May 18, 2016

Supreme Court Clarifies Standing Requirement for Statutory Violations

Ruling Could Limit Federal Court Access for Class Actions Alleging Only Procedural Violations

In a ruling with potentially broad implications for class actions, the Supreme Court this week reaffirmed that federal court standing requires a showing of injury-in-fact that is both "concrete" and "particularized." These requirements are no less applicable where a plaintiff's claim is based solely on a procedural statutory violation. Accordingly, in *Spokeo, Inc. v. Robins*,[1] the Court remanded a Ninth Circuit decision for consideration of whether the plaintiff had adequately pled a concrete injury caused by an alleged procedural violation of the Fair Credit Reporting Act (FCRA).[2] In so doing, the Court held that a plaintiff does not "automatically satisfy the injury-in-fact requirement whenever a statute grants a right and purports to authorize a suit to vindicate it."

Factual and Procedural Background of the Case

The case involves a website that allows users to search for information about other people by aggregating publicly available information from a variety of databases. Search results include items such as an individual's address, marital status, age, occupation, and finances. Plaintiff Thomas Robins claims that Spokeo compiled inaccurate information about him, including reporting that he is married with children, in his 50s, has a job, is relatively affluent, and holds a graduate degree. None of that information is accurate; instead, Robins stated that at the time, he was out of work and actively seeking employment. In his brief, Robins claimed that the report made him appear overqualified for job opportunities, expectant of a higher salary, and less mobile because of family responsibilities.

Robins filed a class action complaint in federal court in California alleging that Spokeo failed to comply with several obligations imposed by the FCRA. That Act seeks to ensure "fair and accurate credit reporting" by regulating the creation and use of credit reports. Among other things, the FCRA requires credit reporting agencies (which Spokeo is alleged to be) to "follow reasonable procedures to assure maximum possible accuracy" of consumer reports. Credit reporting agencies that willfully fail to comply with the Act with respect to any individual are liable to that individual for either "actual damages" or statutory damages of $100 to $1,000 per violation, plus costs and attorneys' fees.

The district court granted Spokeo's motion to dismiss based on Robins' failure to properly plead injury-in-fact. The Court of Appeals for the Ninth Circuit reversed. That Court reasoned that "the violation of a statutory right is usually a sufficient injury in fact to confer standing."[3] According to the Circuit Court, because Robins alleged that his personal statutory rights were violated and that his personal interests were at stake, then he suffered an injury-in-fact.

The Supreme Court's Standing Analysis

Article III of the United States Constitution imposes limits on the power of the federal judiciary by restricting courts' jurisdiction to "Cases" or "Controversies."[4] By design, such limited authority is consistent with the balance of powers vested in the three branches of the federal government. Because the federal courts should not be in the business of settling hypothetical political disputes, the Framers insisted that only an injured party (or one threatened with injury) should have standing to invoke the

courts' jurisdiction. That constitutional limit cannot be circumvented by congressional acts that would otherwise eliminate the standing requirement.

At issue before the Supreme Court in *Spokeo* was whether the legislative grant of a statutory right of action for a technical violation of the FCRA conferred standing to a claimant without additional allegations of injury-in-fact.

The Court began its analysis by articulating the "irreducible constitutional minimum" of standing as consisting of (1) an injury-in-fact (2) that is fairly traceable to the challenged conduct and (3) that is likely to be redressed by a favorable decision. Injury-in-fact in turn requires a showing that the plaintiff suffered an invasion of a legally protected interest that is *both* concrete and particularized. The component of a "particularized" injury simply means that it must affect the plaintiff personally – a plaintiff generally does not possess standing to pursue claims on behalf of others or the public at large. This component was not at issue in Robins' case inasmuch as he alleged a connection between the alleged violation by Spokeo and his own personal interests. Instead, the focus of the Court's attention was on the requirement that the injury be "concrete."

The Supreme Court characterized a concrete injury as one that is real and not abstract. Moreover, a concrete injury could be either tangible or intangible. To determine whether an intangible harm rises to the level of injury-in-fact, courts look to historical practice and the judgment of Congress. However, such deference cannot confer standing for a "bare procedural violation, divorced from any concrete harm."[5] In the context of the case before it, the Court noted that not all violations of the FCRA are capable of giving rise to actual harm or a risk of harm. For example, the Court questioned how a credit report containing an inaccurate zip code – which might constitute a violation of the FCRA – could, without more, work any concrete harm to any claimant.

The Supreme Court concluded that the Ninth Circuit failed to distinguish between particularized harm and concrete harm and remanded for a determination as to "whether the particular procedural violations alleged by Robins entailed a degree of risk sufficient to meet the concreteness requirement."

Justice Thomas filed a concurrence to offer his perspective on how the injury-in-fact requirement applies to different types of rights. Justice Ginsburg, joined by Justice Sotomayor, dissented. In their view, the record before them would allow a conclusion that Robins suffered concrete harm by alleging Spokeo's dissemination of inaccurate information about him.

Wider Implications of the Court's Ruling

Spokeo has the potential to create significant hurdles for other claimants seeking relief for violation of a statute in the complete absence of any concrete harm. Many federal and state statutes, like the FCRA, create a private cause of action for either actual or statutory damages.[6] In such cases, in order to obtain federal standing, claimants will need to plead more than simply a technical violation and a claim for the minimum statutory damages. Instead, they must allege harm that is particularized to them and concrete in the sense of being real harm, or allege a risk of the type of harm that the statute was intended to protect against. In some cases, the ability to allege actual harm from a technical statutory violation may be difficult, if not impossible.

More significantly, this pleading requirement has the potential to frustrate certain types of consumer class actions that depend upon technical violations without any real harm whatsoever being visited upon class members. Indeed, even where it is possible to allege actual harm to class members, the potential for individualized inquiries on damages may impact whether a class can or should be certified.

Both the majority and dissent provide a road map on remand for articulating the sort of concrete damage that Robins has suffered, or is at risk of suffering, from Spokeo's alleged violation of the FCRA. It remains to be seen whether other claimants will be similarly poised to make such allegations or whether *Spokeo* will provide powerful authority on which to challenge the standing of an individual plaintiff or putative class representatives to assert claims for mere technical statutory violations.

---

[1] No. 13-1339, 578 U.S. ___ (2016).

[2] 15 U.S.C. 1681, *et seq.*

[3] 742 F.3d 409 (9th Cir. 2014).

[4] U.S. Const. Art. III.

[5] The Supreme Court noted that in "some circumstances," the risk of real harm based on the violation of a procedural right could be sufficient to allege a concrete injury, citing to cases involving statutory rights to public information.

[6] For example, the Telephone Consumer Protection Act provides that a claimant may recover $500 or actual loss, whichever is greater. 47 U.S.C. 227(b)(3)(B). Many state consumer protection statutes provide similar relief.