No. 129783

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 Hon. Donna-Jo Vorderstrasse, Judge Presiding

BRIEF OF AMICUS CURIAE PUBLIC CITIZEN IN SUPPORT OF PLAINTIFF-APPELLEE

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TABLE OF POINTS AND AUTHORITIES

Pages

INTEREST OF AMICUS CURIAE

Public Citizen is a nonprofit consumer advocacy organization with members in every state. Since its founding in 1971, Public Citizen has worked before Congress, administrative agencies, and courts to promote the enactment and enforcement of laws protecting consumers, workers, and the public. Public Citizen is interested in the effective enforcement of consumer-protection laws and often addresses the issue of standing as a party or amicus.

The Fair and Accurate Credit Transactions Act of 2003 (FACTA) provides important consumer protections intended to reduce consumers' risk of identity theft. To deter businesses from willfully violating FACTA's requirements, Congress has authorized consumers to recover statutory damages through a private cause of action. Public Citizen is concerned that requiring plaintiffs who sue for willful violation of FACTA to show additional harm beyond violation of their statutory rights would undermine the purpose and effectiveness of FACTA, putting consumers and our economy at greater risk of identity theft. Public Citizen submits this brief to explain the history and purposes of FACTA and to demonstrate how

the provision of FACTA at issue in this case benefits consumers. Public Citizen also writes to explain why affirming the circuit court's finding of standing would be consistent with this Court's precedents.

INTRODUCTION

In 2003, faced with evidence that identity theft was wreaking havoc on the lives of millions of people annually and costing the economy billions of dollars a year, Congress enacted FACTA. Among other consumer protections, the law prohibits merchants from printing more than the last five digits of a credit-card or debit-card number on a receipt. This requirement ensures that retailers do not create, with each consumer transaction, a piece of paper that fraudsters can use to gain access to consumers' financial accounts. To foster compliance, Congress made the law enforceable by consumers through a private cause of action for statutory damages.

This case concerns whether a consumer has standing to sue a retailer for violation of FACTA without proof of additional harm beyond the violation of the consumer's statutory right. Under this Court's precedents, the consumer does. When defendant Walgreen

Co. printed more than the last five digits of plaintiff Calley Fausett's debit-card number on her receipt, Ms. Fausett suffered an injury in fact to a legally cognizable interest. The statutory violation *is* the injury, and that injury is legally cognizable because Congress made it so. To hold otherwise would undermine a carefully tailored legislative scheme that deliberately places the burden on retailers like Walgreen to reduce the risk of identity theft—a policy choice that Congress made after careful deliberation to address a problem that remains prevalent today.

ARGUMENT

I. FACTA provides important consumer protections.

A. At the time of FACTA's enactment, identity theft had reached "almost epidemic proportions." H.R. Rep. No. 108-263, pt. 1, at 25 (2003). Identity thieves were thriving in the emerging digital age, wherein information—including the most sensitive information—had begun flowing freely over the Internet. H.R. Rep. No. 108-396, at 65–66 (2003) (Conference Report). In 2003, the Federal Trade Commission (FTC) estimated that 10 million people in the previous year, and 27 million people within the previous five

years, had fallen victim to identity theft. *See* FTC, *Identity Theft Survey Report* 4, 12 (2003). That is, an imposter had misused their personal information for actual or attempted financial gain—whether by fraudulently opening an account in their name or using an existing account without authorization.

Card-based fraud was particularly rampant. In 2002, 42 percent of the more than 160,000 victim complaints lodged with the FTC's Identity Theft Clearinghouse involved credit-card fraud, making it by far the most common type of identity crime reported to the agency. *See The Fair Credit Reporting Act and Issues Presented by Reauthorization of the Expiring Preemption Provisions: Hearings Before S. Comm. on Banking, Housing & Urban Affairs*, 108th Cong. 133 (2003) (hereinafter *FACTA Hearings*) (statement of Timothy Caddigan, U.S. Secret Serv.). And an FTC study found that the misuse of an existing credit-card account was the most prevalent form of identity theft, affecting 67 percent of all identity-theft victims. *See* FTC, *Identity Theft Survey Report* at 33, 34, 37.

One cause of the prevalence of card-based fraud was retail receipts. At the time, merchants regularly printed a customer's

entire credit-card or debit-card number and expiration date on the receipt. *See FACTA Hearings* at 180 (statement of Howard Beales, III, Director, Bur. of Consumer Protection, FTC). Fraudsters then used the information on receipts to charge purchases. In other words, "[s]lips of paper that most people throw away" held "the key to their savings and financial secrets." Remarks of President Bush on Signing the Fair and Accurate Credit Transactions Act of 2003, 2 Pub. Papers 1674, 1676 (Dec. 4, 2003). To avoid falling victim to such fraud, consumers had to take action to prevent disclosure of the information in their receipts, either securing the receipts or destroying them; simply throwing a receipt into the garbage was risky. *FACTA Hearings* at 78 (statement of Sen. Charles E. Schumer), 137 (statement of Timothy Caddigan, U.S. Secret Serv.).

This state of affairs was costing the economy an estimated $47 billion annually. FTC, *Identity Theft Survey Report*, at 7. On its own, the misuse of an existing credit-card or other account (as distinct from using someone's personal information to open a new account) caused an estimated $14 billion in business losses between 2002 and 2003. *Id.* Although consumers are generally not held

responsible for fraudulent purchases charged to their accounts, *see id.* at 6 n.4, existing-account fraud cost individual victims an average of $160, for an annual estimated total of $1.1 billion, *id.* at 7. In addition, falling victim to fraud was time-consuming: the average victim spent 15 hours solving the problem. *Id.*; *see also* U.S. Gov't Accountability Off., GAO-02-363, *Identity Theft: Prevalence and Cost Appear to be Growing* 55–57 (2002) (detailing the monetary and nonmonetary harm of identity theft on consumers). As one senator stated, "our consumers are losing the battle against identity thieves, and when they lose, I think we all lose in our economy." *FACTA Hearings* at 72 (statement of Sen. Jon Corzine).

B. After holding comprehensive hearings on the "explosive growth" of identity theft and "the havoc it visits upon the lives of its victims," H.R. Rep. No. 108-396, at 65–66, Congress responded with FACTA, Pub. L. No. 108-159, 117 Stat. 1952. The statute includes both provisions intended to prevent identity theft from occurring, *see, e.g.*, 15 U.S.C. § 1681c-1, and provisions intended to assist people who nonetheless fall victim to identity crimes, *see, e.g.*, *id.* § 1681c-2.

FACTA's consumer protections include bulwarks against credit-card and debit-card fraud. FACTA prohibits merchants from printing more than the last five digits of a card number on a receipt and prohibits printing the card's expiration date. 15 U.S.C. § 1681c(g)(1). As Congress later explained, "[e]xperts in the field agree" that proper truncation of a credit-card or debit-card number "prevents a potential fraudster from perpetrating identity theft or credit card fraud." Credit and Debit Card Receipt Clarification Act of 2007, Pub. L. No. 110-241, § 2(a)(6), 122 Stat. 1565, 1565 (2008). Today, because of FACTA, "when consumers go into a convenience store, restaurant or retailer," 154 Cong. Rec. H3409, H3730 (May 13, 2008), they no longer need to worry that their receipts contain "key card account information" that criminals could "pick off" and put to nefarious use, S. Rep. No. 108-166, at 13 (2003); *see Jeffries v. Volume Servs. Am., Inc.*, 928 F.3d 1059, 1064 n.2 (D.C. Cir. 2019).

To incentivize compliance and compensate consumers for FACTA violations, FACTA's consumer protections are enforceable through private causes of action for damages. For negligent violations, a consumer may recover actual damages. 15 U.S.C.

§ 1681o(a). For "willful[]" violations, a consumer may recover either actual damages or statutory damages of "not less than $100 and not more than $1,000," as well as punitive damages. *Id.* § 1681n(a). Statutory damages are available for willful violations without a showing of actual damages. *See Santos v. Healthcare Rev. Recovery Grp., LLC*, 90 F.4th 1144, 1155 (11th Cir. 2024) (collecting cases).

The availability of statutory damages for willful violations, without proof of additional harm, serves an important compensatory purpose. Willful FACTA violations often cause "actual harm" that is "small or difficult to prove." *Bateman v. Am. Multi-Cinema, Inc.*, 623 F.3d 708, 718 (9th Cir. 2010). For example, violations often trigger privacy concerns or create a "chance that information [will] leak out and lead to identity theft." *Id.* (quoting *Murray v. GMAC Mortg. Corp.*, 434 F.3d 948, 953 (7th Cir. 2006)).

The availability of statutory damages under section 1681n also has a second important function: As this Court has recognized, statutory damages encourage compliance with a regulatory scheme. *See, e.g.*, *Rosenbach v. Six Flags Entm't Corp.*, 2019 IL 123186, ¶¶ 36–37; *see also F.W. Woolworth Co. v. Contemp. Arts, Inc.*, 344

U.S. 228, 233 (1952). Through FACTA, Congress intended to "restrict the amount of information available to identity thieves." *Bateman*, 623 F.3d at 718 (quoting 149 Cong. Rec. S13839, S13850 (Nov. 4, 2003)). And statutory damages "further[] this purpose by deterring businesses from willfully making consumer financial data available, even where no actual harm results." *Id.* By providing for statutory damages, Congress gave businesses "the strongest possible incentive to conform to the law and prevent problems before they occur and cannot be undone." *Rosenbach*, 2019 IL 123186, ¶ 37.

Notably, five years after enacting FACTA, Congress passed a retroactive safe harbor for businesses that had correctly truncated credit-card and debit-card numbers on receipts, but had incorrectly disclosed expiration dates. Responding to lawsuits based on what Congress viewed as some merchants' misunderstanding in the early days after FACTA's enactment, *see* Credit and Debit Card Receipt Clarification Act of 2007 § 2(a)(3), (4), Congress provided that the printing of an expiration date before the effective date of the 2007 "clarification" would not be considered "willful noncompliance," *id.*

§ 3(a), *codified at* 15 U.S.C. 1681n(d). Yet while recognizing that the lawsuits that it referenced did not "contain[] an allegation of harm to any consumer's identity," *id.* § 2(a)(5), Congress did not otherwise amend section 1681n. The 2007 law reflects Congress's judgment about the continuing importance of the statutory damages remedy to the effectiveness of FACTA's consumer protections.

C. Despite FACTA, identity theft remains a problem today. In 2022, the FTC recorded 1.1 million reports of identity theft, including nearly 40,000 reports regarding the misuse of an existing credit-card account. FTC, *Consumer Sentinel Network: Data Book 2022*, 4, 14 (2023). Illinois is not immune: In 2022, Illinois had the 12th-highest rate of identity theft in the country, with credit-card fraud topping the list of reported identity crimes. *Id.* at 35.

Faced with similar data twenty years ago, Congress sought to protect consumers by prohibiting merchants from printing more than the last five digits of a card number on a receipt, and by enabling consumers, like Ms. Fausett, to "us[e] their credit and debit cards without facing an increased risk of identity theft."

Jeffries, 928 F.3d at 1064. As in 2003, consumers' ability to sue for violations with respect to their own cards provides an important incentive for businesses "to conform to the law and prevent problems before they occur and cannot be undone." *Rosenbach*, 2019 IL 123186, ¶ 37.

II. Under Illinois law, consumers have standing to bring suit for violations of rights conferred on them by law.

Standing in this case rests on a simple proposition: When a defendant violates a statutory duty owed to a plaintiff personally, the plaintiff has suffered an injury in fact to a legally cognizable interest. The violation of a privately held statutory right *is* the injury, and that injury is legally cognizable because the legislature has made it so.

A. This Court has explained that standing requires "some injury to a legally cognizable interest." *Stevens v. McGuireWoods LLP*, 2015 IL 118652, ¶ 23. As relevant here, the injury must be "distinct and palpable," which means that the injury is one that "cannot be characterized as a generalized grievance common to all members of the public." *Ill. Rd. & Transp. Builders Ass'n v. Cnty. of Cook*, 2022 IL 127126, ¶ 17 (quotation marks omitted). When a

defendant violates a legal duty owed to a plaintiff, the resulting injury is personal to the plaintiff. *See Cothron v. White Castle Sys., Inc.*, 2023 IL 128004, ¶ 38. Consistent with that proposition, a person is "prejudiced or aggrieved," and therefore entitled to seek judicial relief, "when a legal right is invaded by the act complained of"—in other words, where the party has suffered "a denial of some personal or property right." *Glos v. People*, 259 Ill. 332, 340 (1913).

In *Rosenbach*, for example, the plaintiff sought statutory damages under the Biometric Information Privacy Act (BIPA) based on defendant Six Flags' failure to comply with BIPA when the plaintiff provided his fingerprint to the company. 2019 IL 123186, ¶¶ 6, 10, 11. Six Flags argued that the plaintiff had not suffered harm beyond the violation of her rights and, therefore, did not qualify as an "aggrieved" person entitled to sue under the statute *Id.* ¶¶ 21–22. Rejecting this argument, the Court held that "an individual need not allege some actual injury or adverse effect, beyond violation of his or her rights … [to] be entitled to seek liquidated damages" (that is, statutory damages of $1,000) under the BIPA. *Id.* ¶ 40.

Subsequent decisions reiterate this point. As the Court stated in *Cothron*, "*Rosenbach* clearly recognizes the statutory violation itself is the 'injury' for purposes of a claim under [BIPA]." 2023 IL 128004, ¶ 38; *see McDonald v. Symphony Bronzeville Park, LLC*, 2022 IL 126511, ¶ 48; *see also In re Estate of Schlenker*, 209 Ill. 2d 456, 462, 464–65 (2004) (holding that an heir had standing without a showing of harm, where the Probate Act provides that an "interested person" may contest the validity of a will, "including without limitation an heir"); *Landmarks Pres. Council of Ill. v. City of Chicago*, 125 Ill. 2d 164, 177 (1988) (holding that a plaintiff had standing, without a showing of harm, where "Congress intended to permit" it to assert the claim at issue).

In short, when the legislature "confer[s] a right of action," that body "may determine who shall sue, and the conditions under which the suit may be brought." *Wilson v. Tromly*, 404 Ill. 307, 310 (1949). That principle is particularly apt here, where "impos[ing] limitations on standing that [the statute] does not require," *In re Estate of Schlenker*, 209 Ill. 2d at 464, would "defeat the purpose of the Act," *State ex rel. Leibowitz v. Fam. Vision Care, LLC*, 2020 IL

124754, ¶ 47, which seeks to "deter[] businesses from willfully making consumer financial data available, even where no actual harm results," *Bateman*, 623 F.3d at 718.

B. Walgreen points to *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021). There, the U.S. Supreme Court held that a group of individuals whose rights under the Fair Credit Reporting Act had been violated by other private parties lacked standing under Article III of the U.S. Constitution to sue for statutory damages because, apart from the violation of their rights, they had suffered no concrete harm. *TransUnion*, 594 U.S. at 442. That case, however, addresses *federal* court standing—an issue of subject-matter jurisdiction under Article III of the U.S. Constitution.

By contrast, standing in Illinois courts is an affirmative defense that does not implicate a court's subject-matter jurisdiction. *See Lebron v. Gottlieb Memorial Hosp.*, 237 Ill. 2d 217, 252–53 (2010). Recognizing that federal standing law derives from jurisdictional constraints not applicable in Illinois courts, this Court has repeatedly "rejected federal principles of standing," *People v. $1,124,905 U.S. Currency*, 177 Ill. 2d 314, 329 (1997), and

conferred standing on plaintiffs with "greater liberality," *Greer v. Ill. Hous. Dev. Auth.*, 122 Ill. 2d 462, 491 (1988). Standing serves the important purpose of ensuring that the dispute before the court is "truly adversarial and capable of resolution by judicial decision," *Greer*, 122 Ill. 2d at 488, but the doctrine "should not be an obstacle to the litigation of a valid claim," *$1,124,905 U.S. Currency*, 177 Ill. 2d at 330. Ms. Fausett's standing in this case is consistent with the purposes of standing in Illinois: ensuring that the persons who bring suit have an actual interest in the controversy, *Glisson v. City of Marion*, 188 Ill. 2d 211, 221 (1999), and that "courts are deciding actual, specific controversies, and not abstract questions or moot issues," *In re Marriage of Rodriguez*, 131 Ill. 2d 273, 279–80 (1989).

Walgreen's amici Illinois Defense Counsel and Retail Litigation Center take *TransUnion* a step further, suggesting that it "expressly held that '[a] regime where Congress could freely authorize unharmed plaintiffs to sue defendants who violate federal law not only would violate Article III but also would infringe on the Executive Branch's Article II authority.'" Ill. Def. Counsel Br. 3 (quoting *TransUnion*, 594 U.S. at 429); *see* Retail Litig. Ctr.

Br. 8–9. The language on which the amici rely, however, is dicta, not a holding in the case, which addressed the question "[w]hether either *Article III* or [Federal] Rule [of Civil Procedure] 23 permits a damages class action where the vast majority of the class suffered no actual injury." Brief for Petitioner i, *TransUnion*, 594 U.S. 413 (No. 20-297) (emphasis added).[1] Consistent with the question before the Court, neither party mentioned Article II in their briefs.[2]

As Justice Thomas, writing for himself and three other Justices, pointed out, the *TransUnion* decision "does not prohibit Congress from creating statutory rights for consumers; it simply holds that federal courts lack jurisdiction to hear some of these cases." 594 U.S. at 460 n.9. To the contrary, the decision "may leave state courts—which 'are not bound by the limitations of a case or controversy or other federal rules of justiciability even when they address issues of federal law,' *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617 (1989)—as the sole forum for such cases." *Id.*

[1] http://tinyurl.com/29s9zhpu.

[2] *See id.*; Brief for Respondent, http://tinyurl.com/57skjmtb; Reply Brief, http://tinyurl.com/yc3mhzh9.

Importantly, Congress has enacted numerous statutes authorizing private enforcement of public rights "without a hint of constitutional doubt." Cass R. Sunstein, *What's Standing After Lujan? Of Citizen Suits, "Injuries," and Article III*, 91 Mich. L. Rev. 163, 214 (1992); *see, e.g.*, Act of Mar. 1, 1790, § 3, 1 Stat. 101, 102 (regarding filing of census forms); Act of July 20, 1790, § 1, 1 Stat. 131, 131 (regarding contracts with mariners and seamen); Act of July 22, 1790, § 3, 1 Stat. 137, 137–38 (regarding trade with Indian tribes); Act of Feb. 25, 1791, § 8, 1 Stat. 191, 195–96 (regarding the Bank Act). And the U.S. Supreme Court has recognized the "long tradition," *Vt. Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 774 (2000), of private citizens filing suits to aid the government in enforcement of laws to "vindicat[e] … polic[ies] that Congress considered of the highest priority," *Newman v. Piggie Park Enters., Inc.*, 390 U.S. 400, 402 (1968) (per curiam). For example, in a lawsuit under the False Claims Act, 31 U.S.C. §§ 3729–3733, private individuals do not assert their own injuries; rather, they sue to vindicate an injury to the United States. *Vt. Agency*, 529 U.S. at 774.

The centuries of history of "reliance on private enforcement of public laws," *see* James E. Pfander, *Public Law Litigation in Eighteenth Century America: Diffuse Law Enforcement in a Partisan World*, 92 Fordham L. Rev. 469, 473 (2023), demonstrates that Article II poses no impediment to lawsuits brought by individuals to vindicate the *public* interest, rather than their own rights. Thus, Article II certainly poses no impediment to Ms. Fausett's suit for infringement of *private* rights conferred *on her* by Congress.

C. Recognizing a consumer's standing to sue for FACTA violations is also consistent with *Greer*, *Glisson*, and the other decisions of this Court cited by Walgreen. *Greer* and *Glisson* establish the basic principle that "standing in Illinois requires only some injury in fact to a legally cognizable interest." *Greer*, 122 Ill. 2d at 492; *Glisson*, 188 Ill. 2d at 221. In *Greer*, for example, the plaintiffs had standing based on their allegation that the development they challenged threatened to decrease the value of their property. *See* 122 Ill. 2d at 494. By contrast, in *Glisson*, where the plaintiff brought suit under the Illinois Endangered Species

Protection Act, which did "not expressly confer standing on plaintiff to bring [the] private cause of action," 188 Ill. 2d at 223, the Court held that the plaintiff's "self-proclaimed interest" in engaging in various recreational activities near a soon-to-be-developed creek was not legally cognizable, *id*. at 231.

In this case, Ms. Fausett alleges that Walgreen violated her personal rights under a federal statute enacted to protect her from debit-card and credit-card fraud. That violation of her statutory rights is an injury in fact to a legally cognizable interest: Congress *has* "expressly confer[red] standing on [Ms. Fausett] to bring this private cause of action." *Id*. at 223; *see also Greer*, 122 Ill. 2d at 507–08 (explaining that standing to bring some of plaintiffs' claims was "governed by section 11–13–15 of the Illinois Municipal Code" and would turn on what that statute requires).

None of the other decisions of this Court to which Walgreen cites (at 13, 15, 17) denied standing to a plaintiff with an express statutory right to sue for damages. *See Midwest Com. Funding, LLC v. Kelly*, 2023 IL 128260, ¶ 9 (challenge to the method used to effect service on another party); *Lewis v. Lead Indus. Ass'n*, 2020 IL

124107, ¶¶ 30, 54 (concerning a common-law claim); *Stevens*, 2015 IL 118652, ¶ 23 (plaintiff who was not a shareholder at the time of the challenged transaction lacked standing to pursue a derivative action under both common law and Illinois's Limited Liability Company Act); *Carr v. Koch*, 2012 IL 113414, ¶ 1 (concerning a claim for declaratory relief); *Raintree Homes, Inc. v. Vill. of Long Grove*, 209 Ill. 2d 248, 251 (2004) (same); *$1,124,905 U.S. Currency*, 177 Ill. 2d at 330 (concerning standing to contest forfeiture); *Almgren v. Rush-Presbyterian-St. Luke's Med. Ctr.*, 162 Ill. 2d 205, 216 (1994) (attempt by a client to appeal his attorney's contempt sanction); *In re Estate of Burgeson*, 125 Ill. 2d 477, 484 (1988) (petition to vacate a judgment lodged by the Cook County public guardian); *Glazewski v. Coronet Ins. Co.*, 108 Ill. 2d 243, 254 (1985) (concerning a common-law claim); *McAdam v. People ex rel. Joslyn*, 179 Ill. 316, 317–18 (1899) (collusive attempt to obtain a judgment in a "fraudulent and fictitious case").

Walgreen also relies on two decisions in which Illinois appellate courts held that plaintiffs lacked standing to assert claims under Illinois's Personal Information Protection Act and

Consumer Fraud and Deceptive Business Practices Act. *See* Walgreen Br. 25 (citing *Petta v. Christie Bus. Holding Co.*, 2023 IL App (5th) 220742; *Maglio v. Advoc. Health & Hosps. Corp.*, 2015 IL App (2d) 140782).[3] The Personal Information Protection Act does not have its own private cause of action. Instead, "[a] violation of [that] Act constitutes an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act." 815 ILCS 530/20. And the Consumer Fraud Act limits its cause of action to "person[s] who suffer[] actual damage," 815 ILCS 505/10a(a)—that is, some damage "beyond violation of the rights conferred by the statute," *Rosenbach*, 2019 IL 123186, ¶ 25. In FACTA, Congress made a different choice, authorizing "any consumer" to recover either actual *or* statutory damages in cases of willful violations of the law. 15 U.S.C. § 1681n(a)(1)(A).

D. Finally, that FACTA emanates from "a different legislature than our General Assembly," Walgreen Br. 28, is also no justification for treating FACTA claims differently than BIPA or

[3] *See also Flores v. Aon Corp.*, 2023 IL App (1st) 230140, *cited by* Walgreen at 25 (holding that the plaintiff had standing under the Consumer Fraud Act).

other state-law statutory claims. A state "may not discriminate against rights arising under federal laws" by declining to adjudicate a claim "solely because the suit is brought under a federal law." *McKnett v. St. Louis & S.F. Ry. Co.*, 292 U.S. 230, 233–34 (1934). Thus, FACTA "is as much the policy of [Illinois] as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the state." *Testa v. Katt*, 330 U.S. 386, 392 (1947) (quoting *Mondou v. N.Y., New Haven & Hartford R.R. Co.*, 223 U.S. 1, 57 (1912)).

Relatedly, whether or not Ms. Fausett would have standing to pursue her claim in federal court is of no consequence. The "state courts have inherent authority, and are thus presumptively competent, to adjudicate claims arising under the laws of the United States." *Tafflin v. Levitt*, 493 U.S. 455, 458 (1990) (collecting cases). And Congress has historically "arranged the limited jurisdiction of federal courts [so] that some federal laws can be enforced *only* in the state courts." *Charles Dowd Box Co. v. Courtney*, 368 U.S. 502, 508 n.4 (1962) (emphasis added) (explaining that the statute conferring general federal-question

jurisdiction on the district courts restricts that jurisdiction to cases with a certain amount in controversy). A state court entertaining a suit that a federal court, because of Article III constraints, is powerless to hear is not "novel and dramatic," Walgreen Br. 28, and should give the Court no pause here.

CONCLUSION

For the foregoing reasons, the decision below should be affirmed.

March 20, 2024

Respectfully submitted,

/s/ *George A. Zelcs*

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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 4,266 words.

/s/ *George A. Zelcs*

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NOTICE OF FILING AND CERTIFICATE OF SERVICE

I hereby certify that on March 20, 2024, I caused the foregoing Brief of Amicus Curiae Public Citizen in Support of Plaintiff-Appellee to be electronically filed and served upon the Clerk of the Supreme Court of Illinois through the Illinois e-filing system. I further certify that on March 20, 2024, I caused a true and correct copy of the foregoing to be served via e-mail and by U.S. mail with proper postage upon the counsel of record listed below.

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Within five days of acceptance by the Court, the undersigned states that 13 paper copies of the Brief of Amicus Curiae Public Citizen in Support of Plaintiff-Appellee bearing the court's file-stamp will be sent to the above court.

/s/ *George A. Zelcs*
George A. Zelcs

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct.

/s/ *George A. Zelcs*
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No. 129783

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ORDER REGARDING MOTION OF PUBLIC CITIZEN FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT OF PLAINTIFF-APPELLEE

THIS CAUSE coming to be heard on the Motion for Leave to File Brief of Amicus Curiae Public Citizen in Support of Plaintiff-Appellee, it is hereby ORDERED that the foregoing motion is GRANTED / DENIED.

Dated: _____, 2024

_____
Justice of the Supreme Court