

Fair Credit Reporting Act (FCRA) Lawsuit Sent Back To Ninth Circuit For Further Analysis on Standing to Sue

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A bare procedural violation of the Fair Credit Reporting Act (FCRA) is not sufficient to permit an individual to sue for a willful FCRA violation, ruled the U.S. Supreme Court today. But, if the alleged procedural violation entails a risk of real harm, the plaintiff may have a concrete injury sufficient to have standing to sue. In a 6-to-2 decision, the Court sent the case back to the Ninth Circuit for further analysis of the injury-in-fact requirement of Article III standing. *Spokeo, Inc. v. Robins*, 578 U.S. ____ (2016).

People Search Engine Produced False Information

Spokeo, Inc. operates a website that provides users with information about other people, including contact data, marital status, age, occupation, economic health, hobbies, shopping habits, musical preferences, and wealth level. It collects that information from various sources including phone books, real estate listings, and social networks.

Thomas Robins found that Spokeo's website published false information about him. It stated that he was married, in his fifties, had children, held a job, was relatively affluent, and had a graduate degree – none of which was accurate. Robins sought to file a class action against Spokeo, asking to recover the \$1,000 in damages allowed by the FCRA for each willful violation of the statute. The potential class could include millions of people.

Ninth Circuit Reversed on Whether Actual Harm Needed for Willful FCRA Violations

The trial court focused on Robins' allegations of harm, which were "that he has been unsuccessful in seeking employment, and that he is concerned that the inaccuracies in his report will affect his ability to obtain credit, employment, insurance, and the like." It dismissed his complaint without prejudice, ruling he lacked standing to sue Spokeo because he had not alleged "any actual or imminent harm." Despite filing an amended complaint in which he more fully described the inaccuracies in the information on Spokeo's website, the district court ruled that Robins had failed to plead an injury-in-fact and that any injuries pled were not traceable to Spokeo's alleged violations.

The Ninth Circuit Court of Appeals reversed. Spokeo had argued that Robins could not sue under the

FCRA without showing actual harm, but the Ninth Circuit found that the FCRA does not require a showing of actual harm when a plaintiff sues for willful violations. Therefore, the Ninth Circuit held that a plaintiff can suffer a violation of the statutory right without suffering actual damages.

Injury-In-Fact Requires Concrete and Particularized Harm

The Supreme Court vacated the Ninth Circuit's decision, stating that the appellate court had failed to consider both aspects of the injury-in-fact requirement for standing to sue, namely that the plaintiff suffered an invasion of a legally protected interest that is both concrete *and* particularized, rather than hypothetical. Justice Alito, writing for the majority, stated that the Ninth Circuit focused on the "particularized" aspect of Robins' injury – in other words, that he had been affected in a personal and individual way – but failed to consider whether his injury was "concrete." The Court emphasized that Article III standing requires a concrete injury, even in the context of a statutory violation.

The Court pointed out, however, that a concrete injury does not have to be tangible. An intangible harm may constitute an injury-in-fact and Congress can identify and elevate intangible harms to give rise to a case or controversy sufficient for standing to sue. A risk of real harm may satisfy the concreteness requirement.

As it relates to Robins' allegations of Spokeo's willful FCRA violations, the Court wrote that although Congress clearly sought to prevent the dissemination of false information by adopting the safeguards in the FCRA, Robins could not satisfy the injury-in-fact requirement for standing simply by alleging a bare procedural violation of the FCRA. The Court noted that a violation of one of the FCRA's procedural requirements, such as providing an incorrect zip code, may not result in harm. The Court, without taking a position on whether the Ninth Circuit's ultimate conclusion was correct, sent the case back to the Ninth Circuit to further analyze whether Robins' particular procedural violations, as alleged, involve a degree of risk sufficient to meet the concreteness requirement.

Effect of Ruling

By remanding this case back to the appellate court, the Supreme Court may have muddied the waters for defendants who face a statutory violation of the FCRA (or other federal statutes). Although it is good news that a bare statutory violation without concrete harm will not be sufficient to confer standing to sue, the analysis of the injury-in-fact requirement will likely mean that most cases will not be dismissed early in the proceeding, say on a motion to dismiss. That will raise the cost of defending such cases. Today's opinion also leaves the door open for Robins' class action case to proceed, should the Ninth Circuit find that the plaintiffs' face the risk of real harm from false information in Spokeo's people search database. We will continue to follow the case as the liability for statutory violations of the FCRA in a class action is huge.

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