No. 16-348

In the Supreme Court of the United States

MIDLAND FUNDING, LLC, PETITIONER

v.

ALEIDA JOHNSON

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE PETITIONER

JASON B. TOMPKINS
CHASE T. ESPY
BALCH & BINGHAM LLP
1901 Sixth Avenue North,
Suite 1500
Birmingham, AL 35203

KANNON K. SHANMUGAM
Counsel of Record
ALLISON JONES RUSHING
MASHA G. HANSFORD
KATHERINE A. PETTI
WILLIAM T. MARKS
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000
kshanmugam@wc.com

QUESTIONS PRESENTED

1. Whether the filing of an accurate proof of claim for an unextinguished time-barred debt in a bankruptcy proceeding violates the Fair Debt Collection Practices Act.

2. Whether the Bankruptcy Code, which governs the filing of proofs of claim in bankruptcy, precludes the application of the Fair Debt Collection Practices Act to the filing of an accurate proof of claim for an unextinguished time-barred debt.

CORPORATE DISCLOSURE STATEMENT

Petitioner Midland Funding, LLC, is a subsidiary of Encore Capital Group, Inc., a publicly held company. Encore Capital Group has no parent corporation, and no publicly held company owns 10% or more of its stock.

TABLE OF CONTENTS

Page

Table of contents—continued:

TABLE OF AUTHORITIES

Cases:

Page

Cases—continued:

Page

Cases—continued:

Page

Cases—continued:

Constitution, statutes, and rules:

Page

Statutes and rules—continued:

Page

Statutes and rules—continued:

Miscellaneous:

Page

Miscellaneous—continued:

In the Supreme Court of the United States

No. 16-348

MIDLAND FUNDING, LLC, PETITIONER

v.

ALEIDA JOHNSON

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE PETITIONER

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-15a) is reported at 823 F.3d 1334. The order of the district court granting petitioner's motion to dismiss (Pet. App. 18a-37a) is reported at 528 B.R. 462.

JURISDICTION

The judgment of the court of appeals was entered on May 24, 2016. A petition for rehearing was denied on August 19, 2016 (Pet. App. 16a-17a). The petition for a writ of certiorari was filed on September 16, 2016, and granted on October 11, 2016. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS AND RULES INVOLVED

Relevant provisions of the Bankruptcy Code, 11 U.S.C. 101-1532; the Fair Debt Collection Practices Act, 15 U.S.C. 1692-1692p; and the Federal Rules of Bankruptcy Procedure are reproduced in an appendix to this brief.

STATEMENT

This case presents two related questions concerning the interplay between the Bankruptcy Code (Code) and the Fair Debt Collection Practices Act (FDCPA). The Code entitles a creditor to file a proof of claim in a bankruptcy proceeding. Together with the accompanying rules, the Code requires a creditor seeking to collect on specified types of consumer debt to include certain information in the proof of claim, so as to enable parties in interest to assess the claim's timeliness, and it provides a remedial scheme to address abusive or otherwise improper filings. The earlier-enacted FDCPA prohibits debt collectors from engaging in collection practices that are deceptive, misleading, unfair, or unconscionable. The questions presented by this case are, first, whether a debt collector violates the FDCPA by filing an accurate proof of claim for an unextinguished time-barred debt in a bankruptcy proceeding, and second, whether the Bankruptcy Code precludes such an application of the FDCPA.

Petitioner is a debt purchaser that acquired respondent's defaulted credit-card debt. When respondent filed for bankruptcy, petitioner filed a proof of claim in her bankruptcy case. The proof of claim accurately listed the amount of the debt and other required information, including the date of the last transaction on respondent's account. Because that date was more than six years before petitioner's filing, the debt appears to have been

time-barred under the relevant state law. Respondent objected to petitioner's claim, and the bankruptcy court disallowed it.

Three days later, respondent filed a separate lawsuit against petitioner outside the bankruptcy proceeding, alleging that the filing of a proof of claim on a time-barred debt in the bankruptcy proceeding violated the FDCPA. The district court granted petitioner's motion to dismiss. In a decision contrary to decisions from every other court of appeals to have considered the issue, the Eleventh Circuit reversed and remanded. The Eleventh Circuit recognized that the Code permits creditors to file proofs of claim for time-barred debts in bankruptcy proceedings. It nevertheless held, first, that debt collectors violate the FDCPA when they file such proofs of claim, and, second, that the Code does not preclude applying the FDCPA to prohibit such filings. Both of those holdings were incorrect, and the Eleventh Circuit's judgment should be reversed.

A. Background

1. "The principal purpose of the Bankruptcy Code is to grant a fresh start to the honest but unfortunate debtor." *Marrama* v. *Citizens Bank of Massachusetts*, 549 U.S. 365, 367 (2007) (internal quotation marks and citation omitted). An individual debtor can commence a bankruptcy proceeding by filing a voluntary petition, typically under Chapter 7 or Chapter 13 of the Code. See 11 U.S.C. 301. At that point, the debtor's property becomes part of the bankruptcy estate. See 11 U.S.C. 541(a). In connection with the filing of the petition, the debtor is required to file a list of creditors and a schedule of assets and liabilities. See 11 U.S.C. 521(a)(1)(A), (B)(i).

The Code establishes the procedures by which debtors "can reorder their affairs, make peace with their creditors, and enjoy a new opportunity in life with a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." *Grogan* v. *Garner*, 498 U.S. 279, 286 (1991) (internal quotation marks and citation omitted). Specifically, the Code provides that, "[w]hen a debtor declares bankruptcy, each of [the debtor's] creditors is entitled to file a proof of claim" against the estate. *Travelers Casualty & Surety Co.* v. *Pacific Gas & Electric Co.*, 549 U.S. 443, 449 (2007); see 11 U.S.C. 501. Consistent with bankruptcy's goal of resolving all potential claims against the debtor, the Code defines a "claim" 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." 11 U.S.C. 101(5)(A). As this Court has repeatedly recognized, that language gives the term "claim" the "broadest available definition." *Johnson* v. *Home State Bank*, 501 U.S. 78, 83 (1991); see *FCC* v. *NextWave Personal Communications Inc.*, 537 U.S. 293, 302 (2003).

"Once a proof of claim has been filed, the court must determine whether the claim is 'allowed' under [Section] 502(a) of the Bankruptcy Code." *Travelers*, 549 U.S. at 449. In consumer bankruptcies, the Code provides for the appointment of a trustee, who is required to examine proofs of claim and, where appropriate, object to any improper claim. See 11 U.S.C. 704(a)(5), 1302(b)(1). By default, a claim is deemed allowed unless the trustee or some other party in interest (such as the debtor or another creditor) objects. See 11 U.S.C. 502(a). If there is an objection, the bankruptcy court must determine whether the claim should be disallowed under any of the "exceptions"

listed in the Code. See 11 U.S.C. 502(b); *Travelers*, 549 U.S. at 449.

As is relevant here, a claim may be disallowed because it is "unenforceable * * * under any * * * applicable law for a reason other than because such claim is contingent or unmatured." 11 U.S.C. 502(b)(1). The Code specifically provides that the estate is entitled to invoke any "defense" that would have been available to the debtor, "including statutes of limitation." 11 U.S.C. 558. For claims based on certain types of consumer credit agreements (such as credit-card agreements), the Federal Rules of Bankruptcy Procedure require the creditor to disclose certain information in the proof of claim, including the date of the account holder's last transaction; the date of the last payment on the account; and the date the account was charged to profit and loss. See Fed. R. Bankr. P. 3001(c)(3)(A)(iii)-(v). The purpose of requiring those additional disclosures is to aid parties in interest in "assessing the timeliness of the claim." Fed. R. Bankr. P. 3001 advisory committee's notes (2012).

Beyond the procedures for the filing and allowance of claims, which ensure the comprehensiveness of the bankruptcy process and the equitable distribution of assets, the Code provides several additional protections for debtors. Once a debtor declares bankruptcy, the Code's automatic-stay provision operates to enjoin any act to "collect, assess, or recover a [preexisting] claim against the debtor," such as phone calls and letters to the debtor seeking to obtain a payment on the debt. 11 U.S.C. 362(a)(6). At the conclusion of the bankruptcy process, moreover, the Code discharges all debts that have been brought into the bankruptcy process. See 11 U.S.C. 523(a)(3), 727(b). Discharge provides the fresh start promised by bankruptcy and protects the debtor from any future acts to recover discharged debts, as well as from various forms of

discrimination based on the nonpayment of those debts. See 11 U.S.C. 524(a), 525.

The Bankruptcy Code has a comprehensive remedial scheme for abusive or otherwise improper actions taken in bankruptcy proceedings. The Code permits a bankruptcy court to "tak[e] any action or mak[e] any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. 105(a). In addition, the Federal Rules of Bankruptcy Procedure state that the presentation of any document to the court constitutes a certification that the document is not presented "for any improper purpose" and that any "legal contentions * * * are warranted by existing law" (or by an argument for modifying the law). Fed. R. Bankr. P. 9011(b). Violations of that provision are punishable by sanctions specified in the Rules. See Fed. R. Bankr. P. 9011(c).

2. This case results from a recent effort by the plaintiffs' bar to apply the Fair Debt Collection Practices Act to prevent the filing of certain types of claims in bankruptcy proceedings. The FDCPA was enacted in 1977, a year before the Code, as an amendment to the Consumer Credit Protection Act. See Pub. L. No. 95-109, 91 Stat. 874 (1977). In enacting the FDCPA, Congress sought, among other things, to "eliminate abusive debt collection practices," which it found "contribute to the number of personal bankruptcies." 15 U.S.C. 1692(a), (e). To achieve that end, the FDCPA bars debt collectors—defined broadly to include entities that "regularly collect[] or attempt[] to collect, directly or indirectly," debts owed to others, 15 U.S.C. 1692a(6)—from engaging in specified types of conduct.

Of particular relevance here, the FDCPA prohibits debt collectors from using "any false, deceptive, or misleading representation or means in connection with the

collection of any debt," including "false[ly] represent[ing] * * * the character, amount, or legal status of any debt." 15 U.S.C. 1692e. The FDCPA also prohibits debt collectors from using "unfair or unconscionable means to collect or attempt to collect any debt," including "collect[ing] * * * any amount" that is not "expressly * * * permitted by law." 15 U.S.C. 1692f. The FDCPA provides a private right of action for consumers against debt collectors. See 15 U.S.C. 1692k. Successful plaintiffs are entitled to actual damages and costs, including attorney's fees. See 15 U.S.C. 1692k(a). Regardless of the existence of actual damages, the FDCPA provides for statutory damages of up to $1,000 in an individual action or up to $500,000 in a class action. See 15 U.S.C. 1692k(a)(2).

B. Facts And Procedural History

1. In 2014, respondent filed a petition for bankruptcy in the United States Bankruptcy Court for the Southern District of Alabama under Chapter 13 of the Bankruptcy Code. Respondent was represented by counsel throughout the bankruptcy proceeding, and the bankruptcy court duly assigned a trustee to respondent's case. J.A. 9-10.

Petitioner had previously purchased a defaulted credit-card debt incurred by respondent in the amount of $1,879.71. Respondent did not list that debt in the schedule accompanying her bankruptcy petition. Petitioner subsequently filed a proof of claim for that debt in the bankruptcy proceeding. J.A. 12-19. As required by Bankruptcy Rule 3001, petitioner's proof of claim accurately listed the date of the last transaction on respondent's account as May 2003. J.A. 18. Respondent is an Alabama resident, and Alabama has a six-year limitations period for claims of the type at issue here. See Ala. Code § 6-2-34. The proof of claim was filed more than six years after

the last transaction on respondent's account. J.A. 15. Respondent's counsel objected to petitioner's claim on the ground that it lacked supporting documentation, J.A. 21, and the bankruptcy court disallowed it.[1]

Respondent's eligible assets were smaller than her debts. See Bankr. Ct. Dkt. 1, at 1 (Mar. 24, 2014). The bankruptcy court accordingly confirmed a non-100% repayment plan. See Bankr. Ct. Dkt. 42, at 1 (Sept. 15, 2014). Under such a plan—as in the majority of Chapter 13 cases and virtually all Chapter 7 cases—the amount the debtor pays depends on the debtor's projected income, not the total amount of the creditors' claims. See *In re Dubois*, 834 F.3d 522, 531-532 (4th Cir. 2016). Respondent's bankruptcy plan specified that she would pay $402 per month for 60 months, amounting to approximately 77% of her outstanding unsecured debts. See Bankr. Ct. Dkt. 42, at 1.

2. Three days after the bankruptcy court disallowed petitioner's claim, respondent brought a putative nationwide class action against petitioner in the United States District Court for the Southern District of Alabama under the FDCPA. J.A. 23-28. Respondent chose to file her FDCPA claim as a stand-alone action, rather than as an adversary proceeding within the bankruptcy case. The complaint in this case appears to have been a form complaint; respondent's counsel misspelled her first name as

---

[1] Because respondent's counsel objected to the claim on the ground that it lacked supporting documentation (rather than on the ground that it was untimely), and because this case is before the Court on a motion to dismiss, the record does not reflect whether there was some reason the limitations defense would not apply: for example, because the defense had been waived, the limitations period tolled, or the claim revived by the debtor's subsequent conduct. For present purposes, the Court may assume that the claim would have been disallowed if respondent had raised a timeliness defense.

"Aledia" and erroneously referred to her as "him[]." J.A. 23, 26. The complaint alleged that, because petitioner's claim was for a time-barred debt, the filing of the proof of claim in respondent's bankruptcy proceeding constituted a deceptive, misleading, unfair, and unconscionable debt-collection practice under the FDCPA. J.A. 25. The complaint sought actual damages (although it did not allege any), as well as statutory damages, attorney's fees, and costs. *Ibid.* Despite the fact that respondent was still in bankruptcy, she did not seek to proceed *in forma pauperis*; instead, she (or someone on her behalf) paid the filing fee of $400. J.A. 5.

3. Petitioner moved to dismiss the suit, and the district court granted the motion. Pet. App. 18a-37a. The district court recognized that it was bound by the Eleventh Circuit's decision in *Crawford* v. *LVNV Funding, LLC*, 758 F.3d 1254 (2014), cert. denied, 135 S. Ct. 1844 (2015), which held that the filing of a proof of claim for a time-barred debt violates the FDCPA. Pet. App. 19a-20a. But the district court observed that the Eleventh Circuit had left open the related question whether the Code precludes such an application of the FDCPA. *Id.* at 20a.

The district court held that it does. Pet. App. 20a-37a. The court noted that, under Alabama law, the running of the limitations period does not extinguish a creditor's right to payment, but instead potentially eliminates the creditor's judicial remedy: namely, a civil judgment against the debtor. *Id.* at 22a. Analyzing the text of the Code, this Court's precedents, and bankruptcy practice, the district court determined that the Code permits a creditor to file a proof of claim for an unextinguished time-barred debt: that is, a debt on which the limitations period has run, but where the underlying right to payment continues to exist under state law. *Id.* at 21a-30a. The court then determined that there was an irreconcilable conflict

between the Code and the FDCPA, because "comply[ing] with the [FDCPA]" requires "surrendering [the creditor's] right under the Code." *Id.* at 33a. Accordingly, the court concluded that the earlier-enacted FDCPA "must give way" to the Code. *Id.* at 37a.

4. The court of appeals reversed and remanded. Pet. App. 1a-15a.[2]

The court of appeals first explained that it had decided a "nearly identical" question in *Crawford* and had held that "a debt collector violates the FDCPA when it files a proof of claim in a bankruptcy case on a debt that it knows to be time-barred." Pet. App. 2a, 5a. The court reaffirmed *Crawford*'s holding on that question. *Id.* at 5a-6a.

The court of appeals then turned to the related question it had expressly left open in *Crawford*: namely, whether the Bankruptcy Code "preclude[s] an FDCPA claim in the context of a Chapter 13 bankruptcy when a debt collector files a proof of claim it knows to be time-barred." Pet. App. 7a. At the outset, the court of appeals agreed with the district court that, under the Code, a creditor has a "'right' to file a time-barred claim." *Id.* at 8a. The court explained that "the Code allows creditors to file proofs of claim that appear on their face to be barred by the statute of limitations." *Id.* at 7a.

The court of appeals nevertheless concluded that the Code "does not preclude an FDCPA claim in the bankruptcy context." Pet. App. 15a. The Code and the FDCPA could be "reconciled," according to the court, be-

[2] The court of appeals considered this case together with another case in which the same district court had subsequently relied on the reasoning of its decision in this case. See Pet. App. 4a. While the court of appeals addressed both cases in a single opinion, it entered separate judgments in each case. Only petitioner's case is before the Court.

cause the FDCPA "dictates the behavior of only 'debt collectors'" and because the Code "establishes the ability to file a proof of claim" while the FDCPA "addresses the later ramifications of filing a claim." *Id.* at 12a. The court reasoned that there was no "positive repugnancy" between the statutes, because a debt collector that files a proof of claim for a time-barred debt (as authorized under the Code) "is simply opening [itself] up to a potential lawsuit for an FDCPA violation." *Id.* at 14a (internal quotation marks omitted). In the court of appeals' view, subjecting conduct authorized by the Bankruptcy Code to civil liability under the FDCPA did not give rise to an irreconcilable conflict between the two statutes. *Id.* at 15a.

5. The court of appeals subsequently denied rehearing. Pet. App. 16a-17a.

SUMMARY OF ARGUMENT

A proof of claim is a creature of the Bankruptcy Code—a filing in a bankruptcy case defined and regulated by the Code and the accompanying rules. Of particular relevance here, the Code entitles a creditor that holds an unextinguished time-barred debt to file a proof of claim in the bankruptcy proceeding. The court of appeals erred by holding that the filing of such a proof of claim violates the FDCPA, and it further erred by holding that the Code does not preclude an application of the FDCPA that would prohibit such a filing.

I. As every court of appeals (including the Eleventh Circuit in the decision below) has correctly concluded, the Bankruptcy Code entitles a creditor such as petitioner to file a proof of claim for an unextinguished time-barred debt.

Under the Code, any creditor, including a debt collector, may file a proof of claim in the bankruptcy court when a debtor declares bankruptcy. In order to have a "claim"

for purposes of the Code, a creditor must have a "right to payment" under the relevant state law. Here, Alabama law (like the law of almost every other State) provides that the holder of a time-barred debt retains a right to payment. Accordingly, petitioner had a valid "claim" under the Code and was entitled to file a proof of claim for its debt.

Indeed, the Code expressly addresses the question of how a bankruptcy court should process a proof of claim for a time-barred debt. The Code seeks to bring all claims, whether enforceable or not, into the bankruptcy process in order to provide comprehensive resolution for the debtor. The Code also establishes a specific procedure for determining the allowability of claims, under which the trustee, assisted by other parties in interest, can raise objections on limitations or other grounds. Where those objections are sustained, the claim will be disallowed, with the result that it will not be paid by the estate and will ultimately be discharged.

What is more, the Federal Rules of Bankruptcy Procedure also address the filing of proofs of claim for time-barred debts. For claims involving certain types of consumer debt (including the type at issue here), Bankruptcy Rule 3001 requires a creditor to make disclosures that make it easy for the trustee and other parties in interest to raise timeliness objections. At the same time, the Bankruptcy Rules deliberately stop short of imposing an affirmative burden on creditors to identify limitations defenses in their proofs of claim.

This Court's cases, too, support the conclusion that the Code authorizes the filing of proofs of claim for time-barred debts. Those cases emphasize both the breadth of the Code's definition of "claim" and the breadth of States' authority to define creditors' underlying property rights,

even where a debt may not be recoverable via a monetary judgment in an action outside bankruptcy.

The inclusion of claims for time-barred debts within the Code's broad definition of "claim" is wholly consistent with the policies animating bankruptcy: most notably, the Code's core purpose of comprehensively bringing all of a debtor's debts into a single bankruptcy proceeding and resolving them. Excluding claims for time-barred debts would undermine the Code's operation by gutting its automatic-stay and discharge provisions—provisions that confer integral protections on debtors both during and after bankruptcy.

II. Filing a proof of claim for a time-barred debt, as authorized by the Code, does not violate the FDCPA.

The FDCPA prohibits debt collectors from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. 1692e. A creditor does not violate Section 1692e by filing an accurate proof of claim for an unextinguished time-barred debt. Petitioner's proof of claim was entirely accurate, both in its factual content and in its implied representation that the debt collector had a "claim" under the Code. Under this Court's recent decision in *Sheriff* v. *Gillie*, 136 S. Ct. 1594 (2016), the filing of such a proof of claim did not violate Section 1692e.

Nor did such a filing violate the provision of the FDCPA that prohibits debt collectors from using "unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. 1692f. The bankruptcy process is replete with protections for a debtor, including the appointment of a trustee who is obligated to monitor proofs of claim and raise all necessary objections. The vast majority of debtors (like respondent here) have their own counsel as an additional layer of review. The creditor directs a proof of claim not at the debtor, but rather at the

bankruptcy estate, against whose assets the claim is being made. And an additional proof of claim, even if allowed, usually has no impact on a debtor's ultimate payments under the bankruptcy plan. There is therefore nothing unjust or unfair about the filing of a proof of claim for a time-barred debt.

Precisely because the allowance of a claim for a time-barred debt will ordinarily have no impact on the debtor, policing the filings of such proofs of claim in bankruptcy proceedings would assist only other creditors, not the consumers the FDCPA is designed to protect. And in practice, it would fuel already rampant litigation driven by the plaintiffs' bar for its own benefit. It would make little sense to stretch the language of the FDCPA to encompass the conduct at issue here.

III. Even if the FDCPA could be read to prohibit the filing of a proof of claim for a time-barred debt, the Bankruptcy Code would preclude that application of the FDCPA.

As an initial matter, this Court should interpret the FDCPA in such a way as to harmonize it with the Code. Assuming, *arguendo*, that the FDCPA is ambiguous on the question whether filing a proof of claim for a time-barred debt is prohibited, any ambiguity should be resolved against such an interpretation, because the Code expressly authorizes that very practice.

This Court's decision in *Kokoszka* v. *Belford*, 417 U.S. 642 (1974), is instructive. There, the Court held that a closely related consumer-protection statute could not be read to apply within bankruptcy. That holding counsels strongly in favor of a similar approach in interpreting the FDCPA. A contrary approach would disregard the Code's comprehensive scheme, its emphasis on uniformity, and its carefully tailored remedies for abusive or otherwise improper conduct in bankruptcy proceedings.

Finally, if the FDCPA were interpreted to prohibit the filing of a proof of claim for a time-barred debt, it would create an irreconcilable conflict with the Code. So read, the earlier-enacted FDCPA would prohibit what the later-enacted Code entitles a creditor to do. That conflict would suffice to repeal even clear statutory text, so it is plainly sufficient to preclude the judicial interpretation of the FDCPA that the Eleventh Circuit adopted here. It would be inconsistent with Congress's objective in expanding the definition of "claim" to construe an earlier-enacted, non-bankruptcy statute to limit the proofs of claim that can be filed in a bankruptcy proceeding.

In short, there is no valid justification for interpreting the FDCPA to prevent the filing of a proof of claim for a time-barred debt. The court of appeals' outlying interpretation is erroneous, and its judgment should therefore be reversed.

ARGUMENT

I. THE BANKRUPTCY CODE CREATES A RIGHT TO FILE A PROOF OF CLAIM FOR AN UNEXTINGUISHED TIME-BARRED DEBT IN A BANKRUPTCY PROCEEDING

As a threshold matter, the Bankruptcy Code plainly entitles a debt collector to file a proof of claim for an unextinguished time-barred debt. The Code gives every creditor, including a debt collector, the right to file a proof of claim when the debtor files for bankruptcy. A claim for an unextinguished time-barred debt qualifies as a "claim" under the Code, because the creditor has a right to payment under applicable state law. As a result, the Code confers a right to file a proof of claim for such a time-barred debt. That conclusion is so inescapable that every court of appeals to have considered the question, including the Eleventh Circuit in the decision below, has agreed

that the Code creates such a right. See *Dubois*, 834 F.3d at 529-530; *Owens* v. *LVNV Funding, LLC*, 832 F.3d 726, 730-734 (7th Cir. 2016), petition for cert. pending, No. 16-315 (filed Aug. 26, 2016); Pet. App. 8a-9a.

A. The Bankruptcy Code Defines A 'Claim' As A 'Right To Payment,' Which Includes The Right To Payment On An Unextinguished Time-Barred Debt

Under the Code, a creditor, including a debt collector, is entitled to file a proof of claim with the bankruptcy court when the debtor declares bankruptcy. 11 U.S.C. 501(a); see *Travelers*, 549 U.S. at 449. A "creditor" is defined simply as an "entity that has a claim against the debtor." 11 U.S.C. 101(10)(A). And a "proof of claim" is nothing more than a "written statement setting forth a creditor's claim." Fed. R. Bankr. P. 3001(a).

The Code defines a "claim" 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." 11 U.S.C. 101(5)(A). By including that language in the Code, Congress "intended * * * to adopt the broadest available definition of 'claim.'" *Johnson*, 501 U.S. at 83. Congress sought to ensure that "all legal obligations of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case," with the result that the debtor can obtain the "broadest possible relief." H.R. Rep. No. 595, 95th Cong., 1st Sess. 309 (1977); see *Pennsylvania Department of Public Welfare* v. *Davenport*, 495 U.S. 552, 558 (1990); S. Rep. No. 989, 95th Cong., 2d Sess. 21-22 (1978).

It is a "settled principle" that "[c]reditors' entitlements in bankruptcy arise in the first instance from the underlying substantive law creating the debtor's obliga-

tion." *Travelers*, 549 U.S. at 450 (quoting *Raleigh* v. *Illinois Department of Revenue*, 530 U.S. 15, 20 (2000)). Consistent with that principle, this Court has repeatedly recognized that, for purposes of the Code's definition of "claim," a "right to payment" exists where such a right is "recognized under state law." *Id.* at 451; see *Butner* v. *United States*, 440 U.S. 48, 54-55 (1979).

Under Alabama law, the relevant state law here, the running of a statutory limitations period does not "extinguish[]" the underlying "right" to payment; rather, it potentially eliminates a creditor's judicial remedy. *Ex parte Liberty National Life Insurance*, 825 So. 2d 758, 765 (Ala. 2002) (per curiam) (internal quotation marks and citation omitted). Indeed, because the running of the limitations period is an affirmative defense, Alabama courts will enter judgment for the creditor even on a time-barred claim where the debtor fails to raise the limitations defense at an appropriate time and thereby forfeits the defense. See, *e.g.*, *Ex parte Alabama ex rel. Ohio*, 718 So. 2d 669, 671 (Ala. 1998); *Oliver* v. *Dudley*, 109 So. 2d 668, 669 (Ala. 1959). Alabama law also allows a time-barred claim to be revived in certain circumstances: for example, where a debtor makes a partial payment on the debt or supplies a written promise to pay. See Ala. Code § 6-2-16; *Defco, Inc.* v. *Decatur Cylinder, Inc.*, 595 So. 2d 1329, 1333 (Ala. 1992). For present purposes, the critical point is that, regardless of the running of the limitations period, a creditor such as petitioner retains a right to payment on a time-barred debt under Alabama law.

Nor is Alabama law atypical in that respect. As this Court has recognized, it is the "traditional rule" that "expiration of the applicable statute of limitations merely bars the remedy and does not extinguish the substantive right." *Semtek International Inc.* v. *Lockheed Martin Corp.*, 531 U.S. 497, 504 (2001); see, *e.g.*, 51 Am. Jur. 2d

Limitation of Actions § 20 (West 2016). Almost all of the States adhere to that rule.[3] Because petitioner has a right to payment under applicable state law, it necessarily follows under the Code's definition of "claim" that petitioner was entitled to file a proof of claim in respondent's bankruptcy proceeding.

B. The Bankruptcy Code Invites The Filing Of Proofs Of Claim For Unextinguished Time-Barred Debts

Beyond its definition of "claim," the Code generally invites the filing of proofs of claim for rights that are not enforceable, and specifically contemplates the filing of proofs of claim for unextinguished time-barred debts.

1. The Code expressly brings claims that are not presently enforceable into the bankruptcy proceeding. As examples of "claims," the Code cites rights to payment that are "contingent," "unmatured," or "disputed." 11 U.S.C. 101(5)(A). Neither contingent nor unmatured claims are presently enforceable. See *In re Rosteck*, 899 F.2d 694, 697 (7th Cir. 1990) (describing a "contingent" claim as one that "depend[s] on future uncertain events"); *In re Camp*, 78 B.R. 58, 63 n.6 (Bankr. E.D. Pa. 1987) (describing an "unmatured" claim as one where "the right to payment exists at the outset, but the time of payment is deferred" (citation omitted)). And the same is true for at least some disputed claims: namely, those where a debtor's reasons for disputing the claim turn out to be valid.

The Code also establishes a specific process for determining the allowability of claims: that is, for resolving de-

---

[3] We are aware of only two States, Mississippi and Wisconsin, where the expiration of the limitations period extinguishes not just the remedy but also the underlying right to payment. See Miss. Code Ann. § 15-1-3(1); Wis. Stat. Ann. § 893.05.

fenses to claims, including limitations defenses. In consumer bankruptcies, the Code provides for the appointment of a trustee, who is required to examine proofs of claim and object, as needed, to any claim that is improper. See 11 U.S.C. 704(a)(5), 1302(b)(1). By default, most claims are deemed allowed unless the trustee or some other party in interest objects. See 11 U.S.C. 502(a), (d), (e).

Upon an objection, the bankruptcy court must determine whether the claim should be disallowed under any of the exceptions listed in the Code: for example, if a defense renders the claim "unenforceable against the debtor and property of the debtor." 11 U.S.C. 502(b)(1). The Code specifically provides that "[t]he [bankruptcy] estate shall have the benefit of any defense available to the debtor as against any entity other than the estate, *including statutes of limitation*." 11 U.S.C. 558 (emphasis added). The Code thus invites claims for time-barred debts to be brought into the bankruptcy process; where the trustee or another party in interest raises a valid objection on limitations grounds, the claim will be disallowed, with the result that it will not be paid by the estate and will ultimately be discharged.

Notably, a limitations objection will not always be successful. Statutes of limitations generally provide affirmative defenses that are subject to forfeiture, tolling, and revival, all of which would make a seemingly time-barred debt enforceable. See, *e.g.*, 54 C.J.S. *Limitations of Actions* § 133, at 150 (2010); 51 Am. Jur. 2d *Limitation of Actions* § 16; *Shepherd* v. *Thompson*, 122 U.S. 231, 235 (1887); Ala. Code § 6-2-16. For present purposes, the key point is that the Code establishes that a limitations defense (like any other defense) will be raised, and if necessary litigated, *in response to* the filing of a proof of claim

for a potentially time-barred debt. See 11 U.S.C. 502(a), (b)(1), 558.

2. The Federal Rules of Bankruptcy Procedure also address the filing of proofs of claim for time-barred debts. For claims involving certain types of consumer debt (including the type at issue here), Bankruptcy Rule 3001 requires a creditor to include certain information in the proof of claim, including the date of the account holder's last transaction; the date of the last payment on the account; and the date the account was charged to profit and loss. See Fed. R. Bankr. P. 3001(c)(3)(A). Those additional disclosures were mandated precisely for the purpose of enabling parties in interest to "assess[] the timeliness of the claim." Fed. R. Bankr. P. 3001 advisory committee's notes (2012); see *Agenda Book for the Meeting of the Advisory Committee on Bankruptcy Rules* 86-87, 90 (Mar. 26-27, 2009) (*Agenda Book*) <tinyurl.com/2009-agenda>. And the failure to supply the required information exposes a creditor to sanctions, including the payment of attorney's fees and other expenses "caused by the failure." Fed. R. Bankr. P. 3001(c)(2)(D). Consistent with the Code, therefore, the Bankruptcy Rules authorize the filing of proofs of claim for time-barred debts, but provide protections to ensure that objections to such claims can be made with minimal burden.

Critically, when it proposed adding the disclosure requirements to Bankruptcy Rule 3001, a working group of the Advisory Committee on Rules of Bankruptcy Procedure considered going further and requiring creditors affirmatively to "state whether the claim is timely under the relevant statute of limitations." *Agenda Book* 86. But it stopped short of such a requirement, instead recommending that creditors supply the factual information that would allow parties in interest to raise timeliness objec-

tions "more easily." *Id.* at 86-87. The Advisory Committee adopted that reasoning and rejected the affirmative certification requirement. See *Minutes for the Meeting of the Advisory Committee on Bankruptcy Rules* 9 (Mar. 26-27, 2009) <tinyurl.com/2009minutes>. By devising specific procedures for the filing of proofs of claim for time-barred debts, the Advisory Committee obviously contemplated that such proofs of claim would be filed.[4]

3. This Court's cases on the scope of bankruptcy proceedings support the conclusion that the Code authorizes the filing of proofs of claim for time-barred debts. Those cases emphasize both the breadth of the Code's definition of "claim" and the breadth of States' authority to define creditors' underlying property rights. See, *e.g.*, *Travelers*, 549 U.S. at 449-451; *Grogan*, 498 U.S. at 283; *Davenport*, 495 U.S. at 558-559; *Butner*, 440 U.S. at 54-55; *Bryant* v. *Swofford Brothers Dry Goods*, 214 U.S. 279, 290-291 (1909).

This Court's decision in *Davenport* is illustrative. There, the Court considered whether a right to restitution payments from criminal offenders who declared bankruptcy constituted a "claim" for purposes of the Code. Although the probation department could revoke the debtors' probation if they missed their payments, neither the probation department nor the victim had a civil cause of action to recover the unpaid sums (and there was thus no way to obtain a monetary judgment for those sums). See 495 U.S. at 558-559. The Court nevertheless held that

---

[4] Because the Bankruptcy Code expressly authorizes the filing of proofs of claim for time-barred debts, it necessarily follows that such a filing is not sanctionable under Bankruptcy Rule 9011 simply because a limitations defense is available. The Advisory Committee's decision to require only factual disclosures, rather than a certification about the claim's timeliness, underscores the point. See *Agenda Book* 86.

the probation department and the victim had a "right to payment," and thus a "claim," under the Code. See *id.* at 558-560. In so holding, the Court emphasized "Congress' broad rather than restrictive view of the class of obligations that qualify as a 'claim.'" *Id.* at 558. *Davenport* thus stands for the proposition that a "claim" can exist under the Code regardless of the creditor's ability to obtain a monetary judgment in an action outside bankruptcy.

To be sure, in *Davenport*, the Court also stated that a "claim" is "nothing more nor less than an enforceable obligation, regardless of the objectives the State seeks to serve in imposing the obligation." 495 U.S. at 559. But precisely because the obligation at issue in *Davenport* was enforceable, albeit through a means other than a monetary judgment, the Court was not purporting to create a rule excluding "unenforceable" obligations from the scope of the term "claim." Instead, the Court was merely clarifying that "[neither] the purpose [n]or enforcement mechanism" of an obligation could *limit* its status as a "claim." *Id.* at 560.[5] And excluding "unenforceable" obligations from the definition of "claim" would conflict with the plain language of the Code, which expressly sweeps in claims that are not presently enforceable (such as "contingent" and "unmatured" claims) and instructs how those claims should be processed. See pp. 18-19, *supra*.

[5] To the extent this Court has quoted the foregoing language from *Davenport* in subsequent cases, it has done so to emphasize the *breadth* of the term "claim," not to narrow it. See *NextWave*, 537 U.S. at 302-303; *Cohen* v. *de la Cruz*, 523 U.S. 213, 218 (1998); *Johnson*, 501 U.S. at 83-84.

C. Including Claims For Time-Barred Debts Within The Code's Broad Definition Of 'Claim' Serves The Code's Key Policies

The inclusion of claims for time-barred debts within the Code's broad definition of "claim" is wholly consistent with the policies animating bankruptcy. After all, "[a] fundamental principle of the bankruptcy process is the collective treatment of all of a debtor's creditors at one time." 1 William L. Norton Jr. & William L. Norton III, *Norton Bankruptcy Law and Practice* § 3:9, at 3-17 (3d ed. 2016); see, *e.g.*, *In re Glenn*, 542 B.R. 833, 841 (Bankr. N.D. Ill. 2016) (observing that, "[t]he more participation there is[,] the better [the bankruptcy] process works"). A contrary interpretation would erode the protections and benefits that bankruptcy provides to debtors.

1. Excluding claims for time-barred debts from the definition of "claim" would eliminate one of the Code's core protections for debtors: the automatic-stay provision that prevents creditors from taking any act to "collect, assess, or recover a [preexisting] claim against the debtor." 11 U.S.C. 362(a)(6). In adopting that provision, Congress sought to protect "[i]nexperienced, frightened, or ill-counseled debtors" from conduct that could lead them to "succumb to suggestions to repay [a preexisting debt] notwithstanding their bankruptcy." H.R. Rep. No. 595, *supra*, at 342.

If claims for time-barred debts do not qualify as "claims" under the Code, the foregoing provision, which by its terms governs only efforts to collect "claim[s] against the debtor," would not apply to those debts. A creditor could thus continue to contact a debtor during the bankruptcy in an effort to get the debtor to repay all or some of the debt (or to take some other action that would revive the claim). Such a regime would strip the debtor of

the repose a declaration of bankruptcy is supposed to provide, and it could conceivably result in payment to a holder of time-barred debt at the expense of the estate (thus contravening the Code's goal of preserving the estate for equitable division among all of the creditors). See 3 *Collier on Bankruptcy* ¶ 362.03, at 362-23 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. 2016) (*Collier on Bankruptcy*).

2. Excluding claims for time-barred debts from the definition of "claim" would also limit the benefits to the debtor from discharge—widely understood to be the "principal advantage" of bankruptcy in the first place. Thomas H. Jackson, *The Fresh-Start Policy in Bankruptcy Law*, 98 Harv. L. Rev. 1393, 1393 (1985). A discharge in bankruptcy applies only to a debtor's "debts." See 11 U.S.C. 727(b), 1328(a). A "debt," in turn, is "liability on a claim" as defined by the Code. 11 U.S.C. 101(12). It necessarily follows that, if claims for time-barred debts do not constitute "claims" for purposes of the Code, those debts cannot be discharged.

In light of the Bankruptcy Code's ultimate goal of granting debtors a "fresh start," *Marrama*, 549 U.S. at 367 (internal quotation marks and citation omitted), it is fundamental to the Code's operation that all of a debtor's debts are brought into the bankruptcy proceeding in order to ensure that they are discharged. It was for that reason that Congress gave the term "claim" such an expansive definition in the Code. See *Davenport*, 495 U.S. at 558; H.R. Rep. No. 595, *supra*, at 309. There is no valid justification to construe the term "claim" so as to exclude claims for time-barred debts.

The inability to discharge time-barred debts would harm debtors in multiple ways. First, a discharge acts as a continuing injunction against any "act[] to collect" the debt. 11 U.S.C. 524(a)(2). Absent a discharge, a creditor

could continue contacting the debtor through phone calls and letters in an effort to collect. See, *e.g.*, *Owens*, 832 F.3d at 732 & n.6; Federal Trade Commission, *Consumer Information: Time-Barred Debts* (July 2013) (*Consumer Information*) <tinyurl.com/ftcinformation>; Federal Trade Commission, *Repairing a Broken System: Protecting Consumers in Debt Collection Litigation and Arbitration* 22-23 (July 2010) (*Repairing a Broken System*) <tinyurl.com/ftcdebtcollection>. Second, a discharge extinguishes the debt nationwide, whereas statutes of limitations vary from State to State. See 54 C.J.S. *Limitations of Actions* § 20, at 38. Unless a time-barred debt is discharged, a creditor could potentially collect on the debt by filing a lawsuit in a State with a longer limitations period and no "borrowing" statute. See 1 Restatement (Second) of Conflict of Laws §§ 142(2) & cmt. f, 143 & cmt. a, at 396-397, 400 (1971). Third, a discharge ensures that the debtor receives the full benefits of a fresh start, including protection from various forms of discrimination based on the nonpayment of the debt. See 11 U.S.C. 525.

In sum, the Bankruptcy Code sweeps claims for time-barred debts within its broad definition of "claim," and the Code, together with the accompanying rules, establishes a process for resolving these claims easily and expeditiously. Because petitioner has a right to payment under applicable state law, it possessed a "claim" and thus was entitled to file a proof of claim in respondent's bankruptcy proceeding.

II. THE FDCPA DOES NOT PROHIBIT FILING A PROOF OF CLAIM FOR AN UNEXTINGUISHED TIME-BARRED DEBT IN A BANKRUPTCY PROCEEDING

Petitioner did not violate the FDCPA by filing a proof of claim on an unextinguished time-barred debt, as authorized by the Bankruptcy Code. The FDCPA prohibits

debt collectors from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt," 15 U.S.C. 1692e, or from using "unfair or unconscionable means to collect or attempt to collect any debt," 15 U.S.C. 1692f. Filing a proof of claim on an unextinguished time-barred debt pursuant to the Code does not violate either of those prohibitions. Petitioner's proof of claim accurately presented all of the facts required by the Bankruptcy Rules to enable parties in interest to assess the claim's timeliness. Nor is there anything unfair or unconscionable about filing an accurate proof of claim in the bankruptcy process, which is replete with protections for the debtor. And it would be far removed from the core purposes of the FDCPA to extend that statute to regulate the filing of proofs of claim in bankruptcy proceedings.

For those reasons, every court of appeals to consider this question, with the exception of the Eleventh Circuit, has concluded that the FDCPA does not prohibit filing a proof of claim for an unextinguished time-barred debt in a bankruptcy proceeding. Compare *Dubois*, 834 F.3d at 533; *Owens*, 832 F.3d at 736-737; *Nelson* v. *Midland Credit Management, Inc.*, 828 F.3d 749, 752 (8th Cir. 2016), with Pet. App. 5a-6a. This Court should now reach the same conclusion.

A. Filing A Factually Accurate Proof Of Claim For An Unextinguished Time-Barred Debt In A Bankruptcy Proceeding Does Not Violate Section 1692e

To begin with, petitioner did not violate Section 1692e by filing a proof of claim on an unextinguished time-barred debt. That provision prohibits debt collectors from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. 1692e. It proceeds to list sixteen non-

exclusive categories of conduct qualifying as false or misleading, including "false[ly] represent[ing] * * * the character, amount, or legal status of any debt." *Ibid.*

1. This Court interpreted Section 1692e just a few months ago in *Sheriff* v. *Gillie*, 136 S. Ct. 1594 (2016). In that case, a state attorney general appointed private attorneys to collect a debt on his behalf; those attorneys used the attorney general's letterhead on letters seeking to collect those debts. See *id.* at 1598-1599. The letters disclosed that the attorneys were debt collectors and included the attorneys' contact information in the signature block. See *id.* at 1599. The debtors sued the attorneys, contending that their use of the attorney general's letterhead violated Section 1692e. See *id.* at 1598.

The Court unanimously rejected the debtors' claim, holding that the use of the letterhead was accurate and thus not "false" or "misleading" for purposes of Section 1692e. See 136 S. Ct. at 1601. The Court reasoned that the letterhead correctly identified the principal for whom the attorneys were acting as agents. See *ibid.* Neither debtors' fear that the attorney general might take punitive action against them, nor debtors' doubts about the authenticity of the letters, altered the Court's analysis. See *id.* at 1602-1603. As the Court explained, "[Section] 1692e bars debt collectors from deceiving or misleading consumers; it does not protect consumers from fearing the actual consequences of their debts." *Id.* at 1603.

Like the letters in *Sheriff*, petitioner's proof of claim here was entirely accurate and in no way misleading. The proof of claim contained all the information required by Bankruptcy Rule 3001, including the date of the account holder's last transaction, the date of the last payment on the account, and the date the account was charged to profit and loss. J.A. 18. It is undisputed that petitioner

made the required disclosures and that it did so correctly and completely.

Petitioner's proof of claim was equally accurate with regard to the "legal status" of the debt. 15 U.S.C. 1692e(2)(A). As required by the Bankruptcy Rules, petitioner used a standard form for its filing. See Fed. R. Bankr. P. 3001(a), 9009. Petitioner made no affirmative representation concerning the legal status of the debt other than the preprinted notation "PROOF OF CLAIM" at the top of the form. J.A. 12. That notation indicated petitioner's good-faith belief that it had a claim—that is, a right to payment—regardless of whether the right was ultimately enforceable. See 11 U.S.C. 101(5)(A). Because petitioner did in fact have a right to payment under Alabama law and thus under the Code, see pp. 16-17, *supra*, petitioner's belief was well founded.

Petitioner was under no obligation affirmatively to state that the claim was timely (or to make any representations concerning other possible defenses). Indeed, the Advisory Committee deliberately chose not to require creditors to make such a statement. See pp. 20-21, *supra*. Consistent with the requirements the Advisory Committee actually adopted in the Bankruptcy Rules, the proof-of-claim form did not ask petitioner to express its view as to whether the claim was subject to a limitations defense, but instead merely required petitioner to make certain factual disclosures so as to enable parties in interest to assess the claim's timeliness. Because petitioner accurately made those disclosures, the proof of claim was not "false" or "misleading," and it therefore did not violate Section 1692e.

2. As in *Sheriff*, because petitioner's proof of claim was accurate by any standard, this Court need not consider the question of whose perspective is relevant in adjudging a potentially false or misleading statement. See

Sheriff, 136 S. Ct. at 1602 n.6 (reserving the question). In this context, however, the applicable standard confirms the conclusion that petitioner did not violate Section 1692e by filing its proof of claim.

Generally, whether a communication is false or misleading is measured by reference to its intended recipient. See, *e.g.*, *Bates* v. *State Bar of Arizona*, 433 U.S. 350, 383 n.37 (1977). Thus, for purposes of applying the FDCPA to communications directly to a debtor, courts of appeals generally assess those communications from the perspective of an unsophisticated consumer (albeit with slightly varying formulations). See, *e.g.*, *Fouts* v. *Express Recovery Services, Inc.*, 602 Fed. Appx. 417, 421 (10th Cir. 2015); *Peters* v. *General Service Bureau, Inc.*, 277 F.3d 1051, 1055 (8th Cir. 2002); *Gammon* v. *GC Services Limited Partnership*, 27 F.3d 1254, 1257 (7th Cir. 1994). By contrast, in cases involving communications to a debtor's attorney (or to a debtor represented by an attorney), several courts of appeals analyze those communications from the perspective of a competent attorney. See, *e.g.*, *Bravo* v. *Midland Credit Management, Inc.*, 812 F.3d 599, 603 (7th Cir. 2016); *Powers* v. *Credit Management Services, Inc.*, 776 F.3d 567, 573-574 (8th Cir. 2015); *Dikeman* v. *National Educators, Inc.*, 81 F.3d 949, 953-954 (10th Cir. 1996).

So too here, the applicable standard should turn on the intended recipient of the proof of claim. And a proof of claim filed in a bankruptcy proceeding dramatically differs from a letter sent to a debtor—or even a lawsuit filed against the debtor outside bankruptcy. A proof of claim is directed not at the debtor, but rather at the bankruptcy estate, against whose assets the claim is being made. See 11 U.S.C. 726(a); *Travelers*, 549 U.S. at 449. In bankruptcy proceedings, a trustee is assigned to each case, and it is the trustee's duty, where appropriate, to "examine

proofs of claims and object to the allowance of any claim that is improper." 11 U.S.C. 704(a)(5); see 11 U.S.C. 1302 (b)(1). In addition, the overwhelming majority of debtors—like respondent here—are represented by counsel. See Administrative Office of the United States Courts, *Bankruptcy Cases Filed by Pro Se Debtors, by Chapter, During the 12-Month Period Ending September 30, 2016*, tbl. F-28 (noting that 91.3% of debtors in Chapter 13 cases and 91.1% of debtors in Chapter 7 cases have counsel).

As a practical matter, therefore, the intended recipients of a proof of claim are the trustee, the counsel for the debtor, and the other parties in interest (including other creditors). In the rare case where a debtor is proceeding pro se, the debtor need not do anything in response to a proof of claim, because a trustee's objection—which the trustee is obligated to make, where appropriate—is sufficient for the claim to be disallowed. See 11 U.S.C. 502(a), (b). And as explained below, see pp. 35-36, an additional proof of claim, even if allowed, usually has no impact on a debtor's ultimate payments under the bankruptcy plan. Accordingly, for purposes of applying the FDCPA to a proof of claim in a bankruptcy proceeding, a court should analyze any alleged misrepresentation from the perspective of a competent trustee or attorney.

For all of the reasons set out above, a competent trustee or attorney would not be misled by a proof of claim that, like the claim at issue here, accurately discloses the required information so as to enable the parties in interest to assess the claim's timeliness. Particularly under the correct standard for measuring the accuracy of a proof of claim, this is not a close case. Because petitioner's proof of claim was in no respect "false" or "misleading," it did not violate Section 1692e.

B. Filing A Factually Accurate Proof Of Claim For An Unextinguished Time-Barred Debt In A Bankruptcy Proceeding Does Not Violate Section 1692f

For similar reasons, petitioner did not violate Section 1692f by filing a proof of claim on an unextinguished time-barred debt. That provision prohibits debt collectors from using "unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. 1692f. As is relevant here, "unfair" conduct is conduct that is "[n]ot honest" or is "unjust." *Black's Law Dictionary* 1760 (10th ed. 2014). "Unconscionable" conduct is conduct that "show[s] no regard for conscience" and "affront[s] the sense of justice, decency, or reasonableness" or is "[s]hockingly unjust or unfair." *Id.* at 1757.

1. As we have just explained, there is nothing dishonest about filing an accurate proof of claim for an unextinguished time-barred debt in a bankruptcy proceeding. And submitting such a filing—a type of filing that the Bankruptcy Code invites creditors to make—is a far cry from conduct that offends the sense of justice. Such a filing bears no resemblance to the intimidating and coercive conduct that motivated the FDCPA's enactment, such as threatening or harassing consumers, sending phony legal documents, and impersonating attorneys. See H.R. Rep. No. 1202, 94th Cong., 2d Sess. 2 (1976).

Unlike consumers who are the target of traditional debt-collection activity, debtors in bankruptcy are protected by a panoply of procedures. Every consumer bankruptcy case is assigned a trustee who is obligated to monitor proofs of claim and raise all necessary objections, and the vast majority of debtors (like respondent here) have their own counsel as an additional layer of protection. See pp. 29-30, *supra*. In addition, the claims process is highly regulated: the Code and accompanying rules establish a procedure for handling proofs of claim, require proofs of

claim to contain certain information, and prescribe sanctions for abusive or otherwise improper conduct. See, *e.g.*, 11 U.S.C. 105(a); Fed. R. Bankr. P. 3001, 3002, 3004, 3007, 9011.

Of particular relevance here, objecting to a proof of claim is a simple step that imposes only a minimal burden, as illustrated by the one-sentence objection respondent's attorney filed in response to petitioner's claim. J.A. 21; see Fed. R. Bankr. P. 3007(a) (providing that an objection need only be "in writing"). Unlike a debtor faced with defending an improper civil action brought by a debt collector or responding to a communication from a debt collector outside the legal process, a debtor in bankruptcy does not have to assemble the key facts and supporting documentation relating to the debt's timeliness. Instead, in cases such as this one, the Bankruptcy Rules place the onus on the creditor advancing the claim to maintain the relevant documentation and expend the effort of collecting and presenting those facts in the first instance. See Fed. R. Bankr. P. 3001(c)(3)(A). The rules even empower the debtor to seek additional documentation from the creditor. See Fed. R. Bankr. P. 3001(c)(3)(B).

A debtor in bankruptcy is also protected by the automatic stay, which ensures that a creditor cannot take any sort of action to collect on a preexisting claim, such as calling a debtor or sending the debtor letters in an effort to obtain a payment. See 11 U.S.C. 362(a)(6). The stay provides "breathing space" for the debtor, eliminating the potentially coercive pressures that debtors face outside the bankruptcy process. 3 *Collier on Bankruptcy* ¶ 362.03, at 362-23.

Further decreasing any intimidation or coercion, a creditor directs a proof of claim not at the debtor, but rather at the bankruptcy estate, against whose assets the claim is being made. See 11 U.S.C. 726(a); *Travelers*, 549

U.S. at 449. In most cases, the proof of claim will be filed on the docket and reviewed by the debtor's attorney; the debtor may not even see it. And as explained below, see p. 35, an additional proof of claim, even if allowed, usually has no impact on a debtor's ultimate payments under the bankruptcy plan. The filing of a proof of claim is thus far less direct, and far less likely to be intimidating and coercive, than the types of traditional debt-collection activity directed at the debtor and regulated by the FDCPA.

What is more, to the extent the FDCPA seeks to protect debtors from the embarrassment of the public airing of their debts, see, *e.g.*, 15 U.S.C. 1692c(b), 1692f(7), (8); S. Rep. No. 382, 95th Cong., 1st Sess. 4 (1977), debtors who take advantage of the bankruptcy process have already chosen to make public the fact of their debts and much of their financial information. See 11 U.S.C. 107(a); *Greene* v. *Taylor*, 132 U.S. 415, 443 (1889). In addition, because debtors choose the forum and are likely to have voluntarily initiated the proceedings, debtors are far less vulnerable inside the bankruptcy process than they would be outside it.

Finally on this score, at the conclusion of the bankruptcy process, a debt is discharged regardless of whether the corresponding claim is allowed. As discussed above, see pp. 24-25, discharge provides a debtor with broad protection from any future acts to recover the debt, as well as from various forms of discrimination based on the nonpayment of that debt. See 11 U.S.C. 524(a), 525. Even if the claim is disallowed, therefore, the inclusion of the debt in the bankruptcy process gives the debtor the fresh start contemplated by the Bankruptcy Code. See *Grogan*, 498 U.S. at 286. For all of those reasons, in addition to being accurate, a proof of claim for time-barred debt is neither unjust nor unfair.

2. Nor is it unjust or unfair that, if the trustee and the other parties in interest all fail to object, a proof of claim for an unextinguished time-barred debt could result in a payment that could have been avoided by the filing of an objection. A creditor, including a debt collector, has a right to payment on an unextinguished debt, even if it is subject to a limitations defense. See pp. 16-18, *supra*. Debt collectors may thus seek repayment on time-barred debt in various ways without violating the FDCPA, including by encouraging a debtor to make partial payment or to acknowledge the debt, or by otherwise seeking to revive a time-barred claim. See *Owens*, 832 F.3d at 732 & n.6; *Repairing a Broken System* 22-23. Just as debt collectors are within their rights to take actions directed at debtors in an effort to obtain repayment, so too are they within their rights in seeking to recover via the more indirect step of filing a proof of claim in a bankruptcy proceeding.

C. Filing A Factually Accurate Proof Of Claim For An Unextinguished Time-Barred Debt Has Little If Any Impact On A Debtor And Does Not Implicate The FDCPA's Purposes

Reading either Section 1692e or Section 1692f to bar the filing of a proof of claim for an unextinguished time-barred debt would be especially odd because a proof of claim has little if any effect on the consumers the FDCPA is meant to protect.

1. Debt recovery within bankruptcy is fundamentally different from debt collection outside bankruptcy. As discussed above, a creditor in bankruptcy makes a claim not against the debtor's assets, but against the assets of the bankruptcy estate. See p. 29, *supra*. The allowance of a claim thus affects how the assets of the estate will be divided among the creditors. While the Code provides debt-

ors with numerous protections, the claims-allowance process exists primarily to ensure fairness to *creditors*. See, *e.g.*, *Gardner* v. *New Jersey*, 329 U.S. 565, 573 (1947). To the extent the filing of a proof of claim affects a debtor at all, it will often be affirmatively beneficial, because it ensures discharge of the debt (where, as here, the debtor has failed to list the debt on the schedule accompanying the bankruptcy petition). See 11 U.S.C. 523(a)(3)(A), 1328 (c)(2). The Code even permits the debtor to file a proof of claim on behalf of a creditor that has failed to do so. See 11 U.S.C. 501(c); Fed. R. Bankr. P. 3004.

In the event a claim for a time-barred debt is ultimately allowed, moreover, it will ordinarily have no effect on the debtor. Congress "clearly contemplated [C]hapter 13 plans paying little or nothing on unsecured debts," and unsecured claims may be discharged even if the debtor "pay[s] nothing to unsecured claimants." 8 *Collier on Bankruptcy* ¶ 1328.02[3][a], at 1328-13. In most Chapter 13 cases (and virtually all Chapter 7 cases),[6] debtors pay back less than 100% of their unsecured debts—which is understandable, since debtors who can afford to pay back all of their unsecured debts generally do not need to enter bankruptcy in the first place. See *Dubois*, 834 F.3d at 531-532. In the typical Chapter 13 case, the amount the debtor pays depends on the debtor's projected income—with the result that an additional allowed claim decreases the amount available to pay other creditors, rather than increasing the amount paid by the debtor. See *ibid.* That was the case here: the bankruptcy court ultimately confirmed a repayment plan under which respondent would

[6] In a Chapter 7 case, the allowance of an additional proof of claim generally has no effect on the debtor, because the debtor lacks any pecuniary interest in the estate. See 4 *Collier on Bankruptcy* ¶ 502.02 [2][c], at 502-13.

pay $402 per month for 60 months, amounting to approximately 77% of her outstanding unsecured debts. See p. 8, *supra*.[7]

Policing the filing of proofs of claim thus primarily affects the interests of other creditors. If anything, it is those creditors, not the debtor, that should have every incentive to object to claims they believe should be disallowed. The Bankruptcy Code plainly confers the right to object on creditors as parties in interest, 11 U.S.C. 502(a)—and, as sophisticated parties, they are more than able to protect their rights by doing so. And at the risk of stating the obvious, the FDCPA exists to protect the interests of consumers, not creditors. See 15 U.S.C. 1692(a), (b), (e), 1692a(3); S. Rep. No. 382, *supra*, at 1-2. Nothing in the text or legislative history of the FDCPA

[7] Indeed, in light of the foregoing circumstances, respondent has not identified a concrete injury sufficient to establish Article III standing. J.A. 23-28; see *Spokeo, Inc.* v. *Robins*, 136 S. Ct. 1540, 1548 (2016). Because petitioner's claim was disallowed, respondent did not have to make any payment on it. But even if the claim had been allowed, it would not have affected respondent, because allowance would not have altered the amount she was required to pay; each creditor simply received a *pro rata* share of the total pool of available assets. Respondent does not allege that she incurred any cost from her bankruptcy attorney's filing the one-sentence objection to petitioner's claim; to the contrary, it appears that respondent paid her attorney a flat fee for his services in the bankruptcy proceeding. Bankr. Ct. Dkt. 2, at 2 (Mar. 24, 2014); see Lois R. Lupica, *The Consumer Bankruptcy Fee Study: Final Report*, 20 Am. Bankr. Inst. L. Rev. 17, 80 (2012) (noting that most bankruptcy attorneys are paid on a flat-fee basis). As a result, respondent has failed to establish any injury that "actually exist[s]," and she thus lacks standing to proceed with her FDCPA suit. *Spokeo*, 136 S. Ct. at 1548.

evinces an intention to govern the division of a bankruptcy estate among creditors.[8]

2. Because the filing of a proof of claim for a time-barred debt has little if any impact on a debtor, the primary beneficiaries of extending the FDCPA to that conduct would be plaintiffs' lawyers looking for technical violations of the statute in the hope of obtaining attorney's fees. This case appears to be a prime example of such lawyer-driven litigation. After respondent's bankruptcy attorney filed a one-sentence objection to petitioner's proof of claim, the bankruptcy court disallowed the claim. J.A. 9-10. Respondent thus suffered no actual injury. Yet just three days later, another attorney filed a putative nationwide class action on respondent's behalf, using what appears to have been a form complaint. J.A. 5, 23-28.

The Court should not endorse this pernicious practice. For years, courts have expressed concern about the "cottage industry" of litigation that has arisen under the FDCPA. See, *e.g.*, *Federal Home Loan Mortgage Corp.* v. *Lamar*, 503 F.3d 504, 513 (6th Cir. 2007). In fact, there has been an explosion of litigation under the FDCPA in the last few years alone: approximately 11,000 plaintiffs filed FDCPA cases in 2015, up from approximately 4,000

---

[8] To be sure, the FDCPA seeks not only to "eliminate abusive debt collection practices by debt collectors," but also to "insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged." 15 U.S.C. 1692(e). In both respects, however, the FDCPA ultimately seeks to encourage good debt-collection practices *for the benefit of the consumer*. See H.R. Rep. No. 1202, *supra*, at 5 (stating that the "object" of the FDCPA is to "protect consumers by encouraging all debt collectors to adopt an honest and ethical standard of conduct"). Any harm to one debt collector from an improperly allowed proof of claim filed by another is far removed from this concern—especially because that harm would result from the first debt collector's own failure to file an objection to the proof of claim. See 11 U.S.C. 502(a).

plaintiffs in 2007. See Consumer Financial Protection Bureau, *Fair Debt Collection Practices Act: CFPB Annual Report* 15 (Mar. 2016) <tinyurl.com/cfpbannualreport>; WebRecon LLC, *Out Like a Lion … Debt Collection Litigation & CFPB Complaint Statistics, Dec. 2015 & Year in Review* (last visited Nov. 11, 2016) <tinyurl.com/webreconyearinreview>. A disproportionate number of those cases are brought by the same small group of attorneys. See, *e.g.*, WebRecon LLC, *Do You Remember … When September Was Still Unpredictable? Debt Collection Litigation & CFPB Complaint Stats, Sept. 2016* (last visited Nov. 11, 2016) <tinyurl.com/webreconsept2016>.

Federal statutes should not be construed for the benefit of rapacious attorneys. Yet allowing FDCPA suits for filing proofs of claim for time-barred debts would primarily serve the plaintiffs' bar, rather than the consumers the FDCPA is meant to protect. Consistent with the plain language of the statute, this Court should reject the court of appeals' outlying interpretation and hold that the FDCPA does not reach the filing of a proof of claim for an unextinguished time-barred debt.

III. TO THE EXTENT THE FDCPA COULD BE READ TO PROHIBIT FILING A PROOF OF CLAIM FOR AN UNEXTINGUISHED TIME-BARRED DEBT, THE BANKRUPTCY CODE PRECLUDES SUCH APPLICATION OF THE FDCPA

Even if the FDCPA could be read to prohibit the filing of a proof of claim for an unextinguished time-barred debt, the Bankruptcy Code would preclude that application of the FDCPA. When faced with two conflicting statutes, courts should seek to harmonize them. See *United States* v. *Estate of Romani*, 523 U.S. 517, 530-532 (1998). And where an irreconcilable conflict persists, the later-enacted statute supersedes the earlier. See *Posadas* v. *National City Bank*, 296 U.S. 497, 503 (1936). In this case,

both of those canons of construction point to the same conclusion: the Code precludes application of the FDCPA to the filing of a proof of claim for an unextinguished time-barred debt.

A. The FDCPA Should Not Be Interpreted To Conflict With The Bankruptcy Code

The court of appeals' interpretation of the FDCPA would interject an extraneous regime, enforced by a private right of action, into the administration of a bankruptcy estate—a subject that is comprehensively addressed by the Bankruptcy Code and committed to the bankruptcy courts. Such an interpretation would be an unwarranted and unprecedented intrusion into the bankruptcy process, and the FDCPA should not be read to reach so broadly.

1. Assuming, *arguendo*, that the FDCPA is ambiguous on the question whether filing a proof of claim for a time-barred debt is prohibited, but see pp. 25-38, *supra*, any ambiguity should be resolved against such an interpretation. Cf. Pet. App. 6a (characterizing the FDCPA as containing "ambiguity" on this point, but nevertheless holding that the FDCPA applies).

Where a statutory term is ambiguous, a court should "construe it to contain that permissible meaning which fits most logically and comfortably into the body of both previously and subsequently enacted law." *West Virginia University Hospitals, Inc.* v. *Casey*, 499 U.S. 83, 100 (1991). Even if it would be "plausible" *in vacuo* to read the FDCPA to bar the filing of proofs of claim for time-barred debts, there is no valid justification for adopting an interpretation that gives rise to a conflict with the Code, which specifically addresses and authorizes the filing of

this very type of document. See *American Bank & Trust Co.* v. *Dallas County*, 463 U.S. 855, 868-869 (1983).[9]

If interpreted to prohibit filing a proof of claim for an unextinguished time-barred debt, the FDCPA would patently conflict with the Code, which expressly authorizes that very practice. See pp. 15-25, *supra*. Such an interpretation would also substitute the FDCPA's broader remedies in place of the Code's own carefully calibrated ones and supplant the authority of bankruptcy courts to police conduct occurring within a bankruptcy proceeding. See, *e.g.*, 11 U.S.C. 105(a); Fed. R. Bankr. P. 9011(c)(2). The Court should instead interpret the FDCPA in a manner that harmonizes it with the Code by concluding that it does not regulate bankruptcy filings of the type at issue here.

2. This Court's decision in *Kokoszka* v. *Belford*, 417 U.S. 642 (1974), strongly supports the foregoing approach. In *Kokoszka*, the Court addressed whether the limitation on the garnishment of wages under the Consumer Credit Protection Act (CCPA) applied to certain property in a bankruptcy proceeding. See *id.* at 648-652. The Court recognized that the CCPA and the bankruptcy laws must be interpreted to "coexist." See *id.* at 650. The bankruptcy laws, the Court explained, create a "delicate

---

[9] That canon applies with particular force where, as here, the ambiguous statute is the earlier-enacted one. See *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (noting that "the meaning of one statute may be affected by other Acts, particularly where Congress has spoken subsequently and more specifically to the topic at hand"); Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 330 (2012) (explaining that "the implication of a later enactment * * * will often change the meaning that would otherwise be given to an earlier provision that is ambiguous").

balance of a debtor's protections and obligations." *Id.* at 651. In enacting the CCPA, by contrast, Congress was not concerned with "the *administration* of a bankrupt's estate," but rather with "the *prevention* of bankruptcy in the first place." *Id.* at 650. On that basis, the Court construed the CCPA garnishment provision to apply only outside bankruptcy proceedings and not within bankruptcy. See *id.* at 651-652.

So too here. Like the CCPA—the statute to which Congress subsequently added the provisions constituting the FDCPA—the FDCPA was intended to prevent bankruptcy. 15 U.S.C. 1692(a). Nothing in its text or legislative history reflects any intent to interfere with the "delicate balance" of the bankruptcy system itself, by operating directly on the administration of an estate within the framework of a bankruptcy proceeding. *Kokoszka*, 417 U.S. at 651. Accordingly, while the FDCPA, like the rest of the CCPA, governs a debt collector's conduct outside the four corners of a bankruptcy proceeding (whether before, during, or after bankruptcy), it is better understood to have no application to the debt collector's conduct within such a proceeding—at least where, as here, the Code itself specifically authorizes that conduct.

In addition, the FDCPA should not lightly be read to intrude upon the Code's operation because the Code aims to be comprehensive and uniform, whereas the FDCPA does not. As discussed above, see pp. 18-20, the Bankruptcy Code establishes an "elaborate framework" governing the claims filing and resolution process within a bankruptcy proceeding. Cf. *Elgin* v. *Department of Treasury*, 132 S. Ct. 2126, 2133 (2012) (citation omitted). Consistent with the Bankruptcy Clause of the Constitution, see U.S. Const. Art. I, § 8, cl. 4, the federal bankruptcy laws also prize uniformity and exclude conflicting state laws. See *International Shoe Co.* v. *Pinkus*, 278

U.S. 261, 265, 268 (1929); *Stellwagen* v. *Clum*, 245 U.S. 605, 613 (1918). By contrast, the FDCPA does not seek to "foreclose the States from enacting or enforcing their own laws regarding debt collection" as long as they impose stronger standards. S. Rep. No. 382, *supra*, at 6; see 15 U.S.C. 1692n. And the FDCPA is enforced primarily through a private right of action, 15 U.S.C. 1692k, which inevitably produces "wide variations" in issued decisions. *Elgin*, 132 S. Ct. at 2135 (citation omitted). A "comprehensive" scheme, like that in the Bankruptcy Code, "represents Congress' detailed judgment" and should control absent some clear indication to the contrary. *Estate of Romani*, 523 U.S. at 530-532.

Finally on this point, allowing FDCPA suits in this context would effectively create a remedy that Congress chose not to make available in the Code: namely, a private right of action for abusive or otherwise improper conduct within a bankruptcy proceeding. The Code permits a bankruptcy court to "tak[e] any action or mak[e] any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process." 11 U.S.C. 105(a). Notably for present purposes, however, that provision does not permit parties in interest to bring separate suits to enforce its terms. See, *e.g.*, *In re Kalikow*, 602 F.3d 82, 97 (2d Cir. 2010); *In re Joubert*, 411 F.3d 452, 455 (3d Cir. 2005); *Walls* v. *Wells Fargo Bank, N.A.*, 276 F.3d 502, 507 (9th Cir. 2002); *Bessette* v. *Avco Financial Services, Inc.*, 230 F.3d 439, 445 (1st Cir. 2000), cert. denied, 532 U.S. 1048 (2001).

Allowing debtors to bring FDCPA suits for the filing of proofs of claim for time-barred debts would amount to authorizing a private right of action to challenge purportedly improper conduct within a bankruptcy proceeding where the Code does not provide for one—never mind that it would do so where the Code specifically condones,

rather than condemns, the conduct at issue. That would violate the "elemental canon of statutory construction" that, "where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it." *Transamerica Mortgage Advisors, Inc.* v. *Lewis*, 444 U.S. 11, 19 (1979); see *Armstrong* v. *Exceptional Child Center, Inc.*, 135 S. Ct. 1378, 1385 (2015). The Court should not open the Code to enforcement through private rights of action that would inevitably give rise to the very disuniformity the bankruptcy laws are designed to prevent.

B. If The FDCPA Is Interpreted To Conflict With The Bankruptcy Code, It Must Yield To The Later-Enacted Code

Finally, even if the Court were to conclude that the FDCPA unambiguously reached the filing of a proof of claim for a time-barred debt, it should hold that the application of the FDCPA must yield because it would create an irreconcilable conflict with the later-enacted Bankruptcy Code. See *Posadas*, 296 U.S. at 503. While "repeals by implication are not favored," *Universal Interpretive Shuttle Corp.* v. *Washington Metropolitan Area Transit Commission*, 393 U.S. 186, 193 (1968), this Court has long recognized that an implied repeal will be found where the interpretation of the earlier-enacted statute giving rise to the conflict with the later-enacted one does not appear in the "express statutory text." *United States* v. *Fausto*, 484 U.S. 439, 453 (1988).

Because the conflicting application of the FDCPA does not appear in the statutory text but has arisen only through judicial interpretation, Congress had no reason specifically to address that application when it enacted the Bankruptcy Code in 1978. See *Fausto*, 484 U.S. at 453. Indeed, it would have required an act of clairvoyance for

Congress to have anticipated this conflict between the FDCPA and the Bankruptcy Code, given that no one so much as sought to apply the FDCPA to bankruptcy proceedings until many years later. In fact, we are not aware of a single FDCPA suit challenging the filing of a proof of claim in bankruptcy in the first two decades after the Code's enactment.

The judicial interpretation of the FDCPA adopted by the Eleventh Circuit gives rise to an inescapable conflict with the Bankruptcy Code, because the Code entitles a debt collector to take an action that the interpretation would prohibit. The Bankruptcy Code provides that any "creditor"—which plainly includes a debt collector, see 11 U.S.C. 101(10)(A)—"may file a proof of claim." 11 U.S.C. 501(a). As explained above, that includes a proof of claim on an unextinguished time-barred debt. See pp. 16-18, *supra*. Thus, the Code authorizes—or, in this Court's words, "entitle[s]," *Travelers*, 549 U.S. at 449—a debt collector to file such a proof of claim. By contrast, if the FDCPA applies to the filing of such a proof of claim, it would "prohibit[]" that conduct altogether. See *Sheriff*, 136 S. Ct. at 1598; *Heintz* v. *Jenkins*, 514 U.S. 291, 292 (1995). The Code would thus entitle a debt collector to take an action that the FDCPA by judicial interpretation prohibits.

That type of conflict is so irreconcilable that it would repeal even express statutory text, much less a judicial interpretation. See *Credit Suisse Securities (USA) LLC* v. *Billing*, 551 U.S. 264, 273 (2007) (explaining that a "conflict" is "clear" where the earlier-enacted law "forbid[s] the very thing that the [later-enacted law] had then permitted"); *Branch* v. *Smith*, 538 U.S. 254, 291 (2003) (Stevens, J., concurring in part and concurring in the judgment) (noting that, "[a]s a matter of plain English, the conflict between [one statute's] prohibition [against at-large elections] and [another statute], which permitted at-

large elections, is surely irreconcilable"). As Justice Scalia colorfully put it in his treatise on statutory interpretation, "[w]hen a statute specifically permits what an earlier statute prohibited, or prohibits what it permitted, the earlier statute is (no doubt about it) implicitly repealed." Antonin Scalia & Bryan A. Garner, *Reading Law: The Interpretation of Legal Texts* 327 (2012). This Court has explained that implied repeal is warranted even where there is a mere "threat" that applying an earlier-enacted statute would require certain parties to avoid actions that the later-enacted statute "permits or encourages." *Credit Suisse*, 551 U.S. at 279, 282. *A fortiori*, the clear conflict created by the Eleventh Circuit's interpretation of the FDCPA suffices to warrant implied repeal here.

The Code's legislative history provides further support for that conclusion. Before the 1978 Code, Congress effectively limited the claims that could be brought into bankruptcy proceedings by imposing a provability requirement. See 11 U.S.C. 103 (1976); Bankruptcy Act of 1898, ch. 541, § 63(a), Pub. L. No. 55-541, 30 Stat. 562-563. In the 1978 Code, however, Congress sought markedly to expand the definition of a "claim" and thus the comprehensiveness of the claims process. Congress jettisoned the provability requirement in favor of the "broadest possible definition" of "claim," so as to ensure that all debts could "be dealt with in the bankruptcy case" and to "permit[] the broadest possible relief in the bankruptcy court." H.R. Rep. No. 595, *supra*, at 309. By Congress's own recognition, that represented a "significant departure" from then-existing law. *Ibid.* It would be inconsistent with Congress's objective to construe an earlier-enacted, non-bankruptcy statute to limit the proofs of claim that can be filed in a bankruptcy proceeding.

* * * * *

The straightest path to a reversal of the judgment below is simply to hold that the FDCPA does not reach the filing of a proof of claim for an unextinguished time-barred debt. But if the FDCPA were read to have that reach, applying the FDCPA to the filing of such a proof of claim would create an impermissible conflict with the later-enacted Bankruptcy Code. In either event, the Eleventh Circuit's application of the FDCPA to a proof of claim for an unextinguished time-barred debt is improper. This Court should therefore reverse the Eleventh Circuit's outlying judgment.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

JASON B. TOMPKINS
CHASE T. ESPY
BALCH & BINGHAM LLP
1901 Sixth Avenue North, Suite 1500
Birmingham, AL 35203

KANNON K. SHANMUGAM
ALLISON JONES RUSHING
MASHA G. HANSFORD
KATHERINE A. PETTI
WILLIAM T. MARKS
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, DC 20005
(202) 434-5000
kshanmugam@wc.com

NOVEMBER 2016

APPENDIX

11 U.S.C. 101 provides in relevant part:

In this title the following definitions shall apply:

* * *

(5) The term "claim" means—

(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; * * * .

* * *

(10) The term "creditor" means—

(A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor; * * * .

* * *

(12) The term "debt" means liability on a claim.

11 U.S.C. 501 provides in relevant part:

(a) A creditor or an indenture trustee may file a proof of claim. An equity security holder may file a proof of interest. * * *

11 U.S.C. 502 provides in relevant part:

(a) A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest, including a creditor of a general partner in a partnership that is a debtor in a case under chapter 7 of this title, objects.

(b) Except as provided in subsections (e)(2), (f), (g), (h) and (i) of this section, if such objection to a claim is made, the court, after notice and a hearing, shall determine the amount of such claim in lawful currency of the United States as of the date of the filing of the petition, and shall allow such claim in such amount, except to the extent that—

(1) 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; * * * .

11 U.S.C. 558 provides in relevant part:

The estate shall have the benefit of any defense available to the debtor as against any entity other than the estate, including statutes of limitation, statutes of frauds, usury, and other personal defenses. A waiver of any such defense by the debtor after the commencement of the case does not bind the estate.

11 U.S.C. 704 provides in relevant part:

(a) The trustee shall—

* * *

(5) if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper * * * .

11 U.S.C. 1302 provides in relevant part:

* * *

(b) The trustee shall—

(1) perform the duties specified in sections 704(a)(2), 704(a)(3), 704(a)(4), 704(a)(5), 704(a)(6), 704(a)(7), and 704(a)(9) of this title * * * .

15 U.S.C. 1692 provides:

(a) Abusive practices

There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Inadequacy of laws

Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Available non-abusive collection methods

Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Interstate commerce

Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

(e) Purposes

It is the purpose of this subchapter to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive

debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses.

15 U.S.C. 1692e provides in relevant part:

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

* * *

(2) The false representation of—

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

* * *

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer. * * *

15 U.S.C. 1692f provides in relevant part:

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by

the agreement creating the debt or permitted by law.
* * *

Federal Rule of Bankruptcy Procedure 3001 provides in relevant part:

(a) Form and content

A proof of claim is a written statement setting forth a creditor's claim. A proof of claim shall conform substantially to the appropriate Official Form.

* * *

(c) Supporting information

* * *

(3) Claim based on an open-end or revolving consumer credit agreement

(A) When a claim is based on an open-end or revolving consumer credit agreement—except one for which a security interest is claimed in the debtor's real property—a statement shall be filed with the proof of claim, including all of the following information that applies to the account:

(i) the name of the entity from whom the creditor purchased the account;

(ii) the name of the entity to whom the debt was owed at the time of an account holder's last transaction on the account;

(iii) the date of an account holder's last transaction;

(iv) the date of the last payment on the account; and

(v) the date on which the account was charged to profit and loss.

(B) On written request by a party in interest, the holder of a claim based on an open-end or revolving consumer credit agreement shall, within 30 days after the request is sent, provide the requesting party a copy of the writing specified in paragraph (1) of this subdivision.
* * *

Federal Rule of Bankruptcy Procedure 9011 provides in relevant part:

* * *

(b) Representations to the court

By presenting to the court (whether by signing, filing, submitting, or later advocating) a petition, pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) Sanctions

If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation. * * *