25-1534

United States Court of Appeals

for the

Fourth Circuit

JOHN DOE,

Plaintiff/Appellant,

– v. –

INFORMDATA, LLC, f/k/a Wholesale Screening LLC

Defendant/Appellee,

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA AT ALEXANDRIA

Case No. 1:25-cv-00826-RDA-WEF
Honorable Rossie D. Alston Jr., District Judge

BRIEF OF *AMICUS CURIAE* NATIONAL CONSUMER LAW CENTER IN SUPPORT OF APPELLANTS

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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- In criminal cases, the United States must file a disclosure statement if there was an organizational victim of the alleged criminal activity. (See question 7.)
- Any corporate amicus curiae must file a disclosure statement.
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No. 26-1491 Caption: John Doe v. InformData, LLC f/k/a Wholesale Screening LLC

Pursuant to FRAP 26.1 and Local Rule 26.1,

National Consumer Law Center
(name of party/amicus)

who is amicus curiae, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐YES ☑NO

2. Does party/amicus have any parent corporations? ☐YES ☑NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐YES ☑NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation? ☐YES ☑NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐YES ☐NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐YES ☑NO
If yes, the debtor, the trustee, or the appellant (if neither the debtor nor the trustee is a party) must list (1) the members of any creditors' committee, (2) each debtor (if not in the caption), and (3) if a debtor is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of the debtor.

7. Is this a criminal case in which there was an organizational victim? ☐YES ☑NO
If yes, the United States, absent good cause shown, must list (1) each organizational victim of the criminal activity and (2) if an organizational victim is a corporation, the parent corporation and any publicly held corporation that owns 10% or more of the stock of victim, to the extent that information can be obtained through due diligence.

Signature: /s/ Leonard A. Bennett Date: 7/9/2026

Counsel for: Amicus Curiae

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STATEMENT OF IDENTITY AND INTERESTS OF *AMICUS CURIAE*[1]

The National Consumer Law Center (NCLC) is a nonprofit organization that works for consumer justice and economic security for low income and other disadvantaged people, including older adults, in the United States through its expertise in policy analysis and advocacy, publications, litigation, expert witness services, and training. NCLC draws on over fifty years of expertise regarding the Fair Credit Reporting Act (FCRA) and its protections for consumers. NCLC provides information, legal research, and policy analysis to Congress, state legislatures, administrative agencies, and courts. NCLC publishes *Fair Credit Reporting* (10th ed. 2022), the definitive treatise on the FCRA. The Supreme Court of the United States has cited NCLC's treatises with approval.

INTRODUCTION AND SUMMARY OF ARGUMENT

Enacted over fifty years ago, the FCRA has never been more important to ensure accuracy and vital protections for people who must undergo background screening to access jobs, housing, and other critical opportunities. Technological advancements have dramatically enhanced the ability of consumer reporting

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[1] Pursuant to Rule 29(a)(2), counsel for *amicus curiae* states that they sought consent of all parties to the filing of this brief. Plaintiff-Appellant has consented to the filing of this brief. As of the date of the filing, Defendant-Appellee has not stated its position. Pursuant to Rule 29(a)(4)(E), counsel for *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and no person other than *amicus curiae*, their members, or their counsel made a monetary contribution to its preparation for submission.

agencies (CRAs)—such as tenant and employment screening companies and other background screening companies—to collect, aggregate, and analyze data from a variety of sources. CRAs create reports that frequently contain errors, including inaccurate and outdated criminal and eviction history information.

Amicus curiae is concerned about the effect that the district court's decision will have on people who were told that certain records will no longer bar them from jobs and housing but then face denial of those opportunities based on reports containing records that no longer legally exist. *Amicus* is also concerned that the district court's decision will undermine states' determination that certain criminal and eviction records should no longer bar people from accessing critical opportunities.[2]

Contrary to the district court's holding, reporting records that have been sealed or expunged can violate the FCRA. The FCRA imposes a "maximum possible accuracy" standard and requires CRAs to have reasonable procedures to achieve it.

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[2] As many as forty-six states and Washington, D.C. provide some form of generalized criminal record sealing. Restoration of Rights Project, Collateral Consequences Resource Ctr., 50-State Comparison: Expungement, Sealing & Other Record Relief (2024), https://ccresourcecenter.org/state-restoration-profiles/50-state-comparisonjudicial-expungement-sealing-and-set-aside-2-2/. At least twenty-two states and Washington, D.C. have measures sealing at least some eviction records. PolicyLink, Mapping the Growth of Eviction Record and Tenant Screening Protections (updated May 2026), https://www.policylink.org/resources/tools/housing-anti-displacement/mapping-growth; Nat'l Consumer L. Ctr., *Fair Credit Reporting* appx. H (10th ed. 2022).

15 U.S.C. § 1681e(b). Even if information in a background screening report is technically accurate, if it creates a misleading impression, it may be deemed inaccurate. Background screening companies fail to satisfy the "maximum possible accuracy" standard when they report information that is stale as current because such information is misleading and thus inaccurate. A background screening company therefore violates § 1681e(b) if it lacks "reasonable procedures" to ensure it does not report records that no longer exist because they have been sealed, expunged or otherwise legally restricted from public view.

Prior guidance from the Consumer Financial Protection Bureau (CFPB) further affirms that reporting sealed or expunged records can violate § 1681e(b). Enforcement actions from the CFPB and the Federal Trade Commission (FTC) that predate the now-withdrawn CFPB guidance also support this interpretation of the FCRA.

Section 1681c of the FCRA is irrelevant to whether reporting sealed or expunged records violates the statute. This provision governs for how many years CRAs can report certain information; it does not speak to questions of accuracy. The Court should decline to follow other courts' incorrect application of § 1681c and should instead apply § 1681e(b)'s accuracy requirements to the question of whether CRAs violate the FCRA when they report a sealed or expunged record. At minimum, we urge the Court to distinguish between the reporting of records that no longer exist because they have been sealed or expunged and those that remain publicly available.

Because a CRA violates § 1681e(b) if it lacks reasonable procedures to ensure that it does not report sealed or expunged records, we urge this Court to reverse.

ARGUMENT

I. The FCRA Is a Critical Tool to Protect Workers, Renters, and Other Consumers from Abuses by the Background Screening Industry

A. Origins of the FCRA

Congress passed the FCRA in 1970 to address two related concerns. First, background checks, credit reports, and other consumer reports were playing an increasingly central role in people's lives at crucial moments, such as when they applied for housing, employment, or credit. Second, despite their importance, these consumer reports were unregulated and contained errors and inaccuracies, thereby impairing people's access to these critical opportunities.

Recognizing that unregulated background screening companies and their inaccurate reports harmed the economy, as well as individuals, Congress set out to overhaul the industry. *See Dalton v. Cap. Associated Indus., Inc.*, 257 F.3d 409, 414 (4th Cir. 2001) (FCRA enacted out of concerns about abuses in the credit reporting industry). Because inaccuracies in background checks can wrongfully deprive people of necessities ensuring the accuracy of such reports is a foundational goal of the FCRA. *See id.* at 414–15; *see also Guimond v. Trans Union Credit Info Co.*, 45

F.3d 1329, 133 (9th Cir. 1995) (FCRA "was crafted to protect consumers from the transmission of inaccurate information about them and to establish credit reporting practices that utilize accurate, relevant, and current information in a confidential and responsible manner" (citation modified)). For that reason, the FCRA sets a high standard of accuracy for CRAs, including those that prepare tenant and employment screening reports, requiring that they "follow reasonable procedures to assure *maximum possible accuracy* of the information" in their reports on consumers. 15 U.S.C. § 1681e(b) (emphasis added).

B. The background screening industry today

The FCRA's protections for consumers have only become more important over the last two and a half decades, during which the background screening industry has grown and changed tremendously. *See* Consumer Fin. Protection Bureau, Market Snapshot: Background Screening Reports 3 (2019), https://files.consumerfinance.gov/f/documents/201909_cfpb_market-snapshot-background-screening_report.pdf [hereinafter CFPB, Market Snapshot]. The background screening industry—now a multi-billion-dollar industry[3]—exercises

[3] Revenue estimates for the tenant screening industry alone range from $1.3 billion to $3 billion annually, with about 650 companies providing reports. Chi Chi Wu, Ariel Nelson, April Kuehnhoff, & Caroline Cohn, Nat'l Consumer L. Ctr., Digital Denials: How Abuse, Bias, and Lack of Transparency Harm Renters 7 & nn. 2–4 (2023), https://www.nclc. org/wp-content/uploads/2023/09/202309_Report_Digital-Denials.pdf.

staggering power in hiring and rental decisions, as most employers and landlords procure screening reports from specialized employment or tenant screening companies to evaluate potential employees or tenants. *Id.* at 3–4; *see also* Consumer Reporting of Rental Information (July 1, 2021), https://files.consumerfinance.gov/f/documents/cfpb_consumer-reporting-rental-information_bulletin-2021-03_2021-07.pdf.

Criminal histories, along with eviction records in the tenant screening context, are major components of these reports. Approximately ninety-four percent of employers and ninety percent of landlords run criminal background checks on applicants, and about eight-five percent of landlords also purchase an eviction report on all applicants. Ariel Nelson, Nat'l Consumer L. Ctr., Broken Records Redux: How Errors by Criminal Background Checking Companies Harm Consumers Seeking Jobs and Housing 7, 3, (2019), https://www.nclc.org/images/pdf/criminal-justice/reportbroken-records-redux.pdf [hereinafter NCLC, Broken Records Redux]. All told, background screening reports, including those containing criminal and eviction record information, are more prevalent than when the FCRA was enacted.

The background industry has also changed significantly due the rise of the internet, online services, and other technological advancements that have made it easier and cheaper for companies to aggregate data about people and create background check products. CFPB, Market Snapshot, *supra*, at 4; NCLC, Broken Records Redux, *supra*, at 7. First, the growth of digitized and online access to public records has enabled more companies to enter the industry in the first place—and made it possible for them to incorporate and analyze even more records in their reports. CFPB, Market Snapshot, *supra*, at 5; *id.* at 11 ("Advances in information technology have made it easier to obtain access to criminal records, either directly through digitized court records, through state criminal repositories, or from private databases (third party or internally generated) that collect public criminal records."); NCLC, Broken Records Redux, *supra*, at 9 ("[T]he internet has facilitated the emergence of online background screening companies that have instant access to millions of databases containing criminal records information.").

C. How background screening companies generate reports

Background screening companies obtain information and prepare reports in different ways. Different companies search different databases and sources of records and use different procedures for updating public records. Despite this variation, the general process of ordering, matching records for, creating, and distributing a background screening report for tenant or employment screening purposes—which can occur within minutes—is set forth below.

- **The application.** A consumer completes a job or rental housing application.

- **The order and authorization.** The employer or landlord orders a background screening report online through the screening company's web portal or web-based integration. The consumer provides authorization and necessary information for the report to be run, often via an online candidate portal. *See, e.g.*, Checkr, *What to expect during your background check process* (Nov. 26, 2025), https://help.checkr.com/s/article/What-to-expect-during-your-background-check-process.

- **Matching records.** The background screening company then matches the consumer with criminal and/or eviction information in giant databases of aggregated data using personally identifying information and the company's proprietary matching criteria. NCLC, Broken Records Redux, *supra*, at 10; Resident Screening, https://www.realpage.com/apartment-marketing/resident-screening/ (RealPage's criminal history search offers "[a]ccess to a comprehensive online national database that automatically searches its entire criminal and sex offender registry"); Checkr, Criminal Records Checks, https://checkr.com/platform/screenings/criminal-records-check (Checkr's National Criminal Records Check "queries over 900 million records"); CIC, Criminal Records, https://www.cicreports.com/criminal-records/ (CIC's nationwide database contains "over a billion public criminal records" and its "API allows for delivery speed as fast as 1.5 seconds per inquiry”). These databases are private and proprietary and often assembled by third-party vendors, though some large companies assemble and maintain their own databases. NCLC, Broken Record Redux, *supra*, at 10. The data is generally purchased or obtained in bulk, often through intermediaries, from a variety of sources such as law enforcement agencies, state courts, corrections offices, and criminal record repositories, or obtained using web scraping technology. *Id.* at 3.

Some screening companies use the initial database search as a starting point that requires verification against the original public records. Others do not have a human verify the results of an initial, automated database search. *Id.* at 11.

- **The report.** The background screening company creates the resulting report, including any records matched from the databases it used, and provides it to the landlord or employer. CFPB, Market Snapshot, *supra*, at 8–9.

D. Why inaccurate public records information appears on background screening reports

Background screening reports frequently contain inaccurate and outdated public records information. *See, e.g.*, Chi Chi Wu, Ariel Nelson, April Kuehnhoff, & Caroline Cohn, Nat’l Consumer L. Ctr., Digital Denials: How Abuse, Bias, and Lack of Transparency Harm Renters 28–47 (2023), https://www.nclc. org/wp-content/uploads/2023/09/202309_Report_Digital-Denials.pdf [hereinafter NCLC, Digital Denials] (discussing results of 2023 NCLC survey of attorneys, advocates, and counselors concerning criminal and eviction record screening issues and inaccuracies their clients experienced). Such errors occur for a variety of reasons. The source public record could itself contain an error, for example. Nat'l Consumer L. Ctr., *Fair Credit Reporting* § 4.3.5.2.1 (10th ed. 2022) [hereinafter NCLC, *Fair Credit Reporting*]. Errors also stem from reliance on stale data, reliance on public records information that did not come directly from the courthouse or official public records source, and/or reliance on automated web scraping that ignores subsequent developments in a legal case. NCLC, Digital Denials, *supra*, at 29; NCLC, Broken Records Redux, *supra*, at 19–20. Indeed, the reporting of sealed or expunged records often occurs due to a screening company's bulk purchase or acquisition of records and the subsequent failure to update those records to remove those that no longer exist. CFPB, Market Snapshot, *supra*, at 12 ("If a background company's external or internal databases do not align with the frequency of a court's record update, it could lead to incomplete reporting or reporting of expunged or dropped cases."); NCLC, Digital Denials, *supra*, at 34, 38; Jenny Roberts, *Expunging America's Rap Sheet in the Information Age*, 2015 Wis. L. Rev. 321, 341 (2015).

Errors on background screening reports have grave consequences, such as the loss of a much-needed job opportunity or the denial of stable and affordable housing. Even where a consumer disputes an inaccurate report and gets the report corrected, the job opportunity or apartment can vanish in the time it takes for the report to be fixed. With respect to the reporting of sealed or expunged records, once a landlord or employer is aware of someone's past—even a past that the state has legally erased—it is virtually impossible to unring the bell.

II. Reporting Sealed or Expunged Records Can Violate the FCRA

A. The FCRA imposes the high standard of "maximum possible accuracy" and requires CRAs to have reasonable procedures to satisfy it

Section § 1681e(b) of the FCRA provides that whenever a CRA, such as a background screening company, "prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates." 15 U.S.C. § 1681e(b). A CRA violates § 1681e(b) if "(1) the consumer report contains inaccurate information and (2) the reporting agency did not follow reasonable procedures to assure maximum possible accuracy." *Dalton v. Cap. Associated Indus.*, Inc., 257 F.3d 409, 415 (4th Cir. 2001) (citation modified).

"It is important to note that § 1681e(b) erects a standard of 'maximum possible accuracy,'" which "requires more than merely allowing for the possibility of accuracy." *Cortez v. Trans Union*, LLC, 617 F.3d 688, 709 (3d Cir. 2010). Moreover, "the distinction between 'accuracy' and 'maximum possible accuracy' is not nearly as subtle as may at first appear, it is in fact quite dramatic." *Id.* Technical accuracy is not sufficient. As this Court has stated, "a consumer report that contains technically accurate information may be deemed 'inaccurate' if the statement is presented in such a way that it creates a misleading impression." *Saunders v. Branch Bank & Trust Co.*, 526 F.3d 142, 148 (4th Cir. 2008). Thus, a report is "inaccurate when it is 'patently incorrect' or when it is 'misleading in such a way and to such an extent that it can be expected to have an adverse effect.'" *Dalton*, 257 F.3d at 415 (citation modified). In a case concerning an FCRA provision governing furnishers of information, § 1681s-2(b), this Court recently held that inaccuracies are actionable so long as the plaintiff pleads an "objectively and readily verifiable inaccuracy." *Roberts v. Carter-Young, Inc.*, 131 F.4th 241, 252 (4th Cir. 2025).

The FCRA does not impose strict liability for inaccurate information, however. Instead, liability flows from a CRA's failure to follow reasonable procedures. *Philbin v. Trans Union Corp.*, 101 F.3d 957, 963–66 (3d Cir. 1996), *abrogated on other grounds as recognized in Cortez v. Trans Union*, LLC, 617 F.3d 688 (3d Cir. 2010). "The determination regarding the reasonableness of a [CRA's] procedure is normally a question for trial unless the reasonableness or unreasonableness of the procedure is beyond question." *Jones v. Equifax, Inc.*, No. 3:14CV678, 2015 WL 5092514, at *4 (E.D. Va. Aug. 27, 2015) (citation modified); *see also NCLC*, *Fair Credit Reporting, supra,*§ 4.4.5.2.1 (collecting cases). Judging the reasonableness of a CRA's procedures involves weighing the potential harm from inaccurate information against the burden of safeguarding against such inaccuracy. *Williams v. Corelogic Rental Prop. Sols.*, LLC, No. CV PX 16-58, 2016 WL 6277675, at *3 (D. Md. Oct. 26, 2016); *see also NCLC*, *Fair Credit Reporting, supra,* § 4.4.5.1.2.

CRAs cannot satisfy the standard of "maximum possible accuracy" by reporting information that was once true but is now stale, because outdated information is misleading and thus inaccurate. *See Soutter v. Equifax Info. Servs.*, LLC, 307 F.R.D. 183, 201 (E.D. Va. 2015) (omitting current status of a judgment was "by definition" inaccurate); *see also* Fed. Trade Comm'n, 40 Years of Experience with the Fair Credit Reporting Act: An FTC Staff Report with Summary of Interpretations § 607(b), item 5A (2011); *NCLC*, *Fair Credit Reporting, supra,* § 4.4.6.9.5.

B. Once a court removes a record from public view, the record no longer exists, and it is inaccurate to include in a background screening report

The district court turned the FCRA's maximum possible accuracy requirement on its head when it reasoned that, because there were "no public records of the expungement," the inaccuracy could not be verified and therefore the records *could be* reported. JA 43. In other words, according to the district court, it is accurate to report a record even though the record does not exist.

Contrary to the district court's reasoning, background screening companies cannot possibly verify the accuracy of information that has been expunged or sealed because they cannot access it. For example, under the Delaware law relevant to this case, when a court issues an order expunging records, all the criminal records relating to the case must be removed from the court's files within sixty days. After the removal occurs, the records are no longer open to public inspection or subject to disclosure to private companies. JA 16; Del. Code Ann. tit. 11, § 4372(e)(1)).

If a background screening company prepares a report at least sixty days after a Delaware expungement order—as Plaintiffs allege occurred in this case, JA 16, JA 18–19—the record is no longer publicly available with the government entity that maintains the record. Reporting a record as if it is publicly available when, in fact, the background screening company could not access it because it no longer exists, is misleading and thus inaccurate. *See Watson v. Caruso*, 424 F. Supp. 3d 231, 245 (D. Conn. 2019) (including erased conviction in employment screening report was materially misleading and inaccurate). As the Third Circuit emphasized in *Cortez v. Trans Union, LLC*, "There are . . . inherent dangers in including any information in a credit report that a credit reporting agency cannot confirm is related to a particular customer." 617 F.3d 688, 710 (3d Cir. 2010).

Reporting information about a now-nonexistent public record also means that such information cannot be verified if the consumer disputes it under § 1681i(a) of the FCRA. *See* 15 U.S.C. § 1691i(a)(5)(A) (CRA must delete information if, after an investigation, "the information is found to be inaccurate or incomplete or *cannot be verified*" (emphasis added)). A CRA that receives such a dispute would need to check the public record to confirm its accuracy; because the public record no longer exists, they could no longer verify its accuracy as part of the reasonable investigation required under § 1681i(a).

The district court's decision essentially permits a CRA to continue to report information even when the underlying record no longer exists. Not only is such a holding illogical, but it would also present an insurmountable burden to consumers seeking to correct errors in a variety of situations. For example, what if a dispute involved a report where the CRA incorrectly reported that the consumer had a felony conviction when the consumer had never been convicted of a crime? How would that consumer prove that they had never been convicted of a felony if the absence of a public record of conviction was insufficient to require deletion of the erroneous record? Or, in the case of a credit report where the creditor lost all its records, perhaps because it went out of business—how would a consumer prove they were not liable for a debt if the CRA is permitted to continue to report it despite the absence of any documentation showing the consumer owed the debt?

C. A background screening company violates § 1681e(b) if it lacks reasonable procedures to ensure it does not report sealed or expunged records

The district court did not address whether Appellee failed to employ reasonable procedures when it reported the expunged records.[4] When a sealed or expunged record appears on a report, it is likely because the background screening company relied on outdated information obtained from a large database of aggregated records and chose not to consult the courthouse records to confirm the information before reporting it. *See* Section I.C.–D., *supra*. Indeed, Appellant alleges that "the information [Appellee] relied on in preparing and selling its consumer report about [Appellee] was incomplete and outdated and likely obtained prior to [Appellant's] expungement. A cursory review of the widely available public court records confirms that there were no criminal records reported about Plaintiff." JA 19; *see also id.* JA 14–15.

In *Dalton*, this Court indicated that relying on sources other than the official source of the public record can constitute an unreasonable procedure in violation of § 1681e(b). *Dalton*, 257 F.3d at 417 ("A jury could properly conclude that it was an unreasonable procedure to rely on a clerk's informal opinion on the crucial question of whether a specific crime is a felony and that CAI should have had procedures in

[4] *See* JA 40 ("Although Defendant raises a number of arguments regarding the plausibility of Plaintiff's FCRA claim, the one that bears consideration here is the argument that Defendant did not report inaccurate information.").

place to instruct its subvendors on the appropriate sources for reliable information about a person's criminal record."). Other courts outside this Circuit have reached similar conclusions. *E.g.*, *Wilson v. Corelogic SafeRent, LLC*, No. 14-CV-2477 (JPO), 2017 WL 4357568, at *5 (S.D.N.Y. Sept. 29, 2017) (fact finder should decide whether SafeRent failed to employ reasonable procedures to assure maximum possible accuracy when it reported inaccurate criminal history information without consulting any court records); *Taylor v. First Advantage Background Servs. Corp.*, 207 F. Supp. 3d 1095, 1109 (N.D. Cal. 2016) (jury should decide reasonableness of procedures to assure maximum possible accuracy where CRA did not rely on information it obtained directly from the courthouse records).

A background screening company violates § 1681e(b) if it lacks reasonable procedures to ensure it does not report records that once existed publicly but no longer do because they have been sealed or expunged.

D. The CFPB and FTC have affirmed that reporting sealed or expunged records can violate the FCRA

In January 2024, the CFPB issued an advisory opinion concerning the reporting of sealed or expunged records. In that guidance, the CFPB affirmed that a CRA, such as a background screening company, that reports public record information is not using "reasonable procedures to assure maximum possible accuracy" as required under § 1681e(b) if it does not have reasonable procedures in place to ensure that "it does not report information that has been expunged, sealed, or otherwise legally restricted from public access in a manner that would prevent the user from obtaining it directly from the government entities that maintain the records." Fair Credit Reporting; Background Screening, 89 Fed. Reg. 4171, 4173 (Jan. 23, 2024). The CFPB reasoned that, once a conviction or other public record has been sealed, expunged, or otherwise legally restricted from public access, a public record of the matter no longer exists, and it is therefore "misleading and inaccurate to include it as part of the individual's background in a consumer report." *Id.* at 4174.[5]

In May 2025, the CFPB withdrew sixty-seven of its guidance documents, including this advisory opinion. Interpretive Rules, Policy Statements, and Advisory Opinions; Withdrawal, 80 Fed. Reg. 20,084, 2086 (May 12, 2025). The CFPB characterized the mass withdrawal of guidance documents not as a rejection as to the content of specific documents, but as a stay of their use in CFPB enforcement while the agency evaluates each guidance document to see if it should

[5] The CFPB's guidance also suggested that including a sealed or expunged record on a report but noting the disposition—that the record was sealed or expunged—would not comply with the FCRA. *See* Fair Credit Reporting; Background Screening, 89 Fed. Reg. 4171, 4174 n.27 (Jan. 23, 2024) ("Even when disposition information is included, court filings can of course only be reported if doing so complies with the FCRA. . . . [CRAs] must, for example, have procedures in place to ensure that court filings are not reported if the information has been expunged, sealed, or otherwise legally restricted from public access in a manner that would prevent the user from obtaining it directly from the government entity that maintains the records.").

be retained. *See id.* Indeed, the withdrawal notice does not indicate that any specific document is faulty or should be written, including the guidance relevant here. *Id.*

Moreover, even active sub-regulatory guidance does not have the force of law; its value is that it offers well-reasoned analysis, based on the agency's expertise as to the underlying statutes and regulations and on its unique knowledge of the nature of the practices to which the guidance relates. Thus, the analysis and reasoning in the withdrawn CFPB advisory opinion addressing why the reporting of sealed or expunged records can violate § 1681e(b) remains persuasive. *See, e.g.*, *Grijalva v. ADP Screening & Selection Servs. Inc.*, 151 F.4th 1055, 1063 (9th Cir. 2025) (citing withdrawn CFPB guidance regarding 15 U.S.C. § 1681c(a)(5)).

Additionally, even before issuing the now-withdrawn guidance, the CFPB, as well as the FTC, brought enforcement actions against background screening companies for including expunged or sealed public records on their reports, further affirming that reporting such records violates the FCRA. Complaint ¶¶ 3, 46–53, *Fed. Trade Comm'n v. TransUnion Rental Screening Solutions, Inc.*, No. 1:23–cv–2659 (D. Colo. Oct. 12, 2023), https://files.consumerfinance. gov/f/documents/cfpb_transunion-rental-screeningsolutions-inc-trans-union-llc_complaint_2023- 10.pdf (alleging failure to follow reasonable procedures to prevent the inclusion of sealed eviction proceeding records); Consent Order, *In re*

Gen. Info. Servs., Inc., 2015–CFPB–0028 (Oct. 29, 2015), https://files. consumerfinance.gov/f/201510_cfpb_consentorder_general-information-service-inc.pdf (alleging failure to use reasonable procedures to prevent the inclusion of expunged criminal records in consumer reports); Complaint ¶¶ 13, *United States v. HireRight Sols., Inc.*, 1:12–cv–01313 (D.D.C. Aug. 8, 2012), https://www.ftc.gov/sites/default/files/ documents/cases/2012/08/120808hireright cmpt.pdf (FTC complaint alleging failure to follow reasonable procedures to assure that information in consumer reports reflected current public record status of consumers' information, such as expungement of a criminal record).

E. Section 1681c concerns obsolescence, not accuracy, and is irrelevant to whether reporting a sealed or expunged record violates the FCRA

The district court in this case incorrectly applied § 1681c and cases analyzing that FCRA provision to conclude that it was accurate to report a sealed or expunged record that was not publicly available. Section 1681c governs how long certain information about a consumer can be reported, also known as obsolescence. 15 U.S.C. § 1681c. For example, CRAs can only report civil suits, civil judgments, and records of arrest for seven years. *Id.* § 1681c(a)(2). Under this provision, as the district court noted, CRAs may report criminal convictions indefinitely. *Id.* § 1681c(a)(5). Section 1681c does not speak to questions of accuracy, however. It bars, for example, CRAs from reporting even accurate information about eviction records if those records are over seven years old.

Instead, § 1681e(b), which governs accuracy of consumer reports, is the relevant provision for assessing whether a CRA unlawfully reported a sealed or expunged record. *See* Section. II.A.–D., *supra*.

We urge the Court to apply § 1681e(b) to this case and decline to import other courts' analyses under § 1681c. At minimum, we urge the Court to distinguish between FCRA cases concerning the reporting of sealed or expunged records and FCRA cases, like those the district court cited, JA 41– 42, concerning the reporting of records that have *not* been legally restricted from public access.[6]

The Seventh Circuit's decision in *Aldaco v. RentGrow, Inc.*, for example, should not be persuasive here. In that case, the Seventh Circuit held that federal law controlled the meaning of "conviction" under § 1681c(a) and that the CRA did

[6] Although one of the cases the district court cited initially refers to a *pro se* plaintiff's "now-expunged criminal conviction," it appears the conviction in that case was set aside and not expunged or otherwise removed from public view. *See Bugoni v. Emp. Background Investigations, Inc.*, No. CV SAG-20-1133, 2022 WL 888434, at *3 (D. Md. Mar. 25, 2022), *aff'd*, No. 22-1548, 2023 WL 3721210 (4th Cir. May 30, 2023).

Additionally, this Court should decline to adopt the reasoning in a Northern District of Georgia magistrate judge's vacated report and recommendation. In a footnote, the district court here pointed to that decision, which found no violation of § 1681i where the CRA, upon receiving the plaintiff's dispute, modified the file to indicate that the plaintiff's record had been expunged. *Peeples v. Nat'l Data Rsch., Inc.*, No. 1:22-CV-1764-SCJ-CMS, 2024 WL 671628, at *9 (N.D. Ga. Jan. 4, 2024), *report and recommendation adopted*, No. 1:22-CV-01764-SCJ, 2024 WL 1476201 (N.D. Ga. Feb. 27, 2024) (declining to give retroactive effect to the CFPB's Advisory Opinion that reporting an expunged conviction violates § 1681e(b)), *opinion vacated, appeal dismissed*, No. 24-10956, 2025 WL 2682441 (11th Cir. Sept. 19, 2025).

not violate that provision when it reported information about a guilty plea that was later dismissed pursuant to a diversionary disposition. 921 F.3d 685, 686–89 (7th Cir. 2019).[7] The Seventh Circuit itself emphasized that the plaintiff had not had the record at issue expunged, *id.* at 686, suggesting that expungement could have altered the analysis. The Court should not adopt the reasoning in *Aldaco* because that case involved a record that remained publicly available and the issue was how to categorize it for purposes of the FCRA's obsolesce provision.

Nor should *Dickerson v. New Banner Institute, Inc.*, which concerned the meaning of "conviction" in the context of firearms disabilities, control here. 460 U.S. 103, 103 S. Ct. 986, 74 L. Ed. 2d 845 (1983), *superseded by statute*, Firearms Owners' Protection Act, 100 Pub. L. No. 99-308, 100 Stat. 449, *as recognized in Logan v. United States*, 552 U.S. 23, 27, 128 S. Ct. 475, 479, 169 L. Ed. 2d 432 (2007). In *Dickerson*, the Supreme Court interpreted a federal firearms statute and held that a state's expungement of a conviction did not nullify the conviction for purposes of the firearms disabilities in certain provisions of that statute. *Id.* at 111–16. *Dickerson* involved the question of whether an expunged record met the

[7] The plaintiff in *Aldaco* also alleged that the CRA violated § 1681e(b) for failing to inform the landlord that the court had dismissed her battery charge after she served her supervision. The Seventh Circuit did not engage in a detailed analysis of the requirements under § 1681e(b). Instead, the court concluded only that the plaintiff could not establish causation because the landlord's eligibility criteria disqualified applicants with any criminal record of battery or assault. *Aldaco*, 921 F.3d at 689–90.

threshold of being a "conviction" such that it would trigger a federal statutory restriction. Its reasoning should not be applied to assess whether it was misleading and inaccurate for a commercial background screening company to report a nonexistent public record.

The FCRA provision at issue here revolves around accuracy, and accuracy of information about a criminal record, including a conviction record, necessarily involves state law. For example, a CRA would be reporting inaccurate information if it reported that a consumer was convicted of a felony, if they were convicted of a misdemeanor under state law, even if the same offense could constitute a felony under federal law. It would also be inaccurate to report that a consumer was convicted of a crime when the offense was civil in nature under state law—for example, a consumer who received a citation for a motor vehicle infraction. State law defines what constitutes a state criminal offense, the elements of that offense, the sentence for that offense, and whether a conviction exists after an expungement for the purpose of, for example, employment or job applications. *See, e.g.*, JA 16–17 (alleging "expungement order further stated that Plaintiff need not disclose that he was arrested, charged, or convicted for any reason except as provided under" Del. Code Ann. tit., § 4376(a), which allows, for example, criminal justice agencies involved in the licensing of individuals to carry a concealed deadly weapon to access records of expunged cases).

Moreover, following *Dickerson*, Congress made the determination that state law should control what constitutes a "conviction." Congress subsequently amended the firearms statute "in response to *Dickerson*'s holding that, for purposes of federal firearms disabilities, state law did not determine the present impact of a prior conviction." *Logan*, 552 U.S. at 27–28. The amended provision states that "[w]hat constitutes a conviction of [a crime punishable by imprisonment for a term exceeding one year] shall be determined in accordance with the law of the jurisdiction in which the proceedings were held." 18 U.S.C. § 921(a)(20). And the provision "excludes from qualification" as such a crime "[a]ny conviction which has been expunged, or set aside or for which a person has been pardoned or has had civil rights restored . . . unless such pardon, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms." *Id.*

We urge the Court to apply the FCRA's accuracy provisions in § 1681e(b) and state law to determine whether reporting sealed or expunged records violates the FCRA.

CONCLUSION

The district court inverted the FCRA's accuracy requirements and applied the incorrect FCRA provision. If allowed to stand, the district court's decision will undermine states' rights and harm workers and renters who were promised a clear record and a fresh start. We urge the Court to reverse and hold that reporting records that have been sealed, expunged, or otherwise legally restricted from public access violates § 1681e(b) of the FCRA.

DATED: July 9, 2026

Respectfully submitted,

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1. This brief complies with the type-volume limitation of Federal Rule of Appellate Procedure 29(a)(5) because it contains 5,671 words, excluding the parts of the brief exempted by the rules.

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Dated: July 9, 2026

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I hereby certify that on July 9, 2026, I electronically filed the foregoing *Amicus Curiae* Brief for the National Consumer Law Center with the United States Court of Appeals for the Fourth Circuit using the CM/ECF system. I certify that the following parties or their counsel of record are registered ECF Filers and that they will be served by the CM/ECF system:

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>
> Charles E. Harris, II, Carmen N. Longoria-Green, and Preston R. Michelson, Mayer Brown LLP, Counsel for Defendant-Appellee.

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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