

CLIENT ALERT

## Supreme Court Holds That Consumers Must Allege Concrete Injury to Establish Standing to Sue for Statutory Violations

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On Monday, in a much anticipated decision, the U.S. Supreme Court vacated a Ninth Circuit ruling upholding a plaintiff's standing to sue for the alleged violation of privacy rights under the Fair Credit Reporting Act of 1970 ("FCRA"), a federal consumer protection statute. In *Spokeo, Inc. v. Robins*, No. 13-1339, the Court reaffirmed that in order to establish standing, a plaintiff must allege an injury that is both concrete *and* particularized, which requires more than the alleged violation of a statutory right. Although this decision did not go quite as far as some had hoped, it deals a significant blow to costly "no-harm" class actions based on statutory violations that are merely technical or procedural.

Spokeo operates a "people search engine" that can be used to search for information about any person. When a name, phone number, or email address is searched, Spokeo's website trawls various databases and compiles information such as an individual's address, marital status, and approximate age. Robins alleged that Spokeo's website incorrectly stated that he is married, has children, is in his 50's, has a job, and holds a graduate degree—all of which he claims is untrue.

Robins filed a putative federal class action in California, asserting that Spokeo willfully failed to comply with FCRA, which requires companies to take reasonable steps to ensure the accuracy of consumer reports. The district court dismissed Robins' complaint for lack of standing, finding that Robins had failed to plead an injury in fact as required by Article III of the U.S. Constitution.

The Ninth Circuit reversed, holding that the alleged violation of Robins' statutory rights was itself sufficient to confer standing. The court reasoned that Robins had established an injury in fact because (a) he alleged the violation of his statutory rights, rather than the statutory rights of others, and (b) his personal interests in the handling of *his* credit information are individualized rather than collective.

In a 6-2 decision authored by Justice Alito, the U.S. Supreme Court vacated and remanded the Ninth Circuit's ruling, holding that its standing analysis was incomplete. The injury-in-fact requirement requires proof of not only a "particularized" injury, but also a "concrete" injury. The Ninth Circuit's ruling improperly analyzed only particularization, ignoring concreteness.

Although the Court recognized "Congress' role in identifying and elevating intangible harms," the Court clarified that the injury-in-fact requirement is not automatically satisfied when a plaintiff sues to vindicate a purported statutory

right: “Article III standing requires a concrete injury even in the context of a statutory violation.” In other words, a “bare procedural violation, divorced from any concrete harm,” is insufficient for standing.

The Court further explained that merely procedural violations of the FCRA would not be sufficient to confer standing. Even the dissemination of inaccurate consumer information would not automatically give rise to standing, as “not all inaccuracies cause harm or present any material risk of harm.” For example, providing an incorrect zip code, without more, would not cause any concrete harm.

Ultimately, the Supreme Court expressed no opinion as to whether Robins had adequately alleged an injury in fact, and remanded to the Ninth Circuit to revisit its standing analysis.

Justice Thomas joined the majority, but also authored a separate concurrence. In his view, while Robins has no standing to sue Spokeo for violations of regulatory duties that Spokeo owes to the public collectively, he may have standing to sue for violation of Spokeo’s legal duty owed personally to Robins to protect his information. The nature of the claim will be a determination left for the Ninth Circuit.

Justices Ginsburg and Sotomayor dissented, arguing that Robins had established a concrete injury and no remand was necessary. The dissent emphasized that inaccurate representations regarding Robins’ education, family situation, and economic status could harm his employment prospects. For example, employers could believe that he was overqualified for a job he was seeking, or that he would be unwilling to relocate for a job due to family commitments.

To be sure, the Court’s decision in *Spokeo* was not quite as dramatic as it could have been. For example, the Court did not adopt a rule requiring a tangible injury, and it did not constrain Congress’s role in identifying harms that may meet minimum requirements under Article III. Still, the Court answered the critical question in a manner helpful to defendants, confirming that plaintiffs cannot simply rely on an alleged statutory violation. Thus, Spokeo bolsters defendants’ arsenal of challenges to putative class claims at the pleadings stage. The Court’s ruling also provides ammunition to challenge class certification, insofar as proof of a concrete injury may require individualized factual inquiries that predominate over common issues.

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