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Article III of the United States Constitution requires that a plaintiff prove an injury-in-fact, causation, and redressability to have standing in federal court. To establish “concrete” and “particularized” harm for standing through a common law analogy, there must be a “close relationship” between the harm and a traditionally recognized injury. In Vazzano v. Receivable Mgmt. Servs., LLC, the U.S. District Court for the Northern District of Texas (“district court”) considered “whether emotional damages suffice for standing, and if they do, what types of emotional damages count” in federal court. However, instead of resolving this issue directly, the district court offered an alternative analysis based on a common law analogue between a violation of the Fair Debt Collection Practices Act ("FDCPA") and the tort of intrusion.

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1 See U.S. CONST. art. III, § 2, cl. 1 (stating standing requirement for federal forums). Standing is a party’s capacity to bring a lawsuit in federal court. LEGAL INFORMATION INSTITUTE, Standing, https://perma.cc/6U6F-QMUA (last visited Oct. 26, 2022) (defining “standing”); see also Warth v. Seldin, 422 U.S. 490, 498 (1975) (illustrating standing is litigant’s entitlement to have court decide merits of case); Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (providing three elements required to satisfy constitutional standing). An injury-in-fact is an invasion of a legally protected interest that is actual, concrete, and particularized. Lujan, at 560. The causation element requires a causal connection between the injury and the conduct complained of. See id. Thirdly, it must be likely that the injury will be redressed by a favorable decision. See id. at 561.

2 See Spokeo, Inc. v. Robins, 578 U.S. 330, 334, 341 (2016) (quoting Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc., 528 U.S. 167, 180 (2000)) (creating “close relationship” test and demonstrating harm must be both “concrete” and “particularized”); see also Jon Romberg, Trust the Process: Understanding Procedural Standing Under Spokeo, 72 OKLA. L. REV. 517, 594 (2020) (explaining concrete injury is established by real-world harm or risk of real harm). The Spokeo decision highlights the important role Congress can play in defining the parameters of standing under a particular statute when “denial of a procedure it mandates, though intangible, is concrete, and when the risk of harm resulting from that denial is real and not bare.” See Romberg, supra at 525 (discussing Congress’s role in identifying injuries based on historical instructions).

3 See id. at *8-9 (illustrating central issue before court was determining what emotional harm is sufficient for standing); see also Elizabeth Earle Beske, Charting a Course Past Spokeo and TransUnion, 29 GEO. MASON L. REV. 729, 757 (2022) (discussing circuit split after Spokeo and TransUnion LLC in determining what FDCPA violations confer standing).
upon seclusion. The district court ultimately ruled that a reasonable jury could find that the Plaintiff, Aprile Vazzano ("Vazzano") suffered an injury-in-fact and satisfied the standing requirement, expediting a path for future consumer protection violations to be addressed in federal court.

Vazzano purchased an automobile insurance policy from Progressive Advanced Insurance Company ("Progressive") and made timely payments. When the policy ended on November 21, 2019, Progressive offered a renewal policy with the first installment for $142.86 due on November 21, 2019. Progressive provided Vazzano with three options: (1) to pay the installment, (2) call Progressive to renew the policy, or (3) go to Progressive’s website to renew the policy. However, if Vazzano chose not to renew, the policy would end on November 21, 2019. Even though Vazzano asserted she did not renew her policy, Progressive sought payment from Vazzano after she missed one payment, leading Progressive to transfer her debt to Receivable Management Services, LLC ("RMS").

RMS sent Vazzano a letter on February 15, 2020, as an “attempt to collect a debt” and gave Vazzano thirty days to dispute the validity thereof. By March 5, 2020, Vazzano sent a letter in response to RMS refusing to pay what she disputed was non-existing debt. However, on November 19, 2020, RMS sent Vazzano another letter with a copy of the information

5 See Vazzano, 2022 U.S. Dist. LEXIS at *11, *14-15 (recognizing alternative theory for standing). The district court addressed the tension in case law precedent determining what emotional damages suffice for standing but chose not to resolve that tension “because Vazzano offer[ed] an alternative theory for standing of which there is an easier analysis.” See id. at *11; see also 15 U.S.C. § 1692c(c) (regulating communication between debtors and debt collectors).


7 See id. at *1 (establishing Vazzano’s pre-existing automobile insurance policy).

8 See id. at *2 (describing details of Vazzano’s insurance policy). Progressive sent a second letter to Vazzano that increased the initial installment for renewal to $152.86. See id. at *2 n.2.

9 See id. at *2 (listing Vazzano’s options to renew her automobile insurance policy).

10 See id. (providing if Vazzano did not renew her policy, it would automatically end).

11 See Vazzano, 2022 U.S. Dist. LEXIS at *2 (describing communications between Vazzano and RMS pertaining to debt collection). A Progressive employee stated that Vazzano paid the initial installment for the renewal but not the second installment payment. Id. at *3 n.3. Subsequently, Progressive sent her a cancellation letter on January 2, 2019, stating that the policy was cancelled because the second installment was not paid. Id. Vazzano disputed the initial installment payment and noted that Progressive sent her a cancellation letter on November 29, 2019. Id.

12 See id. at *2 (establishing timeline of first debt collection letter).

13 See id. at *3 (describing Vazzano’s intentions to not pay alleged debt). The letter stated, “Please be advised that the alleged debt is hereby being disputed, your client is fully aware that no such funds are owed to them, thus I refuse to pay.” Id.
requested regarding the disputed debt and offered ways to pay it off. In response to the stress of these requests, Vazzano testified that she suffered panic attacks, an elevated heart rate, loss of sleep, diarrhea, interrupted sleep, memory lapse, and difficulty concentrating. In addition, Vazzano contended that the November debt collection letter violated her right to privacy because it violated § 1692c(c) of the Fair Debt Collection Practices Act ("FDCPA"). The court granted partial summary judgment on Vazzano’s FDCPA § 1692c(c) claim and denied RMS’s motion for summary judgment on all of Vazzano’s claims.

Congress enacted the FDCPA in 1978 to protect consumers from threatening debt collector practices. The statute provides that a debt collector cannot harass consumers, make deceptive statements, or engage in other unfair debt collection practices. For a plaintiff to allege a debt 

See id. (establishing timeline of second debt collection letter, almost eight months after Vazzano disputed the debt). In addition to trying to validate the debt, RMS offered ways for Vazzano to pay off her debt by mail or by phone. Id. at *20.

See id. at *6-7 (listing emotional and physical harms Vazzano suffered because of intrusive letters). There was no factual dispute that the letters affected Vazzano in a personal and individualized way. See id. at *8 n.11.

See Vazzano, 2022 U.S. Dist. LEXIS at *6-7 (contending violation of FDCPA is sufficient to confer standing). Although RMS’s second November letter violated FDCPA § 1692c(c) communication in connection with debt collection because it was sent months after Vazzano’s refusal letter in March, the court deemed RMS’s verification of the debt permissible to avoid placing RMS in a “frozen state.” See id. at *17-19. However, the court still ruled that the November letter went beyond what was permitted communication. See id. at *19; see also 15 U.S.C. § 1692 (protecting consumers from unfair debt collection practices).

See Vazzano, 2022 U.S. Dist. LEXIS at *25 (stating procedural posture of each party). Vazzano contended that she felt harassed by the second letter from RMS in November. See id. at *6-7. In addition, Vazzano asserted that the second letter violated FDCPA § 1692c(c) because her privacy was violated after she had ended communication with RMS. See id.


See 15 U.S.C. § 1692f (“A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.”); see also Deitch, supra note 18, at 410 (noting unfair means include deceptive statements and falsely representing amounts of debt). A common form of an unfair debt collection practice is communicating with a consumer after refusal of the debt. See 15 U.S.C. § 1692c(c) (controlling communication between debtor and debtor after debtor refuses payment).
collector violated the FDCPA in federal court, the plaintiff must demonstrate they experienced a harm sufficient to gain constitutional standing. Constitu-
tional standing requires an injury-in-fact, a causal connection between the injury and the defendant’s alleged conduct, and that the injury will likely result in favorable redress by the court. The rationale behind the standing doctrine is to enforce the separation of powers between the three branches of government—legislative, executive, and judicial—because “requiring a plaintiff to demonstrate a concrete and particularized injury caused by the defendant and redressable by the court ensures that federal courts decide only ‘the rights of individuals.’”

If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt except (1) to advise the consumer that the debt collector’s further efforts are being terminated; (2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or (3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.


20 See U.S. CONST. art. III, § 2, cl. 1 (laying foundation for constitutional standing).

21 See Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-61 (1992) (listing three elements of constitutional standing). The party invoking federal jurisdiction bears the burden of proving standing. Id. at 561. First, an injury-in-fact is an invasion of a legally protected interest which is “concrete and particularized” and “actual or imminent.” Id. at 560. Additionally, the causal connection must be “fairly trace[able] to the challenged action of the defendant.” Id. Last, the court must determine that redressability of the injury is more than likely, not merely “speculative.” Id. at 561.

22 See TransUnion LLC v. Ramirez, 141 S. Ct. 2190, 2203 (quoting Marbury v. Madison, 5 U.S. 137, 170 (1803)) (limiting federal courts’ jurisdiction to “cases” and “controversies”); see also Spokeo, Inc. v. Robins, 578 U.S. 340-41 (2016) (emphasizing standing doctrine is grounded in historical practice). The standing doctrine is justified as a necessary constitutional safeguard to ensure cases are brought in an adversarial setting, with proper parties, and to ensure the federal judiciary does not infringe on the powers of the other branches. See Matthew S. DeLuca, Note, The Hunt for Privacy Harms After Spokeo, 86 FORDHAM L. REV. 2439, 2443-44 (2018).
Statutory violations alone are insufficient grounds to establish standing; in most circumstances, a concrete injury must exist in addition to the violation. In TransUnion LLC v. Ramirez, the Supreme Court of the United States (“Supreme Court”) conferred standing only to those class members that suffered a concrete harm. However, courts have considered the possibility of eliminating the concrete harm requirement for sake of efficiency and convenience, instead determining standing to be met when a party shows a

(articulating rationale for standing requirements). Congress may elevate previously inadequate de facto injuries to a concrete and legally cognizable injury status. See Lujan, 504 U.S. at 579 (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.” Id. at 580. Generally, the separation of powers ensures that respective branches of government do not encroach on the other branches. See Hessick, supra note 20, at 684. The standing doctrine protects separation of powers in four ways: (1) it confines federal courts to the historical role of the courts, (2) it ensures the federal judiciary does not decide matters more appropriately addressed by the other branches, (3) it restricts the ability of the federal courts to act only when necessary to protect the rights of individuals, and (4) it protects the President from the threat of Congress enacting laws that confer executive power on private individuals. See id. at 684-85.

23 See Spokeo, 578 U.S. at 341-42 (establishing necessary concrete injury but clarifying injury need not exceed injury Congress identified); TransUnion LLC, 141 S. Ct. at 2205 (“[A]n important difference exists between (i) a plaintiff’s statutory cause of action to sue a defendant over the defendant’s violation of federal law and (ii) a plaintiff’s suffering concrete harm because of the defendant’s violation of the federal law.”); see also Jackson Erpenbach, Note, A Post-Spokeo Taxonomy of Intangible Harms, 118 Mich. L. Rev. 471, 479 (2019) (“Some procedural violations are sufficiently concrete in themselves, while others require articulating a consequent risk of harm from the violation.”). In Spokeo, the Supreme Court created a new distinction in the standing doctrine by dividing tangible harms from intangible harms, further confusing the standing doctrine. Spokeo, 578 U.S. at 340. The Supreme Court elaborated by explaining an intangible harm to be concrete if it is supported by history and the judgment of Congress and there is a risk of real harm. See id. However, this uncertainty in cases involving consumer protection may prevent consumers from redressing their interests in a federal court. See Erpenbach, supra at 473; see also Pierre v. Midland Credit Mgmt., 29 F.4th 934, 944 (7th Cir. 2022) (Hamilton, J., dissenting) criticizing both Spokeo and TransUnion LLC providing “Congress much more room than our recent cases have to provide statutory remedies for violations of consumer protection laws that inflict intangible harm without inflicting measurable financial harm on the victim.”).

24 See TransUnion LLC, 141 S. Ct. at 2214 (2021) (“No concrete harm, no standing”). Here, the Supreme Court held that a physical injury, monetary injury, or an intangible harm such as “reputational harms, disclosure of private information, and intrusion upon seclusion” suffices for standing. See id. at 2204. In a class action suit based on the Fair Credit Reporting Act, the 1,853 class members whose credit reports were provided to third-party businesses suffered a concrete harm and established standing on the grounds of the tort of defamation. Id. at 2214. “[I]f the law of Article III did not require plaintiffs to demonstrate a ‘concrete harm,’ Congress could authorize virtually any citizen to bring a statutory damages suit against virtually any defendant who violated virtually any federal law.” Id. at 2206. The concrete harm requirement is essential to the Constitution’s separation of powers; however, it can be difficult to apply. See id. at 2207. The injury is necessary to support standing because it ensures the plaintiff has adequate incentive to litigate and provides “context that forces the court to be aware of the impact of its decision.” See Hessick, supra note 20, at 680. Congressional deference would both produce more consistent outcomes and reduce the tension between the courts’ determination of tangible and intangible harms. See Erpenbach, supra note 23, at 503.
statutory violation has occurred. Specifically, determining what types of intangible emotional harms are concrete to ascertain standing is the crux of the circuit split. Some circuits apply a broad interpretation of harm while others reject intangible harms altogether.

Although there is unresolved tension in discerning exactly what types of intangible emotional harms are concrete, the Supreme Court

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25 See TransUnion LLC, 141 S. Ct. at 2207 (recognizing tension in case law). Although convenience and efficiency are helpful to the courts when considering the issue of standing, the Constitution carries great weight and overrides goals of efficiency. See id. However, standing is often difficult to resolve. See Hessick, supra note 20, at 727. Eliminating standing in cases where the separation of powers rationale does not apply to the case will save the resources and effort spent on resolving standing. See id. Moreover, where standing poses a threat to separation of powers, courts are more likely to produce stringent standing doctrines, whereas cases that pose less of a threat will be more flexible. See id. at 724. Nonetheless, standing cannot be statutorily conferred to private rights of action because it is constitutional. See Erpenbach, supra note 23, at 474. In a case of a violation of a right granted by statute, a plaintiff does not need to allege any additional harm beyond the one identified by Congress. See Spokeo, 578 U.S. at 342 (deferring to Congress to identify intangible harms). However, not all statutory violations are sufficient for injury without additional allegations of harm. See id. Given Congress’s power to define injuries and articulate chains of causation, Congress is positioned to identify intangible harms that satisfy standing. See Romberg, supra note 2, at 595.

26 See Erpenbach, supra note 23, at 478 (“An intangible injury is concrete if it is supported, to some indefinite degree, by history and the judgement of Congress, and the injury entails at least a risk of real harm to the plaintiff?”); Jason R. Smith, Comment, Statutes and Spokeo: The Case of the FDCPA, 87 U. Chi. L. Rev. 1695, 1704 (2020) (“Circuits have subsequently split on the questions of which violations of consumer protection statutes are sufficiently concrete to confer standing.”).

27 See Smith, supra note 26, at 1709-15 (elaborating on circuit split and Spokeo ambiguity); compare Rideau v. Keller Indep. Sch. Dist., 819 F.3d 155, 168-69 (5th Cir. 2016) (holding emotional harm satisfies injury requirement of constitutional standing), and Macy v. GC Servs. L.P., 897 F.3d 747, 757 (6th Cir. 2018) (holding violation created risk of real harm without need to allege additional harm), with Pierre v. Midland Credit Mgmt., 29 F.4th 934, 938 (7th Cir. 2022) (holding no concrete harm occurred because plaintiff did not act to her detriment). In response to a debt collection letter, the plaintiff called the creditors to dispute the debt. See Pierre, 29 F.4th at 939. Calling a debt collector is “not closely related to an injury that our legal tradition recognizes as providing basis for a lawsuit.” Id. Psychological states, such as anxiety, stress, and mental anguish, are not enough to show concrete injury sufficient to support a remedy Congress authorized. See id.; Brunett v. Convergent Outsourcing, Inc., 982 F.3d 1067, 1068 (7th Cir. 2020) (holding state of confusion is not itself an injury). However, the Seventh Circuit noticed it requires one of the highest burdens to meet the circuit split on standing in FDCPA cases. See Pierre, 29 F.4th at 955 (Hamilton, J., dissenting). If a debtor acts to her detriment by paying a debt she does not owe because of confusion, then she may be injured; however, the state of confusion is not the injury. Brunett, 982 F.3d at 1068. If confusion itself was a concrete injury, then “everyone would have standing to litigate about everything.” See id.; see also Laufer v. Arpan LLC, 29 F.4th 1268, 1273 (11th Cir. 2022) (holding no close relationship between frustration and humiliation to intentional infliction of emotional distress); Casilla v. Madison Ave. Assocs., 926 F.3d 329, 336 (7th Cir. 2019) (holding violations of FDCPA mandatory disclosure requirement are never concrete if no additional harm arises).
recently offered an alternative analysis in *Spokeo Inc.*, v. *Robins*. The analysis considers “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.” For example, the common law tort intrusion upon seclusion has been applied to debt collectors violating debtors’ right to privacy. In addition to intrusion upon seclusion, the Supreme Court in *TransUnion LLC* applied a common law analogue between the plaintiffs’ harm and the tort of defamation. The Supreme Court left the question of what types of emotional harms are sufficient for standing and otherwise conferred standing through a new basis for the plaintiffs’ interests to be addressed in federal court.

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28 See *Spokeo*, 578 U.S. at 341 (establishing how to determine intangible harm). “‘Concrete’ is not, however, necessarily synonymous with ‘tangible.’” *Id.* at 340. Although tangible injuries are easier to recognize, intangible harm can be concrete and therefore establish the injury-in-fact requirement for standing. See *id.*

29 See *id.* at 341-42 (describing central issue before Supreme Court and establishing “close relationship” analysis). Similar to common law permitting recovery for tort victims even if their harms are difficult to measure, the violation of a procedural right granted by statute can be sufficient in some circumstances to constitute injury-in-fact. See *id.* at 342. But see Deluca, *supra* note 22, at 2456 (criticizing lack of clarity *Spokeo* presents and addressing ambiguity it created).

30 See *RESTATEMENT (SECOND) OF TORTS* § 652B (AM. L. INST. 1977). The Restatement states “one who intentionally intrudes, physically or otherwise, upon the solitude or seclusion of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.” *Id.* The tort protects mental interests in addition to physical interests, which provides relief for an invasion of constitutional rights where concrete physical injuries are harder to prove. See Tigran Palyan, Comment, *Common Law Privacy in a not so Common World: Prospects for the Tort of Intrusion Upon Seclusion in Virtual Worlds*, 38 SW. L. REV. 167, 171 (2008). Modern courts have applied intrusion upon seclusion to harassing phone calls from creditors to a debtor. *Id.* at 172. The typical case when action is brought against a creditor for abusive collection practices involves the creditor making an excessive amount of telephone calls to the debtor’s home or workplace. See William A. Reilly II, Note, *Debt Collection Practices: Iowa Remedies for Abuse of Debtors’ Rights*, 68 IOWA L. REV. 753, 764 (1983) (explaining typical unfair debt collection practices); Gadelhak v. AT&T Servs., Inc., 950 F.3d 458, 462 (7th Cir. 2020) (holding courts recognize intrusion upon seclusion for irritating intrusions into privacy); see also Warren & Brandies, *The Right to Privacy*, 4 HARV. L. REV. 193, 195 (1890) (defining right to privacy as right “to be let alone” and protecting individuals’ “inviolate personality”).

31 See *TransUnion LLC*, 141 S. Ct. at 2208 (establishing standing using *Spokeo* “close relationship” standard to a common law tort analysis). *TransUnion* provided third parties credit reports that labeled class members as potential terrorists, drug traffickers, or serious criminals which resembled a “close relationship” to the harm associated with the tort of defamation. *Id.* at 2209. To determine if a plaintiff’s alleged harm has a “close relationship” to a traditionally recognized harm providing basis for a lawsuit, the Supreme Court requires a sufficiently close comparative relationship but does not require an exact duplicate of those harms. *Id.*

32 See *TransUnion LLC*, 141 S. Ct. at 2208 (applying *Spokeo* “close relationship” standard to a common law tort analysis to confer standing); *Spokeo*, 578 U.S. at 341-42 (creating “close relationship” test clarifying injury does not need to exceed one Congress identified); see also Pierre, 29 F.4th at 946 (Hamilton, J., dissenting) emphasizing Congressional deference to “injuries similar, not identical, to those long recognized in law”); Romberg, *supra* note 2, at 595 (discussing...
In Vazzano v. Receivable Mgmt. Servs., LLC, the district court applied the Spokeo “close relationship” analysis to confer standing in an unfair debt collection claim, following the Supreme Court’s reasoning in TransUnion LLC. The court first addressed whether a reasonable jury could find that Vazzano suffered an injury-in-fact, the first element of standing. The district court relied on precedent established in the Fifth Circuit, holding that evidence of emotional harm suffices for constitutional standing. However, the district court indicated there is conflict in determining what intangible harms are “concrete.” Ultimately, the district court decided not to address this tension around what specific types of intangible harms are sufficient for standing but rather relied on an alternative theory for standing.

In applying the “close relationship” test, the district court avoided the unanswered question of what certain emotional harms are sufficient for injury-in-fact and applied a common law analogue to the pre-existing tort of intrusion upon seclusion. The Supreme Court in Spokeo left interpretive
of another or his private affairs or concerns, is subject to liability to the other for invasion of his privacy, if the intrusion would be highly offensive to a reasonable person.” See id. Courts have held that even merely irritating intrusions through unwanted text messages constitute intrusion upon seclusion. See Gadelhak, 950 F.3d at 462 (explaining why unwanted texts caused harm). Similarly, the Vazzano court found numerous unwanted debt collection letters constituted intrusion upon seclusion. See id.; Vazzano, 2022 U.S. Dist. LEXIS at *13. 
See Spokeo, 578 U.S. at 340 (giving courts’ discretion to determine if harm resembles close relationship to traditionally recognized tort).

11 Congress is better positioned than the judicial branch to align injuries with “cultural, political, and technological change.” Erpenbach, supra note 23, at 2501-02 (contending judicial precedent is too blunt compared to congressional risk determinations); see also Smith, supra note 26, at 1710-11 (explaining solution to Spokeo test is to “focus on whether Congress created the procedural right to protect a concrete interest and whether the violation threatened that concrete interest”). But see Beske, supra note 4, at 766 (indicating TransUnion LLC decision “is notable for the absence of any reliable metric for confining judicial discretion . . . [and] leaves lower courts little else in their request for ‘close relationships’ to common law analogues.”)

Vazzano, 2022 U.S. Dist. LEXIS at *13 (holding intangible harm based on common law analogue is sufficient for standing). The Vazzano court relied heavily on the analysis of the Supreme Court in TransUnion LLC, and Spokeo’s “close relationship” test, which allowed the court to support Vazzano’s reasons for standing and hear the merits of her case. See id. at *12-14. The court found there was no disputed material issue of fact, thereby entitling Vazzano to partial summary judgement, establishing her FDCPA § 1692c(c) claim. See id. at *21-22.

43 See id. at *25 (holding Vazzano suffered concrete harm); Spokeo, 578 U.S. at 340 (creating “close relationship” test); 15 U.S.C. § 1692 (establishing violations of fair debt collection practices); see also Federal Reserve Board, supra note 18 (explaining FDCPA was “designed to
exercising their discretion in conferring standing for Vazzano, the district court infringed on the separation of powers principles at the root of the standing doctrine.\(^\text{44}\) Although RMS’s second November debt collection letter was deemed permissible, the district court ultimately ruled that the letter violated the FDCPA § 1692c(c) because it included more than the verification of debt.\(^\text{45}\) This established a statutory violation in addition to the intangible harm of invading Vazzano’s privacy.\(^\text{46}\)

Additionally, the district court’s deliberate decision to leave unresolved the issue created in TransUnion LLC of identifying what types of emotional harms are sufficient for standing redirects their application to an alternative theory.\(^\text{47}\) The district court lost the opportunity to address the tension determining what emotional harms are considered an injury-in-fact by failing to introduce the alternative theory sooner, and therefore build a

eliminate abusive, deceptive, and unfair debt collection practice . . . [and] protect reputable debt collectors from unfair competition and encourages consistent state actions to protect consumers from abuses in debt collection.”).

\(^\text{44}\) See Beske, supra note 4, at 736 (“The Spokeo/TransUnion concreteness inquiry invites the insertion of judicial policy preferences and cannot be squared either with the separation of powers underpinnings of standing doctrine”). Such judicial deference goes against the heavy weight of the democratic legislative intent. See Beske, supra note 4, at 767 (allowing “unelected judges to run roughshod over the legislative power”). Furthermore, a “deferential stance would simply produce [a] more coherent doctrine,” reducing the divide between tangible and intangible harms. See Erpenbach, supra note 23, at 503 (predicting judicial deference to Congressional intent will product more consistent outcomes). However, the judicial branch may struggle to bridge this divide because different circuits have different assumptions about identifying and categorizing harms. See Erpenbach, supra note 23, at 481 (identifying Third and Ninth Circuit split).

\(^\text{45}\) See Vazzano, 2022 U.S. Dist. LEXIS at *19, *21-22 (determining November letter went beyond what was permitted because it did more than verify debt); Smith, supra note 26, at 1707 (addressing presumption collectors cannot contact consumers at inconvenient times or after consumer requests termination); see also Federal Reserve Board, supra note 18 (explaining when debt collectors must cease communication with consumers).

When a consumer refuses, in writing, to pay a debt or requests that the debt collector cease further communication, the collector must cease all further communication, except to advise the consumer that the collection effort is being stopped, certain specified remedies ordinarily invoked may be pursued . . . [and] mailed notices from the consumer are official when they are received by the debt collector.

Federal Reserve Board, supra note 18.

\(^\text{46}\) See Vazzano, 2022 U.S. Dist. LEXIS at *19, *21-22 (holding RMS violated FDCPA § 1692c(c) after Vazzano refused to pay disputed debt). In addition to the violation of FDCPA communications, the court determined Vazzano did suffer emotional harm because of the harassing letters. See id. at *7 (listing emotional distress injuries). However, Spokeo introduced more confusion in the area of privacy claims that further uncertainty in how to classify intangible harms. See DeLuca, supra note 22, at 2457. When faced with identifying intangible harms, the Supreme Court in Spokeo instructed lower courts to look to “both history and the judgement of Congress.” See DeLuca, supra note 22, at 2457-58.

\(^\text{47}\) See Vazzano, 2022 U.S. Dist. LEXIS at *11-12 (“TransUnion explicitly recognized the harms protected by intrusion upon seclusion tort as an ‘intangible harm.’”).
stronger argument in favor of the “close relationship” test.\textsuperscript{48} However, it is because the district court found that the alternative theory had merit that it applied the flawed \textit{Spokeo} “close relationship” test, doing so to the best of its ability.\textsuperscript{49} The district court ultimately based its analysis of the facts on supportive precedent, following the direction of other courts leaning towards finding intangible harms sufficient for standing in an area extremely lacking guidance after \textit{Spokeo}.\textsuperscript{50}

Moreover, the \textit{Vazzano} court primarily focused on protecting the individual rights of those harmed by debt collectors, rather than creating an overly broad determination of what specific types of emotional harm constitute injury-in-fact, which could ultimately create a greater divide amongst the circuit courts.\textsuperscript{51} The vagueness of “close relationship” allowed the district court to draw an inference between a violation of the FDCPA and the

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\item \textsuperscript{48} See \textit{Vazzano}, 2022 U.S. Dist. LEXIS 144258, at *11 (applying easier and more efficient analysis rather than tackling harder issue). In \textit{Casilla v. Madison Ave. Assocs.}, the Seventh Circuit’s decision resulted in a “one-sided reading of a two-sided decision” because it put a limitation on standing to the mandatory disclosure provision of the FDCPA to all consumer protection statutes. \textit{See} 926 F.3d 329, 333 (7th Cir. 2019); \textit{see also} Smith, supra note 26, at 1713-15 (discussing circuit split and different readings of \textit{Spokeo}). Meanwhile, in \textit{Macy v. GC Servs. L.P.}, the Sixth Circuit held the debt collector’s failure to disclose in this particular case threatened the rights of the debtors and therefore granted them standing. \textit{See} Smith, supra note 26 at 1712; \textit{Macy v. GC Servs. L.P.}, 897 F.3d 747, 757 (6th Cir. 2018) (holding FDCPA violation of consumer disclosure alone was sufficient for concrete injury).
\item \textsuperscript{49} See \textit{Vazzano}, 2022 U.S. Dist. LEXIS 144258, at *11-12 (interpreting “close relationship” test). The alternative theory adopted by the district court in \textit{Vazzano} is consistent with \textit{Spokeo} and \textit{TransUnion LLC}. \textit{See id.} (emphasizing alternative theory credibility). The court elaborated on case law tension deciding whether certain types of emotional harm have a suitable common law analogue sufficient for standing, but ultimately decided to ignore this issue, instead focusing on \textit{Vazzano}’s specific harms analogous to the intrusion upon seclusion. \textit{See id.; Spokeo}, 578 U.S. at 340 (establishing precedent for lower courts); \textit{Erpenbach, supra note 23, at 490 (indicating ambiguity between tangible and intangible harms). As a result of “[h]aving little Supreme Court guidance, lower courts have identified numerous harms when analyzing a plaintiff’s intangible yet concrete injury.”} \textit{Erpenbach, supra at 483; see also Rideau v. Keller Indep. Sch. Dist., 819 F.3d 155, 168-69 (5th Cir. 2016) (holding constitutional standing satisfied by emotional harm); \textit{Macy}, 897 F.3d at 757 (holding allegation of additional harm to be unnecessary because violation alone created risk of real harm); Brunett v. Convergent Outsourcing, Inc., 982 F.3d 1067, 1068 (7th Cir. 2020) (holding “state of confusion is not itself an injury” for standing).}
\item \textsuperscript{50} See \textit{Rideau}, 819 F.3d at 168-69 (holding emotional harm satisfies injury requirement of constitutional standing); \textit{Macy}, 897 F.3d at 757 (holding violation created risk of real harm without alleging additional harm); \textit{Gadelhak v. AT&T Servs., Inc.}, 950 F.3d 458, 462 (7th Cir. 2020) (holding courts recognize intrusion upon seclusion for irritating intrusions into privacy).
\item \textsuperscript{51} See \textit{Vazzano}, 2022 U.S. Dist. LEXIS 144258, at *11 (electing to avoid tension regarding scope of emotional harm); Smith, supra note 26, at 1716 (articulating “objective approach.”). Applying an objective approach “does not require the courts to determine whether a plaintiff suffered a subjective injury to determine whether she has a concrete injury.” Smith, supra note 26 at 1716. This would allow courts to make a case-by-case analysis of an individual’s harm based on the violation of a consumer protection statute, rather than address the specific injuries and grapple with the difficulties of determining if an intangible harm is concrete for standing. \textit{See id.}
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tort of intrusion upon seclusion. The court’s reasoning echoes the recent TransUnion LLC analysis to establish standing through a common law analogue to an injury traditionally based in history, rather than identify certain types of intangible harms. Although this is one district court in the Northern District of Texas, it indicates how a lower court has interpreted Spokeo and TransUnion LLC, establishing an alternative and creative way to confer standing based on traditional common law, potentially influencing other lower court decisions.

In Vazzano v. Receivable Mgmt. Servs., LLC, the district court ultimately considered whether a violation of the FDCPA § 1692c(c) had a “close relationship” to the tort of intrusion upon seclusion to confer standing for Vazzano, a woman who suffered mental anguish in response to an intrusive debt collection letter from RMS. By following ambiguous Supreme Court decisions in Spokeo and TransUnion LLC, the district court determined that the violation of the FDCPA § 1692c(c), in addition to the mental anguish, had a “close relationship” to intrusion upon seclusion, fulfilling the injury-in-fact requirement and conferring standing. In an area of extreme inconsistency, the district court correctly found that the debt collection letter from RMS intruded Vazzano’s privacy, therefore protecting consumers and upholding the FDCPA fair practices. This lower court’s interpretation of a confusing test will pave the way for other courts to use discretion to protect consumers from harm by large debt collection companies.

52 See Vazzano, 2022 U.S. Dist. LEXIS 144258, at *5-7, *14-15 (addressing both parties arguments and concluding intrusion upon seclusion is common law analogue to FDCPA § 1692c(c); Erpenbach, supra note 23, at 478 (contending “close” implies courts should engage in process of analogy but not find exact relation). Courts should defer to Congress because “Spokeo’s bare terms may simply exclude standing for statutory violations that have no rational connection to underlying harm—whether as defined by history or by congressional judgment.” Erpenbach, supra note 23, at 506.

53 See TransUnion LLC, 141 S. Ct. at 2204 (applying common law analogy creates opportunity for more privacy harms to suffice for standing); Erpenbach, supra note 23, at 478 (“[A]n intangible injury is concrete if it is supported, to some indefinite degree, by history and the judgement of Congress, and the injury entails at least a risk of real harm to the plaintiff.”). The Supreme Court in TransUnion LLC gave discretion to federal courts and judges, not Congress, to ascertain which harms are “sufficiently close” analogies to common law harms and which harms are not. See Beske, supra note 4, at 767 (giving courts power over Congress). But see Romberg, supra note 2, at 542 (identifying Congress’s role and asking, “when should courts defer to congressional judgement about the chain of causation between an instrumental right and the risk of concrete injury it was designed to protect?”).

54 See Erpenbach, supra note 23, at 474 (commenting “[h]ow lower courts apply Spokeo . . . has enormous implications for future of consumer protection statutes”). Lower courts have applied the Spokeo analysis in an inconsistent way, which “is particularly concerning for consumer protections laws” because they “rel[y] on consumers to vindicate their own statutory rights.” See id. at 506; see also Beske, supra note 4, at 766 (opining “TransUnion invites lower courts into uncharted territory”).

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