National Consumer Reporting ASSOCIATION

NCRA, NAPBS and PreCheck join forces to file SCOTUS

Amicus Brief on Spokeo v. Robins

June 9, 2014

For the fourth time in two years NCRA has co-sponsored a Supreme Court Amicus brief on an issue important to our member's interests. The case, Spokeo, Inc. vs. Thomas Robbins is a direct FCRA case with huge implications outside FCRA with regard to whether a consumer who was not harmed has the ability to bring litigation on a minor technicality.

Since the FCRA specifically is the law cited in the Spokeo case, the potential for fines on a per report basis in addition to civil damages makes this case very dangerous for our industry. If this case is left unchallenged, the potential legal risk members face is mindboggling due to the volume of reports subject to penalties.

Below is an article by Chris Mohr, the co-author of the Spokeo Amicus filed by NCRA/NAPBS/PreCheck (as well as the NCRA co-sponsored Amicus's on the McBurney and Mt. Holly SCOTUS cases) with a copy of the brief as filed last week.

Spokeo v. Robins: No Harm, No Foul?
By Chris Mohr

Suppose a statute requires someone to make a disclosure following a certain precise form, and the person required to make that disclosure omits a sentence. Suppose further that the person supposed to receive the disclosure never relied on it or was hurt in any way. Should the recipient be able to make a federal case out of it? Common sense says "no," but that question is enormously important, has split the federal courts of appeal, and currently pends before the United States Supreme Court.

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In order for a federal court to be able to hear a case, Article III of the U.S. Constitution requires a plaintiff to have standing, namely, to have suffered a concrete, particularized harm. In Spokeo v. Robins, the plaintiff filed a class action based on a "bare allegation" that the defendant had violated the Fair Credit Reporting Act (FCRA) by issuing consumer reports in willful violation of that statute. Spokeo is a web site that offers information on consumers, claiming to have searched social media, criminal records, and public filings to put together estimates of their wealth and character. The named plaintiff found his profile on Spokeo, but never lost a job or was denied credit; in fact, Spokeo's website listed him as having more wealth than he actually did. The issue in Spokeo is whether an allegation of a willful violation, standing alone, is enough of a "harm" to justify the exercise of federal jurisdiction.

This issue is particularly important under the FCRA, which creates statutory damage liability for willful violations ranging from $100 to $1000 per consumer. Even a small consumer reporting agency issues reports on thousands of individuals, and a small mistake can result in liability that outstrips any actual harm caused by the award. This is not news to the class action bar, which is showing an increased interest in filing these kinds of suits and is filing growing numbers of them.

This Supreme Court has attempted to rein in the excesses of class-action litigation through, for example, enforcing arbitration clauses that prohibit class-action lawsuits and tightening pleading standards so that defendants cannot be forced to endure discovery or to enter in terrorem settlements based on a naked claim that a violated a statute that affected the plaintiff and a few thousand of his closest friends. In fact, last year, in First American Financial v. Edwards, they took a case presenting a very similar issue involving the presence of conflicts of interest in real estate transactions. The Court dismissed that appeal as improvidently granted, meaning that a majority of them thought that the facts of First American presented a bad vehicle to decide the question presented.

Spokeo, however, represents a better vehicle due to the fact that there is no question of whether or not this plaintiff was harmed (he wasn't), and if the Supreme Court were to review this decision there is a good chance that they would reverse it. As the Supreme Court, however, hears very few cases, amicus participation at the petition stage is critical. NCRA joined with the National Association of Professional Background Screeners (NAPBS) and PreCheck, a

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background screening company, to file a friend-of-the-court brief explaining the harm that these suits are doing to this industry, and urging them to take the case.

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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 Petition for a Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE NATIONAL ASSOCIATION OF PROFESSIONAL BACKGROUND SCREENERS; THE NATIONAL CONSUMER REPORTING ASSOCIATION; AND PRECHECK AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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IDENTITY OF THE *AMICI*[1]

Amici are associations of companies that constitute "consumer reporting agencies" under the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.* They provide pre-employment, tenant, and mortgage credit reports to employers, lenders, and landlords of all shapes and sizes.

The **National Consumer Reporting Association** (NCRA), is a national trade organization of consumer reporting agencies and associated professionals that provide products and services to credit grantors, employers, landlords and all types of general businesses. NCRA's membership includes 70 percent of the mortgage credit reporting agencies in the United States that can produce a credit report meeting Fannie Mae, Freddie Mac and HUD requirements for mortgage lending.

The **National Association of Professional Background Screeners** (NAPBS), an association of nearly 700 employment and tenant background

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[1] Counsel of record for all parties received 10 days' written notice of *amici* intent to file this brief, and they have consented thereto. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. In addition, no person or entity other than *amici* made a monetary contribution intended to fund the preparation or submission of this brief.

screening firms. Its members verify educational and employment history, and search publicly available criminal background information from state, federal and international sources in order to enable employers and landlords to provide their customers with safe places to live and work. NAPBS's members are both large and small businesses.

PreCheck is an industry accredited, national background screening company that focuses on the needs of healthcare employers. In accordance with the Fair Credit Reporting Act, PreCheck performs pre-employment screening of doctors, nurses, hospital staff, and healthcare workers involved in providing patient care at all levels. Through its compliance education programs of staff and clients and solutions for license monitoring and drug testing, PreCheck is committed to patient safety.

SUMMARY OF ARGUMENT

Amici and, as applicable, their members are all entities regulated by the Fair Credit Reporting Act, and are primarily involved in three general regulated activities: (1) pre-employment screening; (2) mortgage credit; and (3) tenant screening. In this case, the Ninth Circuit decided that a class plaintiff who files a lawsuit under the Fair Credit Reporting Act alleging nothing more than a statutory violation has satisfied the case or controversy requirement of Article III, even in the absence of allegations of particularized harm to a consumer. In addition to splitting the Circuits, that rule has caused and will continue to cause harm to *amici's* nationwide activities.

When this Court recently clarified pleading standards under the Rules of Civil Procedure, it remarked on the prospect of unfair *in terrorem* settlements and an unwieldy discovery process as reasons for trial courts to ensure that the specific facts pled in a complaint support the claimed wrong. *Amici* submit that the same harm occurs through class-action suits that lack allegations of particularized harm. *Amici* face a practical reality in which ruinous potential liability and litigation expense grossly outweighs any harm actually caused to consumers, and are seeing an increasing number of class action in which the plaintiffs have suffered no injury whatsoever. That exposure and expense is not limited to the largest entities: it has spread to small and mid-size businesses.

Amici do not gainsay the general societal interest in law enforcement, or the need to ensure that consumers harmed by illegal action are fairly compensated. Where that harm exists, Article III standing is of course entirely appropriate, and the courts should remedy those wrongs. In the absence of a case or controversy, the government, through agency and Executive Branch enforcement, can, should and do vindicate the broader societal interest in legal compliance. By permitting consumers to vindicate that generalized interest in the absence of injury-in-fact, the Ninth Circuit rule violates the constitution and should be reversed.

ARGUMENT

I. PERMITTING SUITS TO GO FORWARD IN THE ABSENCE OF INJURY-IN-FACT CREATES AN INHERENT PROCEDURAL UNFAIRNESS AGAINST CLASS-ACTION DEFENDANTS

The Ninth Circuit found that merely alleging a "willful" violation of the Fair Credit Reporting Act (FCRA), 15 U.S.C. § 1681 *et seq.*, creates injury-in-fact to a consumer, and grants that consumer Article III standing under the FCRA. Pet. App. at 8a. As the petition spells out in some detail, the Courts of Appeal have irreconcilably split on whether a technical statutory violation can confer Article III standing in the absence of particularized harm. Pet. 9-11. *Compare, e.g.,* Pet App. at 8a with *David v. Alphin,* 704 F.3d 327, 337-38 (4th Cir. 2013) (rejecting the standing argument based on breach of statutory duty without concomitant showing of harm).

Article III standing requires the plaintiff to have suffered "an injury in fact—an invasion of a legally protected interest which is (a) concrete or particularized, and (b) actual or imminent, not conjectural or hypothetical." *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560 (1992) (internal quotation and citations omitted). In addition, the plaintiff must show a "causal connection between the injury and the conduct complained of" that is "fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Id.* (internal citation and

editing omitted). As standing allegations are "not mere pleading requirements, but rather an indispensible part of the plaintiff's case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof." *Id.* at 561.

Amici are writing to emphasize the negative nationwide effects of the Ninth Circuit rule on their industry, all of which is regulated by the FCRA. The prevalence of FCRA class actions in the absence of sufficiently pled harm creates the same undesirable results that this Court recognized and sought to prevent in *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 559 (2007) ("the threat of discovery expense will push cost-conscious defendants to settle even anemic cases before reaching those proceedings"); *see also Ashcroft v. Iqbal,* 556 U.S. 662, 684 (2009) (clarifying that *Twombly*'s concerns over unruly discovery and *in terrorem* settlements are not limited to antitrust suits). By permitting FCRA cases to go forward based only on an unadorned statement of a statutory violation, the Ninth Circuit rule opens *amici's* members to *in terrorem* settlement of these claims as a "partial downside insurance policy." *Dura Pharm., Inc. v. Broudo*, 544 U.S. 336, 347-48 (2006); *see also Twombly,* 550 U.S. at 557-58.

In the absence of this Court's grant of the petition and reversal of the Ninth Circuit decision, *amici* fully expect continued growth in the number of "bare allegation" suits. FCRA litigation of this kind has become an industry unto itself, leaving *amici's* members with two unappetizing choices. They may

either settle the case based on creation of a class that has never been directly harmed by their activity, and be done with the liability, or they can litigate these marginal claims, endure a discovery process involving potentially millions of consumers--a process that the courts have acknowledged can barely be controlled, *see Iqbal,* 556 U.S. at 684-85, and risk liability that bankrupts the company. The choice to settle is not a hard one. *Amici's* members have seen steady increases in their errors and omissions insurance from year to year as these cases become more prolific, and some insurers have ceased offering FCRA coverage altogether.[2] Meanwhile, the number of FCRA class actions and plaintiffs' counsel solely dedicated to these claims continues to increase rapidly. In short, the floodgates are more than ajar; *amici* urge this Court to dam them before the industry drowns.

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[2] *See* Justin F. Lavella & John W. McGuiness, *Insurance Coverage in Consumer Class Actions,* Corp. Couns., Oct. 2010, at 7, 8 (noting that "insurers have begun adding to policies exclusions specifically tailored to eliminate coverage," that many "CGL policies contain an exclusion that bars coverage for claims arising from the 'distribution of material in violation of statutes,'" and that "other insurers have been more direct by expressly excluding coverage for claims seeking damages under specific consumer protections statutes such as CAN-SPAM, FACTA, and FCRA").

II. THE NINTH CIRCUIT RULE MAKES IT UNECONOMIC TO CONTEST BARE STATUTORY VIOLATIONS OF THE FAIR CREDIT REPORTING ACT

Amici's members are "consumer reporting agencies" and the FCRA extensively regulates their activities. The FCRA's stated purpose is to encourage the reporting of accurate consumer information in a manner that provides for fairness, impartiality, and efficiency in the banking system while respecting the consumer's right to privacy. *See* 15 U.S.C. § 1681. The statute's actual reach is a bit broader: it regulates the activities of a "consumer reporting agency," namely, "any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating . . . information on consumers for the purpose of furnishing consumer reports to third parties." 15 U.S.C. § 1681a(f). A "consumer report," in turn, consists of any communication by a consumer reporting agency "bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, or mode of living which is used or expected to be used ... for credit or insurance[,] . . . employment purposes, or any other purpose authorized [by the statute]." 15 U.S.C. §§ 1681a(d)(1)(A)-(C).

The statute places several obligations on consumer reporting agencies (CRAs). A CRA may only provide consumer reports for certain enumerated purposes: most notably employment, housing, lending, and insurance. *See* 15 U.S.C. §

1681b *et seq.* When preparing those reports, CRAs have a general obligation to "follow reasonable procedures to assure maximum possible accuracy," 15 U.S.C. § 1681e(b). In addition, when reporting public record information (*e.g.*, criminal conviction information) for employment purposes, CRAs must maintain "strict procedures" ensuring that such information is complete or up to date, or notify the consumer when that information is being reported. 15 U.S.C. § 1681k(a)(2). When it creates a consumer report, the CRA must provide the report's user with a notice written by the Federal Trade Commission, which describes the user's obligations under the statute, and must obtain certifications from the user that the report will be used only for a permissible purpose. 15 U.S.C. §§ 1681e(a), (d).[3]

If negative information in the report results in an "adverse action" such as denial of a job, loan, or housing, then the user (*e.g.*, the employer, lender or landlord) must (a) cause the consumer to be notified that an adverse action may be taken with respect to their application because of information in the report; (b) provide the consumer with a "Summary of Rights" under the FCRA to dispute the information's accuracy; and (c) provide the consumer with the name of the CRA as well as a notice of the consumer's right to receive a free copy of their report from that CRA, and (d) inform the consumer of the

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[3] A similar notice must be sent to the furnisher of certain information to the CRA that describes that furnisher's obligations. 15 U.S.C. § 1681e(d).

right to dispute the information that the CRA provided. 15 U.S.C. §§ 1681m(a), 1681g(c). If the consumer disputes the report's accuracy, the statute requires the CRA to re-investigate and resolve that dispute within thirty days. 15 U.S.C. § 1681i(a)(1). In the event that the disputed information cannot be confirmed, it must be deleted from the consumer's file, and can only be re-inserted upon a certification of accuracy provided by the information's furnisher. 15 U.S.C. § 1681i(a)(5). If an employer or other user takes adverse action based on the consumer report, the user must provide the consumer with a final notice of adverse action. *See* 15 U.S.C. § 1681m(a).[4]

A negligent violation of the statute results in liability to each affected consumer for actual damages, costs and attorneys fees. 15 U.S.C. § 1681o. For willful violations, a consumer may obtain "any actual damages sustained by the consumer as a result of the failure [to comply with the FCRA] or damages of not less than $100 and not more than $1000." 15 U.S.C. § 1681n(a)(1)(A). Punitive damages are also available for willful violations. 15 U.S.C. § 1681n(a)(2). A number of government

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[4] The statute contains a number of technical requirements. *E.g.*, 15 U.S.C. § 1681c(f) (indication of dispute in consumer's file); 15 U.S.C. § 1681g(c)(2) (requiring disclosure of summary of rights when consumer report disclosed to consumer); 15 U.S.C. § 1681h(c) (requiring that trained personnel to explain information in consumer report); 15 U.S.C. § 1681i(a)(1)(A) (requiring CRAs to conduct a "reasonable" reinvestigation in the event of a consumer dispute).

agencies may bring suit to enforce the FCRA, including the Federal Trade Commission, the Consumer Financial Protection Bureau, as well as state attorneys general. *See e.g.,* 15 U.S.C. §§ 1681s (a)-(c); 12 U.S.C. § 5481(12)(F) (defining "enumerated consumer laws" to include FCRA); 12 U.S.C. § 5564(g) (describing the Bureau's litigation authority). The FCRA also recognizes that several states have their own fair credit reporting laws. *See e.g.,* 15 U.S.C. § 1681t (listing specific state laws immune from preemption).

A. *Amici's* Members Make Extensive Efforts to Comply With the Law

Amici's members operate mainly in three fields: (1) pre-employment criminal background screening; (2) tenant screening; and (3) credit screening for residential mortgages. Although *amici* have large members, a majority of their members are small and mid-size businesses. *Amici* exist in substantial part to educate their members on FCRA compliance, a formidable task given its "less-than-pellucid statutory text." *Safeco Ins. Co. of Am. v. Burr,* 551 U.S. 47, 70 (2007). For example, *amicus* NAPBS not only develops and promotes best practices for its members, but also accredits screening companies that demonstrate compliance with high standards of operation as prescribed by its industry accreditation program. In addition, *amici* devote substantial efforts to educating their members and employees not only through continuing legal education and compliance seminars, but also by inviting their regulators to discuss that regulator's priorities and advise the industry about practices the

regulator would like to see ceased or expanded. *Amici's* members spend millions of dollars on FCRA compliance every year and market that compliance as a reason for employers, landlords and others to use their services.

The industry emphasis on FCRA compliance results from direct legal responsibility and desired market advantage, and serves to minimize errors in consumer reporting. Nonetheless, no matter how extensive, industry compliance efforts cannot change the reality that background and credit screening is a business run by human beings and even an individual exercising reasonable care can make a mistake. The FCRA's provisions contemplate the presence of inaccuracies, and provide means to correct them.[5] Under the Ninth Circuit rule, all it takes is one technical mistake to bankrupt a company.

For example, a midsize background screening company might run about one million checks per year, retaining those records for five years on five million total consumers. A five-employee screening company might run about 5,000 checks per year, and retain records on 25,000 total consumers. The

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[5] The FCRA acknowledges this reality--most notably by 15 U.S.C. § 1681i, "Procedure in case of disputed accuracy". The dispute and reinvestigation process provides a CRA an opportunity to cure inaccuracies. *See also, e.g.,* 15 U.S.C. § 1681o (imposing liability for negligent noncompliance, not strict liability for violations of the statute).

midsize company stares down the barrel of a $5 billion maximum liability with a minimum liability of half a billion dollars. The smaller company faces an equally devastating $2.5 million liability on the low end, and $25 million on the high end. The liability on either end of the spectrum is ruinous. The statutory damages far exceed the net worth—or indeed the total assets—of these kinds of companies, and well out of proportion to any harm actually caused to consumers. No matter what their size, however, the crippling liability that *amici's* members face under "bare allegation" FCRA suits renders defense of them an economic gamble.

B. The Ninth Circuit Rule Forces *Amici's* Members to Pay for Harm that They Did Not Cause

As certain commentators noted, the structure of the FCRA created a target-rich environment for class-action attorneys: even the small chance of being found liable for multi-billion-dollar awards creates enormous incentives to settle litigation no matter how tenuous the plaintiff's claim.[6] The class-

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[6] *See generally* Sheila Scheuerman, *Due Process Forgotten: The Problem of Statutory Damages and Class Actions*, 74 Mo. L. Rev. 103, 104-06 (2009), *available at* http://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=3812&context=mlr (discussing the ruinous potential of the $100 to $1000 statutory damages under the Fair and Accurate Credit Transactions Act); David L .Permut and Tamra T. Moore, Recent Developments in Class Actions: The Fair Credit

action bar has taken note: according to this Court's own reports, filings of cases involving consumer credit statutes, including the FCRA, increased by 53 percent in 2009.[7] Five years later, *amici*'s members are finding that where once only the large firms were targeted, smaller firms now appear in the crosshairs on truly questionable grounds.[8]

For example, one of *amici*'s members currently faces a class-action suit arising from an alleged failure to provide statutory notices under 15 U.S.C. § 1681g(c)(2), *even though the defendant had no information on the plaintiff and never ran a consumer report on him.* Class Complaint ¶¶ 26-33, *Henderson v. InfoMart,* Inc., No. 3:13-cv-00578 (E.D. Va. Aug. 26, 2013) (alleging violation of 15 U.S.C. § 1681g (c)(2)); *see also* Class Complaint ¶¶ 24-30, 61-70, *Henderson v. First Advantage Background Servs. Corp.*, No. 3:14-cv-00221 (E.D. Va. Mar. 24, 2014) (alleging violation of FCRA based on failure by CRA to provide notice even though the CRA had no

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Reporting Act, 61 Bus. L. 931 (2006) (discussing FCRA damages in a class action context).

[7] 2009 Year-End Report on the Federal Judiciary, at 3, http://www.supremecourt.gov/publicinfo/year-end/2009year-endreport.pdf

[8] A noted class action attorney went as far as to tell one of *amici's* members that he has a "punch list" of *amici*'s members from big to small, and was gradually working his way through it. *Amici* take him at his word.

information about the consumer).[9] Similarly, another CRA faces a class action on the basis that it did not adequately obtain certifications from *employers* that the consumer report would be used for employment purposes, even though that is the *only* purpose for which the class plaintiff's report was used. Class Action Complaint ¶¶ 3, 21-26, *Lozano-Rivera v. Universal City Nissan,* No. 2:14-cv-01010 (C.D. Cal. Feb. 10, 2014) (alleging violations of 15 U.S.C. § 1681b(b)(2)(a)). Still another complaint involves allegations not that the plaintiffs were injured by the inaccuracy of criminal record information in their reports, but simply that they were not told about the fact that the employer was considering not hiring them because of it. *See* Class Action Complaint ¶¶ 42-60, *Henderson v. Wal-Mart,* No. 3:14-cv-208 (E.D. Va. Mar. 24, 2014). Here, the class plaintiff relies on the "anxiety" caused by the presence of inaccurate (but generally flattering) information about him in petitioner's database, absent any evidence that that information has been transmitted to anyone other than himself. First Amended Complaint ¶¶ 32,37, *Robins v. Spokeo, Inc.,* No. 2:10-cv-05306 (C.D. Ca. Feb. 17, 2011).

In these "bare violation" cases, a plaintiff's injury-in-fact improperly depends "on the

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[9] It should be noted that another class representative in *InfoMart*, Mr. Woods, based his claim on the fact that he had a dispute with the CRA; the CRA fixed the erroneous information, and he was permitted to go on a field trip with his daughter. Class Complaint, *InfoMart*, *supra* p. 14, at ¶¶ 51-56.

independent action of some third party not before the court." *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41-42 (1972). Thus, for example, in *InfoMart, supra,* the alleged failure to provide a notice never resulted in *any* adverse action as the CRA never issued a report about the consumer. The allegations in *Lozano-Rivera, supra,* suffer a similar defect: a consumer has complained about the lack of certifications between an employer and the CRA, in the absence of any causal connection to him. In this case, there is no allegation that any employer, insurer, or lender has taken any action with respect to respondent that has specifically harmed *him*. The strength of such claims is entirely irrelevant; the stakes render the legality of these practices functionally indefensible, and the liability has to be paid off.

C. Agency Enforcement of the FCRA Vindicates the Public Interest in Technical Compliance

To be clear, Petitioner's alleged conduct will receive no praise from *amici*. But Petitioner hardly got away with it: *amici* note that Petitioner was investigated by and settled with the Federal Trade Commission over the very same activity alleged in the complaint.[10] In the absence of concrete,

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10 *See* Press Release, FTC, Spokeo to Pay $800,000 to Settle FTC Charges Company Allegedly Marketed Information to Employers and Recruiters in Violation of FCRA (June 12, 2012), *available at* http://www.ftc.gov/news-events/press-

particularized injury, that investigation and settlement vindicated the public interest in petitioner's FCRA compliance. *See, e.g.*, 15 U.S.C. §§ 1681s(a), (b), (c)(1), (c)(2) (providing enforcement authority to Federal Trade Commission, multiple agencies, and state attorneys general); 12 U.S.C. § 5564 (describing CFPB litigation authority). Moreover, to the extent any consumer actually *was* hurt by Petitioner's transmission of inaccurate information by, for example, losing a job for which she was otherwise qualified, *amici* do not contest that that consumer and all others similarly situated would have suffered an injury-in-fact, have standing to sue, and should be fairly compensated for that injury. In that kind of case, *amici* suggest that the FCRA's statutory damage provisions create a range from which damages can be awarded in cases where they cannot be accurately quantified. *See Dowell v. Wells Fargo Bank, NA*, 517 F.3d 1024, 1026 (8th Cir. 2008) (per curiam) (noting that a reasonable reading of the statute could require that plaintiff show some actual damage in order to make statutory damages available). The threshold injury-in-fact, however, is missing not only from this case, but every case in which *amici*'s members face suits based on a technical statutory violation.

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releases/2012/06/spokeo-pay-800000-settle-ftc-charges-company-allegedly-marketed.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be granted.

Respectfully submitted,

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