

Case Review: Spokeo vs. Robins  
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### Case Review: Spokeo vs. Robins

The case of *Spokeo vs. Robins* involves a lawsuit brought under the Fair Credit Reporting Act of 1970 (FCRA). Spokeo was the operator of a website that collected and disseminated information about individuals, such as their current addresses, educational backgrounds, work history, marital status, and financial status. In a background report compiled by Spokeo for Thomas Robins, identified inaccuracies resulted in a lawsuit alleging that the company willfully violated FCRA requirements for consumer reporting agencies by failing to implement reasonable procedures that assured the accuracy of information gathered about individuals. When Spokeo argued that the lawsuit did not involve a concrete injury within the context of Article III of the Constitution, the district court dismissed the case identifying that Robins had not suffered an actual or perceived injury (Legal Information Institute, 2019). Subsequently, Robins filed an amended complaint alleging that he had suffered actual harm to his employment prospects, given that the information published by Spokeo misstated items such as his age, marital status, education employment history as well as having an incorrect photograph. The district court's ruling that Robins lacked standing to sue Spokeo was reversed by the U.S. Court of Appeals for the Ninth Circuit finding that an alleged violation of a statutory right was sufficient to qualify as an injury. Spokeo then petitioned the U.S. Supreme Court, which ultimately granted the writ of certiorari.

### Majority Holding and Court's Reasoning

In the Spokeo decision, the Supreme Court addressed the question of whether the absence of any claim of damages or other actual harm resulting from having false information posted online was a sufficient injury in fact to justify Article III standing in violations of the Fair Credit Reporting Act. With only eight justices appointed to the Supreme Court at the time of the Spokeo, a 6-2 decision was issued that reiterated the need for harm that is both particularized and concrete.

While the Court did identify that an intangible injury, such issues associated with free speech can be considered concrete, it stipulated that the role of Congress in the elevation of intangible harms does not necessarily mean that the injury requirements are satisfied simply because a statute grants such a right. Nevertheless, while concrete injuries do not always equate to an injury being tangible, the Court recognized that previous cases had inferred that intangible injuries could in fact be considered to be concrete. As such, the Supreme Court remanded the case back to the Ninth Circuit Court with direction that consideration be given to whether the injuries incurred by Robins were both particularized and concrete as stipulated by Article III.

The reasoning of the majority opinion is rooted in the consideration that the judicial branch of government must ensure that the legislative branch does not infringe upon Article III Constitutional requirements through statutes that would allow plaintiffs to be sued where the right would not otherwise exist. However, in a seemingly a contradictory conclusion, the majority writes that Congress does have the authority to identify those intangible harms meeting Article III requirements when such claims did not previously exist. Further confusing the issue that statutes passed by Congress should not usurp the Constitutional provisions of Article III, the majority stipulates that the injury requirements are not satisfied because of a statute that grants a right and implies that vindication through a lawsuit is an acceptable legal remedy.

Despite the contradictory nature of some aspects of the majority reasoning, the Court did suggest that Spokeo decision was not intended to preclude changes through future Congressional legislation. Rather, in today's information age, the considerations of harm for serious acts could be expanded by Congress to become statutory rights. If this expansion were to occur, a court could potentially consider intangible harm to be an injury in those instances where there was a resemblance to traditional considerations for a lawsuit.

**Dissenting Opinion**

The prevailing focus of the majority opinion in *Spokeo* was concerned with whether the claims of damages or other actual harm were sufficient to meet the requirement of a concrete injury within the purview of Article III of the Constitution. In substantiating their reasoning, the majority made note of an established federal court doctrine that the judicial branch of government not be used to seize authority of the legislative and executive branches. In writing the dissenting opinion, Justice Ginsburg indicated that she was not in disagreement with the standing court doctrine since Robins sought to rectify his inaccurate information provided by *Spokeo* absent claims of harm to others. However, Justice Ginsburg further identified that the doctrine should be flexible to the degree that a court could grant standing to a plaintiff when their injury is of interest to society as a whole. In supporting this opinion, Justice Ginsburg provided a discussion of various instances where the Supreme Court had previously considered injuries of an informational nature to be substantive harms connected to procedural requirements that were sufficient to grant standing. As such, Robins' injury was sufficient for standing, and there was no need to vacate the Ninth Circuit's decision and remand the case for further consideration.

**Position on the Majority Opinion**

I disagree with the Supreme Court's *Spokeo* decision vacating and remanding the Ninth Circuit's decision. The majority opinion was overly focused on the concrete nature of the claim despite having past precedent of recognizing the injury in fact requirements under Article III of the Constitution. While the Court recognized that a statutory violation could be a concrete injury, it struggled to determine when a statutory violation alone is concrete enough for Article III standing. Further, aside from discussing the immaterial inaccuracy of an incorrect zip code, the alleged actual harm to Robbins' employment prospects were overlooked.

I also find it difficult to see how *Spokeo* applies to the underlying concept of the separation of powers doctrine given that judicial system, by design, is supposed to decide cases and resolve controversies while avoiding the surrounding political issues associated with the legislative and executive branches. Interestingly, in a separate writing for the majority opinion, Justice Thomas provided discussion of the application of varying rights to the injury-in-fact requirements. While Justice Thomas agreed with the majority opinion, he identified that when a claim created a private duty, as opposed to one that is broadly associate with the public, it could potentially have standing and be in accordance with statutory requirements. Arguably, this creates an impression that Judge Thomas was somewhat leaning towards the dissenting opinion of Justice Ginsburg with both aligning more with the 1992 Supreme Court decisions in *Lujan v. Defenders of Wildlife* which the court stated that while a plaintiff must have suffered an injury in fact, the injury required by Article III “may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing” (*Lujan v. Defenders of Wildlife*, 1992).

### **Consequences of the Spokeo Opinion**

In vacating and remanding *Spokeo*, the Supreme Court appears to have followed related precedent established in *Lujan* and other similar cases. However, the Court failed to consider that in prior cases allowing any person to file a lawsuit, the Fair Credit Reporting Act only provides a remedy for the injured individual. Consequently, federal courts are now using *Spokeo* to require that plaintiffs show a concrete and particularized injury beyond simply a statutory violation to have Article III standing. As a result, in addition to creating undue difficulties for pursuing remedies under the Fair Credit Reporting Act against websites that collected and disseminated information about individuals, the *Spokeo* decision is having potentially far-reaching consequences on other private rights lawsuits being pursued in federal courts (Pugh, 2017).

The statutory protections provided through the Fair Credit Reporting Act (FCRA) requires that credit reporting agencies adhere to reasonable procedures to assure the maximum possible accuracy of consumer information. The FCRA requirements are even more critical in ensuring the accuracy of an individual's data in today's digital age than it was when the act was created by Congress in 1970. However, by imposing procedural requirements associated with achieving Article III standing, Congress effectively provided consumer reporting agencies with some measure of leeway in ensuring the accuracy of information disseminated to consumers. As such, Congress must act to provide more prescriptive guidance regarding responsible protection procedures to ensure maximum possible accuracy and the manner that remedies may be pursued. Until this occurs, despite the failure to appreciate the adverse impact that inaccurate consumer reports have on individuals, the Court is poorly situated to further clarify the issue.

The primary means of enforcing consumer protection laws in the United States is through private litigation for statutory damages and deceptive trade practices (Burbank, Farhang & Kritzer, 2013). Given this consideration, the greatest impact of the Spokeo decision may be on the certification requirements for a plaintiff to demonstrate both a concrete and injury in fact. The complaint by Robins alleged numerous ways that Spokeo, Inc. violated numerous aspects of the Fair Credit Reporting Act in providing reports that contained factual errors. However, in considering the outcome of Spokeo and the resulting adverse impact on a plaintiff's ability to obtain Article III standing in filing lawsuits, credit reporting agencies and other similar institutions have little to gain by implementing more costly measures to protect and ensure the accuracy of information. And in the end, as long as the cost of litigation does not substantially exceed the judgment from a lawsuit, the monetary consideration will override any significant changes to the protection and accuracy of consumer information.

## References

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