

Sec. 1—Judicial Power, Courts, Judges

would necessarily presage the settling of the law.¹¹⁰ But the breadth of the various opinions not only left unclear the degree of discretion left in Congress to restructure the bankruptcy courts, but also placed in issue the constitutionality of other legislative efforts to establish adjudicative systems outside a scheme involving the creation of life-tenured judges.¹¹¹

Congress responded to *Marathon* by enactment of the Bankruptcy Amendments and Federal Judgeship Act of 1984.¹¹² Bankruptcy courts were maintained as Article I entities, and overall their powers as courts were not notably diminished. However, Congress did establish a division between “core proceedings,” which could be heard and determined by bankruptcy courts, subject to lenient review, and other proceedings, which, though initially heard and decided by bankruptcy courts, could be reviewed *de novo* in the district court at the behest of any party, unless the parties had consented to bankruptcy-court jurisdiction in the same manner as core proceedings. A safety valve was included, permitting the district court to withdraw any proceeding from the bankruptcy court on cause shown.¹¹³

Notice, however, that in *Granfinanciera, S.A. v. Nordberg*¹¹⁴ the Court, evaluating the related issue of when a jury trial is required under the Seventh Amendment,¹¹⁵ found that a cause of action to avoid a fraudulent money transfer was founded on state law, and, although denominated a core proceeding by Congress, was actually a private right. Similarly, the Court in *Stern v. Marshall*¹¹⁶ held that a counterclaim of tortious interference with a gift, although made during a bankruptcy proceeding and statutorily deemed a core proceeding, was a state common law claim that did not fall under any of the public rights exceptions.¹¹⁷

¹¹⁰ *Ex parte Bakelite Corp.*, 279 U.S. 438 (1929), was, after all, a unanimous opinion and did not long survive.

¹¹¹ In particular, the Federal Magistrates Act of 1968, under which judges may refer certain pretrial motions and the trial of certain matters to persons appointed to a specific term, was threatened. Pub. L. 90-578, 82 Stat. 1108, as amended, 28 U.S.C. §§ 631-639. See *United States v. Radios*, 447 U.S. 667 (1980); *Mathews v. Weber*, 423 U.S. 261 (1976).

¹¹² Pub. L. 98-353, 98 Stat. 333, judiciary provisions at 28 U.S.C. §§ 151 *et seq.*

¹¹³ See 28 U.S.C. § 157.

¹¹⁴ 492 U.S. 33 (1989).

¹¹⁵ See Seventh Amendment, Cases at Common law, *infra*.

¹¹⁶ 564 U.S. ___, No. 10-179, slip op. (2011).

¹¹⁷ The Court noted that the claim “. . . is not a matter that can be pursued only by grace of the other branches . . . or one that ‘historically could have been determined exclusively by’ those branches It does not ‘depend[] on the will of Congress’s . . . ; Congress has nothing to do with it. [It] . . . does not flow from a federal statutory scheme [And it] is not ‘completely dependent upon’ adjudication of a claim created by federal law” 564 U.S. ___, No. 10-179, slip op. at