No. 18-1531

IN THE
UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

NICOLE NELSON Plaintiff-Appellant, v. GREAT LAKES EDUCATIONAL LOAN SERVICES, INC. and DOE DEFENDANTS 1-10, Defendants-Appellees.	))))))))))	Appeal from the United States District Court for the Southern District of Illinois. No. 3:17-cv-00183-NJR-SCW The Honorable NANCY J. ROSENSTENGEL, Judge Presiding.

BRIEF AMICUS CURIAE
OF LISA MADIGAN, ATTORNEY GENERAL OF ILLINOIS,
IN SUPPORT OF PLAINTIFF AND SUPPORTING REVERSAL

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TABLE OF CONTENTS

PAGE(S)

TABLE OF AUTHORITIES

CASES **PAGE(S)**

CONSTITUTIONAL PROVISIONS, STATUTES, and REGULATIONS

OTHER SOURCES

STATEMENT OF IDENTITY AND INTEREST OF AMICUS

This brief is submitted by Lisa Madigan, Attorney General of Illinois, as amicus in support of plaintiff and urging reversal of the district court's decision that plaintiff's statutory and common-law fraud claims are preempted by § 1098g of the Higher Education Act, 20 U.S.C. § 1098g. Attorney General Madigan is the chief legal officer of the State, Ill. Const. art. V, § 15, and is authorized to appear for and represent the people of the State in all cases in which the State or the people of the State are interested, 15 ILCS 205/4 (2016). As relevant here, the Illinois Consumer Fraud and Deceptive Business Practices Act (Consumer Fraud Act) provides that the Attorney General may bring an action under that statute whenever she "has reason to believe that any person is using, has used, or is about to use any method, act or practice declared by this Act to be unlawful, and that proceedings would be in the public interest." 815 ILCS 505/7(a) (2016). The Attorney General has exercised this enforcement authority to bring an action on behalf of the People of the State of Illinois against student loan servicers for engaging in fraudulent and deceptive practices under Illinois law, including by enrolling nearly a million borrowers in economically disadvantageous forbearances that lasted for more than two years. *See People of the State of Ill. v. Navient Corp.*, Cir. Ct. Cook Cty., Ill., No. 17 CH 00761.

The State has a significant interest in the outcome of this appeal concerning whether the federal Higher Education Act preempts generally applicable state consumer protection laws. Consumer protection laws "are within the states' historic police

powers." *First Resort, Inc. v. Herrera*, 860 F.3d 1263, 1283 (9th Cir. 2017) (emphasis omitted). Illinois has chosen to exercise its power to regulate in that area, in part through enacting the Consumer Fraud Act, and it has an interest in ensuring that this statute is given full effect and that its statutory purpose is vindicated.

The Attorney General also has an interest in the application of preemption principles to Illinois law generally, and is regularly required to appear in court and defend state action or statutes against similar claims of preemption. For instance, the Attorney General has appeared as an amicus in this Court to defend Illinois laws against a claim of preemption under the Federal Aviation Administration Authorization Act of 1994. *See Costello v. Beavex, Inc.*, 7th Cir. Nos. 15-1109 & 15-1110.

In sum, the Attorney General has a significant interest in the enforcement of Illinois law and whether Illinois law is preempted by a federal statute. The Attorney General can assist this Court by presenting ideas and insights not presented by the parties to this case who do not have the same institutional knowledge and experience in enforcing state law. *See Voices for Choices v. Ill. Bell Tel. Co.*, 339 F.3d 542, 544-45 (7th Cir. 2003) (Posner, J., in chambers).

ARGUMENT

I. Introduction.

This Court should reverse the district court's decision that Nelson's claims were preempted by § 1098g of the Higher Education Act. As the district court explained, Nelson alleged that defendant Great Lakes was her student loan servicer and that Great Lakes repeatedly encouraged borrowers experiencing financial hardship to contact it for assistance in evaluating alternative repayment options. R. 392. Great Lakes' website promised student loan advice and stated that its "expert representatives" would provide assistance to a borrower to understand all of her options. *Id*. But, Nelson alleged, Great Lakes did not provide expert advice; instead, its employees steered student loan borrowers into forbearance and deferment, causing the borrowers to incur greater financial hardship than if they had been enrolled in available income-driven repayment plans. *Id*. Great Lakes took this approach because it required fewer employees to answer questions, explain and review repayment options, and process income-driven repayment plan applications. R. 392-93. Great Lakes compensated its customer service personnel, in part, based on average call time, so employees were incentivized to push borrowers into forbearance without exploring income-driven repayment plans, which would have been more time-consuming. R. 393. Nelson alleged that Great Lakes' conduct violated the Consumer Fraud Act and amounted to common-law fraud. R. 394.

The Higher Education Act provides that student loans made, insured, or guaranteed under that statute "shall not be subject to any disclosure requirements of

any State law." 20 U.S.C. § 1098g. The district court acknowledged that, to determine whether Nelson's claims were preempted by § 1098g, it must "examine whether her claims involve 'disclosures.'" R. 399. The court explained that the Higher Education Act did not define "disclosure," but held that "Congress intended § 1098g to preempt any state law requiring lenders to reveal facts or information not required by federal law." R. 400.

In reaching this decision, the district court failed to acknowledge the long-standing presumption against preemption of state laws — a presumption that is heightened when the matter concerns an area within the State's traditional police power, such as consumer protection and common-law fraud in this case. When an express preemption provision is susceptible of more than one plausible interpretation, the court should adopt the interpretation that leaves the operation of state law intact. Moreover, the district court incorrectly classified Nelson's claim as seeking to impose additional disclosure requirements on Great Lakes. Instead, her fraud-based claims rely on deceptive conduct, and on the generally applicable duty not to deceive, a duty that is independent of a loan servicer's federally required disclosures. *See Altria Grp., Inc. v. Good*, 555 U.S. 70, 81 (2008).

II. Section 1098g does not preempt Nelson's claims.

This Court should construe § 1098g in light of the well-established presumption against preemption and adopt a narrow reading of its scope that permits Illinois's consumer protection and tort laws to complement federal law.

A. The heightened presumption against preemption applies to this case.

Under the Supremacy Clause, U.S. Const. art. VI, cl. 2, state laws that conflict with federal laws are "without effect," *Altria Grp.*, 555 U.S. at 76 (internal quotation marks omitted). There are two "cornerstone" principles of preemption jurisprudence. *Wyeth v. Levine*, 555 U.S. 555, 565 (2009). First, "the purpose of Congress is the ultimate touchstone in every preemption case." *Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996) (internal quotation marks omitted). Second, the court ascertains congressional intent "through a lens that presumes that the state law has not been preempted." *Patriotic Veterans, Inc. v. Ind.*, 736 F.3d 1041, 1046 (7th Cir. 2013). Even where Congress has adopted an express preemption provision, as with § 1098g of the Higher Education Act, there is a "presumption that Congress does not intend to supplant state law." *N.Y. State Conference of Blue Cross & Blue Shield Plans v. Travelers Ins. Co.*, 514 U.S. 645, 654 (1995). "[R]espect for the States as independent sovereigns in our federal system leads [the court] to assume that Congress does not cavalierly pre-empt state-law causes of action." *Wyeth*, 555 U.S. at 565 (internal quotation marks omitted). Because of this presumption against preemption, "express preemption statutory provisions should be given narrow interpretation." *Air*

Conditioning & Refrigeration Inst. v. Energy Res. Conservation & Dev. Comm'n, 410 F.3d 492, 496 (9th Cir. 2005).

That presumption is particularly strong if "Congress has 'legislated . . . in a field which the States have traditionally occupied.'" *Medtronic*, 518 U.S. at 485 (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). Where an area of law "is traditionally the domain of state law," the operation of that state law "must do major damage to clear and substantial federal interests before the Supremacy Clause will demand that state law will be overridden." *Hillman v. Maretta*, 569 U.S. 483, 490-91 (2013). Otherwise, courts assume that state regulation related to matters within the States' traditional purview "can normally coexist with federal regulations." *Hillsborough Cty. v. Automated Med. Labs., Inc.*, 471 U.S. 707, 718 (1985); *see Patriotic Veterans*, 736 F.3d at 1049. This Court thus applies a "heightened presumption in areas that have traditionally been the province of states." *Lynnbrook Farms v. Smithkline Beecham Corp.*, 79 F.3d 620, 627 (7th Cir. 1996).

Where a preemption provision is susceptible of more than one reading, "courts ordinarily 'accept the reading that disfavors pre-emption.'" *Patriotic Veterans*, 736 F.3d at 1046 (quoting *Altria Group v. Good*, 555 U.S. 70, 77 (2008)). Additionally, the presumption against preemption "is even stronger against preemption of state remedies, like tort recoveries, when no federal remedy exists." *Abbot by Abbot v. Am. Cyanamid Co.*, 844 F.2d 1108, 1112 (4th Cir. 1988) (citing *Silkwood v. Kerr-McGee Corp.*, 464 U.S. 238, 251 (1984)).

To be sure, the Supreme Court recently stated that when a federal statute contains an express preemption clause, "we do not invoke any presumption against pre-emption but instead 'focus on the plain wording of the clause, which necessarily contains the best evidence of Congress' pre-emptive intent.'" *Puerto Rico v. Franklin California Tax-Free Trust*, 136 S. Ct. 1938, 1946 (2016) (quoting *Chamber of Commerce of United States of Am. v. Whiting*, 563 U.S. 582, 594 (2011), and citing *Gobeille v. Liberty Mut. Ins. Co.*, 136 S.Ct. 936, 946 (2016)). But this statement should not be read to prevent the operation of the traditional presumption against preemption here. First, the Court did not purport to overrule the substantial body of precedent that adheres to the presumption against preemption, including cases such as *N.Y. State Conference of Blue Cross & Blue Shield Plans*, involving the application of an express preemption clause. *See id*. As the Court held in *Altria Group*, "[w]hen addressing questions of express or implied pre-emption, we begin our analysis 'with the assumption that the historic police powers of the States are not to be superseded by the Federal Act, unless that was the clear and manifest purpose of Congress." 555 U.S. at 76 (internal quotation marks and alteration omitted). If the text of the express preemption clause "is susceptible of more than one plausible reading, courts ordinarily accept the reading that disfavors pre-emption." *Id*. at 77 (internal quotation marks omitted). Indeed, the Court in *Puerto Rico* did not mention *Altria Group* or any other precedent in that line going back more than 70 years, and thus should not be understood to have overruled them. *See Shalala*

v. Ill. Council on Long Term Care, Inc., 529 U.S. 1, 18 (2000) ("The Court does not normally overturn, or so dramatically limit, earlier authority *sub silentio*.").

Second, *Chamber of Commerce*, the case upon which *Puerto Rico* principally relies, likewise does not contain any discussion of whether to adhere to the longstanding principle that preemption of state law is the exception rather than the rule. Rather, the Court simply recited the commonplace statement that when an express preemption clause is at issue, the focus is on the clause's wording. *Chamber of Commerce*, 563 U.S. at 594. The same is true of the other case relied on by the *Puerto Rico* Court, *Gobeille*, 136 S.Ct. at 946 ("Pre-emption claims turn on Congress's intent.") (citation and internal alteration omitted). Those routine admonitions to attend to a statute's text are fully compatible with the well-established rule that such textual analysis should be performed, as this Court has explained, through a "lens that presumes that the state law has not been preempted," *Patriotic Veterans,* 736 F.3d at 1046.

B. Application of these principles to this case compels the conclusion that Nelson's claims are not preempted by § 1098g.

The heightened presumption against preemption applies in this case. Nelson's statutory fraud and common-law tort claims are within areas that have traditionally been the subject of state regulation through States' exercise of their historic police powers. Illinois's Consumer Fraud Act is a consumer protection law, *see* 815 ILCS 505/2 (2016) (defining unlawful practices under the Act), and "'consumer protection law is a field traditionally regulated by the states,'" *Aguayo v. U.S. Bank*, 653 F.3d 912, 917 (9th Cir. 2011) (quoting *Gen. Motors Corp. v. Abrams*, 897 F.2d 34, 41-42 (2d Cir. 1990)); *see*

Castro v. Collecto, Inc., 634 F.3d 779, 784-85 (5th Cir. 2011) (States "have traditionally governed matters regarding contracts and consumer protections"); *Greenwood Trust Co. v. Mass.*, 971 F.2d 818, 828 (1st Cir. 1992) (explaining that "consumer protection" is an area in which States have traditionally exercised their police power); *In re Ocwen Fed. Bank FSB Mortgage Servicing, Inc.*, No. 04 C 2714, 2006 WL 794739, at *4 (N.D. Ill. Mar. 22, 2006), *aff'd*, 491 F.3d 638 (7th Cir. 2007) ("One historic police power is consumer protection, which is an area traditionally regulated by the states.") (internal quotation marks omitted). Accordingly, the Eleventh Circuit held that application of Florida's Consumer Collection Practices Act was not preempted by the Higher Education Act, relying in part on the fact that "consumer protection is a field traditionally regulated by the states." *Cliff v. Payco Gen. Am. Credits, Inc.*, 363 F.3d 1113, 1125-26 (11th Cir. 2004). Likewise, common-law tort claims of the type raised by Nelson fall within the State's historic police powers and are entitled to the presumption against preemption. *See Bausch v. Stryker Corp.*, 630 F.3d 546, 557 (7th Cir. 2010).

The presumption against preemption is heightened further still by the fact that the Higher Education Act does not provide a federal remedy to Nelson for the claims she raises. As the Supreme Court has noted, "[i]t is difficult to believe that Congress would, without comment, remove all means of judicial recourse for those injured by illegal conduct." *Dan's City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 265 (2013) (quoting *Silkwood*, 464 U.S. at 251). While apparently recognizing the force of this argument, the Ninth Circuit erred in concluding that borrowers injured by a student loan servicer had

an adequate remedy because they could complain about the servicer to the Department of Education, whereupon the Department could choose in its discretion whether to institute an "informal compliance procedure" or file a suit that could lead to civil penalties or termination of the servicer's participation in the federal program. *Chae v. SLM Corp.*, 593 F.3d 936, 943 n. 6 (9th Cir. 2010). These uncertain administrative remedies do not provide injured parties like Nelson with a personal remedy for the harms they have suffered or otherwise meaningfully remedy or deter deceptive conduct by loan servicers. Displacement of those statutory fraud and common-law tort remedies by an administrative process that provides no specific relief to Nelson is inconsistent with the assumption that Congress did not intend to displace those remedies. *See Silkwood*, 464 U.S. at 251.

As Nelson has explained, the Higher Education Act's preemption of "any disclosure requirements of any State law," 20 U.S.C. § 1098g, does not extend beyond nullifying state-law regulations requiring the provision of standardized information about the core terms of a loan transaction. App. Br. 18-28. Because Nelson's claim is not that Great Lakes failed to disclose anything required by Illinois law, but rather that Great Lakes engaged in a practice of misrepresentations to steer her into a forbearance plan when other, more economically appropriate options were available, her action is not preempted. But even if there were uncertainty as to whether Nelson's action is within the scope of the § 1098g preemption provision, that uncertainty should be resolved against preemption.

The Supreme Court's decision in *Altria Group* is instructive. There, cigarette smokers sued a tobacco products manufacturer, alleging that the manufacturer's claims that the product was "light" and had "lowered tar and nicotine" were misrepresentations under the Maine Unfair Trade Practices Act. 550 U.S. at 72-74. The manufacturer claimed that the state law claims were expressly preempted by the Federal Cigarette Labeling and Advertising Act. *Id*. at 75. In rejecting the preemption argument, the Court explained that the plaintiffs' fraud claims "rely only on a single, uniform standard: falsity." *Id*. at 79-80 (internal quotation marks omitted). The Court continued that the duty allegedly breached by the manufacturer was "the duty not to deceive as that duty is codified in" Maine's statute, and "the duty codified in that state statute . . . has nothing to do with smoking and health." *Id*. at 81. Because the Maine law "is a general rule that creates a duty not to deceive," it was not preempted by the federal Labeling Act. *Id*. at 84.

Similarly, the Consumer Fraud Act creates a general duty not to deceive consumers. That duty does not impose any affirmative disclosure requirements on student loan servicers participating in the federal program. It does, however, impose a duty on those servicers not to make material misrepresentations or act deceptively. As in *Altria Group*, that state-law duty not to deceive operates in conjunction, not in conflict, with federal law.

Indeed, federal regulators have long acknowledged that federal and state laws prohibiting unfair or deceptive practices complement one another, and have recognized

the need for parallel state enforcement. Beginning in 1964, the Federal Trade Commission (FTC), the national agency responsible for combating unfair trade practices, encouraged States to adopt consumer protection legislation. Sheila B. Scheuerman, *The Consumer Fraud Class Action: Reining in Abuse by Requiring Plaintiffs to Allege Reliance as an Essential Element*, 43 Harv. J. on Legis. 1, 16-17 (2006). By 1973, 43 States had adopted some version of the model legislation proposed by the FTC. *Id*. at 17-18.

The FTC has long acknowledged that "problems in the marketplace go beyond the enforcement capabilities of the federal government." *Kellogg Co. v. Mattox*, 763 F. Supp. 1369, 1380 (N.D. Tex.), *aff'd*, *Kellogg Co. v. Morales*, 940 F.2d 1530 (5th Cir. 1991). That is why one of the FTC's enumerated core purposes is "to assist and cooperate with . . . state . . . agencies . . . in consumer protection enforcement and regulatory matters." 16 C.F.R. § 0.17. Thus, for instance, when the FTC closes its own investigation without taking enforcement action, it may refer the matter to state or local officials "for such action as may be warranted under state or local law." *FTC Operating Manual*, ch. 14.2.3.9, available at goo.gl/t8vLda.

Nor is enforcement by state Attorneys General the only complement to federal enforcement; private actions, where available under state deceptive practices legislation as in Illinois, form an important part of the picture. The Supreme Court has recognized that "common law claims . . . — unlike most administrative and legislative regulations — necessarily perform an important remedial role in compensating . . . victims."

Sprietsma v. Mercury Marine, 537 U.S. 51, 64 (2002). As noted above, this is particularly true where, as here, federal law does not provide any means of private enforcement.

For these reasons, Nelson's action complements, and does not conflict with, federal law.

C. The Department of Education's recent Notice of Interpretation is not entitled to deference.

Great Lakes will likely invite this Court to defer to the Department of Education's recent Notice of Interpretation on preemption of state law by the Higher Education Act, 83 Fed. Reg. 10619 (Mar. 12, 2018). This Court should decline the invitation. The Supreme Court has made clear that agency proclamations about the preemptive effect of their enabling statutes are not entitled to the strong version of judicial deference associated with *Chevron U.S.A. Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984). In *Wyeth*, the Court rejected a drug manufacturer's argument that the labeling requirements of the federal Food, Drug, and Cosmetic Act preempted a state-law tort claim alleging failure to warn. The manufacturer attempted to rely on a preamble to a 2006 regulation in which the Food and Drug Administration asserted that state tort actions interfered with the federal agency's authority over drug labeling. 555 U.S. at 575-76. Turning aside this argument, the Court noted that even in complex, technical cases, it had "not deferred to an agency's *conclusion* that state law is pre-empted." *Id.* at 576 (emphasis in original). Instead, the Court held, "weight we accord the agency's explanation of state law's impact on the federal scheme depends on its thoroughness,

consistency, and persuasiveness." *Id*. at 577 (citing *United States v. Mead Corp*., 533 U.S. 218, 234–235 (2001); and *Skidmore v. Swift & Co.*, 323 U.S. 134, 140 (1944)).

The courts of appeals that have addressed the issue unanimously agree that agency statements about preemption are not entitled to *Chevron* deference. *See Grosso v. Surface Transp. Bd.*, 804 F.3d 110, 116 (1st Cir. 2015); *Steel Inst. of N.Y. v. City of New York*, 716 F.3d 31, 39-40 (2d Cir. 2013); *Franks Investment Co. v. Union Pacific Railroad Co.*, 593 F.3d 404 (5th Cir. 2010); *St. Louis Effort for AIDS v. Huff*, 782 F.3d 1016, 1024 (8th Cir. 2015); *Do Sung Uhm v. Humana, Inc.*, 620 F.3d 1134, 1155-56 (9th Cir. 2010); *In re Univ. Serv. Fund Tel. Billing Practice Litig.*, 619 F.3d 1188, 1200 (10th Cir. 2010); *Seminole Tribe of Fla. v. Stranburg*, 799 F.3d 1324, 1338 (11th Cir. 2015).

Likewise, scholars across the ideological spectrum echo the view that *Chevron* deference does not apply to agencies' statements concerning preemption. *See, e.g.*, Catherine M. Sharkey, *Federalism Accountability: "Agency-Forcing" Measures*, 58 Duke L.J. 2125, 2180 (2009) (arguing that "the agency's views [about preemption] should be accorded *Skidmore* 'power to persuade' (not *Chevron* mandatory) deference"); Ernest A. Young, *Executive Preemption*, 102 Nw. U. L. Rev. 869, 883-94 (2008) (arguing that judicial deference doctrines should give way to the presumption against preemption of States' historic police powers); Thomas W. Merrill, *Preemption and Institutional Choice*, 102 Nw. U. L. Rev. 727, 771-72 (2008) (arguing that generic grants of rulemaking authority do not entitle agency preemption declarations to *Chevron* deference, especially where such declarations are found in "interpretative rules"); Nina A. Mendelson,

Chevron and Preemption, 102 Mich. L. Rev. 737, 800 (2004) (concluding that "a court should exercise its own judgment to resolve questions of state law preemption, even when an agency has issued an interpretation").

Even if *Chevron* deference to agency statement on preemption were sometimes appropriate, such deference would be unwarranted here, where the agency pronouncement was not the product of relatively formal procedures such as notice-and-comment rulemaking. *See Mead Corp.*, 533 U.S. at 229-31; *Joseph v. Holder*, 579 F.3d 827, 831 (7th Cir. 2009). As its name suggests, the Notice of Interpretation is an "interpretative rule" on which States and other interested parties were not given the opportunity to comment. *See* 5 U.S.C. § 553(b)(A). It is thus entitled, at best, to the sliding-scale form of deference announced in *Skidmore*, under which the weight given to the agency's view "will depend upon the thoroughness evident in its consideration, the validity of its reasoning, its consistency with earlier and later pronouncements, and all those factors which give it power to persuade, if lacking power to control." 323 U.S. at 140.

The Notice of Interpretation does not fare well under this test. First, as noted, state governments and other stakeholders were denied an opportunity to comment, and "[t]he agency's views on state law are inherently suspect in light of this procedural failure." *Wyeth*, 555 U.S. at 577.

Second, the Notice's three paragraphs on express preemption of state disclosure requirements, *see* 83 Fed. Reg. 10619, 10621, fall far short of evidencing thorough

consideration or valid reasoning. Indeed, aside from the Department's conclusory assertion that it "interprets 'disclosure requirements' under section 1098g of the Higher Education Act to encompass informal or non-written communications to borrowers as well as reporting to third parties such as credit reporting bureaus," *id*., its reasoning is limited to an overbroad reading of *Chae* and the district court's holding in this case, *id*. It would be a strange exercise in bootstrapping to affirm a district court decision by deferring to an agency statement that largely relies on that same decision.

Third, the Notice is not "consisten[t] with earlier and later pronouncements." *Skidmore*, 323 U.S. at 140. To the contrary, the Department stated in 2010 (after notice and comment) that "States should retain the primary role and responsibility for student consumer protection against fraudulent or abusive practices by some postsecondary institutions." *Final Regulations, Program Integrity Issues*, 75 Fed. Reg. 66832, 66865 (Oct. 29, 2010). And in 2016, the Department's Office of General Counsel explained that "the Department does not believe that the State's regulation of [loan servicers or private collection agencies] would be preempted by Federal law." Letter of Vanessa A. Burton to Jedd Bellman, Assistant Commissioner, Maryland Dep't of Labor, Licensing and Regulation 2 (Jan. 21, 2016), available at https://goo.gl/J1KB3e. The agency's "dramatic change in position," *Wyeth*, 555 U.S. at 579, deprives it of any claim to judicial deference. *Cf. Riegel v. Medtronic, Inc.*, 552 U.S. 312, 326 (2008) (observing that judicial deference to agency's position as to preemptive effect of ambiguous statute "might be reduced by the fact that the agency's earlier position was different"); *id*. at 338 n.8 (Ginsburg, J.,

dissenting) (agreeing with majority that agency's "new position is entitled to little weight").

CONCLUSION

For these reasons, Lisa Madigan, Attorney General of Illinois, respectfully requests that this Court reverse the district court's decision that § 1098g of the Higher Education Act preempted plaintiff's claims in this action.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION, TYPEFACE REQUIREMENTS, and TYPE STYLE REQUIREMENTS

I hereby certify that this brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and Circuit Rule 32 and the type style requirements of Federal Rule of Appellate Procedure 32(a)(6) because the brief has been prepared in a proportionally spaced typeface using WordPerfect X4, in 12-point Century Schoolbook BT font, and complies with Federal Rules of Appellate Procedure Rule 29(d) and 28(e)(1) in that the brief contains 4,148 words. In preparing this word count, I used the word count function of the word processor used to prepare this brief, Word Perfect X4.

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CERTIFICATE OF SERVICE

I certify that on July 2, 2018, I electronically filed the foregoing Brief with the Clerk of the Court for the United States Court of Appeals for the Seventh Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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