



October 14, 2021

Statement of CFPB Director Rohit Chopra and FTC Chair Lina M. Khan  
on Amicus Brief filed in Henderson v. The Source for Public Data, L.P.

The Consumer Financial Protection Bureau (CFPB) and Federal Trade Commission (FTC), and North Carolina Department of Justice filed an amicus brief today with the U.S. Court of Appeals for the Fourth Circuit to urge the Court to overturn a problematic District Court decision that would undermine the Fair Credit Reporting Act (FCRA) by granting immunity to consumer reporting agencies under Section 230 of the Communications Decency Act. The case is Henderson v. The Source for Public Data, L.P.

Reporting has extensively documented how commerce marketplaces have become havens for counterfeit and unsafe goods, and that platforms wip their hands of responsibility by claiming Section 230 immunize them from liability.<sup>1</sup> The argument is not only wrong as a matter of law, but it also

delivers data online does not change that. But the Defendant in Henderson successfully argued, at the District Court level, that it was an “interactive computer service” and that because inaccuracies in its consumer reports originated with state agencies and courthouses, it should be immune from all liability under the FCRA, including the provisions that only apply to consumer reporting agencies.

Lawyers at the CFPB, FTC, and NC DOJ have expertly rebutted these arguments in the amicus brief filed in court today. The brief is worth reading in full, but it is worth noting that the Defendants are trying to use Section 230 in a manner that is much broader than the typical understanding of that statute. Typically, Section 230 is used to immunize interactive computer services for illegal and tortious conduct of others who use the platform. But this case is different. The Plaintiff is not trying to hold the Defendant liable for the FCRA violations of someone using its platform. To the contrary, the FCRA provisions at issue in this case exclusively apply to consumer reporting agencies just like the Defendant. This case highlights a dangerous argument that could be used by market participants to sidestep laws exp(8v(he)10.4 (-4.067 0 Td ( )de)10.4 (-