

Illinois Supreme Court Redefines Concrete Injury Requirement in No-Injury Cases

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On November 20, 2025, the Illinois Supreme Court narrowly construed private rights of action under the federal Fair Credit Reporting Act (FCRA) so as to impose a *de facto* “concrete injury” requirement for claims under the FCRA and potentially other federal statutes with similar liability language. *Fausett v. Walgreen Co.*, 2025 IL 131444. Although Article III’s concrete-injury requirement has become familiar in federal courts over the last decade, Illinois courts had not previously imposed such a requirement. The Court in *Fausett* held that the FCRA does not explicitly authorize consumers to sue for violations, so the law did not authorize consumer lawsuits unless the consumer could show that a violation caused them a concrete injury. This ruling could significantly narrow consumers’ ability to bring no-injury claims under similar statutes in Illinois state courts.

Background

The “concrete injury” requirement gained renewed focus in *Spokeo, Inc. v. Robins*, when the U.S. Supreme Court held that a concrete injury is required to create a “case or controversy,” which is required for a federal court to have subject-matter jurisdiction under Article III of the U.S. Constitution. *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016). *Spokeo* held that, even where a statute authorizes a right of action without actual damages, a lawsuit alleging a bare statutory violation without any resulting concrete harm is not a case or controversy, so a federal court lacks subject-matter jurisdiction over such a lawsuit. *Id.* at 1549. In federal court, the practical outcome of *Spokeo* is that simply pointing to a violation of a federal statute isn’t sufficient to support subject-matter jurisdiction; the plaintiff must also articulate how this violation resulted in a concrete injury.

Unlike the U.S. Supreme Court’s decision in *Spokeo*, Illinois courts are not bound by Article III, and had historically allowed lawsuits based solely on a statutory violation and without a requirement of concrete injury. Indeed, the appellate court in *Fausett* specifically noted that “federal standing law and Illinois standing law are not identical and Illinois courts are not required to follow federal law on issues of justiciability and standing.” *Fausett v. Walgreen Company*, 2024 IL App (2d) 230105, ¶ 28. The most significant recent example was the Illinois Supreme Court’s decision allowing a claim for violation of Illinois’s Biometric Information Privacy Act (BIPA) without any showing of injury beyond a statutory violation. *Rosenbach v. Six Flags Entertainment Corp.*, 2019 IL 123186, ¶ 28 (“a person need not have sustained actual damage beyond violation of his or her rights under the Act in order to bring an action under it”). The Court in *Rosenbach* relied on the statutory language that “[a]ny person aggrieved by a violation of this Act shall have a right of action in a State circuit court or as a supplemental claim in federal district court against an offending party.” 2019 IL 123186, ¶ 21.

The Decision in *Fausett*

The plaintiff in *Fausett* alleged a violation of a provision in the FCRA (known as the Fair and Accurate Credit Transactions Act or (FACTA)) that prohibits retailers from printing more than the last five digits of a credit or debit card number on any receipt.^[1] Although *Fausett* alleged no injury from the alleged violation, she nonetheless sued on behalf of a nationwide class of others subject to the same alleged violation.

The plaintiff relied on the Illinois Supreme Court decision in *Rosenbach*, arguing that a mere violation of a statutory right was sufficient to support a claim in Illinois state court. The defendant relied on *Petta v. Christie Business Holdings Co., P.C.*, where the Illinois Supreme Court held that an increased risk of harm without any other injury was insufficient to give plaintiff standing to sue. 2025 IL 130337.

In *Fausett*, the Illinois Supreme Court confirmed that an alleged statutory violation can be sufficient to support standing, but only where the statute specifically authorizes a lawsuit for violations, which the Court found is *not* the case with the FCRA.

The Court began by noting Illinois standing law is distinct from federal law, and Illinois standing notions govern in state-court actions invoking federal statutes.^[2]

The Court then noted that two different types of standing exist in Illinois: (1) common law standing, which requires an injury in fact to a legally cognizable interest; and (2) statutory standing, where the legislature creates a right of action and determines who shall sue and the conditions under which a lawsuit can be filed.^[3] After “examining the plain and unambiguous language of the relevant provisions of FCRA,” the court concluded that the FCRA does not explicitly identify who may bring suit.^[4] As a result, the FCRA did not provide statutory standing as the statute in *Rosenbach* did.

Once it found a lack of statutory standing under the FCRA, the Court held that the plaintiff must show a concrete injury to create common-law standing, and that the alleged increased risk of identity theft did not suffice.^[5] Accordingly, the Court reversed class certification and remanded with directions to dismiss for lack of standing.

Notably, the Supreme Court also left open the possibility that a concrete injury would be required even in cases where the plaintiff alleges a violation of a statute that explicitly authorizes consumers to sue. *Fausett*, 2025 IL 131444, ¶ 46 (“Given this court has found common-law standing is at issue in this appeal, we need not determine whether a concrete injury is also required with statutory standing.”)

What This Means for Consumer Class Actions in Illinois

The immediate consequence for FCRA litigation is clear. Federal courts will continue to dismiss no-injury claims for lack of Article III standing after *Spokeo*. And now *Fausett* forecloses simply refile those same no-injury claims in Illinois state courts.

By contrast, BIPA remains a different animal in Illinois. *Rosenbach* recognized statutory standing based on that statute’s “aggrieved person” language, permitting plaintiffs to proceed in Illinois state court without alleging a separate concrete injury beyond a violation of statutory rights. *Fausett* confirms that this statutory-versus-common-law distinction drives outcomes.

Looking ahead, the viability of no-injury cases in Illinois state court will depend on the specific statutory language involved. Many federal consumer statutes have private-right-of-action provisions similar to the FCRA, including the FDCPA, RESPA, and TILA. Defendants may be able to rely on *Fausett* to argue that claims under such statutes in Illinois state courts require showing a concrete injury.

Thus, just as arguments over Article III standing have been pervasive in federal courts since the U.S. Supreme Court's decision in *Spokeo*, the *Fausett* decision could trigger new litigation over Illinois's standing requirements.

[1] *Fausett v. Walgreen Co.*, 2025 IL 131444, ¶ 1 (citing 15 U.S.C. § 1681c(g)(1)).

[2] *Fausett*, 2025 IL 131444 ¶ 37.

[3] *Id.* ¶ 39.

[4] *Id.* ¶ 40 (Congress did not expressly define the parties who have the right to sue for the statutory damages established in FCRA. As such, FCRA is distinguishable from the act in *Rosenbach*.)

[5] *Id.* ¶ 50.

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