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

REPLY BRIEF IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS THE FORT WORTH CHAMBER OF COMMERCE FOR LACK OF STANDING AND TRANSFER THIS CASE TO THE U.S. DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Plaintiffs' opposition does not change the basic associational standing problem presented by this case: Plaintiffs concede that members of the Fort Worth Chamber of Commerce have joined together for the purpose of "support[ing] the business and economic development of Fort Worth." Opp'n 1. And they have not altered their pitch for how that localized purpose is furthered by this lawsuit, which challenges a Consumer Financial Protection Bureau regulation targeting the 30 to 35 largest credit card issuers in the country—all based outside of Fort Worth. In the Fort Worth Chamber's telling, it is enough that larger credit card issuers based elsewhere do business in Fort Worth. *Id.* at 6. When pressed on that point, Plaintiffs resort to speculation about the ripple effects of the regulation in the Fort Worth economy, as well as general legal and policy objections to the Rule and government regulatory action more broadly. Those attenuated connections cannot carry the Fort Worth Chamber's burden to establish that this lawsuit is indeed germane to its regional organizational mission, so the Court should dismiss it from this case.

That outcome will best preserve the germaneness requirement's "modest yet important goal" of preventing membership organizations from "forcing the federal courts to resolve numerous issues as to which the organizations themselves enjoy little expertise and about which few of their members demonstrably care.'" *Bldg. & Constr. Trades Council of Buff., N.Y. & Vicinity v. Downtown Dev., Inc.*, 448 F.3d 138, 149 (2d Cir. 2006). And, as another district court facing a strikingly similar set of circumstances recently observed, any "loose[r] interpretation" of the associational standing test would "open the door for any individual or company to bypass venue rules by becoming a member of any association remotely related to a challenged law or regulation." *Dayton Area Chamber of Com. v. Becerra*, No. 3:23-cv-156, 2024 WL 3741510, at *9 (S.D. Ohio Aug. 8, 2024). To avoid that result, the Court should dismiss the Fort Worth Chamber and transfer the case to the U.S. District Court for the District of Columbia.

I. The Fort Worth Chamber still hasn't established that furthering the interests of larger credit card issuers based elsewhere is germane to its mission of promoting the Fort Worth economy.

In their opposition brief, Plaintiffs contend that the Fort Worth Chamber satisfies the associational standing doctrine's germaneness requirement because this litigation is "pertinent" to its stated mission 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." Opp'n 6 (quoting PI App'x 21). In trying to establish that link, however, they ask the Court to engage in unsupported speculation about larger card issuers' business in Fort Worth and the possible indirect, attenuated effects of the challenged Rule on other companies in the area. The Court should decline that invitation, which would eviscerate the well-established limits of associational standing and encourage impermissible forum-shopping in challenges to regulations with limited reach.

To begin, and despite their best efforts, Plaintiffs simply have not demonstrated that furthering the economic interests of larger card issuers based elsewhere is germane to the Fort Worth Chamber's localized mission of promoting the business climate in Fort Worth. As before, Plaintiffs' first line of attack is that they have larger card issuer members directly subject to the Late Fee Rule. Opp'n 6. To shore up the allegations in their papers related to Synchrony Bank (a Utah-based card issuer), Plaintiffs now identify five additional larger card issuers on the Fort Worth Chamber's membership rolls: Bank of America, Capital One, JPMorgan Chase & Co., PNC Bank, and Wells Fargo. *See id.* at 3; Opp'n App'x 2 (Third Montgomery Decl. ¶ 4). But those new out-of-state issuers don't add anything to the Fort Worth Chamber's bid for associational standing. Plaintiffs don't allege that any of them is based in Fort Worth, and none is.[1] While some have

[1] Bank of America is based in Charlotte, North Carolina; Capital One is based in McLean, Virginia; JPMorgan Chase & Co. is based in New York, New York; PNC is based in Pittsburgh, Pennsylvania; and Wells Fargo is based in San Francisco, California.

branches or other offices here,[2] Plaintiffs don't attempt to put forward any evidence—in declarations from these five issuers or otherwise—that branches in the region have any role in assessing or collecting late fees or would otherwise feel the effects of the Rule. *See Summers v. Earth Island Inst.*, 555 U.S. 488, 499 (2009) (refusing to accept organizations' self-description of membership). Nor is it obvious why a rule affecting the banks' credit card operations would have any impact on local branches, let alone on the Fort Worth economy more broadly. Plaintiffs suggest that this doesn't matter because, they claim, the Bureau has "recognized that" larger card issuers will be harmed "not just at their headquarters but everywhere they offer credit." Opp'n 9. Not so. Plaintiffs point only to a discussion in the Rule's preamble of how the Rule might affect *consumers* in certain areas. *See* 89 Fed. Reg. 19128, 19200 (Mar. 15, 2024). But as the Bureau has already explained, a *business* is not adversely affected by a challenged Rule everywhere it may have customers. *See* Opening Br. 15, ECF No. 110. Plaintiffs thus have not established that furthering the interests of six out-of-state issuers that operate in Fort Worth (and everywhere else in the country) would promote the business climate or competitiveness of companies in this region.

To avoid this problem, Plaintiffs attempt three pivots. Each fails. First, Plaintiffs say the Fort Worth Chamber sues on behalf of *other* members—particularly smaller credit card issuers—that are based in Fort Worth and could be affected by the Late Fee Rule here. *See* Opp'n 3. But the challenged Rule's changes to the late fee safe harbor do not directly apply to smaller card issuers. *See* Opening Br. 11. And Plaintiffs have not bothered to put forward a declaration from any of the

[2] In fact, from the Bureau's review of the Fort Worth Chamber's membership directory, it appears that many of the card-issuing members that the Fort Worth Chamber now invokes are actually just various local branches of a larger card-issuing bank—not the card-issuing banks themselves. *See* Fort Worth Chamber, Member Directory: Banks, *available at* https://business.fortworthchamber.com/list/category/banks-54 (last visited August 19, 2024) (listing as members dozens of individual locations for Bank of America, PNC, and Wells Fargo).

referenced smaller issuers detailing how they might be indirectly affected by the Rule, including how they might react if larger issuers adjust their late fees after the Rule goes into effect. *Cf.* App'x 2 (Third Montgomery Decl. ¶ 4) (claiming that smaller card issuer members will be harmed but citing only the Fort Worth Chamber's directory for that point). Even if the record contained such evidence, it would be speculative at best. The Fort Worth Chamber cannot make out an effect in Fort Worth based on conjecture about how consumers shopping for credit cards could react to larger card issuers' lower late fees, and how smaller issuer competitors might then need or want to react. *Cf. Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 (2013) (noting "usual reluctance to endorse standing theories that rest on speculation about the decisions of independent actors").

As a second pivot, Plaintiffs reach even further afield and claim that, once larger card issuers charge lower late fees to comply with the Rule, (1) the economics underpinning some of their card offerings may change; (2) those issuers may therefore decide to offer less credit to riskier borrowers; (3) consumers in Fort Worth could be among the affected borrowers; (4) those consumers' "spending power" could go down; and (5) local businesses those consumers patronize might then be harmed, too. *See* Opp'n 6–7. Again, Plaintiffs ask the Court to speculate about the challenged Rule's ripple effects in the Fort Worth economy. That attenuated and speculative chain of causation does not establish an adequate link between the Rule and the Fort Worth Chamber's mission of promoting the Fort Worth economy. Nor should the germaneness test be stretched to cover the sort of attenuated interests on which Plaintiffs rely. Expanding the doctrine in this way would only exacerbate the serious concerns about associational standing's faithfulness to Article III. *See FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 399–402 (2024) (Thomas, J., concurring).

Finally, Plaintiffs claim that this suit generally supports the "thriving business climate" in Fort Worth because it serves the interests of "*all* businesses"—no matter where they are based—

that "fac[e] complex regulatory landscapes" and want "to ensure that federal agencies act within appropriate statutory boundaries." Opp'n 7 (emphasis added). With this, Plaintiffs give up the game. In Plaintiffs' telling, this suit is pertinent to the Fort Worth Chamber's mission not because businesses here will be affected, but because the Fort Worth Chamber objects to a regulation targeted at businesses based elsewhere. Such an expansive theory of germaneness would improperly allow the Fort Worth Chamber to operate as "no more than a law firm seeking to sue *in its own name* . . . alleging injury from governmental action wholly unrelated to" it. *Humane Soc'y of the U.S. v. Hodel*, 840 F.2d 45, 57–58 (D.C. Cir. 1988). And it would violate the Supreme Court's admonition that standing serves to "screen[] out plaintiffs who might have only a general legal, moral, ideological, or policy objection to a particular government action." *All. for Hippocratic Med.*, 602 U.S. at 381. The Court should not endorse this approach.

Instead, the Court should reach the same conclusion as another district court that recently faced a strikingly similar germaneness challenge to a lawsuit brought by the U.S. Chamber of Commerce and a local affiliate. In *Dayton Area Chamber of Commerce v. Becerra*, the U.S. Chamber, two state chambers, and a chamber based in Dayton, Ohio, sued in the Southern District of Ohio to challenge the constitutionality of the federal Drug Price Negotiation Program. *Dayton Area Chamber of Com. v. Becerra*, No. 3:23-cv-156, 2024 WL 3741510, at *1 (S.D. Ohio Aug. 8, 2024). There, as here, plaintiffs claimed venue was proper because a regional chamber of commerce was a party to the suit and located in the district. *Id.* at *8. There, as here, that regional chamber of commerce had a distinctly localized mission: "striv[ing] to improve the . . . business climate and overall standard of living" in the Dayton region. *Id.* at *5. And there, as here, that regional chamber of commerce sought to sue on behalf of members that were directly affected by the challenged federal program but located far from the local economy that chamber purported to

promote; in that case, the program at issue covered only a handful of drug manufacturers, and the only directly regulated members the Dayton Area Chamber identified were based in California and Illinois. *Id.* at *2, *5. Based on that set of facts, earlier this month the district court sustained the government's germaneness challenge and dismissed the Dayton Area Chamber of Commerce for lack of associational standing. *Id.* at *6. That outcome was necessary, the court reasoned, to preserve the separation-of-powers principles enshrined in Article III standing. *Id.* at *7.

Plaintiffs say the Court should ignore the *Dayton Area Chamber* case as an "outlier" and distinguishable. *See* Opp'n 10 n.2. They are wrong on both points. As to the first, Plaintiffs simply assert without explanation that the *Dayton Area Chamber* court's approach is inconsistent with associational standing case law. It's not. The court applied the germaneness requirement as written, requiring only some link between the purpose of the organization and the interests advanced in the suit. *See Dayton Area Chamber*, 2024 WL 3741510, at *5. To be sure, Plaintiffs cite to cases finding that different suits were germane to the purposes of other organizations with different purposes. *See* Opp'n 5–6, 7–9. But none of those cases addressed whether a regional chamber of commerce suing to challenge a rule affecting only companies based elsewhere satisfied the germaneness requirement—the question at issue only in *Dayton Area Chamber* and here.

Plaintiffs also cannot adequately distinguish *Dayton Area Chamber*. They say this case is different because the Fort Worth Chamber provided "numerous declarations" discussing how the Late Fee Rule will impact Fort Worth Chamber members in Fort Worth, while the Dayton Area Chamber did not. Opp'n 11 n.2. But as discussed above, the declarations here at most establish that some larger card issuers have customers or a corporate presence in Fort Worth, and that the President of the Fort Worth Chamber speculates that the Rule could indirectly affect unregulated smaller card issuer members based in Fort Worth. The *Dayton Area Chamber* court made clear

that that kind of evidence would not suffice: "The Program's potential downstream effects—on unnamed members in the supply chain, and on unknown investment" in other companies in the industry—"are far too speculative to connect this lawsuit to the business climate of the Dayton area." *Dayton Area Chamber*, 2024 WL 3741510, at *5.

Dayton Area Chamber—the most analogous case either party has identified—demonstrates why Plaintiffs are wrong to complain that finding no standing here would somehow improperly countenance a venue objection "masquerading" as a standing argument, *see* Opp'n 12. The two are connected. As the *Dayton Area Chamber* court noted, the plaintiffs' favored "loose interpretation" of the associational standing requirement could let regulated entities "manipulate the system and manufacture standing to obtain a favorable venue." *Dayton Area Chamber*, 2024 WL 3741510, at *9. Like the *Dayton Area Chamber* case before it, the Court should not "open the door for any individual or company to bypass venue rules by becoming a member of any association remotely related to a challenged law or regulation." *Id.*

II. Plaintiffs' hyperbolic objections to this straightforward application of the germaneness requirement are unfounded.

In an effort to keep this case where it does not belong, Plaintiffs contend that dismissing the Fort Worth Chamber would upend settled standing law and place impermissible barriers for plaintiffs seeking associational standing. They are wrong.

Plaintiffs first say the Bureau is trying to impose a new "headquarters" requirement on associational standing plaintiffs, which would need to "show that [their] affected members are headquartered within the jurisdiction and thus themselves would have proper venue to sue." Opp'n 12. To be clear, the Bureau does not advocate for such an across-the-board rule. The location of affected members only matters where, as here, the association whose standing is at issue has a location-focused mission and has failed to demonstrate any nonspeculative impact in that location.

A different organization with a different mission based in Fort Worth would not have the same trouble establishing germaneness, regardless of where its members are based. For instance, if a new organization—say, the Larger Credit Card Issuer League of America—were based in Fort Worth, remedying any injuries the Late Fee Rule causes larger card issuers would be germane to that organization's interest, notwithstanding the fact that no larger issuer is based in Fort Worth.

Plaintiffs are likewise misguided when they claim that the Bureau's approach to the germaneness requirement would make it too difficult for regional associations to protect their interests. *See* Opp'n 11–12. Many federal regulations do directly or predictably affect businesses across the country. Those businesses would have standing to challenge those regulations in their own right. And an association focused on the economic development of the region in which those businesses sit would have associational standing to sue on their behalf, too. That's why, in recent years, regional chambers of commerce have faced no germaneness barrier to suing to challenge a wide range of federal regulations that indeed affected businesses in their area. *See, e.g.*, Compl., *Chamber of Com. v. Occupational Safety & Health Admin.*, No. 6:24-cv-00271 (W.D. Tex. May 21, 2024) (Greater Waco Chamber of Commerce suit to challenge OSHA rule governing walkaround inspections of millions of worksites, including members of the Greater Waco Chamber based in Waco); Compl., *Chamber of Com. v. NLRB*, No. 6:23-cv-00553 (E.D. Tex. Nov. 9, 2023) (Longview Chamber of Commerce suit to challenge NLRB rule governing standard for joint-employer liability, which would apply directly to businesses in the Longview area); Compl., *Chamber of Com. v. SEC*, No. 3:22-cv-00561 (M.D. Tenn. July 28, 2022) (Tennessee Chamber of Commerce & Industry suit to challenge SEC regulations affecting publicly traded companies in Tennessee).

To the extent regional business associations won't be able to make out a case that any given

suit is germane to their region's interests, that's a feature rather than a bug. Under the prevailing *Hunt* test, associational standing offers a mechanism for associations to sue on behalf of their injured members about issues related to the reasons their members chose to join together in the first place. *See Bldg. & Constr. Trades Council of Buff., N.Y. & Vicinity v. Downtown Dev., Inc.*, 448 F.3d 138, 149 (2d Cir. 2006); *see also Dayton Area Chamber*, 2024 WL 3741510, at *5 ("Associational standing was created to allow an association to sue on behalf of its members that have suffered injury."). If no business in a given geographic area would have sufficient stake in a nationwide regulation to have standing to sue in its own right, it stands to reason that the regulation would not sufficiently affect the interests of the local or regional economy for that area's chamber of commerce to bring a challenge in any representative capacity.

III. Plaintiffs' theory of transactional venue—not the Bureau's—would undermine the statutory venue limits on suits against the federal government.

Plaintiffs urge the Court to keep this case in Fort Worth under 28 U.S.C. § 1391(e)(1)(B), even if it dismisses the Fort Worth Chamber for lack of standing. *See* Opp'n 14–16. In Plaintiffs' view, "a substantial part of the events or omissions giving rise to the claim" occurred in Fort Worth because the plaintiff associations' larger card issuer members do business with customers in Fort Worth. *Id.* at 15. Even assuming that transactional venue lies wherever "the effects of [a rule] are felt," *contra* Opening Br. 14–16, a regulated entity does not feel the effects of a rule wherever it does business. The statute authorizes venue only where a "substantial" part of the events giving rise to the claim occurred, and Plaintiffs' view would read the "substantial" requirement right out of the statute. Moreover, as Plaintiffs' response on this point makes clear, their expansive reading of the transactional venue prong of § 1391(e)(1)(B) would essentially eliminate any meaningful venue requirements for challenges to a vast swathe of federal rules: A business with customers nationwide—like the Utah-based Synchrony Bank—wouldn't need to enlist a local association to

challenge a regulation on its behalf in some far-afield district, so long as it does any business there. And associations would likewise be able to sue wherever they chose, so long as they could name a single member with customers in the chosen district—again, even if no member is based there. Allowing challengers to regulations to bring suit anywhere they do business would eviscerate the plaintiff-based standing rule laid out in § 1391(e)(1)(C), which allows suit only where a plaintiff resides, not anywhere it does business. The Court should not endorse that approach.

IV. The Court should avoid chaos by transferring rather than dismissing this case.

In an aside in their conclusion, Plaintiffs urge the Court to dismiss the case rather than transfer so that they can "exercise their appellate rights in the ordinary course." *See* Opp'n 17. But Plaintiffs have had no qualms with "exercis[ing] their appellate rights" to challenge this Court's transfer orders before, and appealing "in the ordinary course" instead would just tie this case up—and delay progress to final judgment—for significantly longer than transfer would. Dismissal would also still result in the "emergency appellate proceedings" Plaintiffs say they want to avoid, *id.*, because Plaintiffs would need a new injunction against the Final Rule pending appeal. Plaintiffs say this Court should offer them that remedy now, but they offer no arguments for why such extraordinary relief would be appropriate, *Greene v. Fair*, 314 F.2d 200, 201 (5th Cir. 1963)—or why *this* Court should consider that merits-intensive question in a case it should not be adjudicating in the first place. There is a better, more justifiable, way to avoid the chaos and inefficiency that dismissal would entail: transfer instead to a venue all parties agree is appropriate. That would allow an orderly review of the preliminary injunction at the appropriate time, and by the appropriate court, and would permit this case to proceed to final judgment more expeditiously.

CONCLUSION

For the foregoing reasons, the Court should dismiss the Fort Worth Chamber of Commerce, hold that venue is improper in this District, and transfer the case to D.D.C. under 28 U.S.C. § 1406.

DATED: August 19, 2024

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 19, 2024, a true and correct copy of this document was served electronically by the Court's CM/ECF system to all counsel of record.

/s/ Stephanie B. Garlock
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