

“CONCRETE HARM” OR WET CEMENT?:
EXAMINING ARTICLE III STANDING IN BREACH OF
CONTRACT CASES

TABLE OF CONTENTS

INTRODUCTION	1155
I. THE DEVELOPMENT OF THE “INJURY-IN-FACT” REQUIREMENT ..	1157
II. THE EVOLUTION OF STANDING IN THE 21ST CENTURY	1162
A. <i>Spokeo and its Effect on Standing</i>	1162
B. <i>TransUnion and its Effect on Standing</i>	1164
III. STANDING IN BREACH OF CONTRACT SUITS	1165
A. <i>The Traditional Approach</i>	1167
B. <i>The Revised Approach</i>	1168
IV. THE FUTURE OF STANDING IN BREACH OF CONTRACT SUITS ...	1169
A. <i>Applying the New Standing Requirements to Breach of Contract Suits</i>	1169
B. <i>Judicial Efficiency</i>	1171
C. <i>Contracts, Remedies, and Standing</i>	1172
CONCLUSION	1174

INTRODUCTION

Article III of the United States Constitution requires, “at an irreducible minimum,” that a party must have standing to bring a lawsuit in federal court.¹ Thus, whether a plaintiff has standing is the “threshold question in every federal case, determining the power of the court to entertain the suit.”² However, reading the plain language of Article III will not reveal such a requirement.³ Instead, the standing doctrine is a product of the Supreme Court’s interpretation of Article III’s conferment of power to federal courts over certain “Cases” and “Controversies.”⁴

According to the Court, a case or controversy is only established within the meaning of Article III if a plaintiff has a sufficient

1. *Valley Forge Christian Coll. v. Ams. United for Separation of Church & State, Inc.*, 454 U.S. 464, 472 (1982).

2. *Warth v. Seldin*, 422 U.S. 490, 498 (1975).

3. *See* U.S. CONST. art. III.

4. *Id.* § 2, cl. 1. The standing doctrine originates from the Supreme Court’s decision in *Fairchild v. Hughes*. 258 U.S. 126, 129–30 (1922) (holding that a private citizen may not sue in federal court alleging a generalized grievance affecting the public at large). One year later, the Court bolstered the doctrine by holding that only “a party to a proceeding of judicial cognizance” may sue in federal court. *Massachusetts v. Mellon*, 262 U.S. 447, 480 (1923).

“personal stake” in the suit,⁵ otherwise known as “standing.”⁶ The Court has gradually molded the standing doctrine through case law, including a “trend toward easing standing requirements” through a series of decisions in the early 1970s.⁷ Following these decisions, Article III standing requirements were considered “incoherent” and perplexing for judges and litigants to apply and satisfy.⁸

Eventually, the Court resolved some ambiguity by assembling its precedent into the three-element test for standing articulated in *Lujan v. Defenders of Wildlife*⁹:

First, the plaintiff must have suffered an “injury in fact” . . . which is . . . concrete and particularized Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be “fairly . . . trace[able] to the challenged action of the defendant” Third, it must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.”¹⁰

Lujan’s user-friendly framework was a welcome change from the puzzling standing laws that had formerly persisted in federal court. In fact, this three-element test served as the basis for standing for more than thirty years.¹¹

Although *Lujan* continues to serve as a vital facet of the standing test, the Court has not shied away from further defining the contours of the standing doctrine through a series of recent decisions.¹² In particular, the “injury-in-fact” requirement has been a trending issue in the Court’s cases in recent years.¹³

5. *Warth*, 422 U.S. at 498–99 (quoting *Baker v. Carr*, 369 U.S. 186, 204 (1962)).

6. *Id.* at 498.

7. Kenneth E. Scott, *Standing in the Supreme Court—A Functional Analysis*, 86 HARV. L. REV. 645, 645–46, 645 n.2 (1973).

8. William A. Fletcher, *The Structure of Standing*, 98 YALE L.J. 221, 221 (1988).

9. 504 U.S. 555 (1992).

10. *Id.* at 560–61 (alteration in original) (footnote omitted) (citations omitted) (quoting *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 38, 41, 43 (1976)).

11. Jonathan H. Adler, *Standing Without Injury*, 59 WAKE FOREST L. REV. 1, 2 (2024).

12. See *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2203–14 (2021); *Thole v. U.S. Bank N.A.*, 140 S. Ct. 1615, 1625–34 (2020); *Spokeo, Inc. v. Robins*, 578 U.S. 330, 337–43 (2016).

13. *TransUnion*, 141 S. Ct. at 2204–07; *Thole*, 140 S. Ct. at 1625–28; *Spokeo*, 578 U.S. at 338–43.

The most notable of these cases, *Spokeo, Inc. v. Robins*¹⁴ and *TransUnion LLC v. Ramirez*,¹⁵ have made clear that the violation of a statutory right alone does not suffice as a “concrete harm” to create standing in federal court.¹⁶ While recognizing that tangible harms, such as physical and economic harms, will comfortably meet the concrete harm requirement,¹⁷ the Court articulated a new test for intangible harms to be concrete enough for standing. The new test requires a plaintiff to prove that the “alleged intangible harm has a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts.”¹⁸

This new rule has spurred a flurry of conflicting deliberation among federal courts. Specifically, federal courts are split on the issue of whether a breach of contract alone, without any additional tangible harm, is enough to meet the concreteness requirement.¹⁹

This Comment will argue that a breach of contract alone, without any additional tangible harm, should not suffice to meet Article III’s concrete harm requirement to sue in federal court. Part I summarizes the development of the injury-in-fact requirement over time and as it stands today. Part II analyzes the *Spokeo* and *TransUnion* decisions and their effects on modern standing law. Part III discusses standing in breach of contract suits generally, and the circuit split itself. Finally, Part IV contends that a breach of contract alone should not serve as a concrete harm sufficient to create standing in federal court. Ultimately, this Comment will argue that a breach of contract should not automatically grant the aggrieved party standing to sue in federal court.

I. THE DEVELOPMENT OF THE “INJURY-IN-FACT” REQUIREMENT

To understand the significant impact of *Spokeo* and *TransUnion* on Article III standing law, it will be helpful to briefly overview the development of the injury-in-fact requirement prior to those holdings. For many years, litigants could satisfy Article III’s requirements without alleging an injury “in fact” at all.²⁰ Instead, it was necessary to allege an injury in law, or a legal injury.²¹ As the Supreme Court succinctly put it in *Tennessee Electric Power Co. v. Tennessee Valley Authority*,²² a plaintiff who sought standing to sue in federal court must have alleged the invasion of “a legal right,—one of property, one

14. 578 U.S. 330 (2016).

15. 141 S. Ct. 2190 (2021).

16. *Id.* at 2205; *Spokeo*, 578 U.S. at 341.

17. *TransUnion*, 141 S. Ct. at 2204; *see Spokeo*, 578 U.S. at 340.

18. *Spokeo*, 578 U.S. at 341; *see also TransUnion*, 141 S. Ct. at 2222.

19. *See infra* Part III.

20. *See Tenn. Elec. Power Co. v. Tenn. Valley Auth.*, 306 U.S. 118, 137–38 (1939).

21. *See id.*

22. 306 U.S. 118 (1939).

arising out of contract, one protected against tortious invasion, or one founded on a statute which confers a privilege.”²³ Thus, throughout the mid-1900s, “[t]he touchstone to justiciability” remained “injury to a legally protected right.”²⁴

It was not until 1970 that the injury-in-fact requirement was created,²⁵ making it a relatively recent addition to the standing doctrine. The requirement was first coined by the Supreme Court in *Ass’n of Data Processing Service Organizations, Inc. v. Camp*.²⁶ In that case, the plaintiffs challenged a ruling that allowed national banks to perform data processing services for their clients.²⁷ Specifically, the plaintiffs alleged that the ruling unlawfully expanded the scope of national banks’ power beyond that which was granted to them under the National Bank Act.²⁸

There, the plaintiffs had not alleged the violation of a property right, a contractual right, or any right conferred to them by statute.²⁹ Instead of a legal harm, the only alleged harm the plaintiffs would suffer was the economic injury resulting from competition with the national banks crowding the data processing industry.³⁰ Under the existing precedent conveyed by *Tennessee Electric*, it appeared clear that the plaintiffs lacked standing to sue by failing to allege the violation of a legal right.³¹ However, the Court diverged from its prior holdings and granted the plaintiffs standing because of their alleged economic injury.³² In its reasoning, the Court proclaimed that an injury in fact was a sufficient harm to create standing.³³

The *Data Processing* Court did not stop there; it further stated that standing also turns on “whether the interest sought to be protected by the complainant is arguably within the zone of interests

23. *Id.* at 137–38.

24. *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 140–41 (1951).

25. *See Ass’n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 152 (1970).

26. 397 U.S. 150 (1970).

27. *Id.* at 151.

28. *Ass’n of Data Processing Serv. Orgs., Inc. v. Camp*, 279 F. Supp. 675, 676 (D. Minn. 1968), *aff’d*, 406 F.2d 837 (8th Cir. 1969), *rev’d*, 397 U.S. 150 (1970).

29. Although the National Bank Act provided the statutory authority for the *Data Processing* Court to review the plaintiffs’ allegations, the Court noted that the Act does not “protect a specified group.” *Data Processing*, 397 U.S. at 157. Thus, the Act did not provide any statutory right to the plaintiffs for the breach of which they could sue.

30. *Id.* at 152–55.

31. *See Data Processing*, 406 F.2d at 841–43; *Data Processing*, 279 F. Supp. at 678–79. Both the District Court and the Court of Appeals relied on *Tennessee Electric* to dismiss the suit for lack of standing. *See Data Processing*, 279 F. Supp. at 678; *Data Processing*, 406 F.2d at 840.

32. *Data Processing*, 397 U.S. at 151–52.

33. *Id.* at 152–53.

to be protected or regulated by the statute or constitutional guarantee in question.”³⁴ Thus, the Court established a new two-element test for standing. First, the plaintiff must have suffered an “injury in fact.”³⁵ Second, the interest the plaintiff is seeking to protect must “arguably [be] within the zone of interests” protected under the applicable law.³⁶

The *Data Processing* holding has been deemed astonishing in the context of previous standing laws. Just two years prior, the Supreme Court itself noted that it had “repeatedly held that . . . economic injury . . . cannot, in and of itself,” be an injury sufficient for standing.³⁷ Over time, the holding has become infamous in the history of the Court and subject to scrutiny by legal scholars.³⁸

However, there is a case to be made that the injury-in-fact rule was a transformative step in the right direction for standing law. It is no secret that standing laws were notorious for bemusing litigants and judges.³⁹ To that point, it is important not to misconstrue the rule of law administered by the Court in *Data Processing*. The Court did not displace the well-established rule that the violation of a legal right was a sufficient harm for Article III standing purposes. Rather than further constricting standing laws, the injury-in-fact rule expanded the circumstances under which a lawsuit could be brought in federal court. The Court’s reasoning demonstrates that it hoped to supplement standing law by creating a new avenue for plaintiffs who suffered factual injuries to meet the Article III standing requirements. As Justice Douglas explained, the holding was aimed at buttressing a “trend . . . toward enlargement of the class of people who may protest administrative action.”⁴⁰ A few years later, the Court went on to confirm its intention to “expand[] the types of ‘personal stake[s]’ which are capable of conferring standing on a potential plaintiff.”⁴¹ Additionally, the Court noted that an “actual injury” need only be alleged “in the absence of a statute expressly conferring standing.”⁴²

Despite scholarly criticism of the idea that plaintiffs who had not suffered a legal injury could have standing, the *Data Processing* Court seemingly attempted to dilute its apparently drastic change to standing law. By requiring an inquiry into the “zone of interests”

34. *Id.* at 153.

35. *Id.* at 152.

36. *Id.* at 153.

37. *Hardin v. Ky. Utils. Co.*, 390 U.S. 1, 5–6 (1968).

38. *See, e.g.*, Cass R. Sunstein, *Injury in Fact, Transformed*, 2021 SUP. CT. REV. 349, 355–56 (denouncing the holding as disrespectful to legal theory existing at the time of the decision and calling it “shockingly sloppy”).

39. *See Fletcher*, *supra* note 8, at 221.

40. *Data Processing*, 397 U.S. at 154.

41. *Linda R.S. v. Richard D.*, 410 U.S. 614, 616–17 (1973) (second alteration in original).

42. *Id.* at 617.

protected by the “statute or constitutional guarantee” in question, the Court maintained the familiar significance of legal, rather than factual, harm in the standing framework.

The Court’s attempt to ensure the relevance of Congress’s judgment in the standing inquiry appears half-hearted. The requirement that a plaintiff must seek to protect an interest “arguably” included in those protected by a statute leaves the door open to much judicial discretion. However, inviting judicial discretion on this matter is consistent with the Court’s efforts to allow more types of harms to give rise to Article III standing. Additionally, federal judges are well-equipped to analyze both the plain language and legislative purpose behind a statute to determine the interests it is intended to protect and rule accordingly. As it turned out, the “zone of interests” protected by a statute was interpreted broadly by federal courts in the wake of *Data Processing*.⁴³

Aside from a few basic points of instruction, *Data Processing* provided little guidance as to when an alleged injury would satisfy the new injury-in-fact rule. The Court simply stated that the injury in fact must be “economic or otherwise.”⁴⁴ It also provided the vague illustration that the injured interest “may reflect ‘aesthetic, conservational, and recreational’ . . . values.”⁴⁵

These broad guideposts again confirm the Court’s attempt to expand the circumstances under which a plaintiff will have standing. If nothing else, *Data Processing* widened the courthouse doors for plaintiffs who may not have been conferred standing in the past. Perhaps as an attempt to maintain judicial efficiency and discourage litigious complainants, the Court began restricting the scope of the injury-in-fact rule in the years following *Data Processing*.

Specifically, a few years after *Data Processing*, the Court provided additional critiques to the rule by requiring that a litigant seeking standing “must allege specific, concrete facts demonstrating that the challenged practices harm him.”⁴⁶ The concrete harm rule has been explained by the Court to mean that the harm “must be concrete in both a qualitative and temporal sense.”⁴⁷ By requiring plaintiffs to allege how a defendant’s conduct has or will harm them with specificity, standing law became a higher bar than it may have seemed after *Data Processing*.

43. For example, in interpreting the “zone of interests” test, the Eighth Circuit held that “[a] court cannot circumscribe the zone around only those interests Congress *said* it intended to protect or regulate, while excluding all others.” *DeLoss v. Dep’t of Hous. & Urb. Dev.*, 822 F.2d 1460, 1464 (8th Cir. 1987). This holding demonstrates the extensive breadth of the “zone of interests” test.

44. *Data Processing*, 397 U.S. at 152.

45. *Id.* at 154 (quoting *Scenic Hudson Pres. Conf. v. Fed. Power Comm’n*, 354 F.2d 608, 616 (2d Cir. 1965)).

46. *Warth v. Seldin*, 422 U.S. 490, 508 (1975) (emphasis omitted).

47. *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990).

Lujan again constricted the injury-in-fact rule by adding that the injury must be “particularized.”⁴⁸ In other words, “the injury must affect the plaintiff in a personal and individual way.”⁴⁹ The Court had indirectly employed the particularized harm requirement two years after *Data Processing* when it held that the injury-in-fact test “requires that the party seeking review be himself among the injured” by a defendant’s conduct.⁵⁰

Lujan provides a straightforward demonstration of the concrete harm requirement in action. In that case, wildlife protection organizations sued the Secretary of the Interior, challenging its interpretation of the Endangered Species Act of 1973.⁵¹ While the Act required federal agencies to consult the Secretary prior to taking action that may harm endangered species, the challenged interpretation only required such consultation regarding agency action “within the United States [and] on the high seas.”⁵² The plaintiffs alleged that their interest in observing endangered species in foreign lands would be harmed because of the lack of regulation over agency conduct in those regions.⁵³

Although the plaintiffs submitted group members’ affidavits expressing their desire to observe threatened animal species in foreign countries,⁵⁴ the claim ultimately failed the concrete harm test.⁵⁵ The Court reasoned that the members’ intentions to observe the endangered species at some point in the future did not constitute an “‘actual or imminent’ injury” required for standing.⁵⁶ The Court also specified that the alleged injury was too speculative to support a grant of standing.⁵⁷

In sum, the Court explained, a plaintiff must meet the injury-in-fact requirement by alleging “an invasion of a legally protected interest which is (a) concrete and particularized, . . . and (b) ‘actual or imminent, not “conjectural” or “hypothetical.””⁵⁸

48. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992).

49. *Id.* at 560 n.1.

50. *Sierra Club v. Morton*, 405 U.S. 727, 735 (1972).

51. *Lujan*, 504 U.S. at 557–59.

52. *Id.* at 558–59.

53. *Id.* at 562. The Court indicated the breadth of harms that may meet the injury-in-fact requirement by recognizing that “the desire to . . . observe an animal species, even for purely esthetic purposes, is undeniably a cognizable interest for purpose of standing.” *Id.* at 562–63. However, the lack of imminence and materiality of the interest asserted in the case was ultimately the plaintiffs’ downfall. *Id.* at 564.

54. *Id.* at 563–64.

55. *Id.* at 564.

56. *Id.*

57. *Id.* at 564 & n.2.

58. *Id.* at 560 (footnote omitted) (citations omitted) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 155 (1990)).

The *Lujan* Court was careful, however, to clarify that its ruling did not unsettle “the principle that ‘[t]he . . . injury required by Art. III may exist solely by virtue of “statutes creating legal rights, the invasion of which creates standing.”’”⁵⁹ Further, the Court noted Congress’s role in “elevating to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law.”⁶⁰

These principles remained the foundational tenets of standing law for decades.⁶¹ Then, along came *Spokeo* . . .

II. THE EVOLUTION OF STANDING IN THE 21ST CENTURY

A. *Spokeo and Its Effect on Standing*

In recent years, a series of cases has led the Supreme Court’s latest effort to shape the standing doctrine. *Spokeo* emerged in 2016 as one of the most influential changes to federal standing law since *Lujan*.⁶² In that case, the plaintiff, Robins, sued Spokeo, Inc. after the search engine company disseminated incorrect data about him.⁶³ Robins alleged that the company violated the Fair Credit Reporting Act (FCRA),⁶⁴ which “requires consumer reporting agencies to . . . ‘assure maximum possible accuracy of’” the information they share about consumers.⁶⁵ It was clear that Robins adequately alleged that both (a) Spokeo, Inc. was a consumer reporting agency within the meaning of the FCRA; and (b) Spokeo, Inc. failed to assure maximum possible accuracy of the information it disseminated about Robins.⁶⁶ Thus, Robins had alleged a bona fide legal injury for violation of his statutory rights under the FCRA.⁶⁷ However, it was unclear whether Robins had adequately alleged a concrete harm, notwithstanding the statutory violation.⁶⁸ Nonetheless, under existing law, the alleged legal harm appeared to be sufficient to confer standing upon Robins in the Ninth Circuit.⁶⁹

59. *Id.* at 578 (alterations in original) (quoting *Warth v. Seldin*, 422 U.S. 490, 500 (1975)).

60. *Id.*

61. *See Adler*, *supra* note 11, at 2.

62. *See Spokeo, Inc. v. Robins*, 578 U.S. 330 (2016).

63. *Id.* at 333.

64. *Id.* at 333–34.

65. *Id.* at 335 (citing 15 U.S.C. § 1681e(b)).

66. *See id.* at 335–37.

67. *Id.* at 337.

68. *See id.* at 342–43.

69. In fact, the Ninth Circuit held that Robins had alleged an injury in fact sufficient for the conference of standing. *Robins v. Spokeo, Inc.*, 742 F.3d 409, 413–14 (9th Cir. 2014), *vacated and remanded*, 578 U.S. 330 (2016). In its reasoning, the Court of Appeals applied *Lujan*’s principles and focused on the particularized nature of the alleged injury by virtue of Spokeo, Inc. allegedly violating Robins’s personal statutory rights under the FCRA. *Id.* at 413. The

However, the Supreme Court found it proper to once again exercise its authority to transform the landscape of standing law in federal court. In granting certiorari, the Court explained that, although Robins’s alleged injury was “particularized,” the Ninth Circuit failed to properly analyze whether it was “concrete.”⁷⁰ In a revolutionary holding, the *Spokeo* Court proclaimed the following:

Congress is well positioned to identify intangible harms that meet minimum Article III requirements . . . [But] a plaintiff [does not] automatically satisf[y] the injury-in-fact requirement whenever a statute grants . . . a statutory right and purports to authorize [a suit] to vindicate [it]. Article III standing requires a concrete injury even in the context of a statutory violation.⁷¹

Viewing this excerpt on its face leads to the conclusion that the *Spokeo* court transformed the injury-in-fact rule from an additional route to gain standing into a requirement that all plaintiffs, including those with legal injuries, must meet to gain standing. However, the Court hedged its significant holding by noting that a “bare procedural violation, divorced from any concrete harm” generally will not satisfy Article III’s injury-in-fact requirement.⁷² Thus, the Court left the door open to the interpretation that a showing of a discrete injury in fact is only required in cases of bare procedural violations, so other types of statutory violations could still be sufficient for standing purposes.

The *Spokeo* Court seized its opportunity to further refine standing law. For example, the Court clarified that for an injury to be concrete, it must be “real” rather than “abstract,” and it must “actually exist.”⁷³ Initially, the requirement that an alleged injury is “real” may seem quite restrictive for standing purposes. After all, how “real” is the injury resulting from the dissemination of inaccurate information or unfair economic competition in comparison with physical injuries sustained in a collision with a drunk driver?

The Court explained that tangibility is not a requirement for a harm to be concrete and provided additional guidance about when intangible harms are concrete enough for a grant of standing.⁷⁴ The Court dictated that “both history and the judgment of Congress” are substantial factors to analyze in considering whether an intangible

Ninth Circuit’s holding demonstrates the well-settled nature of the standing principles set forth in *Lujan*, including the notion that an alleged legal harm would satisfy the standing requirement in the absence of a factual harm.

70. *Spokeo*, 578 U.S. at 339–40.

71. *Id.* at 341.

72. *Id.*

73. *Id.* at 340 (first citing 1 WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY 472 (1971); then citing RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE 305 (1966); and then citing *De Facto*, BLACK’S LAW DICTIONARY (10th ed. 2014)).

74. *Id.* at 340–41.

harm is concrete.⁷⁵ It justified this reasoning because the Article III “case-or-controversy” requirement from which the doctrine of standing is derived is itself “grounded in historical practice.”⁷⁶ The Court then stated that “it is instructive to consider whether an alleged intangible harm has a close relationship to a harm that has traditionally been regarded as providing a basis for a lawsuit in English or American courts.”⁷⁷

Once again, the language employed by the *Spokeo* Court left open the possibility that a properly alleged legal harm could suffice for standing. After all, legal injuries have historically and traditionally provided a basis for a lawsuit in American courts.⁷⁸ Additionally, the Court did not definitively establish that history and tradition would dispositively settle the issue of whether an alleged harm would meet the injury-in-fact standard. Instead, it merely said that history and tradition were “instructive” in that inquiry.⁷⁹ Further, the Court made clear that “a plaintiff . . . need not allege any *additional* harm beyond the one Congress has identified” when alleging certain types of statutory violations.⁸⁰

Therefore, it was made clear after *Spokeo* that a bare procedural violation would not satisfy the concrete harm prong of the injury-in-fact analysis. In the end, the Court decided that Robins’s alleged harm was a bare procedural violation, thus failing the concrete harm test.⁸¹

B. *TransUnion and its Effect on Standing*

In many ways, *TransUnion* picked up where *Spokeo* left off. The case involved a class of individuals who sued the credit reporting agency, TransUnion, LLC, under the FCRA.⁸² The breach of the same FCRA provision implicated in *Spokeo* was a primary part of the class’s allegations.⁸³ Specifically, the plaintiffs alleged “that TransUnion failed to use reasonable procedures to ensure the accuracy of their credit files.”⁸⁴ However, only a portion of the class members’ inaccurate credit reports were actually distributed to third parties.⁸⁵ Of the 8,185-member class, the Court held that only the 1,853 members whose “misleading credit reports” were provided to third parties had suffered a concrete harm sufficient for Article III

75. *Id.* at 340.

76. *Id.* at 340–41.

77. *Id.* at 341.

78. *See supra* Part I.

79. *Spokeo*, 578 U.S. at 341.

80. *Id.* at 342.

81. *Id.* at 342–43.

82. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2200 (2021).

83. *Id.* (citing 15 U.S.C. § 1681e(b)).

84. *Id.*

85. *Id.*

standing.⁸⁶ The remaining 6,332 class members whose reports were merely maintained in TransUnion’s database were deemed to lack a concrete harm sufficient for standing.⁸⁷

In its reasoning, the Court endorsed *Spokeo*’s decree that history and tradition should be considered in determining whether an injury is concrete.⁸⁸ However, the *TransUnion* Court went further by proclaiming that whether an alleged harm has a “close relationship”⁸⁹ to traditionally recognized harms is not only instructive, but “[c]entral to assessing concreteness.”⁹⁰ In applying that standard, the Court likened the class members’ suit to the traditionally recognized tort of defamation.⁹¹ In reference to the 6,332 class members whose misleading reports were not published, the Court reasoned that “[p]ublication is ‘essential to liability’” in a traditional, historically recognized defamation suit.⁹²

The Court further clarified that there is a distinct difference between statutory causes of action and legal rights on the one hand, and concrete harm on the other.⁹³ Particularly, the Court made clear that neither a statutory cause of action, nor an alleged legal injury, will “relieve courts of their responsibility to independently decide whether a plaintiff has suffered a concrete harm.”⁹⁴

This decision flipped standing law on its head. Until *Spokeo*, the Court had not even suggested that the legal harm suffered through the breach of a statutory right was insufficient to create standing. Then, *TransUnion* confirmed the principle that even when plaintiffs have suffered the breach of a statutory right, they must still show some independent and concrete harm for a grant of standing. Thus, *TransUnion* set forth yet another barrier for entry into federal court for judges to apply and litigants to confront. But, as Justice Kavanaugh explained, “[n]o concrete harm, no standing.”⁹⁵

III. STANDING IN BREACH OF CONTRACT SUITS

Prior to the decisions in *Spokeo* and *TransUnion*, courts dealing with breach of contract cases routinely followed the “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

86. *Id.*

87. *Id.*

88. *Id.* at 2204.

89. *Id.* at 2200 (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016)).

90. *Id.*

91. *Id.* at 2208.

92. *Id.* at 2209 (quoting RESTATEMENT (FIRST) OF TORTS § 577 cmt. a (AM. L. INST. 1938)).

93. *Id.* at 2205.

94. *Id.*

95. *Id.* at 2200.

invaded.”⁹⁶ For example, the Court in *Katz v. Pershing, LLC*⁹⁷ held that “[t]he invasion of a common-law right (including a right conferred by contract) can constitute an injury sufficient to create standing.”⁹⁸ Following *Spokeo* and *TransUnion*, it appeared that courts would likely take for granted that the breach of a contractual right would create standing for the party who held the right. For one thing, *Spokeo* and *TransUnion* specifically dealt with standing in cases alleging the mishandling of data. Even before *TransUnion*, courts landed on “conflicting conclusions about whether the breach of a contractual obligation to safeguard data sufficed as a concrete injury for Article III purposes. Those fissures existed even among courts within the same jurisdiction.”⁹⁹

This makes sense. Courts would understandably apply *Spokeo*’s guidance to find that the mishandling of data has not traditionally provided a basis for a lawsuit in America or England. However, the breach of other types of contractual obligations can readily be identified as historically and traditionally providing a basis for a lawsuit. For example, an uncle’s alleged breach of a contractual obligation to pay his nephew \$5,000 if the nephew refrained from smoking.¹⁰⁰ Or, the alleged breach of a contractual obligation to buy a certain quantity of lumber.¹⁰¹

At first glance, it would seem proper that breaches of contract bear a close relationship to harms traditionally recognized in American courts, thus satisfying *Spokeo* and *TransUnion*’s test. However, federal courts found themselves in disagreement on this issue, with some contending that a more careful read of *TransUnion* leads to a different conclusion. In particular, some circuits have decided that a breach of contract alone, without any additional harm, does not suffice as a concrete harm to meet the injury-in-fact requirement for standing.¹⁰² Others maintain that the breach of a contract itself constitutes a concrete harm.¹⁰³

96. *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 163 (1803) (quoting 3 WILLIAM BLACKSTONE, COMMENTARIES *23).

97. 672 F.3d 64 (1st Cir. 2012).

98. *Id.* at 72.

99. *Attias v. CareFirst, Inc.*, 346 F.R.D. 1, 7 (D.D.C. 2024), *motion to certify appeal denied*, No. 15-cv-882, 2024 WL 3886643 (D.D.C. Aug. 20, 2024), *and leave to appeal denied sub nom. In re Attias*, No. 24-8001, 2024 WL 4633243 (D.C. Cir. Oct. 29, 2024) (per curiam).

100. *See Hamer v. Sidway*, 27 N.E. 256, 257 (N.Y. 1891).

101. *See Ingram-Day Lumber Co. v. McLouth*, 275 U.S. 471, 472 (1928).

102. *See infra* Section III.B.

103. *See infra* Section III.A.

A. *The Traditional Approach*

Prior to *Spokeo* and *TransUnion*, the D.C. Circuit regularly held that the breach of a contractual duty conferred standing to sue upon the party to whom the duty was owed.¹⁰⁴ This was the case even when a plaintiff did not allege any tangible or intangible harm apart from the breach of contract itself.¹⁰⁵ For example, in *Alston v. Flagstar Bank, FSB*,¹⁰⁶ the Circuit Court held that “the injury, for standing purposes, is the breach itself.”¹⁰⁷ The Court justified this reasoning because a plaintiff may still recover nominal damages from a breach of contract, even when the plaintiff does not suffer nor prove actual damages.¹⁰⁸

In a recent case, *Attias v. CareFirst, Inc.*,¹⁰⁹ the D.C. Circuit demonstrated that it would follow the lead of its prior decision in *Alston*, despite the Supreme Court’s rulings in *Spokeo* and *TransUnion*. While recognizing that a class of plaintiffs had not proven actual damages,¹¹⁰ the Court granted standing for the class’s breach of contract claim.¹¹¹ The Court even noted its concern “that the proposed classes may impermissibly sweep in large numbers of uninjured customers who [would] flunk *TransUnion*’s test.”¹¹² In applying *TransUnion*’s mandate to inquire whether the alleged harm is closely related to one recognized in history and tradition, the Court ultimately ruled that “American courts dating back to the Founding have permitted plaintiffs to bring suit based on . . . a breach of contract.”¹¹³

The Fifth Circuit largely mimics the decisions and reasoning of the D.C. Circuit in breach of contract cases following *TransUnion*. In particular, that Circuit has held that, even when a plaintiff has not suffered any factual harm from a breach of contract, “traditional . . . precedent arising from both the Fifth Circuit and the Supreme Court reflect that a breach of contract is a sufficient injury for standing purposes.”¹¹⁴ The Ninth Circuit Court of Appeals adopts the traditional approach as well, holding that “the breach of a contract or binding promise is an injury traditionally recognized as a violation

104. See, e.g., *Alston v. Flagstar Bank, FSB*, 609 F. App’x 2, 3 (D.C. Cir. 2015) (per curiam). This Comment will refer to this position as the “traditional approach.”

105. See *id.*

106. 609 F. App’x 2 (D.C. Cir. 2015).

107. *Id.* at 3.

108. *Id.*

109. 346 F.R.D. 1 (D.D.C. 2024).

110. See *id.* at 6.

111. *Id.* at 11.

112. *Id.* at 5.

113. *Id.* at 9.

114. *Denning v. Bond Pharmacy, Inc.*, 50 F.4th 445, 451 (5th Cir. 2022).

of a private right, whether or not the injured party suffers economic or other damage.”¹¹⁵

Generally, the courts that continue to hold that a breach of contract alone suffices as a concrete harm justify their decisions by reasoning that a breach of contract satisfies *TransUnion*'s test as a harm traditionally recognized in American courts.¹¹⁶

B. *The Revised Approach*

The Seventh Circuit leads the charge for the courts that hold that a breach of contract alone does not constitute a concrete harm sufficient for standing purposes.¹¹⁷ For example, in *Dinerstein v. Google, LLC*,¹¹⁸ the plaintiff's anonymized medical records were released to Google by the University of Chicago Medical Center.¹¹⁹ The Court held that the Medical Center's act of releasing the anonymized records did not constitute a harm in itself.¹²⁰ It reasoned that the anonymized records could not be traced back to the plaintiff, and any risk of future harm was not imminent enough to constitute a factual harm.¹²¹ However, the plaintiff argued that the Medical Center breached a contractual duty to refrain from releasing the records.¹²² After analyzing *TransUnion* and *Spokeo*, the court held that “a breach of contract alone—without any actual harm—is purely an injury in law, not an injury in fact.”¹²³

The District of Vermont has also adopted the revised approach. In *Patel v. University of Vermont & State Agricultural College*,¹²⁴ a University of Vermont student sued the University in 2020.¹²⁵ The student contended that University's shift from in-person classes to “remote learning” during the COVID pandemic constituted a breach of contract and entitled her to a refund of her tuition.¹²⁶ However, the student attended the University on a full scholarship and did not pay any out-of-pocket tuition expenses.¹²⁷

The court held that, even if the University breached its contract, the student did not suffer a concrete, factual harm because she did not pay tuition.¹²⁸ It reasoned that “[t]he presence of a breach or

115. *Perry v. Newsom*, 18 F.4th 622, 640 (9th Cir. 2021).

116. *See id.* at 639.

117. This Comment will refer to this position as the “revised approach.”

118. 73 F.4th 502 (7th Cir. 2023).

119. *Id.* at 507–08.

120. *Id.* at 513–16.

121. *Id.*

122. *Id.* at 509.

123. *Id.* at 522.

124. No. 20-cv-61, 2021 WL 4523683 (D. Vt. Oct. 1, 2021).

125. *Id.* at *1.

126. *Id.*

127. *Id.*

128. *Id.* at *5.

violation of the plaintiff’s legal right is only one portion of the standing requirement” and the lack of monetary or other factual damages failed the concrete harm requirement.¹²⁹

The conflicting opinions on this issue amongst different circuits demonstrate the need for clarity so that courts can apply a uniform approach to these types of cases nationally. Courts within the same circuit have even appeared to be split on this issue. As noted previously, the Ninth Circuit Court of Appeals has sided with the traditional approach adopted by the D.C. and Fifth Circuits.¹³⁰ However, the Northern District of California, a district within the Ninth Circuit, recently held that “a breach of contract alone is . . . not sufficient to show concrete injury.”¹³¹ Overall, it is clear that there is no prevailing approach to addressing the concrete harm requirement in breach of contract cases, even among courts within the same circuit.

IV. THE FUTURE OF STANDING IN BREACH OF CONTRACT SUITS

With the principles of *Spokeo* and *TransUnion* in hand, federal courts should adopt the revised approach that a breach of contract alone is insufficient to satisfy the concrete harm requirement.

A. *Applying the New Standing Requirements to Breach of Contract Suits*

Applying the standing principles articulated in *Spokeo* and *TransUnion* to breach of contract suits may seem straightforward on its face. As many of the courts following the traditional approach have noted, breach of contract suits can readily be recognized in the history and tradition of American and English courts.¹³²

However, an important distinction must be made for purposes of standing. The injury-in-fact requirement, as the name suggests, focuses on the *injury* the plaintiff alleges, rather than the cause of action under which he or she sues. In fact, the *TransUnion* Court explicitly made that distinction and ordered judges to inquire beyond the cause of action in determining whether a plaintiff has alleged a concrete injury.¹³³ Additionally, one of the main points made by *Spokeo* and adopted by *TransUnion* was that an adequately alleged

129. *Id.* at *6.

130. *See supra* Section III.A.

131. Jeong v. Nexo Fin. LLC, No. 21-cv-02392, 2022 WL 174236, at *6 (N.D. Cal. Jan. 19, 2022).

132. For example, *Breithecker v. Dallas*, 94 A. 307 (N.J. 1915), is an early breach of contract case involving a woman suing a man for his alleged breach of a promise to marry her. *Id.* at 307–08.

133. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2205 (2021).

legal injury, such as the breach of a statutory right, is no longer enough to create standing.¹³⁴

In consideration of those holdings, it would be improper to grant standing for the breach of contractual rights without requiring some allegation of additional, factual harm. After all, a contract, at its core, “is a promise that creates legal obligations.”¹³⁵ Given that the rights and obligations created by contracts are purely legal, rather than factual, they are substantially analogous to the rights and obligations created by statutes. With the similarity between contractual rights and statutory rights, it makes little sense to hold plaintiffs who allege the breach of a statutory right to a higher standard than those who allege the breach of a contractual right.

For example, imagine that Tom has a statutory right to have his promissory note returned to him once he repays a federal loan. Next, imagine that Jerry has a contractual right to have his promissory note returned to him once he repays a private loan. Then, both Tom and Jerry only receive a copy of their promissory notes once their debts are paid, rather than the original promissory note. Under these limited facts, both Tom and Jerry have suffered a purely legal injury, and neither has cognizable grounds to allege a factual injury. However, under the traditional approach, only Tom would be required to allege a factual injury to gain standing since his legal right came from statute, rather than contract. On the other hand, Jerry would be granted standing simply because his legal right came from a contract, thus satisfying the traditional approach to the concrete harm requirement.¹³⁶

It could be argued that the contractual rights implicated in this circuit split are sufficiently different from the statutory rights implicated in *Spokeo* and *TransUnion* to warrant a grant of standing for their violation. However, the legal rights involved in many of these cases are essentially identical to the legal rights implicated in both *Spokeo* and *TransUnion*. Specifically, disputes over contractual rights to have a party’s data accurately maintained and protected are especially prevalent in this circuit split.¹³⁷ To illustrate, imagine that a contract requires a postal carrier to accurately maintain and protect a client’s postal address. In that case, the postal carrier’s storage of a

134. *Id.* (citing *Spokeo, Inc. v. Robins*, 578 U.S. 330, 341 (2016)).

135. F. Andrew Hessick, *Standing and Contracts*, 89 GEO. WASH. L. REV. 298, 313 (2021).

136. The *Alston* court dealt with a similar factual scenario and reached the conclusion that the breach of contract alone constituted an injury in fact. *Alston v. Flagstar Bank, FSB*, 609 F. App’x 2, 2–4 (D.C. Cir. 2015) (per curiam).

137. See *Attias v. CareFirst, Inc.*, 346 F.R.D. 1, 3–4 (D.D.C. 2024), *motion to certify appeal denied*, No. 15-cv-882, 2024 WL 3886643 (D.D.C. Aug. 20, 2024), *and leave to appeal denied sub nom. In re Attias*, No. 24-8001, 2024 WL 4633243 (D.C. Cir. Oct. 29, 2024) (per curiam); see also *In re Google Referrer Header Priv. Litig.*, 465 F. Supp. 3d 999, 1011 (N.D. Cal. 2020).

client’s incorrect zip code and subsequent disclosure of that zip code to a third party would constitute a breach of the contract. However, “[i]t is difficult to imagine how the dissemination of an incorrect zip code, without more, could work any concrete harm.”¹³⁸

In fact, the plaintiffs in both *TransUnion* and *Spokeo* claimed violation of their statutory rights to have their data accurately maintained and protected.¹³⁹ Thus, the breach of a plaintiff’s legal right to have their data protected and maintained is the exact scenario the Supreme Court had in mind when it updated the standing doctrine. Therefore, the legal rights addressed in this circuit split do not justify a different outcome than the one reached in *Spokeo* and *TransUnion*. In sum, parties should not receive special treatment simply because the legal right to have their data protected was conferred through contract law rather than statutory law.

Additionally, although the recent Supreme Court rulings have rendered the standing doctrine more restrictive than in years past, the concrete harm requirement remains “a low threshold.”¹⁴⁰ Identifying a harm with a close relationship to one providing a basis to sue in the history and tradition of the American and English courts is not a high bar to reach. As the *TransUnion* Court pointed out, a plaintiff’s alleged harm need not be an “exact duplicate in American history and tradition” to meet the concrete harm requirement.¹⁴¹ Thus, finding a harm with a close relationship to a historically and traditionally recognized harm is a broad mandate that can easily be satisfied in most cases. Even modern factual harms that would not have been contemplated in the history and tradition of the courts can typically find their common law analogue with a bit of creative reasoning. For example, the receipt of excessive unwanted text messages has been held to be a concrete harm because it is comparable to the common law tort of intrusion upon seclusion.¹⁴² Ultimately, “an injury in law is not an injury in fact,”¹⁴³ and the violation of a legal right should not be treated as an injury in fact simply because it was conferred by contract rather than statute.

B. *Judicial Efficiency*

In the case that a complaint is unfit to satisfy the new concrete harm requirement, it must be considered whether the case is too frivolous to warrant the use of courts’ precious time and resources. In practice, standing restrictions can be a mechanism to control a court’s

138. *Spokeo*, 578 U.S. at 342.

139. *TransUnion*, 141 S. Ct. at 2200; *Spokeo*, 578 U.S. at 335–37.

140. *John v. Whole Foods Mkt. Grp., Inc.*, 858 F.3d 732, 736 (2d Cir. 2017) (quoting *WC Cap. Mgmt., LLC v. UBS Sec., LLC*, 711 F.3d 322, 329 (2d Cir. 2013)).

141. *TransUnion*, 141 S. Ct. at 2204.

142. *See Gadelhak v. AT&T Servs., Inc.*, 950 F.3d 458, 462 (7th Cir. 2020).

143. *TransUnion*, 141 S. Ct. at 2205.

hefty docket.¹⁴⁴ Indeed, standing laws have been praised for their ability to “concentrat[e] limited judicial resources on controversies as to those who have actually suffered injuries.”¹⁴⁵ When viewed in this light, the *Spokeo* and *TransUnion* decisions can be recognized as attempts by the Supreme Court to ensure that judicial resources are being put to good use in cases where factual harms have been suffered.

A review of the cases adopting the revised approach demonstrates the value of denying certain cases the federal resources required for their litigation. For instance, the *Patel* court noted that the injury-in-fact requirement “ensures that . . . courts do not become drawn into theoretical controversies such as . . . whether a student who was not required to pay tuition may be entitled to its refund.”¹⁴⁶ As it stands after *Spokeo* and *TransUnion*, the bar is still low enough to allow parties with bona fide factual injuries to be addressed in federal court while also discouraging unharmed plaintiffs from bringing untenable claims over legal injuries.

Overall, it is sound policy that judicial resources are utilized to adjudicate factual injuries that satisfy the Article III concrete harm requirement, instead of entertaining debates over theoretical controversies.

C. *Contracts, Remedies, and Standing*

Proponents of the traditional approach may argue that holding parties accountable for their contractual obligations is good policy from a deterrence perspective, even when the breach of those obligations does not result in factual harm. This argument is persuasive, because if courts fail to enforce contractual rights and obligations just because no concrete injury occurred, parties may become careless with their offer, acceptance, and performance of contracts.

However, a party whose contractual right has been breached can typically point to some type of factual harm flowing from the breach, thus holding their counterparty responsible for their contractual obligations. The purposes underlying the contractual remedies available to a plaintiff illustrate this point. The Restatement (Second) of Contracts specifically enumerates three purposes for contractual remedies, each of which entail protecting the parties to a contract from some form of factual harm.¹⁴⁷

First, a party to a contract may be granted damages to protect his “expectation interest,” allowing a court to put him “in as good a

144. See Fletcher, *supra* note 8, at 228.

145. *Doran v. 7-Eleven, Inc.*, 524 F.3d 1034, 1051 (9th Cir. 2008) (Duffy, J., dissenting).

146. *Patel v. Univ. of Vt. & State Agric. Coll.*, No. 20-cv-61, 2021 WL 4523683, at *6 (D. Vt. Oct. 1, 2021).

147. See RESTATEMENT (SECOND) OF CONTRACTS § 344 (AM. L. INST. 1981).

position as he would have been in had the contract been performed.”¹⁴⁸ Second, a party to a contract may be entitled to damages to protect his “reliance interest,” allowing him to recover damages when he relies on a contractual agreement to his detriment.¹⁴⁹ Third, a party to a contract may be entitled to damages to protect his “restitution interest,” allowing him to be reimbursed for “any benefit that he has conferred on the other party.”¹⁵⁰

Among the cases in this circuit split, none of these remedial purposes could be served by awarding a plaintiff damages. If any of these interests had been infringed on by the party allegedly in breach, the plaintiff would undoubtedly pass the concrete harm test. Given that none of these broadly applicable purposes can be served when a plaintiff has failed to allege a factual harm, the objectives underlying contractual remedies do not support a grant of standing in these cases.

Moreover, a common trend in this circuit split is that the plaintiffs typically seek nominal damages because they are unable to allege any measurable factual harm, “economic or otherwise,”¹⁵¹ apart from the alleged breach of contract. Critics of the revised approach may argue that a plaintiff should be granted standing to pursue nominal damages, even when the plaintiff cannot allege a factual harm. In fact, many of the courts siding with the traditional approach find this argument persuasive in their analysis. Those courts often rely on *Uzuegbunam v. Preczewski*,¹⁵² a Supreme Court case decided shortly before *TransUnion*, for the proposition that nominal damages may be awarded “for a violation of any legal right.”¹⁵³ In applying this principle, courts have reasoned that the availability of nominal damages for a mere breach of contract “suggests that, even absent actual harm, standing exists.”¹⁵⁴

However, the Court’s discussion of nominal damages in *Uzuegbunam* related directly to the redressability prong for Article III standing.¹⁵⁵ To satisfy the redressability prong, a federal court

148. *Id.* § 344(a).

149. *Id.* § 344(b).

150. *Id.* § 344(c).

151. *Ass’n of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150, 152 (1970).

152. 141 S. Ct. 792 (2021).

153. *Id.* at 799.

154. *Meek v. Kan. City Life Ins. Co.*, No. 19-00472-CV-W, 2023 WL 7182127, at *5 n.3 (W.D. Mo. Sept. 27, 2023), *aff’d*, 126 F.4th 577 (8th Cir. 2025). Courts adopting the revised approach have disagreed with the proposition that the existence of nominal damages should be considered when addressing standing. For instance, the *Dinerstein* court acknowledged the “historical pedigree” of nominal damages in American courts but ultimately decided that this consideration was irrelevant to the issue of standing. *Dinerstein v. Google, LLC*, 73 F.4th 502, 521 (7th Cir. 2023).

155. *See Uzuegbunam*, 141 S. Ct. at 800–02.

must have the ability to “provide[] a remedy that can redress the plaintiff’s injury.”¹⁵⁶ It is well settled that the ability of nominal damages “‘to effectuate a partial remedy’ satisfies the redressability requirement.”¹⁵⁷ Nevertheless, the redressability requirement for Article III standing is wholly separate from the injury-in-fact requirement. As noted in *Uzuegbunam*, “a request for nominal damages [does not] guarantee[] entry to court,” and a plaintiff must “meet all other relevant requirements,” including the injury-in-fact requirement, to be granted Article III standing.¹⁵⁸ Although a legal injury may entitle a plaintiff to sufficient damages to satisfy the redressability prong, *TransUnion* made clear that the violation of a legal right alone is no longer enough to meet the injury-in-fact prong.¹⁵⁹ Thus, *Uzuegbunam* is properly relied upon by courts when dealing with redressability issues, but *TransUnion* is the ultimate authority on concrete harms and the injury-in-fact inquiry.

Additionally, as *TransUnion* demonstrated, the injury-in-fact requirement turns on the type of factual harm alleged in a lawsuit without regard to other factors, such as the cause of action under which a litigant sues.¹⁶⁰ The Court’s precise focus on the alleged factual harm implies that the nature of the damages sought by a plaintiff is also irrelevant to the injury-in-fact prong of the standing analysis. Therefore, under both *Uzuegbunam* and *TransUnion*, a plaintiff should not be relieved of his obligation to allege a factual harm simply because he requests damages.

CONCLUSION

Like it or not, *Spokeo* and *TransUnion* have transformed standing requirements for the foreseeable future, and federal courts must comply with the new rules in this area of the law. Moving forward, Article III standing in breach of contract suits should be reserved for those who can adequately allege an independent, factual harm apart from the breach of contract itself. First, applying the principles of *Spokeo* and *TransUnion* requires plaintiffs to allege a factual harm for a grant of standing. Second, judicial efficiency would decline if standing were granted in cases where no factual harm is alleged. Third, the purposes and policies behind contractual remedies and damages support the conclusion that a breach of contract alone is not enough to create standing.

Given the development of this circuit split, the time is ripe for the Supreme Court to settle the issue before more conflicting opinions are

156. *Id.* at 801.

157. *Id.* (quoting *Church of Scientology of Cal. v. United States*, 506 U.S. 9, 13 (1992)).

158. *Id.* at 802.

159. *TransUnion LLC v. Ramirez*, 141 S. Ct. 2190, 2205 (2021).

160. *See id.*

decided. The trajectory of the Court’s recent decisions on standing suggests that it will ultimately rule that a breach of contract alone is insufficient to create standing, further restricting the circumstances under which a plaintiff may sue in federal court.

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