No. 13-1339

IN THE

Supreme Court of the United States

SPOKEO, INC.,
Petitioner,
v.
THOMAS ROBINS, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED,
Respondent.

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

BRIEF FOR AMICUS CURIAE RETAIL LITIGATION CENTER, INC. SUPPORTING PETITIONER

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INTEREST OF *AMICUS CURIAE*

The Retail Litigation Center, Inc. (RLC) is a public-policy organization that identifies and engages in legal proceedings that affect the retail industry.[1] The RLC's members include many of the country's largest and most innovative retailers. The member entities whose interests the RLC represents employ millions of people throughout the United States, provide goods and services

[1] Pursuant to this Court's Rule 37.6, *amicus* affirms that no counsel for a party authored this brief in whole or in part, that no such counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and that no person other than *amicus* and its counsel made such a monetary contribution. Letters from counsel of record for each party consenting to the filing of this *amicus* brief are on file with the clerk's office.

to tens of millions more, and account for tens of billions of dollars in annual sales. The RLC seeks to provide courts with retail-industry perspectives on important legal issues, and to highlight the potential industry-wide consequences of significant pending cases.

SUMMARY OF ARGUMENT

The Ninth Circuit gave the Fair Credit Reporting Act (the "Act") an expansive reading—so expansive that it effectively erased injury-in-fact as a constitutional requirement for standing. Although this Court could reverse the judgment below because it contravenes Article III, another option is also available: rejecting the Ninth Circuit's construction of the Act. Reversing on that ground would terminate this litigation and reserve for another day the exploration of the outer boundaries of Article III standing.

The Ninth Circuit construed the Act to authorize suit and recovery by plaintiffs who, while unharmed themselves, could point to a defendant's violation of technical statutory standards. This aggressive construction implicates Article III's limits. A closer statutory reading, however, reveals no such constitutionally dubious legislative ambition, but only the standard fare of a regulatory statute—authorizing suits by those who have actually been injured by a statutory violation. Under that reading, Congress never intended the Act to push up against Article III, thus leaving no constitutional tension to resolve. If Congress ever *does* seek to press standing beyond the breaking point, this Court will have ample opportunity to consider how far Congress can go.

This more modest reading—that the Act allows individuals to sue and recover *when they are harmed* by a violation—follows from the Court's traditional background presumption that Congress does not intend to violate the Constitution, or even approach its outer limits.

Congress can always rebut such a presumption simply by providing a clear statement—that, for example, it *does* wish to eliminate the injury-in-fact component of standing, at which point the courts must confront the resulting constitutional question. Hesitating to decide constitutional issues when they are not squarely presented respects Congress by assuming that Congress would push past time-honored constitutional understandings only consciously and after meaningful deliberation, not capriciously or casually. By trusting Congress to make clear when it wishes to deviate from established constitutional norms, the Court avoids the twin dangers of invalidating statutes on the basis of constitutional conflict that Congress never intended and of endorsing novel constitutional propositions that Congress never actually enacted.

Under these principles, the Court should reject the Ninth Circuit's reading. After all, the Act here contains no express language clearly eliminating the injury-in-fact requirement of standing, and its text bears the more modest and constitutionally unassailable interpretation that private litigation is contingent, as always, on alleging an actual injury.

Applying this Court's clear-statement principles to statutes touching on the Constitution's standing requirements also has important practical benefits. Statutes like the Act have proliferated, and the regulated public—like retailers—are subject to constantly increasing requirements from all levels of government. Clarity about the obligations and potential liabilities actually imposed on businesses and citizens acting in commercial capacities would give them the notice that they need to comply with legal obligations as efficiently as possible. Congress is far more likely to view its legislation as facilitating good-faith compliance than as inviting litigation by ambush, with plaintiffs awaiting the slightest technical error, even when no harm results, as a basis to bring suit.

If Congress ever actually intended the latter result, the Court should reasonably expect it to say so clearly.

The need for a uniform and sensible approach to construing statutes like the Act is urgent. Like those of other industries, members of the retail industry are repeatedly sued for technical, no-harm violations of this Act and others like it. The Court should recognize the enormous practical consequences that would follow from greenlighting the Ninth Circuit's willingness to open the gates to federal court without a plaintiff who has suffered an actual injury.

ARGUMENT

THE NINTH CIRCUIT ERRED BY READING THE ACT TO ELIMINATE ARTICLE III'S INJURY-IN-FACT REQUIREMENT

Before considering whether Congress constitutionally *could* enact a statute like the one portrayed by the Ninth Circuit—although *amicus* agrees with Spokeo that it could not—the Court may choose instead to consider whether Congress in fact *did* enact such a statute. If, as *amicus* argues, Congress never intended the Fair Credit Reporting Act to authorize cases like Robins's, then this opening inquiry should also be the closing one. The absence of any clear textual indication that Congress wished to push standing up to or beyond Article III's limits is dispositive.

A. The doctrine of constitutional avoidance requires reversing the Ninth Circuit's broad construction of the Act

In construing the Act, the Ninth Circuit embraced the most constitutionally problematic reading that the Act could possibly bear, casually dismissing other alternatives as "of little consequence," given its confidence in its own construction. Pet. App. 7a n.2. This was error. When the Ninth Circuit concluded that "the statutory

cause of action does not require a showing of actual harm," *id.* at 6a, the court should have heard constitutional alarm bells ringing. Unlike an element of a claim that Congress could include or dispense with as seems best, "actual harm" is not something that is merely an option for Congress to consider; instead, as Spokeo has explained, actual harm is a fundamental *constitutional* prerequisite for access to the federal courts. See Pet. Br. 11-32. The Ninth Circuit should have selected the reading of the statute that did not trigger such constitutional problems.

No one disputes Congress's broad power and responsibility to legislate, particularly in the sphere of interstate commerce. The Commerce Clause vests Congress with ample power to enact legislation to regulate any "economic activity [that] substantially affects interstate commerce." *United States* v. *Lopez*, 514 U.S. 549, 560 (1995). Congress correspondingly enjoys substantial discretion and deference to its judgment that a chosen regulatory scheme—including creating new rights and obligations—is necessary to protect the Nation's commercial interests. The very breadth of this power, however, generates the need for cautious statutory constructions. If courts always gave statutory text its broadest possible meaning, statutes passed under capacious provisions like the Commerce Clause would regularly threaten the outer bounds of the Constitution—but only rarely with that intention.

Weighing a statutory provision's constitutionality is appropriate only when it is certain that Congress truly intended its legislation to bear the constitutionally questionable meaning. This Court refuses to proceed to constitutional analysis if there are alternative routes to resolution open. See, *e.g.*, *Ashwander* v. *Tenn. Valley Auth.*, 297 U.S. 288, 346-347 (1936) (Brandeis, J., concurring). Likewise, the Court avoids constitutional tension by

adopting a plausible reading that does not present serious constitutional questions. *Id.* at 348.

Thus, last year, for example, the Court refused to read the Chemical Weapons Convention Implementation Act to reach ordinary and wholly intra-state assault cases. Such a reading, it concluded, would subject that statute to constitutional problems arising from federalizing purely intra-state conduct. Because a plausible alternative was available, the Court read the statute more narrowly, thereby avoiding a more aggressive construction that would trigger constitutional scrutiny and the risk of judicially invalidating the statute. See *Bond* v. *United States*, 134 S. Ct. 2077, 2088-2090 (2014).[2]

Spokeo's brief more than adequately demonstrates that the constitutional question in this case is serious—and indeed that, if that question must be reached, the judgment below should be reversed on that ground, requiring the invalidation of the Act's expansion of standing. See Spokeo Br. 36-53. After all, standing is not simply a doctrine to be learned or a jurisdictional matter to be established. It is a constitutional principle that demarcates the Judiciary's sphere of authority. It preserves the separation of powers, and therefore, ultimately, liberty. It is "[t]he idea of separation of powers that underlies standing doctrine," *Allen* v. *Wright*, 468 U.S. 737, 759 (1984), and "the Constitution's separation-of-powers structure, like the substantive guarantees of the Fifth and Fourteenth Amendments, protects" individual rights. *Boumediene* v. *Bush*, 553 U.S. 723, 743 (2008) (ci-

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[2] That risk was not insubstantial. Three concurring Justices, who felt compelled to reach the constitutional question, would have found the statute unconstitutional. See, *e.g.*, *Bond*, 134 S. Ct. at 2098-2102 (Scalia, J., concurring in the judgment); *id.* at 2102-2103 (Thomas, J., concurring in the judgment); *id.* at 2111 (Alito, J., concurring in the judgment).

tations omitted).

But that constitutional analysis can be pretermitted because the Act has a constitutionally unremarkable text and structure—it provides technical standards that "consumer reporting agencies" must follow, and provides a right of action for those *who have constitutional standing—i.e.*, those who have been actually harmed by violations of the technical standards. The doctrine of constitutional avoidance is sufficient to resolve this case.

B. When Congress *does* wish to push the boundaries, the Court reasonably expects a clear statement to that effect

Even if it were established that Congress *could* make adjustments to the actual-injury requirement of standing, that does not establish that Congress intended to do so here. The Act should reasonably be interpreted to avoid a construction that touches on important constitutional values—here, the very character of Article III's standing requirements and the deleterious consequences of transferring to private parties the power to prosecute alleged violations of legal standards when the parties have not themselves been actually harmed by those violations. This is not simply a matter of dodging a clear congressional intent to adopt a constitutionally questionable statute. Rather, as the Court explained in *Bond*, "[p]art of a fair reading of statutory text is recognizing that 'Congress legislates against the backdrop' of certain unexpressed presumptions." 134 S. Ct. at 2088 (quoting *EEOC* v. *Arabian Am. Oil Co.*, 499 U.S. 244, 248 (1991)). A clear statement to the contrary, of course, can rebut any such presumption. But absent such a clear indication that Congress actually wished to expand standing dramatically—and none exists in this Act—the Court should presume that Congress intends no such fundamental alteration of the lines of demarcation among the three branches even assuming that it had the power to do so.

1. *Clear-statement rules help courts in identifying legislative intent in delicate and important areas*

Bond itself provides a useful example. While the statutory text at issue there was extraordinarily broad and unquestionably *could* have been construed to cover the intra-state conduct involved in that case, the Court made clear that part of the judicial reading of statutory text requires identifying the shared understandings between Congress and the courts that facilitate the smooth application of statutes. "The problem with [the Government's] interpretation is that it would 'dramatically intrude[] upon traditional state criminal jurisdiction,' and we avoid reading statutes to have such reach in the absence of a clear indication that they do. ∗ ∗ ∗ As we have explained, 'Congress has traditionally been reluctant to define as a federal crime conduct readily denounced as criminal by the States.' There is no clear indication of a contrary approach here." 134 S. Ct at 2088, 2093 (quoting *United States* v. *Bass*, 404 U.S. 336, 350, 349 (1971)).

In other words, while the statute *could* be read to cover the conduct at issue, the Court repeatedly insisted on a "clear indication" that Congress *actually intended* that it cover such conduct before it would give it the more aggressive reading. This need not imply anything at all about Congress's *power* to make any particular choice. Indeed, this Court requires explicit language from Congress in areas in which Congress has particularly broad power to legislate. "'[T]he Court . . . has tended to create the strongest clear statement rules to confine Congress's power in areas in which Congress has the constitutional power to do virtually anything.'" *INS* v. *St. Cyr*, 533 U.S. 289, 299 n.10 (2001) (quoting Eskridge & Frickey, Quasi-Constitutional Law: Clear Statement Rules as Constitutional Lawmaking, 45 Vand. L. Rev. 593, 597 (1992)).

Clarity is vital when political will is the primary pro-

tection against "intrusive exercises of Congress' Commerce Clause powers ∗ ∗ ∗." *Gregory* v. *Ashcroft*, 501 U.S. 452, 464 (1991). The Court must "be absolutely certain Congress *intended* such an exercise." *Ibid.* (emphasis added). Because "the separation and independence of the coordinate branches of the Federal Government serve to prevent the accumulation of excessive power in any one branch," *id.* at 458, Congress must textually remove all doubt if it intends to intrude upon the powers of coordinate branches. Creating new rights and remedies under the Commerce Clause is, as a general matter, purely for Congress; if its powers extend to modifying the roles of the other branches, therefore, then a respectful response from the Judiciary is to attribute no such motive to Congress unless it is unmistakable.

Examples in various other contexts abound. Some derive from constitutional red lines and others from centuries of tradition that Congress would be unlikely to jettison without doing so clearly.

- The Court has emphasized that limitations on access to habeas corpus present such a serious Suspension Clause issue that a statute will not be read to require that result if any other plausible reading exists. See *St. Cyr*, 533 U.S. at 300 (no clear statement to rebut presumption); *Boumedience*, 553 U.S. at 737-738 (Congress sufficiently rebutted presumption with clear statement); cf. *Hamdan* v. *Rumsfeld*, 548 U.S. 557, 575 (2006) ("Congress [will] not be presumed to have affected such denial [of habeas corpus] absent an unmistakably clear statement to the contrary.").
- In *Morrison* v. *National Australia Bank, Ltd.*, the Court emphasized that "[w]hen a statute gives no clear indication of an extraterritorial application, it has none." 561 U.S. 247, 255 (2010).

- The Court has held that "Congress may abrogate the States' constitutionally secured immunity from suit in federal court only by making its intention unmistakably clear in the language of the statute." *Atascadero State Hosp.* v. *Scanlon*, 473 U.S. 234, 242 (1985).
- Giving "exclusive jurisdiction over a federal cause of action" requires Congress to "affirmatively divest state courts of their presumptively concurrent jurisdiction." *Yellow Freight Sys., Inc.* v. *Donnelly*, 494 U.S. 820, 823 (1990).
- In *Hecht Co.* v. *Bowles*, the Court even presumed that Congress would make no "abrupt departure from traditional equity practice" without first "ma[king] its desire plain." 321 U.S. 321, 330 (1944).

All of these (and other) presumptions ultimately turn on common sense and the respectful assumption that Congress desires to maintain the contours of our constitutional system. One would not, in other words, expect Congress to cavalierly or thoughtlessly abrogate the States' sovereign immunity, and so it is sensible to read a statute as intending such a step (when constitutionally permissible at all) only when Congress has removed all ambiguity. "This interpretive rule facilitates a dialogue between Congress and the Court. If the Court invokes a clear statement rule to advise that certain statutory interpretations are favored in order to avoid constitutional difficulties, Congress can make an informed legislative choice either to amend the statute or to retain its existing text." *Boumediene*, 553 U.S. at 738 (citations omitted).

2. *Congress would not modify constitutional standing requirements without a clear statement*

Legislative adjustments to standing to sue readily fit within the category where this Court expects clear indications from Congress before the Court will read a statute to take a dramatic turn from established constitutional understandings. When exercising its power to authorize private litigation, for instance, "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." *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 580 (1992) (Kennedy, J., concurring). If it is indispensable to clearly "identify the injury" underlying a new cause of action, the Court should expect far more clarity in a statute that intends to *eliminate* the injury-in-fact requirement altogether.

The Ninth Circuit's expansive reading of the Fair Credit Reporting Act, however, leaps to the conclusion that Congress intended plaintiffs to be excused from showing injury in fact. Pet. App. 6a. Spokeo is a business that aggregates publicly available data to operate a "people search engine." Here, Spokeo allegedly included false data that *enhanced* Robins's qualifications. Whether Spokeo violated the Act's standards at all is not directly at issue here, but even assuming that it did, lawsuits like Robins's—seeking redress for an act causing him no concrete injury—upset the balance of power in two ways that justify demanding a clear statement before embracing the Ninth Circuit's reading: They directly infringe upon the Executive's law-enforcement responsibility and they drag the Judiciary into disputes that do not fall within the "judicial Power," U.S. Const. art. III, § 1.

First, the injury-in-fact requirement is "not just an empty formality." *Lujan*, 504 U.S. at 581 (Kennedy, J., concurring). It protects "the Chief Executive's most im-

portant constitutional duty, to 'take Care that the Laws be faithfully executed,' Art. II, § 3." *Id.* at 577 (maj. op.). A private party does not have "special license to roam the country" to search out wrongdoings and bring them to court. *Valley Forge Christian College* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 487 (1982). Unless Congress expressly grants a private party the right to bring suit, see *Vermont Agency of Nat. Res.* v. *United States ex. rel. Stevens*, 529 U.S. 765, 773 (2000), enforcement of the laws belongs to the President, not bounty hunters. See also Pet. Br. 28-31.

Second, another primary purpose of the concrete-injury requirement is to "confine[] the Judicial Branch to its proper, limited role in the constitutional framework of Government." *Lujan*, 504 U.S. at 581 (Kennedy, J., concurring). Any limitation upon the federal Judiciary, "whether imposed by the Constitution or by Congress, must be neither disregarded nor evaded." *Owen Equipment & Erection Co.* v. *Kroger*, 437 U.S. 365, 374 (1978). If Congress desired to make an abrupt departure from Article III standing requirements in the adoption of the Act, "it would have made its desire plain." *Hecht Co.*, 321 U.S. at 330. Reading the Act, as the Ninth Circuit did, to eliminate the need to show any injury-in-fact thus undercuts the constitutional structure of the separation of powers—*all three powers*—without any clear statement from Congress that it intended to do so.

The Ninth Circuit insisted on no such clarity, believing that Congress's simple authorization of statutory damages dispensed with the injury-in-fact requirement. Pet. App. 6a. But that hardly makes sense. It is at odds with what the Act intends to do—prevent *harm* and compensate *injury*. Indeed, drawing such broad meaning from the mere existence of statutory damages exacerbates the problem—granting standing to someone not *constitutionally entitled* to sue is bad enough, but then entitling

such a party to collect potentially ruinous damages *for nothing* of constitutional cognizance is dramatically worse.[3] A statute requiring "accurate payment of overtime," with a statutory penalty for willful violations, would not reasonably indicate a congressional desire to subject a company to suit and damages after inaccurately *over-paying* employees.

3. *Congress is perfectly capable of speaking clearly about standing*

Nor is there any question that Congress is capable of legislating expressly—as it has done when it wishes to push standing to (and perhaps beyond) its outer bounds. It did so in the well known case of Terri Schiavo. See Relief of the Parents of Theresa Marie Schiavo, Pub. L. 109-3, § 2, 119 Stat. 15, 15 (Mar. 21, 2005) ("Any parent of Theresa Marie Schiavo shall have standing to bring suit under this Act.").[4] In 1979, after the Senate confirmed Congressman Abner Mikva to a seat on the United State Court of Appeals for the District of Columbia Circuit, Congress passed a special statute allowing members of Congress to challenge the appointment on the grounds

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[3] The collapse of the three-part standing inquiry into simply the question of whether there has been a statutory violation, see Pet. App. 9a, shows how dramatic the Ninth Circuit's judgment actually is. Spokeo's constitutional analysis is surely correct—but more immediately, the very fact that the Ninth Circuit collapses well-understood standing requirements into the mere existence of a statutory cause of action is itself a reason to doubt that Congress intended such a result. Even if Congress thought that it *could* escape Article III, it would be unlikely to do so in such a cavalier manner.

[4] The case was ultimately resolved when the courts refused to read the statute as requiring a preliminary injunction, see *Schiavo ex rel. Schindler* v. *Schiavo*, 403 F.3d 1223 (11th Cir. 2005); *Schiavo ex rel. Schinder* v. *Schiavo*, 403 F.3d 1289 (11th Cir. 2005), and this Court denied certiorari.

that it violated the Constitution's Ineligibility Clause,[5] because "the salaries of federal judges were increased during [then-Congressman] Mikva's term in Congress * * * ." *McClure* v. *Carter*, 513 F. Supp. 265, 266 (D. Idaho), *aff'd sub nomine McClure* v. *Reagan*, 454 U.S. 1025 (1981). The statute,[6] which the courts voided for violating the standing doctrine, "purport[ed] to grant standing to senators who voted for Judge Mikva as well as to those who voted against him. Furthermore, the statute purports to grant standing to members of the House of Representatives, who had no vote on the appointment at all." *Id.* at 271. That Congress readily can express its will when it wishes to push the standing envelope makes it far less likely that, in the Act at issue here, it intended to press as far as the Ninth Circuit believed.

The bottom line here is that the Ninth Circuit's analysis was backward in its assumptions. Rather than assume that Congress intended to erase standing requirements because "the statutory cause of action does not require a showing of actual harm," Pet. App. 6a, the logic of this Court's cases requires that Congress expressly provide for standing in the absence of harm if that is what it intends.

C. Applying the clear-statement rule in this context has important practical benefits

The doctrinal analysis of this case cannot be wholly divorced from its larger context: the Act is a regulatory statute that imposes technical standards on American

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[5] "No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time * * * ." U.S. Const. art. I, § 6, cl. 2.

[6] Act of October 12, 1979, Pub. L. No. 96-86, § 101(c), 93 Stat. 656 (not codified)

businesses. The Fair Credit Reporting Act details standards for how consumer credit reports must be processed, prepared, divulged, and reviewed. But that is, of course, only a tiny fraction of the regulatory thicket facing all American businesses.

From the perspective of this regulated public, clarity is not so much a doctrinal nicety as an essential means of being able to comply with the law in good faith. For example, if this Act—and the many others like it—contained a clear statement subjecting businesses to private suits *even when no one has been harmed*, businesses would at least have meaningful notice of this vast risk. The clear statement would itself generate awareness of potential liability, which in turn could inform decision-making about whether and to what extent businesses or individuals should engage in particular commercial endeavors. Sometimes the risk may not be worth the reward; ensuring absolute compliance could be so costly as to destroy an activity's economic value altogether. But clear statutory directives at least would allow businesses to make an educated assessment in the first place.

Clarity also facilitates compliance. Commercial actors work hard to comply with all obligations, but there are countless opportunities for the unwary to fall short of some technical requirement or other. Before any retailer can buy any inventory, sell any merchandise, or employ any workers, it faces a complex of governmental imperatives—statutes passed at the federal, state, and local levels, and then regulations issued by administrative agencies at each level of government. That corpus is always growing. Each year, between 2,500 and 4,500 new final rules—of sometimes considerable length and complexity—are published in the Federal Register alone. See Carey, Counting Regulations: An Overview of Rulemaking, Types of Federal Regulations, and Pages in the Federal Register, Congressional Research Service, at ii

(2014).[7] Those who are trying in earnest to follow the law often find it difficult to know what the law demands—and error can be financially ruinous or even bring criminal consequences.[8]

Retailers, like those in other industries that contribute to the American economy, certainly seek no dispensation from any validly imposed legal obligation. But a clear-statement rule with respect to statutes, like the Act, that vastly expand the number of potential plaintiffs, would allow the regulated public to predict with some modicum of accuracy what the law requires. This is not a theoretical concern. As Spokeo noted, various *amici* at the petition stage have already illustrated with examples how no-harm lawsuits (and often class actions) under the Act, or others like it, have begun to proliferate. See Pet. Br. 33. The retail industry is, unsurprisingly, no exception.

To take but a single type of claim under just the Fair Credit Reporting Act itself, retailers are frequently targeted in no-harm class-action lawsuits for alleged violations of the Act's requirement that companies include a "stand-alone disclosure" during the job-application process. See 15 U.S.C. §1681b(b)(2)(A)(i). Retailers who have included any *extra* information on a disclosure have been sued; many such cases will turn on this Court's decision in *Spokeo*, while others have already led to substantial nuisance-value settlements that primarily pay

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[7] Available at https://fas.org/sgp/crs/misc/R43056.pdf.

[8] In *Sykes* v. *United States*, Justice Scalia acknowledged the "ever-increasing volume of laws in general, and of criminal laws in particular. It should be no surprise that as the volume increases, so do the number of imprecise laws. And no surprise that our indulgence of imprecisions that violate the Constitution encourages imprecisions that violate the Constitution." 131 S. Ct. 2267, 2288 (2011) (Scalia, J., dissenting).

the lawyers.[9] These cases, already just the tip of the iceberg and taken only from this single Act, would presumably be just the start of a much larger onslaught if the judgment below were to be affirmed and this litigation tactic were to be endorsed.

But common sense reveals that there is no good reason that Congress would intend to draft statutes to function like jackpots for the primary benefit of those who scour the United States Code or the Code of Federal Regulations to identify technical misses that harmed nobody. Robins here purports to be able to extract more than a *billion* dollars from Spokeo, simply because of alleged errors that have harmed neither himself nor anyone else. See Pet. Br. 33-34. It is unlikely in the extreme that Congress thought that it was endorsing such entrepreneurial yet destructive litigation.

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[9] See, *e.g.*, Bricketto, JPML Centralizes Michaels Class Suits Over Job Credit Checks, Law360 (Apr. 9, 2015), available at http://www.law360.com/articles/641381 (discussing *Graham* v. *Michaels Stores Inc.*, No. 2:14-cv-07563 (D.N.J.); *Burnside* v. *Michaels Stores Inc.*, No. 6:15-cv-3010 (W.D. Mo.), and *Castro* v. *Michaels Stores Inc.*, No. 3:15-cv-276 (N.D. Tex.)); Field, Whole Foods Can't Stay FCRA Suit Until *Spokeo* Decision, Law360 (Apr. 29, 2015), available at http://www.law360.com/articles/649165 (discussing *Speer* v. *Whole Foods Market Group Inc.*, No. 8:14-cv-03035 (M.D. Fla.)); Germaine, Dollar Tree Hit With Class Action Over Background Checks, Law360 (May 18, 2015), available at http://www.law360.com/articles/656847 (discussing *Walker* v. *Dollar Tree Stores Inc.*, No. 8:15-cv-01170 (M.D. Fla.)); Grande, Home Depot Pens Deal To End FCRA Class Action, Law360 (Apr. 21, 2015), available at http://www.law360.com/articles/645948 (discussing *Fernandez* v. *Home Depot USA Inc.*, No. 8:13-cv-00648 (C.D. Cal.)); Wickham, Publix Seeks OK On $6.8M Deal Over Background Checks, Law360 (Oct. 28, 2014), available at http://www.law360.com/articles/590992 (discussing *Knights* v. *Publix Super Markets, Inc.*, No. 3:14-cv-00720 (M.D. Tenn.)) (settlement would give $48 to each class member and $2.3 million to each attorney).

Before reaching the constitutional issues, therefore, the values from clarity and dangers from the lack of clarity reasonably should inform the anterior step of ascertaining the Act's meaning in the first place. The Ninth Circuit's statutory reading markedly diverges from our Nation's constitutional tradition and widely threatens the viability of all commercial actors who are subject to the increasing plethora of regulatory requirements. This Court, by contrast, should adopt a reading of the Act that simultaneously keeps it within Article III's bounds *and* prevents it from becoming a mechanism that erodes the freedom and vitality of Americans engaged in commerce. Applying the clear-statement principles from this Court's jurisprudence to statutes that arguably depart from the Constitution's injury-in-fact requirement for standing would achieve that goal.

CONCLUSION

For the foregoing reasons, this Court should reverse the judgment below.

Respectfully submitted.

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