

No. _____

IN THE
Supreme Court of the United States

JAMES HUFF, individually and on
behalf of others similarly situated,

Applicant,

v.

TELECHECK SERVICES, INC.;
TELECHECK INTERNATIONAL INC.;
FIRST DATA CORPORATION,

Respondents.

**On Application for Extension to File a Petition for Writ of Certiorari
to the United States Court of Appeals for the Sixth Circuit**

**APPLICATION TO JUSTICE KAGAN FOR AN EXTENSION OF TIME
TO FILE A PETITION FOR WRIT OF CERTIORARI**

MARTIN D. HOLMES
Counsel of Record
DICKINSON WRIGHT PLLC
Fifth Third Center, Suite 800
424 Church Street
Nashville, TN 37219
(615) 244-6538
mdholmes@dickinsonwright.com

Counsel for Applicant
James Huff

To the Honorable Elena Kagan, as Circuit Justice for the United States Court of Appeals for the Sixth Circuit:

James Huff respectfully asks for a 60-day extension of time in which to file a petition for writ of certiorari from a final judgment of the United States Court of Appeals for the Sixth Circuit, up to and including December 16, 2019. *See* Sup. Ct. R. 13.5. A petition for writ of certiorari is currently due on October 17, 2019, which is ninety days from July 19, 2019, when the Sixth Circuit denied Huff's petition for rehearing en banc. This request comes more than 10 days in advance of the current deadline. This Court will have jurisdiction over the petition for writ of certiorari under 28 U.S.C. § 1254(1).

JUDGMENTS BELOW

The petition for writ of certiorari will request this Court's review of the judgment of the United States Court of Appeals for the Sixth Circuit in Case No. 18-5438, *James Huff v. Telecheck Services, Inc., et al*, decided on May 3, 2019. The Sixth Circuit's majority and dissenting opinions, along with the denial of Huff's petition for rehearing en banc, are attached.

BACKGROUND

This is a putative class action alleging that TeleCheck, a check verification company, systematically violated § 1681g of the Fair Credit Reporting Act by omitting linked information from required disclosures to consumers, the substance of which TeleCheck relies on to make credit determinations about those consumers. In Huff's case, the omitted information included bank accounts that are erroneously linked to him. In a split decision, the Sixth Circuit held that Huff had not suffered a

concrete injury, as needed to confer Article III standing, because the erroneously linked accounts that TeleCheck failed to disclose have never been associated with any debt and, consequently, the presence of those accounts in Huff's file have never resulted in a check decline. In other words, the Sixth Circuit reasoned, Huff could not have avoided any additional consequential harm had he received his entire credit file as statutorily required.

This case exemplifies the confusion among lower courts following *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540 (2016), with respect to both informational and other types of intangible injuries. This Court in *Spokeo* recognized that an informational injury, in which a person is denied information to which he is statutorily entitled, can be concrete in its own right and sufficient to confer Article III standing. But *Spokeo* did not involve an informational injury and ultimately announced a general test for evaluating the concreteness of intangible injuries: whether the plaintiff has alleged “a bare procedural violation, divorced from any concrete harm,” or whether the procedural violation alleged “entail[s] a degree of risk sufficient to meet the concreteness requirement.” *Id.* at 1549-50.

In the years since *Spokeo*, lower courts have struggled to apply this Court's teachings consistently. Whereas some courts recognize informational injuries under consumer protection statutes as sufficiently concrete, the Sixth Circuit here suggested that informational injuries must hinder participation in the political process. And whereas some courts ask whether the deficient disclosure of information deprived the plaintiff of an opportunity to exercise a right conferred by

statute, the Sixth Circuit here went one step further by asking whether exercising the right would have prevented *additional consequential harm* to Huff. In short, the Sixth Circuit not only failed to recognize this case as involving a concrete informational injury, but also imposed a requirement of additional consequential harm that *Spokeo* rejected. The dissent would have held that Huff had standing under *Spokeo* because the violation posed a risk of harm to a concrete interest that Congress sought to prevent through the FCRA—an inaccurate credit report based on bank accounts that are not his.

Guidance is needed on this frequently recurring issue of exceptional importance, and this case offers an ideal vehicle to provide that guidance.

REASONS FOR GRANTING AN EXTENSION OF TIME

The time to file a petition for writ of certiorari should be extended by 60 days, up to and including December 16, 2019, for the following reasons:

1. Undersigned counsel is the lead attorney in 11 pending class actions, many which are national in scope, that have demanded substantial time and travel since July 19, 2019 and will demand substantial time and attention in the coming months. An extension of time will allow undersigned counsel to devote the appropriate amount of time and attention to the petition for writ of certiorari while not compromising his duties with respect to other pending matters.

2. Undersigned counsel is seeking to partner with an attorney who has an established Supreme Court practice. Discussions with this attorney are ongoing. An extension of time is needed to pursue this opportunity and collaborate on the petition for writ of certiorari if an agreement to partner on the petition is reached.

3. The Courts of Appeals, while divided, are not cleanly split on how to apply *Spokeo*, and an examination of post-*Spokeo* decisions reveals a fractured and confused state of the law. The complexity of the issues on which the petition will be based justifies an extension of time.

CONCLUSION

For these reasons and good cause shown, Applicant James Huff respectfully requests that this Court grant his application for an extension of time to file a petition for writ of certiorari.

Respectfully submitted,



MARTIN D. HOLMES
Counsel of Record
DICKINSON WRIGHT PLLC
Fifth Third Center, Suite 800
424 Church Street
Nashville, TN 37219
(615) 244-6538
mdholmes@dickinsonwright.com

Counsel for Applicant
James Huff

October 2, 2019