



Recent Supreme Court ruling in *Spokeo* raises the bar for unharmed plaintiffs seeking statutory damages

Spokeo, Inc. v. Robins
No. 13-1339



The long-anticipated Supreme Court ruling in *Spokeo, Inc. v. Robins* (“*Spokeo*”) is sure to give potential plaintiffs with only technical violations of consumer statutes some pause before bringing claims.

A number of consumer protection statutes provide for statutory damages, which as the name implies, are damages assessed for violations of the statute rather than as compensation for actual harm suffered by the plaintiff. One such statute is the Fair Credit Reporting Act (“FCRA”), which requires consumer reporting agencies to “follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates.”¹ The FCRA provides that “[a]ny person who willfully fails to comply with any requirement [of the Act] with respect to any [individual] is liable to that [individual]” for either “actual damages” or statutory damages of \$100-to-\$1,000 per violation, costs of the action and attorney’s fees, and possibly punitive damages.² Generally, statutes providing statutory damages offer plaintiffs an advantage by expediting lawsuits and awarding damages without proving real harm.

On May 16, the Supreme Court announced its 6-2 decision in *Spokeo*³, a case brought under the FCRA concerning the sale of inaccurate personal data. Defendant Spokeo, Inc. is a people search-engine that aggregates and provides information about individuals to a variety of users, including employers wanting to evaluate prospective employees.

Robins, upon discovering that his Spokeo-generated profile contained numerous inaccuracies, filed a federal class-action complaint against the firm. Robins alleged that Spokeo’s inaccurate information both harmed his employment prospects and violated his statutory rights.⁴ In an attempt to avoid litigation on the merits, Spokeo moved to dismiss the case for lack of standing, arguing that neither Robins’ alleged harms are sufficiently tangible to constitute an “injury-in-fact” as required by the Constitution. For this reason, Spokeo alleged, Robins lacked the judicial standing to invoke the jurisdiction of a federal court.⁵ Under Article III of the Constitution and well-established Supreme Court case law, plaintiff’s standing is predicated on the presence of an “injury-in-fact.” As a result, Robins bore the burden to prove what—if any—harm Spokeo had caused him.

¹ 15 C.F.R. § 1681e (1968).

² 15 C.F.R. § 1681n (1968).

³ *Spokeo, Inc. v. Robins*, No. 13-1339, slip op. (U.S. May 16, 2016).

⁴ *Id.* at 4.

⁵ *Id.* at 4.

Reversing the District Court’s dismissal of the complaint for lack of standing, the U. S. Court of Appeals for the Ninth Circuit held that Spokeo’s procedural violation of the plaintiff’s statutory right was sufficient to satisfy the injury-in-fact requirement of Article III and confer judicial standing.⁶ The Ninth Circuit found that a plaintiff automatically has Article III standing “whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right.”⁷

The Supreme Court rejected the Ninth’s Circuit conclusion. Alternatively, the Supreme Court declared that the violation of Robin’s statutory rights can only furnish judicial standing if he can prove that these technical violations caused him an “injury-in-fact.”⁸ Over the past half-century, the Court has defined an “injury in fact” as a harm that is both “concrete and particularized,” meaning that before a court will hear a case, the plaintiff must show that the defendant’s conduct caused him—in a personal way—tangible (actual) or intangible (risk of future) harm. The Court stated that the Ninth Circuit’s standing analysis was incomplete because it focused on particularization, but overlooked concreteness.⁹

The Court ruled that even in the context of a statutory violation, Article III standing requires a concrete injury. To be “concrete,” an injury must either cause the plaintiff actual (tangible) harm or present a sufficient risk of future (intangible) harm. Accordingly, the Court indicated that “concreteness” is not, synonymous with “tangibility.” Intangible injuries can be concrete, so long as they entail a “sufficient” degree of risk. The Court noted, however, that the Ninth Circuit did not address whether the alleged FCDRA violations “entail a degree of risk sufficient to meet the concreteness requirement.”

Observing that not all statutory violations or inaccuracies cause harm nor present any material risk of harm, the Court held that Robins could not “allege a bare procedural violation, divorced from any concrete harm, and satisfy the injury-in-fact requirement of Article III.”¹⁰ Consequently, the Court vacated the Ninth Circuit’s decision, and remanded the case for further proceedings. Should litigation continue, the Ninth Circuit’s impending ruling will answer the question of what degree of risk is “sufficient” for an intangible injury to meet the concreteness requirement of the “injury in fact” requirement of Article III in federal court.

Spokeo could dampen the growth of class action practice under the numerous federal statutes that provide statutory damages without requiring plaintiff to proffer evidence of actual injury. These statutes have contributed to the proliferation of cases by awarding meaningful damages to successful plaintiffs for procedural violations where actual or potential harm is nonexistent. *Spokeo* may discourage small litigants from filing such cases. Ultimately, the availability of statutory damages will likely depend on continued litigation over the definition of “concreteness,” and the corresponding degree of risk that is required to make such harm “sufficient” to confer Article III standing.

Although satisfactory solutions to these issues may not come for years, the impossibility of obtaining statutory damages without proving other concrete damages is no longer in doubt, because a statutory violation—by itself—is *not* sufficient. While *Spokeo* has not put an end to liability for statutory violations, it has reinforced the constitutional protections against “windfall plaintiffs” who have suffered no harm at all.

⁶ *Robins v. Spokeo, Inc.*, 742 F.3d 409 (9th Cir. 2014), *vacated and remanded*, No. 13-1339, slip op. (U.S. May 16, 2016).

⁷ *Spokeo*, No. 13-1339 at 9.

⁸ *Id.* at 9.

⁹ *Id.* at 2.

¹⁰ *Id.* at 9.