

Environmental Injuries Must Be “Concrete” and “Particularized” to Confer Standing to Sue in Federal Court

Schiff
Hardin

Article By

[J. Michael Showalter](#)

[Alex Garel-Frantzen](#)

[Schiff Hardin LLP](#)

[Energy and Environmental Law Adviser](#)

- [Constitutional Law](#)
- [Environmental, Energy & Resources](#)
- [Litigation / Trial Practice](#)

- [All Federal](#)

Thursday, May 26, 2016

On May 16, 2016, the **United States Supreme Court** clarified that a plaintiff must allege an injury in fact that is both concrete *and* particularized to establish standing to sue in federal court. Neither a particularized injury nor a “bare procedural violation” of a federal statute alone will confer standing. The case, **Spokeo, Inc. v. Robins**, may impact “citizen suits” in environmental litigation where the injury in fact alleged may actually be to the environment broadly construed and not to an individual plaintiff’s “concrete” and “particularized” interests.

A plaintiff must assert, among other things, a concrete and particularized injury in fact to establish standing to sue in federal court. In the seminal case of **Lujan v. Defenders of Wildlife**, a citizen suit brought under the Endangered Species Act, the Court made clear that an injury in fact must be concrete and particularized, actual or imminent. It “requires that the party seeking review be himself among the injured.” In *Lujan*, plaintiffs who simply failed to show that they themselves were injured by the challenged regulation were not permitted to proceed with their suit.

In *Spokeo*, the Court revisited the “injury-in-fact” requirement and focused on the “concreteness” element. Robins sued Spokeo, Inc. under the **Fair Credit Reporting Act (FCRA)**, alleging that Spokeo, as a consumer reporting agency, had disseminated inaccurate information about him in violation of the FCRA. The district court dismissed the case for lack of standing, but the Ninth Circuit reversed. Using the familiar *Lujan* standard, the court of appeals found that Robins adequately pleaded standing, and, in particular, an “injury in fact” by alleging that (1) “Spokeo violated *his* statutory rights, not just the statutory rights of other people,” and (2) “Robins’s personal interests in the handling of his credit information are individualized rather than collective.”

The Supreme Court disagreed and held that a plaintiff must have suffered an injury that is both “concrete” and “particularized” to have standing. The Ninth Circuit erred by conflating these two independent requirements by analyzing only the “particularization” of Robins’s harm. The Court explained that a particularized injury is one that “must affect the plaintiff in a personal and individual way.” A concrete injury is a tangible or intangible harm that “actually exist[s].” Even when a statute grants a person a statutory right to sue, as many environmental laws do, the doctrine of “standing requires a concrete injury.”

Spokeo will impact environmental litigation because federal anti-pollution statutes almost uniformly confer a right to sue on private individuals. Private citizens will have to show more than a “bare procedural violation” or a particularized injury to have standing to sue.

© 2019 Schiff Hardin LLP

Source URL: <https://www.natlawreview.com/article/environmental-injuries-must-be-concrete-and-particularized-to-confer-standing-to-sue>