



## Newsletters

### In Significant Check on Federal Consumer Class Actions, U.S. Supreme Court Holds "No Harm, No Foul"

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On Friday, June 25, 2021, the U.S. Supreme Court, in a 5-4 decision, reversed and remanded *TransUnion LLC v. Ramirez* back to the Ninth Circuit. Justice Kavanaugh delivered the opinion of the Court and he was joined by Justices Alito, Barrett, Gorsuch and Chief Justice Roberts. The Court decided the question of whether Plaintiff can establish Article III standing without suffering a concrete harm aside from simply alleging a violation of a federal statute, which provides for the recovery of statutory damages. The Court also decided whether each putative class member must establish Article III standing to assert a claim for statutory damages.

As to the first issue, the Court held "[n]o concrete harm, no standing." In regard to the second issue, the Court held "[e]very class member must have Article III standing in order to recover individual damages."

The *Ramirez* class action involves 8,185 class members. Plaintiffs alleged that TransUnion violated the Fair Credit Reporting Act (FCRA) because: 1) TransUnion failed to use reasonable procedures to ensure the accuracy of its credit files in regard to reports of people on the terrorist watch list; and 2) the notices TransUnion provided the class members contained formatting errors, which caused confusion.

The Supreme Court relied heavily on its ruling in *Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016), and several Circuit Court decisions following *Spokeo*, to perform its analysis. The Court held that in order to establish Article III standing, Plaintiffs must show more than simply a violation of a federal statute that provides for the recovery of statutory damages. Instead, the "inquiry asks whether plaintiffs have identified a close historical or common-law analogue for their asserted injury."

In other words, the Court found that Congress cannot create Article III standing simply through the passage of a law that provides for statutory damages. A structure that allows Congress to freely authorize unharmed Plaintiffs to sue runs afoul not only of Article III, but it also infringes on the Executive Branch's Article II authority. It is the Executive Branch that decides how to prioritize and how aggressively to pursue legal actions against defendants. This authority is not within the purview of private Plaintiffs (and their attorneys) because they are not accountable to the public and they are not in charge of enforcing general compliance of regulatory law.

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The Court also held that "standing is not dispensed in gross." It is Plaintiffs' burden to establish that each class member has Article III standing in order to recover individual damages.

As a result, the Court ultimately concluded that none of the class members has standing to assert a claim regarding the formatting defects in the notices. The issue of whether Plaintiff had standing himself to assert a claim regarding the notices was not at issue before the Court. Additionally, the Court held that the 1,853 class members for whom TransUnion provided credit reports to a third-party have Article III standing as they suffered an injury to their reputation. On the other hand, the remaining 6,332 class members did not have standing to assert a claim because their credit reports were not disclosed to a third-party. The Court held that disclosure of the credit reports internally within TransUnion and/or disclosure to a vendor did not meet the requirements of Article III standing.

*TransUnion* will have a significant impact on consumer class actions. *TransUnion* expressly holds that Article III standing requires something more than simply alleging a violation of a statute that provides for statutory damages, and each individual class member must establish Article III standing to recover statutory damages. Whether each individual class member has Article III standing may prove to be a substantial obstacle in certifying future consumer class actions. On the other hand, Justice Thomas in the dissent warns that the majority's opinion will result in a deluge of cases being filed in state court alleging a violation of federal law and the defendants will not have access to federal court.