the bankruptcy court's exercise of equitable jurisdiction outside of Article III. Reaching back to *Granfinanciera*, the Court emphasized "that by filing a claim against a bankruptcy estate the creditor triggers the process of 'allowance and disallowance of claims,' thereby subjecting himself to the bankruptcy court's equitable power."⁶⁶ As seen in *Northern Pipeline* the bankruptcy courts' equitable power is non-Article III power. Therefore, *Langenkamp* suggests that bankruptcy courts have the power to determine some category of claims outside of traditional Article III constraints. *Langenkamp* strongly implies that the claims allowance process is one of these proceedings that lies at the heart of the bankruptcy courts' equitable power.

The Court's decision in *Stern* does not rebut this implication. *Stern* neither held nor suggested that the statutory scheme delegating the claims allowance process to bankruptcy judges is unconstitutional. Indeed, the Court's later decision in *Wellness International* suggests that bankruptcy courts may constitutionally administer the claims allowance process. When coupled

⁶⁴ *Langenkamp v. Culp*, 498 U.S. 42, 44 (1990) (per curiam).

⁶⁵ *See id.* (citing *Granfinanciera*, 492 U.S. at 58–59).

⁶⁶ *Id.* (citing *Granfinanciera*, 492 U.S. at 59 n.14).

with statements in other cases, this core power potentially encompasses claims that otherwise would fall outside the bankruptcy courts' authority if a party avails itself of the claims allowance process. The question remains, though, how to characterize this universe of constitutionally permissible bankruptcy authority. We know it exists from current practice and its presence in the Court's bankruptcy opinions. But what is its constitutional status?

Theories of bankruptcy court status and jurisdiction abound.⁶⁷ Without committing to the subtleties of any particular theory, I offer two tentative suggestions: First, the Court's consent rationale in *Wellness International* does not suffice to support the entire body of bankruptcy courts authority. *Wellness International*'s holding was limited to consent to adjudication of *Stern* claims and required remand to conduct the "deeply factbound" inquiry whether the debtor actually consented to the adjudication. This rationale, though, if extended beyond *Stern* claims, has the effect of crowding out any independent bankruptcy court authority that the Court has intimated exists and neglects the Article III structural concerns which controlled in *Stern* and admittedly resurfaced in *Wellness International*. Even accounting for tacit consent, Congress, through its enactment of § 157, seems to believe that bankruptcy courts may constitutionally exercise some independent adjudicatory power absent party consent, and the Court seems to accept as much. For this reason, a consent-based theory alone fails to support bankruptcy court authority.

Second, a constitutive theory of bankruptcy jurisdiction should not completely discard the Court's prior language. The Court has plausibly suggested that the core bankruptcy restructuring power is a public right which Congress may permissibly delegate to non-Article III

⁶⁷ See, e.g., Anthony J. Casey & Aziz Z. Huq, *The Article III Problem in Bankruptcy*, 82 U. CHI. L. REV. 1155 (2015) (drawing on the "creditors'-bargain theory" of bankruptcy); Ralph Brubaker, *A "Summary" Statutory and Constitutional Theory of Bankruptcy Courts' Core Jurisdiction After Stern v. Marshall*, 86 AM. BANKR. L.J. 121 (2012).

decisionmakers.⁶⁸ Having rejected the adjunct theory on multiple occasions and declining to ground the breadth of bankruptcy jurisdiction in Congress’s Article I, Section 8 powers, the public rights doctrine endures as the most viable theory for non-Article III bankruptcy authority: The core of the bankruptcy power—epitomized by the claims allowance process—is a public right and non-Article III decisionmakers may constitutionally exercise it. That being the case, bankruptcy courts escape the constitutional imposition of Article III standing requirements and may entertain claims to the extent permitted by the Bankruptcy Code.

C. An Objection

One objection to the contention that bankruptcy courts possess their own independent, non-Article III authority comes from the statutory structure of bankruptcy jurisdiction. District courts possess original and exclusive jurisdiction over all cases arising under the Bankruptcy Code.⁶⁹ Moreover, while district courts may refer bankruptcy proceedings to the bankruptcy courts under § 157(a), they retain original jurisdiction over all proceedings under Title 11 and may withdraw any or all proceedings from the bankruptcy court for cause.⁷⁰ How, then, may the bankruptcy court exercise non-Article III authority in bankruptcy proceedings when the only reason it is able to conduct those

⁶⁸ See *N. Pipeline Constr. Co. v. Marathon Pipe Line Co.*, 458 U.S. 50, 71 (1982). The Court explicitly left this question open in *Stern* but has not flatly repudiated it since. See also *Granfinanciera, S.A. v. Nordberg*, 492 U.S. 33, 54 (1989) (“The crucial question, in cases not involving the Federal Government, is whether ‘Congress, acting for a valid legislative purpose pursuant to its constitutional powers under Article I, [has] create[d] a seemingly ‘private’ right that is so closely integrated into a public regulatory scheme as to be a matter appropriate for agency resolution with limited involvement by the Article III judiciary.’” (quoting *Thomas v. Union Carbide Agric. Prods. Co.*, 473 U.S. 568 (1985)) (alterations in original)); *Union Carbide*, 473 U.S. at 600 (Brennan, J., concurring) (suggesting that the “closely integrated” question was satisfied and created a public right because “the dispute arises in the context of a federal regulatory scheme that virtually occupies the field”). If any regulatory scheme satisfies the public rights test, bankruptcy is the paradigmatic example because it is the *exclusive* system for resolution of claims against the estate once the debtor files its petition in a field exclusively occupied by federal law.

⁶⁹ 28 U.S.C. § 1334(a).

⁷⁰ *Id.* § 157(d).

proceedings is because the district court—an Article III court—has referred the proceedings to it and retains original and exclusive jurisdiction over the case?

The answer requires evaluation of the district court’s jurisdiction over the bankruptcy case in the first instance. As Professor James Pfander notes, many aspects of the bankruptcy case lack hallmarks of ordinary litigation in federal courts.⁷¹ For example, bankruptcy cases arrive in federal district court almost exclusively upon debtors’ unilateral petitions, without plaintiffs or defendants, and many bankruptcy proceedings do not bear the ordinary indicia of contestation,⁷² a supposedly integral element of federal justiciability.⁷³ Nonetheless, district courts exercise jurisdiction over bankruptcy cases everyday despite this seeming incongruity with Article III. And unless one is prepared to render bankruptcy proceedings unconstitutional, district courts have to possess the power to exercise this jurisdiction.⁷⁴

Article III courts do have the power to hear bankruptcy cases. Professor Pfander goes on to explain that “[t]he presence of the debtor’s property confers in rem jurisdiction and leads to mixed proceedings thereafter.”⁷⁵ When a debtor files a bankruptcy petition, it initiates a “case”

⁷¹ See JAMES E. PFANDER, *CASES WITHOUT CONTROVERSIES: UNCONTESTED ADJUDICATION IN ARTICLE III COURTS* 113–14 (2021).

⁷² *Id.*

⁷³ 13 CHARLES ALAN WRIGHT & ARTHUR R. MILLER, *FEDERAL PRACTICE AND PROCEDURE* § 3530 (3d ed. 2021) (“All models of cases and controversies begin with the premise that there must be a conflict of interest between at least two genuinely adversary parties.”).

⁷⁴ A brief methodological point: I employ the coherentist theory of “reflective equilibrium” to make this claim. Reflective equilibrium is predicated on the idea that we best justify our beliefs and judgments by undertaking continued reflection and revision to those beliefs and judgments in order to produce an internally consistent system of beliefs, instead of extrapolating from supposed fundamental premises. See Mitchell N. Berman, *Our Principled Constitution*, 166 U. PA. L. REV. 1325, 1355 (2018). Simply (but effectively) put, reflective equilibrium states that “[a] rule is amended if it yields an inference we are unwilling to accept; an inference is rejected if it violates a rule we are unwilling to amend.” Nelson Goodman, *The New Riddle of Induction, in* FACT, FICTION, AND FORECAST 58, 64 (1965) (emphasis omitted). I suggest that Article III court jurisdiction over bankruptcy cases is not unconstitutional.

⁷⁵ PFANDER, *supra* note 71, at 113.

over which federal courts may exercise jurisdiction despite the lack of party adversity or contestation.⁷⁶ A debtor’s right to petition the court for relief and a discharge of its debts has deep roots in English and American law,⁷⁷ and historical practice implies that this seeming anomaly of justiciability doctrine nonetheless has gained general acceptance as a legitimate feature of legal practice. The bankruptcy case, then, proceeds under the auspices of the district court which exercises non-contested jurisdiction over the case consistent with the history of Article III and established practice.⁷⁸ Concurrent with this power, Congress has created a mechanism for resolution of bankruptcy cases which includes the use of a non-Article III decisionmaker—the bankruptcy court.

Even accepting this argument, the initial objection endures. Surely the Constitution does not *require* Congress to create bankruptcy courts, and Congress has chosen to create a bankruptcy system that uses Article III courts. So what room does the statutory scheme leave for bankruptcy courts to exercise non-Article III power when the bankruptcy case itself remains within the district court’s jurisdiction? A plausible answer lies in the distinction between jurisdiction over the bankruptcy “case” and power to determine bankruptcy “proceedings.” The bankruptcy case—proper, that is, ultimate jurisdiction over the estate, resides with the district court, as § 1334(a) requires. However, § 157(a) and (b) entitle the bankruptcy court, with referral from the district court, to hear and determine *all proceedings* arising from a Title 11 case.⁷⁹ Bankruptcy courts,

⁷⁶ *Id.* at 5–6. While this argument requires a significant departure from the Court’s modern reading of Article III’s “case or controversy” requirement, it provides a convincing basis through which uncontested cases traditionally litigated in federal court may be accommodated.

⁷⁷ See Casey & Huq, *supra* note 67, at 1192.

⁷⁸ See PFANDER, *supra* note 71, at 148–50.

⁷⁹ See 28 U.S.C. § 157(a), (b). To the extent that this section allows bankruptcy courts to hear and determine *cases* under Title 11, it seems to conflict with the language in 28 U.S.C. § 1334(a) vesting “original *and exclusive*” jurisdiction over Title 11 cases in district courts. My focus in this

then, do have an independent power within this statutory scheme because their power is not exercised over the case itself, but rather over the statutory proceedings. The district court retains absolute control of the bankruptcy case, but when it refers proceedings to the bankruptcy court, the bankruptcy court acts according to its own non-Article III authority conferred by § 157.⁸⁰

But this argument does not prove too much—that is, the district court’s jurisdiction over the bankruptcy “case” does not render the bankruptcy court’s non-Article III status insignificant. It is one thing to assert that the district court may constitutionally exercise in rem, non-contested jurisdiction over the bankruptcy estate despite its incongruity with traditional justiciability doctrine. It is quite another to say that an Article III court may provide a remedy for a plaintiff who has not suffered an injury in fact sufficient to establish subject matter jurisdiction over that claim, bankruptcy case or not. For this reason, bankruptcy courts are necessary in this scheme because of their non-Article III status and authority under Title 11, entitling them to grant relief to plaintiffs who would not otherwise have a remedy for a violation of their statutory rights.

II. FROM RIGHTS TO CLAIMS, FROM CLAIMS TO STANDING

Plaintiffs who possess a cause of action to sue for infringement of a legally protected right, but who have not suffered an injury in fact sufficient to convey standing in federal court, nonetheless may assert that cause of action as a claim in bankruptcy court. Despite its counterintuitive appearance,⁸¹ this result logically follows from the statutes establishing federal jurisdiction over cases under Title 11, the Supreme Court’s non-Article III decisionmaker cases, and the Bankruptcy

Paper is only the proceedings which bankruptcy courts may hear. While § 157 and § 1334 present a question of concurrent jurisdiction, such a discussion is not directly pertinent to this argument.

⁸⁰ This is the only type of authority it may exercise. Bankruptcy judges are not Article III judges and may not exercise the judicial power of the United States. *See* Baude, *supra* note 48, at 1575.

⁸¹ *See* Lujan v. Defs. of Wildlife, 504 U.S. 555, 560–61 (1992).

Code itself. This Part explains why, addressing claims both in bankruptcy courts and appeals to Article III courts.

A. Claims in Bankruptcy and Outside Article III

Because bankruptcy courts are not Article III courts, their powers are not necessarily constrained in the same way as district courts. Consequently, the Article III injury-in-fact requirement does not necessarily apply to putative creditors in bankruptcy proceedings.⁸² Prudential limitations on which claims bankruptcy courts may hear must be imposed by statute or federal common law. Neither Title 28 nor Title 11 impose any such limitations on the bankruptcy courts, nor does federal common law. Instead, Title 11 enables bankruptcy courts to allow a claim by a plaintiff who otherwise lacks standing to assert that claim in federal court.

The Bankruptcy Code broadly conceptualizes the claims allowance process. Any person⁸³ who qualifies as a creditor may file a proof of claim against the bankruptcy estate.⁸⁴ In order to qualify as a creditor, the person must be “[an] entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor.”⁸⁵ The Code defines a claim in

⁸² Some courts of appeal have made unqualified pronouncements about the applicability of Article III to bankruptcy courts. *See, e.g., In re Res. Tech. Corp.*, 624 F.3d 376, 382 (7th Cir. 2010) (“Article III’s standing requirements apply to proceedings in bankruptcy courts just as they do to proceedings in district courts.”). *Cf. infra* note 100. To the extent that these statements are meant literally, I suggest they are incorrect for the reasons articulated above. *See supra* Part I.B. In any event, these statements do not arise in the claims allowance process. Instead, they refer to instances where courts are determining whether particular parties in interest have the ability to object to discrete orders from the bankruptcy court or actions by the trustee in contested matters and adversary proceedings. *See, e.g., In re Res. Tech. Corp.*, 624 F.3d at 382–83. In these instances, the objecting party’s pecuniary interest in the bankruptcy case must be imminently or actually affected by the court order or trustee action. I do not suggest this is incorrect, nor does such a requirement threaten my central claim. *See infra* Part II.B.

⁸³ The Code defines person to include, as relevant here, “[an] individual, partnership, and corporation.” 11 U.S.C. § 101(41).

⁸⁴ *Id.* § 501(a).

⁸⁵ *Id.* § 101(10). The Code also defines an “entity” as including “[a] person, estate, trust, governmental unit, and United States trustee.” *Id.* § 101(15).

relevant part as a “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.”⁸⁶ Absent an objection by a party in interest, the bankruptcy court will allow claims filed in accordance with these provisions.⁸⁷ If the putative claim is met with an objection, the bankruptcy court shall, after notice and hearing, determine the value of the claim and allow it in that amount.⁸⁸

Claims will be allowed in their determined value except to the extent that “such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured.”⁸⁹ This language implies that the bankruptcy court will deem the claim allowed so long as the claim is enforceable under the applicable law. The Bankruptcy Code contains no language that limits the breadth of this provision—applicable law includes state law that does not share Article III’s standing requirements. Therefore, § 502(b)(1)’s negative implication sweeps broadly, opening up the universe of allowable claims to include many of those claims under state or federal law that may be enforced in a state forum.⁹⁰ Importantly, though, this enforceability condition requires showing *actual* enforceability. The Court has intimated that an actual ability to enforce the claim outside of

⁸⁶ *Id.* § 101(5)(A).

⁸⁷ *Id.* § 502(a).

⁸⁸ *Id.* § 502(b).

⁸⁹ *Id.* § 502(b)(1).

⁹⁰ *See Travelers Cas. & Sur. Co. of America v. Pacific Gas & Elec. Co.*, 549 U.S. 443, 450 (2007) (“[§ 502(b)(1) is consistent with] the settled principle that ‘[c]reditors’ entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor’s obligation, subject to any qualifying or contrary provisions of the Bankruptcy Code.’ . . . That principle requires bankruptcy courts to consult state law in determining the validity of most claims.”) (quoting *Raleigh v. Illinois Dept. of Revenue*, 530 U.S. 15 (2000)). *Cf. Melikian Enterprises v. McCormick*, 863 F.3d 802, 809 (8th Cir. 2017) (“[T]he Bankruptcy Code and the Supreme Court have directed bankruptcy courts to determine whether a particular claim is allowed in any given proceeding by referencing “applicable law,” which includes state law.”) (footnote omitted).

bankruptcy is necessary for a claim to survive § 502(b)(1),⁹¹ and that requirement would not be augmented even given the unusual posture of these types of claims.⁹²

Many plaintiffs who have not suffered an injury in fact nonetheless will have forums in which they may pursue their claims. Article III does not bind state courts because they do not exercise the judicial power of the United States,⁹³ and they may establish their own standing requirements under their respective state constitutions. Indeed, the primary dissent in *TransUnion* made clear that through its decision, “the Court has thus ensured that state courts will exercise exclusive jurisdiction over these sorts of [federal claims].”⁹⁴ Since state courts, with few exceptions, exercise concurrent jurisdiction with federal courts over federal causes of action, state courts function as the forum in which plaintiffs may enforce their federal claims.⁹⁵ Therefore, to the extent states have more permissive standing requirements than federal courts, which many states do,⁹⁶ they supply an integral route for prospective creditors to establish their claims as enforceable and allowable. The expansive language of § 502(b) facilitates employing state law in

⁹¹ See *Midland Funding, LLC v. Johnson*, 137 S. Ct. 1407, 1411–12 (2017) (explaining that an unenforceable right to payment is still a claim under Title 11, but that an unenforceable claim will be disallowed under § 502(b)(1)).

⁹² Not without some hesitation, I suggest that in this unique case, where the forum in which the claim is brought is of the utmost importance, the concept of enforceability in § 502(b)(1) requires the putative creditor, if met with an objection, to demonstrate actual enforceability of the right constituting a claim. Section 502(b)(1), then, nets out to a barrier to allowance where the substantive law governing the claim imposes a barrier to enforceability, but so long as the claim is justiciable in some forum, the claim may be allowed. This comports with the principle that the unenforceability of a claim in one forum does not necessarily preclude the enforcement of the claim in a different forum. Section 502(b)(1) appears to countenance such a regime.

⁹³ *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617 (1989).

⁹⁴ *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2224 n.9 (2021) (Thomas, J., dissenting).

⁹⁵ See *id.*

⁹⁶ See generally, e.g., M. Ryan Harmanis, Note, *States’ Stances on Public Interest Standing*, 76 OHIO ST. L.J. 729 (2015); Wyatt Sassman, *A Survey of Constitutional Standing in State Courts*, 8 KY. J. EQUINE AGRIC. & NAT. RES. L. 349 (2015).

this way. Title 11 does not otherwise qualify this reference to “applicable law”—permissive state standing doctrine is “applicable law” and makes those causes of action actually enforceable.

B. Interests, Parties in Interest, and the Right to Appeal

As demonstrated above, Title 11 provides the mechanism through which plaintiffs without Article III standing may pursue their claims as creditors in bankruptcy proceedings. The mandatory language in § 502(b) requires a bankruptcy court to allow the claim to the extent that the right to payment is enforceable outside of bankruptcy. And states provide forums in which plaintiffs may pursue their federal claims. The question remains, though, whether these plaintiffs have standing as parties in interest in the bankruptcy proceeding to challenge adverse orders and determinations. Title 11 and the bankruptcy court’s power to allow claims support the conclusion that they do. By allowing a claim, the bankruptcy court gives the plaintiff a pecuniary interest in the restructuring. This interest amounts to a personal stake in the bankruptcy case which the plaintiff may defend against adverse orders just like any other creditor. Both Title 11 and Article III support this result.

First, importantly, what does allowing a claim actually do? The bankruptcy court renders conclusive judgment over the allowance or disallowance of claims under Title 11.⁹⁷ The allowance of a plaintiff’s claim in bankruptcy, while not identical, is analogous to a judgment recognizing the plaintiff’s right to a pro rata share of the debtor’s estate. The bankruptcy court’s determination of the creditor’s rights mirrors any other determination of rights in bankruptcy: it may be exerted and defended consistent with the terms of Title 11, other federal statutes, and the Constitution. This right, though, depends on the status of the bankruptcy court as a non-Article III decisionmaker with the ability to grant relief without Article III constraints. After the bankruptcy court grants this right as required by Title 11, the creditor’s interest in the bankruptcy case attaches. With its newly

⁹⁷ See 28 U.S.C. § 157(b)(2)(B).

vested right, the creditor now has party-in-interest status under § 1109, giving it bankruptcy standing to challenge adverse orders and appellate standing to seek appeal in the district court and court of appeals. To address these contentions in order:

Section 1109(b) provides that “[a] party in interest, including . . . a creditor . . . may raise and may appear and be heard on any issue in a case under this chapter.”⁹⁸ Per the Code’s plain text, a plaintiff with an allowed claim invariably qualifies as a “party in interest” because that plaintiff is a creditor. While the Code does not define “party in interest,” § 1109(b)’s enumerative clause makes clear that whatever the term’s scope, a creditor qualifies.

But bankruptcy standing is not so easily satisfied. Courts of appeals have insisted that a party in interest needs to show more than simply meeting § 1109(b)’s statutory requirement.⁹⁹ Instead, plaintiffs additionally “must satisfy Article III constitutional requirements; and . . . they must meet federal court prudential standing requirements.”¹⁰⁰ “As applied in the Chapter 11 context, Article III standing exists where ‘the participant holds a financial stake in the outcome of the proceeding such that the participant has an appropriate incentive to participate in an adversarial form to protect his or her interests.’”¹⁰¹ Because a creditor has an allowed claim and therefore a pecuniary interest in the outcome of the bankruptcy case, it has Article III standing to challenge

⁹⁸ 11 U.S.C. § 1109(b).

⁹⁹ Because of the provision’s maximalist language, at it has been suggested that § 1109(b)’s party in interest requirement does little, if any, work to limit the universe of parties that may object. *See In re Glob. Indus. Techs., Inc.*, 645 F.3d 201, 211 (3d Cir. 2011) (“Interpreting the ‘party in interest’ requirement as an additional obstacle to bankruptcy standing would frustrate the purpose of § 1109(b), which was intended to confer broad standing at the trial level”) (cleaned up).

¹⁰⁰ *In re Thorpe Insulation Co.*, 677 F.3d 869, 884 (9th Cir. 2012). *See also In re Old Carco LLC*, 500 B.R. 683, 690 (Bankr. S.D.N.Y. 2013) (adopting the same tripartite bankruptcy standing test). Importantly, “bankruptcy standing” does not refer to the ability of a party to bring a claim against the debtor in the claim allowance process. Instead, it refers to “standing to object to the confirmation of the plan in bankruptcy court.” *In re Thorpe Insulation Co.*, 677 F.3d at 883.

¹⁰¹ *In re Thorpe Insulation Co.*, 677 F.3d at 887.

the restructuring plan when it is adverse to the creditor’s rights or interests, fairly traceable to the order or action, and redressable by favorable judicial resolution.¹⁰² Importantly, the interest that gives the creditor Article III standing in this context is not its underlying cause of action; rather, it is the determination by the bankruptcy court that the underlying cause of action constitutes an allowable claim under Title 11. That judgment, then, constitutes the right that the creditor exerts and is entitled to protect in the plan confirmation process, and it is that pecuniary interest which conveys Article III standing.¹⁰³

Finally, a creditor must satisfy the prudential standing requirements imposed by the Bankruptcy Code.¹⁰⁴ Prudential standing is a judicially crafted limitation on jurisdiction meant to ensure that litigants assert their own rights, a concern particularly salient in the bankruptcy context which invites a convergence of disparately-interested parties.¹⁰⁵ To have prudential standing, the creditor’s grievance must fall within the “zone of interests” protected by the applicable statute.¹⁰⁶ In the bankruptcy context, Congress intended to facilitate broad participation in the reorganization

¹⁰² *See id.*

¹⁰³ *Cf. infra* note 113.

¹⁰⁴ The Supreme Court’s decision in *Lexmark Int’l, Inc. v. Static Control Components*, 572 U.S. 118 (2014), has cast doubt on the ability of federal courts to require prudential standing in addition to a statutory grant of jurisdiction. *See, e.g., In re City of Detroit, Michigan*, 838 F.3d 792, 800 (6th Cir. 2016). *Cf. In re One2One Communications, LLC*, 805 F.3d 428, 441 (3d Cir. 2015) (Krause, J., concurring). Some courts of appeals have interpreted *Lexmark* to convert “prudential standing” into a merits inquiry. *See, e.g., In re Wilton Armetale, Inc.*, 968 F.3d 273, 281 (3d Cir. 2020); *In re Cap. Contracting Co.*, 924 F.3d 890, 895 (6th Cir. 2019). The question, it appears, is fundamentally the same in bankruptcy because § 1109 provides the answer whether characterized as a standing requirement or a merits question. *See infra* note 106.

¹⁰⁵ *See, e.g., Kane v. Johns-Manville Corp.*, 843 F.2d 636, 644 (2d Cir. 1988).

¹⁰⁶ *In re Thorpe Insulation Co.*, 677 F.3d at 888 (citing *Bennett v. Spear*, 520 U.S. 154 (1997)). *See also In re Fin. Oversight & Mgmt. Bd. for Puerto Rico* (D.P.R. 2020) (“Prudential standing requires a claimant to demonstrate that ‘his claim is premised on his own legal rights . . . and that it falls within the zone of interests protected by the law invoked.’”) (quoting *Katz v. Pershing, LLC*, 672 F.3d 64 (1st Cir. 2012)). A plaintiff’s grievance falls within the “zone of interests” when the plaintiff possesses statutory standing. *See id.* (citing *In re Chiu*, 266 B.R. 743 (9th Cir. BAP 2001)).

and therefore gave parties broad statutory standing.¹⁰⁷ A creditor's interest in the reorganization patently constitutes an interest that falls within the zone of statutory protection because its financial interest is directly at stake in the case. Congress's intention to sweep in all interested parties brings the creditor within the Bankruptcy Code's zone of interest. Therefore, plaintiffs with allowed claims satisfy all three prongs of the bankruptcy standing test and may challenge adverse orders and actions in the bankruptcy court.

Moreover, creditors with allowed claims have standing to appeal orders and adverse determinations to the district court and court of appeals, *and* putative creditors whose claims have been *disallowed* also have standing to appeal the bankruptcy court's determination. Again, this result follows from the principles of Article III, Title 11, and the bankruptcy court's power over the claims allowance process.

District courts have jurisdiction under 28 U.S.C. § 158(a)(1) to hear appeals "from final judgments, orders, and decrees" and discretion under § 158(a)(3) to take interlocutory appeals from bankruptcy courts. Courts of appeals have jurisdiction to hear appeals from all final decisions entered by district courts under § 158(a).¹⁰⁸ The courts of appeals universally follow the "person-aggrieved" test for determining whether a party may appeal an order of the bankruptcy court.¹⁰⁹ "To be a person aggrieved, a party must challenge an order that 'diminishes their property, increases their burdens, or impairs their rights.'"¹¹⁰ Appellate standing is narrower than Article III

¹⁰⁷ *In re Thorpe Insulation Co.*, 677 F.3d at 888. Courts seem to treat § 1109 as the determinant for prudential standing, despite the redundancy of applying it twice in the bankruptcy standing test. *See, e.g., id. Cf. In re Combustion Eng'g, Inc.*, 391 F.3d 190, 214 n.21 (3d Cir. 2004) (emphasizing the "broad right of participation in the early stages of a bankruptcy proceeding" granted by § 1109).

¹⁰⁸ 28 U.S.C. § 158(d)(1). To be precise, § 158(d) also gives courts of appeals jurisdiction over appeals from bankruptcy appellate panels which may hear appeals under § 158(b).

¹⁰⁹ *In re Point Ctr. Fin., Inc.*, 890 F.3d 1188, 1191 (9th Cir. 2018).

¹¹⁰ *In re Revstone Indus. LLC*, 690 F. App'x 88, 89 (3d Cir. 2017) (quoting *In re Combustion Eng'g, Inc.*, 391 F.3d 190 (3d Cir. 2004)).

standing and may arise only from a direct financial injury derived from the bankruptcy court determination.¹¹¹ Therefore, only parties with interests directly injured by a final bankruptcy order may take an appeal.¹¹²

A creditor with an allowed claim possesses the requisite pecuniary interest in the bankruptcy case to give rise to appellate standing. Assuming that the bankruptcy court enters a final order that is directly adverse to the creditor's pecuniary interest—such as a cramdown reorganization plan under § 1129(b) over the creditor's objection—the creditor's interest suffices under Article III, § 1109, and the person-aggrieved test to convey appellate standing to challenge the order because it would diminish the creditor's property or rights. Taking confirmation of a reorganization plan as an example, the confirmation order discharges the debtor's pre-plan obligations and fixes the debt to the terms outlined in the reorganization plan. Such an order injures the creditor because the plan almost invariably diminishes the claim's value. Therefore, the creditor may invoke appellate jurisdiction over final orders by virtue of its pecuniary interest from its allowed claim notwithstanding whether that creditor had standing to pursue its underlying cause of action in federal court.

A putative creditor also has standing to appeal the bankruptcy court's determination that a claim should be disallowed. The disallowance of a claim is a judgement by the bankruptcy court that the plaintiff has no right to assert; because that ruling is adverse to the party asserting the

¹¹¹ *Id.*

¹¹² Both the allowance and disallowance of claims by the bankruptcy court are “final orders” under § 158(a)(1). *In re Nicolaus*, 963 F.3d 839, 842 (8th Cir. 2020) (treating the disallowance of a claim as a final order sufficient to convey appellate jurisdiction); *In re Joliet-Will Cty. Cmty. Action Agency*, 847 F.2d 430, 431 (7th Cir. 1988) (holding that allowance of a claim by the bankruptcy court is a final order which may be appealed).

purported right, it entitles that party to appeal the adverse determination.¹¹³ Whether or not the claim was disallowed for lack of standing or for another reason does not change the fact that the putative creditor may appeal the bankruptcy court’s determination.¹¹⁴ Plaintiffs without standing may pursue their claims in bankruptcy court because Article III does not preclude allowance of the claim and Title 11 requires allowance to the extent the claim is enforceable. So, while the bankruptcy court erroneously interprets federal law by arriving at a contrary conclusion, it does not deprive the putative creditor of an avenue for appellate review.

CONCLUSION

This Paper has shown that plaintiffs who have not suffered an injury in fact may nonetheless participate fully in the bankruptcy process and enforce their rights against the debtor. This conclusion raises the question whether Congress would approve of allowing these sorts of claims in bankruptcy. The answer, at least for federal causes of action like at issue in *TransUnion*, is likely “yes.” Congress created a private right of action to give redress for violations of rights it thought worthy of protection. The fact that federal courts may not hear these claims does not extinguish Congress’s interest in creating and protecting these rights. Indeed, unless Congress has rescinded its grant of statutory rights and an accompanying cause of action, it likely remains interested in seeing those rights vindicated. And bankruptcy poses no exception.¹¹⁵ For these reasons, we should

¹¹³ See 2 HOWARD J. STEINBERG, BANKRUPTCY LITIGATION § 9:18 (2021) (stating appellate review of claim allowance and disallowance orders is “consistent with the fact that allowing or disallowing the claim has the same impact as entering a judgment for plaintiff or defendant in an independent lawsuit”).

¹¹⁴ Cf. *In re Thorpe Insulation Co.*, 677 F.3d 869, 884 (9th Cir. 2012) (“A party denied standing in the bankruptcy court has appellate standing to challenge that determination.”).

¹¹⁵ Recognizing these types of claims as enforceable in bankruptcy presents importance questions of priority, especially with respect to “non-injury” claims versus other unsecured claims, like personal injury or other tort claims. Placing non-injury claims on the same footing as other tort claims raises important policy questions, and this Paper admittedly offers no answer for how the Bankruptcy Code ought to treat those claims or how those companies’ liabilities should be

take Congress at its word when it provides a private cause of action to protect statutory rights and enforce them to the extent permissible, even in bankruptcy.

restructured. For two perspectives on this issue, see generally Vincent S.J. Buccola & Joshua C. Macey, *Claim Durability and Bankruptcy's Tort Problem*, 38 YALE J. ON REG. 766 (2021) (arguing that the temporal durability of tort claims lends insight into whether such claims should be subject to discharge); Samir D. Parikh, *Scarlet-Lettered Bankruptcy: A Public Benefit Proposal for Mass Tort Villains*, 117 NW. U. L. REV. 425 (2022) (proposing that mass tortfeasors seeking relief in chapter 11 emerge from bankruptcy “as a corporation for the public benefit”).