No 16-348

IN THE

Supreme Court of the United States

MIDLAND FUNDING, LLC,
Petitioner,

v.

ALEIDA JOHNSON,
Respondent.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

**BRIEF FOR RESURGENT CAPITAL SERVICES, L.P.
AS AMICUS CURIAE IN SUPPORT OF PETITIONER**

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QUESTIONS PRESENTED

1. Whether the filing of an accurate proof of claim for an unextinguished time-barred debt in a bankruptcy proceeding violates the Fair Debt Collection Practices Act.

2. Whether the Bankruptcy Code, which governs the filing of proofs of claim in bankruptcy, precludes the application of the Fair Debt Collection Practices Act to the filing of an accurate proof of claim for an unextinguished time-barred debt.

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INTEREST OF AMICUS CURIAE[1]

Resurgent Capital Services, L.P. services debt owned by affiliated and non-affiliated entities and files proofs of claim for that debt in bankruptcy cases. Resurgent and its affiliates, like the petitioner, have been sued in numerous cases alleging that the filing of proofs of claim on account of time-barred debt violates the Fair Debt Collection Practices Act. Indeed, the opinion below addresses not only the case currently before the Court, but also another case in which Resurgent was a defendant. *See* Pet. Br. 10 n.2; Pet. App. 1a. Moreover, an affiliate of Resurgent's is the respondent in a petition presenting the same question as that presented here, and that this Court is presumably holding pending the resolution of this case. *See Owens* v. *LVNV Funding, LLC*, No. 16-315.

SUMMARY OF ARGUMENT

The Fair Debt Collection Practices Act (FDCPA) is a consumer protection statute whose manifest purpose is to protect individual borrowers. Its text and legislative history make clear that, although the statute offers broad protection from unfair debt practices, including to certain third parties in addition to consumer borrowers themselves, all of those protections are ultimately directed at benefiting and protecting consumer borrowers.

A proof of claim in bankruptcy, however, is directed to an entirely different entity—the bankruptcy estate—which is essentially a trust operated for the

[1] No counsel for a party authored this brief in whole or in part. No party or its counsel made a monetary contribution intended to fund the preparation or submission of this brief. The parties have filed blanket consent to the filing of amicus briefs.

benefit of creditors, and in which the debtor typically lacks any economic interest. Indeed, a principal purpose of the Bankruptcy Code is to *separate* the rights and interests of the debtor from those of the bankruptcy estate. To the extent that the allowance of a proof of claim for a time-barred debt causes an injury, that injury is borne by other creditors who risk receiving a diluted recovery on their claims against the estate—not by the debtor.

That is why the FDCPA has no application to the filing of proofs of claim. Under the Bankruptcy Code, an allowed proof of claim entitles a creditor to recover only from the bankruptcy estate, a legal entity that is comprised of certain property of the debtor but is separate and distinct from the consumer debtor. The estate is administered by a trustee—a bankruptcy professional appointed by the Office of the United States Trustee—who oversees the collection and distribution of estate property to creditors. The Code assigns to the trustee, not the consumer debtor, the duty to object to proofs of claim as to which there may be a valid defense. And it clearly considers statutes-of-limitations defenses to be defenses of the estate, not the consumer. The filing of a proof of claim has little to do, as a legal matter, with the consumer—and nothing to do with the FDCPA.

The allowance of a claim against an individual debtor's estate virtually never has any economic effect on the debtor. The vast majority of consumer (*i.e.*, individual) debtors seek relief under either chapter 7 or chapter 13 of the Bankruptcy Code. In both chapter 7 and chapter 13 cases, upon completion of the bankruptcy process, the consumer debtor will receive a discharge of certain prepetition debts. In chapter 7, a debtor must relinquish all of his or her nonexempt, prepetition property to pay prepetition claims. It is exceedingly rare for anything to be left over to be distributed to the debtor, who is entitled to receive any remaining property only after prepetition creditors are paid in full. And in chapter 13 cases, the debtor is typically required to dedicate all of his or her projected disposable income over a three to five year period to paying prepetition claims—regardless of the magnitude of the claims against the estate. In either case, the total dollar value of allowed claims affects only the relative distributions of value among creditors and does not affect the debtor's obligations.

Some courts have concluded that filing a factually accurate complaint asserting a time-barred state-law collection action violates the FDCPA on the ground that the initiation of legal process against an unsophisticated consumer is inherently abusive. Even if that were correct, however, the principle has no application to the filing of a proof of claim, which has no effect on an individual debtor, and runs only against a bankruptcy estate that is represented by a court-appointed trustee with sophisticated counsel.

Finally, even if one were to read the FDCPA to create a cause of action for filing a proof of claim for a debt that is subject to a valid statute-of-limitations defense, both the Bankruptcy Code and the FDCPA would require that such a cause of action be pursued by the bankruptcy estate, not the individual debtor—thus underscoring that the FDCPA should not be construed to give rise to such a cause of action in the first place, as it would do nothing to advance the statute's consumer-focused purpose.

ARGUMENT

I. The Protections Of The FDCPA Are Directed To Consumers

"The FDCPA is a consumer protection statute that prohibits certain abusive, deceptive, and unfair debt collection practices." *Marx* v. *General Revenue Corp.*, 133 S. Ct. 1166, 1171 n.1 (2013). Importantly, the statute prohibits such practices only to the extent they affect "consumers and those who have a special relationship with the consumer … such that the Act is still protecting the consumer." *O'Rourke* v. *Palisades Acquisition XVI, LLC*, 635 F.3d 938, 943 (7th Cir. 2011).

The statute's focus on consumers is reflected across its text and legislative history. They make clear that, consistent with Congress's purpose in enacting the law, the FDCPA prohibits only activities that burden or injure consumers.

First, the FDCPA's focus on consumers appears in the statute's definitional provisions. As the Petitioner's Brief explains (at 26-34), the statute prohibits the making of "false, deceptive, or misleading representation … in connection with the collection of any debt," 15 U.S.C. § 1692e, and the use of "unfair or unconscionable means to collect or attempt to collect any debt," *id.* § 1692f.

In the FDCPA, however, the word "debt" is a term of art with a far narrower meaning than its ordinary English meaning of money that is owed. Rather, under the FDCPA, "debt" is defined as "any obligation or alleged obligation *of a consumer* to pay money arising out of a transaction in which the [goods or services] which are the subject of the transaction are primarily for personal, family, or household purposes." 15 U.S.C. § 1692a (emphasis added). And the FDCPA defines "'consumer' [as] any *natural person* obligated or allegedly obligated to pay any debt." *Id.* § 1692a(3) (emphasis added).

Second, the FDCPA's self-proclaimed purpose is "to protect consumers." 15 U.S.C. § 1692(b), (e). The statute explains that "[a]busive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy"—problems suffered only by consumers and other closely related natural persons. *Id.* § 1692(a).

The legislative history similarly declares that the FDCPA's "purpose is to protect *consumers* from a host of unfair, harassing, and deceptive debt collection practices without imposing unnecessary restrictions on ethical debt collectors." S. Rep. No. 95-382, at 1-2 (1977) (emphasis added). It further clarifies that "the [statute] applies only to debts contracted by *consumers* for personal, family, or household purposes; it has no application to the collection of commercial accounts." *Id.* at 3 (emphasis added).

Third, the FDCPA's prohibitions address paradigmatic *consumer*-targeting harassment. For example, the statute prohibits "[c]ausing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass." 15 U.S.C. § 1692d(5). It forbids "[t]he use or threat of use of violence or other criminal means to harm the physical person." *Id.* § 1692d(1). And it bans various "false representation[s] or implication[s]," such as "that the debt collector is vouched for, bonded by, or affiliated with the United States or any State" or "is an attorney," or that "documents are legal process." *Id.* § 1692e(1), (3), (13).

In enacting the FDCPA, Congress found that those specific problems beset consumers—typically consumers who were commercially unsophisticated and with limited means to protect their legal interests. The legislative history explains that the "increasing incidence of debt collectors abusing consumers by using various means of harassment and deception" gave rise to the "[n]eed for [the] [l]egislation":

> Consumers are frequently sent phony legal documents. They are harassed by phone at home and at work. Debt collectors impersonate attorneys and policemen. If these tactics do not work, threats of bodily harm or death are sometimes made.... [T]hese debt collection tactics affect the lives of many consumers throughout the country.... Yet, at present there is no effective regulation of debt collectors.... [T]he facts of frequent consumer abuse and inadequate Federal and State regulation of debt collection practices make this legislation necessary and appropriate.

H.R. Rep. No. 95-131, at 2-4 (1977).

While the FDCPA allows nonconsumers to sue to enforce its provisions in certain situations, *see Wright* v. *Finance Serv. of Norwalk, Inc.*, 22 F.3d 647, 649 & n.1 (6th Cir. 1994); *see also* 15 U.S.C. § 1692k(a) ("Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person."), it does so only in the service of its core purpose of protecting consumers, *see O'Rourke*, 635 F.3d at 943.

For example, Congress determined that a debt collector should be liable when it harasses "the family, employer and neighbors of the consumer." H.R. Rep. No. 95-131, at 8. In doing so, Congress rightly noted that such people are often targeted for harassment because of their close relationship to the consumer. *Id.* And it also explained how protecting these third parties operates to protect consumers. The House Report points out that "a debt collector's contact with a consumer's employer" can "constitute[] an unwarranted invasion of the consumer's privacy and interference with the consumer's employee-employer relationship." *Id.* at 5. The Senate Report echoes this statement, observing that "contact [with] third persons such as a consumer's friends, neighbors, relatives, or employer" can "result in serious invasions of privacy, as well as the loss of jobs." S. Rep. No. 95-382, at 4.

At bottom, then, the FDCPA seeks to protect against "the type of actions that would intimidate unsophisticated individuals and which … would likely disrupt a debtor's life." *Guerrero* v. *RJM Acquisitions LLC*, 499 F.3d 926, 938 (9th Cir. 2007). This context must guide interpretation of the statute. *Regions Hosp.* v. *Shalala*, 522 U.S. 448, 460 & n.5 (1998); *U.S. Nat'l Bank of Or.* v. *Independent Ins. Agents of Am., Inc.*, 508 U.S. 439, 455 (1993).

II. THE FILING OF A PROOF OF CLAIM AGAINST A BANKRUPTCY ESTATE DOES NOT HARM AN INDIVIDUAL DEBTOR

Unlike the practices at which the FDCPA was aimed, the filing of a proof of claim in bankruptcy does not harm any individual consumer debtor. In either a chapter 7 or a chapter 13 bankruptcy, a creditor files a proof of claim against the bankruptcy estate—an entity distinct from the debtor that is represented by sophisticated bankruptcy professionals. And in the typical case, whether a proof of claim is allowed or disallowed has no effect at all on the debtor. The claims allowance process in bankruptcy simply falls outside the ambit of the FDCPA.

A. A Proof of Claim Does Not Run Against The Debtor—It Runs Against The Bankruptcy Estate

Proofs of claim are "file[d] … against the [bankruptcy] estate." *Travelers Cas. & Sur. Co. of Am.* v. *Pacific Gas & Elec. Co.*, 549 U.S. 443, 449 (2007); *see also* 4 *Collier on Bankruptcy* ¶ 501.01[2][a] (16th ed. 2016) (filing a proof of claim reflects "a claim on the assets of the bankruptcy estate").

The estate is a legal entity—wholly distinct from the debtor—that comes into being upon the filing of a bankruptcy petition. 11 U.S.C. § 541(a); *see also United States* v. *Mitchell*, 476 F.3d 539, 544 (8th Cir. 2007) ("The filing of a bankruptcy petition creates a new legal entity: the bankruptcy estate.").

The Bankruptcy Code sets out the property that comes into the bankruptcy estate: "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). The bankruptcy estate is administered by a trustee—a bankruptcy professional appointed by the Office of the United States Trustee[2]—who oversees the collection

[2] The Office of the United States Trustee has appointed between one and five "standing" chapter 13 trustees in each federal judicial district who serve as trustees in chapter 13 cases in their respective districts. In chapter 7 cases, the trustee is assigned from a list of chapter 7 "panel" trustees appointed by the Office of the United States Trustee. *See* U.S. Dep't of Justice, *Private Trustee Information*, https://www.justice.gov/ust/private-trustee-information (updated May 12, 2015).

and liquidation of that property and its distribution to creditors with allowed claims. 11 U.S.C. §§ 321-323, 701-705, 1302; *see also* H.R. Rep. No. 95-595, at 91-92 (1977).

The debtor stands separate and apart from the estate; they "are distinct entities in an individual's bankruptcy proceeding." *Katz* v. *C.I.R.*, 335 F.3d 1121, 1127 (10th Cir. 2003); *see also, e.g.*, *In re Smith*, 235 F.3d 472, 477-478 (9th Cir. 2000) ("The Bankruptcy Code distinguishes between property of the estate in bankruptcy and property of the debtor."). As Congress has recognized, the long-standing "premise" underlying bankruptcy law is "that the money of the estate [i]s essentially a trust for the benefit of the bankrupt's *creditors*." H.R. Rep. No. 95-595, at 91 (emphasis added).

Once a bankruptcy petition is filed, an automatic stay takes effect, barring creditors from attempting to "exercise control over property of the estate," 11 U.S.C. § 362(a)(3), or attempting to enforce or collect prepetition claims against the debtor or the estate, *see id.* § 362(a) (separately addressing the automatic stay protections enjoyed by "property of the estate" and "property of the debtor"). The automatic stay ensures both that the trustee can marshal and distribute the debtor's assets without disruption and that creditors need not compete in a "race to the courthouse" to enforce their claims.

While the Bankruptcy Code thus halts any collection activity against *the debtor* during the pendency of the bankruptcy case, it permits creditors to seek recovery on their prepetition claims from *the bankruptcy estate*. Creditors who wish to receive a distribution from the estate must file a proof of claim, which is generally "deemed allowed" unless a party in interest objects. 11

U.S.C. §§ 501, 502. If a party in interest objects, the bankruptcy court determines whether the claim should be allowed, generally by applying nonbankruptcy law. *See id.* § 502(b). Where a proper objection is filed to a proof of claim for a debt whose collection is barred by the statute of limitations under applicable state law, the proof of claim would be disallowed. *Id.* § 502(b)(1).

The Code assigns to the trustee—not to the debtor—the 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 id.* § 1302(b)(1) (incorporating this duty by cross-reference). And it provides that "[t]he estate shall have the benefit" of any defense to any claim that would be available to the debtor under nonbankruptcy law, including "statutes of limitation[s]." *Id.* § 558; *see also* 5 *Collier on Bankruptcy* ¶ 558.01 (defenses otherwise belonging to the consumer "inure to the benefit of the estate"). Moreover, "[a] waiver of any such defense by the debtor after the commencement of the case does not bind the estate." 11 U.S.C. § 558.

In sum, in contrast to a collection action directed against an unsophisticated consumer, a proof of claim is directed against an estate represented by a sophisticated trustee and its counsel.

B. The Allowance Of A Claim Almost Always Has No Economic Effect On The Debtor

In the vast majority of consumer bankruptcy cases, whether a proof of claim is allowed or disallowed affects only the distribution among creditors and will have no effect on the debtor. Indeed, as a matter of bankruptcy law, a consumer debtor rarely even has standing to object to the allowance of a claim. That is because the debtor typically has no "pecuniary interest" in the proceedings: "[N]o matter how the estate's assets are disbursed by the trustee, no assets will revert to the debtor." *In re Cult Awareness Network, Inc.*, 151 F.3d 605, 607 (7th Cir. 1998).

1. *Chapter 7*. "Chapter 7 … gives an insolvent debtor the opportunity to discharge his debts by liquidating his assets to pay his creditors." *Law* v. *Siegel*, 134 S. Ct. 1188, 1192 (2014). In a chapter 7 bankruptcy, the filing of the petition creates the estate, 11 U.S.C. § 541(a)(1), and triggers appointment of the trustee, *id.* § 701, whose duties include "collect[ing] and reduc[ing] to money the property of the estate," *id.* § 704(a)(1), distributing the proceeds to creditors, *id.* § 726.

In a chapter 7 case, the estate is comprised 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). An individual debtor may exempt certain assets—*e.g.*, a certain amount of equity in a residence or a vehicle—from the estate and thus from creditor claims. *Id.* § 522. If there is any nonexempt estate property unencumbered by a lien—in most chapter 7 cases, there is none—the chapter 7 trustee sells that property and distributes the proceeds according to creditors' statutory priority. The total size of the estate—the total value available for distribution to creditors—is in no way dependent upon the number and dollar amount of proofs of claim filed against the estate. Rather, the total value of allowed claims against the bankruptcy estate affects only the percentage payment that creditors receive. In other words, the consequence of allowance of any given proof of claim is that it dilutes the recoveries of other creditors holding allowed claims—it makes no difference at all to the debtor.

In return for surrendering nonexempt prepetition assets for distribution to creditors, the chapter 7 debtor may receive a discharge of certain prepetition debt, meaning that, after the bankruptcy, those creditors can no longer pursue the debtor for payment on their claims. 11 U.S.C. §§ 524, 727; *see Law*, 134 S. Ct. at 1192.[3] The discharge "operates as an injunction against the commencement or continuation of an action … to collect … any such debt as a personal liability of the debtor." 11 U.S.C. § 524(a)(2). Most importantly, it applies whether or not the creditor has received any distribution from the estate on its claim. *Id.* §§ 524, 727; *see also Law*, 134 S. Ct. at 1192.

Because the property that the debtor must surrender to the estate does not depend on the dollar amount of allowed claims against the estate, and because the debtor's entitlement to a discharge does not depend on the amount creditors receive in the bankruptcy, allowance or disallowance of any given claim is—except in the extremely rare case—irrelevant from the chapter 7 debtor's perspective. It affects only the recoveries amongst creditors.

It is true that, if all creditors have been paid in full from the estate, the debtor is entitled to the remainder. 11 U.S.C. § 726(a)(6). But this situation is the "limited and rare exception" to the normal course of events. *In re Tuttle*, 259 B.R. 735, 739 (Bankr. D. Kan. 2000); *see also Cult Awareness Network*, 151 F.3d at 607 ("Debtors, particularly Chapter 7 debtors, rarely have … a pecuniary interest [in a bankruptcy order] because no matter how the estate's assets are disbursed by the trustee, no assets will revert to the debtor."). Indeed,

[3] Discharge may be denied for certain misconduct, 11 U.S.C. § 727(a), and certain debts are non-dischargeable, *id.* § 523(a).

the vast majority of chapter 7 cases are so-called "no asset" cases: After subtracting the assets they are entitled to exempt from the estate under section 522, individual chapter 7 debtors typically have no property that is unencumbered by a lien remaining for *any* distribution to unsecured creditors, let alone property sufficient to pay all creditors *in full* and provide a surplus to the debtor.[4]

2. *Chapter 13*. In a chapter 13 case, the debtor proposes a plan to pay creditors with future income rather than liquidation of existing assets, as would occur in chapter 7. Eligible debtors with a regular income may retain their prebankruptcy assets, propose a plan to repay prepetition creditors over time from their future income over a fixed period of three or five years, and receive a discharge of certain prepetition debts upon completion of the repayment plan. *Hamilton* v. *Lanning*, 560 U.S. 505, 508 (2010); *see also* 11 U.S.C. § 1328 (discharge under chapter 13).

In a chapter 13 case, therefore, the bankruptcy estate is comprised not only of the debtor's interests in property "as of the commencement of the case," 11 U.S.C. § 541(a)(1), but also "earnings from services performed by the debtor after the commencement of the

[4] *See Colonial Sur. Co.* v. *Weizman*, 564 F.3d 526, 531 (1st Cir. 2009) ("'Most chapter 7 cases involving individual debtors are no asset cases.'" (quoting Administrative Office of the United States Courts, *Chapter 7—Bankruptcy Basics*, http://www.uscourts.gov/FederalCourts/Bankruptcy/BankruptcyBasics/Chapter7.aspx (last visited Nov. 21, 2016))); Flynn, *Chapter 7 Asset Cases and Trustee Compensation*, 33 Am. Bankr. Inst. J. 48, 48 tbl. 1 (June 2014) (between 2006 and 2011, only 7.9% of chapter 7 cases were closed as asset cases); Lupica, *The Consumer Bankruptcy Fee Study: Final Report*, 20 Am. Bankr. Inst. L. Rev. 17, 68 (2012) (finding that 89.4% of chapter 7 cases filed after the 2005 Bankruptcy Code amendments were no-asset cases).

case, but before the case is closed, dismissed, or converted to a case under chapter 7, 11 or 12 of this title, whichever occurs first," *id.* § 1306(a).

Moreover, unlike in chapter 7, the consumer "remain[s] in possession of all property of the estate" during the bankruptcy case unless a confirmed plan provides otherwise. 11 U.S.C. § 1306(b). Consequently, the role of the trustee in a chapter 13 case is different than in a chapter 7 bankruptcy. *See id.* § 1302. The chapter 13 trustee generally does not take possession of and liquidate the debtor's property to make distributions to creditors. Rather, the debtor is charged with the rights and duties of a trustee with respect to the property of the estate in his possession. *Id.* § 1303; *see also* 8 *Collier on Bankruptcy* ¶ 1300.22[1].

Despite these distinctions, the consumer debtor is typically just as indifferent to the allowance or disallowance of proofs of claim in chapter 13 as in chapter 7. That is because a chapter 13 debtor typically dedicates all of his or her projected disposable income for the plan period to the plan, regardless of the magnitude of the claims against the estate.

Promptly after the petition date, a chapter 13 debtor is required to file a proposed plan for repayment of creditors over a three or five-year period. 11 U.S.C. § 1321; Fed. R. Bankr. P. 3015(b). "If an unsecured creditor or the bankruptcy trustee objects to [plan] confirmation, § 1325(b)(1) requires the debtor either to pay unsecured creditors in full or to pay all 'projected disposable income' to be received by the debtor over the duration of the plan." *Hamilton*, 560 U.S. at 508-509; *see also* 11 U.S.C. § 1325(b)(1).

Because the debtor typically lacks the financial means to pay all claims in full, the requirements of section 1325(b)(1) usually force the debtor to commit to pay all of his or her disposable income during the repayment period to secure plan confirmation. Thus, in chapter 13, as in chapter 7, the debtor is generally unaffected by a creditor's filing of a proof of claim: The only consequence of the allowance of a claim as to which there might have been a valid objection is that other creditors' recovery is diluted. *See In re LaGrone*, 2015 WL 2330314, at *3 (Bankr. N.D. Ill. May 14, 2015) ("In most Chapter 13 cases, … the debtor is proposing to pay all general unsecured claims less than in full from a limited contribution. Payment of an additional unsecured claim … simply reduces the amount paid to other unsecured creditors; it does not cause the debtor to pay more into the plan."); *see also* 8 *Collier on Bankruptcy* ¶ 1325.11.

Indeed, if anything, a chapter 13 debtor benefits from the filing of a proof of claim for debt that is subject to a statute-of-limitations defense. This is so because the chapter 13 discharge extends only to "unsecured debts provided for by the plan or disallowed under section 502 of this title." 11 U.S.C. § 1328(c). Accordingly, in the absence of the filing of a proof of claim, the holder of a claim subject to a statute-of-limitations defense would—except for the unusual case in which the debt is included on the debtor's schedules—be permitted after the bankruptcy to engage in collection activity, as state law typically allows (*see* Pet. Br. 17-18 & n.3). The filing of a proof of claim renders that debt dischargeable in a chapter 13 bankruptcy, and thus subject to the discharge injunction, which bars the type of collection activity otherwise permitted by state law for debt that is subject to a valid statute-of-limitations defense.

*   *   *

Congress's manifest purpose in enacting the FDCPA was to protect individual consumers from debt collection practices that it considered abusive or misleading. The filing of a proof of claim is an act to collect from a bankruptcy estate—not from any individual consumer. The claim's allowance or disallowance is typically a matter of complete indifference to the individual debtor—the affected parties are other *creditors*, whose interests are protected by a court-appointed trustee. The claims-allowance process in bankruptcy therefore falls entirely outside of the purposes for which the FDCPA was enacted, and outside the cause of action the FDCPA creates for the benefit of consumers.

III. IF THE FDCPA WERE TO CREATE A CAUSE OF ACTION, IT WOULD BELONG TO THE ESTATE, NOT THE DEBTOR

Under both settled principles of bankruptcy law and the language of the FDCPA, if the Court were to conclude that the filing of an accurate proof of claim for debt that is subject to a valid statute-of-limitations defense were actionable under the FDCPA, the cause of action would belong to, and could only be asserted by, the bankruptcy estate, not the individual debtor. Indeed, a debtor would lack Article III standing to assert such a claim because there is no injury to any legally protected interest of the *debtor*. More fundamentally, the point illustrates that the FDCPA should not be construed to provide a cause of action here. *See U.S. Nat'l Bank of Or.*, 508 U.S. at 455 ("'[i]n expounding a statute, we must not be guided by a single sentence or member of a sentence, but look to the provisions of the whole law, and to its object and policy'" (alteration in original)); *see also Ransom* v. *FIA Card Servs., N.A.*, 562 U.S. 61, 71 (2011); *Kasten* v. *Saint-Gobain Performance Plastics Corp.*, 563 U.S. 1, 7 (2011).

A. As A Matter Of Bankruptcy Law, Any Cause Of Action Under The FDCPA Could Be Asserted Only By The Estate, And Not By The Debtor

Bankruptcy law makes clear that causes of action seeking redress for an injury to the bankruptcy estate may be brought only by the trustee for the benefit of the bankruptcy estate—not by an individual debtor for his or her own benefit.

Section 541 of the Bankruptcy Code makes clear that claims belonging to the debtor that arise before the petition date become property of the estate, and thus cannot be pursued by individual debtors. For example, in *Auday* v. *Wet Seal Retail, Inc.*, 698 F.3d 902 (6th Cir. 2012), the Sixth Circuit held that an individual debtor lacked standing to pursue an employment discrimination claim arising out of her termination four days before her bankruptcy filing.[5] Upon the bankruptcy filing, that claim became property of the bankruptcy estate, to be pursued (or not) by the trustee for the benefit of the estate. "[A]bsent abandonment, only the Trustee may bring the age-discrimination claim, and [the debtor] has no standing to pursue it alone." *Id.* at 904.

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[5] While many of the cases discussed in text use the term "standing," as this Court explained in *Lexmark International, Inc.* v. *Static Control Components, Inc.*, 134 S. Ct. 1377 (2014), the question whether a particular litigant falls within the zone of interests protected by a particular statute is best understood as raising a traditional question of statutory construction rather than an issue of "prudential standing."

The same principle applies to claims arising out of postpetition actions that are directed at the bankruptcy estate, rather than the debtor personally. For instance, the Ninth Circuit has held that an individual debtor did not have standing to bring a claim against a bank for having frozen the debtor's bank account, allegedly in violation of the automatic stay, when the account was property of the estate, rather than the individual debtor's property. *In re Mwangi*, 764 F.3d 1168, 1174 (9th Cir. 2014); *see also In re Cook*, 520 F. App'x 697, 701 (10th Cir. 2013) ("'In the context of bankruptcy proceedings, it is well understood that a trustee, as the representative of the bankruptcy estate, is the real party in interest, and is the only party with standing to prosecute causes of action belonging to the estate once the bankruptcy petition has been filed.'"); *Moses* v. *Howard Univ. Hosp.*, 606 F.3d 789, 795 (D.C. Cir. 2010) (same).[6]

The same is true here. As explained above, to the extent that the allowance of a proof of claim for a time-barred debt causes any injury, that injury is borne by the bankruptcy estate (and, indirectly, by other creditors), not the individual debtor. It therefore follows that if the FDCPA were construed to create a cause of action arising out of such conduct, bankruptcy law would grant that cause of action to the estate rather than to the debtor.

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[6] The chapter 13 plan that was confirmed in this case makes clear that estate property remains property of the bankruptcy estate throughout the plan's repayment period, and does not revest in the individual debtor until "discharge or dismissal of the case." JA9; Chapter 13 Plan ¶13(b), *In re Johnson*, No. 14-00917 (Bankr. S.D. Ala.), Dkt. 2.

B. The FDCPA Similarly Bars An Individual Debtor From Suing To Recover On Account Of An Injury To A Bankruptcy Estate

Consistent with ordinary principles of standing, the FDCPA itself likewise operates to preclude an individual debtor from bringing suit on account of collection activity that is directed against a bankruptcy estate. The provision of the FDCPA creating a private right of action provides that a debt collector who fails to comply with the statute "with respect to any person is liable to such person" for damages as set forth in the statute. 15 U.S.C. § 1692k(a).

The work done by this language is clear: Liability under the statute runs only to the "person" "with respect to [whom]" the debt collector failed to comply with the statute. Even assuming that entities other than natural persons (such as bankruptcy estates) are "persons" entitled to protection under the FDCPA, *see Anarion Investments LLC* v. *Carrington Mortgage Servs.*, 794 F.3d 568 (6th Cir. 2015) (so holding),[7] the statute grants a right of action only to the "person" who is the target of the allegedly improper debt-collection activity. Because a bankruptcy estate, not an individual debtor, is the "person" against which a proof of claim is filed, the statute does not give rise to a cause of action by the debtor arising out of that filing.

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[7] Notably, Judge Donald, one of the few courts of appeals judges to have served as a bankruptcy judge, dissented from the Sixth Circuit's conclusion that entities other than natural persons are protected by the FDCPA. *Anarion*, 794 F.3d at 571 (Donald, J., dissenting).

CONCLUSION

For the foregoing reasons, as well as those set forth in the Petitioner's Brief, the judgment of the court of appeals should be reversed.

Respectfully submitted.

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