



Robins v. Spokeo, Inc.: Ninth Circuit rules that plaintiff has standing to pursue FCRA claims

Class Action Alert

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A unanimous three-judge panel of the Ninth Circuit Court of Appeals has again reversed a district court's dismissal of a putative class action on standing grounds in the closely watched case of *Robins v. Spokeo*.

On August 15, 2017, the Ninth Circuit held that the named plaintiff, Thomas Robins, had standing under Article III of the United States Constitution to pursue his claims in federal court for alleged violations of the Fair Credit Reporting Act (FCRA).

The putative class action arises from Robins' allegations that the Spokeo consumer information data profile about him included incorrect information regarding his marital and job status, age, and educational background. The image ostensibly showing him actually was a photograph of another person. All of this, he claimed, harmed his employment prospects and caused him emotional distress. Robins alleged that Spokeo failed to "follow reasonable procedures to assure maximum possible accuracy" for its consumer reports. Robins was unable to substantiate the loss of a specific job prospect due to the profile, but he contended that the inaccurate information did concrete harm to his job search.

US Supreme Court: an important holding

The Ninth Circuit's previous reversal of the district court's holding that Robins failed to allege a concrete harm was

appealed to the US Supreme Court. In a landmark 2016 decision, the Supreme Court vacated the Ninth Circuit's opinion and remanded the case for further consideration to determine whether Robins' allegations were sufficiently "concrete" to satisfy the requirements for Article III standing in federal court.

Justice Samuel Alito, writing for a 6-2 majority, held that "Article III standing requires a concrete injury even in the context of a statutory violation." The Supreme Court acknowledged that Congress has the authority to "elevate to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate at law." But the fact Congress has "elevat[ed]" an intangible injury "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."

In an important holding, the Supreme Court found that "a bare procedural violation, divorced from any concrete harm" would not satisfy the injury-in-fact requirement of Article III.

The Court remanded the case to the Ninth Circuit to determine whether Robins' alleged harms met the concreteness standard of Article III.

The Ninth Circuit finds concrete harm

On remand, the Ninth Circuit rejected Spokeo's argument that Robins' allegations of harm were too speculative to establish a concrete injury. The Ninth Circuit found that where a plaintiff alleges an intangible harm under a statute – such as the one alleged by Robins – the court must answer two questions to determine whether the harm confers standing: (1) whether the statutory provisions allegedly violated were established to protect the plaintiff's concrete interests (as opposed to purely procedural rights), and, if so, (2) whether the specific procedural violations alleged actually harmed, or present a material risk of harm to, such interests. The Ninth Circuit held the answer to both questions was "yes."

First, the Ninth Circuit found that Congress created the FCRA to protect a "consumer's concrete interests." The court concluded that these interests are "real, rather than purely legal creations," and observed that the "ubiquity and importance of consumer reports in modern life" makes inaccuracies in those reports "patent on their face." As a result, the court said that "it makes sense" that Congress would not require "any additional showing of injury" beyond a violation of the FCRA.

In addition, the Ninth Circuit found that the harms protected by the FCRA have a "close relationship" to harms traditionally protected by Congress. This "historical practice" of vindicating "untruthful disclosures about individuals," as the court put it, further supported the conclusion that the FCRA's provisions were created to vindicate concrete interests.

Second, the Ninth Circuit turned to the question of whether Robins' allegedly inaccurate profile actually harmed these concrete interests. The Supreme Court previously had found that not all information that is reported inaccurately under the FCRA creates a concrete harm. For example, the Supreme Court opined that it was difficult to imagine how reporting an incorrect zip code could create Article III standing.

As a result, the Ninth Circuit examined the "nature" of the alleged reporting inaccuracies "to ensure that they raise a real risk of harm" to the concrete interests protected by the FCRA. Without drawing any bright-line rule, the Ninth Circuit found that the inaccuracies alleged by Robins "are substantially more likely to harm his concrete interests" than would an incorrect zip code. The Court further found that, even if it was "debatable" whether these inaccuracies could harm Robins' job search, they were not "mere technical violations" of the FCRA, and thus Robins could allege a concrete injury.

Relying on another Supreme Court decision, *Clapper v. Amnesty International USA*, Spokeo had argued that Robins lacked standing because the harm Robins allegedly suffered was too speculative to establish a concrete injury, and he could not demonstrate that any alleged harm was "certainly impending." Spokeo argued that, at most, Robins showed only that the alleged inaccuracies in his profile *might* hurt his future employment prospects.

The Ninth Circuit rejected this argument, finding that the alleged intangible injury under the FCRA was itself "sufficiently concrete." Therefore, the court concluded that it did not have to decide whether additional potential harm to Robins' employment prospects satisfied *Clapper*.

Read the opinion here.

Learn more about the implications of this development by contacting any of the authors.

While DLA Piper has represented Spokeo, this commentary is not on behalf of Spokeo and does not represent its views.

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