

## Litigation Alert: SCOTUS Grants Certiorari to Review Ninth Circuit's *Spokeo* Decision Granting Standing To Enforce Statutory Rights in the Absence of Monetary Harm

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In an important move that may clarify standing in a variety of consumer cases, the U.S. Supreme Court on April 27, 2015 granted review in *Robins v. Spokeo, Inc.*, 742 F.3d 409 (9th Cir. 2014), *cert. granted*, 135 S. Ct. 323 (U.S. Apr. 27, 2015) (No. 13-1339). Briefing will proceed this summer with a decision expected during the 2015 – 2016 term.

In *Spokeo*, the Ninth Circuit panel held that plaintiff and putative class representative Thomas Robins was entitled to proceed with his claim that Spokeo had violated the Fair Credit Reporting Act (“FCRA”) by disclosing false information about him, despite his inability to plead economic injury from the defendant’s alleged disclosure. The court held that “alleged violations of Robins’s statutory rights are sufficient to satisfy the injury-in-fact requirement of Article III.” *Id.* at 413 – 14. The Ninth Circuit reasoned that an alleged violation of the FCRA was itself sufficient to confer standing to enforce the statute because it constituted “concrete, *de facto*” injury that Congress was entitled to “elevat[e] to the status of legally cognizable injuries.” *Id.* at 413. Here plaintiff Robins was “among the injured” (in the sense that he alleged his statutory rights were violated), and plaintiff had an individualized interest in protecting his own information. *Id.* at 413 – 414. The *Spokeo* decision had provided opportunities for plaintiffs to proceed with class actions despite their inability to allege actual harm beyond a statutory violation.

The Supreme Court’s grant of review may result in trimming back those situations in which consumer and class action plaintiffs find opportunities to utilize the federal courts to enforce various federal statutes. Petitioner Spokeo argued that “Congress cannot erase Article III’s standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing.” *See Raines v. Byrd*, 521 U.S. 811, 820 n.3 (1997). Spokeo also pointed to a circuit split, in which the Sixth, Tenth and D.C. Circuits have articulated views similar to the Ninth Circuit,

with the Second and Fourth opposed, and the Eighth and Third reaching varying results. Spokeo enlisted assistance in seeking review from amici including eBay, Facebook, Google, Yahoo!, and the Chamber of Commerce.

Despite the grant of certiorari, the Ninth Circuit’s *Spokeo* decision will continue to be binding authority in that Circuit until the ultimate decision by the Supreme Court. However, that ultimate decision may impact standing for numerous statutes including the Wiretap Act, Electronic Communications Privacy Act, Telephone Communications Privacy Act, Video Privacy Protection Act, Truth in Lending Act, Fair Debt Collections Practices Act, among others. Defendants will certainly want to preserve their standing arguments in such cases as the proceed. They should also take into account the favorable impact that this development has on valuation of cases and the risk it presents to the long term viability of claims brought by uninjured plaintiffs.

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