



Special Alert: SCOTUS Vacates Ninth Circuit Decision in Case Alleging Procedural FCRA Violations

On May 16, the United States Supreme Court [issued an opinion](#) vacating the Ninth Circuit's 2014 ruling that a plaintiff had standing under Article III of the Constitution to sue an alleged consumer reporting agency as defined by the Fair Credit Reporting Act (FCRA), for alleged procedural violations of the FCRA, 15 U.S.C § 1681 *et seq.* *Spokeo v. Robins*, No. 13-1339 (U.S. May 16, 2016). According to plaintiff Thomas Robins, the reporting agency violated *his* individualized (rather than collective) statutory rights by reporting inaccurate credit information regarding Robins's wealth, job status, graduate degree, and marital status in willful noncompliance with certain FCRA requirements. In a 6-2 opinion delivered by Justice Alito, the Court ruled that Robins could not establish standing by alleging a bare procedural violation because Article III requires a concrete injury even in the context of statutory violation. Here, the Ninth Circuit erred in failing to consider separately both the "concrete and particularized" aspects of the injury-in-fact component of standing. The Court opined that the Ninth Circuit's analysis was incomplete:

[T]he injury-in-fact requirement requires a plaintiff to allege an injury that is both "concrete and particularized." *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 180-181 (2000) (emphasis added). The Ninth Circuit's analysis focused on the second characteristic (particularity), but it overlooked the first (concreteness). We therefore...remand for the Ninth Circuit to consider both aspects of the injury-in-fact requirement.

Relying on case law, the Court emphasized that the "irreducible constitutional minimum" of Article III's standing to sue relies on the plaintiff demonstrating (i) an injury-in-fact; (ii) that the injury is fairly traceable to the challenged conduct of the defendant; and (iii) that the injury is likely to be redressed by a favorable judicial decision. *Lujan v. Defenders of Wildlife*, 504 U.S., 560-561 (U.S. June 12, 1992); *Friends of the Earth, Inc.*, 528 U.S., at 180-181. *Spokeo* primarily revolves around the first element, establishing an injury-in-fact. Again relying on *Lujan*, the Court reasoned that to establish injury-in-fact, the plaintiff must "show that he or she suffered 'an invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Lujan*, at 560. According to the Court, the Ninth Circuit's discussion of Robins's standing to sue, and in particular its discussion of whether Robins had articulated an individualized statutory right rather than a collective right, concerned *only* the particularization element of establishing an injury-in-fact. The Court stated that the Ninth Circuit's standing analysis was incomplete because it had failed to consider whether the "concreteness" requirement for an injury-in-fact—whether Robins had a "real" and "not abstract" injury—also had been satisfied. While the Court did make clear that a concrete injury could be intangible and that Congress may identify intangible harms that meet minimum Article III requirements, it noted that "Congress' role in identifying and elevating intangible harms does not mean that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right."

The Court noted that because the Ninth Circuit had not fully distinguished concreteness from particularization, it had failed to consider whether the reporting agency's procedural violations of the

FCRA constituted a sufficient degree of risk to Robins to meet the concreteness standard. The Court observed that while a procedural violation of the FCRA may, in some cases, be sufficient to establish a concrete injury-in-fact, not all inaccuracies in consumer information, i.e. an incorrect zip code, cause harm or a material risk of harm. Further, because “Article III standing requires a concrete injury even in the context of a statutory violation” the Court explained that “Robins cannot satisfy the demands of Article III by alleging a bare procedural violation.”

The Court vacated the Ninth Circuit’s judgment, and remanded the case for the Ninth Circuit to consider both aspects of the injury-in-fact requirement.

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