

One Minute Memo®



Spokeo v. Robins: The U.S. Supreme Court Declines An Encore Performance

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Seyfarth Synopsis: In deciding to deny *certiorari* to review *Spokeo, Inc. v. Robins*, No. 17-806 (U.S. 2017), the U.S. Supreme Court has declined to reconsider the standing principles it announced in its landmark 2016 *Spokeo* opinion, which has led to “wide confusion” among the lower courts regarding what is a sufficient concrete harm under Article III to establish standing for statutory violations.

On January 22, 2018, the U.S. Supreme Court declined to grant *certiorari* in *Spokeo, Inc. v. Robins*, No. 17-806 (U.S. 2017), which we have been watching closely for its potential implications on the future of workplace class action litigation.

By way of brief background, Plaintiff Thomas Robins, alleged that Spokeo, an internet people search engine, reported inaccurate information about him regarding his marital status and education, among other things. Plaintiff alleged that Spokeo violated the federal Fair Credit Reporting Act (“FCRA”) by failing to “follow reasonable procedures to assure maximum possible accuracy,” and that the dissemination of false information could negatively affect his future employment prospects.

While the district court initially found that Plaintiff did not have standing, the Ninth Circuit later reversed. Spokeo then appealed to the U.S. Supreme Court, which granted *certiorari* and ultimately reversed and remanded the matter back to the Ninth Circuit for further consideration. We have previously covered the U.S. Supreme Court’s grant of *certiorari* and its oral argument [here](#), [here](#), [here](#), [here](#), [here](#), and [here](#). In *Spokeo I*, the Supreme Court laid out what qualifies as a tangible or intangible concrete injury for standing purposes and remanded the dispute to the Ninth Circuit to apply the appropriate concreteness standard. We have previously analyzed the U.S. Supreme Court’s ruling in *Spokeo I* [here](#).

On remand, the Ninth Circuit held that Plaintiff alleged a sufficient concrete harm. The Ninth Circuit found that an intangible harm might constitute a concrete harm under a two-part test that considers whether the statute at issue was established to protect concrete interests, as opposed to procedural rights, and whether the alleged statutory violation actually harms or presents a material risk of harm to such concrete interests. Under this approach, the Ninth Circuit found that that the FCRA protects against the dissemination of false information and that the inaccuracies in this matter were not “mere technical violations,” but posed a sincere risk of harm. We have discussed the Ninth Circuit’s ruling in *Spokeo II* [here](#) and [here](#).

Spokeo immediately filed a second petition for *certiorari* with the U.S. Supreme Court, challenging the Ninth Circuit's *Spokeo II* ruling. Spokeo argued that the Ninth Circuit wrongly applied standing principles, and that the Supreme Court must resolve a growing confusion among the lower courts since the Supreme Court's initial ruling in *Spokeo I*. Despite the Ninth Circuit's expansive ruling and the notable divergence in the lower courts, the Supreme Court declined *certiorari*. We will continue to monitor how *Spokeo I* influences workplace class action litigation.

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Seyfarth Shaw LLP One Minute Memo® | January 23, 2018

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