No. 13-1151

In the United States Court of Appeals for the Fourth Circuit

DANA CLARK AND DAVID CLARK,
individually and on behalf of all others similarly situated,
Plaintiffs-Appellants,

v.

ABSOLUTE COLLECTION SERVICE INCORPORATED,
Defendant-Appellee.

On Appeal from the United States District Court
for the Eastern District of North Carolina

REPLY BRIEF FOR APPELLANTS

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When interpreting a statute, it is usually a good idea to start with the text. The question here is whether the Fair Debt Collection Practices Act permits a consumer to "dispute[] the validity of the debt" orally, 15 U.S.C. § 1692g(a)(3), or instead imposes a writing requirement. The text of the relevant section contains no writing requirement. But neighboring sections of the same statute do. Basic statutory-construction principles tell us to presume that Congress made this choice intentionally. That common-sense conclusion is buttressed by other textual clues, including the default rule that the Act, unless otherwise specified, contemplates communications "through any medium." *Id.* § 1692a(2).

Undeterred by the text, Absolute Collection Service (ACS) asks this Court to invent an "inherent writing requirement" based on "public policy and the spirit of the FDCPA." ACS Br. 7. The argument, in essence, is that reading the statute as written—to permit both oral and written disputes—will be "confusing" for consumers and thus "absurd." ACS Br. 18-19. Because judges are not legislators, this would be an insufficient reason for a federal court to depart from the statute's language even if "public policy" or "the spirit of the FDCPA" were on ACS's side. But they are not. Creating an "inherent writing requirement" would not only disregard the words that Congress enacted into law, but would rob § 1692g(a)(3) of any independent effect, overlook the value of oral disputes to consumers, and reward debt collectors who turn a deaf ear to disputes conveyed over the phone.

Before ACS filed its brief, the U.S. Court of Appeals for the Second Circuit—joining one sister circuit and the majority of district courts—issued a precedential opinion rejecting ACS's reading of the statute. *See Hooks v. Forman, Holt, Eliades & Ravin, LLC*, --- F.3d ---, 2013 WL 2321409 (May 29, 2013). In reply, it would be difficult for us to improve on what the Second Circuit had to say.

First, the Second Circuit followed the text: "The language of § 1692g(a)(3) does not incorporate the writing requirement included specifically in other sections of the same statute. We see no reason to ignore this difference in statutory language." *Id.* at *3. That conclusion comports with the analysis in our opening brief at pages 12-16—analysis to which ACS has offered no response. Indeed, the word "text" appears not once in ACS's 31-page brief.

Second, the Second Circuit explained that "giving effect" to the text "creates a sensible bifurcated scheme," *id.*, a conclusion that tracks the description in our opening brief (at 18) of the FDCPA's "two-tiered framework of consumer protections." As the Second Circuit explained: "Debtors can protect certain basic rights through an oral dispute, but can trigger a broader set of rights by disputing a debt in writing." *Id.* "The right to dispute a debt is the most fundamental of those set forth in § 1692g(a), and it was reasonable to ensure that it could be exercised by consumer debtors who may have some difficulty with making a timely written challenge." *Id.; see* Appellants' Br. 18-19 (making the same point).

Third, the Second Circuit echoed our observation that the statutory structure "reveals a parallelism between consumers' and debt collector's obligations." *Id.* at 19. The rights triggered by oral disputes "place less of a burden on debt collectors" than those triggered by written communications. *Hooks,* 2013 WL 2321409, at *3. For those rights that "call for affirmative steps on the part of the debt collector," including verification of a debt in writing, it "makes sense to require debtor consumers to take the *extra* step of putting a dispute in writing." *Id.*

Finally, the Second Circuit explained why even a "public policy" argument far more persuasive than ACS's false paternalism would still not be enough to justify departing from the statutory text: "[E]ven if we were inclined to strike a different balance between the value of allowing oral disputes and the value of simpler requirements for debtors, we are not at liberty to substitute a view different from that expressed by Congress in the legislative enactment." *Id.* (citation and quotation marks omitted). This Court, too, should adhere to the words "expressed by Congress in the legislative enactment."

CONCLUSION

The district court's judgment should be reversed.

Respectfully submitted,

/s/ Deepak Gupta

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June 19, 2013

CERTIFICATE OF COMPLIANCE

I hereby certify that this reply brief complies with the type-volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B) because the brief (as indicated by word processing program, Microsoft Word) contains 710 words, exclusive of the portions excluded by Rule 32(a)(7)(B)(iii). I further certify that this brief complies with the typeface requirements of Rule 32(a)(5) and type style requirements of Rule 32(a)(6) because this brief has been prepared in the proportionally spaced typeface of 14-point Baskerville.

/s/ Deepak Gupta

Deepak Gupta

June 19, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this date I am causing this reply brief to be filed electronically via this Court's CM/ECF system, which will automatically serve the following counsel of record:

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