No. 20-2064

UNITED STATES COURT OF APPEALS
For The First Circuit

CONSUMER DATA INDUSTRY ASSOCIATION,
Plaintiff - Appellee,

v.

AARON M. FREY, in his capacity as the Attorney General of the State of Maine; WILLIAM N. LUND, in his capacity as Superintendent of the Maine Bureau of Consumer Credit Protection

Defendants – Appellants.

ON APPEAL FROM THE DISTRICT OF MAINE (CASE NO. 1:19-cv-438-GZS)

REPLY BRIEF OF DEFENDANTS-APPELLANTS AARON M. FREY AND WILLIAM N. LUND

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Express Preemption Provisions Must Be Narrowly Construed.

The Supreme Court has clearly stated that as a matter of federalism and because of the presumption against preemption, express preemption provisions must be narrowly construed. *See Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996); *Cipollone v. Ligget Group, Inc*., 505 U.S. 504, 518 (1992) (noting that express preemption provisions must be construed "in light of the presumption against the pre-emption of state police power regulations" and "[t]his presumption reinforces the appropriateness of a narrow reading of [the express preemption provision at issue]"); *see also Phillip Morris Inc. v. Harshbarger*, 122 F.3d 58, 68 (1st Cir. 1997) (holding that the "presumption applies in both express and implied preemption analyses.").

Amici American Financial Services Association ("AFSA") and Chamber of Commerce of the United States claim that in *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 136 S. Ct. 1938, 1946 (2016), the Supreme Court eliminated this presumption when it comes to express preemption provisions. AFSA Br., at 8-9, 20-21. This is not so. In *Franklin*, the Court stated: "Resolving whether Puerto Rico is a 'State' for purposes of the pre-emption provision begins 'with the language of the statute itself,' and that 'is also where the inquiry should end,' for 'the statute's language is plain.'" *Franklin Cal. Tax-Free Tr*., 136 S. Ct. at 1946

(quoting *United States v. Ron Pair Enterprises, Inc*., 489 U.S. 235, 241 (1989). There was thus no need for the Court to invoke the presumption to choose among different constructions, and the Court's statement that it would not apply the presumption to an express preemption provision must be read in that context. Underscoring this, the Court supported its statement by citing to *Chamber of Commerce of U.S. v. Whiting*, 563 U.S. 582, 594 (2011). There, the Court simply said that it focuses on the language of an express preemption provision because that is the "best evidence of Congress' preemptive intent." *Id*. Finally, it is unlikely that the Court intended to overrule *Medtronic*, 518 U.S. at 485 and *Cipollone*, 505 U.S. at 518 without even mentioning them.

Section 1681t(b)(1)(E) Preempts Only States Laws Relating to Subject Matter Regulated Under Section 1681c.

Section 1681t(b)(1)(E) states: "No 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). According to CDIA, this means that "any state laws that attempt to regulate information contained in consumer reports are preempted." Appellee's Br., at 10. If that is what Congress had intended, though, it easily could have eliminated the phrase "with respect to any subject matter regulated under . . . section 1681c" and instead have declared that "no requirement or prohibition may be imposed under the laws of any

State . . . relating to information contained in consumer reports." That, of course, is not what Congress did. It expressly referenced matters regulated under Section 1681c, and this necessarily means that it intended to preempt a subset of laws narrower than all those that relate to information contained in consumer reports.

CDIA's amici fault Appellants for "quibl[ing] with Congress' choice of structure for Section 1681t(b)," but, at the same time, they acknowledge that the phrase "with respect to any subject matter regulated under . . . section 1681c" would be rendered a "minor superfluidity" [sic] if Section 1681t(b)(1)(E) were to be interpreted as broadly preempting all laws relating to information contained in consumer reports. AFSA Br., at 23. Amici dismisses this, though, by stating that the "'preference for avoiding surplusage constructions is not absolute.'" *Id.* (quoting *Seila Law LLC v. Consumer Fin. Prot. Bureau*, 140 S. Ct. 2183, 2210 (2020)). In *Selia Law*, though, there was no construction that would avoid the surplusage, and the Court noted that the principle that statutes should be construed to avoid surplusage applies only when there is another interpretation that would avoid the surplusage. Here, under Appellants' construction, the phrase "subject matter regulated under . . . section 1681c" defines the scope of preemption, and the

phrase "relating to information contained in consumer reports" is a shorthand description of section 1681c. This construction avoids any surplusage.[1]

Section 1681t(b)(1)(E) Is Distinguishable From Other Statutes in Which Congress Broadly Preempted a Subject Area.

Congress clearly knows how to preempt states from regulating entire subject areas, and Congress did just that in the statutes at issue in cases CDIA relies upon. Appellee Br., at 11-16. In *Morales v. Trans World Airlines, Inc.,* 504 U.S. 374, 378-79 (1992), a provision in the Airline Deregulation Act of 1978 "prohibit[ed] the States from enforcing any law 'relating to rates, routes, or services' of any air carrier." In *Rowe v. New Hampshire Motor Transp. Ass'n*, 552 U.S. 364, 368 (2008), a provision in the Federal Aviation Administration Authorization Act of 1994 declared that states "may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, route, or service of any motor carrier." 49 U.S.C. § 14501(c)(1). In *Massachusetts Ass'n of Health Maint. Organizations v. Ruthardt*, 194 F.3d 176, 180 (1st Cir. 1999) a federal law declared: "State standards relating to the following are superseded under this paragraph: (i) Benefit requirements. (ii) Requirements relating to inclusion or

[1] For its part, CDIA does not acknowledge any surplusage but instead argues that "any subject matter regulated under . . . section 1681c" "is a descriptive phrase, not a limiting one." Appellee Br., at 16. CDIA has it backwards. The descriptive phrase is "relating to information contained in consumer reports" – it describes Section 1681c.

treatment of providers. (iii) Coverage determinations (including related appeals and grievance processes)."

In each of these statutes, Congress expressly preempted state laws relating to entire subject matters, without reference to whether federal law regulated the matters. The corollary here would be if Congress had preempted states laws relating to information contained in credit reports. It did not do that, though. Instead it inserted the qualifying phrase "with respect to any subject matter regulated under . . . section 1681c." If this phrase is not to be regarded as surplusage, it must mean that state laws are not preempted merely because they relate to information contained in consumer reports.[2]

At most, the cases CDIA cites support the proposition that the phrase "relating to" has broad sweep. But CDIA is wrong when it says "Congress used the phrase 'related to the subject matter' to describe the preemptive effect that the FCRA would have on state laws that attempted to regulate that which Congress intended to preserve to itself." Appellee's Br., at 10. In fact, Congress used the

[2] In effort to show that the two Maine laws do relate to subject matter regulated under Section 1681c, CDIA's amici note that Section 1681c forbids the reporting of "[a]ny other adverse item of information" (other than conviction records) that is more than seven years old. AFSA Br., at 22 (citing 15 U.S.C. § 1681c(a)(5). They appear to argue that this means that Section 1681c implicitly allows the reporting of all adverse information that is not expressly prohibited. While that may be true, the fact that Section 1681c is silent as to certain subject matters does not mean that it regulates those subject matters.

phrase "with respect to" regulated subject matter. 15 U.S.C. § 1681t(b)(1). Assuming for the sake of argument that "with respect to" is synonymous with "relating to," *see, e.g., Huffington v. T.C. Grp., LLC*, 637 F.3d 18, 22 (1st Cir. 2011), CDIA still must demonstrate that the Maine laws relate to subject matter regulated under Section 1681c.[3] Instead of doing so, though, CDIA reverts to its argument that because Section 1681t relates to information contained in consumer reports, any state law addressing the content of consumer reports "relates to" a matter regulated by Section 1681c. Again, though, if this is what Congress had intended it would not have added the "with respect to subject matter regulated under" phrase and instead would simply have preempted state laws "relating to information contained in consumer reports." That Congress did not do so demonstrates that Congress intended more narrow preemption. Specifically, it intended to preempt only state laws respecting subject matter actually regulated under Section 1681c. And because Section 1681c does not regulate at all debt

[3] The district court stated that under Appellants' interpretation, states could prohibit the inclusion on consumer reports of all paid tax liens despite that 15 U.S.C. § 1681c(a)(3) prohibits only paid tax liens that were satisfied more than seven years ago. Add., at 14-15. Section 1681c(a)(3) clearly regulates the subject matter of tax liens, though, so states likely would be preempted from regulating in that area.

incurred as a result of economic abuse, and regulates only veterans' medical debt, the Maine laws are not preempted.[4]

In a case CDIA itself relies upon, Appellee's Br., at 16, the Second Circuit recognized that the "relating to" phrase does not define the scope of preemption. *Galper v. JP Morgan Chase Bank, N.A.*, 802 F.3d 437 (2d Cir. 2015). There, bank employees allegedly used a customer's accounts to engage in money laundering, and the customer sued the bank for identity theft. *Id.*, at 441. The bank argued that the claim was preempted by 15 U.S.C. § 1681t(b)(1)(F), which states: "No requirement or prohibition may be imposed under the laws of any State . . 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." Section 1681s-2, in turn, imposes certain duties on furnishers who receive notice of identity theft. 15 U.S.C. § 1681s-2(a)(6). The Second Circuit stated that the provision "must be read to preempt only those claims against furnishers that are 'with respect to' the subject matter regulated under § 1681s–2." *Id.*, at 445-46 (emphasis in original). The court went on to reject the bank's argument that Section 1681t(b)(1)(F) "preempts all claims 'relating to the

[4] It may be that Section 1681c could be construed as regulating the subject matter of credit information regarding veterans. 15 U.S.C. § 1681c(a)(7), (8). If so, states might be preempted from regulating that subject matter. But the fact that Section 1681c imposes a special rule when it comes to veterans' medical debt does not mean that the section regulates the subject matter of medical debt.

responsibilities' of furnishers in any way, and regardless of the capacity in which the furnisher is acting." *Galper*, 802 F.2d at 447. The court stated:

> This broad argument overlooks the language of the statute. In this statutory context, the phrase "relating to" is not used to describe the scope of preemption. Instead, the phrase exists as a shorthand reference to describe the subject matter governed by § 1681s–2. If Congress had intended to preempt claims that relate in any way to someone furnishing information to a consumer reporting agency, it could easily have drafted the statute to say that state laws "relating to the furnishing of information to consumer reporting agencies are preempted."

Id.[5]

The Cases Relied Upon By CDIA Regarding Prescreening of Consumer Credit Reports Are Inapposite.

CDIA notes that Section 1681t(b)(1)(A) preempts state laws "with respect to any subject matter regulated under . . . subsection (c) or (e) of section 1681b of this title, relating to the prescreening of consumer reports." CDIA then argues that "courts have found that the FCRA preempts state laws on all aspects of prescreening." Appellee's Br., 17. The two cases CDIA cites, though, do not support that proposition. At issue in *Consumer Data Indus. Ass'n v. Swanson*, 2007 WL 2219389 (D. Minn. 2007) was a Minnesota law prohibiting consumer reporting agencies from selling "mortgage-trigger lists," i.e., lists of persons

[5] The court noted that if there were any ambiguity in the preemption provision, the presumption against preemption would require it to accept the interpretation that would avoid preemption. *Id*., at 448.

applying for mortgages, which agencies compile based on requests for credit reports they receive from mortgage lenders in connection with applications for mortgages. *Id*., at *1. The plaintiff – CDIA – alleged that the state law was preempted by 15 U.S.C. § 1681t(b)(1)(A). CDIA argued that mortgage-trigger lists are a form of prescreened consumer reports and are expressly authorized by 15 U.S.C. § 1681b(c)(1). *Id*. Minnesota, on the other hand, argued that mortgage-trigger lists are not a form of "consumer reports" but instead are a "record of inquiries in connection with a credit or insurance transaction that is not initiated by a consumer." *Id*., *4. Minnesota noted that a separate provision of Section 1681b(c) prohibits the furnishing of such lists and argued that the state law was not preempted "because it forbids something—selling mortgage-trigger lists—that is already forbidden under the FCRA." *Id*., at *4 (citing 15 U.S.C. § 1681b(c)(3)). The court rejected Minnesota's argument as "self-defeating:"

> Even if mortgage-trigger lists are indeed forbidden by the FCRA because they reflect "a record of inquiries"—a question on which this Court expresses no opinion—Minnesota still may not regulate them for the very reason that they are forbidden by § 1681b(c)(3). The preemptive reach of the FCRA is both broad and explicit: Section 1681t(b)(1)(A) preempts any state law that imposes a prohibition or requirement with respect to "any subject matter regulated by" § 1681b(c). Whether selling mortgage-trigger lists is explicitly authorized by § 1681b(c)(1) (as CDIA argues) or explicitly forbidden by § 1681b(c)(3) (as [Minnesota] argues), the "subject matter" of mortgage-trigger lists is unquestionably regulated by § 1681b(c), and thus, under § 1681t(b)(1)(A), neither Minnesota nor any other state may prohibit or regulate their sale.

Id. The state law was preempted not merely because it related to the prescreening of consumer reports, but because it addressed a subject matter "unquestionably regulated" by the FCRA provision at issue.

In the other case relied upon by CDIA – *Premium Mortg. Corp. v. Equifax, Inc.*, 583 F.3d 103 (2d Cir. 2009) – the plaintiff brought state law claims alleging that consumer reporting agencies were unlawfully selling mortgage-trigger lists. The court's holding that plaintiffs' claims were preempted is no more relevant than the holding in *Swanson* that state regulation of the sale of mortgage-trigger lists was preempted.

The Cases Relied Upon By CDIA Regarding Duties of Furnishers Are Inapposite.

CDIA cites to a string of cases that have nothing to do with preemption of state statutes relating to the content of consumer reports but instead involve preemption of state common law causes of action brought against entities that allegedly furnished inaccurate information to credit reporting agencies. In all of these cases, the provision at issue was 15 U.S.C. § 1681t(b)(1)(F), which states: "No requirement or prohibition may be imposed under the laws of any State . . . 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." Section 1681s-2 expressly regulates the duties of furnishers to provide accurate information to credit reporting agencies and to correct errors. 15

U.S.C. § 1681s-2(a), (b). In the cases cited by CDIA, the courts held that this provision preempted common law claims premised on allegations that a furnisher provided erroneous information and failed to correct it. *See Aleshire v. Harris, N.A.*, 586 F. App'x 668 (7th Cir. 2013); *Ross v. F.D.I.C.*, 625 F.3d 808 (4th Cir. 2010); *Macpherson v. JPMorgan Chase Bank, N.A.*, 665 F.3d 45 (2d Cir. 2011); *Purcell v. Bank of Am.*, 659 F.3d 622 (7th Cir. 2011); *Marshall v. Swift River Acad., LLC*, 327 F. App'x 13 (9th Cir. 2009); *Pinson v. Equifax Credit Info. Servs., Inc.*, 316 F. App'x 744 (10th Cir. 2009); *Macpherson v. JPMorgan Chase Bank, N.A.*, 665 F.3d 45 (2d Cir. 2011). These holdings are hardly surprising given that, as the Fourth Circuit noted, the reporting of inaccurate information is "an area regulated in great detail under § 1681s-2(a)-(b)." *Ross*, 625 F.3d at 813. [6]

The Economic Abuse Debt Reporting Law is Not Preempted By Section 1681t(b)(5)(C).

CDIA argues that the Economic Abuse Debt Reporting Law is preempted "[t]o the extent . . . that the Economic Abuse Law requires a CRA to reinvestigate allegations of what amounts to identity theft and block reporting of that information." Appellee's Br., at 26. This argument is based on 15 U.S.C. §

[6] CDIA somehow finds it significant that state common law claims "are not mentioned anywhere in the FCRA, yet courts continue to hold them preempted by the 'subject matter' preemption provision of section 1681t(b)(1)." Appellant's Br., at 18 n.11. As the Seventh Circuit explained, though, "laws of the State" refers not just to statutory law but also common law. *Purcell*, 659 F.3d at 623-24.

1681t(b)(5)(C), which states: "No requirement or prohibition may be imposed under the laws of any State . . . with respect to the conduct required by the specific provisions of . . . section 1681c-2 of this title." Section 1681c-2 requires credit reporting agencies to block information regarding transactions resulting from alleged identity theft upon proper notification from a consumer. 15 U.S.C. § 1681c-2.

But CDIA is making a facial challenge to the Economic Abuse Debt Reporting Law. It must, then, "establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). Alternatively, "a facial challenge must fail where the statute has a plainly legitimate sweep." *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 449 (2008) (citation and internal quotation marks removed); *see also Libertarian Party of New Hampshire v. Gardner*, 843 F.3d 20, 24 (1st Cir. 2016). So even if the Economic Abuse Debt Reporting Law might be preempted when applied to conduct that constitutes identify theft under FCRA, CDIA's facial challenge still fails.[7]

[7] CDIA's amici appear to diverge from CDIA and argue that the Economic Abuse Debt Reporting Law is preempted under all circumstances even though "economic abuse" under the state law will only sometimes also constitute "identify theft" under FCRA. AFSA Br., at 17-19. This Court, though, "ordinarily do[es] not entertain arguments raised by amici and not by parties." *In re Sony BMG Music Ent.*, 564 F.3d 1, 3 (1st Cir. 2009); *see also Mount Vernon Fire Ins. Co. v. VisionAid, Inc.*, 875 F.3d 716, 720 n.1 (1st Cir. 2017). In any event, it is

Even as to economic abuse that would also constitute identity theft, the Economic Abuse Debt Reporting Law is not preempted. Notably, Congress did not preempt state laws that relate to the "subject matter regulated" by Section 1681c-2. Rather, Congress preempted state laws that that impose requirements or prohibitions with respect the conduct required by the "specific provisions" of Section 1681c-2. 15 U.S.C. § 1681t(b)(5)(C). Section 1681c-2 essentially requires consumer reporting agencies, after being provided with documentation by consumers, to block information resulting from identity theft and notify furnishers. The Economic Abuse Debt Reporting Law requires consumer reporting agencies, after being provided with documentation by consumers, to investigate whether debts were the result of economic abuse and, if so, remove them.[8] The Economic

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impossible to see how the fact that a state law might be preempted when applied only to specific conduct means that it is preempted when applied to any conduct. And even when it comes to economic abuse that also constitutes identity theft, the Economic Abuse Debt Reporting Law is not preempted. *See* Appellants' Br., at 34-36 & *infra*.

[8] CDIA claims that removing the debt from a consumer report is "tantamount" to an adjudication of the consumer's legal obligation to the creditor for that debt. Appellee's Br., 9 n.5; *see also id*., at 27 n.15 (claiming that credit reporting agencies will "become the adjudicator of claims between the furnisher and the consumer"). Of course, this is not true. Removing the debt from a credit report has nothing to do with whether the debt is still owed. Rather, the Legislature has determined that regardless of whether certain debts are owed or not, it is unfair to include them in consumer reports, because, among other things, the debts may not be accurate reflections of the consumers' credit worthiness.

Abuse Debt Reporting Law thus imposes requirements entirely separate from the conduct required by Section 1681c-2.

Congress Did Not Intend to Establish a Single "National Standard" For Consumer Reports.

According to CDIA, Congress intended FCRA to "establish a uniform national standard related to credit reporting with which sates could not interfere." Appellee's Br., 22-23. But nowhere in FCRA's statement of Congressional findings and statement of purpose is there a reference to a need to establish national uniformity or any indication that FCRA was intended to establish such uniformity. 15 U.S.C. § 1681. Moreover, if Congress had wanted to establish uniformity, it easily could have done so by preempting state laws "relating to information contained in consumer reports." Instead, though, it preempted state laws concerning "any subject matter regulated under . . . section 1681c." This is odd language for Congress to use if its intent was to preempt the entire field of the content of consumer reports.[9] It is further odd that Congress would have expressly carved out from Section 1681t(b)(1)(E) state laws that were in effect as of

[9] CDIA finds it "perplexing" that while Appellants acknowledge the importance of Congressional intent in a preemption analysis, they fault the district court for considering Congress' supposed intent to impose national standards for consumer reports. Appellee's Br., at 11 n.6. The district court's error, though, was in concluding that there was such an intent.

September 30, 1996, thus virtually ensuring that there will not be national uniformity.[10]

The only "evidence" CDIA can muster in support of its national uniformity argument are statements made by three members of Congress. Appellee's Br., at 23-24. Such statements are of little value in ascertaining Congress' intent. See *Helsinn Healthcare S.A. v. Teva Pharm. USA, Inc*., 855 F.3d 1356, 1368 (Fed. Cir. 2017) (noting that "floor statements made by individual members of Congress" are "typically not reliable as indicators of congressional intent"), *aff'd*, 139 S. Ct. 628 (2019); *Mozee v. Am. Com. Marine Serv. Co*., 963 F.2d 929, 933 (7th Cir. 1992) ("It is difficult to decipher congressional intent from the statements of different members of Congress."); *see also Conroy v. Aniskoff*, 507 U.S. 511, 519 (1993) ("Judge Harold Leventhal used to describe the use of legislative history as the equivalent of entering a crowded cocktail party and looking over the heads of the guests for one's friends.") (Scalia, J., concurring).[11]

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[10] CDIA claims that this savings clause would not have been necessary "[i]f Congress intended states to be able to adopt laws governing the content of consumer reports as Appellants suggest." Appellee's Br., at 24. This makes no sense. Because Section 1681t(b)(1)(E) preempts states from enacting laws with respect to the subject matter regulated under Section 1681c, the saving clause is necessary to preserve pre-existing state laws even if they relate to regulated subject matter.

[11] It should also be noted that the amicus brief submitted by the National Consumer Law Center and other organizations points to statements from members of Congress demonstrating that Congress did not intend to preempt all state regulation of the content of consumer reports. NCLC Br., at 10-12.

CDIA's amici seek to use a Senate Report to support their "national uniformity" argument. AFSA Br., at 9 (citing S. Rep. No. 103-209, at 7, 1993 WL 516162 (1993)). This report, though, predated the Consumer Credit Reporting Reform Act of 1996, Pub. L. No. 104–208, which added 15 U.S.C. § 1681t(b). And while the report does reference the "national scope of the consumer reporting industry and the benefits of uniformity" and that state law is preempted "in several key areas of the FCRA," S. Rep. No. 103-209, at 7, the report also states:

> Additionally, the Committee understands that states have the power to protect their own citizens, including protection from abuses in the credit reporting industry. Therefore, the FCRA, as amended by the Committee bill will not infringe upon the rights of states to legislate more stringent requirements that fall outside the scope of those areas specifically preempted in this section to the extent that such provisions are not inconsistent with any provisions of the FCRA, and then only to the extent of the inconsistency.

Id., at 28-29.[12]

CDIA's amici claim that the sky would fall if states were permitted to regulate aspects of consumer reports that are not otherwise regulated by FCRA. AFSA Br., at 3-6; 24-31. They argue that "a lack of national uniformity would

[12] CDIA's amici cite to the statement in *Ross v. F.D.I.C.*, 625 F.3d 808, 813 (4th Cir. 2010) that one purpose of the 1996 amendments was to "to avoid a 'patchwork system of conflicting regulations.'" AFSA Br., at 25. The only support the court cited in support of this proposition, though, was a law review article, and the article was simply referring to an argument made by the credit reporting industry. Michael Epshteyn, *The Fair and Accurate Credit Transactions Act of 2003: Will Preemption of State Credit Reporting Laws Harm Consumers?*, 93 Geo. L.J. 1143, 1154 (2005).

impose serious, practical consequences for consumer lenders, consumer borrowers, and the Nation's economy as a whole." *Id*., at 6. It is doubtful that allowing states to protect their residents from harmful consumer reports is as dire as amici claim. National companies frequently must comply with different laws in different states. For example, insurance is generally regulated at the state level, resulting in "fifty different regulatory systems applicable to insurers." Alexia Brunet Marks, *Under Attack: Terrorism Risk Insurance Regulation*, 89 N.C. L. Rev. 387, 399 (2011). If the insurance industry can adapt to different regulations in different states, it is difficult to understand why the credit reporting industry cannot do so as well.

More fundamentally, though, there is no such thing as "anti-patchwork preemption." To be sure, Congress sometimes broadly preempts certain areas to avoid state patchworks. *See, e.g., Fort Halifax Packing Co., Inc. v. Coyne*, 482 U.S. 1, 11 (1987) (ERISA was intended to prevent a patchwork of regulations relating to employee benefit plans). But, in the absence of any evidence that Congress intended to prevent a patchwork, the fact that a patchwork might result is irrelevant to the issue of whether a state law is preempted.

CONCLUSION

For the reasons set forth above, the Court should vacate the district court's judgment and hold that neither the Medical Debt Reporting Law nor the Economic Abuse Debt Reporting Law is preempted by FCRA.

Dated: March 25, 2021
Augusta, Maine

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The within Appellants' Brief is submitted under Federal Rule of Appellate Procedure 32(a)(7)(B). I hereby certify that the brief complies with the type-volume limitation prescribed by Rule 32(a)(7)(B)(i). For this Certification, I relied on the word count function of the word-processing software used to prepare this brief (Microsoft Word 2007), which has counted 4,430 words in this brief. I further certify that all text in this brief is in proportionally spaced Times New Roman Font and is 14 points in size.

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CERTIFICATE OF SERVICE

Pursuant to Fed. R. App. P. 25(d), I, Christopher C. Taub, Chief Deputy General for the State of Maine, hereby certify that on this, the 25th day of March, 2021, I filed the above brief electronically via the ECF system. I further certify that on this, the 25th day of March, 2021, I served the above brief electronically on the following parties, who are ECF Filers, via the Notice of Docket Activity:

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