No. 25-_____

IN THE
SUPREME COURT OF THE UNITED STATES

HANNAH HEKEL,

Petitioner,

v.

HUNTER WARFIELD, INC.,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

DARREN B. SCHWIEBERT
DEBT LAWSUIT RELIEF, INC.
301 FOURTH AVENUE S.,
SUITE 280N
MINNEAPOLIS, MN 55415

JOHN M. BUHTA
SOUTHERN MINNESOTA
REGIONAL LEGAL SERVICES, INC.
903 WEST CENTER STREET, SUITE 230
ROCHESTER, MN 55902

COUNSEL FOR PETITIONER HANNAH HEKEL

QUESTIONS PRESENTED

This case presents three questions:

(1) Whether the Eighth Circuit may disregard this Court's instructions in *Spokeo v. Robins*, 578 U.S. 330 (2016) and *TransUnion LLC v. Ramirez*, 594 U.S. 413 (2021) that an injury-in-fact analysis for Article III standing requires assessment of whether the injury alleged has a "close relationship" to a harm traditionally recognized at common law, and to evaluate the "downstream consequences" of the violation presented by Petitioner.

(2) Whether the Eighth Circuit improperly ignored actionable, downstream consequences of the alleged harms pled in the Ms. Hekel's complaint.

(3) Whether the Eighth Circuit decision that all emotional injuries are insufficient to establish standing is consistent with this Court's case-by-case approach in *TransUnion* and *Spokeo*.

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

All parties appear in the caption of the case on the cover page.

Plaintiff-Appellant below (and Petitioner here) is Hannah Hekel, an individual.

Defendant-Appellee below (and the Respondent here) is Hunter Warfield, Inc.

RELATED CASES

There are no pending related cases.

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OPINIONS BELOW

The Eighth Circuit's denial of Petitioner's Petition for Rehearing En Banc was entered on December 10, 2024 and appears at Pet. App. 21 and is reported at 2024 U.S. App. LEXIS 31470, 2024 WL 5051325. The opinion of the United States Court of Appeals for the Eighth Circuit appears at Pet. App. 11-17 and is reported at 118 F.4th 938. The opinion of the United States district court appears at Pet. App. 4-9, and is reported at 2023 U.S. Dist. LEXIS 160909, 2023 WL 5941527.

JURISDICTION

On October 4, 2024, the Eighth Circuit issued its decision. On December 10, 2024, it denied petitions for rehearing en banc. This petition timely invokes the Court's jurisdiction under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

Title 15 United States Code, Sections 1692a and 1692f, as well as Article III of the Constitution of the United States, which are reproduced in the Appendix.

INTRODUCTION

In remanding Ms. Hekel's case to the district court with instructions to dismiss the case, the Eighth Circuit failed to assess whether the injury alleged has a "close relationship" to a harm traditionally recognized at common law, and to evaluate the "downstream consequences" of the violation presented by Petitioner as required by this Court's decisions in *Spokeo* and *TransUnion*.

Because the Eighth Circuit failed to follow the precedent of this Court in assessing standing and dismissing Petitioner's case, this Court should grant, vacate and remand this case to the Eighth Circuit for a decision consistent with *Spokeo* and *TransUnion*. *See* 28 U.S.C. § 2106. Given the actionable, downstream consequences pled in Ms. Hekel's complaint, this Court should also determine grant, vacate, and remand with a determination of standing for an Eighth Circuit decision on the merits of Ms. Hekel's appeal.

In the alternative, this Court should grant *certiorari* to resolve the entrenched circuit split regarding whether emotional harms are sufficient to establish standing for FDCPA claims.

The Eighth Circuit's errors are significant and extend beyond Petitioner's case: they threaten to foreclose entire categories of tangible and intangible injuries alleged in debt-collection cases, steering the trajectory of the FDCPA away from its intended, original purpose: the prohibition of "deceptive, and unfair debt collection practices" like "misrepresenting the consumer's legal rights," and "collecting more" than is legally owed. S. Rep. No. 95-382, at 4 (1977), 1977 U.S.C.C.A.N. 1695, 1698.

STATEMENT OF THE CASE

Ms. Hekel signed a residential lease that she alleged violated Minnesota law by requiring her to pay utility charges that were undisclosed and billed on a single-meter utility. *See* Pet. App. 40, ¶ 14; Minn. Stat. § 504B.215, subd. 2a. Though federal law bars the collection of debts illegal under state law, *see* 15 U.S.C. § 1692f(1), Ms. Hekel's landlord eventually evicted Ms. Hekel for failing to fully pay the charges. *See*

Pet. App. 40, ¶ 16. The debt was then transferred to Defendant-Appellee, Hunter Warfield. *See id.*, ¶ 18.

In an attempt to collect the outstanding balance, Hunter Warfield sent Ms. Hekel a debt-collection letter. In the complaint she filed with the district court, Ms. Hekel alleged the letter violated the FDCPA in three ways. First, she alleged that Hunter Warfield failed to include FDCPA-required notices. *See* Pet. App. 42-43, ¶¶ 26, 28, 30; 15 U.S.C. § 1692g. The FDCPA requires debt collectors to alert consumers of the deadline by which they may dispute the validity of the alleged debt, *see* 15 U.S.C. § 1692g(a)(3); state the process by which a debt collector must obtain verification of the debt, if the debt or any portion of it is in dispute, *see* id. § 1692g(a)(4); and advise the consumer that, upon their request, the debt collector must provide them with the name and address of the original creditor, *see* id. § 1692g(a)(5). Ms. Hekel alleged that none of these required notices were in the letter, or if they were, they were insufficiently "effective[]" and "prominent," *Garcia Contreras v. Brock & Scott, PLLC*, 775 F.Supp.2d 808, 813 (M.D.N.C. 2011), to meet the FDCPA's disclosure requirements. *See* Pet. App. 43-44, ¶¶ 32–33. As a result of these omissions, Ms. Hekel alleged that she was "confused and misled" by the "false statements," *id.* ¶ 44, and "did not understand her rights" after receiving the letter, *id.* ¶ 36.

Second, Ms. Hekel alleged that Hunter Warfield had applied an interest rate that was both undisclosed in her lease agreement and is prohibited by Minnesota law, which violates the FDCPA's prohibition on unfair collection practices. *See* 15 U.S.C.

§ 1692f(1); Pet. App. 45, ¶¶ 37–39. Hunter Warfield's letter stated that a 6% interest rate had been applied to Ms. Hekel's debt, and, in her complaint, Ms. Hekel explained that this rate violated 15 U.S.C. § 1692f(1) both because her lease was silent as to an interest rate, and because Minnesota law caps interest rates on judgments less than $50,000 at 4% or 5%, depending on the year in which the judgment is awarded. *See* Pet. App. 45-46 ¶¶ 40–44.

Third, Ms. Hekel argued that Hunter Warfield's omissions and incorrect interest rate amounted to false and misleading statements in violation of the FDCPA. *See* Pet. App. 46, ¶ 47; 15 U.S.C. §§ 1692e, 1692e(2), 1692e(3), 1692e(10). She alleged that Hunter Warfield's multiple false and misleading statements "misled her with regard to her legal and contractual rights." *See id.*, ¶ 48. She further alleged that the improper collection efforts caused her "out-of-pocket costs, worry, and sleeplessness." *See* Pet. App. 47, ¶ 49. As relief, Ms. Hekel sought actual and statutory damages and reasonable costs and fees. *See* Pet. App. 48-49.

The Fair Debt Collection Practices Act (FDCPA) was enacted in 1978 and codified as 15 U.S.C. § 1692 et seq. The purpose of the statute is "to eliminate abusive debt collection practices" and "to insure that those debt collectors who refrain from using [such] practices are not competitively disadvantaged." *See* 15 U.S.C. § 1692e.

15 U.S.C. § 1692k(a) provides that "any debt collector who fails to comply with any provision of this subchapter with respect to any person is liable to such person . . ." 15 U.S.C. § 1692f provides as follows:

> A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt.

15 U.S.C. § 1692f(1) provides:

> Without limiting the general application of the foregoing, the following conduct is a violation of this section:
>
> (1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

Ms. Hekel moved for partial summary judgment. Pet. App. 52-65. Her motion sought disposition of just one of the three issues she presented: whether Hunter Warfield violated 15 U.S.C. § 1692f(1) by applying the 6% interest rate to her debt. *Id.* The district court denied Ms. Hekel's motion for partial summary judgment and—though Ms. Hekel had been the only movant, and though her motion sought judgment on just one of her three claims—the disctrict court (without notice) granted summary judgment on all Ms. Hekel's claims in favor of the non-movant, Hunter Warfield. Pet. App. 4-9.

Ms. Hekel timely appealed to the Eighth Circuit Court of Appeals, contending the district court erred in dismissing her case without reaching two of the three issues she raised, and finding for the defendant on her interest-rate claim. For the first time, in response, Hunter Warfield argued that Ms. Hekel lacked standing to raise any of her claims. *See* Pet. App. 79-85.

Although neither party has moved the district court for an assessment of the evidence supporting most of Ms. Hekel's claims, the Eighth Circuit affirmed the district court's dismissal of all of Ms. Hekel's claims on the basis that she had failed to provide sufficient "evidence" or "specific facts" establishing that she had been

concretely injured by Hunter Warfield's violations of the FDCPA. *See* Pet. App. 15-17. The panel vacated the district court's judgment and remanded with instructions to dismiss the case on the ground that Ms. Hekel lacked a concrete injury.

Petitioner filed a timely petition for rehearing or rehearing *en banc* arguing that the panel decision had failed to properly conduct the concreteness analysis required by *Spokeo* and *TransUnion*. Petitioner also argued that the Eighth Circuit panel's sweeping conclusion that "emotional injuries like confusion, worry, and sleeplessness" cannot be concrete conflicted with this Court's decision in *Spokeo* and *TransUnion*. The Eighth Circuit denied Petitioner's request for rehearing.

REASONS FOR GRANTING THE PETITION

A. The Eighth Circuit ignored this Court's directive in *Spokeo* and *TransUnion* requiring analysis of whether the injuries have a close relationship to harms traditionally recognized as providing a basis for suit.

As explained by this Court in *Spokeo*, in addition to being particularized, "[a]n injury in fact must also be 'concrete.' 578 U.S. at 340. "'Concrete' is not, however, necessarily synonymous with 'tangible.'" *Id.* at 341. Thus, standing may be established by tangible or intangible harm.

"In determining whether an intangible harm constitutes injury in fact, ***both*** history and the judgment of Congress play important roles." *Id.* (emphasis added). However, "Congress' role in identifying and elevating intangible harms does not mean that a plaintiff automatically satisfies the injury-in-fact requirement whenever a statute grants a person a statutory right and purports to authorize that person to sue

to vindicate that right." *Id.* Thus, the fact that Congress created a private right of action in section 15 U.S.C. § 1692k(a) of the FDCPA does not ***alone*** establish standing. Nonetheless, Congress' judgment is "instructive and important." *Id.*

The critical analysis as explained in *Spokeo* and *TransUnion* is 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." *Id; TransUnion*, 594 U.S. at 424. This is because the doctrine of standing is derived from the case-or-controversy requirement which is "grounded in historical practice." *Spokeo*, 578 U.S. at 341. As this Court explained in *TransUnion*, "an exact duplicate" in the common law claim harms is not required. 594 U.S. at 433. Rather, a "close relationship" between Ms. Hekel's asserted harm and a harm traditionally recognized as providing a basis for a lawsuit is all that is required for standing. *Id.*

The Eighth Circuit panel did not conduct the close-relationship analysis, concluding instead that both the tangible injuries Ms. Hekel alleged (i.e., "out of pocket costs," and "time and money," *see* Pet. App. 15) and the intangible injuries (i.e., "confusion," "worry," "sleeplessness," *see* Pet. App. 14-15), were "abstract" and "insufficiently concrete." *Id.*

Ms. Hekel's alleged injuries, however, bear close proximity to the types of harm traditionally considered concrete at common law. The FDCPA sections on which Ms. Hekel relies are effectively a codification of common-law fraud or emotional-distress torts in the debt-collection context: Ms. Hekel alleges that Hunter Warfield omitted or misrepresented key information required by law, *see* Pet. App. 42-43, ¶¶ 26–30;

that she relied on that information to her own economic detriment, *see* Pet. App. 47, ¶ 49 (collection efforts "cost Plaintiff time and money"), and that she is entitled to both actual and statutory damages as a result, *see* Pet. App. 48-49, ¶ 59. This claim—and the harm that results—is a form of common-law fraud by nondisclosure, which occurs when one party (i.e., Hunter Warfield) owes a duty to another (Ms. Hekel) to exercise reasonable care to disclose a piece of information and then fails to disclose that information knowing that the nondisclosure may justifiably induce the other to refrain from acting. *See* RESTATEMENT (SECOND) OF TORTS § 551. Hunter Warfield's duty to disclose is created by the FDCPA, and the lack of statutory notice regarding Ms. Hekel's rights to challenge the underlying debt deprived her of the ability to dispute the debt and caused her to expend concrete resources determining how to respond to the letter. *See*, e.g., Pet. App. 46-47, ¶¶ 44, 49. This is sufficient to sustain an injury-in-fact under *Spokeo* and *TransUnion*.

Ms. Hekel's allegations can also be understood as a common-law emotional-distress claim, which the Eighth Circuit had previously suggested "may be [a] close common-law analogue[]" to an FDCPA injury caused by collectors demanding interest on debt without a judgment. *Bassett v. Credit Bureau Servs., Inc.*, 60 F.4th 1132, 1136 & n.2 (8th Cir. 2023). Ms. Hekel alleged that the letter demanded payment of a debt that she did not owe, *see* Pet. App. 45, ¶¶ 38–39, and that the omissions and misrepresentations in the letter resulted in "worry, and sleeplessness," *see* Pet. App. 47, ¶ 49. Receiving a letter requesting money from a source with apparent authority

to do so can establish the sort of "extreme and outrageous" conduct that causes redressable emotional distress. *See* RESTATEMENT (SECOND) OF TORTS § 46 & cmt. e.

Respondent did not argue to either the district court or the Court of Appeals that the injuries pled in Ms. Hekel's complaint do not bear close proximity to the types of harm traditionally considered concrete at common law. This is because Respondent did not raise the issue of standing before the district court. The issue was raised for the first time in Respondent's opposition brief before the Eighth Circuit. Respondent did not dispute or even discuss the close proximity to the types of harm traditionally considered concrete at common law in their argument.

The failure by the Eighth Circuit to perform the close-relationship analysis eliminated the "important role" of Congress in the standing analysis. Although Congress clearly created a right of action in the FDCPA for Ms. Hekel to file claims for Respondent's violations of the FDCPA, the "important role" of Congress can ***only*** effect the standing analysis if the close-relationship analysis is performed. Thus, the Eighth Circuit's decision entirely forecloses "Congress' power under the Constitution to regulate interstate commerce – its power to authorize private civil remedies for statutory violations that cause intangible but concrete injuries, including emotional distress, fear, and confusion." *See Pierre v. Midland Credit Mgmt., Inc.*, 36 F.4th 728, 729 (7th Cir. 2022) (Hamilton, J., dissenting from denial of rehearing *en banc*).

Because the Eighth Circuit failed to perform the analysis required by *Spokeo* and *TransUnion*, this Court should grant, vacate, and remand the decision back to the Eighth Circuit for a decision consistent with this Court's precedent.

B. The Eighth Circuit Ignored Actionable, Downstream Consequences of the Alleged Harms.

The Eighth Circuit incorrectly concluded that Ms. Hekel failed to identify any "downstream consequences," App. 13, resulting from Hunter Warfield's FDCPA violations. But Ms. Hekel identifies actual consequences that occurred as a result of Hunter Warfield's statutory violations: She alleges that she relied on Hunter Warfield's letter, App. 46, ¶ 44, expended "time and money" and "out of pocket costs" in response to its misrepresentations, Pet. App. 47, ¶ 49, and that it caused her "worry, and sleeplessness," *id.* Hunter Warfield's fundamental "misrepresentation[s] of a consumer's legal rights," S. Rep. No. 95-382, at 2, are apt to produce the kind of "substantial" emotional harms that Ms. Hekel alleges, and that Congress sought to prevent in the FDCPA. *Id.*; 15 U.S.C. § 1692(a).

Indeed, Ms. Hekel's emotional injuries are at the very heart of the FDCPA's remedial purpose. *See TransUnion*, 594 U.S. at 425 (stating that Congress' views regarding concrete injuries may be "instructive," as the legislative body can "elevate to the status of legally cognizable injuries concrete, de facto injuries that were previously inadequate in law"). Congress recognized that "[c]ollection abuse takes many forms, including . . . misrepresentation of a consumer's legal rights." S. Rep. No. 95-382, at 2. To shelter consumers from those abuses, the FDCPA expressly protects consumers against emotional harms. 15 U.S.C. § 1692(a); *see* id. 1692e(7) (outlawing "false representation[s]" that "disgrace the consumer"); S. Rep. No. 95-

382, at 2 (debt collectors "regularly inflict" "suffering and anguish"); *Demarais v. Gurstel Chargo, P.A.*, 869 F.3d 685, 692 (8th Cir. 2017) ("Congress recognized that abusive debt collection practices contribute to harms that can flow from mental distress, like 'marital instability' and 'the loss of jobs.'"). By failing to afford "due respect" to—or even acknowledge—Congress' "instructive and important" judgment that emotional harms in the FDCPA context are sufficiently concrete, *TransUnion*, 594 U.S. at 425, the Eighth Circuit's decision violated the teachings of *TransUnion* and *Spokeo*.

Even if emotional harms weren't embedded in the FDCPA, Ms. Hekel's economic injuries—"time and money," "out of pocket costs," *see* Pet. App. 47, ¶ 49—are sufficiently concrete. *See TransUnion*, 594 U.S. at 425; *Demarais*, 869 F.3d at 693 (injury includes "the aggravation and loss of value of the time to set things straight"); *Webb v. Injured Workers Pharmacy, LLC*, 72 F.4th 365, 376 (1st Cir. 2023) ("The loss of [] time is equivalent to a monetary injury, which is indisputably a concrete injury."); *Lewert v. P.F. Chang's China Bistro, Inc.*, 819 F.3d 963, 967 (7th Cir. 2016) ("time and money spent resolving fraudulent charges are cognizable injuries for Article III standing.").

The Eighth Circuit's opinion concluded that Ms. Hekel does not identify any "specific out-of-pocket costs," Op. at 943, but "[a]t the pleading stage . . . [courts] 'presum[e] that general allegations embrace those specific facts that are necessary to support the claim." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992) (citation omitted). Under *TransUnion*, Ms. Hekel has sufficiently alleged injuries that the

FDCPA specifically sought to remediate and monetary harms that routinely pass Article III muster.

Thus, this Court should grant, vacate, and remand the decision back to the Eighth Circuit for determination of the merits of Petitioner's appeal.

C. This Court Should Grant *Certiorari* to Resolve the Entrenched Circuit Split Regarding Whether Emotional Harms Establish Standing for FDCPA Claims.

The Eighth Circuit's opinion held that all emotional injuries are insufficient to establish standing. Pet. App. 15 (stating that "emotional injuries" like "confusion," "worry," "irritability," "sleeplessness," "restlessness," "nervousness," and "negative emotions" do not suffice for Article III purposes).

The Eighth Circuit's decision deepens an "entrenched" circuit split regarding whether emotional harms establish standing for FDCPA claims. *See Pierre v. Midland Credit Mgmt., Inc.*, 29 F.4th 934, 955 (7th Cir. 2022) (Hamilton, J., dissenting), *cert. denied* 143 S. Ct. 775 (2023) ("At this point, this circuit is at the far end of the circuit split on standing in FDCPA cases based on emotional distress, confusion, and anxiety. That split seems ***entrenched***, at least pending further guidance from the Supreme Court.") (emphasis added).

Ms. Hekel's alleged harm would have been sufficient for standing in the Fourth, Fifth, and Eleventh Circuits. *See e.g., Calogero v. Shows, Cali & Walsh, L.L.P.*, 95 F.4th 951, 958 (5th Cir. 2024) ("fear, anxiety and emotional distress" sufficient because "emotional distress is a traditional harm that satisfies *TransUnion*'s concreteness requirement"); *Ben-Davies v. Blibaum & Assocs.*, 695 F.

App'x 674, 676 (4th Cir. 2017) ("emotional distress, anger, and frustration" sufficient where debt collector "demand[ed] payment of an incorrect sum based on the calculation of an interest rate not authorized by law"); *Toste v. Beach Club at Fontainebleau Park Condo. Ass'n., Aventura, P.A.*, 2022 U.S. App. LEXIS 25076 *12, 2022 WL 4091738 (11th Cir. 2022) ("emotional distress manifesting in a loss of sleep" sufficient to confer Article III standing.")

The Eighth Circuit decision below joined the Seventh and Ninth Circuits on the other side of the circuit split. *See Pierre*, 29 F.4th at 939 ("But worry, like confusion, is insufficient to confer standing in this context."); *Adams v. Skagit Bonded Collectors, LLC*, 836 F. App'x 544, 547 (9th Cir. 2020) ("[w]ithout more, confusion does not constitute actual harm to [plaintiff's] concrete interests.").

This Court's instruction is *Spokeo* was that "[i]n determining whether an intangible harm constitutes injury in fact, ***both*** history and the judgment of Congress play important roles." *Id.* (emphasis added). The Eighth Circuit has now joined the side of the circuit split closing the door on emotional harms as injuries identified by Congress in determining standing.

The FDCPA's intended, original purpose was the prohibition of "deceptive, and unfair debt collection practices" like "misrepresenting the consumer's legal rights," and "collecting more" than is legally owed. S. Rep. No. 95-382, at 4 (1977), 1977 U.S.C.C.A.N. 1695, 1698.

This Court should grant certiorari to resolve the entrenched circuit split over emotional harms as sufficient to establish standing under the FDCPA.

CONCLUSION

For the foregoing reasons, this Court should grant the Petition, vacate the Eighth Circuit's decision, and remand the case to the Eighth Circuit. In the alternative, this Court should grant the Petition and resolve the Circuit split over whether emotional damages are sufficient to establish injury in fact in favor or Petitioner.

Respectfully submitted,

DARREN BRAYER SCHWIEBERT
DEBT LAWSUIT RELIEF, INC.
301 FOURTH AVENUE S.
SUITE 280N
MINNEAPOLIS, MN 55415

JOHN M. BUHTA
SOUTHERN MINNESOTA
REGIONAL LEGAL SERVICES, INC.
903 WEST CENTER STREET
SUITE 230
ROCHESTER, MN 55902