No. 18-328

IN THE

Supreme Court of the United States

KEVIN ROTKISKE,

Petitioner,

v.

PAUL KLEMM, ET AL.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

Brief of the Mortgage Bankers Association and the Chamber of Commerce of the United States of America as *Amici Curiae* in Support of Respondents

ELAINE J. GOLDENBERG
Counsel of Record
MUNGER, TOLLES & OLSON LLP
1155 F St. NW, 7th Floor
Washington, DC 20004
(202) 220-1100
Elaine.Goldenberg@mto.com

HELEN KANOVSKY
JUSTIN WISEMAN
MORTGAGE BANKERS ASSOCIATION
1919 M St. NW, 5th Floor
Washington, DC 20036
(202) 557-2700
Counsel for Amicus Mortgage Bankers Association

DARYL JOSEFFER
JANET GALERIA
U.S. CHAMBER LITIGATION CENTER
1615 H St., NW
Washington, DC 20062
(202) 463-5337
Counsel for Amicus Chamber of Commerce of the United States of America

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SEC v. *Tambone*,
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N.Y. Unconsol. Law § 8610 (McKinney) 28

S.C. Code Ann. § 35-1-509(j)(1) 28

OTHER AUTHORITIES

Bob Carlson, American Bar Assoc., *ABA President Says Fair Debt Collection Practices Act Should Exclude Attorneys*, Bloomberg Law (Jan. 9, 2019), *available at* https://news.bloomberglaw.com/bankruptcy-law/insight-aba-president-says-fair-debt-collection-practices-act-should-exclude-attorneys; 24

CFPB, *Check Your Credit Report Once A Year*, *available at* https://files.consumerfinance.gov/f/documents/cfpb_adult-fin-ed_check-your-credit-report.pdf 19

Consumer Fin. Protection Bureau, *Fair Debt Collection Practices Act: CFPB Annual Report 2016* (Mar. 2016) 23

Larry Cordell *et al.*, *The Cost of Delay*, Working Paper No. 13-15 (Apr. 24, 2013), *available at* http://www.philadelphiafed.org/bank-resources/publications/presentations/the-cost-of-delay.pdf 25

Richard A. Epstein, *The Temporal Dimension in Tort Law*, 53 U. Chi. L. Rev. 1175 (1986) 22

Freddie Mac, *Single-Family Seller / Servicer Guide*, Ex. 83 (Dec. 12, 2018), http://www.freddiemac.com/singlefamily/service/pdf/exh83.pdf 25

FTC, *Free Credit Reports*, https://www.consumer.ftc.gov/articles/0155-free-credit-reports 20

WebRecon Stats for Dec 2018: 2018 Ends with a Whimper, WebRecon (last visited July 18, 2019), https://webrecon.com/webrecon-stats-for-dec-2018-2018-ends-with-a-whimper/ 23

Webster's Third New Int'l Dictionary 2554 17

Ralph K. Winter, *Paying Lawyers, Empowering Prosecutors, and Protecting Managers: Raising the Cost of Capital in America*, 42 Duke L.J. 945 (1993) 25

2 H. Wood, *Limitation of Actions* (4th ed. 1916).. 7

H.G. Wood, *A Treatise on the Limitations of Actions at Law and in Equity* (1901) 11

Nathaniel Wuerffel, *Market Structure and Liquidity in the U.S. Treasury and Agency Mortgage-Backed Security (MBS) Markets* (May 17, 2016), *available at* https://www.newyorkfed.org/newsevents/speeches /2016/wue160517 27

INTEREST OF THE *AMICI CURIAE*[1]

The Mortgage Bankers Association ("MBA") is a national association representing the real estate finance industry. It has more than 2,200 members, including real estate finance companies, mortgage companies, mortgage brokers, commercial banks, thrifts, life insurance companies, and others in the mortgage lending field. MBA seeks to strengthen the nation's residential and commercial real estate markets, to support sustainable homeownership, and to extend access to affordable housing to all Americans.

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 3 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 that raise issues of concern to the nation's business community.

Amici have a strong interest in ensuring that statutory provisions stating when applicable statutes of limitations begin to run are enforced just as Congress has written them. Implication of a discovery

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[1] Pursuant to Rule 37.6 of this Court, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici*, their members, and their counsel made a monetary contribution to its preparation or submission. The parties have consented to the filing of this brief.

rule into the Fair Debt Collection Practices Act (FDCPA) is inconsistent with basic principles of statutory interpretation, and it would undermine repose and certainty in important sectors of the economy.

INTRODUCTION

This case presents a useful opportunity for this Court to clarify that, contrary to petitioner's argument, Congress does not legislate (and has not legislated in the past) against a background discovery-of-injury rule that is to be implied into federal statutes of limitations in favor of any plaintiff who was "blamelessly ignorant" (Pet. Br. 28) of his injury. As Justice Scalia explained in his opinion concurring in the judgment in *TRW Inc.* v. *Andrews*, 534 U.S. 19 (2001), there is no historical grounding for such a rule. And when Congress wishes to use discovery of injury as a means of triggering the running of a statute of limitations, it has said so expressly. This Court should not engraft language that Congress has found appropriate only in a limited category of circumstances onto statutory provisions where that language does not appear.

That is particularly true given that the judgment reflected in a statute of limitations is so quintessentially legislative. Any statute of limitations reflects a balance between a policy in favor of redressing injuries and a policy in favor of repose—and Congress sometimes finds the latter policy particularly compelling. Repose creates certainty; it avoids presentation of stale claims, as to which evidence may no longer be available; and it relieves burdens on the judicial system. Congress's judgment in favor of repose should not be disturbed by

interpreting statutory language to mean something other than what it actually says.

To be sure, as Justice Scalia's concurring opinion also explained, there is some historical basis in cases of fraud for affording some relief with respect to the limitations period. But this Court's cases do not establish a discovery rule in that regard that Congress could have understood itself to be legislating against. And, in any event, there is no warrant for applying such a rule to statutes as to which claims sometimes may implicate fraudulent conduct and sometimes may implicate conduct that has nothing to do with fraud. That would countenance reading the same statutory language to mean two different things depending on particular factual circumstances, an approach to statutory interpretation that this Court has firmly rejected. The better approach is the one taken by the court of appeals below: assessing whether a plaintiff asserting fraudulent concealment meets the requirements of the separate equitable tolling doctrine, under which tolling is "the exception, not the rule." *Rotella* v. *Wood*, 528 U.S. 549, 561 (2000).

Regardless of how the Court resolves those broader questions, no implied discovery rule can apply here given the language of the FDCPA's statute-of-limitations provision. Under 15 U.S.C. 1692k(d), the limitations period begins running on the date when the alleged "violation" occurred. That language, which does not appear in any of the statutes addressed in this Court's prior cases involving discovery of injury, admits of no exceptions. And whether petitioner qualifies for equitable tolling is not presented in this case given his forfeiture of that argument in the lower courts.

Accepting petitioner's construction of the FDCPA would have serious negative consequences—and those consequences would only expand along with the scope of any discovery rule that this Court were to adopt. As to the FDCPA itself, imposition of a discovery rule would upset settled expectations, likely lead to increased litigation, make debt collection more expensive and difficult, and potentially interfere with foreclosure, all of which would make credit more expensive and otherwise have a deleterious economic effect. Many other statutes—a number of them involving finance-related matters—include language virtually identical to the FDCPA, and extra-textual lengthening of the limitations periods under those statutes would also create uncertainty and economic harm. In addition, to the extent that the Court were to suggest that a discovery rule should be implied into statutes that have different language than Section 1692k(d), the ripple effects of that decision would reach into many corners of federal and state limitations law, with seriously destabilizing effects.

ARGUMENT

I. There Is No Background Discovery Rule For The "Blamelessly Ignorant" That May Be Engrafted Onto The Text Of A Federal Statute Of Limitations Provision

A. This Court Should Not Endorse The Background Rule That Petitioner Urges

Petitioner claims that he "is not advocating that the Court adopt a generally applicable discovery rule." Pet. Br. 16 n.16. In fact, though, he is necessarily asserting the existence of a background discovery rule—one seemingly not limited to claims of fraud—that is implied into federal statutes of limitations even when Congress has not chosen to enact such a rule.

See, *e.g.*, *id.* at 28 (arguing that "it is difficult to imagine that Congress would have expected anything other than judicial application of the discovery rule to the FDCPA claim of Petitioner or any other blamelessly ignorant plaintiff"). Although this Court's decision in *TRW* appears to leave that question open to some degree, see 534 U.S. at 27 (stating that "[t]o the extent" a "presumption exists" that "all federal statutes of limitations, regardless of context, incorporate a general discovery rule unless Congress has expressly legislated otherwise," the court of appeals "conspicuously overstated its scope and force") (citation omitted), no such background rule exists now, or existed in 1977 when Congress enacted the FDCPA. This Court should clarify the law and bring order and certainty to the interpretation of federal statutes of limitations by rejecting the contention that a discovery rule should be implied into the FDCPA or into federal statutes more generally. See *id.* at 38 (Scalia, J., concurring in the judgment) (explaining that expressions of "uncertainty" about the "background rule" make "all unspecifying new legislation a roll of the dice" and "cast[] the meaning of innumerable other limitation periods in doubt").

1. Congress's enactment of a statute of limitations for claims under a federal statute "reflects a concern, grounded in separation of powers, that Congress rather than the courts controls the availability of remedies for violations of statutes." *Stoneridge Inv. Partners, LLC* v. *Scientific-Atlanta, Inc.*, 552 U.S. 148, 165 (2008) (quoting *Wilder* v. *Va. Hosp. Ass'n*, 496 U.S. 498, 509 n.9 (1990)). Congress is, after all, the proper body to decide how "to strike the balance between remediation of all injuries and a policy of repose," *TRW*, 534 U.S. at 38 (Scalia, J., concurring in the

judgment)—a judgment that may involve "subtle and difficult" questions, *Klehr* v. *A.O. Smith Corp.*, 521 U.S. 179, 191-193 (1997); see *Johnson* v. *Railway Express Agency, Inc.*, 421 U.S. 454, 463-464 (1975) (explaining that imposition of a limitations period "reflects a value judgment concerning the point at which the interests in favor of protecting valid claims are outweighed by the interests in prohibiting the prosecution of stale ones"); *Mills* v. *Habluetzel*, 456 U.S. 91, 101 n.9 (1982) (limitations decisions are "best left to legislative determination and control").

The "standard rule" against which the courts interpret Congress's enactments is, and long has been, that a "limitations period commences when the plaintiff has a complete and present cause of action." *TRW*, 534 U.S. at 36 (Scalia, J., concurring in the judgment) (quoting *Bay Area Laundry and Dry Cleaning Pension Trust Fund* v. *Ferbar Corp. of Cal.,* 522 U.S. 192, 201 (1997)). This Court has frequently stated as much. See, *e.g.*, *Gabelli* v. *SEC*, 568 U.S. 442, 448 (2013) (noting that the standard rule has governed since the 1830s); *Green* v. *Brennan*, 136 S. Ct. 1769, 1776 (2016); *Graham County Soil & Water Conservation Dist.* v. *United States ex rel. Wilson*, 545 U.S. 409, 418 (2005); *Wallace* v. *Kato*, 549 U.S. 384, 388, 391-392 (2007); *Clark* v. *Iowa City*, 87 U.S. (20 Wall.) 583, 589 (1875).

That standard rule does not ask whether the plaintiff has *knowledge* of the injury underlying the cause of action, or of any of the other facts that give rise to the cause of action. Rather, it asks only whether those facts *exist.* See, *e.g.*, *SCA Hygiene Prod. Aktiebolag* v. *First Quality Baby Prod., LLC*, 137 S. Ct. 954, 962 (2017) (explaining that it is "not ordinarily true" that a discovery rule "triggers the running of a

statute of limitations" and concluding that a discovery rule "is not a universal feature of statutes of limitations"); 2 H. Wood, *Limitation of Actions* § 276c(1), at 1411 (4th ed. 1916) ("That a person entitled to an action has no knowledge of his right to sue, or of the facts out of which his right arises, does not postpone the period of limitation.").

This Court has never held that a discovery rule should be implied into a statute of limitations simply because a "blamelessly ignorant" plaintiff misses the deadline for filing suit. None of the cases cited by petitioner articulates such a broad-based rule. Setting aside certain cases involving fraud, which are discussed further below, see pp. 11-16, *infra*, this Court has squarely held on only one occasion that a discovery rule should be implied. See *Urie* v. *Thompson*, 337 U.S. 163, 169-171 (1949) (medical claim under Federal Employers' Liability Act). As Justice Scalia explained in his concurrence in *TRW*, that case rests on an outdated mode of statutory interpretation that looks to how "humane" the underlying legislation can be said to be, *id.* at 170—a question that is for Congress to answer in choosing the language of a statute-of-limitations provision in the first place. See *TRW*, 534 U.S. at 37 (Scalia, J., concurring in the judgment); see also *id.* at 37 n.2 (noting that on several other occasions the Court has observed that the courts of appeals have implied an injury-discovery rule, but has not adopted that principle itself) (citing *United States* v. *Kubrick*, 444 U.S. 111, 120 & n.7 (1979) (medical-malpractice action), *Rotella*, 528 U.S. at 555, and *Klehr*, 521 U.S. at 191); *id.* at 27-28 (majority opinion) (reaching similar conclusion); *Merck & Co.* v. *Reynolds*, 130 S.

Ct. 1784 (2010) (discussing discovery rule in case involving express statutory discovery-rule provision).

In any event, no background discovery rule for the blamelessly ignorant can be derived from a single case decided in 1949. And if Congress wishes to vary the standard rule, it well knows how to do so expressly. See *TRW*, 534 U.S. at 38 (Scalia, J., concurring in the judgment); see also *BP Am. Prod. Co.* v. *Burton*, 549 U.S. 84, 92 (2006) (rejecting argument that statute of limitations was intended to apply to administrative proceedings when Congress "knew how to identify administrative proceedings" expressly); cf. *Cent. Bank of Denver, N.A.* v. *First Interstate Bank of Denver, N.A.,* 511 U.S. 164, 176-177, 181 (1994) (rejecting argument that "general principles of tort law" on aiding and abetting should be engrafted onto all statutes given that Congress "knew how to impose aiding and abetting liability when it chose to do so"). A multitude of federal statutes of limitations—including statutes enacted before the enactment of the FDCPA in 1977—expressly incorporate a discovery rule of some kind, making a limitations period run in some or all circumstances from the date that the plaintiff discovered his injury or other key facts.[2]

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[2] See, *e.g.*, 12 U.S.C. 1715z-4a(d) (authorizing certain housing claims brought within six years after the government "discovers any use of a property's assets and income in violation of" regulations); 12 U.S.C. 3416 (authorizing claims regarding right to financial privacy brought within three years of "the date of discovery of [the] violation"); 15 U.S.C. 77m (under certain securities laws, "[n]o action shall be maintained * * * unless brought within one year after the discovery of the untrue statement or the omission, or after such discovery should have been made by the exercise of reasonable diligence," with outside period of repose) (enacted before 1977); 15 U.S.C. 78r(c) (similar) (enacted before 1977); 15 U.S.C. 78u-6(h)(B)(1)(iii)(I)(bb) (three-

If Congress had believed that courts would imply a discovery rule into a federal statute for a plaintiff who was unaware of his injury during the limitations period, those discovery-rule provisions would have been superfluous. See *TRW*, 534 U.S. at 31 ("It is 'a

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year time limit for anti-retaliation actions by securities whistleblowers from "the date when facts material to the right of action are known or reasonably should have been known by the employee alleging a violation"); 15 U.S.C. 6104(a) (authorizing claims relating to telemarketing brought "within 3 years after discovery of the violation"); 15 U.S.C. 1711(a)(2) (claims regarding land-sale contracts must be brought within three years of "discovery of the violation or after discovery should have been made by the exercise of reasonable diligence"); 15 U.S.C. 3006(c) (authorizing claims regarding horse-betting filed within three years of "the discovery of the alleged violation upon which such civil action is based"); 18 U.S.C. 2520(e) (authorizing civil claims for interception or use of certain communications if brought within "two years after the date upon which the claimant first has a reasonable opportunity to discover the violation"); 18 U.S.C. 2710(c)(3) (authorizing civil claims for wrongful disclosure of certain records if brought within two years of "the date of discovery"); 19 U.S.C. 1621 (under tariff law, providing that with respect to certain statutory violations "no suit or action * * * may be instituted unless commenced within 5 years after the date of the alleged violation or, if such violation arises out of fraud, within 5 years after the date of discovery of fraud"); 26 U.S.C. 7431(d) (authorizing claims for unauthorized disclosure of tax information brought within two years "after the date of discovery by the plaintiff of the unauthorized inspection or disclosure"); 28 U.S.C 1658(b) (claim of securities fraud may be brought no later than two years "after the discovery of the facts constituting the violation," with five-year repose period); 31 U.S.C. 3731(b) (authorizing claims under False Claims Act brought within three years of "the date when facts material to the right of action are known or reasonably should have been known" to a U.S. official); 42 U.S.C. 9612(d)(2)(A) (authorizing claims regarding hazardous substances brought within three years of the "date of the discovery of the loss and its connection with the release in question"); 42 U.S.C. 9613(g)(1) (similar).

cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'") (quoting *Duncan* v. *Walker*, 533 U.S. 167, 174 (2001)). That strongly suggests that Congress understood the "standard rule," and not a discovery rule, as the background principle against which it was legislating.[3]

While the professors' *amicus* brief filed in support of neither party suggests (at 14-18) that Congress's discovery-rule enactments all serve special clarifying purposes that a background discovery rule would not address, that is simply not so. See, *e.g.*, 19 U.S.C. 1621(1) (statute of limitations providing for discovery rule in cases of fraud without imposing outside period of repose). More generally, if Congress were indeed legislating with an understanding that some background discovery-rule-by-implication existed, it would be odd indeed for Congress to enact *affirmative* discovery rules that cover only certain limited situations. It would make far more sense for Congress to state that *no discovery rule* should be applied in specified circumstances. But neither petitioner nor any of his *amici* has come forward with examples of that kind of negatively stated enactment.

As the Court explained in 1889 in *Amy* v. *City of Watertown*, 130 U.S. 320 (1889), "great caution" must be exercised in deciding that "the running of a statute of limitation may be suspended by causes not

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[3] According to petitioner (Br. 28 n.25), when this Court decided *TRW* in 2001 Congress may have experienced some doubt about the existence of a background discovery rule, thus explaining why Congress would start stating a discovery rule expressly in certain statutes. But enactment of a number of the statutes cited in the preceding footnote predated *TRW*.

mentioned in the statute itself," lest "the court would make the law instead of administering it." *Id.* at 323-25.[4] Concluding that a background discovery rule for all "blamelessly ignorant" plaintiffs exists now, or existed in 1977, would throw that caution to the winds. There is no warrant for that kind of departure from statutory text, or for the imposition of what amounts to a clear-statement rule by which Congress can avoid implication of a discovery limitations trigger only if it disclaims clearly any intent that such a rule apply. *Astoria Fed. Sav. & Loan Ass'n* v. *Solimino,* 501 U.S. 104, 108-109 (1991) (clear-statement rule intrudes on Congress's legislative authority and is therefore justified only to protect "independent values of * * * magnitude and constancy" such as federalism and separation of powers). Moreover, the strong interest in repose and certainty, as well as in avoiding litigation of stale claims, points powerfully in the other direction.

2. As Justice Scalia explained in his *TRW* concurrence, although "Congress has been operating against the background rule" set forth above "for a very long time," there also has "historical[ly]" been

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[4] See *ibid.* ("The general rule is that the language of the act must prevail, and no reasons based on apparent inconvenience or hardship can justify a departure."); see also, *e.g.*, *Gabelli*, 568 U.S. at 454; *Baldwin County Welcome Center* v. *Brown,* 466 U.S. 147, 152 (1984) (per curiam) ("Procedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts out of a vague sympathy for particular litigants."); H.G. Wood, *A Treatise on the Limitations of Actions at Law and in Equity* § 274 (1901) (describing discovery principle as "a judicial exception engrafted upon the statute, by the assumption of legislative and equitable powers," that "is not warranted by any principle or rule of law, nor can it be supported by any known rule for the construction of statutes").

some solicitude with respect to limitations periods for parties who are claiming fraud. *TRW*, 534 U.S. at 37 (Scalia, J., concurring in the judgment); see *Gabelli*, 568 U.S. at 449; see also, *e.g.*, *Amy*, 130 U.S. at 324-325.

Despite the acknowledged historical roots of that solicitude, Congress would not have understood in 1977 (let alone would understand now) that a discovery rule in cases of fraud was to be implied into all (or virtually all) federal statutes of limitations so as to delay the commencement of the limitations period. Such an understanding could not be reconciled with Congress's practice of enacting express discovery rules—including in contexts in which fraud is clearly at issue—when it wishes its statutes of limitations to function in that way. See pp. 8-10, *supra*. And a uniform principle along those lines cannot be derived from this Court's cases, which have often spoken in terms of equitable tolling rather than of delay in the commencement of a limitations period, see *Lozano* v. *Montoya Alvarez*, 572 U.S. 1, 10-11 (2014) (describing *Holmberg* v. *Armbrecht*, 327 U.S. 392 (1946), and *Bailey* v. *Glover*, 88 U.S. (21 Wall.) 342 (1875), as equitable tolling cases); have not found a fraud-specific rule appropriate to every "context," see *Gabelli*, 568 U.S. at 449; have described the fraud that might afford relief from a statute of limitations in differing terms, see, *e.g.*, *Glus* v. *Brooklyn Eastern Dist. Terminal*, 359 U.S. 231, 231-232 (1959) (discussing "estoppel" and focusing on whether defendant expressly misled plaintiff as to the length of the statute of limitations); have sometimes involved situations in which no federal statute of limitations existed, see *Holmberg*, 327 U.S. at 394-395; and have stated that where Congress has spoken directly to the statute of

limitations question "there is an end of the matter" because what Congress has said is "definitive," *id.* at 395; but see *id.* at 397 (stating in dicta that the "equitable doctrine" regarding discovery of fraud "is read into every federal statute of limitation").[5]

In any event, however, no fraud discovery rule could possibly be implied with respect to any statute that—like the FDCPA—proscribes not only acts that might be said to be fraudulent but also acts that cannot be characterized in that way because they involve no deception.[6] See, *e.g.*, 15 U.S.C. 1692d(2) (proscribing use of profane language in collecting debts). Language in a federal statute of limitations about when a limitations period begins to run cannot mean one thing in fraud cases and a different thing in non-fraud cases. Rather, it must mean the same thing in all cases involving claims governed by that particular statute of limitations. Any other result would run contrary to basic principles of statutory interpretation. See, *e.g.*, *Clark* v. *Martinez*, 543 U.S.

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[5] The cases relied upon petitioner (Br. 21-28) do not clarify the matter. In *Glus*, the Court cited cases in which the Court had stated that estoppel was not appropriate where Congress had made some express provision. 359 U.S. at 231-232, 234 & n.11, 235. In *Exploration Co.* v. *United States*, 247 U.S. 435 (1918), the Court variously spoke of fraudulent "concealment" and "fraudulent transactions." *Id.* at 449-450. *Bailey* v. *Glover*, 21 Wall. 342 (1875), involved affirmative concealment of fraud. *Id.* at 348-349. And *American Pipe & Construction Co.* v. *Utah*, 414 U.S. 538 (1974), is simply irrelevant. It involves tolling, not the discovery rule, and has nothing to do with fraud or even more generally with blameless ignorance.

[6] In addition, no such rule could apply to any statute that indicated Congress's contrary intent, whether implicitly or explicitly. See *TRW*, 534 U.S. at 27-28. Congress has indicated its contrary intent here. See pp. 16-20, *infra*.

371, 378, 382, 386 (2005) (rejecting "dangerous principle that judges can give the same statutory text different meanings in different cases," which "would render every statute a chameleon, its meaning subject to change depending on" facts "in each individual case," and thus would "invent a statute rather than interpret one"); *Pasquantino* v. *United States*, 544 U.S. 349, 358 (2005). It would embroil the courts in trying to decide which statutory claims sound in fraud and which ones do not—a challenging enterprise in a statutory context divorced from the common law. And it would render utterly inexplicable Congress's choice to enact statutes of limitations that specify, with respect to causes of action that may or may not be based on a claim of fraud, that a discovery rule applies only to cases involving misrepresentations or other indicia of fraud. See, *e.g.*, 15 U.S.C. 1681p (at issue in *TRW*). A case-by-case implied discovery rule for fraud would already have accomplished exactly that aim.

No doubt for such reasons, this Court has rejected the idea that a single statute of limitations can be read two different ways. In *Reading Co.* v. *Koons*, 271 U.S. 58 (1926), the Court addressed the statute of limitations in the Federal Employers' Liability Act, which provided that "no action shall be maintained under this act unless commenced within two years from the day the cause of action accrued." *Id.* at 60. One party argued that in cases of wrongful death the cause of action did not accrue until appointment of an administrator who was able to bring suit on behalf of the decedent, asserting that background historical principles dictated that conclusion. See *id.* at 64. The Court disagreed, explaining that the statute also applied to claims for personal injuries short of death, as to which no administrator would ever be appointed,

and observing that "[i]t cannot be supposed that Congress, in enacting the statute intended to impose a fixed limitation of two years within which all actions for personal injury must be begun, regardless of death and of the time of appointment of an administrator of the injured employee, * * * at the same time intended to allow an indefinite period within which application may be made for the appointment of an administrator as the prerequisite to an action to recover for wrongful death." *Id.* at 63. It is equally fanciful to believe that Congress meant the language of the FDCPA limitations provision that specifies the trigger for the running of the limitations period to be read in different ways depending on the particular facts of the case before the court.

As to a statute that covers at least some non-fraudulent conduct, then, a limitations inquiry involving fraud should (absent some contrary instruction in the statutory text) be directed instead to the question whether equitable tolling might apply. That is how the court of appeals approached the problem here. See 890 F.3d at 428-429; see also, *e.g.*, *Rotella* v. *Wood*, 528 U.S. 549, 560-561 (2000) (rejecting discovery rule and stating that concern for the "blameless[ly] ignoran[t]" can be dealt with through "equitable principles of tolling"). Rather than varying Congress's express textual choice of the event that triggers commencement of a limitations period, "equitable tolling pauses the running of, or 'tolls,' a statute of limitations when a litigant has pursued his rights diligently but some extraordinary circumstance prevents him from bringing a timely action." *Lozano*, 572 U.S. at 10-11; see, *e.g.*, *Irwin* v. *Department of Veterans Affairs,* 498 U.S. 89, 96 (1990) ("equitable tolling" of limitations period may be appropriate

"where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass"). Dealing with fraud under the rubric of equitable tolling, if the statute at hand permits, has the virtue of a firm grounding in a common-law rule that this Court has consistently recognized. See *Lozano*, 572 U.S. at 11. It also ensures that varying of the limitations period by the courts is "the exception, not the rule." *Rotella*, 528 U.S. at 561; see *Nat'l R.R. Passenger Corp.* v. *Morgan*, 536 U.S. 101, 114 (2002) (equitable-tolling doctrine is to be "applied sparingly").

B. In Any Event, The Specific Language Of The Statute Of Limitations Provision At Issue Here Precludes Implication Of A Discovery Rule

Even assuming that it were appropriate in some cases to imply a discovery rule into the text of a federal statute-of-limitations provision that does not expressly provide for such a rule, no such implication is appropriate with respect to a statute of limitations, like the one at issue in this case, under which the "occur[rence]" of a "violation" triggers the running of the limitations period. 15 U.S.C. 1692k(d); see generally *Henson* v. *Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1725-1726 (2017) (explaining in FDCPA case that judiciary's role is "to apply, not amend, the work of the People's representatives"); *Magwood* v. *Patterson,* 561 U.S. 320, 334 (2010) ("We cannot replace the actual text with speculation as to Congress' intent."). Notably, none of the cases on which petitioner relies in support of its asserted background discovery-rule principle involved a statute worded in that way.

1. Section 1692k(d) provides that "[a]n action to enforce any liability created by this subchapter may be brought * * * within one year from the date on which the violation occurs." 15 U.S.C. 1692k. Congress thus chose to start the limitations period running on the date of "the violation"—that is, the date of an alleged culpable act or omission by the defendant.

Some other words commonly used in statutes of limitations may arguably be "less-determinate," 890 F.3d at 426, but the meaning of the word "violation" is plain. As Judge O'Scannlain has explained in interpreting Section 1692k(d), "[a] 'violation' is 'an infringement or transgression'; it is not the discovery of an infringement or a transgression." *Mangum* v. *Action Collection Serv., Inc.*, 575 F.3d 935, 945 (9th Cir. 2009) (O'Scannlain, J., specially concurring) (quoting *Webster's Third New Int'l Dictionary* 2554). Accordingly, "[t]he 'date on which the violation occurs' must refer to the date on which the 'infringement' or 'transgression' complained of by the plaintiff took place," not some date *after* the violation when a plaintiff who was previously unaware of the violation discovered that he had been injured. *Id.* at 945; see *TRW*, 534 U.S. at 28-33 (finding discovery rule inconsistent with language of particular provision before the Court); cf. *California Public Employees' Retirement System* v. *ANZ Sec., Inc.*, 137 S. Ct. 2042, 2049-2050 (2017) (provision that "runs from the defendant's last culpable act (the offering of the securities), not from the accrual of the claim," is not subject to exception); *CTS Corp.* v. *Waldburger*, 134 S. Ct. 2175, 2182 (2014) (same); *Morgan*, 536 U.S. at 109-110 (requirement that a charge be filed "after" a specified practice "occurred" means "that a litigant has

up to" a specified amount of time "*after* the unlawful practice happened to file").

That interpretation is confirmed by the existence of statutes—including at least one involving consumer credit—in which Congress chose to couple a limitations period that runs from "the date of the occurrence of the violation" with an *express* discovery rule that operates as an exception to the normal functioning of the limitation period. For example, Section 1679i(1)(a) of Title 15 states that an action under the Credit Repair Organizations Act may be brought before "the end of the 5-year period beginning on the date of the occurrence of the violation involved." 15 U.S.C. 1679i(1)(a). Section 1679i(1)(b) then goes on to state that in cases involving material and willful misrepresentations the limitations period concludes instead at "the end of the 5-year period beginning on the date of the discovery by the consumer of the misrepresentation." 15 U.S.C. 1679i(1)(b).

That provision is a specific manifestation, involving the same operative language found in Section 1692k(d), of the broader principle set forth above: Congress would have had no need to specify a discovery-rule exception to the usual limitations period, governing specific cases in which the claim under the statute involved a misrepresentation, if Congress had believed that such a discovery rule would be automatically read into subsection (a) despite its specification of a "violation" as the "occur[rence]" that triggers the running of the limitations period. See pp. 8-10, *supra*; see also, *e.g.*, 15 U.S.C. 78u-6 (similar limitations provision combining "violation" trigger with express discovery-rule exception). That cements the conclusion that Congress did not understand or intend for a discovery rule to somehow be read into the

"violation" language in Section 1692k(d). Rather, if Congress had intended Section 1692k(d) to involve a discovery rule in any set of circumstances, Congress would have said so expressly. See, *e.g.*, *Palmore* v. *United States*, 411 U.S. 389, 395 & n.5 (1973).

Moreover, if Congress had expressly provided for a discovery rule it also could have considered whether to set an outside limit on the length of time a prospective plaintiff has to discover his alleged injury. After all, "statutes applying a discovery rule * * * often couple that rule with an absolute provision for repose," *Gabelli*, 568 U.S. at 453, so as not to leave potential defendants with an "interminable threat of liability," *ANZ Sec.*, 137 S. Ct. at 2049-2050. Implying a discovery rule into Section 1692k(d) would mean that the provision has no such outside period of repose, since the courts cannot fix one by judicial fiat. That consequence underscores the fact that imposition of a discovery rule is a judgment that should be left in Congress's hands.

As a practical matter, there is no reason here to suppose that Congress intended a limitations period for FDCPA claims that may never end. Most violations of the FDCPA will be quickly known to prospective plaintiffs. See 890 F.3d at 426-427. For instance, a debtor can hardly fail to notice that he is experiencing harassment, 15 U.S.C. 1692d, or that he has written a post-dated check, 15 U.S.C. 1692f(2)-(4). Even with respect to the violation alleged here, petitioner could readily have discovered the unpaid amount within the limitations period if he had—as federal authorities recommend—checked his credit report on a yearly basis (and, by federal statute, such a once-a-year report can be obtained for free). See 15 U.S.C. 1681j; CFPB, *Check Your Credit Report Once A Year*,

available at https://files.consumerfinance.gov/f/documents/cfpb_adult-fin-ed_check-your-credit-report.pdf; FTC, *Free Credit Reports*, *available at* https://www.consumer.ftc.gov/articles/0155-free-credit-reports. Congress's provision of a one-year period that begins running on the date of an FDCPA violation rather than on the date of some later discovery of injury thus represents an eminently rational judgment—one that should remain in Congress's own hands.

2. The en banc court of appeals left open the possibility that a party similarly situated to petitioner could assert entitlement to "equitable tolling," which the court described as potentially addressing "FDCPA violations that involve fraudulent, misleading, or self-concealing conduct." 890 F.3d at 428. But the court determined that petitioner had forfeited any such argument in this case by failing to raise it. See *ibid.* This case therefore presents no occasion for this Court to map out the details of equitable tolling in an FDCPA case. See generally pp. 15-16, *supra*. It is enough, here, simply to note the possibility that where fraud is at issue a party bringing an FDCPA suit may, on a case-by-case basis, be able to establish that the one-year period that runs from the date of the violation should be tolled for some period of time once it has already begun running.

II. Engrafting A Discovery Rule Onto The FDCPA's Limitations Provision, Or Onto Limitations Provisions More Generally, Would Have Broad Negative Consequences

Interpreting the FDCPA's statute of limitations to include an implied discovery rule for which Congress did not provide, and that flies in the face of the text Congress enacted, would have serious negative policy consequences. Those consequences would reverberate

in industries affected by the FDCPA, depriving financial institutions and actors involved in debt collection of the certainty and repose that Congress afforded them when it enacted a statute of limitations that expires one year after the date of any violation. Similar consequences would also reverberate in a variety of other industries and areas of the law. The same "violation" language set forth in the FDCPA limitations provision appears in a number of other federal statutes of limitations (as well as in state statutes). And, of course, to the extent that this Court were to endorse implication of a discovery rule into statutes of limitations more generally, the negative consequences would be felt even more widely.

1. Congress's judgment that a plaintiff has one year from the date of a violation to bring suit under the FDCPA gives repose to debt-collectors who might be subject to such a suit and to the parties for whom the debts are being collected.

Limitations provisions are not, after all, "simply technicalities." *Board of Regents of Univ. of State of N.Y.* v. *Tomanio,* 446 U.S. 478, 487 (1980). Rather, they represent the legislature's judgment that potential defendants are eventually entitled to "certainty," *Rotella,* 528 U.S. at 555, and that "it is unjust to fail to put the adversary on notice to defend within a specified period of time." *United States* v. *Kubrick*, 444 U.S. 111, 117 (1979); see *Guar. Trust Co.* v. *United States*, 304 U.S. 126, 136 (1938) ("The statute of limitations is a statute of repose, designed to protect the citizens from stale and vexatious claims, and to make an end to the possibility of litigation after the lapse of a reasonable time. It has long been regarded by this Court * * * as a meritorious defense, in itself serving a public interest."). Statutes of limitations

also "promote justice" and judicial efficiency by preventing "revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared." *Order of R.R. Telegraphers* v. *Ry. Express Agency*, 321 U.S. 342, 348-349 (1944); see *Kubrick*, 444 U.S. at 117 (limitations statutes "protect defendants and the courts from having to deal with cases in which the search for truth may be seriously impaired by the loss of evidence"); *Burnett* v. *Grattan*, 468 U.S. 42, 53 (1984); see generally Richard A. Epstein, *The Temporal Dimension in Tort Law*, 53 U. Chi. L. Rev. 1175, 1182 (1986).

The implied discovery rule that petitioner urges would, by contrast, create uncertainty and unpredictability. Although discovery-rule provisions that Congress has enacted are often backed by some maximum deadline for suit that affords repose, under petitioner's approach no such repose would exist. See p. 19, *supra*. Instead, a plaintiff could have an infinite time to bring suit if he could claim that he did not discover his injury until after the limitations period would otherwise have run and he was not at fault for that delay, so long as he did not allow more than the length of the limitations period to elapse between the time of that discovery and the filing of his complaint. See 15 U.S.C. 1692k(d); *Klehr*, 521 U.S. at 187 (discovery rule that "lengthens the limitations period dramatically" conflicts with a limitations statute's "basic objective" of ensuring repose); cf. *id.* at 199 (Scalia, J., concurring in part and concurring in the judgment) ("[A]ny period of limitation is utterly meaningless without specification of the event that starts it running.").

Imposing such a rule on the FDCPA would spur on the cottage industry of FDCPA litigation. The number of FDCPA suits is already high. See Consumer Fin. Protection Bureau, *Fair Debt Collection Practices Act: CFPB Annual Report 2016*, at 15 (Mar. 2016); U.S. Chamber Amicus Br. (*Midland Funding LLC v. Johnson*, No. 16-348) at App. 1a (number of plaintiffs bringing individual FDCPA claims in federal court grew from around 1,300 plaintiffs in 2001 to over 11,800 plaintiffs in 2015); *WebRecon Stats for Dec 2018: 2018 Ends with a Whimper*, WebRecon (last visited July 18, 2019), https://webrecon.com/webrecon-stats-for-dec-2018-2018-ends-with-a-whimper/ (in 2016 through 2018 the number of FDCPA complaints per year ranged between approximately 9,000 and 10,000). And such suits—often asserting only technical or non-meritorious violations—can readily be used as a delaying tactic by debtors and as leverage for settlements. *Jerman* v. *Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573, 617 (2010) (Kennedy, J., dissenting) (discussing "troubling dynamic" associated with FDCPA suits); *Miller* v. *Javitch, Block & Rathbone*, 561 F.3d 588, 596 (6th Cir. 2009) (recognizing "cottage industry" of FDCPA litigation) (quoting *Jacobson* v. *Healthcare Fin. Servs.*, 434 F. Supp. 2d 133, 138-139 (E.D.N.Y. 2006)).

Extending the statute of limitations in the way that petitioner suggests would only increase the number of suits while upsetting "settled expectations." *Bd. of Regents* v. *Tomanio*, 446 U.S. 478, 487 (1980). And defendants would not likely be able to predict exactly which suits were coming, or how many; instead, they would face the possibility of long-term liability with respect to every step they ever take or have taken to collect a debt. If a suit were brought at a great enough

length of time from the alleged violation, defendants would likely no longer have relevant records, and the courts—having first expended resources in determining whether the plaintiff was "blamelessly ignorant" and when he discovered his injury—might have to wrestle with all of the problems associated with stale claims.

A debt collector that must face FDCPA suits brought long after the date of any violation may, as a result, charge more for its services, or pay less to acquire debt, and ultimately may have less success collecting debts that financial institutions and others are owed. Creating unnecessary and unpredictable hurdles to collect legitimate debts disrupts lending markets, possibly resulting in less capital to fund new loans and support other economic activity. And when it is "harder to collect valid debts, all consumers are forced to pay more for credit." Bob Carlson, American Bar Assoc., *ABA President Says Fair Debt Collection Practices Act Should Exclude Attorneys*, Bloomberg Law (Jan. 9, 2019), *available at* https://news.bloomberglaw.com/bankruptcy-law/insight-aba-president-says-fair-debt-collection-practices-act-should-exclude-attorneys; see *ibid.* (stating that the FDCPA can "result[] in unfair 'gotcha' lawsuits, higher costs" for businesses relying on others "to collect legitimate debts, and more expensive credit for everyone").

Moreover, to the extent that the debt in question is a secured debt such as mortgage debt, a party could attempt to use a newly discovered FDCPA claim as leverage in a foreclosure or bankruptcy proceeding. See generally *Obduskey* v. *McCarthy & Holthus LLP*, 139 S. Ct. 1029 (2019). More FDCPA suits and greater uncertainty in that context could increase the costs associated with foreclosure and make it more difficult

for lenders and servicers to foreclose when necessary, which would affect communities through increased blight due to prolonged foreclosures and would make it harder for would-be home buyers to get mortgages in the first place. See generally Larry Cordell *et al.*, *The Cost of Delay*, Working Paper No. 13-15 at 3 (Apr. 24, 2013), *available at* http://www.philadelphiafed.org/bank-resources/publications/presentations/the-cost-of-delay.pdf (concluding that longer foreclosure timelines greatly increase costs associated with foreclosure); Freddie Mac, Single-Family Seller/Servicer Guide, Ex. 83 (Dec. 12, 2018), http://www.freddiemac.com/singlefamily/service/pdf/exh83.pdf; cf. generally *United States* v. *Beggerly*, 524 U.S. 38, 48-49 (1998) (as to "ownership of land" it is of "special importance" that involved parties "know with certainty what their rights are, and the period during which those rights may be subject to challenge").

In short, as in other areas of the law, "uncertainty and excessive litigation can have ripple effects." *Cent. Bank*, 511 U.S. at 189. Expending time and resources in anticipating, litigating, or settling stale FDCPA cases not only negatively affects the defendants (or prospective defendants) themselves; it also increases the cost of capital and otherwise inflicts more general economic damage. *SEC* v. *Tambone*, 597 F.3d 436, 452-453 (1st Cir. 2010) (Boudin, J., concurring) (explaining in securities case that "[n]o one sophisticated about markets believes that multiplying liability is free of cost"); 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.").

2. If this Court rules that a discovery rule applies despite the language of Section 1692k(d), similar negative effects may well be felt with respect to other federal statutes that include a "violation"-based limitations period that is virtually identical to that found in the FDCPA. Those statutes include (but are not limited to) the Truth in Lending Act, which imposes requirements regarding credit transactions, see 15 U.S.C. 1640(e) (measuring limitations periods for civil suit from "the date of the occurrence of the violation"); see also 15 U.S.C. 1635(f); the Real Estate Settlement Procedures Act, which governs various aspects of the real estate settlement process, see 12 U.S.C. 2614 (action must be brought within specified period "from the date of the occurrence of the violation"); the Equal Credit Opportunity Act, which addresses discrimination against credit applicants, see 15 U.S.C. 1691e(f) (private action shall not "be brought later than 5 years after the date of the occurrence of the violation," although additional grace period is afforded if an agency takes enforcement action); the Electronic Funds Transfer Act, which deals with electronic means of managing finances, see 15 U.S.C. 1693m(g) (action may be brought "within one year from the date of the occurrence of the violation"), and provisions relating to banks' responsibilities to make deposited funds available to customers, see 12 U.S.C. 4010(d) (action may be brought "within one year after the date of the occurrence of the violation involved").

It is likely no coincidence that so many finance-related limitations provisions contain that "violation" language. That is an area in which certainty and repose are especially valuable and necessary. Cf., *e.g.*, *ANZ Sec., Inc.*, 137 S. Ct. at 2055 ("stability and reliance are essential components of valuation and

expectation for financial actors" in the securities "marketplace"). For example, because a court in a TILA case may decide the propriety of rescission of a mortgage transaction under certain circumstances, 15 U.S.C. 1935(b), (g); *Palmer* v. *Champion Mortg.*, 465 F.3d 24, 26-27 (1st Cir. 2006), or otherwise impugn a mortgage lender's actions and impose damages, a suit under TILA can cast a cloud over an existing mortgage. See generally *Beach* v. *Ocwen Fed. Bank*, 523 U.S. 410, 418 (1998); see also 15 U.S.C. 1641 (mortgage assignees are liable under TILA, and subject to rescission remedy, under certain circumstances). If the time to bring a suit is extended by a discovery rule, then a cloud of uncertainty will grow, costs to borrowers will increase, and the liquidity necessary for a functioning mortgage market could be compromised, since investors can price time-limited risk far better than indefinite liability. See, *e.g.*, Nathaniel Wuerffel, *Market Structure and Liquidity in the U.S. Treasury and Agency Mortgage-Backed Security (MBS) Markets* (May 17, 2016) (discussing economic importance of liquidity in mortgage market), *available at* https://www.newyorkfed.org/newsevents/speeches /2016/wue160517.

Petitioner's proposed rule also could well have effects in many other areas in which repose is necessary. Various other federal statutes of limitations run from the date of a "violation" (rather than, for instance, from accrual of liability). See, *e.g.*, 15 U.S.C. 77m (to enforce liability under particular provision of securities laws, action must be "brought within one year after the violation upon which it is based"); 29 U.S.C. 2617(c) (action may be brought alleging violation of Family and Medical Leave Act not later than "2 years after the date of the last event

constituting the alleged violation"). Various state-law limitations periods do as well. See, *e.g.*, S.C. Code Ann. § 35-1-509(j)(1) (certain securities-law violations under Uniform Securities Act, which has been adopted by a large number of States); 225 Ill. Comp. Stat. Ann. 425/9.5 (violation of Collection Agency Act); N.Y. Unconsol. Law § 8610 (McKinney) (violation of rules relating to rent).

3. Of course, to the extent that this Court were to endorse implication of a discovery rule into all federal statutes of limitations that do not foreclose such a rule by their text, including statutes that use language other than "violation," the implications would be far broader. As this Court has explained, "[a]n interpretation of a statute purporting to set a definite limitation upon the time of bringing action, without saving clauses, which would, nevertheless, leave defendants subject indefinitely to actions for the wrong done, would, we think, defeat its obvious purpose." *Reading Co.*, 271 U.S. at 65. The purpose of many federal limitations provisions would be defeated in just that way by an implied discovery rule. Extending for an uncertain and indefinite period of time the period in which claims can be brought would undermine the strong interest in repose and in avoiding litigation of stale claims, and every sector of the economy would suffer the resulting ill effects.

CONCLUSION

For the foregoing reasons, the judgment of the *en banc* court of appeals should be affirmed.

Respectfully submitted,

ELAINE J. GOLDENBERG
Counsel of Record
MUNGER, TOLLES & OLSON LLP
1155 F St. NW, 7th Floor
Washington, DC 20004
(202) 220-1100
Elaine.Goldenberg@mto.com

HELEN KANOVSKY
JUSTIN WISEMAN
MORTGAGE BANKERS ASSOCIATION
1919 M St. NW, 5th Floor
Washington, DC 20036
(202) 557-2700
Counsel for Amicus Mortgage Bankers Association

DARYL JOSEFFER
JANET GALERIA
U.S. CHAMBER LITIGATION CENTER
1615 H St., NW
Washington, DC 20062
(202) 463-5337
Counsel for Amicus Chamber of Commerce of the United States of America

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