

No. 10-948

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IN THE  
**Supreme Court of the United States**

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COMPU CREDIT CORPORATION AND SYNOVUS BANK,  
*Petitioners,*

v.

WANDA GREENWOOD *et al.*,  
*Respondents.*

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**On Writ of Certiorari  
to the United States Court of Appeals  
for the Ninth Circuit**

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**REPLY BRIEF FOR PETITIONERS**

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## INTRODUCTION

The Federal Arbitration Act (FAA) codifies the liberal federal policy favoring enforcement of arbitration agreements. Over the past 25 years, this Court has repeatedly explained that, pursuant to the FAA, agreements to arbitrate statutory causes of action are fully enforceable absent explicit direction by Congress to the contrary. When Congress intends to preclude arbitration of statutory claims, it therefore does so directly and expressly.

Congress gave no such indication in the Credit Repair Organizations Act (CROA). The CROA's terms make no mention of the subject of arbitration, much less any intent to preclude arbitration. The legislative history likewise contains no reference, even a passing one, to arbitration. And plaintiffs make no effort to identify anything in the CROA's purposes inherently inconsistent with arbitration. Under the FAA and this Court's precedents, the CROA's silence concerning arbitration can lead only to one conclusion—valid agreements to arbitrate CROA claims are fully enforceable.

## ARGUMENT

### **I. The FAA And This Court's Precedents Require A Clear Congressional Statement To Overcome The Strong Federal Policy Favoring Arbitration**

A. According to respondents, the question “whether a federal statute exempts claims from arbitration” should be decided without regard to any “policy favoring arbitration.” Resp. Br. 10, 14. Respondents are decidedly wrong.

This Court has repeatedly emphasized that the FAA “embodies the national policy favoring arbitration.” *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 443 (2006). And the FAA’s “liberal federal policy favoring arbitration agreements,” *Green Tree Fin. Corp. v. Randolph*, 531 U.S. 79, 90-91 (2000) (quotation omitted), fully applies “when a party bound by an agreement raises a claim founded on statutory rights.” *Shearson/American Express, Inc. v. McMahon*, 482 U.S. 220, 226 (1987).

While the FAA’s strong federal policy favoring arbitration “may be overridden by a contrary congressional command,” *id.*, this Court’s precedents require Congress to speak clearly when issuing any such “command.” Accordingly, the “burden is on the party opposing arbitration ... to show that Congress intended to preclude a waiver of judicial remedies for the statutory rights at issue.” *Id.* at 227. “If such an intention exists, it will be discoverable in the text of the [statute], its legislative history, or an ‘inherent conflict’ between arbitration and the [statute’s] underlying purposes.” *Gilmer v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 26 (1991) (quoting *McMahon*, 482 U.S. at 227). “Throughout such an inquiry, it should be kept in mind that ‘questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration.’” *Id.* (quoting *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)). And “any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.” *Moses H. Cone Mem’l Hosp.*, 460 U.S. at 24-25.

Applying those principles, this Court has held that—at least when there is no “inherent conflict” between arbitration and the purposes of the relevant statute—statutory claims are arbitrable when “nothing in the text of the [statute] or its legislative history *explicitly* precludes arbitration.” *Gilmer*, 500 U.S. at 26 (emphasis added).

B. Respondents would have the Court disregard those established principles. In contending that the Court should resolve this case without regard to the FAA’s strong policy favoring arbitration, respondents rely (Resp. Br. 10, 14) on a footnote in this Court’s opinion in *14 Penn Plaza LLC v. Pyett*, 129 S. Ct. 1456, 1470 n.9 (2009). *Pyett*, however, affords no basis for departing from the established rule “that questions of arbitrability must be addressed with a healthy regard for the federal policy favoring arbitration.” *Gilmer*, 500 U.S. at 26 (quotation omitted). To the contrary, *Pyett* strongly reaffirms *Gilmer* and its requirement that the Court will read a statute to preclude arbitration only if Congress makes any such intention unmistakably clear.

*Pyett* addressed the enforceability of a term in a collective bargaining agreement requiring arbitration of ADEA claims. The Court in *Gilmer* had already upheld the enforceability of agreements to arbitrate ADEA claims. *Pyett*, relying on *Gilmer*, held that arbitration provisions in collective bargaining agreements are no different. 129 S. Ct. at 1465-66. Far from overruling or distinguishing *Gilmer*, *Pyett* strongly reaffirmed it.

In the footnote on which respondents rely, the Court denied Justice Stevens’s suggestion, in dissent,

that the *Court itself* possessed a “preference for arbitration” or had *itself* fashioned a “policy favoring arbitration.” *See id.* at 1470 n.9. That observation is of no consequence here: the policy favoring arbitration is one established by *Congress* (in the FAA), not the Court. As the Court explained in the same footnote, “it is the Court’s fidelity to the ADEA’s text—not an alleged preference for arbitration—that dictates the answer to the question presented.” *Id.* And the Court upheld the enforceability of agreements to arbitrate claims under the antidiscrimination statutes at issue because, as *Gilmer* had explained, “nothing in the text of Title VII or the ADEA precludes contractual arbitration.” *Id.*

Thus, like *Gilmer* before it, *Pyett* stands for the proposition—by now well settled—that Congress will be found to have precluded arbitration of claims under a given statute only if it makes its intention “explicitly” clear. *Gilmer*, 500 U.S. at 26. Congress did not do so in the CROA.

## **II. Nothing In The CROA Overcomes The Strong Policy Favoring Arbitration**

### **A. The CROA’s Silence Concerning Arbitration Compels The Conclusion That CROA Claims Are Fully Arbitrable**

The CROA contains no explicit indication of an intention to preclude arbitration. Indeed, the statute contains no mention of arbitration at all. The inescapable conclusion from Congress’s silence is that CROA claims are subject to arbitration.

1. Congress’s silence in the CROA is particularly deafening when contrasted with the numerous provisions in which Congress, when electing to preclude arbitration of a statutory claim, has done so directly and explicitly, as this Court’s precedents require. Pet. Br. 19-21 (citing provisions). Respondents question the relevance of those provisions on the basis that none was enacted before 2002, while the CROA was enacted in 1996. Resp. Br. 28-29. By the time of the CROA’s enactment, however, this Court had long established the strong presumption favoring arbitrability of federal statutory claims and the resulting need to make clear any intention to overcome that presumption. *See, e.g., Gilmer*, 500 U.S. 20 (1991) (ADEA claims arbitrable); *Rodriguez de Quijas v. Shearson/American Express, Inc.*, 490 U.S. 477 (1989) (Securities Act actions arbitrable); *McMahon*, 482 U.S. 220 (1987) (Exchange Act and RICO claims subject to arbitration); *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614 (1985) (federal antitrust claims arbitrable).

Congress is presumed to have been aware of this Court’s requirements when it enacted the CROA. *See, e.g., Porter v. Nussle*, 534 U.S. 516, 528 (2002). Indeed, proposed legislation in the 104th Congress—the Congress that enacted the CROA—confirms Congress’s full awareness at that time of the need to make explicit any intention to preclude arbitration, and even of this Court’s specific precedents establishing that requirement.<sup>1</sup> Accordingly, if the Congress

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<sup>1</sup> *See, e.g.,* Civil Rights Procedures Protection Act of 1996, H.R. 3748, 104th Cong. §§ 2-8 (bill to amend the major civil rights statutes in response to *Gilmer*, by stating that those acts’

that enacted the CROA intended to preclude arbitration of CROA claims, it could have (and would have) included an explicit statement to that effect, just as various contemporaneous bills did, and just as later Congresses did in enacted legislation.

2. Respondents would equate the CROA with laws in which Congress directly and explicitly precluded the enforceability of predispute arbitration agreements. *E.g.*, 15 U.S.C. § 1226(a)(2) (enacted in 2002) (providing that, where contract “provides for the use of arbitration to resolve a controversy, ... arbitration may be used to settle such controversy only if after such controversy arises all parties to such controversy consent in writing to use arbitration to settle such controversy”). There is no basis for treating Congress as if it manifested the same intention in the CROA even though Congress made no mention of arbitration in the statute.

Respondents argue that the CROA nonetheless achieves the same result through the interaction of “[t]hree interlocking provisions,” Resp. Br. 14-15: (i) the civil-liability provision, 15 U.S.C. § 1679g, which

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judicial remedies “shall be the exclusive powers and procedures applicable to such claim” unless the parties agree to arbitration *post*-dispute); H.R. 3967, 104th Cong. § 1 (bill responding to *Mitsubishi Motors*, which had been decided on July 2, 1985, stating, “Notwithstanding any other provision of law,” any person who has entered an arbitration agreement before July 1, 1985, “shall not be barred from bringing an action in any court of competent jurisdiction in the United States ...”); Fairness and Voluntary Arbitration Act of 1996, H.R. 3422, 104th Cong. § 2 (bill to amend FAA by allowing parties to “sales and service contracts” that require arbitration to reject arbitration after dispute arises).

creates a cause of action that respondents say establishes an exclusively judicial forum; (ii) the disclosure provision, *id.* § 1679c(a), which describes that cause of action as a “right to sue” when setting forth a mandatory disclosure to lay consumers; and (iii) the anti-waiver provision, § 1679f(a), which renders void and unenforceable any “waiver by a consumer of ... any right of the consumer.” According to respondents, those three provisions, when read together, establish an exclusively judicial forum that cannot be waived through an arbitration agreement.

Respondents’ argument is meritless. Congress does not preclude arbitration in such an elliptical manner. Rather it must do so (and repeatedly has done so) “explicitly.” *Gilmer*, 500 U.S. at 26. Congress, in short, should not be considered to have overridden the FAA’s strong policy “in such a backhanded way.” *Bd. of Trustees v. Roche Molecular Sys.*, 131 S. Ct. 2188, 2197 n.5 (2011).

**B. The CROA’s Anti-Waiver And Civil-Liability Provisions Do Not Bar Enforcement Of A Valid Arbitration Agreement**

Even apart from the absence of any mention of arbitration in the CROA, respondents’ analysis of the CROA’s “interlocking provisions” is fundamentally flawed. Those provisions, properly understood, do not establish any non-waivable entitlement to a judicial forum.

1. *Assuming The CROA Creates A Right To Sue Exclusively In Court, That Right May Be Waived Pursuant To A Valid Arbitration Agreement*

Assuming, *arguendo*, that the CROA’s civil-liability provision establishes a right to sue exclusively in court, the statute’s anti-waiver provision poses no bar to a voluntary waiver of that right through a valid arbitration agreement. The anti-waiver provision prevents waiver only of substantive rights established by the statute, not procedural rights like the (supposed) right to sue exclusively in court. Respondents’ argument to the contrary cannot be squared with the statutory text or with this Court’s decisions.

a. The CROA’s anti-waiver provision states that “[a]ny waiver by any consumer of any protection provided by or any right of the consumer under [the CROA] ... shall be treated as void[,] and may not be enforced by any Federal or State court or any other person.” 15 U.S.C. § 1679f(a). In respondents’ view, the “rights” protected by the anti-waiver provision must include the judicial remedy created by the CROA’s civil-liability provision because: the disclosure provision labels that remedy a “*right to sue*,” the anti-waiver provision refers to “*any right* of the consumer,” and “the use of the word ‘any’ to modify a noun ‘suggests a broad meaning.’” Resp. Br. 35 (quoting *Ali v. Bureau of Prisons*, 552 U.S. 214, 219 (2008)).

Respondents err in presuming that the anti-waiver provision’s use of the word “any” in reference

to the “rights” within its sweep necessarily means that the provision reaches beyond substantive “rights.” See *Small v. United States*, 544 U.S. 385, 388 (2005) (“The word ‘any’ considered alone cannot answer [the] question” whether “any court” includes a “foreign court.”). As the Court has explained, “general words” like “any” must “be limited” in their application “to those objects to which the legislature intended to apply them.” *United States v. Palmer*, 3 Wheat. 610, 631 (1818) (Marshall, C.J.). The term “any right,” while a “catchall” phrase, does not “define what it catches.” *Flora v. United States*, 362 U.S. 145, 149 (1960) (interpreting “any sum”). The breadth of the term “any right,” as any other statutory term, thus depends on the “context in which [it] is used.” *United States v. Alvarez-Sanchez*, 511 U.S. 350, 358 (1994) (quoting *Deal v. United States*, 508 U.S. 129, 132 (1993)) (alteration in original).

The context here dictates concluding that the “rights of the consumer” referenced in the anti-waiver provision are confined to substantive CROA rights. The relevant context is supplied by the FAA. This Court has long recognized that, in light of the FAA, a waiver of the right to seek a judicial remedy is distinct from a waiver of substantive rights: “by agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral, rather than a judicial, forum.” *Gilmer*, 500 U.S. at 26 (quoting *Mitsubishi Motors*, 473 U.S. at 628).

The FAA requires construing the CROA’s anti-waiver provision “with a healthy regard for the federal policy favoring arbitration.” *Id.* (quotation omit-

ted). Doing so compels reading the anti-waiver provision to apply to substantive rights under the CROA, not procedural rights. Indeed, this Court has already construed a materially identical anti-waiver provision to encompass only substantive rights, and thus to pose no bar to enforcement of an arbitration agreement. The Court need only apply that same understanding in this case.

In *Gilmer*, this Court considered the arbitrability of claims under the ADEA, which contains an anti-waiver provision that states: “An individual may not waive *any right* or claim under this chapter unless the waiver is knowing and voluntary. Except as provided in paragraph (2), a waiver may not be considered knowing and voluntary unless at a minimum ... (C) the individual *does not waive rights* or claims that may arise after the date the waiver is executed.” 29 U.S.C. § 626(f)(1) (emphasis added). The ADEA, like the CROA, thus contains an anti-waiver provision that speaks in terms of the waiver of “any right.” Moreover, the ADEA, like the CROA, contains a separate provision establishing a right of action, *i.e.*, a right to sue. *See* 29 U.S.C. § 626(c)(1). Yet this Court held that the ADEA’s anti-waiver provision does not preclude arbitration. *Gilmer*, 500 U.S. at 28 n.3, 29; Pet. Br. 33. And this Court reaffirmed in *Pyett* that the ADEA’s anti-waiver provision precludes only waivers of “substantive” rights, and that the “*right to a judicial forum is not the nonwaivable ‘substantive’ right protected by the ADEA.*” 129 S. Ct. at 1464 n.5 (emphasis added); *see also id.* at 1465, 1469.

Respondents attempt to distinguish the ADEA on the ground that, whereas the CROA characterizes its cause of action as a “right to sue” in the disclosure provision, the ADEA “nowhere expressly provides that the entitlement to bring an action in court is a ‘right’ within the meaning of the waiver provision.” Resp. Br. 32, 34. That asserted distinction is illusory. The “right to sue” language in the CROA’s disclosure provision is merely a plain-English description for lay consumers of the CROA’s cause of action. Respondents do not dispute that any cause of action in the U.S. Code—including the one in the ADEA—is properly described as a “right to sue.” The ADEA contains no express description of its cause-of-action provision as a “right to sue” only because the ADEA—unlike the CROA—contains no verbatim required disclosure to employees of their rights. But if the ADEA did require such a disclosure, one of its terms would presumably be that “You have the right to sue your employer for violations of the Age Discrimination in Employment Act.” The existence of such a required disclosure would not in any way change the meaning of the ADEA’s anti-waiver provision such that it would preclude arbitration. That is dispositive here.

Accordingly, just as this Court has read the ADEA’s anti-waiver provision to encompass waiver only of substantive rights, the CROA’s parallel anti-waiver provision should be read to encompass only waiver of substantive rights. The CROA’s anti-waiver provision thus poses no obstacle to the enforcement of agreements to arbitrate CROA claims.

b. The conclusion that the CROA’s anti-waiver provision does not preclude arbitration of CROA claims is reinforced by other language in that provision, *viz.*, that waivers “may not be enforced by any Federal or State court or *any other person.*” 15 U.S.C. § 1679f(a)(2) (emphasis added). The emphasized language confirms that Congress fully expected arbitrators to play a role in enforcing the CROA.

Respondents contend that “any other person” does not refer to an arbitrator. Rather, respondents assert, the “term could easily encompass an administrative agency officer, or even a private person or company attempting to enforce a waiver through litigation.” Resp. Br. 42. In fact, the term could not encompass such actors. Under the principle of *ejusdem generis*, “when a general term follows a specific one, the general term should be understood as a reference to subjects akin to the one with specific enumeration” *Norfolk & W. R.R. Co. v. Train Dispatchers’ Ass’n*, 499 U.S. 117, 129 (1991). The “any other person” language therefore must be read in light of its statutory neighbors—“any Federal or State court.” Those terms demonstrate that “any other person” addresses persons, like federal and state courts, who adjudicate private claims involving CROA rights. Arbitrators fall within that category. In contrast, the phrase “any other person” does not comfortably encompass administrative agency officials, who might *bring* actions involving CROA rights, *see, e.g.*, 15 U.S.C. § 1679h, but would not normally adjudicate such actions. And it certainly does not include litigating parties, who play no role in adjudicating CROA rights. In all events, even if plaintiffs were correct

that “any other person” *can* include all the actors it identifies, there is no basis for *excluding* arbitrators.

Respondents also contend—following the Ninth Circuit below, Pet. App. 15a—that, even if the “any other person” language does include arbitrators, “the possibility that an arbitrator might be in a position to decide whether to enforce a waiver of rights under CROA could arise in any number of circumstances other than compelled arbitration of a consumer’s CROA claims”—for instance, if a “credit repair organization ... demand[s] arbitration against a consumer to collect a payment for services allegedly due under its contract.” Resp. Br. 42; *see* Resp. Br. 42-44. Anything is possible, but as petitioners have explained (Pet. Br. 30-31), the far more natural reading of “any other person” is simply that Congress assumed arbitrators would in some circumstances adjudicate CROA claims, and sought to assure that arbitrators, like courts, would not enforce waivers of *substantive* CROA rights.

Respondents’ contrary reading is particularly unpersuasive in light of the strong federal policy favoring arbitration, and of Congress’s demonstrated awareness of how to prohibit arbitration directly and explicitly when intending to do so. If Congress in fact sought to preclude enforcement of arbitration agreements in a provision that *affirmatively contemplates arbitration*, Congress would make its intention to do so expressly clear.

c. The anti-waiver provision’s relationship with a neighboring provision confirms the conclusion that the CROA does not preclude enforcement of arbitration agreements. Section 1679f(b) renders any at-

tempt to obtain a waiver of “any right of the consumer” referenced in subsection (a) a violation of the CROA. 15 U.S.C. § 1679f(b). Respondents readily admit that, under that provision, merely presenting a consumer with a pre-dispute arbitration agreement would subject a credit repair organization to compensatory and punitive damages and FTC enforcement. Resp. Br. 50-51 & n.19. On respondents’ view, therefore, a consumer could successfully sue a credit repair organization under the CROA for even *proposing* a contract that includes a generic arbitration agreement, unless that agreement *expressly* excluded CROA claims. Resp. Br. 51 n.19.

Respondents cite no similar provision in the U.S. Code, and the result they contemplate would be truly extraordinary. It is one thing for Congress to preclude *enforcement* of pre-dispute arbitration agreements. It is quite another to render the mere offer of such an agreement a *violation of federal law*.

Indeed, respondents’ position is even more far-reaching than that. Respondents cannot rule out the possibility that the offer of *post-dispute* agreements to arbitrate—or even to *settle*—CROA claims would be unenforceable and a violation of the CROA. Resp. Br. 51-56. Respondents provide no textual basis for distinguishing between pre- and post-disputes waivers of “any right of the consumer.”<sup>2</sup> Respondents also

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<sup>2</sup> The three cases upon which respondents rely provide no support for drawing any such distinction here. Two of those cases held that railroads are not precluded from settling claims brought under the Federal Employers’ Liability Act (FELA) because FELA only precludes a railroad from “exempt[ing] itself from any *liability* created by” that Act, 45 U.S.C. § 55 (emphasis added), and a settlement release “is not a device to exempt from

argue that it would not be unprecedented to treat an agreement to settle certain aspects of a claim as unenforceable. Resp. Br. 55-56. But the sole case respondents cite for that proposition concerned a former employee’s post-termination release of an employer from *future* claims against the employer, which the Court held to violate the plain terms of the ADEA’s anti-waiver provision—the same provision this Court has held *does not* preclude enforcement of arbitration agreements. See *Oubre v. Entergy Operations, Inc.*, 522 U.S. 422, 423-24, 425-28 (1998); 29 U.S.C. § 626(f)(1) (“An individual may not waive any right *or claim* .... (emphasis added)). *Oubre* did not concern an attempt to settle existing litigation. And in any event, respondents do not purport to provide an example of a statute that would treat a post-dispute offer of settlement as a *violation of law*. This Court should avoid any reading of the CROA under which the mere offer to settle a CROA claim could raise the prospect of compensatory and punitive damages and FTC enforcement. Congress cannot be seen to have intended that unprecedented result without saying so directly and unambiguously.

d. Respondents’ remaining textual arguments in support of their reading of the anti-waiver provision

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liability ....” *Callen v. Pa. R.R. Co.*, 332 U.S. 625, 631 (1948); see also *Boyd v. Grand Trunk W. R.R. Co.*, 338 U.S. 263, 266 (1949). There is no similar textual support in the CROA for the distinction respondents seek to draw. The third case, *Wilko v. Swan*, 346 U.S. 427 (1953), relied on no text at all to support the proposition that “waiver in advance of a controversy stands upon a different footing” than agreements to arbitrate. *Id.* at 438. And as respondents acknowledge, *Wilko* was expressly overruled in *McMahon* and *Rodriguez de Quijas*. Resp. Br. 52.

are without merit. Respondents argue that “rights of the consumer” subject to the anti-waiver provision cannot be limited to substantive rights because the anti-waiver provision also precludes waiver of “any protection provided by” the Act. The reference to “protection,” respondents argue, “is most naturally read as referring to the substantive requirements of the CROA ....” Resp. Br. 36. That argument lacks merit.

In providing a list of “substantive requirements” that they believe are “protections” and not “rights,” respondents include provisions prohibiting credit repair organizations from making false statements, barring them from requiring payment in advance, and requiring them to provide consumers a disclosure of rights. Resp. Br. 36. But the listed CROA provisions are just as easily described as “rights” as “protections,” and in some cases much more easily described as “rights.” For example, the CROA’s disclosure provision (§ 1679c(a)) is naturally described as a consumer’s “right” to receive a specified disclosure. It is difficult to imagine how it can be described as a “protection.” (A protection against unwarned purchases of credit repair services?)

Indeed, respondents simply err in asserting that the term “protection” alone “encompasses the substantive provisions of the statute ....” Resp. Br. 36. As respondents admit (at 36-37), a consumer’s entitlement to cancel a contract within 3 days is specifically labeled a “right” by the provision creating it (and not only by the disclosure provision). 15 U.S.C. § 1679e. But that right is clearly substantive. Respondents’ reliance on the distinction between a

CROA “protection” and a “right” is thus misplaced. The use of both “protection” and “right” is not meant to distinguish between substantive and non-substantive CROA provisions, as respondents assert. It instead assures that the statute’s scope extends to *all* substantive provisions, whether best described as a “right” or a “protection.”

Respondents also suggest that several provisions in which Congress has explicitly precluded arbitration “actually reflect the concept that arbitration is a waiver of the right to sue,” because some of those provisions state that “[t]he rights and remedies provided for in this section may not be waived by any agreement, policy form, or condition of employment *including by a predispute arbitration agreement.*” Resp. Br. 31 (quoting 7 U.S.C. § 26(n)(1), 12 U.S.C. § 5567(d)(1), 18 U.S.C. § 1514A(e)(1), and Pub. L. No. 111-5, § 1553(d)(1)) (emphasis and alteration in original). Those provisions demonstrate just the opposite, because the next subsection in each of the cited statutes states that “No predispute arbitration agreement shall be valid or enforceable, if the agreement requires arbitration of a dispute arising under this section.” 7 U.S.C. § 26(n)(2), 12 U.S.C. § 5567(d)(2), 18 U.S.C. § 1514A(e)(2), and American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 1553(d)(2). If the italicized portion of the provisions respondents quote were meant to equate a prohibition of waiver of “rights and remedies” with the preclusion of arbitration, then the next subsection in each statute expressly precluding arbitration would be wholly superfluous, an impermissible inference. *See, e.g., Milner v. Dep’t of the Navy*, 131 S. Ct. 1259, 1268 (2011).

Rather, the two statutory provisions, read together, provide (i) that purported waivers of substantive rights and remedies found in various documents, including arbitration agreements, are unenforceable, and (ii) that claims under the statute are non-arbitrable. The fact that Congress found it necessary to prevent a waiver of “rights and remedies,” and then to *separately* preclude enforcement of an agreement to arbitrate, demonstrates that Congress views the concepts of a waiver of “rights and remedies” and an agreement to arbitrate as distinct, consistent with this Court’s holdings in *Gilmer* and *Pyett*. *See supra* Part II.A.

e. Respondents make no effort to argue that the CROA’s legislative history speaks to the question of arbitration in any respect, and respondents likewise make no contention that there is an “inherent conflict” between arbitration and the CROA’s “underlying purposes.” *Gilmer*, 500 U.S. at 26. Indeed, respondents suggest no reason why Congress could have desired to prevent arbitration of CROA claims. The closest they come is a passing mention of the CROA’s explicit provision for class-action recoveries, which respondents state “will generally be unavailable in arbitration.” Resp. Br. 47. But Congress’s provision for class-action recoveries affords no grounds for supposing that Congress sought to preclude arbitration, as respondents concede: “the fact that a statutory scheme contemplates class actions may not be enough to render claims under the stat-

ute nonarbitrable ....” *Id.* (citing *Gilmer*, 500 U.S. at 32).<sup>3</sup>

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Respondents thus fail to provide any sound basis—textual or otherwise—for concluding that Congress intended to preclude enforcement of agreements to arbitrate claims under the CROA. Even if there were any ambiguity on the subject—and there is not—“any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration.” *Moses H. Cone Mem’l Hosp.*, 460 U.S. at 24-25. Any doubts concerning the correct interpretation of the CROA’s anti-waiver provision thus must be resolved

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<sup>3</sup> Respondents’ amicus appears to argue that the CROA should be read to preclude arbitration because the CROA is a part of the Consumer Credit Protection Act (CCPA), 15 U.S.C. § 1601-1693r, whose intent is “to protect consumers with respect to financial credit ....” Brief of Amici Curiae of AARP and National Senior Citizens Law Center (AARP Br.) 34 (quoting *Clemmer v. Key Bank Nat. Ass’n*, 539 F.3d 349, 353 (6th Cir. 2008)). As this Court has explained, however, “even claims arising under a statute designed to further important social policies may be arbitrated because ‘so long as the prospective litigant effectively may vindicate [his or her] statutory cause of action in the arbitral forum,’ the statute serves its functions.” *Green Tree*, 531 U.S. at 90 (quoting *Gilmer*, 500 U.S. at 28 (quotation omitted)). Thus, the Truth In Lending Act, 15 U.S.C. § 1601 *et seq.*, like the CROA, is meant to protect consumer credit, 15 U.S.C. § 1601, and, like the CROA, is a part of the CCPA, AARP Br. 34. Yet claims under that statute are fully arbitrable. *Green Tree*, 531 U.S. at 89-92. So too with the Equal Credit Opportunity Act (ECOA), 15 U.S.C. § 1691 *et seq.* AARP Br. 34 (ECOA part of CCPA); *Green Tree*, 531 U.S. at 83, 89-92 (claims under that ECOA arbitrable). Claims under the CROA are no less subject to arbitration than claims under TILA and ECOA are.

in favor of arbitration. Consequently, whether or not the CROA creates a right to an exclusive judicial forum, that right may be waived through a valid arbitration agreement.

2. *The CROA's Civil-Liability Provision Does Not Establish An Exclusively Judicial Forum*

a. Respondents and their amici argue at length that the “right to sue” described in CROA’s disclosure provision—and established by the CROA’s civil-liability provision—means the right to bring an action in court. In their view, the CROA’s civil-liability provision *must* establish a right to bring an action in court, because otherwise, the required disclosure to consumers that they have a “right to sue” would be misleading. *E.g.*, Resp. Br. 17-24; AARP Br. 8-36. Respondents’ argument misses the point. There is no question that consumers have a right to sue credit repair organizations in court for CROA violations, 15 U.S.C. § 1679g, but they also have a right to choose to arbitrate CROA claims. The fact that consumers can—as respondents in this case did—voluntarily give up the right to sue in court by entering into an arbitration agreement makes no less accurate the disclosure that they have a “right to sue.”

The relevant question, then, is not whether consumers have the right to sue in court—they do—but whether they can validly give up that right. The answer to that question is yes unless both of two conditions are satisfied: first, the civil-liability provision must provide that a consumer’s remedy is *exclusively* judicial; and, second, that exclusive remedy must be non-waivable. For the reasons already explained, the

CROA’s civil-liability provision, whatever its content, can be waived. But even if that were not so, consumers could still choose to arbitrate CROA claims because the civil-liability provision does not provide an *exclusively* judicial remedy.

Insofar as the “right to sue” language in the disclosure provision contemplates a judicial remedy, there is no basis to conclude that it establishes an *exclusively* judicial remedy. Respondents point to the language of the civil-liability provision itself, observing that it uses the terms “action” and “court.” Resp. Br. 24-26. But that merely demonstrates Congress’s assumption that courts would generally serve as the default venue for resolution of CROA claims, not that they would serve as the exclusive venue.<sup>4</sup>

b. In this regard, the CROA’s civil-liability provision differs from most statutes creating a cause of action. When Congress intends to create an exclusively judicial remedy, it does so explicitly. For example, the various statutes read by this Court to allow waiver of judicial remedies nevertheless make clear that those remedies are exclusively judicial (and thus must be waived before arbitration is allowed). *See* 15 U.S.C. § 15(a) (Sherman Act) (“[A]ny person who

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<sup>4</sup> Respondents argue that the civil-liability provision contemplates class actions, which respondents say “are generally unavailable in arbitration.” Resp. Br. 25. But class arbitration is unavailable only if the parties to an arbitration agreement voluntarily agree to make it unavailable. *See, e.g., AT&T Mobility LLC v. Concepcion*, 131 S. Ct. 1740, 1744-45 (2011); *Stolt-Nielsen S.A. v. AnimalFeeds Int’l Corp.*, 130 S. Ct. 1758, 1775 (2010). Congress’s contemplation of class actions in the CROA thus does not suggest an intention to create an exclusively judicial remedy.

shall be injured in his business or property by reason of anything forbidden in the antitrust laws may sue therefor *in any district court of the United States ...*”); 15 U.S.C. § 77l (Securities Act) (“Any person who [violates particular provisions concerning securities] shall be liable ... to the person purchasing such security from him, who may sue either at law or in equity *in any court of competent jurisdiction ...*”); 15 U.S.C. § 1640(e) (Truth In Lending Act) (“Any action under this section may be brought *in any United States district court, or in any other court of competent jurisdiction ...*”); 18 U.S.C. § 1964(c) (RICO) (“Any person injured in his business or property by reason of a violation of [the RICO statute] may sue therefor *in any appropriate United States district court ...*”); 29 U.S.C. § 626(c)(1) (ADEA) (“Any person aggrieved may bring a civil action *in any court of competent jurisdiction* for such legal or equitable relief as will effectuate the purposes of this Act.”) (emphases added).

In contrast to these provisions, each of which by its own terms allows suit to be brought only *in court*, the CROA’s civil-liability provision contains no specification of a forum. Rather, the operative language speaks in terms of who is “liable” for what—a concept fully consistent with arbitration—and is agnostic with respect to the chosen forum: “Any person who fails to comply with any provision of [the CROA] with respect to any other person shall be liable to such person” in an amount calculated through a prescribed framework. 15 U.S.C. § 1679g(a). There is no basis for reading that provision to establish an exclusively judicial remedy, particularly when considered in light of the need to construe the statute to ac-

commodate—rather than preclude—arbitration. *E.g., Moses H. Cone Mem'l Hosp.*, 460 U.S. at 24-25.

Accordingly, even if the CROA's anti-waiver provision precluded the waiver of the remedy found in that statute's civil-liability statute—which it does not, *see supra* Part II.B.1—the CROA's civil-liability provision does not itself prescribe an exclusively judicial remedy. Rather, the statute leaves the choice of remedy to the parties. And here, respondents elected to resolve all their claims against petitioners—including CROA claims—in arbitration. Nothing in the CROA allows respondents to avoid being held to that choice. On the contrary, the FAA establishes the courts' responsibility to "rigorously enforce agreements to arbitrate," *McMahon*, 482 U.S. at 226 (quotation and citation omitted), including this one.

**CONCLUSION**

The judgment of the court of appeals should be reversed.

Respectfully submitted,

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