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Supreme Court Limits Standing for Statutory Claims

On June 25, 2021, the Supreme Court held in *TransUnion v. Ramirez* that a private plaintiff cannot establish standing to sue merely by alleging that the defendant violated a federal statute. The decision limits Congress's ability to authorize private parties to sue for statutory violations in federal court and provides a powerful defense against liability in consumer litigation.

Background

To sue in federal court, a plaintiff must demonstrate Article III standing, which requires proof that the plaintiff suffered an injury in fact traceable to the defendant's conduct and redressable by a favorable judgment. The injury-in-fact portion of the standing inquiry requires a plaintiff to demonstrate "concrete" harm—that is, harm that is "real" and not "abstract." In *Spokeo v. Robins* (2016), the Supreme Court held that an allegation of a "procedural" statutory violation, "divorced from any concrete harm," cannot alone satisfy the injury-in-fact requirement. The Court did not decide, however, whether Congress was permitted to create new *substantive* rights, the violation of which alone would confer standing.

In *TransUnion*, a class of over 8,000 consumers alleged that TransUnion, one of the three major credit-reporting firms, had violated the Fair Credit Reporting Act (FCRA). In particular, the plaintiffs alleged that TransUnion had inaccurately identified them on their credit reports as potential matches to terrorists, narcotics traffickers or other serious criminals blocked by the federal government from doing business in the United States. The plaintiffs also alleged that, when they had subsequently requested copies of their credit reports, TransUnion had failed to include a statutorily required form in the mailing. The district court certified the class, rejecting TransUnion's argument that most of the class members had never suffered injury because their credit reports had never been mailed to third parties. The case went to trial, and the jury awarded both statutory and punitive damages to plaintiffs. On appeal, the Ninth Circuit reduced the total damages award but otherwise affirmed the judgment against TransUnion.

The Supreme Court granted review to decide whether Article III of the Constitution or Federal Rule of Civil Procedure 23 (which governs class actions) permits a class action for damages where the majority of the class suffered no actual injury.

The Supreme Court's Decision

In a 5-4 decision written by Justice Kavanaugh, the Supreme Court held that some of the class members had Article III standing but that most others did not. The Court did not address the question whether Rule 23 requires proof that some or all absent class members must have standing before a class is certified.

The Court's decision focused on the requirement that a harm be "concrete" in order to qualify as an Article III injury in fact. The Court explained that certain tangible harms—such as physical injury or economic loss—are unquestionably "real" and thus "concrete." Intangible harms can also qualify as "concrete," the Court continued, as long as the harm in question bears "a close relationship to a harm traditionally recognized as providing a basis for a lawsuit in American courts." But the mere fact that a defendant violated a plaintiff's statutory right, the Court held, does not qualify as a "concrete" injury. Instead, a plaintiff must demonstrate concrete harm even when a defendant has violated a federal statute and Congress has provided the plaintiff with a private right of action. That requirement thus serves as a limit on Congress's power to create new injuries that will permit suit in

federal court: Congress can create new statutory protections and provide a private right of action to redress violations of those protections, but a plaintiff will have standing to seek such redress only if the plaintiff suffered a concrete injury separate from the statutory violation or if the statutory violation is analogous to an injury historically recognized as a basis for suit in American courts.

Applying those principles to the facts before it, the Court held that the subset of class members whose credit reports TransUnion sent to third parties had standing. The Court had “no trouble” concluding that those class members suffered a concrete injury because the injury recognized by the FCRA was sufficiently related to the tort of defamation, which permitted recovery without proof of harm beyond the publication of a defamatory statement. On the other hand, the Court held that the class members whose credit reports had not been distributed to third parties lacked a concrete injury. “A letter that is not sent does not harm anyone,” the Court reasoned, “no matter how insulting the letter is.” In reaching that conclusion, the Court dismissed the plaintiffs’ argument that they had standing because their identification as a blocked individual created a *risk* of harm; the Court explained that a risk of harm can only confer standing to seek prospective relief, not damages, which redress past injury. Finally, the Court held that only the named plaintiff had presented evidence at trial to establish standing to sue for the failure to include the disclosures required by the FCRA.

Justice Thomas, joined by Justices Breyer, Sotomayor and Kagan, dissented. In Justice Thomas’s view, standing to sue for a statutory violation turned only on whether the plaintiff was seeking to vindicate a public right or a private right. Where Congress had created a statutory duty owed broadly to the community, Justice Thomas reasoned, proof of concrete injury was required to establish Article III standing. But where Congress had created a right belonging to particular individuals and not the public at large, Justice Thomas argued that individuals had always been permitted to sue in federal courts without proof of harm separate from the statutory violation. Justice Thomas viewed the Court’s decision to limit Congress’s ability to create and recognize new legal injuries as improper.

Justice Kagan, joined by Justices Breyer and Sotomayor, wrote a separate dissenting opinion. While Justice Kagan largely agreed with Justice Thomas’s analysis, she believed that a concrete injury was required even when an individual right was at issue. In Justice Kagan’s view, however, courts should generally defer Congress’s judgment that a right is sufficiently concrete to permit private suits in federal court to vindicate the right.

Implications

The decision in *TransUnion* resolves the question left open in *Spokeo* regarding when a private plaintiff had standing to sue under a federal statute. The Supreme Court made clear in *TransUnion* that a plaintiff must do more than merely allege that the defendant violated a federal statute. Instead, the plaintiff must show concrete harm flowing from that alleged violation. While Congress is permitted to recognize new “intangible” injuries, those injuries qualify as “concrete” only if they are sufficiently analogous to a harm historically recognized as a basis for suit. The Court explained that a historical harm need not be an “exact duplicate” of the newly recognized injury to confer standing, but the two injuries must still bear a “sufficiently close relationship.”

The *TransUnion* decision may have significant impact in consumer litigation under other statutes such as the Fair Debt Collection Practices Act and the Telephone Consumer Protection Act. Litigation on questions of injury in fact under those statutes will likely focus on the appropriate historical comparators to the statutory rights involved and the similarity between the two.

TransUnion also clarified that exposure to a risk of harm does not necessarily confer Article III standing. The risk-of-harm analysis pertains only to requests for prospective relief, such as an injunction. Where the plaintiff seeks only damages, a past risk of harm that never materialized does not confer standing.

Notably, the Court declined to decide in *TransUnion* whether certification of a class action is impermissible absent proof that every class member suffered a concrete injury. In 2016, the Court granted review to resolve that question in *Tyson Foods v.*

Bouaphakeo, but it decided the case on other grounds. Going forward, class-action litigants will continue to confront this question.

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This memorandum is not intended to provide legal advice, and no legal or business decision should be based on its content. Questions concerning issues addressed in this memorandum should be directed to:

Walter Brown
+1-628-432-5111
wbrown@paulweiss.com

Andrew G. Gordon
+1-212-373-3543
agordon@paulweiss.com

Melinda Haag
+1-628-432-5110
mhaag@paulweiss.com

Jeh Charles Johnson
+1-212-373-3093
jjohnson@paulweiss.com

Brad S. Karp
+1-212-373-3316
bkarp@paulweiss.com

Daniel J. Kramer
+1-212-373-3020
dkramer@paulweiss.com

Gregory F. Laufer
+1-212-373-3441
glaufer@paulweiss.com

Jessica E. Phillips
+1-202-223-7338
jphillips@paulweiss.com

Jeannie S. Rhee
+1-202-223-7466
jrhee@paulweiss.com

Elizabeth M. Sacksteder
+1-212-373-3505
esacksteder@paulweiss.com

Kannon K. Shanmugam
+1-202-223-7325
kshanmugam@paulweiss.com

Aidan Synnott
+1-212-373-3213
asynnott@paulweiss.com

Daniel J. Toal
+1-212-373-3869
dtoal@paulweiss.com

Liza M. Velazquez
+1-212-373-3096
lvelazquez@paulweiss.com

Theodore V. Wells Jr.
+1-212-373-3089
twells@paulweiss.com

Associates Maria E. Eliot and William T. Marks, and summer associate Joshua A. Altman, contributed to this client memorandum.