

# Supreme Court's Spokeo Decision Leaves Questions Unresolved

CONSUMER FINANCE | CONSUMER FINANCE | JUNE 30, 2016



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On May 16, the Supreme Court issued its *Spokeo v. Robins* decision. *Spokeo* was a closely-watched case, as it had the potential to substantially limit federal court jurisdiction in cases where plaintiffs sued for violations of federal statutes and only sought statutory damages. But the Court's 6-2 decision turned out to be fairly narrow.

The plaintiff filed a class action against Spokeo alleging violation of the Fair Credit Reporting Act, 15 U.S.C. § 1681 (FCRA). Specifically, plaintiff alleged Spokeo published inaccurate information about him. In resolving a challenge to standing, the Ninth Circuit held that stating a violation of a statutory right is sufficient injury-in-fact to confer standing.

Justice Alito, writing for the majority, reversed this decision, holding that the Ninth Circuit's standing analysis was "incomplete" because it focused only on the particularized nature of the injury-in-fact requirement for constitutional standing, but did not address the concreteness requirement. For an injury to be particularized, it must affect the plaintiff in a personal and individual way. Justice Alito held the complaint satisfied this requirement. The injury also must be concrete, meaning it "must actually exist." Moreover, according to the Court, Congress can identify and elevate intangible harms to the level of concrete injury in certain circumstances.

When it enacted the FCRA, Congress sought to curb the dissemination of false information by adopting procedures designed to decrease that risk. On the other hand, the plaintiff could not satisfy the concreteness requirement by alleging a "bare procedural violation." Not all inaccuracies in information cause harm. Justice Ginsburg's dissent, in which she was joined by Justice Sotomayor, posited that the plaintiff had indeed alleged enough about concreteness to cross the threshold on this point.

As evidenced by the favorable reaction from both consumer and industry groups, it is unclear who will ultimately benefit most from the opinion.

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