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 THE MORTGAGE BANKERS ASSOCIATION, THE CHAMBER OF COMMERCE OF THE UNITED STATES, THE AMERICAN BANKERS ASSOCIATION, USFN–AMERICA'S MORTGAGE BANKING ATTORNEYS, THE AMERICAN FINANCIAL SERVICES ASSOCIATION, AND THE BANK POLICY INSTITUTE AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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INTEREST OF AMICI CURIAE[1]

The Mortgage Bankers Association (MBA) is a national association representing the real-estate finance industry, an industry that employs more than 300,000 people in virtually every community in the country. MBA works to ensure the continued strength of the nation's residential and commercial real-estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. Its membership of more than 2,200 companies includes all elements of real-estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field.

The Chamber of Commerce of the United States of America (the Chamber) is the world's largest business federation. It represents 300,000 direct members and indirectly represents the interests of more than three million companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the Chamber regularly files amicus curiae briefs in cases, like this one, that raise issues of concern to the nation's business community.

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[1] Pursuant to Rule 37, counsel for *amici curiae* affirm that all parties were timely notified of the filing of this brief. No counsel for a party authored this brief in whole or in part and no entity or person, other than *amici*, their members, or their counsel, made any monetary contribution intended to fund the preparation or submission of this brief.

The American Bankers Association (ABA) is the voice of the nation's $23.4 trillion banking industry, which is composed of small, regional, and large banks that together employ approximately 2.1 million people, safeguard $18.6 trillion in deposits, and extend $12.3 trillion in loans. ABA regularly advocates on behalf of its members on important policy issues and through amicus curiae briefs on issues of importance to the industry.

USFN–America's Mortgage Banking Attorneys (USFN) is a national, not-for-profit association of law firms that specialize in matters of real-estate finance. Founded in 1988, USFN consists of organizations that represent the nation's largest banks, mortgage lenders, mortgage-servicing companies, and government-sponsored enterprises in connection with foreclosure, bankruptcy, loan modifications and other workouts, inventoried properties, and litigation related to those areas. USFN's members also include industry-affiliated suppliers of products and services. USFN was established to promote competent, professional, and ethical representation by its membership and in the mortgage-servicing industry.

Founded in 1916, the American Financial Services Association (AFSA) is the national trade association for the consumer credit industry. AFSA works to protect access to credit and consumer choice. AFSA has a broad membership, ranging from large international financial services firms to single-office, independently owned consumer finance companies. AFSA members provide consumers with many kinds of credit, including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales financing.

The Bank Policy Institute is a nonpartisan public policy, research, and advocacy group that represents

universal banks, regional banks, and the major foreign banks doing business in the United States. The Institute produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to cybersecurity, fraud, and other information security issues. Issues of focus include capital and liquidity regulation, anti-money-laundering, payment systems, consumer protection, bank powers, bank examination, and competition in the financial sector.

Amici's members, which include businesses that engage in lending, debt collection, and foreclosure, have a powerful interest in reversal of the erroneous Fourth Circuit decision as to which petitioner seeks review in this case. Those businesses rely on the ability to collect duly owed debts in a predictable, cost-effective manner. But the decision below threatens onerous and unpredictable state-law liability for debt-collection efforts as to which federal law would impose no liability. Such liability would have numerous harmful effects, including chilling legitimate debt-collection activities and, therefore, chilling the provision of financial services, including lending. It also would undermine the uniformity that is one of the fundamental—and constitutionally prescribed—attributes of bankruptcy law.

INTRODUCTION AND SUMMARY OF ARGUMENT

This case stands at the intersection of two basic but critical legal rules. First, bankruptcy law is federal and, by constitutional command, must be uniform. See *Int'l Shoe Co.* v. *Pinkus*, 278 U.S. 261, 265 (1929); U.S. Const. art. I, § 8, cl. 4. Second, a judge that issues an injunction is "solely responsible for identifying, prosecuting, adjudicating, and sanctioning" conduct in violation of that injunction. *Int'l Union, United Mine Workers of Am.* v. *Bagwell*, 512 U.S. 821, 831 (1994).

As the petition explains, the Fourth Circuit ran afoul of both of those principles in allowing Mark Guthrie to pursue state-law claims against PHH Mortgage Corporation (PHH) based on an alleged violation of a bankruptcy court's discharge order, which "operates as an injunction" under federal law. 11 U.S.C. 524(a)(2). The Fourth Circuit's holding that preemption is no bar to such claims is manifestly incorrect, as the majority of circuits that have addressed the issue have recognized. Those circuits have held that a debtor's recourse for such an alleged violation is not an action asserting violation of state law, but rather a contempt action under federal law in the bankruptcy court that issued the injunction in the first instance.

Unless this Court intervenes, the Fourth Circuit's erroneous holding also will give rise to a number of harmful practical consequences. Creditors trying to collect debts will face the threat of onerous and unpredictable liability under state law—even where those creditors operate not only in good faith but also in an objectively reasonable way. That heightened potential liability will, in turn, chill lawful debt-collection efforts, increase litigation surrounding dis-

chargeability, and burden debt-related activities more generally. This Court's review is urgently needed to stave off those highly undesirable results.

ARGUMENT

A. The Fourth Circuit's Decision Runs Afoul Of Basic Principles Of Federal Law

The Constitution grants Congress the "Power" to "establish * * * uniform Laws on the subject of Bankruptcies throughout the United States." U.S. Const. art. I, § 8, cl. 4. That grant "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). Congress has exercised that power in the Bankruptcy Code, which provides that many types of debts are dischargeable in bankruptcy but that certain types of debts are not. See 11 U.S.C. 523(a)(1)-(20); see also 28 U.S.C. 1334(a) (federal courts have "original and exclusive jurisdiction of all cases under" the Bankruptcy Code).

Under the Code, a discharge takes the form of an order that "operates as an injunction" against any future attempts to collect discharged debt. 11 U.S.C. 524(a)(2). Accordingly, bankruptcy courts may enforce a "discharge injunction" through civil-contempt sanctions. *Taggart* v. *Lorenzen*, 139 S. Ct. 1795, 1801 (2019); see *ibid.* (civil-contempt proceeding in bankruptcy court provides a debtor with a "potent weapon" to address any violation of a discharge injunction) (citation omitted). The judge that has issued an injunction is the judicial officer that is "solely responsible for identifying, prosecuting, adjudicating, and sanctioning" any violation of that injunction—that is, for addressing any "contumacious conduct" that flies in the face of the court's order and thereby defies the court's authority. *Bagwell*, 512 U.S. at 831.

Allowing a debtor to pursue a state-law claim premised on a violation of a discharge order, as the Fourth Circuit did in the decision below, offends those basic principles. State law has no role to play in policing violations of a discharge order; a federal civil-contempt remedy already exists to address such violations and has preemptive effect. See *Guthrie* v. *PHH Mortg. Corp.*, 79 F.4th 328, 350 (4th Cir. 2023) (Wynn, J., concurring in part and dissenting in part) (describing 1970 amendment to Bankruptcy Code to make discharge operate as an injunction); see also Pet. 5-6, 24-30. Allowing state-law claims to supplant that federal remedy would put the States in the driver's seat for determining the consequences of violating a bankruptcy-discharge injunction, thereby displacing a clear federal enactment in an area where Congress has been constitutionally tasked with ensuring "uniform Laws." U.S. Const. art. I, § 8, cl. 4.

Moreover, the Fourth Circuit's holding runs roughshod over the fundamental principle that the issuing court—here, a federal bankruptcy court—is responsible for determining what, if any, consequences should follow from violation of an injunction. That principle vindicates a court's inherent authority. All parties bound by an injunction have a duty to "obey * * * out of respect for judicial process." *GTE Sylvania, Inc.* v. *Consumers Union of U.S., Inc.*, 445 U.S. 375, 387 (1980) (citation omitted)—and that "same respect" dictates that the issuing "court alone has the power to enforce" its injunction, *In re Anderson*, 884 F.3d 382, 391 (2d Cir. 2018) (discussing discharge orders). In addition, "[t]he court that issued the discharge order is in a better position" than any other court "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); see, *e.g.*, *Anderson*, 884 F.3d at 390-391 ("[T]he bankruptcy court retains a unique expertise in interpreting its own injunctions and determining when they have been violated.").

Although only federal courts can discharge debts in bankruptcy, state courts have concurrent jurisdiction over certain bankruptcy-related matters, which allows them to apply federal bankruptcy law in some circumstances. Compare 28 U.S.C. 1334(a), with 28 U.S.C. 1334(b) (federal courts have "original but not exclusive jurisdiction of all civil proceedings arising under [the Bankruptcy Code], or arising in or related to cases under [the Bankruptcy Code]"); see, *e.g.*, *Laurich-Trost* v. *Wabnitz*, 2003 WL 22805159, at *2 (Ohio Ct. App. Nov. 25, 2003) (holding that debt was not collectible in state court because that debt had already been discharged in bankruptcy pursuant to 11 U.S.C. 524). But that general principle of concurrent jurisdiction does not undermine the conclusion that a specific federal-law remedy for violation of a discharge injunction preempts state substantive law. That general principle also does not trump the more specific principle—which is often applied as between courts that have *identical* jurisdiction—that it is the court that issued an injunction that has the sole judicial power to enforce that injunction through monetary or other remedies.[2]

[2] As the petition notes, the question whether claims for violations of bankruptcy discharge orders are subject to arbitration is distinct from the question presented by the petition, as the former question implicates a separate body of arbitration-related law that has no relevance here. Pet. 24 n.10; see, *e.g.*, *Epic Sys. Corp.* v. *Lewis*, 584 U.S. 497, 510-525 (2018).

B. If Allowed To Stand, The Fourth Circuit's Decision Will Have Serious Practical Consequences

1. Permitting State-Law Claims For Violation Of Discharge Orders Threatens To Impose Onerous And Unpredictable Liability On Creditors, Even Where They Act Reasonably

Federal law on the consequences for violating a discharge injunction is clear, well-developed, and relatively predictable. Creditors are familiar with that body of law and used to conforming their conduct to its requirements. But the Fourth Circuit's approach would significantly change that state of affairs and introduce an enormous amount of uncertainty into debt collection, foreclosure, and similar activities. Allowing state-law claims for violation of a bankruptcy court's discharge injunction would lower the standard for finding the existence of a violation and would do so inconsistently across different states. It would create the possibility of more significant and difficult-to-predict damages, including for debt-collection activity that creditors currently regard as routine. And it would open the door to the prospect of class actions alleging violation of a discharge injunction, which would be extremely onerous for creditors to litigate.

a. In *Taggart*, this Court held that a court may impose a civil-contempt sanction for violation of a bankruptcy-discharge order only "when there is no objectively reasonable basis for concluding that the creditor's conduct might be lawful under the discharge order." 139 S. Ct. at 1801. That standard reflects the "traditional standards in equity practice for determining when a party may be held in civil contempt for violating an injunction." *Ibid.*

In contrast, state-law causes of action that could be premised on violation of a discharge order often require something less than a showing of objective unreasonableness. See, *e.g.*, W. Va. Code § 46A-2-127(d) (provision of West Virginia Consumer Credit Protection Act (WVCCPA) barring "[a]ny false representation or implication of the character, extent or amount of a claim against a consumer, or of its status in any legal proceeding"); *State ex rel. McGraw* v. *Telecheck Servs., Inc.*, 582 S.E.2d 885, 897 n.19 (W. Va. 2003) (noting that WVCCPA exception for "bona fide error of fact * * * does not include errors or mistakes of law"); see also, *e.g.*, *Cortez* v. *Purolator Air Filtration Prods. Co.*, 999 P.2d 706, 717 (Cal. 2000) ("The [California Unfair Competition Law] imposes strict liability when property or monetary losses are occasioned by conduct that constitutes an unfair business practice."). Indeed, Guthrie has argued that some of his state-law claims here impose essentially a strict-liability standard. See Pet. 28. The result is that, in many states, a litigant may be able to pursue state-law claims based on a creditor's violation of a discharge order even where the creditor acted objectively reasonably and a civil-contempt sanction therefore would be unavailable under *Taggart*.

That lower standard creates significant unpredictability for creditors accused of violating a discharge injunction. Whether a particular debt is discharged in whole or in part—and thus, whether attempting to collect that debt violates the order—often involves a complex legal question on which reasonable minds may differ. Although a discharge order will discharge most debts, the Bankruptcy Code includes numerous exceptions to discharge, many of which involve complicated, multi-part tests. See, *e.g.*, 11 U.S.C. 523(a)(1)-(20); 11 U.S.C. 1328(a)(1) (dis-

charge exception specific to Chapter 13 bankruptcy cases); see also 11 U.S.C. 524(j) (permitting creditors with security interest in "principal residence," acting post-discharge, to "seek[] or obtain[]" certain "periodic payments" in "ordinary course of business"). And even if those statutory exceptions do not apply, creditors may still be entitled to collect a debt in the face of a discharge order—for instance, if the debt arose after the bankruptcy, or if the money sought to be collected is not a "claim" under the Bankruptcy Code. See, *e.g.*, 11 U.S.C. 727(b); 11 U.S.C. 101(5), (12). Deciding whether such entitlement exists often involves challenging questions of law and fact. See, *e.g.*, *Ohio* v. *Kovacs*, 469 U.S. 274, 278-279 (1985) (addressing whether obligation was "claim"); *In re Ybarra*, 424 F.3d 1018, 1022-1024 (9th Cir. 2005) (addressing when claim arises).

Notably, a discharge order itself is not much help to creditors attempting to determine whether they can collect on a particular debt. A bankruptcy-discharge order is issued on a form that includes only very basic information about the debtor and the bankruptcy (*e.g.*, the debtor's name and bankruptcy case number) along with bare-bones and generalized statements that "[c]reditors cannot collect discharged debts" and that "[m]ost," but not all, "debts are discharged." *E.g.*, Individual Chapter 11 Discharge, Form 3180RI, https://www.uscourts.gov/forms/bankruptcy-forms/individual-chapter-11-discharge; see *Anderson*, 884 F.3d at 390 (discussing use of "standard form using boilerplate language"). The result is that the discharge order, standing alone, provides no real guidance to a creditor trying to determine whether a particular debt is discharged. Indeed, the form order includes a caution that it provides "only a general summary" of the discharge, that

"some exceptions exist," that "the law is complicated," and that an interested party "should consult an attorney to determine the exact effect of the discharge in this case." Form 3180RI.

The combination of difficult dischargeability questions and a lack of guidance from the discharge order itself means that "there will often be at least some doubt as to the scope of such orders," *Taggart*, 139 S. Ct. at 1803, and that whether a particular debt is discharged will often be subject to reasonable disagreement, see, *e.g.*, *id.* at 1800 (state court and bankruptcy court concluded debt not discharged; federal district court concluded debt discharged). The federal-law standard set forth in *Taggart* thus provides much-needed protection to creditors who are doing their best to puzzle through complicated issues and reach a reasonable conclusion. But under the Fourth Circuit's approach, debtors might well be able to secure judgments under state law even for conduct that creditors reasonably believed was permitted under the federal Bankruptcy Code.

b. State-law claims for violation of a discharge order also carry the potential for far more significant and unpredictable damages than a creditor would likely face under a civil-contempt judgment.

First, state law may impose remedies that are unavailable or uncommon in the civil-contempt context. Most notably, violation of state law may trigger statutory damages that would be unavailable in a civil-contempt proceeding and that can quickly multiply, particularly given the often repetitive nature of debt-collection efforts. For example, one of the claims asserted in this case, which alleges unfair or deceptive acts or practices, permits damages of between $500 and $4,000 *per violation*—even without any showing of actual harm. See N.C. Gen. Stat. § 75-56(b); Pet.

29. Guthrie alleged that petitioner contacted him numerous times, including through letters and phone calls. Complaint ¶¶ 55, 264, No. 7:20-cv-43 (E.D.N.C.). If Guthrie were able to show that each such contact constituted a violation of state law, he could obtain substantial statutory damages on that single claim, regardless of whether he was actually harmed in any way by any of the letters or calls. And in a case involving multiple plaintiffs, imposing those kinds of statutory damages can quickly create staggering liability. See *Barr* v. *Am. Ass'n of Pol. Consultants, Inc.*, 140 S. Ct. 2335, 2345 (2020); *Shady Grove Orthopedic Assocs., P.A.* v. *Allstate Ins. Co.*, 559 U.S. 393, 445 n.3 (2010) (Ginsburg, J., dissenting) (noting that statutory damages can "pose[] the risk of massive liability unmoored to actual injury").

Second, jury awards on state-law claims will be far less predictable than civil-contempt sanctions issued by federal bankruptcy-court judges. As a general matter, jury verdicts carry the risk of "stark unpredictability." *Exxon Shipping Co.* v. *Baker*, 554 U.S. 471, 499 (2008) (discussing empirical evidence regarding "punitive damages awarded by juries in state civil trials"). Although juries may have to rely on their "instincts" and "random, often inaccurate, bits of information" about prior awards, judges' "far greater familiarity with the experience of the legal system" means that the remedies they authorize are more likely to be consistent with past practice. *E.g.*, *Payne* v. *Jones*, 711 F.3d 85, 93-96 (2d Cir. 2013). And the disparity between jury and judge awards is likely to be particularly heightened in this context: bankruptcy-court judges have special expertise in and familiarity with discharge orders, the often-difficult interpretive questions that arise in connection with such orders, and the sort of activities that are accept-

ed business practices in the field of debt collection and foreclosure. See *Anderson*, 884 F.3d at 390-391 ("[T]he bankruptcy court retains a unique expertise in interpreting its own injunctions and determining when they have been violated."). Bankruptcy-court contempt sanctions are, accordingly, likely to be more predictable and more appropriately tailored to the conduct at issue than a verdict from a jury, whose members may very well have never encountered the bankruptcy process, much less a discharge order, before their jury service.

c. The Fourth Circuit's approach also opens the door to the possibility of class actions alleging violations of state law, even as against creditors who have reasonably concluded that their conduct conforms to the strictures of any relevant bankruptcy discharge order. That approach therefore would exacerbate the uncertainty that creditors would face in trying to determine whether they are likely to be subject to a significant claim for violation of a discharge injunction and, if so, what their financial exposure might be.

As the petition notes, litigants have frequently attempted to bring class actions alleging violations of bankruptcy-discharge orders. Pet. 33. Many of those class actions have tried to aggregate debtors from across different bankruptcy districts in the same state, or even from different places across the country. See, *e.g.*, *Bruce* v. *Citigroup Inc.*, 75 F.4th 297, 306 (2d Cir. 2023). And many of them have involved a "large" number of putative class members. *Cox*, 239 F.3d at 912.

Courts taking the opposite view from the Fourth Circuit here, and thus correctly holding that only the court issuing an injunction has authority to impose civil-contempt sanctions for its violation, have rejected such class actions. As those courts have ex-

plained, a putative class action that includes debtors who have obtained discharge injunctions from multiple different bankruptcy-court judges is not consistent with the rule that each bankruptcy-court judge has authority to enforce his or her own orders. See, *e.g.*, *Bruce*, 75 F.4th at 306 (holding that a court's civil-contempt authority "does not extend to other bankruptcy courts' discharge orders in a nationwide class action"); *Cox*, 239 F.3d at 916 (acknowledging that treating contempt as exclusive remedy "precludes class-action relief" because other debtors "are scattered all over the country"); see also *In re Crocker*, 941 F.3d 206, 216-217 (5th Cir. 2019), *as revised* (Oct. 22, 2019) (requiring "return[] to the issuing bankruptcy court to enforce an injunction" and raising question "whether [bankruptcy court] has authority to enforce the injunctions arising from discharges entered by any bankruptcy court in the same judicial district").

But no such limitation exists if debtors can challenge violations of the discharge order through state law and outside of the civil-contempt process. There is every reason to think that, if the Fourth Circuit's approach is permitted to stand, debtors will pursue class relief against creditors under state law that they could not pursue federally. And it is well recognized that class actions exert significant pressure on defendants regardless of the merits of the claims raised in those actions, including by imposing increased litigation costs (such as the costs required to litigate class-certification issues) and by sometimes forcing defendants to settle to escape from even a remote prospect of significant classwide damages. Cf. *Stoneridge Inv. Partners, LLC* v. *Scientific-Atlanta, Inc.*, 552 U.S. 148, 162-164 (2008) (discussing *in terrorem* effect of class actions in securities cases); *Blue*

Chip Stamps v. *Manor Drug Stores*, 421 U.S. 723, 741 (1975) (same).

2. The Uncertainty And Unpredictability Spawned By The Fourth Circuit's Approach Would Have Pernicious Practical Effects

If this Court does not step in to align the Fourth Circuit with its sister circuits, the distinct state-law features discussed above would all combine to make the large number of discharge orders issued annually in Maryland, Virginia, West Virginia, North Carolina, and South Carolina into potential sources of creditor liability, even for creditors who operate in an objectively reasonable manner. See Pet. 31 & n.12. Indeed, as the petition explains (at 32), even debtors who reside outside of the Fourth Circuit may be able to take advantage of its rule, magnifying the decision's ramifications. Such a sea change would likely have a variety of harmful consequences for creditors and other participants in the lending industry.

First, some creditors may decide that the costs and risks associated with collecting a debt are too great, leading them to write off or modulate their efforts to collect debts that they are fully entitled to collect under a reasonable reading of the relevant discharge order. See generally *Gonzales* v. *Parks*, 830 F.2d 1033, 1036 (9th Cir. 1987) (recognizing that "the kind of substantial damage awards that might be available in state court tort suits * * * could in some instances deter persons from exercising their rights"); *PNH, Inc.* v. *Alfa Laval Flow, Inc.*, 958 N.E.2d 120, 126 (Ohio 2011). But it is the federal Bankruptcy Code, not state law, that is responsible for determining which debts can be collected and which are discharged. See *Int'l Shoe Co.*, 278 U.S. at 265 ("In re-

spect of bankruptcies the intention of Congress is plain. The national purpose to establish uniformity necessarily excludes state regulation."). The Fourth Circuit's rule turns that fundamental feature of bankruptcy law on its head and would create significant unfairness for creditors.

What's more, the chilling effect of the Fourth Circuit's rule may create national disuniformity, as creditors will be more likely to write off debts in states in the Fourth Circuit, particularly those with harsh state-law remedies, or to refrain from viable collection efforts in those states. Such uneven application of the law in enforcing bankruptcy-discharge injunctions is also fundamentally unfair—and beyond that, it offends both the Bankruptcy Code and the Constitution. See U.S. Const. art. I, § 8, cl. 4; *MSR Expl., Ltd.* v. *Meridian Oil, Inc.*, 74 F.3d 910, 915 (9th Cir. 1996) (noting "the unique, historical, and even constitutional need for uniformity in the administration of the bankruptcy laws"); *Pertuso* v. *Ford Motor Credit Co.*, 233 F.3d 417, 426 (6th Cir. 2000) ("Permitting 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.'" (citation and alteration omitted)).

Second, and relatedly, the potential for more onerous state-law litigation would create at least some incentive for creditors to seek a bankruptcy-court determination regarding whether a debt has been discharged prior to attempting collection of that debt. The Bankruptcy Rules permit creditors to "file a complaint to obtain a determination of the dischargeability of any debt." Fed. R. Bankr. P. 4007(a). In

Taggart, this Court recognized that adopting a strict-liability standard for civil contempt "m[ight] lead risk-averse creditors to seek an advance determination in bankruptcy court even where there is only slight doubt as to whether a debt has been discharged." *Taggart*, 139 S. Ct. at 1803; see *ibid.* (noting that "there will often be at least some doubt as to the scope of [discharge] orders"). An unpredictable and difficult regime of state-law liability would likely provide even further motivation for creditors to seek such advance determinations.

But a system where more creditors feel compelled to take such a step is both inconsistent with the congressional scheme and unduly costly. As *Taggart* noted, Congress contemplated that an advance determination of that kind "would be needed in only a small class of cases." *Taggart*, 139 S. Ct. at 1803 (citing 11 U.S.C. 523(c)(1)); see 11 U.S.C. 523(c)(1) (listing three situations in which an advance determination is required). The Fourth Circuit's rule threatens to transform what should be a rare procedure, generally limited to specific kinds of debt, into a much more common practice. That could well mean far more litigation on the issue than Congress contemplated. See *Taggart*, 139 S. Ct. at 1803. The result would be "additional federal litigation, additional costs, and additional delays," all "interfer[ing] with a chief purpose of the bankruptcy laws: to secure a prompt and effectual resolution of bankruptcy cases within a limited period." *Ibid.* (citations omitted). And, as this Court explained, those "negative consequences, especially the costs associated with the added need to appear in federal proceedings, could work to the disadvantage of debtors as well as creditors." *Ibid.*

Finally, all of the unpredictability and uncertainty discussed above—even as to objectively reasonable conduct—would increase the cost of collecting debt, and such increased cost would be priced into the cost of lending and borrowing to at least some degree, even if only at the margins. See generally *Cent. Bank of Denver, N.A.* v. *First Interstate Bank of Denver, N.A.*, 511 U.S. 164, 189 (1994) ("uncertainty and excessive litigation can have ripple effects"). Given that the Fourth Circuit's approach may require perfect compliance to avoid meaningful state-law remedies, creditors operating under the shadow of that decision would likely spend more time and money trying to conform their conduct to the sometimes complex rules regarding dischargeability. Those efforts would be particularly onerous for lenders with a multi-state or national profile, as such lenders would need to monitor the laws of multiple states rather than just understanding one federal bankruptcy regime relating to violation of discharge injunctions. And even after making those efforts, creditors would likely make innocent mistakes sometimes, and they would need to factor the potential for substantial state-law judgments into their business operations—for instance, by increasing their reserves. In addition, loan-servicing rights that trade on a secondary market would trade for less money if they were exposed to greater risk due to potential state-law liability. See generally Cong. Rsch. Serv., IN11377, *Mortgage Servicing Rights and Selected Market Developments* (May 2020), https://crsreports.congress.gov/product/pdf/IN/IN11377. The bottom line is that the Fourth Circuit's approach would mean higher costs than exist under a relatively predictable and straightforward regime in which alleged violations of discharge injunctions are handled by the issuing bankruptcy court under the rules set forth in *Taggart*. See gen-

erally Ralph K. Winter, *Paying Lawyers, Empowering Prosecutors, and Protecting Managers: Raising the Cost of Capital in America*, 42 Duke L.J. 945, 948 (1993) ("Unnecessary civil * * * liability diminishes the return to, and increases the cost of, capital."), cited in *Central Bank*, 511 U.S. at 189.

In short, allowing the Fourth Circuit's decision to stand would create a host of practical problems and harmful impacts. This Court's review is urgently needed.

CONCLUSION

For the foregoing reasons, and those stated by petitioner, the Court should grant the petition for certiorari.

Respectfully submitted,

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