No. 14-370

IN THE
SUPREME COURT OF THE UNITED STATES

Med-1 Solutions, LLC,
Petitioner,
v.
Mark Suesz,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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As laid out in the initial Petition, there is a split in the Circuits on a question of significant federal importance, specifically whether § 1692i of the FDCPA looks to state law to determine what constitutes a "judicial district or similar legal entity" or whether a federal definition should be imposed upon the states, notwithstanding state jurisdictional and procedural rules and definitions to the contrary.

Suesz responds that there is not in fact a conflict, noting that the debtor prevailed under both the Second and Seventh Circuit constructions of the statute. However, this superficial analysis fails to acknowledge that the Second and Seventh Circuits utilized different definitions and employed divergent approaches in interpreting §1692i. Moreover, the facts of this case provide the fulcrum upon which the two approaches lead to opposite results. Under the Hess/Newsom rule that is the law in the Second Circuit, Med-1 prevails and the Marion County township small claims courts are not judicial districts; under the purposive venue approach of the Seventh Circuit, Suesz prevails and the township small claims courts are considered judicial districts. Accordingly, this case presents the ideal vehicle for resolution of this dispute.

Beyond challenging the legitimacy of the Circuit conflict, Suesz does not substantively argue against certiorari except to defend the Seventh

Circuit decision below on the merits. In fact, his brief reinforces the national significance of the question presented. His policy arguments in favor of the Seventh Circuit approach assume that Congress wished to infringe upon the state's sovereign rights to craft procedural and venue rules for state courts. Simply stated, this is an assumption that cannot be found in the language of the statute.

For these reasons, and the reasons stated in the initial Petition, Med-1 requests that this Court grant certiorari.

I. The Conflict between the Second and Seventh Circuits is Real, and It Is Important

The Seventh and Second Circuit currently define the term "judicial district" in § 1692i differently. On this, there can be no reasonable dispute.

The Second Circuit noted in Hess,

> The logical first step in resolving this question is to consider the nature of the territorial subdivisions of the court system in which the debt collector brought suit. *See* Newsom, 76 F.3d at 818-19. Because the court system of which [the debt collector] availed itself is governed by laws that limit the territorial extent of those courts based on, *inter alia*, a defendant's contacts

> with the forum, we hold that those laws delimit the "judicial district" by which compliance with the FDCPA's venue provisions must be measured.

Hess v. Cohen & Slammowitz, LLP, 637 F.3d 117, 123 (2nd Cir. 2011).

The Seventh Circuit expressly rejects this construction and, in fact, it rejects any emphasis on the state laws that "delimit the judicial district." The majority below explained,

> Suppose, for example, that state law allowed venue in the township where the plaintiff does business, and suppose that a debt collector filed all its consumer collection suits in that township regardless of where the defendants lived or where the contracts giving rise to the alleged debts had been signed. Those suits would comply with state law but violate the FDCPA. Such violations would not undermine the validity of state court judgments in favor of a debt collector, but they would provide the basis for federal remedies against the debt collector.
>
> In essence, the FDCPA takes state courts as states choose to structure and operate them. Section 1692i then provides federal remedies for violations of the new federal requirements for

> venue in consumer debt-collection cases covered by the federal law. The remedies are available whether or not the filing of the case complies with state law.

Suesz v. Med-1 Solutions, LLC, 757 F.3d 636, 648 (7th Circ. 2014).

As Judge Flaum noted in dissent below, the Seventh Circuit's new rule departs from the Newsom/Hess construction and creates a clear conflict in the circuits:

> I believe Newsom is consistent with the Second Circuit's decision in Hess, 637 F.3d 117—more so, in fact that the court's rule. Like Newsom, Hess directs courts to look at the specifics of state law to define judicial districts…
>
> The court's new rule, contrary to Hess and Newsom, does not give appropriate deference to the way a state chooses to structure its own court system.

757 F.3d at 657-58.

The fact that the debtors won in both cases is not dispositive as to whether a conflict exists, as the Courts used vastly different approaches to decide the question.

More importantly, this case presents the fall line upon which the two approaches diverge. The District Court and the initial panel majority used Newsom/Hess approach of looking to state law: the first asking how the state consistently and uniformly divides itself, then evaluating if courts of limited jurisdiction function as judicial districts under the state's own framework. Both the District Court and the panel majority held that, under this approach, Marion County township small claims courts are not independent judicial districts. On rehearing *en banc*, the Seventh Circuit announced a new rule and held that a judicial district is the smallest geographic unit relevant in state court venue rules.

The split in circuit authority is real, and it is apparent. On the facts of this case, the Seventh and Second Circuit approaches lead to polar results.

The additional cases cited by Suesz do not address the fundamental dispute presented by this Petition, which is whether a judicial district should be defined by state law, or whether a federal definition should be imposed upon the states. In fact, all of the cases cited by Suesz follow the Newsom/Hess approach of allowing state law to define the state's judicial districts for the purposes of the FDCPA.

In Addison v. Braud, the Fifth Circuit looked to Louisiana law and held that because the court in which the debt collector filed suit lacked jurisdiction under state law, it was not the proper judicial

district under § 1692i. 105 F.3d 223, 224 (5th Cir. 1997). In Fox v. Citicorp Credit Services, Inc., the Ninth Circuit, in a single sentence devoted to the issue, held that Arizona does not constitute a single judicial district, and that its individual counties constitute judicial districts. 15 F.3d 1507 at 1515 (9th Cir. 1994).

The District Court decisions further reinforce that the decision below creates a conflict as in each case, the District Court looked to state law to define the judicial district. In Nichols v. Byrd, 435 F.Supp.2d 1101 (D. Nev. 2006), the court determined the state court at issue lacked jurisdiction under state law. Id. at 1108. Similarly, the District Court in Pabon v. Recko, 2001 WL 36356981 (D. Conn. 2001) determined that the court in which the debt collector filed suit lacked jurisdiction or was otherwise an improper venue under state law. Id. at *7-8. Harrington v. CACV of Colorado, LLC, 508 F.Supp.2d 128 (D. Mass. 2007) also focused upon the state's definition of a judicial district, ultimately citing directly to the Massachusetts statute defining its uniform judicial districts. Id. at 134.

In each of the cases cited, the Courts used state law to define the applicable judicial district for purposes of § 1692i. Below, the Seventh Circuit majority did not rely upon state law. Instead, it created a new federal common law definition, and used that definition to supplant Indiana's own jurisdictional and venue rules. The fact that the debtors prevailed in the cases cited by Suesz does not shield the fact that the approaches taken by the

Second and Seventh Circuits are fundamentally different.

II. Suesz's Policy Justifications in Support of the Lower Court Ruling Demonstrate the Importance of the Question Presented

This split is far from trivial. It directly impacts the extent to which District Courts throughout the country should interfere with state court procedural and venue rules via enforcement of § 1692i. In this respect, Med-1 notes that Suesz does not argue that the question is not important, and in fact, the bulk of his responsive brief largely reinforces the national nature of the question. *See* Respondent's Brief in Opposition, p. 12 (noting that courts of limited jurisdiction are created in most major population centers around the country).

Suesz instead defends the decision below by arguing that it is sound policy. He starts by assuming that the *only* reason a state would ever create a court of limited jurisdiction in an urban area is to provide a more geographically convenient court for its citizens. Once this assumption is made, it necessarily follows—according to Suesz—that declaring a court of limited jurisdiction a "judicial district" could never disrupt the intent of the state or locality.

The principal problem with this position is not with the conclusion, but rather the assumption upon which the conclusion is based. There are numerous

reasons why a state or local government may elect to create courts of limited jurisdiction that have nothing to do with providing geographic convenience to the locality's citizens. And under Suesz's position, many of those justifications are now foreclosed and prohibited by § 1692i.

For example, a state or city may choose to move courts out of the central business district to save costs. The cost of building a new structure in downtown Indianapolis, or inside the loop in Chicago, or in the densest parts of most major population centers is often exponentially greater than the costs of similar structures in other areas of the city. Or perhaps a state has existing government buildings that it would like to convert to another use.

Yet, under Suesz's argument, if a city moves its small claims courts or courts of limited jurisdiction out of an overcrowded downtown government center to township government centers or to parish government centers, the city loses the ability to set venue rules for that court in debt collection cases.

As another example, a city or state may choose to place courts around the city, but desire to keep the dockets relatively equal in number so as to make budgeting for the facilities simpler and more consistent.[1] Yet again, under Suesz's argument, the

[1] As the District Court in the decision below noted, at the time of the events at issue, the Marion County Circuit Court judge may transfer cases from one

state or city cannot achieve its intended result as the courts are going to be considered standalone judicial districts under § 1692i, and will only be able to hear the cases that originate within their geographic borders.

These examples are offered to highlight that a state may choose to create courts of limited jurisdiction and place them throughout a metropolitan area for reasons completely unrelated to protection of consumer debtors. This is why the *state* should be permitted to define whether its courts of limited jurisdiction are independent judicial districts and why a federal court interpreting § 1692i should look to the *state's* own definitions.

Suesz writes on page 14 of his response that Med-1's position requires one to ignore local court systems. He then continues by stating that

> …the one thing that local authorities cannot do is to allow debt collectors to contravene the express determination of Congress in § 1692i that the protection of consumers mandates that collection actions be filed in the subdivision where the consumer resides or signed a written contract on which the action is based.

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township to another "as necessary" and without the consent of either litigant. Suesz v. Med-1 Solutions, LLC, 2013 WL 1183292, *4 (S.D. Ind. 2013), *citing* Ind. Code § 33-34-5-1.

[Brief in Opposition, p. 14]

This is the fundamental fallacy in his approach, as it fails to recognize that the states themselves must be able to define the nature and limits of their own subdivisions.

III. Conclusion

The Seventh Circuit approach contradicts years of developed case law in the lower courts and creates a conflict among the circuits requiring resolution by this Court. The question at the heart of the split is one of significant federal importance as it directly controls the extent to which § 1692i trumps state court jurisdictional and venue rules, and will have profound effects on the manner in which major population centers throughout the country can administer small claims and limited jurisdiction dockets in consumer collection matters.

For these reasons, this Court should grant certiorari.

Respectfully submitted,

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