

The US Supreme Court ruled 6-2 on May 16, 2016 in [Spokeo, Inc. v. Robins](#), No. 13-1339, that a plaintiff must allege “concrete” and “actual” harm in order to sue in federal court, and that “alleging a bare procedural violation” of a statute is not sufficient to confer Article III standing where the alleged violation will “result in no harm” to the plaintiff. The ruling could narrow the field of plaintiffs able to sue under laws that provide for statutory damages with no requirement of actual injury, such as the Fair Credit Reporting Act (FCRA) or the Telephone Consumer Protection Act (TCPA), or state consumer protection statutes.

## Federal Plaintiffs Must Show Actual Harm

In the case, Mr. Robins alleged that Spokeo published inaccurate information about him on its website in willful violation of the FCRA, including a FCRA requirement that “consumer reporting agencies” take “reasonable procedures” to ensure the accuracy of reports of consumer credit information. The district court dismissed the case because Mr. Robins failed to allege that he suffered any “actual or imminent harm,” but the Ninth Circuit reversed on grounds that the violation of a statutory right was sufficient to confer standing.

Justice Alito’s majority opinion disagreed, finding that the Ninth Circuit failed to consider whether Mr. Robins’ alleged injury was “concrete” and, in particular, whether the “procedural violations” of the FCRA that he alleged carried a “degree of risk” sufficient to satisfy that requirement. The Court emphasized that standing requires a showing of both “concrete and particularized” harm, which is a “constitutional requirement” that Congress “cannot erase.” Therefore, a plaintiff suing in federal court must “clearly . . . allege facts demonstrating” that she suffered an “actual” harm – alleging a mere technical violation of a statute is not sufficient.

## A “Concrete” Hurdle and a Real Risk to Plaintiffs

The Court’s decision poses an additional hurdle to plaintiffs (and attorneys) who hope to sue under laws like the FCRA or the TCPA that provide for statutory damages without an express requirement of actual injury. And the decision could curb attorney-driven class actions because the named plaintiff must allege (and demonstrate) that she suffered “concrete” harm – it is not enough to simply identify a technical violation of a statute providing for statutory damages.

Exactly what constitutes “concrete” harm remains open for dispute after this case. The harm must “actually exist” and not be “abstract,” but “intangible injuries” or a “risk of real harm” can “nevertheless be concrete.” A bare statutory violation, however, is not enough because some statutory violations will cause no real harm to the plaintiff at all. In the context of this case, which involved the dissemination of inaccurate information, the Court offered the example of an “incorrect zip code,” explaining that it was difficult to imagine how disseminating an inaccurate zip code “could work any concrete harm.”

It remains to be seen just how high this hurdle proves to be in practice. However, FCRA and TCPA defendants should strongly consider challenging a plaintiff’s standing where the plaintiff is seeking statutory damages and has not articulated any concrete and particularized harm.

## About Our Global Litigation and FCRA and TCPA Practices

We can assist clients in addressing their class action, FCRA, and TCPA needs. Our Class Action & Multidistrict Litigation team represents clients across all industries in nationwide, multistate and statewide class actions, mass actions and multidistrict litigation. We also have extensive experience advising clients on all aspects of the FCRA and TCPA, including the use of automated calling technologies and pre-recorded messaging, facsimiles and text messaging, and we represent clients before the FCC and FTC. Our FCRA team includes experienced FCRA and class action litigators and our TCPA team includes former FCC officials experienced with TCPA rulemaking and enforcement.

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