

U.S. Supreme Courts Accepts Review of *Robins v. Spokeo, Inc.*

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The **Supreme Court** recently accepted review of one of the most talked about privacy class action and consumer cases of the past year, ***Robins v. Spokeo, Inc.***, No. 13-1339 (U.S.). The issue before the Court is whether Congress can confer Article III standing on a plaintiff who suffers no concrete harm, but who can recover statutorily imposed penalties for a mere violation of a federal statute.

In *Spokeo*, Thomas Robins alleges that “people search engine,” Spokeo Inc., disseminated inaccurate information about him on Spokeo.com, a website that aggregates publicly available information. According to Robins, Spokeo acted as a consumer reporting agency (CRA) when it displayed his information on Spokeo.com. Robins claims that Spokeo violated the Fair Credit Reporting Act (“FCRA”) by failing to provide him with mandatory notices. Robins further claims that Spokeo “caused actual harm” to his employment prospects by reporting that he is wealthy and holds an advanced degree, when, in fact, he experienced difficulty securing employment.

Spokeo sought dismissal of the case, arguing that: (1) it is not a CRA; and (2) Robins had no standing to sue without proof of economic harm. Article III of the United States Constitution requires that a plaintiff suffer an “injury-in-fact,” which means an injury or damage that is concrete and that the law recognizes.

The federal district court sided with Spokeo and ruled that entitlement to statutory penalties under the FCRA does **not** confer standing where no injury-in-fact is pled. The Ninth Circuit, however, disagreed and reversed. In doing so, the Ninth Circuit held that Robins had sufficiently satisfied Article III’s injury-in-fact requirement because statutory penalties are sufficient without actual injury or damage to provide standing. The Ninth Circuit notably did not rely on any allegations of harm to Robins’ employment prospects, stating that Robins has “standing by virtue of the alleged violations of his statutory rights” alone. *Robins v. Spokeo, Inc.*, 742 F.3d 409 (9th Cir. 2014). The Ninth Circuit’s holding joined the Sixth, Tenth and D.C. Circuits. The Second and Fourth circuits have found directly to the contrary. Spokeo appealed to the Supreme Court based on the circuit court split.

The Supreme Court's acceptance of Spokeo's petition is interesting in light of the fact that the Court previously declined review of two cases with very similar issues: *First National Bank of Wahoo v. Charvat*, which the court declined to review, and *First American Financial Corp. v. Edwards*, which the Court heard in 2010, but later dismissed certiorari as "improvidently granted." The Supreme Court's acceptance of Spokeo's petition is also interesting because it means that the high court has disregarded the recommendations of the federal government. In October, the high court requested that the Solicitor General file a brief regarding the government's position. In response, the Solicitor General recommended that the Court deny Spokeo's petition, which would leave the Ninth Circuit's decision in place. The Solicitor General supported his position by stating that the public dissemination of inaccurate personal information about Robins amounted to "concrete harm" that courts have traditionally acted to redress, regardless of whether the plaintiff could demonstrate some further consequential injury.

Spokeo has the attention of the financial industry. Additionally, several large companies have joined Spokeo in opposing the Ninth Circuit's Ruling, including but not limited to, Facebook Inc., Google Inc., Yahoo Inc. and eBay. In an amicus brief, the companies expressed to the high court that agreeing with the Ninth Circuit's decision would result in a flood of "no-injury" class actions under the Telephone Consumer Protection Act, the Video Privacy Protection Act and similar statutes.

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