No. 22-471

In the Supreme Court of the United States

CONSUMER DATA INDUSTRY ASSOCIATION,
Petitioner,

v.

AARON M. FREY, in his official capacity as ATTORNEY GENERAL OF THE STATE OF MAINE, WILLIAM N. LUND, in his official capacity as SUPERINTENDENT OF THE MAINE BUREAU OF CONSUMER CREDIT PROTECTION,
Respondents.

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

BRIEF OF AMICUS CURIAE ACA INTERNATIONAL IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether the Fair Credit Reporting Act broadly preempts state laws "relating to" the "subject matters" expressly described in 15 U.S.C. § 1681t(b)(1), or narrowly preempts state laws only to the extent they address the specific issues addressed in the cross-referenced provisions of FCRA.

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INTEREST OF AMICUS CURIAE[1]

ACA International (ACA) is a nonprofit corporation based in Minneapolis, Minnesota. Founded in 1939, as the American Collectors Association, ACA is the largest trade group for the debt-collection industry. ACA has members in every state and more than 30 countries. ACA represents more than 1,800 member organizations and their more than 133,000 employees worldwide, including third-party collection agencies, asset buyers, attorneys, creditors, and vendor affiliates. ACA International, *Advocacy Booklet* (Nov. 21, 2022), bit.ly/3UKuh5m.

ACA's members include sole proprietorships, partnerships, small businesses, and large corporations. Some members operate within a single state while others are large multinational corporations that operate in every state. Nearly 90% of ACA's members are small businesses with limited resources. *Id.* Many of their customers are small businesses as well.

ACA's members are vital to protecting both consumers and creditors. Members work with consumers to resolve consumer debt, which saves every American household, on average, more than $700 each year. Kaulkin Ginsberg, *2020 State of the Industry Report*, ACA International (2020), bit.ly/3uxMcBC. ACA's members also help keep America's credit-based economy functioning with access to low-cost credit. For example, in 2018 the accounts receivable management

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[1] All parties were given timely notice, and all parties have consented to this filing. No party's counsel authored this brief in whole or in part, and no person or entity other than amicus curiae, its counsel, or its members made a monetary contribution intended to fund the brief's preparation or submission.

(ARM) industry returned more than $90 billion to creditors for goods and services they had provided to their customers. *Id.* These collections benefit consumers by lowering the costs of goods and services, particularly at a time when rising prices are hurting consumers throughout the country.

ACA provides its members with essential information, education, and guidance on compliance with laws and regulations. ACA also articulates the value of the credit-and-collection industry to businesses, consumers, policymakers, and courts. As part of this mission, ACA regularly files amicus briefs in cases of interest to its membership, like this one.

ACA and its members support the uniform system of accurate credit reporting dictated by the Fair Credit Reporting Act (FCRA), 15 U.S.C. §§ 1681 to 1681x. ACA submits this brief in support of the Consumer Data Industry Association's (CDIA) petition for a writ of certiorari because ACA's members will be severely disrupted by the enforcement of Maine's law requiring less-than-accurate credit reporting, and because the First Circuit's interpretation of FCRA's express preemption provision threatens to upend the national consumer credit-reporting system by undercutting its touchstones: accuracy and uniformity.

SUMMARY OF THE ARGUMENT

FCRA expressly preempts any state law "with respect to any subject matter regulated under [its provision] relating to information contained in consumer reports." Despite this straightforward text, the First Circuit held that a Maine statute regulating how and when medical debt and economic-abuse debt can be reported in consumer reports is not preempted. This

Court has often had to clarify the scope of Congress' preemption provisions. *See, e.g.*, *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 126–27 (2016). ACA urges the Court to do so again, as the decision below threatens to undercut the nation's consumer credit-reporting system.

I. The decision below allows states to manipulate consumer credit reports contrary to FCRA's accuracy and uniformity aims. Congress passed FCRA to ensure that consumer credit reports are accurate. It later amended FCRA, adding the broad preemption provision at issue, to promote nationwide standards for consumer credit reports. Understandably, the utility of credit reports—for all participants in the national credit-reporting system—is a direct product of reports' accuracy and completeness. By compelling inaccurate and incomplete information, state statutes like Maine's will destroy the utility of credit reports and the system as a whole. A patchwork system also stands to harm consumers and sow inefficiencies in the credit-reporting system. A less efficient and trustworthy system means creditors will be less likely to extend credit, especially to riskier borrowers.

II. Left standing, the decision below threatens the viability of our national consumer credit-reporting system. In the wake of the decision below, the Consumer Financial Protection Bureau (CFPB) effectively invited states to follow Maine's lead and pass laws restricting accurate reporting and furnishing of the most common types of debt. Absent the Court's intervention, either a national standard will be set by whichever state enacts the most-restrictive reporting law or a patchwork of idiosyncratic reporting prohibitions will turn back the clock and fracture our national

credit-reporting system. This, in turn, will crush the efficient provision of credit and open the door to overly subjective credit decisions, as opposed to the widespread use of objective metrics like credit scores. This is the precise subjective underwriting that other federal laws such as the Equal Credit Opportunity Act have sought to avoid, by protecting consumers with a more uniform system aimed at limiting credit decisions based on ideological or biased views.

ACA asks the Court to grant certiorari to resolve the important question presented in this case and to head off the disastrous consequences that will flow from the decision below.

ARGUMENT

Compared to its peers, the United States' consumer credit-reporting system is unique. Over the last century, the system has tracked a market-driven evolution, from regional, trade-specific credit bureaus reporting on consumer accounts at local grocers and hardware stores in the early 20th century, to three credit reporting agencies (CRAs) serving an array of companies offering national credit services to consumers. Today, in the United States, no matter the creditor or state, consumers enjoy broad access to immediate credit; "[t]his 'miracle' is only possible because of our credit reporting system." Timothy J. Muris, Chairman, Fed. Trade Comm'n, Protecting Consumers' Privacy: 2002 and Beyond, Remarks at The Privacy 2001 Conference (Oct. 4, 2001), https://bit.ly/3XFjY52.

This case is of immense importance to the viability of our national consumer credit-reporting system. Through its erroneous interpretation of FCRA's preemption provision, 15 U.S.C. § 1681t, the First

Circuit unleashed a race to the bottom among states. No longer constrained by federal law—at least in some circuits—states, like Maine, will demand furnishers of credit information and CRAs report less-than-accurate credit data through a patchwork of idiosyncratic reporting prohibitions. To be clear, this race to the bottom, accelerated by the CFPB's newfound hostility toward the consumer credit-reporting system,[2] will be the undoing of national reporting standards.

A straightforward reading of § 1681t(b)(1)(E), decides this case in favor of CDIA. (*See* Pet. 15–24.) *See also Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 125 (2016) (explaining the text of express preemption provision is the "begin[ning] and end[ing]" of the analysis and that there is no "presumption

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[2] *See* The Fair Credit Reporting Act's Limited Preemption of State Laws, 87 Fed. Reg. 41042 (July 11, 2022) (CFPB's Interpretive Preemption Rule) (interpretive rule "narrow[ly]" construing § 1681t and proclaiming states have "substantial flexibility to pass laws involving consumer reporting"). The CFPB's apparent approval of state regulation prohibiting the reporting of truthful data about consumer accounts is a new administrative interest. Shortly after Congress extended FCRA-preemption in 2003, the agencies charged with administering FCRA defended FCRA's broad preemptive reach. *See* Amicus Curiae Brief of the FTC et al., *Am. Bankers Assoc. v. Lockyer*, 412 F.3d 1081 (9th Cir. 2005) (No. 04-16334). FCRA-preemption "ensure[s] the operational efficiency of [the] national credit system by creating a number of preemptive national standards." *Id.* at 14 (first alteration added) (quoting H.R. Rep. No. 108-396, at 66 (2003) (Conf. Rep.)). "[C]oncerned about the emergence of incorrect judicial precedent that could increase costs for institutions and consumers, promote inefficiency, expose institutions to uncertain civil liabilities, and undermine Congress' objective of achieving uniformity," *id.* at 15–16, the agencies warned that state laws "impos[ing] unique … requirements or other limitations" would "frustrat[e] Congress' objective," including leveraging the "benefits of … uniform national standard[s]," *id.* at 13–15.

against pre-emption"). ACA adds its voice of urgency to explain why allowing the decision below to stand will be catastrophic to FCRA's national consumer credit-reporting mission. Not only will allowing laws like Maine's, which *require* less-than-accurate reporting, destroy the utility of consumer credit reports, but the inevitable patchwork of state laws will saddle ACA's members with the near-impossible task of compliance. ACA urges review and reversal to stave off disastrous consequences.

I. The Decision Below Allows States to Manipulate Consumer Credit Reports Through Content Prohibitions Contrary to FCRA's Accuracy and Uniformity Aims.

Allowing states to commandeer the national consumer credit-reporting system, by not only discouraging the accurate reporting of credit data but prohibiting it, will disadvantage all participants in the system. FCRA was intended to promote accuracy; accuracy, both to the benefit and detriment of consumers, promotes utility; utility, in turns, benefits consumers by lowering the cost of credit, by making credit more widely available (particularly to low-income consumers) and by equitably distributing credit based on unbiased metrics such as credit scores. The decision below threatens to undo the system's careful balance.

A. FCRA unified the national consumer credit-reporting system to promote accuracy, fairness, and uniformity. The United States consumer credit-reporting system is a product of the market; it was borne of commercial need in the early 20th century when retailers (grocers, hardware stores, department stores, etc.) provided nearly all consumer credit. Michael E. Staten & Fred H. Cate, *Does the Fair Credit Reporting*

Act Promote Accurate Credit Reporting?, Harv. Univ., Joint Ctr. for Hous. Stud., at 4 (Feb. 2004) (Staten & Cate 2004). Early credit bureaus were cooperatives created by local retailers to aggregate credit histories and assist with collecting on accounts. *Id.*

During the mid-1900s, however, legal and economic changes prompted two critical developments. *First*, the changes increased the demand for consumer credit exponentially. *Id.* at 5. In 1945, less than $6 billion in consumer credit was outstanding; that number swelled to $116 billion by 1970, the year FCRA was enacted. *Id. Second*, the changes significantly shifted the share of consumer credit held by retailers, from 80% in 1919 to only 40% in 1941. *Id.* at 4–5. As traditional financial institutions became a major source for consumer credit, the market for consumer credit evolved to one "national in scope." *Id.* at 5.

Because of these changes, along with the population's changing mobility, the market "faced an increasing need for credit reports," "especially … nationwide, multi-purpose credit reports." *Id.* At the same time, emerging technologies made it possible to collect and store large amounts of consumer credit data and to share that data fast and efficiently. *Id.*

Not surprisingly, the rapid expansion of the consumer credit-reporting system in the United States weakened its accuracy.[3] *See id.* at 6. At the same time, credit bureaus were too protective of their proprietary data and refused to disclose credit information to the consumers subject to reporting. *Id.* So, "not only did

[3] "Accuracy" referred to the truth or falsity of the information in the report, *not* disputes about whether a complete and true consumer report was an accurate assessment of the consumer's creditworthiness. *See* Staten & Cate 2004 at 5–6.

consumers not have the chance to dispute the accuracy of information in their own credit reports, many did not even know of their existence." *Id.*

Accurate reporting therefore was "the primary impetus for passage of … FCRA" in 1970, specifically "to reduce widely recognized problems in credit report content." *Id.* at 2. In fact, FCRA's accuracy aim is enshrined in the statute's purpose: the national banking system requires "fair and accurate credit reporting" and "[i]naccura[cies] … directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system." 15 U.S.C. § 1681(a)(1); *see also* S. Rep. No. 108-166, at 7 (2003) (Conf. Rep.) ("Achieving … accuracy in consumer report information was a main goal of the FCRA when it was enacted in 1970.").

While accuracy was the driving aim of the 1970 act, national uniformity was the centerpiece of the 1996 and 2003 Amendments. With the 1996 Amendments, Congress "sought to establish uniform standards in key areas … to enhance the development of national credit markets." S. Rep. No. 108-166, at 6. These "national standards" included measures for "the contents of consumer reports"; "[s]tate laws with respect to these issues were [expressly] preempted." *Id.* True, Congress recognized "the national standards" may "preclude states from adopting more robust consumer protections," but "[n]ational credit markets [we]re necessary to meet business and consumer demands and [we]re very important to the efficient operation of the United States economy." *Id.* at 11.

That said, Congress embedded a compromise in the 1996 Amendments, agreeing to sunset FCRA's

preemption mandate after seven years. As Representative Kennedy explained, the "compromise provision" was "the product of a careful effort to balance industry's desire for nationwide uniformity with States' vital interests in protecting its citizens. … [The] preemption mandated by this bill will test the viability of a uniform standard." 140 Cong. Rec. 25866 (1994). This uniformity aim through federal preemption was intended to lift the "unfair regulatory burden on companies that provide credit to consumers"; that is, preemption "allow[ed] business to comply with one law on credit reports rather than a myriad of State laws." *Id.* at 25871 (statement of Rep. Castle); *id.* at 25867 (statement of Rep. C. Thomas) ("We have compromised on the preemption issue so companies will not have to comply with a patchwork of State laws.").

At the end of the seven-year trial period, Congress not only made FCRA-preemption permanent, but it expanded FCRA's preemptive reach. Fair and Accurate Credit Transactions Act of 2003, Pub. L. 108-159, § 711 (2003). As Representatives Oxley and Bachus summarized, "Under th[e] new [FCRA] preemption provision, no state … may add to, alter, or affect the rules established" by FCRA in the "specified areas"; they "are governed solely by federal law." 149 Cong. Rec. 32232 (2003). The consensus was clear: the amendments "establishe[d] uniform national standards in key areas of regulation" to promote "efficient national credit markets." *See, e.g.*, Effective Dates for the Fair and Accurate Credit Transactions Act of 2003, 68 Fed. Reg. 74529, 74529 (Dec. 24, 2003).

B. Accurately reporting consumer credit data safeguards consumers while securing national standards for determining creditworthiness. It's axiomatic

that accuracy benefits consumers. A broadly used credit-reporting system built on accurate data increases access to credit and "democratizes" financial opportunity; makes lending decisions more efficient and more equitable by minimizing the use of subjective factors; and facilitates the speedy and convenient provision of credit to consumers. Michael E. Staten & Fred H. Cate, *The Impact of National Credit Reporting Under the Fair Credit Reporting Act: The Risk of New Restrictions and State Regulation*, at 4–15, 20 (2003) (Staten & Cate 2003). Accuracy also enables the precision of risk-based pricing. Michael E. Staten, *Risk-Based Pricing in Consumer Lending*, Ctr. for Capital Mkts. Competitiveness, at 7 (2014).

But accurate reporting is a two-way street. Accuracy is also imperative to *users* of credit reports, and, by extension, CRAs and furnishers of credit information. This includes avoiding "errors of omission": "items or events associated with the consumer that do not appear in the file." Omissions unquestionably "reduce file accuracy" and "its value for assessing risk." Staten & Cate 2004 at 24–25. Because omissions "unambiguously reduce the predictive value of credit file information," the "missing information imposes a cost on all users of the credit reporting system[.]" *Id.* at 47.

The utility of credit reports is therefore a direct product of the accuracy and completeness of reports—that is, both the good and bad of an individual's credit history. Accurate reports enable users to make informed decisions about whom to extend credit and on what terms. Indeed today, the purpose of the national consumer credit-reporting system is to help creditors understand what a consumer can truly afford to pay. "[A] consumer's credit risk is carefully calculated so

that he [or she] is offered a particular rate or terms that closely match the risks his [or her] report suggests[.]" S. Rep. No. 108-166, at 7. And, as Congress recognized in 2003, trillions of dollars of consumer credit transactions are based on the accuracy of the national credit-reporting system. *Id.*; *see also Fair Credit Reporting Act: How It Functions for Consumers and the Economy, Hearing on H.R. 2622 Before the Subcomm. on Fin. Insts. and Consumer Credit, H. Comm. on Fin. Servs.*, 108th Cong. 433 (2003) (prepared statement of Dolores S. Smith, Fed. Rsrv. Bd., Dir. of Div. of Consumer and Cmty. Affairs) ("The accuracy of consumer report information is a critical element of the national credit reporting system.") (Federal Reserve 2003 Congressional Testimony).

C. Compelling inaccurate and incomplete consumer credit reporting through state-specific content prohibitions will undermine the utility of credit reports and the system as a whole. The state prohibitions in this case prove the point. Maine bars CRAs from "report[ing] debt from medical expenses on a consumer's [credit] report when the date of the first delinquency on the debt is less than 180 days prior to the date that the debt is reported," Me. Rev. Stat. Ann. tit. 10, § 1310-H(4)(A); requires CRAs to "remove or suppress" medical debt from credit reports if there is "reasonable evidence" the debt has been settled or paid, § 1310-H(4)(B)(1)–(2); and requires CRAs to report scheduled periodic payments on medical debt the same way "consumer credit transactions" are reported, § 1310-H(4)(C). Likewise, Maine requires CRAs to investigate allegations of "economic abuse" and "remove any reference to … debt" resulting from "economic abuse." § 1310-H(2-A).

Maine's piecemeal content manipulation is the precise sort of regulation that Congress feared would destroy national standards for consumer credit reports. *See* S. Rep. No. 108-166, at 6 (stating the 1996 Amendments established uniform, national standards for "the *contents* of consumer reports" (emphasis added)). And without broad federal preemption, which allows CRAs and furnishers to *accurately* report consumer credit transactions and histories, the Federal Reserve cautioned that "non-uniform state laws" may "restrict the information that can be furnished to or reported by [CRAs]," "impairing the utility of consumer reports and credit scores that creditors use for portfolio management, underwriting, and fraud control." Federal Reserve 2003 Congressional Testimony at 433. Of course, Maine does not stand alone in its quest to adopt content prohibitions. The decision below is a watershed for FCRA-preemption, and other states will follow with prohibitions—based on their own policy judgments and priorities—limiting the accurate reporting of consumer credit activity.

Less accurate consumer credit data, at states' urging, will destroy the predictive value of consumer credit reports and the integrity of the consumer-reporting system. Simply, if credit reports do not accurately reflect consumers' creditworthiness because of a patchwork of state-specific content prohibitions, the reports are of little utility to users. And "a lack of uniformity in credit bureau data" will "undermine the utility of such data for assessing [consumer] creditworthiness." *Id.* at 434. The Federal Reserve's warning on this score is just as true today.

D. Destroying the utility of consumer credit reporting will disadvantage all actors in the system. The

benefits that flow from creditors' (e.g., financial institutions, credit-card companies, auto lenders, retailers, insurers, etc.) ability to obtain standardized consumer credit reports right away cannot be overstated. Credit reports, which contain robust, nationally uniform data, allow users to make informed credit decisions quickly, no matter where the consumer lives or works. Indeed, consumer credit reports are ubiquitous; each of the three CRAs has 200 million credit files and processes three *billion* updates per month. *An Overview of the Credit Reporting System, Hearing Before the Subcomm. on Fin. Insts. and Consumer Credit, H. Comm. on Fin. Servs.*, 113th Cong. 7 (2014) (statement of Stuart K. Pratt, President & CEO, CDIA). That CRAs can process volumes of consumer credit data in short order for hundreds of millions of Americans makes the national consumer credit-reporting system a reality—and useful.

At such a scale, implementation of state-specific content prohibitions like Maine's would be an impossible undertaking. And, even if it were possible, the result is neither productive nor desirable. Reports plagued with informational gaps because a state, as a policy matter, deemed accurate credit history off limits to the market are of little value to users.

Ultimately, consumers will bear much of the cost of the credit-reporting system's wrecked utility. A national system allows creditors to maintain and expand broad, first-in-its-class access to consumer credit in the United States. Staten & Cate 2003 at 4–6; Federal Reserve 2003 Congressional Testimony at 434–35. A national system facilitates the fair and equitable distribution of consumer credit across the income spectrum, including expanding credit to underserved

consumers. Staten & Cate 2003 at 8–11; FTC, Report to Congress Under Section 319 of the Fair and Accurate Credit Transactions Act of 2003, at 5 (2012). And a national system enables the "miracle" of immediate credit through a speedy, convenient, and efficient process that reduces costs. *See* Staten & Cate 2003 at 20.

In the end, if FCRA-preemption is contorted to allow states to require the reporting of less-than-accurate consumer credit data through state-specific content prohibitions, everyone in the system loses. This issue is critical to the national credit-reporting system and deserves the Court's review.

II. Left Standing, the Decision Below Would Have Disastrous Consequences.

A. If the decision below stands, state laws like Maine's that openly regulate in the teeth of FCRA will proliferate. Effective July 11, 2022, the CFPB issued an interpretive rule narrowly (and erroneously) interpreting 15 U.S.C. § 1681t, consistent with the First Circuit's decision. *See* CFPB's Interpretative Preemption Rule, 87 Fed. Reg. 41042–46. The CFPB highlighted laws that, in its view, "would generally not be preempted," including laws "forbid[ding] [CRAs] from including information about medical debt, evictions, arrest records, or rental arrears in a consumer report," and laws "prohibit[ing] furnishers from furnishing such information." *Id.* at 41042.

While "[i]nterpretive rules 'do not have the force and effect of law,'" *Perez v. Mortg. Bankers Ass'n*, 575 U.S. 92, 97 (2015) (quoting *Shalala v. Guernsey Mem'l Hosp.*, 514 U.S. 87, 99 (1995)), the CFPB's hat tip to the states all but freed those states waiting in the wings to restrict the accurate reporting and

furnishing of common credit data. To be clear, the interpretive rule is a partisan call to action to state legislatures to advance the policy goals of the CFPB—a supposedly independent agency.

Nor was the timing of the interpretive rule a coincidence. FCRA-preemption was enacted in 1996. For its part, the CFPB has carried out federal consumer financial laws for more than a decade. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1011 (2010) (codified at 12 U.S.C. § 5491(a)). Yet the CFPB issued its interpretive rule four months after the First Circuit's decision, and cited the decision as support, *see* 87 Fed. Reg. at 41043–44. Make no mistake, the sudden pivot to notify states that the CFPB narrowly interprets FCRA-preemption was inspired by the decision below.

The interpretive rule is also an attempt by the CFPB to capture courts' role as arbiter of FCRA's preemptive scope to further political aims. The rule followed shortly after the White House directed the CFPB to investigate "coercive credit reporting and determine whether unpaid medical billing should ever be included in credit reports," Press Release, White House, FACT SHEET: The Biden Administration Announces New Actions to Lessen the Burden of Medical Debt and Increase Consumer Protection (Apr. 11, 2022), bit.ly/3HiRs3M, and after a House Resolution that would have amended § 1681c(a), by excluding some medical debt from credit reports stalled in the Senate, *see* H.R. 2547, 117th Cong. § 403(b) (2022). Taken together, the decision below, and now the CFPB's interpretive rule, threaten to spread state legislation that will frustrate the national credit-reporting system. The Court should take this case to avoid

the disastrous consequences that will follow from ignoring the clear text of 15 U.S.C. § 1681t(b)(1).

B. Allowing states to enact laws like Maine's, directly regulating the content of credit reports, sets up a compliance nightmare. Maine's laws restricting the reporting of medical debt and economic-abuse debt is just the beginning. Armed with federal court approval, and the CFPB's passive blessing, other states *will* regulate the reporting of accurate credit data based on their own idiosyncratic policies and priorities. The result will be a dizzying maze of state-specific reporting prohibitions with which the CRAs must comply to keep the nation's system functioning.

Additionally, because the First Circuit's reasoning could apply to the other preemption subsections of § 1681t(b)(1), there is a real risk the compliance nightmare will compound beyond CRAs to furnishers, including ACA's members. *Cf. Gobeille v. Liberty Mut. Ins. Co.*, 577 U.S. 312, 323 (2016) ("Pre-emption is necessary to prevent the States from imposing novel, inconsistent, and burdensome reporting requirements[.]"). Put directly, the risk of idiosyncratic policies and priorities is not limited to CRAs; states will also create a patchwork of policies and priorities regulating the furnishing of accurate credit data.

To deal with this, furnishers and CRAs will simply submit to the most restrictive state law. If Maine prohibits reporting medical debt less than 180 days old and another state prohibits reporting medical debt less than 365 days old, then CRAs will simply opt to follow the other state's law. *See* Staten & Cate 2003 at 29. While such system may be "uniform," authority to set national standards would shift away from Congress and to the most-restrictive state. This has

preemption exactly backwards, *see* U.S. Const. art. VI, cl. 2, and still destroys utility.

Worse, where state laws conflict, the credit market will be fractured back to a regional structure. Rather than incur the costs and headache of navigating the compliance labyrinth described above, national entities will choose, or be forced, to become regional; regional entities will become local; and some entities will leave the market altogether. *See, e.g.*, *The Role of FCRA in the Credit Granting Process: Hearing Before the Subcomm. On Fin. Insts. And Consumer Credit of the H. Comm. On Fin. Servs.*, 108th Cong. 9 (2003) (statement of John A. Courson, Chairman, Mortgage Bankers' Assoc.) ("Consumers will have fewer lenders among which to choose as varying non-uniform State laws give rise to regional barriers that will make it difficult to operate nationally.").

C. The fallout from a fragmented system will also impact consumers and creditors. A system that permits states to go as far as, or even further than Maine in altering the credit-reporting process, means creditors will have incomplete information about credit history. Artificially eliminating negative credit history through state content prohibitions is *not* in consumers' best interest. The economics of the national credit-reporting system make that much clear.

Not only that, but credit reports are a critical informational tool for consumers. Consumers—often those who have recently moved, changed phone numbers, or otherwise changed their contact information—often learn about outstanding debts only once the debts have been included on their credit reports. *See* Healthcare Financial Management Association, *Best Practices for Resolution of Medical*

Accounts, ACA International (2020), bit.ly/3VFA5OK. If there is a delay in reporting a consumer's medical debt, the consumer may miss critical timeframes for insurance coverage, which ultimately recycles the expenses back into the medical system and drives up the costs of medical care altogether. Less-than-accurate reporting also lessens the value of free consumer reports. Reports with missing information mislead consumers about outstanding obligations. Simply because a debt does not show on a consumer report, does not mean it does not exist. A creditor could still invoke collections proceedings in court, even if the information about the debt is not on a credit report.

Incomplete and inaccurate information in credit reports harms creditors as well. Federal law prohibits discrimination in lending decisions. 15 U.S.C. § 1691(a). And complete and accurate credit reports provide an objective, unbiased assessment of the credit risk, particularly with smaller-dollar loans. Without complete and accurate information, creditors must deploy more subjective review of consumers' creditworthiness. This creates risk-management issues, increases the cost of underwriting, and overall results in less accessible consumer credit.

To be clear, permitting states to steer away from a national credit-reporting system premised on accuracy and uniformity reduces the chance of fair and equitable treatment of all consumers. When creditors must deploy their own subjective review of creditworthiness, they will disparately determine how and to whom they decide to lend.

* * *

Under the United States' market-driven system and FCRA—no matter the consumer, no matter the

creditor, and no matter the state—a creditor can quickly rely on a credit report to assess the consumer's creditworthiness. Easily obtained, the report provides a complete picture of the relevant information. Our national consumer credit-reporting system, while imperfect, has been a remarkable success the last 50 years—success that Congress saw fit to extend with its explicit endorsement of FCRA-preemption.

That success is now jeopardy. The effect of the First Circuit's erroneous interpretation of 15 U.S.C. § 1681t, combined with the CFPB's interpretive rule, will be a patchwork of conflicting state laws that threaten the "miracle" of immediate credit. This uncharted territory—a credit-based economy in the United States with inaccurate credit reports—would be a new world since the enactment of the FCRA more than 50 years ago. Congress contemplated the need for accuracy and integrity in the reporting process; the First Circuit's decision undercuts the plain language of FCRA and intent of Congress' national focus.

This case therefore presents a confluence of circumstances for granting CDIA's petition. Not only did the First Circuit erroneously decide a question of federal law in a manner that conflicts with the (correct) reasoning of other circuits, but the endorsement of the decision below by the CFPB has greenlit state legislatures to supersede Congress' national standards with an impending cascade of state laws that will destroy the national consumer credit-reporting system.

CONCLUSION

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