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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

When a debt is discharged in bankruptcy, the bankruptcy court issues a discharge order that "operates as an injunction against" efforts by a creditor to collect that debt. 11 U.S.C. § 524(a)(2)-(3). The bankruptcy court enforces its discharge injunction using the contempt power. And this Court has held that there can be no civil contempt of a discharge injunction where there is a "'fair ground of doubt as to whether the creditor's conduct might be lawful under the discharge order." *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801, 1804 (2019).

Three circuits have long held that the Code preempts state-law claims premised on alleged collection efforts by a creditor in violation of the discharge injunction, given bankruptcy's uniquely federal character, its insistence upon uniformity, and the bankruptcy court's authority to remedy any violations of its own orders through contempt. In the decision below, the Fourth Circuit broke from that consensus and held that such state-law claims are not preempted, even when they would impose liability without regard to the "fair ground of doubt" standard and award relief not available in the bankruptcy court.

The question presented is as follows:

Whether the Bankruptcy Code preempts state-law claims premised on alleged efforts to collect a debt in violation of the bankruptcy court's discharge injunction.

PARTIES TO THE PROCEEDING

All remaining parties are identified in the caption. The following entities were named as defendants in the district court action, but were dismissed from the action by stipulation and were not parties in the court of appeals: Trans Union, LLC; Equifax, Inc.; Equifax Information Services, LLC; Experian Information Solutions, Inc. *See* Pet.App.1a n.1.

RULE 29.6 STATEMENT

Petitioner PHH Mortgage Corporation is a wholly-owned subsidiary of Ocwen Financial Corporation, a publicly held company. No other publicly held company owns 10% or more of Petitioner's stock.

RELATED PROCEEDINGS

U.S. District Court for the Eastern District of North Carolina:

> *Mark Anthony Guthrie v. PHH Mortgage Corporation f/k/a Ocwen Loan Servicing, LLC d/b/a PHH Mortgage Services, et al.*, No. 7:20-CV-43-BO (Mar. 4, 2022)

U.S. Court of Appeals for the Fourth Circuit:

> *Mark Anthony Guthrie v. PHH Mortgage Corporation*, No. 22-1248 (Aug. 18, 2023), *reh'g denied* (Sept. 18, 2023)

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s):

Cases:

Statutes:

Rule:

Other Authorities:

PHH Mortgage Corporation respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fourth Circuit.

INTRODUCTION

Can a plaintiff sue under *state* law for violations of a *federal* court's injunction? Can he use a strict-liability standard that this Court has specifically rejected in exactly this context? Both answers should be a resounding "no"—especially when the subject matter is bankruptcy, where uniformity is paramount. And until this case, every circuit that has confronted the question has indeed said "no." Claims that a defendant violated a federal bankruptcy court's injunction must be presented to the bankruptcy court that issued the injunction. The bankruptcy court may not use strict liability but must adhere to the well-established limitations on civil contempt, including the protection for reasonable mistakes. And state-law claims that circumvent these rules are preempted.

The Fourth Circuit has split from that consensus. By a divided vote, it allowed respondent to pursue state-law claims based on purported violations of a bankruptcy court's discharge injunction (the order that discharges particular debts and enjoins creditors not to pursue them). The court of appeals acknowledged that Congress has provided a civil contempt remedy for exactly that type of violation. But it saw no preemption problem with allowing state-law claims for the same conduct, before a different decisionmaker, under a stricter standard of liability, with different remedies.

Three circuits—the Seventh, Sixth, and First—have expressly held that such state-law causes of

action are preempted by the Bankruptcy Code. Several other circuits have adopted the same legal principles, holding that the contempt remedy is exclusive, that it can only be sought in the bankruptcy court, and that similar state-law claims (for violation of the Bankruptcy Code's automatic stay) are preempted. The disagreement among the courts of appeals threatens to undermine the paramount goal of uniformity in bankruptcy law. This Court should resolve the split now.

As this Court recently explained in *Taggart v. Lorenzen*, 139 S. Ct. 1795 (2019), the civil contempt remedy carefully balances the interests of creditors and debtors. It does not punish objectively reasonable mistakes—which are common in a field as complex as the bankruptcy discharge. But the state-law claims at issue in this case reject that balanced approach. This Court's cases on preemption, bankruptcy, and the contempt power all contradict the Fourth Circuit's decision to allow state-law second-guessing of the Bankruptcy Code's classically *federal* judgment.

The question presented is important to the functioning of the bankruptcy system, and it is frequently litigated. The Fourth Circuit's holding will have serious consequences throughout the Nation. No matter where a debtor's bankruptcy was adjudicated, she can sue in the Fourth Circuit—a significant banking center. Until this Court steps in to resolve the split, the threat of state-law liability in the Fourth Circuit will hang over creditors nationwide when they attempt to collect debts they reasonably believe have *not* been discharged.

This Court should grant certiorari.

OPINIONS BELOW

The Fourth Circuit's opinion (Pet.App.1a-41a) is reported at 79 F.4th 328. The district court's opinion (Pet.App.42a-72a) is not published in the *Federal Supplement*, but is available at 2022 WL 706923.

JURISDICTION

The court of appeals entered judgment on August 18, 2023. A petition for rehearing was denied on September 18, 2023 (Pet.App.76a). On December 7, 2023, the Chief Justice extended the time to file a petition for a writ of certiorari until January 17, 2024. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISION INVOLVED

Section 524(a) of Title 11, United States Code, provides in pertinent part:

> (a) A discharge in a case under this title—
>
> (1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1192, 1228, or 1328 of this title, whether or not discharge of such debt is waived;
>
> (2) 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; * * * .

Relevant portions of this and other statutes are reproduced in the appendix, *infra*, at 78a-84a.

STATEMENT

1. Pursuant to its power to enact "uniform Laws on the subject of Bankruptcies throughout the United States," U.S. Const., art. I, § 8, cl. 4, Congress has provided for the discharge of debts in federal bankruptcy court. When a debtor satisfies the applicable requirements, a discharge of prior financial obligations gives the debtor a "fresh start." *E.g.*, *Harris v. Viegelahn*, 575 U.S. 510, 513 (2015) (citation omitted). But not all debtors receive a discharge, and not all debts are discharged: sometimes, "in Congress's judgment, the creditor's interest in recovering a particular debt outweighs the debtor's interest in a fresh start." *Bartenwerfer v. Buckley*, 598 U.S. 69, 72 (2023).

In any bankruptcy case, "[a] discharge … operates as an injunction against any "act … to collect, recover, or offset" any debt that has been discharged. 11 U.S.C. § 524(a)(2). That is so whether the discharge is issued under Chapter 7, 9, 11, 12, or 13 of the Code. *See id.* (applicable to any "case under this title"). As this Court recently noted, "[t]o facilitate the Code's orderly and centralized debt-resolution process, [Section 524(a)(2)'s] basic requirements generally apply to *all* creditors." *Lac du Flambeau Band of Lake Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, 390-391 & n.2 (2023) (citation omitted).

Congress decided to treat the bankruptcy discharge as an injunction so that creditors would no longer try to collect on discharged debts in the hope that the debtor would fail to assert the discharge as a defense. Before 1970, "if the debtor failed to plead the discharge affirmatively"—which was not uncommon—"the defense was deemed waived." 4 *Collier on Bankruptcy* ¶ 524.LH[1] (16th ed. 2023) (*Collier*).

Federal bankruptcy courts could enjoin such an action, but often did not do so. *Local Loan Co. v. Hunt*, 292 U.S. 234, 241 (1934). Congress changed the law in 1970 "to effectuate the discharge" and "to correct this abuse." 4 *Collier* ¶ 524.LH[1]; H.R. Rep. No. 91-1502, at 1 (1970). Since that time, a bankruptcy discharge has enjoined creditors not to collect any debt that has been discharged. *See* 11 U.S.C. § 524(a)(2); Act of Oct. 29, 1970, Pub. L. No. 91-467, § 3, 84 Stat. 990, 991.[1]

Because it is an injunction, a discharge is enforced through civil contempt—with the relevant limitations that govern civil contempt proceedings. The bankruptcy court's contempt power comes from its statutory authority to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). Reading Section 524(a) and Section 105(a) together, this Court has held that those provisions "bring with them the 'old soil' that has long governed how courts enforce injunctions," which "includes the 'potent weapon' of civil contempt." *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1801 (2019) (citation omitted).

And civil contempt does not punish reasonable mistakes. This Court has recognized that "because discharge orders are written in general terms and operate against a complex statutory backdrop, there will often be at least some doubt as to the scope of such orders" (meaning which debts are discharged). *Taggart*, 139 S. Ct. at 1803. Consistent with "the traditional principles that govern civil contempt," the

[1] There are certain exceptions, most prominently for a secured creditor seeking in rem relief to enforce a lien on a debtor's home. 11 U.S.C. § 524(j).

Court unanimously held that "[a] court may hold a creditor in civil contempt for violating a discharge order where there is not a 'fair ground of doubt' as to whether the creditor's conduct might be lawful under the discharge order." *Id.* at 1804. The Court adopted that objective standard, and rejected the standard "resembling strict liability" that the debtor proposed, *id.* at 1803, because leaving room for objectively reasonable mistakes would "strike[] the 'careful balance between the interests of creditors and debtors' that the Bankruptcy Code often seeks to achieve." *Id.* (quoting *Clark v. Rameker*, 573 U.S. 122, 129 (2014)). Thus, a creditor with reasonable grounds to believe its actions are consistent with the injunction may not be held in contempt.

Under "the traditional principles that govern civil contempt," *id.*, only the court that issued an injunction can decide that it has been violated and issue a contempt remedy. *Int'l Union, United Mine Workers of Am. v. Bagwell*, 512 U.S. 821, 831 (1994) ("[C]ivil contempt proceedings leave the offended judge solely responsible for identifying, prosecuting, adjudicating, and sanctioning the contumacious conduct."). To be sure, other courts can decide that a debt has been discharged—as, for example, a defense to a collection action. *Taggart*, 139 S. Ct. at 1803. But the question here is whether other courts can *punish* an attempt to collect on a discharged debt.

2. In 2009, respondent Mark Guthrie and his then-wife, Tonia, bought a house in Jacksonville, North Carolina. Pet.App.43a. The purchase was financed with a loan to both Guthrie and Tonia, secured by a lien on the home. *Id.*

In 2011, Guthrie (but not Tonia) filed for Chapter 13 bankruptcy. The couple had apparently separated before the bankruptcy filing. About two months later, they were divorced. Pet.App.43a.

Guthrie entered into a payment plan as part of his Chapter 13 proceeding, under which he agreed to keep making payments on the home loan and cure the portion that was in arrears. Subsequently, however, Guthrie moved into housing at the military base where he was stationed. In February 2013, the bankruptcy court granted Guthrie's request to surrender the property and modify his Chapter 13 plan to reduce his monthly payments. Pet.App.44a.

Shortly thereafter, Guthrie's lender assigned the loan to Ocwen Loan Servicing. Petitioner PHH Mortgage Corporation is that company's successor after a 2019 merger. Pet.App.44a-45a.[2]

Tonia remained a co-borrower on the loan and a co-owner of the home. Pet.App.4a. PHH has no record of ever having been told about Guthrie's divorce, or that Tonia was no longer living in the home, until this lawsuit was served. C.A.App.332, 336, 341, 1628-1629. Neither Guthrie nor Tonia made further payments on the loan. C.A.App.1629.

In May 2016, the bankruptcy court entered a discharge order under 11 U.S.C. § 1328, after Guthrie made all payments under the Chapter 13 plan. Pet.App.4a. This left "an unusual situation," *id.*: Both Guthrie and Tonia continued to co-own the house, as PHH did not foreclose or take title after the surrender. Guthrie had received an order discharging his debt,

[2] This petition refers to both entities as "PHH."

but Tonia had not filed for bankruptcy and was still obligated on the loan. Pet.App.4a-5a.

Moreover, both Guthrie and Tonia remained contractually obligated to pay various expenses to maintain the collateral—hazard insurance, property taxes, and maintenance—that arose post-discharge. Pet.App.21a. Because Guthrie and Tonia were not making any payments, PHH was forced to pay those expenses itself in order to protect its interest in the house as security for the loan. C.A.App.1629. These payments created new liability for Guthrie. *E.g.*, C.A.App.765.

Between 2016 and 2019, after the bankruptcy court's discharge order, PHH periodically sent communications about the loan to the address on the account, addressed to both Guthrie and Tonia. Pet.App.46a-47a. Many of these were regular monthly mortgage statements. Guthrie characterized these communications as attempts to collect the debt that had been discharged in bankruptcy *as to him*. *Id.* But Tonia's liability on the loan had not been discharged. And PHH's correspondence explained that if the loan had been discharged then all communications were "for informational purposes only with regard to our secured lien on the … property." *E.g.*, C.A.App.766, 767, 770, 771; *see* note 1, *supra* (explaining the discharge exception for secured liens).

2. In 2020, Guthrie sued PHH (and several other defendants later dismissed from the case) in North Carolina state court, asserting ten claims under federal and state law arising from PHH's alleged collection efforts and from allegations that PHH misreported his credit status. Pet.App.7a & n.5. Relevant here, Guthrie brought state-law claims for violation of

the North Carolina Debt Collection Act (NCDCA) and for both negligent and intentional infliction of emotional distress. *Id.* Guthrie alleged "as the basis of each [of these claims] that he was discharged from any legal obligation to make further payments on the Loan pursuant to the Chapter 13 bankruptcy discharge." Pet.App.55a, 60a. But Guthrie never presented his allegations that PHH had violated the discharge to the bankruptcy court.

Guthrie sought several forms of monetary relief, including a statutory penalty of up to $4,000 for "each and every" act that violated the NCDCA, plus punitive damages. C.A.App.85-86; *see* N.C. Gen. Stat. § 75-56(b). He demanded a jury trial. C.A.App.86.

The defendants removed the case to federal court. After discovery, PHH moved for summary judgment on all claims. Pet.App.5a n.3, 7a. The district court granted that motion in full. Pet.App.72a.

The district court stated that Guthrie's NCDCA claim "is preempted by the Bankruptcy Code." Pet.App.57a. Those "allegations are expressly premised on [PHH's] alleged failure to acknowledge the effect of the discharge in bankruptcy," and therefore "the conduct of which plaintiff complains[] 'would not be wrongful absent the existence of the … discharge injunction imposed by the Bankruptcy Code.'" Pet.App.56a (brackets and citation omitted). For the same reason, the district court also held that the Bankruptcy Code preempted Guthrie's claims for negligent and intentional infliction of emotional distress

"to the extent they are premised on alleged attempts to collect on a discharged debt." Pet.App.60a.[3]

3. In a divided decision, the Fourth Circuit reversed in relevant part. Pet.App.1a-34a. Judge Wynn dissented from the preemption holding. Pet.App.35a-41a.

a. The majority opinion held that "the Bankruptcy Code does not preempt Guthrie's state law claims arising from alleged improper collection attempts of a discharged debt." Pet.App.34a. The court concluded that neither ordinary conflict preemption nor bankruptcy law's special requirement of uniformity barred state-law liability.

The majority opinion acknowledged that Guthrie's state-law claims "hinge on [an alleged] violation of the discharge injunction," and that "Guthrie's state law claims provide greater remedies than those available under the Bankruptcy Code for the same conduct." Pet.App.10a, 17a. Yet the majority did not think that Congress made the federal contempt remedy "comprehensive," or limited it "to facilitate a certain public-policy outcome." Pet.App.15a, 17a. So it concluded that allowing additional state-law remedies for violation of the discharge injunction would "further one of the primary goals of the Bankruptcy Code and the discharge injunction—a fresh start for debtors." Pet.App.17a. The court also thought that a state-law suit would not "increase the debts that are

[3] The district court also held that the Fair Credit Reporting Act preempted Guthrie's state-law claims "insofar as they are based on [PHH]'s credit reporting conduct." Pet.App.60a, 57a. Guthrie did not appeal this holding. Pet.App.7a n.6. The district court disposed of the rest of Guthrie's claims on grounds not relevant here.

dischargeable," or "slow down or negatively affect the administration or settlement of [Guthrie's] his estate." Pet.App.13a.

The majority opinion also rejected PHH's argument that allowing state-law remedies for a discharge injunction violation would frustrate the Bankruptcy Code's goal of uniformity. The court stated that the Bankruptcy Clause "is not about ensuring uniformity in state laws whenever they happen to intersect with bankruptcy," but rather is a limit on congressional power. Pet.App.18a. The majority further reasoned "that preemption depends on an actual conflict, and not all state-levels differences frustrate the Constitution's uniformity principle." *Id.* The majority perceived no such "obstacle to the goals of the Bankruptcy Code" in Guthrie's state-law claims, and therefore held that they were not preempted. Pet.App.19a.

The majority opinion acknowledged decisions by other circuits holding that the Bankruptcy Code preempted state-law causes of action. Pet.App.10a-11a n.9. It (incorrectly) perceived one decision as having involved only the automatic stay, *see* 11 U.S.C. § 362, which "is in place during a bankruptcy proceeding, while the discharge injunction is entered after it has been closed." Pet.App.11a n.9 (discussing *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417 (6th Cir. 2000)). And while it acknowledged that the First Circuit decision in *Bessette v. Avco Financial Services, Inc.*, 230 F.3d 439, 447 (1st Cir. 2000), was factually on point, it did not engage with *Bessette* based on its perception (again, incorrect) that PHH had "waived" reliance on field preemption. Pet.App.11a n.9. In fact, PHH had invoked both conflict preemption *and* a "sub-variation of the preemption analysis that

incorporates the Bankruptcy Clause's uniformity requirements." PHH C.A.Br.22, 24-25. The latter, is, in substance, a bankruptcy-specific field-preemption argument.[4] The Fourth Circuit took up and rejected that argument on its merits. Pet.App.18a-19a.

b. Judge Wynn dissented in relevant part. He would have held that "state-law claims, to the extent they are premised on a violation of the automatic stay or discharge injunction issued by the bankruptcy court, are preempted by the Bankruptcy Code." Pet.App.35a.

Judge Wynn emphasized "the comprehensive and particularly federal nature of bankruptcy law" and that "Congress has wielded [its bankruptcy] power by creating comprehensive regulations on the subject and by vesting exclusive jurisdiction over bankruptcy matters in the federal district courts." Pet.App.35a (quoting *Pertuso*, 233 F.3d at 425). He further noted that "Congress chose to give the discharge order the force of an injunction, replete with the traditional contempt remedy." Pet.App.38a. Congress made that remedy "the sole remedy," which serves the Bankruptcy Code's goals of uniformity and centralization and "has the practical advantage of 'placing responsibility for enforcing the discharge order in the court that issued it.'" Pet.App.41a (quoting *Cox v. Zale Del., Inc.*, 239 F.3d 910, 916 (7th Cir. 2001)). By contrast, "[p]ermitting state-law causes of action to redress purported violations of the injunction would 'undermine

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[4] As explained below, pp. 17-18, *infra*, this Court said as much in *International Shoe Co. v. Pinkus*, 278 U.S. 261, 264-65 (1929), which the First Circuit followed in *Bessette*. And, of course, field preemption is ultimately a *type* of conflict preemption, not a "rigidly distinct" separate category. P. 18, *infra*.

the uniformity the Code endeavors to preserve' and 'stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.'" *Id.* (quoting *Pertuso*, 233 F.3d at 426).

Judge Wynn noted that other "circuits appear to be unanimous in holding that state-law claims alleging violations of the *automatic-stay* provision of the Code are preempted," Pet.App.36a, and that there is "no reason why state-law claims alleging violations of a discharge injunction should be treated differently" given the equivalent federal remedy for any discharge violation. Pet.App.37a.

4. The Fourth Circuit denied PHH's petition for rehearing. Pet.App.76a.

REASONS FOR GRANTING THE WRIT

This Court should resolve the conflict over whether the Bankruptcy Code preempts state-law causes of action premised on violation of the discharge injunction. As most circuits recognize, only the bankruptcy court has the authority to enforce its own order. Allowing a jury in some other court to penalize the creditor—especially where the bankruptcy court itself would not or could not—circumvents the careful limitations this Court has placed on the contempt power. The Fourth Circuit's incorrect decision, on this important and recurring issue, warrants this Court's review.

I. The decision below directly conflicts with decisions of three other circuits, and is irreconcilable with the precedent of several more.

The Fourth Circuit's holding directly conflicts with the precedents of three other circuits. Relying on reasoning rejected by the majority opinion in this case, the Seventh, Sixth, and First Circuits have all held

that state-law claims premised on a violation of the discharge injunction are preempted by the Bankruptcy Code. Several other circuits have also rejected enforcement of the discharge injunction by means other than contempt, and two have held that state-law claims based upon alleged violations of a closely related provision of the Code are preempted. The reasoning of those decisions is also irreconcilable with the decision below.

A. The decision below directly conflicts with the decisions of three other courts of appeals.

The Fourth Circuit's decision directly conflicts with decisions of the Seventh, Sixth, and First Circuits, all of which have held that state-law claims premised on violation of the discharge injunction are preempted by the Bankruptcy Code.[5]

1. The Seventh Circuit held that the Bankruptcy Code preempted a state-law unjust-enrichment claim premised on the defendant's allegedly having "violat[ed] the order of discharge [in bankruptcy] by trying to collect a discharged debt" through a debt-affirmation agreement. *Cox v. Zale Del., Inc.*, 239 F.3d 910, 913 (7th Cir. 2001) (Posner, J.). The Seventh Circuit concluded that "remedies against debt-affirmation agreements contended to violate the Bankruptcy Code are a matter exclusively of federal bankruptcy law." *Id.* That makes sense, the court explained, because it "plac[es] responsibility for enforcing the discharge order in the court that issued it," which "is in

[5] The Fourth Circuit decision also conflicts with an on-point decision of the Ninth Circuit Bankruptcy Appellate Panel. *See* pp.21-22, *infra*.

a better position to adjudicate the alleged violation, assess its gravity, and on the basis of that assessment formulate a proper remedy." *Id.* at 916.

The court therefore concluded that the Bankruptcy Code "extinguishes the plaintiff's claim for unjust enrichment, which is based on state law." 239 F.3d at 913. The Seventh Circuit endorsed decisions of the Sixth and First Circuits that had addressed the very same issue. *See id.* (agreeing with *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417, 420, 426 (6th Cir. 2000), and *Bessette v. Avco Fin. Servs.*, 230 F.3d 439, 447-448 (1st Cir. 2000)).

2. In *Pertuso*, debtors who had received a discharge in bankruptcy sued a creditor for unjust enrichment and an accounting after the creditor persuaded them to reaffirm and make payments on debt. The Sixth Circuit held that the state-law claims, which "presuppose[d] a violation of the Bankruptcy Code," were preempted by federal law. 233 F.3d at 426. Specifically, the plaintiffs argued that the "same course of conduct"—accepting payment on the reaffirmed debt—violated both the automatic-stay provision (during bankruptcy) *and* Section 524(a)(2) ("post-discharge"). *Id.* at 425. But as the court explained, the discharge "'operates as an injunction,'" and "the traditional remedy for violation of an injunction lies in contempt proceedings, not in a lawsuit such as this one." *Id.* at 421. There was no separate federal right of action to enforce Section 524(a)(2) outside contempt, *id.* at 421-423, and the court reasoned that any state law creating one is preempted, *id.* at 425-426.

In so holding, the Sixth Circuit "highlight[ed] the exclusively federal nature of bankruptcy proceedings," along with "[t]he pervasive nature of Congress'

bankruptcy regulation." *Id.* at 425. It explained that "[p]ermitting assertion of a host of state law causes of action to redress wrongs under the Bankruptcy Code would undermine the uniformity the Code endeavors to preserve and would stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Id.* at 426 (quotation marks and brackets omitted); *see In re Schafer*, 689 F.3d 601, 614 (6th Cir. 2012) ("*Pertuso* primarily rested upon a conflict, and not field, preemption analysis.").

The Fourth Circuit incorrectly thought *Pertuso* was limited to the automatic stay and therefore not "persuasive" on the discharge injunction. Pet.App.10a-11a n.9. But as explained, the plaintiffs in *Pertuso* explicitly alleged violations of *both* the automatic stay and the discharge injunction. 233 F.3d at 421. For all the payments the creditor accepted after the discharge, the "violation of the Bankruptcy Code" that the state-law claim "presuppose[d]," *id.* at 426, was of Section 524(a)(2). *See id.* at 420, 425. Thus, the Seventh Circuit read *Pertuso* to hold, "correctly," that the contempt remedy is the exclusive remedy for "attempts to collect a discharged debt," which "extinguishes" state-law claims trying to do just that. *Cox*, 239 F.3d at 913, 915 (citing *Pertuso*, 233 F.3d at 421, 426). And courts within the Sixth Circuit read *Pertuso* the same way.[6] The Fourth Circuit was simply wrong in overlooking the direct conflict with *Pertuso*.

3. In *Bessette*, the First Circuit similarly held that a state-law claim for unjust enrichment for collecting

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[6] *See, e.g.*, *McCruter v. Advantage Imaging of Lake Cnty., L.L.C.*, 168 N.E.3d 53, 56 (Ohio Ct. App. 2021) (citing *Pertuso*, 233 F.3d at 426).

debt under an improper reaffirmation agreement was preempted by the Bankruptcy Code. 230 F.3d at 447. Bessette had entered into a reaffirmation agreement that did not satisfy the criteria of § 524(c), which requires that a voluntary reaffirmation agreement be filed with the bankruptcy court and advise the debtor of the right to rescind. *Id.* at 444. After the discharge injunction was entered and the creditor made efforts to collect, Bessette brought various federal claims as well as a claim of unjust enrichment under state law. *Id.* at 443.

The First Circuit held that the state-law claim was preempted because Congress had provided an exclusive remedy for violation of the discharge injunction. It explained that "§ 105 of the Code authorizes federal courts to order damages for violations of § 524 when necessary"; therefore, "an alternative state court remedy for unjust enrichment in these circumstances is inevitably in conflict with Congress's plan that federal courts enforce § 524 through § 105." *Id.* at 447. The court held that "the broad enforcement power under the Bankruptcy Code preempts virtually all alternative mechanisms for remedying violations of the Code." *Id.*

The majority opinion below brushed aside *Bessette* as "based on field preemption" rather than on the preemption categories PHH argued. Pet.App.10a-11a n.9. But that distinction is illusory. PHH raised as a separate preemption theory that the mandate of a nationally uniform bankruptcy law precludes state-law remedies. PHH C.A.Br.22, 24-25; *see* Pet.App.18a-19a (rejecting this argument on the merits). That is exactly what the First Circuit relied on, too. As this Court explained in *International Shoe Co. v. Pinkus*,

278 U.S. 261 (1929), bankruptcy cases involve a special form of field preemption driven by the uniformity principle of bankruptcy law: "In respect of bankruptcies the intention of Congress is plain. The national purpose to establish uniformity necessarily excludes state regulation.… States may not pass or enforce laws to interfere with or complement the Bankruptcy Acts or to provide additional or auxiliary regulations." *Id.* at 265. And that last sentence from *International Shoe* is exactly what the First Circuit quoted in *Bessette*. *See* 230 F.3d at 447.

The remainder of *Bessette* makes clear that while the court referred to "occup[ying] the field," it was considering precisely the same argument PHH made here—that Congress's chosen remedy under the Bankruptcy Code is exclusive. *See* PHH C.A.Br.24 ("[C]ourts jealously guard the Bankruptcy Code as the exclusive enforcement mechanism for violations of the … discharge injunction"). Thus, for instance, the First Circuit distinguished precedent holding that the Code did not preempt state-law claims for false imprisonment, negligence, and abuse of process arising from a violation of the automatic stay; the claim in *Bessette* was preempted where those were not, because of the "overlap between a specific remedy available under the Bankruptcy Code and the state law remedies." 230 F.3d at 447.

Indeed, *Bessette* illustrates well this Court's observations that "the categories of preemption are not 'rigidly distinct'" and that "field pre-emption may be understood as a species of conflict pre-emption." *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 n.6 (2000) (quoting *English v. Gen. Elec. Co.*, 496 U.S. 72, 79 n.5 (1990)); *see also Murphy v. NCAA*, 138 S. Ct.

1461, 1480 (2018) (field and conflict preemption "work in the same way"). For that reason, too, the Fourth Circuit was too quick to dismiss the conflict between its decision and *Bessette* on waiver grounds.[7]

In sum, the conflict is stark: In the First, Sixth, and Seventh Circuits, a state-law claim based on violation of the discharge injunction is preempted. In the Fourth Circuit, it is not.

B. The decision below is also incompatible with the precedent of several other circuits in closely related contexts.

The Fourth Circuit's decision is not just contrary to every other circuit's resolution of the question presented, it is also incompatible with the reasoning of several other circuits in closely related contexts. The Ninth and Second Circuits, in particular, have rejected the notion that the discharge injunction can be enforced through means other than contempt.

1. In a pair of cases, the Ninth Circuit has taken an approach to preemption and the discharge injunction that is squarely inconsistent with the Fourth Circuit's. That precedent, in turn, led the Ninth Circuit Bankruptcy Appellate Panel to find preemption when confronted with the question presented here.

In the first, the Ninth Circuit addressed "whether state malicious prosecution actions for events taking place within the bankruptcy court proceedings are completely preempted by federal law." *MSR*

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[7] In any event, even where a party has "expressly disavowed" a particular theory below, this Court's "traditional rule" is that "parties are not limited to the precise arguments they made below." *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 378-379 (1995) (citation omitted).

Exploration, Ltd. v. Meridian Oil, Inc., 74 F.3d 910, 912 (9th Cir. 1996).[8] The court held that the state-law claims were preempted for several reasons. *Id.* at 913.

The court in *MSR* observed that "a mere browse through the complex, detailed, and comprehensive provisions of the lengthy Bankruptcy Code … demonstrates Congress's intent to create a whole system under federal control" where "the adjustment of rights and duties within the bankruptcy process itself is uniquely and exclusively federal." *Id.* at 914. The court stated that "[i]t is very unlikely that Congress intended to permit the superimposition of state remedies on the many activities that might be undertaken in the management of the bankruptcy process." *Id.*

Soon thereafter, the Ninth Circuit applied *MSR*'s broad reasoning to a case involving an alleged violation of the discharge injunction. Under *MSR*, the Ninth Circuit held, the Bankruptcy Code precludes a claim for violating the discharge injunction arising under the *federal* Fair Debt Collection Practices Act (FDCPA). *See Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 510-511 (9th Cir. 2002). The court in *Walls* explained that "[t]he Bankruptcy Code provides its own remedy for violating § 524, civil contempt under § 105," and allowing "a simultaneous claim under the FDCPA … would circumvent the remedial scheme of the Code under which Congress struck a balance between the interests of debtors and creditors by permitting (and limiting) debtors' remedies for violating the

[8] "When [a] federal statute completely pre-empts [a] state-law cause of action," any claim within the relevant scope is federal in nature for jurisdictional purposes, "even if pleaded in terms of state law." *Beneficial Nat'l Bank v. Anderson*, 539 U.S. 1, 8 (2003). Nothing relevant here rests on complete preemption.

discharge injunction to contempt." *Id.* at 510. Indeed, the court noted, it would be particularly "inconsistent" with that scheme to put "enforcement of the discharge injunction in the hands of a court that did not issue it (perhaps even in the hands of a jury)." *Id.*

Walls thus confirms that the sole remedy for alleged violations of the discharge injunction is contempt—to the point that even non-bankruptcy *federal* remedies are off the table. *See also Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1189 (9th Cir. 2011) (claims for violation may not even be brought in a new bankruptcy proceeding, because "Congress did not intend for enforcement of a discharge order to be left to any other judge than the bankruptcy judge who issued the order"). That leaves no room for state-law claims, like Guthrie's, that are premised on alleged violations of the discharge injunction and seek to put their adjudication "in the hands of a jury."[9]

Confirming the point, the Ninth Circuit Bankruptcy Appellate Panel and other courts within that circuit have directly held that state-law claims premised on an alleged discharge-injunction violation were preempted because "federal law provides the sole

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[9] To be sure, the reverse is not necessarily true: holding that state-law claims like Guthrie's are preempted does not necessarily entail concluding that federal FDCPA claims are precluded, too. Indeed, the Seventh Circuit has held that state-law claims are preempted, pp. 14-15, *supra*, but that FDCPA claims premised on a violation of the discharge injunction may proceed. *Randolph v. IMBS, Inc.*, 368 F.3d 726, 730 (7th Cir. 2004) ("Preemption is more readily inferred" than ouster of a federal claim). But having held that FDCPA claims may *not* proceed, it is inconceivable that the Ninth Circuit would hold that identical state debt-collection claims *may* proceed. The decisions in *MSR* and *Walls* thus widen the split.

remedy for violation of § 524." *In re Bassett*, 255 B.R. 747, 758-759 (9th Cir. BAP 2000) (relying on *MSR*); *Rogers v. NationsCredit Fin. Servs. Corp.*, 233 B.R. 98, 109-110 (N.D. Cal. 1999) (same). Although in *Bassett* the Ninth Circuit ultimately affirmed the dismissal of those claims on the alternative ground that there had been no violation at all (mooting the preemption question), *In re Bassett*, 285 F.3d 882, 887, 888 (9th Cir. 2002), courts in the Ninth Circuit continue to rely on the BAP's preemption holding. *See, e.g.*, *In re Chaussee*, 399 B.R. 225, 230-233 (9th Cir. BAP 2008).

2. Claims like Guthrie's are not viable in the Second Circuit either. That court has joined the Sixth and Ninth Circuits in holding that the "Bankruptcy Code preempts any state law claims for a violation of the automatic stay." *E. Equip. & Servs. Corp. v. Factory Point Nat'l Bank, Bennington*, 236 F.3d 117, 121 (2d Cir. 2001) (per curiam). Subsequent authority within that circuit reads the decision in *Eastern Equipment* to answer the question presented here, too.

The Second Circuit expressly built on and approved of the Ninth Circuit's analysis in *MSR*. It reasoned that "Congress created a lengthy, complex and detailed Bankruptcy Code to achieve uniformity"; that the Bankruptcy Code gives a federal remedy for "misuse of the bankruptcy process" by violating the automatic stay; and that "the mere threat of state tort actions could prevent individuals from exercising their rights in bankruptcy, thereby disrupting the bankruptcy process." 236 F.3d at 121. These points apply with even greater force to state-law claims premised on violations of the discharge order—as Judge Wynn recognized below, Pet.App.36a-37a. Congress

established remedies for violations of the automatic stay and the discharge injunction alike. *See MSR*, 74 F.3d at 915 (listing the two together). The contempt remedy is even more carefully limited, and state-law claims that evade those limitations are an even greater interference with Congress's design.

For those reasons, plaintiffs cannot bring claims like Guthrie's in the Second Circuit any more than in the First, Sixth, Seventh, or Ninth. Indeed, courts within the Second Circuit hold that state-law claims "premised upon a violation of the discharge injunction" are "preempted by the Bankruptcy Code"—and in one case, the court expressly relied on *Eastern Equipment* as the basis for that holding. *In re Cultrera*, 360 B.R. 28, 32 (Bankr. D. Conn. 2007); *accord Diamante v. Solomon & Solomon, P.C.*, 2001 WL 1217226, at *2-3 (N.D.N.Y. Sept. 18, 2001).

3. In addition, the decision below is in serious tension with the reasoning of several circuits emphasizing that *only* the bankruptcy court that issued the discharge injunction has the power to enforce it. Indeed, the Second Circuit has held that because of the bankruptcy court's "unique expertise in interpreting its own injunctions and determining when they have been violated," violations of the discharge injunction cannot be subject to arbitration: they "are enforceable only by the bankruptcy court and only by a contempt citation." *In re Anderson*, 884 F.3d 382, 391 (2d Cir. 2018); *In re Belton*, 961 F.3d 612, 616-617 (2d Cir. 2020); *see also Bruce v. Citigroup, Inc.*, 75 F.4th 297, 304-305 (2d Cir. 2023) (emphasizing the bankruptcy court's "unique insight" in deciding "the appropriate-

ness of civil contempt sanctions").[10] For the same reason—that "the court that issued the injunctive order alone possesses the power to enforce compliance"—several circuits (the Second, Fifth, and Eleventh) have held that no *other* federal bankruptcy court can entertain such a claim. *Alderwoods Grp., Inc. v. Garcia*, 682 F.3d 958, 968-971 (11th Cir. 2012) (citing *Cox*); *accord In re Crocker*, 941 F.3d 206, 216-217 (5th Cir. 2019); *Bruce*, 75 F.4th at 303-306. If it would "wreak havoc on the federal courts" (*Alderwoods*, 682 F.3d at 970) to have another bankruptcy court, another district court, or an arbitrator enforce the injunction, *a fortiori* these circuits would conclude that it conflicts with the federal framework to have a *state* court enforce the injunction, too.

II. The decision below is wrong.

The Court should also grant certiorari because the Fourth Circuit's decision is contrary to this Court's precedents. The States have no power to punish perceived violations of an order of a federal bankruptcy court granting a discharge. That is particularly true where, as here, a plaintiff seeks to use state law to override the protection for objectively reasonable conduct that this Court set out in *Taggart*.

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[10] Although the Second Circuit's reasoning as to the exclusive power of bankruptcy courts is necessarily inconsistent with the Fourth Circuit's decision here, reversing on the question presented would not necessarily endorse the Second Circuit's reasoning *as to arbitration*.

A. State law may neither supplement the Bankruptcy Code's remedies nor punish contempt of a federal injunction.

Enforcement of a federal bankruptcy court's discharge injunction is a federal matter, for two reasons: it involves *both* the plenary federal power over bankruptcy *and* the plenary power of federal courts to enforce their own rulings.

1. The Constitution "'granted plenary power to Congress over the whole subject of 'bankruptcies,'" *Siegel v. Fitzgerald*, 142 S. Ct. 1770, 1779 (2022) (citation omitted), which "includes the power to discharge the debtor from his contracts and legal liabilities." *Hanover Nat'l Bank v. Moyses*, 186 U.S. 181, 188 (1902). Once Congress exercised that "paramount" power and adopted a nationally uniform bankruptcy statute, "[t]he national purpose to establish uniformity necessarily excludes state regulation." *International Shoe*, 278 U.S. at 265.

Applying that principle, the Court held in *International Shoe* that a state law was preempted—irrespective of direct conflict—because it came "within the field entered by Congress when it passed the Bankruptcy Act." 278 U.S. at 266. Analogizing to other field-preemption cases, the Court explained that it is just as impermissible for state law to "complement" the Bankruptcy Act or "provide additional or auxiliary regulations" as it would be to "interfere with" federal bankruptcy law overtly. *Id.* at 265. Thus, the Court did not need to "compar[e] in detail" the state law and the Bankruptcy Act; what mattered was that the state law in question contained provisions "providing for [debts'] discharge, or that otherwise relate to the subject of bankruptcies." *Id.* at 265-66. "Congress did not

intend to give insolvent debtors …, or their creditors …, choice between the relief provided by the Bankruptcy Act and that specified in state insolvency laws." *Id.* at 265.

2. Where the issue concerns not just the federal bankruptcy *law* but the power of the federal bankruptcy *court*, our constitutional structure is even more skeptical of state regulation. For instance, this Court has squarely held that States cannot punish perjury committed in a federal tribunal: "the power of punishing a witness for testifying falsely in a judicial proceeding belongs peculiarly to the government in whose tribunals that proceeding is had." *In re Loney*, 134 U.S. 372, 375 (1890). Thus, even though perjury is unquestionably illegal everywhere, perjury *in federal court* is "within the exclusive jurisdiction of the courts of the United States; and cannot, therefore, be punished in [state courts]." *Id.*

The same principles apply to the contempt power. As already explained, pp. 6, 23-24, *supra*, only "the offended judge" has the power to punish contempt of a court order. *Bagwell*, 512 U.S. at 831; *see also Ex parte Bradley*, 74 U.S. 364, 371-372 (1868) (rejecting "the anomalous proceeding of one court taking cognizance of an alleged contempt committed before and against another court"); Fed. R. Civ. P. 4.1 Advisory Committee Note (1993) ("Contempt proceedings, whether civil or criminal, must be brought in the court that was allegedly defied by a contumacious act.").

3. The Fourth Circuit's decision contradicts both of these principles—and either would be sufficient to reverse. Guthrie seeks to choose state-law remedies—such as the $4,000 in statutory damages that state law allows for each NCDCA violation, N.C. Gen. Stat.

§ 75-56(b)—over those provided by the Bankruptcy Code. That is exactly what this Court said in *International Shoe* was impermissible. 278 U.S. at 265; *see Bessette*, 230 F.3d at 447. And he seeks to have a jury applying state law, not the bankruptcy judge who issued the injunction, decide whether PHH violated the injunction and should be penalized.

It is no answer to say, as the court of appeals did, that remedies not available in federal court are permissible because they "further … a fresh start for debtors." Pet.App.17a. "[C]omplement[ary]," "additional[,] or auxiliary regulations" are impermissible because they upset the balance Congress set. *International Shoe*, 278 U.S. at 265. Asserting that the state law "has the same aim as federal law" is insufficient to justify different penalties imposed by a different decisionmaker. *Arizona v. United States*, 567 U.S. 387, 402 (2012).[11]

Because the Bankruptcy Code occupies the field of remedying violations of the Code itself, Guthrie's state-law claims are preempted.

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[11] Decisions like *Arizona*, involving the field of alien registration, are particularly probative here because the Bankruptcy Clause is twinned with the Naturalization Clause in Article I, Section 8, Clause 4, and both emphasize that Congress is given the relevant power so that legislation may be "uniform … throughout the United States." Indeed, this Court's precedent about alien registration and preemption drew on *International Shoe* for the proposition that Congress occupies the field when, "in the exercise of its superior authority in this field, [it] has enacted a complete scheme of regulation." *Hines v. Davidowitz*, 312 U.S. 52, 66-67 & n.18 (1941).

B. State-law claims premised on violations of the discharge injunction conflict with the Bankruptcy Code.

Guthrie seeks damages he could not recover in a contempt proceeding, from a decisionmaker (a lay jury) with no prior knowledge of the injunction, under a state law that he insists imposes essentially strict liability. Each of these aspects of his state-law claims conflicts with the remedial procedure *Congress* selected: a contempt proceeding before the same judge, governed by the age-old limitations this Court has imposed on civil contempt, and shielding objectively reasonable mistakes from liability. Allowing such claims to proceed will interfere with the bankruptcy system in exactly the way this Court identified in *Taggart*: it will chill creditors from pursuing payments they have every right to pursue.

In *Taggart*, this Court recognized that not every attempt to collect a debt that turns out to have been discharged warrants contempt sanctions. By making the discharge an injunction, and selecting civil contempt as the remedy for violating it, Congress imported the venerable legal principle that reasonable mistakes do not warrant contempt. 139 S. Ct. at 1801-1802. Thus, the Code does not grant "unlimited authority to hold creditors in civil contempt." *Id.* at 1801. Rather, contempt is appropriate "when the creditor violates a discharge order based on an objectively unreasonable understanding of the discharge order or the statutes that govern its scope." *Id.* at 1802; *see id.* at 1804.

The Court specifically rejected strict liability—even though the debtor in *Taggart*, like the court of appeals here, contended that such a harsh rule would

further Congress's purpose to facilitate a "fresh start" for debtors. *Compare* 139 S. Ct. at 1803 *with* Pet.App.17a. This Court emphasized that there is "often" doubt about what violates a discharge, and that if even objectively reasonable mistakes are punished, "risk-averse" creditors will have to either refrain from collecting or return to the bankruptcy court for clarification. 139 S. Ct. at 1803. That would "risk additional federal litigation, additional costs, and additional delays," and "interfere with a chief purpose of the bankruptcy laws: to secure a prompt and effectual resolution of bankruptcy cases within a limited period." *Id.* (citations omitted).

Allowing a *state* to impose strict liability for violation of a federal discharge injunction circumvents *Taggart*'s holding and does exactly what this Court warned against: frustrate the Code's aim of efficient resolution. Yet that is exactly what the Fourth Circuit's holding permits.

Consider Guthrie's NCDCA claim. That statute broadly prohibits, among other things, "[f]alsely representing the character, extent, or amount of a debt … or of its status in any legal proceeding." N.C. Gen. Stat. § 75-55(4). And Guthrie emphasizes that under the NCDCA, "it is totally irrelevant whether the Defendant communicated with Plaintiff negligently, in good faith, in ignorance of the falsity of its communications, and/or without intent to mislead." Dist. Ct. ECF No. 97, at 38. The statute also permits penalties of up to $4,000 for each act—even if the plaintiff has suffered no actual harm. Thus, it would punish even the type of mistake that this Court has held *cannot* be punished as civil contempt. The conflict with the federal remedy is clear.

This Court emphasized that protecting reasonable mistakes, and rejecting strict liability, "strikes the careful balance between the interests of creditors and debtors that the Bankruptcy Code often seeks to achieve." *Taggart*, 139 S. Ct. at 1804. The Fourth Circuit's decision upsets that balance. Even if Congress did not preempt all state-law remedies in the bankruptcy field, it preempted at least those remedies that would second-guess the bankruptcy court under state law—or penalize conduct that, under *Taggart*, the bankruptcy court *may not*. The conflicting liability standards are enough, *see Arizona*, 567 U.S. at 406, but the interference with federal goals is even more pronounced: as this Court already recognized, a strict-liability standard would force creditors back into bankruptcy court to seek permission whenever there is any doubt about whether a debt was discharged. *Taggart*, 139 S. Ct. at 1803 (citing textual evidence that Congress "expected that this procedure would be needed in only a small class of cases"). A state-law rule that gums up a federal system in that manner is preempted. *See Buckman Co. v. Plaintiffs' Legal Comm.*, 531 U.S. 341, 351 (2001).

This Court's cases leave no doubt about the key principles. State law cannot enforce federal injunctions—especially not discharge injunctions. And it certainly cannot "enforce" those injunctions by imposing penalties Congress withheld, on conduct that Congress and this Court have said may not be penalized. The Fourth Circuit's clear misapplication of these principles warrants review.

III. The question presented is important and frequently recurring.

This Court should grant certiorari for a third reason: the question is important and recurring. The decision below threatens to disrupt the national uniformity that is critical to bankruptcy law. And this case is an excellent vehicle to resolve the conflict without delay.

1. The decision below will have a significant and detrimental effect on bankruptcy law throughout the Nation. As already discussed, nationwide consistency is particularly important in bankruptcy. And the nature of the question presented here guarantees that the circuit conflict the Fourth Circuit has created will be particularly disruptive.

Hundreds of thousands of discharge injunctions are issued each year in bankruptcy courts nationwide.[12] These injunctions prohibit a wide swath of collection-related actions (*e.g.*, routine phone calls and letters), they cover virtually all debt (big and small), and they last in perpetuity.[13] And the rules governing what debts are discharged are complex. There are dozens of subject-matter exceptions to discharge, 11 U.S.C. § 523, plus temporal exceptions, *id.* §§ 727(b),

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[12] *See* U.S. Courts, *Bankruptcy Filings Rise 10 Percent* (July 31, 2023), https://www.uscourts.gov/news/2023/07/31/bankruptcy-filings-rise-10-percent (noting that "annual bankruptcy filings totaled 418,724 in the year ending June 2023"). Most, though not all, bankruptcy cases end in a discharge. *See* Pamela Foohey et al., *Life in the Sweatbox*, 94 Notre Dame L. Rev. 219, 226-227 (2018).

[13] *See* 4 *Collier* ¶ 524.02[2] (injunction "extends to all forms of collection activity," even worldwide); *In re Eber*, 687 F.3d 1123, 1128 (9th Cir. 2012) (discharge order is "a permanent injunction under § 524").

1141(d)(1)(A). This Court has repeatedly had to resolve circuit splits over those exceptions, including just last Term. *See Bartenwerfer, supra*; *Lamar, Archer & Cofrin, LLP v. Appling*, 138 S. Ct. 1752 (2018); *Husky Int'l Elecs., Inc. v. Ritz*, 578 U.S. 355 (2016). As a result, "there will often be at least some doubt as to the scope of [discharge] orders." *Taggart*, 139 S. Ct. at 1903.

But now any creditor who attempts to press even an objectively reasonable view that a debt was not discharged, and who therefore could not be held liable in bankruptcy court under *Taggart*, risks being sued in the Fourth Circuit. And any debtor has an open invitation to sue in any of the nine federal districts bound by the decision below—whether or not the debtor went through bankruptcy in that district. *Any* discharge injunction issued in *any* bankruptcy court could potentially be enforced through a state-law cause of action in Maryland, Virginia, West Virginia, North Carolina, or South Carolina. For instance, a plaintiff who receives a mailing or phone call while in one of those five states—perhaps after relocating post-bankruptcy—will have no trouble establishing personal jurisdiction. Indeed, because of the likelihood that creditors will have ties to the Fourth Circuit's five states—Charlotte is the nation's second-largest financial center—even out-of-state plaintiffs may find it relatively easy to sue there. *See, e.g.*, *Pertuso*, 233 F.3d at 420 (suit in *defendant's* home district in Michigan, alleging violation of injunction issued by *plaintiffs'* home district in Rhode Island).

In short, any creditor that is based in the Fourth Circuit, or that could be sued there, will have to think twice before attempting to collect a debt after

discharge—upsetting the careful balance this Court struck when it rejected a strict-liability standard in *Taggart*. State law—and the juries that will enforce it—will be free to penalize even objectively reasonable conduct.

The stakes are particularly high because, once plaintiffs are cleared to pursue such claims under state law, they will have strong incentives to bring their claims as class actions. Many of the cases in the circuit split were putative class actions, which foundered on the principle that only the court that issued the injunction may enforce it. *See, e.g.*, *Crocker*, 941 F.3d at 216-217 (precluding certification of a nationwide class based on alleged contempt of injunctions in many districts); *Bruce*, 75 F.4th at 302-306 (same); *Cox*, 239 F.3d at 916 (precluding "a large class-action suit" on behalf of debtors "scattered all over the country"). By rejecting that principle, the Fourth Circuit has invited class plaintiffs to renew those efforts. And the federal debt-collection statute caps statutory damages in class actions, 15 U.S.C. § 1692k(a)(1)(B), making the uncapped penalties available under statutes like North Carolina's highly attractive to plaintiffs.

Given the portable nature of the discharge injunction, the decision below presents a serious threat to the uniformity of bankruptcy law. This Court has frequently resolved bankruptcy-related circuit conflicts when only a few courts of appeals have weighed in—narrower splits than the one presented here. *See, e.g.*, *Husky, supra* (2-1 split); *Baker Botts L.L.P. v. ASARCO LLC*, 576 U.S. 121 (2015) (1-1 split); *Harris, supra* (1-1 split). And here, the position of the minority circuit will affect even the collection of debts allegedly discharged in other circuits.

2. The question presented recurs frequently. Within six weeks after the decision in this case, a bankruptcy court in another jurisdiction had disagreed with it and followed the dissent. *In re O'Flynn*, 654 B.R. 296, 329 (Bankr. S.D. Ind. 2023). The lower courts (both federal and state) confronting this question "overwhelmingly, but not unanimously," limit debtors to the contempt remedy. *Id.* *Compare, e.g.*, *McCruter*, 168 N.E.3d at 57, *and Helman v. Bank of Am.*, 2013 WL 12203977, at *4 (S.D. Fla. Aug. 07, 2013), *aff'd on other grounds*, 685 F. App'x 723, 725 (11th Cir. 2017), *and N.M. Bank & Tr. v. Lucas*, 2019 WL 1231981, at *4-5 (N.M. Ct. App. Feb. 6, 2019) (noting trial court found preemption but affirming without deciding preemption issue), *with Leahy-Fernandez v. Bayview Loan Servicing, LLC*, 159 F. Supp. 3d 1294, 1302 (M.D. Fla. 2016) (finding no preemption and attempting to distinguish *Pertuso* and *Bessette*), *and Williams v. New Penn Fin., LLC*, 2017 WL 11221333, at *3 (M.D. Fla. Nov. 29, 2017) (similar). And now that the circuits are no longer unanimous in rejecting this theory, more such actions are certain to result.

3. This case is an excellent vehicle to decide the question presented. Guthrie presents both statutory and common-law claims, seeking both damages and statutory penalties. Preemption is outcome-determinative as to all the state-law claims. Pet.App.57a, 60a. And Guthrie has emphasized that he plans to argue at trial that it does not matter whether PHH reasonably believed that its communications were permissible under federal bankruptcy law—that "it is totally irrelevant whether [PHH] communicated with Plaintiff negligently, in good faith, in ignorance of the falsity of its communications, and/or without intent to

mislead." Dist. Ct. ECF No. 97, at 38. Thus, this case starkly presents the question whether a jury can punish a defendant under state law for violation of a discharge injunction even where the bankruptcy court that issues it could not, under *Taggart*'s fair-ground-of-doubt standard.

The majority's footnote on field preemption is no obstacle to this Court's review: as explained above, PHH preserved all the arguments that have persuaded other circuits. *See* pp. 11-12 and note 4, *supra*. The court of appeals has rejected those arguments, including the bankruptcy preemption argument grounded in uniformity, over a thoughtful dissent. And the circuit conflict would still exist even if the majority had addressed only conflict preemption.

Given the cleanly presented issue, the sharp and lopsided circuit conflict, and the likelihood that forum-shoppers and class plaintiffs will take advantage of the Fourth Circuit's decision, this is not a question that should be left to percolate. The Fourth Circuit has declined to reconsider its decision en banc. And the circuits governing all the nation's largest financial centers have now provided their views.

Until this Court resolves the question presented, any creditor seeking to collect from a former debtor, or (as here) on a debt where *one* co-borrower received a discharge, will have to do so under the shadow of state-law liability asserted within the Fourth Circuit. The Court should not delay in clearing up the split.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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