No. 23-785

IN THE

Supreme Court of the United States

PHH MORTGAGE CORPORATION,

Petitioner,

v.

MARK ANTHONY GUTHRIE,

Respondent.

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

BRIEF FOR *AMICUS CURIAE* NATIONAL CREDITORS BAR ASSOCIATION IN SUPPORT OF PETITIONER

BRIT SUTTELL
BARRON & NEWBURGER, P.C.
6100 219th Street SW,
Suite 480
Mountlake Terrace, WA 98043

MICHAEL S. TRUESDALE
Counsel of Record
STEPHEN SATHER
BARRON & NEWBURGER, P.C.
7320 North MoPac Avenue
Greystone II, Suite 400
Austin, TX 78731
(737) 263-1241
mtruesdale@bn-lawyers.com

Counsel for Amicus Curiae
National Creditors Bar Association

327768

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

TABLE OF CONTENTS

Table of Contents

Table of Contents

TABLE OF CITED AUTHORITIES

Page

Cases

Cited Authorities

Page

Statutes and Other Authorities

Cited Authorities

INTEREST OF AMICUS CURIAE

The National Creditors Bar Association™ ("NCBA") is the only nationwide, not-for-profit bar association for attorneys dedicated to practicing all area of creditors' rights law.[1] Its members include over 400 law firm and individual members, totaling over 2,500 attorneys, who are licensed to practice across the United States and bound by their bars' respective rules of professional conduct. NCBA's Code of Ethics imposes on its members additional obligations of self-discipline beyond those of their respective governing state rules of professional conduct.

NCBA members represent creditors in the lawful collection of past-due obligations, both consumer and commercial, as well as in bankruptcy proceedings. Given that a large portion of NCBA members collect consumer debt, these attorneys are among the most rigorously regulated as they must comply with, *inter alia*, the federal Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692, *et seq.*, its implementing regulation, Regulation F, 12 C.F.R. Part 1006, Title 11 of the U.S. Code (the "Bankruptcy Code"), as well as various state consumer protection laws. As a result, NCBA member have a strong interest in ensuring that all of these laws are interpreted and applied in a consistent manner that allow them to execute their ethical duties in advancing their clients' legitimate interests—within the bounds of existing

1. Pursuant to Supreme Court Rule 37, counsel of record for petitioner and respondent received notice of the intent to file this brief more than ten (10) days before its due date. No counsel for a party authored this brief in whole or in part, and no person other than amicus or its counsel contributed any money to fund its preparation or submission.

law—without exposing themselves to substantial personal liability. The NCBA, under its current and former name (National Association of Retail Collection Attorneys), has participated as *amicus curiae* in other cases before this Court to advance this objective. *See, e.g., Rotkiske v. Klemm*, 140 S. Ct. 355 (2019); *Taggart v. Lorenzen*, 139 S. Ct. 1795 (2019); *Obduskey v. McCarthy & Holthus LLP*, 139 S. Ct. 1029 (2019); *Midland Funding, LLC v. Johnson*, 581 U.S. 224 (2017); *Marx v. General Revenue Corp.*, 568 U.S. 2 (2013); *Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573 (2010); *Heintz v. Jenkins*, 514 U.S. 291 (1995).

As the only national bar association dedicated to serving the needs of all creditors' rights attorneys, NCBA has a direct interest in this litigation. NCBA shares the concerns expressed in the appellate opinion that, given circuit splits and uncertainty in the law, its members must engage in "law school exam" analyses to make legal predictions about the governing law that may be invoked to evaluate their day-to-day operations. *Guthrie v. PHH Mortgage Corp.*, 79 F.4th 328, 334 (4th Cir. 2023). NCBA urges this Court to grant review to resolve the lack of clarity governing the relationship between remedies under state law causes of action and the United States Bankruptcy Code for violations of bankruptcy court discharge orders. The Fourth Circuit's opinion, which allows for a state law claim independent of the remedies provided by the Bankruptcy Code, obfuscates uniformity in the application of the Bankruptcy Code and inappropriately exposes creditors and their attorneys to liability outside of the bankruptcy courts for conduct that falls squarely within the remedial provisions contained in the Bankruptcy Code. NCBA requests this Court grant

the writ of certiorari to address this national issue of importance to its membership.

SUMMARY OF THE ARGUMENT

The Fourth Circuit's opinion departs from the system created by Congress as mandated by Article I of the Constitution to create a uniform system governing bankruptcies. Congress created a remedy for the violation of a bankruptcy discharge order and that remedy included contempt and sanctions proceedings by the bankruptcy courts whose order was violated. The Fourth Circuit's conclusion that another potential remedy exists outside the Bankruptcy Code and through state law debt collection statutes upends the very uniformity in bankruptcy law that would otherwise result under an application of the congressional approach as set forth in the Bankruptcy Code of restricting any remedy to the bankruptcy court judge.

The other circuits to address this issue got it right – the exclusive remedy for the violation of a discharge order is restricted to remedies under the Bankruptcy Code. When Congress intended to provide remedies outside the Bankruptcy Code for violations of bankruptcy court injunctions, it has done so. Its decision not to do so in the context of a discharge order is a compelling indication of its intent to restrain any available remedy to those available through the bankruptcy court as provided in the Bankruptcy Code. The Fourth Circuit's contrary opinion undermines the constitutionally-mandated implementation of uniform provisions governing bankruptcies, instead allowing for a patchwork quilt of remedies that depend on available state laws.

This Court should grant certiorari to opine on this important conflict.

ARGUMENT

I. Resolution of the question presented is of vital importance.

A. The Bankruptcy Code provides a constitutionally-mandated uniform method for handling alleged violations of discharge orders.

Bankruptcy is one of only two areas where the Framers gave Congress the exclusive purview to legislate. *See* U.S. CONST. Art. I, § 8, cl. 4.[2] Recognizing the importance of that grant of power, this Court has, time and again, acknowledged, and prized uniformity of the federal Bankruptcy Code. *See International Shoe Co. v. Pinkus*, 278 U.S. 261, 265 (1929).

1. Congress exercised its constitutionally-delegated power to regulate bankruptcy matters.

Congress exercised its exclusive power by adopting the Bankruptcy Code. *See* 11 U.S.C. § 101, *et seq*. The Bankruptcy Code contains "complex, detailed and comprehensive provisions" which "demonstrate() Congress's intent to create a whole system under federal

2. U.S. CONST. Art. 1, § 8 (conferring the power "To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States.").

control which is designed to bring together and adjust all of the rights and duties of creditors and embarrassed debtors alike." *MSR Exploration v. Meridian Oil,* 74 F.3d 910, 914 (9th Cir. 1996). The discharge is one aspect of this comprehensive scheme. "At the conclusion of a bankruptcy proceeding, a bankruptcy court typically enters an order releasing the debtor from liability for most prebankruptcy debts. This order, known as a discharge order, bars creditors from attempting to collect any debt covered by the order." *Taggart*, 139 S. Ct. at 1799, *citing* 11 U.S.C. § 524(a)(2). Specifically, the discharge "operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived. . ." 11 U.S.C. § 524(a)(2).

2. The discharge is an injunction issued by a federal court which may be enforced through the court's civil contempt power.

A bankruptcy court may enforce its discharge order against a creditor by way of contempt. *See Local Loan Co. v. Hunt*, 292 U.S. 234 (1934). (The discharge injunction discussed in *Local Loan* was codified by Congress in 1970. *See* PUB. L. NO. 91-467, § 3, 84 STAT. 990, 991 (1970).). Because the discharge is an injunction, a creditor who violates its provisions may be subject to civil contempt proceedings in the bankruptcy court. *See Taggart*, 139 S. Ct. at 1801.

3. The power to punish violation of a court order resides with the court which issued the order.

The power of a court to make an order "carries with it the equal power to punish for a disobedience of that order." *In re Debs*, 158 U.S. 564, 594 (1895). The bankruptcy court "is no different than any other federal court, which possesses the inherent power to sanction contempt of its orders." *Alderwoods Group, Inc. v. Garcia,* 682 F.3d 958, 970 (11th Cir. 2012). "Enforcement of an injunction through a contempt proceeding must occur in the issuing jurisdiction because contempt is an affront to the court issuing the order." *Waffenschmidt v. Mackay,* 763 F.2d 711, 716 (5th Cir. 1985). Thus, it is that the bankruptcy court has the exclusive right to punish violations of its own orders, such as the discharge, through contempt. *Green Point Credit, LLC v. McLean (In re McLean),* 794 F.3d 1313, 1318-19 (11th Cir. 2015).

B. This case asks whether the congressional remedy for violating a discharge order is exclusive of any state law claims for damages.

The present case presents a circumstance in which a debtor complaining of a violation of a discharge order sought a remedy in state court pursuant to a state consumer protection statute rather than by way of asking the bankruptcy court to enforce its injunction. The issue presented asks whether the injunctive relief and the prospects for civil contempt provided by the Bankruptcy Code for a violation of a discharge order provide the exclusive remedies to a debtor. While federal courts have split on this important question, the answer should be

yes. But the very fact there is a split among the courts confirms why review is warranted.

C. The split among the circuits addressing the issue warrants review.

The Fourth Circuit's opinion is troubling to NCBA and its members because, by departing from the holdings and reasoning of other circuit courts, it injects a separate standard into the governing law, allowing for state law claims to address violations of discharge orders. That standard purports to expose NCBA members to liability for conduct in one state or federal circuit that would be inappropriate in another.[3] Given the national scope of NCBA's membership, it is concerned about the now lack of uniformity in the law across the circuits and the nation.

1. Other circuits recognize that the pursuit of a state law remedy conflicts with the intent of Congress in fashioning the discharge as an injunction issued by a bankruptcy court.

While the present issue has yet to be decided by this Court, other circuits have reached a different conclusion than the Fourth Circuit. Their conclusions more closely track the language of the Bankruptcy Code and reflect the intent of Congress than the Fourth Circuit's opinion.

---

3. For example, an NCBA member in Western Virginia, within the Fourth Circuit, may be subject to different rules governing its collection efforts undertaken in Virginia and in adjacent Kentucky, operating under Sixth Circuit precedent, even on identical facts other than the location of the debtor's bankruptcy case.

In *Taggart*, this Court set forth the standard under which a creditor who violates a bankruptcy court's discharge order can be held in civil contempt. 139 S. Ct. at 1801. The question now before the Court is whether that remedy of civil contempt for violation of a bankruptcy court's discharge order provides the consumer's exclusive remedy or whether the consumer may pursue a private right of action under a state's consumer protection law for such a violation. Three circuits have held that violations of the discharge order must be brought as contempt proceedings in the bankruptcy court; only the Fourth Circuit has stated otherwise. *Compare Bessette v. Avco Fin. Servs., Inc.*, 230 F.3d 439 (1st Cir. 2000); *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417 (6th Cir. 2000); and *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502 (9th Cir. 2002) *with Guthrie v. PHH Mort. Corp.*, 79 F.4th 328 (2023). The Fourth Circuit's opinion creates a stark conflict among the circuits.

Prior to the Fourth Circuit's decision, every other Court that faced this question held that section 105 of the Bankruptcy Code is the only appropriate avenue for enforcing alleged violations of a discharge injunction. The First Circuit first addressed this question in *Bessette,* 230 F.3d at 439. There, it explained that "section 105(a) empowers the bankruptcy court to exercise its equitable powers – where 'necessary' or 'appropriate' – to facilitate the implementation of other Bankruptcy Code provisions." *Id.* at 444, *quoting Noonan v. Sec'y of Health & Human Servs., (In re Ludlow Hosp. Soc'y, Inc.)*, 124 F.3d 22, 27 (1st Cir. 1997). The *Bessette* court recognized that "a bankruptcy court is authorized to invoke § 105 to enforce the discharge injunction imposed by § 524 and order damages . . .if the merits so require." *Id.* at 445. It further

held that allowing "an alternative state court remedy . . .is inevitably in conflict with Congress's plan that federal courts enforce § 524 through § 105." *Id.* at 447.

Following the First Circuit's decision, the Sixth Circuit held similarly and stated that Congress' failure to amend § 524 when it amended § 362 "is instructive." *Pertuso*, 233 F.3d at 422. "Congress knew that courts were enforcing § 524 through contempt proceedings, and Congress knew how to create a private right of action when it wished to do so, but in this instance it elected to do nothing." *Id.* The Sixth Circuit stated that "[t]he obvious purpose" of § 524 "is to enjoin the proscribed conduct – and the traditional remedy for violation of an injunction lies in contempt proceedings, not in a lawsuit such as this one." *Id*. at 421.

Finally, in *Walls*, the Ninth Circuit also held that the remedy for a discharge injunction violation lies in bankruptcy court. There the court stated plainly, "[h]ad Congress meant to create a private right of action for violations of § 524, it could easily have done so; that it did not is a strong indication that it did not intend any such remedy." *Id*. at 509, *citing Pertuso*, 233 F.3d at 422. It further noted that under the Bankruptcy Code scheme, "contempt is the appropriate remedy and no further remedy is necessary," as "the normal sanction for violation of the discharge injunction." *Id.* at 507.

2. The Fourth Circuit's opinion is an improperly-decided outlier.

The Fourth Circuit's opinion not only cuts against the majority viewpoint espoused by First, Sixth, and

Ninth Circuits, but it also undercuts the uniformity of the Bankruptcy Code. "[T]he superimposition of state remedies by the Plaintiffs, which is in effect an attempt to regulate bankruptcy procedural law, undercuts the constitutional concern with uniform Bankruptcy case administration." *In re Tate*, 253 B.R. 653, 670-71 (Bankr. W.D.N.C. 2000). "Remedies and sanctions for improper behavior and filings in bankruptcy court, however, are matters on which the Bankruptcy Code is far from silent and on which uniform rules are particularly important." *Koffman v. Osteoimplant Tech., Inc.*, 182 B.R. 115, 124-25 (D. Md. 1995).

The ruling on review condones a lack of uniformity in federal bankruptcy law by allowing a state law claim to prevail independent of the remedies provided by the Bankruptcy Code.

3. The circuit split warrants review.

Resolution of the circuit split created by the Fourth Circuit is necessary to protect the uniformity of the Bankruptcy Code. Granting petitioner's request for a writ of certiorari will allow this Court to confirm that the bankruptcy court is the proper forum for handling alleged discharge injunction violations.

D. The proper answer is that bankruptcy law provides the exclusive remedy for a creditor's violation of a discharge order.

1. The exclusive remedy is not only consistent with, but is managed by, the terms of the Bankruptcy Code.

An interpretation of the Bankruptcy Code as providing an exclusive remedy for a violation of a statutory injunction is internally consistent. Notably, the discharge injunction is not the only injunction issued in a bankruptcy proceeding. When the debtor initially files bankruptcy, an injunction is immediately issued pursuant to 11 U.S.C. § 362 which is commonly referred to as the "automatic stay." Upon successful completion of the bankruptcy, the automatic stay is replaced with the discharge injunction. 11 U.S.C. § 524(a)(2). Both prevent efforts to collect debts outside the supervision of the bankruptcy court and both enjoin such efforts.

But the statutory similarities end there. Although both the automatic stay and discharge injunction sections of the Bankruptcy Code were codified at the same time, in 1984 Congress amended the automatic stay provision to confer "on debtors the right to sue for damages for a willful violation of the automatic stay." *Walls*, 276 F.3d at 509. However, Congress did not amend the discharge injunction provision to include a similar private right of action, even though it is clear it knew how to do so.[4] In

4. Congress has demonstrated such intent in other contexts related to debt collection. *See, e.g.*, 15 U.S.C. §§ 1681, 1681o (imposing the right to pursue claims for civil liability for the failure

other words, Congress amended the Bankruptcy Code to allow actions as a remedy for the violation of one category of injunction (the automatic stay) but not for another (the discharge order). As this Court has stated:

> Like substantive federal law itself, private rights of action to enforce federal law must be created by Congress. The judicial task is to interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy. Statutory intent on this latter is determinative. Without it, a cause of action does not exist and courts may not create one, no matter how desirable that might be as a policy matter, or how compatible with the statute.

Alexander v. Sandoval, 532 U.S. 275, 286-87 (2001) (citations omitted).

Section 105(a) provides that

> The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title. No

---

to comply with 15 U.S.C. § 1681); § 1681p (conferring federal court jurisdiction of private cases for violations of § 1681); 15 U.S.C. §§ 1691e(a), (c) (authorizing claims for damages on individual or class bases and other claims to enforce the subchapter); 15 U.S.C. §§ 1692k(a), (d) (creating private rights of action for damages against a debt collector and confirming federal court jurisdiction over such claims); 15 U.S.C.§ § 1693m(a), (g) (creating private cause of action for violation of the subchapter and conferring federal court jurisdiction over such claims).

> provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.

In other words, prior to the 1984 amendment to section 362, Congress explicitly stated that the bankruptcy court is the only forum for enforcing violations of a discharge injunction and the automatic stay. But the fact that Congress subsequently amended section 362 to explicitly add a private right of action for violations of the automatic stay provision, it is clear that Congress knew how to add a private right of action for debtors. The fact that Congress did not add such a provision corresponding to section 524 to allow a claim for a violation of a discharge injunction illustrates a lack of congressional intent to allow for a private right of action under those circumstances. Put differently, Congress left section 105 as the only appropriate source of remedy for prosecuting alleged violations of the discharge injunction, even though it affirmatively provided access to remedies outside the bankruptcy proceedings for violations of other injunctions.

As discussed above, section 524(a)(2) sets forth the effect of the bankruptcy discharge order—it creates an injunction on creditors collecting discharged debts—while section 105(a) empowers the bankruptcy court to enforce that injunction through contempt proceedings. Contempt proceedings "are between the original parties and are instituted and tried as a part of the main cause" because "proceedings for civil contempt are a part of the original

cause." *Gompers v. Bucks Stove & Range Co.*, 221 U.S. 418, 445, 446 (1911). Furthermore, court power to punish for contempts "is a necessary and integral part of the independence of the judiciary, and is absolutely essential to the performance of the duties imposed on them by law. Without it [the courts] are mere boards or arbitration whose judgments and decrees would be only advisory." *Id.* at 450. The contempt power is necessary for the courts, including bankruptcy courts, "to enforce [their] judgments and orders necessary to the due administration of law and protection of the rights of suitors." *Bessette v. Conkey*, 194 U.S. 324, 333 (1904).

2. The exclusive remedy for a violation of a discharge order is consistent with this Court's prior interpretation of the Bankruptcy Code and the response by Congress thereto.

This Court's landmark decision in *Local Loan Co.*, *supra*, dealt specifically with the discharge injunction before it was codified by Congress. In *Local Loan*, the petitioner alleged "[t]hat the bankruptcy court was without jurisdiction to entertain a proceeding to enjoin" an alleged violation of the discharge injunction. 292 U.S. at 238-39. Rejecting that allegation, the Court held it "well settled" that "a federal court of equity has jurisdiction of a bill ancillary to an original case or proceeding in the same court, whether at law or in equity, to secure or preserve the fruits and advantages of a judgment or decree rendered therein." *Id.* at 239. This Court confirmed that "courts of bankruptcy are essentially courts of equity, and their proceedings inherently proceedings in equity." *Id.* at 240. As such, this Court concluded that allegations

of a creditor's violation of the discharge injunction "apply to proceedings in bankruptcy." *Id.*

Congress later codified the holding in *Local Loan Co.*: "an order of discharge shall enjoin all creditors whose debts are discharged from thereafter instituting or continuing any action . . .to collect such debts. . ." PUB. L. NO. 91-467, § 3, 84 STAT. 990, 991 (1970). The current language in section 524(a)(2) also reflects the holding from *Local Loan* by specifying that the discharge order "operates as an injunction."

Section 524 is not self-executing, however, and Congress crafted section 105 as the enforcement mechanism. "Section 105(a) empowers the bankruptcy court to exercise its equitable powers—where 'necessary' or 'appropriate'—to facilitate the implementation of other Bankruptcy Code provisions." *Noonan v. Sec'y of HHS (In re Ludlow Hosp. Soc'y)*, 124 F.3d 22, 27 (1st Cir. 1997).

Neither sections 105(a) nor 524(a)(2) can be read in isolation. Congress indicated that bankruptcy courts have the same powers to enforce their discharge orders as other courts have to enforce their orders, including injunctions in the civil context. Considering the history of *Local Loan*, this makes sense and reinforces the traditional standard for civil contempt.

This Court has already recognized that "[w]hen a statutory term is 'obviously transplanted from another legal source,' it 'brings the old soil with it.'" *Taggart*, 139 S. Ct. at1801, *citing Hall v. Hall*, 584 U.S. 59, 73 (cleaned up). The Court explicitly described the fact that the discharge order injunction brings with it the "'old soil'

that has long governed how courts enforce injunctions." *Id.* at 1801. "Under traditional principles of equity practice, courts have long imposed civil contempt sanctions to 'coerce the defendant into compliance' with an injunction or 'compensate the complainant for losses' stemming from the defendant's noncompliance with an injunction." *Id.*, citing *U.S. v. United Mine Workers*, 330 U.S. 258, 303-04 (1947).

3. The exclusive remedy provided by the Bankruptcy Code is consistent with this Court's treatment of injunctions provided in other statutes.

NBCA's interpretation of how the Bankruptcy Code remedies should be construed is consistent with how this Court has treated similar matters in other statutory contexts. This Court has recognized that "[s]anctions for violations of an injunction, in any event, are generally administered by the court that issued the injunction." *Baker v. GMC*, 522 U.S. 222, 236 (1998). This is a long-standing principle of equity endorsed by this Court. For instance, in *Leman v. Krentler-Arnold Hinge Last Co.*, 284 U.S. 448 (1932), when dealing with a patent infringement case, the Court held that the injunction prohibiting the respondent "operated continuously and perpetually." 284 U.S. at 451 "The decree was binding upon the respondent, not simply within the District of Massachusetts, but throughout the United States." *Id.* (collecting cases). Similar to an injunction in the patent context, the bankruptcy discharge injunction "operate[s] continually and perpetually" as to the debtor's creditors. And the creditors are bound by the discharge injunction's provisions not just in the specific federal district where the discharge was entered, but nationally.

The Fourth Circuit's opinion directly contradicts these long-standing principles regarding enforcement of injunctions by allowing a tribunal other than bankruptcy courts to enforce a bankruptcy court's order of discharge. As such, the petition for certiorari should be granted to confirm that bankruptcy courts retain the sole power to enforce their discharge injunctions.

E. An interpretation allowing for state law claims to remedy alleged violations of bankruptcy discharge is unworkable on a nationwide basis.

The discharge injunction and violations thereof are areas from which "the Bankruptcy Code is far from silent." *Koffman*, 182 B.R. at 124-25. The Ninth Circuit aptly stated that "the discharge shield cannot be used as a sword that enables a debtor to undertake risk-free litigation. . ." *Boeing N. Am., Inc. v. Ybarra (In re Ybarra)*, 424 F.3d 1018, 1026 (9th Cir. 2005). Yet, the ability to use the discharge injunction as a sword through the mechanism of a claim pursued outside the bankruptcy court is exactly what the Fourth Circuit's opinion appears to authorize.

Congress intended the discharge to provide the debtor with a "fresh start," and the discharge injunction set forth in § 524(a)(2) furthers that goal. But the scheme provides that the Bankruptcy Court retains control over that "fresh start" by assuming the role of enforcing its injunction. It would be inconsistent to have the Code prohibit certain conduct post-discharge (11 U.S.C. § 524(a)(2)), and provide for a remedy for wrongful post-discharge actions (11 U.S.C. § 105), but then allow a different remedy to be sought based on an individual state's consumer

protection laws outside of the bankruptcy context. The Fourth Circuit's decision will encourage the filing of claims based on a wide variety of state-specific consumer protection laws outside of the bankruptcy context and force those state courts into decision-making premised on the bankruptcy code when the uniformity and enforcement mechanisms have already been granted to the bankruptcy courts by Congress.

Until the Fourth Circuit's decision, every other court understood that section 105 is the sole enforcement mechanism for alleged violations of section 524, and that makes sense. The Bankruptcy Code provides for one comprehensive, uniform statutory scheme for handling bankruptcy, an area expressly granted to Congress by the Constitution to legislate. 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.*, 278 U.S. at 265, 268 (1929); *Stellwangen v. Clum*, 245 U.S. 605, 613 (1918). Put differently, a "comprehensive" scheme, like that in the Bankruptcy Code, "represents Congress' detailed judgment" and should control absent some clear indication to the contrary. *U.S. v. Estate of Romani*, 523 U.S. 517, 530-32 (1998). No clear indication exists demonstrating that Congress intended its remedies for violation of a discharge order could be supplemented by the filing of a state court damages action.

While the Bankruptcy Code aims to be comprehensive and uniform, the same cannot be said of the various states' consumer protection laws. Allowing debtors to file lawsuits based on alleged discharge injunction violations under state consumer protection laws would effectively allow

for a remedy that Congress chose not to make available in the Code: namely, a private right of action for alleged violations of the discharge order. Section 105(a) of the Code permits a bankruptcy court to "tak[e] any action or mak[e] any determination necessary or appropriate to enforce or implement" the discharge order. However, that provision does not permit debtors to bring separate suits to enforce the terms of the discharge order. *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*, 276 F.3d at 507; *Bessette*, 230 F.3d at 445, *cert. denied*, 532 U.S. 1048 (2001).

The Fourth Circuit's holding interjects an extraneous regime, enforceable through states' consumer protection laws, into the federal bankruptcy scheme. The Bankruptcy Code already addresses how discharge injunction violations should be handled—within the bankruptcy courts. Allowing debtors to bring such private suits for alleged discharge injunctions would force various state law judges to opine on the federal bankruptcy regime and result in piece-meal remedies across the nation. Since the Bankruptcy Code speaks directly to the issue of discharge injunctions in section 524 and imparts contempt powers on the court in section 105, allowing such litigation 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).

The Court should grant certiorari to avoid allowing the Bankruptcy Code to be enforced through private rights of action that would inevitably give rise to the very non-uniform and piecemeal universe of remedies the Code is designed to prevent.

CONCLUSION

For the foregoing reasons, NCBA urges this Court to grant the writ of certiorari and reverse the judgment of the Fourth Circuit Court of Appeals.

Respectfully submitted,

Michael S. Truesdale
Counsel of Record
Stephen Sather
Barron & Newburger, P.C.
7320 North MoPac Avenue
Greystone II, Suite 400
Austin, TX 78731
(737) 263-1241
mtruesdale@bn-lawyers.com

Brit Suttell
Barron & Newburger, P.C.
6100 219th Street SW,
Suite 480
Mountlake Terrace, WA 98043

Counsel for Amicus Curiae National Creditors Bar Association