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PERSPECTIVE

Judging uninjured plaintiffs' standing

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On Monday, the U.S. Supreme Court granted certiorari in *Spokeo, Inc. v. Robins* on the question whether Congress can confer on uninjured persons standing to sue in federal court. The court's resolution of Spokeo could have a dramatic effect on the viability of so-called "no injury" class actions that have flooded the federal courts in recent years.

Article III's standing requirement is well-established, and requires a plaintiff to have suffered an "injury in fact" to bring suit in federal court. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). And because this requirement is constitutional, "[i]t is settled 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." *Raines v. Byrd*, 521 U.S. 811, 820 n.3 (1997).

Several lower courts have nonetheless allowed claims to proceed, and even certified class actions, despite the lack of any injury to the named plaintiff or absent members of a class. In *Spokeo*, the 9th U.S. Circuit Court of Appeals held that a violation of a federal statute can be sufficient to satisfy Article III's injury-in-fact requirement, even if a plaintiff has suffered no actual injury beyond the alleged statutory violation.

Plaintiff Thomas Robins alleges that Spokeo, which operates an online "people search engine" containing data on individuals culled from public records and social networks, willfully violated various provisions of the federal Fair Credit Reporting Act by disseminating false information about him on its website. Spokeo successfully moved to dismiss the action for lack of Article III standing, on the ground that Robins had suffered no actual injury as the result of the misinformation, such as an impact on his ability to obtain credit or employment.

The 9th Circuit reversed, holding that "the violation of a statutory right is usually a sufficient injury in fact to confer standing." While the court recognized that "the Constitution limits the power of Congress to confer standing," it nonetheless held that Congress, through the creation of "statutory rights," could "elevate" injuries that would not otherwise be legally cognizable or sufficient to satisfy the requirements of Article III. Thus, according to the 9th Circuit, Robins had standing — even if he could not show any "actual harm" — because "he alleges that Spokeo violated his statutory rights, not just the statutory rights of other people," and because his "personal interests in the handling of his credit information are individualized rather than collective."

This is not the first time the Supreme Court has had opportunity to rule on this issue. The court was poised to resolve it nearly three years ago in *First American Financial Corp. v. Edwards*, but after granting certiorari and holding oral argument, the court dismissed that case, without explanation, as "improvidently granted."

The justices' questioning at oral argument in *First American* suggests they are skeptical of the 9th Circuit's "statutory rights" approach to Article III standing. As Chief Justice John Roberts pointedly observed, the court's standing decisions have required "injury-in-fact," not "injury-in-law," and merely pleading a "violation of the statute ... doesn't sound like injury-in-fact."

The court's recent decisions also seem to forecast limiting Congress' ability to confer standing. The court in 2009 specifically held that the "requirement of injury in fact is a hard floor of Article III jurisdiction that cannot be removed by statute." *Summers v. Earth Island Institute*, 555 U.S. 488, 497 (2009). And in Hollingsworth v. Perry, the court held that proponents of California's Proposition 8 lacked standing to defend the law in federal court in part because "States cannot ... issu[e] to private parties who otherwise lack standing a ticket to the federal courthouse." 133 S. Ct. 2652, 2667 (2013).

Robins, however, has an influential supporter: the solicitor general of the United States, who filed a brief endorsing the "statutory rights" approach to Article III standing that the 9th Circuit applied in *Spokeo*, and urged the Supreme Court to deny review. In the view of the solicitor general, the asserted claim under the Fair Credit Reporting Act was "a modest legislative expansion of the circumstances under which the dissemination of inaccurate personal information will be treated as an actionable wrong even without proof of further consequential harm." And, according to the solicitor general, this "modest legislative expansion" was permitted under the Supreme Court's 1975 decision in *Warth v. Seldin*, which held that the "injury required by Art. III may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing." That the Supreme Court nonetheless granted review in *Spokeo* over the solicitor general's contrary recommendation may be a sign that at least some members of the court do not share the solicitor general's view of Congress' power to authorize federal suits.

Spokeo involves an individual plaintiff's standing under a single federal statute, but the court's decision could have a significant impact on class actions brought under a wide range of federal statutes. Like the Fair Credit Reporting Act at issue in *Spokeo*, many other federal statutes — including the Fair Debt Collection Practices Act, the Truth in Lending Act, and the Telephone Consumer Protection Act — impose statutory damages without requiring plaintiffs to prove anything beyond a statutory violation. And numerous other class action claims, under both federal and state law, are premised on theories of liability that do not purport to prove that all (or even most) class members suffered any actual injury whatsoever as the result of defendant's conduct.

Indeed, many of the most abusive uses of the class action device have been the sort of "no injury" class actions like *Spokeo*. These types of class claims threaten massive statutory damages awards after class certification is granted, and consequently often result in windfall settlements that bear no relationship to any harm class members have suffered. If Spokeo prevails, the Supreme Court's decision may close the loophole created by some courts that has allowed such class actions to bypass Article III's injury-in-fact requirement, and would ensure that class actions in federal court are limited to those situations where plaintiffs can prove not only a statutory violation, but also some resulting injury.

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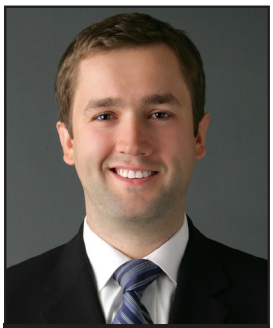

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