No. 15-11240-E

In the United States Court of Appeals for the Eleventh Circuit

ALEIDA JOHNSON,
Plaintiff-Appellant,

v.

MIDLAND FUNDING, LLC,
Defendant-Appellee.

On Appeal from the United States District Court for the Southern District of Alabama in No. 1:14-cv-00322-WS-C, Hon. William H. Steele

OPENING BRIEF FOR PLAINTIFF-APPELLANT ALEIDA JOHNSON

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CERTIFICATE OF INTERESTED PERSONS

In compliance with Fed. R. App. P. 26.1 and 11th Cir. R. 26.1-1, the undersigned hereby certifies that the persons and/or entities listed below have an interest in the outcome of this appeal:

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STATEMENT REGARDING ORAL ARGUMENT

Plaintiff-Appellant Aleida Johnson (Johnson) respectfully submits that this appeal warrants oral argument. This case presents fundamental questions concerning the interaction of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. 1692 *et seq*., and the Bankruptcy Code. In *Crawford* v. *LVNV Funding, LLC*, 758 F.3d 1254 (11th Cir. 2014), in the context of a Chapter 13 bankruptcy, this Court held that filing a proof of claim on a time-barred debt violates the FDCPA. See 758 F.3d at 1256-1257. In the decision below, however, the district court held that the Bankruptcy Code impliedly repeals the very FDCPA claim that *Crawford* recognized. That issue has sharply divided the courts, and it implicates a broader split among the circuits. The issue directly affects thousands of debtors, consumes countless hours of judicial and party time in bankruptcies nationwide, and imposes serious costs on creditors with legitimate claims (unlike those at issue here). The outcome of this case will likely prove dispositive to the ability of consumer debtors (at least in this circuit) to vindicate their statutory rights.

In light of the importance and complexity of these issues, Johnson believes that oral argument may assist the Court in its review.

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JURISDICTIONAL STATEMENT

The district court had jurisdiction under 15 U.S.C. 1692k(d) and 28 U.S.C. 1331, and this Court has jurisdiction under 28 U.S.C. 1291. The notice of appeal was filed on March 24, 2015 (Dkt. 31), after final judgment was entered on the same day (Dkt. 30). Under 28 U.S.C. 2107(a) and Fed. R. App. P. 4(a), Johnson's appeal is timely.

STATEMENT OF THE ISSUE

In *Crawford* v. *LVNV Funding, LLC*, 758 F.3d 1254 (11th Cir. 2014), in the context of a Chapter 13 bankruptcy, this Court held that filing a proof of claim on a knowingly time-barred debt violates the FDCPA. While the district court recognized *Crawford*'s holding, it concluded that the same conduct that *Crawford* found unlawful under the FDCPA was affirmatively *authorized* under the Code. Believing that debt collectors had an absolute "right" to file the time-barred claims that *Crawford* prohibited, the court declared the two schemes in "irreconcilable conflict" and held that the Code impliedly repealed the FDCPA.

The question presented is whether the FDCPA claim found viable in *Crawford* is precluded by the Bankruptcy Code.

STATEMENT OF THE CASE

Johnson sued Midland under the FDCPA for knowingly filing a time-barred proof of claim in her Chapter 13 bankruptcy. Invoking this Court's *Crawford* decision, the district court rejected Midland's contention that Johnson failed to state a claim under the FDCPA. But the court nevertheless held that any viable claim under the FDCPA was precluded by the Bankruptcy Code. This case concerns the interaction between these fundamental federal schemes.

1. a. Congress enacted the FDCPA in 1977 to "eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. 1692(e). Congress specifically determined that "[e]xisting laws and procedures for redressing these injuries are inadequate to protect consumers." 15 U.S.C. 1692(b).

"The Act regulates interactions between consumer debtors and 'debt collector[s],' defined to include any person who 'regularly collects * * * debts owed or due or asserted to be owed or due another." *Jerman* v. *Carlisle, McNellie, Rini, Kramer & Ulrich, L.P.A.*, 559 U.S. 573, 577 (2010) (quoting 15 U.S.C. 1692a(5), (6)). Among a broad range of prohibitions, the FDCPA forbids the use of "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. 1692e. That section further enumerates a non-exhaustive list of prohibited practices, including making a false representation of "the character, amount, or legal status of any debt," threatening to "take any action that cannot legally be taken," and "using any false or deceptive means to collect or attempt to collect any debt." 15 U.S.C. 1692e(2)(A), 1692e(5), 1692e(10). The Act separately prohibits the use of "unfair or unconscionable means to collect or attempt to collect any debt." 15 U.S.C. 1692f; see also 15 U.S.C. 1692f(1) (declaring, as a violation, "[t]he collection of any amount * * * unless such amount is expressly authorized by the agreement creating the debt or permitted by law"). "[A]s remedial legislation, the FDCPA must be broadly construed in order to give full effect to these purposes." *Kaymark* v. *Bank of Am., N.A.*, 783 F.3d 168, 172 (3d Cir. 2015) (internal quotation marks omitted).

Congress authorized a private right of action to enforce the FDCPA's prohibitions. 15 U.S.C. 1692k.

b. Once a debtor files for bankruptcy, a bankruptcy estate is created that consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. 541(a)(1). Creditors who wish to recover from the estate "may file a proof of claim" (11 U.S.C. 501(a)): "a written statement setting forth a creditor's claim." Fed. R. Bankr. P. 3001. The Code defines a "claim" as a "right to payment, whether or not such right is * * * fixed, contingent, matured, unmatured, disputed, [or] undisputed." 11 U.S.C. 101(5)(A).

When a proof of claim is filed, it is automatically deemed "allowed" unless a party in interest objects and shows that "such claim is unenforceable against the debtor * * * under any agreement or applicable law." 11 U.S.C. 502(a), (b)(1). The trustee is subject to a statutory duty to "examine proofs of claims and object to the allowance of any claim that is improper." 11 U.S.C. 704(a)(5); see also 11 U.S.C. 1302(b)(1) (imposing the same duty on Chapter 13 trustee).

2. "A deluge has swept through U.S. bankruptcy courts of late. Consumer debt buyers—armed with hundreds of delinquent accounts purchased from creditors—are filing proofs of claim on debts deemed unenforceable under state statutes of limitations." *Crawford*, 758 F.3d at 1256. "Absent an objection from either the Chapter 13 debtor or the trustee, the time-barred claim is automatically allowed against the debtor"; "[a]s a result, the debtor must then pay the debt from his future wages as part of the Chapter 13 repayment plan, notwithstanding that the debt is time-barred and unenforceable in court." *Id*. at 1259. "Such a distribution of funds to debt collectors with time-barred claims then necessarily reduces the payments to other legitimate creditors with enforceable claims." *Id*. at 1261. And even when a proper objection is lodged, those objections "consume[] energy and resources in a debtor's bankruptcy case, just as filing a limitations defense does in state court." *Ibid*.

A study by the Federal Trade Commission found that "debt buyers paid on average 3.1 cents per dollar of debt for debts that were 3 to 6 years old and 2.2 cents per dollar for debts that were 6 to 15 years old compared to 7.9 cents per dollar for debts less than 3 years old." *McMahon* v. *LVNV Funding, LLC*, 744 F.3d

1010, 1022 (7th Cir. 2014). By paying significantly less than face value for the debt, debt collectors may still generate a profit even if the majority of claims are properly rejected as baseless.

3. Midland Funding is part of this trend. According to its website, Midland is "one of the nation's biggest buyers of unpaid debt." Dkt. 1 at 2. After Aleida Johnson sought protection in Chapter 13 bankruptcy, Midland filed a proof of claim against her seeking $1,879.71. *Ibid*. The claim on its face was barred by the statute of limitations: it had been obtained from Fingerhut Credit Advantage, which recorded the last transaction on May 28, 2003, over a decade earlier. Dkt. 1-1 at 3. Johnson responded with a suit under the FDCPA, alleging that Midland's attempt to collect a knowingly time-barred debt violated 15 U.S.C. 1692e and 1692f as an "unfair," "unconscionable," "deceptive," and "misleading" practice.

Midland filed a motion to dismiss (Dkt. 17), which was granted (Dkt. 28). The district court rejected Midland's contention that Johnson failed to state a claim under the FDCPA, declaring the argument barred by *Crawford*. Dkt. 28 at 2. But it held that Johnson's FDCPA claim was nevertheless precluded by the Code. According to the district court, Midland had a "right" to file a proof of claim, even fully aware that it was time-barred. Because the FDCPA claim would effectively "negat[e]" Midland's rights under the Code, the court held there was an "irreconcilable conflict." Dkt. 28 at 13, 15. The FDCPA, it concluded, "must give way to the Code." Dkt. 28 at 15.

This appeal followed.

SUMMARY OF ARGUMENT

This case asks whether conduct that violates the FDCPA is exempt from FDCPA liability because the conduct occurred in a Chapter 13 bankruptcy. "'[W]hen two statutes are capable of coexistence, it is the duty of the courts, absent a clearly expressed congressional intention to the contrary, to regard each as effective.'" *J.E.M. Ag Supply, Inc.* v. *Pioneer Hi-Bred Int'l, Inc.*, 534 U.S. 124, 143-144 (2001); *Morton* v. *Mancari*, 417 U.S. 535, 550 (1974). The standard for establishing an implied repeal thus requires clear text or irreconcilable conflict, and the district court failed to identify either one.

1. There is no dispute that there is no textual preclusion. The district court did not identify any textual basis for its ruling, and nothing in either scheme remotely qualifies as a "clear statement" that one scheme precludes the other. Indeed, on the contrary, the Code has no indication of exclusivity. It sets out a mechanism for objecting to claims on any ground, without any special or exclusive procedure for handling patently invalid claims. The Code does authorize sanctions under Rule 9011 or 11 U.S.C. 105, but no one seriously suggests these general provisions exclude all other federal remedies (much less that they do so *expressly*).

Nor did Congress provide any hint of a textual limitation in the FDCPA itself. Congress deliberately crafted the FDCPA in sweeping terms, capturing "all" activities of professional debt collectors. This inclusive language is exactly the opposite of any attempt to block the FDCPA whenever debt collection occurs in bankruptcy.

2. In finding that the two schemes conflict, the district court asserted that the Code grants debt collectors an absolute "right" to file knowingly time-barred claims. This was wrong on multiple fronts.

The Code does not tolerate the filing of frivolous claims. Debt collectors are prohibited from filing proofs of claim without a good-faith basis, and they have no such basis for deliberately filing a *stale* claim: the Supreme Court has defined a "claim" as a legally "enforceable" right, and time-barred claims are not *legally enforceable*. *Cohen* v. *de la Cruz*, 523 U.S. 213, 218 (1998). The FDCPA thus only prohibits what the Code does not even allow, and its application would not undermine the Code, but *promote* it. Because nothing compels (or even *permits*) an act under one scheme that violates the other, there is no conceivable "conflict" in this setting: Congress nowhere indicated that debt collectors are immune from FDCPA liability when they lodge claims in bankruptcy that would indisputably give rise to FDCPA liability in non-bankruptcy litigation.

Moreover, it is odd to say that a party has a "right" to file a proof of claim that the trustee has a mandatory duty to *reject*. The Code imposes the specific obligation on the trustee to weed out exactly this kind of invalid claim. That alone suggests these claims are not permissible: there is no reason to think that Congress granted a right under one section (Section 101(5)) that is immediately forbidden by another (Section 704(a)(5)). The bankruptcy process is designed to run fairly and efficiently. There is no room for a pointless exercise of lodging invalid claims so a trustee can instantly object that a claim is invalid.

Finally, courts have routinely sanctioned parties for filing knowingly time-barred claims—including in the bankruptcy context. It makes no difference that the legal defect arises as an affirmative defense. If a creditor is aware—as Midland most certainly was aware here—that its claim was subject to a complete and unavoidable defense, then that creditor is not entitled to tax scarce judicial or party resources by filing a frivolous claim. This dooms the court's core rationale: there is no conceivable basis for saying that a party has a "right" to engage in conduct that courts, correctly, sanction as improper.

There accordingly is no right (under the Code or the FDCPA) to file a proof of claim fully aware that a debt is legally unenforceable. This is dispositive on the preclusion question. It is easy to comply with both statutes because the conduct at issue *violates* both statutes. Nothing compels (or even *permits*) an act under one scheme that violates the other. This is simply a matter of refusing to pursue claims that lack any conceivable good-faith basis (which all parties, in every context, should be doing anyway). The FDCPA thus easily survives the implied-repeal analysis: whenever it is possible to enforce both schemes, courts will not find that one precludes the other.

In any event, the FDCPA survives the Code even if parties somehow had a "right" to burden bankruptcy proceedings with time-barred claims. There is no conflict where a party can easily comply with each scheme by voluntarily refraining from targeted behavior. The Code creates a *permissive* right to file a claim; no one is compelled to take any act under the Code that is forbidden by the FDCPA. The fact that debt collectors are singled out for additional regulation does not create a conflict; it reflects Congress's considered judgment that this particular group imposes heightened risks of public harm, and its behavior must be restricted in ways that do not affect ordinary creditors.

Nor does the FDCPA interfere with the Code's ordinary and intended operation. On the contrary, the FDCPA directly promotes Congress's interest in both schemes: the Code's provisions are calibrated for *ordinary* creditors, and they cannot properly account for the harmful activities of professional debt collectors. Congress intended the FDCPA to fill the gaps of other laws, and it does exactly that here: it prevents debt collectors from abusing the bankruptcy system by filing knowingly invalid claims—all in the hope of collecting when the process *fails*, not when it performs as intended. The FDCPA safeguards the Code by adding an extra check on this wasteful behavior.

3. While the district court did not reach the "broader" preclusion issue—whether the Code displaces the FDCPA in its entirety—there is no basis for finding *any* preclusion here.

Under the Supreme Court's "established" analysis (*Randolph* v. *IMBS, Inc*., 368 F.3d 726, 731 (7th Cir. 2004)), one federal statute will not preclude another in the absence of plain text or "irreconcilable" conflict. Neither condition is met here.

While the Ninth Circuit reached the opposite conclusion in *Walls*, its analysis was demonstrably at odds with controlling precedent. *Walls* relied primarily on *preemption* cases, not *preclusion* cases (276 F.3d at 510), and the difference is stark: it takes far less for courts to find *state law* preempted for interfering with a federal scheme. *Simon*, 732 F.3d at 275 (rejecting *Walls* for this reason). But it is a "rare bird indeed" where one *federal* statute precludes another. *Randolph*, 368 F.3d at 730. In that setting, Congress presumptively intends for its laws to operate in tandem, and courts refuse to "pick and choose" between congressional enactments unless it is impossible to enforce both. *Morton*, 417 U.S. at 551. In this case, there is no such impossibility and the statutes easily co-exist: both prohibit the same core activity, and compliance requires forgoing the same misconduct. This perfect alignment is the very opposite of the requisite "'positive repugnancy.'" *J.E.M.*, 534 U.S. at 143.

Nor is there a "conflict" simply because some debtors may "bypass" the Code's reticulated scheme. *Walls*, 276 F.3d at 510. This is not a genuine "conflict" at all, but the predictable result of Congress providing injured parties a "choice" between overlapping remedies. *Johnson* v. *Railway Express Agency, Inc.*, 421 U.S. 454, 461 (1975). That choice is commonplace in the U.S. Code, and there is no evidence that FDCPA claims—targeting the same conduct the Code already forbids—interferes with the Code's ordinary and intended operation. See, *e.g.*, *J.E.M.*, 534 U.S. at 144.

The legal default is that every federal statute operates according to its terms. "We have stated time and again that courts must presume that a legislature says in a statute what it means and means in a statute what it says there." *Conn. Nat'l Bank* v. *Germain*, 503 U.S. 249, 253-254 (1992). Congress never said that the Code's remedies were "exclusive[]" (contrast *Simmons*, 622 F.3d at 96 n.2), and it necessarily understood (under the implied-repeal standard) that the FDCPA would remain available as an independent remedy for debt-collector misconduct. The decision to eliminate the FDCPA's superimposed scheme does nothing to advance the Code, but it does frustrate legislative intent. See *Morton*, 417 U.S. at 551.

4. Professional debt collectors are purchasing huge sets of knowingly stale claims, and flooding bankruptcy proceedings with claims that everyone knows are legally unenforceable. While many individual claims impose little harm, the aggregate effect of this practice is staggering. Congress had every reason to impose additional restrictions on groups that tend to abuse the system in order to collect debts. It was aware that existing remedies were not always adequate to deter wrongful collection practices, and it intended the FDCPA to overlap with those schemes to provide added protection. The remedies available under the Code for *ordinary* creditors are not calibrated to handle the business methods of debt collectors. The FDCPA performs that role, and the district court erred in refusing to apply this superimposed scheme as Congress intended. Its judgment should be reversed.

STANDARD OF REVIEW

This Court "'review[s] *de novo* the district court's grant of a motion to dismiss under [Fed. R. Civ. P.] 12(b)(6) for failure to state a claim, accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff.'" *Lanfear* v. *Home Depot, Inc.*, 679 F.3d 1267, 1275 (11th Cir. 2013).

ARGUMENT

UNDER THE SUPREME COURT'S CONTROLLING ANALYSIS, THE BANKRUPTCY CODE DOES NOT PRECLUDE VIABLE CLAIMS UNDER THE FDCPA

"When two federal statutes address the same subject in different ways, the right question is whether one implicitly repeals the other * * * ." *Randolph*, 368 F.3d at 730. This standard is demanding, and Congress's intent to displace one of its own laws must be "clear and manifest" (*Morton*, 417 U.S. at 551): "Courts should 'not infer a statutory repeal unless the later statute *expressly contradicts* the original act or unless such a construction is *absolutely necessary* in order that the words of the later statute shall have any meaning at all." *Simon*, 732 F.3d at 274 (quoting *Nat'l Ass'n of Home Builders* v. *Defenders of Wildlife*, 551 U.S. 644, 662 (2007)) (emphases added).

Under this controlling standard, there is no preclusion here. Congress did not textually foreclose the FDCPA in the bankruptcy context, and there is no serious (much less "irreconcilable") conflict between the Code and the FDCPA. These statutory schemes can readily co-exist, and it is "easy to enforce each one." *Randolph*, 368 F.3d at 730. The court below misread the Code and misunderstood this established standard. Its judgment should be reversed.

I. THERE IS NO TEXTUAL SUPPORT FOR PRECLUSION BECAUSE THERE WAS NO CLEARLY EXPRESSED STATEMENT OF PRECLUSION IN EITHER SCHEME

There is no "clearly expressed legislative decision" that the Code replace the FDCPA in this context. *Randolph*, 368 F.3d at 730. No court examining this question—in any setting—has suggested that Congress textually displaced the FDCPA. There assuredly is no such statement in the Code: it provides that creditors "may file a proof of claim" (11 U.S.C. 501(a)), and authorizes parties to "object[]" because the claim is "unenforceable * * * under any agreement or applicable law" (11 U.S.C. 502(a), (b)(1)). It also instructs that the trustee "shall," "if a purpose would be served, examine proofs of claims and object to the allowance of any claim that is improper." 11 U.S.C. 704(a)(5); see also 11 U.S.C. 1302(b)(1) (same). But Congress crafted these procedures without any special or exclusive mechanism for handling patently invalid claims. Bankruptcy courts are authorized to address misconduct through the judiciary's general contempt powers (under 11 U.S.C. 105, Fed. R. Bankr. P. 9011, and its inherent authority). See, *e.g.*, *Randolph*, 368 F.3d at 728; *Walls*, 276 F.3d at 510. But nowhere does the Code textually declare those general remedies the *exclusive* means for redressing unfair, misleading, or unlawful collection activities. See, *e.g.*, *Wagner* v. *Ocwen Fed. Bank*, No. 99-C-5404, 2000 U.S. Dist. LEXIS 12463, at *3-*4 (N.D. Ill. Aug. 28, 2000).

Nor is there any preclusive language in the FDCPA: it directly prohibits a variety of unlawful collection activities, and provides a statutory right of action for redressing those violations. 15 U.S.C. 1692k; see also *Crawford*, 758 F.3d at 1256-1257 (finding untimely proofs of claim actionable under the FDCPA); *Turner* v. *J.V.D.B. & Assocs., Inc.*, 330 F.3d 991, 993 (7th Cir. 2003) (finding discharge-injunction violations actionable under the FDCPA). Nowhere in the FDCPA did Congress suggest that conduct related to the Code was exempt from the FDCPA's universal reach. On the contrary, Congress framed the FDCPA's prohibitions with broad language (*e.g.*, "[a] debt collector may not use *any* false, deceptive, or misleading representation or means 15 U.S.C. 1692e (emphasis added)), and Congress even underscored, expressly, the "inadequa[cy]" of "[e]xisting" remedies for curbing abusive practices (15 U.S.C. 1692(b)). That suggests the *opposite* intent of deferring to other schemes to regulate "debt collectors."

Had Congress intended to preclude FDCPA claims premised on bankruptcy-related misconduct, it knew exactly how to do it. The FDCPA itself draws similar exceptions in other places (see, *e.g.*, 15 U.S.C. 1692g(e)), and Congress was well aware of the obvious connection (which it specifically recognized) between abusive debt-collection and "personal bankruptcies" (15 U.S.C. 1692(a)). There is no reason to think that Congress crafted a scheme to protect debtors from abuse, yet immediately withdrew those protections for those debtors most at risk—vulnerable consumers forced into bankruptcy (see, *e.g.*, *Dawson* v. *Wash. Mutual Bank, F.A. (In re Dawson)*, 390 F.3d 1139, 1148 (9th Cir. 2004)).

Congress acts against the backdrop of settled judicial law, and it is settled that the judiciary will read two statutes to co-exist unless Congress explicitly says otherwise, or dual enforcement is impossible. See, *e.g.*, *Nat'l Ass'n of Home Builders*, 551 U.S. at 662. Congress was presumptively aware of this standard, and it was also aware that debt collectors participate in bankruptcies. This is not some obscure or unpredictable overlap between two wholly unrelated schemes; the connection between the Code and the FDCPA is obvious. Congress would have invoked clear text if it wished to set aside the FDCPA in all cases involving bankruptcies; its silence is conspicuous.

II. THERE IS NO CONFLICT ("IRRECONCILABLE" OR OTHERWISE) BETWEEN THE FDCPA AND THE CODE

The district court found that the Code and the FDCPA "irreconcilabl[y] conflict" in this setting: according to the court, the Code gives debt collectors the absolute "right" to file knowingly time-barred claims, and the FDCPA conflicts with the Code by punishing the exercise of that right: "as long as state law preserves a right to payment after the limitations period expires, the Code authorizes filing a proof of claim on a debt known to be stale, while the Act (as construed by *Crawford*) prohibits that precise practice." Dkt. 28 at 15. Because these "contradictory provisions cannot possibly be given effect simultaneously," "the Act must give way to the Code." *Ibid*.

The district court's reasoning is incorrect in multiple respects. Its core premise is wrong because the Code does not confer any "right" to file a proof of claim without a good-faith belief in its enforceability. On the contrary, a plain assessment of the Code's text, its structure, and its intended operation proves (unsurprisingly) that deliberately filing a baseless claim is forbidden. This eliminates any conceivable conflict between these two provisions: the FDCPA and the Code easily coexist if each scheme prohibits the same practice.

Even aside from that initial error, the court's conclusion is independently wrong: a party who has *permission* under the Code may always comply with both schemes by simply refraining from activity that violates the FDCPA. As a matter of simple logic, there is a clear difference between having a "right" to act and being *compelled* to act. It is simply not true that federal law is impliedly repealed whenever one provision forbids what another provision allows. The district court's contrary view diminishes the stringent standard for identifying a true "conflict" in the implied-repeal setting.

Because the district court rested its holding on narrow grounds—(i) its belief in a "right" to file frivolous proofs of claim, and (ii) its finding of a "conflict" whenever a party is asked to forgo "permitted," not *required*, activity—the court did not consider the "more sweeping approaches" to preclusion adopted by the Second and Ninth Circuits. Dkt. 28 at 16 n.24. As the Third and Seventh Circuits have found, however, there is no basis for precluding the FDCPA in its entirety whenever a debt collector's activity relates to the Code. These schemes each regulate different interests in different ways, and Congress presumptively intended them to operate together.

A. There Is No Preclusion Because There Is No "Right" To File A Time-Barred Proof Of Claim

Contrary to the district court's contention, there is no conflict at all, because Midland's conduct is forbidden under *both* schemes. The FDCPA can be enforced simultaneously with the Code.

1. Midland's conduct is plainly prohibited by the FDCPA. In *Crawford*, this Court held that filing a knowingly time-barred proof of claim violates the FDCPA. 758 F.3d at 1256-1257. That is exactly what Midland has done here: it filed a proof of claim without any good-faith belief that it was an enforceable obligation. On its face, the debt involved a transaction from over *twelve years* ago (May 28, 2003); the original creditor charged off the debt on January 5, 2004, still over a *decade* ago. Dkt. 1-1 at 3. The limitations period is only six years (at most), meaning the last chance to sue expired in May 2009. Dkt. 21 at 1 & n.1. Midland submitted this proof of claim without any plausible legal theory that it should be paid out of estate funds. Midland's only hope was that the debtor may unwittingly "fail to object"

and the trustee may "fail[] to fulfill its statutory duty to object to improper claims." *Crawford*, 758 F.3d at 1259 n. 5, 1261. The Code's automatic-allowance provision (11 U.S.C. 502(a)) would then force Johnson to "pay the debt from h[er] future wages as part of the Chapter 13 repayment plan, notwithstanding that the debt is time-barred and unenforceable in court." *Id.* at 1259. This renders Midland's actions "'unfair,' 'unconscionable,' 'deceptive,' and 'misleading' within the broad scope of § 1692e and § 1692f." *Id.* at 1260.

2. Midland's conduct also plainly violates the Code, and the district court's contrary contention is incorrect. According to the district court, every creditor has an absolute "right" to file "a proof of claim on a time-barred debt," even where a creditor is fully aware that the claim is not legally enforceable. Dkt. 28 at 7-8, 13. This contention is fundamentally mistaken.

<u>First</u>, it is incompatible with the Code's plain text. A claim is defined as a "right to payment" (11 U.S.C. 101(5)(A)), and "[t]he plain meaning of a 'right to payment' is nothing more nor less than an *enforceable obligation*" (*Pa. Dep't of Pub. Welfare* v. *Davenport*, 495 U.S. 552, 559 (1990) (emphasis added)). The Supreme Court has repeatedly held that only legally "enforceable" claims are authorized under 11 U.S.C. 101(5)(A) (see, *e.g.*, *FCC* v. *NextWave Pers. Communs. Inc.*, 537 U.S. 293, 303 (2003); *Cohen* v. *de la Cruz*, 523 U.S. 213, 218 (1998); *Johnson* v. *Home State Bank*, 501 U.S. 78, 83-84 (1991)), and stale claims are *not* legally

"enforceable" (see, *e.g.*, *Crawford*, 758 F.3d at 1261 (a time-barred claim is "unenforceable"); *McMahon*, 744 F.3d at 1020 (time-barred claims are not "legally enforceable"); *Huertas* v. *Galaxy Asset Mgmt.*, 641 F.3d 28, 32 (3d Cir. 2011) (the statute of limitations "renders [the debt] unenforceable")).

The district court is accordingly wrong that creditors still have a "right to payment" because the limitations period "'extinguishes the remedy'" but not the underlying debt. Dkt. 28 at 3-5. State law may preserve the underlying obligation, but it is still not an "*enforceable*" obligation. See *Huertas*, 641 F.3d at 32 ("Huerta's debt obligation is not extinguished by the expiration of the statute of limitations, *even though the debt is ultimately unenforceable in a court of law*") (emphasis added).

A time-barred claim, by contrast, imposes at most a *moral* obligation. See *McMahon*, 744 F.3d at 1020 ("some people might consider full debt re-payment a *moral obligation* even though the legal remedy for the debt has been extinguished") (emphasis added). Parties have no right to share in an estate's limited assets—and divert funds from legitimate creditors—based on a "moral" obligation. Unless the "right" is "enforceable," it does not qualify under the Code. Because the creditor has no corresponding "right to payment," it has no basis for filing a proof of claim under Section 501(a).

Second, the notion that parties have a "right" to file stale claims is directly at odds with the trustee's statutory duty to *object* to stale claims. See 11 U.S.C. 704(a)(5), 1302(b)(1). There is no reason to think that Congress embraced the pointless exercise of authorizing creditors to file a time-barred claim so the trustee could immediately object to that time-barred claim. Bankruptcies are sufficiently busy without make-work. "[F]iling objections to time-barred claims consumes energy and resources in a debtor's bankruptcy case, just as filing a limitations defense does in state court." *Crawford*, 758 F.3d at 1261. Midland's business practice wastes limited judicial and party resources with no offsetting public benefit. There is no societal value to permitting a debt collector to purchase time-barred debts for pennies on the dollar, all in the hope of flooding bankruptcy courts with "hundreds of delinquent accounts" and "unenforceable" claims. *Id*. at 1256. That does not advance the "just, speedy, and inexpensive determination of every case and proceeding." Fed. R. Bankr. P. 1001; see also, *e.g.*, *In re Sekema*, 523 B.R. 651, 655 (Bankr. N.D. Ind. 2015) (sanctioning debt collectors for filing knowingly time-barred claims, and imposing a fine that "reflects an appreciation of the system-wide burdens created by this type of misconduct").

The decision below is incompatible with this statutory structure. It also flunks this simple question: Why would any rational legislative body simultaneously grant an absolute "right" for one party to file a claim that another party has an absolute duty to reject? These time-barred claims will fail, by design, unless the trustee fails to discharge her legal obligations. That statutory design is incompatible with a purported "right" to file unenforceable claims.

Third, the district court's understanding is further inconsistent with the routine award of sanctions against parties filing knowingly time-barred claims:

> Plaintiff[] would have us proceed under a theory where because of the ignorance of one's adversary, one could advance a claim groundless in law. Rule 11 does not concern itself with the failure to assert an available defense. Rule 11 does not permit a plaintiff to avoid sanctions merely because the opposing party or the judge might not immediately recognize that the assertion is groundless. Where an attorney knows that a claim is time-barred and has no intention of seeking reversal of existing precedent, as here, he makes a claim groundless in law and is subject to Rule 11 sanctions.

Brubaker v. *City of Richmond*, 943 F.2d 1363, 1385 (4th Cir. 1991) (footnote omitted); see also, *e.g.*, *FDIC* v. *Calhoun*, 34 F.3d 1291, 1299 (5th Cir. 1994); *White* v. *GM Corp*., 908 F.2d 675, 682 (10th Cir. 1990).

This, again, describes Midland's conduct exactly. Midland purchased the debt at a steep discount precisely because the debt is time-barred and unenforceable. The affirmative defense is "blindly obvious": "coming to the conclusion that the claims might be time-barred did not require either claimant to look beyond the information it already possessed." *Sekema*, 523 B.R. at 654. Nor is there any merit in the district court's suggestion (Dkt. 28 at 5-6, 9 n.14) that the claim was fair to file "because the statute of limitations is an affirmative defense which must be pled or waived." *Steinle* v. *Warren*, 765 F.2d 95, 101 (7th Cir. 1985) (rejecting this contention and labeling the claim "frivolous"); *Leeds Bldg. Prods.* v. *Moore-Handley, Inc. (In re Leeds Bldg. Prods.)*, 181 B.R. 1006, 1010 (Bankr. N.D. Ga. 1995) (Rule 9011 places a "prefiling duty upon a plaintiff to conduct an inquiry into possible affirmative defenses" in "unusual or extreme circumstances where such a defense is obvious and needs no discovery to establish"); see also *In re Excello Press, Inc.*, 967 F.2d 1109, 1112-1113 (7th Cir. 1992).[1]

In short, "[s]anctions therefore would be appropriate if any attorney knowingly filed suit on an undisputedly time-barred claim." *Goins* v. *JBC & Assocs., P.C.*, 352 F. Supp. 2d 262, 272 (D. Conn. 2005). And that proposition is impossible to square with any alleged "right" to file time-barred claims: there is no such thing as a "right" to engage in conduct that subjects a party to sanctions. The entire point of a sanction is that conduct is not merely prohibited, but sufficiently egre-

[1] Alabama law applies materially indistinguishable principles: "It is one thing to file a lawsuit where the claim is of debatable legitimacy or where the defense is doubtful, but it is quite another to file a claim knowing it to be without merit or knowing that there exists a complete defense. The court system exists for the resolution of genuine disputes, and must not be used as a means of coercing a party either to pay a debt that he does not owe or be compelled to expend a greater sum to defend an illegitimate claim." *Empiregas, Inc.* v. *Feely*, 524 So.2d 626, 628 (Ala. 1988) (so holding in the context of a malicious-prosecution suit based on the filing of a knowingly time-barred claim).

gious to warrant *punishment*. Parties are not typically punished for exercising legitimate rights.

This emphatically underscores that Midland's practice is not even *tolerated* under the Code, but forbidden; this eliminates any plausible basis for identifying a "conflict" between the Code and the FDCPA: if both prohibit the same act, the schemes readily coexist and there is no preclusion. See, *e.g.*, *Brimmage* v. *Quantum3 Group LLC (In re Brimmage)*, 523 B.R. 134, 140 (Bankr. N.D. Ill. 2015).

3. The district court had no meaningful answers for any of these points. Instead, it targeted a series of issues that it believed separately supported a "right" to file time-barred claims. The court's theories are unavailing.

<u>First</u>, the district court cited the claims process itself as a reason to presume time-barred claims were permitted: "The objections a party in interest may raise include that the 'claim is unenforceable,' which would be unnecessary if proofs of claim on unenforceable claims were prohibited to begin with." Dkt. 28 at 7-8 (citing 11 U.S.C. 502(b)(1)).

This misunderstands the Code entirely. The fact that Congress created a procedure for challenging claims hardly proves that parties have a right to file patently invalid claims. Congress would have understood the need to create a process for resolving *good-faith* disputes. The existence of those procedures does not suggest that Congress granted anyone a right to file a "claim" that is indisputably *not* entitled to payment—and where the only prospect of obtaining payment turns on the hope that the debtor or trustee will fail to file a *mandatory* objection. See, *e.g.*, *Trevino* v. *HSBC Mortgage Servs., Inc. (In re Trevino)*, No. 10-70594, 2015 WL 3883180, at *15 (S.D. Tex. June 19, 2015).

Here, of course, there should have been no need for any adjudicatory process. Midland is fully aware of the defects in its claim and it has no good-faith basis for defending its filing. Had it not filed the claim in the first place, no one would have wasted judicial or party resources in grappling with a frivolous claim.

Second, according to the district court, because Section 101(5)(A) "defines a claim to include a right to payment that is 'continent' or 'unmatured,'" the Code "expressly contemplates the filing of proofs of claim on presently unenforceable claims." Dkt. 28 at 7.

The Code's definition of "claim" is broad, but this misunderstands Congress's objective: it wanted a process that could afford "complete relief." "The legislative history of the [Bankruptcy] Code suggests that Congress intended to define the term claim very broadly under § 101(5), so that all *legal obligations* of the debtor, no matter how remote or contingent, will be able to be dealt with in the bankruptcy case." *Bendall* v. *Lancer Mgmt. Group, LLC*, 523 F. App'x 554 (11th Cir. 2013) (unpublished) (quoting *Epstein* v. *Official Comm. of Unsecured Creditors of Estate of Piper Aircraft Corp.*, 58 F.3d 1573, 1576 (11th Cir. 1995)). In a world in which parties could not file contingent or unmatured claims, parties would be shut out of the bankruptcy proceeding. They could not share in the bankruptcy estate, and the debtor could not obtain full relief or a fresh start. Once those unresolved claims ripen, the debtor could be thrown back into debt, threatening the viability of any Chapter 13 plan and frustrating bankruptcy's objective.

Congress eliminated those concerns by widening the scope of "claims" to capture all claims that might have a "right to payment"—*i.e.*, a *legally enforceable obligation*. But nowhere did Congress suggest that this new definition of "claim" was intended to sweep in knowingly *invalid* claims. The goal was to bring all legitimate interests before the bankruptcy court. A party with a knowingly stale claim does not have any *legitimate* interest. It simply hopes to divert funds from the estate without any legal "right to payment." That behavior harms debtors and creditors alike, and there is no indication that Congress intended anyone to burden the process with knowingly stale claims.

Likewise, it is true that, "[i]n expanding the definition of the term 'claim,' Congress established that the existence of a right to payment is more extensive than the existence of a cause of action that entitles an entity to bring suit." *Keeler* v. *PRA Receivables Mgmt., LLC (In re Keeler)*, 440 B.R. 354, 362 (Bankr. E.D. Pa. 2009); see also Dkt. 28 at 6. But Congress only expanded the term in certain respects, and those respects were *enumerated*: things like "contingent," "unmatured," and "disputed." 11 U.S.C. 101(5)(A). That satisfied the purpose of bringing all *enforceable* obligations before the court to provide comprehensive relief. This improved upon the prior system where known claims on the horizon would soon be enforceable but were shut out of the proceeding. H.R. Rep. No. 95-595, at 180 (1977). But stale claims fall outside this statutory category. Those claims are already resolved as a legal matter; they are not "contingent," "disputed," or "unmatured"—they are simply *unenforceable* (now and later). There is no comparable need to include those claims in the bankruptcy.

Third, the district court cited a host of cases "under the prior bankruptcy code" where parties filed stale claims that were "provable" but not "allowable." Dkt. 28 at 8-9. Yet those cases generally stand for the proposition that a creditor may share in the estate if no one objected to a stale claim. See, *e.g.*, *In re Solomons*, 2 F. Supp. 572, 573 (S.D.N.Y. 1932). That accurately describes the *legal consequences* of the Code's operation. But it does not stand for the very different proposition that parties are *entitled* to file knowingly stale claims. Moreover, these cases merely underscore exactly why this practice is actionable under the FDCPA.

"A proof of claim is, of course, *prima facie* evidence of its validity." *Gardner* v. *New Jersey*, 329 U.S. 565, 573 (1947). Debt collectors submit these claims fully aware that the law will treat *unenforceable* claims as *enforceable* until someone objects. The pre-Code cases simply confirm how that practice works. It shows the stark unfairness and impropriety of lodging a knowingly invalid claim: under the Code's clockwork procedures, a debt collector takes advantage of the possibility that others will miss the patent unenforceability of its claim, and thus collect on a barred debt. Congress set up the procedures as an efficient means of processing presumptively *legitimate* claims. None of the cases cited below suggest that Congress granted all "creditors" an absolute right to file a proof of claim without any good-faith belief in its enforceability.

Fourth, the district court believed that the FDCPA would interfere with the Code's operation by discouraging parties from exercising their statutory right to file claims. Dkt. 28 at 13. But it is the district court's view that is unworkable in practice. Midland's business model takes unfair advantage of the claims-allowance process. The Code does not permit parties to flood bankruptcy proceedings with knowingly baseless claims. This would frustrate the Code's design. Congress intended this process to be fair and efficient. There is nothing fair or efficient about lodging a claim that all agree should be denied unless the system fails. This burdens the parties, disrespects judicial economy, and diverts funds from honest creditors. See, *e.g.*, *Jenkins* v. *Genesis Fin. Solutions, LLC (In re Jenkins)*, 456 B.R. 236, 241 (Bankr. E.D.N.C. 2011) ("The issue is a real one, the problem is widespread, and it burdens both debtors and the courts."). The aggregate cost to the system is staggering: this imposes countless hours of attorney time and court expense in addressing stale claims. The fact is that lawyers are not always available (without expense) to handle objections to frivolous claims, and trustees will not always have sufficient time or resources to carefully examine each claim in every bankruptcy.[2]

As long as the business model is profitable, there is every reason to believe that these practices will continue. There is no reason to construe the Code in a way that unnecessarily tolerates such a serious problem.[3]

4. As established above, a debt collector "can easily satisfy both mandates" (*Dep't of Transp*. v. *Pub. Citizen*, 541 U.S. 752, 767 (2004)), because the challenged conduct is forbidden under both schemes. No one is compelled to do any-

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[2] Some courts, including the district court, noted that debtors are often represented in Chapter 13 bankruptcies. But not every debtor has legal representation, and not representation automatically extends to filing objections under Section 502(a)(1). Lawyers often charge a separate fee for lodging those objections, and this practice takes a real toll on parties with limited funds. Everyone agrees that these claims are objectionable; yet every dollar a debtor pays to obtain the inevitable ruling is a dollar that cannot be devoted to paying off legitimate claims or supporting the debtor's efforts to bring a successful plan to fruition.

[3] According to some courts, the FDCPA interferes with the "speedy" resolution of claims: it is far less efficient, they say, to entertain an adversary proceeding than simply to object to the time-barred claim under the Code's ordinary process (11 U.S.C. 502(b)). See, *e.g*., *B-Real, LLC* v. *Rogers*, 405 B.R. 428, 432 (M.D. La. 2009). While that may be true for some individual claims, it is most certainly false on a systemic level. The entire point of the FDCPA is to stop unfair practices before they begin. These suits deter future misconduct, eliminating the need to expend *any* effort objecting to baseless claims.

thing under the Code that is forbidden under the FDCPA; indeed, the challenged conduct is not even *permitted* under the Code. Any debt collector who refuses to file baseless claims will automatically comply with every FDCPA requirement. Debt collectors can avoid liability—under *both* schemes—by simply not violating the law. The district court's finding of a "positive[] repugnan[cy]" was incorrect (Dkt. 28 at 15), and it should be reversed.

B. There Is No Preclusion Even If There Somehow *Is* A "Right" To File A Time-Barred Proof Of Claim

Even if there were a "right" to file knowingly stale claims, the Code and the FDCPA would still easily co-exist, eliminating the case for preclusion. See, *e.g.*, *J.E.M.*, 534 U.S. at 143-144. The district court, however, disagreed. It found that the question is not whether mutual compliance was possible, but instead whether Midland could exercise its rights under the Code without being punished under the FDCPA: "The plaintiff is not urging that the defendant 'comply' with both the Act and the Code, she is insisting that the defendant comply with the Act by surrendering its rights under the Code to file a proof of claim on a time-barred debt." Dkt. 28 at 13. Because this required "the negation of one [Act] by the enforcement of the other," the court reasoned, the schemes were in "irreconcilable conflict." Dkt. 28 at 13-15.

This is not the way the ordinary preclusion analysis works. One always has a "right" to act in ways not prohibited by law. The fact that Midland may have to forgo filing claims in bankruptcy is no different from any other regulated party forgoing any other activity it would otherwise engage in (absent the regulation). See *POM Wonderful LLC* v. *Coca-Cola Co*., 134 S. Ct. 2228, 2238-2242 (2014). The implied-repeal standard is remarkably high: it requires a true conflict that prevents parties from simultaneously complying with two provisions. *Nat'l Ass'n of Home Builders*, 551 U.S. at 662. There is no such conflict in this case, and the district court's contrary theory requires too little before the judiciary may refuse to apply a binding federal statute.

Indeed, it is absolutely clear in this case that Midland would have no difficulty at all complying with both schemes. The Code never *mandates* that parties file proofs of claim; by its own terms, the Code's allowance is *permissive*: "A creditor * * * may file a proof of claim." 11 U.S.C. 501(a). "Thus, it is within the creditor's discretion whether or not to file the claim," and courts can "apply both the Bankruptcy Code and the FDCPA." *Grandidier*, 2014 U.S. Dist. LEXIS 169279, at *4; see also *Trevino*, 2015 WL 3883180, at *14 ("If the Code *required* holders of a debt on which the statute of limitations to run to file proofs of claim, this might conflict with the FDCPA. * * * However, there is no such requirement."); *Patrick* v. *Worldwide Asset Purchasing II, LLC*, No. 1:14-cv-00544-TWP-TAB, 2015 U.S. DIst. LEXIS 17725, at *4-*5 (S.D. Ind. Feb. 13, 2015).

This (proper) analysis makes perfect sense: Congress at times singles out specific groups for special restrictions or heightened regulations. Those targeted regulations do not generate a "conflict" with the *absence* of regulation elsewhere. It simply shows that Congress intended to fill the gaps left open by other schemes. *POM Wonderful*, 134 S. Ct. at 2238-2239.

In this case, the FDCPA imposes restraints on debt collectors that are not imposed on others in bankruptcy. This restricts their conduct alone, but it does so for a reason: "debt collectors" are *not* ordinary creditors, 15 U.S.C. 1692a(6), and Congress had every reason for targeting their activity separately. The Code's general remedies may strike an appropriate balance in most cases, but that balance is not necessarily adequate for professional debt collectors. The risks of misconduct are greater, the prospect of harm is more serious, and the need for deterrence is increased. The FDCPA accordingly supplements the Code's remedies for this subset of actors. See 15 U.S.C. 1692(a)-(b), (e). There is no reason to think that Congress excluded these important protections for bankruptcy-related activity. The fact that debt collectors must forgo certain claims in Title 11 is a direct consequence of Congress's policy decision—it is a reason to *enforce* the FDCPA, not preclude it.

C. There Is No Preclusion Under The "Sweeping" Theory That *All* FDCPA Claims Are Precluded In The Bankruptcy Context

Due to its narrow holding, the district court found it unnecessary to confront the broader circuit conflict over the FDCPA's interaction with the Code. Compare, *e.g.*, *Walls* v. *Wells Fargo Bank, N.A.*, 276 F.3d 502, 510-511 (9th Cir. 2002) (holding the FDCPA claims "precluded"), and *Simmons* v. *Roundup Funding LLC*, 622 F.3d 93, 96 (2d Cir. 2010) (finding that the Code precluded an FDCPA claim over an "inflated" proof of claim), with *Randolph* v. *IMBS, Inc.*, 368 F.3d 726, 730-733 (7th Cir. 2004) (refusing to find the FDCPA "repealed by implication"), and *Simon* v. *FIA Card Servs., N.A.*, 732 F.3d 259, 273-274 (3d Cir. 2013) ("follow[ing] the Seventh Circuit's approach," and rejecting *Simmons* and *Walls*, to hold that "[t]he proper inquiry * * * is whether the FDCPA claim raises a direct conflict" between the Code and the FDCPA "or whether both can be enforced").

Contrary to *Walls*'s contention, the Code does not occupy the field. It has no exclusive set of remedies, and there is no basis for foreclosing the entire FDCPA for any claims concerning bankruptcy-related conduct. On the contrary, Congress concluded that debt collectors pose a risk of harm that exceeds the risk imposed by ordinary creditors. That judgment applies with equal force in the bankruptcy setting, and the FDCPA's application does not frustrate any legitimate aspect of the Code.

If this Court reaches this question on appeal, it should hold that "[t]he Bankruptcy Code of 1986 does not work an implied repeal of the FDCPA." *Randolph*, 368 F.3d at 732.

1. The FDCPA and the Code operate in tandem, and there is no indication that Congress intended to exempt bankruptcy-related misconduct from the FDCPA

a. As *Randolph* explained, "[w]hen two federal statutes address the same subject in different ways, the right question is whether one implicitly repeals the other." 368 F.3d at 730. That showing, again, is demanding: "Repeal requires either an 'irreconcilable conflict between the statutes or a clearly expressed legislative decision that one replace the other.'" *Simon*, 732 F.3d at 273. Even where statutes "overlap[]" (*id*. at 274), if it "is easy to enforce both statutes, and any debt collector can comply with both simultaneously," then the schemes co-exist.

b. *Walls* reached the opposite conclusion, but it started by flipping the correct standard on its head. Rather than asking whether Congress expressly foreclosed one statute for the other, *Walls* instead asked whether Congress *indicated* an intent for both laws to apply: "Nothing in either Act persuades us that Congress intended to allow debtors to bypass the Code's remedial scheme when it enacted the FDCPA." 276 F.3d at 510. The question is not whether Congress explicitly *endorsed* both schemes but whether Congress explicitly *precluded* one in favor of the other. Unless the Code textually prohibited FDCPA claims in this context, there was no basis for *Walls* to preclude those claims without a manifest showing of irreconcilable conflict. The Ninth Circuit, however, never asked whether the two schemes *could* operate together; it simply found that the Code's framework was "'complex, detailed, and comprehensive'" (*ibid.*)—a point that says nothing about whether another law could co-exist with that detailed scheme. See, *e.g.*, *Johnson*, 421 U.S. at 459 ("Despite Title VII's range and its design as a comprehensive solution for the problem of invidious discrimination in employment, the aggrieved individual clearly is not deprived of other remedies he possesses and is not limited to Title VII in his search for relief."); cf. *English* v. *General Elec. Co.*, 496 U.S. 72, 87 (1990) ("the mere existence of a federal regulatory or enforcement scheme," even a "detailed" one, "does not by itself imply pre-emption of state remedies").[4]

Federal laws operate in accordance with their plain text, and "[o]verlapping statutes do not repeal one another by implication; as long as people can comply with both, then courts can enforce both." *Randolph*, 368 F.3d at 731. The FDCPA comfortably reaches the conduct at issue. It was not necessary for Congress to indicate that the FDCPA would "'overlay'" the Code's protections (contra *Simmons*, 622 F.3d at 96), because the FDCPA would already do exactly that under the controlling standard.

[4] Even on its own terms, *Walls* answered this question incorrectly. It was an express purpose of the FDCPA to supplement other remedies: Congress detailed the harms imposed by professional debt collectors (15 U.S.C. 1692(a)), and it declared existing remedies "inadequate" to curb those harms (15 U.S.C. 1692(b)). This statement alone contradicts the notion that Congress silently intended to restrict the FDCPA's natural scope.

c. While not mustering a *true* conflict, some courts have declared that the FDCPA would wrongly interfere with the Code's operation. *Walls*, 276 F.3d at 510. Because the Code provides a fully reticulated system, any attempt to superimpose the FDCPA's remedies would frustrate Congress's design. The FDCPA, in short, cannot supplement the Code's remedies. See, *e.g.*, *B-Real, LLC* v. *Chaussee (In re Chaussee)*, 399 B.R. 225, 236-237, 240 (B.A.P. 9th Cir. 2008).

This analysis fails in multiple respects. The first is that it impermissibly waters down the implied-repeal standard. It is well settled that "overlapping and not entirely congruent remedial systems can coexist," and "[t]his is so even if the application of one system is jarring against the background of another." *Randolph*, 368 F.3d at 731. The "remedies available" under each scheme, "although related, and although directed to most of the same ends, are separate, distinct, and independent." *Johnson*, 421 U.S. at 459. The fact that one scheme may be comprehensive and detailed means little in the absence of irreconcilable conflict: unless it is impossible for the statutes to operate together, courts apply the strong presumption against implied repeal. See *J.E.M.*, 534 U.S. at 144 ("Here we can plainly regard each statute as effective because of its different requirements and protections.").

Nor is it even true that the FDCPA would upset the Code's "balance" between "the interests of debtors and creditors." *Walls*, 276 F.3d at 510. Simply put, not all creditors are the same. The FDCPA reflects a clear legislative determination that "debt collectors" are different from ordinary creditors, and different rights and remedies are necessary to counteract abusive debt-collection practices. *Crawford*, 758 F.3d at 1258 n.3. No rule or requirement under the Code is "negated" by punishing a debt collector for independently violating the FDCPA. See *Randolph*, 368 F.3d at 732-733 ("[p]ermitting remedies for negligent falsehoods would not contradict any portion of the Bankruptcy Code"). The Code's "balance" for *ordinary* creditors—without any specific treatment for professional "debt collectors"—is reinforced, not disturbed, by the FDCPA's application: "[i]t would be better to recognize that the statutes overlap, each with coverage that the other lacks." *Id*. at 731; see also *POM Wonderful LLV* v. *Coca-Cola Co*., 134 S. Ct. 28, 2238 (2014) (refusing preclusion where "two statutes complement each other"); cf. *Bates* v. *Dow Agrosciences LLC*, 544 U.S. 431, 450 (2005) ("Private remedies that enforce federal misbranding requirements would seem to aid, rather than hinder, the functioning of FIFRA.").

Walls expressed concern about forcing courts to make "bankruptcy-laded determinations" to resolve FDCPA claims. 276 F.3d at 510. But there is no reason that bankruptcy issues are uniquely difficult for district courts to handle. See, *e.g*., 28 U.S.C. 1334(a) (assigning district courts "original" jurisdiction); 28 U.S.C. 158(a) (granting district courts jurisdiction to hear bankruptcy appeals). If Congress felt that bankruptcy issues (or any other issues) were somehow too cumbersome or complex, it could have exempted those issues from the FDCPA. But courts are presumptively capable of resolving those issues, and there is nothing in the statutory text forbidding those determinations.

Walls's concern is further inconsistent with the statutory structure. The FDCPA has no exhaustion requirement. It does not insist that parties first enforce underlying rights in other forums before asserting FDCPA claims for those violations. On the contrary, Congress, for example, specifically contemplated that parties would assert claims based on conduct not "permitted by law" (15 U.S.C. 1692f(1))—without any limitation on what "law" that might be. It knew courts would have to consult separate legal doctrine to determine those FDCPA claims. Yet there is no indication that Congress foreclosed the FDCPA in any jurisprudential field—or demanded that litigants exhaust remedies elsewhere before resorting to the FDCPA. The Ninth Circuit erred in grafting an artificial limitation onto the FDCPA. Cf., *e.g.*, *Johnson*, 421 U.S. at 461 (in concluding that both schemes coexist, finding that "Congress did not expect that a § 1981 court action usually would be resorted to only upon completion of Title VII procedures and the Commission's efforts to obtain voluntary compliance," despite the fact that pursuing one scheme might hobble the other).

d. *Walls* likewise perceived a "conflict" because it declared the Code's remedial scheme *exclusive*—effectively occupying the field. 276 F.3d at 510; see also *In re Chaussee*, 399 B.R. at 236-237. This contention is entirely question-begging: it is *not* true that the Code's remedies are "exclusive" if Congress understood that the FDCPA would operate in the background *as an additional check* for professional "debt collectors." Congress would have been aware that these statutes, by default, co-exist. There was no need to reference the FDCPA in the Code, because the FDCPA retains force under the implied-repeal standard. And there was no need to reiterate the FDCPA's remedies in the Code: those remedies already exist independently in the FDCPA itself. The inexorable consequence of the implied-repeal default is that the Code's remedies do *not* occupy the field.[5]

Overlapping coverage is not a valid basis for refusing to apply an independent federal statute. *J.E.M.*, 534 U.S. at 141-144. Congress often provides a choice of remedies across different statutory schemes. This avoids gaps in enforcement and permits Congress to calibrate remedies in each scheme for different actors.

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[5] Even if courts are "convinced" that the Code is "up to the task" of redressing violations in bankruptcy (*In re Chaussee*, 399 B.R. at 241), that is ultimately a policy determination for the political branches. Some courts may believe that the Code's remedies are sufficient, but Congress made a contrary determination in the FDCPA. It explained that other remedies are inadequate, and it imposed a broad set of prohibitions without any textual limitation for bankruptcy-related misconduct. Courts are not "at liberty to pick and choose among congressional enactments" when federal statutes overlap. *Morton*, 417 U.S. at 551. If Congress wishes to displace the FDCPA in any given setting, it must clearly express that determination in the statutory text. See *Kaymark*, 783 F.3d at 179 (rejecting preclusion and noting "the prudence of maintaining parallel FDCPA claims is not ours to decide").

POM Wonderful, 134 S. Ct. at 2239 (invoking "synergies among multiple methods of regulation"); *Conn. Nat'l Bank*, 503 U.S. at 253. What may be sufficient under the Code to punish ordinary creditors may not be sufficient to regulate debt collectors. The FDCPA permits Congress to target those different actors, and the unique harms they pose, with a scheme calibrated specifically for those actors. See *Randolph*, 368 F.3d at 732-733. The two schemes are not in "conflict" simply because some litigants elect to pursue one set of remedies over the other. *Johnson*, 421 U.S. at 461 ("these are the natural effects of the choice Congress has made available").[6]

e. *Walls* reasoned that permitting an FDCPA claim would "allow through the back door what [debtors] cannot accomplish through the front door—a private right of action." 276 F.3d at 510 (so holding for discharge violations).

This concern is misplaced. There is no need to identify a right of action under the Code because a right of action is authorized directly *under the FDCPA*. 15

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[6] Contrary to some courts' contentions, the FDCPA's availability does not render the Code "superfluous." *Necci* v. *Universal Fid. Corp.*, 297 B.R. 376, 381 (E.D.N.Y. 2003). The Code remains available for all debtors, and some debtors may prefer the Code to the FDCPA's independent remedies. See, *e.g.*, *Randolph*, 368 F.3d at 730-731 (explaining the Code's advantages in certain circumstances). And the Code is the only option where an *ordinary* creditor (as opposed to a "debt collector") violates the law. *Ibid*. These FDCPA claims will thus "have no impact whatever upon the vast majority of lawsuits brought under [the Code]." *Radzanower* v. *Touche Ross & Co.*, 426 U.S. 148, 156 (1976). The Code does not become "superfluous" merely because it may not be invoked in every situation it otherwise reaches.

U.S.C. 1692k. If Congress wished to limit the FDCPA's scope, it would have said so. It was aware of the obvious connection between debt collection and bankruptcy, and it would have exempted from the FDCPA activity related to pending bankruptcy proceedings. Compare, *e.g.*, *Carpenter* v. *Ries (In re Carpenter)*, 614 F.3d 930, 932 (8th Cir. 2010) (discussing 42 U.S.C. 407(a) and its express preclusion of "the operation of any bankruptcy or insolvency law"). Congress instead spoke expansively: it authorized, without limitation, FDCPA actions where debt collectors engage in conduct that exactly describes the conduct here. There is no need for courts to "imply" anything in order to recognize this independent statutory authority.

The more salient concern is reading Congress's express statutory action in the FDCPA out of existence. "'It would be dangerous in the extreme to infer * * * that a case for which the words of an instrument expressly provide, shall be exempted from its operation.'" *Conn. Nat'l Bank*, 503 U.S. at 254. Courts are no more permitted to negate express statutory rights than courts may invent rights that plainly do not exist. The high threshold for establishing implied repeals is designed in part to avoid exactly this kind of judicial interference with legislative judgments. *Astoria Fed. Sav. Loan Ass'n* v. *Solimino*, 501 U.S. 104, 109 (1991).

f. *Walls* again erred by effectively applying the standard for preempting *state* law, rather than the strict standard for precluding a co-equal *federal* statute. 276

F.3d at 510 (invoking *MSR Exploration* v. *Meridian Oil*, 74 F.3d 910 (9th Cir. 1996), a *preemption* case); see also *In re Chaussee*, 399 B.R. at 236 (acknowledging that *Walls*'s "rationale" was "based in large part" on *MSR Exploration*). Rather than searching for irreconcilability, *Walls* instead asked whether additional remedies were "necessary" or would frustrate the Code's comprehensive regime. This methodology conflicts with controlling law. See, *e.g.*, *Simon*, 732 F.3d at 275 (rejecting "the Ninth Circuit's reliance on a precedent involving federal statutory preemption of a state-law claim to decide whether a federal statute precludes a federal-law claim").

Preemption cases are not preclusion cases. See *POM Wonderful*, 134 S. Ct. at 2236. "Preemption is more readily inferred, so [preemption] decisions * * * are not informative about which federal laws apply to what transactions." *Randolph*, 368 F.3d at 730. Preemption is governed by a different standard, and its lower threshold often implicates considerations that are not even relevant in this context—such as maintaining national uniformity and federal control over some substantive area. See, *e.g.*, *POM Wonderful*, 134 S. Ct. at 2236.

Preclusion cases, by contrast, do not implicate those concerns. When the question is whether one *federal* statute precludes another *federal* statute, national uniformity is a given: in each situation, the standard will be federal in nature, and all courts (federal and state alike) will be bound by that "single, uniform standard."

See *Altria Group, Inc*. v. *Good*, 555 U.S. 70, 79-80 (2008) (internal quotation marks omitted); compare *MSR Exploration*, 74 F.3d at 914-915 (discussing the need for *federal* uniformity in the bankruptcy context). Congress also automatically retains full legislative control over the substantive area: there is no concern about patchwork regulation or private entities struggling to operate under 50 different regulatory regimes. There is a *single* regime: the overlapping framework—all under federal law—of the Code and the FDCPA. Compare *MSR Exploration*, 74 F.3d at 914 (explaining that the Code's "complex, detailed, and comprehensive provisions" reflect "Congress's intent to create a whole system under *federal* control," not *state* control) (emphasis added). If any aspect of that distinct federal regulation proves inadequate or inefficient, Congress itself can amend the Code or the FDCPA without worrying about varying state legislation.

MSR Exploration turned on factors irrelevant in this context, and *Walls* erred in its heavy reliance on that decision. There is no concern of frustrating a uniform federal standard because the FDCPA is a uniform federal law. There is a reason that preclusion is a "rare bird indeed" (*Randolph*, 368 F.3d at 730), and its conditions are unmet in this context.

2. Preclusion is further inconsistent with the purpose and history of each law

a. The Code's and the FDCPA's overlapping remedial schemes advance the purpose of each law: each law targets a different audience, and Congress would have necessarily intended both laws to apply in tandem.

The FDCPA targets "debt collectors" (not ordinary creditors), and prohibits its own set of misconduct. See, *e.g.*, *Randolph*, 368 F.3d at 730-732 (recognizing multiple differences in the FDCPA, including its exclusive prohibition of "negligent falsehoods"). Its primary focus is not the fair distribution of estate assets, but protecting debtors from abuse. See *Heintz* v. *Jenkins*, 514 U.S. 291, 292 (1995). The Code, by contrast, does not consider the "full scope of the interests the [FDCPA] protects" (*POM Wonderful*, 134 S. Ct. at 2241)—including the FDCPA's broad consumer safeguards and its leveling of the playing field for honest debt collectors (15 U.S.C. 1692(e)). It relies upon general contempt authority to redress misconduct of all creditors, without any specific directives for professional collectors. See, *e.g.*, *In re Chaussee*, 399 B.R. at 235-236.

There is no indication that Congress left to the Code the task of curtailing debt collectors' abusive practices. The Code's remedies under 11 U.S.C. 105, or a bankruptcy court's supervision, are not perfect substitutes for the FDCPA. See *Simon*, 732 F.3d at 277; *McCollough* v. *Johnson, Rodenburg & Lauinger, LLC*, 637 F.3d 939, 951 (9th Cir. 2011). The Code has no detailed disclosure requirements, and it lacks a comprehensive prohibition of false, misleading, unfair, deceptive, and unconscionable practices. Each scheme applies in different ways to the challenged conduct. *Randolph*, 368 F.3d at 730-731; see also *J.E.M.*, 534 U.S. at 144 (finding no preclusion where each law "reaches some distinct cases"); *Bd. of Supervisors* v. *Lackawana Iron & Coal Co.*, 93 U.S. 619, 623 (1876) (no incompatibility where the statutes' "scope and purposes are distinct and different").

The FDCPA's safeguards are just as essential in the bankruptcy context as any other. The Code leaves consumers exposed to direct contact by professional debt collectors in a way that the FDCPA does not. The fact that a debt collector has already violated the Code's rules does not somehow make the debtor *less* vulnerable to abuse.

Contrary to *Walls*'s contention, the FDCPA's purpose is not limited to "avoid[ing] bankruptcy." 276 F.3d at 510. Congress articulated the statutory purpose directly in the Act itself, and it extends broadly to preventing abusive practices everywhere. Congress even considered the specific need to level the playing field between all debt collectors, so that upright professionals would not suffer a competitive disadvantage by "refrain[ing]" from abusive practices. 15 U.S.C. 1692(e). There is no reason Congress would have tolerated a "competitive disadvantage" solely in bankruptcy-related activities. Nowhere, in short, did Congress hint that the FDCPA's sweeping protections vanish once a consumer declares bankruptcy.

In any event, the perceived "policy" of a statute does not limit its textual application. The FDCPA broadly addressed a host of violations and authorized categorical relief for those violations. The conduct at issue fits comfortably within multiple provisions of the FDCPA's scheme. That unambiguous text cannot be limited by a judicial declaration of Congress's "policy": "vague notions of a statute's 'basic purpose' are * * * inadequate to overcome the words of its text regarding the *specific* issue under consideration." *Mertens* v. *Hewitt Assocs*., 508 U.S. 248, 261 (1993).

Congress was distinctly aware of the connection between abusive debt-collection practices and bankruptcy, featuring it in the FDCPA's statement of purpose. See 15 U.S.C. 1692(a) (including "bankruptc[y]" in the very first subsection of the FDCPA's first section). The issue was obviously at the forefront of Congress's mind. Had it intended to exempt bankruptcy-related violations from the FDCPA's scope, this is not how Congress would have done it.[7]

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[7] Some courts finding preclusion further err in their reliance on *Kokoszka* v. *Belford*, 417 U.S. 642 (1974), a case definitively rejected as irrelevant by other circuits. As those circuits explained, the Supreme Court's statements were "at minimum dicta," and at most a "gloss" on a separate issue entirely. *Simon*, 732 F.3d at 278 (describing the "garnishment provisions" in *Kokoszka*). Under the FDCPA, the

[Footnote continued on next page]

b. These schemes' parallel history reinforces that Congress never intended the Code to preclude the FDCPA. See *POM Wonderful*, 134 S. Ct. at 2237. These two schemes have now coexisted for nearly four decades. Congress substantially reworked the Bankruptcy Code in 2005 (see Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, Pub. L. No. 109-8, 119 Stat. 23), and it has amended the FDCPA on multiple occasions (see, *e.g.*, *Jerman*, 559 U.S. at 604 n.22 ("[t]he FDCPA has been amended some eight times since its enactment in 1977")). Yet Congress has never cut back the FDCPA's natural reach where challenged conduct concerns bankruptcy. "If Congress thought [FDCPA] suits posed an obstacle to its objectives, it surely would have enacted an express pre[clusion] provision at some point during the [Code]'s" long history. *Wyeth* v. *Levine*, 555 U.S. 555, 574 (2009); see also *POM Wonderful*, 134 S. Ct. at 2237. It had ample opportunity to draw a line between the two laws if it so wished. Contrast 15 U.S.C. 1692n (expressly outlining the FDCPA's "[r]elation to State laws," including the scope of preemption).

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question is "how debt collectors interact with debtors," not "what assets are made available" in bankruptcy. *Randolph*, 368 F.3d at 731 (likewise distinguishing *Kokoszka*). The concerns animating the FDCPA apply with full force in this context.

In short, it makes little sense that Congress would have targeted a unique subset of creditors, imposed independent restrictions on that group's conduct, recognized the obvious connection between debt collection and bankruptcy, declared that the FDCPA exists to supplement "inadequate" remedies—and then presumed that courts would silently read the FDCPA out of existence whenever an FDCPA violation somehow relates to bankruptcy. The far more likely scenario is the one compelled by the controlling standard: in the absence of express preclusion or irreconcilable conflict, both schemes operate together to address a common harm. The FDCPA is not precluded, and the district court erred in holding otherwise.

3. Even if some theoretical conflict exists, there is no basis for categorically precluding all FDCPA claims in the bankruptcy context

Even if the Code and the FDCPA conflict in some small way, there is still no basis for categorically precluding all FDCPA claims in the bankruptcy context.

Any alleged "conflict" between the two schemes is more imaginary than real. It is fairly easy to construe these provisions to avoid any tension. See, *e.g.*, *Jerman*, 559 U.S. at 600 (the FDCPA's "provisions should not be assumed to compel absurd results"); *Heintz*, 514 U.S. at 296 (alleged "'anomalies' * * * depend for their persuasive force upon readings that courts seem unlikely to endorse"). For example, not every direct "contact" is a violation of the Code. See *In re Duke*, 79 F.3d 43, 45-46 (7th Cir. 1996); *U.S. ex rel. Farmers Home Admin.* v. *Nelson*, 969

F.2d 626, 630-631 (8th Cir. 1992). And not every "communication" automatically mandates a full set of FDCPA disclosures. See 15 U.S.C. 1692g(d) ("A communication in the form of a formal pleading in a civil action shall not be treated as an initial communication for purposes of subsection (a)."); *Brimmage* v. *Quantum3 Group LLC (In re Brimmage*), 523 B.R. 134, 141-142 (Bankr. N.D. Ill. 2015) ("[t]he filing of a proof of claim is specifically exempt by § 1692g(d) of the FDCPA from the validation letter requirement"). It is also possible to accommodate any tension with sensible practices: one might, for example, combine FDCPA disclosures with initial communications to the debtor. See *In re Brimmage*, 523 B.R. at 142 ("The Defendants provide no explanation as to why they are unable to provide the specified information when they file a proof of claim, participate in the § 341 meeting, object to plan confirmation or pursue motions for relief from stay."). Under a fair construction of each law, and a fair understanding of each interaction, virtually any theoretical "conflict" disappears. See, *e.g.*, *Buckley* v. *Bass & Assocs.*, 249 F.3d 678, 680-681 (7th Cir. 2001).

If all else fails, the answer is still not to void the entire FDCPA. Rather, the answer is to displace those narrow provisions that *do* pose unavoidable conflicts. See *McCollough*, 637 F.3d at 952 (explaining *Heintz* as "allowing for the possibility that the FDCPA may contain some 'additional, implicit, exception[s]' to account for the potential conflicts that may arise"). If the Court has any concerns about particular provisions of the FDCPA, it should resolve those issues with a scalpel, not a sledgehammer. *Heintz*, 514 U.S. at 296.

CONCLUSION

The district court's judgment should be reversed, and the case should be remanded for further proceedings.

Respectfully submitted.

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