No. 131444

IN THE SUPREME COURT OF ILLINOIS

CALLEY FAUSETT, individually and on behalf of others similarly situated,

Plaintiff-Appellee,

v.

WALGREEN CO.,

Defendant-Appellant.

Appeal from the Appellate Court of Illinois, Second Judicial District, No. 2-23-0105.
There Heard on Appeal from the Nineteenth Judicial Circuit Court, Lake County, Illinois, No. 19 CH 675, the Honorable Donna-Jo Vorderstrasse, Judge Presiding

BRIEF OF *AMICI CURIAE* THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA AND THE ILLINOIS CHAMBER OF COMMERCE IN SUPPORT OF DEFENDANT-APPELLANT WALGREEN CO.

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INTEREST OF *AMICI CURIAE*

Amici the Chamber of Commerce of the United States of America (U.S. Chamber) and the Illinois Chamber of Commerce (Illinois Chamber) are the voice of the business community in Illinois and across the country.

The U.S. 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 companies and professional organizations of every size, in every industry sector, and from every region of the country. An important function of the U.S. Chamber is to represent the interests of its members in matters before Congress, the Executive Branch, and the courts. To that end, the U.S. Chamber regularly files *amicus curiae* briefs in cases, like this one, that raise issues of concern to the nation's business community. These include briefs regarding the longstanding requirement that a plaintiff must allege an injury in fact to have standing to bring a claim, particularly when seeking to represent a class of individuals who also have not sustained any actual injury from the alleged misconduct.

The Illinois Chamber has more than 1,800 members in virtually every industry. It advocates on behalf of its members to achieve an optimal business environment that enhances job creation and economic growth. It also regularly files *amicus curiae* briefs in cases before this Court that, like this one, raise issues of importance to the State's business community. The Court has acknowledged the value of the Chamber's perspective in explaining the impact

of rulings on the Illinois business community by granting the Chamber leave to file *amicus* briefs in many other cases.

Amici have a strong interest in this case because it speaks to the foundational injury-in-fact requirement for standing to file a claim against a company doing business in this State. As a result of the Appellate Court's ruling finding standing and granting class certification, companies based in Illinois can be haled into the state's courts for high-dollar, high-stakes class actions by plaintiffs around the country, even though those plaintiffs have not sustained—or even articulated—any injury and, for that reason, could not bring their suits in federal court, or the courts of many other states, including their home states. The prospect of creating such specious, national liability in Illinois against Illinois businesses is of great concern to both the Illinois and national business communities.

INTRODUCTION

This case presents the Court with an important opportunity to reaffirm longstanding Illinois law that, regardless of the cause of action, a plaintiff must have a "distinct and palpable" injury in fact to pursue a lawsuit in the state's courts. *See Greer v. Illinois Hous. Dev. Auth.*, 122 Ill. 2d 462, 492-93 (1988). In the past decade, some Illinois courts have strayed from this jurisprudence; they have allowed plaintiffs to maintain lawsuits based solely on alleged violations of statutes, even when they have not sustained injuries from those violations. In doing so, they have misinterpreted this Court's decision in *Rosenbach v. Six Flags Entertainment Corp.*, 2019 IL 123186, as eliminating this injury

requirement for statutes with private rights of action. *Rosenbach* did not have such a broad reach. In *Rosenbach*, the Court interpreted specific statutory terms in the Biometric Information Privacy Act; it did not reverse—or even discuss—the state's standing jurisprudence. Injury in fact remains a foundational requirement for standing.

Here, an Arizona plaintiff alleges Walgreens violated the Federal Fair and Accurate Credit Transaction Act (FACTA), which prohibits the printing of more than the last five digits of a credit card number on a receipt. *See* 15 U.S.C. § 1681c(g)(1). Plaintiff alleges Walgreens printed the first six digits of a reloadable prepaid debit card along with the last four digits on the receipt of a transaction in her home state. Plaintiff does not assert that she suffered any injury from it, such as identity or card theft. In fact, as the lower courts acknowledged, there seemed to be "no dispute" that she is a "no-injury plaintiff." (App. to Pet. at A7-A8). She alleges solely a technical violation of FACTA. Yet, the Appellate Court's ruling allows the Plaintiff to turn this technical issue into a nationwide class action on behalf of approximately 1.6 million consumers who received similar receipts, without evidence that any of them sustained a distinct and palpable injury from this conduct. These claims could not be brought in federal court or the courts of many states because, as in Illinois, concrete injury is needed for standing. They similarly do not belong in Illinois courts.

Nevertheless, no-injury lawsuits like this one continue to be filed. In the past decade, the U.S. Supreme Court has repeatedly held that "concrete and particularized" injury is needed for a plaintiff to have standing to bring a lawsuit in federal court, including when, as here, a federal statute includes a private right of action. *See, e.g.*, *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423-26 (2021); *Spokeo, Inc. v. Robins*, 578 U.S. 330, 343-43 (2016). As the Court recognized in *TransUnion*, "Article III does not give federal courts the power to order relief to any uninjured plaintiff, class action or not." 594 U.S. at 431 (quoting *Tyson Foods v. Bouaphakeo*, 577 U.S. 442, 466 (2016) (Roberts, C.J., concurring)).[1]

Following this jurisprudence, every federal court of appeals to consider a similar claim has found that a FACTA violation that does not cause an injury in fact does not confer standing. *See, e.g., Thomas v. TOMS King (Ohio), LLC*, 997 F.3d 629, 638-40 (6th Cir. 2021) (finding no injury or increased risk of identity theft from printing the first six and last four digits of a credit card number); *Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 931 (11th Cir. 2020) (finding time spent safeguarding or destroying a noncompliant receipt is

[1] The U.S. Supreme Court is continuing to scrutinize no-injury class action litigation. It is currently considering whether a federal court can certify a class action, brought for technical violations of another federal statute, Title III of the Americans with Disabilities Act, that includes more than a *de minimis* number of uninjured class members. *Laboratory Corp. of Am. Holdings d/b/a LabCorp v. Davis*, No. 24-304 (U.S. oral argument held Apr. 29, 2025). This issue remains unresolved under Illinois law as well. *See Petta v. Christie Business Holdings Co.*, 2025 IL 130337, ¶ 23 (2025).

not a concrete harm); *Kamal v. J. Crew Grp., Inc.*, 918 F.3d 102, 115-17 (3d Cir. 2019) (finding plaintiff alleged "a bare procedural violation," not unauthorized third-party disclosure or even a material risk of identity theft); *Katz v. Donna Karan Co., L.L.C.*, 872 F.3d 114, 118 (2d Cir. 2017) (noting that the first six digits of a credit card merely identify the financial institution that issued the credit card). Courts in other states have followed these rulings. *See*, *e.g.*, *Saleh v. Miami Gardens Square One, Inc.*, 353 So. 3d 1253, 1254-55 (Fla. Ct. App. 2023); *Budai v. Country Fair, Inc.*, 296 A.3d 20, 26-28 (Pa. Super. Ct. 2023).

Against this national legal landscape that clearly is hostile to Plaintiff's purported class action, she filed her case in Illinois. She is not alone. Similar no-injury class actions have been filed in Illinois courts in recent years. *See, e.g.*, *Barrientos v. Williams-Sonoma, Inc.*, No. 21-cv-05160, 2023 WL 5720855 (N.D. Ill. Sept. 1, 2023) (granting motion to remand FACTA class action to the Cook County Circuit Court). Plaintiffs in these lawsuits disclaim suffering any concrete injury to avoid federal court jurisdiction. *See id.* at *3. Since, even under the Class Action Fairness Act, a plaintiff must have standing to proceed in federal courts, federal courts have no choice but to remand these no-injury class actions to Illinois state courts. *See id.* at *10.

As a result, unless this Court reverses the Appellate Court's ruling, Illinois is poised to become the preferred destination for plaintiffs from other states to file nationwide no-injury class actions against Illinois companies.

Such an outcome would be an affront to Illinois standing law, waste the State's judicial resources, and unfairly harm Illinois businesses that have not caused anyone injury.

For these reasons, *Amici* respectfully request that the Court reverse the ruling below. The injury-in-fact requirement protects the sanctity of the courts and safeguards the rights and interests of plaintiffs and defendants. Illinois courts should not become the nation's forum for no-injury class actions.

ARGUMENT

I. Removing injury in fact as a requirement for standing would be a major departure from established Illinois law.

A. Injury in fact is an important requirement for standing in Illinois law.

This Court has long recognized that the State Constitution limits the power of the Illinois courts to claims brought by plaintiffs who have standing to bring them. *See In re Est. of Burgeson*, 125 Ill. 2d 477, 486 (1988). The state's standing doctrine is not a "procedural technicality"—it is a threshold determination of justiciability. *Rowe v. Raoul*, 2023 IL 129248, ¶¶ 22-23. Standing provides Illinois courts with the ability to "cull their dockets so as to preserve for consideration only those disputes which are truly adversarial and capable of resolution by judicial decision." *Greer v. Illinois Hous. Dev. Auth.*, 122 Ill. 2d 462, 488 (1988).

Critical to standing is injury in fact. A plaintiff must have an injury from the alleged misconduct in order to seek vindication in the courts. *See Burgeson*, 125 Ill. 2d at 486 ("[W]e have defined standing under our State Constitution

as the requirement of 'some injury in fact to a legally recognized interest.'") (quoting *Glazewski v. Coronet Ins. Co.*, 108 Ill. 2d 243, 254 (1985)); *State ex rel. Leibowitz v. Fam. Vision Care, LLC*, 2020 IL 124754, ¶ 28 ("This court has held repeatedly that standing requires some injury in fact to a legally recognized interest."). The Court has defined injury in fact as a harm that is "actual or threatened," meaning the harm "must be (1) distinct and palpable; (2) fairly traceable to the defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief." *Midwest Com. Funding, LLC v. Kelly*, 2023 IL 128260, ¶ 13 (quoting *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999)). Thus, plaintiffs are required to have sustained an actual injury, or be in "immediate danger of sustaining a direct injury," or else they do not have a claim. *Chicago Teachers Union, Loc. 1 v. Board of Educ. of City of Chicago*, 189 Ill. 2d 200, 206-07 (2000).

This injury-in-fact requirement makes sense. As the Court explained in *Greer*, "[t]here is universal agreement that one component of standing—injury in fact—genuinely narrows the class of potential plaintiffs to those whose grievances may be redressed." *Greer*, 122 Ill. 2d at 488. It also ensures "that issues are raised only by those parties with a real interest in the outcome of the controversy." *Carr v. Koch*, 2012 IL 113414, ¶ 28. This requirement helps preserve court resources for those disputes where real, distinct and palpable interests of Illinois parties are at stake.

B. *Rosenbach* did not change the injury-in-fact requirement for standing under Illinois law.

Notwithstanding this clear and repeated precedent, the Appellate Court emphasized that Illinois is "not in lock step with federal standing law." (App. at A18.) It also held that *Rosenbach* effectively eliminated the injury-in-fact requirement for standing. The Appellate Court stated that, now, "a right of action based on a violation of an individual's statutory rights, even in the absent of any actual harm of adverse effect," provides sufficient standing to bring a lawsuit. (App. at A21-22.) This assertion overstates *Rosenbach*. That case did not change Illinois standing law.

Rosenbach centered on the question whether the collection of a person's biometric information without consent caused the plaintiff to be "aggrieved" under the Biometric Information Privacy Act, 740 ILCS 14/20 (the "Privacy Act"). *See* 2019 IL 123186 ¶¶ 21-22. The Court engaged in a statutory analysis of the word "aggrieved," concluding the legislature intended "aggrieved" in the Privacy Act to mean "having legal rights that are adversely affected." *Id.* ¶ 32. The Court grounded this explanation in the fact that the General Assembly was codifying "that individuals possess a right to privacy in and control over their biometric identifiers and information." *Id.* ¶ 33. "Accordingly, when a private entity fails to comply" with the Privacy Act, "no additional consequences need be pleaded or proved." *Id.* The Court then emphasized that a violation of the Privacy Act was not merely "technical" in nature; it infringed

on the substantive "right to control [one's own] biometric information" and resulted in a "real and significant" injury. *Id.* ¶ 34.

Thus, this Court's decision in *Rosenbach* does not stand for the proposition that no injury in fact need be pleaded anytime a plaintiff alleges a violation of a state or federal statute. To the contrary, it held that improper collection of biometric information *does* provide such an injury in fact sufficient to sue. Here, no similar substantive rights are at issue. A FACTA claim over how many credit or debit card (or, here, prepaid debit card) numbers appear on a receipt does not involve personal identifiers and does not cause, without more, any "real and significant" injury. In *Rosenbach*, the Court observed that biometric identifiers cannot be changed, making the "procedural protections" in the Privacy Act "particularly crucial in our digital world." 2019 IL 123186, ¶ 34. By contrast, the prepaid debit card numbers at issue here have no innate personal significance.

Rather, the Court should adhere to the sound reasoning it applied in *Petta v. Christie Business Holdings Co.*, 2025 IL 130337 (2025), to dismiss the Plaintiffs' FACTA claim here. That case involved a lawsuit following the plaintiff's receipt of a notice of "data incident," informing her that her personal information *may* have been exposed to a third party after unauthorized access to a medical clinic's email account. *See id.* ¶ 20. There was no evidence, however, that a third party actually acquired her information. *Id.* In that context, this Court recognized that it has repeatedly found that speculative

allegations concerning an increased risk of future harm are insufficient to confer standing to pursue a complaint seeking monetary damages. *See id.* ¶ 21. Here, the risk of identity theft or fraud from the partial printing of the digits of pre-paid debit card on a receipt is minimal compared to the situation in *Petta*, if there is any true risk at all. That a federal statute includes a private right of action does not alter the fundamental principle of Illinois law limiting a court's jurisdiction to cases in which there is an actual injury or "immediate danger" of sustaining a direct injury. *Id.* ¶ 18 (quoting *Chicago Teachers Union,* 189 Ill. 2d at 206-07).

II. Federal courts interpreting these kinds of federal claims have reinforced the need for a concrete injury in order to justify standing, as have other state courts.

Illinois should not become an outlier in allowing technical, no-injury statutory claims to survive a motion to dismiss. Other courts that have considered FACTA claims comparable to those here—the printing of certain extra digits of a credit or debit card number—have held that the consumers are not injured and have no standing to bring their claims based on the violation alone. *See Thomas*, 997 F.3d at 636 (observing that the federal circuits "that have weighed in on this issue basically agree that not *every* violation of FACTA's truncation requirement creates a risk of identity theft") (internal quotation omitted) (emphasis original). If such claims are nevertheless permitted to proceed in this State's courts, Illinois will invite countless similar claims to be filed here that would not be viable elsewhere.

A. This Court should be guided by well-reasoned federal law on standing and require an actual injury beyond a bare statutory violation.

For years, Illinois courts have aligned this Court's injury-in-fact prerequisite for standing with the federal "injury in fact" requirement—and rightly so. *See, e.g.*, *Maglio v. Advoc. Health & Hosps. Corp.*, 2015 IL App (2d) 140782, ¶¶ 25-26 ("Federal standing principles are similar to those of Illinois, and the case law is instructive."). Shortly after this Court's ruling in *Greer*, the U.S. Supreme Court echoed this Court's sentiments when holding that injury in fact is essential for standing under Article III of the U.S. Constitution. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). The U.S. Supreme Court established a similar three-part test as in *Greer* for determining whether a plaintiff has standing, requiring the plaintiff to show (1) an injury in fact, (2) fairly traceable to the defendant's alleged conduct, and (3) that can be redressed by the courts. *Id.* at 560-61.[2] Indeed, the *Lujan* Court relied on much of the same authority as this Court did in *Greer*.

Over the past decade, the U.S. Supreme Court has reinforced this jurisprudence, affirming in several cases that plaintiffs must show that they "suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'"

[2] By comparison, this Court held in *Greer* that standing in Illinois requires that the claimed injury be "(1) distinct and palpable, (2) fairly traceable to the defendant's actions; and (3) substantially likely to be prevented or redressed by the grant of the requested relief." *Greer*, 122 Ill. 2d at 492-93 (quoting and citing United States Supreme Court cases).

Spokeo, 578 U.S. at 339 (quoting *Lujan*, 504 U.S. at 560). The Court explained that when Congress enacts a statute such as FCRA or FACTA, it is "identifying and elevating" certain potential harms that should be protected. *Id*. at 340-41. But, that "does not mean that a plaintiff automatically satisfies the injury-in-fact requirement whenever a law grants a person a statutory right and purports to authorize that person to sue to vindicate that right." *Id*. at 341. Rather, the alleged injury "must actually exist." *Id*. at 340. As here, if there is a "bare procedural violation" of a statute, without more, there is no injury in fact and the statute does not confer standing for the plaintiff to bring a claim. *Id*. at 341-342.

Spokeo is particularly instructive here because it involved the Fair Credit Reporting Act, of which FACTA is a part. The U.S. Supreme Court observed that Congress adopted this legislation to provide procedures to help decrease the risk that false information about a consumer would be disseminated to others, though fully recognizing that not every tidbit of incorrect information results in an injury. *Id.* at 341-42. For example, the Court stated that it is "difficult to imagine how the dissemination of an incorrect zip code" associated with a consumer, "without more, could work any concrete harm." *Id*. at 342.

The U.S. Supreme Court then revisited the injury-in-fact requirement for standing in *TransUnion*, 594 U.S. at 441. The lower courts, as with the Appellate Court here, allowed claims to proceed even though many plaintiffs

never sustained any harm. The U.S. Supreme Court again "rejected the proposition that 'a plaintiff automatically satisfies the injury in fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right.'" *Id.* at 426 (quoting *Spokeo*, 578 U.S. at 341). Rather, the potentially damaging information about the individual in that case had to have been exposed to a third party to have created a potential tangible harm akin to defamation. *Id.* at 433-34. This injury requirement "ensures that federal courts decide only 'the right of individuals.'" *Id.* at 423 (quoting *Marbury v. Madison*, 5 U.S. 137, 170 (1803)).[3]

B. Federal case law interpreting claims like the one here demonstrates that there is no standing.

It is not surprising, then, that federal courts have uniformly held that a FACTA violation, in itself, does not confer standing. A real or palpable injury caused by the violation is required in order to file a lawsuit.

Shortly after the Supreme Court's ruling in *Spokeo*, the U.S. Court of Appeals for the Seventh Circuit heard a case in which plaintiffs alleged that a restaurant violated FACTA by printing the credit card's expiration date on the receipt and sought damages. *See Meyers v. Nicolet Rest. of De Pere, LLC*, 843 F.3d 724, 727 (7th Cir. 2016). The Court explained that under *Spokeo*, the fact

[3] Similarly, a critical goal of standing in Illinois is to "preserve for consideration only those disputes which are truly adversarial and capable of resolution by judicial decision." *Greer*, 122 Ill. 2d at 488; *see also Maglio*, 2015 IL App (2d) 140782, ¶ 24 (affirming dismissal of identity-theft claims as unduly "speculative" and not "distinct and palpable").

that Congress passed a statute with a private right of action "is a good indicator that whatever harm might flow from a violation of that statute would be particular to the plaintiff. Yet the plaintiff still must allege a concrete injury that resulted from the violation in his case." *Id.* at 727.[4] "Congress' judgment that there should be a legal remedy for the violation of a statute does not mean each statutory violation" confers standing. *Id.*

The Seventh Circuit then looked at the legislative history of the Credit and Debit Card Receipt Clarification Act of 2007, Pub. L. No. 110-241, which Congress enacted in response to cases brought based on the mere printing of a credit card expiration date on receipts without any resulting harm to a consumer. *Id.* at 728. The court observed that Congress was "quite concerned with the abuse of FACTA lawsuits, finding that 'the continued appealing and filing of these lawsuits represents a significant burden on the hundreds of companies that have been sued and could well raise prices to consumers without corresponding consumer protection benefit.'" *Id.* at 728 (quoting Clarification Act, Pub. L. No. 110-241, § 2(a)(7)). "That is why Congress sought to limit FACTA lawsuits to consumers 'suffering from any actual harm.'" *Id.* (quoting § 2(b)). The Seventh Circuit then noted that this ruling "is in accord

[4] *See also Collier v. SP Plus Corp.*, 889 F.3d 894 (7th Cir. 2018) (remanding case to Cook County Circuit Court alleging airport parking lot violated FACTA by including zip code on receipt because the complaint did not allege any concrete harm, such as credit card fraud or identity theft).

with those of our sister circuits in similar statutory-injury cases." *Id.* at 728-29.

Federal district courts throughout the Seventh Circuit, including those sitting in Illinois, have followed this jurisprudence, holding that plaintiffs alleging technical violations of FACTA without injury do not have standing. *See, e.g., Donahue v. Everi Payments, Inc.*, No. No. 19-cv-3665, 2019 WL 13253793 at *2 (N.D. Ill. Aug. 19, 2019) (stating, typically, the plaintiff would have to identify "a third party that improperly received private information" in order to be injured by a FACTA violation); *Blanco v. Bath & Body Works, LLC*, No. 1:22-cv-01207, 2022 WL 1908980 at *3 (N.D. Ill. June 3, 2022) (because there was "no allegation that anyone acted on the information contained in the receipt or that an identity thief even saw the receipt," the allegations amounted to "nothing more than the theoretical risk of a future harm that is too speculative to amount to an injury in fact").

In *Barrientos v. Williams-Sonoma, Inc.*, No. 21-cv-05160, 2023 WL 5720855 (N.D. Ill. Sept. 1, 2023), the court noted the "strange turn of events," which was common to all three of these cases: the *plaintiffs* were the ones arguing they were not injured by the FACTA violations. *Id.* at *3. They sought to avoid removal and have their claims remanded to Illinois courts, where, post-*Rosenbach*, they hoped no-injury claims would suddenly be viable. As the Seventh Circuit observed, these types of cases present the "unusual circumstance" in which "both parties insist that the plaintiffs lack Article III

standing to sue." *Collier*, 889 F.3d at 895. Plaintiffs make this argument to support remand to Illinois state courts, where "they presumably hoped that their case could stay alive there despite their lack of a concrete injury," while defendants seek dismissal. *Id.*

Other federal circuits that addressed the specific issue presented here—printing "the first six and last four digits of the consumer's credit card"—have similarly concluded that this FACTA violation does not constitute an injury in fact and, therefore, does not give rise to a cause of action or convey standing. *Thomas*, 997 F.3d at 363; *see also Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 934 (11th Cir. 2020) (recognizing that the Second, Third and Ninth Circuits have considered FACTA violations involving partially truncated credit-card numbers and "concluded that the violation created neither a harm nor a material risk of harm").[5] The courts explained that a violation of FACTA "does not automatically create a concrete injury" and that cases like the one at bar "do not establish an increased risk of identity theft either because they do not show how, even if Plaintiff's receipt fell into the wrong hands, criminals would have a gateway to consumers' personal and financial data." *Thomas*, 997 F.3d at 640. The information reveals nothing about the plaintiff, solely the

[5] *See also Kamal v. J. Crew Grp., Inc.,* 918 F.3d 102, 116-17 (3d Cir. 2019) (printing of extra digits did not lead to material risk of identity theft); *Katz*, 872 F.3d at 116 (same); *cf. O'Leary v. TrustedID, Inc.*, 60 F.4th 240, 243 (4th Cir. 2023) (observing, in finding a plaintiff lacked standing to pursue a comparable claim, that "cases involving the Fair and Accurate Credit Transactions Act. . . show that a FACTA digit-truncation violation isn't a concrete injury unless it creates a nonspeculative risk of identity theft").

bank that issued the card. *See id.* at 636. And, the mere printing of the information on a receipt is not the same as if personal information was "lost, stolen, or seen by a third set of eyes." *Id.* "[N]o one's identity is stolen at the moment a receipt is printed with too many digits." *Muransky*, 979 F.3d at 930. There is no "intrinsic worth in a compliant receipt. . . . So it makes little sense to suggest that receipt of a noncompliant receipt itself is a concrete injury." *Id.* at 929.

The one federal court of appeals to find that a statutory violation of FACTA conferred standing did so based upon the increased risk of identity theft presented in a "nightmare scenario" where the receipt included the *entire* sixteen-digit credit card number along with the expiration date. *Jeffries v. Volume Servs. Am., Inc.*, 928 F.3d 1059, 1065-67 (D.C. Cir. 2019). Even the *Jeffries* court, however, recognized that "not *every* violation of FACTA's truncation requirement creates a risk of identity theft" or "creates a concrete injury in fact." *Id.* at 1065-66 (emphasis in original); *see also Heuer v. Smithsonian Inst.*, 619 F. Supp. 3d 202, 210-11 (D.D.C. 2022) (finding plaintiff lacked standing for FACTA claim post-*Jeffries* because "the first four digits of a credit card number do not reflect any sensitive information specific to him" and is unlikely to have increased the risk of any "real harm").

The Court should continue its policy of looking to federal decisions to guide its treatment of claims under federal statutes. *See Melena v. Anheuser-Busch, Inc.*, 219 Ill. 2d 135, 141-42 (2006); *State Bank of Cherry v. CGB*

Enterprises, Inc., 2013 IL 113836, ¶ 33 (same). As this Court has fully appreciated, it is important to preserve unity with federal courts when interpreting federal statutes. *See State Bank of Cherry*, 2013 IL 113836, ¶ 35. Here, Congress and the federal courts are aligned: being handed a receipt containing one's own credit card (or prepaid debit card) information may be a technical violation of FACTA, but it presents *less* risk than carrying around the credit card itself and does not constitute an injury for which a claim can be brought. The Court should hold the same under its jurisprudence that a palpable injury is required for standing in state courts.

C. Other state courts requiring injury in fact for standing have similarly rejected these no-injury FACTA claims.

Maintaining the injury-in-fact requirement for standing and reversing the ruling below also will keep Illinois within mainstream jurisprudence among the states. Most states require a "palpable" or "concrete" injury in order to have standing to bring a claim, including when the claim is based on a statutory violation. When presented with a bare violation of FACTA, courts in these other states have followed the federal circuits and have dismissed the cases.

For example, in *Saleh v. Miami Gardens Square One, Inc.*, 353 So. 3d 1253 (Fla. Ct. App. 2023), a Florida appellate court held that the printing of additional credit card numbers, in itself, did not demonstrate a "concrete, distinct and palpable, and actual or imminent" injury. *Id.* at 1255-56. As here, there were no allegations in that case that anyone else saw the receipts or

caused the plaintiff actual harm. *See id*. at 1255. This court, like the Seventh Circuit in *Meyers,* also found persuasive that Congress enacted the Clarification Act, demonstrating its intent that technical FACTA claims without actual injury ought not be viable, and that the Eleventh Circuit rejected these claims. *See id.* There was no basis to expand FACTA standing beyond federal limits "where Florida law also imports an injury in fact requirement under our standing framework." *Id*.; *see also Southam v. Red Wing Shoe Co.,* 343 So. 3d 106, 112-13 (Fla. Ct. App. 2022), *review denied,* 2022 WL 16848677 (Fla. Nov. 10, 2022) (also finding plaintiff's FACTA claim did not demonstrate a "concrete," "distinct and palpable" or "actual or imminent" injury).

Similarly, Pennsylvania appellate courts have held in two cases that plaintiffs lacked standing to bring no-injury FACTA claims because, "[s]tated simply, [the defendant's] conduct has not adversely affected them." *Budai v. Country Fair, Inc.*, 296 A.3d 20, 28 (Pa. Super. Ct. 2023), *appeal denied*, 307 A.3d 1198 (Pa. Nov. 14, 2023); *Gennock v. Kirkland's Inc*., 299 A.3d 900 (Pa. Super. Ct. 2023) (unpublished), *appeal denied*, 307 A.3d 1202 (Pa. Nov. 14, 2023) (finding no standing for FACTA claim when plaintiff did not allege any injury from the alleged violation). The Pennsylvania court explained that because the plaintiffs did not allege third-party access to the credit card numbers or that the numbers printed were sufficient to enable identity theft, they did not suffer any injury in fact. *See Budai*, 296 A.3d at 26.

In Ohio, the Court of Appeals held that its state courts should reject the concept that standing may "exist on the basis of a federal statute despite the absence of an alleged injury in fact." *Smith v. Ohio State Univ.*, 2017-Ohio-8836, 2017 WL 6016627 (Ohio Ct. App 2017) (unpublished) (affirming dismissal of FCRA background-check-disclosure claims). The court echoed the sentiments from the other states that in order for a statute to confer standing absent an injury, the statute must clearly abrogate the common law standing doctrine. *See id.* at ¶ 13. Further, where the statute at issue is a federal law, it noted the "significant anomaly" that it would create by allowing federal actions to proceed in state courts that could not proceed in federal courts. *Id.* at ¶ 14. In addition, any attempt by Congress "to supplant the traditional requirements of standing in Ohio state court" would be "particularly problematic" considering that it would intrude on the constitutional authority of Ohio's judiciary and raise separation of powers concerns. *Id.*

D. The Appellate Court's limiting the significance of the Clarification Act to abuse from expiration dates is incorrect.

The Appellate Court disagreed with *Amici* that the Clarification Act proves that FACTA does not convey a right to pursue claims for technical noncompliance without any actual injury. (A-25 n.2.) The Appellate Court viewed the Clarification Act as addressing only the printing of zip codes on receipts, continuing to permit no-injury lawsuits stemming from FACTA's truncation requirement. *See id.* That narrow view of the Clarification Act both

misses the point of why Congress intervened—to stop no-injury lawsuit abuse—and court rulings interpreting the Act.

The Clarification Act addressed the printing of expiration dates on receipts, as that was the litigation abuse *de jour* in 2007. *See Muransky v. Godiva Chocolatier, Inc.*, 979 F.3d 917, 921 (11th Cir. 2020) (observing that Congress enacted the Clarification Act in response to hundreds of lawsuits seeking damages because credit card expiration dates had been printed on receipts, but otherwise complied with receipt-printing limitations). But the Clarification Act also clearly shows Congress's intent to preclude similar no-injury lawsuits. As the findings state, "The purpose of this Act is to ensure that consumers suffering from any actual harm to their credit or identity are protected while simultaneously limiting abusive lawsuits that do not protect consumers but only result in increased cost to business and potentially increased prices to consumers." Credit and Debit Card Receipt Clarification Act of 2007, Pub. L. No. 110-241, § 2(b). As discussed earlier, several federal circuits, including the Seventh Circuit, as well as state courts, have properly understood the Clarification Act as demonstrating Congress's intent to stop no-injury FACTA lawsuits, whether they stem from receipts that include an expiration date, as the Clarification Act specifically addressed, or the printing of some, but not all, digits of a card that have not resulted in actual harm to a plaintiff or pose a significant risk of identity theft or credit card fraud. *See*

Meyers, 843 F.3d at 728; *see also Muransky*, 979 F.3d at 921; *Thomas,* 997 F.3d at 637; *Saleh*, 353 So. 3d at 1255.

As support for its conclusion that the Clarification Act does not support *Amici's* argument, the Appellate Court relied upon *Muransky v. Godiva Chocolatier, Inc*., 905 F.3d 1200, 1210 (11th Cir. 2018), which it characterized as reversed on other grounds. (A-25 n.2.) That decision, however, was *vacated* and repudiated on this very point by the en banc court. *See Muransky,* 979 F.3d at 921. The en banc decision recognized that "[t]he Clarification Act offered a subsequent Congress's view that some technical FACTA violations caused consumers no harm: the statute's stated 'purpose' was to protect 'consumers suffering from any actual harm' while also 'limiting abusive lawsuits' that would drive up costs to consumers without offering them any actual protection." *Id.* The en banc court also recognized that "Congress expressly recognized in the Clarification Act that not all violations of the truncation requirement pose a serious threat to consumers. So Congress itself has made clear that not every FACTA violation carries with it a risk of harm." *Id.* at 933 (citation omitted). Rather, the Appellate Court endorsed the dissents' view, which limited the Clarification Act's significance to expiration dates. *See id.* at 941 (Wilson, J., dissenting), 951 (Martin, J., dissenting).

III. Relaxing traditional standing requirements facilitates forum shopping, inappropriately burdens local courts and juries, and leads to abusive settlements—not justice.

If the Court shifts course from its jurisprudence and opens its doors to suits based on bare FACTA violations, it would turn Illinois into a magnet for

claims alleging statutory violations of federal law that could not be brought elsewhere. Illinois would be the destination of choice for such no-injury class litigation, regardless of any meaningful connection to this state. As discussed above, this is already happening. Several federal statutory class actions exactly like the one here were remanded to Illinois courts because the lack of injury in fact has made their claims unfit for the federal judiciary. *See e.g., Barrientos*, 2023 WL 5720855 at *3-7; *Blanco*, 2022 WL 1908980 at *2-4; *Donahue*, 2019 WL 13253793 at *2. In a paradigm shift, *plaintiffs* argue that they have no injury in order to remain in Illinois courts and take advantage of rulings like the one below that allow them to seek money without experiencing any harm. *Collier*, 889 F.3d at 895. Such a result would unduly burden judicial resources across Illinois and unfairly harm companies doing business in the state by inflicting on them litigation burdens not imposed on employers in other states.

A. Judicial resources should be preserved for cases involving actual injures that are connected to the community.

Illinois should not have to spend its limited judicial resources on cases where the state's communities, judges and juries have little to no interest. As this Court expressed in the *forum non conveniens* context, the public interest supports rejecting cases like these that have minimal connection to Illinois given "the administrative difficulties caused when litigation is handled in congested venues instead of being handled at its origin; the unfairness of imposing jury duty upon residents of a community with no connection to the litigation; and the interest in having local controversies decided locally."

Fennell v. Illinois Cent. R. Co., 2012 IL 113812, ¶16. Illinois courts should focus on matters involving actual harm, not abstract no-injury class actions like this one.

B. Allowing no-injury class actions to proceed past the pleading stage often leads to abusive settlements.

Finally, courts and scholars across the country have long expressed concern that class actions can lead to prolonged, expensive litigation, and abusive settlements driven by risk aversion, not justice. As the U.S. Supreme Court explained fifty years ago, litigating a putative class action, regardless of the merits, "may so increase the defendant's potential damages liability and litigation costs that he may feel it economically prudent to settle and to abandon a meritorious defense." *Coopers & Lybrand v. Livesay*, 437 U.S. 463, 476 (1978). The liability threat has only worsened with recent trends.

Businesses are facing a record number of class actions, including non-injury lawsuits alleging technical statutory violations. In 2024, the percentage of companies facing class actions reached its highest level in thirteen years. 2024 Carlton Fields Class Action Survey at 8 (2024). Nearly two thirds of businesses are defendants in class action litigation, according to a survey of general counsel and senior legal officers at large companies across a variety of industries. *Id.* In fact, these businesses are typically targets of multiple class actions in a given year, with an average number per company that has doubled over the past decade. *See id.* at 18-19. Unsurprisingly, corporate legal spending on defense costs related to class actions reached its highest level in 2024, an

estimated $4.21 billion, and is expected to continue to grow. *See id.* at 7. Businesses view the growth of baseless claims as the largest risk of class actions. *Id.* at 16.

In these cases, businesses are in an untenable position. These actions can drag on for years, even before a court takes up class certification. *See* U.S. Chamber Inst. for Legal Reform, *Do Class Actions Benefit Class Members? An Empirical Analysis of Class Actions*, at 1 (Dec. 2013) ("Approximately 14 percent of all class actions remained pending four years after they were filed, without resolution or even a determination of whether the case could go forward on a class-wide basis."). When the costs of litigating far exceed the settlement demand, taking the case to trial is generally not a viable option. An increasingly common strategy, understandably from a business perspective, is to "get out quickly." Carlton Fields, *supra*, at 39.

Thus, merely allowing a putative class action to survive a motion to dismiss can enable plaintiffs to leverage the inefficiencies of the judicial system "to extort settlements from innocent companies." *Stoneridge Inv. Partners, LLC v. Scientific-Atlanta, Inc.*, 552 U.S. 148, 149 (2008); *accord AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 350 (2011) (noting the "risk of 'in terrorem' settlements that class actions entail"). This risk of this injustice is heightened, as the late Justice Ruth Bader Ginsburg observed, when "a class action poses the risk of massive liability unmoored to actual injury." *Shady Grove*

Orthopedic Assocs., P.A. v. Allstate Ins. Co., 559 U.S. 393, 445 n.3 (2010) (Ginsburg, J., dissenting).

Experience has also shown that it is difficult to value a class action for settlement purposes when class members have not suffered a palpable, measurable injury. *See generally* Jason Scott Johnston, *High Cost, Little Compensation, No Harm to Deter: New Evidence on Class Actions Under Federal Consumer Protection Statutes*, 2017 Colum. Bus. L. Rev. 1 (2017); Geoffrey P. Miller & Lori S. Singer, *Nonpecuniary Class Action Settlements*, 60 L. & Contemporary Problems 97 (1997). As a result, even when parties try to settle no-injury claims, few, if any, benefits end up going to the class. In 2019, the Federal Trade Commission found a weighted mean claims rate of just 4%—meaning that 96% of class members in consumer class settlements recovered nothing. *See* Fed. Trade Comm'n, *Consumers and Class Actions: A Retrospective and Analysis of Settlement Campaigns*, at 11 (Sept. 2019). That figure may be an overestimate. Even prominent plaintiffs' lawyers observe that "the percentage of class members who submit claims and receive any money has been embarrassingly low—often 1%-2%." Jay Edelson & Amy Hausmann, *Plaintiffs Bar Should Work to Raise Class Action Claims Rates*, Law360, Mar. 7, 2022.

A likely contributor to these low claim rates is that there is often little interest among absent class members to claim an award. They do not feel aggrieved and view returning the claim form not worth it. Also, uninjured class

members have little incentive to monitor the litigation and hold their counsel accountable; they "have individually too little at stake to spend time monitoring the lawyer—and their only coordination is through" such counsel. *Mars Steel Corp. v. Cont'l Ill. Nat'l Bank & Tr. Co. of Chi.*, 834 F.2d 677, 681 (7th Cir. 1987). The result is that "class counsel effectively appoint themselves as agents for the class, wielding a power to transact in class members' rights." Richard A. Nagareda, *The Preexistence Principle and the Structure of the Class Action*, 103 Colum. L. Rev. 149, 150-51 (2003). It is not surprising, then, that the bulk of the money in these actions ends up going to class counsel for fees and administrative costs, or to *cy pres* recipients. *See* Jones Day, White Paper: An Empirical Analysis of Federal Consumer Fraud Class Action Settlements (2010-2018), at 8-11 (Apr. 2020). The truth is that consumers rarely see value in no-injury class actions.

Worse, this type of litigation ends up costing consumers money, reduces the amount of resources businesses can spend on research and development, and hurts employees. To this end, "litigation expenses, attorney's fees, and settlement costs" are often passed "to consumers through increased prices, fewer innovations, and lower product quality." Joanna Shepherd, *An Empirical Study of No-Injury Class Actions,* 23 Emory Univ. Sch. of Law, Legal Studies Research Paper Series No. 16-402 (2016).

All of these concerns are exemplified here. FACTA class actions in which no one has suffered injury are expensive to litigate, provide no benefits to the

public, and largely result in money for lawyers. *See generally* Johnston, *High Cost, Little Compensation,* 2017 Colum. Bus. L. Rev. at 5 (analyzing the costs, inefficiencies, and lack of benefit provided to plaintiffs in no-injury class actions, including FACTA, in the United States District Court for the Northern District of Illinois, and finding "attorneys' fees often equal 300%-400% of the actual aggregate class recovery" in cases in which "the harm to consumers is very small or even arguably nonexistent"). "In an era of frequent litigation [and] class actions . . . courts must be more careful to insist on the formal rules of standing, not less so." *Arizona Christian Sch. Tuition Org. v. Winn*, 563 U.S. 125, 146 (2011). The Court should make it clear that violations of federal statutes, even those that include a private right of action, must cause some injury in fact in order to meet the state's standing requirements. The burden of no-injury class actions on the courts and defendants is great, the need to compensate plaintiffs is nonexistent, and the benefits to consumers are negligible at best.

CONCLUSION

For the foregoing reasons, the Court should reverse the Appellate Court's decision granting class certification and hold that the complaint should be dismissed for lack of standing.

Dated: June 4, 2025

Respectfully submitted,

THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA and THE ILLINOIS CHAMBER OF COMMERCE

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 7,312 words.

Dated: June 4, 2025 */s/ Matthew C. Wolfe*