



US Supreme Court Issues Long-Awaited Decision in *Spokeo, Inc. v. Robins*

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On May 16, 2016, the United States Supreme Court issued its opinion in *Spokeo, Inc. v. Robins*, a case that the background screening community has watched with great interest, as the Supreme Court has been asked to decide whether an actual “injury in fact” is required to confer standing under the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*

In the proceedings below, Robins filed a class action lawsuit against Spokeo, a people search engine, under the FCRA on the basis that it had reported inaccurate information about him (and others). As part of its defense, Spokeo argued that Robins did not have standing to sue because he had not adequately alleged harm as a result of any alleged inaccurate reporting. Put differently, Spokeo argued Robins needed to allege more than a mere “technical violation” of the FCRA to have standing. On appeal, however, the Ninth Circuit held that Robins had sufficiently alleged an “injury-in-fact” because of his technical violation claims under FCRA and thus had standing to sue. The Supreme Court then granted consideration of *Spokeo* amidst the split of authority among the federal appeals courts. The Second, Third, and Fourth Circuits hold that more than a technical violation must be alleged to confer standing, on the one hand, and the Fifth, Sixth, Seventh, and Ninth Circuits have held that a technical statutory violation alone confers standing, on the other hand.

In a 6-2 opinion, the Supreme Court vacated the Ninth Circuit’s decision, holding that it had failed to properly conduct the standing analysis. The Supreme Court then remanded the case and directed the Ninth Circuit to consider both aspects of the injury-in-fact requirement (based on a finding that the Ninth Circuit had analyzed only one of two requirements). Justice Alito wrote the majority opinion, in which Chief Justice Roberts and Justices Kennedy, Thomas, Breyer, and Kagan joined. Justice Thomas wrote a separate concurring opinion, while Justices Ginsburg and Sotomayor dissented.

The Court first noted that, to have standing, a plaintiff must sufficiently allege that it has suffered an “injury-in-fact” as a result of the defendant’s conduct. To allege an injury-in-fact, the plaintiff must allege that an injury is both “concrete” and “particularized.” According to the Supreme Court, the Ninth Circuit found that Robins had alleged a **particularized** injury, but it had not analyzed whether he alleged a **concrete** injury. For that reason, the Supreme Court remanded the case back to the Ninth Circuit.

Elaborating on this procedural decision, the Supreme Court provided insights favorable to the background screening and employer communities, particularly in light of the explosion of class action lawsuits under the FCRA. Specifically, the Supreme Court commented that a plaintiff would not “automatically” satisf[y] 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.” But, the Court recognized that the “risk of real harm” is important and the “violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury in fact.” Turning to a few hypothetical scenarios, the Supreme Court suggested that the failure to provide required notices may not cause sufficient injury in fact when the reported information was entirely accurate. In a more obvious example, the Supreme Court noted that reporting an incorrect ZIP code would probably never cause concrete harm. Interestingly, the majority wrote that it “express[ed] no view about any other types of false information that may merit similar treatment” but that it “leave[s] that issue for the Ninth Circuit to consider on remand.”

Given the ultimate conclusion of the majority opinion in *Spokeo*, we expect that any decision before the Ninth Circuit on remand will again be appealed to the Supreme Court. In the meantime, FCRA defendants can continue to argue that plaintiffs must allege more than mere technical violations of the statute to confer individual and representative standing. And, the guidance given by the Supreme Court can now be applied in context and in light of the favorable precedent that a mere technical violation of the FCRA does not always confer standing.

We will continue to monitor the developments following this long-awaited opinion.

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