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 FOR THE NATIONAL ASSOCIATION OF HOME BUILDERS AS *AMICUS CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether Congress may confer Article III standing upon a plaintiff who suffers no concrete harm, and who therefore could not otherwise invoke the jurisdiction of a federal court, by authorizing a private right of action based on a bare violation of a federal statute.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Cases

TABLE OF AUTHORITIES *(cont.)*

Page(s)

Constitutional and Statutory Provisions

TABLE OF AUTHORITIES *(cont.)*

Page(s)

Other

INTEREST OF *AMICUS CURIAE*[1]

The National Association of Home Builders (NAHB) is a Washington, D.C.-based trade association whose mission is to enhance the climate for housing and the building industry. Chief among NAHB's goals is providing and expanding opportunities for all people to have safe, decent, and affordable housing. Founded in 1942, NAHB is a federation of more than 700 state and local associations. About one-third of NAHB's approximately 140,000 members are home builders or remodelers, and constitute 80% of all homes constructed in the United States. NAHB is a vigilant advocate in the nation's courts. It frequently participates as a party litigant and *amicus curiae* to safeguard the constitutional and statutory rights and business interests of its members and those similarly situated.

As an advocate in federal court, NAHB is keenly aware of the requirements for proving Article III standing. NAHB agrees with the Petitioner that a plaintiff may not invoke the jurisdiction of a federal court unless that plaintiff suffers an injury. NAHB, however, also files this brief to request that the court not raise the bar on standing at the motion to dismiss stage of litigation.

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1 Letters of consent are included with this filing. No counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

SUMMARY OF ARGUMENT

NAHB agrees with Petitioner, Spokeo, Inc., that, because the Article III "injury-in-fact" requirement is Constitutional, Congress may not eradicate it. At this stage of litigation (motion to dismiss), however, the standing hurdle should not be difficult for plaintiffs to overcome.

ARGUMENT

While Congress may not eradicate Article III's "injury-in-fact" requirement, the courts should not readily dismiss a plaintiff's complaint at the pleading stage of litigation.

I. CONGRESS MAY NOT ABROGATE A PLAINTIFF'S REQUIREMENT TO PROVE AN INJURY.

A. This Court Has Interpreted the Constitution to Require an Injury- in-Fact, Causation and Redressability.

The Court of Appeals for the Ninth Circuit explained: "Robins's personal interests in the handling of his credit information are individualized rather than collective. . . . Therefore, alleged violations of Robins's statutory rights are sufficient to satisfy the injury-in-fact requirement of Article III." *Robins v. Spokeo, Inc.*, 742 F.3d 409, 413-14 (9th Cir. 2014). Article III, however, limits the jurisdiction of the federal courts to hearing "Cases" or "Controversies." U.S Const. art. III, § 2. "For there to be such a case or controversy, it is not

enough that the party invoking the power of the court have a keen *interest* in the issue. That party must *also* have 'standing,' which requires, among other things, that it have suffered a concrete and particularized injury." *Hollingsworth v. Perry*, 133 S. Ct. 2652, 2659 (2013) (emphasis added). Thus, as the Court clearly stated, a plaintiff must have an interest and an injury to invoke a federal court's jurisdiction.

Furthermore, the Court has consistently explained that standing emanates from Article III and is therefore a Constitutional requirement. *E.g. Arizona State Legislature v. Arizona Indep. Redistricting Comm'n*, No. 13-1314, 2015 WL 2473452, at *8 (U.S. June 29, 2015) (providing that "standing is '[o]ne element' of the Constitution's case-or-controversy limitation on federal judicial authority. . . .") (quoting *Raines v. Byrd,* 521 U.S. 811, 818, 117 S.Ct. 2312, 138 L.Ed.2d 849 (1997)); *Hollingsworth*, 133 S. Ct. at 2661 ("In other words, for a federal court to have authority *under* the Constitution to settle a dispute, the party before it must seek a remedy for a personal and tangible harm.") (emphasis added); *Arizona Christian Sch. Tuition Org. v. Winn*, 131 S. Ct. 1436, 1439 (2011) (providing that plaintiffs "must show that they have standing *under* Article III of the Constitution.") (emphasis added). Furthermore, the Court has repeatedly stated that Article III requires a plaintiff to prove i) injury-in-fact, ii) causation, and iii) redressability before a federal court may assert jurisdiction. *E.g. Hollingsworth*, 133 S. Ct. at 2661; *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

Thus, this Court has consistently interpreted and applied the Constitution in a manner that requires plaintiffs to prove an injury-in-fact caused by the defendant that is redressable before they may invoke the power of the federal judiciary.

B. Congress May Not Supersede Constitutional Interpretations

Congress may only alter Article III's standing requirements with a Constitutional amendment. In *Dickerson v. United States*, the Court addressed whether the warnings given by police pursuant to *Miranda v. Arizona*, 384 U.S. 436 (1966), could be overruled by an act of Congress, 530 U.S. 428 (2000). The Court explained that its decision in *Miranda* was based on the Constitution and that the warnings are Constitutionally required. *Id.* at 438-41. Furthermore, the Court held that "Congress may not legislatively supersede [the Court's] decisions interpreting and applying the Constitution." *Id.* at. 437.

The same reasoning should apply in this case. As the three components of standing are Constitutional requirements, but for a Constitutional amendment, Congress cannot abolish them.

II. AT THE MOTION TO DISMISS STAGE, THE STANDING BAR IS LOW.

While NAHB agrees that Congress may not erase the Constitutional requirement of an "injury in fact," it cautions the Court not to inadvertently raise the standing bar at the motion to dismiss stage.

A. Notice Pleading Under Federal Rule of Civil Procedure 8(a)(2)

Federal Rule of Civil Procedure 8(a)(2) provides that a complaint need only include "a short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R.Civ. Proc. 8(a)(2). That statement must simply provide "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, (2007). Yet, "[s]pecific facts are not necessary; the statement need only give the defendant fair notice of what the ... claim is and the grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (quoting *Bell Atl. Corp.*, 550 U.S. at 555 (internal quotation marks omitted). As this Court has explained:

> This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims. . . . Other provisions of the Federal Rules of Civil Procedure are inextricably linked to Rule 8(a)'s simplified notice pleading standard. Rule 8(e)(1) states that "[n]o technical forms of pleading or

> motions are required," and Rule 8(f) provides that [a]ll pleadings shall be so construed as to do substantial justice.

Swierkiewicz v. Sorema N. A., 534 U.S. 506, 513-14 (2002) (internal quotation marks omitted). In a Complaint, a plaintiff need not "allege all of the facts supportive of the chain of causation upon which his allegation of injury rests" because that "would return [the courts] to the unpredictable and fact-laden system of code pleading." *American Society of Travel Agents, Inc. v. Blumenthal*, 566 F.2d 145, 156 (D.C. Cir. 1977) (Chief Judge Bazelton dissenting). The Federal Rules of Civil Procedure

> were designed in large part to get away from some of the old procedural booby traps which common-law pleaders could set to prevent unsophisticated litigants from ever having their day in court. If rules of procedure work as they should in a honest and fair judicial system, they not only permit, but should as nearly as possible guarantee that bona fide complaints be carried to an adjudication on the merits.

Sorowitz v. Hilton, 383 U.S. 363, 373 (1966).

B. Standing at the Pleading Stage

In conformance with Rule 8(a), to establish standing at the pleading stage a plaintiff need only provide general allegations of injury resulting from

the defendant's conduct. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). "For purposes of ruling on a motion to dismiss for want of standing, . . . courts must accept as true all material allegations of the complaint, and must construe the complaint in favor of the complaining party." *Warth v. Seldin*, 442 U.S. 490, 501 (1975). Additionally, at this stage, the courts "presume[] that general allegations embrace those specific facts that are necessary to support the claim. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 889 (1990).

Thus, in response to a motion to dismiss courts should fill in the gaps to find that standing exists. They should not conduct lengthy analyses to create reasons that it does not.

Assume, for example, that a business challenged a rule developed by a federal agency because it believed the agency i) failed to follow the proper procedures for promulgating the rule and ii) acted beyond its authority. In its Complaint, the business explained that it believed the rule would cause it to hire consultants to assist with compliance and alter the way it conducted its business. Certainly, faced with a motion to dismiss, a court could "fill in the gaps" by assuming that hiring consultants and changing business practices would cause the business to expend funds that it would not otherwise expend. And this would support the business's standing.

C. A Plaintiff's Injuries Need Not be Significant

Finally, this Court has previously explained that while an "interest" in a problem does not suffice as an injury, the harm incurred by a plaintiff need not be "significant." The Court has "allowed important interests to be vindicated by plaintiffs with no more at stake in the outcome of an action than a fraction of a vote, *see Baker v. Carr*, 369 U.S. 186 (1962); a $5 fine and costs, *see McGowan v. Maryland*, 366 U.S. 420 (1960); and a $1.50 poll tax, *Harper v. Virginia State Bd. of Elections*, 383 U.S. 663 (1966)." *United States v. Students Challenging Regulatory Agency Procedures* (SCRAP), 412 U.S. 669, 690 (1973) (additional citations omitted). "'The basic idea that comes out in numerous cases is that an identifiable trifle is enough for standing to fight out a question of principle; the trifle is the basis for standing and the principle supplies the motivation.'" *Id.* (quoting Davis, *Standing: Taxpayers and Others*, 35 U.Chi.L.Rev. 601, 613 (1968).) In other words, "[i]njury-in-fact is not Mount Everest." *Danvers Motor Co. v. Ford Motor Co.*, 432 F.3d 286, 294 (3d Cir. 2005).

Again, assume that a plaintiff is challenging a rule created by a federal agency. If the plaintiff alleges that the rule will cause it to in any way, change how it conducts its operations, then it has stated an "identifiable trifle." This is enough to establish an "injury in fact." *See Chevron Natural Gas v. F.E.R.C.*, 199 F. App'x 2, 3-4 (D.C. Cir. 2006) (explaining that an "increase [in] daily monitoring

costs and . . . a loss in scheduling flexibility" satisfied the injury requirement).

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Thus, if courts properly consider, i) the simplified notice pleading requirements, ii) the favorable view that must be given to the plaintiff's allegations, and iii) the minuteness of the required injury, they should infrequently dismiss a plaintiff's case for lack of standing on the pleadings.

CONCLUSION

The Court has interpreted the Constitution to require only an "identifiable trifle" to satisfy Article III's injury in fact requirement. The Ninth Circuit's analysis, however, improperly allows a plaintiff to have standing based on no injury at all. Therefore, its decision should be reversed.

Respectfully Submitted,

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