No.

In the Supreme Court of the United States

UNITED STATES DEPARTMENT OF AGRICULTURE
RURAL DEVELOPMENT RURAL HOUSING SERVICE,
PETITIONER

v.

REGINALD KIRTZ

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether the civil-liability provisions of the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, unequivocally and unambiguously waive the sovereign immunity of the United States.

PARTIES TO THE PROCEEDING

Petitioner (defendant-appellee below) is the United States Department of Agriculture Rural Development Rural Housing Service.

Other defendants in the district court were Trans Union LLC and Pennsylvania Higher Education Assistance Agency, doing business as American Education Services.

Respondent (plaintiff-appellant below) is Reginald Kirtz.

RELATED PROCEEDINGS

United States District Court (E.D. Pa.):

Kirtz v. *Trans Union LLC*, No. 20-cv-5231 (June 9, 2021)

United States Court of Appeals (3d Cir.):

Kirtz v. *Trans Union LLC*, No. 21-2149 (Aug. 24, 2022)

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The Solicitor General, on behalf of the United States Department of Agriculture Rural Development Rural Housing Service (USDA), respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-34a) is reported at 46 F.4th 159. The opinion of the district court (App., *infra*, 35a-48a) is not published in the Federal Supplement but is available at 2021 WL 1750141.

JURISDICTION

The judgment of the court of appeals was entered on August 24, 2022. A petition for rehearing was denied on

November 3, 2022 (App., *infra*, 49a-50a). On January 17, 2023, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including March 3, 2023. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Pertinent statutory provisions are reproduced in the appendix to this brief. App., *infra*, 51a-79a.

STATEMENT

Respondent filed suit in the United States District Court for the Eastern District of Pennsylvania, alleging that USDA and the other defendants violated provisions of the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.* The district court granted the government's motion to dismiss on sovereign-immunity grounds. App., *infra*, 35a-48a. The court of appeals reversed. *Id.* at 1a-34a.

A. Statutory Background

1. In 1970, Congress enacted the Fair Credit Reporting Act (FCRA or 1970 Act), Pub. L. No. 91-508, Tit. VI, 84 Stat. 1127 (15 U.S.C. 1681 *et seq.*), to "promote efficiency in the Nation's banking system and to protect consumer privacy," *TRW Inc.* v. *Andrews*, 534 U.S. 19, 23 (2001); see 15 U.S.C. 1681(b).

As originally enacted in 1970, FCRA principally imposed duties only on "consumer reporting agencies." *E.g.*, 1970 Act, sec. 601, § 602, 84 Stat. 1128. Those are entities engaged in "assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties." § 603(f), 84 Stat. 1129; see §§ 604-605, 607-614, 84 Stat. 1129-1133. Congress's express goal in imposing those duties was "to require that consumer reporting

agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit * * * in a manner which is fair and equitable to the consumer" and is conducted with a "respect for the consumer's right to privacy." § 602(a)(4) and (b), 84 Stat. 1128; see *TRW*, 534 U.S. at 23. The 1970 Act also required "users of consumer reports," such as potential employers or creditors, to inform consumers of the reasons for any adverse actions taken on the basis of information in the relevant consumer report. § 615, 84 Stat. 1133. In its remedial provisions, the 1970 Act imposed civil liability on "[a]ny consumer reporting agency or user of information" that violated FCRA's provisions. §§ 616-617, 84 Stat. 1134. The statute authorized recovery of actual damages, costs, reasonable attorney's fees, and, in the case of willful violations, punitive damages. *Ibid.* It also imposed criminal liability on officers and employees of consumer reporting agencies who disclosed consumer information without authorization. § 620, 84 Stat. 1134.

The 1970 Act contained one provision imposing duties and another imposing liability on a "person," a term the statute defined to include "any individual, partnership, corporation, trust, estate, cooperative, association, *government or governmental subdivision or agency*, or other entity." Sec. 601, § 603(b), 84 Stat. 1128 (emphasis added). Section 606 imposed certain conditions on when a "person" could "procure or cause to be prepared an investigative consumer report on any consumer." § 606(a), 84 Stat. 1130; see § 606(b), 84 Stat. 1130. And Section 619 imposed criminal liability on "[a]ny person" obtaining consumer information "under false pretenses." 84 Stat. 1134. The 1970 Act did not otherwise contain any substantive requirements or remedial provisions applying directly to a "person" as such, in con-

trast to the various provisions applicable to "consumer reporting agencies" and "users of information." Instead, with the exception of Section 606, the 1970 Act used "person" or "persons" only in provisions imposing duties on consumer reporting agencies with respect to a person. *E.g.*, § 604(3), 84 Stat. 1129 (identifying circumstances in which a consumer reporting agency may furnish a consumer report to a "person"); § 613(1), 84 Stat. 1133 (requiring consumer reporting agencies to make disclosures to consumers about "the name and address of the person to whom [certain] information is being reported"); see, *e.g.*, §§ 607, 610-612, 615, 620, 84 Stat. 1130-1134.

2. In 1996, Congress amended FCRA by expanding its regulatory focus beyond consumer reporting agencies to include persons who furnish information to those agencies. See Consumer Credit Reporting Reform Act of 1996 (1996 Act), Pub. L. No. 104-208, Div. A, Tit. II, Subtit. D, Ch. 1, 110 Stat. 3009-426. As relevant here, a newly enacted provision obligated a "person" to conduct an investigation and take specific steps "[a]fter receiving notice * * * of a dispute with regard to the completeness or accuracy of any information provided by [the] person to a consumer reporting agency." 1996 Act § 2413(a), 110 Stat. 3009-448; see 15 U.S.C. 1681s-2(b)(1).

The 1996 Act also amended FCRA's remedial provisions to apply to "[a]ny person," not just to "[a]ny consumer reporting agency or user of information." § 2412(a) and (d), 110 Stat. 3009-446; see 15 U.S.C. 1681n and 1681*o*. It added a provision for statutory damages in addition to actual and punitive damages, expanded the availability of attorney's fees, and enhanced the criminal penalties applicable to "person[s]." 1996

Act §§ 2412(b), (c), and (e), 2415, 110 Stat. 3009-446 to 3009-447, 3009-450; see 15 U.S.C. 1681n, 1681*o*, 1681q. The 1996 Act also authorized both the Federal Trade Commission (FTC) and state governments to bring actions against "person[s]" who violate FCRA, including to obtain civil penalties in the case of FTC enforcement actions, and damages and injunctive relief in the case of state enforcement actions. 1996 Act §§ 2416, 2417, 110 Stat. 3009-450 to 3009-452; see 15 U.S.C. 1681s. (The Bureau of Consumer Financial Protection now shares enforcement authority with the FTC. See Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, Tit. X, Subtit. H, § 1088(a)(10), 124 Stat. 2088-2090 (15 U.S.C. 1681s(b)(1)(H)).) The 1996 Act did not, however, modify or amend the definition of "person" in the 1970 Act.

B. Proceedings Below

1. The United States Department of Agriculture operates the Rural Housing Service, which offers loans and other financial services to promote housing in rural areas. App., *infra*, 4a. Respondent alleges that a credit report prepared by a consumer reporting agency erroneously stated that his payments on a Rural Housing Service loan were past due when, he maintains, the loan had been fully paid. *Ibid.* Respondent alleges that he sent a dispute letter to the credit reporting agency, which alerted USDA of the issue, but that USDA failed to make a good-faith effort to investigate or correct the disputed information. *Id.* at 4a-5a, 36a-37a.

Respondent filed this suit against USDA, the consumer reporting agency, and another loan provider. App., *infra*, 4a-5a, 36a-37a. As relevant here, respondent contended that USDA's alleged failure to investigate and correct the disputed loan status after having

received notice of the dispute violated 15 U.S.C. 1681s-2(b)(1)—a provision added by Section 2413 of the 1996 Act, 110 Stat. 3009-448 to 3009-449—which imposes those obligations on persons that furnish credit information to consumer reporting agencies. App., *infra*, 4a n.1, 37a. Claiming that the alleged violations were both negligent and willful, see *id.* at 4a, 37a, respondent sought actual, statutory, and punitive damages, plus attorney's fees, see Am. Compl. 12.

USDA moved to dismiss respondent's claims against it on the ground that, although the 1970 Act's definition of "person" includes "any * * * government or governmental subdivision or agency," 15 U.S.C. 1681a(b), the remedial provisions that were amended in 1996 to extend to "person[s]" (15 U.S.C. 1681n, 1681*o*) do not unequivocally and unambiguously waive the sovereign immunity of the United States for purposes of imposing monetary liability, including civil penalties, punitive damages, and attorney's fees. See App., *infra*, 5a, 37a-38a.

2. The district court dismissed respondent's claims against USDA. App., *infra*, 35a-48a. The court explained that a "waiver of the government's immunity 'must be unequivocally expressed in statutory text,'" *id.* at 38a (quoting *Lane* v. *Peña*, 518 U.S. 187, 192 (1996)), and that "[e]ven when a waiver is unequivocally expressed, the scope of that waiver must be strictly construed in favor of the government, settling any ambiguity in favor of immunity," *ibid.* (citing *United States* v. *Williams*, 514 U.S. 527, 531 (1995)). The court further explained that "[a]mbiguity exists when there is a 'plausible' reading of the statute that does not impose 'monetary liability on the Government.'" *Ibid.* (quoting

United States v. *Nordic Village, Inc.*, 503 U.S. 30, 37 (1992)).

The district court observed that the Fourth and Ninth Circuits had held that FCRA does not unequivocally waive the United States' sovereign immunity from civil liability and damages in a suit by a private plaintiff, while the Seventh Circuit had reached the opposite conclusion. App., *infra*, 40a-42a; see *Robinson* v. *United States Department of Education*, 917 F.3d 799 (4th Cir. 2019), cert. denied, 140 S. Ct. 1440 (2020); *Daniel* v. *National Park Service*, 891 F.3d 762 (9th Cir. 2018); *Bormes* v. *United States*, 759 F.3d 793 (7th Cir. 2014). The court found "the reasoning of the Fourth and Ninth Circuits convincing." App., *infra*, 42a.

In particular, the district court found it significant that "reading 'person' to include the United States and its agencies throughout the FCRA would lead to illogic[al] results," such as "subject[ing] the United States to criminal penalties," authorizing "'state and federal enforcement' actions" against the federal government, and "expos[ing] the Government to punitive damages." App., *infra*, 42a-44a. The court observed that "another section" of FCRA contains an "express waiver of sovereign immunity," thereby "demonstrat[ing] that Congress uses particular and explicit language in waiving immunity"—language Congress did not use in the general remedial provisions at issue in this case. *Id.* at 44a-45a; see 15 U.S.C. 1681u(j) (providing damages actions for certain prohibited disclosures of information provided to the FBI). And the court further observed that other statutes waiving sovereign immunity "expressly mention 'the United States'" in waivers found within "liability sections," whereas a waiver here would have to be "deduced from

broad language in the definition section" of FCRA. *Id.* at 45a-46a (citing the Little Tucker Act, 28 U.S.C. 1346(a), and the Federal Tort Claims Act, 28 U.S.C. 2674).

The district court entered a partial final judgment under Rule 54(b) of the Federal Rules of Civil Procedure against respondent and in favor of USDA on all of respondent's claims against USDA. D. Ct. Doc. 38 (June 9, 2021).

3. The court of appeals reversed. App., *infra*, 1a-34a. The court noted that the Fourth Circuit in *Robinson* and the Ninth Circuit in *Daniel* had "concluded that the United States is not subject to liability under the FCRA," but that the Seventh Circuit in *Bormes* and the D.C. Circuit in *Mowrer* v. *United States Department of Transportation*, 14 F.4th 723 (2021), in an opinion rendered after the district court's decision in this case, had "reached the opposite conclusion." App., *infra*, 6a. The court rejected the analyses of the Fourth and Ninth Circuits, see *id.* at 17a-28a, and stated that it instead "agree[d] with the reasoning of the D.C. and Seventh Circuits," *id.* at 6a.

The court of appeals emphasized that FCRA's "express definition" of person "explicitly applies 'for purposes of this subchapter,'" necessarily including, in the court's view, "its enforcement provisions." App., *infra*, 8a (citation omitted). The court thus concluded that "the plain text of the statute operates as a waiver of sovereign immunity," *ibid.*, a conclusion it found "reinforced" by the fact that, unlike some other statutes, FCRA does not "expressly preserve[] the United States' sovereign immunity against civil suits," *id.* at 11a-12a; see *id.* at 11a-13a. The court rejected the government's arguments based on FCRA's structure and

history in light of what it viewed to be "clear and unambiguous terms." *Id.* at 14a; see *id.* at 13a-17a, 31a-34a.

The court of appeals acknowledged that uniformly including the federal government each time FCRA's remedial provisions apply to a "person" would produce anomalous results, such as exposing the United States to punitive damages, criminal penalties, and enforcement actions by federal agencies and States. App., *infra*, 21a-28a. But the court reasoned that it could "depart[] from a statutory definition only to the extent necessary to avoid untenable—not merely implausible—results." *Id.* at 22a. For example, the court opined that FCRA did *not* waive federal sovereign immunity with respect to criminal liability because "[i]t would be absurd * * * to subject the federal government to criminal prosecution," *id.* at 22a—but that FCRA *did* waive federal sovereign immunity for punitive damages and enforcement actions by federal agencies and States because those results were merely "implausible," *id.* at 25a; see *id.* at 25a-26a. And the court then concluded that "it is certainly not absurd for Congress to" have waived federal sovereign immunity for purposes of FCRA's private-damages provisions. *Id.* at 27a.

REASONS FOR GRANTING THE PETITION

The court of appeals incorrectly held that FCRA waives the sovereign immunity of the United States to suits by private plaintiffs for money damages. The court concluded that because the 1970 Act defines "person" to include the government, the 1996 Act's extension of civil liability to certain "person[s]" implicitly waives the federal government's sovereign immunity to suits for money damages, notwithstanding the absence of an explicit statutory waiver of sovereign immunity. That conclusion cannot be reconciled with this Court's

precedents requiring waivers of sovereign immunity to be unequivocal and unambiguous. As the court of appeals itself acknowledged, its holding squarely conflicts with holdings of the Fourth and Ninth Circuits. And as Justice Thomas has recognized, the question presented "concerns a matter of great importance" because it could "have a significant impact on the public fisc." *Robinson* v. *Department of Education*, 140 S. Ct. 1440, 1442 (2020) (Thomas, J., dissenting from the denial of certiorari). Although the Court declined to review the question presented in *Robinson*, *supra* (No. 19-512), that was at a time when it appeared that the circuit conflict might resolve itself. Since then, however, the conflict has only deepened, and the decision below solidifies it. This Court should grant review to resolve that conflict and correct the court of appeals' erroneous decision.

A. The Court Of Appeals Erred In Holding That FCRA Waives Sovereign Immunity For Private Damages Suits

1. Waivers of sovereign immunity must be unequivocal and unambiguous

"It is inherent in the nature of sovereignty, not to be amenable to the suit of an individual without its consent." *The Federalist* No. 81, at 548 (Alexander Hamilton) (Jacob E. Cooke ed. 1961) (emphasis omitted). The United States accordingly has long enjoyed immunity from suit without its consent. See, *e.g.*, *United States* v. *Clarke*, 33 U.S. (8 Pet.) 436, 444 (1834) (Marshall, C.J.) ("As the United States are not suable of common right, the party who institutes such suit must bring his case within the authority of some act of [C]ongress, or the court cannot exercise jurisdiction over it.").

The foundational principle of immunity from suit protects "the nation from unanticipated intervention in the processes of government." *Alden* v. *Maine*, 527 U.S. 706, 750 (1999) (citation omitted). That is especially true in the case of claims for money damages because "the allocation of scarce resources among competing needs and interests lies at the heart of the political process." *Id.* at 751. Were the federal government to be stripped of sovereign immunity without consent, "private suits for money damages would place unwarranted strain on the [government's] ability to govern in accordance with the will of [its] citizens." *Id.* at 750-751.

It is thus "a common rule, with which [courts] presume congressional familiarity, that any waiver of the National Government's sovereign immunity must be unequivocal." *United States Department of Energy* v. *Ohio*, 503 U.S. 607, 615 (1992) (citation omitted); see *Lane* v. *Peña*, 518 U.S. 187, 192 (1996). As this Court has explained in the parallel context of state sovereign immunity, "[t]he requirement of a clear statement in the text of [a] statute ensures that Congress has specifically considered state sovereign immunity and has intentionally legislated on the matter," rather than "'legislat[ing] on a sensitive topic inadvertently or without due deliberation.'" *Sossamon* v. *Texas*, 563 U.S. 277, 290-291 (2011) (citation omitted); see *id.* at 285 n.4 (observing that the requirement of an "unequivocally expressed" waiver applies equally to state and federal sovereign immunity).

The Court has further recognized that Indian tribes likewise enjoy the "'immunity from suit traditionally enjoyed by sovereign powers'" as "[a]mong the core aspects of sovereignty that tribes possess." *Michigan* v. *Bay Mills Indian Community*, 572 U.S. 782, 788 (2014)

(citation omitted). And as is the case with other sovereigns, "to abrogate such immunity, Congress must 'unequivocally' express that purpose." *Id.* at 790 (brackets and citation omitted). Foreign sovereigns also long enjoyed "complete immunity from suit in the courts of this country" as a "matter of grace and comity on the part of the United States," *Verlinden B.V.* v. *Central Bank of Nigeria*, 461 U.S. 480, 486 (1983), and are "presumptively immune" from suit today except in "specific" enumerated statutory circumstances, *Federal Republic of Germany* v. *Philipp*, 141 S. Ct. 703, 707 (2021); see 28 U.S.C. 1602 *et seq.*

The requirement of a clear and unequivocal waiver of sovereign immunity demands that "[a]ny ambiguities in the statutory language are to be construed in favor of immunity, so that the Government's consent to be sued is never enlarged beyond what a fair reading of the text requires." *FAA* v. *Cooper*, 566 U.S. 284, 290 (2012) (citation omitted). "Ambiguity exists if there is a plausible interpretation of the statute that would not authorize money damages against the Government." *Id.* at 290-291. That rule ensures that courts will not mistakenly impose burdens on the fisc that Congress did not authorize. See *Office of Personnel Management* v. *Richmond*, 496 U.S. 414, 423, 428 (1990); see *Alden*, 527 U.S. at 751.

2. FCRA's text does not contain an unequivocal and unambiguous waiver of sovereign immunity

Nothing in the text or statutory history of Section 1681n, Section 1681*o,* or the other FCRA provisions at issue here contains an unambiguous and unequivocally expressed waiver of the sovereign immunity of the United States—or, for that matter, an abrogation of the sovereign immunity of States, Indian tribes, and foreign

governments. The court of appeals reasoned that because Congress defined "person" in the original 1970 Act to include any "government or governmental subdivision or agency," 1970 Act, sec. 601, § 603(b), 84 Stat. 1128 (15 U.S.C. 1681a(b)), and because that definition is "applicable for the purposes of [FCRA]," § 603(a), 84 Stat. 1128 (15 U.S.C. 1681a(a)), the 1996 provisions of FCRA imposing liability on "person[s]" also impose liability on the United States. See App., *infra*, 8a-11a. That reasoning is unsound.

a. The 1970 Act itself plainly did not waive the sovereign immunity of the United States. As originally enacted, FCRA principally regulated "consumer reporting agenc[ies]," which are entities that aggregate and disseminate personal information about consumers. 1970 Act, sec. 601, § 603(f), 84 Stat. 1129; see §§ 604-605, 607-614, 84 Stat. 1129-1133. Consistent with that focus, the 1970 Act's private damages provisions applied only to "consumer reporting agenc[ies]" and "user[s] of information"—not to "person[s]" as such. §§ 616-617, 84 Stat. 1134.

Nor could Congress have intended for the United States to be deemed a "person" for each provision of the 1970 Act. Section 619 of the 1970 Act imposed criminal liability, including imprisonment for up to one year, on any "person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses." 84 Stat. 1134 (15 U.S.C. 1681q). Congress "never would have thought [that provision] applied to the United States." *Daniel* v. *National Park Service*, 891 F.3d 762, 775 n.12 (9th Cir. 2018); see *United States* v. *Cooper Corp.*, 312 U.S. 600, 609 (1941) (finding it "obvious" that the term "person" used in the Sherman Act does not include the United

States because otherwise the United States would be subject to civil and criminal liability); cf. *Return Mail, Inc.* v. *United States Postal Service*, 139 S. Ct. 1853, 1863 & n.4 (2019) (observing that a provision relieving the Patent Office of certain confidentiality obligations when "'a person'" is charged "with a criminal offense" is an example of a use of "person" that "plainly excludes the Government"). And no court has suggested that the 1970 Act subjected the United States—or States, Indian tribes, or foreign governments—to criminal liability; indeed, the court of appeals in this case acknowledged that "[i]t would be absurd * * * to subject the federal government to criminal prosecution" under Section 619. App., *infra*, 22a.

Against that background, the 1996 Act cannot properly be construed to have silently subjected the United States to suits for money damages. Although the 1996 Act expanded FCRA's scope from consumer reporting agencies to "persons" who provide information to reporting agencies and who make use of credit reports, *e.g.*, §§ 2403, 2411, 110 Stat. 3009-430 to 3009-431, 3009-443 to 3009-446 (15 U.S.C. 1681b(b)(2) and (3), 1681m(a)), its expanded remedial provisions do not contain any language expressing an "unequivocal" waiver of federal sovereign immunity, *Ohio*, 503 U.S. at 615. For example, the 1996 Act increased the criminal penalties applicable to "person[s]," § 2415, 110 Stat. 3009-450 (15 U.S.C. 1681q); added provisions permitting the FTC and state governments to sue "person[s]" in federal court for FCRA violations, including for civil penalties, §§ 2416, 2417, 110 Stat. 3009-450 to 3009-452 (codified as amended at 15 U.S.C. 1681s); and provided for private suits against "person[s]" for actual, statutory, and punitive damages, plus costs and attorney's

fees, § 2412, 110 Stat. 3009-446 to 3009-447 (15 U.S.C. 1681*o*).

Yet nothing in the 1996 Act suggests that any of those expanded provisions were intended to subject the United States or state, tribal, or foreign governments to private suits for money damages. Nor did the court of appeals identify any language elsewhere in the 1996 Act waiving or abrogating sovereign immunity. And because the 1970 Act also did not waive or abrogate sovereign immunity, the combination of the two statutes cannot be read to have impliedly created such a waiver or abrogation. As this Court has explained, "[a] waiver of the Federal Government's sovereign immunity must be unequivocally expressed in statutory text, and will not be implied." *Lane*, 518 U.S. at 192 (citation omitted). And that principle applies equally to the States, Indian tribes, and foreign governments. See pp. 11-12, *supra*.

Employees of the Department of Public Health & Welfare v. *Department of Public Health & Welfare*, 411 U.S. 279 (1973) (*Employees*), illustrates the Court's general refusal to interpret amendments to an existing scheme as allowing new damages actions against the sovereign when neither the text nor history of the amendments affirmatively demonstrates that Congress intended that result. *Employees* concerned an amendment to the Fair Labor Standards Act of 1938 (FLSA), 29 U.S.C. 201 *et seq.*, that expanded the statutory definition of "employer" to include state hospitals. See 411 U.S. at 282-283. The FLSA already provided for civil remedies, including back pay and liquidated damages, against "[a]ny employer who violates the" FLSA's minimum-wage and overtime provisions. *Id.* at 283 (citation omitted). Yet the Court held that the amendment's ex-

pansion of the term "employer" to include state hospitals did *not* expose the States that ran those hospitals to damages liability otherwise applicable to an "employer." See *id.* at 284-286. The Court stated that Congress *could* "place new or even enormous fiscal burdens on the States." *Id.* at 284. But under the unequivocal-waiver rule described above, the Court found the FLSA amendments wanting: "[W]e have found not a word in the history of the 1966 amendments to indicate a purpose of Congress to make it possible * * * to sue the State," and therefore "[i]t is not easy to infer that Congress * * * desired silently to deprive the States of an immunity they have long enjoyed under * * * the Constitution." *Id.* at 285.

In *Employees*, Congress expanded the FLSA's definition of "employer" without amending the statute's remedial provisions that were applicable to "any employer." Here, Congress expanded FCRA's remedial provisions to reach "any person" without amending the statutory definition of "person." In neither case, however, did Congress include affirmative language unequivocally waiving or abrogating sovereign immunity. Cf. *Kimel* v. *Florida Board of Regents*, 528 U.S. 62, 76 (2000) (finding an abrogation of state sovereign immunity where Congress amended a statute "to provide for suits against States in precisely the same Act in which it extended the [statute's] substantive requirements to the States"). As with the FLSA amendment in *Employees*, therefore, the 1996 Act cannot properly be read to have exposed the United States (or States, Indian tribes, and foreign governments) to private suits for money damages under FCRA, even on the assumption that the "literal language" of the definitional provision might plausibly be read to impose such liability. *Em-*

ployees, 411 U.S. at 283. Indeed, this Court has long refused to read statutes to have waived the sovereign immunity of the United States absent a clear and unambiguous statement, even when the statute could reasonably be read to the contrary. *E.g.*, *United States* v. *Idaho ex rel. Director, Idaho Department of Water Resources*, 508 U.S. 1, 7 (1993); *Library of Congress* v. *Shaw*, 478 U.S. 310, 323 (1986); *Employees*, *supra*; *United States* v. *Chemical Foundation, Inc.*, 272 U.S. 1, 20-21 (1926).

The court of appeals provided no basis for departing from those precedents here. Instead, it dismissed the relevance of *Employees* in a cursory footnote on the ground that the Court's reliance on legislative history there did not reflect current modes of statutory analysis. App., *infra*, 17a n.11. But the Court in *Employees* relied not only on legislative history but also on the absence of "clear language" in the statute demonstrating that "immunity was swept away." 411 U.S. at 285. In light of *Employees*, Congress could not reasonably have anticipated in 1996 that the bare definition of "person" in the 1970 Act would be sufficient, standing alone, to waive sovereign immunity and impose broad and substantial liabilities on the United States.

b. Not only do the 1970 Act and 1996 Act lack unequivocal language waiving sovereign immunity, but a reading of FCRA as not waiving the United States' immunity from private suits for money damages is at a minimum plausible. See *Cooper*, 566 U.S. at 290-291 (requiring only "a plausible interpretation of the statute that would not authorize money damages against the Government").

For example, reading FCRA as having preserved the sovereign immunity of the United States (as well as

state, tribal, and foreign governments) does not render superfluous the inclusion of "government or governmental subdivision or agency" in the definition of "person" in 15 U.S.C. 1681a(b). That inclusion renders the substantive duties of a consumer reporting agency with respect to a "person" equally applicable with respect to a government or governmental subdivision or agency. See, *e.g.*, 15 U.S.C. 1681b (describing various circumstances under which a consumer reporting agency may furnish a consumer report to a "person"); 15 U.S.C. 1681c-1(i)(4) (describing exceptions to the requirement to place a security freeze on the making of a consumer report if the request is by a "person" for certain enumerated uses). And some courts have stated that FCRA's substantive requirements that apply to "persons" also could be read as applying to governmental bodies. See, *e.g.*, *Robinson* v. *United States Department of Education*, 917 F.3d 799, 806 (4th Cir. 2019), cert. denied, 140 S. Ct. 1440 (2020).

Nor would there be any inconsistency in reading certain provisions in FCRA applicable to a "person" as applying to the government, but not treating the provisions for private damages actions in the same way. Sovereign immunity protects the government from suit, not from congressionally imposed obligations. The requirement that a statute speak in unequivocal and unambiguous terms thus applies only to putative waivers or abrogations of sovereign immunity, not to general duty-imposing provisions. It is thus unremarkable that the applicability of a FCRA provision to the government could depend on whether it dispenses with sovereign immunity. See *Robinson*, 917 F.3d at 806 ("[T]he substantive and enforcement provisions in FCRA are not one and the same.").

The court of appeals recognized (App., *infra*, 22a-23a) that principle in finding that the FCRA provision expressly subjecting "person[s]" to criminal prosecution, 15 U.S.C. 1681q; see 1996 Act § 2415, 110 Stat. 3009-450 (increasing the criminal penalties), is inapplicable to the United States. As the court observed, "[i]t would be absurd * * * to subject the federal government to a criminal prosecution" under that provision. App., *infra*, 22a; see *Daniel*, 891 F.3d at 770 ("patently absurd") (citation omitted). And it is likewise quite unlikely that Congress subjected States, Indian tribes, and foreign governments to criminal prosecution.

But the same analysis applies to the other remedial provisions in FCRA. The 1996 Act authorized the FTC to seek civil penalties against "person[s]" who violate the statute. § 2416, 110 Stat. 3009-450 (15 U.S.C. 1681s(a)). It is hard to imagine that Congress intended to enable one federal agency (the FTC) to sue another federal agency—or the United States itself—in federal court to recover civil penalties, without being pellucidly clear about such an intent. Cf. Joseph W. Mead, *Inter-agency Litigation and Article III*, 47 Ga. L. Rev. 1217, 1245 (2013).

The 1996 Act also authorized States to enforce FCRA's provisions against "any person," including for monetary damages, in any court of competent jurisdiction. § 2417, 110 Stat. 3009-451 to 3009-452 (15 U.S.C. 1681s(c)). It would be anomalous and contrary to the constitutional structure to assume that Congress intended—again, without making such intent clear—to allow States to seek damages under FCRA against the United States, cf. *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 431 (1819), or against another State and its agencies, cf. *Franchise Tax Board* v. *Hyatt*, 139 S. Ct.

1485, 1499 (2019), or against Indian tribes, cf. *Bay Mills*, 572 U.S. at 788-789, or against foreign governments, cf. 28 U.S.C. 1605-1607.

Similarly, Congress cannot be assumed to have subjected the United States and other governments to punitive damages, see 15 U.S.C. 1681n, especially given the venerable "presumption against imposition of punitive damages on governmental entities." *Vermont Agency of Natural Resources* v. *United States ex rel. Stevens*, 529 U.S. 765, 785 (2000); see *Robinson*, 917 F.3d at 805 (explaining that reading FCRA to waive sovereign immunity for punitive damages "would trample yet another presumption"); cf., *e.g.*, 11 U.S.C. 106(a)(3) (excepting governmental units from punitive damages); 28 U.S.C. 1606 (precluding punitive damage awards against foreign sovereigns).

Those provisions make clear that Congress did not contemplate treating the United States or its agencies (or States, Indian tribes, or foreign governments) as "persons" for all of the remedial provisions of FCRA. See *Robinson*, 917 F.3d at 806; *Daniel*, 891 F.3d at 770. And there is no sound basis to treat the provisions for private damages actions differently from the other remedial provisions discussed above—especially given the potentially enormous burden on the public fisc that throwing open the courthouse doors to FCRA private damages suits against the federal government could entail. See *Robinson*, 140 S. Ct. at 1441-1442 (Thomas, J., dissenting from the denial of certiorari) (observing that "the Federal Government's potential liability under the FCRA is substantial" and that a "waiver of sovereign immunity would thus have a significant impact on the public fisc"); *Robinson*, 917 F.3d at 804 ("There is no telling the true costs of [finding] a waiver.").

The court of appeals, however, resisted that conclusion only by inverting the analysis this Court's precedents demand. The court of appeals insisted on reading each FCRA remedial provision to waive sovereign immunity even if such a reading would yield what the court called "merely implausible" results. App., *infra*, 22a. But this Court has required precisely the opposite: courts must adopt any "plausible interpretation of the statute that would *not* authorize money damages against the Government." *Cooper*, 566 U.S. at 290-291 (emphasis added). Instead of adopting a reading of FCRA that would not waive or abrogate sovereign immunity, the court of appeals adopted an implausible reading that would do precisely that.

The court of appeals relied heavily on the fact that FCRA's statutory definitions "apply to the entire subchapter" of the United States Code containing FCRA. App., *infra*, 11a; see *id.* at 8a, 22a. But the FLSA provision at issue in *Employees*, *supra*, likewise stated that its definition of "'[e]mployer'" applied to that term "[a]s used in this chapter," 29 U.S.C. 203 (1970). This Court nevertheless explained that such language did not answer the sovereign-immunity question. *Employees*, 411 U.S. at 283-285. That is in keeping with the general principle that sovereign-immunity waivers must be evaluated on a provision-by-provision basis. *E.g.*, *Idaho Department of Water Resources*, 508 U.S. at 8. Indeed, even outside the context of sovereign immunity, this Court has understood that a term nominally given an Act-wide definition need not invariably be accorded a single, rigid meaning throughout the statute, for "a statutory term—even one defined in the statute—'may take on distinct characters from association with distinct statutory objects calling for different implementa-

tion strategies.'" *Utility Air Regulatory Group* v. *EPA*, 573 U.S. 302, 320 (2014) (citation omitted).

3. The statutory structure and history confirm that FCRA does not waive sovereign immunity

Other indications in the statutory structure and history refute the court of appeals' holding that the 1996 Act unequivocally and unambiguously waives sovereign immunity.

a. As the court of appeals recognized (App., *infra*, 22a-24a), mechanically applying FCRA's definition of "person" throughout the statute would subject States to private suits for money damages as well. Yet Congress presumably enacted the 1996 Act while mindful of this Court's decision in *Seminole Tribe* v. *Florida*, 517 U.S. 44 (1996), issued only months earlier, which held that Congress lacked authority under the Commerce Clause to abrogate state sovereign immunity to private damages actions. See *id.* at 47, 72. It is implausible that Congress, "in an insurrectionary moment," *Robinson*, 917 F.3d at 805, responded to *Seminole Tribe* with an attempt to subject States to both compensatory and punitive damages under FCRA. A more plausible reading is that Congress did not intend to extend the provisions for private civil damages actions to States. And given that the same "strict construction principle" applies to state and federal sovereigns alike when determining whether Congress has unequivocally abrogated or waived sovereign immunity, *Sossamon*, 563 U.S. at 285 n.4, the same conclusion should obtain in this case with respect to the federal government.

Indeed, Congress has demonstrated that when it wants to permit damages actions against the United States under FCRA, it does so expressly. In a FCRA amendment enacted just a few months before the 1996

Act, Congress empowered the FBI to obtain and use consumer information from consumer reporting agencies in limited circumstances for national security purposes, and simultaneously provided that "[a]ny agency or department of the United States obtaining or disclosing any consumer reports, records, or information contained therein in violation of this section is liable to the consumer" for statutory, actual, and (in certain circumstances) punitive damages. Intelligence Authorization Act for Fiscal Year 1996, Pub. L. No. 104-93, Tit. VI, sec. 601(a), § 624(i), 109 Stat. 976 (15 U.S.C. 1681u(j)). This Court has explained that "differences in language" in the same statute generally "convey differences in meaning." *Henson* v. *Santander Consumer USA Inc.*, 137 S. Ct. 1718, 1723 (2017). Congress's unequivocal and unambiguous waiver of federal sovereign immunity in Section 1681u(j) is a strong indication that it intended no such waiver in Sections 1681n and 1681*o*. See *Daniel*, 891 F.3d at 771 ("Equating 'the United States' with a 'person' in multiple sections of the FCRA also conflicts with a very clear waiver of sovereign immunity elsewhere in the statute.").

The court of appeals attempted to distinguish Section 1681u on the ground that "only federal agencies are subject to [its] substantive requirements in the first place." App., *infra*, 18a. If anything, that distinction cuts the other way: Congress would have had *even less* reason to explicitly identify the United States in Section 1681u(j), given that no other "person" (on the court's view) had duties or obligations under 1681u. That Congress did in fact explicitly name the United States in Section 1681u(j) underscores that even when Congress imposes particular substantive duties only on the federal government, it still knows that it must be unequiv-

ocal and unambiguous if it wishes to waive sovereign immunity and expose the government to private damages actions for breaching those duties.

Not only did the court of appeals mistakenly discount that provision in FCRA itself, but it improperly relied (App., *infra*, 11a-13a) on inferences from provisions in other statutes—namely, the Equal Credit Opportunity Act (ECOA), 15 U.S.C. 1691 *et seq.*, and the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.* ECOA expressly exempts "a government or governmental subdivision or agency" from a punitive-damages provision that otherwise applies to "[a]ny creditor," 15 U.S.C. 1691e(b), and TILA expressly preserves state and federal sovereign immunity, 15 U.S.C. 1612(b). Based on those provisions, the court concluded (App., *infra*, 11a-13a) that the lack of similar provisions in FCRA should be read to waive the sovereign immunity of the United States. That conclusion was mistaken. Waivers of sovereign immunity must be "unequivocally expressed," *Sossamon*, 563 U.S. at 285 n.4, not implicitly found by negative "inference" (App., *infra*, 13a n.7) from provisions in *other* statutes. See *Sossamon*, 563 U.S. at 290-291; *Lane*, 518 U.S. at 192.

b. Another reason to doubt that FCRA waives sovereign immunity is that Congress is unlikely to have intended the 1996 Act to disrupt the carefully calibrated remedies available against the federal government under the Privacy Act of 1974, Pub. L. No. 93-579, 88 Stat. 1896 (5 U.S.C. 552a). That statute comprehensively regulates Executive Branch agencies in their collection, maintenance, use, and dissemination of "records" containing information about an "individual," when those records are maintained as part of a "system of records." 5 U.S.C. 552a(a)(1)-(5) and (b). The Privacy Act author-

izes a limited class of private civil actions to enforce its terms. 5 U.S.C. 552a(g); see *Cooper*, 566 U.S. at 303 (observing that Congress's goal in enacting the Privacy Act was "to cabin relief, not to maximize it").

The court of appeals' understanding of FCRA would vastly expand the liability of the United States for federal-agency activity already covered by the Privacy Act. The Privacy Act, for example, addresses disclosures by a federal agency to a consumer reporting agency of an overdue debt that the federal agency is trying to collect—a type of disclosure that a federal agency is required by law to make under certain circumstances, see 31 U.S.C. 3711(e), including with respect to student loans, see 20 U.S.C. 1080a, 1087a(b)(2), 1087e(a)(1). If the disclosed record of the overdue debt contains an error, the Privacy Act offers procedures whereby the individual to whom the record pertains can correct the record, see 5 U.S.C. 552a(d), and contains requirements for reporting such corrections, see 5 U.S.C. 552a(c)(4). The FCRA provision respondent invokes contains analogous (but not identical) correction procedures and a notice requirement when there has been an error in a disclosure made by a "person" to a consumer reporting agency. See 15 U.S.C. 1681s-2(b).

Yet under the Privacy Act, an individual generally may seek only injunctive relief, not money damages, for failure to correct the record. 5 U.S.C. 552a(g)(1)(A) and (2)(A). Compensatory damages are available only if "actual damages" resulted from an "intentional or willful" failure to take specified actions. 5 U.S.C. 552a(g)(4)(A); see *Doe* v. *Chao*, 540 U.S. 614, 620-621 (2004). By contrast, on the court of appeals' reading, FCRA would permit a damages action not only for a failure to update the consumer reporting agency, but also for a failure to

correct the record. 15 U.S.C. 1681n, 1681*o*, and 1681s-2(b). It would permit either type of action to be premised merely on negligence, without any need to prove intentional or willful conduct. 15 U.S.C. 1681*o*. And it would permit, in the case of a willful violation, automatic statutory damages without any showing that the plaintiff sustained "actual damages"—and punitive damages as well. 15 U.S.C. 1681n(a)(1)(A). Congress cannot have intended the Privacy Act's reticulated remedial scheme to be so easily displaced or circumvented.

The court of appeals recognized the "overlap" between the Privacy Act and FCRA but asserted that no "actual inconsistency" existed because "the two statutes impose liability on federal agencies in different ways." App., *infra*, 32a, 34a. But that is the very point. There is no sound reason to believe that Congress intended to make the United States liable for money damages under FCRA based on the same conduct that Congress found insufficient to trigger money damages under the Privacy Act. That is especially true given that the extent of liability under the Privacy Act was the subject of extensive congressional debate: Congress considered and rejected amendments that would have allowed recovery for negligent violations or the award of punitive damages. See *Fitzpatrick* v. *IRS*, 665 F.2d 327, 330 (11th Cir. 1982), abrogated in part on other grounds by *Doe*, 540 U.S. at 618; see also, *e.g.*, 120 Cong. Rec. 36,613, 36,659-36,660 (1974) (statements of Reps. McCloskey, Erlenborn, and Butler); *id.* at 36,956 (statement of Rep. Butler).

c. Finally, the legislative history of the 1996 Act underscores that Congress did not understand itself to have been imposing vast new liabilities on the United States and other governments. See *Employees*, 411

U.S. at 285 (finding no waiver of state sovereign immunity in part because "we have found not a word in the history of the 1966 amendments to indicate" that Congress wished to waive such immunity). The House Report on an early version of the 1996 Act observed only that extension of the provisions for private damages suits to "'any person who'" fails to comply with FCRA would bring within the scope of the provisions "persons who furnish information to consumer reporting agencies, such as banks and retailers." H.R. Rep. No. 486, 103d Cong., 2d Sess. 49 (1994); see S. Rep. No. 185, 104th Cong., 1st Sess. 48-49 (1995). Likewise, the sponsor of a Senate bill containing identical language described those provisions as extending liability to "banks, retailers, and other creditors." 140 Cong. Rec. 8941 (1993) (statement of Sen. Bryan). Nothing indicates that the language was understood to extend liability to, and dispense with the sovereign immunity of, the United States or state, tribal, or foreign governments.

The court of appeals discounted that history, quoting this Court's statement in *Dellmuth* v. *Muth*, 491 U.S. 223 (1989), that "'legislative history generally will be irrelevant to a judicial inquiry into whether Congress intended' to waive sovereign immunity." App., *infra*, 16a (quoting *Dellmuth*, 491 U.S. at 230). But *Dellmuth*'s point was that because a waiver or abrogation of sovereign immunity requires "unmistakably clear" and "unequivocal" language, "recourse to legislative history will be futile" if Congress does not speak with the requisite clarity. 491 U.S. at 230. In other words, "[a] statute's legislative history cannot *supply* a waiver that does not appear clearly in any statutory text." *Lane*, 518 U.S. at 192 (emphasis added).

The point here, by contrast, is that the 1996 Act does *not* contain any unmistakably clear or unequivocal language waiving or abrogating sovereign immunity, and the statutory and legislative history is evidence of the contemporaneous linguistic understanding that FCRA did not take the momentous step of doing so. See *Quern* v. *Jordan*, 440 U.S. 332, 343 (1979) (observing, when declining to construe the Civil Rights Act of 1871, ch. 22, 17 Stat. 2467, to have abrogated state sovereign immunity, that the statute "passed with only limited debate and not one Member of Congress mentioned" immunity).

B. This Court's Review Is Warranted

1. The court of appeals acknowledged that "the Courts of Appeals to have considered this issue are split down the middle." App., *infra*, 2a. The Fourth and Ninth Circuits have held that FCRA does not unequivocally and unambiguously waive the federal government's sovereign immunity from private damages actions. See *Robinson*, 917 F.3d at 806; *Daniel*, 891 F.3d at 775. In contrast, the District of Columbia and Seventh Circuits, joined now by the Third Circuit in the decision below, have held the opposite. See *Mowrer* v. *United States Department of Transportation*, 14 F.4th 723 (D.C. Cir. 2021); *Bormes* v. *United States*, 759 F.3d 793 (7th Cir. 2014). Justice Thomas remarked upon the "pre-existing Circuit split" three years ago, and the decision below has only further "deepened" it. *Robinson*, 140 S. Ct. at 1441 (Thomas, J., dissenting from the denial of certiorari).

To be sure, the Court denied review in *Robinson*. But at the time, only the Seventh Circuit in *Bormes* had held that FCRA waives sovereign immunity—and that court had signaled a potential retreat from that position

in *Meyers* v. *Oneida Tribe of Indians*, 836 F.3d 818 (2016), cert. denied, 137 S. Ct. 1331 (2017), where it held that FCRA does not abrogate tribal sovereign immunity. As the government observed in opposing certiorari in *Robinson*, the decisions in *Meyers* and *Bormes* were "in serious tension" because "there is no textual basis in FCRA's definition of 'person' to treat the word 'government' as applying to the federal government (and possibly state governments) but not tribal governments." Br. in Opp. at 23, *Robinson*, *supra* (No. 19-512). "Accordingly," the government concluded, "it is far from clear that, if squarely presented with the issue, the Seventh Circuit would adhere to its holding in *Bormes*, especially now that two other courts of appeals have expressly disagreed with *Bormes*—and none has agreed with it." *Ibid.*

Since the denial of certiorari in *Robinson*, however, the D.C. and Third Circuits have joined the Seventh Circuit in holding that FCRA waives sovereign immunity, thereby cementing the circuit conflict. In addition, the court of appeals in this case attempted to distinguish *Meyers* on the ground that abrogation of tribal sovereign immunity "may perhaps require specificity beyond that required to waive the United States' immunity." App., *infra*, 30a; see *id.* at 28a-31a. That distinction is unconvincing and would lead to anomalous results, see Br. in Opp. at 23-24, *Robinson*, *supra* (No. 19-512), but it indicates that the government was mistaken to predict that the circuit conflict would resolve itself. "Thus, absent intervention from this Court * * * the Courts of Appeals will remain in conflict." *Robinson*, 140 S. Ct. at 1441 (Thomas, J., dissenting from the denial of certiorari).

2. The question presented also involves an issue of exceptional importance. The federal government is the nation's largest employer. It is also the nation's largest lender and creditor. In both capacities, the federal government routinely makes use of consumer reports and provides information to consumer reporting agencies. See *Robinson*, 140 S. Ct. at 1442 (Thomas, J., dissenting from the denial of certiorari) (explaining that the federal government "is one of the largest furnishers of credit information in the country"). Under the construction of the statute adopted by the court of appeals, the federal government could be a ubiquitous FCRA defendant that could routinely be threatened with substantial monetary liability for its everyday employment and lending activities.

At the end of fiscal year 2021, for example, the delinquent non-tax debt owed to the United States totaled $197.7 billion. Department of the Treasury, *Fiscal Year 2021 Report to Congress: U.S. Government Non-Tax Receivables and Debt Collection Activities of Federal Agencies* 1 (Nov. 2021), www.fiscal.treasury.gov/files/dms/debt21.pdf. Federal agencies have been authorized since 1983, and required since 1996, to report such delinquent accounts to consumer reporting agencies in certain circumstances. See Act of Jan. 12, 1983, Pub. L. No. 97-452, § 1, 96 Stat. 2467, 2470; Debt Collection Improvement Act of 1996 (DCIA), Pub. L. No. 104-134, § 31001(k), 110 Stat. 1321-365. The DCIA in particular sets forth a comprehensive scheme addressing the collection of delinquent non-tax debts, including provisions addressing notice to the person owing the debt, dispute resolution, and the reporting of information to consumer reporting agencies. See 31 U.S.C. 3711(e) and (g). The court of appeals' construction of FCRA could

expose the United States to substantial liability for conduct related to satisfying those statutory directives.

"A waiver of sovereign immunity [in FCRA] would thus have a significant impact on the public fisc." *Robinson*, 140 S. Ct. at 1442 (Thomas, J., dissenting from the denial of certiorari). And "because 'the allocation of scarce resources among competing needs and interests lies at the heart of the political process,'" the "question whether sovereign immunity has been waived [in FCRA] is one of critical importance" to our "democratic republic." *Id.* at 1441 (quoting *Alden*, 527 U. S. at 751).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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MARCH 2023

APPENDIX

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-2149

REGINALD KIRTZ, APPELLANT

v.

TRANS UNION LLC; PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY, DOING BUSINESS AMERICAN EDUCATION SERVICES; UNITED STATES DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT RURAL HOUSING SERVICE

Argued: May 24, 2022
Filed: Aug. 24, 2022

On Appeal from the United States District Court
for the Eastern District of Pennsylvania
District Court No. 2-20-cv-05231
District Judge: The Honorable Mitchell S. Goldberg

OPINION OF THE COURT

Before: KRAUSE, BIBAS, and PHIPPS, *Circuit Judges*

KRAUSE, Circuit Judge

There are profound implications to throwing open the doors to the United States Treasury, so before we do, we need to be sure that is what Congress intended. Here, the District Court dismissed Appellant Reginald Kirtz's lawsuit against the U.S. Department of Agricul-

ture ("USDA") for alleged violations of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681 et seq, because it concluded the statute did not clearly waive the United States' sovereign immunity. The District Court was in good company, as the Courts of Appeals to have considered this issue are split down the middle, and until today, we had not yet spoken. But our best indicator of Congress's intent is the words that it chose, and in our view, the FCRA's plain text clearly and unambiguously authorizes suits for civil damages against the federal government. In reaching a contrary conclusion, the District Court relied on its determination that applying the FCRA's literal text would produce results that seem implausible. That may be, but implausibility is not ambiguity, and where Congress has clearly expressed its intent, we may neither second-guess its choices nor decline to apply the law as written. Accordingly, we will reverse and remand to the District Court for further proceedings.

I.

In 1970, Congress enacted the FCRA to "ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy." *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 52 (2007). As originally enacted, the FCRA imposed substantive requirements on consumer reporting agencies and "persons" who used information in credit reports. *See* Pub. L. No. 91-508, §§ 604-615, 84 Stat. 1114, 1129-33 (1970) ("1970 Act"). The 1970 Act also expressly defined the term "person" as "any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity." *Id.* § 603(b).

In 1996, Congress amended the FCRA to impose new requirements on "persons," such as creditors and lenders, who furnish information to credit reporting agencies. *See* Consumer Credit Reporting Reform Act of 1996, Pub. L. No. 104-208, § 2413, 110 Stat. 3009, 3009-447 to -449 ("1996 Amendments"). One such set of requirements is triggered when consumers contact a consumer reporting agency to dispute the accuracy of information in their credit file under § 1681i(a)(1)(A) of the FCRA. The consumer reporting agency is required to send notice of the dispute to "any person who provided any item of information in dispute"—that is, to the furnisher of the information. 15 U.S.C. § 1681i(a)(2)(A). When a furnisher receives such notice from a consumer reporting agency, it must "conduct an investigation with respect to the disputed information," "modify," "delete," or "block the reporting of" any information found to be inaccurate, and "report the results of the investigation" to both the consumer reporting agency that provided notice and, "if the investigation finds that the information is incomplete or inaccurate," to "all other consumer reporting agencies" to which the furnisher provided the disputed information. *Id.* § 1681s-2(b)(1).

If a furnisher of information negligently fails to comply with these requirements—or any of the FCRA's other substantive requirements—§ 1681o authorizes consumers to bring an action for actual damages, costs, and attorney's fees. If the failure to comply is willful, § 1681n further provides for statutory and punitive damages. When §§ 1681n and 1681o were originally enacted in 1970, they imposed liability only on consumer reporting agencies and users of information, *see* Pub. L. No. 91-508 at §§ 616-17, but when Congress expanded the FCRA's substantive requirements in the 1996

Amendments it also expanded these sections to authorize suits against "[a]ny person" who fails to comply with "any requirement" under the Act, 15 U.S.C. §§ 1681n(a), 1681o(a).

This appeal arises from two loans issued to Reginald Kirtz, one by the Pennsylvania Higher Education Assistance Agency ("AES"), a "public corporation" authorized under Pennsylvania law to make, guarantee, and service student loans, 24 Pa. Stat. and Cons. Stat. §§ 5101, 5104(1), and the other by the USDA through the Rural Housing Service, which issues loans to promote the development of safe and affordable housing in rural communities. Kirtz alleges that, as of June 2018, both of his loan accounts were closed with a balance of zero. Despite this, AES and the USDA continued to report the status of Kirtz's accounts as "120 Days Past Due Date" on his credit file from Trans Union LLC, resulting in damage to his credit score. Pursuant to § 1681i(a)(1)(A) of the FCRA, Kirtz sent a letter to Trans Union disputing the inaccurate statements on his credit file, and Trans Union gave notice of the dispute to both AES and the USDA per § 1681i(a)(2)(A). According to Kirtz, however, neither AES nor the USDA took any action to investigate or correct the disputed information, in violation of § 1681s-2(b)(1).

Kirtz commenced this action against Trans Union, AES, and the USDA on October 20, 2020, alleging both negligent and willful violations of the FCRA under §§ 1681n and 1681o.[1] Both AES and Trans Union filed

[1] Specifically, Kirtz alleged that AES and the USDA failed to comply with the duties the FCRA imposes on furnishers of information under § 1681s-2(b)(1), and that Trans Union failed to comply with the duties the FCRA imposes on credit reporting agencies

answers to Kirtz's Amended Complaint, but the USDA responded by filing a motion to dismiss for lack of subject matter jurisdiction based on the United States' sovereign immunity.[2] *See* Fed. R. Civ. P. 12(b)(1). The District Court agreed with the USDA that §§ 1681n and 1681o did not unequivocally express Congress's intent to waive sovereign immunity and granted the USDA's motion to dismiss. Applying the statutory definition of "person" to the civil liability provisions, the Court reasoned, would require doing so throughout the FCRA, leading to certain results that seemed implausible. Thus, the Court rejected that reading, even recognizing those provisions authorize suits against "[a]ny person," and § 1681a(b) expressly defines "person" to include any "government or governmental subdivision or agency."

II.

Kirtz originally invoked the District Court's jurisdiction under 15 U.S.C. § 1681p and 28 U.S.C. § 1331. We have jurisdiction under 28 U.S.C. § 1291. We review

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to ensure the accuracy of the information contained within credit reports under §§ 1681e(b), 1681i(a)(1)(A), and 1681i(a)(5).

[2] Though AES was established by the Pennsylvania Legislature as "a public corporation and government instrumentality," 24 Pa. Stat. and Cons. Stat. § 5101, it is not supported by tax revenue, is controlled by a largely autonomous board of directors, and would be responsible for paying any civil judgment against it from its own funds, rather than those of the Commonwealth, *see id.* at §§ 5104(3), 5105.10. For these reasons, some courts have expressed doubt as to whether AES shares Pennsylvania's sovereign immunity from suit. *See, e.g.*, *United States ex rel. Oberg v. Pa. Higher Educ. Assistance Agency*, 804 F.3d 646, 650 (4th Cir. 2015). Because AES did not move to dismiss on sovereign immunity grounds, however, the District Court did not consider that issue, and it is consequently not implicated in this appeal.

the District Court's legal conclusion that the FCRA does not waive the federal government's sovereign immunity *de novo*. *See Karns v. Shanahan*, 879 F.3d 504, 512 (3d Cir. 2018).

The sole question at issue in this appeal is whether §§ 1681n and 1681o of the FCRA waive the USDA's sovereign immunity. We have not addressed this question, but four other Courts of Appeals have. The District Court aligned itself with the Fourth and Ninth Circuits, which concluded that the United States is not subject to liability under the FCRA. *See Robinson v. United States Dep't of Educ.*, 917 F.3d 799 (4th Cir. 2019); *Daniel v. Nat'l Park Serv.*, 891 F.3d 762 (9th Cir. 2018). The D.C. and Seventh Circuits, on the other hand, have reached the opposite conclusion, holding that the FCRA's plain language indeed waives the United States' sovereign immunity. *See Mowrer v. United States Dep't of Transp.*, 14 F. 4th 723 (D.C. Cir. 2021); *Bormes v. United States*, 759 F.3d 793 (7th Cir. 2014). For the reasons that follow, we agree with the reasoning of the D.C. and Seventh Circuits and hold that §§ 1681n and 1681o unequivocally waive the sovereign immunity of the United States.

A.

The United States and its agencies—including the USDA—enjoy sovereign immunity from suit, but Congress may waive that immunity by enacting a statute that authorizes suit against the government for damages or other relief. *See FAA v. Cooper*, 566 U.S. 284, 290-91 (2012); *Doe 1 v. United States*, 37 F.4th 84, 86-88 (3d Cir. 2022). Whether a statute waives sovereign immunity is a question of statutory interpretation. Any waiver must be "unequivocally expressed" in the statu-

tory text, *Sossamon v. Texas*, 563 U.S. 277, 284 (2011) (quoting *Pennhurst State Sch. & Hosp. v. Halderman*, 465 U.S. 89, 99 (1984)), but "Congress need not state its intent in any particular way" and is "never required" to use "magic words" to waive immunity, *Cooper*, 566 U.S. at 291. Rather, if, after applying the "traditional tools of statutory construction," there is "no ambiguity," courts must apply a waiver as written, *Richlin Sec. Serv. Co. v. Chertoff*, 553 U.S. 571, 590 (2008), and may not "narrow [a] waiver that Congress intended," *United States v. Idaho ex rel. Dir., Idaho Dep't of Water Res.*, 508 U.S. 1, 7 (1993) (internal quotation marks omitted).

On the other hand, if the waiver *is* ambiguous—meaning the language Congress purportedly used to waive immunity is reasonably susceptible to more than one meaning—then the sovereign immunity canon requires courts to construe that ambiguity in favor of immunity. *See Cooper*, 566 U.S. at 290.

Importantly, while we speak of Congress's "intent" to waive sovereign immunity, our inquiry is limited the statutory text. Legislative history may neither supply a waiver that is not present in the text nor destroy one that is. *See Lane v. Pena*, 518 U.S. 187, 192 (1996). Instead, if a waiver is "clearly discernable from the statutory text in light of traditional interpretive tools," we must give effect to it. *Cooper*, 566 U.S. at 291. For the reasons that follow, we hold that §§ 1681n and 1681o of the FCRA satisfy this standard.

B.

1.

The FCRA provides that any "person" who either negligently or willfully "fail[s] to comply with any requirement imposed under [the FCRA] with respect to any consumer is liable to that consumer" for civil damages. 15 U.S.C. §§ 1681n(a), 1681o(a). The FCRA also expressly defines the term "person" to include any "government or governmental subdivision or agency." *Id.* § 1681a(b). The term "person" is usually presumed to not include the sovereign. *See Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 780-81 (2000). But that presumption only applies "[i]n the absence of an express statutory definition[.]" *Return Mail, Inc. v. United States Postal Serv.*, 139 S. Ct. 1853, 1861-62 (2019). And here, the FCRA contains such an express definition: it defines "person" to include any "government or governmental subdivision or agency." 15 U.S.C. § 1681a(b).

This definition, moreover, explicitly applies "for purposes of this subchapter," *id.* at § 1681a(a), meaning subchapter III of chapter 41 of Title 15, containing the entirety of the FCRA, including both its substantive requirements and its enforcement provisions, *see id.* §§ 1681-1681x. Indeed, where Congress wanted to use a different or narrower definition of "person" within the FCRA, it knew how to do so: § 1681g, for example, imposes certain disclosure obligations on "[a]ny person who makes or arranges loans and who uses a consumer credit score," 15 U.S.C. § 1681g(g)(1), but that section explicitly excludes from the FCRA's definition of "person" any "enterprise" as defined in a separate statute, *id.* § 1681g(g)(1)(G). We presume, therefore, that Con-

gress's failure to do so in §§ 1681n and 1681o was deliberate and intended to convey the full statutory definition. And that presumption is buttressed by the fact that § 1681n clearly distinguishes between "natural person" and the statutorily-defined term "person." *See id.* § 1681n(a)(1)(B), n(a). Together, these statutory provisions demonstrate that Congress intended for the term "person" in the civil liability provisions to carry its expressly defined meaning, rather than a narrower or a colloquial meaning.

Nor is there ambiguity about whether that express definition—covering "any . . . government or governmental subdivision or agency"—encompasses the United States and its agencies, including the USDA. *Id.* § 1681a(b). As a general matter, Congress uses the expansive modifier "any" to bring within a statute's reach all types of an item. *See, e.g., Republic of Iraq v. Beaty*, 556 U.S. 848, 856 (2009); *Ali v. Fed. Bureau of Prisons*, 552 U.S. 214, 218-220 (2008). That it intended as much here is apparent from § 1681a(d)(2)(D), which excludes from the definition of "consumer report" any communications "described in" § 1681a(y),[3] which relates, inter alia, to employment-based communications that are "not provided to any person except . . . any Federal or State officer, agency, or department," 15 U.S.C. § 1681a(y)(1)(D)(ii). Were federal agencies and departments already excluded from the FCRA's definition of "person," there would be no need for these carve-outs.

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[3] Due to a drafting error, § 1681a(d)(2)(D) actually refers to § 1681a(x), but the accompanying notes make clear that the reference should be to subsection (y). *See* 15 U.S.C. § 1681a note (References in Text Notes).

Likewise, § 1681b(b)(3)(A) imposes obligations on "person[s]" who make adverse employment decisions based on credit reports but makes an exception "[i]n the case of an agency or department of the United States Government" if that agency or department makes certain written findings. *Id.* § 1681b(b)(4)(A). Again, this exception would be entirely superfluous if federal agencies and departments were not otherwise included as "persons" within the FCRA's definition.[4]

Even the Fourth and Ninth Circuits, though ultimately concluding that Congress did not waive the United States' sovereign immunity, do not dispute that the United States must be a "person" for purposes of the FCRA's substantive requirements;[5] rather, they draw a

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[4] Other examples abound. For example, the FCRA only permits credit reporting agencies to furnish credit reports in six circumstances "and no other:" (1) pursuant to a court order; (2) pursuant to the written instructions of the consumer; (3) to "person[s]" whom the credit reporting agencies believe intend to use the information for specified purposes; (4) in response to a request from the head of a state or local child support agency; (5) to an agency administering a State child support plan; and (6) to the Federal Deposit Insurance Corporation or the National Credit Union Administration pursuant to applicable federal law. 15 U.S.C. § 1681b(a)(1)-(6). If the United States and its agencies were not "persons," within the FCRA's definition, credit reporting agencies would not be able to legally provide them with credit reports. Similarly, when a consumer disputes the accuracy of information in a credit report, § 1681i only requires credit reporting agencies to provide notice of disputes to "persons" who furnished the disputed information. *Id.* § 1681i(a)(2). Reading the government out of the definition of "person" would thus eliminate the sole means by which the FCRA allows consumers to dispute information furnished by the nation's largest employer and creditor.

[5] The United States itself conceded that it was a "person" within the FCRA's definition in *Bormes*, although it did not do so in *Robinson* or

distinction between the Act's substantive and enforcement provisions. *See Robinson*, 917 F.3d at 806; *Daniel*, 891 F.3d at 773. But that distinction is wholly artificial. The FCRA could not be clearer that its definitions apply to the entire subchapter, *see* 15 U.S.C. § 1681a(a), and there is nothing in the text of the FCRA's civil liability provisions nor its other enforcement provisions to the contrary. Nor do these courts cite any authority to support such a departure from the statutory text.

In sum, we agree with the Seventh and D.C. Circuits that the plain text of the statute operates as a waiver of sovereign immunity: "[O]nce it is conceded that 'any . . . government' includes the United States . . . there is no basis for denying that the same definition governs FCRA's private damages actions."[6] *Mowrer*, 14 F.4th at 730.

2.

Our reading of the FCRA's plain text is reinforced by a comparison with the Truth in Lending Act ("TILA"), 15 U.S.C. § 1601 *et seq.*, and the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. § 1691 *et seq.*, both of which are codified alongside the FCRA in Chapter 41 of Title 15. Like the FCRA, the TILA and ECOA define

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Daniel. *Compare Bormes*, 759 F.3d at 795, *with Robinson*, 917 F.3d at 806, *and Daniel*, 891 F.3d at 773.

[6] The USDA suggests that, in order to waive sovereign immunity, Congress may not simply define a term like "person" to include the government in a general definitional section and then use that term in a later liability section, but that it must instead authorize suit against the government in the liability section itself. The Supreme Court, however, has "never required that Congress make its clear statement in a single section or in statutory provisions enacted at the same time[.]" *Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 76 (2000).

"person" to include any "government or governmental subdivision or agency," and each includes "person" in its definition of the term "creditor." *See* 15 U.S.C. §§ 1602(d)-(g), 1691a(e)-(f). Both statutes also authorize suits for civil damages against any "creditor" who violates their substantive requirements, using nearly identical language to the FCRA's civil liability provisions. *Compare* 15 U.S.C. § 1640(a) ("[A]ny creditor who fails to comply with any requirement imposed under [the TILA] . . . with respect to any person is liable to such person. . . . "), *and* 15 U.S.C. § 1691e(a) ("Any creditor who fails to comply with any requirement imposed under [the ECOA] shall be liable to the aggrieved applicant. . . . "), *with* 15 U.S.C. § 1681n(a) ("Any person who willfully fails to comply with any requirement imposed under [the FCRA] with respect to any consumer is liable to that consumer. . . . ").

The surrounding statutory context of each statute confirms that Congress understood the use of the defined term "person" to signal an unambiguous waiver of sovereign immunity. The TILA, for example, includes a provision that expressly preserves the United States' sovereign immunity against civil suits. *See* 15 U.S.C § 1612(b); *see Moore v. United States Dep't. of Agriculture*, 55 F.3d 991, 994 (5th Cir. 1995). Similarly, while the ECOA also authorizes punitive damages against "creditors," it expressly exempts any "government or governmental subdivision or agency." 15 U.S.C § 1691e(b). As these examples make plain, Congress understood in the contexts of the TILA and ECOA that authorizing suits against "any creditor"—*i.e.*, any "person"—would otherwise suffice to waive sovereign

immunity,[7] and legislated against that statutory background when it enacted the 1996 FCRA Amendments.[8] Indeed, since 1996, Congress has amended the FCRA to expressly incorporate the ECOA's definition of "creditor," and thus its definition of "person." *See* 15 U.S.C. § 1681a(r)(5) (1998). These statutory parallels and cross-references provide additional evidence that the FCRA authorizes civil damages against "any person," without any exemption for the United States government.

3.

The USDA challenges our interpretation by pointing to the original 1970 version of the FCRA, which also defined "person" to include the government but did not impose civil liability on "persons"—only on "consumer reporting agenc[ies] [and] user[s] of information." Pub. L. No. 91-508 at §§ 616-617. The USDA argues that the FCRA's definition of "person" could not have waived the United States' sovereign immunity in 1970 and that

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[7] In distinguishing the ECOA waiver, the District Court stressed that neither of the FCRA's civil liability provisions contains an exemption for government entities similar to that found in §1691e(b). But the inference is the exact opposite: It is the express authorization of suits against "any creditor" in § 1691e(a) that waives sovereign immunity, not the government exemption in subsection § 1691e(b), which merely confirms the existence of the waiver. Put another way, if Congress eliminated subsection (b) tomorrow, the waiver in subsection (a)—which is nearly identical to the FCRA's waiver—would remain clear and unambiguous.

[8] The civil liability provision of the TILA was enacted in 1980 and the relevant provision of the ECOA in 1991. And by 1996 at least one Court of Appeals had already interpreted the ECOA to unambiguously waive the United States' sovereign immunity. *See Moore*, 55 F.3d at 994.

there is nothing in the text or legislative history of the 1996 Amendments to signal a change in Congress's intent. This argument, however, ignores Congress's decision to extend civil liability under the 1996 Amendments beyond consumer reporting agencies and users of information to "persons," a term expressly encompassing the United States and thus signaling a waiver of sovereign immunity absent an exemption.

We also take issue with the USDA's premise. The 1970 Act imposed civil liability on all "user[s] of information" who violated its requirements, and while the statute did not expressly define "user[s] of information," it did prohibit consumer reporting agencies from providing credit reports except to "person[s]" whom the agency had reason to believe would "use the information" for specified purposes. Pub. L. No. 91-508 at §§ 604(3), 616-617. If only "person[s]" could be "users of information," then the 1970 Act's civil liability provisions would appear to authorize suit against any "person" who uses credit information, including the United States.[9]

In any event, even if the USDA is correct that the 1970 Act did not waive sovereign immunity, we are focused today on interpreting the 1996 Amendments, and those Amendments, in clear and unambiguous terms,

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[9] The Seventh and D.C. Circuits have also suggested that the 1970 Act may have waived the United States' sovereign immunity. *See Mowrer*, 14 F. 4th at 730 n.1; *Bormes*, 759 F.3d at 795. The Ninth Circuit, however, rejected this reading based on the fact that the 1970 Act only imposed criminal liability on "persons." *See Daniel* 891 F.3d at 775 & n.12. It does not appear to have considered that only "persons" could be "user[s] of information" under the 1970 Act.

authorize suits against all "persons," including the United States.

4.

We also find it significant that, in addition to imposing liability on "any person," Congress also authorized suits for failure to comply with "any requirement imposed under [the FCRA] with respect to any consumer[.]" 15 U.S.C. §§ 1681n(a), 1681o(a). As previously discussed, the United States is subject to the FCRA's substantive requirements as both a furnisher and a user of credit information, *see id.* §§ 1681s-2, 1681b(b)(3), so even if the FCRA did not expressly impose liability on the United States as a "person," the plain text would appear to authorize suit for violations of "any requirement" to which the FCRA subjects the United States.

This reading finds support in the Supreme Court's decision in *Lane v. Pena*, 518 U.S. 187 (1996). In that case, the Court considered a provision of the Rehabilitation Act of 1973 that authorized civil damages "to any employee or applicant for employment" aggrieved by an employer's response to an EEOC complaint. 29 U.S.C. § 794a(a)(1). Though that provision never references the United States government nor any defined term like "person," the Rehabilitation Act expressly allows employees to file EEOC complaints against federal agencies. *See id.* § 791(f). Based on this and § 794a(a)(1)'s "broad language" encompassing "any complaint," the Supreme Court held that the provision expressly waived federal agencies' sovereign immunity. *Lane*, 518 U.S. at 193. In contrast, a different provision of the Rehabilitation Act that imposed liability only on a narrow class of defendants who were "recipient[s] of Federal as-

sistance or Federal provider[s] of such assistance" did not speak broadly enough to waive federal sovereign immunity. *Id.* at 192-93 (quoting 29 U.S.C. § 794a(a)(2)).

The same is arguably true here, where the FCRA both imposes requirements on the United States and authorizes civil damages for failure to comply with "any requirement." We need not now decide, however, if the FCRA's "any requirement" language would suffice on its own, as in Lane, to effect a waiver of sovereign immunity. For today's purposes, it is enough to observe that Congress's use of such broad language lends further support to our reading.

5.

In the face of the FCRA's clear text, the USDA tells us to look instead to the statute's legislative history. Our inquiry, however, is limited to ascertaining Congress's intent as expressed in the text, and "[l]egislative history generally will be irrelevant to a judicial inquiry into whether Congress intended" to waive sovereign immunity. *Dellmuth v. Muth*, 491 U.S. 223, 230 (1989). For the reasons we have laid out, the FCRA's text is clear, and legislative history cannot create ambiguity where there is none. *See, e.g.*, *Bostock v. Clayton Cnty.*, 140 S. Ct. 1731, 1749 (2020).

Moreover, even if the legislative history put forward by the USDA were relevant, it would not be persuasive. The USDA provides no evidence that Congress sought to preserve the federal government's immunity; instead, it offers scattered references by members of Congress to *private* furnishers of credit information, such as banks and businesses, and asks us to infer from Congress's silence as to *public* furnishers its intent to ex-

clude them from civil liability.[10] But Congressional silence can hardly be said to speak loudly, particularly when viewed alongside clear statutory text.[11] Moreover, as Kirtz points out, the USDA's reliance on Congressional silence would also mean that the federal government, because it was not discussed in the floor debates, could not be subject to the FCRA's substantive requirements, which it clearly is.

C.

The District Court in this case was persuaded to follow the Fourth and Ninth Circuits, each of which held that Congress needed to be even clearer to meet the standard set by other, more specific, waivers of sovereign immunity. It goes without saying, though, that some waivers of sovereign immunity will be more explicit than others. And the Supreme Court has been clear that "Congress need not state its intent in any par-

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[10] The USDA also urges us to consider the Congressional Budget Office's analyses of antecedent versions of the FCRA, none of which anticipated significant government liabilities. *Cf. Daniel*, 891 F.3d at 775-76. But the "CBO is not Congress," *Sharp v. United States*, 580 F.3d 1234, 1239 (Fed. Cir. 2009), and its expertise is calculating costs, not statutory interpretation; its views are thus immaterial to our analysis.

[11] This was not always so. As the USDA points out, the Supreme Court has in the past been willing to disregard a clear and unambiguous waiver of immunity based solely on silence in the Congressional record. *See* Appellees' Br. at 17 (citing *Emps. of the Dep't of Pub. Health & Welfare v. Dep't of Pub. Health & Welfare*, 411 U.S. 279, 282-87 (1973)). That era, however, has long since passed, and today's precedent makes clear that our analysis must begin and end with the text. *See Cooper*, 566 U.S. at 291; *Seminole Tribe of Fla. v. Fla.*, 517 U.S. 44, 55-56 (1996); *Dellmuth*, 491 U.S. at 230.

ticular way," and that we may not impose any "magic words" requirement. *Cooper*, 566 U.S. at 291. Thus, while other waivers of sovereign immunity may provide helpful points of reference, they do not dictate the manner in which Congress must convey its intent, nor can they inject ambiguity into otherwise clear text.

The Fourth and Ninth Circuits placed great emphasis on a second, more specific waiver of sovereign immunity within the FCRA itself. Section 1681u requires credit reporting agencies to disclose certain credit information to the Federal Bureau of Investigation for counterintelligence purposes and permits the FBI to disseminate that information to other federal agencies subject to specific requirements. *See* 15 U.S.C. § 1681u(a)-(b), (g). Where the FBI or "[a]ny agency or department of the United States" fails to comply with requirements on its use of consumers' credit information, § 1681u(j) imposes statutory, actual, and punitive damages. *Id.* § 1681u(j). Contrasting the explicit reference to the United States in this waiver with the terms of §§ 1681n and 1681o, these Courts reasoned that Congress intended to waive sovereign immunity only in the former. *See Robinson*, 917 F.3d at 803-04; *Daniel*, 891 F.3d at 771-72.

We are not persuaded. As the D.C. Circuit correctly observed, "there is a good reason why [§ 1681u(j)] specifically targets federal agencies," which is that only federal agencies are subject to § 1681u's substantive requirements in the first place. *Mowrer*, 14 F.4th at 729. In contrast, §§ 1681n and 1681o concern requirements that apply not merely to the government but to "persons" generally, so it makes sense to employ the broader

term rather than enumerate specific entities already encompassed by the statutory definition.

The Fourth and Ninth Circuits also contrasted §§ 1681n and 1681o with other waivers in other statutes that specifically authorize suits against the United States. *See Robinson*, 917 F.3d at 803; *Daniel*, 891 F.3d at 772-73. The Federal Tort Claims Act ("FTCA"), for instance, provides that "[t]he United States shall be liable . . . in the same manner and to the same extent as a private individual under like circumstances[.]" 28 U.S.C. § 2674. Likewise, the Clean Water Act ("CWA") provides that "any citizen may commence a civil action . . . against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency . . .)." 33 U.S.C. § 1365(a), (a)(1).

Again, however, there are reasonable explanations for why each of these waivers lists the United States specifically. The FTCA, like § 1681u(j) of the FCRA, only applies to the federal government, so there is no need to name any other entity as liable. And the CWA's definition of "person," unlike the FCRA's, only includes state and municipal governments, meaning that the United States would not otherwise be included in the Act's waiver if it were not specifically included. *See* 33 U.S.C. § 1362(5).

The last group of comparators on which the Fourth and Ninth Circuits rely are those that explicitly reference the federal government not only in defining the potential defendants but again in imposing liability. The Resource Conservation and Recovery Act ("RCRA"), for instance, defines the term "person" to "include each department, agency, and instrumentality of the United

States," but also includes additional language in its liability provision authorizing suits "against any person, including (a) the United States, and (b) any other governmental instrumentality or agency. . . . " 42 U.S.C. §§ 6903(15), 6972; *see also Robinson*, 917 F.3d at 803; *Daniel*, 891 F.3d at 771 n.5. Likewise, the USDA points to the Family and Medical Leave Act ("FMLA") and the Age Discrimination in Employment Act ("ADEA"), each of which defines "employer" to include any "public agency," 29 U.S.C. §§ 2611(4), 203(d)—a term expressly defined to encompass the federal government, *see* 29 U.S.C. § 2611(4)[12]—before imposing civil liability on "any employer (including a public agency)," 29 U.S.C. §§ 2617(a)(2), 216(b). While the USDA contends that these statutes, with their built-in redundancies, should set the standard for the FCRA's waiver, that would impose the exact sort of "magic words" requirement that the Supreme Court has long rejected. *See Cooper*, 566 U.S. at 291. Even more troubling, the USDA's approach would require that Congress employ "magic words" that are superfluous and duplicative of an express statutory definition. Certainly, Congress is free to repeat itself for good measure, as it did in the FMLA, ADEA, and RCRA, but we will not require it to do so.

In sum, none of the more explicit waivers cited by the USDA or invoked by the Fourth or Ninth Circuits call into question the clarity with which Congress spoke in the 1996 Amendments.

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[12] Both statutes incorporate by reference the definition of "public agency" under 29 U.S.C § 203(x), which includes "the Government of the United States; the government of a State or political subdivision thereof; [and] any agency of the United States. . . . "

D.

In departing from the FCRA's plain text, the Fourth and Ninth Circuits assumed that treating the government as a "person" for purposes of the FCRA's civil liability provisions would require doing so in every other provision of the statute, including those that subject "persons" to punitive damages, 15 U.S.C. § 1681n(a)(2), criminal liability, *id.* § 1681q, and civil enforcement actions by the Federal Trade Commission, *id.* § 1681s(a), and the states, *id.* § 1681s(c). This, according to these sister Circuits, would lead to a parade of implausible and untenable results. *See Robinson*, 917 F.3d at 804-05; *Daniel*, 891 F.3d at 770-71.

Marshaling that parade, however, is a legal bogeyman. Courts have never been required to choose between mechanically applying a statutory definition everywhere in a statute or applying it nowhere. To the contrary, the Supreme Court has repeatedly held that where a statute contains an "express definition," that definition is "virtually conclusive" and must be applied for all purposes "[s]ave for some exceptional reason." *Sturgeon v. Frost*, 139 S. Ct. 1066, 1086 (2019) (internal quotation marks omitted). These reasons include circumstances where applying a definition to a specific provision would be unconstitutional, *see Kimel v. Fla. Bd. of Regents*, 528 U.S. 62, 73-74, 91 (2000) (declining to apply the ADEA's definition of "public agency" to unconstitutionally abrogate state sovereign immunity), where it would be absurd, *see Green v. Bock Laundry Mach. Co.*, 490 U.S. 504, 510 (1989) (declining to apply the plain text of Federal Rule of Evidence 609(a) in a way that "would deny a civil plaintiff the same right to impeach an adversary's testimony that it grants to a civil defend-

ant"), or where it would be "incompatible" with Congress's regulatory scheme, *see Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 319-20 (2014) (declining to apply a broad definition of the term "air pollutant" in the Clean Air Act where doing so would render the EPA's regulatory scheme unworkable).

When it comes to sovereign immunity, it is understandable and entirely appropriate that the District Court was wary of implausible results and cautious about exposing the public fisc to liability. But even exceptional circumstances justify departing from a statutory definition only to the extent necessary to avoid untenable—not merely implausible—results. For all other provisions of a statute, courts must continue to apply statutory terms as defined. With this standard in mind, we consider the two categories of purportedly "untenable" applications of the term "person" that led the Fourth and Ninth Circuits to reject the FCRA's statutory definition.

1.

One category of potentially problematic applications is those that appear untenable on their face, but which can be reconciled with the statute without rejecting its definition wholesale by using well-established canons of statutory construction.

Section 1681q, for instance, imposes criminal penalties, including fines and imprisonment, on any "person" who knowingly obtains credit information under false pretenses. It would be absurd, however, to subject the federal government to criminal prosecution, not to mention the impossibility of imprisoning a government en-

tity.[13] *See United States v. Cooper Corp.*, 312 U.S. 600, 606-07 (1941) (holding that a provision of the Sherman Act imposing criminal penalties on "person[s]" could not "embrace the United States"); *United States v. Singleton*, 165 F.3d 1297, 1300 (10th Cir. 1999) (imposing criminal penalties on the United States government is "patently absurd"); *Berger v. Pierce*, 933 F.2d 393, 397 (6th Cir. 1991) ("[I]t is self-evident that a federal agency is not subject to state or federal criminal prosecution."). The canon against absurdity thus leans against applying the FCRA's definition of "person" to this provision.

Similarly, a court could not interpret the term "person" as used in §§ 1681n and 1681o as authorizing suits against state governments without running afoul of the Eleventh Amendment and principles of state sovereign immunity, which prohibit Congress from abrogating state sovereign immunity under its Commerce Clause authority. *See Seminole Tribe of Fla. v. Florida*, 517 U.S. 44, 72-73 (1996). And from that, the Fourth Circuit reasoned that Congress could not have intended for those provisions to waive the federal government's immunity either. *See Robinson*, 917 F.3d at 805. We see it differently. There is no constitutional bar to Congress waiving the *federal* government's sovereign

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[13] The Seventh Circuit in *Bormes* viewed the FCRA's criminal liability provisions as unproblematic because it interpreted them as authorizing criminal prosecutions only against federal employees. *See Bormes*, 759 F.3d at 796. But as the Ninth Circuit correctly observed, a faithful application of the FCRA's definition "would read 'the United States' into the FCRA's enforcement provisions, not 'federal employees.'" *Daniel*, 891 F.3d at 770. For the reasons we explain, however, whether the FCRA's definition of "person" may be applied to § 1681q is immaterial to whether it may be applied to §§ 1681n and 1681o.

immunity in the FCRA, so regardless of how Seminole Tribe affects state sovereign immunity under the statute, it does not allow us to impute a statutory bar in derogation of the statutory text.

To the contrary, doing so would disregard the central tenet of *Seminole Tribe* and conflate Congress's intent with its power. In *Seminole Tribe*, the Supreme Court clearly distinguished between two distinct inquiries—(1) whether Congress has unequivocally expressed its intent to waive immunity, and (2) whether Congress has acted pursuant to a valid grant of authority, *see* 517 U.S. at 55—and addressed each independently. It concluded that while Congress clearly intended to abrogate state immunity, it lacked the power to do so. *See id.* at 56-57, 72-73. Here, however, the plain text of §§ 1681n and 1681o clearly expresses Congress's intent to authorize suits against both the federal and state governments, and under *Seminole Tribe* we cannot infer from Congress's lack of authority under the Commerce Clause an intent to preserve state immunity, let alone federal immunity. *See id.* at 55-57, 72.

Indeed, that inference has been resoundingly rejected by the Supreme Court. In *Kimel*, the Court applied *Seminole*'s twin inquiries to the ADEA, which subjects "public agencies" to civil damages. *See* 528 U.S. at 78, 29 U.S.C. §§ 203(d), 203(x), 216(b). On the second prong, the Court concluded, as in *Seminole Tribe*, that Congress lacked authority to abrogate state sovereign immunity. *See* 528 U.S. at 91. But that conclusion did not negate the Court's holding as to the first prong that Congress had clearly expressed its intent to do so by authorizing suits against "public agencies," a term defined to include state agencies. *See id.* at 73-

74. The same holds true for the FCRA; whether Congress intended to abrogate state sovereign immunity does not turn on whether it had authority to do so. And where there is no constitutional bar to waiving federal sovereign immunity, there is even less reason to question the FCRA's plain text.

2.

The other category of applications that concerned the Fourth and Ninth Circuits are those that would produce results that may be implausible, but which, ultimately, are not untenable.

For example, there is a "presumption against [the] imposition of punitive damages on governmental entities," *Vt. Agency*, 529 U.S. at 785, but that presumption, like sovereign immunity, may be overcome by a clear expression of Congress's intent, *see City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 263-64 (1981). Section 1681n(a)(2) meets that standard.

Similarly, while Congress has only rarely expressed its intent to subject the United States and its agencies to enforcement actions brought by administrative agencies and states, neither is unprecedented. RCRA, for instance, authorizes the Environmental Protection Agency to bring enforcement actions against other federal agencies, *see* 42 U.S.C. §§ 6928(a)(1) (authorizing civil actions by the EPA Administrator), 6972(a)(1) (authorizing civil actions against any "person," including the United States and its agencies), and both RCRA and the CWA permit states, as "persons," to bring actions against the federal government as well, *see id.* §§ 6972(a)(1) (authorizing suits against the United States by "any person"), 6903(15) (defining "person" to

include States); 33 U.S.C. §§ 1365(a)(1) (authorizing suits against the United States by "any citizen"), 1365(g) (defining "citizen" as "a person"), 1362(5) (defining "person" to include States). The Fourth and Ninth Circuits did not identify any principle, constitutional or otherwise, that would preclude Congress from adopting a similar enforcement mechanism for the FCRA. They held only that it would be "implausible" or "anomalous" for Congress to do so without being more explicit. *See Robinson*, 917 F.3d at 805; *Daniel*, 891 F.3d at 770-71. We are aware of no principle of law, however, that requires Congress to express its intent to authorize administrative or state enforcement in a particular way beyond a clear statement.[14]

In sum, there are two provisions for which applying the FCRA's definition of "person" would lead to untenable results and a handful for which the results would be merely unusual, but none ultimately precludes our application of that definition to the civil liability provisions at issue here.[15]

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[14] The closest the USDA comes to identifying such a principle is its reference to the Supreme Court's decision in *Library of Congress v. Shaw*, 478 U.S. 310 (1986). In that case, the Court applied the longstanding principle, dating from common law, that even where Congress has waived the United States' immunity, "interest cannot be recovered unless the award of interest was affirmatively and separately contemplated by Congress." *Id.* at 315. That principle, however, is not implicated in this case.

[15] The USDA argues that if a statutory term cannot be applied as defined to every part of a statute, that term is ambiguous. *See also Robinson*, 917 F.3d at 805 ("The pro-waiver camp cannot have it both ways—literal most often, just not when it suits to blur the lines."). This argument, however, confuses ambiguity with applicability. The term "person" as defined in the FCRA remains unambiguous,

3.

The upshot of that discussion is that we see no exceptional reason that absolves us of our duty to apply the FCRA's definition to §§ 1681n and 1681o. There is no constitutional impediment to Congress waiving the United States' sovereign immunity, and it is certainly not absurd for Congress to do so. Nor would waiving the federal government's immunity be "incompatible" with the FCRA's enforcement scheme or "destroy" the statute's major purposes. *Digit. Realty Tr., Inc. v. Somers*, 138 S. Ct. 767, 778 (2018) (first quoting *Util. Air*, 573 U.S. at 322 and then quoting *Lawson v. Suwannee Fruit & S.S. Co.*, 336 U.S. 198, 201 (1949)). To the contrary, one of the FCRA's express findings is that the banking system depends on "fair and accurate credit reporting," 15 U.S.C. § 1681(a)(1), and authorizing enforcement against the federal government—the nation's

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even if exceptional reasons counsel against applying it in a particular instance. Moreover, the USDA's all-or-nothing approach is inconsistent with cases in which the Supreme Court has declined to apply a statutory definition without calling into question its unambiguous meaning. *See, e.g.*, *Util. Air*, 573 U.S. at 319-20 (recognizing that the term "air pollutant" in the Clean Air Act was defined broadly enough to include greenhouse gases but declining to apply it where doing so would lead to unworkable results); *Nw. Austin Mun. Util. Dist. No. 1 v. Holder*, 557 U.S. 193, 206-11 (2009) (recognizing that the term "political subdivision" in the Voting Rights Act unambiguously excluded certain districts that did not conduct their own voter registration but declining to apply that definition where doing so would frustrate the Act's purpose); *United States v. Pub. Utils. Comm'n*, 345 U.S. 295, 312-16 (1953) (recognizing that the term "person" under the Federal Power Act unambiguously excluded municipalities but declining to apply that definition in a way that would frustrate the Act's purposes by depriving municipalities of the right to complain and petition).

largest employer and creditor—is a reasonable means of furthering that goal.[16]

The closest the Fourth and Ninth Circuits come to identifying a reason not to apply the FCRA's express definition of "person" to the civil liability provisions is their observation that waiving immunity for FCRA claims would expose the federal fisc to potential liability. *See Robinson*, 917 F.3d at 804; *Daniel*, 891 F.3d at 775-76. But this is true whenever Congress decides to waive immunity for damages claims and is certainly not an exceptional reason to depart from Congress's clear intent. Whether to subject the federal fisc to liability is a policy choice reserved to Congress and one that we are bound to honor, not second-guess. *See Doe*, 37 F.4th at 88 (emphasizing that the clear-statement rule for finding a waiver of sovereign immunity "ensures that elected officials, not judges, choose when to open the public purse").

E.

The USDA also directs our attention to the Seventh Circuit's decision in *Meyers v. Oneida Tribe of Indians of Wis.*, 836 F.3d 818, 826 (7th Cir. 2016), which held that the FCRA did not unambiguously abrogate tribal sovereign immunity,[17] and suggests that the court has backed

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[16] We need not resolve here whether Congress in fact chose to waive sovereign immunity specifically to further any particular end; it suffices that waiver is not incompatible with the FCRA's purposes. *Cf. Digit. Realty*, 138 S. Ct. at 778.

[17] Technically, the Seventh Circuit was analyzing whether the Fair and Accurate Credit Transaction Act ("the FACTA") waived tribal immunity. *See Meyers*, 836 F.3d at 819-20. The FACTA amended the FCRA in 2003 and employs the same statutorily-

away from its position in *Bormes*. The Fourth and Ninth Circuits likewise viewed *Meyers* as a retreat. *See Robinson*, 917 F.3d at 806-07; *Daniel*, 891 F.3d at 774.

We disagree. As the Seventh Circuit correctly explained in Meyers, there are important differences between waiver of the federal government's own immunity and abrogation of Indian tribes' inherent sovereignty that warrant different analyses. *See Meyers*, 836 F.3d at 826-27. Indian tribes are "'domestic dependent nations' that exercise inherent sovereign authority[.]" *Okla. Tax Comm'n v. Citizen Band Potawatomi Tribe of Okla.*, 498 U.S. 505, 509 (quoting *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 17 (1831)). Congress, however, may abrogate that sovereignty at any time pursuant to its plenary authority over tribes. *See, e.g., Michigan v. Bay Mills Indian Cmty.*, 572 U.S. 782, 789 (2014).

But Indian tribes are not vassal states, nor is the United States an empire. Rather, Congress is presumed to legislate for the benefit of Indian tribes, with all statutory language "'construed liberally in favor of the Indians'" and any "'ambiguous provisions interpreted to their benefit.'" *Ysleta Del Sur Pueblo v. Texas*, 142 S. Ct. 1929, 1941 n.3 (2022) (quoting *Montana v. Blackfeet Tribe*, 471 U.S. 759, 766 (1985)); *see also McClanahan v. State Tax Comm'n of Ariz.*, 411 U.S. 164, 174-75 (1973); *Choate v. Trapp*, 224 U.S. 665, 675 (1912). This canon of interpretation is robust and displaces rules that would otherwise govern outside the Indian law context. *See, e.g., Cobell v. Salazar*, 573 F.3d

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defined term "person" in its civil liability provision. *See* 15 U.S.C. § 1681a(b), c(g)(1).

808, 812 (D.C. Cir. 2009) (explaining that the Indian canons "trump[]" and "mute[]" the application of *Chevron* deference) (internal quotation marks omitted). For this reason, too, Congress must speak with particular clarity when it chooses to abrogate tribal sovereign immunity. *See, e.g., Bay Mills*, 572 U.S. at 788-90. Application of these unique canons of construction would thus require us to not only identify a clear statement from Congress, but also to pause and consider whether Congress believed that waiving tribal immunity under the FCRA would have inured to tribes' benefit, an inquiry that may perhaps require specificity beyond that required to waive the United States' immunity. *See* Justin W. Aimonetti, *"Magic Words" and Original Understanding: An Amplified Clear Statement Rule to Abrogate Tribal Sovereign Immunity*, 2020 Pepp. L. Rev. 1, 29-34 (2020).

Even applying the ordinary rules of statutory construction, however, it is not clear that Congress intended to abrogate tribal immunity. It is indisputable that the United States is a "government" within the FCRA's definition, as evidenced by those provisions that explicitly treat "person" as including the federal government. *See* 15 U.S.C. §§ 1681a(y)(1)(D)(ii), 1681b(b). In contrast, there is not a single mention of either "Indians" or "tribes" anywhere in the FCRA's text, let alone any provision that specifically treats tribes as "persons."

This is significant; as the Seventh Circuit correctly noted, "there is not one example in all of history where the Supreme Court has found that Congress intended to abrogate tribal sovereign immunity *without* expressly mentioning Indian tribes somewhere in the statute."

Meyers, 836 F.3d at 824 (quoting *In re Greektown Holdings, LLC*, 532 B.R. 680, 693 (E.D. Mich. 2015)) (emphasis in original). Thus, even if Indian tribes are "governments,"[18] we have no textual basis from which to conclude that Congress ever contemplated them as such for purposes of the FCRA. This ambiguity, which is not present with respect the United States, requires that we construe the FCRA in favor of tribal immunity. *Cf. Meyers*, 836 F.3d at 826 ("[I]t is one thing to read 'the United States' when *Congress* says 'government.' But it [is] quite another . . . to read 'Indian tribes' when Congress says 'government.'" (internal quotation marks omitted) (emphasis in original)).

In short, the Seventh Circuit's decisions in *Bormes* and *Meyers* are in perfect harmony given the unique status of Indian tribes, the special rules of construction that apply in the Indian law context, and the complete lack of any reference to Indian tribes in the FCRA.

F.

Finally, the USDA contends that construing "person" to include the federal government would expand the United States' liability beyond that provided for by the Privacy Act of 1974, codified at 5 U.S.C. § 552a,

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[18] Though we need not decide the issue, we note that the unique status of Indian tribes may not map neatly onto the term "government" as used in the FCRA. While "the Supreme Court has referred to Indian tribes as 'sovereigns,' 'nations,' and even 'distinct, independent political communities, retaining their original natural rights,'" it has never equated them with the federal and state "governments." *In re Whitaker*, 474 B.R. 687, 695 (8th Cir. 2012). As such, the term "government" itself may be ambiguous with respect to Indian tribes, in which case that ambiguity must be resolved in favor of tribal immunity.

which also regulates information about individuals contained within systems of records maintained by federal agencies including, in some cases, consumer credit information.[19] Where a federal agency fails to correct inaccurate information on an individual, the Privacy Act allows for injunctive relief, but not money damages unless the failure is "intentional or willful." 5 U.S.C. § 552a(g)(1), (4). The USDA's argument, in short, is that construing the 1996 FCRA amendments to allow for money damages without proof of intentional or willful conduct would upset the careful balance struck by the Privacy Act.

We find this argument unpersuasive for two reasons. First, the Privacy Act's remedial scheme in no way limited Congress's ability, more than two decades later, to revisit an area of perceived need. To the contrary, it would have been quite reasonable for Congress, in enacting the 1996 FCRA amendments, to find that the Privacy Act's remedial scheme, with its strict limit on money damages, was insufficient to ensure the accuracy of consumer credit information. In any event, the mere fact that the 1996 FCRA amendments struck a balance that may be inconsistent with the Privacy Act is no reason to set aside clear statutory text.

Second, USDA has not identified any actual inconsistency between the Privacy Act and the 1996 amendments. No doubt, there is some overlap between the information covered by the two statutes, as the Privacy

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[19] Similar arguments based on the Privacy Act were raised in *Bormes*, *Daniel*, and *Robinson*. Although none of these courts discussed those arguments in their opinions, we address the issue here for the sake of completeness and for the benefit of courts that may be presented with this same argument in the future.

Act addresses any information on an individual that is maintained in a system of records maintained by a federal agency, *see* 5 U.S.C. § 552a(a)(4), which may include some consumer credit information, as is the case with the system of records maintained by the USDA Rural Housing Service, *see* 81 Fed. Reg. 25369 (Apr. 28, 2016); 63 Fed. Reg. 38546 (Aug. 17, 1998). And the FCRA and the Privacy Act also both provide a way to request correction of inaccurate information and require that notice of any correction be sent to any "person" to whom the inaccurate information was given. *See* 15 U.S.C. § 1681s-2(b)(1) (requiring a federal agency, as a "person," to respond to notification from a consumer reporting agency of a dispute, to conduct a reasonable investigation, to correct any inaccurate information, and then to report the correction to both the consumer reporting agency that notified the agency of the dispute, but also any other consumer reporting agencies to which the inaccurate information was also provided); *See* 5 U.S.C. § 552a(c)(4) (requiring federal agencies to "inform any person or other agency" to which disputed information was previously disclosed "about any correction" made).[20]

But there the overlap ends. For one thing, the government's duties to correct inaccurate information under both statutes are triggered by different events. Under § 1681s-2of the FCRA, these duties are triggered

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[20] The USDA reads the term "agency" in 5 U.S.C. § 552a(c)(4) to include credit reporting agencies, but this is inaccurate, as the Privacy Act explicitly defines "agency" to include only government agencies and government corporations. *See* 5 U.S.C. §§ 552a(a)(1), 552(f)(1), 551(1). Credit reporting agencies are covered as "persons" under this provision, as § 551(2) defines "person" to include any "individual, partnership, corporation, association, or public or private organization other than an agency.".

only upon receiving notice from a consumer reporting agency of disputed information; notice from an individual is insufficient. In contrast, the government's duty to amend a record under the Privacy Act, may *only* be triggered by a request from an individual. *See* 5 U.S.C. § 552a(d). For another, the two statutes impose liability on federal agencies in different ways. Under the FCRA, a federal agency is liable for any failure to comply with the Act's substantive requirements, *see* §§ 1681n, 1681o, whereas under the Privacy Act, an individual may only seek civil damages for failure to correct inaccurate information if that failure leads to a determination adverse to the individual, 5 U.S.C. §§ 522a(g)(1)(C)-(D), 522a(g)(4). These important differences reinforce our view that the Privacy Act provides no obstacle to reading "person" in the FCRA to include the federal government.

III.

For the foregoing reasons, we will reverse the judgment of the District Court and remand for further proceedings not inconsistent with this opinion.

APPENDIX B

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

Civil Action No. 20-5231

REGINALD KIRTZ, PLAINTIFF

v.

TRANS UNION LLC, ET AL., DEFENDANTS

Filed: May 4, 2021

MEMORANDUM

GOLDBERG, J.

Plaintiff Reginald Kirtz has sued multiple Defendants alleging violations of the Fair Credit Reporting Act. One such Defendant, the United States Department of Agriculture Rural Development Rural Housing Service, maintains that it is immune from suit and has filed a Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b). For the following reasons, I will grant this Motion.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Complaint sets forth the following facts:[1]

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[1] In considering a facial challenge to jurisdiction under Federal Rule of Civil Procedure 12(b), I must accept all factual allegations in the complaint as true, construe the complaint in the light most favorable to the plaintiff, and determine whether, under any rea-

Plaintiff maintained accounts with Defendants, Pennsylvania Higher Education Assistance Agency d/b/a American Education Services ("AES") and United States Department of Agriculture Rural Development Rural Housing Service ("USDA"). On or about July 15, 2016, Plaintiff's AES account was closed with a balance of zero and, on or about June 7, 2018, Plaintiff's USDA account was closed with a balance of zero. Plaintiff's credit report from Defendant Trans Union, dated October 10, 2018, showed both accounts closed with a zero balance on or about these dates. (Am. Compl. ¶¶ 10-12.)

Despite the accounts showing a zero balance, both AES and USDA continued to report the status of Plaintiff's payment history ("pay status") as "Account 120 Days Past Due Date" as of the October 10 Trans Union Report. An account that is listed as closed with a balance of zero could not simultaneously be past due, thus, according to Plaintiff, the reported pay statuses were false on their face. Plaintiff asserts that this status misled the algorithms used to determine Plaintiff's credit score by making it appear Plaintiff was still late on accounts that were closed, lowering Plaintiff's credit score and damaging Plaintiff's creditworthiness. (Am. Compl. ¶¶ 10-12.)

Plaintiff sent a letter to Trans Union disputing the inaccurate pay statuses on both the AES and USDA accounts. According to the Complaint, Trans Union did not undertake a good faith investigation into the disputed pay statuses, which would have uncovered the in-

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sonable reading, the plaintiff may be entitled to relief. Atiyeh v. Nat'l Fire Ins. Co. of Hartford, 742 F. Supp. 2d 591, 596 (E.D. Pa. 2010).

accuracy. Plaintiff alleges that Trans Union transmitted the dispute to AES and USDA, neither of which undertook any good faith investigation to uncover and corrected the inaccurate pay statuses. Both AES and USDA continue to erroneously report an overdue pay status, and Trans Union continues to incorporate these statuses in Plaintiff's credit report. (Am. Compl. ¶¶ 16, 18, 20-21.)

Plaintiff filed this action on October 20, 2020, alleging violations of the Fair Credit Reporting Act ("FCRA") against all three Defendants. Specifically, the Amended Complaint sets forth both willful and negligent violations of section 1681s-2(b) against the USDA. The USDA filed the present Motion to Dismiss for Lack of Subject Matter Jurisdiction on January 7, 2021, and Plaintiff responded on January 26, 2021.

II. STANDARD OF REVIEW

Pursuant to Federal Rule of Civil Procedure 12(b)(1), a party may seek dismissal of a complaint for lack of subject matter jurisdiction. Fed. R. Civ. P. 12(b)(1). A motion pursuant to Rule 12(b)(1) challenges the power of the court to hear the case. Petruska v. Gannon Univ., 462 F.3d 294, 302 (3d Cir. 2006). A challenge to jurisdiction may be either facial or factual. Gould Electrs. Inc. v. United States, 220 F.3d 169, 176 (3d Cir. 2000) (citing Mortensen v. First Fed. Sav. & Loan Ass'n, 549 F.2d 884, 891 (3d Cir. 1977)). In a facial challenge, the court will limit evaluation to only the allegations in the pleadings and assume the truthfulness of the complaint. Mortensen, 549 F.2d at 891. A factual attack, however, offers no such deference to the plaintiff's allegations and the court may weigh evidence outside of the

facts in the pleadings to determine whether jurisdiction exists. Id.

III. DISCUSSION

The USDA's challenge to subject matter jurisdiction here is facial and asserts that the Court lacks jurisdiction over this case pursuant to the doctrine of sovereign immunity. The USDA contends that the FCRA contains no waiver of immunity that would allow Plaintiff to bring suit against it. Plaintiff responds that the FCRA allows civil action for damages against "[a]ny person" who negligently or willfully violates the substantive provisions, and the Act defines "person" to include "government or governmental subdivision or agency" thus providing a waiver of sovereign immunity.

Under the doctrine of sovereign immunity, it is well established that the United States is protected from suit in federal court unless Congress has waived such immunity. U.S. v. Bein, 214 F.3d 408, 412 (3d Cir. 2000) (citing United States v. Mitchell, 463 U.S. 206, 212 (1983)). A waiver of the government's immunity "must be unequivocally expressed in statutory text and will not be implied." Lane v. Pena, 518 U.S. 187, 192 (1996) (citation omitted). Even when a waiver is unequivocally expressed, the scope of that waiver must be strictly construed in favor of the government, settling any ambiguity in favor of immunity. United States v. Williams, 514 U.S. 527, 531 (1995). Ambiguity exists when there is a "plausible" reading of the statute that does not impose "monetary liability on the Government." United States v. Nordic Village, Inc., 503 U.S. 30, 37 (1992). Without such unambiguous waiver, the court lacks subject matter jurisdiction over the case. Bein, 214 F.3d at 412.

The question before me is whether the FCRA contains an express waiver of sovereign immunity for a private right of action[2] alleging a violation of section 1681s-2(b). This section imposes a duty on a person, who furnishes information to a consumer reporting agency ("CRA") and who receives notice from a CRA of a consumer dispute regarding the accuracy of such information, to conduct an investigation and correct information found to be inaccurate or incomplete. 15 U.S.C. § 1681s-2(b). Section 1681n(a) authorizes a private right of action for actual, statutory, and punitive damages against "[a]ny person" who willfully fails to comply with the substantive requirements of the Act, including section 1681s-2(b). 15 U.S.C. § 1681n(a). Additionally, section 1681o(a) authorizes a private right of action for actual damages against "[a]ny person" who negligently fails to comply with the substantive requirements of the Act, including section 1681s-2(b). 15 U.S.C. § 1681o(a). Other than authorizing a private right of action, the FCRA also subjects "[a]ny person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses" to a criminal fine and or imprisonment. 15 U.S.C. § 1681q. Finally, the FCRA authorizes the Federal Trade Commission, the Consumer Financial Protection Bureau, and state governments to commence investigations and enforcement actions against "person[s]" who violate the substantive provisions of the FCRA. 15 U.S.C. § 1681s. The FCRA defines "person" as "any individual, partnership, corporation, trust, estate, cooperative,

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[2] A private right of action is "the right of an individual to bring suit to remedy or prevent an injury that results from another party's actual or threatened violation of a legal requirement." Wisniewski v. Rodale, Inc., 510 F.3d 294, 297 (3d Cir. 2007).

association, *government or governmental subdivision or agency*, or other entity." 15 U.S.C. § 1681a(b) (emphasis added).

Although the United States Court of Appeals for the Third Circuit has not ruled on whether the FCRA contains a waiver of sovereign immunity, three other Circuit Courts have examined this issue. Compare Robinson v. U.S. Dep't of Educ., 917 F.3d 799, 806 (4th Cir. 2019) (holding that the FCRA did not unequivocally waive the DOE's sovereign immunity), cert. denied, 140 S. Ct. 1440,[3] and Daniel v. Nat'l Park Serv., 891 F.3d 762, 769 (9th Cir. 2018) (holding that the FCRA is ambiguous thus did not unequivocally waive sovereign immunity); with Bormes v. United States, 759 F.3d 793, 795 (7th Cir. 2014) (holding the FCRA waived sovereign immunity).

As noted above, in Bormes, the Seventh Circuit found that the FCRA permits suit against a federal government entity. Bormes, 759 F.3d at 795. There, the Court reasoned that the statute authorizes suit against "any person," which includes "any . . . government." Because "[t]he United States is a government," the Bormes court concluded that Congress expressly waived immunity. Id. The Court explained that the government conceded it was a "person" under the substantive requirements of the FCRA, thus its argument that it was not a "person" for the liability sections was not supported by the statutory language. Id. Additionally, the Court noted that exposing federal employ-

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[3] The Supreme Court recently denied certiorari in this case, with Justice Thomas dissenting and noting that "this important question has divided the Courts of Appeals." Robinson, 140 S. Ct. at 1440 (2020) (Thomas, J. dissenting).

ees to criminal liability was "not so outlandish that we should read § 1681a(b) to mean something other than what it says." Id. at 796.

The Fourth and Ninth Circuits, however, have reached the opposite conclusion and found that the FCRA does not unequivocally waive sovereign immunity. Robinson v. U.S. Dep't of Educ., 917 F.3d 799, 806 (4th Cir. 2019), cert. denied, 140 S. Ct. 1440; Daniel v. Nat'l Park Serv., 891 F.3d 762, 769 (9th Cir. 2018). In Daniel, the Ninth Circuit reasoned that reading "person" to include the United States and its agencies leads to implausible results such as imposing excessive punitive damages, federal and state enforcement liability, and criminal liability against the United States. 891 F.3d at 770. The Court explained that in the rare case where Congress did authorize punitive damages against the government and/or civil enforcement by one government agency on another government agency, Congress has been clear in waiving immunity. Id. at 771 n. 5 (citing 42 U.S. § 6961). Additionally, the Court reasoned that the legislative history supports the finding that Congress did not intend to waive sovereign immunity in the FCRA. Id. at. 774-75. The Court noted that because the original FCRA authorized criminal but not civil liability against a "person," if "person" is read to include the United States, then Congress originally intended to waive immunity only for the purpose of criminal prosecution, which is "patently absurd." Daniel, 891 F.3d at 775 (quoting Al-Haramain Islamic Found., Inc. v. Obama, 705 F.3d 845, 854 (9th Cir. 2012)).[4]

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[4] When the FCRA was eventually amended to subject "person[s]" to civil liability, there was no mention of potential costs to the government and the Congressional Budget Office analysis "did

The Fourth Circuit followed similar reasoning in Robinson, stressing that "[t]here is a 'longstanding presumption that "person" does not include the sovereign.'" 917 F.3d at 802 (quoting Vt. Agency of Nat. Res. v. United States *ex rel.* Stevens, 529 U.S. 765, 780 (2000)). The Court concluded that implausible results would be reached by reading "person" in the FCRA to include the United States. The Fourth Circuit also noted that the fact that the presumption that there is no waiver in the FCRA is bolstered by the fact that established waivers are generally more explicit. Id. at 803-06.

Keeping in mind that "[s]tatutory construction is a holistic endeavor," Koons Buick Pontiac GMC, Inc. v. Nigh, 543 U.S. 50, 60 (2004), for several reasons, I find the reasoning of the Fourth and Ninth Circuits convincing.

First, I agree that reading "person" to include the United States and its agencies throughout the FCRA would lead to illogic results. Such a reading could subject the United States to criminal penalties. See 15 U.S.C. § 1681q. In Bormes, the Court brushed past this issue, reasoning that it "is not so outlandish" that Congress authorized criminal penalties against federal employees. Bormes, 759 F.3d at 796. But as the Ninth Circuit noted in Daniel, the FCRA does not distinguish employees from the government itself and, thus, reading the United States into "person" subjects the government itself to criminal liability, which is untenable. 891 F.3d at 770; see also Conboy v. U.S. Small

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not anticipate any costs from defending the federal government against private suits." Daniel, 891 F.3d at 775-76 (citing H.R. Rep. No. 103-486, at 62-63 (1994); S. Rep. No. 103-209, at 32-34 (1994); H.R. Rep. No. 102-692, at 45-46 (1992)).

Bus. Admin., No. 3:18-224, 2020 WL 1244352, at *8 (M.D. Pa. March 16, 2020) (citing Daniel with approval and noting that interpreting "that the United States is a 'person' for purposes of the FCRA and therefore can be subject to the FCRA's criminal penalties" is a "dubious proposition").

The FCRA also authorizes state and federal enforcement against "any person" who violates the substantive requirements of the Act, 15 U.S.C. § 1681s, but is silent about a lawsuit against a government entity. In the rare case where Congress does permit the use of such an enforcement scheme against a governmental entity, the applicable statute is clear and explicit in waiving sovereign immunity. See Daniel, 891 F.3d at 771 n.5 (citing. 42 U.S.C. § 6961). For example, in the Resource Conservation and Recovery Act ("RCRA"), Congress authorized the Environmental Protection Agency to enforce compliance and "expressly waives any immunity otherwise applicable to the United States. . . . " 42 U.S.C. § 6961. Notably, the definition of "person" in the RCRA also explicitly includes "each department, agency, and instrumentality of the United States." 42 U.S.C. § 6903. This language is clearer than the FCRA's broad definition of "any government" and the subsequent express waiver in the enforcement provision of the RCRA reflects that Congress is exceptionally clear when it intends to waive sovereign immunity. Conversely, the FCRA contains no similar express waiver of immunity suggesting that Congress did not intend to allow "state and federal enforcement" actions against the Government.

Second, as the Fourth and Ninth Circuits noted, reading the FCRA's definition of "person" as waiving

sovereign immunity would expose the Government to punitive damages. See 15 U.S.C. § 1681n(A)(2) (authorizing punitive damages against "any person" for a willful violation of the Act). "There is a 'presumption against the imposition of punitive damages on governmental entities." Daniel, 891 F.3d at 771 (quoting Vt. Agency of Nat. Res. v. United States *ex rel.* Stevens, 529 U.S. 765, 785 (2000)). Similar to criminal and civil enforcement provisions, Congress uses clear and unambiguous language when it intends to waive immunity for punitive damages. See Daniel, 891 F.3d at 771.[5]

Third, the "longstanding interpretive presumption that 'person' does not include the sovereign" should be followed absent an "affirmative showing of statutory intent to the contrary." Vt. Agency of Nat. Res., 529 U.S. at 780-81 (citing United States. v. Cooper Corp., 312 U.S. 600, 604 (1941); Int'l Primate Prot. League v. Adm'rs of Tulane Educ. Fund, 500 U.S. 72, 83 (1991)). Even when a term is defined in the statute, it may be appropriate to "consider the ordinary meaning . . . particularly when there is a dissonance between that ordinary meaning and the reach of the definition." Bond v. United States, 572 U.S. 844, 861 (2014). The implausible results of imposing criminal liability, civil enforcement actions, and punitive damages against the United States supports the presumption that "person" is not meant to include the sovereign in the FCRA.

Fourth, the express waiver of sovereign immunity in another section of the FCRA demonstrates that Congress did not intend to waive such immunity in the lia-

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[5] Section 1681u of the FCRA discussed below reflects this express language within the FCRA itself. See 15 U.S.C. §. 1681u.

bility sections at issue here. Section 1681u prohibits certain disclosures on credit reports "that the Federal Bureau of Investigation has sought or obtained access to [certain] information or records. . . . " 15 U.S.C § 1681u(d)(1)(A). Section 1681u(j) specifically authorizes statutory, actual, and punitive damages against "[a]ny agency or department of the United States" for violating the substantive provisions of section 1681u. 15 U.S.C. § 1681u(j). This section demonstrates that Congress uses particular and explicit language in waiving immunity. While the substantive provisions of section 1681u deal with disclosures by government agencies and would not apply to other actors, the language of the liability section is nonetheless instructive as to how Congress unambiguously waives immunity. This section thus "clouds whether the remedial provisions" relied upon in the present case "extend 'unambiguously' to monetary claims against the United States." Daniel, 891 F.3d 762, 771 (9th Cir. 2018) (citing Ordonez v. United States, 680 F.3d 1135, 1138 (9th Cir. 2012)).

Fifth, a review of other express waivers of sovereign immunity reveals that the definition in the FCRA does not meet the level of explicitness that Congress ordinarily uses to waive immunity. For example, the Little Tucker Act provides that "[t]he district courts shall have original jurisdiction . . . of . . . [a]ny other civil action or claim against *the United States*." 28 U.S.C. § 1346(a) (emphasis added). Additionally, the Federal Tort Claims Act explicitly states "*[t]he United States* shall be liable . . . in the same manner and to the same extent as a private individual. . . . " 12 U.S.C. § 2674 (emphasis added). Not only do these waivers expressly mention "the United States," the waiver is found in liability sections and is not deduced

from broad language in the definition section. A comparison of the language and structure of the FCRA to these waivers, as well as many others,[6] makes clear that FCRA is ambiguous and does not show Congress's unequivocal expression of an intent to waive immunity for civil suits.

Examination of the Equal Credit Opportunity Act ("ECOA"), 15 U.S.C. § 1691, which has similar language to the FCRA, is also instructive. See also Ordille v. U.S., 216 F. App'x 160, 164 (3d Cir. 2007). The ECOA authorizes a private right of action against any "creditor" who violates the Act's substantive provisions and defines "creditor" to include "any person," which includes a "government or governmental subdivision or agency. . . . " § 1691a(e), (f). While this language is almost identical to the FCRA, the two statutes contain key distinctions that necessitate different findings on the issue of sovereign immunity. First, unlike the FCRA, the ECOA does not impose criminal liability, meaning there is no implausible result of subjecting the government to criminal penalties by reading "creditor" to include the United States throughout the statute. Second, while the ECOA authorizes punitive damages, that authorization contains an express exemption for "a government or governmental subdivision or agency," which clearly evidences Congress's intent to subject the government to civil suits for actual damages. See Stel-

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[6] "Indeed the words 'United States' appear in a great many waivers." Robinson v. U.S. Dep't of Educ., 917 F.3d 799, 803 (4th Cir. 2019) (first citing 12 U.S.C. § 3417(a); then citing 42 U.S.C. § 9620(a)(1); then citing 26 U.S.C. § 7433(a); and then citing 46 U.S.C. § 30903(a)).

lick v. U.S. Dep't of Educ., No. 11-cv-0730, 2013 WL 673856, at *3-4 (D. Minn. Feb. 25, 2013).

Finally, although the Third Circuit has not explicitly ruled on whether the FCRA contains a waiver of sovereign immunity, it has shown a tendency to strictly interpret other waivers of immunity. See, e.g., Gentile v. Sec. & Exch. Comm'n, 947 F.3d 311, 315-317 (3d Cir. 2020) (holding that a narrow construction of the Administrative Procedure Act's waiver of sovereign immunity does not extend to agency decisions to initiate investigation); United States v. Craig, 649 F.3d 509, 513 (3d Cir. 2012) (construing the Civil Asset Forfeiture Reform Act and Federal Rule of Civil Procedure 41(g) narrowly as to not waive immunity for the payment of monetary interest on returned property); Cudjoe *ex rel.* Cudjoe v. Dep't of Veterans Affairs, 426 F.3d 241, 248 (3d Cir. 2005) (reading the waiver in the Toxic Substance Control Act narrowly as to not extend to private suits for money damages); Antol v. Perry, 82 F.3d 1291, 1297-98 (3d Cir. 1996) (declining to incorporate the waiver in the Rehabilitation Act into the Vietnam Era Veterans' Readjustment Assistance Act simply because the latter mentions the former).

In short, the mere fact that a statute can be plausibly read to contain a waiver of sovereign immunity is insufficient. A waiver must be unambiguous. See Cudjoe *ex rel.* Cudjoe v. Dep't of Veterans Affairs, 462 F.3d 241, 247 (3d Cir. 2005) (citing United States v. Nordic Village, Inc., 503 U.S. 30, 37 (1992) ("Language subject to varying interpretations will not be construed as a waiver.")). The FCRA does not contain such an unambiguous waiver of sovereign immunity. Therefore, I conclude that the USDA is immune from suit, and I lack

jurisdiction over the claims against it. Accordingly, I will grant the USDA's Motion to Dismiss for Lack of Subject Matter Jurisdiction.

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 21-2149

REGINALD KIRTZ, APPELLANT

v.

TRANS UNION LLC; PENNSYLVANIA HIGHER EDUCATION ASSISTANCE AGENCY, DOING BUSINESS AMERICAN EDUCATION SERVICES; UNITED STATES DEPARTMENT OF AGRICULTURE RURAL DEVELOPMENT RURAL HOUSING SERVICE

Filed: Nov. 3, 2022

E.D. Pa. No. 2:20-cv-05231

SUR PETITION FOR REHEARING

Present: MCKEE[*], JORDAN, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, and PHIPPS, Circuit Judges

The petition for rehearing filed by Appellee United States Department of Agriculture Rural Development Rural Housing Service in the above-entitled case having been submitted to the judges who participated in the decision of this Court and to all the other available circuit

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[*] At the time the petition for rehearing was submitted to the en banc panel, Judge McKee was an active judge of the Court. 3rd Cir. I.O.P. 9.5.2.

judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court en banc, is denied.

BY THE COURT,

/s/ CHERYL ANN KRAUSE
CHERYL ANN KRAUSE
Circuit Judge

Dated: Nov. 3, 2022
Tmm/cc: Deborah Mayham
Abigail M. Green, Esq.
Daniel V. Johns, Esq.
Barry M. Klayman, Esq.

APPENDIX D

1. 15 U.S.C. 1681(b) (1970) provides:

Congressional findings and statement of purpose.

(b) It is the purpose of this subchapter to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this subchapter.

2. 15 U.S.C. 1681a (1970) provides in pertinent part:

Definitions; rules of construction.

(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term "consumer" means an individual.

* * * * *

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on con-

sumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

* * * * *

3. 15 U.S.C. 1681n (1970) provides:

Civil liability for willful noncompliance.

Any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

4. 15 U.S.C. 1681*o* (1970) provides:

Civil liability for negligent noncompliance.

Any consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure;

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

5. 15 U.S.C. 1681p (1970) provides:

Jurisdiction of courts; limitation of actions.

An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this subchapter to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this subchapter, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

6. 15 U.S.C. 1681q (1970) provides:

Obtaining information under false pretenses.

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined not more than $5,000 or imprisoned not more than one year, or both.

7. 15 U.S.C. 1681s(a) (1970) provides:

Administrative enforcement.

(a) Federal Trade Commission; powers.

Compliance with the requirements imposed under this subchapter shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other government agency under subsection (b) hereof. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this subchapter shall constitute an unfair or deceptive act or practice in commerce in violation of section 45(a) of this title and shall be subject to enforcement by the Federal Trade Commission under section 45(b) of this title with respect to any consumer reporting agency or person subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this subchapter and to require the filing of reports, the production of documents, and the appearance of witnesses as though the applicable terms and conditions of the Federal Trade Commission Act were part of this subchapter. Any person violating any of the provisions of this subchapter shall be

subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions thereof were part of this subchapter.

8. 15 U.S.C. 1681(b) (1994) provides:

Congressional findings and statement of purpose

(b) Reasonable procedures

It is the purpose of this subchapter to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this subchapter.

9. 15 U.S.C. 1681a (1994 & Supp. II 1996) provides in pertinent part:

Definitions; rules of construction

(a) Definitions and rules of construction forth in this section are applicable for the purposes of this subchapter.

(b) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term "consumer" means an individual.

* * * * *

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

* * * * *

10. 15 U.S.C. 1681n (Supp. II 1996) provides:

Civil liability for willful noncompliance

(a) In general

Any person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1)(A) any actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000; or

(B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or $1,000, whichever is greater;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action

together with reasonable attorney's fees as determined by the court.

(b) Civil liability for knowing noncompliance

Any person who obtains a consumer report from a consumer reporting agency under false pretenses or knowingly without a permissible purpose shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or $1,000, whichever is greater.

(c) Attorney's fees

Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

11. 15 U.S.C. 1681*o* (Supp. II 1996) provides:

Civil liability for negligent noncompliance

(a) In general

Any person who is negligent in failing to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure;

(2) in the case of any successful action to enforce any liability under this section, the costs of the action

together with reasonable attorney's fees as determined by the court.

(b) Attorney's fees

On a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

12. 15 U.S.C. 1681p (1994) provides:

Jurisdiction of courts; limitation of actions

An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this subchapter to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this subchapter, the action may be brought at any time within two years after discovery by the individual of the misrepresentation.

13. 15 U.S.C. 1681q (Supp. II 1996) provides:

Obtaining information under false pretenses

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined under title 18, imprisoned for not more than 2 years, or both.

14. 15 U.S.C. 1681s (1994 & Supp. II 1996) provides in pertinent part:

Administrative enforcement

(a) Enforcement by Federal Trade Commission

(1) Compliance with the requirements imposed under this subchapter shall be enforced under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] by the Federal Trade Commission with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this subchapter is specifically, committed to some other government agency under subsection (b) hereof. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this subchapter shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act [15 U.S.C. 45(a)] and shall be subject to enforcement by the Federal Trade Commission under section 5(b) thereof [15 U.S.C. 45(b)] with respect to any consumer reporting agency or person subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of

whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this subchapter and to require the filing of reports, the production of documents, and the appearance of witnesses as though the applicable terms and conditions of the Federal Trade Commission Act were part of this subchapter. Any person violating any of the provisions of this subchapter shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions thereof were part of this subchapter.

(2)(A) In the event of a knowing violation, which constitutes a pattern or practice of violations of this subchapter, the Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person that violates this subchapter. In such action, such person shall be liable for a civil penalty of not more than $2,500 per violation.

(B) In determining the amount of a civil penalty under subparagraph (A), the court shall take into account the degree of culpability, any history of prior such conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(3) Notwithstanding paragraph (2), a court may not impose any civil penalty on a person for a violation of section 1681s-2(a)(1) of this title unless the person has been enjoined from committing the violation, or ordered not to commit the violation, in an action or proceeding

brought by or on behalf of the Federal Trade Commission, and has violated the injunction or order, and the court may not impose any civil penalty for any violation occurring before the date of the violation of the injunction or order.

(4) Neither the Commission nor any other agency referred to in subsection (b) of this section may prescribe trade regulation rules or other regulations with respect to this subchapter.

* * * * *

(c) State action for violations

(1) Authority of States

In addition to such other remedies as are provided under State law, if the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this subchapter, the State—

(A) may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction;

(B) subject to paragraph (5), may bring an action on behalf of the residents of the State to recover—

(i) damages for which the person is liable to such residents under sections 1681n and 1681o of this title as a result of the violation;

(ii) in the case of a violation of section 1681s-2(a) of this title, damages for which the person would, but for section 1681s-2(c) of this

title, be liable to such residents as a result of the violation; or

(iii) damages of not more than $1,000 for each willful or negligent violation; and

(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

(2) Rights of Federal regulators

The State shall serve prior written notice of any action under paragraph (1) upon the Federal Trade Commission or the appropriate Federal regulator determined under subsection (b) of this section and provide the Commission or appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Federal Trade Commission or appropriate Federal regulator shall have the right—

(A) to intervene in the action;

(B) upon so intervening, to be heard on all matters arising therein;

(C) to remove the action to the appropriate United States district court; and

(D) to file petitions for appeal.

(3) Investigatory powers

For purposes of bringing any action under this subsection, nothing in this subsection shall prevent the chief law enforcement officer, or an official or

agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(4) Limitation on State action while Federal action pending

If the Federal Trade Commission or the appropriate Federal regulator has instituted a civil action or an administrative action under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818] for a violation of this subchapter, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Commission or the appropriate Federal regulator for any violation of this subchapter that is alleged in that complaint.

(5) Limitations on State actions for violation of section 1681s-2(a)(1)

(A) Violation of injunction required

A State may not bring an action against a person under paragraph (1)(B) for a violation of section 1681s-2(a)(1) of this title, unless—

(i) the person has been enjoined from committing the violation, in an action brought by the State under paragraph (1)(A); and

(ii) the person has violated the injunction.

(B) Limitation on damages recoverable

In an action against a person under paragraph (1)(B) for a violation of section 1681s-2(a)(1) of this title, a State may not recover any damages incurred before the date of the violation of an injunction on which the action is based.

* * * * *

15. 15 U.S.C. 1681s-2 (Supp. II 1996) provides in pertinent part:

Responsibilities of furnishers of information to consumer reporting agencies

* * * * *

(b) Duties of furnishers of information upon notice of dispute

(1) In general

After receiving notice pursuant to section 1681i(a)(2) of this title of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall—

(A) conduct an investigation with respect to the disputed information;

(B) review all relevant information provided by the consumer reporting agency pursuant to section 1681i(a)(2) of this title;

(C) report the results of the investigation to the consumer reporting agency; and

(D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis.

(2) Deadline

A person shall complete all investigations, reviews, and reports required under paragraph (1) regarding information provided by the person to a consumer reporting agency, before the expiration of the period under section 1681i(a)(1) of this title within which the consumer reporting agency is required to complete actions required by that section regarding that information.

(c) Limitation on liability

Sections 1681n and 1681o of this title do not apply to any failure to comply with subsection (a) of this section, except as provided in section 1681s(c)(1)(B) of this title.

(d) Limitation on enforcement

Subsection (a) of this section shall be enforced exclusively under section 1681s of this title by the Federal agencies and officials and the State officials identified in that section.

* * * * *

16. 15 U.S.C. 1681u(i) (Supp. II 1996) provides:

Disclosures to FBI for counterintelligence Purposes

(i) Damages

Any agency or department of the United States obtaining or disclosing any consumer reports, records, or information contained therein in violation of this section is liable to the consumer to whom such consumer reports, records, or information relate in an amount equal to the sum of—

(1) $100, without regard to the volume of consumer reports, records, or information involved;

(2) any actual damages sustained by the consumer as a result of the disclosure;

(3) if the violation is found to have been willful or intentional, such punitive damages as a court may allow; and

(4) in the case of any successful action to enforce liability under this subsection, the costs of the action, together with reasonable attorney fees, as determined by the court.

17. 15 U.S.C. 1681(b) provides:

Congressional findings and statement of purpose

(b) Reasonable procedures

It is the purpose of this subchapter to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with

regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this subchapter.

18. 15 U.S.C. 1681a provides in pertinent part:

Definitions; rules of construction

(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term "consumer" means an individual.

* * * * *

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

* * * * *

19. 15 U.S.C. 1681n provides:

Civil liability for willful noncompliance

(a) In general

Any person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1)(A) any actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000; or

(B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or $1,000, whichever is greater;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Civil liability for knowing noncompliance

Any person who obtains a consumer report from a consumer reporting agency under false pretenses or knowingly without a permissible purpose shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or $1,000, whichever is greater.

(c) Attorney's fees

Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

(d) Clarification of willful noncompliance

For the purposes of this section, any person who printed an expiration date on any receipt provided to a consumer cardholder at a point of sale or transaction between December 4, 2004, and June 3, 2008, but otherwise complied with the requirements of section 1681c(g) of this title for such receipt shall not be in willful noncompliance with section 1681c(g) of this title by reason of printing such expiration date on the receipt.

20. 15 U.S.C. 1681*o* provides:

Civil liability for negligent noncompliance

(a) In general

Any person who is negligent in failing to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure; and

(2) in the case of any successful action to enforce any liability under this section, the costs of the action

together with reasonable attorney's fees as determined by the court.

(b) Attorney's fees

On a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

21. 15 U.S.C. 1681p provides:

Jurisdiction of courts; limitation of actions

An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction, not later than the earlier of—

(1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or

(2) 5 years after the date on which the violation that is the basis for such liability occurs.

22. 15 U.S.C. 1681q provides:

Obtaining information under false pretenses

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting

agency under false pretenses shall be fined under title 18, imprisoned for not more than 2 years, or both.

23. 15 U.S.C. 1681s provides in pertinent part:

Administrative enforcement

(a) Enforcement by Federal Trade Commission

(1) In general

The Federal Trade Commission shall be authorized to enforce compliance with the requirements imposed by this subchapter under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other Government agency under any of subparagraphs (A) through (G) of subsection (b)(1), and subject to subtitle B of the Consumer Financial Protection Act of 2010 [12 U.S.C. 5511 et seq.], subsection (b).[1] For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this subchapter shall constitute an unfair or deceptive act or practice in commerce, in violation of section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)), and shall be subject to enforcement by the Federal Trade Commission under section 5(b) of that Act [15 U.S.C. 45(b)] with respect to any consumer reporting agency or person that is subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of

[1] So in original.

whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this subchapter and to require the filing of reports, the production of documents, and the appearance of witnesses, as though the applicable terms and conditions of the Federal Trade Commission Act were part of this subchapter. Any person violating any of the provisions of this subchapter shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions of such Act are part of this subchapter.

(2) Penalties

(A) Knowing violations

Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, in the event of a knowing violation, which constitutes a pattern or practice of violations of this subchapter, the Federal Trade Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person that violates this subchapter. In such action, such person shall be liable for a civil penalty of not more than $2,500 per violation.

(B) Determining penalty amount

In determining the amount of a civil penalty under subparagraph (A), the court shall take into account the degree of culpability, any history of such

prior conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(C) Limitation

Notwithstanding paragraph (2), a court may not impose any civil penalty on a person for a violation of section 1681s-2(a)(1) of this title, unless the person has been enjoined from committing the violation, or ordered not to commit the violation, in an action or proceeding brought by or on behalf of the Federal Trade Commission, and has violated the injunction or order, and the court may not impose any civil penalty for any violation occurring before the date of the violation of the injunction or order.

* * * * *

(c) State action for violations

(1) Authority of States

In addition to such other remedies as are provided under State law, if the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this subchapter, the State—

(A) may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction;

(B) subject to paragraph (5), may bring an action on behalf of the residents of the State to recover—

(i) damages for which the person is liable to such residents under sections 1681n and 1681o of this title as a result of the violation;

(ii) in the case of a violation described in any of paragraphs (1) through (3) of section 1681s-2(c) of this title, damages for which the person would, but for section 1681s-2(c) of this title, be liable to such residents as a result of the violation; or

(iii) damages of not more than $1,000 for each willful or negligent violation; and

(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

(2) Rights of Federal regulators

The State shall serve prior written notice of any action under paragraph (1) upon the Bureau and the Federal Trade Commission or the appropriate Federal regulator determined under subsection (b) and provide the Bureau and the Federal Trade Commission or appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Bureau and the Federal Trade Commission or appropriate Federal regulator shall have the right—

(A) to intervene in the action;

(B) upon so intervening, to be heard on all matters arising therein;

(C) to remove the action to the appropriate United States district court; and

(D) to file petitions for appeal.

(3) Investigatory powers

For purposes of bringing any action under this subsection, nothing in this subsection shall prevent the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(4) Limitation on State action while Federal action pending

If the Bureau, the Federal Trade Commission, or the appropriate Federal regulator has instituted a civil action or an administrative action under section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818] for a violation of this subchapter, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Bureau, the Federal Trade Commission, or the appropriate Federal regulator for any violation of this subchapter that is alleged in that complaint.

(5) Limitations on State actions for certain violations

(A) Violation of injunction required

A State may not bring an action against a person under paragraph (1)(B) for a violation de-

scribed in any of paragraphs (1) through (3) of section 1681s-2(c) of this title, unless—

(i) the person has been enjoined from committing the violation, in an action brought by the State under paragraph (1)(A); and

(ii) the person has violated the injunction.

(B) Limitation on damages recoverable

In an action against a person under paragraph (1)(B) for a violation described in any of paragraphs (1) through (3) of section 1681s-2(c) of this title, a State may not recover any damages incurred before the date of the violation of an injunction on which the action is based.

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24. 15 U.S.C. 1681s-2 provides in pertinent part:

Responsibilities of furnishers of information to consumer reporting agencies

* * * * *

(b) Duties of furnishers of information upon notice of dispute

(1) In general

After receiving notice pursuant to section 1681i(a)(2) of this title of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall—

(A) conduct an investigation with respect to the disputed information;

(B) review all relevant information provided by the consumer reporting agency pursuant to section 1681i(a)(2) of this title;

(C) report the results of the investigation to the consumer reporting agency;

(D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis; and

(E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for purposes of reporting to a consumer reporting agency only, as appropriate, based on the results of the reinvestigation promptly—

(i) modify that item of information;

(ii) delete that item of information; or

(iii) permanently block the reporting of that item of information.

(2) Deadline

A person shall complete all investigations, reviews, and reports required under paragraph (1) regarding information provided by the person to a consumer reporting agency, before the expiration of the period under section 1681i(a)(1) of this title within

which the consumer reporting agency is required to complete actions required by that section regarding that information.

(c) Limitation on liability

Except as provided in section 1681s(c)(1)(B) of this title, sections 1681n and 1681o of this title do not apply to any violation of—

(1) subsection (a) of this section, including any regulations issued thereunder;

(2) subsection (e) of this section, except that nothing in this paragraph shall limit, expand, or otherwise affect liability under section 1681n or 1681o of this title, as applicable, for violations of subsection (b) of this section; or

(3) subsection (e) of section 1681m of this title.

(d) Limitation on enforcement

The provisions of law described in paragraphs (1) through (3) of subsection (c) (other than with respect to the exception described in paragraph (2) of subsection (c)) shall be enforced exclusively as provided under section 1681s of this title by the Federal agencies and officials and the State officials identified in section 1681s of this title.

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25. 15 U.S.C. 1681u(j) provides:

Disclosures to FBI for counterintelligence purposes

(j) Damages

Any agency or department of the United States obtaining or disclosing any consumer reports, records, or information contained therein in violation of this section is liable to the consumer to whom such consumer reports, records, or information relate in an amount equal to the sum of—

(1) $100, without regard to the volume of consumer reports, records, or information involved;

(2) any actual damages sustained by the consumer as a result of the disclosure;

(3) if the violation is found to have been willful or intentional, such punitive damages as a court may allow; and

(4) in the case of any successful action to enforce liability under this subsection, the costs of the action, together with reasonable attorney fees, as determined by the court.