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 Writ Of *Certiorari* To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF *AMICUS CURIAE* CONSUMER DATA INDUSTRY ASSOCIATION IN SUPPORT OF PETITIONER

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RULE 29.6 STATEMENT

Pursuant to Rule 29.6, the Consumer Data Industry Association ("CDIA") provides the following disclosure.

CDIA is a trade association. No publicly held company owns 10% or more of CDIA stock.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES – Continued

Page

TABLE OF AUTHORITIES – Continued

INTEREST OF *AMICUS CURIAE*

With the consent of all parties,[1] *amicus curiae*, the Consumer Data Industry Association ("CDIA"), submits its brief in support of petitioners, Spokeo, Inc. (*hereinafter*, "Spokeo").

CDIA is an international trade association, founded in 1906, and headquartered in Washington, D.C. As part of its mission to support companies offering consumer information reporting services, CDIA establishes industry standards, provides business and professional education for its members, and produces educational materials for consumers describing consumer credit rights and the role of consumer reporting agencies ("CRAs") in the marketplace. CDIA is the largest trade association of its kind in the world, with a membership of approximately 180 consumer credit and other specialized CRAs operating throughout the United States and the world.

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[1] The parties were timely notified of CDIA's intention to file this brief in accordance with Rule 37.2(a). All parties have consented to the filing of CDIA's *amicus* brief. CDIA's letters requesting consent and the parties' responses have been filed with the Clerk of Court.

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. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

In its more than 100-year history, CDIA has worked with the United States Congress and state legislatures to develop laws and regulations governing the collection, use, maintenance, and dissemination of consumer report information. In this role, CDIA participated in the legislative efforts that led to the enactment of the Fair Credit Reporting Act ("FCRA") in 1970 and its subsequent amendments.

CDIA is vitally interested in the outcome of this appeal because, CDIA's CRA members are subject to the FCRA's comprehensive regulatory scheme and its statutory damages provision, which permits consumers to recover "any actual damages sustained by the consumer as a result of the [willful violation] *or damages of not less than $100 and not more than $1,000*" from those who have willfully failed to comply with the FCRA "with respect to" such consumers.[2]

Because, in the electronic age, any CRA business practice is likely to be repeated millions of times each year (perhaps even millions of times each day),[3] the

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[2] 15 U.S.C. § 1681n(a)(1)(A) (emphasis added).

[3] *See, e.g., Sarver v. Experian Info. Solutions*, 390 F.3d 969, 972 (7th Cir. 2004) (noting that one CRA "processes over 50 million updates to trade information each day"); *see also,* Michael E. Staten and Fred H. Cate, *The Impact of National Credit Reporting Under the Fair Credit Reporting Act: The Risk of New Restrictions and State Regulation* at 28 (May 2003) (the credit reporting system "deals in huge volumes of data – over 2 billion trade line updates, 2 million public record items, an average of 1.2 million household address changes a month,

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Article III standing requirements, particularly the injury-in-fact requirement, are critical to CRAs whose activities can be said to be, in the FCRA's language (15 U.S.C. § 1681n) "with respect to" almost any adult U.S. consumer. Article III's limitations are essential to prevent entrepreneurial plaintiffs' class action counsel from abusing the FCRA's statutory damages provision to challenge any CRA activity as a willful violation even when the activity results in no cognizable consumer injury.

Moreover, because the FCRA imposes compliance obligations upon tens of thousands of businesses who furnish information to CRAs,[4] and the users (e.g., creditors, insurers, employers, landlords, and law enforcement) of the billions of consumer reports CRAs prepare every year,[5] the risk of no-injury class action lawsuits, such as Robins's putative class action, could threaten nearly every aspect of the U.S. economy.

Because CDIA has represented the consumer reporting industry for more than a century, and because its member CRAs and their furnishers and

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and over 200 million individual credit files.") available at http://www.ftc.gov/bcp/workshops/infoflows/statements/cate02.pdf.

[4] *See, e.g.*, *Sarver*, 390 F.3d at 972 (noting that a single CRA "gathers information originated by approximately 40,000 sources").

[5] Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003* at 8-9 (2004) (more than 1.5 billion consumer reports furnished annually) available at http://www.ftc.gov/reports/facta/041209factarpt.pdf.

users are all subject to potential claims under the FCRA's statutory damages provision, CDIA is uniquely qualified to assist this Court as it considers Spokeo's petition.

SUMMARY OF THE ARGUMENT

Left uncorrected, the Ninth Circuit's decision disrupts long-held rules that govern standing and ensure the Article III courts address only true cases or controversies as required by the Constitution. The Court has repeatedly held that Article III standing requires three elements: (1) a concrete injury, (2) caused by the defendant's actions, and (3) that is redressable by the Courts. According to the Ninth Circuit, the tripartite test may now be collapsed into one question in circumstances where Congress has granted plaintiffs the ability to seek statutory damages, as in a case brought under the FCRA. While this Court has recognized that Congress may create enforceable rights that did not previously exist, this Court has never held that Congress may dispose of the requirement that the plaintiff suffer a distinct, palpable injury.

The Ninth Circuit's decision places CDIA's members at great risk. Virtually all aspects of the data that CRAs provide to their customers relate to activities with respect to consumers. Granting consumers standing to sue without any allegation of injury in fact would open the door to ruinous damages to

CDIA's members through unchecked class action litigation. The specific facts of this case present a perfect example of why no-harm class actions are so problematic; Robins's alleged injury concerns inaccurate credit information that likely *bolstered* his credit profile.

Because Robins, as in many class actions seeking statutory damages under the FCRA, has identified no tangible injury to him as a result of the alleged violations, this case presents the appropriate vehicle for the Court to address the issue of whether Article III standing may exist in the absence of any claim of actual harm.

To confirm that Congress may not abrogate by legislative fiat the U.S. Constitution's minimum requirements for judicial standing, this Court should grant Spokeo's petition and decide the important question of whether plaintiffs may satisfy the requirement for Article III standing solely through claims for statutory damages under the FCRA without reference to actual harm.

ARGUMENT

I. THE NINTH CIRCUIT ERRED IN CREATING A SINGLE-INJURY, NO-HARM, STANDING.

The Ninth Circuit's decision suffers from two principal infirmities. First, the court erred in concluding that Robins may satisfy the "injury" requirement

for standing merely by asserting a claim under the statutory damages provision of the FCRA, without reference to actual harm. Second, the court concluded that because Robins's "injury" is a statutory cause of action, the requirements that Robins's injury be caused by Spokeo's conduct and redressable by the court are necessarily satisfied. This Court's long-standing rules regarding access to the judicial system support neither conclusion.

A. Even where Congress has authorized statutory damages, Robins must allege a distinct and palpable injury.

In determining that Robins had standing to pursue his class action lawsuit against Spokeo, the Ninth Circuit erred by holding that Congress may create standing for plaintiffs who suffer no actual injury and seek to recover solely through a statutory damages remedy.[6] This holding represents an unwarranted and unprecedented expansion of standing by making Congress, rather than the judiciary, the gatekeeper to the federal courthouse.

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[6] *Robins v. Spokeo*, 742 F.3d 409, 414 (9th Cir. 2014). This case arises in the same context as *First American Financial Corporation v. Edwards*, 132 S.Ct. 2536 (2012) (cert. dismissed as improvidently granted). This case differs from *Edwards* in that Robins has not alleged that he paid any money to Spokeo. Since *Edwards* was a RESPA case, the plaintiffs' claims arose from the payment of settlement fees. *Edwards v. First American Financial Corp*., 610 F.3d 514, 516 (9th Cir. 2010). This case presents no such difficulty.

This Court's rules for standing are well-established. "[T]hose who seek to invoke the jurisdiction of the federal courts must satisfy the threshold requirement imposed by Article III of the Constitution by alleging an actual case or controversy."[7] "One of those landmarks, setting apart the 'Cases' and 'Controversies' that are of the justiciable sort referred to in Article III – serving to identify those disputes which are appropriately resolved through the judicial process – is the doctrine of standing."[8] "For the federal courts to decide questions of law arising outside of cases and controversies would be inimical to the Constitution's democratic character. And the resulting conflict between the judicial and the political branches would not, 'in the long run, be beneficial to either.'"[9]

This Court has consistently held that the "irreducible constitutional minimum of standing" consists of three elements: (1) an injury in fact, that is (2) caused by the challenged action of the defendant, and that (3) is redressable in some way by a favorable decision.[10] In requiring a particular injury, this Court

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[7] *City of Los Angeles v. Lyons*, 461 U.S. 95, 101 (1983).

[8] *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (internal citations omitted).

[9] *Arizona Christian School Tuition Org. v. Winn,* 131 S.Ct. 1436, 1442 (2011) (quoting *United States v. Richardson*, 418 U.S. 166 (1974)).

[10] *Lujan*, 504 U.S. at 560 (citing *Warth v. Seldin*, 422 U.S. 490, 508 (1975); *Sierra Club v. Morton*, 405 U.S. 727, 740-41, n. 16 (1972); *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990);

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has emphasized "that the injury must affect the plaintiff in a personal and individual way."[11]

To be sure, Congress may in some circumstances recognize new rights, with the result that an invasion of those rights causes injury and, therefore, permits standing. "[T]he . . . injury required by Art. III may exist solely by virtue of 'statutes creating legal rights, the invasion of which creates standing.'"[12] Nonetheless, "Art. III's requirement remains: the plaintiff *must still allege a distinct and palpable injury to himself*."[13]

The Ninth Circuit's *Spokeo* decision ignores this fundamental rule, holding that a mere statutory violation is "injury" enough, "when . . . the statutory cause of action does not require proof of actual damages. . . ."[14] Thus, because Congress authorized "damages of not less than $100 and not more than $1,000" against "[a]ny person who willfully fails to comply

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Simon v. Eastern Ky. Welfare Rights Organization, 426 U.S. 26, 41-42 (1976)).

[11] *Arizona Christian*, 131 S.Ct. 1442 (quoting *Lujan*, 504 U.S. at 560, n.1).

[12] *Lujan*, 504 U.S. 579 (citing *Warth v. Seldin*, 422 U.S. 490, 500 (1975), quoting *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 n.3 (1973)); *see also Massachusetts v. EPA*, 549 U.S. 497, 516 (2007) ("In exercising this power, however, Congress must at the very least identify the injury it seeks to vindicate and relate the injury to the class of persons entitled to bring suit.").

[13] *Warth*, 422 U.S. at 501 (emphasis added).

[14] 742 F.3d at 413.

with"[15] the FCRA, the Ninth Circuit held that Robins had sustained the requisite "injury," as he alleged willful violations of the FCRA.[16]

The Ninth Circuit purported to follow the lead of two other courts of appeals that concluded that section 1681n authorizes a cause of action for statutory damages without the need to show any actual injury.[17] In *Beaudry v. TeleCheck Services, Incorporated*, the Sixth Circuit concluded that, in section 1681n, Congress created a "new legal right," including the right to sue when "the only injury-in-fact involves the violation of that statutory right."[18] Similarly, but in a more attenuated connection to the Ninth Circuit's holding in *Spokeo*, the Seventh Circuit in *Murray v. GMAC Mortgage Corporation*, stated that "the FCRA 'provide[s] for modest damages without proof of injury.'"[19] However, the Seventh Circuit couched this statement in a discussion where it also noted that individual losses would be "small and hard to quantify" and did so without reference to Article III requirements.[20] Regardless of what the

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[15] 15 U.S.C. § 1681n.

[16] 742 F.3d at 413.

[17] *See, e.g., Beaudry v. TeleCheck Servs., Inc.*, 579 F.3d 702 (6th Cir. 2009); *Murray v. GMAC Mortgage Corp.*, 434 F.3d 948 (7th Cir. 2006).

[18] 579 F.3d at 705.

[19] 434 F.3d at 953.

[20] *Id.* At least one other Circuit has recognized that a "reasonable reading" of section 1681n is that the FCRA "require[s] proof of actual damages but simply substitute[s] statutory

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court in *Murray* meant, the Ninth Circuit's *Spokeo* holding builds upon prior decisions from the Sixth and Seventh Circuits that appear to suffer from the same infirmity. *Spokeo* transforms the existence of a remedy (i.e., statutory damages) into the existence of a remedial case or controversy.

This Court's own decisions have never allowed such bootstrapping to establish a justiciable case or controversy. Even where Congress creates a private right of action, "Art. III's requirement remains: the plaintiff must still allege a distinct and palpable injury to himself, even if it is an injury shared by a large class of other possible litigants."[21] This is because, "the requirement of injury in fact is a hard floor of Article III jurisdiction that cannot be removed by statute."[22] "Congress cannot erase Article III's

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rather than actual damages for the purpose of calculating the damage award." *Dowell v. Wells Fargo Bank, N.A.*, 517 F.3d 1024, 1026 (8th Cir. 2008). CDIA submits that this interpretation of section 1681n should be favored because it avoids any constitutional difficulties. *See Almendarez-Torres v. United States*, 523 U.S. 224, 237 (1998) ("A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score.") (quotations omitted). Under the approach in *Dowell*, statutory damages would be available to plaintiffs who alleged an actual injury, but the damages are hard to quantify.

[21] *Warth*, 422 U.S. at 499.

[22] *Summers v. Earth Island Inst.*, 129 S.Ct. 1142, 1151 (2009); *Lujan*, 504 U.S. at 560 ("[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III.").

standing requirements by statutorily granting the right to sue to a plaintiff who would not otherwise have standing."[23]

CDIA does not deny that, through the FCRA, Congress granted putative plaintiffs a private right of action, including a private right of action for statutory damages based on willful violations. But Congress's creation of a private right of action does not entitle every member of the public who discovers inaccurate credit information access to the federal courts.

This Court addressed this issue in a related context, noting "[a]n interest unrelated to injury in fact is insufficient to give a plaintiff standing."[24] In *Vermont Agency of Natural Resources v. United States ex rel. Stevens*, this Court considered whether a plaintiff suing under the *qui tam* provision of the False Claims Act had standing to assert his claims because the injury alleged in the suit was suffered by the United States. The plaintiff's only interest in the litigation was the "bounty," in the form of a percentage of the United States' recovery he stood to receive if he prevailed in the litigation. The Court firmly rejected the notion that this interest in the suit's outcome sufficed for standing, comparing the

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[23] *Raines v. Byrd*, 521 U.S. 811, 820 n.3 (1997) (citing *Gladstone, Realtors v. Village of Bellwood*, 441 U.S. 91, 100 (1979)).

[24] *Vermont Agency of Natural Resources v. U.S. ex rel. Stevens*, 529 U.S. 765, 772 (2000).

plaintiff's interest to that of "someone who has placed a wager on the outcome."[25]

The *Spokeo* decision would permit what this Court rejected in *Vermont Agency*: "wagering" on the outcome of class action litigation by plaintiffs who have suffered no actual injury. That credit information is reported inaccurately does not create an automatic injury. For example, credit information that bolsters a consumer's credit profile, while inaccurate, causes no harm.[26]

Affording access to the courts in such circumstances is particularly troubling to CDIA's members, because they engage in activities that, in this electronic age, occur millions of times each year or even millions of times each day.[27] Their conduct may occur "with respect to" almost any adult U.S. consumer.[28] Thus, enterprising plaintiffs' counsel who seek to remedy technical violations of the FCRA (at profits to counsels' firms hugely disproportionate to the recovery by each class member, no less) without reference to any actual harm are in the same place as the *qui tam* relator in *Vermont Agency*.[29] This is not to say

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[25] *Id*.

[26] Such is the case with Robins. *See* discussion *infra* at 18-19.

[27] *See* discussion *supra* at 2.

[28] *See* 15 U.S.C. § 1681n.

[29] That Robins lacks standing does not mean that the alleged harms are not subject to any other type of oversight or enforcement. The FCRA provides for its administrative

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that there are no circumstances in which a violation of the FCRA *would* create a cognizable injury. For example, providing a credit report without a permissible purpose represents a circumstance where Congress has created an actionable injury where none otherwise existed.[30] In that case, a consumer's privacy rights are injured when credit reports are provided without a permissible purpose.

But a plaintiff who seeks to vindicate the violation of a statutory right, without more, becomes a

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enforcement by the Federal Trade Commission, the Consumer Financial Protection Bureau, the federal banking agencies, and state Attorneys General. 15 U.S.C. § 1681s. Each of these enforcement authorities may vindicate the public interest in seeing that the FCRA's provisions are obeyed. Even when no individual has been injured, governmental authorities charged with enforcement of the law, always have an interest in seeing that the laws are obeyed. *Heckler v. Chaney*, 470 U.S. 821, 831-832 (1985) (" . . . an agency decision . . . often involves a complicated balancing of a number of factors which are peculiarly within its expertise. . . . Thus, the agency must not only assess whether a violation has occurred, but whether agency resources are best spent on this violation or another, whether the agency is likely to succeed if it acts, whether the particular enforcement action requested best fits the agency's overall policies, and, indeed, whether the agency has enough resources to undertake the action at all. An agency generally cannot act against each technical violation of the statute it is charged with enforcing. The agency is far better equipped than the courts to deal with the many variables involved in the proper ordering of its priorities."). CDIA submits that administrative enforcement actions advance statutory purposes without exceeding the courts' traditional and proper Article III role of vindicating individual rights and remedying individual injuries.

[30] *See* 15 U.S.C. § 1681b.

private attorney-general, seeking to vindicate an undifferentiated public interest in CRAs' compliance with the FCRA.[31] Article III must have a more concrete limitation. Robins must allege a distinct and palpable injury.

B. Robins's injury must be fairly traceable to Spokeo's conduct and redressable by the Court.

Having incorrectly concluded that alleging a willful violation of the FCRA is sufficient to satisfy the injury-in-fact element of standing, the Ninth Circuit also found that the statutory injury, by itself also satisfied the "causation" and "redressability" requirements of standing, because "[w]hen the injury in fact is the violation of a statutory right . . . causation and redressability will usually be satisfied."[32]

Therefore, under the Ninth Circuit's rationale, the formerly three-part standing inquiry now consists of a single question: Did the plaintiff allege a violation of a legal right that affords a private cause of action? If the answer is yes, then the plaintiff has standing to pursue a legal remedy through the courts

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[31] *See Lujan*, 504 U.S. at 576-577 (Congress cannot convert "public interest in proper administration of the laws" into an "'individual right' vindicable in the courts").

[32] *Spokeo*, 742 F.3d 409, 414 (9th Cir. 2014).

on his (or a class's) behalf.[33] Plainly, Article III requires more. An "injury," by itself is not enough to provide access to federal courts.[34] Yet the Ninth Circuit's interpretation of the injury requirement dictates a result where causation and redressability are established automatically. That this approach obviates two-thirds of the traditional standing test suggests grave infirmities with the Ninth Circuit's rule.

II. THE NINTH CIRCUIT'S DECISION THREATENS CDIA'S MEMBERS WITH CRUSHING LIABILITY THROUGH UNCHECKED CLASS ACTION LITIGATION.

CDIA's members' business practices are subject to the FCRA and may involve millions of consumers each day, touching every aspect of the economy. By affording standing to plaintiffs who have not suffered any harm, the Ninth Circuit's decision, creates the possibility that CDIA's members, their data furnishers and their customers will be subject to ruinous damages through class action lawsuits.

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[33] Although Robins alleged that Spokeo had harmed his employment prospects and caused him emotional distress through maintaining inaccurate information about him on the internet, the Ninth Circuit declined to reach those allegations because it determined that a violation of the FCRA alone was sufficient to satisfy standing requirements. *Spokeo*, 742 F.3d at 414 n.4.

[34] *See Arizona Christian*, 131 S.Ct. at 1442.

A. The consumer reporting industry.

Congress recognizes that the consumer reporting industry is vital to the U.S. economy.[35] Each year, CRAs furnish more than 1.5 billion consumer reports to creditors, insurers, employers, landlords, law enforcement and counter-terrorist agencies, all of which use this information to make important risk-based decisions, hire employees, evaluate the backgrounds of potential tenants, and locate individuals suspected of criminal activity.[36]

In order to prepare these reports, CRAs have created and maintain data files on nearly 200 million consumers.[37] The files contain 2.6 billion tradelines (an industry term for accounts that are included in a credit report)[38] that include billions of items of

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[35] 15 U.S.C. § 1681(a)(1) ("The banking system is dependent upon fair and accurate credit reporting."); 15 U.S.C. § 1681(a)(2) (the consumer reporting system is an "elaborate mechanism" for investigating and evaluating a consumer's credit worthiness, credit standing, credit capacity, character, and general reputation); *TRW Inc. v. Andrews*, 534 U.S. 19, 23 (2001) ("Congress enacted the FCRA in 1970 to promote efficiency in the Nation's banking system and to protect consumer privacy.").

[36] *Id.*; *Sarver v. Experian Info. Solutions*, 390 F.3d 969, 972 (7th Cir. 2004); Michael E. Staten and Fred H. Cate, *The Impact of National Credit Reporting Under the Fair Credit Reporting Act: The Risk of New Restrictions and State Regulation* at vi (May 2003).

[37] Federal Trade Commission, *Report to Congress Under Sections 318 and 319 of the Fair and Accurate Credit Transactions Act of 2003* (2004) at 8-9.

[38] *Id.* at 8-9.

information the CRAs receive from tens-of-thousands of furnishers on a monthly basis.[39]

B. The Ninth Circuit's decision encourages unchecked class action litigation.

Because CRAs produce more than 1.5 billion consumer reports each year, it is not surprising that they are sued hundreds of times each year by consumers alleging violations of the FCRA. Typical lawsuits include claims that the CRAs failed to follow "reasonable procedures" to assure the "maximum possible accuracy" of the information used to prepare consumer reports concerning the plaintiffs,[40] or that the CRAs failed to conduct reasonable investigations following the receipt of consumer disputes concerning the accuracy or completeness of the information in the CRA's files relating to the plaintiffs.[41]

Recasting standing as a one-part inquiry that does not require actual injury removes some of the principal constraints to class certification, namely commonality and predominance.[42] "Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury."[43] Predominance

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[39] *Id.*

[40] 15 U.S.C. § 1681e(b).

[41] 15 U.S.C. § 1681i(a).

[42] *See* Fed. R. Civ. P. 23.

[43] *Wal-Mart Stores, Inc. v. Dukes*, 131 S.Ct. 2541, 2551 (2011) (internal quotation marks omitted).

"tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation."[44] Where an entire class asserts willful violations of the FCRA and requests relief in the form of statutory damages, commonality and predominance pose little resistance to class certification.[45]

Opening the door for no-harm plaintiffs to pursue class actions creates a high risk of *in terrorem* settlements.[46] CDIA's members maintain or furnish credit information on millions of consumers. With statutory damages as much as $1,000 per violation under section 1681n and no limit on total class recovery, a CRA's potential monetary exposure could reach into the billions, thus increasing the likelihood that CDIA's members will be forced to settle questionable claims solely because they risk catastrophic liability.[47]

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[44] *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 623 (1997).

[45] *Cf. Murray*, 434 F.3d at 953 (Where consumers must allege individual harm "[c]ommon questions no longer would predominate, and an effort to determine a million consumers' individual losses would make the suit unmanageable.").

[46] *See AT&T Mobility LLC v. Concepcion*, 131 S.Ct. 1740, 1752 (2011) ("Faced with even a small chance of a devastating loss, defendants will be pressured into settling questionable claims").

[47] *Id.*

C. The facts in this case particularly warrant this Court's consideration of the injury-in-fact issue.

With the potential for untold statutory damages in mind, consider the alleged facts in this case. Robins is a putative class-action plaintiff who claims that Spokeo reported inaccurate credit information identifying him as *more* educated than in actuality, in a better employment circumstance, and married rather than single.[48] That the allegedly inaccurate information likely bolstered Robins's credit profile rather than damaged it shows the absurdity of affording standing to class action plaintiffs without reference to actual harm.

Moreover, Robins's actual allegations of harm, which the Ninth Circuit expressly declined to address in its decision,[49] further underscore the inherent conflict between affording standing to no-harm plaintiffs and Article III's requirements. Robins claims that the inaccurate information about him contained on Spokeo's website, although it likely bolstered his credit profile, damaged his "prospects" for employment and caused him anxiety and stress.[50] But Robins points to no employer who actually denied his job application, much less an employer who denied his job application based on information reported by Spokeo. In fact, Robins does not identify any actual or

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[48] *See* Complaint at 31-33.

[49] 742 F.3d at 414 n.4.

[50] First Amended Complaint at ¶¶ 35-37.

imminent adverse action from an employer; the alleged harm to his employment "prospects" is entirely forward-looking, a presumption that someday, somehow, an employer will use inaccurate information housed at Spokeo to harm him.

The Court recently held that similarly-situated plaintiffs lacked standing where the plaintiffs' theory of standing "reli[ed] on a highly attenuated chain of possibilities."[51] In *Clapper v. Amnesty International USA*, the plaintiffs based their claim for standing on a presupposition that the Government would at some point in the future conduct illegal international surveillance against the plaintiffs' international contacts.[52] Yet, the plaintiffs could not identify any specific person against whom the federal government might conduct illegal surveillance, nor could they demonstrate that the specific statute at issue would be the vehicle for the supposed illegal surveillance.[53]

Robins is similarly situated in this case because his allegations of harm depend on the occurrence of future events that are neither imminent nor particularized.[54] Indeed, Robins's injury may only be characterized as a "highly speculative fear" that, at some

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[51] *Clapper v. Amnesty International USA*, 133 S.Ct. 1138, 1148 (2013).

[52] *Id.* at 1143-44.

[53] *Id.* at 1148-49.

[54] *See id.* at 1147 (citing *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990) ("A threatened injury must be certainly impending to constitute injury in fact.") (internal quotations omitted)).

point in the future, his career will suffer because Spokeo provided inaccurate information about him.[55] This Court's prior decisions demonstrate that this type of highly-attenuated injury does not satisfy Article III's requirements.[56]

The Court should grant Spokeo's petition for review and clarify that no-harm plaintiffs are not entitled to access federal courts solely in the pursuit of ruinous monetary damages from CDIA's members under the FCRA.

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[55] *Clapper*, 133 S.Ct. at 1147.

[56] *See, e.g.*, *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 343-344 (2006) (no case or controversy where taxpayers alleged that a tax credit to Chrysler would deplete state treasury in the future and cause a disproportionate tax burden on citizens); *City of Los Angeles v. Lyons*, 461 U.S. 103, 105 (1983) (no case or controversy where injury allegations depended on excessive police force occurring at some point in the future); *Golden v. Zwickler*, 394 U.S. 103, 109 (1969) (no standing where harm depended on the future candidacy of a former congressman).

CONCLUSION

For the reasons set forth above, Spokeo's petition for writ of certiorari should be granted to permit this Court to review and correct the Ninth Circuit's decision.

Respectfully submitted,

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