No. 22-471

In the Supreme Court of the United States

CONSUMER DATA INDUSTRY ASSOCIATION,
PETITIONER,

v.

AARON M. FREY, ATTORNEY GENERAL OF MAINE, et al.,
RESPONDENTS.

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

BRIEF OF *AMICI CURIAE* CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA, *ET AL.*, SUPPORTING PETITIONER

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QUESTION PRESENTED

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

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INTEREST OF *AMICI CURIAE*[1]

Amici Curiae are trade organizations representing businesses and organizations across every sector of the economy. Many of *Amici*'s members operate nationwide in the credit and credit reporting industries. They rely upon federal rules that simultaneously advance important societal and statutory objectives, such as consumer-credit reporting, and provide a predictable and nationally uniform regulatory regime.

The Chamber of Commerce of the United States of America ("Chamber") is the world's largest business federation. It represents approximately 300,000 direct members and indirectly represents the interests of more than three million businesses and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. It

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[1] Pursuant to Supreme Court Rule 37.2(a), all parties have provided their written consent to the filing of this brief and have received timely notice of its filing more than 10 days prior to filing. Pursuant to Rule 37.6, *Amici* affirm that no counsel for a party authored this brief in whole or in part, and that no party, counsel for a party, or any person other than *Amici*, their members, or their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

regularly files amicus briefs in cases of importance to the business community, including this one.

Since its founding in 1916, the American Financial Services Association ("AFSA") has been the national trade association for the consumer-credit industry, with a mission of protecting access to credit and consumer choice. AFSA has a diverse membership, ranging from large, international financial-services firms to single-office, independent consumer-finance companies, each of whom must operate within the requirements of the FCRA, 15 U.S.C. § 1681, *et seq.* AFSA's over 420 members span the consumer-credit market and provide consumers with financial services and numerous kinds of credit—including traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance. Through these members' individual actions, they shape the consumer-credit industry's direction and positions on a broad range of public-policy issues that affect the consumer-credit industry.

Established in 1875, the American Bankers Association ("ABA") is the united voice of America's $23.6 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard $19.4 trillion in deposits, and extend $12 trillion in loans.

The National Association of Federally-Insured Credit Unions ("NAFCU") advocates for all federally-

insured not-for-profit credit unions that, in turn, serve over 134 million consumers with personal and small business financial service products. NAFCU members are from across the country and of all asset sizes. It provides members with representation, information, education, and assistance to meet the constant challenges that cooperative financial institutions face in today's economic environment. NAFCU proudly represents many smaller credit unions with relatively limited operations, as well as many of the largest and most sophisticated credit unions in the Nation. NAFCU represents 78 percent of total federal credit union assets and 62 percent of all federally-insured credit union assets.

The Bank Policy Institute ("BPI") is a nonpartisan public policy, research, and advocacy group that represents the nation's leading national- and state-chartered banks and their customers. BPI's member banks employ nearly two million Americans, make 68 percent of the nation's loans and nearly half of the nation's small business loans, and serve as an engine for financial innovation and economic growth.

INTRODUCTION AND SUMMARY OF ARGUMENT

The FCRA comprehensively regulates the contents of consumer reports issued throughout the United States. In order to ensure that this carefully calibrated, nationwide credit reporting regime does not become hopelessly fragmented, the FCRA, as

relevant to this case, also expressly preempts state laws "relating to information contained in consumer reports." The First Circuit's decision below guts this critically important preemption provision, taking an approach to FCRA preemption that is irreconcilable both with the statutory text, and with the approaches taken by the Second, Fourth, and Sixth Circuits.

This Court's review is especially necessary because of the destructive impact that the First Circuit's decision will have on the national credit reporting market, which market is essential for the health of the economy and for consumers' access to affordable credit. If the First Circuit's approach stands, each State will be able to craft its own rules for the contents of consumer reports, potentially creating a patchwork of at least 50 different types of reports, thus defeating the FCRA's objective of creating a uniform system. Following the First Circuit's blessing of Maine's laws here, West Virginia might decide that it needs special consumer-reporting rules for debts owed by miners; New York may conclude that real-estate debt reporting deserves special treatment; Nevada and New Jersey may opt for rules for gambling-related debt reporting; and so on. Notably, even if the damage from the First Circuit's decision could somehow be limited only to Maine's provisions at issue here, that itself would merit this Court's review and reversal. After all, the Maine provisions at issue here require credit reporting agencies to alter fundamentally their

nationwide reporting systems, in order to identify and create Maine-resident-specific consumer reports.

This Court should grant the Petition.

ARGUMENT

I. The First Circuit's Decision Misreads The FCRA And Conflicts With Other Courts Of Appeals' Understandings Of That Statute

The First Circuit's interpretation of Section 1681t(b) below is inconsistent with the FCRA's plain language, structure, and history, as well as this Court's preemption precedents. The First Circuit's reading is also contrary to the approaches taken by several other Courts of Appeals.

A. The plain text of a statute provides "the best evidence of Congress' pre-emptive intent." *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 125 (2016) (quoting *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 594 (2011)). Where a statute "contains an express pre-emption clause," the Court will not "invoke any presumption against pre-emption" but will instead "focus on the plain wording of the clause." *Id.* (quoting *Whiting*, 563 U.S. at 594).

Here, the plain statutory language demonstrates that the FCRA expressly preempts state laws that seek to regulate information included in consumer reports. Section 1681t(b)(1) provides that "[n]o

requirement or prohibition may be imposed under the laws of any State . . . with respect to any subject matter regulated under . . . section 1681c of this title, relating to information contained in consumer reports." 15 U.S.C. § 1681t(b)(1)(E). These words have broad scope. The phrase "'[n]o requirement or prohibition' sweeps broadly," *Cipollone v. Liggett Grp., Inc.*, 505 U.S. 504, 521 (1992) (plurality op.) (alteration in original), to apply to any state law. The term "any" has "an expansive meaning," *Patel v. Garland*, 142 S. Ct. 1614, 1622 (2022) (quoting *Babb v. Wilkie*, 140 S. Ct. 1168, 1173 n.2 (2020)), as does the phrase "relating to," *Coventry Health Care of Mo., Inc. v. Nevils*, 137 S. Ct. 1190, 1197 (2017). When read together, this capacious statutory language preempts the entire "subject matter" regulated by Section 1681c, namely, "information contained in consumer reports." 15 U.S.C. § 1681t(b)(1)(E); *id.* § 1681c. Thus, by its clear terms, Section 1681t(b)(1)(E) bars States from enacting laws that regulate what information may or may not be included in consumer reports.

The statutory history of the FCRA's preemption provisions further supports the conclusion that the FCRA preempts any state law regulating the information contained in consumer reports. *See Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992). As first enacted in 1970, the FCRA preempted state laws only "to the extent that those laws [were] *inconsistent* with any provision of [the statute]." 15 U.S.C. § 1681t(a) (1995) (emphasis

added). Thus, in its original form, the statute employed a narrow preemption, permitting States to enact consumer-reporting laws so long as those laws did not conflict with any provisions of the FCRA. In 1996, Congress amended the FCRA to add Section 1681t(b), a "strong preemption provision," *Ross v. FDIC*, 625 F.3d 808, 813 (4th Cir. 2010), designed to ensure "uniform, national standards" in credit reporting, *CDIA v. King*, 678 F.3d 898, 901 (10th Cir. 2012). At the same time, Congress provided that Section 1681t(b) would expire on January 1, 2004, and thereafter would not preempt any state law giving "greater protection to consumers" than otherwise provided under the FCRA. Pub. L. No. 104-208, § 2419 (1996) (codified at 15 U.S.C. § 1681t(d)(2)). But in 2003, Congress amended the statute again to strike that expiry provision, *see* Pub. L. No. 108-159, § 711 (2003), such that Section 1681t(b) remains in effect and broadly preempts even those state laws that provide greater consumer protection if they regulate a "subject matter" reserved by that provision for federal regulation. And the "subject matter" of Section 1681c is "information contained in consumer reports." 15 U.S.C. § 1681c.

The two Maine laws at issue here fall squarely within Section 1681t(b)'s broadly preemptive reach, as each imposes express requirements relating to information contained in consumer reports. *Id.* § 1681t(b)(1)(E). Maine's Medical-Debt Provision prohibits a consumer reporting agency from reporting medical debt on a consumer report "when the date of

the first delinquency on the debt is less than 180 days prior to the date that the debt is reported," Me. Rev. Stat. Ann. tit. 10, § 1310-H(4)(A), or when the reporting agency has "reasonable evidence" that the debt has been "settled" or "paid in full," *id.* § 1310-H(4)(B)(1)-(2), and requires the reporting agency to report medical debt "in the same manner as debt related to a consumer credit transaction" if the consumer is "making regular, scheduled periodic payments toward" that debt, *id.* § 1310-H(4)(C). Maine's Economic Abuse Provision, in turn, bars reporting debts resulting from "economic abuse," if the consumer "provides documentation" of the economic abuse and a subsequent investigation confirms that abuse. *Id.* § 1310-H(2-A). Both laws thus purport to establish requirements concerning what information regarding certain debts may or may not be included in a consumer report, and thus are preempted by the plain language of the FCRA. 15 U.S.C. § 1681t(b)(1)(E).

Rather than give Section 1681t(b)(1)(E)'s broad language its plain effect, the First Circuit rewrote that subsection as only preempting state laws to the extent those laws regulate specific issues addressed by Section 1681c. App.17–23. That interpretation conflicts with the text and context of Section 1681t(b)(1)(E), which expressly preempts the "subject matter" regulated under Section 1681c—namely, requirements "relating to information contained in consumer reports." 15 U.S.C. § 1681t(b)(1)(E). Further, the First Circuit's reading renders Section

1681t(b)(1)(E)'s "relating to" clause superfluous, as the specific contents of the cross-referenced FCRA provision—in this case, Section 1681c—are, according to the First Circuit, the only determinants of that provision's preemptive scope. *See TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001). Nor can the First Circuit's reading be reconciled with the FCRA's statutory history, noted above. *King*, 678 F.3d at 901.

B. The First Circuit's parsimonious approach to FCRA preemption also renders that Court an outlier among Courts of Appeals to have considered the FCRA's preemptive scope. Other Courts of Appeals have correctly concluded that the FCRA broadly preempts the general "subject matter[s]" identified in Section 1681t(b)(1)(A)-(K). In *Premium Mortgage Corp. v. Equifax, Inc.*, the Second Circuit declined to construe narrowly Section 1681t(b)(1)(A), which bars state laws concerning "any subject matter regulated under . . . subsection (c) or (e) of section 1681b of this title, relating to the prescreening of consumer reports." 583 F.3d 103, 106 (2d Cir. 2009) (per curiam). Rather than determine whether the plaintiff's allegations were expressly covered by the specific provisions within Section 1681b(c) or (e), the Second Circuit simply asked whether those allegations "relate[d] to the prescreening of consumer reports." *Id.* at 105–06. The Fourth and Sixth Circuits employed the same approach when considering the scope of Section 1681t(b)(1)(F), which preempts state laws "with respect to any subject matter regulated under . . . section 1681s-2 of this

title, relating to the responsibilities of persons who furnish information to consumer reporting agencies." *Ross*, 625 F.3d at 812–13; *Scott v. First S. Nat'l Bank*, 936 F.3d 509, 519–21 (6th Cir. 2019). Those cases did not analyze preemption by assessing whether the plaintiff's specific allegations fell within the express provisions within Section 1681s-2—which state specific duties of furnishers of information—and instead asked only whether those allegations "relat[ed] to the responsibilities of persons who furnish information to consumer reporting agencies." *Ross*, 625 F.3d at 812–13; *Scott*, 936 F.3d at 519–21.

In contrast to these decisions of the Second, Fourth and Sixth Circuits, the First Circuit here held that the preemptive scope of Section 1681t(b)(1) is narrowly limited to the specific requirements and prohibitions listed in the cross-referenced FCRA provisions. App.17–23.

II. The First Circuit's Decision Destroys The Nationwide Uniformity Of Credit Reporting, Meaning That Immediate Review And Reversal By This Court Is Essential

Immediate review is further warranted because the First Circuit's decision undermines the uniformity of consumer reporting in the United States, especially given that other States are sure to follow Maine's lead in adopting State-specific rules for the contents of consumer reports. But even if this Court looks only to the consequences of permitting

Maine's laws challenged here to stand, that alone would be sufficient to justify prompt review and reversal, as those laws themselves alter fundamentally the nation's uniform credit reporting practices.

A. Before consumer reports were widely available across the entire country, lenders deciding whether to offer credit to consumers typically depended on their prior experience with a potential borrower, resulting in highly individualized and non-replicable reviews of consumers. *See* Michael E. Staten & Fred H. Cate, *The Impact of National Credit Reporting Under the Fair Credit Reporting Act: The Risk of New Restrictions and State Regulation* at iv, 13 (2003).[2] As a result of those practices, consumer lending previously was inherently limited to a "local," rather than "national," sphere, resulting in comparably limited consumer-credit lending across the country. Fed. Trade Comm'n, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003* at 6–7 (Dec. 2004) (hereinafter "*FTC 2004 Report*").[3]

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[2] Abstract available at https://www.researchgate.net/publication/215992113_The_impact_of_national_credit_reporting_under_the_Fair_Credit_Reporting_Act_The_risk_of_new_restrictions_and_state_regulation.

[3] Available at https://www.ftc.gov/sites/default/files/documents/reports/under-section-318-and-319-fair-and-accurate-credit-transaction-act-2003/041209factarpt.pdf.

B. The introduction of nationwide consumer reports changed that dynamic, providing consumers a nationwide file for credit worthiness and the ability to "take [their] reputation with [them] as [they] travel around the country," S. Rep. No. 108-166, at 10 (2003) (quoting Secretary of Treasury John W. Snow), while at the same time allowing creditors "to make sound [consumer-lending] decisions" without needing prior personal experience with a borrower, S. Rep. No. 91-517, at 2 (1969); Staten & Cate, *supra*, at iv–v, 11, 13. This allowed consumers and creditors to forge relationships across the country, spurring lending and yielding "extraordinary benefits" to consumers and the economy as a whole. Staten & Cate, *supra*, at ii, 4; *accord* 15 U.S.C. § 1681(a)(1), (3).

Congress enacted the FCRA, in relevant part, to support this shift to national credit reporting by "creat[ing] uniform, national standards in the area of credit reporting." *King*, 678 F.3d at 900–01; *see also* S. Rep. No. 108-166, at 10 (noting that FCRA "sought to establish uniform standards in key areas" including "the contents of consumer reports [and] furnisher responsibilities" with the 2003 amendments "establish[ing] permanent, uniform, national standards" in these areas). To that end, Congress combined a "host of requirements concerning the creation and use of consumer reports," *Spokeo, Inc. v. Robins*, 578 U.S. 330, 335 (2016), with the FCRA's broad preemption provisions, *see* S. Rep. No. 103-209, at 7 (1993), for the "purpose" of "avoid[ing] a patchwork system of conflicting regulations" by the

States, *Ross*, 625 F.3d at 813 (citations omitted). Thus, as the lower courts have long concluded, "the FCRA expressly preempts any state requirement or prohibition relating to . . . the content of consumer reports" and "the responsibilities of those who maintain them," leaving "no room for overlapping state regulations" within this statutory regime. *King*, 678 F.3d at 900–01; *accord Aldaco v. RentGrow, Inc.*, 921 F.3d 685, 688 (7th Cir. 2019); *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1172 (9th Cir. 2009). The "purpose" of the FCRA's express-preemption clauses "was, in part, to avoid a patchwork system of conflicting regulations" by the States. *Ross*, 625 F.3d at 813 (citations omitted).

The FCRA's requirement of nationally uniform consumer-reporting standards, through the "preemption of state laws," is "critical" to "preserv[e]" our existing national "credit reporting system that support[s] widespread access to credit." Staten & Cate, *supra*, at i, 2; *accord* S. Rep. No. 103-209, at 7. Ready access to consistent credit information is necessary to maintain the "predictive power" of consumer reports and "the industry's ability to measure credit risk," with decreases in available information resulting in consumers receiving decreases in acceptance rates or increases in delinquencies. Dr. Michael Turner, *The Fair Credit Reporting Act: Access, Efficiency & Opportunity* 9,

Info. Pol'y Inst. (June 2003).[4] A shift away from nationally-uniform credit information, which undergirds the prescreening process for most credit applications, would cause "increase[d] . . . cost of credit and reduce[d] access to credit." *Id.*

Studies have shown that credit reporting of the type that the FCRA fosters greatly benefits consumers "by facilitating greater access to credit and financial services, especially for traditionally underserved populations," and has "significantly enhanced competition and lowered credit prices by making it possible for lenders to compete for customers nationally." Michael E. Staten, *Maximizing the Benefits from Credit Reporting* 15, Transunion White Paper (2008).[5] The "result of these public policies has been a dramatic increase in credit availability to all segments of the U.S. population, particularly to those toward the bottom of the socio-economic spectrum who need it the most." John M. Barron, *The Value of Comprehensive Credit Reports: Lessons from the U.S. Experience* 5 (Nov. 2001);[6] *see*

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[4] Available at https://www.perc.net/wp-content/uploads/2013/09/fcra_report_exec_sum.pdf.

[5] Available at https://www.transunion.com/docs/rev/aboutTransunion/maximizing_the_Benefits_from_Credit_Reporting%20_Michael_Staten.pdf.

[6] Available at https://www.researchgate.net/profile/John-Barron-2/publication/242391913_The_Value_of_Comprehensive_Credit_Reports_Lessons_from_the_US_Experience_Summary/

also Ctr. for Capital Markets, *The Economic Benefits of Risk-Based Pricing for Historically Underserved Consumers in the United States* 4 (Spring 2021).[7]

This "national character" of the consumer-reporting industry has created a multitude of "benefits to individuals and the economy." Staten & Cate, *supra*, at viii, 27. Nationwide reporting facilitated the "amount of consumer credit extended [to] gr[o]w substantially," *FTC 2004 Report* at 7, providing "widespread access to credit across the age and income spectrum," Staten & Cate, *supra*, at ii, 4. It has "encourage[d] entry by new lenders and greater competition" among existing lenders by "dramatically reduc[ing] the cost of assessing the risk of new borrowers." *Id.* at v, 15. This "[i]ncreased competition"—driven largely by the availability of nationwide prescreening based on consistent and uniform criteria—"has caused interest rates today to be more widely dispersed (and lower overall)" than in years past, Turner, *supra*, at 10, while "significantly improv[ing] the effectiveness of the risk evaluation process in consumer lending," Staten, *supra*, at 8. The result is a "remarkably mobile" society, given "the ubiquitous availability of credit reports." Staten & Cate, *supra*, at viii, 27.

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links/57b780b808ae6f173764f22b/The-Value-of-Comprehensive-Credit-Reports-Lessons-from-the-US-Experience-Summary.pdf.

[7] Available at https://www.centerforcapitalmarkets.com/wp-content/uploads/2021/04/CCMC_RBP_v11-2.pdf.

C. Any disruption of this nationwide consumer-reporting industry in favor of a patchwork of state-by-state standards "run[s] the risk of upsetting the carefully balanced interests under [the] FCRA," and returning the credit industry to its limited, local focus that we progressed past decades ago. *Id.* at ii, 3, 25. Most obviously, "[t]he cost of determining which state law or laws appl[y], and of complying with those laws," may encourage creditors to operate solely within a single State or cease such business altogether as costs make current business models no longer feasible. *See id.* at v, viii, 15, 28. State regulations can "inhibit[ ] the assembly of comprehensive credit reports," *id.* at v, 18, "undermin[ing] the[ir] predictive value" and increasing lending risk, *id.* at viii, 25; 15 U.S.C. § 1681(a)(1) ("Inaccurate credit reports directly impair the efficiency of the banking system."); *see also* Turner, *supra*, at 9–11. The resulting patchwork of different and possibly conflicting state regulation would significantly impact consumers' credit scores based on where they locate. This would impact their locational incentives and decisions in arbitrary ways, "ill serv[ing] consumers as they move, commute, and deal with business from across state lines." Staten & Cate, *supra*, at viii, 28. Such ill effects would reduce lending competition across the country, driving up interest rates for some consumers and foreclosing access to credit for others.

Data shows that a scattershot reporting system with less credit information results in a stark

decrease in the availability of consumer credit and an increase in default rates when compared to comprehensive credit profiles, like those in the current American system. Staten, *supra*, at 6–7. In a system of selective credit information, rather than the comprehensive, nationwide model currently in place, default rates are higher at every target loan approval rate by a hypothetical creditor, because of the loss of information for screening applicants. *Id.* at 6 tbl.1. In other words, no matter how selective creditors are, when they have less information, credit defaults occur more frequently. *Id.* Moreover, these increased defaults are not offset by increased availability of credit to consumers because of the limited reporting. At every single level of accepted default rate, a comprehensive credit reporting system results in a higher percentage of customers who obtain a loan. *Id.* at 6 tbl.2. To put it simply, limiting the amount of permissible information credit reporting agencies may include in their reports will "greatly reduce the reliability of credit reports," Staten & Cate, *supra*, at 28, necessarily lowering rates of credit acceptance and increasing delinquencies, Turner, *supra*, at 9.

D. If this Court permits the First Circuit's decision to stand, that would undermine our Nation's credit reporting system, thereby subverting all of the benefits to consumers and the economy outlined above. To comply with state-specific laws dictating the content of consumer reports on consumers in particular States, lenders would need to establish

underwriting rules and processes specific to Maine, to ensure that no State-specific-prohibited information made its way into the consumer reports of any consumers for whom a particular State's laws would apply, requiring multiple workflows that increase both compliance costs and the possibility of error. These compliance and resource burdens, while generally problematic in the industry, will most seriously challenge small, community financial institutions. Regardless of how effective any alternative workflows and processes are, such additional requirements will lead to additional disputes with individual consumers, with the threat of state-court litigation hanging over every misstep and innumerable unanswered questions attaching to every consumer's file.

To take just some concerns with Maine's laws at issue in this case, questions would abound: "Do [a state's special credit-report content laws] laws apply to this particular file?" "Is this defaulted debt on a consumer file the result of economic abuse, or other fraud?" "Is this consumer making 'regular, scheduled, periodic payments' on medical debt, such that the consumer reporting agency cannot report that debt?" "The consumer missed a single payment on that medical debt, can it be reported now?" "Why didn't the individual lender investigate all of this?" Each of these questions and many more will proliferate as a result of various States' unique requirements, forcing credit reporting agencies to incur new costs, and pass them on to lenders who seek consumer reports, which

will in turn raise interest rates on their consumer loans to offset such costs.

Additionally, removing predictive information from the credit reporting system would cause decreases in the availability of credit and increases in default rates. Staten, *supra*, at 6–7.

Each consumer reporting agency will, moreover, need to produce different consumer reports based on where a particular consumer lives. Determining where an individual lives can be a difficult enough task as it is, *see* Staten & Cate, *supra*, at 28, let alone tracking whether a consumer has moved to or from Maine or any other State. Credit reporting agencies will surely face increased costs associated with this type of location tracking as well as a heightened risk of litigation in the foreseeable event they are mistaken about a consumer's state of residence.

These problems would multiply as other States inevitably follow Maine's lead, adopting their own rules for what can and must appear in consumer reports. "[A]llow[ing] Maine" to adopt its own "special" regulations on consumer reports will necessarily "allow other States to do the same," leading inexorably to a 50-State "patchwork" of state-level regulations based upon whatever interests each State chooses to favor or protect. *Rowe v. N.H. Motor Transp. Ass'n*, 552 U.S. 364, 373 (2008). Maine decided that its laws should give special considerations for medical debt and debt arising from

economic abuse, but other States may well choose to regulate different areas, in light of their own policy preferences or special interests. For example, Massachusetts may create special rules for student debt.[8] Connecticut, in turn, may require special care for reporting of insurance-industry debt,[9] whereas New York may think it better to adopt specific rules for reporting of real-estate debt.[10] And Nevada and New Jersey may have special concern for gambling-related debts.[11] Any number of States could also require the *inclusion* of particular information each State deems important for credit reporting, creating

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[8] *Accord* U.S. Pub. Int. Rsch. Grp., *MassPIRG Praises Passage Of Key Bill To Protect Student Loan Borrowers*, U.S. PIRG (Jan. 6, 2021), https://uspirg.org/news/map/masspirg-praises-passage-key-bill-protect-student-loan-borrowers.

[9] *See generally* Conn. Bus. & Indus. Ass'n, *Study: Health Insurance Industry's Major Impact on State's Economy* (May 22, 2019), https://www.cbia.com/news/economy/health-insurance-industry-economic-impact/.

[10] *See generally* Jeff Andrews, *Rent? Buy? Run to the Burbs? Deciphering New York's Wild Real-Estate Market*, Curbed.com (Oct. 14, 2020), https://www.curbed.com/article/nyc-real-estate-housing-rent-buy-manhattan-brooklyn.html.

[11] *See generally* Kay Foley, *Betting on Nevada: Gaming Industry Outlook*, Nevada Business (Feb. 1, 2020), https://www.nevadabusiness.com/2020/02/nevada-gaming-industry-outlook/; Wayne Parry, *Another Month, Another Sports Betting Record in NJ With $931M Wagered in Nov.*, NBC 10 Philadelphia (Dec. 15, 2020), https://www.nbcphiladelphia.com/news/sports/sports-betting-record-new-jersey/2633462/.

the same type of disuniformity that state-by-state exclusions would.

Further, under the First Circuit's approach, the FCRA would permit States to take directly conflicting positions on exactly the same consumer-report content. That would make compliance by nationwide credit reporting agencies all but impossible. *See* Staten & Cate, *supra*, at vii–viii, 25, 28, 30.

E. Notably, the deeply prejudicial, nationwide effects of the First Circuit's decision will not wait until other States adopt their own special rules, but will follow immediately from this decision, as every national credit reporting agency will have to comply with Maine's idiosyncratic rules. As previously noted, the benefits of the national credit system under the FCRA's fulsome preemption of state requirements come largely from its nationwide uniformity, allowing consumers to travel freely throughout the country without losing their credit portfolios, S. Rep. No. 108-166, at 10, while permitting credit reporting agencies to support efficient, automated underwriting practices that benefit all consumers seeking credit, Turner, *supra*, at 7–8. Allowing Maine to impose special requirements on information contained within consumer reports will either destroy that uniformity or deprive creditors of useful credit information nationwide, as credit reporting agencies attempt to comply with Maine's new rules. Although the Internet "has facilitated truly national (in many cases, global) markets," it also "make[s] it impossible

to identify automatically in which state users are located," Staten & Cate, *supra*, at 28, thereby destroying the effectiveness of automatic prescreening for creditworthiness. Given the primarily "national character" of the credit reporting industry as it currently stands, *id.* at viii, Maine's destruction of the previously uniform requirements for consumer reports will have rippling effects across the entire industry nationwide, with the result that "compliance costs are greatly exacerbated," as well as "greatly reduc[ing] the reliability of credit reports," *id.* at 28, thereby decreasing credit acceptance rates or increasing delinquencies, Turner, *supra*, at 9, thus harming consumers.

CONCLUSION

This Court should grant the Petition.

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