No. 11-192

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

JAMES X. BORMES

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether the Little Tucker Act, 28 U.S.C. 1346(a)(2), waives the sovereign immunity of the United States with respect to damages actions for violations of the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-17a) is reported at 626 F.3d 574. The court of appeals' denial of the government's motion to transfer the appeal to the Seventh Circuit (Pet. App. 18a-22a) is not published in the Federal Reporter, but is available at 2010 WL 331771. The opinion of the district court (Pet. App. 23a-30a) is reported at 638 F. Supp. 2d 958.

JURISDICTION

The judgment of the court of appeals was entered on November 16, 2010. A petition for rehearing was denied on March 15, 2011 (Pet. App. 31a-32a). On June 3, 2011, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including July

13, 2011. On July 1, 2011, the Chief Justice further extended the time to August 12, 2011, and the petition was filed on that date. The petition was granted on January 13, 2012. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The Little Tucker Act, 28 U.S.C. 1346(a)(2), provides, subject to certain exceptions not relevant here:

> The district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims, of * * * [a]ny * * * civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Constitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

The general Tucker Act, 28 U.S.C. 1491(a)(1), provides in relevant part:

> The United States Court of Federal Claims shall have jurisdiction to render judgment upon any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort.

Pertinent provisions of the Fair Credit Reporting Act, 15 U.S.C. 1681 *et seq.*, are reproduced in an appendix to this brief. App., *infra*, 1a-25a.

STATEMENT

1. Respondent is an attorney who, according to the allegations in his complaint, filed a lawsuit on behalf of one of his clients in the United States District Court for the Northern District of Illinois in August 2008. Pet. App. 86a. He paid the $350 filing fee using his own American Express credit card. *Ibid.* The transaction was processed through the federal government's pay.gov system, which dozens of federal agencies use to process online credit-card and debit-card payment transactions. *Id.* at 85a-86a. Respondent alleges that he received from that system a "confirmation webpage that was displayed on his computer screen," as well as an e-mail confirmation, both of which contained the expiration date of his credit card. *Id.* at 87a.

Respondent then filed this putative class action, also in the United States District Court for the Northern District of Illinois, alleging that the government's electronic transaction confirmations did not comply with the Fair Credit Reporting Act (FCRA), 15 U.S.C. 1681 *et seq.* Pet. App. 2a. FCRA is a consumer-protection statute that regulates, *inter alia*, the collection, dissemination, and use of information related to a consumer's finances and creditworthiness. See *TRW Inc.* v. *Andrews*, 534 U.S. 19, 23 (2001). One of FCRA's substantive provisions generally prohibits a "person" who "accepts credit cards or debit cards for the transaction of business" from "print[ing] more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction." 15 U.S.C. 1681c(g)(1). Respondent claimed that the government had violated that provision; that it had done so "willfully"; and that, as a result, he

and a class of thousands of similarly situated persons were entitled to recovery under one of FCRA's general civil-remedies provisions, 15 U.S.C. 1681n. Pet. App. 91a-97a. Section 1681n provides, as relevant here, that "[a]ny person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer" either for "any actual damages" or else for statutory damages between $100 and $1000, plus potential punitive damages, as well as reasonable attorney fees and costs. 15 U.S.C. 1681n(a).

The district court dismissed the suit. Pet. App. 23a-30a. The court explained that "[t]he well-established doctrine of sovereign immunity protects the United States from suit except where Congress has 'unequivocally expressed' a waiver of immunity." *Id.* at 27a-28a (quoting *United States* v. *Nordic Village, Inc.*, 503 U.S. 30, 33-34 (1992)). Respondent pointed to FCRA's general definition of "person" as "any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity," 15 U.S.C. 1681a(b), and argued that Section 1681n's imposition of damages liability on "[a]ny person" necessarily included the United States. Pet. App. 28a. But the district court rejected respondent's contention that inclusion of the "generic term 'government'" in the definition effectively waives the United States' sovereign immunity, observing that "other federal statutes have unequivocally waived the United States' sovereign immunity by expressly inserting the specific term 'United States' into the statutory language." *Ibid.*; see *id.* at 28a-29a (citing the Federal Tort Claims Act, 28 U.S.C. 1346(b)(1), and the Quiet Title

Act, 28 U.S.C. 2409a(a)). The district court further observed that "a separate section of the FCRA expressly provides that the United States may be liable for certain violations." *Id.* at 29a (citing 15 U.S.C. 1681u(i), which imposes liability on "[a]ny agency or department of the United States" for certain actions relating to law-enforcement investigations). The district court concluded that Section 1681n, in contrast, "has not so unequivocally waived the sovereign immunity of the United States." *Id*. at 29a.

2. Respondent appealed to the Federal Circuit. Pet. App. 19a. His asserted justification for appealing to the Federal Circuit, rather than the regional Seventh Circuit, was 28 U.S.C. 1295(a)(2). Pet. App. 19a-20a. That provision grants the Federal Circuit exclusive jurisdiction "of an appeal from a final decision of a district court of the United States * * * if the jurisdiction of that court was based, in whole or in part, on" the Little Tucker Act, 28 U.S.C. 1346(a)(2).

In the district court, respondent's complaint had alleged multiple bases of jurisdiction over his suit. Pet. App. 82a. One was FCRA's own jurisdictional provision, 15 U.S.C. 1681p, which provides that "[a]n action to enforce any liability created under this subchapter may be brought in any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction." Another asserted basis of jurisdiction was the Little Tucker Act, which provides that, subject to certain exceptions, "district courts shall have original jurisdiction, concurrent with the United States Court of Federal Claims," of a "civil action or claim against the United States, not exceeding $10,000 in amount, founded either upon the Con-

stitution, or any Act of Congress, or any regulation of an executive department, or upon any express or implied contract with the United States, or for liquidated or unliquidated damages in cases not sounding in tort." 28 U.S.C. 1346(a)(2). The Little Tucker Act is an adjunct to the general Tucker Act, 28 U.S.C. 1491(a)(1), which provides that the same set of claims may be brought in the United States Court of Federal Claims, whether or not the plaintiff seeks more than $10,000. See, *e.g.*, *United States* v. *Sherwood*, 312 U.S. 584, 591 (1941) (substantive scope of Little Tucker Act and Tucker Act are identical). The district court had not resolved the question whether the Little Tucker Act can provide the basis for jurisdiction over a FCRA suit. Pet. App. 26a n.1; see *id.* at 2a.

The government moved to transfer respondent's appeal to the Seventh Circuit. Pet. App. 19a. The government argued that, to the extent a FCRA suit against the United States would be permissible at all, the proper jurisdictional basis would be FCRA's own specific jurisdictional provision, 15 U.S.C. 1681p, and not the more general jurisdictional provision in the Little Tucker Act. Pet. App. 20a-21a. The relevant statute governing an appeal therefore would not be 28 U.S.C. 1295(a)(2), but instead 28 U.S.C. 1291, which would assign the appeal to the appropriate regional circuit (in this case, the Seventh Circuit), rather than the Federal Circuit. Pet. App. 21a. The Federal Circuit, finding the issue "close," denied the government's motion to transfer. *Id.* at 18a-22a.

3. A merits panel of the Federal Circuit subsequently vacated the district court's decision and reinstated respondent's FCRA claim. Pet. App. 1a-17a. Un-

like the district court, the Federal Circuit declined to decide whether FCRA itself expressly and unequivocally waives the United States' sovereign immunity to suit under FCRA's general civil-remedies provisions. *Id.* at 14a. The court instead applied a "less stringent" standard. *Ibid.*

The court of appeals believed that even if FCRA did not itself expressly waive the United States' sovereign immunity, the Little Tucker Act and the general Tucker Act could independently supply such a waiver. Pet. App. 7a. The panel noted that the Little Tucker Act and Tucker Act not only supply district-court or claims-court jurisdiction over certain categories of claims, but also waive the United States' sovereign immunity with respect to those categories of claims. *Id.* at 6a-7a. The panel concluded from that premise that the sovereign-immunity issue in this case could be resolved simply by reexamining the question that had been tentatively addressed by the motions panel as a threshold jurisdictional matter—namely, whether FCRA suits fall within the type of claims covered by the Tucker Act. *Ibid.*

In the panel's view, the applicable mode of analysis for this case could be extrapolated from *United States* v. *White Mountain Apache Tribe*, 537 U.S. 465 (2003), a case in which this Court had analyzed whether an Indian tribe had a cause of action based on a statute governing the use of property held in trust for the tribe. The right question to ask in this case, the Federal Circuit panel believed, was whether, treating the Little Tucker Act as the requisite waiver of sovereign immunity, FCRA "can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained." Pet. App. 7a (quoting *White Mountain Apache Tribe*,

537 U.S. at 472). The panel emphasized that this test "demands a showing 'demonstrably lower' than the initial waiver of sovereign immunity." *Ibid.* (quoting *White Mountain Apache Tribe*, 537 U.S. at 472). "It is enough," the panel stated, "that a statute creating a Tucker Act right be reasonably amenable to the reading that it mandates a right of recovery in damages. While the premise to a Tucker Act claim will not be 'lightly inferred,' . . . a fair inference will do." *Ibid.* (quoting *White Mountain Apache Tribe*, 537 U.S. at 473).

The government objected to that mode of analysis, contending that it would be improper to rely on the Little Tucker Act to sidestep the requirement that FCRA itself unequivocally waive sovereign immunity. Gov't C.A. Br. 23-35. The government did not dispute the basic premise that, with respect to certain kinds of damages claims, the Tucker Act both grants jurisdiction and waives sovereign immunity. But the government argued that FCRA was not the kind of statute to which the Tucker Act could apply. The government also pointed to a number of specific inconsistencies between FCRA and the Tucker Act. Pet. App. 10a-16a.

The Federal Circuit rejected the government's arguments and concluded that the Tucker Act and Little Tucker Act waive the United States' sovereign immunity with respect to suits under FCRA's general civil-remedies provisions. Pet. App. 6a-16a. The court focused on the government's acknowledgment at oral argument that FCRA's general definition of "person" in 15 U.S.C. 1681a(b), which includes "any * * * government," includes the United States for some purposes. Pet. App. 10a-11a; see Oral Argument Recording, No. 2009-1546, at 14:18-16:15, 18:40-19:07 (Fed. Cir. Aug. 2, 2010). The

court reasoned that if "person" includes the United States in some FCRA provisions, "a fair interpretation * * * applies the same definition throughout," including in the civil-remedies provisions. Pet. App. 11a. The court recognized, however, that this reasoning would not necessarily be sufficient to demonstrate that FCRA itself contained an express sovereign-immunity waiver. *Id.* at 14a.

SUMMARY OF ARGUMENT

The Federal Circuit's decision in this case circumvents the "critical requirement," "firmly grounded in [this Court's] precedents," that a "waiver of the Federal Government's sovereign immunity must be unequivocally expressed in statutory text." *Lane* v. *Peña*, 518 U.S. 187, 192 (1996). According to the Federal Circuit, the United States is subject to damages actions under FCRA's general civil-remedies provisions, notwithstanding any ambiguity about whether the United States is a proper defendant under those provisions. Any such ambiguity is irrelevant, the Federal Circuit reasoned, because the Tucker Act and Little Tucker Act independently supply the requisite sovereign-immunity waiver and obviate the need to be certain that Congress specifically wanted to expose the public fisc to potentially massive FCRA liability. That reasoning is flawed on multiple levels. The Federal Circuit erred in considering this to be a Little Tucker Act suit over which it could exercise appellate jurisdiction, and the case should be transferred to the Seventh Circuit for application of the proper legal standards.

A. The Tucker Act and Little Tucker Act have no role to play in assessing whether the United States is

liable for damages under FCRA's general civil-remedies provisions. Congress enacted the Tucker Acts in order to avoid the necessity of passing private bills to provide compensation for breaches by the United States of certain types of legal obligations. The Tucker Acts accomplish that goal by supplying a fully formed remedial scheme, including a waiver of sovereign immunity, that permits damages suits against the United States, primarily in the Court of Federal Claims, in certain circumstances. See 28 U.S.C. 1346(a)(2), 1491(a)(1); *United States* v. *Mitchell*, 463 U.S. 206, 212-219 (1983). In particular, the Tucker Acts provide a mechanism for seeking relief in cases where the federal government has violated a duty imposed on the United States by statute; the statute "can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained," *id.* at 217 (citation omitted); and Congress has not otherwise provided a judicial damages remedy. But the Tucker Acts' generalized remedial scheme neither supersedes, nor provides a distorting lens through which to view, the native remedial scheme of a more specialized statute like FCRA.

Throughout the history of the Tucker Act (and its statutory precursors), this Court has repeatedly adhered to "the well-established principle that, in most contexts, a precisely drawn, detailed statute pre-empts more general remedies." *Hinck* v. *United States*, 550 U.S. 501, 506 (2007) (citation omitted); see also, *e.g.*, *Nichols* v. *United States*, 74 U.S. (7 Wall.) 122 (1868). The Court has accordingly declined on numerous occasions to apply the Tucker Act's remedial scheme in circumstances where Congress has more directly addressed the judicial remedies appropriate under a par-

ticular statute. The Court has in particular refused to permit a plaintiff to sidestep a limitation inherent in a statute's own remedial scheme by resorting to the Tucker Act. See, *e.g.*, *Hinck*, 550 U.S. at 507-508.

Yet that is precisely what the Federal Circuit permitted here. In the Federal Circuit's view, even if Congress, when it specifically addressed the question of FCRA remedies, did not elect to allow damages suits against the United States, the Tucker Acts allow a plaintiff to overcome that limitation. The specific-governs-the-general principle forecloses that line of reasoning. The existence of a more generalized remedial scheme under the Tucker Acts says nothing about whether the separate and more specific FCRA remedial scheme can be brought to bear against the United States.

The Federal Circuit purported to draw support for its application of the Tucker Acts from cases where this Court has found congressional intent to provide a monetary remedy for the government's violation of a statute of the sort covered by the Tucker Acts. But those cases involved statutes that expressly applied to the United States and did not contain their own judicial remedial schemes, and the issue was whether there should be any judicial remedy at all for a violation. In those circumstances, it may make sense to analyze whether Congress intended the Tucker Acts' autonomous remedial scheme to apply. That mode of analysis does not make sense, however, when the issue is whether Congress intended to allow claims against the United States under FCRA's remedial scheme. Resolution of that issue depends on whether FCRA itself waives the United States' sovereign immunity—a question answered by the traditional "unequivocal expression" test, not by the Tucker Acts.

B. Even assuming the Tucker Acts' general remedial scheme might be hybridized with a more particular one in some circumstances, no such synthesis would be possible here. FCRA's remedial scheme is irreconcilable with the Tucker Acts in several critical respects.

First, FCRA's general civil-remedies provisions define tort claims—specifically, claims for "willful[]" (15 U.S.C. 1681n) or "negligent" (15 U.S.C. 1681*o*) violations of the statutory duties that FCRA's substantive provisions impose. The Tucker Acts, however, do not permit damages actions against the United States in "cases * * * sounding in tort." 28 U.S.C. 1346(a)(2), 1491(a)(1). The Federal Circuit attempted to avoid that limitation on the scope of the Tucker Acts by distinguishing between "torts" and statutory claims. But a cause of action defined by a statute can qualify as a "tort" within the meaning of the Tucker Acts, see *Schillinger* v. *United States*, 155 U.S. 163, 167 (1894), and the tort liability imposed by Sections 1681n and 1681*o* thus falls squarely within the Tucker Acts' "sounding in tort" exception.

Second, FCRA and the Tucker Acts are at odds about when a district court may exercise jurisdiction over a claim. FCRA provides that suits under its general civil-remedies provisions may be brought in "district court, without regard to the amount in controversy, or in any other court of competent jurisdiction." 15 U.S.C. 1681p. The Tucker Acts, however, require that claims against the United States exceeding $10,000 be brought only in the Court of Federal Claims. 28 U.S.C. 1346(a)(2), 1491(a)(1). Contrary to the Federal Circuit's belief, those provisions cannot be reconciled simply by deeming the Court of Federal Claims to be an "other

court of competent jurisdiction" for FCRA purposes. Not only is that a question-begging interpretation of the phrase "other court of competent jurisdiction" (which more naturally refers only to state courts), but it fails to resolve the inconsistency. A FCRA claim exceeding $10,000 may be filed in district court; a Tucker Act claim exceeding $10,000 may not; and a hybrid Tucker Act/FCRA claim of the sort envisioned by the Federal Circuit would have to disregard one of those two jurisdictional rules.

Third, the two remedial schemes authorize different types of remedies and provide different limitations periods. FCRA authorizes punitive damages for willful violations, 15 U.S.C. 1681n(a)(2); but the Tucker Acts do not permit punitive damages, Pet. App. 14a. And FCRA provides for a two-year or five-year statute of limitations, 15 U.S.C. 1681p(1)-(2); but the statute of limitations for Tucker Act claims is six years, 28 U.S.C. 2401(a), 2501. The Federal Circuit believed that it could overcome these inconsistences as well, simply by adopting the stricter rule in each case. But that reasoning skips past the main point: namely, that the existence of all of these inconsistencies provides powerful evidence that Congress never intended these different remedial schemes to intermingle.

C. Finally, even setting aside the threshold inapplicability of the Tucker Acts, and the conflicts between the different remedial schemes, the Federal Circuit's decision fails on its own terms, because FCRA cannot "fairly be interpreted as mandating compensation by the Federal Government." Pet. App. 7a (citation omitted). The Federal Circuit believed that test to be satisfied by FCRA's imposition of civil liability on "person[s],"

15 U.S.C. 1681n and 1681o, and its separate statutory definition of "person" to include "any * * * government," 15 U.S.C. 1681a(b). FCRA's general definition of "person," however, does not apply uniformly to every FCRA provision. It would be implausible, for example, to conclude that the United States is a "person" subject to criminal liability under FCRA (15 U.S.C. 1681q), or a "person" subject to enforcement suits by federal agencies or States (15 U.S.C. 1681s).

It is similarly implausible to conclude that the United States is a "person" subject to private civil actions under FCRA. For one thing, under the Federal Circuit's logic, not only the United States, but also States, could fairly be considered "person[s]" for purposes of FCRA liability. But the relevant liability-creating language was added to FCRA mere months after this Court's decision in *Seminole Tribe* v. *Florida*, 517 U.S. 44 (1996), had made clear that Congress could not exercise its Commerce Clause powers to abrogate state sovereign immunity. Congress is exceedingly unlikely to have flouted *Seminole Tribe* by trying to subject the States to FCRA suits, and it is difficult to conceive of a reasonable definition of "person" in FCRA's general civil-remedies provisions that would exclude States but include the United States.

Furthermore, Congress's use of the term "person" in FCRA's general civil-remedies provisions contrasts sharply with the language of 15 U.S.C. 1681u(i), which unambiguously permits suit against "[a]ny agency or department of the United States" for certain limited types of FCRA violations (not at issue here). No sound reasoning supports the conclusion that, mere months after enacting Section 1681u(i)'s limited express waiver,

Congress decided to expose the United States to much more expansive liability by using the ambiguous term "person." The legislative history of the 1996 amendments contains no evidence that Congress anticipated that use of the term "person" would have any impact on the federal Treasury, let alone the enormous impact that the Federal Circuit's decision invites. The federal government regularly engages in many of the activities that FCRA regulates, and the imposition of FCRA liability could make it one of the biggest FCRA defendants.

Exposing the United States to liability as a "person" under FCRA would also have substantially unraveled the legislative compromise embodied in the Privacy Act of 1974, 5 U.S.C. 552a. FCRA regulates certain activities of "person[s]" that, when carried out by the United States, are already covered by the Privacy Act. The Privacy Act, however, provides only a narrow set of civil remedies against the United States, 5 U.S.C. 552a(g), the scope of which was a subject of extensive legislative debate and compromise. Congress would not have discarded that compromise, in favor of far broader liability under FCRA and the Tucker Acts, without any debate at all. The Tucker Acts provide no license for imposing burdens on the federal fisc that Congress neither intended nor contemplated, and the Federal Circuit erred in applying them in that fashion.

ARGUMENT

THE TUCKER ACT AND LITTLE TUCKER ACT DO NOT AUTHORIZE SUITS AGAINST THE UNITED STATES UNDER FCRA'S GENERAL CIVIL-REMEDIES PROVISIONS

Congress addressed the issue of private damages remedies for FCRA violations in the text of FCRA itself. The critical question, in determining whether the United States can be sued under FCRA's civil-remedies provisions, is whether Congress specifically intended that result. Recognizing that courts should not readily infer that Congress has opened the door to claims against the federal Treasury, this Court "insist[s] upon" an "unequivocal expression of elimination of sovereign immunity" before concluding that Congress has exposed the United States to suit under a particular remedial scheme. *Lane* v. *Peña*, 518 U.S. 187, 192 (1996) (citation omitted); see also *FAA* v. *Cooper*, No. 10-1024 (Mar. 28, 2012), slip op. 5-6.

The court of appeals here, however, explicitly declined to conclude that FCRA's general civil-remedies provisions, 15 U.S.C. 1681n and 1681*o*, unequivocally express an intent to impose liability on the United States. Pet. App. 14a. It instead believed that it could recognize governmental liability under those provisions notwithstanding uncertainty about whether Congress actually had the United States in mind when it enacted them. *Ibid.* In the court's view, the Tucker Act, 28 U.S.C. 1491(a)(1), and the Little Tucker Act, 28 U.S.C. 1346(a)(2), supply an alternative, and "less stringent," mechanism for applying FCRA's civil-remedies provisions to the United States. Pet. App. 14a. So long as "a fair interpretation" of those provisions could include the

United States as a defendant, the Federal Circuit would allow the Tucker Acts to substitute for an unequivocal textual indication that Congress specifically intended that interpretation. *Ibid.*

That reasoning fundamentally misunderstands the Tucker Acts. The Tucker Acts provide an autonomous remedial scheme that allows plaintiffs to obtain monetary payments based on statutes that impose certain types of obligations on the United States but do not themselves address questions of judicial remedy. The Tucker Acts do not lower the bar for determining whether the United States is a proper defendant under a statute's own organic remedial scheme. Deploying them in that way is particularly unwarranted here, where the Tucker Acts' remedial scheme conflicts with FCRA's in several critical respects, and where the context undermines any suggestion that Congress intended to expose the United States to vast potential liability based on alleged FCRA violations.

A. The Tucker Acts Do Not Create Liability Under Statutes That Contain Their Own Specialized Judicial Remedial Schemes

The Tucker Acts provide a remedial scheme whereby plaintiffs may obtain satisfaction of financial obligations of the United States that might otherwise be unrecoverable. Congress did not intend them to be, and this Court has not applied them as, a basis for determining whether the United States is subject to liability under a specialized remedial scheme such as FCRA's.

1. Originally enacted in 1887, the Tucker Act evolved from congressional efforts to provide a judicial damages remedy against the United States in certain

circumstances in which Congress otherwise would have needed to pass a specialized bill to give redress to an aggrieved person. Before 1855, claims against the federal government required a direct petition to Congress. *United States* v. *Mitchell*, 463 U.S. 206, 212 (1983) (*Mitchell II*). In 1855, "primarily to relieve the pressure on Congress caused by the volume of private bills," Congress created the Court of Claims. *Glidden Co.* v. *Zdanok*, 370 U.S. 530, 552 (1962) (opinion of Harlan, J.); see *Mitchell II*, 463 U.S. at 212-213. The Court of Claims was authorized to hear "all claims founded upon any law of Congress, or upon any regulation of an executive department, or upon any contract, express or implied, with the government of the United States." Act of Feb. 24, 1855 (1855 Act), ch. 122, §1, 10 Stat. 612.

Congress did not initially authorize the Court of Claims "[t]o render judgments and draw warrants upon the Treasury." Cong. Globe, 33d Cong., 2d Sess. 107 (1854) (statement of Sen. Brown). Instead, case-specific legislation was necessary to pay claims that the court had approved. See 1855 Act § 7, 10 Stat. 613. For that reason, the creation of the Court of Claims did not fully "relieve Congress from the laborious necessity of examining the merits of private bills." *Mitchell II*, 463 U.S. at 213 (internal quotation marks and citation omitted). In 1863, on the recommendation of President Lincoln, Congress gave the Court of Claims authority to enter final judgments. See Act of Mar. 3, 1863, § 3, ch. 92, 12 Stat. 765.

In 1887, Congress enacted the Tucker Act (named after its primary sponsor, Representative John Randolph Tucker). *Mitchell II*, 463 U.S. at 213-214. Its primary purpose was to expand the Court of Claims' juris-

diction beyond damages claims based on statutes, regulations, and contracts to include certain other categories, such as certain constitutional damages claims. H.R. Rep. No. 1077, 49th Cong., 1st Sess. 3-4 (1886) (House Report); see Act of Mar. 3, 1887 (Tucker Act), ch. 359, 24 Stat. 505. The Tucker Act thus provided that the Court of Claims would have jurisdiction over suits against the United States "founded upon the Constitution of the United States or any law of Congress, except for pensions, or upon any regulation of an Executive Department, or upon any contract, expressed or implied, with the Government of the United States, or for damages, liquidated or unliquidated, in cases not sounding in tort." Tucker Act § 1, 24 Stat. 505. In a section known as the "Little Tucker Act," the Tucker Act provided that "[j]urisdiction concurrent with the Court of Claims" would lie in the district courts for claims seeking up to $1000 and in the circuits for claims between $1000 and $10,000. House Report 4; see Tucker Act § 2, 24 Stat. 505; see also *Mitchell II*, 463 U.S. at 212 n.10. This Court has held that "by giving the Court of Claims jurisdiction over specified types of claims against the United States, the Tucker Act constitutes a waiver of sovereign immunity with respect to those claims." *Mitchell II*, 463 U.S. at 212 (footnote omitted).

As relevant to this case, the current versions of the Tucker Act and Little Tucker Act are largely identical to the 1887 versions. Compare 28 U.S.C. 1491(a)(1) (allowing suits "founded * * * upon" an "Act of Congress"), with Tucker Act § 1, 24 Stat. 505 (allowing suits "founded upon" a "law of Congress, except for pensions"). There are only four pertinent changes. First, original jurisdiction under the Tucker Act is now vested

in the Court of Federal Claims, the successor to the trial-court functions of the former Court of Claims. 28 U.S.C. 1491(a)(1); see *Hercules, Inc.* v. *United States*, 516 U.S. 417, 423 n.5 (1996). Second, the Little Tucker Act now grants concurrent jurisdiction for claims not exceeding $10,000 only to the district courts (rather than the district and circuit courts). 28 U.S.C. 1346(a)(2). Third, Congress has enacted an "Indian Tucker Act," which is worded and operates similarly to the Tucker Act, but applies to claims of Indian tribes. 28 U.S.C. 1505; see, *e.g.*, *Mitchell II*, 463 U.S. at 214. Finally, the Federal Circuit has inherited the appellate functions once performed by the Court of Claims, including its appellate jurisdiction over Tucker Act suits, and has exclusive jurisdiction over appeals in Little Tucker Act and Indian Tucker Act cases as well. 28 U.S.C. 1295(a)(2)-(3); *Lindahl* v. *OPM*, 470 U.S. 768, 775 (1985).

2. This Court's application of the Tucker Act and Little Tucker Act has reflected the Tucker Acts' purpose to provide a judicial remedy in cases in which the alternative congressional remedy for unlawful executive action would have been a private bill. Although the text of the Tucker Act literally encompasses, *inter alia*, "any claim against the United States founded either upon the Constitution, or any Act of Congress or any regulation of an executive department," 28 U.S.C. 1491(a)(1), the Court has recognized that "[n]ot every claim invoking the Constitution, a federal statute, or a regulation is cognizable under the Tucker Act." *Mitchell II*, 463 U.S. at 216. Congress would not, for example, have intended a Tucker Act remedy for statutes as to which another more specialized statutory judicial remedy already existed. And the Court has repeatedly held that such stat-

utes are not separately enforceable in a suit for monetary compensation under the Tucker Act (or its predecessors).

In *Nichols* v. *United States*, 74 U.S. (7 Wall.) 122 (1868), for example, the Court held that the Tucker Act's immediate predecessor did not permit suit to recover an illegally assessed import duty. The Court rejected the plaintiff's contention that his suit necessarily fell within the Court of Claims' jurisdiction over "claims founded upon any law of Congress," simply because the suit was "founded on one of the tariff acts of Congress." *Id.* at 128-129. The Court observed that another statute already provided a mechanism whereby an importing merchant could pay a duty under protest, sue the collector to recover, and be repaid from Treasury funds if successful. *Id.* at 126. "Can it be supposed," the Court asked, "that Congress, after having carefully constructed a revenue system, with ample provisions to redress wrong, intended to give to the * * * importer a further and different remedy?" *Id.* at 131. The Court answered that question in the negative. "The mischiefs that would result, if the aggrieved party could disregard the provisions in the system designed expressly for his security and benefit, and sue at any time in the Court of Claims, forbid the idea that Congress intended to allow any other modes to redress a supposed wrong in the operation of the revenue laws, than such as are particularly given by those laws." *Ibid.*

The Court's more recent cases have applied that same specific-governs-the-general principle. For instance, in *Brown* v. *General Services Administration*, 425 U.S. 820 (1976), the Court held that a plaintiff could not bring an action under the Little Tucker Act alleging

employment discrimination by a federal agency. *Id.* at 834; see Pet. Br. 26-31, *Brown*, *supra* (No. 74-768) (contending that the Little Tucker Act applied). The Court relied in part on legislative history indicating congressional intent that Title VII supply the only remedy, but also stressed the "balance, completeness, and structural integrity" of the Title VII remedy, and the principle that "a precisely drawn, detailed statute pre-empts more general remedies." 425 U.S. at 828-834.

That principle applies whether or not the existing remedial scheme actually provides recovery for the type of claim the plaintiff asserts. In *United States* v. *Erika, Inc.*, 456 U.S. 201 (1982), for example, the Court declined to recognize a Tucker Act remedy for a dispute about reimbursement under the Medicare Act. *Id.* at 208. The Court observed that the judicial review provisions in the Medicare Act itself did not authorize the sort of judicial action the plaintiff had tried to bring under the Tucker Act, and reasoned that "[i]n the context of the statute's precisely drawn provisions, this omission provides persuasive evidence that Congress deliberately intended to foreclose further review of such claims." *Ibid.* Similarly, in *United States* v. *Fausto*, 484 U.S. 439 (1988), the Court held that, because the "comprehensive and integrated" review provisions of the Civil Service Reform Act did not provide for judicial review of the plaintiff's suspension from federal employment, the plaintiff could not seek compensation for that suspension through a Back Pay Act suit against the United States under the Tucker Act. *Id*. at 454.

Most recently, in *Hinck* v. *United States*, 550 U.S. 501 (2007), the Court held that a suit to abate interest on federal taxes could be brought only in the Tax Court

under a special provision of the Internal Revenue Code, and not under the Tucker Act. *Id.* at 506-507; see Pet. Br. 16-21, *Hinck*, *supra* (No. 06-376) (contending that Tucker Act applied). The Court observed that the tax statute already "provide[d] a forum for adjudication, a limited class of potential plaintiffs, a statute of limitations, a standard of review, and authorization for judicial relief." 500 U.S. at 506. The Court reasoned that the "precisely drawn, detailed" tax statute precluded resort to a separate Tucker Act remedy. *Ibid.* (quoting *EC Term of Years Trust* v. *United States*, 550 U.S. 429, 433 (2007)).

3. The specific-governs-the-general principle applied in the cases discussed above dictates the outcome of this case. As in those cases, FCRA contains a "precisely drawn, detailed" remedial scheme that leaves no room for the Tucker Act's separate, and more general, remedial scheme.

FCRA is a consumer-protection statute intended to "ensure fair and accurate credit reporting, promote efficiency in the banking system, and protect consumer privacy." *Safeco Ins. Co. of Am.* v. *Burr*, 551 U.S. 47, 52 (2007). As a remedial mechanism, FCRA permits an injured "consumer" to bring suit against a "person" who "willfully" (15 U.S.C. 1681n) or "negligent[ly]" (15 U.S.C. 1681*o*) fails to comply with "any requirement imposed under this subchapter." See also, *e.g.*, 15 U.S.C. 1681m(h)(8)(A), 1681s-2(c) (specially excepting certain requirements from enforcement under Sections 1681n and 1681*o*). Such suits may be brought in "any appropriate United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction," within five years of the violation,

or two years of its discovery (whichever is earlier). 15 U.S.C. 1681p.

FCRA, like the tax statute at issue in *Hinck*, "provides a forum for adjudication, a limited class of potential plaintiffs, a statute of limitations, a standard of review, and authorization for judicial relief." 550 U.S. at 506. FCRA's jurisdictional provision, 15 U.S.C. 1681p, specifies both a forum for adjudication ("any appropriate United States district court, without regard to the amount in controversy" or "any other court of competent jurisdiction") and a statute of limitations (the earlier of five years after the violation or two years after its discovery by the plaintiff). The general civil-remedies provisions, 15 U.S.C. 1681n and 1681*o*, identify a class of potential plaintiffs ("consumer[s]"), a standard of review (the state of mind, namely, willfulness or negligence, necessary for liability to attach), and authorization for judicial relief (actual, statutory, and/or punitive damages, plus fees and costs). As with the tax statute at issue in *Hinck*, FCRA's specific, self-contained scheme necessarily "pre-empts more general remedies" like the Tucker Act and Little Tucker Act. 550 U.S. at 506 (citation omitted).

Because FCRA's more specific remedy supersedes the Tucker Acts, the Federal Circuit erred in believing that the Little Tucker Act could "provide[] the waiver of sovereign immunity that the trial court found lacking in the FCRA itself." Pet. App. 7a. As the cases discussed above (pp. 20-23, *supra*) demonstrate, the Tucker Act cannot be used to circumvent the constraints of an existing remedial scheme. In each of those cases, the Tucker Acts would have allowed plaintiffs to avoid some limitation in the self-contained remedial scheme. See *Hinck*,

550 U.S. at 509-510 (specific remedial statute restricted class of plaintiffs eligible to seek relief); *Fausto*, 484 U.S. at 449 (same); *Erika, Inc.*, 456 U.S. at 207-208 (specific remedial statute allowed for judicial review only in certain circumstances); *Brown*, 425 U.S. at 824 (specific remedial statute required suit within 30 days of final agency action); *Nichols*, 74 U.S. (7 Wall.) at 126 (specific remedial statute required payment of duty under protest). In each case, the Court refused to permit that result.

In *Hinck*, for example, the petitioners argued that they could rely on the substance of the specific tax statute at issue (which allowed for abuse-of-discretion review of certain agency decisions) while importing the Tucker Act for other remedial purposes. 550 U.S. at 507-508. The Court rejected that argument, explaining that "[w]e cannot accept the Hincks' invitation to isolate one feature of this 'precisely drawn, detailed statute'—the portion specifying a standard of review—and use it to permit taxpayers to circumvent the other limiting features Congress placed in the *same* statute." *Id.* at 507.

The Federal Circuit in this case engaged in the same sort of mixing and matching that the Court rejected in *Hinck*. It relied on the substance of 15 U.S.C. 1681n, which allows damages claims for willful violations of FCRA, while invoking the Tucker Act to remove any sovereign-immunity limitation on that provision's scope as applied to the United States. Pet. App. 10a-11a, 14a. The Tucker Act cannot be employed to create such hybrid suits and remedies.

4. The Federal Circuit purported to find support for its methodology in the so-called "money-mandating"

(Pet. App. 7a) test that this Court has sometimes applied to determine whether a particular federal statute creates a substantive right that would provide the basis for a Tucker Act suit. That test examines whether the statute in question "can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained." *Ibid.* (quoting *United States* v. *White Mountain Apache Tribe*, 537 U.S. 465, 472 (2003)). As *Hinck* exemplifies, however, the fair-interpretation test takes a back seat to the specific-governs-the-general principle. Although the plaintiffs in *Hinck* argued that the tax statute at issue there was "money mandating," Pet. Br. 18-19, *Hinck*, *supra* (No. 06-376), this Court resolved the case based on the specific-governs-the-general principle and did not analyze it under a "money-mandating" framework. 550 U.S. at 506-510. Compare also Resp. Br. 13-14, 19-22, *Erika, Inc.*, *supra* (No. 80-1594) (arguing for the application of that framework), with *Erika, Inc.*, 456 U.S. at 206-211 (resolving the case on the ground that the specific governs the general).

This Court has never applied that fair-interpretation framework to hold that a plaintiff may sue the United States under damages provisions contained in a statute of general applicability. Rather, circumstances in which this Court has applied that framework have involved statutes that unquestionably applied to the United States. In those cases, the plaintiff has contended that the statute (or regulation) creates a right to compensation and has invoked the Tucker Act (or Indian Tucker Act) as the mechanism for obtaining the desired monetary remedy. The Court has sometimes agreed that the Tucker Act supplied such a remedy and sometimes has not. See *United States* v. *Navajo Nation*, 556 U.S. 287,

290, 295 (2009) (no Indian Tucker Act claim under 25 U.S.C. 635(a), 638 and 30 U.S.C. 1300(e)); *United States* v. *Navajo Nation*, 537 U.S. 488, 493 (2003) (no Indian Tucker Act claim under Indian Mineral Leasing Act of 1938); *White Mountain Apache Tribe*, 537 U.S. at 468 (Indian Tucker Act claim based on unique statute providing for particular Indian property to be held in trust by United States); *Bowen* v. *Massachusetts*, 487 U.S. 879, 905 n.42 (1988) (no Tucker Act claim based on provision of Medicaid Act, 42 U.S.C. 1396b(a)); *Mitchell II*, 463 U.S. at 226 (Tucker Act claim based on certain governmental statutes and regulations concerning Indian lands); *Army & Air Force Exch.* v. *Sheehan*, 456 U.S. 728, 738-739 (1982) (no Tucker Act claim based on military-exchange employment regulations); *United States* v. *Mitchell*, 445 U.S. 535, 546 (1980) (no Tucker Act claim based on Indian General Allotment Act); *United States* v. *Testan*, 424 U.S. 392, 401-402 (1976) (no Tucker Act claim based on Classification Act). In cases in which an alternative remedial scheme was already potentially available, the Court has cited that as a reason not to allow a Tucker Act remedy. See *Sheehan*, 456 U.S. at 740-741; *Testan*, 424 U.S. at 403-404.

The case on which the Federal Circuit primarily relied—*United States* v. *White Mountain Apache Tribe*—illustrates the circumstances in which the fair-interpretation test would supply the appropriate mode of analysis. *White Mountain Apache Tribe* did not involve, as this case does, a statute of general applicability that contains its own remedial scheme. Instead, the statute in that case, which stated that the United States would hold certain land in trust for an Indian tribe, unambiguously applied only to the United States and said

nothing about remedies. 537 U.S. at 468-469. The issue in *White Mountain Apache Tribe* was whether the remedial scheme of the Indian Tucker Act provided damages if the government failed to carry out the duties imposed by the statute. *Id.* at 474-478. In other words, the question was whether any remedial scheme for damages at all should apply to the statute. It was to answer that question that the Court analyzed whether the particular Indian statute "can fairly be interpreted as mandating compensation by the Federal Government for the damage sustained." *Id.* at 472 (citation omitted).

In applying that same test to this case, the Federal Circuit picked the wrong tool for the job. The question here is not whether FCRA calls for a remedial scheme—it already has one of its own. The question instead is whether FCRA's generally applicable remedial scheme permits suits against the United States. The test drawn from *White Mountain Apache Tribe*—whether a statute that applies only to the United States can fairly be interpreted to contemplate the payment of compensation in the event of a violation—does not help to answer that question.

5. Instead, as this Court's sovereign-immunity precedents demonstrate, the question whether the United States is subject to suit under the remedial scheme of a generally applicable statute is answered by examining whether Congress has unequivocally expressed its specific intent that the particular remedial scheme it created should apply to the United States. In *Lane* v. *Peña*, for example, a plaintiff sought to sue the federal government for a violation of Section 504(a) of the Rehabilitation Act of 1973, 29 U.S.C. 794(a). This Court analyzed the Rehabilitation Act, found no unambiguous

waiver of federal sovereign immunity in the statute's text, and consequently affirmed the dismissal of the suit. 518 U.S. at 190-200. Similarly, in *United States Department of Energy* v. *Ohio*, 503 U.S. 607 (1992), a State sought to impose punitive fines on the United States for violations of the Clean Water Act. The Court found no "clear and unequivocal waiver" of the United States' sovereign immunity from such fines and therefore "rejected" the State's attempt to impose them. *Id.* at 619-620.

The outcome of these and similar cases should not change simply because a plaintiff, like respondent here, invokes the Little Tucker Act or the Tucker Act as a basis for jurisdiction. Cf. *Brown*, 425 U.S. at 833 ("It would require the suspension of disbelief to ascribe to Congress the design to allow its careful and thorough remedial scheme to be circumvented by artful pleading."). The fair-interpretation test is not, as the Federal Circuit would have it, a "less stringent" (Pet. App. 14a) substitute for the traditional rule that a comprehensive statute must itself clearly and unequivocally waive the United States' sovereign immunity to damages actions. Treating it as such conflicts with the history of the Tucker Acts and with this Court's precedents interpreting those Acts; significantly expands the jurisdiction of the Federal Circuit, and of the Court of Federal Claims and district courts, under the Tucker Acts; and exposes the United States to damages in circumstances never contemplated by Congress. This Court should reject the Federal Circuit's methodology and reaffirm that when Congress specifically addresses the issue of judicial remedies available for the violation of a particular statute, the relevant inquiry is whether Congress specifi-

cally and expressly intended that statute's remedial provisions to waive the sovereign immunity of the United States.

B. The Tucker Acts' Remedial Scheme Irreconcilably Conflicts With FCRA's

Even assuming that the Tucker Acts could, in theory, be grafted onto another statute's existing, self-contained remedial scheme, that operation would be impossible here. The Tucker Acts conflict in a number of critical ways with FCRA.

1. As a threshold matter, FCRA suits fall outside the class of claims covered by the Tucker Acts. The Tucker Acts have never permitted claims against the United States "sounding in tort." 28 U.S.C. 1346(a)(2), 1491(a)(1). As this Court explained over a century ago, that limiting language, "even if qualifying only the clause immediately preceding, and not extending to the entire grant of jurisdiction found in the section, is a clear endorsement of the frequent ruling of this court that cases sounding in tort are not cognizable in the Court of Claims." *Schillinger* v. *United States*, 155 U.S. 163, 169 (1894); see also *Basso* v. *United States*, 239 U.S. 602, 606-608 (1916) (reaffirming *Schillinger*). The Court has adhered to that interpretation, repeatedly describing the Tucker Act and Little Tucker Act as encompassing only non-tort claims. See, *e.g.*, *United States* v. *Tohono O'Odham Nation*, 131 S. Ct. 1723, 1729 (2011) (describing Tucker Act as a "general waiver of sovereign immunity for non-tort claims for monetary relief"); *United States* v. *Hohri*, 482 U.S. 64, 66 n.1 (1987) (describing Little Tucker Act and Tucker Act jurisdiction as "limited to nontort claims"); *Bigby* v. *United States*,

188 U.S. 400, 407 (1903) (observing that government liability for "the torts, misconduct, misfeasances or laches of its officers or employ[ee]s * * * is expressly excluded by" the Tucker Act).

FCRA's general civil-remedies provisions define causes of action sounding in tort, and are therefore not cognizable under the Tucker Acts. The definition of a "tort," both around the time of the Tucker Act's enactment and now, is "a legal wrong committed upon the person or property independent of contract." *Black's Law Dictionary* 1178 (1st ed. 1891); see *Black's Law Dictionary* 1626 (9th ed. 2009) (defining "tort" as "a civil wrong, other than a breach of contract, for which a remedy may be obtained, usu. in the form of damages"). FCRA's general remedial provisions, which provide damages for "willful[]" (15 U.S.C. 1681n) or "negligent" (15 U.S.C. 1681*o*) violations of the rights that FCRA guarantees to consumers, fall squarely within that definition. See *Black's Law Dictionary* 1626-1627 (9th ed. 2009) (listing "negligent tort[s]" and "willful tort[s]" as types of "tort[s]").

This Court has itself referred to tort treatises to help define the term "willfully" in FCRA's civil-remedies provisions. See *Safeco Ins. Co. of Am.*, 551 U.S. at 57, 69. And it has long been understood that "[c]ausing harm by negligence is a tort," including for Tucker Act purposes. *Bigby*, 188 U.S. at 408. FCRA claims are necessarily "independent of contract," as actionable violations of FCRA can occur without a breach of contract—or, indeed, without any contractual privity at all between the plaintiff and the defendant. See, *e.g.*, 15 U.S.C. 1681c(a) (restricting the information that a "consumer reporting agency," which provides reports to a potential lender or

employer rather than the consumer himself, may report about a consumer). In this case, for example, respondent does not (and could not) allege that the FCRA violation he asserts (including too much information on a credit-card receipt, see 15 U.S.C. 1681c(g)(1)) constitutes a breach of contract.

The Federal Circuit sought to avoid the Tucker Act's limitation to non-tort claims, at least with respect to negligence suits under Section 1681*o*, by positing a difference between "a negligence claim" (which, it conceded, would not be covered by the Tucker Act) and "a statutory claim that includes an element which is analyzed under a negligence standard" (which, in its view, would be allowable under the Tucker Act). Pet. App. 15a. Respondent has similarly suggested (Br. in Opp. 15) that the term "tort" should be defined to include only "a common-law cause of action under state law" and not "a federal-law statutory claim."

This Court, however, has drawn no distinction between statutory and nonstatutory torts in the context of the Tucker Act. In *Schillinger* v. *United States*, the Court looked to a statutory cause of action in concluding that a suit alleging the government's unlawful use of a patent fell within the Tucker Act's tort bar. 155 U.S. at 169. The Court deemed it "clear" that the suit was "one sounding in tort," reasoning in part that it was "plainly and solely an action for an infringement, and in this connection reference may be made to the statutory provision (Rev. Stat. § 4919 [1870]) of an action on the case, as the legal remedy for the recovery of damages for the infringement of a patent." *Ibid.*; see also *United States* v. *Berdan Firearms Mfg. Co.*, 156 U.S. 552, 566 (1895) ("[A] mere infringement, which is only a tort, creates no

cause of action in the court of claims."). If, as the Federal Circuit and respondent have suggested, a statutory cause of action cannot be a "tort" for purposes of the Tucker Act's bar, then the existence of the patent-infringement statute would have undercut, rather than supported, the Court's conclusion in *Schillinger* that the claim at issue sounded in tort.

When Congress has exposed the United States to tort liability, it has done so separately from the Tucker Act. For example, it responded to *Schillinger* (and similar cases declining to permit patent-infringement torts under the Tucker Act) by passing a special statute specifically waiving the United States' immunity with respect to patent-infringement claims. *Crozier* v. *Fried. Krupp Aktiengesell-schaft*, 224 U.S. 290, 303-304 (1912). More sweepingly, Congress in 1946 enacted the Federal Tort Claims Act (FTCA), ch. 753, Tit. IV, 60 Stat. 842, which waives the United States' sovereign immunity for claims based on certain torts committed by federal officers and employees. But the FTCA provides for liability only when the United States, if a private person, would be liable under *state* law. 28 U.S.C. 1346(b)(1). Torts based on asserted violations of federal statutes are not covered. See, *e.g.*, *FDIC* v. *Meyer*, 510 U.S. 471, 477-478 (1994). That limitation cannot be circumvented by resort to a cramped and ahistorical interpretation of the Tucker Act's exclusion of cases "sounding in tort."

2. A further obstacle to applying the Tucker Act to FCRA is that FCRA's own jurisdictional provision, 15 U.S.C. 1681p, directs plaintiffs to different courts than the Tucker Act does. Section 1681p specifically provides that "[a]n action to enforce any liability created under this subchapter may be brought in any appropriate

United States district court, without regard to the amount in controversy, or in any other court of competent jurisdiction." Under the plain language of the statute, any action under FCRA, regardless of the amount sought, may be brought in district court.

The Tucker Acts, in contrast, only permit claims up to $10,000 to be brought in district court. The general Tucker Act provides that "[t]he United States Court of Federal Claims shall have jurisdiction" over the types of damages claims it covers. 28 U.S.C. 1491(a)(1). The Little Tucker Act allows those same types of claims also to be brought in district court, but only when the plaintiff seeks no more than $10,000. 28 U.S.C. 1346(a)(2). For a claim of more than $10,000, the Court of Federal Claims has exclusive jurisdiction.

The conflicting jurisdictional directives cannot be reconciled. A plaintiff who wants to bring a FCRA claim for more than $10,000 against the United States cannot simultaneously be authorized (by Section 1681p) to bring suit in district court yet be required (by the Tucker Act) to bring suit only in the Court of Federal Claims. Rather, the fundamental divergence between FCRA's jurisdiction provision (which establishes district courts as the primary forum for suit) and the Tucker Act's (which establishes the Court of Federal Claims as the primary forum for suit) demonstrates that FCRA is not the sort of "Act of Congress" as to which Congress could have intended the Tucker Act to apply.

The jurisdictional mismatch between the Tucker Act and FCRA is fatal to respondent's claim, even though his particular claim (and those of the other classmembers he purports to represent) happens to be under $10,000. For two independent reasons, the Little Tuc-

ker Act's grant of "concurrent" jurisdiction to district courts for Tucker Act claims up to $10,000, 28 U.S.C. 1346(a)(2), cannot be interpreted to permit FCRA claims below that threshold. First, the Little Tucker Act's substantive scope is identical to the general Tucker Act's. Compare *ibid.*, with 28 U.S.C. 1491(a)(1). It does not encompass any sorts of claims (such as FCRA claims) that could not be brought under the general Tucker Act. *United States* v. *Sherwood*, 312 U.S. 584, 590-591 (1941). Thus, because the jurisdictional conflict forecloses FCRA suits under the general Tucker Act, it forecloses them under the Little Tucker Act as well. Second, a district court exercising Little Tucker Act jurisdiction is not sitting as a district court in the usual sense. Instead, as this Court has explained, the Little Tucker Act does "no more than authorize the District Court to sit as a court of claims." *Id.* at 591. FCRA, in contrast, anticipates that district courts hearing FCRA suits will be sitting as district courts. See 15 U.S.C. 1681p.

The Federal Circuit believed that the jurisdictional provisions could be harmonized simply by considering the Court of Federal Claims to be a "court of competent jurisdiction" in which Section 1681p would authorize suit. Pet. App. 12a. But that does not solve the problem. Section 1681p provides that a plaintiff can file any FCRA claim in district court "*or* in any *other* court of competent jurisdiction" (emphases added). It therefore presumes that the district court is itself *always* competent to adjudicate a FCRA claim. It does not contemplate that other, unspecified federal courts, such as the Court of Federal Claims, might award damages that are unavailable in district court.

The Federal Circuit's proposal moreover suffers from "some circularity of reasoning." *Fausto*, 484 U.S. at 454. It tries to assume away a conflict between the different jurisdictional provisions simply by presupposing that Congress would have deemed the Court of Federal Claims a "competent" court to resolve FCRA suits. See *ibid.* (noting circularity in Court of Claims' reasoning that it was an "appropriate authority" to entertain suits under the Back Pay Act "because it had jurisdiction to award backpay"). There is no evidence that Congress held such a view. Instead, the more natural interpretation of the reference to "any other court of competent jurisdiction" is that it merely ensures that FCRA claims may be brought in state court as well as federal district court. See *Bank One Chi. N.A.* v. *Midwest Bank & Trust Co.*, 516 U.S. 264, 268 (1996) (describing similarly worded provision as "provid[ing] for concurrent federal-court and state-court jurisdiction"). It is, moreover, highly unlikely that Congress had federal-government-specific claims courts in mind when it first enacted the phrase in the original 1970 version of FCRA, as not even the Federal Circuit has suggested the 1970 version imposed liability on the United States. Fair Credit Reporting Act (1970 Act), Pub. L. No. 91-508, Tit. VI, § 618, 84 Stat. 1134; see Pet. App. 14a; pp. 41-43, *infra*.

Respondent, relying on a vacated Seventh Circuit decision, has suggested a different, but equally incorrect, way to resolve the conflict between Section 1681p and the Tucker Act. See Br. in Opp. 7-8 (citing *Talley* v. *United States Dep't of Agric.*, 595 F.3d 754 (2010), vacated on reh'g en banc, No. 09-2123, 2010 WL 5887796 (7th Cir. Oct. 1, 2010)). The Seventh Circuit panel, un-

like the Federal Circuit here, recognized that under Section 1681p, any FCRA action must be capable of adjudication by a district court. *Talley*, 595 F.3d at 759. It reasoned, however, that Section 1681p's grant of jurisdiction to district courts "without regard to the amount in controversy" would "supersed[e] the [Tucker Act's] allocation of large demands to the Court of Federal Claims," such that "all suits under [FCRA] may be litigated in a district court, while the Tucker Act remains available as a waiver of sovereign immunity." *Ibid.*

That reasoning is flawed. It violates the basic principle that the Tucker Act "is a package deal—the waiver of sovereign immunity is coextensive with the jurisdiction the statute confers." *United States* v. *Park Place Assocs., Ltd.*, 563 F.3d 907, 927 (9th Cir. 2009); see also *Presidential Gardens Assocs.* v. *United States*, 175 F.3d 132, 141 (2d Cir. 1999). As this Court has explained, the Tucker Act is "simply [a] jurisdictional provision[]" (allowing the Court of Federal Claims to hear certain suits) that also "operate[s] to waive sovereign immunity." *United States* v. *Navajo Nation*, 556 U.S. at 290; see *Mitchell II*, 463 U.S. at 212-216. It is not a free-floating waiver that plaintiffs may invoke in cases in which a district court has jurisdiction under some other statute such as Section 1681p. Because FCRA's own jurisdictional grant cannot be squared with the Tucker Act, the Tucker Act's sovereign-immunity waiver cannot be applied to FCRA.

3. FCRA and the Tucker Act conflict in other relevant respects as well. For one thing, a plaintiff suing for a willful violation of FCRA may seek punitive damages. 15 U.S.C. 1681n(a)(2). But, as the Federal Circuit acknowledged, the Tucker Act only allows awards of com-

pensatory damages. Pet. App. 14a (citing *Brown* v. *United States*, 105 F.3d 621, 623 (Fed. Cir. 1997)). The Federal Circuit tried to sidestep this problem by declaring that it would recognize only those FCRA claims that (as is the case with the complaint here) do not seek punitive damages. *Id.* at 15a; see *id.* at 96a. But the difference in the types of remedies available under FCRA and the Tucker Act simply underscores why Congress could not have intended the Tucker Act to be a basis for asserting FCRA damages claims against the United States.

Differences in the two remedial schemes' limitations periods further illustrate the point. FCRA claims are cabined by a distinct statute of limitations, and must be asserted no later than two years after the date of the discovery of the violation that is the basis of liability, or five years after the date on which the violation occurs, whichever is earlier. 15 U.S.C. 1681p(1) and (2). Tucker Act and Little Tucker Act suits, in contrast, are governed by a six-year statute of limitations. See 28 U.S.C. 2401(a), 2501. This Court has viewed differences in limitations periods as an indication that a more specific remedial scheme should govern over the general. See, *e.g.*, *EC Term of Years Trust*, 550 U.S. at 433-434 (rejecting reliance on more general remedial provision that would allow plaintiffs to "effortlessly evade" more specific statute's limitations period); *Brown*, 425 U.S. at 833 (similar).

The Federal Circuit dismissed this concern by noting that "different statutes of limitations are common in federal practice," and stating that "the rule is that the more specific limit prevails, not that a short limit cancels out any substantive statute." Pet. App. 16a (internal

quotation marks and citation omitted). In support of the latter proposition, the Federal Circuit and respondent have cited *United States* v. *Clintwood Elkhorn Mining Co.*, 553 U.S. 1 (2008), and *United States* v. *A.S. Kreider Co.*, 313 U.S. 443 (1941). See Pet. App. 16a; Br. in Opp. 15. Those decisions undermine, rather than support, the Federal Circuit's conclusion.

Both cases involved the application of a particularized five-year statute of limitations for tax-refund actions. *Clintwood Elkhorn Mining Co.*, 553 U.S. at 4; *A.S. Kreider Co.*, 313 U.S. at 447. In each case, the Court applied the specific-governs-the-general principle to hold that the more specific tax-refund limitations period superseded a more general default six-year limitations period for suits against the United States. *Clintwood Elkhorn Mining Co.*, 553 U.S. at 4; *A.S. Kreider Co.*, 313 U.S. at 447. In neither case did the Court directly address whether the Tucker Act can provide the basis for bringing suit against the United States under a statute that not only supplies a statute of limitations, but also all the other elements necessary to create a complete and self-contained remedy. See *Clintwood Elkhorn Mining Co.*, 553 U.S. at 9 (declining to decide whether respondent's suit arose directly under the Tucker Act). But the logic of both decisions indicates that the more specific remedial scheme would supersede a more general remedial scheme altogether. They thus reinforce the long line of cases already discussed (see pp. 20-23, *supra*) that expressly so hold.

That oft-recognized specific-governs-the-general principle precludes a court from superimposing the Tucker Act atop an existing remedial scheme, and it certainly precludes the mixed Tucker Act-FCRA scheme

created by the Federal Circuit in this case. Congress could not have intended a scheme that incorporates the Tucker Act's sovereign-immunity waiver while dispensing with its bar against tort suits and its statute of limitations, and incorporates FCRA's liability provisions while dispensing with its jurisdictional directives and its provision for punitive damages. That judicially created hybrid is at odds with both statutes, is supported by neither, and has no legitimate legal basis.

C. FCRA Does Not Demonstrate Congressional Intent To Expose The United States To Damages Under The Tucker Act

Even assuming away the conflicts between the remedial schemes, and accepting for argument's sake the premise that the Tucker Act might apply, permitting FCRA claims under the Tucker Act would contravene congressional intent. As the Federal Circuit recognized, a Tucker Act suit requires, at a minimum, that the relevant substantive statute can "fairly be interpreted as mandating compensation by the Federal Government for the damage sustained." Pet. App. 7a (quoting *White Mountain Apache Tribe*, 537 U.S. at 472). And contrary to the Federal Circuit's conclusion, FCRA's general civil-remedies provisions cannot fairly be interpreted as evidencing congressional intent to expose the United States to damages liability.

The Federal Circuit's imposition of such liability was premised entirely on the statutory definition of "person" in 15 U.S.C. 1681a(b) as including "any * * * government or governmental subdivision or agency." Pet. App. 10a-11a. The United States acknowledged in the court of appeals that, even though the Section 1681a(b) defini-

tion does not specifically mention the United States, the term "person" in some FCRA contexts could include the United States. *Ibid.* But Congress's intent to include the United States varied depending on the context of the particular section in which the term was used. See, *e.g.*, *Robinson* v. *Shell Oil Co.*, 519 U.S. 337, 344-345 (1997) (interpretation of defined term can depend on context); see also *Roberts* v. *Sea-Land Servs., Inc.*, No. 10-1399, slip op. 13 (Mar. 20, 2012) ("[T]he presumption that 'identical words used in different parts of the same act are intended to have the same meaning . . . readily yields whenever there is such variation in the connection in which the words are used as reasonably to warrant the conclusion that they were employed in different parts of the act with different intent.") (quoting *General Dynamics Land Sys., Inc.* v. *Cline*, 540 U.S. 581, 595 (2004)). And the history and structure of FCRA demonstrate that Congress never intended the term "person" to include the United States in the context of civil-remedies provisions subjecting a "person" to damages liability.

1. When Congress first enacted Section 1681a(b)'s definition of "person," in the original 1970 version of FCRA, the definition did not directly impose liability on federal, state, or local governments. 1970 Act § 603, 84 Stat. 1128. As originally enacted, FCRA principally regulated "consumer reporting agencies"—entities that aggregate and disseminate personal information about consumers, which third parties use to determine a consumer's eligibility for credit, insurance, or employment, or for other enumerated purposes. § 603(f), 84 Stat. 1129 (defining "consumer reporting agency"); §§ 604-605, 607-614, 84 Stat. 1129-1133 (imposing substantive requirements on consumer reporting agencies); see 15

U.S.C. 1681a(f) (current statutory definition of "consumer reporting agency"). The only requirements imposed directly upon "person[s]" related to the procurement of investigative consumer reports. 1970 Act § 606, 84 Stat. 1130; see also § 615, 84 Stat. 1133 (suggesting that a "person" might also be subject to additional requirements if he used a consumer report). Consistent with its focus on consumer reporting agencies, the damages provisions of the 1970 Act applied not to "persons" but to consumer reporting agencies and "user[s] of information." §§ 616-617, 84 Stat. 1134. The choice of language in defining the term "person" therefore did not reflect an expectation that FCRA could be the basis for a damages claim against the federal government (or a state or local government).

Nor did Congress intend that the United States always be considered a "person" for every FCRA purpose, irrespective of context. As this Court has recognized, Congress may not want a statutory definition of "person" to apply in the same way across all provisions of a statute. In *United States* v. *Public Utilities Commission*, 345 U.S. 295 (1953), the Court considered the meaning of the phrase "sale of electric energy to any person for resale," as it appeared in Section 201 of the Federal Power Act. *Id.* at 312. The Act specifically defined "person" to include only "an individual or a corporation," *id.* at 312 n.20 (citation omitted), and it expressly excluded "'municipalities'" from the definition of "corporation," *id.* at 312 n.21 (citation omitted). The Court nevertheless concluded that Section 201 covered sales of energy to a municipality, as well as to the United States Navy. *Id.* at 316. The Court reasoned that, notwithstanding the limitations on the Act's defini-

tion of a "person," this broad interpretation was more consistent with the statutory scheme as a whole, the Act's legislative history, and prior administrative and judicial interpretations. *Id.* at 312-316; see also *Farmers Reservoir & Irrigation Co.* v. *McComb*, 337 U.S. 755, 764 (1949) ("[W]e have * * * consistently refused to pervert the process of interpretation by mechanically applying definitions in unintended contexts.").

The original 1970 version of FCRA exhibited a similar congressional intent that the term "person" be interpreted in the context of the provision in which it appeared. The 1970 Act included a provision, still in FCRA today, subjecting "[a]ny person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses" to a fine of up to $5000 or imprisonment for up to one year. § 619, 84 Stat. 1134 (15 U.S.C. 1681q). Congress could not have intended the term "person" in the context of that criminal provision to include the United States. (Nor, for that matter, should Congress be understood to have intended to subject States or municipalities to criminal liability in the absence of some more specific expression of intent.) Rather, Congress's use of the term "person" in that provision necessarily reflects an intent that the term "person" would *not* always be given its broadest possible statutory definition.

2. Congress displayed that same intent 26 years later, when it amended FCRA in the Consumer Credit Reporting Reform Act of 1996 (1996 Act). Pub. L. No. 104-208, §§ 2401 *et seq.*, 110 Stat. 3009-426. The 1996 Act significantly expanded the scope of FCRA beyond its original focus on consumer reporting agencies to extensively regulate persons who provide information

to reporting agencies and persons who make use of credit reports. The 1996 Act, for example, prohibited persons from procuring certain consumer information for employment purposes except in enumerated circumstances and restricted the ways in which employers may use consumer credit information in taking employment actions. §§ 2403, 2411, 110 Stat. 3009-431, 3009-443 to 3009-444 (15 U.S.C. 1681b(b)(2)-(3), 1681m(a)). The 1996 Act also modified the civil-remedies provisions to reflect the expanded scope of the statute. In particular, it amended those provisions to apply to "person[s]" rather than just to consumer reporting agencies and users of information. See § 2412(a) and (d), 110 Stat. 3009-446.

The 1996 amendments, like the 1970 Act, demonstrate that Congress did not intend the meaning of "person" to be the same across every provision. In addition to amending the civil-remedies provisions to apply to "person[s]," the 1996 amendments also added provisions authorizing FCRA enforcement suits to be brought by the Federal Trade Commission and the States against "person[s]" in certain circumstances. 1996 Act §§ 2417, 2418, 110 Stat. 3009-451 to 3009-452. As with the preexisting criminal provision, Congress, without expressly so providing, cannot be understood to have intended the United States to be a "person" subject to an enforcement action by a State or an agency of the federal government itself.

3. Nor is there any indication that Congress intended that the United States be a "person" for purposes of the newly-expanded civil-remedies provisions. Nothing in the legislative history of the 1996 Act suggests that Congress believed it was exposing the United States to

significant new liabilities. The House Report on an early version of the 1996 legislation noted only that extension of the liability provisions to "any person who" fails to comply with FCRA's requirements would bring within the scope of the provisions "persons who furnish information to consumer reporting agencies, such as banks and retailers." H.R. Rep. No. 486, 103d Cong., 2d. Sess. 49 (1994); see also S. Rep. No. 185, 104th Cong., 1st. Sess. 48-49 (1995).

This Court has previously refused to interpret amendments to an existing scheme as allowing new damages actions against a sovereign when neither the text nor history of the amendments themselves affirmatively demonstrate that Congress intended that result. In *Employees of the Department of Public Health & Welfare* v. *Department of Public Health & Welfare*, 411 U.S. 279 (1973), the Court addressed the effect of a 1966 amendment to the Fair Labor Standards Act that added state hospitals to the statutory definition of "employer." *Id.* at 282-283. The Court recognized that, in combination with the preexisting statutory provision subjecting an "employer" to monetary liability, the "literal language" of the amended Act permitted damages suits against States. *Id.* at 283. And the Court additionally believed that Congress might have the constitutional authority to abrogate state sovereign immunity in that fashion. *Id.* at 284. But the Court nevertheless concluded that the Act should not be construed to do so. *Id.* at 285-287. The Court reasoned that "Congress, acting responsibly, would not be presumed to take such action silently"; that there was "not a word in the history of the 1966 amendments to indicate a purpose of Congress" to subject States to suit in federal court; and that it would

"be surprising * * * to infer that Congress deprived [a State] of [its] constitutional immunity without changing the old [liability provision] or indicating in some way by clear language that the constitutional immunity was swept away." *Id.* at 284-285; see also *Library of Congress* v. *Shaw*, 478 U.S. 310, 319 (1986) (declining to construe amendment to Title VII of the Civil Rights Act of 1964 to subject the federal government to liability for interest).

The Court should similarly decline in this case to conclude that the 1996 FCRA amendments exposed the United States to potentially massive damages liability, in the absence of evidence that Congress actually considered and intended the interaction between statutory provisions enacted decades apart to have that result. The ordinary meaning of the term "person," particularly in the context of a provision creating damages liability, would not include the United States. See *International Primate Prot. League* v. *Administrators of Tulane Educ. Fund*, 500 U.S. 72, 82 (1991) ("[I]n common usage, the term 'person' does not include the sovereign."); see, *e.g.*, *United States* v. *United Mine Workers of Am.*, 330 U.S. 258, 275 (1947) (same); see also, *e.g.*, *United States Postal Serv.* v. *Flamingo Indus. (USA) Ltd.*, 540 U.S. 736, 744-745 (2004) (discussing meaning of "person" in the Sherman Act); 1 U.S.C. 1 (default statutory definition of "person," which does not expressly include the United States). Several factors reinforce the conclusion that Congress would have had that typical meaning—which does not include the United States—in mind when it amended FCRA's civil-remedies provisions.

First, if the term "person" in the civil-remedies provisions were construed so broadly as to encompass "any

* * * government," including the United States, it would also necessarily include States. But Congress amended FCRA's civil-remedies provision to allow suits against "any person" only months after this Court's decision in *Seminole Tribe* v. *Florida*, 517 U.S. 44, 47, 72 (1996), which held that Congress lacked authority under the Commerce Clause to abrogate state sovereign immunity to private damages actions. It would have been extraordinary if Congress had responded to *Seminole Tribe* with an attempt to subject States to both compensatory and punitive damages under FCRA; there is no indication that it sought to do so; and courts should avoid interpreting statutes to create potential constitutional infirmities. See, *e.g.*, *Clark* v. *Martinez*, 543 U.S. 371, 381 (2005) (noting the "reasonable presumption that Congress did not intend [an interpretation] which raises serious constitutional doubt").

Second, Congress had demonstrated earlier in 1996 that when it wanted to allow damages actions against the United States under FCRA, it could and would do so expressly. A previous amendment to FCRA in 1996 had empowered the Federal Bureau of Investigation to obtain and use consumer information from consumer reporting agencies in limited circumstances for national security purposes. See Intelligence Authorization Act for Fiscal Year 1996, Pub. L. No. 104-93, Tit. VI, § 601(a), 109 Stat. 974 (codified as amended at 15 U.S.C. 1681u). As part of that amendment, Congress provided that "[a]ny agency or department of the United States obtaining or disclosing any consumer reports, records, or information contained therein in violation of this section is liable to the consumer" for statutory, actual, and (in certain circumstances) punitive damages. § 601, 109

Stat. 976-977 (15 U.S.C. 1681u(i)). Having so recently employed such explicit language in exposing the federal government to damages under FCRA, Congress can be expected to have done the same if it had intended to expose the federal government to damages liability in its amendments to FCRA's general civil-remedies provisions later that same year.

Third, Congress is unlikely to have intended the 1996 FCRA amendments to disrupt the carefully calibrated remedies available against the federal government under the Privacy Act of 1974. The Privacy Act, codified in relevant part at 5 U.S.C. 552a, comprehensively regulates Executive Branch agencies in their collection, maintenance, use, and dissemination of "records" containing information about an "individual," when those records are maintained as part of a "system of records." 5 U.S.C. 552a(a)(1)-(5) and (b). The Privacy Act authorizes a limited class of private civil actions to enforce its terms. 5 U.S.C. 552a(g); see *Cooper*, slip op. 18 (noting Congress's intent, in enacting the Privacy Act, "to cabin relief, not to maximize it").

If the Tucker Act permitted suits against the United States pursuant to FCRA's civil-remedies provisions, 15 U.S.C. 1681n and 1681*o*, then federal-agency activity already covered by the Privacy Act could expose the United States to far more liability than the Privacy Act contemplates. That could happen, for example, in a circumstance where a federal agency has disclosed to a consumer reporting agency an overdue debt that the federal agency is trying to collect—a type of disclosure that a federal agency is required by law to make under certain circumstances, see 31 U.S.C. 3711(e). If the disclosed record of the overdue debt contains an error, the

Privacy Act provides procedures whereby the individual to whom the record pertains can correct the record, see 5 U.S.C. 552a(d), and would require the federal agency to inform the consumer reporting agency about any correction, see 5 U.S.C. 552a(c)(4). FCRA contains analogous (but not identical) correction procedures and a notice requirement when there has been an error in a disclosure made by a "person" to a consumer reporting agency. See 15 U.S.C. 1681s-2(b).

The remedies for FCRA violations in that situation would be much broader than the remedies for the corresponding Privacy Act violations. The Privacy Act would authorize injunctive relief, but no money damages, for failure to correct the record, 5 U.S.C. 552a(g)(1)(B), and compensatory relief if "actual damages" resulted from an "intentional or willful" failure to update the consumer reporting agency about a correction, 5 U.S.C. 552a(g)(4); *Doe* v. *Chao*, 540 U.S. 614, 624-626 (2004). FCRA's civil-remedies provisions, on the other hand, would permit a damages suit not only for a failure to update the consumer reporting agency but also for a failure to correct the record, 15 U.S.C. 1681n, 1681*o*, 1681s-2(b); would permit either type of suit to be premised merely on negligence, without any need to prove intentional or willful conduct, 15 U.S.C. 1681*o*; and, in the case of a willful violation, would permit automatic statutory damages, without requiring any showing that the plaintiff sustained "actual damages." 15 U.S.C. 1681n(a)(1)(A).

There is no sound reason to believe that Congress intended the 1996 FCRA amendments to so dramatically expand the monetary liability of the United States for activities already within the ambit of the Privacy Act. The extent of liability under the Privacy Act was the

subject of extensive congressional debate: Congress considered and rejected amendments that would have allowed recovery for negligent violations or the award of punitive damages. See *Fitzpatrick* v. *IRS*, 665 F.2d 327, 330 (11th Cir. 1982), abrogated in part on other grounds by *Doe*, 540 U.S. 614. Multiple Members of Congress expressed concern about the harmful effect that such amendments would have on the federal fisc. See, *e.g.*, 120 Cong. Rec. 36,659-36,660 (1974) (Reps. McCloskey, Erlenborn, and Butler); *id.* at 36,956 (Rep. Butler). It is extremely unlikely that Congress, without even debating the matter, would have undermined the carefully crafted compromise it reached in the Privacy Act context by allowing far more substantial damages suits against the United States under FCRA.

Fourth, even putting the Privacy Act to one side, it remains telling that nowhere in the legislative history did any Member of Congress suggest or indicate any awareness that the 1996 FCRA amendments would expose the United States to liability. Cf. *Church of Scientology* v. *IRS*, 484 U.S. 9, 17-18 (1987) ("All in all, we think this is a case where common sense suggests, by analogy to Sir Arthur Conan Doyle's 'dog that didn't bark,' that an amendment having the effect [respondent] ascribes to it would have been differently described by its sponsor, and not nearly as readily accepted by the floor manager of the bill."); see also *Koons Buick Pontiac GMC, Inc.* v. *Nigh*, 543 U.S. 50, 63 (2004). Because the federal government pervasively engages in the kinds of transactions covered by FCRA, and both uses and disseminates large quantities of the type of consumer-credit information FCRA regulates, the practical impact of imposing such liability would potentially be significant

and would be expected to have generated at least some congressional comment.

The claim at issue here is illustrative. Respondent's suit arises from a single credit-card transaction in which he paid a $350 federal-court filing fee using pay.gov, a federal-government website for processing online payments. Pet. App. 85a-86a. Respondent alleges that the government violated 15 U.S.C. 1681c(g)(1) by transmitting to his computer an electronic transaction receipt that contained the expiration date of his credit card. Pet. App. 86a-87a. On the basis of that single transaction, he seeks automatic statutory damages on behalf of all individuals who received such receipts on or after June 4, 2008, *id.* at 92a, a claim that potentially encompasses well over a million similar transactions. This Office is informed by the Department of the Treasury that 54 Executive departments, independent agencies, government corporations, and judicial- and legislative-branch entities together generate over 600 separate credit-card-transaction cash flows on pay.gov. The Department of Treasury is additionally aware of more than 400 credit-card transaction cash flows into the United States Treasury using systems other than pay.gov, an unknown number of which might be subject to similar claims.

Although the substantive FCRA provision on which respondent relies was enacted after the 1996 FCRA amendments (see Fair and Accurate Credit Transactions Act of 2003, Pub. L. No. 108-159, Tit. I, § 113, 117 Stat. 1959), the 1996 version of the statute contained provisions that could likewise give rise to substantial damages claims against the United States. For example, as discussed above (see pp. 48-49, *supra*), FCRA

requires "person[s]" who disclose information (*e.g.*, about an overdue debt) to consumer reporting agencies to conduct a timely investigation, and correct their disclosures, when the consumer disputes the information's accuracy to a consumer reporting agency. 15 U.S.C. 1681s-2(b); see 1996 Act § 2413, 110 Stat. 3009-448; see also *Talley* v. *United States Dep't of Agric.*, No. 07 C 0705, 2009 WL 303134 (N.D. Ill. Feb. 4, 2009) (awarding emotional-distress damages based on government's negligent violation of 15 U.S.C. 1681s-2), aff'd by equally divided court, No. 09-2123, 2010 WL 5887796 (7th Cir. Oct. 1, 2010).

The 1996 version of FCRA also regulated (and the current version still does regulate) a wide range of conduct by "person[s]" who use information obtained from consumer reporting agencies. In particular, it regulates the use by a "person" of a "consumer report," expansively defined to include "any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living," when collected for the purpose of evaluating a consumer's fitness for certain loans, suitability for employment, or other enumerated purposes. 15 U.S.C. 1681a(d)(1). FCRA broadly provides, for example, that a "person shall not use or obtain a consumer report for any purpose" except as provided by FCRA. 15 U.S.C. 1681b(f); see 1996 Act § 2403, 110 Stat. 3009-433. FCRA additionally places conditions on the use of consumer reports by "person[s]" to take "adverse action" against employees and potential employees. 15 U.S.C. 1681b(b)(3); see 1996 Act § 2403, 110 Stat. 3009-431; see also 15 U.S.C.

1681a(k)(1)(B)(ii) (defining "adverse action"); 15 U.S.C. 1681b(b)(4) (exception to Section 1681b(b)(3), originally added in 1997, for certain cases involving national security).

Liability for federal agencies' violations of these provisions could make the United States a ubiquitous FCRA defendant. To begin with, the federal government is the Nation's largest employer. See U.S. Dep't of Labor, Bureau of Labor Statistics, *Current Employment Statistics Survey (National),* http://data.bls.gov/cgi-bin/surveymost?ce. In 1996, the federal government had over 2.7 million civilian executive employees (plus over 1.5 million military personnel and over 60,000 legislative and judicial employees). United States Office of Personnel Mgmt., *Total Government Employment Since 1962*, http://www.opm.gov/feddata/HistoricalTables/TotalGovernmentSince1962.asp. The numbers for more recent years are similar. *Ibid.* And the federal government often uses consumer reports for employment purposes (for example, to check the credit history of job applicants). See, *e.g.*, 15 U.S.C. 1681k(b).

The federal government is also the Nation's largest lender and creditor. Around the time that the pertinent FCRA amendments were enacted, the federal government reported nearly $1.2 trillion in outstanding guaranteed loans and non-tax receivables. Department of the Treasury, Financial Mgmt. Serv., *Annual Report to the Congress: U.S. Government Debt Collection Activities of Fed. Agencies* 7, http://www.fms.treas.gov/news/reports/debt99.pdf. In 1996, it had over $51 billion of delinquent (*i.e.*, overdue) debt owing to it. *Ibid.* By 2010, the amount of delinquent debt had grown to over $100 billion. *Fiscal Year 2010 Report to the Congress:*

U.S. Government Receivables and Debt Collection Activities of Fed. Agencies 4 (Mar. 2011), http://www.fms.treas.gov/news/reports/debt10.pdf. Delinquencies (*i.e.*, late or missed payments) can occur with some frequency in debt owed to the United States, because many "[f]ederal loan programs are authorized when private sector credit is unavailable or inadequate," resulting in the government's accumulation of "relatively high risk" debt. *Id.* at 5. Federal agencies have been authorized since 1983, and required since 1996, to report such delinquent accounts to consumer reporting agencies in certain circumstances. Act of Jan. 12, 1983, Pub. L. No. 97-452, § 1, 96 Stat. 2470; Debt Collection Improvement Act of 1996, Pub. L. No. 104-134, § 31001(k), 110 Stat. 1321-365.

It is highly improbable that Congress, without any affirmative indication or debate at all, would have exposed the federal Treasury to a multiplicity of FCRA suits arising out of commonplace governmental activities such as employment and lending. The concern that courts might mistakenly impose burdens on the public fisc that Congress did not actually contemplate provides one of the principal reasons for insisting on a clear and unequivocal congressional waiver of sovereign immunity. See *OPM* v. *Richmond*, 496 U.S. 414, 428, 432 (1990); see also *INS* v. *St. Cyr*, 533 U.S. 289, 299 n.10 (2001) ("In traditionally sensitive areas, . . . the requirement of [a] clear statement assures that the legislature has in fact faced, and intended to bring into issue, the critical matters involved in the judicial decision.") (citations omitted). Even when the Tucker Act is asserted to provide the necessary waiver, "this Court has not lightly inferred the United States' consent to suit."

Mitchell II, 463 U.S. at 218. In light of all the evidence that Congress did not intend any such consent with respect to FCRA, the Federal Circuit's decision here would be insupportable even assuming the Tucker Act's framework applied. *A fortiori*, FCRA does not contain the clear waiver of sovereign immunity required to subject the United States to suit for damages under a statute of general applicability.

* * * * *

Because neither the Tucker Act nor Little Tucker Act provides a basis for FCRA claims against the United States, the Federal Circuit erred in concluding that it, rather than the Seventh Circuit, had jurisdiction over respondent's appeal. Compare 28 U.S.C. 1291 (regional circuit jurisdiction over final decisions of district courts), with 28 U.S.C. 1295(a)(2) (Federal Circuit jurisdiction only over a limited class of appeals from district courts, including Little Tucker Act claims). The Federal Circuit's error on that "threshold" question of appellate jurisdiction, *Goodyear Atomic Corp.* v. *Miller*, 486 U.S. 174, 178 (1988), requires that its decision be vacated and the appeal transferred to the Seventh Circuit. The Seventh Circuit can then address (if necessary) whether respondent has standing to bring his class-action claim, see Cert. Reply Br. 10-11, and (if necessary) whether FCRA's remedial scheme itself, separate and apart from the Tucker Acts, contains an "unequivocal expression" of Congress's intent to waive the protections of sovereign immunity, *United States* v. *Nordic Village, Inc.*, 503 U.S. 30, 37 (1992).

CONCLUSION

The judgment of the court of appeals should be vacated and the case should be remanded with instructions that it be transferred to the United States Court of Appeals for the Seventh Circuit.

Respectfully submitted.

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APPENDIX

1. 15 U.S.C. 1681a provides in pertinent part:

Definitions; rules of construction

(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this subchapter.

(b) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term "consumer" means an individual.

(d) CONSUMER REPORT.—

(1) IN GENERAL.—The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for—

(A) credit or insurance to be used primarily for personal, family, or household purposes;

(B) employment purposes; or

(C) any other purpose authorized under section 1681b of this title.

(2) EXCLUSIONS.—Except as provided in paragraph (3), the term "consumer report" does not include—

(A) subject to section 1681s-3 of this title, any—

(i) report containing information solely as to transactions or experiences between the consumer and the person making the report;

(ii) communication of that information among persons related by common ownership or affiliated by corporate control; or

(iii) communication of other information among persons related by common ownership or affiliated by corporate control, if it is clearly and conspicuously disclosed to the consumer that the information may be communicated among such persons and the consumer is given the opportunity, before the time that the information is initially communicated, to direct that such information not be communicated among such persons;

(B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device;

(C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his or her decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom the request was made, and such person makes the disclosures to the consumer required under section 1681m of this title; or

(D) a communication described in subsection (*o*) or (x) of this section.

(3) RESTRICTION ON SHARING OF MEDICAL INFORMATION.—Except for information or any communication of information disclosed as provided in section 1681b(g)(3) of this title, the exclusions in paragraph (2) shall not apply with respect to information disclosed to any person related by common ownership or affiliated by corporate control, if the information is—

(A) medical information;

(B) an individualized list or description based on the payment transactions of the consumer for medical products or services; or

(C) an aggregate list of identified consumers based on payment transactions for medical products or services.

(e) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

* * * * *

2. 15 U.S.C. 1681b (2006 & Supp. IV 2010) provides in pertinent part:

Permissible purposes of consumer reports

* * * * *

(b) Conditions for furnishing and using consumer reports for employment purposes

* * * * *

(3) Conditions on use for adverse actions

(A) In general

Except as provided in subparagraph (B), in using a consumer report for employment purposes, before taking any adverse action based in whole or in part on the report, the person intending to take such adverse action shall provide to the consumer to whom the report relates––

(i) a copy of the report; and

(ii) a description in writing of the rights of the consumer under this subchapter, as prescribed by the [Consumer Financial Protection] Bureau under section 1681g(c)(3) of this title.

(B) Application by mail, telephone, computer, or other similar means

(i) If a consumer described in subparagraph (C) applies for employment by mail, telephone, computer, or other similar means, and if a person who has procured a consumer report on the consumer for employment purposes takes adverse action on the employment application based in whole or in part on the report, then the person must provide to the consumer to whom the report relates, in lieu of the notices required under subparagraph (A) of this section and under section 1681m(a) of this title, within 3 business days of taking such action, an oral, written or electronic notification—

(I) that adverse action has been taken based in whole or in part on a consumer report received from a consumer reporting agency;

(II) of the name, address and telephone number of the consumer reporting agency that furnished the consumer report (including a toll-free telephone number established by the agency if the agency compiles and maintains files on consumers on a nationwide basis);

(III) that the consumer reporting agency did not make the decision to take the adverse action and is unable to provide to the consumer the

specific reasons why the adverse action was taken; and

(IV) that the consumer may, upon providing proper identification, request a free copy of a report and may dispute with the consumer reporting agency the accuracy or completeness of any information in a report.

(ii) If, under clause (B)(i)(IV), the consumer requests a copy of a consumer report from the person who procured the report, then, within 3 business days of receiving the consumer's request, together with proper identification, the person must send or provide to the consumer a copy of a report and a copy of the consumer's rights as prescribed by the [Consumer Financial Protection] Bureau under section 1681g(c)(3) of this title.

(C) Scope

Subparagraph (B) shall apply to a person procuring a consumer report on a consumer in connection with the consumer's application for employment only if—

(i) the consumer is applying for a position over which the Secretary of Transportation has the power to establish qualifications and maximum hours of service pursuant to the provisions of section 31502 of title 49, or a position subject to safety regulation by a State transportation agency; and

(ii) as of the time at which the person procures the report or causes the report to be procured the only interaction between the consumer

and the person in connection with that employment application has been by mail, telephone, computer, or other similar means.

(4) Exception for national security investigations

(A) In general

In the case of an agency or department of the United States Government which seeks to obtain and use a consumer report for employment purposes, paragraph (3) shall not apply to any adverse action by such agency or department which is based in part on such consumer report, if the head of such agency or department makes a written finding that—

(i) the consumer report is relevant to a national security investigation of such agency or department;

(ii) the investigation is within the jurisdiction of such agency or department;

(iii) there is reason to believe that compliance with paragraph (3) will—

(I) endanger the life or physical safety of any person;

(II) result in flight from prosecution;

(III) result in the destruction of, or tampering with, evidence relevant to the investigation;

(IV) result in the intimidation of a potential witness relevant to the investigation;

(V) result in the compromise of classified information; or

(VI) otherwise seriously jeopardize or unduly delay the investigation or another official proceeding.

(B) Notification of consumer upon conclusion of investigation

Upon the conclusion of a national security investigation described in subparagraph (A), or upon the determination that the exception under subparagraph (A) is no longer required for the reasons set forth in such subparagraph, the official exercising the authority in such subparagraph shall provide to the consumer who is the subject of the consumer report with regard to which such finding was made—

(i) a copy of such consumer report with any classified information redacted as necessary;

(ii) notice of any adverse action which is based, in part, on the consumer report; and

(iii) the identification with reasonable specificity of the nature of the investigation for which the consumer report was sought.

(C) Delegation by head of agency or department

For purposes of subparagraphs (A) and (B), the head of any agency or department of the United States Government may delegate his or her authorities under this paragraph to an official of such agency or department who has personnel security responsibilities and is a member of the Senior Ex-

ecutive Service or equivalent civilian or military rank.

(D) Definitions

For purposes of this paragraph, the following definitions shall apply:

(i) Classified information

The term "classified information" means information that is protected from unauthorized disclosure under Executive Order No. 12958 or successor orders.

(ii) National security investigation

The term "national security investigation" means any official inquiry by an agency or department of the United States Government to determine the eligibility of a consumer to receive access or continued access to classified information or to determine whether classified information has been lost or compromised.

* * * * *

(f) Certain use or obtaining of information prohibited

A person shall not use or obtain a consumer report for any purpose unless—

(1) the consumer report is obtained for a purpose for which the consumer report is authorized to be furnished under this section; and

(2) the purpose is certified in accordance with section 1681e of this title by a prospective user of the report through a general or specific certification.

* * * * *

3. 15 U.S.C. 1681c provides in pertinent part:

Requirements relating to information contained in consumer reports

* * * * *

(g) Truncation of credit card and debit card numbers

(1) In general

Except as otherwise provided in this subsection, no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of the sale or transaction.

(2) Limitation

This subsection shall apply only to receipts that are electronically printed, and shall not apply to transactions in which the sole means of recording a credit card or debit card account number is by handwriting or by an imprint or copy of the card.

(3) Effective date

This subsection shall become effective—

(A) 3 years after December 4, 2003, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is in use before January 1, 2005; and

(B) 1 year after December 4, 2003, with respect to any cash register or other machine or device that electronically prints receipts for credit card or debit card transactions that is first put into use on or after January 1, 2005.

* * * * *

4. 15 U.S.C. 1681n (2006 & Supp. IV 2010) provides:

Civil liability for willful noncompliance

(a) In general

Any person who willfully fails to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1)(A) any actual damages sustained by the consumer as a result of the failure or damages of not less than $100 and not more than $1,000; or

(B) in the case of liability of a natural person for obtaining a consumer report under false pretenses or knowingly without a permissible purpose, actual damages sustained by the consumer as a result of the failure or $1,000, whichever is greater;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Civil liability for knowing noncompliance

Any person who obtains a consumer report from a consumer reporting agency under false pretenses or knowingly without a permissible purpose shall be liable to the consumer reporting agency for actual damages sustained by the consumer reporting agency or $1,000, whichever is greater.

(c) Attorney's fees

Upon a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

(d) Clarification of willful noncompliance

For the purposes of this section, any person who printed an expiration date on any receipt provided to a consumer cardholder at a point of sale or transaction between December 4, 2004, and June 3, 2008, but otherwise complied with the requirements of section 1681c(g) of this title for such receipt shall not be in willful noncompliance with section 1681c(g) of this title by reason of printing such expiration date on the receipt.

5. 15 U.S.C. 1681*o* provides:

Civil liability for negligent noncompliance

(a) In general

Any person who is negligent in failing to comply with any requirement imposed under this subchapter with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure; and

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court.

(b) Attorney's fees

On a finding by the court that an unsuccessful pleading, motion, or other paper filed in connection with an action under this section was filed in bad faith or for purposes of harassment, the court shall award to the prevailing party attorney's fees reasonable in relation to the work expended in responding to the pleading, motion, or other paper.

6. 15 U.S.C. 1681p provides:

Jurisdiction of courts; limitation of actions

An action to enforce any liability created under this subchapter may be brought in any appropriate United States district court, without regard to the amount in

controversy, or in any other court of competent jurisdiction, not later than the earlier of—

(1) 2 years after the date of discovery by the plaintiff of the violation that is the basis for such liability; or

(2) 5 years after the date on which the violation that is the basis for such liability occurs.

7. 15 U.S.C. 1681q provides:

Obtaining information under false pretenses

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined under title 18, imprisoned for not more than 2 years, or both.

8. 15 U.S.C. 1681s (2006 & Supp IV 2010) provides in pertinent part:

Administrative enforcement

(a) Enforcement by Federal Trade Commission

(1) In general

The Federal Trade Commission shall be authorized to enforce compliance with the requirements imposed by this subchapter under the Federal Trade Commission Act (15 U.S.C. 41 et seq.), with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other

Government agency under any of subparagraphs (A) through (G) of subsection (b)(1), and subject to subtitle B of the Consumer Financial Protection Act of 2010, subsection (b). For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this subchapter shall constitute an unfair or deceptive act or practice in commerce, in violation of section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)), and shall be subject to enforcement by the Federal Trade Commission under section 5(b) of that Act with respect to any consumer reporting agency or person that is subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this subchapter and to require the filing of reports, the production of documents, and the appearance of witnesses, as though the applicable terms and conditions of the Federal Trade Commission Act were part of this subchapter. Any person violating any of the provisions of this subchapter shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions of such Act are part of this subchapter.

(2) Penalties

(A) Knowing violations

Except as otherwise provided by subtitle B of the Consumer Financial Protection Act of 2010, in the event of a knowing violation, which constitutes a pattern or practice of violations of this subchapter, the Federal Trade Commission may commence a civil action to recover a civil penalty in a district court of the United States against any person that violates this subchapter. In such action, such person shall be liable for a civil penalty of not more than $2,500 per violation.

(B) Determining penalty amount

In determining the amount of a civil penalty under subparagraph (A), the court shall take into account the degree of culpability, any history of such prior conduct, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

(C) Limitation

Notwithstanding paragraph (2), a court may not impose any civil penalty on a person for a violation of section 1681s-2(a)(1) of this title, unless the person has been enjoined from committing the violation, or ordered not to commit the violation, in an action or proceeding brought by or on behalf of the Federal Trade Commission, and has violated the injunction or order, and the court may not impose any civil penalty for any violation occurring before the date of the violation of the injunction or order.

* * * * *

(c) State action for violations

(1) Authority of States

In addition to such other remedies as are provided under State law, if the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this subchapter, the State—

(A) may bring an action to enjoin such violation in any appropriate United States district court or in any other court of competent jurisdiction;

(B) subject to paragraph (5), may bring an action on behalf of the residents of the State to recover—

(i) damages for which the person is liable to such residents under sections 1681n and 1681o of this title as a result of the violation;

(ii) in the case of a violation described in any of paragraphs (1) through (3) of section 1681s-2(c) of this title, damages for which the person would, but for section 1681s-2(c) of this title, be liable to such residents as a result of the violation; or

(iii) damages of not more than $1,000 for each willful or negligent violation; and

(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.

(2) Rights of Federal regulators

The State shall serve prior written notice of any action under paragraph (1) upon the Bureau and the Federal Trade Commission or the appropriate Federal regulator determined under subsection (b) of this section and provide the Bureau and the Federal Trade Commission or appropriate Federal regulator with a copy of its complaint, except in any case in which such prior notice is not feasible, in which case the State shall serve such notice immediately upon instituting such action. The Bureau and the Federal Trade Commission or appropriate Federal regulator shall have the right—

(A) to intervene in the action;

(B) upon so intervening, to be heard on all matters arising therein;

(C) to remove the action to the appropriate United States district court; and

(D) to file petitions for appeal.

(3) Investigatory powers

For purposes of bringing any action under this subsection, nothing in this subsection shall prevent the chief law enforcement officer, or an official or agency designated by a State, from exercising the powers conferred on the chief law enforcement officer or such official by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(4) Limitation on State action while Federal action pending

If the Bureau, the Federal Trade Commission, or the appropriate Federal regulator has instituted a civil action or an administrative action under section 8 of the Federal Deposit Insurance Act [12 U.S.C.A. § 1818] for a violation of this subchapter, no State may, during the pendency of such action, bring an action under this section against any defendant named in the complaint of the Bureau, the Federal Trade Commission, or the appropriate Federal regulator for any violation of this subchapter that is alleged in that complaint.

(5) Limitations on State actions for certain violations

(A) Violation of injunction required

A State may not bring an action against a person under paragraph (1)(B) for a violation described in any of paragraphs (1) through (3) of section 1681s-2(c) of this title, unless—

(i) the person has been enjoined from committing the violation, in an action brought by the State under paragraph (1)(A); and

(ii) the person has violated the injunction.

(B) Limitation on damages recoverable

In an action against a person under paragraph (1)(B) for a violation described in any of paragraphs (1) through (3) of section 1681s-2(c) of this title, a State may not recover any damages in-

curred before the date of the violation of an injunction on which the action is based.

* * * * *

9. 15 U.S.C. 1681s-2 provides in pertinent part:

Responsibilities of furnishers of information to consumer credit reporting agencies

* * * * *

(b) Duties of furnishers of information upon notice of dispute

(1) In general

After receiving notice pursuant to section 1681i(a)(2) of this title of a dispute with regard to the completeness or accuracy of any information provided by a person to a consumer reporting agency, the person shall—

(A) conduct an investigation with respect to the disputed information;

(B) review all relevant information provided by the consumer reporting agency pursuant to section 1681i(a)(2) of this title;

(C) report the results of the investigation to the consumer reporting agency;

(D) if the investigation finds that the information is incomplete or inaccurate, report those results to all other consumer reporting agencies to which the person furnished the information and that compile and maintain files on consumers on a nationwide basis; and

(E) if an item of information disputed by a consumer is found to be inaccurate or incomplete or cannot be verified after any reinvestigation under paragraph (1), for purposes of reporting to a consumer reporting agency only, as appropriate, based on the results of the reinvestigation promptly—

(i) modify that item of information;

(ii) delete that item of information; or

(iii) permanently block the reporting of that item of information.

(2) Deadline

A person shall complete all investigations, reviews, and reports required under paragraph (1) regarding information provided by the person to a consumer reporting agency, before the expiration of the period under section 1681i(a)(1) of this title within which the consumer reporting agency is required to complete actions required by that section regarding that information.

* * * * *

10. 15 U.S.C. 1681u provides in pertinent part:

Disclosures to FBI for counterintelligence purposes

(a) Identity of financial institutions

Notwithstanding section 1681b of this title or any other provision of this subchapter, a consumer reporting agency shall furnish to the Federal Bureau of Investigation the names and addresses of all financial institutions (as that term is defined in section 3401 of title 12) at which a consumer maintains or has maintained an ac-

count, to the extent that information is in the files of the agency, when presented with a written request for that information, signed by the Director of the Federal Bureau of Investigation, or the Director's designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office designated by the Director, which certifies compliance with this section. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in writing, that such information is sought for the conduct of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

(b) Identifying information

Notwithstanding the provisions of section 1681b of this title or any other provision of this subchapter, a consumer reporting agency shall furnish identifying information respecting a consumer, limited to name, address, former addresses, places of employment, or former places of employment, to the Federal Bureau of Investigation when presented with a written request, signed by the Director or the Director's designee in a position not lower than Deputy Assistant Director at Bureau headquarters or a Special Agent in Charge of a Bureau field office designated by the Director, which certifies compliance with this subsection. The Director or the Director's designee may make such a certification only if the Director or the Director's designee has determined in writing that such information is sought for the conduct

of an authorized investigation to protect against international terrorism or clandestine intelligence activities, provided that such an investigation of a United States person is not conducted solely upon the basis of activities protected by the first amendment to the Constitution of the United States.

* * * * *

(e) Payment of fees

The Federal Bureau of Investigation shall, subject to the availability of appropriations, pay to the consumer reporting agency assembling or providing report or information in accordance with procedures established under this section a fee for reimbursement for such costs as are reasonably necessary and which have been directly incurred in searching, reproducing, or transporting books, papers, records, or other data required or requested to be produced under this section.

(f) Limit on dissemination

The Federal Bureau of Investigation may not disseminate information obtained pursuant to this section outside of the Federal Bureau of Investigation, except to other Federal agencies as may be necessary for the approval or conduct of a foreign counterintelligence investigation, or, where the information concerns a person subject to the Uniform Code of Military Justice, to appropriate investigative authorities within the military department concerned as may be necessary for the conduct of a joint foreign counterintelligence investigation.

* * * * *

(i) Damages

Any agency or department of the United States obtaining or disclosing any consumer reports, records, or information contained therein in violation of this section is liable to the consumer to whom such consumer reports, records, or information relate in an amount equal to the sum of—

(1) $100, without regard to the volume of consumer reports, records, or information involved;

(2) any actual damages sustained by the consumer as a result of the disclosure;

(3) if the violation is found to have been willful or intentional, such punitive damages as a court may allow; and

(4) in the case of any successful action to enforce liability under this subsection, the costs of the action, together with reasonable attorney fees, as determined by the court.

(j) Disciplinary actions for violations

If a court determines that any agency or department of the United States has violated any provision of this section and the court finds that the circumstances surrounding the violation raise questions of whether or not an officer or employee of the agency or department acted willfully or intentionally with respect to the violation, the agency or department shall promptly initiate a proceeding to determine whether or not disciplinary action is warranted against the officer or employee who was responsible for the violation.

(k) Good-faith exception

Notwithstanding any other provision of this subchapter, any consumer reporting agency or agent or employee thereof making disclosure of consumer reports or identifying information pursuant to this subsection in good-faith reliance upon a certification of the Federal Bureau of Investigation pursuant to provisions of this section shall not be liable to any person for such disclosure under this subchapter, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

(*l*) Limitation of remedies

Notwithstanding any other provision of this subchapter, the remedies and sanctions set forth in this section shall be the only judicial remedies and sanctions for violation of this section.

(m) Injunctive relief

In addition to any other remedy contained in this section, injunctive relief shall be available to require compliance with the procedures of this section. In the event of any successful action under this subsection, costs together with reasonable attorney fees, as determined by the court, may be recovered.