No. 22-435

IN THE
Supreme Court of the United States

RENETRICE R. PIERRE,

Petitioner,

v.

MIDLAND CREDIT MANAGEMENT, INC.,

Respondent.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Seventh Circuit

BRIEF OF AMICUS CURIAE PUBLIC CITIZEN IN SUPPORT OF PETITIONER

SCOTT L. NELSON
Counsel of Record
ALLISON M. ZIEVE
PUBLIC CITIZEN LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
snelson@citizen.org

Attorneys for Amicus Curiae

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INTEREST OF AMICUS CURIAE[1]

Public Citizen, Inc., a consumer-advocacy organization with members and supporters nationwide, works before Congress, administrative agencies, and courts for enactment and enforcement of laws protecting consumers, workers, and the public. Public Citizen is interested in the effective enforcement of consumer-protection laws, including the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §§ 1692 *et seq*. In addition, Public Citizen has a longstanding interest in issues relating to standing and federal-court jurisdiction generally, and specifically in protecting consumers' access to the federal courts to vindicate their rights under federal and state law. For that reason, Public Citizen has often addressed issues of standing as a party or amicus. Public Citizen submits this brief because of its concern that the Seventh Circuit's decision in this case, if not overturned by this Court, will significantly impair the protections offered to consumers by the FDCPA and will threaten the ability of Congress to enact, and the federal courts to enforce, protections for a long-recognized form of concrete injury: emotional distress.

SUMMARY OF ARGUMENT

The Seventh Circuit held in this case that "psychological states" including emotional distress are categorically "insufficient to confer standing" in cases under the FDCPA. Pet. App. 9a. As the petition for

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[1] This brief was not authored in whole or part by counsel for a party. No one other than amicus curiae made a monetary contribution to preparation or submission of the brief. Counsel for both parties received more than ten days' notice of the filing of the brief and consented in writing to its filing.

certiorari explains, that decision conflicts with decisions of other circuits and reflects the ongoing, pervasive confusion in the lower courts about this Court's standing precedents, and in particular the consequences of the Court's holdings in *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016), and *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190 (2021).

The Seventh Circuit's decision, left uncorrected, will frustrate the purposes of the FDCPA, which is explicitly directed at deterring and remedying abusive practices that harm consumers' mental well-being, whether or not those practices also hit consumers in their pocketbooks. The statute's recognition of emotional distress as a concrete injury and its creation of remedies for that injury—a form of injury that has "traditionally been regarded as providing a basis for a lawsuit in English or American courts," *Spokeo*, 578 U.S. at 341—falls well within the bounds of congressional authority posited by *Spokeo* and *Ramirez*. And this Court has repeatedly recognized that whether claims for emotional distress are actionable is not an issue of Article III standing, but rather a merits question controlled by statutory provisions or common-law principles establishing the contours of a particular cause of action.

In addition to undercutting the efficacy of the FDCPA's prohibitions on conduct that inflicts nonmonetary harms on consumers, the Seventh Circuit's erection of an Article III bar to the recognition of emotional distress as a basis for standing would, if allowed to stand, also prevent federal courts from entertaining claims for emotional-distress damages under other federal statutes and state common law. The broad potential impact of the lower court's reasoning makes

review of its decision by this Court a matter of national importance.

ARGUMENT

I. The FDCPA directly targets non-monetary harms to consumers' mental well-being inflicted by abusive debt-collection practices.

The FDCPA's terms leave no doubt that Congress intended its prohibition of unfair and abusive debt-collection practices to protect consumers against both financial injury—such as being bullied or misled into paying debts that they do not actually owe or that they cannot legally be compelled to pay—and the mental and emotional harms that are the natural consequences of the tactics Congress outlawed. Allowing debt collectors to inflict emotional harms without legal consequence if they are not accompanied by monetary losses would significantly impair the functioning of the Act.

Congress enacted the FDCPA in 1977 in response to "abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors," 15 U.S.C. § 1692(a), which had become "a widespread and serious national problem." S. Rep. No. 95-382, at 2 (1977). The legislation was aimed at practices Congress recognized as "egregious" wholly apart from whether they resulted in monetary harm, "including obscene or profane language, threats of violence, telephone calls at unreasonable hours, misrepresentation of a consumer's legal rights, disclosing a consumer's personal affairs to friends, neighbors, or an employer, obtaining information about a consumer through false pretense, impersonating public officials and attorneys, and simulating legal process." *Id*. The

legislation's drafters sought to remedy "the suffering and anguish" these practices "regularly inflict." *Id.* And they were well aware that the suffering and anguish attributable to debt-collection abuses are disproportionately inflicted on consumers who lack the ability to pay as a result of "unforeseen event[s]" and who are thus unlikely to suffer the monetary injury of being induced to pay as a result of abusive debt collection practices. *Id.* at 4.

The FDCPA's text plainly manifests the statute's concern with protecting consumers against egregious conduct that inflicts mental and emotional injuries. The congressional findings incorporated into the legislation expressly recognize the impact of abusive practices on such intangible interests as consumers' "marital stability" and freedom from "invasions of individual privacy." 15 U.S.C. § 1692(a). The FDCPA's substantive provisions zero in even more explicitly on conduct that causes mental and emotional suffering: They prohibit debt collectors from "engag[ing] in any conduct the natural consequence of which is to *harass*, *oppress*, or *abuse* any person in connection with the collection of a debt," *id.* § 1692d (emphasis added)—terms that unambiguously refer to the impact of the prohibited practices on the emotional well-being of consumers. Similarly, the statute protects consumers' perceptions and understanding by prohibiting the use of "any false, deceptive, or misleading representation or means in connection with the collection of any debt," *id.* § 1692e, and it further targets practices that inflict distress on consumers by outlawing use of "any unfair or unconscionable means to collect or attempt to collect any debt," *id.* § 1692f.

The FDCPA fleshes out these general standards with detailed provisions that protect consumers

against specific abuses that have a natural tendency to create fear, stress, anxiety, shame, humiliation, anger, annoyance and confusion. For example:

- The statute prohibits the use of fear as a debt-collection technique by outlawing "[t]he use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person." *Id.* § 1692d(1).
- The statute protects consumers against shock and outrage by prohibiting "[t]he use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader." *Id.* § 1692d(2).
- The statute seeks to prevent shame and humiliation by outlawing "[t]he publication of a list of consumers who allegedly refuse to pay debt," *id.* § 1692d(3)—a practice referred to at the time the law was enacted as creating "shame lists," S. Rep. 95-382, at 4—and by generally prohibiting debt collectors from communicating with third parties such as a consumer's neighbors and employer in connection with the collection of a debt, *id.* 15 U.S.C. § 1692c(b).[2]
- The statute protects against consumer misunderstanding and confusion by prohibiting anonymous debt-collection calls, *id.* § 1692d(6), and by outlawing an extensive list of false threats and statements, including (among many others)

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[2] Absent consent or a court order or judgment, the statute allows such communications only "for the purpose of acquiring location information about the consumer." 15 U.S.C. § 1692b; *see also id.* § 1692a(7) (defining "location information" to include only "a consumer's place of abode and his telephone number at such place, or his place of employment")

threats of arrest and imprisonment, *id.* § 1692e(4), threats of actions that cannot legally be taken, *id.* § 1692e(5), using a false business name, *id.* § 1692(e)(14), and falsely representing that the consumer has committed a crime or other misconduct "in order to disgrace the consumer," *id.* § 1692e(7).

- The statute shields consumers' peace of mind by making it illegal for a debt collector to "[c]aus[e] a telephone to ring or engag[e] any person in telephone conversation repeatedly or continuously with intent to *annoy, abuse, or harass* any person at the called number," *id.* § 1692d(5) (emphasis added), by prohibiting a debt collector from communicating with a consumer after the consumer has directed the collector to cease further communications, *id.* § 1692c(c), and by forbidding debt collectors to call consumers at unusual or inconvenient hours or at work (if a debt collector knows that a consumer's employer does not allow such calls), *id.* § 1692c(a).

The FDCPA creates a private cause of action against "any debt collector who fails to comply with *any* provision of this title with respect to any person." *Id.* § 1692k(a) (emphasis added). Thus, by its express terms, the statute makes violations of all of its prohibitions actionable, including those that directly target debt-collection techniques based on whether they harass, oppress, abuse, annoy, shame, or disgrace consumers. In a successful case brought by a consumer alleging a violation of the FDCPA, the statute provides for actual damages and statutory damages of up

to $1,000, as well as costs and reasonable attorney fees. *Id.* [3]

In light of the straightforward connection between the statute's prohibition of actions that inflict distress on consumers and its creation of a cause of action for damages caused by violations of those prohibitions, the statute has for decades been understood to permit recovery of damages for emotional injuries. The Federal Trade Commission's 1988 Staff Commentary on the FDCPA, for example, recognized that "actual damages" under the Act "were not just out-of-pocket expenses, but included damages for personal humiliation, embarrassment, mental anguish, or emotional distress." FTC, *Statements of General Policy or Interpretation Staff Commentary On the Fair Debt Collection Practices Act*, 53 Fed. Reg. 50097, 50109 (Dec. 13, 1988). Courts across the country have repeatedly awarded such damages.[4]

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[3] A debt collector is not liable, however, if the violation "was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." 15 U.S.C. § 1692k(c); *see generally Jerman v. Carlisle, McNellie, Rini, Kramer & Ulrich LPA*, 559 U.S. 573 (2010).

[4] *See Minnifield v. Johnson & Freedman, LLC*, 448 F. App'x 914, 916–17 (11th Cir. 2011) ("Actual damages under the FDCPA include damages for emotional distress."); *McCollough v. Johnson, Rodenburg & Lauinger, LLC*, 637 F.3d 939, 957–58 (9th Cir. 2011) (in FDCPA case, affirming jury award of $250,000 in damages for emotional distress); *Johnson v. Eaton*, 80 F.3d 148, 152 (5th Cir. 1996) (noting that the FDCPA requires that the debt collector compensate the debtor for "emotional distress or other injury that the debtors can prove the debt collector caused."); *Goodin v. Bank of Am., N.A.*, 114 F. Supp. 3d 1197, 1213 (M.D. Fla. 2015) (in FDCPA case, awarding $50,000 in damages for

(*Footnote continued*)

The Seventh Circuit's categorical holding that emotional distress is not an Article III injury in FDCPA cases would severely impair the efficacy of the statutory cause of action to deter and remedy violations of the Act. Debt collectors would face no accountability for abuses that have their natural effect of

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emotional distress to each of two plaintiffs); *Gibson v. Rosenthal, Stein, & Assocs.*, 2014 WL 2738611, at *2 (N.D. Ga. June 17, 2014) (in FDCPA case, awarding $15,000 in damages for emotional distress); *Ford v. Consigned Debts & Collections, Inc.*, 2010 WL 5392643, at *7 (D.N.J. Dec. 21, 2010) (in FDCPA case, awarding $200 in damages for emotional distress); *Perkons v. Am. Acceptance, LLC*, 2010 WL 4922916, at *3 (D. Ariz. Nov. 29, 2010) (in FDCPA case, awarding $5,000 in damages for emotional distress); *Kajbos v. Maximum Recover Solutions, Inc.*, 2010 WL 2035788, at *3 (D. Ariz. May 20, 2010) (in FDCPA case, awarding $5,000 in damages per plaintiff for emotional distress and mental anguish in the form of fear of answering the telephone, sleeplessness, feelings of hopelessness, pessimism, and nervousness); *Rodriguez v. Fla. First Fin. Grp.*, 2009 WL 535980, at *6 (M.D. Fla. Mar. 3, 2009) (in FDCPA case, awarding $1,000 in damages for emotional distress); *Cooper v. Ellis Crosby & Assocs.*, 2007 WL 1322380, at *2 (D. Conn. May 2, 2007) (in FDCPA case, awarding $3,000 in damages for emotional distress); *Baruch v. Healthcare Receivable Mgmt., Inc.*, 2007 WL 3232090, at *4 (E.D.N.Y. 2007) (in FDCPA case, awarding $5,000 in damages for emotional distress); *Chiverton v. Fed. Fin. Grp., Inc.*, 399 F. Supp. 2d 96, 102 (D. Conn. 2005) (in FDCPA case, recommending award of $5,000 in damages for emotional distress); *Gervais v. O'Connell, Harris & Assocs.*, 297 F. Supp. 2d 435, 440 (D. Conn. 2003) (awarding $1,500 for emotional and mental distress damages under FDCPA); *McGrady v. Nissan Motor Acceptance Corp.*, 40 F. Supp. 2d 1323, 1338–39 (M.D. Ala. 1998) (holding that the FDCPA permits damages for mental anguish); *Teng v. Metro. Retail Recovery Inc.*, 851 F. Supp. 61, 71 (E.D.N.Y. 1994) (in FDCPA case, awarding $1,000 in damages for emotional distress); *Donahue v. NFS, Inc.*, 781 F. Supp. 188, 194 (W.D.N.Y. 1991) (in FDCPA case, awarding $100 in damages for emotional distress); *Smith v. Law Offices of Mitchell N. Kay*, 124 B.R. 182, 185 (D. Del. 1991) (holding that the FDCPA permits damages for emotional distress).

harming the mental and emotional well-being of consumers but are not causally linked to a cognizable financial injury (such as payment of a debt that the consumer does not actually owe). Given Congress's awareness that many of the consumers who suffer from abusive debt-collection practices are *unable* to make payments and hence unlikely to suffer monetary injuries, *see* S. Rep. 95-382, at 3, that remedial gap would deprive a substantial number of the intended beneficiaries of the Act of a remedy for practices that inflict exactly the harms that the law expressly targets. As the Ninth Circuit long ago recognized, in many FDCPA cases "[t]he only actual damages that a plaintiff would be likely to incur would be for emotional distress caused by abusive debt collection practices." *Baker v. G.C. Servs. Corp.*, 677 F.2d 775, 780 (9th Cir. 1982).

Moreover, because Article III requires a plaintiff to "demonstrate standing separately for each form of relief sought." *Ramirez*, 141 S. Ct. at 2210 (citation omitted), this Court's case law bars an award of damages that does not redress an Article III injury. Thus, the consequence of the Seventh Circuit's view of standing is that courts are jurisdictionally barred from awarding damages for emotional distress in FDCPA cases even to plaintiffs who otherwise have standing to assert an FDCPA claim. Accordingly, plaintiffs who suffer both monetary and emotional distress injuries will be unable to obtain full recompense for the consequences of a debt collector's unlawful conduct, and, concomitantly, debt collectors will be under-deterred from inflicting the exact kinds of suffering that the FDCPA was expressly designed to prevent.

II. This Court's standing decisions do not disable Congress from providing a cause of action for emotional distress caused by egregious debt-collection practices.

The Seventh Circuit's curtailment of the FDCPA's remedies lacks any genuine support in this Court's standing jurisprudence. The Court's recent precedents provide no basis for restricting Congress's power to make emotional distress actionable or the federal courts' authority to adjudicate claims for emotional-distress damages. On the contrary, both *Spokeo* and *Ramirez* recognize that intangible injuries as well as tangible ones (such as monetary or bodily injury) can be "concrete" for Article III purposes, and that Congress is "well positioned to identify intangible harms that meet minimum Article III requirements." *Spokeo*, 578 U.S. at 340, 341; *accord Ramirez*, 141 S. Ct. at 2204. Indeed, the Court has recognized that Congress may even recognize new forms of injury and "elevate" to "legally cognizable" status "harms that were previously inadequate in law," *Spokeo*, 578 U.S. at 341, especially when such a newly recognized injury has "a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts," *Ramirez*, 141 S. Ct. at 2204.

In making claims for emotional distress actionable under the FDCPA, Congress did not even approach the limits of these powers. Emotional distress is not a new form of injury that was previously inadequate in law, or one that merely bears a close relationship to harms traditionally recognized as providing a basis for lawsuits in American courts. It *is* a harm traditionally recognized, both at common law and in statutory rights of action, as providing a basis for lawsuits in American courts. This Court long ago recognized that

"[d]istress is a personal injury familiar to the law, customarily proved by showing the nature and circumstances of the wrong and its effect on the plaintiff." *Carey v. Piphus*, 435 U.S. 247, 263–64 (1978). Both common-law and statutory rights of action routinely offer remedies for "such injuries as 'impairment of reputation …, personal humiliation, and mental anguish and suffering.' " *Memphis Cmty. School Dist. v. Stachura*, 477 U.S. 299, 307 (1986); *see also Consol. R. Corp. v. Gottshall*, 512 U.S. 532, 550 (1994) (observing that the right to recover for negligently inflicted emotional distress "is nearly universally recognized among the States today").

Thus, in providing a right of action for damages for illegal conduct that inflicts such emotional injuries, the FDCPA does not elevate to legally cognizable status an injury not previously recognized by the law. It merely provides new *substantive* legal grounds for remedying an injury long recognized as a basis for invoking the jurisdiction of American courts.[5]

Not surprisingly, therefore, this Court's decisions have long recognized that whether a plaintiff may maintain an action seeking damages for emotional injuries is not a question of Article III standing, but a *merits* question going to the scope of a particular right of action—that is, whether and under what

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[5] Moreover, the "confusion" that the plaintiff in this case alleges as one result of the defendant's misleading presentation of information in its debt-collection communications is the same kind of injury that the Court recognized as the basis of the individual plaintiff's standing to seek damages for the disclosure and summary-of-rights claims in *Ramirez*. *See* 141 S. Ct. at 2213 n.8 (stating that the Court had "no reason or basis" for overturning the Ninth Circuit's decision that the individual plaintiff had standing on that ground).

circumstances it permits such a recovery. For example, in *Gottshall*, the Court held that "emotional injury" falls within the scope of the term "injury" under the Federal Employers' Liability Act (FELA), *id.* at 550, and treated the issue of when damages could be awarded for negligent infliction of such an injury as a matter of statutory interpretation governed by "FELA itself, its purposes and background, and the construction we have given it over the years," as well as by "common-law developments" that inform a proper reading of the statute, *id.* at 542 (citations omitted). The Court has repeatedly taken the same approach to similar questions about emotional-distress damages under FELA, never hinting that those questions implicate Article III concerns. *See*, *e.g.*, *Norfolk & W. Ry. v. Ayers*, 538 U.S. 136, 145–46 (2003); *Metro-North Commuter R.R. v. Buckley*, 521 U.S. 424, 429 (1997).

Likewise, in considering whether emotional-distress damages are available in actions against federal agencies under the Privacy Act, this Court in *FAA v. Cooper*, 566 U.S. 284 (2012), treated the question whether that statute's authorization of awards of "actual damages" encompassed compensation for mental and emotional-distress injuries as a question of statutory construction: whether the term "actual damages," in context, includes "nonpecuniary harm" or is limited to the narrower sense in which the term "actual damages" was used in common-law libel and slander cases to differentiate pecuniary losses from "general" damages. *Id.* at 295–99. The Court, informed by the principle that waivers of sovereign immunity are narrowly construed, resolved this statutory ambiguity against allowing damages for emotional distress. *See id.* at 299. At the same time, the Court nowhere suggested that Congress would have been barred by Article III

from explicitly allowing recovery for the familiar injury of emotional distress. Indeed, the Court's opinion in *Cooper* recognizes that emotional distress is actionable in a wide variety of circumstances under both statutory and common-law causes of action. *See id.* at 292–93, 299–301. The plain import of *Cooper* is that the decision whether to authorize suits to recover for that injury is a matter of congressional choice, *see id.* at 303, not Article III constraint.

III. The Seventh Circuit's reasoning would have exceptionally far-reaching implications.

The problems the Seventh Circuit's approach in this case will create if not overturned by this Court *start* with gutting the FDCPA's protections against harassment, oppression, and abuse of consumers, but are unlikely to stop there. Although the court's statement of its holding refers to the FDCPA "context," Pet. App. 9a, the court's reasoning that mental and emotional distress are not concrete injuries that Article III allows Congress to redress through the creation of a cause of action for damages cannot readily be confined to that specific "context" or any other.

The Seventh Circuit's limit on Congress's power to make mental and emotional distress actionable could easily be extended, for example, to other consumer protection statutes, such as the Fair Credit Reporting Act (FCRA). As this Court has recognized, many lower courts have held that emotional distress damages are recoverable under FCRA. *See Cooper*, 566 U.S. at 292–93 (citing cases); *see*, *e.g.*, *Stevenson v. TRW, Inc.*, 987 F.2d 288, 292 (5th Cir. 1993) (citing *Guimond v. Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995)); *Boris v. Choicepoint Servs., Inc.*, 249 F. Supp.

2d 851, 859 (W.D. Ky. 2003) ("It is well settled that actual damages under the FCRA are not limited to out-of-pocket expenses and may instead include humiliation and mental distress."). If, as the Seventh Circuit has now held, emotional distress did not qualify as a traditional basis for invoking the adjudicative authority of American courts, those decisions, too, would likely be suspect.

The Seventh Circuit's decision similarly calls into question this Court's line of cases, including *Gottshall*, *Metro-North*, and *Ayers*, involving the availability of damages for negligently inflicted emotional distress under FELA. No principled basis is evident for concluding that Congress has authority to provide redress for the emotional distress of railroad workers negligently subjected to unsafe conditions but not consumers intentionally subjected to harassment, oppression, and abuse. To be sure, many of the rail employees who are able to recover for emotional distress under this Court's line of FELA decisions will also have suffered bodily injuries for which they unquestionably have standing to seek damages, but those injuries would not in themselves suffice to create standing to seek emotional-distress damages that redress a different form of injury. Under this Court's doctrine that a plaintiff must have standing for each form of redress sought, *see Ramirez*, 141 S. Ct. at 2210, the emotional-distress damages that this Court has held are available under FELA require that emotional distress itself be an Article III injury.

Also at risk under the Seventh Circuit's approach is Congress's decision in the Civil Rights Act of 1991 to provide expressly for the recovery of damages (subject to a statutory cap) for "emotional pain, suffering, inconvenience, mental anguish, loss of enjoyment of

life, and other nonpecuniary losses" resulting from employment discrimination. 42 U.S.C. § 1981a(b)(3). Where that discrimination takes the form of harassment that creates a hostile or abusive workplace environment, *see*, *e.g.*, *Harris v. Forklift Sys., Inc.*, 510 U.S. 17 (1993), the ability to sue to redress such injuries to a plaintiff's mental well-being may be critical to a plaintiff's ability to access the federal courts to pursue a claim of employment discrimination.

The decision below also would call into question this Court's decades-old recognition that 42 U.S.C. § 1983 enables plaintiffs to sue for emotional distress resulting from the deprivation of constitutional and statutory rights under color of law. *See Stachura*, 477 U.S. at 307; *Carey*, 435 U.S. at 264. The Seventh Circuit's premise that such an injury is not a traditional basis for a lawsuit in an American court would imply that Congress's authorization of damages actions in Section 1983 cannot empower federal courts to entertain claims seeking redress for mental or emotional injuries.

Indeed, the Seventh Circuit's premise would even suggest that federal courts sitting in diversity might lack authority to hear state statutory and common-law rights of actions seeking recovery for emotional distress, because if an injury is not one that Congress may provide a right of action to redress in federal court, state statutes and common law must be equally inadequate to satisfy Article III's requirements. That extraordinary consequence of the Seventh Circuit's reasoning illustrates the extent to which it has departed from the correct path set by this Court's standing decisions, under which traditionally recognized forms of injury, such as emotional distress, satisfy the threshold requirements of Article III and permit

adjudication on the merits of the question whether a plaintiff has shown an entitlement to recover damages for the injury claimed.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

SCOTT L. NELSON
Counsel of Record
ALLISON M. ZIEVE
PUBLIC CITIZEN
LITIGATION GROUP
1600 20th Street NW
Washington, DC 20009
(202) 588-1000
snelson@citizen.org

Attorneys for Amicus Curiae

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