HURDLES TO THE COURT: THE DOCTRINE OF STANDING UNDER STATUTORY VIOLATIONS

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INTRODUCTION

The meaning of standing is something that divides legal scholars, courts, and practitioners. Standing is defined as a "party's right to make a legal claim or seek judicial enforcement of a duty or right."[1] In federal court, standing refers to satisfying the case or controversy requirement under Article III,[2] which grants a plaintiff the right to tell his story in court. Determining whether a party has Article III standing involves a three-step inquiry: first, the petitioner must sufficiently allege an injury-in-fact; second, the injury alleged must be fairly traceable to the defendant's actions; and third, a favorable ruling by the court must be able to sufficiently redress the plaintiff's alleged injury.[3]

The three elements outlined above are the "minimum constitutional requirement" for a court to hear a case.[4] But over the years, courts have expanded the standing inquiry to additional claims, distinguished from the above elements by the name "prudential" standing.[5] Prudential standing developed "to limit the role of courts in resolving public disputes."[6] For example, courts will not hear cases by plaintiffs asserting a "generalized grievance" whereby the plaintiff's harm is shared "in substantially equal measure" by a class of citizens.[7] Further, even if a plaintiff meets the "case or controversy"

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1. *Standing*, BLACK'S LAW DICTIONARY (10th ed. 2014).
2. *See* U.S. CONST. art. III, § 2 ("The judicial Power shall extend to all Cases, in Law and Equity, arising under . . . the Laws of the United States.").
3. Friends of the Earth v. Laidlaw Envtl. Servs. Inc., 528 U.S. 167, 180–81 (2000).
4. Warth v. Seldin, 422 U.S. 490, 499 (1975).
5. *Id*. at 501.
6. *Id*. at 500.
7. *Id*.

requirement, he must "assert his own legal rights or interests" and cannot assert his relief on the rights of third parties.[8] Prudential standing can be overridden, however, if a court finds "countervailing circumstances" or if Congress grants "an express right of action to persons who otherwise would be barred."[9] But even if Congress expressly affords a right of action, "of course, Art. III's requirement remains."[10]

Standing forms the basis of justiciability. As such, every plaintiff must have standing to bring suit in federal court. Courts, however, have struggled over what constitutes an injury-in-fact, often considered to be the central inquiry in determining a party's standing. *Spokeo, Inc. v. Robins*[11] concerns this inquiry by asking whether a violation of a federal statute grants a plaintiff standing to sue.[12] By granting certiorari, the Court will resolve a circuit split on the definition of injury for the purposes of standing, and could potentially redefine standing by either opening the door to federal courts (if resolving for Robins) or by limiting Congress's ability to confer standing on parties who suffer statutory violations (if resolving for Spokeo).

This Commentary discusses the parties' arguments and urges the Court to settle the issue by finding that a violation of a federal statute does grant a plaintiff standing. Congress's actions in creating the violation reflect a legislative intent that such a violation is an injury-in-fact that can harm a plaintiff and grant him the right to sue in federal court. And because the plaintiff here alleged sufficient injury based on the effects of the statutory violation of a procedural right, he (as well as others similarly situated) has standing.

I. FACTUAL AND PROCEDURAL HISTORY

Petitioner Spokeo, Inc. operates a website where users can obtain a variety of information about individuals.[13] The website aggregates publicly available information into a searchable database accessible to its users and generates a report about an individual upon a search

8. *Id*.
9. *Id*. at 501.
10. *Id*.
11. No. 13-1339 (U.S. 2015).
12. Petition for Writ of Certiorari at i, Spokeo, Inc. v. Robins, No. 13-1339 (U.S. 2015).
13. Brief for Petitioners at 3, *Spokeo*, No. 13-1339 (U.S. 2015) [hereinafter Brief for Petitioner].

query. The report may include information about a person's age, occupation, education, ethnicity, property value, hobbies, phone number, marital status, and names of family members, as well as an image of his residence.[14]

Respondent Thomas Robins's report was available on Spokeo's website.[15] According to Robins, the report contained inaccuracies that affected his employability—it stated that he had a graduate degree, was employed in a professional or technical field, had very strong economic health, was in a high wealth level, was in his 50s, was married, and had children.[16] All of this information was false.[17] Robins claimed his employment prospects were negatively affected by this false report and that his unemployment was partly Spokeo's fault.[18] Not only did he lose money from being unemployed, but Robins also suffered "anxiety, stress, concern, and/or worry about his diminished employment prospects."[19]

Robins brought suit against Spokeo, claiming Spokeo willfully violated the Fair Credit Reporting Act[20] ("FCRA").[21] He alleged that Spokeo created and made available for purchase an inaccurate report of his personal information.[22] According to Robins, Spokeo was aware of the inaccuracies in its processes, which compile reports based on publically available information.[23] Furthermore, Robins alleged that Spokeo does not seek permission from individuals before publishing this information.[24] He sought declaratory relief, injunctive relief, and statutory damages from Spokeo.[25]

Spokeo maintains that its website warns users that "none of the information offered by Spokeo is to be considered for purposes of determining any entity or person's eligibility for credit, insurance,

14. Brief for Respondent at 7, *Spokeo*, No. 13-1339 (U.S. 2015) [hereinafter Brief for Respondent].
15. *Id.* at 9.
16. *Id.* at 8.
17. *Id.*
18. Robins v. Spokeo, Inc., 742 F.3d 409, 411 (9th Cir. 2014), *cert. granted,* 135 S. Ct. 1892 (Apr. 27, 2015) (No. 13-1339).
19. *Id.*
20. 15 U.S.C. § 1681 (2006).
21. Brief for Respondent, *supra* note 14, at 8.
22. *Id.* at 9.
23. *Id.*
24. *Id.*
25. *Id.*

employment, or for any other purposes covered under FCRA."[26] Before accessing the "Wealth" section of the website—which rates an individual's wealth on a scale from low to high and could include information regarding an individual's employment background, credit history, mortgage value, and investments[27]—users had to agree to this disclaimer.[28] Robins, however, alleges that Spokeo "markets its services to employers who want to evaluate prospective employees."[29] Moreover, Robins points to "numerous investigative studies," and a statement by Spokeo's founder to show that Spokeo's reports often contain inaccurate information.[30]

The district court first dismissed Robins's complaint for lack of standing—specifically for insufficient injury—and granted him leave to amend to address the issue of standing.[31] Robins's Amended Complaint additionally alleged that Spokeo's inaccurate consumer reports caused him "actual and/or imminent harm by creating, displaying, and marketing inaccurate consumer reporting information about [him]."[32] Spokeo responded by claiming it is not a consumer reporting agency, and thus could not be sued under FCRA.[33] Spokeo then filed a Motion to Dismiss for failure to state a claim and lack of subject matter jurisdiction.[34]

The district court initially denied Spokeo's Motion to Dismiss[35] for claims arising under FCRA, finding that Robins had "alleged sufficient facts to confer Article III standing."[36] Robins's injury-in-fact was "the marketing of inaccurate consumer reporting information," which "is fairly traceable to [Spokeo's] conduct," and "likely to be redressed by a favorable decision."[37] Furthermore, Robins's allegations that Spokeo "regularly accepts money in exchange for reports that 'contain data and evaluations regarding consumers'

26. Brief for Petitioners, *supra* note 13, at 4.
27. Brief for Respondent, *supra* note 14, at 7.
28. Brief for Petitioners, *supra* note 13, at 4; Brief for Respondent, *supra* note 14, at 7.
29. Brief for Respondent, *supra* note 14, at 7.
30. *Id.*
31. *See* Robins v. Spokeo, Inc., No. CV10-05306 ODW (AGRx), 2011 WL 1793334, at *1 (C.D. Cal. May 11, 2011).
32. *Id.*
33. *Robins*, 2011 WL 1793334, at *1.
34. *Id.*
35. The district court also granted in part Spokeo's motion to dismiss on other claims not relevant here.
36. *Id.* at 2.
37. *Id.*

economic wealth and creditworthiness'" sufficed to "support a plausible inference that [Spokeo's] conduct falls within the scope of the FCRA."[38]

Subsequently, Spokeo sought certification of an interlocutory appeal under 28 U.S.C. § 1292(b).[39] After this action, the district court issued another order that reconsidered its prior ruling by dismissing Robins's action.[40] The court struck its previous standing discussion and reinstated its initial Order that found Robins failed to establish standing.[41] This order found Robins's alleged harm "speculative, attenuated, and implausible." Furthermore, the court found that a "mere violation" of FCRA "does not confer Article III standing, where no injury is properly pled."[42] Additionally, the court found Robins failed to meet the traceability requirement.[43] The district court dismissed the case with prejudice.[44]

After Robins appealed, the Ninth Circuit reversed the district court's decision by finding that Robins's alleged FCRA violations met Article III standing requirements.[45] The court found that Congress intended to create a statutory right by creating a private cause of action in FCRA, and that the violation of a statutory right usually suffices to meet the injury-in-fact element of standing.[46] Because Robins alleged that his statutory rights were injured, he had a sufficiently concrete and particularized injury.[47] The court found that the other two elements of standing—causation and redressibility—were met because statutory rights were at issue.[48] Once injury-in-fact is proven in the context of a statutory right, "causation and redressibility will usually be satisfied."[49]

Spokeo then petitioned the Supreme Court for certiorari, which was granted.[50]

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38. *Id.*
39. Brief for Petitioners, *supra* note 13, at 6.
40. Robins v. Spokeo, Inc., No. CV10-05306 ODW (AGRx), 2011 WL 11562151, at *1 (C.D. Cal. Sept. 19, 2011).
41. *Id.*
42. *Id.*
43. *Id.*
44. Brief for Petitioners, *supra* note 13, at 6.
45. Robins v. Spokeo, Inc., 742 F.3d 409, 414 (9th Cir. 2014).
46. *Id*. 412.
47. *Id.* at 413.
48. *Id.* at 414.
49. *Id.*
50. Spokeo, Inc. v. Robins, 135 S. Ct. 1892 (2015).

II. LEGAL BACKGROUND

A. Standing

Standing is an essential element of every federal case. Under Article III, federal "judicial power" is limited to resolution of "Cases" or "Controversies,"[51] so every plaintiff must have standing to bring suit in federal court.[52] Standing is demonstrated by a three step inquiry: first, the plaintiff must have suffered an injury-in-fact that is concrete and particularized, and actual or imminent, not conjectural or hypothetical; second, the injury must be fairly traceable to the challenged action of the defendant; and, third, it must be likely, not merely speculative, that the injury will be redressed by a favorable decision.[53]

The standing "question" for a court is whether a plaintiff has sufficiently alleged a personal stake in the outcome of the controversy to allow his invocation of federal-court jurisdiction.[54] This justifies the use of court resources and remedial powers for his case.[55] Standing is a version of judicial self-governance and separation of powers that ensures courts remain within their constitutionally delegated duties, not encroaching on decisions better left to other branches.[56]

The source of a plaintiff's claim is an important part of the standing inquiry. For example, if a plaintiff claims injury under a statute, courts often ask whether Congress intended for a plaintiff to bring suit.[57] In many cases, standing has been denied for third-party plaintiffs who alleged statutory violations because courts found that Congress only intended for those directly affected to bring suit.[58] However, courts have also recognized that Congress has the power to grant an express right of action to third-party plaintiffs, as long as they meet the irreducible constitutional minimum of alleging an injury-in-fact.[59]

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51. U.S. CONST, art. III, § 2.
52. *See* Lujan v. Def. of Wildlife, 504 U.S. 555, 560 (1992) ("Standing principles delineate the 'Cases' and 'Controversies' that are of the justiciable sort referred to in Article III.").
53. Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. Inc., 528 U.S. 168, 180–81 (2000).
54. Warth v. Seldin, 422 U.S. 490, 498 (1975).
55. *Id.*
56. *Id.*
57. *Id.* at 500.
58. *Id.* at 501.
59. *Id.*

B. The Statute

This case arises under FCRA,[60] which obligates consumer reporting agencies to comply with specific statutory guidelines in transmitting consumer information. The goal of FCRA was "to prevent consumers from being unjustly damaged because of inaccurate or arbitrary information," and "to prevent an undue invasion of the individual's right of privacy in the collection and distribution of credit information."[61]

Under FCRA, a "consumer reporting agency" is "any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages . . . in the practice of assembling or evaluating consumer credit information or other information on consumers for the purposes of furnishing consumer reports to third parties."[62] A consumer report is "any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living" generated to establish the consumer's eligibility for certain purposes,[63] including "employment purposes."[64] Among other requirements, consumer reporting agencies must "follow reasonable procedures to assure maximum possible accuracy of consumer reports."[65]

The statute distinguishes between two types of violations: negligent and willful.[66] For a negligent violation, consumer reporting agencies must pay actual damages, attorney's fees, and costs.[67] For a willful violation, the harmed consumer is given a choice: the greater of actual damages sustained by the consumer as a result of the failure between $100 and $1000 or statutory damages between $100 and $1000 for a person obtaining a report under false pretenses.[68] For willful violations, consumers may also seek punitive damages.[69]

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60. 15 U.S.C. § 1681 (2006).
61. S. REP. NO. 91-517, at 1 (1969).
62. 15 U.S.C. § 1681a(f).
63. *Id.* § 1681a(d)(1).
64. *Id.* § 1681a(d)(1)(B).
65. *Id.* § 1681e(b).
66. *See id.* §§ 1681n–o.
67. *Id.* § 1681o(a).
68. *Id*. § 1681n(a)(1).
69. *Id.* § 1681n(a)(2).

C. The Circuit Split

Circuits are currently divided on whether a statutory violation grants a plaintiff standing to sue. The Ninth, Sixth, and Eighth Circuits agree that a statutory violation may grant standing, but the Second and Fourth Circuits have ruled the other way. In this case, the Ninth Circuit found that Robins's claim under FCRA sufficed to establish an injury-in-fact and granted him standing. Previously, the Sixth Circuit found a plaintiff bringing a class action claim under FCRA had standing based on an inaccurate consumer report generated by a credit reporting agency.[70] Likewise, the Eighth Circuit recently found that customers had standing to bring a class action against a wholesale retailer under the Fair and Accurate Credit Transactions Act.[71]

On the other hand, the Fourth Circuit found that individuals bringing a class action under the Employee Retirement Income Security Act ("ERISA") failed to meet the injury-in-fact requirement to establish standing.[72] Similarly, in an earlier ERISA case, the Second Circuit found a plaintiff lacked standing to challenge the defendants' action.[73]

The Ninth Circuit followed the approach of the Sixth and Eighth Circuits by finding that a statutory violation provided a basis for an injury-in-fact to meet constitutional standing requirements.[74]

III. HOLDING

A. Injury-in-Fact

The Ninth Circuit held Robins's alleged injury sufficed to grant him standing.[75] This holding rested on two main considerations: the statute's text regarding the requirements to allege a violation[76] and the fact that Robins's injuries were individual and concrete.[77] In reviewing circuit precedent, the court noted that "Congress's creation of a private cause of action to enforce a statutory provision implies that Congress intended the enforceable provision to create a statutory

70. Beaudry v. TeleCheck Servs., Inc., 559 F.3d 702, 705 (6th Cir. 2009).
71. Hammer v. Sam's East, Inc., 754 F.3d 492, 498 (8th Cir. 2014).
72. David v. Alphin, 704 F.3d 327, 334 (4th Cir. 2013).
73. Kendall v. Emp. Ret. Plan of Avon Prod., 561 F.3d 112, 123 (2d Cir. 2009).
74. *See infra* Section III.
75. Robins v. Spokeo, Inc., 742 F.3d 409, 414 (9th Cir. 2014).
76. *Id.* at 412–13.
77. *Id.* at 413.

right."[78] Furthermore, the court stated that "the violation of a statutory right is usually a sufficient injury in fact to confer standing."[79] Against this backdrop, the court examined FCRA's text defining when a statutory violation occurs.[80] Because FCRA does not require a showing of actual harm when a plaintiff sues for violations, the court found that proof of actual damages was unnecessary in the standing inquiry.[81] The court was guided by the statutory text because "the scope of the cause of action determines the scope of the implied statutory right."[82] Thus, Robins's claim fit FCRA's requirements for alleging a statutory violation, which the court found sufficed for an injury-in-fact.[83]

The court then addressed congressional standing inquiring as to "whether violations of statutory rights created by the FCRA are 'concrete, *de facto* injuries' that Congress can . . . elevate" to the status of legally cognizable injury.[84] The court looked to the Sixth Circuit's analysis in *Beaudry v. TeleCheck Services, Inc.*[85] as a guide, and found that because Robins was among the injured and the statutory right at issue protected against individual harm, Robins's injury was concrete and legally cognizable.[86]

B. Causation and Redressability

The Ninth Circuit also found that Robins fulfilled the remaining standing elements: causation and redressability.[87] Looking at precedent, the Ninth Circuit found that "[w]here statutory rights are asserted, . . . [its] cases have described the standing inquiry as boiling down to 'essentially' the injury-in-fact prong." Because the injury could be traced to the violation of a statutory right, such a violation of a statutor right caused that injury.[88] Furthermore, by providing damages in the statute for the violation, redressability was fulfilled.[89]

78. *Id.* at 412.
79. *Id.*
80. *Id.*
81. *Id.* at 412–13.
82. *Id.* at 413.
83. *Id.* at 413–14.
84. *Id.* (applying Lujan v. Def. of Wildlife, 504 U.S. 555 (1992)).
85. 559 F.3d 702, 705 (6th Cir. 2009).
86. *Id.*
87. *Id.* at 414.
88. *Id.*
89. *Id.*

Thus, the last two elements of standing were easily met in the court's eyes.

IV. ARGUMENTS

A. Spokeo's Arguments

Spokeo argues that Robins's claim under FCRA is insufficient to meet the injury-in-fact requirement of standing.[90] Its argument is three-fold: first, Congress may not "override" the minimum injury requirement of Article III; second, the constitutional minimum requires "actual or imminent concrete harm"; and third, Robins has not shown a concrete harm.[91] To show a concrete harm under FCRA, Robins would need to allege additional facts, such as suffering additional pecuniary or other harm beyond the statutory violation.[92]

Looking at precedent, Spokeo first argues that Congress may not override the minimum Article III standing requirements of injury-in fact, causation, and redressability because these are constitutionally derived.[93] But because prudential standing elements are judicially created, they may be overridden if Congress creates a statutory right that allows third parties to bring claims.[94] And Spokeo argues that Congress's ability to override prudential standing stands "only for the proposition that Congress 'may elevat[e] to the status of legally cognizable injuries concrete, *de facto* injuries that were *previously inadequate in law*.'"[95] Thus, Spokeo distinguishes between "injury in fact" and "injury in law" to support its claim that Congress may only create an "injury in law," or legal right, which forms the foundation for an injury-in-fact.[96] Plaintiffs seeking justiciability, therefore, may use the Congressionally created legal right to show an injury-in-fact under Article III, but Congress cannot statutorily create or define an injury-in-fact.[97]

To support its limitation on Congress's ability to define an injury-in-fact, Spokeo then looks to the Constitution's text and history.[98]

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90. Brief for Petitioners, *supra* note 13, at 11.
91. *Id.* at 12.
92. *Id.*
93. *Id.*
94. *Id.* at 13.
95. *Id.* at 14 (quoting Lujan v. Def. of Wildlife, 504 U.S. 560, 578 (1992)).
96. *Id.* at 15.
97. *Id.*
98. *Id.* at 18.

Because the Framers drafted Article III to narrowly confine the scope of judicial authority, properly applied, standing is only conferred on "matters familiar to the Framers as disputes appropriate for resolution in court," deemed "legal wrongs."[99] All legal wrongs in the English tradition "involved the infliction of concrete harm on a person or property."[100] Spokeo looks to this history for the proposition that such concrete harm "was a prerequisite" to bring a claim in court.[101] Further, following separation-of-powers principles, Spokeo asserts that only the judiciary can recognize an injury-in-fact once private parties have demonstrated a concrete harm that exists beyond a statutory violation.[102] In other words, private individuals cannot enter courts without alleging a concrete harm, even if they have suffered a statutory violation.[103] Without this limitation, Congress would usurp the judiciary's role.[104]

Lastly, Spokeo proposes that Robins failed to allege a concrete harm, even though FCRA was violated.[105] This argument is four-fold. First, because FCRA does not require proof of actual or imminent concrete harm as an element of the legal violation, the Court cannot rely on the statutory violation alone to grant Robins standing.[106] Second, FCRA's right to recover damages does not meet the concrete harm threshold.[107] Third, FCRA's legal violations are not grounded in common law claims, such as defamation, to allow Congress to create injury-in-fact here.[108] Fourth, the publishing of inaccurate information did not inflict concrete harm on Robins to meet the injury-in-fact threshold based on the district court's determination.[109] For Robins's claim to proceed as it stands, FCRA would need to contain a clear statement of intent "to abrogate the concrete harm requirement."[110]

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99. *Id.* at 20, 22.
100. *Id.* at 22.
101. *Id.* at 28.
102. *Id.* at 27.
103. *Id.* at 28.
104. *Id.* at 36.
105. *Id.* at 24.
106. *Id.* at 37–38.
107. *Id.* at 47.
108. *Id.* at 49–50.
109. *Id.* at 52–53.
110. *Id.* at 55.

B. Robins's Claims

Robins claims that the private right of action he commenced to seek the statutory damages remedy that Congress provided in FCRA meets Article III's requirements.[111] As Spokeo does, Robins cites common law, Supreme Court precedent, and separation-of-powers principles as support for his argument.[112] According to Robins, the injury requirement of Article III may exist solely from a statute.[113] This finds its roots in common law from the fourteenth century and early Supreme Court decisions.[114] Because Congress had historically provided statutory damages to ensure that legal rights can be remedied in court, allowing a statutory violation under FCRA to be adjudicated in federal court follows Congress's intent, according to Robins.[115]

Robins claimed that consequential harm has not been required to establish standing.[116] He cites early cases where courts recognized that an invasion of a legal right sufficed to grant standing, without any further showing of harm required.[117] Even if a statute only grants an injured party nominal damages, the injured party may still bring an action in court to recover these damages.[118] Further, Robins alleges that Congress often grants statutory damages as a means to redress a legal injury, and consequential harm was not necessary in each case for statutory damages.[119] Given this well-established tradition of redressing invasions of legal rights, Robins claims that allowing his action satisfies Article III.[120]

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111. Brief for Respondent, *supra* note 13, at 10.

112. *Id.* at 11.

113. *Id.* at 15–16.

114. *Id.* at 16–17. For example, Robins cites an early assault case in which the defendant swung a hatchet at a woman but missed, with no physical harm caused. This "inchoate" violence was redressable and conferred standing. Battery, trespass, and slander are also cited as examples of cases of actions being maintained without requiring a showing of real-world damage or actual harm.

115. *Id.* at 17.

116. *Id.* at 13.

117. *Id.* at 13–14.

118. *Id.* at 14.

119. *Id.* at 21–22. Here, Robins cites the Restatement (Second) of Torts for cases involving property rights and the Restatement (Second) of Contracts for cases involving breach of contract where "invasions of legal rights" are redressed by "nominal damages." And Robins cites a copyright case from 1790 where damages were granted absent consequential harm.

120. *Id.* at 13.

V. ANALYSIS

The Court should find in favor of Robins. First, Robins's claim under FCRA is personal and particularized to establish concrete harm. Second, separation-of-powers concerns are not implicated when Congress grants a party the right to sue for a statutory violation. And, unlike Spokeo's claim, precedent favors granting Robins the right to sue here because he meets the irreducible minimum of Article III standing.

Robins's claim meets the injury-in-fact requirement. As noted above, an injury is "an invasion of a legally protected interest."[121] Congress may define an injury by enacting a statute, which defines a legally protected interest.[122] Even when Congress defines an injury, a plaintiff "must allege a distinct and palpable injury to himself, even if it is an injury shared by a large class of other possible litigants."[123] Thus, a plaintiff may first cite a statutory violation, but then must also show how that violation affected him personally in order to meet the injury-in-fact requirement. For example, the Court has found that if Congress has designated an act as permissive under a statute and a plaintiff can show a denial of access, the plaintiff suffers an injury-in-fact. In *Public Citizen v. United States Department of Justice*, the Court noted that the Federal Advisory Committee Act expressly allows individuals to submit requests for information and agency records.[124] A denial of such a request "constitutes a sufficiently distinct injury to provide standing to sue."[125] The Court based this decision on previous decisions evaluating requests under the Freedom of Information Act, and found "no reason for a different rule" under a different statute.[126]

Here, Robins fulfilled both prongs of this two-step injury analysis. First, he claimed a violation of FCRA because inaccurate information about him was posted on Spokeo. Alone, this injury would not be enough—the mere presence of inaccurate information does not harm someone. But the effects of the inaccurate information led Robins's claim to suffice as injury-in-fact. Robins suffered from the inaccurate information because it negatively affected his employment prospects,

121. Lujan v. Def. of Wildlife, 504 U.S. 555, 560 (1992).

122. Massachusetts v. EPA, 549 U.S. 497, 516 (2007) (quoting *Def. of Wildlife*, 504 U.S. at 580 (Kennedy, J., concurring in part and concurring in the judgment)).

123. *Warth v. Seldin*, 422 U.S. 490, 501 (1975).

124. Pub. Citizen v. U.S. Dept. of Justice, 491 U.S. 440, 449 (1989).

125. *Id.*

126. *See id.* (listing cases).

which necessarily constitutes a concrete, particularized injury under FCRA. And Robins sought more than statutory damages for this statutory violation—he also sought injunctive and declaratory relief. Coupled together, his harm could be remedied—if the inaccurate information about him was no longer on Spokeo, then his employment prospects might change. Therefore, Robins's injury suffices as an injury-in-fact.

Second, separation-of-powers concerns are not implicated by affording plaintiffs the ability to bring suit when Congress defines a statutory violation. The core concern with the standing doctrine, as noted above, is to prevent courts from overstepping their bounds into areas distinctly reserved to other branches of government. But when Congress directly expresses its intent for the judiciary to play a role in resolving statutory violations, the concern about judicial overreaching no longer exists. By enacting FCRA with specific provisions defining statutory violations—including assigning punitive damages, which courts can uniquely assess and demand—Congress empowered the judiciary to step into this sphere. When Congress intends to preclude judicial review, this is made clear in the statutory language.[127] However, FCRA does not prohibit judicial review. In fact, by keeping the statutory damages provision unfixed and allowing punitive damages to be assessed to statutory violators, it seems more likely that Congress sought judicial review to determine how much damage an individual plaintiff may be entitled to, depending on the nature of the violation.

Furthermore, Congress has brought courts in to resolve such disputes before, and it is not a stretch to think that it is acting similarly now. For example, *Havens Realty Corp. v. Coleman* addressed an alleged violation under the Fair Housing Act ("FHA") based on racial steering practices.[128] Because the Court recognized that "'Congress intended standing under Section 812 [of the FHA] to extend to the full limits of Art. III,'" all the plaintiffs needed to show was an injury-in-fact.[129] It was clear that Congress intended parties to have the ability to bring suit under the FHA, even though such a suit would not

127. *See, e.g.,* 5 U.S.C. § 701(a) ("This chapter applies, according to the provisions thereof, except to the extent that—(1) statutes preclude judicial review; or (2) agency action is committed to agency discretion by law.").

128. Havens Realty Corp. v. Coleman, 455 U.S. 363, 372 (1982).

129. *Id.*

be possible without the statutory provision.[130] In allowing the parties to bring suit, the Court recognized that the statutory violation could indeed meet the injury-in-fact requirement as long as the plaintiff suffered a distinct and palpable injury.[131] Therefore, allowing a court to resolve injuries alleged under a statute does not implicate separation-of-powers concerns because Congress, in defining statutory violations, clearly intended for a court to resolve these violations.

Thus, Robins seems to have the better argument. By including a statutory provision outlining a statutory violation, has allowed aggrieved parties to challenge violators' practices through the Act. To resolve such an alleged violation, it is likely that a court battle will ensue. The inquiry should focus on the extent of harm and the potential restitution a court may grant an injured party. Even though the minimal penalty may deter most individuals from filing suit, a class action is the exact vehicle to channel such a suit if the violator has caused large-scale harm. Without such actions, companies may continue to violate FCRA, which implicates important privacy concerns, by producing inaccurate data in an increasingly online world. The doctrine of standing should not stand in the way of meeting Congress's goal to improve the quality of online data. Because Robins was harmed by Spokeo's act of making inaccurate data about him readily available, he should be able to bring an action in court to address these violations. The statute allows for it, and he was personally injured. Therefore, the Supreme Court should affirm the Ninth Circuit's holding and find that Robins's injury was sufficient to establish standing.

CONCLUSION

Because Robins alleged a concrete, individualized injury caused by Spokeo that can be adequately redressed in a court action, the Supreme Court should affirm the Ninth Circuit's ruling for Robins. Such a finding is well in line with previous Court decisions finding standing for plaintiffs who allege statutory violations, and is consistent with fundamental principles outlining the accessibility of courts—when an individual suffers an injury caused by the actions of another party, the court acts as an open door to adjudicate such claims. Finding for Robins simply affirms this basic principle without

130. *Id.*
131. *Id.*

corrupting the doctrine of standing. Robins should be afforded his day in court.