

U.S. Supreme Court Will Address Plaintiffs' Ability to Sue for Violations of Federal Law, Including the FCRA, Despite Suffering No Concrete Harm

April 28, 2015

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In a decision with significant implications for businesses that are the targets of consumer class action lawsuits, the U.S. Supreme Court has decided to hear a lawsuit presenting the question of whether a statutory violation confers Article III standing on a plaintiff who has suffered no concrete harm.

In *Spokeo, Inc. v. Robins*, a plaintiff filed a class action lawsuit against Spokeo, a company that aggregates publicly available information about individuals. The plaintiff alleged that the defendant violated the Fair Credit Reporting Act ("FCRA") because he claimed that Spokeo's results provided inaccurate information about him. The district court dismissed the complaint because the plaintiff failed to allege how the inaccurate information caused him any harm, and therefore the plaintiff failed to show he had suffered an "injury-in-fact" necessary to confer standing under Article III. The Ninth Circuit reversed, holding that in light of Congress's decision to give plaintiffs a private right to action to enforce the FCRA, a statutory violation was enough to create Article III standing.

In agreeing to review *Spokeo*, the Supreme Court is poised to resolve a conflict that has divided several appellate courts. Some courts—including the Sixth, Seventh, Eighth, and Ninth Circuits—have concluded that violations of some federal statutes are sufficient to confer standing even if the plaintiff has not suffered any harm. Other courts—including the Second, Fourth, and Federal Circuits—have reached the opposite conclusion, holding that technical violations of federal law cannot give rise to Article III standing if no injury has been suffered.

Although *Spokeo* only involves the FCRA, the Supreme Court's opinions could have broader implications beyond the FCRA. Numerous other federal laws—such as the Truth in Lending Act, the Fair Debt Collection Practices Act, the Telephone Consumer Protection Act, the Electronic Communications Privacy Act, and the Stored Communications Act—have been construed to give plaintiffs a private right of action to recover statutory damages even if they cannot demonstrate they have suffered actual harm. Other laws—such as the Employee Retirement Income Security Act, the Real Estate Settlement Procedures Act, the Lanham Act, the Fair Housing Act, the Americans with Disabilities Act, and the Video Privacy Protection Act—likewise have been interpreted to give plaintiffs a private right of action to recover damages based on so-called "injuries-of-law."

When these statutes are combined with the threat of class action litigation, defendants may face the prospect of enormous liability even though no one has suffered any concrete injury. Class

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certification may become easier when technical violations of law are sufficient to establish standing, because otherwise disparate claims of causation and damages are transformed into common issues. As a result, defendants often face significant pressure to settle no-injury cases even though they may have strong positions on the merits.

The Supreme Court has not yet issued a scheduling ordering in *Spokeo*. We anticipate that Spokeo's opening brief—and amicus briefs filed in support of Spokeo's position—will be due in the early summer, and that the Supreme Court will schedule oral argument in this case in or after October 2015.

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