

No. 13-1339

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IN THE  
**Supreme Court of the United States**

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SPOKEO, INC.,  
*Petitioner,*  
*v.*

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

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

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**BRIEF OF AMICI CURIAE  
NEW ENGLAND LEGAL FOUNDATION AND  
ASSOCIATED INDUSTRIES OF  
MASSACHUSETTS IN SUPPORT OF  
PETITIONER**

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## INTEREST OF AMICI CURIAE

Amici curiae New England Legal Foundation (“NELF”) and Associated Industries of Massachusetts (“AIM”) seek to present their views, and the views of their supporters, on whether Article III of the United States Constitution permits a federal court to exercise jurisdiction over a claim for relief from the bare violation of statutory duties.<sup>1</sup>

NELF is a nonprofit, nonpartisan, public interest law firm, incorporated in Massachusetts in 1977, and headquartered in Boston. Its membership consists of corporations, law firms, individuals, and others who believe in NELF’s mission of promoting balanced economic growth in New England, protecting the free enterprise system, and defending economic rights. NELF’s members and supporters include both large and small businesses located primarily in the New England region.

AIM is a 100-year-old nonprofit, nonpartisan association, with over 4,500 employer members doing business in the Commonwealth. AIM’s mission is to promote the well-being of its members and their employees, and the prosperity of the Commonwealth of Massachusetts, by improving the economic climate of Massachusetts, advocating fair

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<sup>1</sup> Pursuant to Supreme Court Rule 37.6, amici state that no counsel for a party authored this brief in whole or in part, and no person or entity, other than amici, made a monetary contribution to the preparation or submission of the brief.

Pursuant to Supreme Court Rule 37.3(a), amici also state that counsel of record for the petitioner and for the respondent have filed with the Court their respective blanket consent letters, consenting to the filing of amicus curiae briefs in support of either or neither party.

and equitable public policy proactively, and by providing relevant and reliable information and excellent services.

Amici are committed to upholding Article III's limits on the Federal Judiciary's subject matter jurisdiction, and to preserving the separation of powers among the three branches of government. Enforcement of those principles is especially important to amici when, as here, an uninjured plaintiff (and putative representative of a class of similarly uninjured individuals) seeks to impose liability on a business for a potentially large, aggregated award of statutory damages, and reasonable attorney's fees, based on allegations of a bare violation of a statute. In this connection, amici filed a brief on the same issue in *Edwards v. First American Corp.*, 610 F.3d 514 (9th Cir. 2010), *cert. granted*, 131 S. Ct. 3022 (2011), *cert. dismissed as improvidently granted*, 132 S. Ct. 2536 (2012).

For these and other reasons discussed below, NELF and AIM believe that their brief will assist the Court in deciding whether Article III allows a federal court to exercise jurisdiction over a claim for the bare violation of a statutory duty.

### **SUMMARY OF ARGUMENT**

Article III of the Constitution restricts a federal court's jurisdiction to "cases" and "controversies," thereby requiring the plaintiff to plead and prove a concrete, particularized injury in fact. However, the Ninth Circuit has interpreted the federal statute at issue, the Fair Credit Reporting Act ("FCRA"), as allowing the recovery of statutory damages for the mere breach of statutory duties.



According to the Ninth Circuit, Congress has not required the plaintiff to show any resulting concrete harm. Nor has the respondent in this case alleged any such cognizable injury in his complaint.

The complaint should be dismissed for lack of subject matter jurisdiction. Under Article III, the breach of a statutory duty (“injury in law”) is not an injury in fact. To be sure, the breach of a statutory duty may *cause* an injury in fact, thereby giving rise to a potentially justiciable claim in federal court. However, Article III prevents Congress from manufacturing an injury in fact, contrary to the Ninth Circuit’s interpretation of the FCRA in this case. Accordingly, the FCRA should be interpreted as requiring an injury in fact. Therefore, statutory damages should be available only to the injured plaintiff who cannot quantify his harm or who has suffered a minimal quantifiable harm.

The Ninth Circuit, by contrast, held that the respondent has Article III standing to sue for the bare violation of his statutory rights. The lower court erred, primarily by conflating an injury in law with an injury in fact. This confusion rests on a misinterpretation of this Court’s key precedent discussing Article III standing. For one, the Ninth Circuit misconstrued language from *Warth v. Seldin*, 422 U.S. 490, 500 (1975) (“The . . . injury required by Art[icle] III may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing.”) (citations and internal quotation marks omitted). The Ninth Circuit misinterpreted this language to mean that a mere breach of statutory duties establishes an injury in fact under

Article III and, therefore, that Congress is free to create a private damages remedy for such breach.

*Warth* says no such thing. As the Court subsequently explained in *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 578 (1992), this quoted language from *Warth* means that the violation of a statutory right *may* satisfy Article III standing, but only when the statutory violation has caused a concrete, *de facto* harm.

But the Ninth Circuit also misinterpreted this very explanation of *Warth* in *Lujan*. The court misread *Lujan*'s "concrete, *de facto* harm" as merely requiring the plaintiff to establish a violation of a personal statutory right, as opposed to a statutory right belonging to the general public. While Article III does indeed require the violation of a personal right, it also requires the plaintiff to show that such violation caused him actual harm.

By conflating injury in law with injury in fact, the Ninth Circuit effectively abdicated the Federal Judiciary's duty to determine whether a federal statutory claim comports with the requirements of Article III, as established in *Marbury v. Madison*, 1 Cranch 137, 2 L. Ed. 60 (1803). According to the Ninth Circuit, Congress may create Article III standing whenever it exercises its broad plenary powers under Article I, § 8 of the Constitution. Under this erroneous view, a case or controversy is whatever Congress, and not the Judiciary, says it should be.

In so deciding, the Ninth Circuit also violated the separation of powers, which is a cornerstone of the Court’s Article III jurisprudence. The lower court, purportedly acting at the behest of Congress, allowed an uninjured plaintiff (who is also a putative class representative) to proceed as if he were an agent of the Executive Branch seeking to enforce the defendant’s statutory duties owed to consumers. In exceeding its Article III powers, then, the Ninth Circuit intruded upon the exclusive and discretionary role of the Executive Branch to “take Care that the Laws be faithfully executed . . . .” U.S. Const. art. II, § 3.

## ARGUMENT

### I. FEDERAL COURTS HAVE NO ARTICLE III JURISDICTION OVER A CLAIM FOR THE BARE VIOLATION OF STATUTORY DUTIES.

At issue is whether Article III of the United States Constitution permits a federal court to exercise jurisdiction over a claim for relief from the bare violation of statutory duties. Article III limits the Federal Judiciary’s subject matter jurisdiction to “cases” and “controversies.”<sup>2</sup> To satisfy this

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<sup>2</sup> Article III provides, in relevant part:

The judicial Power shall extend to all *Cases*, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all *Cases* affecting Ambassadors, other public Ministers and Consuls;—to all *Cases* of admiralty and maritime Jurisdiction;—to *Controversies* to which the United States shall be a Party;—to

jurisdictional requirement, the plaintiff must allege and prove that he has suffered “a concrete and particularized ‘injury in fact’ . . . .” *Lexmark Int’l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1386 (2014).

Notwithstanding this threshold jurisdictional requirement of injury in fact, the Ninth Circuit has interpreted the statute at issue, the Fair Credit Reporting Act, 15 U.S.C. §§ 1681-1681x (“FCRA”), as allowing an uninjured consumer to recover statutory damages from any consumer reporting agency that has “willfully fail[ed] to comply” with its FCRA reporting duties. 15 U.S.C. § 1681n(a)(1)(A).<sup>3</sup> In

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*Controversies* between two or more States;—  
between a State and Citizens of another  
State;—between Citizens of different States;—  
between Citizens of the same State claiming  
Lands under Grants of different States, and  
between a State, or the Citizens thereof, and  
foreign States, Citizens or Subjects.

U.S. Const. art. III, § 2 (emphasis added).

<sup>3</sup> Section 1681n(a)(1)(A) of the FCRA provides, in relevant part:

Any person who willfully fails to comply with  
any requirement imposed under this subchapter  
with respect to any consumer is liable to that  
consumer in an amount equal to . . . any actual  
damages . . . or damages of not less than \$100  
and not more than \$1,000. . . .

15 U.S.C. § 1681n(a)(1)(A). Section 1681n(a)(2), in turn, allows the prevailing plaintiff to seek punitive damages, and § 1681n(a)(3) awards the prevailing plaintiff costs and reasonable attorney’s fees.

particular, the lower court held that the respondent, Thomas Robins, alleged an injury in fact because the FCRA “does not require a showing of actual harm when a plaintiff sues for willful violations.” *Robins*, 742 F. 3d at 412. Nor has Robins alleged any such cognizable injury in his putative class complaint.<sup>4</sup>

In so interpreting the FCRA, the Ninth Circuit conflated a statutory violation, or “injury in law,” with injury in fact. The lower court erred, and the case should be dismissed for lack of subject matter jurisdiction.

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<sup>4</sup> Robins alleges that the petitioner, Spokeo, Inc., a website operator, has transmitted false (yet favorable) personal information about him on its website, primarily by overstating his educational level and his financial status. *See Robins v. Spokeo, Inc.*, 742 F. 3d 409, 411 (9th Cir. 2014). Robins also alleges that Spokeo’s transmittal of this information has harmed his employment prospects and has caused him anxiety. *See id.* The Ninth Circuit did not to reach these allegations of purported harm because it concluded that Robins had established an injury in fact merely by alleging a violation of his rights under the FCRA. *See Robins*, 742 F. 3d at 414 n.3.

Nevertheless, it should be noted that these allegations cannot establish an injury in fact because they are impermissibly speculative and subjective. In particular, they “rel[y] on a highly attenuated chain of possibilities” that is based on “speculation about the decisions of independent actors[,]” such as prospective employers. *Clapper v. Amnesty Int’l USA*, 133 S. Ct. 1138, 1148, 1150 (2013). As such, these allegations “do[] not satisfy the [Article III] requirement that threatened injury must be *certainly impending* to constitute injury in fact.” *Id.*, 133 S. Ct. at 1147 (citation and internal quotation marks omitted) (emphasis in original).

**A. A Breach Of Statutory Duties Is Not An Injury In Fact Under Article III Unless The Breach Has Caused The Plaintiff To Suffer A Concrete, *De Facto* Harm.**

The violation of a statutory right, willful or otherwise, is not itself an injury in fact under Article III. Instead, Article III requires the plaintiff to plead and prove an “*injury-in-fact caused by the violation of [a] legal right.*” *Lewis v. Casey*, 518 U.S. 343, 353, n.4 (1996) (emphasis in original). The plaintiff must show that the defendant’s breach of its statutory duties has made the plaintiff worse off in some concrete, identifiable way. See Michael E. Rosman, *Standing Alone under the Fair Housing Act*, 60 Mo. L. Rev. 547, 566 (1995) (discussing same).

Nor can Congress *manufacture* an injury in fact, as the Ninth Circuit apparently concluded, by providing a private damages remedy for the mere breach of statutory duties. “It is settled that Congress cannot erase Article III’s standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing . . . .” *Raines v. Byrd*, 521 U.S. 811, 820 (1997). See also *Summers v. Earth Island Inst.*, 555 U.S. 488, 497 (2009) (“[T]he requirement of injury in fact is a hard floor of Article III jurisdiction that *cannot be removed by statute.*”) (emphasis added).

Accordingly, Article III limits Congress to providing a private damages remedy that gives legal recognition to an actual harm. “Congress[] [may]

elevat[e] to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law . . . .” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 578 (1992). Such actual harm must exist in the real world and, therefore, “has nothing to do with the text of the statute relied upon.” *Steel Co. v. Citizens for a Better Env’t*, 523 U.S. 83, 97 (1998).

To satisfy Article III, then, “Congress must at the very least *identify the injury* it seeks to vindicate . . . [and] the party bringing suit must show that the [challenged conduct] *injures him in a concrete and personal way.*” *Lujan*, 504 U.S. at 580-81 (Kennedy, J., concurring) (emphasis added). Consistent with this test for Article III standing, the FCRA should be interpreted as requiring an injury in fact. After all, “[i]t is our settled policy to avoid an interpretation of a federal statute that engenders constitutional issues if a reasonable alternative interpretation poses no constitutional question.” *Gomez v. United States*, 490 U.S. 858, 864 (1989).

Accordingly, the availability of statutory damages in lieu of actual damages under the FCRA should be interpreted as simply aiding the injured plaintiff who cannot quantify his actual harm or who has suffered a minimal quantifiable harm--i.e., a harm of less than \$100.<sup>5</sup> See, e.g., *F.W. Woolworth Co. v. Contemporary Arts, Inc.*, 344 U.S. 228, 231 (1952) (“[Statutory damages under the Copyright Act] give the owner of a copyright some *recompense for injury done him*, in a case where the rules of law

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<sup>5</sup> See n.3, above, for the relevant language of the FCRA.

render difficult or impossible proof of damages or discovery of profits.”) (citation and internal quotation marks omitted) (emphasis added).

Under this interpretation, then, the Ninth Circuit has erroneously eliminated the injury-in-fact requirement from the FCRA. And Robins, in turn, has alleged neither statutory nor constitutional standing to proceed with his FCRA claim.<sup>6</sup> Therefore, his complaint should be dismissed for lack of subject matter jurisdiction.

**B. The Ninth Circuit Conflated “Injury In Law” With Injury In Fact When It Misinterpreted This Court’s Key Precedent On The Issue.**

In reaching its decision, the Ninth Circuit erroneously conflated an “injury in law,” or statutory standing, with an injury in fact, the “irreducible constitutional minimum of standing” under Article III. *Lexmark*, 134 S. Ct. at 1386 (citation and internal quotation marks omitted). According to the Ninth Circuit, “the violation of a statutory right is usually a sufficient injury in fact to confer standing.” *Robins*, 742 F. 3d at 412. In the Ninth Circuit’s view, then, a breach of statutory duties is itself an injury in fact. That is, an uninjured plaintiff would generally have Article III standing to enforce a statutory right whenever Congress says he does, and a court should defer to Congress’s policy choice. *See id.*, 742 F. 3d at 413.

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<sup>6</sup> *See* n.4, above.



In so deciding, the Ninth Circuit all but eliminated the injury-in-fact requirement under Article III. If the Ninth Circuit were correct, there would be no limits to Congress’s expansion of the Federal Judiciary’s jurisdiction, other than Congress’s broad plenary powers to legislate under Article I, § 8. Such a result would contravene this Court’s oft-repeated statement that injury in fact is a “hard floor” jurisdictional requirement of Article III that Congress can neither eliminate nor manufacture. *See Summers*, 555 U.S. at 497; *Citizens for a Better Env’t*, 523 U.S. at 97; *Raines*, 521 U.S. at 820; *Lewis*, 518 U.S. at 353 n.4.

In particular, the Ninth Circuit’s decision rests on a misinterpretation of two key precedents of this Court discussing Article III standing. First, the lower court misconstrued language from *Warth v. Seldin*, 422 U.S. 490 (1975), in which the Court stated that “[t]he actual or threatened injury required by Art[icle] III may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing.” *Robins*, 742 F. 3d at 412 (quoting *Warth*, 422 U.S. at 500) (citations and internal quotation marks omitted). *See also Robins*, 742 F. 3d at 412 (citing *Edwards v. First Am. Corp.*, 610 F. 3d 514, 517 (9th Cir. 2010), *cert. granted*, 131 S. Ct. 3022 (2011), *cert. dismissed as improvidently granted*, 132 S. Ct. 2536 (2012) (discussing *Warth*)).

The Ninth Circuit misinterpreted this language from *Warth* to mean that a mere breach of statutory duties establishes an injury in fact under Article III. Therefore, the lower court concluded, Congress is free to create a private damages remedy

for such breach. *See Robins*, 742 F. 3d at 412 (citing *Edwards*, 610 F. 3d at 517).

*Warth* says no such thing. As this Court subsequently explained in *Lujan*, the “invasion of rights” language from *Warth* means that a claim for breach of statutory duties *may* satisfy Article III standing, but only when the breach has caused the plaintiff to suffer a concrete, *de facto* harm. *See Lujan*, 504 U.S. at 578 (Article III permits “Congress [to] elevat[e] to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law . . .”). *See also id.* (discussing Court precedent illustrating Article III requirement that statutory violation must cause plaintiff actual harm).

But the Ninth Circuit compounded its error by misinterpreting this very explanation of *Warth* that the Court provided in *Lujan*. The lower court misread the “concrete, *de facto* harm” discussed in *Lujan* as merely requiring the plaintiff to establish the violation of a personal statutory right, as opposed to a statutory right belonging to the general public. *See Robins*, 742 F. 3d at 413. According to the Ninth Circuit, then, Article III is satisfied once the plaintiff has established the violation of such a personal statutory right.

This is an incomplete statement of the law of standing. While Article III does indeed require the violation of a personal right, it also requires the plaintiff to show that such violation caused him actual harm. *See Lewis*, 518 U.S. at 353 n.4; *Lujan*, 504 U.S. at 578. Therefore, the mere violation of a personal statutory right, without any ensuing harm

to the plaintiff, is not a case or controversy under Article III.

In sum, the Ninth Circuit virtually abrogated the injury-in-fact requirement under Article III when it misinterpreted both *Warth* and *Lujan*. The lower court's decision should therefore be reversed.

**C. By Conflating Injury In Law With Injury In Fact, The Ninth Circuit Abdicated The Judiciary's Duty, Under *Marbury v. Madison*, To Decide Whether A Federal Statutory Claim Comports With Article III.**

By conflating injury in law with injury in fact, the Ninth Circuit abdicated the Federal Judiciary's duty to determine whether a federal statutory claim comports with Article III. *See Marbury v. Madison*, 1 Cranch 137, 177, 2 L. Ed. 60 (1803) (invalidating federal statute conferring original jurisdiction on the Court over subject matter not authorized by Article III--i.e., issuance of writ of mandamus to compel public officer to deliver Presidential commission). "The federal courts are under an independent obligation to examine their own jurisdiction, and standing is perhaps the most important of the jurisdictional doctrines." *Alabama Legislative Black Caucus v. Alabama*, 135 S. Ct. 1257, 1276 (2015) (Scalia, J., dissenting) (quoting *FW/PBS, Inc. v. Dallas*, 493 U.S. 215, 230–31 (1990)) (internal punctuation marks omitted).

As amici have argued above, the Ninth Circuit's decision would, in effect, allow *Congress*, in

the exercise of its plenary Article I powers, to decide what is a case or controversy under Article III. Simply put, if the lower court's decision were allowed to stand, Article III's jurisdictional limits would be no more. "[I]f Congress . . . creates a legal right the violation of which will meet the injury 'in fact' requirement, it can indeed abrogate the Article III minima because the Court will not examine the factual existence of an 'injury' beyond the violation of a legal right." Rosman, *Standing Alone*, 60 Mo. L. Rev. at 578 (internal quotation marks omitted).

In its decision, then, the Ninth Circuit abandoned the Federal Judiciary's unique responsibility to preserve its own jurisdictional limits under Article III and to hold Congress accountable to those limits:

The powers of the legislature are defined, and limited; and that those limits may not be mistaken, or forgotten, the constitution is written . . . [as] the fundamental and paramount law of the nation. . . . It is emphatically the *province and duty of the judicial department to say what the law is*. . . . This is of the very essence of judicial duty. . . . [I]f the legislature shall do what is expressly forbidden [by the Constitution], . . . [i]t would be giving to the legislature a practical and real omnipotence . . . .

*Marbury*, 1 Cranch at 176-78 (emphasis added).

In short, the lower court's decision should be reversed to uphold the Federal Judiciary's exclusive power and duty to decide whether a federal statutory claim is indeed a case or controversy under Article III. "[T]here is an outer limit to the power of Congress to confer rights of action[, which] is a direct and necessary consequence of the case and controversy limitations found in Article III." *Lujan*, 504 U.S. at 580 (Kennedy, J., concurring).

**II. BY ALLOWING AN UNINJURED PLAINTIFF TO PROCEED WITH HIS CLAIM FOR THE BARE VIOLATION OF STATUTORY DUTIES, THE NINTH CIRCUIT INTRUDED UPON THE EXCLUSIVE POWER OF THE EXECUTIVE BRANCH TO ENFORCE THE LAW, IN VIOLATION OF THE SEPARATION OF POWERS.**

It is clear, then, that the Ninth Circuit has interpreted the FCRA to allow an uninjured plaintiff such as Robins to recover damages in federal court. In so deciding, the lower court certainly exceeded its subject matter jurisdiction under Article III. But the Ninth Circuit also intruded upon the exclusive and discretionary role of the Executive Branch to "take Care that the Laws be faithfully executed . . . ." U.S. Const. art. II, § 3.

In particular, the lower court, acting with purported congressional approval, allowed Robins, an uninjured plaintiff (and putative representative of a class of similarly uninjured individuals), to proceed in federal court as if he were an agent of the Executive Branch, seeking to enforce Spokeo's

general FCRA duties owed to consumers. Stated otherwise, the Ninth Circuit offended the separation of powers--the system of checks and balances among the three branches of federal government that is a cornerstone of the Court's Article III jurisprudence. "The law of Article III standing . . . is built on separation-of-powers principles [and] serves to prevent the judicial process from being used to usurp the powers of the political branches." *Clapper v. Amnesty Int'l USA*, 133 S. Ct. 1138, 1146 (2013). See also *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 341 (2006) ("This Court has recognized that the case-or-controversy limitation is crucial in maintaining the tripartite allocation of power set forth in the Constitution.") (citation and internal quotation marks omitted); *Raines*, 521 U.S. at 820 ("[T]he law of Article III standing is built on a single basic idea--the idea of separation of powers[-] . . . th[e] overriding and time-honored concern about keeping the Judiciary's power within its proper constitutional sphere . . .") (citation and internal quotation marks omitted); Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 897-98 (1983) ("[S]tanding and separation of powers are intimately related. And the essential element that links the two [is] the requirement of *distinctive* injury not shared by the entire body politic . . .") (emphasis in original).

And so, the separation of powers is offended in two ways here. First, the Ninth Circuit exceeded its proper role under Article III to decide a live dispute involving a party who has suffered, or is likely to suffer, a concrete harm. See *Steel Co.*, 523 U.S. 83,

102 n.4 (1998) (“The courts must stay within their constitutionally prescribed sphere of action, whether or not exceeding that sphere will harm one of the other two branches.”). And second, the lower court encroached upon the exclusive and discretionary law-enforcement powers of the Executive Branch under Article II. *See id.*, 523 U.S. at 102 n.4 (discussing “the more specific separation-of-powers concern” that a statutory claim may “interfere[] with the Executive’s power to ‘take Care that the Laws be faithfully executed,’ Art. II, § 3 . . . .”) (citation and internal quotation marks omitted).

In short, the lower court allowed an uninjured plaintiff to vindicate the public’s interest in ensuring compliance with the FCRA. However, “[v]indicating the *public* interest . . . is the function of Congress and the Chief Executive[,]” and *not* the Judiciary. *Lujan*, 504 U.S. at 576 (emphasis in original). *See also* Craig A. Stern, *Another Sign from Hein: Does the Generalized Grievance Fail a Constitutional or a Prudential Test of Federal Standing to Sue?*, 12 Lewis & Clark L. Rev. 1169, 1193 (2008) (“Article II forbids private exercise of federal executive power as much as judicial exercise of federal executive power. If an *uninjured plaintiff* were to bring an action that rightfully must be brought only by the executive power, the court would be countenancing a violation of Article II.”) (emphasis added).

To be sure, the Judiciary’s proper exercise of its powers under Article III does entail the enforcement of statutory duties. But such enforcement is only incidental and necessary to providing the injured party with a remedy for a

concrete harm. “[C]ourts are permitted to interfere in executive processes only to the extent necessary to vindicate individual rights but no more.” James Leonard & Joanne C. Brant, *The Half-Open Door: Article III, the Injury-in-Fact Rule, and the Framers’ Plan for Federal Courts of Limited Jurisdiction*, 54 Rutgers L. Rev. 1, 85 (2001) (discussing *Marbury*). In this case, however, the Ninth Circuit enforced an *uninjured* party’s statutory rights. In so doing, the lower court assumed the exclusive role of the Executive Branch to enforce the law. See *Lujan*, 504 U.S. at 576.<sup>7</sup>

In sum, injury in fact is the irreducible constitutional minimum for the exercise of federal jurisdiction over a statutory claim. A plaintiff simply has no Article III standing to sue in federal court unless he alleges and proves that the defendant’s violation of his statutory rights has caused him actual harm. Notwithstanding this bedrock constitutional requirement, the Ninth

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<sup>7</sup> In this connection, it should be noted that the FCRA provides for broad administrative enforcement of the statute, at both the federal and state levels. For example, the Federal Trade Commission (“FTC”) is empowered to investigate and enforce the FCRA, and to seek civil penalties against the infringing business. 15 U.S.C. § 1681s(a)(1), (a)(2)(A)-(B). Moreover, other federal agencies are authorized to enforce the FCRA. 15 U.S.C. § 1681s(b)(1). The FCRA also provides that any violation of a consumer’s rights thereunder shall constitute an unfair or deceptive act or practice in commerce, in violation of the Federal Trade Commission Act, 15 U.S.C. § 45(a), and is enforceable by the FTC under that statute. 15 U.S.C. § 1681s(a)(1). Finally, the FCRA authorizes a state’s law enforcement agencies to investigate and enforce consumers’ FCRA rights, and to obtain injunctive and monetary relief in state or federal court. 15 U.S.C. § 1681s(c)(1)(A), (c)(1)(B)(i).



Circuit has interpreted the FCRA as allowing an uninjured plaintiff such as Robins to sue in federal court. Therefore, his complaint should be dismissed for lack of subject matter jurisdiction.

### CONCLUSION

For the reasons stated above, amici respectfully request that the judgment of the Ninth Circuit be reversed.

Respectfully submitted,

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