No. 23-785

In The
Supreme Court of the United States

PHH MORTGAGE CORPORATION,

Petitioner,

v

MARK ANTHONY GUTHRIE,

Respondent.

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

BRIEF OF AMICUS CURIAE DRI CENTER FOR LAW AND PUBLIC POLICY IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

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.

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STATEMENT OF INTEREST[1]

Amicus curiae DRI Center for Law and Public Policy is the policy arm of a 14,000-member international association of defense lawyers who represent individuals, corporations, insurance carriers, and local governments involved in civil litigation. DRI and its Center for Law and Public Policy also work with affiliated state and local defense organizations in every state in the union. DRI has long advocated for procedural reforms that (1) promote balance in the civil justice system; (2) reduce the costs and burdens associated with litigation; and (3) advance predictability and efficiency in litigation.

This case concerns federal bankruptcy law, and specifically, whether the Bankruptcy Code, 11 U.S.C. § 501, *et seq*., preempts state-law claims arising out of efforts to collect debts in violation of a bankruptcy court's discharge order under § 524(a)(2)-(3). The Fourth Circuit's decision, which conflicts with opinions from the First, Sixth, and Seventh Circuits, holds that preemption does not apply and thus undermines the goal of uniformity in bankruptcy law. That goal is expressed in the Constitution ("The Congress shall have Power . . . To establish . . . uniform Laws on the subject

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[1] Under Rule 37.6, amicus curiae certifies that no counsel for a party authored this brief in whole or in part and that no person or entity, other than amicus curiae, its members, or its counsel, has made a monetary contribution to the preparation or submission of this brief. Petitioner and Respondent were given timely notice of amicus curiae's intent to file this brief as required under Rule 37.

of Bankruptcies throughout the United States" U.S. Const. art. I, § 8, cl. 4) and through the comprehensive nature of the Bankruptcy Code.

DRI writes in support of Petitioner PHH Mortgage Corporation's position that such claims are preempted and must be brought as a contempt proceeding in federal bankruptcy court and adjudicated under the objectively reasonable standard set forth by this Court in *Taggart v. Lorenzen*, 139 S. Ct. 1795 (2019). DRI's interest in this case stems from its members' need to advise and assist clients who are collecting debts from a party that has filed for bankruptcy. The Fourth Circuit decision and its reasoning also has the potential to impact DRI members' clients who themselves need to file for bankruptcy as well as DRI members when they engage in collection practices on behalf of a client.

If the Fourth Circuit decision is allowed to stand, DRI members and their clients will potentially face 50 different state law standards on whether their efforts to collect a debt are unlawful, many of which are more severe than the proper test under *Taggart*. That would significantly undermine longstanding principles of uniformity in the law of bankruptcy. And worse, it would lead to forum-shopping and potentially diminished protection for debtors whose debts have been discharged through bankruptcy and for creditors engaged in good faith and reasonable efforts to collect on debts that are later held to have been discharged through bankruptcy.

The Fourth Circuit decision simultaneously makes things worse for both debtors and creditors. Debtors could lose the protection bankruptcy is intended to provide by having efforts to determine whether the debt has been discharged be decided in state courts and not the bankruptcy court that issued the discharge injunction. Creditors could be subject to suit even when they pursued debts based on a reasonable belief that the debt had not been discharged.

Thus, review is needed here.

SUMMARY OF ARGUMENT

This Court should grant certiorari and reverse the Fourth Circuit's decision because it refuses to recognize that the Bankruptcy Code preempts state-law claims arising out of efforts to collect debts in violation of a bankruptcy court's discharge order.

If left to stand, the decision and its reasoning will undermine the goal of certainty and uniformity in bankruptcy law. In *Taggart*, this Court set forth the proper standard to determine whether a creditor may be held in civil contempt for violating a discharge order: "[C]ivil contempt may be appropriate if there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful." 139 S. Ct. at 1799. The Fourth Circuit's decision means a client–or its lawyer–cannot be confident that an alleged violation of a discharge order will be litigated in the bankruptcy court that issued the order under an objective

reasonableness standard, as mandated by this Court. Instead, the client or lawyer may face potentially 50 different state law standards.

The uniform application of the objectively-reasonable standard appropriately balances protection for the debtor who has discharged a debt in bankruptcy and the creditor who is engaged in good faith efforts to collect on debts. And, bankruptcy courts, with their expertise, should be the courts to determine whether such a violation has occurred because "[t]he court that issued the discharge order is in a better position to adjudicate the alleged violation, assess its gravity, and on the basis of that assessment formulate a proper remedy." *Cox v. Zale Delaware, Inc.*, 239 F.3d 910, 916 (7th Cir. 2001).

Indeed, both the Constitution, *see* U.S. Const. art. I, § 8, and Bankruptcy Code envision a uniform bankruptcy system under exclusive federal control. Unlike the Fourth Circuit decision, other circuits recognize that Congress intended to preempt state courts from deciding claims arising out of alleged discharge injunction violations because, among other reasons, "Congress placed bankruptcy jurisdiction exclusively in the district courts under 28 U.S.C. § 1334(a)," and "Congress created a lengthy, complex and detailed Bankruptcy Code to achieve uniformity." *E. Equip. & Servs. Corp. v. Factory Point Nat. Bank, Bennington*, 236 F.3d 117, 121 (2d Cir. 2001) (citing *MSR Expl., Ltd. v. Meridian Oil, Inc.*, 74 F.3d 910, 913-16 (9th Cir. 1996); *Koffman v. Osteoimplant Tech., Inc.*, 182 B.R. 115, 123-27 (D. Md. 1995)). Moreover, as this Court has made

clear, "[s]tates may not pass or enforce laws to interfere with or complement the Bankruptcy Act or to provide additional or auxiliary regulations." *Int'l Shoe Co. v. Pinkus*, 278 U.S. 261, 265 (1929). The Fourth Circuit's decision is contrary to these well-established principles and should thus be reversed.

ARGUMENT

I. The Fourth Circuit's Decision Will Inject Uncertainty Into Bankruptcy And Debt Collection Proceedings, Adversely Affecting DRI Members' Ability To Advise Their Clients, And Subjecting Clients And DRI Members Themselves To Litigation Under Standards That Vary By State

As DRI members well know from their experience advising and assisting clients who are collecting debts from a party that has filed bankruptcy–and on other occasions, advising and assisting clients who themselves need to file for bankruptcy–certainty in the law is critical. But the Fourth Circuit's decision undermines the goal of certainty and uniformity in bankruptcy law, because it holds that the Bankruptcy Code does not preempt state-law claims arising out of efforts to collect debts in violation of a bankruptcy court's discharge order.

If left to stand, the Fourth Circuit's decision means a client–or its lawyer–cannot be confident that an alleged violation of a discharge order will be litigated in

the bankruptcy court that issued the order under an objective reasonableness standard, as mandated by this Court in *Taggart*. Instead, the client or lawyer may face a different state law standard; indeed potentially 50 different state law standards, and those standards may be harsher with more onerous penalties.

As this Court explained in *Taggart*, a discharge order is an order entered at the conclusion of a bankruptcy proceeding, which releases the debtor from liability for most prebankruptcy debts and "bars creditors from attempting to collect any debt covered by the order." *Taggart*, 39 S. Ct. at 1799 (citing 11 U.S.C. § 524(a)(2)). See also 11 U.S.C. § 524(a) ("The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.") In effect, "[a] discharge order 'operates as an injunction' that bars creditors from collecting any debt that has been discharged." *Taggart*, 39 S. Ct. at 1800 (citing § 524(a)(2)).

This Court set forth the following standard to determine "when a court may hold a creditor in civil contempt" with respect to violation of a discharge order:

> [A] court may hold a creditor in civil contempt for violating a discharge order if there is no fair ground of doubt as to whether the order barred the creditor's conduct. In other words, civil contempt may be appropriate if there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful.

Taggart, 139 S. Ct. at 1799.

The Court reasoned that a discharge order "'operates as an injunction,' § 524(a)(2), and that a court may issue any 'order' or 'judgment' that is 'necessary or appropriate' to 'carry out' other bankruptcy provisions, § 105(a)," and thus these statues "bring with them the 'old soil,'" i.e., the law, "that has long governed how courts enforce injunctions." *Taggart*, 139 S. Ct. at 1801. "That 'old soil' includes the 'potent weapon' of civil contempt." *Id*. (citation omitted). The purpose of civil contempt sanctions is to "coerce the defendant into compliance with an injunction or compensate the complainant for losses stemming from the defendant's noncompliance with an injunction." *Id.* (citations and quotation marks omitted).

Taggart thus makes clear that the Bankruptcy Code constitutes the source for determining whether a discharge order has been violated. And bankruptcy courts, with their expertise, should be the courts to determine whether such a violation has occurred. Indeed, the law of injunctions provides that the specific court that issued the injunction is tasked with remedying its violation. As the Seventh Circuit has observed, "[t]he remedy authorized by section 524(a)(2) has the advantage of placing responsibility for enforcing the discharge order in the court that issued it. . . . The court that issued the discharge order is in a better position to adjudicate the alleged violation, assess its gravity, and on the basis of that assessment formulate a proper remedy." *Cox*, 239 F.3d at 916.

It is important to DRI members and their clients–whether creditors or debtors–to have a clear process

and rule for resolving issues related to violations of discharge order. That rule should be the standard set forth in *Taggart*, as applied by a bankruptcy court. As this Court explained, the objectively reasonable standard "reflects the fact that civil contempt is a severe remedy, and that principles of basic fairness require that those enjoined receive ***explicit notice*** of what conduct is outlawed before being held in civil contempt." *Taggart*, 139 S. Ct. at 1802 (citations and punctuation omitted; emphasis added). In the bankruptcy context, "[t]he typical discharge order entered by a bankruptcy court is not detailed. Congress, however, has carefully delineated which debts are exempt from discharge." *Id*.

The Bankruptcy Code "provides a comprehensive federal system of penalties and protections to govern the orderly conduct of debtors' affairs and creditors' rights." *E. Equip.*, 236 F.3d at 120. Accordingly, other circuits have properly concluded that "the adjustment of rights and duties within the bankruptcy process itself is uniquely and exclusively federal[,]" and therefore, "[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." *MSR Expl.*, 74 F.3d at 914. *See also id*. (in instances where debtors try to bring malicious prosecution claims based on bankruptcy filings, "the opportunities for asserting malicious prosecution claims would only be limited by the fertility of the pleader's mind and by the laws of the state in which the proceeding took place").

The facts here are convoluted, involving an attempt to recover mortgage payments where one mortgagor had gone through bankruptcy but the other had not, and at some point, the mortgagor couple divorced. They illustrate one of many circumstances in which whether a debt has been discharged may be unclear. And since those collecting debts may reasonably believe the debt has not been discharged, under *Taggart*, they are not liable for their efforts at debt collection. The uniform application of the objectively reasonable standard appropriately balances protection for the debtor who has discharged a debt in bankruptcy and the creditor who is engaged in good faith efforts to collect on debts. The bankruptcy court is best situated to accurately determine whether a claim exists for violating a discharge order. A contrary result under the reasoning adopted by the Fourth Circuit leads not only to uncertainty and a lack of uniformity but, as succinctly articulated in the petition, to forum-shopping, especially in class action litigation. *See* Pet. 32-33.

II. Congress Intended To Preempt State Courts From Deciding Claims Arising Out of Alleged Discharge Injunction Violations

The Fourth Circuit's decision rests on the grounds that, among other things, the conduct at issue took place after the subject bankruptcy and that the state statutes furthered the goal of the Bankruptcy Code rather than conflicting with it. But this Court has held that "[s]tates may not pass or enforce laws to interfere with or complement the Bankruptcy Act or to provide

additional or auxiliary regulations," *Int'l Shoe*, 278 U.S. at 265, and better reasoned decisions from other circuits recognize that both the Constitution and Bankruptcy Code envision a uniform bankruptcy system under exclusive federal control. Preemption is, therefore, mandated here.

A. The Fourth Circuit Erred In Failing To Hold Respondent's Claims Preempted

Respondent, Mark Anthony Guthrie, sued Petitioner seeking to recover for, among other things, violation of the North Carolina Debt Collection Act and negligent and intentional infliction of emotional distress, based on Petitioner's debt collection efforts after a discharge order. The Fourth Circuit held there was neither express preemption nor conflict preemption, and it declined to address field preemption. Instead, the court framed the issue as whether "[u]nder obstacle preemption . . . [Respondent's] state law claims stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress in enacting the Bankruptcy Code." Pet.App.10a (citation and punctuation omitted).

The court acknowledged that the Code's objectives apply to both debtors and creditors. It first determined that "[t]he principal purpose of the Bankruptcy Code is to grant a 'fresh start' to the 'honest but unfortunate debtor.' " Pet.App.12a (quoting *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 367 (2007)). The court also recognized that the Code "seeks to protect

creditors by providing equitable distribution of a debtor's assets, limiting what debts are dischargeable and providing a 'prompt and effectual administration and settlement of the debtor's estate.' " *Id*. (citing *Moses v. CashCall, Inc*., 781 F.3d 63, 72 (4th Cir. 2015)). The court then purported to recognize that the Bankruptcy Code "centralizes disputes over the debtor's assets and obligations in one forum to protect both debtors and creditors from piecemeal litigation and conflicting judgments." *Id*. (citation and punctuation omitted).

Despite these principles and the fact that the bankruptcy court issued a discharge order, the court held that Respondent's claims did not "detract from the ease or centrality with which the federal bankruptcy system operates" because those claims were "almost exclusively based on events which took place after the bankruptcy case was closed. And they are not inconsistent with, nor do they have any impact on, any order issued during the case." Pet.App.13a.

Additionally, when addressing whether the Bankruptcy Code allows "only contempt of court relief for violating the discharge injunction," the court avoided any discussion of *Taggart* and the law on injunctions and instead held that "[w]hile § 105 allows for contempt of court relief . . . [that section] is neither specific to discharge injunction violations nor comprehensive, it is not the type of Congressionally designed balance that implicates obstacle preemption." Pet.App.15a. Thus, while the court admitted that Respondent's "state law claims provide greater remedies than those available

under the Bankruptcy Code for the same conduct," it nevertheless held preemption unwarranted because "there are not indications that Congress sought to limit remedies to facilitate a certain public-policy outcome. Rather, the remedies [Respondent] seeks further one of the primary goals of the Bankruptcy Code and the discharge injunction–a fresh start for debtors." Pet.App.17a.

B. Other Circuits Correctly Hold That The Constitution And The Bankruptcy Code Require Preemption Of Respondent's Claims

Unlike the majority opinion, Judge Wynn's opinion concurring in part and dissenting in part, as well as better reasoned cases from other circuits, rely on the Constitution and Congressional intent as expressed in the Bankruptcy Code to hold that Respondent's claims are preempted. In sum, those sources mandate preemption because:

> (1) Congress placed bankruptcy jurisdiction exclusively in the district courts under 28 U.S.C. § 1334(a); (2) Congress created a lengthy, complex and detailed Bankruptcy Code to achieve uniformity; (3) the Constitution grants Congress exclusive power over the bankruptcy law, see U.S. Const. art. I, § 8, cl. 4; (4) the Bankruptcy Code establishes several remedies designed to preclude the misuse of the bankruptcy process; and (5) the mere threat of state tort actions could prevent individuals

> from exercising their rights in bankruptcy, thereby disrupting the bankruptcy process.

E. Equip., 236 F.3d at 121 (citing *MSR Exploration*, 74 F.3d at 913-16; *Koffman*, 182 B.R. at 123-27).

While the Fourth Circuit majority glossed over the Constitution, Judge Wynn began his opinion by noting it grants Congress the express power to enact "uniform Laws on the subject of Bankruptcies." U.S. Const. art. I, § 8, cl. 4. Pet.App.35a. Accordingly, "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." *Id.* (citing *Pertuso v. Ford Motor Credit Co.*, 233 F.3d 417, 425 (6th Cir. 2000)).

Judge Wynn noted that the Second, Ninth, and Sixth Circuits had found that "state-law claims alleging violations of the automatic-stay provision of the Code are preempted." Pet.App.36a (citing *E. Equip.*, 236 F.3d at 121; *Pertuso*, 233 F.3d at 425-26; *MSR Expl.*, 74 F.3d at 911). Judge Wynn found no reason to treat claims alleging violations of the discharge injunction differently:

> [T]he discharge injunction is "broad," prohibiting "not only legal proceedings, but also any other acts to collect a discharged debt as a personal liability of the debtor." 4 Collier on Bankruptcy ¶ 524.02 (Richard Levin & Henry J. Summer eds., 16th ed.) (emphasis added). As with any injunction, a bankruptcy court enjoys the usual contempt authority to remedy a violation. . . . Indeed, a contempt proceeding

> is the "normal sanction" for violations of the discharge injunction. Collier, supra, at ¶ 524.02.

Pet.App.37a.

Reviewing the history of the Code to assess Congressional intent, Judge Wynn further observed, "Congress chose to give the discharge order the force of an injunction, replete with the traditional contempt remedy. This choice . . . is highly instructive as to congressional intent on the available remedies for violations of the discharge order." Pet.App.38a. Judge Wynn then noted that Respondent's state-law claims were "expressly premised on [Petitioner's] alleged failure to acknowledge the effect of his discharge." Pet.App.39a. In other words, Respondent's "actions are only allegedly unlawful under state law because of the discharge–but for the discharge, [Petitioner] would be entitled to attempt to collect on its debt via the calls and letters that [Respondent] says are unlawful." Pet.App.40a. As a result, "to resolve such claims, a state court would necessarily have to wade into the underlying bankruptcy proceeding, including determining which debts were discharged." *Id*. Judge Wynn thus concluded that, in a case like this . . . the state claims are preempted and the proper remedy is a contempt proceeding in the bankruptcy court." *Id*.

In *Pertuso*, discussed in Judge Wynn's opinion, the Sixth Circuit held that the debtors' state law unjust enrichment and accounting claims were preempted by the Bankruptcy Code. The plaintiff debtors alleged

that the defendant secured creditor "violated the automatic stay provision codified in 11 U.S.C. § 362, as well as violating 11 U.S.C. § 524," with respect to a reaffirmation agreement. *Pertuso*, 233 F.3d at 419. Unlike the Fourth Circuit, the Sixth Circuit apprehended the effect of § 524(a)(2)'s reference to an injunction and thus concluded that "[t]he obvious purpose" of that section "is to enjoin the proscribed conduct–and the traditional remedy for violation of an injunction lies in contempt proceedings, not in a lawsuit such as this one." *Id*. at 421.

In finding the state-law claims preempted, the court emphasized "the exclusively federal nature of bankruptcy proceedings," starting with U.S. Const. art. I, § 8. *Pertuso*, 233 F.3d at 425. The court explained that, through the Bankruptcy Code, "Congress has wielded this power by creating comprehensive regulations on the subject and by vesting exclusive jurisdiction over bankruptcy matters in the federal district courts." *Id*. (citing 28 U.S.C. § 1334(a)). The court then cited with approval an earlier Ninth Circuit opinion that–contrary to the Fourth Circuit's opinion here–emphasized Congress's intent to create a comprehensive bankruptcy system, to the exclusion of state law remedies:

> A mere browse through the complex, detailed, and comprehensive provisions of the lengthy Bankruptcy Code, 11 U.S.C. §§ 101 *et seq*., demonstrates Congress's intent to create a whole system under federal control which is designed to bring together and adjust all of

> the rights and duties of creditors and embarrassed debtors alike. While it is true that bankruptcy law makes reference to state law at many points, the adjustment of rights and duties within the bankruptcy process itself is uniquely and exclusively federal. It 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. (quoting *MSR Expl.*, 74 F.3d at 914). The court thus agreed with the defendant that the plaintiff's "state law claims presuppose a violation of the Bankruptcy Code," and therefore, "[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.

In *Cox*, a former debtor brought a class action to recover for the creditor's alleged violation of the discharge injunction by collecting payments on a discharged debt under an unfiled and unenforceable reaffirmation agreement. The Seventh Circuit concluded that "remedies against debt-affirmation agreements contended to violate the Bankruptcy Code are a matter exclusively of federal bankruptcy law. That extinguishes the plaintiff's claim for unjust enrichment, which is based on state law." *Cox*, 239 F.3d at 913 (citations omitted).

The Court also observed, as the Fourth Circuit here neglected to do, that under § 524(a)(2) a discharge

order operates as an injunction, and therefore, "the creditor who attempts to collect a discharged debt is violating . . . an injunction and is therefore in contempt of the bankruptcy court that issued the order of discharge." *Cox*, 239 F.3d at 915. Like the Sixth Circuit in *Pertuso*, the Seventh Circuit recognized that "[t]he remedy authorized by section 524(a)(2) has the advantage of placing responsibility for enforcing the discharge order in the court that issued it. . . . The court that issued the discharge order is in 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.

Finally, in *Bessette v. Avco Fin. Servs., Inc.*, 230 F.3d 439 (1st Cir. 2000), amended on denial of reh'g (Dec. 15, 2000), a former Chapter 7 debtor brought a purported class action against consumer finance companies, alleging that when securing reaffirmation agreements of pre-petition debt, the companies violated the Bankruptcy Code. The plaintiff sought to recover under state law for unjust enrichment. The First Circuit held that the claim was preempted by the Bankruptcy Code because "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.

Unlike the Fourth Circuit here, the First Circuit did not consider whether the state law complemented the purpose of the Bankruptcy Code. Instead, the court recognized that "Congress clearly intended to 'occupy

the field' to the exclusion of state law." *Bessette*, 230 F.3d at 447. The court referenced one of its earlier decisions which relied on *Pinkus* for the principle that "[s]tates may not pass or enforce laws to interfere with or complement the Bankruptcy Act or to provide additional or auxiliary regulations." *Id*. (citing *Patriot Portfolio, LLC v. Weinstein*, 164 F.3d 677, 682-83 (1st Cir. 1999)).

The First Circuit thus concluded that "the broad enforcement power under the Bankruptcy Code preempts virtually all alternative mechanisms for remedying violations of the Code." *Bessette*, 230 F.3d at 447. Indeed, beyond discharge orders, courts have properly found preemption in other contexts. In *Eastern Equipment*, the Second Circuit held that the Bankruptcy Code preempted a Chapter 7 debtor's state tort law claims, including claims for intentional or negligent infliction of emotional distress, negligence, abuse of process and malicious prosecution, based on the creditors' alleged violations of the automatic stay under 11 U.S.C. § 362. 236 F.3d at 120-21.[2]

Like *Pertuso*, *Cox*, and *Bessette*, the Second Circuit recognized that the "Bankruptcy Code provides a comprehensive federal system of penalties and protections

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[2] As one district court has recognized, "the factors considered by the Second Circuit [in *Eastern Equipment*] in reaching this conclusion relate to all aspects of the bankruptcy process, not just the automatic stay provision[.]" *Astor Holdings, Inc. v. Roski*, 325 F. Supp. 2d 251, 262 (S.D.N.Y. 2003).

to govern the orderly conduct of debtors' affairs and creditors' rights." *E. Equip.*, 236 F.3d at 120. Thus, "[a]ny relief for a violation of the stay must be sought in the Bankruptcy Court." *Id*. at 121.

The court discussed the earlier Ninth Circuit decision in *MSR Exploration*, which, as set forth above, held that state tort claims alleging violations of the automatic stay provision are completely preempted by federal bankruptcy law, as shown by the Constitution, art. I, § 8, cl. 4, and the Bankruptcy Code, and warned that "the mere threat of state tort actions could prevent individuals from exercising their rights in bankruptcy, thereby disrupting the bankruptcy process." *E. Equip.*, 236 F.3d at 120-21 (citing *MSR Exploration*, 74 F.3d at 913-16).

MSR Exploration is also instructive because it involved a collateral attack on an event that took place within a bankruptcy proceeding. A Chapter 11 debtor brought an action for malicious prosecution in district court against creditor, alleging creditor maliciously pursued claims against debtor in bankruptcy proceedings. The court agreed that the claim was preempted, *MSR Expl., Ltd.*, 74 F.3d at 911, and discussed the ill effects–including uncertainty due to variable state law standards–of permitting state courts to take part in deciding bankruptcy matters:

> Debtors' petitions, creditors' claims, disputes over reorganization plans, ***disputes over discharge***, and innumerable other proceedings, would all lend themselves to claims

> of malicious prosecution. Those possibilities might gravely affect the already complicated processes of the bankruptcy court. . . . Of course, the opportunities for asserting malicious prosecution claims would only be limited by the fertility of the pleader's mind ***and by the laws of the state in which the proceeding took place***."

Id. at 914 (emphasis added). Clearly then, permitting state courts to entertain such claims "in effect, interfer[es] with the whole complex, reticulated bankruptcy process itself," and undermines the "considerable weight" Congress placed "on the need for a uniform bankruptcy process." *Id*.

The *MSR* court relied on its earlier decision in *Gonzales v. Parks*, 830 F.2d 1033 (9th Cir. 1987), which involved attorneys as defendants.[3] In *Gonzales*, the plaintiff creditors sued debtors and their attorney in state court, claiming that the debtors' Chapter 11 bankruptcy filing was an abuse of process to thwart the trustee sale of their foreclosed property. The debtors and their attorney then filed an adversary proceeding in the bankruptcy court, seeking relief from the state court action. The bankruptcy court granted the

[3] The court identified an additional concern with the prospect of attorneys as defendants, namely, that "[p]ermitting state courts to award damages against bankrupts' attorneys based on the filing of a bankruptcy petition would subvert exclusive federal jurisdiction in much the same manner as allowing similar awards against the bankrupt parties." *Gonzales*, 830 F.2d at 1036-37.

defendants' motion for summary judgment, declaring the state court judgment void at its inception because it violated the automatic stay provision in 11 U.S.C. § 362(a). *Gonzales*, 830 F.2d at 1034. Both the district court and the Ninth Circuit affirmed.

The Ninth Circuit rejected the premise that "state courts have subject matter jurisdiction to hear a claim that the filing of a bankruptcy petition constitutes an abuse of process." *Gonzales v. Parks*, 830 F.2d at 1035. Quite simply, bankruptcy petitions are a matter of exclusive federal jurisdiction, and therefore, state courts may not determine whether such a filing is appropriate. The court's reasoning articulates DRI's concern over variable state law standards:

> Such an exercise of authority would be inconsistent with and subvert the exclusive jurisdiction of the federal courts by allowing state courts to create their own standards as to when persons may properly seek relief in cases Congress has specifically precluded those courts from adjudicating. . . . The ability collaterally to attack bankruptcy petitions in the state courts would also threaten the uniformity of federal bankruptcy law, a uniformity required by the Constitution. U.S. Const. art. I, § 8, cl. 4.

Id. at 1035. The court added that "remedies have been made available in the federal courts to creditors who believe that a filing is frivolous." *Id*.

Likewise, here, the discharge order is an injunction, and the debtor has available the contempt remedy in bankruptcy court. Accordingly, the *Gonzales* court's reasoning for rejecting state court involvement is just as applicable here:

> Congress' authorization of certain sanctions for the filing of frivolous bankruptcy petitions should be read as an implicit rejection of other penalties, including the kind of substantial damage awards that might be available in state court tort suits. Even the mere possibility of being sued in tort in state court could in some instances deter persons from exercising their rights in bankruptcy. In any event, it is for Congress and the federal courts, not the state courts, to decide what incentives and penalties are appropriate for use in connection with the bankruptcy process and when those incentives or penalties shall be utilized.

Gonzales, 830 F.2d at 1036.

This Court should therefore grant certiorari and reverse the Fourth Circuit's decision.

CONCLUSION

Wherefore Amicus Curiae DRI Center for Law and Public Policy asks this Court to grant certiorari.

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