UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

CONSUMER DATA INDUSTRY ASSOCIATION,

Plaintiff,

v.

STATE OF TEXAS THROUGH KEN PAXTON, IN HIS OFFICIAL CAPACITY AS ATTORNEY GENERAL FOR THE STATE OF TEXAS,

Defendant.

Civil Action No. 1:19-cv-00876-RP

PLAINTIFF'S REPLY BRIEF IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

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INTRODUCTION

In its opening brief, CDIA explained that (1) the federal Fair Credit Reporting Act broadly preempts all state laws that purport to regulate the content of consumer reports; and (2) because of this, Texas's Section 20.05(a)(5) is preempted because it prohibits CRAs from reporting certain information on consumer reports.

Both these propositions are clear. Texas's law undisputedly prohibits CRAs from reporting certain information on consumer reports, as it bars CRAs from reporting that a consumer has outstanding medical debt in certain circumstances. And FCRA provides that: "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) (emphases added). As CDIA explained, the text, context, structure, and history of § 1681t(b)(1)(E) (as well as the weight of persuasive authority) all confirm the straightforward rule the provision establishes: states may not regulate what "information" may be "contained in consumer reports." Indeed, this Court has recognized that "Section 1681c addresses the information which may be included in consumer reports." Dkt. 49 at 10. Under § 1681t(b)(1)(E), that subject matter is off-limits to state regulation.

The Texas Attorney General's (AG) opposition brief does nothing to refute that straightforward conclusion. The AG does not (and cannot) contest that Texas's statute excludes information from consumer reports. And the AG ignores ***entirely*** CDIA's detailed explanation showing that all the rules of statutory construction, plus the weight of persuasive authority, confirm that Congress, in § 1681t(b)(1)(E), expressly and broadly preempted states from enacting laws relating to the information contained in consumer reports. Nor does it make any mention of this

Court's prior ruling finding the Texas statute likely preempted. Its silence on those arguments is telling.

The AG, instead, advances an argument that contradicts the plain text of § 1681t(b)(1)(E) and all the rules of statutory construction. The AG argues that the "subject matter" of § 1681c that is off-limits pursuant to § 1681t(b)(1)(E) is ***not*** "information contained in consumer reports," as expressly stated in § 1681t(b)(1)(E), but rather the *specific prohibitions within that subject matter* expressly articulated in § 1681c. And because Texas's Section 20.05(a)(5) does not conflict with any of those specific prohibitions contained in § 1681c, the AG maintains Texas's statute is not preempted under § 1681t(b)(1)(E).

The fundamental flaw with this argument is self-evident—it flouts the plain language of § 1681t(b)(1)(E), which expressly (and broadly) defines the "subject matter" that is off-limits as "information contained in consumer reports" and does ***not*** limit that subject matter to the specific prohibitions regarding that subject included in § 1681c. It also violates basic canons of statutory construction by effectively rendering § 1681t(b)(1)(E) a nullity, given that § 1681t(a) already preempts state laws that conflict with express provisions of FCRA; that is to say, FCRA already preempts state laws that would conflict with the specific prohibitions of § 1681c. The AG's reading would, therefore, give no meaning or purpose to § 1681t(b)(1)(E). This not only violates every relevant canon of statutory construction but also conflicts with the legislative history of § 1681t(b), which confirms that Congress intended those provisions to expand the scope of preemption beyond what was already provided in § 1681t(a).

The AG's other arguments fare no better. *First*, the AG (at 12) contends its reading of § 1681t(b)(1)(E) is supported by the fact that the "main restrictions on including medical information in consumer reports are located not in section 1681c, which is the target of an express preemption clause, but in section 1681b(g), which is not a target." But the restrictions in § 1681b relate to the *use* of consumer reports, not the *content* of consumer reports. Those provisions are thus irrelevant to an analysis of § 1681t(b)(1)(E), which expressly preempts laws "*relating to information contained in consumer reports*." *Second,* the AG (at 5) incorrectly contends that CDIA's reading of § 1681t(b)(1)(E) would preempt the entire field of consumer reports. CDIA does ***not*** contend that § 1681t(b)(1) preempts the "entire field of consumer reports," but rather only the specific subject matters delineated by § 1681t(b)(1)'s express preemption provisions, which do ***not*** cover the entire field of consumer reports. *Third*, the AG advances several policy arguments in favor of Texas's law, but as the AG itself acknowledges (at 5), "the weighing of policy and its effects are up to Congress."

For all these reasons, the Court should find that Texas's Section 20.05(a)(5) is preempted by FCRA and grant summary judgment in favor of CDIA.

ARGUMENT

I. The AG's Construction of § 1681t(b)(1)(E) Is Fundamentally Flawed.

A. The AG's Reading Conflicts with the Plain Text of § 1681t(b)(1)(E).

The AG concedes (at 8) that the plain language of § 1681t(b)(1)(E) is the touchstone. Yet, in advancing its cramped reading of the "subject matter" preempted by § 1681t(b)(1)(E), the AG ignores the express definition Congress provided and proceeds as if the "subject matter" were undefined. That contravenes a cardinal rule of statutory interpretation: When Congress "takes the trouble to define the terms it uses," courts "must respect its definitions as virtually conclusive." *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 59 (2024) (quotes omitted).

Acknowledging § 1681t(b)(1)(E)'s express definition dooms the AG's position. As CDIA explained, the text of the statute makes clear that § 1681t(b)(1)(E) defines its subject matter as "relating to information contained in consumer reports," *not* (as the AG would have it (at 8–9)) the "conduct required by the specific provisions of Section 1681c." *See* MSJ at 10–12, 21–22. That definition is dispositive. The AG does not engage with, let alone rebut, the import of the statute's text.[1]

The weight of precedent confirms that conclusion. As CDIA explained, most circuits have treated § 1681t(b)(1) as broadly preempting state law and have understood the "subject matter" of each provision to be defined by its "relating to" clause without any need to engage in an item-by-item analysis of the particular regulations Congress made *within* those "subject matters." *See* MSJ at 16–18 (collecting cases). So too does the CFPB, as made clear by its recently issued interpretive rule. *See* MSJ at 17–18 (citing Fair Credit Reporting Act; Preemption of State Laws, 90 Fed. Reg. 48710 (Oct. 28, 2025)). Likewise, this Court has already explained that "Section 1681c addresses the information which may be included in consumer reports." Dkt. 49 at 10.

The AG wholly ignores these cases, the CFPB's interpretive rule, and this Court's prior ruling. Instead, the AG (at 11) cites the First Circuit's decision in *CDIA v. Frey*, 26 F.4th 1 (1st Cir. 2022). But *Frey* is unpersuasive for all the reasons described in CDIA's motion and the CFPB's interpretive rule. *See* MSJ at 18–22. The AG does not engage with those arguments.

The other two cases the AG (at 9–10) offers, *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251 (2013) and *Altria Group, Inc. v. Good*, 555 U.S. 70 (2008), lend it no support. *Dan's City* is inapposite for all the reasons CDIA has already explained. MSJ at 19. And *Altria* supports *CDIA*'s, not the AG's, reading of the statute. *Altria* interpreted an entirely different preemption provision that provided: "no requirement or prohibition *based on* smoking and health shall be

[1] The AG's suggestion that a presumption against preemption applies is wrong. As CDIA explained, MSJ at 10, when a "statute contains an express pre-emption clause" that presumption is inapplicable. *Puerto Rico v. Franklin Cal. Tax-Free Tr.*, 579 U.S. 115, 125 (2016) (quotes omitted).

imposed under State law with respect to the advertising or promotion of any cigarettes the packages of which are labeled in conformity with the provisions of this chapter." 555 U.S. at 78–79 (cleaned up). In distinguishing preemption cases that involved broad "relating to" clauses, *Altria* held that the term it was interpreting—"based on"—has an "unquestionably" narrower scope. *Id.* 85–86. *Altria* thus teaches that the phrase "relating to" is "broad" and "indicates Congress' intent to pre-empt a large area of state law." *Id.* at 85. Applying *Altria*'s reasoning here, § 1681t(b)(1)(E)'s use of the term "relating to" confirms that Congress intended the provision to sweep "broadly." *See also* MSJ at 20 (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 387 (1992)); *id.* at 22.

B. The AG's Reading Renders § 1681t(b)(1)(E) a Nullity.

The AG's reading of § 1681t(b)(1)(E) is also flawed because it reads the provision so narrowly as to deny it any real meaning. According to the AG (at 10–11), § 1681t(b)(1)(E) preempts only state law that regulates the precise items of information listed in § 1681c. But as CDIA explained, such a reading would collapse § 1681t(b) into § 1681t(a), thus rendering it null. *See* MSJ at 12, 19–20. That is because § 1681t(a) already preempts state laws that are inconsistent with the enumerated items in § 1681c, so if that was all § 1681t(b) did, it would serve no purpose. *See* MSJ at 12. That creates a classic surplusage problem. *See* MSJ at 19–21 (surplusage canon favors CDIA's interpretation). The AG provides no response to this clear flaw in its proffered interpretation of § 1681t(b)(1)(E).

The surplusage canon is, in fact, particularly powerful here given that Congress amended FCRA to add t(b). *Infra* at 6–7. When Congress amends a statute, there is a strong presumption that "it intends its amendment to have real and substantial effect." *Bufkin v. Collins*, 604 U.S. 369, 386 (2025) (quoting *Intel Corp. v. Advanced Micro Devices, Inc.*, 542 U.S. 241, 258–59 (2004)).

By construing t(b) to be nothing more than inconsistency preemption, the AG denies it "real" or "substantial" effect. The AG's construction thus proves too much.

C. The AG's Reading Ignores the Context, Structure, and History of § 1681t(b)(1)(E).

The AG's reading not only violates basic canons of construction, it also ignores the clear context, structure, and history of § 1681t(b)(1)(E), all of which (as CDIA explained, *see* MSJ at 12–16) confirm Congress's intent to significantly expand the scope of FCRA's preemption through the addition of § 1681t(b)(1).

As CDIA explained, throughout the federal code Congress has repeatedly used the terms "subject matter" and "relating to" to create national uniformity and preempt large domains of state law. *See* MSJ at 13–14. And when Congress wants to preempt in a limited fashion it uses narrower language. Indeed, Congress did precisely that in three different places in the same FCRA section where it broadly preempted state laws that relate to the content of consumer reports. *Id.* at 12–13. One of those provisions preempts state laws "with respect to the conduct required by" various FCRA subsections related to identity theft. 15 U.S.C. § 1681t(b)(5). Clearly, Congress could have used the same language in § 1681t(b)(1)(E) and preempted only the "conduct required by" the specific subparts of § 1681c. But that is not what Congress did, and its decision to employ broader terms ("subject matter" and "relating to") must be given effect. MSJ at 13 (citing cases).

The legislative and drafting history confirm that Congress added t(b) to expand on the limited preemption provided by t(a). *Id.* at 14–16. When Congress first enacted FCRA, it included a limited preemption provision that covered "inconsistent" state law. *See* Pub. L. No. 91-508, tit. VI, § 601, 84 Stat. 1114, 1136 (1970) (codified at 15 U.S.C. § 1681t(a)). Twenty-six years later, Congress responded to changes in credit markets and the need for uniform national credit reporting standards by amending FCRA and adding § 1681t(b) to provide for more muscular preemption.

See MSJ at 4–5, 14–16; *Ross v. FDIC*, 625 F.3d 808, 813 (4th Cir. 2010) (Wilkinson, J.) (Congress added t(b) as a "strong preemption provision"); *Purcell v. Bank of Am.*, 659 F.3d 622, 625 (7th Cir. 2011) (Easterbrook, J.) (Congress added t(b) as "extra preemption").

Congress's addition of t(b) was a central element of its plan to enact uniform national standards. *See* MSJ at 15. And its success achieving this in practice is why in 2003 Congress decided to eliminate its sunset provision and made it a permanent addition to FCRA. *Id.* at 16. In fact, the sunset provision Congress eliminated in 2003 would have allowed for state law that "gives greater protection to consumers than is provided under" FCRA, Pub. L. No. 104-208, 110 Stat. at 3009-453–54, which is exactly what the Texas statute at issue would do. The idea that t(b) merely duplicates t(a) is thus incompatible with FCRA's history.

The AG—once again—provides no response to ***any*** of these points. It ignores entirely the structure, context, and legislative history of § 1681t(b)(1), just as it ignored the plain text of § 1681t(b)(1)(E).

II. The AG's Other Arguments Against Preemption Also Fail.

A. § 1681b(g) Is Irrelevant to the § 1681t(b)(1)(E) Analysis.

Finding no support in the text, context, structure, or history of § 1681t(b)(1)(E), the AG argues that the "subject matter" preempted by § 1681t(b)(1)(E) does not include medical debt because "the main restrictions on including medical information in consumer reports are located" in § 1681b(g), rather than in § 1681c. This argument fails for two reasons.

First, as CDIA showed, the key question is whether Texas's law regulates the "subject matter" preempted by § 1681t(b)(1)(E)—the content of consumer reports—***not*** whether the law addresses one of the specific items of information enumerated in § 1681c. MSJ at 2–3, 22. Texas's law indisputably regulates the content of consumer reports by prohibiting certain medical information on consumer reports. That resolves this case.

Second, even if determining the "subject matter" preempted by § 1681t(b)(1)(E) required an analysis of the specific items listed in § 1681c, the AG's references to § 1681b(g) are irrelevant. As this Court already correctly held, § 1681c regulates "what medical debt information may be included in a consumer report." Dkt. 49 at 10. Nothing about § 1681b(g) undermines that conclusion. In fact, it is wholly irrelevant. As one would expect given its title, "[p]ermissible purposes of consumer reports," § 1681b regulates the *use*—not the *content*—of consumer reports. In other words, § 1681c addresses what medical debt information may be included in consumer reports, whereas § 1681b(g) addresses how consumer reports containing medical debt may be used. Contrary to the AG's suggestion otherwise (at 12), there is nothing odd, therefore, about Congress's decision in § 1681t(b)(1)(E) to preempt state laws regulating the content of consumer reports generally, or the presence of medical debt on consumer reports in particular, by referencing the substantive provision (§ 1681c) that regulates a consumer report's *content* (including what medical debt information can be included), rather than the provision (§ 1681b(g)) that regulates a report's *use*.

B. CDIA's Arguments Are *Not* Ones of Field Preemption.

The AG's assertion (at 8) that CDIA's reading of § 1681t(b)(1)(E) "would require the Court to assume Congress preempted the entire field of consumer reports" fares no better. Contrary to the AG's suggestion, CDIA does ***not*** contend that § 1681t(b)(1) preempts the "entire field of consumer reports," but rather only the specific subject matters delineated by § 1681t(b)(1)'s express preemption provisions.

Unlike t(a)'s conflict preemption, t(b)'s express preemption does ***not*** apply to every provision of FCRA. Instead, Congress carefully crafted t(b) to cover specific—expressly defined—subject matters. Among the subjects that Congress placed off-limits is "information contained in consumer reports." 15 U.S.C. § 1681t(b)(1)(E). States thus cannot regulate the contents of consumer reports—but this does not mean that Congress preempted all aspects of credit reports. For example, § 1681b regulates the "permissible purposes of consumer reports." But t(b) does not preempt the entire subject matter of § 1681b. Rather, § 1681t(b)(1)(A) preempts only the subject matter of two subsections (c and e) that "relat[e] to the prescreening of consumer reports." In the main, then, state laws regulating the *use* of consumer reports are ***not*** subject to t(b)'s express preemption provisions (though of course they remain subject to general preemption provision of t(a)).

Unlike the AG's approach, this reading gives meaning to both t(a) and t(b). *See supra* at 5 (citing *Bufkin*, 604 U.S. at 386 and MSJ at 19–21). This construction respects the balance Congress struck by precluding state regulation of certain subjects (e.g. the contents of consumer reports) while allowing states more leeway to regulate others (e.g. the uses of consumer reports).

C. The AG's Policy Arguments Are Irrelevant and Unpersuasive.

Finally, the AG advances (at 1–3) a number of policy arguments in support of Texas's law. The court should give these arguments no weight, as even the AG admits (at 5) that "the weighing of policy and its effects are up to Congress." The question is not, therefore, whether Texas's law represents good or bad policy. It is whether Congress has made the determination that these types of laws are expressly preempted. The "wisdom" of Congress's choices "is not the concern of the courts." *INS v. Chadha*, 462 U.S. 919, 944 (1983). Foundational separation of powers principles require courts to "interpret statutes, no matter the context," based on the words Congress wrote, using the "traditional tools of statutory construction, not individual policy preferences." *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 374 (2024). The text and tools here are conclusive. *Supra* at 3–7; MSJ at 10–22.

In any event, Congress got the policy considerations right. Congress correctly recognized the need for "uniform, national standards in the area of credit reporting." *CDIA v. King*, 678 F.3d 898, 901 (10th Cir. 2012); *accord* MSJ 4–5, 9–10, 15–16. By eliminating patchwork state-by-state regulation, Congress made consumer reporting more efficient, "expanded access to credit, lowered the price of credit, and accelerated decisions to grant credit." 149 Cong. Rec. H12198-01, at 71 (2003) (statement of Rep. Kanjorski).

CONCLUSION

The Court should grant summary judgment to CDIA, declare that Section 20.05(a)(5) is preempted in its entirety, and permanently enjoin Texas from enforcing the law.

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Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of this brief was filed electronically through the Court's ECF system. *See* Fed. R. Civ. P. 5(b)(2)(E).

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