

IN THE
SUPREME COURT OF THE UNITED STATES

No. ____

CONSUMER DATA INDUSTRY ASSOCIATION,
Applicant,

v.

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

Respondents.

**APPLICATION TO THE HON. JOHN G. ROBERTS, JR.,
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT**

Pursuant to Supreme Court Rule 13(5), the Consumer Data Industry Association (“CDIA”) hereby moves for an extension of time of 30 days, to and including November 2, 2022, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be October 3, 2022.

In support of this request, CDIA states as follows:

1. The First Circuit rendered its decision on February 10, 2022 (Exhibit 1). It denied CDIA's petition for rehearing en banc on July 5, 2022 (Exhibit 2). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. This case arises out of two recently enacted Maine statutes regulating the credit reporting industry in the teeth of federal law. The first new Maine statute, An Act Regarding Credit Ratings Related to Overdue Medical Expenses, 2019 Me. Laws 266 (the "Medical Debt Reporting Act"), prohibits credit reporting agencies from reporting "debt from medical expenses on a consumer credit report when the date of the first delinquency on the debt is less than 180 days prior to the date that the debt is reported." Me. Rev. Stat. tit. 10, §1310-H(4)(A). The second new Maine statute, An Act to Provide Relief to Survivors of Economic Abuse, 2019 Me. Laws 1062-64 (the "Economic Abuse Debt Reporting Act"), requires credit reporting agencies to reinvestigate debts whenever a consumer provides documentation that a debt resulted from economic abuse, which includes identity theft, and to exclude such debts from future reports upon confirmation. Me. Rev. Stat. Ann. tit. 10, §1310-H(2-A); *id.* tit. 19-A, §4002(3-B).

3. CDIA, the trade association representing the largest credit reporting agencies, sued Respondents, the Maine officials responsible for implementing and enforcing the Medical Debt Reporting Act and the Economic Abuse Debt Reporting Act, in 2019, arguing that both statutes are preempted by the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. §§1681 *et seq.*

4. The district court agreed with CDIA. Under section 1681t(b)(1)(E) of the FCRA, no state “may ... impose[]” any “requirement or prohibition ... 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); *see also id.* §1681c. Because the new Maine statutes both require credit reporting agencies to exclude certain types of information from consumer reports, the district court ruled that they both fall squarely within the preemptive ambit of §1681t(b)(1)(E).

5. The First Circuit vacated, reversed, and remanded. Relying primarily on cases interpreting the Federal Aviation Administration Authorization Act, the First Circuit construed §1681t(b)(1)(E) narrowly. In the First Circuit’s view, §1681t(b)(1)(E) preempts only state laws adopting requirements or prohibitions with respect to the specific subjects explicitly enumerated in section 1681c of the FCRA.

6. Applying that narrow construction, the court held that §1681t(b)(1)(E) does not preempt Maine’s Medical Debt Reporting Act, even though §1681t(b)(1)(E) explicitly preempts any “requirement or prohibition ... with respect to any subject matter regulated under ... section 1681c,” §1681c of the FCRA in turn explicitly regulates certain types of medical debts, *see* 15 U.S.C. §1681c(a)(7)-(8), and Maine’s law explicitly imposes prohibitions and requirements relating to medical debts. Likewise, the court held that §1681t(b)(1)(E) does not preempt Maine’s Economic Abuse Debt Reporting Act even though §1681c-2 of the FCRA explicitly regulates identity theft and establishes how consumer reporting agencies must respond in such

cases, *see* 15 U.S.C. §1681c-2, and Maine's law explicitly imposes new requirements on reporting agencies in such cases.

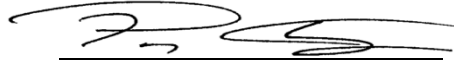
7. CDIA timely filed a petition for rehearing en banc on March 10, 2022. The First Circuit denied CDIA's petition on July 5, 2022. Two of the court's six active judges were recused.

8. Applicant's counsel, Paul D. Clement, was not involved in the proceedings below and was only recently retained. Applicant's counsel requires additional time to review the record and prior proceedings in this case in order to prepare and file a petition for certiorari that best presents the arguments for this Court's review.

9. Applicant's counsel has substantial briefing and argument obligations between now and October 3, including a supplemental brief in *Rhode v. Bonta*, No. 20-55437 (9th Cir.), due on September 22; a response/reply brief in *Smartmatic USA Corp. v. Fox Corp.* (N.Y. App. Div.), due on September 23; a reply brief in *Helix Energy Solutions Group v. Hewitt*, No. 21-984 (U.S.), due on September 30; and a reply in support of a motion to dismiss in *Moses v. Comcast Cable Communications Management, LLC*, No. 22-cv-00665 (S.D. Ind.), due on October 3. Counsel also will be preparing for oral argument in this Court in *Helix*, which is scheduled for October 7.

WHEREFORE, for the foregoing reasons, CDIA requests that an extension of time to and including November 2, 2022, be granted within which it may file a petition for a writ of certiorari.

Respectfully submitted,



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