No. _____

In The

Supreme Court of the United States

PAR, INC. AND LAWRENCE TOWING LLC,

Petitioners,

v.

NICHOLE L. RICHARDS,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the Courts may look to state law to define "present right to possession" in 15 U.S.C. §1692f(6) of the Fair Debt Collection Practices Act to expand upon the plain meaning of the statute's text so as to create an enforcement mechanism for violations of state law.

PARTIES TO THE PROCEEDING

Petitioners are PAR, Inc. and Lawrence Towing LLC.

Respondent is Nichole L. Richards, an individual.

RULE 29.6 STATEMENT

Petitioner PAR, Inc. is a subsidiary of ADESA, Inc. KAR Auction Services, Inc. is a publicly held company that owns 10% or more of PAR, Inc.'s stock.

Petitioner Lawrence Towing LLC does not have any parent corporations. There are no parent or publicly held companies owning 10% or more of the company's stock.

STATEMENT OF RELATED CASES

Pursuant to Rule 14.1(b)(iii), all proceedings in other courts that are directly related to this case are as follows:

- *Nichole Richards v. PAR, Inc. and Lawrence Towing, LLC,* No. 1:17-cv-00409, United States District Court for the Southern District of Indiana. Judgment entered 7/16/18. Order following remand entered 7/2/20.
- *Nichole Richards v. PAR, Inc. and Lawrence Towing, LLC,* No. 19-1184, U.S. Court of Appeals for the Seventh Circuit. Opinion and Order entered March 25, 2020.

STATEMENT OF RELATED CASES – Continued

- *Nichole L. Richards v. Huntington Bancshares, Inc.,* JAMS Arbitration reference # 1340014464. Pending.
- *Nichole L. Richards v. Huntington Bancshares, Inc.*, 29D03-1908-PL-007222, Hamilton County Superior Court 3 (Indiana). Pending.
- *The Huntington National Bank v. Nichole Richards,* 49D02-1906-PL-024527, Marion Superior Court, Civil Division 2 (Indiana). Pending.

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PETITION FOR WRIT OF CERTIORARI

Petitioners PAR, Inc. and Lawrence Towing LLC respectfully petition this Honorable Court for a Writ of Certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Seventh Circuit is published at 954 F.3d 965 (7th Cir. 2020). (App. A). The opinion of the United States District Court for the Southern District of Indiana (App. B) is unpublished at 2018 WL 3426260.

JURISDICTION

The Order of the Court of Appeals denying Petitioners' Petition for rehearing and for rehearing en banc was entered on April 27, 2020.

On March 19, 2020, the Supreme Court entered an order extending the deadline to file any petition for a writ of certiorari 150 days from the date of the lower court judgment, order denying discretionary review, or order denying a timely petition for rehearing.

The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

RELEVANT STATUTORY PROVISION

15 U.S.C. §1692f(6) states that "[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: . . . (6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if – (A) there is no present right to possession of the property claimed as collateral through an enforceable security interest; (B) there is no present intention to take possession of the property; or (C) the property is exempt by law from such dispossession or disablement." 15 U.S.C. §1692f(6).

STATEMENT OF THE CASE

This case concerns the relationship between state law and terminology contained within 15 U.S.C. §1692f(6) of the Fair Debt Collection Practices Act. Indiana state law prohibits self-help repossessions that breach the peace, and prescribes a cause of action for alleged violations. In turn, 15 U.S.C. §1692f(6) prohibits self-help repossessions if there is no present right to possession of the property claimed as collateral through an enforceable security interest. "Present right to possession" as stated within this text is undefined. The question presented by this case is whether state law prohibiting breach of the peace repossessions may be used to further define "present right to

possession" under the Fair Debt Collection Practices Act, thereby creating an enforcement mechanism for state law under a federal statute.

The Seventh Circuit Court of Appeals' decision in this case conflicts with other decisions of this Court requiring lower courts to adopt a narrow interpretation of the Fair Debt Collection Practices Act according to the plain, ordinary meaning of the statute. The question presented is also of fundamental importance for nationwide uniformity of 15 U.S.C. §1692f(6) as to whether causes of action that otherwise lie exclusively under state law may be enforced under the FDCPA, leading litigants to seek the jurisdiction of the federal courts for state law claims.

I. THE UNDERLYING EVENTS

Respondent Nichole Richards ("Richards") purchased a 2010 Chevrolet Tahoe on February 26, 2015 and obtained a $26,054.00 loan from Huntington National Bank to finance the purchase. Richards missed payments and defaulted under the terms of the Personal Loan Agreement with Huntington. The Personal Loan Agreement provided that Huntington had the right to repossess the vehicle if any of the promises under the loan agreement were broken.

To enforce the provisions of the loan agreement, Huntington National Bank contracted with PAR, Inc. to have the vehicle repossessed. In turn, PAR contracted with Lawrence Towing LLC to repossess the vehicle.

On February 6, 2017, Lawrence Towing LLC went to Richards' residence in Indianapolis, Indiana and repossessed the vehicle.

II. THE DISTRICT COURT PROCEEDINGS

Richards filed suit against PAR and Lawrence Towing in the United States District Court for the Southern District of Indiana on February 9, 2017, alleging that Lawrence Towing LLC breached the peace in violation of Indiana law when it repossessed the vehicle. Richards argued that a breach of the peace under Indiana law was actionable as a violation of 15 U.S.C. §1692f(6)(A) of the Fair Debt Collection Practices Act. That is, if a repossession allegedly occurs in violation of Indiana's prohibition against breach of the peace repossessions, that conduct also amounts to a violation of 15 U.S.C. §1692f(6)(A) because Indiana law deprives a repossessor of the "present right to possession" of the collateral.

Defendants moved for summary judgment of Richards' Complaint on the grounds that Richards could not maintain a cause of action under section 1692f of the Fair Debt Collection Practices Act ("FDCPA") based solely on an alleged violation of Indiana statute, effectively using the FDCPA as an enforcement mechanism under state law.

The District Court entered an Opinion and Order granting PAR and Lawrence's Motion for Summary Judgment on July 16, 2018. (App. B). The District Court found that Richards was attempting to utilize

the Fair Debt Collection Practices Act to obtain a recovery for an alleged breach of the peace under Indiana Code §26-1-9.1-609. The language of the Fair Debt Collection Practices Act does not attempt to regulate breach of the peace repossessions. Moreover, the Court found that Defendants had a "present right" to collateral via a valid security interest and therefore, Defendants had a "present right to possession" of the vehicle under the language of §1692f(6)(A). Notably, the District Court found that if the Defendants breached the peace in violation of state law any recovery is a matter of state law and the FDCPA cannot be used as an enforcement mechanism for matters governed under state law.

On August 11, 2018, Richards filed a Motion to Reconsider alleging that the District Court "plowed new ground to erroneously alter the universally accepted understanding of §1692f(6)(A)." On December 27, 2018, the District Court entered an Order denying Richards' Motion to Reconsider.

III. THE APPELLATE PROCEEDINGS

Richards timely appealed the judgment of the District Court to a panel of the Seventh Circuit Court of Appeals. That panel heard oral argument on September 19, 2019.

The Seventh Circuit Court of Appeals issued its opinion and judgment on March 25, 2020 reversing and remanding the case. The Seventh Circuit reasoned that because the FDCPA does not define the phrase

"present right to possession" the Court must look to state law to determine whether a repossessor had a present right to possess the property at the time it was seized. This analysis, together with the Court's reliance on the last-antecedent canon of statutory construction, led the Court to conclude that 15 U.S.C. §1692f(6) should be read to mean that "a repossession without judicial process violates §1692f(6)(A) unless the property is collateral under an unenforceable security interest and the repossessor has a 'present right to possession' of the property" as determined by state law, thereby rendering a state law cause of action for breach of the peace repossession actionable under the FDCPA.

REASONS FOR GRANTING THE WRIT

The Seventh Circuit's interpretation of §1692f(6)(A) of the FDCPA conflicts with the plain meaning of the statute and recent Supreme Court precedent discouraging Courts from re-writing constitutionally valid statutory texts. The Court's analysis is dispositive on whether the text of §1692f(6)(A) may be expanded beyond its plain meaning to create an independent enforcement mechanism for breach of the peace repossession claims otherwise only actionable under state law. This issue should be settled by this Court so as to create nationwide uniformity in the application of this section in FDCPA litigation that cannot be resolved without the Court's review. A finding that litigants will be able to avail themselves of the federal court's

jurisdiction in order to enforce state law claims will also have far-reaching consequences on the district courts. As such, resolution of the question presented in this case will be dispositive on whether the federal court has jurisdiction over Respondent's breach of the peace repossession claims and thus, dispositive of this case in its entirety. Because this case presents an optimal vehicle for addressing and resolving this issue of statutory construction so as to ensure consistency with prior FDCPA opinions of this Court, the petition for a writ of certiorari should be granted.

A. The question presented warrants review in this case

The question presented in this case raises an issue of significant importance for litigants, and the federal courts nationwide, as it will be dispositive on the issue of whether causes of action that otherwise lie only under state law may now be enforced under federal law, and serve as the basis for a litigant to avail himself/herself of federal jurisdiction. This question also examines the permissible extent of the court's discretion to expand upon the plain, ordinary meaning of a statutory text, invariably leading to the aforementioned result.

Historically, the Fair Debt Collection Practices Act is not a "catch-all" regulatory regime designed to create a mechanism for advancing consumer litigation otherwise falling only under state law. Precedent from this Court has advocated for a strict interpretation of the act according to its plain, ordinary meaning.

In *Henson v. Santander Consumer USA Inc.*, ___ U.S. ___, 137 S.Ct. 1718, 198 L.Ed.2d 177 (2017), the Court looked to established principals governing statutory construction when considering whether individuals and entities that purchased debts from original creditors, and then sought to collect those debts for their own accounts, could be considered "debt collectors" subject to the Fair Debt Collection Practices Act. In an unanimous opinion, the Court relied upon the plain meaning of the definition of debt collector codified in 15 U.S.C. §1692a(6) to adopt the interpretation of the Fourth Circuit and find that since the language of the statute focuses the attention on third party collection agents working for a debt owner, not on a debt owner seeking to collect on debts for itself, debt purchasers collecting their own debts could not be considered "debt collectors" subject to the Act. *Henson v. Santander Consumer USA Inc*., ___ U.S. ___, 137 S.Ct. 1718, 1721, 198 L.Ed.2d 177 (2017). In its analysis of alternative interpretations of the statutory text, the Supreme Court rejected any efforts to expand upon the authority of the Fair Debt Collection Practices Act, noting that:

> [W]hile it is of course our job to apply faithfully the law Congress has written, it is never our job to rewrite a constitutionally valid statutory text under the banner of speculation about what Congress might have done had it faced a question that, on everyone's account, it never faced.

Henson, 137 S.Ct. at 1725.

This Court again encouraged the lower courts to adopt a narrow reading of the FDCPA in the unanimous decision of *Obduskey v. McCarthy & Holthus, LLP*, ___ U.S. ___, 139 S.Ct. 1029, 203 L.Ed.2d 390 (2019). In *Obduskey*, the Court considered whether a law firm engaged in foreclosure proceedings as a means of enforcing a security interest could be considered a "debt collector" under the general definition set forth in §1692a(6), thereby subjecting the firm to potential liability under all of the sections of the Act. In its holding, the Supreme Court once again adopted a narrow reading of the statute, finding that by enforcing security interests, the law firm only qualified as a "debt collector" within the limited purpose definition set forth in §1692f(6) and "if Congress wanted enforcers who solely handle security interests to be included in the general definition, then the limited purpose definition would be superfluous." *Id.* The Court also felt that Congress wanted to treat enforcers of a security interest differently, as evidenced by the existence of a limited purpose definition, so as to avoid conflicts with state law foreclosure processes. In perhaps the most insightful statement as to the Court's rationale underlying the *Obduskey* decision, Justice Sotomayor's concurrence suggested that if the Court's interpretation of the FDCPA is viewed as wrong based upon the plain meaning of the Act, the solution is to change the Act. This statement suggests that the FDCPA should be strictly interpreted based upon its plain, ordinary meaning. If Congress had intended to expand upon the scope of the Act, or direct a Court to interpret the Act

based upon reference to state law, such an intention would be incorporated into the language of the Act.

More recently, the Court granted certiorari on an issue of statutory construction under the Fair Debt Collection Practices Act to consider the correct interpretation of the Act's statute of limitations codified in 15 U.S.C. §1692k(d) in *Rotkiske v. Klemm*, ___ U.S. ___, 140 S.Ct. 355, 205 L.Ed.2d 291 (2019). In an opinion relying upon the statute's plain language, the Court held that the section of the act was properly interpreted to require a civil action for violation of the Act to be brought within one year from the date of the alleged violation, not the date on which the violation is discovered by the consumer. Although the consumer in this instance argued that the general discovery rule should be applied as a principle of statutory interpretation, effectively reading a discovery provision into §1692k(d), the Court found that "this approach would require improper atextual supplementation of the statute. Such supplementation is particularly inappropriate when, as here, Congress has shown that it knows how to adopt the omitted language or provision." *Rotkiske*, 140 S.Ct. at 360-361. Significantly, the Court noted that "[i]t is a fundamental principle of statutory construction that 'absent provision[s] cannot be supplied by the courts.'" *Id.*, quoting Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 94 (2012). To do so " 'is not a construction of the statute, but, in effect, an enlargement of it by the court.'" *Id.* at 361 (internal citations omitted).

The issue of statutory construction raised in the instant action has nationwide relevance with the potential to determine whether actions otherwise arising under state law, traditionally filed in state courts, will now inundate the federal judicial district courts as violations of the Fair Debt Collection Practices Act. Therefore, a decision on this petition will be dispositive of the federal court's jurisdiction in these cases, all hinging upon whether the district court may properly invoke state law to supplement otherwise undefined terms in §1692f.

The Seventh Circuit's Opinion noted the parties' opposing interpretations of §1692f(6)(A)'s prohibition against "[t]aking or threatening to take any nonjudicial action to effect dispossession or disablement of property if – (A) there is no present right to possession of the property claimed as collateral through an enforceable security interest," and that Defendants' argument relied upon principles of statutory-interpretation:

> The defendants counter with a statutory-interpretation argument. As they read §1692f(6)(A), the requirement of a "present right to possession" means only that the repossessor must have an enforceable security interest in the property claimed as collateral. On this reading, the statutory phrase "through an enforceable security interest" modifies "present right to possession." But that interpretation skips over language that appears between the two phrases.

[App. A]

The Seventh Circuit provided no discussion concerning what would be the most appropriate canon of statutory construction to rely upon based upon the grammatical structure of this provision in §1692f. Instead, citing *Lockhart v. United States*, ___ U.S. ___, 136 S.Ct. 958, 962, 194 L.Ed.2d 48 (2016) and Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 144-146 (2012), the Opinion simply concluded that the "last-antecedent canon" would be the most appropriate. This canon provides that "a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows. . . . Thus, in §1692f(6)(A), the phrase 'through an enforceable security interest' modifies the phrase directly preceding it: 'the property claimed as collateral'. That is the phrase 'through an enforceable security interest' identifies the legal mechanism through which the property is 'claimed as collateral'; it does not modify 'present right to possession.'" [App. A].

The Seventh Circuit did not consider that the Supreme Court in *Lockhart* determined that the "rule of the last antecedent" is best applied when the "Court has interpreted statutes that include a list of terms or phrases followed by a limiting clause. . . ." In such a case, "a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows." *Lockhart*, 136 S.Ct. at 962. However, the grammatical construction of §1692f(6)(A) is distinguishable from the statute at issue in *Lockhart*, bringing §1692f(6)(A) outside of the intended purview

of the last-antecedent canon. The last-antecedent canon rule of construction, in other words, is inapplicable to the statutory language under review.

In *Lockhart*, the Supreme Court considered the proper interpretation of the phrase "involving a minor or ward" in 18 U.S.C. §2252(b)(2) and whether this limiting phrase appearing at the end of a list of terms modified all items in the list of predicate crimes that preceded it. The Court quoted the relevant statutory language as follows:

> "Whoever violates, or attempts or conspires to violate [18 U.S.C. §2252(a)(4)] shall be fined under this title or imprisoned not more than 10 years, or both, but . . . if such person has a prior conviction under this chapter, chapter 71, chapter 109A, or chapter 117, or under section 920 of title 10 (article 120 of the Uniform Code of Military Justice), or under the laws of any State relating to aggravated sexual abuse, sexual abuse, or *abusive sexual conduct involving a minor or ward*, or the production, possession, receipt, mailing, sale, distribution, shipment, or transportation of child pornography, such person shall be fined under this title and imprisoned for not less than 10 years nor more than 20 years."

Lockhart, 136 S.Ct. at 962 (emphasis added). The Supreme Court considered whether the limiting phrase "involving a minor or ward" applied to all three of the crimes preceding it in the list, or only the final predicate crime in the list, "abusive sexual conduct." Applying the last antecedent rule, the Supreme Court held

that the phrase "involving a minor or ward" modified only the "abusive sexual conduct," the antecedent immediately preceding it. The Court noted that the rule has been applied to interpret "statutes that include a list of terms or phrases followed by a limiting clause" and "reflects the basic intuition that when a modifier appears at the end of a list, it is easier to apply that modifier only to the item directly before it. That is particularly true where it takes more than a little mental energy to process the individual entries in the list, making it a heavy lift to carry the modifier across them all." *Lockhart*, 136 S.Ct. at 963. Conversely, the Court found that application of the rule would not be appropriate where the "modifying clause appear[s] . . . at the end of a single, integrated list" or "in a mechanical way where it would require accepting 'unlikely premises.'" *Lockhart*, 136 S.Ct. at 965 (citing *Jama v. Immigration and Customs Enforcement*, 543 U.S. 335, 344 n. 4, 125 S.Ct. 694, 160 L.Ed.2d 708 (2005) and *Paroline v. United States*, 572 U.S. 434, 134 S.Ct. 1710, 188 L.Ed.2d 714 (2014)).

Unlike the statute analyzed by the Court in *Lockhart*, section 1692f(6)(A) does not contain a list of terms or phrases, nor does the section contain the requisite punctuation to support such an interpretation. On the contrary, this prohibition against limited nonjudicial property dispossession is presented as a single,

coherent phrase beginning with a single pronoun "*there*[1]":

> *(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest.*

The use of the single pronoun "there" further suggests the intention of the author that the phrase be read as a single, coherent sentence with the modifying clause, "through an enforceable security interest," appearing at the end of a single, integrated thought. As such, the Supreme Court's holding in *Lockhart* establishes that reliance on the last-antecedent canon is inappropriate for application in this matter based upon the grammatical construction of section 1692f(6)(A).

Instead, a grammatical analysis of section 1692f(6)(A) suggests that it should be read and interpreted consistently with its plain, ordinary meaning of the phrase "present right to possession of the property claimed as collateral through an enforceable security interest." The phrase "present right to possession" is modified by the following phrase: "claimed as collateral through an enforceable security interest." The absence of punctuation between the phrases supports this reading, and further reveals that Congress intended the presence of an enforceable security interest to be dispositive of whether a repossessor had a present right to possession.

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[1] Pursuant to the Miriam Webster Dictionary, "there" is a pronoun "used as a function word to introduce a sentence or clause."

This interpretation is supported by the "nearest reasonable referent canon" of statutory construction. As noted in the treatise, Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts, Chap. 20 (2012), "this principle is often given the misnomer *last-antecedent canon*, [but] it is more accurate to consider it separately and call it the *nearest-reasonable-referent canon*." The treatise referenced an example of statutory construction adopted by the Sixth Circuit utilizing the doctrine, closely mirroring the grammatical principles Defendants urge the Panel to consider in the instant action.

In *In re Sanders*, 551 F.3d 397 (6th Cir. 2008), the Court relied upon the canon to interpret 11 U.S.C. §1328(f) of the Bankruptcy Code, which states that a debtor cannot receive a discharge under Chapter 13 if he had "*received a discharge* . . . in a *case filed* under Chapter 7 . . . during the 4-year period preceding" the filing of a Chapter 13 petition. The Debtor filed a Chapter 7 petition on July 29, 2002, and received a discharge on February 5, 2003. The Debtor then filed a Chapter 13 case on January 5, 2007, less than four years after the Chapter 7 discharge, but more than four years since he filed his Chapter 7 petition. The Sixth Circuit found that the proper construction of the bankruptcy code required a finding that the four-year period started to run on the date of filing the Chapter 7 petition because the terms *discharge* and *case filed*

are not grammatically parallel; the latter is in a prepositional phrase modifying the former.[2]

The same analysis is warranted in the present action: the phrase *present right to possession of the property claimed as collateral through an enforceable security interest* contained within 1692f(6)(A) includes the prepositional phrase "through an enforceable security interest" that modifies "present right to possession of the property claimed as collateral."

Contrary to Supreme Court precedent directing Courts to adopt the plain, ordinary meaning of the statute, the Seventh Circuit's decision erroneously relying upon the "last antecedent canon," does not adopt a narrow interpretation of the provisions of §1692f(6)(A) as strongly advocated by precedent in this Court. On the contrary, the Seventh Circuit's decision, and the viability of Respondent's cause of action under §1692f(6)(A), is dependent upon an interpretation of the statute that deviates from its plain meaning and requires the Court to engage in two separate inquiries before determining whether a repossession of property without judicial process violates §1692f(6)(A): (1) the property is collateral under an enforceable security interest *and* (2) the repossessor has a "present right to possession" as determined by Indiana State Law.

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[2] Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts, Chap. 20 (2012). The treatise also noted the belief that the Court improperly invoked the last-antecedent canon when "the Court was indulging in the common misnomer [ ] mentioned above: The phrasing involved a referent, not an antecedent."

However, Congress did not insert the conjunction "and" into the statutory text, and instructions for the Court to refer to State Law are markedly absent. Instead, under the nearest-reasonable-referent canon, the prepositional phrase in §1692f(6)(A), "through an enforceable security interest" should modify "present right to possession of the property claimed as collateral." Thus, when this section is read as a whole, a repossessor cannot be subject to liability under §1692f(6)(A) when effectuating repossession pursuant to a valid security interest. If Congress had intended for the "right of possession of property claimed as collateral" to be modified by reference to state law, instead of by the existing modifier, "through an enforceable security interest," it would have incorporated this language into §1692f(6)(A), or a grammatical structure that would have allowed for such an interpretation. Yet, it declined to do so. Based on the plain and ordinary language of section 1692f(6)(A), an analysis of this section correctly turns on whether Lawrence had a "present right to possession . . . through an enforceable security interest" when it repossessed the Appellant's vehicle. The existence of an "enforceable security interest" is dispositive to a finding that a "present right to possession" exists for purposes of §1692f(6)(A).

The Seventh Circuit Opinion dispensed with the above decisions by regarding them as factually distinguishable because "both *Beler* and *Bentrud* dealt with §1692f's general clause prohibiting 'unfair and unconscionable' debt-collection methods . . . [and] [n]othing about the general phrase 'unfair and unconscionable'

requires reference to state law, but elsewhere in the FDCPA contains more specific provisions that do call for an inquiry into state law." [App. A]. However, in both *Beler v. Blatt*, 480 F.3d 470 (7th Cir. 2007) and *Bentrud v. Bowman*, 794 F.3d 871 (7th Cir. 2015), and in the instant action, the Seventh Circuit approached its analysis of the language contained within §1692f of the Fair Debt Collection Practices Act in the same manner. For example, in *Beler*, in which the Plaintiff sought to classify the Defendant's service of a citation to collect a debt as "unfair and unconscionable" under 15 U.S.C. §1692f for purposes of advancing a FDCPA claim, the Court noted: "What is 'unfair or unconscionable'? The statute does not say." *Beler*, 480 F.3d at 473. Despite the perceived lack of guidance from within the statute, the Court went on to deny the Plaintiff's efforts to elaborate on the definition using state law. In denying Plaintiff's invitation to incorporate reliance on state law, the court stated as follows: "There are two problems with Beler's approach. First, §1692f creates its own rules (or authorizes courts and the FTC to do so); it does not so much as hint at being an enforcement mechanism for other rules of state and federal law. . . . Likewise, if the Law Firm [Defendant] violated Illinois law, Section 1692f does not take a state-law dispute and move it to federal court. . . ." *Beler*, 480 F.3d at 474. The Seventh Circuit relied upon a similar analysis in *Bentrud* while quoting *Beler*.

However, a conflict exists with *Beler* and *Bentrud* because although the Panel also referenced ambiguity in 15 U.S.C. §1692f(6)(A) and the FDCPA's failure to

define "present right to possession," the Seventh Circuit concluded that as a result of such ambiguity it *could* refer to state law to determine the underlying meaning of the phrase. [App. A]. The invariable result of this holding is that litigants may now use 15 U.S.C. §1692f(6)(A) as an enforcement mechanism for a breach of the peace repossession claim originating under Indiana statute. Consideration of this case by the full Court is therefore necessary to maintain uniformity with decisions nationwide, and deterring litigants from seeking federal jurisdiction in matters that are otherwise properly before an Indiana State Court.

If Congress intended for the viability of an action under 15 U.S.C. §1692f(6)(A) of the Fair Debt Collection Practices Act to rest upon a Debtor's "present right to possession" as determined by independent state law, it was up to Congress to incorporate such an intent into the statute. However, based upon a plain meaning of the statute advanced by Supreme Court precedent as supported by the nearest-reasonable-referent canon of statutory construction, the prepositional phase "through an enforceable security interest" was intended to modify "present right to possession claimed as collateral." The absence of punctuation, and conjunctions such as "and" separating these phrases, supports such an interpretation of the statute, which the Seventh Circuit chose not to address. [App. A]. The scope of 15 U.S.C. §1692f(6)(A) should not be unjustifiably expanded by allowing litigants to utilize the FDCPA as an enforcement mechanism for Indiana

statute barring breach of the peace repossessions. Any holding in the alternative would effectively allow the federal court to circumvent the autonomy of the State legislatures to legislate rights and remedies under state law, and instead, result in the "rewriting [of] a constitutionally valid statutory text under the banner of speculation about what Congress might have done had it faced a question that, on everyone's account, it never faced." *Henson*, 137 S.Ct. at 1725.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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