NO. 13-1339

IN THE

Supreme Court of the United States

SPOKEO, INC.,

Petitioner,

v.

THOMAS ROBINS, ON BEHALF OF HIMSELF AND ALL OTHERS SIMILARLY SITUATED,

Respondent.

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

RESPONDENT'S BRIEF IN OPPOSITION

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INTRODUCTION

According to the petition, this case raises the question whether Congress can confer Article III standing "in the absence of any allegation of concrete and particularized injury." Pet. 2. But that question is not presented here. Respondent *has* alleged concrete and particularized injuries—economic, reputational, and emotional injuries caused by the publication of false information about him, and no one else. Under the law of defamation, these kinds of allegations have been enough for suits in common-law courts since the seventeenth century.

These concrete allegations make this case a far worse vehicle than either *First American Financial Corporation v. Edwards*, No. 10-708, or *First National Bank of Wahoo v. Charvat*, No. 13-679—both of which claimed to raise the same question. Petitioner never denies that respondent alleges these injuries, but relegates them to a two-paragraph argument on an entirely different element of standing: causation. Pet. 24. That the Court would have to confront petitioner's factbound, case-specific causation argument before even reaching the petition's question belies the assertion that this case "cleanly presents" that question. Pet. 23.

Instead of addressing the allegations, petitioner and its amici raise hypothetical class-action horror stories—some copied nearly verbatim from the briefs in *Charvat*. But their concerns are exaggerated: Damages for the invasion of legal rights have long been a mainstay of our legal system, for everything from contract to copyright. Using Article III to bar these claims, by contrast, would have significant consequences—including a shift of many class actions to state courts, in tension with recent congressional policy. Petitioner and its amici have invited this Court to take this bad vehicle to hear an unnecessary question. The Court should decline.

STATEMENT

1. Before 1970, if a consumer was injured by the dissemination of false credit information, actions for redress "could be brought only under state defamation law." Virginia G. Maurer, *Common Law Defamation and the Fair Credit Reporting Act*, 72 Geo. L.J. 95, 98 (1983). In that year, Congress responded to the "need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy" by enacting the Fair Credit Reporting Act. 15 U.S.C. § 1681(a). Senator Proxmire, the bill's lead sponsor, noted that among the issues the FCRA was designed to combat "[p]erhaps the most serious problem in the credit reporting industry is the problem of inaccurate or misleading information." 115 Cong. Rec. 2411 (1969).

The FCRA, "to a great extent, incorporated common law defamation principles" into a federal cause of action that consumers can bring against agencies who, among other things, publish false information about them as a result of careless procedures. Maurer, *supra*, at 126; 15 U.S.C. § 1681e(b). To protect consumers, Congress specified several procedures that credit reporting agencies must follow—such as providing the furnishers and users of consumer information with notices of their legal obligations and publicizing a telephone number through which consumers can access free reports. 15 U.S.C. § 1681e; *id.* § 1681j. In addition to these specific provisions, the FCRA requires credit reporting agencies to "follow reasonable procedures to assure maximum possible accuracy" of their information. 15 U.S.C. § 1681e(b). In 1996, responding to "horror stories about inaccurate credit information and the inability of consumers to get the information corrected," 141 Cong. Rec. 5419 (1995),

Congress amended the FCRA to include a damages provision granting "not less than $100 and not more than $1,000" to consumers who are the victims of willful violations of the Act. 15 U.S.C. § 1681n.

2. Petitioner Spokeo, Inc. publishes reports on individual consumers' economic health, occupation, wealth, and more. Am. Compl. ¶ 2. Spokeo has published and maintains a report on respondent Thomas Robins that contains a significant amount of inaccurate information. *Id.* at ¶¶ 30-32. Spokeo's report initially misrepresented Robins's age, wealth, employment status, and education level, in addition to incorrectly stating that Robins is married and has children. *Id.* Although some of the report's false material has been modified, Spokeo continues to misrepresent Robins's education, wealth, and economic health. *Id.* Spokeo has marketed its reports to businesses and human resource professionals as a way to research potential new hires. *Id.* at ¶ 15, ¶ 28. Robins is currently unemployed and seeking work. *Id.* at ¶ 34.

3. Robins sued Spokeo in federal court, alleging that false information published by Spokeo has injured his employment prospects, causing him both financial and emotional harm. *Id.* at ¶¶ 35-37. In addition, Robins alleges that Spokeo has violated five different FCRA requirements by not making required disclosures and not following procedures that are designed to ensure the accuracy of its information. *Id.* at ¶¶ 61-74. Robins seeks statutory damages under 15 U.S.C. § 1681n. Am. Compl. 16 ¶ C.

After the district court initially dismissed Robins's complaint without prejudice, Pet. App. 14a, Robins developed his complaint to include descriptions of how Spokeo has marketed its information to employers. *See* Am. Compl. The district court then found that Robins

had alleged an injury sufficient to confer Article III standing: Spokeo's marketing of inaccurate information about him, which was "fairly traceable" to Spokeo's conduct and "likely to be redressed by a favorable decision from this court." Pet. App. 18a. Spokeo objected to this decision, and the district court reversed itself—dismissing the case for lack of standing in a single-paragraph opinion four months later. *Id.* at 23a.

In a unanimous opinion authored by Judge O'Scannlain, the court of appeals rejected Spokeo's argument that Robins had not sufficiently alleged willful violations of the FCRA. Instead, the court found that "[t]he facts that Robins pled make it plausible that Spokeo acted in reckless disregard of [its] statutory duty" to ensure the accuracy of the information it published. *Id.* at 4a n.1. The court held that Spokeo's alleged violations of the FCRA were sufficient to confer standing on Robins, *id.* at 8a, and therefore declined to further evaluate the concrete economic, reputational, and emotional injuries that Robins alleged. *Id.* at 9a n.3.

REASONS FOR DENYING THE PETITION

I. Because this case involves allegations of concrete and particularized injuries, it does not present Spokeo's question.

Spokeo asserts that this case raises the question whether there can be "Article III standing in the absence of any allegation of concrete and particularized injury." Pet. 2. But Robins has clearly alleged concrete and particularized injuries: economic harm to his employment prospects, Am. Compl. ¶¶ 35-36; informational injury from Spokeo's failure to provide legally mandated disclosures, *id.* at ¶ 74; and emotional injury, *id.* at ¶ 37. The kinds of injuries Robins alleges are well established. As a result, this case is a poor vehicle for Spokeo's ques-

tion, which by its own terms applies only where a plaintiff "suffers no concrete harm." Pet. i.

A. Allegations of injury based on the publication of false information have a long pedigree in the common law, and would have been familiar to the Framers of Article III. Claimants who allege such injuries have had standing in common-law courts since at least the seventeenth century. Dan B. Dobbs et al., *The Law of Torts* § 517 (2d ed. 2013). Tort law recognizes a variety of ways in which publishing falsehoods or private information creates a cognizable injury. *See, e.g.*, Restatement (Second) of Torts § 559 (1977) (defamatory communications), *id.* § 623A (publication of injurious falsehood), *id.* § 652D (publicizing private life), *id.* § 652E (publicizing someone in a false light). An individual's allegation that he was harmed by published falsehoods—falsehoods that specifically concern him and no one else—is a claim "of the sort traditionally amenable to, and resolved by, the judicial process." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 102 (1998). Indeed, this Court has held that even "a risk of injury to [one's] reputation," without more, is a sufficient injury for Article III standing. *Meese v. Keene*, 481 U.S. 465, 475 (1987).

In addition to this reputational harm, Robins also alleges a specific economic injury—the harm to his employment prospects by Spokeo's marketing of false information about him. Am. Compl. ¶¶ 35-36. Such "palpable economic injuries have long been recognized as sufficient to lay the basis for standing, with or without a specific statutory provision for judicial review." *Sierra Club v. Morton*, 405 U.S. 727, 733 (1972). With the FCRA, Congress endorsed claims like Robins's—Spokeo cannot argue that the statute makes him somehow *less* worthy of standing.

The FCRA's cause of action, analogous to common-law claims designed to vindicate reputational injury, does not detract from Robins's standing in any way. Legislatures have long built upon the common-law claim of defamation per se by passing statutes that proscribe particular kinds of behavior. Alaska, for instance, prohibits defamatory statements that are "critical of or derogatory to the financial condition of a person in the insurance business," while Louisiana prohibits defamatory statements that are critical of certain financial institutions. Alaska Stat. § 21.36.070; La. Rev. Stat. Ann. § 6:930. The FCRA is the same type of law passed at the federal level to protect consumers. "[T]he FCRA, to a great extent, incorporated common law defamation principles" when it created a federal cause of action "to redress injuries that prior to the FCRA could be brought only under state defamation law." Maurer, *supra*, at 126, 98. This action is thus a federal statutory analog to traditional state common-law claims that have always been sufficient for standing. Spokeo's question presented applies only to "a plaintiff who suffers no concrete harm," pet. i, but actual injury has been alleged here. This case could be decided on the merits of the statutory questions under the FCRA without ever reaching Spokeo's question—making the question unworthy of this Court's review.

Spokeo is wrong to argue that the FCRA's statutory-damages provision somehow changes the standing inquiry. Statutory-damages under the FCRA reflect a facet of reputational-injury law that this Court has recognized: "the experience and judgment of history that proof of actual damage will be impossible in a great many cases" despite "the character of the defamatory words and the circumstances of publication." *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S.

749, 760 (1985) (internal quotation marks omitted). In light of this reality, the law must specify what is "generally considered defamatory [p]er se, and actionable without proof of special damages." *Paul v. Davis*, 424 U.S. 693, 697 (1976). The FCRA's "clear analogs in our common-law tradition" demonstrate that it does not raise the question whether Congress may create "a case or controversy where none existed before." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 580 (1992) (Kennedy, J., concurring).

B. Robins's concrete, particularized allegations make this case a much worse vehicle for Spokeo's question than the two cases that this Court has already declined to decide. Spokeo's petition is a slightly updated version of the petition in *First Nat. Bank of Wahoo v. Charvat*, No. 13-679. But this Court did not grant certiorari in *Charvat*, and should not do so here. The claim in *Charvat* hinged on allegations that two banks' ATMs did not comply with federal notice requirements. *See Charvat v. Mut. First Fed. Credit Union*, 725 F.3d 819 (8th Cir. 2013). That claim would have given standing to any person who walked off the street to use one of either bank's ATMs, even someone who visited the bank solely for the purpose of obtaining a basis to file a lawsuit. In contrast, Spokeo has posted false information about Robins in particular, and Spokeo is liable only to Robins for this wrong under the FCRA. 15 U.S.C. § 1681n(a). *Charvat* was a bad vehicle; this case is worse.

Spokeo also asserts that this case raises the same issues as *First American Financial Corporation v. Edwards*, 132 S. Ct. 2536 (2012). Pet. 2. But in *First American*, the plaintiff explicitly argued that she need not allege *any* injury beyond the bare statutory violation. *See* Br. for Respondent 35-36, *First American Fin. Corp. v.*

Edwards, No. 10-708. She could not have alleged economic injury from the illegal kickbacks she challenged, because the price of the services she received was set by law. *Edwards v. First American Fin. Corp.*, 610 F.3d 514, 516 (9th Cir. 2010). In contrast, this case involves allegations of concrete, particularized injury—that Spokeo has harmed and continues to harm Robins by publishing false information *about him*. Am. Compl. ¶ 35. This case thus involves alleged injuries that are more concrete than those in *First American* and more particularized than those in *Charvat*, making it a poor vehicle for addressing the question Spokeo claims is presented here.

C. Nevertheless, Spokeo contends that this case "cleanly presents" its question for two reasons. Pet. 23-24. First, Spokeo argues that there is no commercial relationship between it and Robins. *Id.* Second, Spokeo argues that there is a causation problem with the injuries Robins alleges. Neither of these points is persuasive.

First, Spokeo points out that, in contrast to *First American*, Robins has not entered into a commercial transaction with Spokeo. *Id.* But Spokeo does not cite any authority—because none exists—for the notion that a commercial transaction is somehow a prerequisite to an injury-in-fact. *See, e.g.*, *Susan B. Anthony List v. Driehaus*, 134 S. Ct. 2334 (2014) (finding injury-in-fact in the threatened enforcement of a law); *Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167 (2000) (finding injury-in-fact due to damage to aesthetic and recreational interests). A great many cases—including many, if not most, tort cases—unquestionably involve an injury-in-fact in the complete absence of commercial transactions.

Second, unable to deny that Robins has alleged actual injuries, Spokeo instead makes a causation argument based on *Clapper v. Amnesty International USA*, 133 S. Ct. 1138 (2013). Pet. 24. But this is a non sequitur—the question whether Robins has sufficiently pled causation is a completely distinct question from the one Spokeo claims this case "cleanly" presents. Spokeo's question presumes that Robins has "suffer[ed] no concrete harm," Pet. i. But as its *Clapper* argument illustrates, what Spokeo really is arguing is that Robins has insufficiently proved causation. Such a logically "prior question" would necessitate a case-specific, fact-bound inquiry that this Court would have to undertake without the benefit of a clear ruling on the causation issue by the court below. *Lebron v. Nat'l R.R. Passenger Corp.*, 513 U.S. 374, 381-82 (1995). There is thus a serious risk that Spokeo's presumption that Robins has not suffered harm will later be proved wrong—"a risk that ought to be avoided." *Id.* at 382.

D. Finally, Spokeo completely ignores several of Robins's allegations that also could serve as grounds for standing. In addition to alleging that Spokeo violated the FCRA by failing to adopt procedures that prevented the publication of false information, Robins also alleges that Spokeo violated four of the FCRA's disclosure requirements: § 1681e(d)(1); § 1681e(d)(2); § 1681b(b); and § 1681j(a)(1)(C). Am. Compl. ¶¶ 61-74. Spokeo simply fails to address these claims, even though they remain in the case as it comes to this Court and entail different forms of cognizable injury. For instance, Robins alleges that Spokeo has failed to disclose information about how consumers can request free access to its reports about them, in violation of 15 U.S.C. § 1681j(a)(1)(C). Am. Compl. ¶ 74. This Court's precedent firmly establishes that Article III standing may rest entirely on this kind of informa-

tional injury. *See, e.g.*, *Fed. Election Comm'n v. Akins*, 524 U.S. 11, 21 (1998); *Pub. Citizen v. U.S. Dep't of Justice*, 491 U.S. 440, 449 (1989); *see generally* Cass R. Sunstein, *Informational Regulation and Informational Standing:* Akins *and Beyond*, 147 U. Penn. L. Rev. 613 (1999).

This injury is distinct from the economic injuries that Robins alleges, and is not addressed even by Spokeo's causation argument. Spokeo did not respond to this claim in the court below, *see* Br. of Appellee, *Robins v. Spokeo*, 2012 WL 4665532, and does not address it in its petition. But Robins has maintained this argument throughout the appeal, Appellant's Opening Br. 40, *Robins v. Spokeo*, 2012 WL 2132528, and it remains an independent basis for his standing. Like the causation issue, the sufficiency of Robins's informational injury is "predicate to an intelligent resolution of the question" Spokeo raises in its petition. *Ohio v. Robinette*, 519 U.S. 33, 38 (1996). While this case can be resolved without reaching Spokeo's question, Spokeo's question cannot be resolved without reaching fact-specific issues in this case. As such, this case is a poor vehicle for Spokeo's question.

II. There is no circuit split.

Even if this were a suitable vehicle for addressing the question presented, there is no need to do so because the lower courts are in harmony. Indeed, Spokeo does not offer any cases—not even a district court case—holding that a plaintiff who brings suit under the FCRA alleging a particularized injury does not have Article III standing.

Instead, Spokeo cites two ERISA cases: *David v. Alphin,* 704 F.3d 327 (4th Cir. 2013), and *Kendall v. Employees Retirement Plan of Avon Prods.*, 561 F.3d 112 (2d Cir. 2009). But the ERISA claims in these two cases

were different from the FCRA claims here in a fundamental way: They involve suits by plan members who sue "on behalf of the Pension Plan," and "are not permitted to recover individually." *David v. Alphin*, 704 F.3d at 332. They do not address the question whether an individual has standing when he brings a suit on his own behalf alleging that an illegal action has caused him a personal injury. The answer to that question is uncontroversial: yes.

In addition to not implicating the actual question presented by this case, these cases are not evidence of a circuit split on the question Spokeo claims is presented. The two ERISA cases that Spokeo cites deal only with a private cause of action, which is distinct from a "legal right[], the invasion of which creates standing." *Warth v. Seldin*, 422 U.S. 490, 500 (1975). When someone violates the fiduciary requirements of ERISA, they are liable to the retirement plan itself—not to the individual members of the plan. 29 U.S.C. §1109. The private cause of action is merely an enforcement mechanism. In contrast, the FCRA creates both a cause of action and an individualized right—when someone violates the FCRA with respect to a particular consumer, they are "liable to that consumer." 15 U.S.C. §1681n.

This means that these ERISA cases do not implicate the question whether Article III standing can be predicated solely on "statutes creating legal rights, the invasion of which creates standing." *Warth v. Seldin*, 422 U.S. at 500. The Second Circuit in *Kendall* itself cited that very statement in *Warth v. Seldin* with approval, accepting the notion that a right could be "statutorily created." *Kendall*, 561 F.3d at 119. But the court held that it was "a clear misstatement of the law" for the plaintiff to claim that the alleged ERISA violation was a

violation of an individual right bestowed on her by the statute. *Id.* As a result, Spokeo has cited no circuit case disagreeing with the decision below. The circuits that have addressed the question agree: "the actual-injury requirement may be satisfied *solely* by the invasion of a legal right that Congress *created.* This is not a novel principle within the law of standing." *Hammer v. Sam's E., Inc.*, 2014 WL 2524534 (8th Cir. 2014) (emphasis in original). *See Edwards v. First American Fin. Corp.*, 610 F.3d 514 (9th Cir. 2010), *cert. dismissed as improvidently granted*, 132 S. Ct. 2536; *Robey v. Shapiro, Marianos & Cejda, L.L.C.*, 434 F.3d 1208, 1211 (10th Cir. 2006); *Murray v. GMAC Mortgage Corp.*, 434 F.3d 948, 952 (7th Cir. 2006); *Beaudry v. TeleCheck Servs., Inc.*, 579 F.3d 702 (6th Cir. 2009); *Shaw v. Marriott Int'l, Inc.*, 605 F.3d 1039, 1042 (D.C. Cir. 2010). On any understanding of the question presented by this case no circuit split is implicated.

III. Robins has Article III standing.

The court of appeals correctly decided that Robins has standing. As explained above, Robins has alleged economic, reputational, and emotional injuries that affected him alone, by virtue of false information that was specifically published about him. Robins's alleged harm is the kind of actual, concrete, and particularized harm that is the *sine qua non* of Article III's injury-in-fact inquiry. *See Lujan*, 504 U.S. at 560. This case does not raise the question Spokeo presents, and Robins has standing under Article III.

Even if Robins had alleged that the only harm he suffered was the violation of his statutory rights under the FCRA, there would be nothing unusual about such an injury conferring standing as well. Because "legal injury is by definition no more than the violation of a legal

right; and legal rights can be created by the legislature," "standing['s]. . . existence in a given case is largely within the control of Congress." Antonin Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 885 (1983). This Court has routinely noted that "[t]he actual or threatened injury required by Art. III may exist solely by virtue of 'statutes creating legal rights, the invasion of which creates standing." *Warth v. Seldin*, 422 U.S. at 500; *see also Massachusetts v. E.P.A.*, 549 U.S. 497, 516 (2007) ("Congress has the power to define injuries and articulate chains of causation that will give rise to a case or controversy where none existed before."); *Lujan*, 504 U.S. at 578 ("[T]he injury required by Art[icle] III may exist solely by virtue of statutes creating legal rights. . . ."); *Hardin v. Kentucky Utilities Co.*, 390 U.S. 1, 6 (1968); *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 n.3 (1973). The statutory violations that Robins alleges would be an entirely legitimate basis for standing in this case in addition to his other alleged injuries.

Spokeo's question tries to distinguish between the violations of Robins's legal rights and the economic and reputational injuries he alleges, but such a distinction cannot be made consistent with centuries of case law. For hundreds of years, common-law courts have construed the violation of a legal right to be an injury that per se demands a remedy: "Every violation of a right imports some damage, and if none other be proved, the law allows a nominal damage." *Whittemore v. Cutter*, 29 F. Cas. 1120 (C.C.D. Mass. 1813) (Story, J.). The kind of injury Spokeo calls a "bare violation" of a legal right has been essential to many customary claims, including those surrounding violations of constitutional rights or con-

tractual rights, defamation, patent infringement, and more.[1] Entire statutory schemes are based on the premise that individuals can sue for violations of their legal rights without proving other injury: The Copyright Act, for instance, has provided for over one hundred years that infringement of copyright is itself a violation that gives rise to a claim for statutory damages without proof of other injury. *See* 17 U.S.C. § 504(c); *Feltner v. Columbia Pictures Television, Inc.*, 523 U.S. 340, 347-352 (1998) (reviewing history of statutory damages under state and federal copyright statutes). "Even for uninjurious and unprofitable invasions of copyright the court may, if it deems it just, impose a liability within statutory limits to sanction and vindicate the statutory policy." *F.W. Woolworth Co. v. Contemporary Arts, Inc.*, 344 U.S. 228, 233 (1952).

Nothing distinguishes this case from the many others that rest on the violation of a legal right per se (aside from the fact that the plaintiff here also alleges additional concrete harm). Whether the injured right comes from the Constitution, statute, or common law, this Court has stated that "there is absolutely no basis for making the Article III inquiry turn on the source of the asserted right." *Lujan*, 504 U.S. at 576. Nor does the fact that

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[1] *See, e.g., Carey v. Piphus*, 435 U.S. 247, 266 (1978) (holding that "denial of procedural due process [is] actionable for nominal damages without proof of actual injury"); *Wilcox v. Plummer's Ex'rs*, 29 U.S. 172, 181-82 (1830) (holding that nominal damages are available "immediately" upon breach of contract, before any other damages are proven); *Pollard v. Lyon*, 91 U.S. 225, 227 (1876) (upholding presumed damages for defamation per se); *Whittenmore*, 29 F. Cas. 1120 (1813) (holding that a patent owner could recover nominal damages from a defendant who made, but never used or sold, an infringing machine).

Robins has brought his claim as a putative class action alter the standing inquiry, as the fact "[t]hat a suit may be a class action . . . adds nothing to the question of standing. . . ." *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 40 n.20 (1976). This Court should be hesitant to grant a question whose very premise cannot be made consistent with the case law, particularly when no split between the circuits has ventilated the issue or created a need to address it.

IV. Spokeo and its amici have greatly exaggerated the implications of this case.

Robins alleges the kind of concrete, particularized injury that courts have recognized for centuries. As a result, this case does not present the question that Spokeo raises, which by its own description involves cases where there is the "absence of any allegation of concrete and particularized injury." Pet. 2. And as for whether a plaintiff has standing when he alleges personal injury from the publication of false material about him, there is no unresolved question—the answer is clearly yes.

Spokeo's arguments about the importance of its question presented are exaggerated and ultimately counsel against hearing this case. Spokeo asserts that there will be "drastic and absurd" consequences if the lower court's decision is not overturned. Pet. 15. It is joined by several amici, some of whose briefs are nearly carbon copies of their past briefs in *Charvat*.[2] Their ar-

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[2] *Compare* Brief of ACA International as Amicus Curiae in Support of Petitioner, *Spokeo, Inc. v. Thomas Robins*, (No. 13-1339), *with* Brief of ACA International as Amicus Curiae in Support of Petitioners, *Mut. First Fed. Credit Union v. Charvat*, 134 S.Ct. 1515 (2014) (No. 13-679), 2014 WL 69413; *compare also* Brief of the Chamber of Commerce of The United States of America and the

(continued …)

guments rest on three claims: that this question arises under a number of statutes, that it is particularly important in the class action context, and that it is raised by an increasing number of cases. Spokeo and its amici exaggerate the significance of each of these claims, and any argument that Spokeo's question arises frequently counsels against this Court taking a case with as many vehicle problems as this one.

First, Spokeo argues that its question presented arises under several federal laws, and deciding the question in this case would therefore resolve the "broad range" of cases that Spokeo claims raise the question as well. Pet. 19. But Spokeo gives no reason to believe that the answer to its question will be the same for all statutes. The FCRA has strong "analogs in our common-law tradition," a statute-specific consideration that is clearly relevant to the standing inquiry. *Lujan*, 504 U.S. at 580 (Kennedy, J., concurring). In *First American*, for instance, much of the argument centered around the common-law analogs to the anti-kickback provisions of the Real Estate Settlement Procedures Act, one of the statutes that Spokeo cites. Transcript of Oral Argument at 17-22, *First American Fin. Corp. v. Edwards*, 132 S. Ct. 2536 (2012) (No. 10-708); Pet. 17. The fact-specific, law-specific issues in this case are not a panacea for all of the statutory claims Spokeo and its amici would like to resolve.

International Association of Defense Counsel as Amici Curiae in Support of Petitioner at 13, *Spokeo, Inc. v. Thomas Robins*, (No. 13-1339), *with* Brief of the Chamber of Commerce of the United States of America as Amicus Curiae in Support of Petitioners at 10, *Mut. First Fed. Credit Union v. Charvat*, 134 S.Ct. 1515 (2014) (No. 13-679), 2014 WL 47112, 10.

Second, Spokeo argues that its question is particularly important in the context of class actions. But again, the fact "[t]hat a suit may be a class action . . . adds nothing to the question of standing. . . ." *Simon v. E. Ky. Welfare Rights Org.*, 426 at 40 n.20. Especially in this case, in which the putative class has not even been certified, it would be inappropriate to grant certiorari based on the downstream implications of what might happen if a class ever were to come into existence.

If Spokeo were to prevail, it would have significant consequences for class actions. "[T]he constraints of Article III do not apply to state courts," *ASARCO Inc. v. Kadish*, 490 U.S. 605, 617 (1989). For this reason, the decision that Article III courts lack jurisdiction to hear entire categories of class actions would apply to federal courts only. Congress has recently found that state and local courts are "keeping cases of national importance out of federal courts," and implemented procedures for the removal of class actions from state to federal court. Class Action Fairness Act of 2005, Pub. L. No. 109-2, 119 Stat. 4 (2005). Spokeo's theory, that federal courts cannot constitutionally exercise jurisdiction in the large numbers of class actions that Spokeo claims would be affected, reverses this process. *See, e.g.*, *Nat'l Consumers League v. Gen. Mills, Inc.*, 680 F. Supp. 2d 132, 136 (D.D.C. 2010) (remanding case from federal court because the plaintiff lacked Article III standing). The likely result of a victory for Spokeo would be a shift of class actions from federal courts, which have limited jurisdiction, to state courts of general jurisdiction. This Court should hesitate to grant certiorari on the basis of a theory that has not been adopted in any circuit and is in such tension with Congressional policy.

Finally, Spokeo argues that its question is important because this kind of litigation under the FCRA has "skyrocketed." Pet. 12. It is hard to reconcile Spokeo's claims about the "great frequency" of these FCRA cases, *id.*, with its failure to find an FCRA case as evidence of its purported circuit split. And if the number of cases raising Spokeo's question is really so voluminous, the Court should wait until a case arrives that serves as a better vehicle. Because Robins alleges concrete, particularized harms, this case does not even raise Spokeo's question. And because Robins's allegations are "predicate to an intelligent resolution of the question" Spokeo raises, *Robinette*, 519 U.S. at 38, the Court would have to wade through a fact-bound, case-specific inquiry to reach Spokeo's question—without the benefit of the lower court having done the same. This Court should not engage in such an exercise, and should not hear this case.

CONCLUSION

The petition for certiorari should be denied.

Respectfully submitted,

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