

No. 13-1339

IN THE
Supreme Court of the United States

SPOKEO, INC.,

Petitioner,

v.

THOMAS ROBINS, INDIVIDUALLY AND ON BEHALF
OF ALL OTHERS SIMILARLY SITUATED,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE NINTH CIRCUIT

**BRIEF FOR *AMICI CURIAE* CENTER
FOR DEMOCRACY & TECHNOLOGY,
ELECTRONIC FRONTIER FOUNDATION,
NEW AMERICA'S OPEN TECHNOLOGY
INSTITUTE AND WORLD PRIVACY FORUM
IN SUPPORT OF RESPONDENT**

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QUESTION PRESENTED

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.

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INTEREST OF THE *AMICI CURIAE*¹

The Center for Democracy & Technology (CDT) is a non-profit public interest organization focused on privacy, civil liberties, and human rights issues affecting the Internet, other communications networks, and associated technologies. CDT represents the public's interest in an open Internet and promotes the constitutional and democratic values of free expression, privacy, and individual liberty. For more than twenty years, CDT has worked to promote individual rights online within the U.S. and abroad through policy expertise, legislative advocacy, and leadership in analyzing key issues in technology law and policy. CDT has frequently testified on consumer privacy issues in Congress and analyzed new technologies and their effects on consumer rights. CDT filed a complaint against Spokeo with the Federal Trade Commission (FTC) in 2010, prior to the commencement of this case, as discussed in more detail *infra*.

The Electronic Frontier Foundation (EFF) is a San Francisco-based, donor-supported, non-profit civil liberties organization working to protect and

¹ Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* and their counsel made a monetary contribution to its preparation or submission. The parties' letters consenting to the filing of this brief have been filed with the Clerk's office.

promote free speech, privacy, and openness in the digital world. Founded in 1990, EFF now has roughly 23,000 dues-paying members throughout the United States. EFF represents the interests of technology users in both court cases and broader policy debates regarding the application of law in the digital age, and is a recognized leader in privacy and technology law. Through direct advocacy, impact litigation, and technological innovation, EFF's team of attorneys, activists, and technologists actively encourage and challenge industry, government, and courts to support free expression, privacy, and transparency in the information society. As part of its work, EFF strives to ensure that the security and privacy of individuals' electronic information is protected.²

New America's Open Technology Institute (OTI) is a program dedicated to technology policy and technology development in support of digital rights, social justice, and universal access to open communications networks. OTI, through its unique blend of policy expertise, technical capacity, and field-level engagement, seeks to promote a stronger and more open Internet to support stronger and more open communities. New America is a non-profit civic enterprise dedicated to the renewal of American politics, prosperity, and purpose in the digital age through big ideas, technological innovation, next generation politics, and creative engagement with broad audiences.

The World Privacy Forum (WPF) is a non-profit public interest research group focusing on privacy is-

² In addition to signing on to this brief, EFF agrees with the arguments set forth in the Brief for Public Law Professors as *Amici Curiae* in Support of Respondent.

sues that have meaningful impact on consumers, with a particular focus on large, complex data flows and a variety of key sectors and technologies, including health, finance, and the workplace. WPF has published a body of significant privacy research, and represents the public interest in this research as well as in a variety of fora at the state, national, and international level. WPF has published reports and testified before Congress and the Federal Trade Commission on the Fair Credit Reporting Act and its relationship to the data broker industry and consumers.

SUMMARY OF ARGUMENT

The issue before the Court is whether Congress may confer Article III standing upon a plaintiff simply by authorizing a private right of action based on a violation of a federal statute—in this case, the Fair Credit Reporting Act (FCRA). The Court must decide whether the judiciary will enforce the laws that Congress chooses to pass, or if the harms that those laws are intended to prevent will not be addressed unless there is additional “real world” injury.

Amici support Mr. Robins’ position that a violation of a statute alone with no additional injury is sufficient to establish Article III standing, which will ensure that the FCRA’s consumer protections remain robust and enforceable.

For more than 40 years, the FCRA has protected individuals from a range of specific, concrete harms caused by a powerful but opaque consumer reporting system. Congress included a private right of action in this law to ensure that individuals could vindicate their own rights and keep the credit industry and

other FCRA-regulated entities—including furnishers of data—accountable.

The FCRA’s carefully balanced consumer protections remain important today. We are now in a digital era in which data brokers routinely acquire, access, compile, analyze, and sell vast data stores of consumers’ personal information, transactions, and behaviors. This activity occurs with little regulation or market incentive to ensure that information is accurate, timely, and used in a manner compliant with existing law.

Neither industry self-regulation nor administrative enforcement mechanisms make the FCRA’s private right of action unnecessary. Many data brokers do not consider themselves within the scope of the FCRA, even if they furnish information used by others to determine eligibility for employment, insurance, credit, housing, and other FCRA-covered purposes. Furthermore, administrative agencies have limited resources, are focused on pursuing matters to serve the general public interest, and often settle actions through consent decrees. The FCRA’s private cause of action is necessary to ensure that individuals can vindicate their own interests and litigate actions to final judgment.

For these reasons, the Court should ensure that consumers may continue to pursue violations of the FCRA through private actions. If, however, the Court rules in Spokeo’s favor, it should cabin its holding narrowly to the facts of this case. This result will ensure Congress has the ability to respond to modern privacy threats and avoid the possibility of eviscerating a broad range of other statutory rights.

ARGUMENT

In this case, the Court considers whether the judiciary will enforce the legal rights that Congress chooses to confer on the public, or whether violations of those rights will have no remedy in the absence of additional “real-world” injury.

Mr. Robins argues that a violation of a statute alone with no additional injury is sufficient to establish Article III standing. *See generally* Resp’t Br. *Amici* support this position, which will ensure the FCRA remains an effective statutory regime to protect the interests of consumers within the consumer reporting system.

I. CONGRESS PASSED THE FAIR CREDIT REPORTING ACT TO PROTECT CONSUMERS FROM HARMS CAUSED BY THE CONSUMER REPORTING SYSTEM, AND THESE PROTECTIONS CONTINUE TO BE CRITICALLY IMPORTANT IN THE DIGITAL AGE.

The FCRA was enacted to create important consumer protections as the credit reporting industry grew larger and use of its products became more pervasive. The statute’s protections remain essential in the digital age, when it is easier to acquire, store, and aggregate information about people than ever before.

A. In the Fair Credit Reporting Act, Congress Recognized that Inaccurate Information Distributed Through the Credit Reporting System Causes Consumer Harm, and Chose to Provide a Private Right of Action to Aggrieved Individuals as a Remedy.

Congress enacted the FCRA in 1970 to respond to the development of a powerful, labyrinthine credit reporting system. While Congress recognized the important role that credit reporting agencies play in modern society, the system was plagued by human and computer-generated inaccuracies, irrelevant and sometimes questionable information, inadequate confidentiality, and insufficient privacy protection for information in credit reports. 115 Cong. Rec 1381, 2410-15 (1969) (statement of Sen. Proxmire). Congress determined that these issues could make it more difficult for people to obtain necessities such as credit, insurance, and employment. S. Rep. No. 91-517, at 1 (1969).³

Upon introducing the Fair Credit Reporting Bill, Senator Proxmire cited specific examples of the injurious situations that prompted the need for legislation, including:

³ See also *Fair Credit Reporting: Hearings Before the Subcomm. on Fin. Insts. of the S. Comm. on Banking and Currency*, 91st Cong. 10 (1969) (Letter from William McChesney Martin, Jr., Chairman, Board of Governors of the Federal Reserve System) (“The stated purpose of the bill . . . is to require all credit reporting agencies . . . to adopt reasonable procedures . . . in a manner fair and equitable to individual consumers.”).

- A consumer who was denied credit because a credit-reporting agency believed he was a different person;
- A woman who lost much of her credit and insurance because she was deemed to have “bad morals”;
- A college student who lost his car insurance due to secret testimony from a neighbor;
- A woman who was denied medical insurance because a credit report erroneously characterized her as an alcoholic; and
- A man who had been erroneously convicted of a felony was never able to obtain credit after his exoneration.

115 Cong. Rec 1381, 2411-12 (1969).

To ensure these types of scenarios would not happen in the future, the FCRA was intended to ensure that credit-reporting agencies conducted their activities with fairness, equity, and respect for the confidentiality, accuracy, relevance, and privacy of personal information. 15 U.S.C. § 1681(b), *see also id.* at (a)(4) (2015). The law satisfied these goals by implementing a variety of consumer protections, including requirements to follow reasonable procedures to ensure maximum possible accuracy of information in a credit report, to notify a consumer when a consumer report leads to an adverse event, and a procedure for disputing and correcting inaccurate information. 15 U.S.C. § 1681e(b) (2015), *id.* at 1681m, *id.* at 1681i.

The FCRA included a private right of action for consumers who might be negatively affected by violations of the statute. Today, the scope of the private

right of action under which Mr. Robins filed suit broadly provides that “[a]ny person who willfully fails to comply with *any* requirement imposed under this subchapter with respect to *any* consumer is liable to that consumer[.]” 15 U.S.C. § 1681n (2015) (emphasis added).

Notably, the legislative history reveals Congress’s concern that computerized systems would exacerbate the problems the FCRA was meant to solve. When introducing the bill, Senator Proxmire noted that an aerospace engineer had called his attention to “the possibilities of error afforded by computer systems, which spew forth incorrect data and half-truths due to the dogmatic nature of computer programming and the limitations of human operations. We desperately need legislation to protect all of us.” 115 Cong. Rec 1381, 2411 (1969).

This concern was remarkably prescient: more than 40 years later, the creation, storage, and availability of vast amounts of digital information have compounded the problems the FCRA was meant to address.

B. The Fair Credit Reporting Act Remains Important in the Digital Age to Ensure that Data Brokers Are Held Accountable When They Provide Detailed Consumer Reports Used to Make Decisions About Eligibility for Basic Essentials Such as Employment, Insurance, Credit, and Housing.

The FCRA's protections remain vital today. The Internet, the widespread digitization of information, the ubiquity of computer use, and ever-increasing storage and data analysis capabilities facilitate the use of more information about people than ever before in history.

Local, state, and federal governments have long documented key details about a person's entire life in public records. These paper records were physically stored in basements or back rooms of government offices, ensuring that only motivated actors would spend the time and energy necessary to retrieve a particular piece of information. But today, government agencies often digitize public records and post them on the Internet. Beth Givens, *Public Records on the Internet: The Privacy Dilemma*, Privacy Rights Clearinghouse (revised March 14, 2015).⁴

The digitization of public record information has important social benefits, including more effective government oversight. But one downside of this technological shift is that massive amounts of personal information are now easily available to all, including data about births, marriages, divorces, deaths, bankruptcy, property ownership, tax liens

⁴ <https://www.privacyrights.org/ar/onlinepubrecs.htm>.

and judgments, civil disputes, arrests, criminal proceedings, voter registration, workers' compensation, professional licenses, and more. Daniel J. Solove, *The Digital Person: Technology and Privacy in the Digital Age* 16 (2004); Givens, *Public Records on the Internet*.

A growing data brokerage industry has access not only to public record information, but countless other data points about consumers that are used for marketing, risk mitigation, background investigation, and more. Fed. Trade Comm'n, *Data Brokers: A Call For Transparency and Accountability* 23-35 (May 2014); Pam Dixon & Robert Gellman, *The Scoring of America: How Secret Consumer Scores Threaten Your Privacy and Your Future*, World Privacy Forum 19 (April 2, 2014).⁵ These companies—including Spokeo—gather information from online and offline sources to create detailed profiles about consumers. In addition to public record data from all levels of government, profiles often are supplemented with purchase data from retailers and catalog companies, pre-existing profiles from other data brokers, and information from press reports, blogs, and social media services. Fed. Trade Comm'n, *Data Brokers* at 11-14 (providing a detailed list of information sources for data broker profiles). As author and security expert Bruce Schneier explains, data brokers “buy your personal data from companies you do business with, combine it with other information about you, and sell it to companies that want to know more about you. . . . The more data you produce, the more they

⁵ <https://www.ftc.gov/system/files/documents/reports/data-brokers-call-transparency-accountability-report-federal-trade-commission-may-2014/140527databrokerreport.pdf>;
http://www.worldprivacyforum.org/wp-content/uploads/2014/04/WPF_Scoring_of_America_April2014_fs.pdf.

collect and the more accurately they profile you.” DATA AND GOLIATH 52 (2015). Because the data in these profiles comes from a variety of sources and is held to varying standards of quality, some information may be speculative, inaccurate, out of date, or unverified.

The FCRA is notable because it is the leading federal law that primarily serves as a check on the distribution, maintenance, and use of inaccurate consumer information in particular circumstances. Fed. Trade Comm’n, *Data Brokers* at i. In an otherwise largely unregulated space, the FCRA gives individuals a degree of control over their digital identities by providing a mechanism to ensure that information in consumer reports is accurate, which decreases the likelihood that others—including potential employers, insurers, lenders, and landlords—will make adverse decisions based on erroneous information resulting in lost opportunities, lower wages, lack of housing, high insurance payments, and high credit card interest rates.

This mechanism is an essential check on inaccurate information in the consumer reporting system. Indeed, more than three-quarters of complaints to the Consumer Financial Protection Bureau stem from erroneous information in a credit report. Consumer Fin. Prot. Bureau, *Consumer Response Annual Report 20-21* (March 2015).⁶ Furthermore, a 2012 FTC study found that 26% of participants discovered at least one potentially material error in at least one of their reports from a major credit-reporting agency. Fed. Trade Comm’n, *Report to Congress Under Sec-*

⁶ http://files.consumerfinance.gov/f/201503_cfpb_consumer-response-annual-report-2014.pdf.

tion 319 of the Fair and Accurate Credit Transactions Act of 2003, Appx. D ii (Dec. 2012).⁷

Anecdotal evidence suggests that Spokeo's consumer reports also often contain inaccurate information about consumers.⁸ Complaint and Request for Investigation, Injunction, and Other Relief ¶ 26, *In re Spokeo, Inc.* (Fed. Trade Comm'n June 29, 2010) ("CDT Compl."). Erroneous data in Spokeo's listings can result in harm of the very type that Congress sought to address when passing the FCRA. For example:

- Inaccuracies in educational background or work experience could remove an individual from consideration at the earliest phases of a job search.
- Errors in age could cause an insurer to conclude that a person poses more substantial risk than she does, resulting in higher insurance payments or credit interest rates.
- Inaccurate information about gender, ethnicity, or military service may limit a person's opportunities with a potential employer striving to diversify its workforce.
- Inconsistencies in any data could lead an employer, insurer, landlord or lender to conclude that a

⁷ <https://www.ftc.gov/sites/default/files/documents/reports/section-319-fair-and-accurate-credit-transactions-act-2003-fifth-interim-federal-trade-commission/130211factareport.pdf>.

⁸ To respect personal privacy, *amici* will not publish links to Spokeo listings in this brief, but we encourage the Justices of this Court and other readers to survey their own information on the Spokeo website to get a sense of the breadth and veracity of the information in those reports.

person has lied about her background, is untrustworthy, or has poor character.

While Spokeo’s inaccuracies might initially appear to favor Mr. Robins, they may have in fact damaged his ability to find employment by creating the erroneous impression that he was overqualified for the work he was seeking, that he might be unwilling to relocate for a job due to family commitments, or that his salary demands would exceed what prospective employers were prepared to offer him. The FCRA’s private right of action is the only way Mr. Robins can enforce his rights under the law and redress these inaccuracies. If the FCRA’s requirements are effectively unenforceable, data brokers such as Spokeo have little incentive to follow the law.⁹

⁹ Allowing Mr. Robins to proceed in his lawsuit against Spokeo will not jeopardize all information exchange online. The FCRA’s consumer protection requirements apply to a subset of companies that meet the narrow definition of a “consumer reporting agency,” which is limited to “any person which . . . regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.” 15 U.S.C. § 1681a(f) (2015). A “consumer report” is generally defined (with some exceptions) as “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 which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer’s eligibility for credit or insurance to be used primarily for personal, family, or household purposes; employment purposes, or any other purpose authorized under section 1681b of this title.” 15 U.S.C.

C. Industry Self-Regulation and Administrative Enforcement Do Not Eliminate the Need for a Private Right of Action in the Fair Credit Reporting Act.

Individuals need a robust, effective private right of action to enforce the FCRA's requirements because neither industry self-regulation nor administrative enforcement sufficiently protects consumers' interests.

Industry self-regulation is not a powerful enforcer of FCRA requirements. Data brokers—including Spokeo—generally publish disclaimers stating that others cannot use the information they provide to determine eligibility for employment, insurance, credit, or other purposes governed by the FCRA (such as housing). Fed. Trade Comm'n, *Data Brokers* at 34-35 & 40-41; About, Spokeo, <http://www.spokeo.com/about> (last visited Aug. 29, 2015); Terms of Use, Spokeo (Feb. 24, 2014), <http://www.spokeo.com/terms-of-use>. According to the FTC, these disclaimers do not discharge a data provider's responsibilities under the FCRA. Fed. Trade Comm'n, *Data Brokers* at 35. Even so, data brokers continue to publish them, presumably because they believe shifting responsibility to the users of the data insulates them from FCRA compliance. Indeed, an undercover operation by the Commission revealed ten data brokers that had disclaimed FCRA liability remained willing to sell consumer data for credit, insurance, housing, or employment screening purposes. Press Release, Fed. Trade Comm'n, FTC

§ 1681a(d) (2015). Thus, the FCRA covers a fairly limited range of entities—including Spokeo.

Warns Data Broker Operations of Possible Privacy Violations (May 7, 2013).¹⁰ In the absence of effective industry self-governance, the FCRA's private right of action is the key remedy for consumers to hold these companies accountable for their data practices.

Nor does administrative enforcement power make a private right of action unnecessary. *See* 18 U.S.C. § 1681s (providing for the FTC and other agencies to enforce compliance with the FCRA's requirements). In 2010, CDT filed a complaint with the FTC alleging that Spokeo's service violated the FCRA. CDT's investigation revealed that Spokeo actively promoted the use of its database to evaluate prospective business associates and employees on a subscription basis, touting the usefulness of its product to research potential employers and employees. CDT Compl. ¶¶ 13 & 15. At the same time, Spokeo attempted to sidestep legal responsibility under the FCRA by posting a disclaimer stating that Spokeo's service should not be used to determine "eligibility for credit, insurance, employment, or for any other purpose covered by the FCRA." CDT Compl. ¶ 34; *see also* Pet. Br. at 4, citing C.A. Supp. ER 22.

Following CDT's complaint, the Commission filed suit against Spokeo for alleged violations of the FCRA and Federal Trade Commission Act. Complaint for Civil Penalties, Injunction and Other Relief, *United States v. Spokeo, Inc.*, No. CV12-05001-MMM-SH (C.D. Cal. June 7, 2012) ("FTC Compl.").¹¹ The FTC determined that Spokeo had marketed its

¹⁰ <https://www.ftc.gov/news-events/press-releases/2013/05/ftc-warns-data-broker-operations-possible-privacy-violations>.

¹¹ <https://www.ftc.gov/sites/default/files/documents/cases/2012/06/120612spokeocmpt.pdf>.

services to companies in the human resources, background screening, and recruiting industries to help determine whether to interview and hire job candidates. FTC Compl. ¶ 10. Spokeo thus met the definition of a consumer reporting agency offering consumer reports to serve as a factor in establishing eligibility for employment under the FCRA. FTC Compl. ¶¶ 12-13. The FTC alleged Spokeo failed to comply with several of the FCRA's requirements, including steps to ensure the accuracy of consumer information. FTC Compl. ¶¶ 18-33.

Unfortunately, no judicial determination was ever made about the legality of Spokeo's practices under the FCRA, as Spokeo quickly settled the Commission's charges. Consent Decree and Order for Civil Penalties, Injunction and Other Relief, *United States v. Spokeo, Inc.*, No. CV12-05001-MMM-SH (C.D. Cal. June 19, 2012).¹² Today, Spokeo continues to publicly represent that it is not a credit-reporting agency and that it does not offer consumer reports, and thus that it is presumably beyond the reach of the FCRA. About, Spokeo, <http://www.spokeo.com/about>; Terms of Use, Spokeo, <http://www.spokeo.com/terms-of-use>.

This result demonstrates why administrative enforcement does not make a private right of action unnecessary in the FCRA or any other federal statute. Agencies do not pursue every possible case; they have discretion to exercise enforcement powers strategically in the public interest. Most of the time, these actions result in consent decrees. *See generally*

¹² <https://www.ftc.gov/sites/default/files/documents/cases/2012/06/120612spokeoorder.pdf>.

Fed. Trade Comm'n, *40 Years of Experience with the Fair Credit Reporting Act* (2011)¹³; Daniel J. Solove & Woodrow Hartzog, *The FTC and the New Common Law of Privacy*, 114 Colum. L. Rev. 583, 607-08 n.90 (2014).

A private right of action serves a different purpose: it ensures that an aggrieved individual can vindicate her own legal rights, regardless of whether an administrative agency chooses to exercise enforcement power. Congress may create a private right of action for many reasons—for example, to supplement administrative enforcement authority, or to deter future violations of the law—but the courts should presume that Congress has made that decision purposefully and defer to it. *See King v. Burwell*, 135 S. Ct. 2480, 2494 (2015); *Friends of the Earth, Inc. v. Laidlaw Envtl. Serv., Inc.*, 528 U.S. 167, 185 (2000) (stating that Congress's decision to include civil penalties in a statute “warrants judicial attention and respect”).

¹³ <https://www.ftc.gov/sites/default/files/documents/reports/40-years-experience-fair-credit-reporting-act-ftc-staff-report-summary-interpretations/110720fcrareport.pdf>.

II. IF THE COURT RULES IN SPOKEO'S FAVOR, IT SHOULD FOCUS NARROWLY ON THE QUESTION OF STANDING IN THIS PARTICULAR CASE.

Amici believe this Court should find that an alleged violation of the FCRA is sufficient injury in fact to establish Article III standing. If, however, the Court disagrees, it should rule narrowly that Mr. Robins lacks standing to sue under the FCRA. A broad ruling that an alleged statutory violation alone is insufficient injury in fact to establish Article III standing would impinge on congressional authority and invalidate private actions in a wide range of federal statutes.

The question before the Court asks whether Congress can confer Article III standing by authorizing a private right of action based on a “bare violation” of *any* federal statute. As framed, the question presented has implications far beyond Mr. Robins’ particular case and the FCRA itself. The Court’s ruling could affect the ability of individuals to file claims under private rights of action authorized by a vast number of other federal statutes, as well.

Because of the rapidly changing nature of technology and its effects upon privacy, legislative protection of privacy should and will be an important focus for Congress in the coming years. *See, e.g., Riley v. California*, 134 S. Ct. 2473, 2497 (2014) (Alito, J., concurring); *United States v. Jones*, 132 S. Ct. 945, 962 (2012) (Alito, J., concurring). A ruling in favor of Spokeo would effectively preclude any private right of action in privacy legislation that does not require “real world” harm, which would severely restrict the remedies Congress can provide for privacy violations.

Many federal laws other than the FCRA create private rights of action to remedy privacy violations, which are critical to protect civil liberties in the digital age. These laws include the Electronic Communications Privacy Act, 18 U.S.C. §§ 2510-2522 (2015), the Stored Communications Act, 18 U.S.C. §§ 2701-2709 (2015), the Driver's Privacy Protection Act, 18 U.S.C. §§ 2721-2725 (2015), the Video Privacy Protection Act, 18 U.S.C. §§ 2710-2712 (2015), and the Cable Communications Policy Act, 47 U.S.C. §§ 521-573 (2015). These laws have underpinned the federal privacy framework for decades, and permit individuals to seek civil damages in a range of contexts.

As in the case of the FCRA, each of these laws extends vital protections to individuals in the digital age. These statutes govern electronic communications (including email), cable television services, and video services, among other areas. Each of these technologies produces more data about individuals than when the legal protections were enacted, implicating privacy rights more than ever before. The need to protect individuals in these statutes has only *increased*. Eliminating private rights of action will only undercut the privacy protections Congress enshrined in law.

Privacy violations do not always lead to an economic, physical, or "real world" injury. "Bare violations," when an important enough interest for Congress to protect against, may be the only way that plaintiffs can establish sufficient standing to pursue their rights granted by statute. But an expansive ruling in Spokeo's favor would make it difficult, if not impossible, for plaintiffs to obtain relief for violations of privacy statutes under which injuries are not easi-

ly quantifiable, leaving individual privacy rights unenforceable.

More broadly, a far-reaching decision could destabilize an array of rights that Congress has granted in other realms, including federal statutes dealing with civil rights and consumer protection. *See, e.g.*, Fair Housing Act, 42 U.S.C. §§ 3601-3619 (2015); Truth in Lending Act, 15 U.S.C. §§ 1601-1651 (2015); Americans with Disabilities Act, 42 U.S.C. §§ 12101-12213 (2015). There is no need for the Court to open a Pandora's box that could extinguish individuals' ability to pursue claims under all these statutes, which are not before the Court.

An expansive ruling would also make it challenging for courts to know which injuries are concrete enough for judicial redress. Refusing to enforce statutes that do not provide a sufficiently "concrete" injury is a difficult task for trial judges, especially given the wide range of statutes that provide private rights for violations for non-economic harms. The resulting rulings could create uncertainty for judges and litigants throughout the country.

A narrow ruling will avoid these problems and give the Court flexibility to address standing issues created by other laws if they arise in the future. By confining the ruling to Mr. Robins' standing to bring his FCRA claims, the Court will minimize the likelihood of creating instability in the current statutory regime and the courts.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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