

# High Court Spokeo Ruling on Standing Avoids Nixing No Injury Class Actions

Article By:

Daniel L. Farris

Rodney L. Lewis

Mark A. Olthoff

Thomas H. Wagner

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On May 16, 2016, the United States Supreme Court released its long-awaited opinion in *Spokeo, Inc. v. Robins*. In a 6–2 decision, the Court remanded the case to the Ninth Circuit for further analysis of the plaintiff's standing—specifically, whether the plaintiff had alleged a "particularized and concrete" injury sufficient to confer standing on him to sue in federal court. The Court's decision will have a big impact on standing in future class action lawsuits, but the full effect of the decision remains unclear.

In the case, Robins contended that Spokeo willfully invaded his legal rights under the Fair Credit Reporting Act (FCRA) by creating a false report about him without using procedures mandated by the act. Robins' claim derived from Spokeo's alleged failure to comply with its FCRA duties and, according to Robins, it materialized the moment Spokeo disseminated the allegedly false information.

Based on these facts, Robins argued the FCRA afforded him a "personal stake" in the outcome of the case sufficient to satisfy constitutional standing principles because Congress provided a cause of action and a damage amount despite Robins' failure to assert any actual harm. Spokeo, and various amici, argued Robbins lacked Article III standing because he did not allege a "tangible" or "real world" injury. They further argued that without a requirement to allege more than mere statutory violations, the federal courts would be inundated by consumer class actions.

## The Supreme Court's Decision

In his majority opinion siding with Spokeo, Justice Alito discussed the separation of powers among the branches of government and its jurisdictional reach. And with particular regard to standing requirements, he noted that in some instances the particularity and concreteness prongs of standing can be satisfied by an intangible harm, e.g., violations of First Amendment rights. But here, a mere technical violation of the FCRA was not enough.

The majority held that while Congress cannot override Article III standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing, it may expand standing to the full extent permitted by the Constitution. Congress may loosen the strictures of the redressability prong, for instance, by creating a statutory cause of action and providing for a statutory remedy, but the requirement of injury-in-fact is a hard floor of Article III jurisdiction. Congress may not abandon the requirement that the party seeking redress in federal court must *himself* have suffered an injury.

Put into the language of standing, to invoke jurisdiction, a plaintiff must allege *an invasion of a legally protected interest* that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. The majority clarified that this line between abstract, speculative and generalized grievances on the one hand, and concrete, actual and particularized invasions of legal rights on the other, is what defines Article III standing.

In this case, Justice Alito concluded that the plaintiff had sufficiently alleged that his harm was "particularized," *i.e.*, specific to him, but the Ninth Circuit had incompletely analyzed the entire standing inquiry. That is, the appeals court had not fully considered whether the plaintiff had alleged sufficient concreteness of injury to satisfy federal standing principles. Thus, the Court remanded for further development of the record.

## What Happens Now

While the *Spokeo* decision sounds a partial victory for defendants facing claims with questionable injuries, it is yet to be decided whether the Court will ultimately accept or reject claims more generally where no actual injury is present (beyond harm that is simply speculative) though a defendant is alleged to have violated a statutorily prescribed duty. And while it is clear that both the particularity and concreteness prongs must be satisfied to establish standing, the Court did not provide much insight as to the distinction between the two (a point that Justice Ginsburg made in her dissent joined by Justice Sotomayor). In the dissent's view, Robbins' standing case was made and the Ninth Circuit will so find.

As the opinion does little to establish a bright-line standard for what constitutes "concrete harm," it will provide little guidance for the lower courts, including in data breach consumer class actions where the question of speculative damages and Article III standing is still being hotly debated, and in cases that tend to be filed shortly after notice of a data breach is given, generally before enough time has passed for consumers to suffer any form of identity theft or uncover fraudulent charges. Many district courts had stayed proceedings in analogous cases pending resolution of *Spokeo*. Those courts may have to receive guidance from the Ninth Circuit's ultimate resolution of Robbins' claims upon remand from the High Court.

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