

Third Circuit Rules the FCRA Waives U.S. Sovereign Immunity

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On August 24, 2022, the U.S. Court of Appeals for the Third Circuit held that the plain text of the Fair Credit Reporting Act (FCRA) operates as a waiver of sovereign immunity, widening the circuit split on this issue.

In *Kirtz v. Trans Union LLC*, the Third Circuit examined whether the FCRA waives sovereign immunity. The plaintiff obtained a student loan and a loan offered by the U. S. Department of Agriculture (USDA). He alleged both loan accounts were closed with a zero balance but were being reported as “120 Days Past Due Date.” He disputed the statements, but, according to the plaintiff, neither agency took action to investigate or correct the disputed information. The plaintiff sued, claiming willful and negligent violations of the FCRA, and the USDA filed a motion to dismiss for lack of subject matter jurisdiction based on sovereign immunity. The district court granted the motion, concluding that applying the FCRA’s literal text would produce implausible results.

The Third Circuit held that implausibility is not ambiguity, and where Congress clearly expressed its intent, courts may neither second-guess its choices nor decline to apply the law as written. Noting that the statute expressly defines “person” to include “any government or governmental subdivision or agency,” the Court concluded that Congress did not intend to exempt the federal government when it enacted the FCRA. The Court reversed and ruled that the FCRA unambiguously authorizes suits for civil damages against the federal government.

Four other circuit courts have also addressed this issue. D.C. and Seventh Circuits previously concluded that the FCRA’s plain text waives the United States’ sovereign immunity. At the same time, the Fourth and Ninth Circuits ruled that the United States is not subject to liability under the FCRA. With this holding, the Third Circuit is now in line with the D.C. and the Seventh Circuit, thus further widening the circuit split.

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