No. 13-1339

IN THE

Supreme Court of the United States

SPOKEO, INC.,

Petitioner,

v.

THOMAS ROBINS,

Respondent.

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

BRIEF OF CONSTITUTIONAL ACCOUNTABILITY CENTER AS *AMICUS CURIAE* IN SUPPORT OF RESPONDENT

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INTEREST OF *AMICUS CURIAE*[1]

Amicus Constitutional Accountability Center (CAC) is a think tank, public interest law firm, and action center dedicated to fulfilling the progressive promise of our Constitution's text and history. CAC works in our courts, through our government, and with legal scholars to improve understanding of the Constitution and preserve the rights and freedoms it guarantees. CAC has a strong interest in ensuring meaningful access to the courts, in accordance with constitutional text, history, and values, and accordingly has an interest in this case.

INTRODUCTION AND SUMMARY OF ARGUMENT

Respondent Thomas Robins sued petitioner Spokeo, Inc. pursuant to the Fair Credit Reporting Act for disseminating false credit information about him. Although the Act explicitly provides a consumer the right to sue for damages to enforce the Act's prohibitions, see 15 U.S.C. §§ 1681n, 1681o, Spokeo argues that this suit is not a "Case[] . . . arising under . . . the Laws of the United States," U.S. Const. art. III, § 2, cl. 1, and that Congress lacks the power under the Constitution to provide Robins with a right to sue for damages to vindicate his rights under the Act. Spokeo's crabbed interpretation of the judicial

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[1] The parties have consented to the filing of this brief and their letters of consent have been filed with the Clerk. Under Rule 37.6 of the Rules of this Court, *amicus* states that 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* or its counsel made a monetary contribution to its preparation or submission.

power vested in the federal courts by Article III cannot be squared with the Constitution's text and history or this Court's precedents.

Three precepts firmly embedded in the text and history of Article III control this case. First, Article III created a federal judiciary with broad power to protect individual rights secured by federal law by ensuring that the power of the federal courts to enforce federal law was co-extensive with the legislative powers of Congress under Article I. When the Framers wrote our founding charter more than two centuries ago, they were concerned that federal laws had been reduced to dead letters under the dysfunctional government of the Articles of Confederation because of the "want of a judiciary power," *The Federalist No. 22*, at 118 (Alexander Hamilton) (Clinton Rossiter ed., 1961), and they recognized that "[a]n effective Judiciary establishment commensurate to the legislative authority, was essential." 1 *The Records of the Federal Convention of 1787*, at 124 (Max Farrand ed., 1911) [hereinafter *Farrand's Records*] (James Madison); *see also The Federalist No. 80*, *supra*, at 444 (Alexander Hamilton) ("If there are such things as political axioms, the propriety of the judicial power of a government being coextensive with its legislative may be ranked among the number.")

To correct this deficiency in the Articles, the Framers wrote Article III to create a federal judiciary vested with a power to enforce federal legal rights that was coextensive with the legislature's power to create them. This "co-extensiveness" principle—repeatedly invoked in the ratification debates over the Constitution—ensured that federal statutory protections, which fell within the scope of Congress' enumerated powers, could be enforced by the federal courts. Resort to the "courts of justice," the Framers

understood, "is the only natural and effectual method of enforcing laws." 4 *The Debates in the Several State Conventions on the Adoption of the Federal Constitution* 146 (Jonathan Elliot ed., 1836) [hereinafter *Elliot's Debates*] (James Iredell).

Second, and intimately related to the first, the Framers wrote Article III to ensure that where there is a legal right, there is also a legal remedy. The Framers, who were steeped in English common law traditions, understood that legal rights were meaningless without the right to go to court to obtain a remedy when those rights are violated. As this Court recognized in *Marbury v. Madison*, "it is a general and indisputable rule, that where there is a legal right, there is also a legal remedy by suit or action at law, whenever that right is invaded." 5 U.S. (1 Cranch) 137, 163 (1803) (quoting 3 William Blackstone, *Commentaries on the Laws of England* *23). During the Framing era, courts in England and the United States applied this fundamental rule-of-law principle to hold that damages are available based on the violation of a legal right alone. This history by itself answers the question whether Robins has a right to go to federal court to seek redress for the violation of his legal rights under the FCRA. He plainly does.

Third, the original meaning of Article III's case or controversy limitation does not disable Congress from prescribing judicial remedies for violation of individual statutory rights. A case under Article III "arises, when some subject, touching the constitution, laws, or treaties of the United States, is submitted to the courts by a party, who asserts his rights in the form prescribed by law." 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1640, at 507 (1833); *Osborn v. Bank of U.S.*, 22 U.S. (9 Wheat.)

738, 819 (1824). Article III's limitation to what James Madison called "judiciary cases" was designed to ensure that courts did not interfere with political matters left to the other branches, not to deprive Congress of the power to prescribe judicial remedies for the violation of federally-protected individual rights. Indeed, the very first Congress exercised its constitutional authority to enable individuals to sue for damages for violations of their legal rights, enacting the nation's first copyright law and creating a statutory damages remedy not unlike the one at issue here. Where, as here, Congress has created a damages remedy to redress concrete, personal violations of federal legal rights, there is plainly a case within the original meaning of Article III.

Spokeo's reading of Article III violates each of these three fundamental, access-to-court principles rooted in the text and history of Article III. It would (1) deny Article III courts the power to enforce the full range of federal legal rights, (2) result in many cases where there are rights without remedies, and (3) sharply limit the power of Congress to prescribe judicial remedies for violations of individual rights secured by federal statutes. In all these respects, Spokeo's stingy interpretation of what constitutes a "case" under Article III cannot be squared with the Constitution's text and history.

Spokeo also argues that more general separation-of-powers principles require closing the courthouse doors to plaintiffs whose rights have been violated, insisting that a ruling in its favor is essential to protect individual liberty. Pet'r Br. at 31-32. The Framers of our Constitution had a very different understanding of liberty and of the role the courts should play in protecting liberty in our constitutional system. They recognized that "[t]he very essence of civil

liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." *Marbury*, 5 U.S. at 163. They understood that the best protection of individual liberty lies in an independent judiciary empowered to vindicate individual rights and enforce the rule of law.

Ultimately, Spokeo may well prevail on the merits in this case, but it is not entitled to a dismissal before Robins has his day in court. Under the text and history of Article III and this Court's precedent, Robins has standing to maintain a claim for damages for violation of FCRA's prohibitions on the dissemination of false credit information about him.

ARGUMENT

I. THE TEXT AND HISTORY OF ARTICLE III GIVE THE FEDERAL COURTS BROAD JUDICIAL POWER TO ENFORCE FEDERAL LAWS, CO-EXTENSIVE WITH THE LEGISLATIVE POWERS OF CONGRESS UNDER ARTICLE I.

Article III of the Constitution broadly extends the "judicial Power" to nine categories of cases and controversies, including "all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . ." U.S. Const. art. III, § 2, cl. 1. Article III's plain language empowers the "judicial department" to "decide all cases of every description, arising under the constitution or laws of the United States," extending to the federal courts the obligation "of deciding every judicial question which grows out of the constitution and laws." *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 382, 384 (1821).

The Constitution's sweeping grant of judicial power to the newly created federal courts was a direct response to the infirmities of the Articles of Confederation, which established a single branch of the federal government and no independent court system. See Akhil Reed Amar, *Of Sovereignty and Federalism*, 96 Yale L.J. 1425, 1443 (1987) (explaining that Confederation courts were "pitiful creatures of Congress, dependent on its pleasure for their place, tenure, salary, and power"). Under the dysfunctional government of the Articles, individuals could not go to court to enforce federal legal protections, prompting Alexander Hamilton to observe that, "[l]aws are a dead letter without courts to expound and define their true meaning and operation." *The Federalist No. 22*, *supra*, at 118 (Alexander Hamilton). The result, Madison explained, is that "acts of Cong[ress] . . . depend[] for their execution on the will of the state legislatures," making federal laws "nominally authoritative, [but] in fact recommendatory only." James Madison, *Vices of the Political System of the United States* (Apr. 1787), *in* 9 *The Papers of James Madison* 345, 352 (Robert A. Rutland & William M. E. Rachal eds., 1975).

When the Framers gathered together in Philadelphia to create a new national charter, they took pains to ensure that the federal courts created by the new Constitution would have the power to enforce federal legal protections. Time and again, the Framers explained that the power of the courts under Article III would be co-extensive with the broad legislative powers granted to Congress under Article I. As James Madison explained, "[a]n effective Judiciary establishment commensurate to the legislative authority, was essential." 1 *Farrand's Records*, *supra*, at 124 (James Madison); *see also id.* at 128 (urging

Convention to "vest the Genl. Govt. with authority to erect an Independent Judicial, coextensive wt. ye. Nation" (James Madison)); *id.* at 147 ("[T]he Judicial, Legislative and Executive departments ought to be commensurate." (James Wilson)). The Framers understood that "[n]o government ought to be so defective in its organization, as not to contain within itself the means of securing the execution of its own laws," and gave to the federal courts "the power of construing the constitution and laws of the Union in every case . . . and of preserving them from all violation from every quarter . . . ." *Cohens*, 19 U.S. at 387, 388.

Spokeo insists that the Framers rejected the views of those "who pressed for a federal judiciary with expansive authority to enforce federal law." Pet'r Br. at 19. Not so. Over the course of the debates in Philadelphia, the Framers took pains to ensure that "judicial authorities" were "fully and effectually vested in the general government of the Union," 2 *Farrand's Records*, *supra*, at 666, continuously expanding the jurisdiction of the federal courts.

The Virginia Plan proposed at the outset of the Convention made no explicit provision for federal question jurisdiction. Instead, it gave the federal courts the power to "hear and determine" a set of discrete cases, including "piracies & felonies on the high seas, captures from an enemy," and matters "which respect the collection of the National revenue," as well as resolve "questions which may involve the national peace and harmony." 1 *Farrand's Records*, *supra*, at 22. This final category corresponded to the Virginia Plan's grant of power to Congress "to legislate in all cases . . . in which the harmony of the United States may be interrupted by the exercise of individual Legislation," *id.* at 21, "contemplat[ing] a jurisdiction coterminous with the national legislative

power." Anthony J. Bellia Jr., *The Origins of Article III "Arising Under" Jurisdiction*, 57 Duke L.J. 263, 295 (2007).

Over the course of the Convention, the delegates revised the language to make even clearer that the grant of judicial power to the federal courts was not limited to discrete categories of cases, but instead encompassed all cases arising under federal law, *see* 2 *Farrand's Records*, *supra*, at 46, 186 (Report of the Committee of detail), 430-31, ensuring that the federal courts "will have a right to decide upon the laws of the United States, and all questions arising upon their construction, and in a judicial manner to carry those laws into execution . . . ." Luther Martin, Attorney General of Maryland and Convention Delegate, The Genuine Information, Delivered to the Legislature of the State of Maryland, Relative to the Proceedings of the General Convention (Nov. 29, 1787), *in* 3 *Farrand's Records*, *supra*, 172, at 220; *see* James S. Liebman & William F. Ryan, *"Some Effectual Power": The Quantity and Quality of Decisionmaking Required of Article III Courts*, 98 Colum. L. Rev. 696, 770 (1998) (discussing the Convention's "expanding 'federal question' jurisdiction"). Rather than use the vague "national peace and harmony" formulation—which Spokeo incorrectly views as the high water mark of federal court jurisdiction proposed during the Convention, Pet'r Br. at 18-19—the Framers explicitly gave to the federal courts the power to hear all cases arising under federal law, such as the damage suit brought by Robins here, ensuring that federal courts could vindicate the full range of federal rights created by Congress.

In its final form, Article III conferred on the federal courts power to hear "all those [cases] which arise out of the laws of the United States, passed in

pursuance of their just and constitutional powers of legislation." *The Federalist No. 80*, *supra*, at 443 (Alexander Hamilton). As Hamilton explained, "[i]f there are such things as political axioms, the propriety of the judicial power of a government being coextensive with its legislative may be ranked among the number." *Id.* at 444; *see also Cohens*, 19 U.S. at 384 (explaining that the principle that "the judicial power of every well constituted government must be coextensive with the legislative" "sustain[s] the words [of Article III] in their full operation and natural import"). Spokeo's argument that the changes made to Article III over the course of the Convention diminished—not expanded—federal court jurisdiction gets Article III's text and history backward.

In the ensuing debates over ratification of the Constitution, Federalists and Anti-Federalists alike agreed that Article III gave the federal courts extensive power to enforce federal legal commands. In the state ratifying conventions, supporters of the Constitution repeatedly made the case that "the judicial power ought to be coëxtensive with the legislative. The federal government ought to possess the means of carrying the laws into execution. . . . If laws are not to be carried into execution by the interposition of the judiciary, how is it to be done?" 4 *Elliot's Debates*, *supra*, at 158 (William Davie); *see also* 3 *id.* at 517 (insisting that "the power of that judiciary must be coëxtensive with the legislative power, and reach to all parts of society" (Edmund Pendleton)); *id.* at 532 ("[I]t is so necessary and expedient that the judicial power should correspond with the legislative . . . ." (James Madison)). Future Chief Justice John Marshall argued that it was "necessary that the federal courts should have cognizance of cases arising under the Constitution, and the laws, of the United States,"

observing that "the service or purpose of a judiciary" is to "execute the laws in a peaceable, orderly manner, without shedding blood, or creating a contest, or availing yourselves of force[.] If this be the case, where can its jurisdiction be more necessary than here?" *Id.* at 554.

Anti-Federalists complained bitterly about Article III's broad sweep, insisting that "[t]he jurisdiction of all cases arising under the Constitution and the laws of the Union is of stupendous magnitude." *Id.* at 565 (William Grayson). As one opponent of ratification of Article III argued, "[t]his is to be co-extensive with the legislature, and, like that, is to swallow up all other courts of judicature.—For what is that judicial power which 'shall extend to all cases in law and equity' . . . but an establishment universal in its operation?" *See The Impartial Examiner I*, Va. Indep. Chron., Feb. 27, 1788, *reprinted in The Documentary History of the Ratification of the Constitution Digital Edition* (John P. Kaminski et al. eds., 2009).

These arguments did not carry the day. Rejecting Anti-Federalist claims that the breadth of judicial power conferred in Article III was too sweeping, the American people ratified the Constitution, giving to the newly created federal courts broad judicial power to ensure that "the Constitution should be carried into effect, that the laws should be executed, justice equally done to all the community, and treaties observed." 4 *Elliot's Debates*, *supra*, at 160 (William Davie). The American people recognized that "[t]hese ends can only be accomplished by a general, paramount judiciary." *Id.*

In creating an independent federal judiciary with the power to enforce federal law co-extensive with the legislative powers of Congress, the Framers incorporated long established common law principles that

allowed courts to vindicate individual rights and enforce the rule of law. The next section examines those principles.

II. THE FRAMERS WROTE ARTICLE III TO ENSURE THAT WHERE THERE IS A LEGAL RIGHT, THERE IS A LEGAL REMEDY FOR INFRINGEMENT OF THE RIGHT.

The Framers, who were steeped in the writings of Sir William Blackstone, wrote Article III to ensure that where there is a legal right, there is also a legal remedy, recognizing that legal rights are meaningless if individuals lack the ability to go to court to obtain a remedy. The Framers understood that rights and remedies must go hand in hand if courts are to play their essential role in the Constitution's system of separation of powers: expounding the law and vindicating individual liberty. As Blackstone had written, it was a "general and indisputable rule, that where there is a legal right, there is also a legal remedy, by suit or action at law, whenever that right is invaded." 3 William Blackstone, *Commentaries on the Laws of England* *23. "[I]n vain would rights be declared, in vain directed to be observed," Blackstone explained, "if there were no method of recovering and asserting those rights, when wrongfully withheld or invaded. This is what we mean properly, when we speak of the protection of the law." 1 *id.* at 55-56.

These fundamental rule-of-law values were affirmed by a number of Founding-era state constitutions, which explicitly guaranteed redress for a violation of a legal right. For example, the Massachusetts Constitution of 1780 provided that "[e]very subject . . . ought to find a certain remedy, by having recourse to the laws, for all injuries or wrongs which he may receive in his person, property, or character. He ought to obtain right and justice freely, and without

being obliged to purchase it; completely, and without any denial; promptly, and without delay, conformably to the laws." Mass. Const. of 1780, art. XI. Other State Constitutions used similar formulations to protect the right of individuals to seek redress in the courts for violations of their legal rights. *See, e.g.*, Md. Const. of 1776, art. XVII; N.H. Const. of 1784, art. XIV; Vt. Const. of 1786, ch. 1, para. 4; Pa. Const. of 1790, art. IX, § 11; Del. Const. of 1792, art. I, § 9; Ky. Const. of 1792, art. XII, § 13; Tenn. Const. of 1796, art. XI, § 17.

In *Marbury v. Madison*, Chief Justice Marshall recognized that these fundamental rule-of-law principles were secured by the U.S. Constitution. Chief Justice Marshall's opinion in *Marbury* explained that, under Article III, the "province of the court is, solely, to decide on the rights of individuals," and he invoked Blackstone's discussion of common law principles that ensure that "'every right, when withheld, must have a remedy, and every injury its proper redress.'" *Marbury*, 5 U.S. at 170, 163 (quoting 3 Blackstone, *supra*, at *109). As *Marbury* observed, a broad understanding of the individual's right to go to court to redress violations of personal rights was necessary to ensure "the very essence of civil liberty" and ensure our Constitution's promise of a "government of laws, and not of men." *Id.* at 163. Thus, "where a specific duty is assigned by law, and individual rights depend upon the performance of that duty, . . . the individual who considers himself injured, has a right to resort to the laws of his country for a remedy." *Id.* at 166; *id.* at 165 (explaining that such suits are "examinable in a court of justice"); *see also Martin v. Hunter's Lessee*, 14 U.S. (1 Wheat.) 304, 350 (1816) (rejecting a construction of Article III because the result "would, in many cases, be rights without corresponding reme-

dies"); *Kendall v. United States ex rel. Stokes*, 37 U.S. (12 Pet.) 524, 624 (1838) (explaining that it would be a "monstrous absurdity in a well organized government, that there should be no remedy, although a clear and undeniable right should be shown to exist").

During the Framing era, courts in both England and the United States applied the rule that where there is a legal right there is also a legal remedy to hold that individuals could sue for damages for violations of rights that did not result in concrete harm. In the celebrated case of *Ashby v. White*, (1703) 92 Eng. Rep. 126 (Q.B.)—a case Spokeo recognizes as a landmark precedent, Pet'r Br. at 24-25—Chief Judge Holt rejected the argument that a suit for damages for the denial of the right to vote "is not maintainable, because here is no hurt or damage to the plaintiff." *Ashby*, 92 Eng. Rep. at 137 (Holt, C.J., dissenting). *rev'd*, (1703) 91 Eng. Rep. 665. Holt's opinion, though delivered in dissent, "prevailed on appeal in the House of Lords" and was regarded as "correctly stating the law." F. Andrew Hessick, *Standing, Injury In Fact, and Private Rights*, 93 Cornell L. Rev. 275, 282-83 (2008); *see also* Pet'r Br. at 24 ("Chief Judge Holt's dissent in the Queen's Bench provides the most complete legal analysis supporting the ultimate decision.").

In *Ashby*, Chief Judge Holt explained that "[i]f the plaintiff has a right, he must of necessity have a means to vindicate and maintain it, and a remedy if he is injured in the exercise or enjoyment of it; and indeed it is a vain thing to imagine a right without a remedy." *Ashby*, 92 Eng. Rep. at 136 (Holt, C.J., dissenting). Applying that principle, Holt held the suit could proceed based on the violation of Ashby's legal right. "[S]urely every injury imports damage, though it does not cost the party one farthing, and it is im-

possible to prove the contrary; for a damage is not merely pecuniary, but an injury imports a damage, when a man is thereby hindered of his right." *Id.* at 137; *see also* Resp't Br. at 18-19 (discussing *Ashby*).

Spokeo tries to rewrite *Ashby* as a case only about the right to vote. Pet'r Br. at 25. That ploy fails. In *Ashby*, Chief Judge Holt held that an individual may sue for damages for violation of a legal right, regardless of the type of action or the nature of the right involved. To make the point, he offered an array of examples drawn from different areas of tort law. As Chief Judge Holt explained,

> [I]n an action for slanderous words, though a man does not lose a penny by reason of the speaking them, yet he shall have an action. So if a man give another a cuff on the ear, though it cost him nothing . . . yet he shall have his action, for it is a personal injury. So a man shall have an action against another for riding over his ground, though it do him no damage; for it is an invasion of his property, and the other has no right to come there.

Ashby, 92 Eng. Rep. at 137 (Holt, C.J., dissenting); *see also Embrey v. Owen*, (1851) 155 Eng. Rep. 579, 585 ("Actual perceptible damage is not indispensable as the foundation of an action; it is sufficient to shew the violation of a right, in which case the law will presume damage; injuria sine damno is actionable, as was laid down in the case of *Ashby v. White* by Lord Holt, and in many subsequent cases . . . ." (citation omitted)).

Federal and state courts of the early republic applied *Ashby*'s reasoning, rejecting arguments—identical to those pressed by Spokeo here—that "it is

essential for the plaintiff to establish any actual damage." *Webb v. Portland Mfg. Co.*, 29 F. Cas. 506, 507 (C.C.D. Me. 1838). In *Webb*, Justice Story, riding circuit, invoked the "great case of *Ashby v. White*," holding that "[a]ctual, perceptible damage is not indispensable as the foundation of an action. The law tolerates no further inquiry than whether there has been the violation of a right. If so, the party injured is entitled to maintain his action for nominal damages, in vindication of his right, if no other damages are fit and proper to remunerate him." *Id.* at 508. Applying this principle, the *Webb* court held that a mill owner could sue an adjoining property owner for diverting water from a river, concluding that "it is not necessary in an action of this sort to show actual damage." *Id.* at 509; *see also Whipple v. Cumberland Mfg. Co.,* 29 F. Cas. 934, 936 (C.C.D. Me. 1843) (holding that "wherever a wrong is done to a right, the law imports, that there is some damage to the right, and, in the absence of any other proof of substantial damage, nominal damages will be given in support of the right" and explaining that "[t]his is a well-known and well-settled doctrine in the law" (Story, J.)); *Hendrick v. Cook*, 4 Ga. 241, 261 (1848) (rejecting the argument that "there must be some *perceptible damage* shown, to entitle the plaintiff to recover; that injury without damage, is not actionable" because "whenever there has been an illegal invasion of the *rights* of another, it is an *injury*, for which he is entitled to a remedy by an action") (emphasis in original); *Parker v. Griswold*, 17 Conn. 288, 303 (1846) ("An injury is a wrong; and for the redress of every wrong there is a remedy . . . . Where therefore there has been a violation of a right, the person injured is entitled to an action."); *Allaire v. Whitney*, 1 Hill 484, 487 (N.Y. Sup. Ct. 1841) ("[A]ctual damage is not necessary to an action.

A violation of right with a possibility of damage, forms the ground of an action."); Resp't Br. at 19-22.

This long history of common law precedents permitting actions for damages to proceed based on the violation of a legal right alone is "well nigh conclusive" here: Robins's suit for denial of his rights secured by FCRA, no less than Ashby's suit for the denial of his right to vote or Webb's suit for the unlawful diverting of water, is "'of the sort traditionally amenable to, and resolved by, the judicial process.'" *Vt. Agency of Natural Res. v. United States ex rel. Stevens*, 529 U.S. 765, 777-78 (2000) (quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 102 (1998)); *see also Sprint Commc'ns Co. v. APCC Servs., Inc.*, 554 U.S. 269, 285 (2008) (finding common law history concerning the right of assignees to sue dispositive).

III. THE ORIGINAL MEANING OF ARTICLE III DOES NOT LIMIT THE POWER OF CONGRESS TO CREATE JUDICIAL REMEDIES FOR VIOLATION OF INDIVIDUAL, FEDERAL STATUTORY RIGHTS.

The Constitution gives Congress broad powers to create judicial remedies, such as FCRA's statutory damages remedy, for violation of federally-protected individual rights. Spokeo suggests that Article III's requirement that there be a "case" or "controversy" prohibits Congress from exercising this power here, but Spokeo fundamentally misunderstands why Article III courts were limited to hearing, what James Madison called, "cases of a Judiciary Nature." 2 *Farrand's Records*, *supra*, at 430. That limitation was designed to ensure that courts did not interfere with political questions left to other branches of government, not to deprive Congress of the power to create individual statutory rights and prescribe judicial

remedies for their violation. The original meaning of the case or controversy limitation does not deprive Congress of the power to authorize individuals whose federal rights have been violated to sue for damages against alleged tort-feasors like Spokeo.

In establishing a federal judiciary with broad powers to enforce federal law, the Framers maintained a fundamental distinction between questions concerning individual rights to be decided by the courts and political matters entrusted to other branches of government. *See Marbury*, 5 U.S. at 164, 166 (distinguishing between "individual rights" and "mere political act[s] belonging to the executive department alone"); 10 Annals of Cong. 606, 613 (1800) (explaining that "[a] case in law or equity proper for judicial decision may arise under a treaty, where the rights of individuals acquired or secured by a treaty are to be asserted or defended in court" but that the judicial power does not extend to "questions of political law, proper to decided, . . . by the Executive, and not by the courts" (Rep. John Marshall)).

Article III "enables the judicial department to receive jurisdiction to the full extent of the constitution, laws, and treaties of the United States, . . . when the subject is submitted to it by a party who asserts his rights in the form prescribed by law. It then becomes a case, and the constitution declares, that the judicial power shall extend to all cases arising under the constitution, laws, and treaties of the United States." *Osborn*, 22 U.S. (9 Wheat.) at 819; Story, *supra*, at 507 (explaining that an Article III question "arises, when some subject, touching the constitution, laws, or treaties of the United States, is submitted to the courts by a party, who asserts his rights in the form prescribed by law"); *see also Weston v. City Council of Charleston*, 27 U.S. (2 Pet.) 449, 464 (1829) (explain-

ing that the term "suit" is "a very comprehensive one, and is understood to apply to any proceeding in a court of justice, by which an individual pursues that remedy in a court of justice, which the law affords him. . . . [I]f a right is litigated between parties in a court of justice, the proceeding by which the decision of the court is sought, is a suit."); *Cohens*, 19 U.S. at 379 ("A case in law or equity consists of the right of the one party, as well as of the other").

The Framing-era formulation of an Article III case recognized the broad power of Congress to create individual rights and prescribe judicial remedies for their violation, while ensuring that courts did not interfere with matters committed to other branches of government. *See, e.g.*, 10 Annals of Cong. 606 (explaining that Article III requires "a question" to "assume a legal form for forensic litigation and judicial decision" and that its grant of judicial power was not designed "to confer on that department any political power whatever"). Beginning with the First Congress, our nation's elected representatives created individual rights and prescribed judicial remedies for their violation, including provisions for statutory damages akin to those contained in the FCRA.

In 1790, the First Congress enacted the nation's first copyright law, providing that the "author and authors of any map, chart, book or books . . . shall have the sole right and liberty of printing, reprinting, publishing and vending such map, chart, book or books" and that "every such offender and offenders shall also forfeit and pay the sum of fifty cents for every sheet which shall be found in his or their possession, either printed or printing, published, imported or exposed to sale, contrary to the true intent and meaning of this act . . . ." Copyright Act of 1790, ch. 15, §§1, 2, 1 Stat. 124, 125; *see also Feltner v. Colum-*

bia Pictures Television, Inc., 523 U.S. 340, 351 (1998) (discussing the 1790 Act). In enacting this per-sheet statutory damages formula, the Copyright Act of 1790 drew on a number of colonial-era copyright laws enacted by the states, which provided a statutory damages range or a per-sheet fixed amount of damages. *See* Francine Crawford, *Pre-Constitutional Copyright Statutes*, 23 Bull. Copyright Soc'y 11, 31-33 (1975); *Feltner*, 523 U.S. at 350-51. While the 1790 Act also contained provisions that allowed an author whose manuscript was published without consent to bring an action for "all damages occasioned by such injury," Copyright Act of 1790 § 6, the Act's statutory damages provision authorized the federal court to award damages based on the copyright violation alone. *See also* Resp't Br. at 22-23 (discussing Copyright Act of 1790).

Likewise, the Second Congress enacted the Patent Act of 1793, providing for an award of treble damages for a violation of an individual's patent rights. Patent Act of 1793, ch. 11, § 5, 1 Stat. 318, 322. Consistent with the common law principles spelled out in *Ashby* and other cases, federal courts held that even if actual damages could not be proven, nominal damages could be recovered under the Patent Act based on a violation of the individual right alone. As Justice Story explained, "where the law gives an action for a particular act, the doing of that act imports of itself a damage to the party. 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, 1121 (C.C.D. Mass. 1813).

Spokeo complains about the judicial remedies contained in the Fair Credit Reporting Act, raising the specter of private plaintiffs and their counsel

roaming the country "in the hopes of obtaining a bounty." Pet'r Br. at 38. But what Spokeo calls a bounty is simply the long-recognized fact that, under the Act, actions for damages can go forward based on the violation of a legal right alone.[2] That is entirely in keeping with Article III's guarantee of broad access to the courts to maintain the rule of law. Where, as here, a plaintiff seeks to recover statutory damages for a violation of his federally-protected rights "in the form prescribed by law," *Osborn*, 22 U.S. at 819, there is plainly a case under Article III. No different from suits seeking statutory damages under the Copyright Act of 1790, Robins's suit for damages is a case within the meaning of the Constitution. Spokeo's argument to the contrary would deprive Congress and the federal courts of roles assigned to them in our Constitution, roles that they have played since the Founding.

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[2] Moreover, the fact that a statute provides such a bounty is no basis to invalidate it. Informer statutes, which authorize courts to award cash bounties to plaintiffs for bringing suit to redress legal wrongs, have been a part of the American law since the birth of the nation. As this Court has recognized, "immediately after the framing, the First Congress enacted a considerable number of informer statutes. . . . [S]ome of them provided both a bounty and an express cause of action; others provided a bounty only." *Stevens*, 529 U.S. at 776-77 (footnotes omitted); *Marvin v. Trout*, 199 U.S. 212, 225 (1905) (recognizing that "[s]tatutes providing for actions by a common informer, who himself had no interest whatever in the controversy other than that given by statute, have been in existence . . . ever since the foundation of our government"). Spokeo's argument fails on its own terms.

IV. SUPREME COURT PRECEDENT AFFIRMS THE BROAD POWER OF CONGRESS TO PRESCRIBE JUDICIAL REMEDIES FOR VIOLATION OF FEDERALLY-PROTECTED INDIVIDUAL RIGHTS.

Consistent with the text and history of Article III, this Court has long held that Congress has broad authority to grant standing to sue to aggrieved individuals to redress violations of federal rights, recognizing that "[w]henever the law provides a remedy enforceable in the courts according to the regular course of legal procedure, and that remedy is pursued, there arises a case within the meaning of the Constitution." *Tutun v. United State*s, 270 U.S. 568, 577 (1926). In a line of cases, this Court has upheld the constitutionality of statutes that, like the FCRA, ensure access to the courts and enable individuals to vindicate their federal rights. In *Oklahoma v. United States Civil Service Commission*, for example, this Court recognized that "Congress may create legally enforceable rights where none before existed. . . . Violation of such a statutory right normally creates a justiciable cause of action . . . ." 330 U.S. 127, 136 (1947); *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 580 (1992) (Kennedy, J., concurring) ("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."); *Massachusetts v. EPA*, 549 U.S. 497, 516 (2007) (observing that congressional "authorization" of suit "is of critical importance to the standing inquiry").

Consistent with this precedent, this Court has time and again held that Congress may create individual rights, allow individuals to sue in federal court to vindicate them, and prescribe judicial remedies for their violation, thereby "elevating to the status of le-

gally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law." *Lujan*, 504 U.S. at 578; *Warth v. Seldin*, 422 U.S. 490, 500 (1975) ("The . . . injury required by Art. III may exist solely by virtue of 'statutes creating legal rights, the invasion of which creates standing . . . .'" (quoting *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 n.3 (1973))); *see, e.g.*, *Hardin v. Kentucky Utils. Co.*, 390 U.S. 1, 5-7 (1968) (individual right to be free from competition under the TVA established standing even without an explicit statutory provision conferring right to sue); *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373-74 (1982) (upholding statutory standing to sue to redress violations of the right to truthful housing information protected by Fair Housing Act); *FEC v. Akins*, 524 U.S. 11, 20-22 (1998) (upholding statutory standing to sue to redress violations of the right to obtain information concerning campaign financing protected by the Fair Election Campaign Act).

This case is on all fours with *Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982), in which this Court upheld Congress's broad grant of standing contained in the Fair Housing Act, allowing suits by individuals for damages to redress misrepresentations concerning the availability of housing to proceed. In *Havens*, the plaintiff had no "intention of buying or renting a home," *Havens Realty Corp.*, 455 U.S. at 374, but that fact was irrelevant to the question whether he had standing to sue for the misrepresentation.

Havens held that injury-in-fact was established by the violation of a legal right, observing that "[a] tester who has been the object of a misrepresentation made unlawful under [the Fair Housing Act] has suffered injury in precisely the form the statute was intended to guard against" and "has standing to maintain a claim for damages under the Act's provisions."

Id. at 373, 374; *see also Akins*, 524 U.S. at 22 (concluding that there was Article III injury based on violation of "a statute which . . . does seek to protect individuals such as respondents from the kind of harm they say they have suffered"). The violation of the plaintiff's "legal right to truthful information about available housing," *Havens Realty Corp.*, 455 U.S. at 373, established the "simple fact of injury" required to satisfy Article III's case or controversy limitation. *Id.* at 374. Spokeo, not surprisingly, turns a blind eye to this aspect of *Havens*.

Like the damages claim for misrepresenting the availability of housing in *Havens*, Robins's suit here satisfies all the prerequisites for an Article III case. As alleged in the complaint, Spokeo's dissemination of false information about Robins was a "concrete and particularized" "invasion of a legally protected interest," *Lujan*, 504 U.S. at 560, that harmed his employment prospects. *See Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377, 1386 (2014) (allegations of lost sales and harm to business reputations constituted injury-in-fact). As in *Havens*, Robins "has suffered injury in precisely the form the statute was intended to guard against," *Havens Realty Corp.*, 455 U.S. at 373; that injury was caused by Spokeo, not some other third party, and that injury can be remedied by an award of damages. To say Robins's suit is not a "case" as that word is used in the Constitution is to distort Article III's plain terms beyond recognition.

Spokeo's argument that permitting this case to go forward will eviscerate Article III's standing requirements is also unfounded. While Congress has very broad authority to provide aggrieved individuals a right to sue and to prescribe judicial remedies for violation of federal law, there are also clear limits on

that authority. This Court has held that Congress cannot provide all citizens a right to sue "to vindicate the public's nonconcrete interest in the proper administration of the laws," *Lujan*, 504 U.S. at 581 (Kennedy, J., concurring), concluding that permitting such generalized grievances to be aired in court would intrude too deeply on the executive's enforcement discretion, and thus raise separation of powers concerns. *See Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009) (denying standing to challenge federal regulations that "govern only the conduct of Forest Service officials engaged in project planning"); *Lujan*, 504 U.S. at 577 (denying Congress the authority make "the undifferentiated public interest in executive officers' compliance with the law . . . vindicable in the courts").

These concerns, however, are entirely absent when Congress provides individuals a right to sue private businesses for damages for concrete violations of individual rights. Private claims against private actors sounding in tort, like those provided in the FCRA, have traditionally been adjudicated by the judicial branch. *See Summers*, 555 U.S. at 492 (discussing the "traditional role of Anglo-American courts, which is to redress or prevent . . . injury to persons caused by private or official violation of law"); Hessick, *supra*, at 319 ("The core duty of the judiciary is to remedy private legal wrongs by awarding relief when there has been a violation of a private right."). Congress's power to create judicial remedies is at its apex, where, as here, it enacts a damages remedy that supplements common law protections to redress private legal wrongs. Spokeo's argument that Congress has violated separation of powers principles in conferring a right to sue here blithely ignores that

this case arises at the core of the judicial power conferred by Article III.

* * *

In enacting the FCRA, Congress created a set of rights and remedies with deep roots in the common law, expanding on well-established common-law protections in order to protect consumers from the dissemination of inaccurate personal information. *See Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749, 763 (1989) (noting "common law" protections that protect "the individual's control of information concerning his or her person"). In establishing a statutory damages remedy that allows courts to award damages for the violation of a legal right, Congress followed in the footsteps of the First Congress, which enacted a similar legal regime to redress violations of federal copyright protections. The fact that Congress incorporated these historic principles in enacting FCRA answers the Article III question posed in this case. Robins's suit for damages for violation of his individual rights secured by the FCRA is plainly "'in a form historically viewed as capable of resolution through the judicial process.'" *Massachusetts*, 549 U.S. at 516 (quoting *Flast v. Cohen*, 392 U.S. 83, 95 (1968)). Robins is entitled to his day in court.

CONCLUSION

For the foregoing reasons, the judgment of the court of appeals should be affirmed.

Respectfully submitted,

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