

January 31, 2020

ATTORNEY GENERAL RAOUL FILES SUPREME COURT BRIEF SUPPORTING FTC AUTHORITY TO OBTAIN CONSUMER RESTITUTION

Raoul, 23 Attorneys General Argue Consumer Refunds Are Critical In Preventing Fraud

Chicago — Attorney General Kwame Raoul, leading a bipartisan coalition of 23 attorneys general, today announced [an amicus brief](#) supporting the Federal Trade Commission's (FTC) ability to seek restitution for consumers when enforcing consumer protections under the Federal Trade Commission Act.

Raoul and the coalition filed the brief in *Federal Trade Commission v. Credit Bureau Center, LLC*, asking the U.S. Supreme Court grant the FTC's petition for certiorari. In its petition, the FTC seeks reversal of a decision by the 7th Circuit Court of Appeals holding that the FTC does not have authority to obtain restitution when providing redress to victims of fraud or deceptive business practices. In the brief Raoul and the attorneys general argue that restitution is a critical FTC enforcement tool and that preventing the FTC from obtaining restitution significantly weakens the FTC's ability to protect consumers.

"Obtaining restitution is critical in enforcing consumer protections because it allows victims of fraud to receive some relief while also providing a deterrent to those engaging in unfair or deceptive practices," Raoul said. "I urge the Supreme Court to review the 7th Circuit's decision that will weaken the FTC and ultimately benefit businesses that profit by misleading people."

Raoul and the attorneys general argue in the brief that the 7th Circuit's unprecedented decision will negatively harm states and their residents, and will impede federal-state collaborations to combat unfair and deceptive practices. In 2018 alone, the FTC's Bureau of Consumer Protection issued more than \$122 million in refunds to consumers throughout the country.

States rely on partnerships with federal regulators such as the FTC to protect millions of Americans from unfair and deceptive business practices. In order to make victims of fraud whole and to adequately deter further wrongdoing, regulators typically seek injunctive relief that requires defendants to cease illegal conduct and return illegal profits to consumers. While Attorney General Raoul and many attorneys general around the country obtain consumer restitution through their own enforcement actions, states also benefit from the FTC's independent authority to investigate and address violations of federal law.

Additionally, the coalition points out that the 7th Circuit's decision upends decades of precedent and will result in defendants attempting to forum shop. In fact, the attorneys general state, defendants have already begun to attempt to transfer cases to the 7th Circuit in order to take advantage of the decision. As a result, the coalition claims the decision has created confusion where none previously existed.

Joining Raoul in filing the brief are the attorneys general of Alaska, Colorado, Connecticut, Delaware, the District of Columbia, Hawaii, Idaho, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oregon, Puerto Rico, South Dakota, Vermont, Virginia, and Wisconsin.

In the Supreme Court of the United States

FEDERAL TRADE COMMISSION,
Petitioner,

v.

CREDIT BUREAU CENTER, LLC and MICHAEL BROWN,
Respondents.

**On Petition for Writ of Certiorari
to the United States Court of Appeals
for the Seventh Circuit**

**BRIEF OF THE STATES OF ILLINOIS, ALASKA,
COLORADO, CONNECTICUT, DELAWARE, HA-
WAI, IDAHO, INDIANA, IOWA, MAINE, MARY-
LAND, MASSACHUSETTS, MICHIGAN, MINNE-
SOTA, NEVADA, NEW JERSEY, NEW MEXICO, OR-
EGON, SOUTH DAKOTA, VERMONT, VIRGINIA,
WISCONSIN, THE DISTRICT OF COLUMBIA, AND
THE COMMONWEALTH OF PUERTO RICO AS
AMICI CURIAE IN SUPPORT OF PETITIONER**

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INTERESTS OF AMICI CURIAE

The States of Illinois, Alaska, Colorado, Connecticut, Delaware, Hawaii, Idaho, Indiana, Iowa, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New Jersey, New Mexico, Oregon, South Dakota, Vermont, Virginia, Wisconsin, the District of Columbia, and the Commonwealth of Puerto Rico (collectively, the “amici States”) submit this brief in support of the petition for certiorari.¹ The amici States have a significant interest in protecting the welfare and financial security of their residents, which includes combating unfair methods of competition and unfair and deceptive trade practices within their borders. The decision below—which held that the Federal Trade Commission (“FTC”) lacks authority to remedy those unlawful practices by seeking restitution under Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b)—interferes with that interest.

The FTC’s ability to seek restitution under Section 13(b) benefits the amici States and their residents. To begin, when the FTC obtains restitution awards, it is able to provide redress to victims of anticompetitive, unfair, or deceptive trade practices, many of whom live or work in the amici States. In 2018 alone, the FTC’s Bureau of Consumer Protection issued more than \$122 million in refunds to consumers throughout

¹ On January 17, 2020, the State of Illinois, through its counsel, informed counsel of record of its intent to file this brief under Supreme Court Rule 37.2.

the country.² In addition to redressing the specific harms to defrauded consumers, the FTC's enforcement efforts benefit the amici States by promoting fair and competitive markets.

Furthermore, the amici States' own enforcement efforts are fortified by having a strong federal partner in the FTC. Although the States play a vital role in policing anticompetitive, unfair, and deceptive trade practices through their own enforcement efforts and in coordination with one another, the FTC serves as a collaborator and critical safeguard. Indeed, the States and the FTC often work in tandem to address illegal practices. Precluding the FTC from seeking restitution would weaken its efforts to combat unfair and deceptive practices, which, in turn, would frustrate federal-state collaboration and require States to expend resources to fill in any gaps that might arise.

Finally, the amici States have an interest in the uniform application of federal law. In holding that the FTC lacks authority to seek restitution under Section 13(b), the Seventh Circuit upended decades of settled practice and precedent. Not only are defendants in the Seventh Circuit (as well as in the four other circuits that have yet to decide the question presented) likely to rely on its unprecedented holding, but defendants in those circuits that currently recognize the FTC's authority to seek restitution may see that decision as an incentive to forum shop. In fact, defendants

² See Fed. Trade Comm'n, 2018 FTC Annual Report on Refunds to Consumers, App. B (2018), https://www.ftc.gov/system/files/documents/reports/2018-annual-report-refunds-consumers/annual_redress_report_2018.pdf [hereinafter "Office of Claims Report 2018"].

in at least one enforcement action have already requested a transfer of their case into the Seventh Circuit to take advantage of its now-favorable law.³ As a result, the decision below has created confusion where none previously existed, to the detriment of States both within and outside the Seventh Circuit.

³ See, e.g., Plaintiffs' Original Verified Complaint for Declaratory Judgment, Preliminary, & Permanent Injunctive Relief, *Nerium Int'l, LLC v. FTC*, No. 1:19-cv-07189 (N.D. Ill. Nov. 1, 2019), ECF No. 1 at 1, 10, 56; Memorandum of Law of Defendants Neora, LLC, and Jeffrey Olson in Support of Their Motion to Dismiss or, in the Alternative, to Transfer this Action, and for Other Additional Relief, *FTC v. Neora, LLC*, No. 3:19-cv-19699 (D.N.J. Dec. 11, 2019), ECF No. 14-1 at 15-16, 19-24.

SUMMARY OF ARGUMENT

The amici States are home to millions of consumers who rely on state and federal regulators to protect them from anticompetitive conduct and unfair and deceptive trade practices, and remedy the losses associated with such practices. To accomplish this task, regulators must be able to obtain funds to make victims whole. Accordingly, regulators typically seek injunctive relief that requires the defendants to cease the illegal conduct and return the proceeds of the unlawful scheme before they can dissolve or dissipate their assets. See Pet. 5. For decades, lower courts recognized that federal regulators could seek restitution as part of their authority to seek injunctive relief under Section 13(b), see *id.* at 11-12, based on the longstanding principle that “all the inherent equitable powers of the District Court” attach to a statute authorizing injunctive relief, *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946). In fact, as this Court recognized, “[n]othing is more clearly a part of the subject matter of a suit for an injunction than the recovery of that which has been illegally acquired and which has given rise to the necessity for injunctive relief.” *Id.* at 399.

The Seventh Circuit, however, departed from these longstanding principles, as well as decades of its own precedent, to hold that Section 13(b) does not give the FTC the authority to seek restitution. Pet. App. 40a. For the reasons outlined in the petition, that decision was incorrect. See Pet. 13-22. The amici States write separately, however, to explain how depriving the FTC of its authority to seek restitution under Section 13(b) will affect the States and their residents. In particular, the FTC’s ability to obtain restitution benefits

the amici States by providing direct relief to consumers who have fallen prey to anticompetitive, unfair, or deceptive practices and by strengthening collaborative efforts between the States and the FTC. Left in place, the decision below will sow uncertainty about the proper interpretation of federal law, undermine the FTC’s ability to obtain relief for victims of unlawful conduct in the amici States, and diminish the effectiveness of the States’ collaboration with the FTC in seeking to address acts of consumer fraud and anticompetitive conduct. This Court should grant the petition for certiorari.

ARGUMENT

I. The FTC’s Ability To Seek Restitution Provides Direct Benefits To The Amici States And Their Residents.

The FTC’s ability to seek restitution benefits the amici States and their residents because it enables the FTC—in addition to state regulators—to obtain and return funds to victims of anticompetitive, unfair, and deceptive practices. Although each State authorizes its attorney general (or other state agency) to seek restitution to remedy unfair or deceptive practices,⁴ and virtually every State authorizes its attorney general to pursue remedies for anticompetitive conduct,⁵

⁴ Nat’l Consumer Law Center, *Consumer Protection in the States: A 50-State Evaluation of Unfair and Deceptive Practices Laws*, at 28, (Mar. 2018) <https://www.nclc.org/images/pdf/udap/udap-report.pdf> [hereinafter “NCLC Report”].

⁵ Richard A. Leiter & William S. Hein & Co., *Antitrust*, 50 *State Statutory Surveys: Business Organizations: Consumer Protection* (2016).

States also benefit from the FTC's independent authority to investigate and redress violations of federal law.

Indeed, the FTC regularly compensates individuals and businesses harmed by anticompetitive conduct or unfair and deceptive trade practices, which include residents of the amici States and businesses that operate within their borders. In 2018 alone, the FTC mailed \$122 million in refunds to consumers throughout the country.⁶ And the residents of the States in the Seventh Circuit—Illinois, Indiana, and Wisconsin—frequently benefit from the FTC's efforts. The FTC issued nearly 170,000 checks to consumers in those States in 2018, totaling more than \$12 million.⁷

The FTC's ability to locate and freeze assets during the early stages of litigation contributes significantly to its success in making victims whole.⁸ Without the authority to seek restitution, the FTC's priorities may shift from aggressively working to identify and secure such assets for consumers' benefit. Thus, if the decision below stands, the States may be forced to redirect resources to compensate for work that would have previously been performed by the FTC, and consumers in the Seventh Circuit may be deprived of restitution to which they are entitled.

⁶ Office of Claims Report 2018, at 1, App. B.

⁷ *Ibid.*

⁸ See, e.g., Preliminary Injunction with Asset Freeze & Other Equitable Relief, *FTC v. Stark Law, LLC*, No. 1:16-cv-03463 (N.D. Ill. July 11, 2016), ECF No. 82; Preliminary Injunction with Asset Freeze & Other Equitable Relief, *FTC v. K.I.P., LLC*, No. 1:15-cv-02985 (N.D. Ill. Apr. 21, 2015), ECF No. 31.

Moreover, it is unlikely that the consequences of the decision below will be limited to Illinois, Indiana, and Wisconsin. In fact, defendants have already attempted to exploit the recent circuit split to deprive individuals and businesses outside the Seventh Circuit of restitution. As one example, the FTC recently filed suit under Section 13(b) against Neora, LLC, and its CEO in the United States District Court for the District of New Jersey, alleging that the defendants engaged in an illegal pyramid scheme and seeking restitution on behalf of consumers throughout the United States.⁹ That same day, the defendants filed a separate lawsuit in the United States District Court for the Northern District of Illinois—where they can avail themselves of the decision below—seeking a declaratory judgment and a preliminary injunction prohibiting the FTC from seeking restitution in its New Jersey lawsuit.¹⁰ They also moved to dismiss the New Jersey lawsuit, arguing that the Northern District of Illinois was the proper forum for the FTC’s suit.¹¹

Such tactics undermine the critical work of the FTC toward obtaining redress for fraud victims throughout

⁹ Complaint for Permanent & Other Injunctive Relief, *FTC v. Neora, LLC*, No. 3:19-cv-19699 (D.N.J. Nov. 1, 2019), ECF No. 1 at 1-2, 4.

¹⁰ Plaintiffs’ Original Verified Complaint for Declaratory Judgment, Preliminary, & Permanent Injunctive Relief, *Nerium Int’l, LLC v. FTC*, No. 1:19-cv-07189 (N.D. Ill. Nov. 1, 2019), ECF No. 1 at 1, 10, 56.

¹¹ Memorandum of Law of Defendants Neora, LLC, and Jeffrey Olson in Support of Their Motion to Dismiss or, in the Alternative, to Transfer this Action, and for Other Additional Relief, *FTC v. Neora, LLC*, No. 3:19-cv-19699 (D.N.J. Dec. 11, 2019), ECF No. 14-1 at 15-16, 19-24.

the United States. For example, the FTC recently put a stop to an alleged scam responsible for billions of illegal and unwanted robocalls across the country.¹² Through three separate settlements in federal district courts in Florida and Utah, the FTC obtained judgments requiring the defendants to pay restitution and liquidate their assets.¹³ Because these kinds of robocall scams impact residents of every State, the FTC is well suited to lead multijurisdictional, large-scale efforts that require nationwide reach and significant resources.

The FTC's authority to seek restitution under Section 13(b) is also important to its efforts to redress anticompetitive conduct. In 2015, for example, the FTC obtained an injunction requiring the drug manufacturer Cephalon, Inc. to repay \$1.2 billion to the victims of an alleged anticompetitive scheme orchestrated to prevent the generic equivalent of a sleep-disorder drug from entering the market.¹⁴ The compensated victims included drug wholesalers, pharmacies, and insurers.¹⁵

¹² Press Release, Fed. Trade Comm'n, FTC Crackdown Stops Operations Responsible for Billions of Illegal Robocalls (Mar. 26, 2019), <https://www.ftc.gov/news-events/press-releases/2019/03/ftc-crackdown-stops-operations-responsible-billions-illegal>.

¹³ *Ibid.*

¹⁴ Press Release, Fed. Trade Comm'n, FTC Settlement of Cephalon Pay for Delay Case Ensures \$1.2 Billion in Ill-Gotten Gains Relinquished; Refunds Will Go To Purchasers Affected By Anticompetitive Tactics (May 28, 2015), <https://www.ftc.gov/news-events/press-releases/2015/05/ftc-settlement-cephalon-pay-delay-case-ensures-12-billion-ill>.

¹⁵ *Ibid.*

Finally, the FTC’s ability to seek restitution has helped to ensure that defrauded consumers are made whole in those limited circumstances where the FTC Act is broader than a state statute. *Compare, e.g.*, 815 Ill. Comp. Stat. 505/10b(6) (exemption for “false, misleading, or deceptive information by an insurance producer . . . unless the insurance producer has actual knowledge of the false, misleading, or deceptive character of the information”) *and* Ind. Code §§ 24-5-0.5-2(a)(8), 24-5-0.5-4(c) (exemption for real property transactions unless they involved “incurable deceptive acts,” meaning defendants possessed “intent to defraud or mislead”) *and* Wis. Stat. § 100.18(12)(a) (exemption for “insurance business”) *with* *FTC v. Travelers Health Ass’n*, 362 U.S. 293, 297-99 (1960) (applying the FTC Act’s prohibition on unfair and deceptive practices to the insurance industry) *and* *FTC v. Amy Travel Serv., Inc.*, 875 F.2d 564, 574 (7th Cir. 1989), *overruled on other grounds*, *FTC v. Credit Bureau Center, LLC*, 937 F.3d 764 (7th Cir. 2019) (FTC need not “prove subjective intent to defraud” or “actual knowledge of material misrepresentations” to seek restitution) (internal quotation marks omitted). In these instances, if the FTC were deprived of its ability to seek restitution, some consumers might be left without complete redress.

II. The FTC’s Ability To Obtain Restitution Is Critical To The Continued Success Of Federal-State Collaboration To Combat Anti-competitive, Unfair, And Deceptive Trade Practices.

In addition to providing a direct financial benefit to consumers in the amici States, the FTC’s ability to obtain restitution traditionally has been an important

component of the States' collaborative efforts with the FTC. Although the States dedicate substantial resources to combating fraud on their own and in conjunction with one another, the magnitude of consumer fraud and anticompetitive conduct is so great that state-level enforcement efforts cannot always protect consumers from all forms of unlawful and unfair practices or fully compensate them when they are victimized by such schemes. As a result, the FTC has served as a valuable partner to the States, through information sharing, joint investigations, and coordinated enforcement efforts. Eliminating the FTC's authority to seek restitution would weaken the FTC's enforcement efforts and reduce the incentives for collaboration between States and the FTC.

States often partner with the FTC to bring successful joint enforcement actions. For example, over the past decade, Illinois—along with other States in many instances—has collaborated with the FTC to jointly pursue civil actions that resulted in more than \$50 million in restitution.¹⁶ In one such case, Illinois,

¹⁶ See, e.g., Press Release, Ill. Attorney Gen., Attorney General Madigan & FTC Reach \$9 Million Settlement with Phantom Debt Collector (Oct. 31, 2017), http://www.illinoisattorneygeneral.gov/pressroom/2017_10/20171031.html (\$9 million); Stipulated Final Judgment & Order for Permanent Injunction & Other Equitable Relief, *FTC v. K.I.P., LLC*, No. 1:15-cv-02985 (N.D. Ill. Nov. 3, 2015), ECF No. 57 at 7 (\$6.4 million); Press Release, Ill. Attorney Gen., Madigan, FTC & States Announce Settlement to Ban Global Pyramid Scheme, Refund Members (May 13, 2014), http://www.illinoisattorneygeneral.gov/pressroom/2014_05/20140513.html (\$7.75 million); Stipulated Order for Permanent Injunction & Monetary Judgment, *FTC v. One Techs., L.P.*, No. 3:14-cv-05066 (N.D. Cal. Nov. 18, 2014), ECF No. 8 at 8 (\$22 mil-

Ohio, and the FTC together secured \$22 million in restitution for victims of an alleged scheme that purported to offer individuals free credit scores on approximately 50 websites.¹⁷ But when consumers “used these sites to access their credit scores, they were enrolled in credit monitoring programs and charged monthly fees—without their consent.”¹⁸ With the proceeds of the judgment, the FTC was able to issue payments in excess of \$20 million to nearly 150,000 individual consumers.¹⁹

In another example, Illinois, Kentucky, North Carolina, and the FTC brought suit against a company allegedly operating an unlawful pyramid scheme.²⁰ The

tion); Stipulated Final Judgment & Order for Permanent Injunction & Other Equitable Relief as to Defendants Lifelock and Davis, *FTC v. Lifelock, Inc.*, No. 2:10-cv-00530 (D. Ariz. Mar. 9, 2010), ECF No. 2 at 8 (\$11 million).

¹⁷ Stipulated Order for Permanent Injunction & Monetary Judgment, *FTC v. One Techs., L.P.*, No. 3:14-cv-05066 (N.D. Cal. Nov. 18, 2014), ECF No. 8 at 8-9; see also Fed. Trade Comm’n, One Technologies Refunds (Jan. 2017), <https://www.ftc.gov/enforcement/cases-proceedings/refunds/one-technologies-refunds>.

¹⁸ Fed. Trade Comm’n, One Technologies Refunds (Jan. 2017), <https://www.ftc.gov/enforcement/cases-proceedings/refunds/one-technologies-refunds>.

¹⁹ Fed. Trade Comm’n, Office of Claims & Refunds Annual Report 3 (2017), <https://www.ftc.gov/system/files/documents/reports/bureau-consumer-protection-office-claims-refunds-annual-report-2017-consumer-refunds-effected-july/redressreportformatforweb122117.pdf> [hereinafter “Office of Claims Report 2017”].

²⁰ Fed. Trade Comm’n, Fortune Hi-Tech Refunds (Sept. 2018), <https://www.ftc.gov/enforcement/cases-proceedings/refunds/fortune-hi-tech-refunds>.

coalition ultimately negotiated a suspended judgment conditioned on the defendants' immediate payment of \$3.5 million and liquidation of certain assets.²¹ As a result, the FTC was able to make payments totaling more than \$3.7 million to approximately 285,000 individual consumers.²²

Similar state-federal collaborations occur throughout the country to address a wide spectrum of fraudulent conduct. For instance, in 2018, Florida and the FTC obtained a \$23 million judgment to redress an alleged debt-relief scam that involved misleading robocalls made to more than 10,000 consumers.²³ Because of the FTC's ability to seek restitution under Section 13(b), Florida residents may receive significant compensation from the proceeds of the judgment, which include cash payments by the defendant as well as the liquidation of the defendant's 55-foot yacht, jet skis, luxury watches, and other personal property.²⁴ Similarly, in 2019, the FTC and Florida collaborated

²¹ Stipulated Order for Permanent Injunction & Monetary Judgment, *FTC v. Fortune Hi-Tech Marketing, Inc.*, No. 5:13-cv-00123 (E.D. Ky. May 9, 2014), ECF No. 202 at 7-13.

²² Office of Claims Report 2017, at 3.

²³ Press Release, Fed. Trade Comm'n, FTC and State of Florida Win Summary Judgment: Court Orders Ringleader of Debt-Relief Scam to Pay \$23 Million and Imposes Industry Bans (Dec. 14, 2018), <https://www.ftc.gov/news-events/press-releases/2018/12/ftc-state-florida-win-summary-judgment-court-orders-ring-leader>.

²⁴ Order & Permanent Injunction, *FTC v. Life Mgmt. Servs. of Orange Cty., LLC*, No. 6:16-cv-982 (M.D. Fla. Dec. 7, 2018), ECF No. 225 at 39, 42-44.

to obtain a total of \$314,945 in restitution for 305 consumers “who paid up-front for worthless credit card interest rate reduction programs pitched . . . using illegal robocalls.”²⁵

Indeed, in some circumstances, state-federal collaboration extends beyond individual lawsuits to nationwide enforcement efforts. For example, in 2017, Colorado, Florida, Illinois, Kansas, Maryland, North Carolina, North Dakota, Oregon, Pennsylvania, Texas, Washington, and the District of Columbia partnered with the FTC to launch a coordinated effort targeting deceptive student loan debt relief that involved 36 separate lawsuits.²⁶ As a part of this effort, both the state attorneys general and the FTC filed lawsuits seeking restitution for individual consumers.²⁷

²⁵ Press Release, Fed. Trade Comm’n, FTC Returns Nearly \$315,000 to Consumers Who Bought Worthless Credit Card Interest Rate Reduction Programs (May 23, 2019), <https://www.ftc.gov/news-events/press-releases/2019/05/ftc-returns-nearly-315000-consumers-who-bought-worthless-credit>.

²⁶ Press Release, Fed. Trade Comm’n, FTC, State Law Enforcement Partners Announce Nationwide Crackdown on Student Loan Debt Relief Scams (Oct. 13, 2017), <https://www.ftc.gov/news-events/press-releases/2017/10/ftc-state-law-enforcement-partners-announce-nationwide-crackdown>.

²⁷ See, e.g., Complaint for Permanent Injunction & Other Equitable Relief, *FTC v. Student Debt Doctor, LLC*, No. 0:17-cv-61937 (S.D. Fla. Oct. 2, 2017), ECF No. 1 at 1, 16; Complaint for Permanent Injunction & Other Equitable Relief, *FTC v. AI DocPrep, Inc.*, No. 2:17-cv-07044 (C.D. Cal. Sept. 27, 2017), ECF No. 1 at 2, 38; Complaint for Permanent Injunction & Other Equitable Relief, *FTC v. Amer. Student Loan Consolidators, LLC*, No. 0:17-cv-61862 (S.D. Fla. Sept. 25, 2017), ECF No. 1 at 1, 16; Complaint for Permanent Injunction & Other Equitable Relief,

The FTC's ability to obtain restitution has been particularly critical to joint state-federal enforcement efforts during the early, investigatory stages of litigation. As one example, initial investigations undertaken by Illinois and the FTC into alleged phantom debt collectors led to the entry of preliminary injunctions freezing the defendants' assets and appointing receivers to ensure that those assets would be used to provide restitution to consumers.²⁸ As a result, Illinois and the FTC ultimately secured permanent injunctions awarding consumers across the country approximately \$15 million in restitution.²⁹ By pooling resources and acting quickly, Illinois and the FTC

FTC v. M&T Fin. Grp., No. 2:17-cv-06855 (C.D. Cal. Sept. 18, 2017), ECF No. 3 at 2, 19; Press Release, Fed. Trade Comm'n, Operation Game of Loans State Law Enforcement Actions (2017), https://www.ftc.gov/system/files/attachments/press-releases/ftc-state-law-enforcement-partners-announce-nationwide-crackdown-student-loan-debt-relief-scams/student_loans_state_case_chart_10-11-17.pdf.

²⁸ Preliminary Injunction with Asset Freeze & Other Equitable Relief, *FTC v. Stark Law, LLC*, No. 1:16-cv-03463 (N.D. Ill. July 11, 2016), ECF No. 82 at 11-12, 17-26; Preliminary Injunction with Asset Freeze & Other Equitable Relief, *FTC v. K.I.P., LLC*, No. 1:15-cv-02985 (N.D. Ill. Apr. 21, 2015), ECF No. 31 at 9-11, 16-24.

²⁹ Press Release, Ill. Attorney Gen., Attorney General Madigan & FTC Reach \$9 Million Settlement with Phantom Debt Collector (Oct. 31, 2017), http://www.illinoisattorneygeneral.gov/pressroom/2017_10/20171031.html; Stipulated Final Judgment & Order for Permanent Injunction & Other Equitable Relief, *FTC v. K.I.P., LLC*, No. 1:15-cv-02985 (N.D. Ill. Nov. 3, 2015), ECF No. 57 at 7.

were able to ensure that consumers were able to obtain restitution before defendants could dissolve or dissipate their assets.

Relatedly, States benefit from the FTC's well-developed methods of identifying and locating individuals and businesses entitled to restitution. The FTC's Bureau of Consumer Protection—through its Office of Claims and Refunds—collects information on affected consumers and mails checks directly to them.³⁰ Before doing so, the FTC checks its distribution lists against the National Change of Address System, which records change-of-address notices submitted to the U.S. Post Office.³¹ If a check is returned as undeliverable, the FTC performs an address search to determine if a consumer has a more recent address.³² And the FTC regularly audits this process to ensure that only those entitled to restitution receive it.³³

As a result, the FTC sent \$513 million in refunds directly to affected consumers in 2017 and 2018.³⁴ The FTC's well-developed refund process thus has helped to ensure that the amici States' residents actually receive the redress to which they are entitled in an efficient manner, and at minimal cost to the States. But without the authority to seek restitution, the FTC would lack incentive to aggressively work to identify

³⁰ Office of Claims Report 2017, at 2.

³¹ Office of Claims Report 2018, at 4.

³² *Ibid.*

³³ *Id.* at 3.

³⁴ *Id.* at 1; Office of Claims Report 2017, at 1.

and locate consumers entitled to such relief, and the States will have to redirect resources to these efforts.

* * *

In enacting Section 13(b), Congress intended the FTC to have expansive authority to redress the injury caused by anticompetitive, unfair, and deceptive practices throughout the marketplace. To give that intent full effect, the FTC must be able to make the victims of such practices whole through restitution. The lower court's decision wrongly deprives the FTC of that authority and has created uncertainty about the proper interpretation of Section 13(b). If allowed to stand, the decision below will undermine the FTC's ability to obtain relief for consumers in the amici States and diminish the effectiveness of the States' partnership with the FTC in addressing acts of consumer fraud and anticompetitive conduct.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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