

# One Minute Memo®



## U.S. Supreme Court Grants Cert in *Spokeo, Inc. v. Robins*

By Pamela Q. Devata, Robert T. Szyba, and Ephraim J. Pierre

This morning, April 27, 2015, the U.S. Supreme Court granted the petition for writ of certiorari in *Spokeo, Inc. v. Robins*, No. 13-1339 (U.S.). The petition poses a critical question that may determine the future scope of congressional power, as well as consumer and workplace-related class actions: Does a plaintiff who suffers no concrete harm, but who instead alleges only a statutory violation, have standing to bring a claim on behalf of himself or a class of individuals? This question will soon be answered.

### Case Background

In July 2010, Plaintiff Thomas Robins filed a purported class action under the Fair Credit Reporting Act (“FCRA”) against Spokeo, Inc., alleging that Spokeo’s searchable database presented inaccurate information about him, in violation of the FCRA. He did not allege any actual damages, instead seeking statutory damages for a violation of the FCRA based on the inaccurate consumer information about him. The case was dismissed by the district court, which held that a plaintiff does not have standing “where no injury in fact is properly pled.” 2011 WL 11562151, at \*1. In February 2014, the U.S. Court of Appeals for the Ninth Circuit reversed, holding that the “violation of a statutory right is usually a sufficient injury in fact to confer standing” and that “a plaintiff can suffer a violation of the statutory right without suffering actual damages.” 742 F.3d 409, 413.

In May 2014, Spokeo filed its petition for writ of certiorari to the U.S. Supreme Court. Spokeo posed this question: “Whether Congress may confer Article III standing upon a plaintiff who suffers no concrete harm and who therefore could not otherwise invoke the jurisdiction of a federal court, by authorizing a private right of action based on a bare violation of a federal statute.” Spokeo’s petition identified a circuit split. The Fifth and Sixth Circuits agree with the Ninth Circuit’s *Spokeo* decision and permit plaintiffs to maintain lawsuits without “injury-in-fact” and based solely on an alleged statutory violation. The Seventh Circuit also has signaled that it agrees with this position. In contrast, the Second, Third and Fourth Circuits have held that Congress cannot create standing by statute alone, and the mere deprivation of a statutory right is insufficient to confer standing.

## Potential Implications for Employers

The Supreme Court's ultimate decision in this case is likely to have a significant impact on congressional power as well as the future of consumer, workplace, and other class actions. The Supreme Court will likely address separation of powers between the Congress and the federal judiciary under Article III of the Constitution, and determine whether plaintiffs have standing to bring a private right of action seeking statutory damages when they have suffered no injury in fact. The opinion likely will apply across a variety of federal statutes, including the FCRA. If *Spokeo* is reversed, the Supreme Court may limit Congress' ability to create private right of actions as well as require plaintiffs to plead and establish actual injury—not just a violation of the underlying statute. As a result, congressional power and the number of viable class actions under the FCRA and other federal statutes may be limited.

The Supreme Court's decision in *Spokeo* is likely to dramatically affect employers, consumer reporting agencies, and other corporate defendants. Indeed, ten separate *amicus* briefs were filed on behalf of seventeen different companies, trade associations, and other organizations in support of *Spokeo*'s petition (including the National Association of Professional Background Screeners, Chamber of Commerce of the United States, eBay, Facebook, Google, Yahoo, and leading consumer reporting agencies). A decision limiting congressional power and providing for actual damages to be alleged would likely discourage the current wave of consumer, workplace, and other class actions seeking millions in statutory damages. A decision allowing individual and class claims to go forward alleging only statutory damages without injury in fact would likely have the opposite outcome. Employers should continue to closely monitor the developments in this case.

[Pamela Devata](#) is a partner in Seyfarth's Chicago office. [Robert Szyba](#) and [Ephraim Pierre](#) are associates in the firm's New York office. If you would like further information, please contact your Seyfarth Shaw LLP attorney, Pamela Devata at [pdevata@seyfarth.com](mailto:pdevata@seyfarth.com), Robert Szyba at [rszyba@seyfarth.com](mailto:rszyba@seyfarth.com), or Ephraim Pierre at [epierre@seyfarth.com](mailto:epierre@seyfarth.com).

[www.seyfarth.com](http://www.seyfarth.com)

Attorney Advertising. This One Minute Memo is a periodical publication of Seyfarth Shaw LLP and should not be construed as legal advice or a legal opinion on any specific facts or circumstances. The contents are intended for general information purposes only, and you are urged to consult a lawyer concerning your own situation and any specific legal questions you may have. Any tax information or written tax advice contained herein (including any attachments) is not intended to be and cannot be used by any taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer. (The foregoing legend has been affixed pursuant to U.S. Treasury Regulations governing tax practice.)

---

Seyfarth Shaw LLP One Minute Memo® | April 27, 2015

©2015 Seyfarth Shaw LLP. All rights reserved. "Seyfarth Shaw" refers to Seyfarth Shaw LLP (an Illinois limited liability partnership). Prior results do not guarantee a similar outcome.