IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION

CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA; FORT WORTH CHAMBER OF COMMERCE; LONGVIEW CHAMBER OF COMMERCE; AMERICAN BANKERS ASSOCIATION; CONSUMER BANKERS ASSOCIATION; and TEXAS ASSOCIATION OF BUSINESS, Plaintiffs, v. CONSUMER FINANCIAL PROTECTION BUREAU; and ROHIT CHOPRA, in his official capacity as Director of the Consumer Financial Protection Bureau, Defendants.	Case No. 4:24-CV-213-P

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THE FORT WORTH CHAMBER OF COMMERCE FOR LACK OF STANDING AND TRANSFER TO THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

INTRODUCTION

Like many local chambers, Plaintiff Fort Worth Chamber of Commerce has a membership made up of a mix of businesses—large and small, national and local. Despite their differences in size and reach, such businesses have joined together to support the business and economic development of Fort Worth, recognizing that all stand to benefit from economic growth in the region they operate. It should thus be no surprise that the Fort Worth Chamber takes positions on matters that affect its membership, whether those matters are the subject of debate and decision in Fort Worth, Austin, or Washington. The Fort Worth Chamber does not limit itself to advocating on behalf of businesses headquartered in Fort Worth, nor would it make sense to do so. After all, issues that affect large businesses operating in Fort Worth will affect Fort Worth. This lawsuit is but one example.

Plaintiff Fort Worth Chamber of Commerce has at least six members that are large credit card issuers operating in Fort Worth who will be directly harmed by the Final Rule, in addition to other members who will be indirectly harmed by it. This Court was thus correct when it found on May 10, 2024, that "the Fort Worth Chamber of Commerce *does* qualify for associational standing." Order 7 n.3, ECF No. 82 ("PI Order") (emphasis in original).

Defendants ask this Court to reconsider that holding, arguing that this lawsuit is not "germane" to the Fort Worth Chamber's mission. But as the Fifth Circuit has held, and Defendants recognize, "the germaneness requirement is 'undemanding' and requires 'mere pertinence' between the litigation at issue and the organization's purpose." *Ass'n of Am. Physicians & Surgeons, Inc. v. Tex. Med. Bd.*, 627 F.3d 547, 550 n.2 (5th Cir. 2010) (quoting *Bldg. & Constr. Trades Council of Buffalo v. Downtown Dev., Inc.,* 448 F.3d 138, 148 (2nd Cir. 2006)). The Fort Worth Chamber easily satisfies that standard. It is a business organization challenging a rule that will harm businesses operating in Fort Worth, including at least six of its members, and will

specifically affect access to credit and the financial services industry in Fort Worth, both of which are critical to the Fort Worth Chamber's mission.

Against the overwhelming body of current law, Defendants press two tactics. First, they intone that the Fort Worth Chamber's directly affected members are "located" or "based" out-of-state. That is a sleight of hand, because the Fort Worth Chamber is located in Fort Worth and its members operate in Fort Worth: what Defendants really mean is some of these members are "headquartered" out of state, but they have cited no precedent that the germaneness inquiry turns on a look-through analysis of the headquarters of each of an association's affected members. Injecting such considerations into the germaneness inquiry would hamper local organizations' abilities to challenge national policies that have real effects in their communities and allow the federal government to push litigation out of proper venues and into the District of Columbia. Nothing in Article III, nor in the federal venue statutes, warrants limiting local organizations in this way. Next Defendants suggest that Justice Thomas' recent concurrence on associational standing calls into question the Fort Worth Chamber's standing in this case, but that concurrence is expressly about what Justice Thomas believes the law should be, not what it is.

The Fort Worth Chamber has standing under existing law that binds this Court. Defendants' motion for transfer should be denied.

BACKGROUND

The Fort Worth Chamber of Commerce's "core mission is to cultivate a thriving business climate in the Fort Worth region." App. 21, ECF No. 5. To that end, it acts to promote a "stronger business climate," including with respect to Fort Worth's financial services industry. *Id.* at 20. That industry "supports over 20,000 jobs and has increased the presence of corporate credit and consumer finance" in Fort Worth. *Id*. at 21.

The Fort Worth Chamber of Commerce has members that will be directly and indirectly affected by the Final Rule. In particular, the Fort Worth Chamber has named six members that are large credit card issuers operating in Fort Worth that will be directly affected by the Final Rule: Synchrony Bank, Bank of America, Capital One, JP Morgan Chase & Co., PNC Bank, and Wells Fargo. Third Suppl. Montgomery Decl. ¶ 4 ("Montgomery Decl."), App. 2. Four of these members have been members of the Fort Worth Chamber for more than fifteen years before the Final Rule was even proposed. *Id.* And the Fort Worth Chamber has detailed numerous harms to both its members and the Fort Worth area from the Final Rule. App. 21-25, ECF No. 5. For example, Synchrony Bank maintains approximately 6.4 million unique cardholders in Texas, including approximately 600,000 in the Fort Worth Division.[1] Pls.' Suppl. Br. on Venue 13, ECF No. 55. The Final Rule would affect Synchrony Bank's ability to charge penalty fees for late payments on those accounts. And Synchrony's retail partners have approximately 4,000 locations in the Fort Worth Division. *Id.* The Fort Worth Chamber also has as members at least fifteen smaller credit-card issuers that will feel market pressure to match the lower late fees of larger card issuers. Montgomery Decl. ¶ 4, App. 2; *see also* Credit Card Penalty Fees (Regulation Z), 89 Fed. Reg. 19,128, 19,200 (Mar. 15, 2024) (Final Rule) (recognizing that "significant reductions in late fees at Larger Card Issuers might create competitive pressure for financial institutions not directly affected by this final rule to lower their own late fees, and thus lose revenue"). In addition, the Fort Worth Chamber has multiple members that offer co-branded cards, which will be affected by this rule. Montgomery Decl. ¶ 4, App. 2.

[1] "[A]pproximately 11% of Synchrony's total outstanding loan receivables were from Texas—the highest amount of any state." By contrast, "[a]pproximately 0.1% of Synchrony's total outstanding loan receivables were from the District of Columbia—a smaller amount than in any state." App. Pls.' Suppl. Br. on Venue 4, ECF No. 56.

For these reasons, the Fort Worth Chamber decided to bring this case. It assessed that this lawsuit would further its mission of promoting economic development in the region, as evidenced both by the harm the Final Rule would otherwise impose on its members and by the importance of the availability of credit to business development. This Court was correct when it concluded that the Fort Worth Chamber has standing. PI Order 7 n.3 ("The Court wants to make clear that the Fort Worth Chamber of Commerce *does* qualify for associational standing. In support of this holding, the Court adopts the detailed standing analysis conducted by other federal district courts in the Fifth Circuit involving challenging federal administrative rules by the Chamber of Commerce on behalf of its members.") (emphasis in original). The Defendants' attempt to undermine that holding is unavailing and should be rejected.

ARGUMENT

I. Plaintiff Fort Worth Chamber of Commerce has standing.

The Fort Worth Chamber of Commerce satisfies the requirements for associational standing under current law. "[A]n association has standing to bring suit on behalf of its members when: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Hunt v. Washington State Apple Advert. Comm'n*, 432 U.S. 333, 343 (1977). The Defendants do not even contest the first and third requirements. The second requirement, under binding precedent, is "undemanding" and routinely satisfied in cases like this one.

A. The Fort Worth Chamber of Commerce satisfies the "germaneness" requirement for associational standing.

i. This litigation is "germane" to the Fort Worth Chamber's purpose of cultivating Fort Worth's business climate, including for at least six credit card issuers that are members.

As the Fifth Circuit has held, and Defendants recognize, "the germaneness requirement is 'undemanding' and requires 'mere pertinence' between the litigation at issue and the organization's purpose." *Ass'n of Am. Physicians*, 627 F.3d at 550 n.2 (quoting *Bldg. & Constr. Trades Council of Buffalo,* 448 F.3d at 148); *see Supreme Beef Processors, Inc. v. U.S. Dep't of Agric.*, 275 F.3d 432, 437 n.14 (5th Cir. 2001) (association had standing because lawsuit "deal[t] with the application of a [regulatory] standard that affects [association's] members"); *see also* Br. 12, ECF 110 (recognizing that "litigation must only be 'pertinent' … to qualify as germane"). Other circuits have reached the same conclusion. *Bldg. & Constr. Trades Council of Buffalo*, 448 F.3d at 148 ("mere pertinence" and "undemanding"); *Humane Soc'y of the U.S. v. Hodel*, 840 F.2d 45, 58 (D.C. Cir. 1988) ("mere pertinence"); *Presidio Golf Club v. Nat'l Park Serv.*, 155 F.3d 1153, 1159 (9th Cir. 1998) ("undemanding").

Under this standard, courts within this Circuit have found standing for organizational plaintiffs in a wide variety of circumstances. For example, a national medical association could challenge state medical board procedures because the suit was germane to its interest in "government abuse." *Ass'n of Am. Physicians*, 627 F.3d at 550 n.2. A national meat association had standing to challenge a USDA regulation that "affects" its members. *Supreme Beef Processors*, 275 F.3d at 437 & n.14. A challenge to an adult entertainment regulation was germane to an entertainment trade association because it "represent[s] the legal and economic interest of its members." *Tex. Ent. Ass'n, Inc. v. Hegar*, 10 F.4th 495, 504 (5th Cir. 2021). A challenge to EPA regulations was germane to two water trade associations because they seek to "protect environmental interests." *Sw. Elec. Power Co. v. U.S. Env't Protection Agency*, 920 F.3d 999, 1014 n.18 (5th Cir. 2019). A challenge to the Houston beltway was "germane" to the national Sierra Club's mission of "protect[ing] the wild places of the earth" because the beltway project

could cause a flood. *Sierra Club v. U.S. Army Corps of Eng'rs*, No. CV H-11-3063, 2012 WL 13040281, at *11 (S.D. Tex. Aug. 22, 2012). A challenge to a pedestrian solicitation law was "clearly" germane to an association of day laborers formed "to organize more formally to learn about their rights in response" to police activity. *Jornaleros de Las Palmas v. City of League City*, 945 F. Supp. 2d 779, 794 (S.D. Tex. 2013). And a challenge to congressional districts was germane to a particular legislative caucus because it related to "voter strength." *Perez v. Abbott*, 274 F. Supp. 3d 624, 677 (W.D. Tex. 2017), *rev'd and remanded on other grounds*, 585 U.S. 579 (2018). These cases demonstrate that courts in this Circuit take the Fifth Circuit's precedent to heart: the germaneness inquiry is not a difficult bar.

The Fort Worth Chamber easily clears the germaneness bar in this case. This litigation is "pertinent," and therefore germane, to the Fort Worth Chamber's purpose of "cultivat[ing] a thriving business climate in the Fort Worth region" and "increas[ing] . . . resources to help businesses compete in the local and global marketplace." App. 21. Fort Worth is home to a growing financial services industry, and the Fort Worth Chamber's membership includes at least six credit card issuers that will be directly affected by this rule, four of whom have been members for more than fifteen years before the Final Rule was proposed. *Id.*; Montgomery Decl. ¶ 4, App. 2. Challenging a rule that imposes regulatory burdens on the financial-services industry—and in particular, a rule that will affect the ability of credit card issuers to manage cardholder risk, offer credit on competitive terms, and collect late-fee revenue—directly furthers the Fort Worth Chamber's mission.

Indeed, by the CFPB's own admission, changes in the availability of credit can have drastic consequences for consumers' spending power and for business and economic development, both of which pose a risk to Fort Worth's "thriving business climate." *See* CFPB, *CFPB Proposes Rule*

to Shine New Light on Small Businesses' Access to Credit (Sept. 1, 2021), https://www.consumerfinance.gov/about-us/newsroom/cfpb-proposes-rule-to-shine-new-light-on-small-businesses-access-to-credit ("[T]oo often, small business development is starved for want of access to responsible, fairly priced credit."); CFPB, *Credit Card Line Decreases* (June 2022), https://files.consumerfinance.gov/f/documents/cfpb_credit-card-line-decreases_report_2022-06.pdf ("Credit cards also play a critical role in many consumers' finances, not only as a routine spending mechanism, but also as a source of flexibility during financial hardship" and a reduction in credit access "may compound existing financial pressures and reduce resilience."). More broadly, advancing legal arguments to ensure that federal agencies act within appropriate statutory boundaries furthers the interests of all businesses facing complex regulatory landscapes, and thus allows the Fort Worth Chamber to "cultivate a thriving business climate." Montgomery Decl. ¶ 4.

ii. The CFPB's arguments are unsupported by facts or precedent.

Against this straightforward application of existing law, Defendants first emphasize that the germaneness requirement is a "constitutional backstop." Br. 7. But the constitutional origins of the germaneness requirement do not transform what the Fifth Circuit has called an "undemanding" requirement into a stringent one. And the constitutional origins of the germaneness requirement only confirm that this case is germane to the Fort Worth Chamber's mission. As the Supreme Court explained, the "demand that an association plaintiff be organized for a purpose germane to the subject of its member's claim raises an assurance that the association's litigators will themselves have a stake in the resolution of the dispute, and thus be in a position to serve as the defendant's natural adversary." *United Food & Com. Workers Union Loc. 751 v. Brown Grp., Inc.*, 517 U.S. 544, 555-56 (1996). Or, as Defendants' preferred out-of-circuit authority puts it, the germaneness requirement "ensures a modicum of concrete adverseness

by reconciling membership concerns and litigation topics by preventing associations from being merely law firms with standing." *Hodel*, 840 F.2d 58. The record plainly reflects that the Fort Worth Chamber has well more than a "modicum" of adverseness to the Final Rule and is the CFPB's "natural adversary" with respect to it.

Defendants next urge that this case is not germane to the Fort Worth Chamber's purpose. They claim the Chamber's purpose is "geographically circumscribed" such that there is no "guarantee that the grievances expressed in this lawsuit apply to a critical mass of association members or that the case bears a reasonable connection to the association's knowledge and experience." Br. 8-9 (internal citations omitted). That argument lacks foundation in the law and is just wrong on the facts. As to the law, neither of the out-of-circuit precedents Defendants cite suggest that an organization with a specific geographical interest cannot challenge national policies that may affect it. In *Hodel*, the D.C. Circuit reasoned that the "modest but sensible" germaneness requirement serves only to avoid a "wholesale mismatch between litigation topics and organizational expertise" and "prevent[] association leaders from abusing their offices," not to "unduly confine the occasions on which associations may bring legal actions on behalf of members." 840 F.2d at 57-59. It thus allowed the Humane Society to challenge a nationwide policy permitting hunting on wildlife refuges due to the Humane Society's "unstated but obvious side goal of preserving animal life, permitting enhanced human appreciation of other live things." *Id.* at 59. Similarly, in *Bldg. & Constr. Trades Council*, the Second Circuit noted that the Supreme Court "used the word 'germane,' rather than the phrase 'at the core of,' or 'central to,' or some word or phrase indicating the need for a closer nexus between the interests sought to be protected by the suit in question and the organization's dominant purpose." 448 F.3d at 148. It thus allowed a labor organization to press certain environmental claims relating more broadly to dumping into

waters of the United States even though it was unclear whether those claims related to *occupational* health and safety, compared to the overall health and safety of residents in a particular area. *Id*. at 150. It did so because effects on the workers at a job site were sufficiently germane to the labor organization's mission. *See id.* Far from circumscribing an organization's interests, these cases demonstrate just how modest the germaneness requirement is.

Defendants' view of the facts is similarly misguided. The Fort Worth Chamber has as members at least six large credit card issuers directly regulated by this Final Rule, four of whom have been members for more than fifteen years before the Final Rule was proposed, and more than fifteen smaller credit card issuers who will be affected by the Final Rule's distortions of the credit card market. Montgomery Decl. ¶ 4. The Fort Worth Chamber routinely advocates on behalf of these members in the financial services industry, and this suit is a natural extension of those efforts. Moreover, the Fort Worth Chamber is well placed to determine how a rule that harms one segment of its membership will impact its membership and local economy more broadly.

The CFPB's own statements reveal why the Final Rule is relevant to the Fort Worth Chamber's mission. The CFPB has acknowledged some of the harms that the Final Rule will impose on large credit card issuers, including lost revenue and increased late payments, 89 Fed. Reg. 19,197-98, and has recognized that such harms will affect those issuers' operations not just at their headquarters but everywhere they offer credit, *see id.* at 19,200 (recognizing that the rule will affect consumers in rural areas, where the affected issuers are not headquartered). Moreover, the CFPB has acknowledged that it is "possible that some consumers' access to credit could fall [due to the Final Rule] if Larger Card Issuers could adequately offset lost fee revenue expected from them only by increasing APRs to a point at which a particular card is not viable, for example, because the APR exceeds applicable legal limits." 89 Fed. Reg. at 19,196. When access to credit

falls, it affects the economy in which those consumers operate. *Cf.* CFPB, Banking and Credit Access in the Southern Region of the U.S. (June 21, 2023), https://files.consumerfinance.gov/f/documents/cfpb_ocp-data-spotlight_banking-and-credit-access_2023-06.pdf ("A small business's ability to access capital can be a determining factor in its ongoing survival and future growth, which then results in more jobs and economic activity."); CFPB, *Credit Card Line Decreases* (June 2022), https://files.consumerfinance.gov/f/documents/cfpb_credit-card-line-decreases_report_2022-06.pdf (a reduction in credit access "may compound existing financial pressures and reduce resilience"). Defendants' assertion that this litigation is unconnected to Fort Worth is belied by the facts of this case and the facts they have asserted elsewhere.

Defendants have no answer other than the repeated sleight of hand that the Fort Worth Chamber's members are not "based" or "located" in Fort Worth. *E.g.*, Br. 1 ("Utah-based"), 4 (no large issuer is "based in Fort Worth"), 9 (no large issuer is "located in Fort Worth"). This misses the point: the six large credit card issuers directly regulated by this Final Rule and the fifteen other card issuers affected by this Final Rule operate in Fort Worth, issue credit cards in Fort Worth, and in many instances have, as Defendants admit, branches in Fort Worth. There can be no doubt that the credit card market in Fort Worth is deeply affected by this Rule.

Defendants' real objection, which they reveal on page 10 of their brief, is that none of these multiple Fort Worth members are "headquartered" in Fort Worth. They obscure this central premise of their argument because they cite no governing precedent—and Plaintiffs are aware of none—that focuses on the "headquarters" of an association's members to determine whether a lawsuit is germane to that association's purpose.[2] Quite the contrary, germaneness in this Circuit

[2] An out-of-circuit district court recently denied associational standing to local member organizations bringing suit on behalf of companies headquartered elsewhere. *See* Order, *Dayton Area Chamber of Com. v. Becerra*, No. 3:23-

is based instead on the relationship between the organization's purpose and the litigation, not the headquarters of an organization's members and the litigation. *See Career Colls. & Schs. of Tex. v. U.S. Dept. of Educ.*, 98 F.4th 220, 234 (5th Cir. 2024) (finding that a trade association representing for-profit colleges and similar post-secondary institutions operating in Texas had standing to challenge a U.S. Department of Education rulemaking, with no inquiry as to the headquarters of those institutions); *Chamber of Com. v. Internal Rev. Serv.*, No. 1:16-CV-944, 2017 WL 4682050, at *3 (W.D. Tex. Oct. 6, 2017) (finding that two trade associations had standing to challenge a federal corporate-tax related rule based on harms of an identified member not headquartered in Texas). Here, as discussed above, there can be no doubt the Final Rule will affect credit card agreements, and thus credit access and economic growth, in Fort Worth, which is part of the Fort Worth Chamber's mission.

The CFPB's novel interpretation of the germaneness requirement would also make it difficult for associations like the Fort Worth Chamber—or any association based where businesses are unlikely to be headquartered, such as rural areas—to protect their interests. The Fort Worth economy is affected not just by businesses headquartered in Fort Worth but by businesses that operate in Fort Worth, including by providing access to credit, made available by businesses headquartered elsewhere. *See* Montgomery Decl. ¶ 5. Likewise, the Fort Worth business community is made up not just of businesses headquartered in Fort Worth but those headquartered elsewhere that do business in Fort Worth. That is why such businesses have been members of the Fort Worth Chamber for over a decade. *Id.* at ¶ 4. The CFPB puts forth no good reason that the

cv-156 (S.D. Ohio Aug. 8, 2024). This approach to germaneness is an outlier and inconsistent with precedent, as discussed above. In addition, the facts of this case are distinguishable from the factual premise of the court's decision in *Dayton*, where the court concluded that "Plaintiffs…provided no information…directly connecting the interests of [two pharmaceutical companies] to the business climate in the Dayton area." *Id.* at *11. Here, the Fort Worth Chamber has provided numerous declarations directly tying the impacts of the Final Rule on the Fort Worth Chamber's members to Fort Worth, where members issue credit cards, and the economic development thereof.

Fort Worth Chamber—or the Chamber of any small town or rural area where significant businesses are unlikely to be headquartered—should be less able to assert its interests than another chamber where more members may be headquartered. Article III simply requires that an association *have* interests that are germane to its suit.

Moreover, this "headquarters" objection is really a venue argument masquerading as a standing argument. The law of proper venue is concerned with the "headquarters"—i.e., the residence—of an organizational plaintiff. 28 U.S.C. § 1391(e)(1)(C). The CFPB cannot contest that the Fort Worth Chamber is headquartered here in Fort Worth and thus supports venue in this district. So to move the case out of this district, the Defendants seek to impose a *new* requirement that an organizational plaintiff that establishes proper venue must be dismissed if it cannot *also* show that its affected members are headquartered within the jurisdiction and thus themselves would have proper venue to sue in that jurisdiction. That additional requirement finds no support in the law and would create an end-run-around the venue statute that Congress adopted.

Perhaps realizing the dearth of precedent supporting their arguments about geography, Defendants also ask this Court to second guess the Fort Worth Chamber's assessment of whether and to what extent the Final Rule harms businesses and consumers in Fort Worth. In particular, the Defendants urge this Court to conclude that the Final Rule will *help* consumers in the area, and that if the Fort Worth Chamber simply understood its own mission, it would support the Final Rule rather than seeking to advance the interests of "out-of-state card issuers." Br. 10. But that argument just confirms what Plaintiffs have always contended—that Fort Worth Chamber's members *will* be affected in Fort Worth by the application of the Final Rule. And how the various benefits and harms from the Final Rule shake out for the local economy and its consumers—particularly consumers who pay their bills on time in Fort Worth—is a merits question that does

not bear on the germaneness requirement. For germaneness purposes, it is enough that the harms are related to the Fort Worth Chamber's members and mission, and the Fort Worth Chamber accordingly has standing to bring this suit.

Defendants' final criticism of the Fort Worth Chamber's purpose of supporting the growing financial services industry in Fort Worth, which includes smaller card issuers and local branches, shares similar flaws. Br. 11. Defendants suggest that the Fort Worth Chamber cannot rely on the interests of those members if those entities lack standing to sue in their own right. Br. 11-12. But Defendants cannot contest—indeed, have never contested, *see* Br. Defs.' Opp'n to Prelim. Inj. 11 n.6, ECF No. 23—that the Fort Worth Chamber has identified a large credit card issuer member with standing to sue.

At the end of the day, Defendants ask this Court to adopt a series of new requirements for associational standing that are irreconcilable with the precedents of the Fifth Circuit and this Court.

B. Justice Thomas's concurrence in *FDA v. Alliance for Hippocratic Medicine* does not change, nor does it claim to change, the settled doctrine of associational standing as previously articulated by the Supreme Court.

In addition to repeating already-rejected germaneness arguments, Defendants point to a recent single-justice concurrence in which Justice Thomas questions the doctrine of associational standing. Br. 12 (citing *FDA v. Alliance for Hippocratic Medicine*, 602 U.S. 367, 397-405 (2024) (Thomas, J., concurring)). But Justice Thomas himself acknowledges that associational standing is settled law, and suggests only that in another, "appropriate case . . . the Court should address whether associational standing can be squared with Article III[]." *Alliance for Hippocratic Medicine*, 602 U.S. at 405 (Thomas, J., concurring). Nothing in the concurrence calls into question *what* the law on associational standing is or disputes that "the Court consistently applies the doctrine." *Id.* Indeed, Defendants themselves recognize that the precedent Justice Thomas criticizes is still precedent, *see* Defs.' Notice of Suppl. Authority 2, ECF No. 107, as does this

Court, which has applied the doctrine of associational standing even after the publication of Justice Thomas's concurrence, *see Hobby Distillers Ass'n v. Alcohol & Tobacco Tax & Trade Bureau*, No. 4:23-cv-01221-P, at *10-11 (N.D. Tex. July 10, 2024). Defendants sidestep this inconvenient reality by recasting Plaintiffs' standing argument as "dramatically expand[ing]" associational standing doctrine. Br. 13. But, as demonstrated above, Plaintiffs hew closely to the relevant Fifth Circuit law.

This Court correctly held that the Fort Worth Chamber has associational standing under that precedent, and neither the relevant law nor the underlying facts of the case have changed. The Court should thus maintain its holding on the Fort Worth Chamber's standing.

II. Venue is proper in this District and this case should not be transferred.

A. Venue is proper under 28 U.S.C. § 1391(e)(C).

Venue is proper in actions against federal agencies and agency heads in any district where "the plaintiff resides if no real property is involved in the action." 28 U.S.C. § 1391(e)(1)(C). Because the Fort Worth Chamber has established associational standing, it should not be dismissed from this case and can properly support venue in the Northern District of Texas. Indeed, notwithstanding Defendants' hyperbole, Plaintiffs are not "bring[ing] suit anywhere they want"—they are bringing suit "in the district of a plaintiff's residence," which Defendants acknowledge is proper under 28 U.S.C. § 1391(e) earlier in that very same sentence. *See* Br. 13.

B. Venue is proper under 28 U.S.C. § 1391(e)(1)(B).

Plaintiffs can also establish venue pursuant to 28 U.S.C. § 1391(e)(1)(B) because "a substantial part of the events or omissions giving rise to the claim occurred" in the district. This Court has held that "a substantial part of the events or omissions giving rise to the claim[s]" take place where an unlawful rule imposes its burdens. *See, e.g.*, *Texas v. United States*, 95 F. Supp. 3d 965, 973 (N.D. Tex. 2015) (O'Connor, J.) (finding venue proper under § 1391(e)(1)(B) in a

challenge to a Department of Labor rulemaking regulating employment because one plaintiff employed people in the district), *injunction dissolved on other grounds*, 2015 WL 13424776 (N.D. Tex. June 26, 2015); *Umphress v. Hall*, 479 F. Supp. 3d 344, 351-52 (N.D. Tex. 2020) (Pittman, J.) (finding venue proper under § 1391(b)(2) in the district where a county judge, who was challenging a provision of the Texas Code of Judicial Conduct subjecting him to discipline for refusing to officiate same-sex weddings, officiated weddings). Indeed, this Court just reaffirmed this view last year in a case Defendants twice cite authoritatively regarding § 1391(e)(1)(B). *Career Colls. & Sch. of Tex. v. U.S. Dep't of Educ.*, No. 4:23-CV-0206-P, 2023 WL 2975164, at *2 (N.D. Tex. Apr. 17, 2023) (discussing *Texas* and *Umphress*); Br. 14, 15.

Defendants zero in on an unpublished opinion in another district that suggests it is "the defendant's conduct, and where that conduct took place" that is most relevant for venue purposes. Br. 15 (quoting *Munro v. U.S. Copyright Off.*, No. 6:21-cv-00666, 2022 WL 3566456, at *2 (W.D. Tex. May 24, 2022), *report and recommendation adopted*, 2022 WL 17400772 (W.D. Tex. Sept. 15, 2022)). But the Fifth Circuit has made clear that what is relevant is where the effects of the challenged conduct are *felt*. *See Guajardo v. State Bar of Tex.*, 803 F. App'x 750, 756 (5th Cir. 2020) (Section 1391(e)(1)(B) was "inapplicable for concluding that venue is proper in Texas because the rules being challenged [we]re Arizona rules and, conceivably, *their effect would be substantially felt only in Arizona*") (emphasis added).

Here, the "burdens" of the unlawful Final Rule are felt in Fort Worth. Plaintiffs' members issue credit card accounts to consumers residing in the Fort Worth Division of the Northern District of Texas, *see e.g.*, App. 2, ECF No. 5 (Bowman Decl. ¶ 5); *id.* at 43 (Schlachter Decl. ¶ 5); *id.* at 56 (Susser Decl. ¶ 4), and are therefore subject to the burdens of the Final Rule in that same Division and District.

Defendants fixate on the fact that the effects will be felt in many cities and towns across the country, in addition to Fort Worth. Br. 14-15. But that the burdens of a rule nationwide in scope would be felt widely should come as no surprise. And this does little to detract from the fact that the burdens of this rule will be felt in Fort Worth, which is all the venue statute requires. *See Texas*, 95 F. Supp. 3d at 973 (N.D. Tex. 2015); *see also McClintock v. Sch. Bd. E. Feliciana Par.*, 299 F. App'x 363, 365 (5th Cir. 2008) ("[T]he chosen venue does not have to be the place where the most relevant events took place.").

As a last gasp, Defendants try to pivot to the argument that, even if the three decisions of this Court are correct that transactional venue arises where a rule imposes its burdens, "Plaintiffs would still have to identify a *plaintiff* that would be subject to a burden within the forum should the contested agency action take effect." Br. 15 (citing *Career Colls.*, 2023 WL 2975164, at *2-3) (emphasis in original). But this Court's decision in that case turned on the fact that there the only Plaintiff was "an Austin, Texas corporation" and thus did "not have any presence" in Fort Worth. *Career Colls.*, 2023 WL 2975164, at *3. On that basis, the Court transferred the suit to Austin, where the association was located, and not to Washington. *Id*. at *4. The Fort Worth Chamber of Commerce does have a presence in Fort Worth, as do its member large and small credit card issuers, who are burdened by the Final Rule. Defendants would read this case to stand for the proposition that transactional venue is not appropriate in an associational standing case. That is contrary to logic and law: it would mean that an association could rely on its members' injuries in a particular district for standing, but not for other requirements. Courts have rejected that view. *See, e.g*,. *Hunt*, 432 U.S. at 346 ("Obviously, if the Commission has [associational] standing to litigate the claims of its constituents, it may also rely on them to meet the requisite amount in controversy.").

CONCLUSION

Plaintiffs respectfully urge this Court to (1) reaffirm its prior finding that the Fort Worth Chamber has associational standing to bring suit on behalf of its members and (2) decline to transfer this case to the District of Columbia because venue is proper in this District. If this Court nevertheless determines that the Fort Worth Chamber does not have standing, Plaintiffs respectfully request that this Court dismiss this case instead of transferring it so that Plaintiffs may exercise their appellate rights in the ordinary course. In that situation, Plaintiffs respectfully request that this Court maintain an injunction against the Final Rule pending Plaintiffs' appeal, so as to avoid emergency appellate proceedings regarding the Final Rule, which has never been in effect by order of this Court. If this Court decides that transfer is appropriate, Plaintiffs respectfully ask this Court to stay any such ruling for 21 days to permit Plaintiffs to seek relief from the Fifth Circuit on an orderly time frame. *See* Proposed Local Rule 62.2.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on August 12, 2024, a true and correct copy of the foregoing document was served on counsel of record via this Court's ECF system.

/s/ Michael Murray
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