Chapter 105 : Credit Cards
(Cite as: 9 V.S.A. § 4041)

§ 4041. Definitions

As used in this chapter:

(1) As used herein, the term "person" shall include a natural person, a firm, an association, and a corporation, and any officer, employee or agent thereof.

(2) "Cardholder" means any person to whom a credit card is issued and any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(3) "Card issuer" means any person who issues a credit card.

(4) "Credit card" means any instrument, whether known as credit card, credit plate, charge plate, or any other name, which purports to evidence an undertaking to pay for property, labor, services, or delinquent taxes paid, delivered, or rendered to or upon the order of persons designated or otherwise authorized as bearers of such card, and includes bank credit cards as defined in 8 V.S.A.§ 1301(b).

Chapter 063 : Consumer Protection
(Cite as: 9 V.S.A. § 2457)

§ 2457. Evidence of fraud

The failure to sell any goods or services in the manner and of the nature advertised or offered, or the refusal or inability to sell any goods or services at the price advertised or offered or in accordance with other terms or conditions of the advertisement or offer, creates a rebuttable presumption of an intent to violate the provisions of this chapter. No actual damage to any person need be alleged or proven for an action to lie under this chapter.

20-year-old sues Dick's Sporting Goods, Walmart over new gun policies

Kevin McCoy, USA TODAY Published 8:12 a.m. ET March 6, 2018 | **Updated 8:39 p.m. ET March 6, 2018**

(Photo: Alan Diaz, AP)

A 20-year-old Oregon man has accused Walmart and Dick's Sporting Goods of age-discrimination for refusing to sell him a rifle.

Tyler Watson filed Oregon county court lawsuits against the retailers on Monday, six days after they announced they would not sell guns to buyers under 21.The companies added the higher age restriction after the massacre at Marjory Stoneman Douglas High School in Parkland, Fla.

Oregon law allows state residents to buy shotguns or rifles as of age 18. Federal law also allows people 18 and older to buy rifles or shotguns from licensed dealers.

Watson's lawsuits may be the first of their kind in the U.S., his attorney, Max Whittington, told *The Oregonian/Oregon Live* (http://www.oregonlive.com/pacific-northwest-news/index.ssf/2018/03/oregon_man_20_sues_big_retaile.html), media outlets that first reported the cases.

More: How Trump's planned steel, aluminum tariffs affect you (/story/money/2018/03/05/tariffs-trump-impact/395314002/)

More: A tire with living moss? Goodyear reveals Oxygene concept at Geneva Motor Show (/story/money/cars/2018/03/06/goodyear-oxygene-tire-geneva-motor-show/398276002/)

More: McDonald's now serves fresh-beef Quarter Pounders at 25% of restaurants (/story/money/2018/03/06/mcdonalds-now-serves-fresh-beef-quarter-pounders-25-restaurants/398346002/)

More: Target's makeover was aimed at holding off Amazon, but did it work? (/story/money/2018/03/06/target-gets-gift-strong-holiday-season-take-into-new-year/394986002/)

Watson went to a Field and Stream store owned by Dick's Sporting Goods in Medford, Ore., on Feb. 24 "for the purpose of buying a .22 caliber Ruger 10/22 rifle," according to the lawsuit filed in state Circuit Court.

He left after being told the store would not sell him any firearm, including rifles and shotguns, or ammunition for the weapons, unless he was 21, the lawsuit alleged. The refusal came four days before the retail chain publicly announced its new sales policy for firearms.

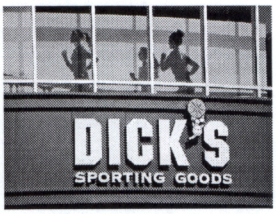
Watson encountered a similar scenario when he went to a Walmart store in Grants Pass, Ore., on March 3 "for the purpose of buying a rifle," according to a separate lawsuit filed in state Circuit Court.

Whittington said Watson did not know about the new age policy for gun sales when he went to the Field and Stream store four days before the policy was announced. It was not immediately clear whether Watson learned about the change before he went to the Walmart store.

"He was really just trying to buy a rifle," Whittington said of the initial purchase attempt. The attorney also said Watson is not part of any organized movement taking action against retailers that have enacted tighter restrictions on gun sales.

18-year-old sues Dick's Sporting Goods in second-known gun policy lawsuit

USA TODAY NETWORK Noe Hernandez, Battle Creek Enquirer Published 10:36 a.m. ET March 9, 2018 | **Updated 2:21 p.m. ET March 11, 2018**



(Photo: Scott Olson, Getty Images)

BATTLE CREEK, Mich. — Dick's Sporting Goods again is facing a lawsuit (http://bcene.ws/2FnHxuS) over its decision to not sell firearms to anyone younger than 21.

At 18, Tristin Fulton, of Battle Creek, Mich., can vote and drive. He just can't buy a firearm from any Dick's Sporting Goods store.

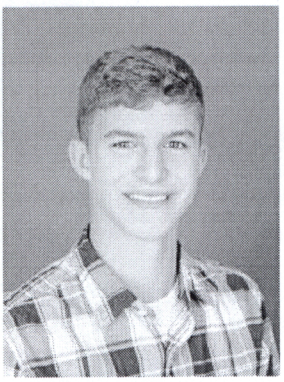
Fulton, a Pennfield High School senior and son of Freedom Firearms co-owner Jared Fulton, filed a lawsuit against the retail giant in Oakland County (Mich.) Circuit Court on Tuesday for refusing to let him buy a shotgun because of his age.

Dick's stopped selling firearms to anyone under 21 on Feb. 28, citing the Feb. 14 school shooting in Parkland, Fla., that left 17 students and educators dead as a reason for its decision.

March 6: 20-year-old sues Dick's Sporting Goods, Walmart over new gun policies (/story/money/business/2018/03/06/walmart-dicks-sporting-goods-sued-over-new-gun-policies/398288002/)

March 8: Bass Pro Shop's CEO has 'constructive' talk with Sandy Hook families, report says (/story/money/nation-now/2018/03/08/bass-pro-shops-ceo-sandy-hook-families/406875002/)

"I'm 18," Fulton said Thursday. "I'm legally allowed to purchase a firearm, and I should have been allowed to.



Tristin Fulton, 18, is suing Dick's Sporting Goods for refusing to sell him a firearm. In February 2018, the sporting goods store raised the minimum age to buy a gun to 21. *(Photo: Provided by Jim Makowski via Battle Creek (Mich.) Enquirer)*

"By denying me my right to purchase a firearm that day, they violated the Elliott-Larsen Civil Rights Act," he added.

Michigan's Elliott-Larsen Civil Rights Act (https://www.michigan.gov/documents/act_453_elliott_larsen_8772_7.pdf) prohibits discriminatory practices, policies and customs on the basis of religion, age, race, national origin, sex, height, weight and other factors.

Fulton tried to buy the shotgun in Troy, Mich. Dick's Sporting Goods did not respond to a request for comment Thursday.

Dick's is not the only retail giant under the gun for raising the minimum age for buying a firearm from 18 to 21.

Tyler Watson, a 20-year-old Oregon man, sued Walmart and a Field & Stream store, owned by Dick's, after he was not allowed to buy a .22-caliber rifle because of his age.

Watson tried to buy a firearm at Field & Stream four days before the retailers announced their new policies and about a week later from Walmart. He was turned away both times.

March 7: High-capacity ammo clips pulled from PX stores at U.S. military bases (/story/news/nation-now/2018/03/07/high-capacity-ammo-clips-pulled-px-stores-u-s-military-bases/405440002/)

Opinion: Columnist: The real reason some retailers are limiting gun sales (/story/money/business/2018/03/05/columnist-real-reason-some-retailers-limiting-gun-sales/396005002/)

Fulton wants Dick's to rescind its new policy, said his attorney, Jim Makowski. He's also asking for monetary damages.

Man, 20, sues after Bi-Mart, Fred Meyer refuse to sell ammo

Geoff Pursinger Monday, March 12, 2018

1 Comment

The lawsuits take aim at store gun sales after a Hillsboro man was denied ammo citing store policy.

A Washington County man is suing Fred Meyer and Bi-Mart after the two companies announced they would no longer sell firearms to people under the age of 21.

Airion Grace, 20, of Hillsboro, filed two lawsuits Friday, March 9, in Washington County Circuit Court, after Grace says the companies refused to sell him shotgun ammunition because of his age.

According to the lawsuit, Grace went to the Bi-Mart store at 2075 S.W. Tualatin Valley Highway, in Hillsboro on March 6 to purchase ammunition for his shotgun, but was told by a clerk he wasn't allowed to purchase the ammunition because of his age. The store's new policy barred employees from selling firearms or ammunition to anyone under 21, the lawsuit said.

That same day, Grace attempted to purchase ammunition from Fred Meyer, 6495 S.E. Tualatin Valley Highway, and was told the same thing by employees there.

The companies were part of a larger cohort of national retailers which have announced policy changes in the wake of the shooting at Marjory Stoneman Douglas High School in Florida, which killed 17 staff and students on Feb. 14. The alleged shooter in that case, Nikolas Cruz, 19, reportedly purchased the gun legally from a Florida gun store days before the shooting.

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882 F.3d 616
United States Court of Appeals, Sixth Circuit.

James R. HAGY, III, Plaintiff-Appellee,
Patricia R. Hagy, Plaintiff,
v.
DEMERS & ADAMS; David J. Demers, Defendants-Appellants,
Green Tree Servicing, LLC; Kevin Winehold; ProAssurance Casualty Company, Defendants.

No. 17-3696
|
Argued: January 31, 2018
|
Decided and Filed: February 16, 2018

Synopsis

Background: Mortgagors brought action against attorney representing mortgage servicing company and attorney's firm alleging violations of Fair Debt Collection Practices Act (FDCPA) and Ohio Consumer Sales Practices Act. The United States District Court for the Southern District of Ohio, Terence P. Kemp, United States Magistrate Judge, entered summary judgment for mortgagors, 2013 WL 434053, and awarded them statutory damages, attorneys' fees, and costs, 2013 WL 5728345. Defendants appealed.

Holdings: The Court of Appeals, Sutton, Circuit Judge, held that:

[1] mortgagors had not suffered injury in fact required for standing under Article III of the United States Constitution to bring FDCPA claim, and

[2] mortgagors had not suffered injury in fact required for standing under Article III to bring their state-law claims.

Ordered accordingly.

West Headnotes (14)

[1] Federal Courts
Nature of dispute;concreteness

Article III of the United States Constitution does not authorize federal courts to decide theoretical questions; it extends the judicial power only to concrete cases and controversies. U.S. Const. art. 3, § 2.

Cases that cite this headnote

[2] Federal Civil Procedure
In general;injury or interest

One telltale of a cognizable dispute suitable for resolution by the federal courts is that the parties have standing to bring it.

Cases that cite this headnote

[3] Federal Civil Procedure
In general;injury or interest

A claimant bears the burden of establishing standing and must show it for each claim he seeks to press.

Cases that cite this headnote

[4] Antitrust and Trade Regulation
Private entities or individuals

Mortgagors had not suffered injury in fact required for standing under Article III of the United States Constitution in Fair Debt Collection Practices Act (FDCPA) action against attorney representing mortgage servicing company and attorney's firm; although letter attorney sent on behalf of servicing company did not disclose that it was from a debt collector, and FDCPA ostensibly entitled mortgagors to sue for such failure, letter was one merely confirming mortgagors' execution of warranty deed in lieu of foreclosure and reaffirming that servicing company would not attempt to collect any deficiency balance. U.S. Const. art. 3; Consumer Credit Protection Act §§ 807, 813, 15 U.S.C.A. §§ 1692e(11), 1692k(a).

Cases that cite this headnote

[5] Federal Civil Procedure

In general;injury or interest

Not all procedural violations, not even all inaccuracies, cause real harm satisfying the injury in fact requirement for standing under Article III of the United States Constitution. U.S. Const. art. 3.

1 Cases that cite this headnote

[6] Federal Civil Procedure

In general;injury or interest

Although Congress may elevate harms that exist in the real world before Congress recognized them to actionable legal status, it may not simply enact an injury into existence, using its lawmaking power to transform something that is not remotely harmful into something that is under standing analysis. U.S. Const. art. 1.

Cases that cite this headnote

[7] Federal Civil Procedure

In general;injury or interest

Standing is not met simply because a statute creates a legal obligation and allows a private right of action for failing to fulfill the obligation.

1 Cases that cite this headnote

[8] Eminent Domain

Property and Rights Subject of Compensation

Neither Congress nor a state legislature may define private property in a way that eliminates an otherwise cognizable claim under the Takings Clause of the Fifth (and Fourteenth) Amendment to the United States Constitution. U.S. Const. Amends. 5, 14.

Cases that cite this headnote

[9] Constitutional Law

Flag desecration or disrespect

Congress may not make a First Amendment limit on its power go away by announcing that flag burning is not "speech." U.S. Const. Amend. 1.

Cases that cite this headnote

[10] Commerce

Constitutional Grant of Power to Congress

To ensure that Congress does not eliminate one of the ultimate safeguards of liberty—that the national legislature does not have a general police power—the federal courts do not permit Congress to label anything it wishes as "commerce among the several states." U.S. Const. art. 1.

Cases that cite this headnote

[11] Constitutional Law

Enforcement of Fourteenth Amendment

Congress may not use its enforcement power under the Fourteenth Amendment to redefine the free exercise of religion however it wishes and in the process intrude on the states' existing powers in the area. U.S. Const. Amends. 1, 14.

Cases that cite this headnote

[12] Antitrust and Trade Regulation

Private entities or individuals

Mortgagors had not suffered injury in fact required for standing under Article III of the United States Constitution to bring Ohio Consumer Sales Practices Act claims against attorney representing mortgage servicing company and attorney's firm; although letters attorney sent on behalf of servicing company did not disclose that they were from a debt collector, and even if Ohio Consumer Sales Practices Act entitled mortgagors to sue for such failure, letters were ones merely sending mortgagors a warranty deed in lieu of foreclosure for their execution and then confirming that execution while reaffirming that servicing company would not attempt to collect any deficiency balance. U.S. Const. art. 3; Ohio Rev. Code Ann. § 1345.02.

Cases that cite this headnote

[13] Federal Civil Procedure
In general;injury or interest

The doctrine of supplemental jurisdiction does not alter the standing requirements of Article III of the United States Constitution. U.S. Const. art. 3; 28 U.S.C.A. § 1367(c)(3).

Cases that cite this headnote

[14] Federal Courts
Standing

The standing requirements of Article III of the United States Constitution apply to state-law claims in federal court. U.S. Const. art. 3.

Cases that cite this headnote

Appeal from the United States District Court for the Southern District of Ohio at Columbus. No. 2:11-cv-00530—Terence P. Kemp, Magistrate Judge.

Attorneys and Law Firms

ARGUED: Adam J. Bennett, COOKE DEMERS LLC, New Albany, Ohio, for Appellant. Edward A. Icove, ICOVE LEGAL GROUP, LTD., Cleveland, Ohio, for Appellee. ON BRIEF: Adam J. Bennett, David J. Demers, COOKE DEMERS LLC, New Albany, Ohio, for Appellant. Edward A. Icove, ICOVE LEGAL GROUP, LTD., Cleveland, Ohio, Kristen Finzel Lewis, SOUTHEASTERN OHIO LEGAL SERVICE, New Philadelphia, Ohio, for Appellee.

Before: SUHRHEINRICH, SUTTON, and BUSH, Circuit Judges.

Opinion

OPINION

SUTTON, Circuit Judge.

David Demers, an attorney, sent a letter on behalf of his client to the attorney for James and Patricia Hagy. The letter indicated that the Hagys would not have to pay the balance on their loan and that the lender would not pursue any other remedies against the Hagys. That seemed like good news for the Hagys. Little did Demers know that this epistle would lead to six years (and counting) of litigation against him and his firm for violating the Fair Debt Collection Practices Act. Because the complaint failed to identify a cognizable injury traceable to Demers (and his firm) and because Congress cannot override this baseline requirement of Article III of the U.S. Constitution by labeling the violation of *any* requirement of a statute a cognizable injury, we must dismiss the appeal and, with it, the underlying case.

I.

In 2002, James and Patricia Hagy took out a loan to purchase a mobile home and some property on which to park it. In 2010, they defaulted on their loan payments. Green Tree Servicing, a mortgage ***619** servicing company, initiated foreclosure proceedings against the Hagys.

Patricia Hagy called the law firm that represented Green Tree, the star-crossed Demers & Adams, with hopes of settling the claim. It worked. On June 8, 2010, David Demers sent the Hagys a letter containing a Warranty Deed in Lieu of Foreclosure. "In return for [the Hagys] executing the Deed," the letter said, "Green Tree has advised me that it will waive any deficiency balance." R. 18-3 at 1. The Hagys executed the Deed on June 24, 2010. And on June 30, 2010, Demers sent another letter, this time to the Hagys' attorney, James Sandy. That letter confirmed receipt of the executed Deed and reaffirmed that "Green Tree will not attempt to collect any deficiency balance which may be due and owing after the sale of the collateral." R. 18-5 at 1. Three weeks later, Green Tree dismissed the foreclosure complaint against the Hagys.

What seemed to end the dispute did not.

Green Tree began calling the Hagys to collect the debt that they no longer owed. James Hagy protested that he "didn't have to pay anything else" in light of the Deed. R. 67 at 26. Green Tree realized it had made a mistake and agreed that the Hagys owed nothing more.

In 2011, the Hagys sued Green Tree and one of its employees (Kevin Winehold), and Demers and his law

firm (Demers & Adams), in federal court. They claimed that the phone calls and letters violated the Fair Debt Collection Practices Act and the Ohio Consumer Sales Practices Act.

Green Tree and Winehold, the phone callers, moved to stay the proceedings and compel arbitration. The district court granted the motion, and this set of contestants eventually resolved their dispute through arbitration.

Demers and his law firm, the letter writers, moved to dismiss the claims against them. The court dismissed the Hagys' federal claim based on the June 8 letter because it was time-barred. But it refused to dismiss the Hagys' Ohio claims based on the June 8 letter as well as their federal and Ohio claims based on the June 30 letter.

After discovery, Demers and the Hagys each moved for summary judgment. In 2013, the district court ruled for the Hagys, reasoning that Demers' June 30 letter to Sandy "fail[ed] to disclose" that it was a "communication ... from a debt collector" in violation of the federal law. 15 U.S.C. § 1692e(11). Believing that the Ohio law incorporates the federal requirements, the court ruled that Demers also violated the Ohio statute by failing to make the § 1692e(11) disclosure in the June 8 and June 30 letters and by failing to provide the notice required by § 1692g(a) "[w]ithin five days [of] the initial communication with [the] consumer." R. 95. All told, the court awarded the Hagys $1,800 in statutory damages, $312 in costs, and $74,196 in attorney's fees against Demers and his law firm.

Over the next three years, the Hagys (successfully) filed two supplemental complaints and Demers (unsuccessfully) tried to appeal the district court's non-final summary judgment decision. Meanwhile, Demers asked the district court to reconsider its decision in light of *Anderson v. Barclay's Capital Real Estate, Inc.*, 136 Ohio St.3d 31, 989 N.E.2d 997 (2013), and *Spokeo, Inc. v. Robins*, —— U.S. ——, 136 S.Ct. 1540, 194 L.Ed.2d 635 (2016). The district court refused. Only in 2017, after James Hagy settled the arbitration with Green Tree and agreed to dismiss the supplemental complaints, did the district court issue a final order.

***620** Demers the man and Demers the law firm appealed.

II.

They argue that (1) the district court lacked jurisdiction over the dispute because the Hagys did not have standing to assert their federal and state claims; (2) the June 30 letter to the Hagys' attorney did not violate the federal law because it was not a "communication with the consumer," 15 U.S.C. § 1692e(11); (3) they did not violate the Ohio law because it does not incorporate the requirements of the federal law and (under Ohio law) this case did not involve a "consumer transaction" or a "supplier," Ohio Rev. Code §§ 1345.01, 1345.02; and (4) the district court abused its discretion by awarding disproportionate attorney's fees.

There is plenty to debate about the merits of this case. The federal circuits disagree about whether provisions like § 1692e(11) cover communications with a consumer's attorney. Some say they do not. *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 934–39 (9th Cir. 2007) (per curiam); *Kropelnicki v. Siegel*, 290 F.3d 118, 127–28 (2d Cir. 2002). Some say they do. *Bishop v. Ross Earle & Bonan, P.A.*, 817 F.3d 1268, 1271–72 (11th Cir. 2016); *Allen ex rel. Martin v. LaSalle Bank, N.A.*, 629 F.3d 364, 368 (3d Cir. 2011); *Sayyed v. Wolpoff & Abramson*, 485 F.3d 226, 232–33 (4th Cir. 2007). Some take a middle position. *Powers v. Credit Mgmt. Servs., Inc.*, 776 F.3d 567, 573–74 (8th Cir. 2015); *Evory v. RJM Acquisitions Funding L.L.C.*, 505 F.3d 769, 773–75 (7th Cir. 2007).

[1] **[2]** **[3]** We have yet to take a position, and our stand on the issue will have to wait. Article III of the U.S. Constitution does not authorize federal courts to decide theoretical questions. *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 102–04 & n.5, 118 S.Ct. 1003, 140 L.Ed.2d 210 (1998). It extends the "judicial Power" only to concrete "Cases" and "Controversies." U.S. Const. art. III, § 2. One telltale of a cognizable dispute suitable for resolution by the federal courts is that the parties have standing to bring it. The "irreducible constitutional minimum" for standing requires the Hagys to show (1) a particular and concrete injury (2) caused by Demers and (3) redressable by the courts. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61, 112 S.Ct. 2130, 119 L.Ed.2d 351 (1992). A claimant bears the burden of establishing standing and must show it "for each claim he seeks to press." *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 352, 126 S.Ct. 1854, 164 L.Ed.2d 589 (2006). That did not happen.

[4] *Federal claim.* The Hagys filed their federal claim under the Fair Debt Collection Practices Act. Causes of action classically require a showing of duty, a breach of duty, and damages. The Act creates a cause of action that has all three components: (1) Duty—a debt collector must include a required disclosure, usually to the effect "that the communication is from a debt collector," in communications to a consumer; (2) breach of duty—any debt collector who fails to comply with that requirement is liable to the consumer; and (3) damages—that consumer may recover actual damages and any additional damages up to $1,000 from the non-compliant debt collector. 15 U.S.C. §§ 1692e(11), 1692k(a).

In one sense, it seems easy to say that the Hagys have standing to bring a claim against Demers under the Act with respect to his June 30 letter. The complaint makes allegations with respect to each element of the cause of action: (1) Demers sent a letter to the Hagys about a debt implicating a duty established by the Act; (2) the ***621** letter failed to include the required disclosure; and (3) the Hagys seek statutory damages. These kinds of allegations usually eliminate any doubts about Article III standing and usually allow the parties and the court to move on to the merits.

But usually is not always. What makes this case different is that Demers challenges Congress's *authority* to create this injury—to create an injury in fact that involves no harm of any sort that could satisfy the injury-in-fact requirements of Article III. *See Spokeo, Inc. v. Robins*, —— U.S. ——, 136 S.Ct. 1540, 1546–48, 194 L.Ed.2d 635 (2016).

The relevant conduct is Demers' June 30 letter to the Hagys' lawyer, James Sandy. Demers sent the letter to confirm that he had received the Hagys' signed Deed and that Green Tree would no longer require the Hagys to pay their deficiency balance. In full, it said:

> Dear Mr. Sandy:
>
> This letter is in follow up to our conversation of Monday, June 28, 2010 wherein we discussed the above referenced matter.
>
> Pursuant to our conversation, I informed you that we have received the executed Warranty Deed in Lieu of Foreclosure signed by the Hagy[s]. Furthermore, you inquired as to should a deficiency balance be realized after the sale of the collateral would Green Tree pursue Mr. & Mrs. Hagy for the amount of the deficiency. I have been informed by my client that in return for Mr. & Mrs. Hagy executing the Warranty Deed in Lieu of Foreclosure Green Tree will not attempt to collect any deficiency balance which may be due and owing after the sale of the collateral.
>
> I believe this letter satisfies any and all of your concerns.
>
> Should you have any questions with respect to this matter, please do not hesitate to contact me.
>
> Very truly yours,
>
> David J. Demers

R. 18-5 at 1.

James Hagy admits that what Demers said in his letter "turned out to be true." R. 67 at 27. Far from causing the Hagys any injury, tangible or intangible, the June 30 letter gave them peace of mind, and they have never testified otherwise. At this point in the case, no one plausibly argues (or even alleges) that the Hagys suffered an actual injury and damages from the letter. Demers had nothing to do with the true source of their anxiety—Green Tree's phone calls seeking to collect the deficiency weeks after the Hagys executed the Deed, which could be injury-causing.

[5] That leaves the possibility that Congress's creation of a statutory injury and damages suffices to satisfy Article III's standing imperative. Congress created a cause of action—and injury—that covers Demers' failure to disclose in his June 30 letter "that the communication [wa]s from a debt collector." 15 U.S.C. § 1692e(11). But it is not that simple, as the Supreme Court recently established in *Spokeo*. To satisfy the injury in fact requirement, the Hagys must point to some harm other than the fact of "a bare procedural violation." *Spokeo*, 136 S.Ct. at 1550. Not all procedural violations, not even all inaccuracies, cause real harm. "It is difficult to imagine," for example, "how the dissemination of an incorrect zip code, without more, could work any concrete harm." *Id.*

The Fair Debt Collection Practices Act protects consumers from abusive debt collection practices. And § 1692e(11)'s disclosure requirement serves that purpose. ***622** *Fed. Home Loan Mortg. Corp. v. Lamar*, 503 F.3d 504, 508, 512 (6th Cir. 2007). But the Hagys have not shown, in truth have not even tried to show, that this failure to disclose caused them any actual harm

beyond that "bare procedural violation." As they argued in their briefs and as they reiterated at oral argument, the letter was "hurtful" only "because it did not provide the [required] notice." Oral Arg. at 18:19–18:46. They do not say that the non-disclosure created a risk of double payment, caused anxiety, or led to any other concrete harm. On this record, it is difficult to see—and we cannot see—how the June 30 letter did anything other than help the Hagys. When Green Tree came calling, in point of fact, James Hagy relied on the June 30 letter to refuse to pay the deficiency balance. The letter was good news when it arrived, and it became especially good news when Green Tree persisted in trying to collect a no-longer-collectible debt.

[6] The district court thought a bare violation of § 1692e(11) sufficed, even after *Spokeo*. "Congress," it said, "has created a new right—the right to receive the required disclosures in communications governed by the FDCPA—and a new injury—not receiving such disclosures." R. 164 at 7 (quoting *Church v. Accretive Health, Inc.*, 654 Fed.Appx. 990, 994 (11th Cir. 2016) (per curiam)). As it happens, this court recently considered and rejected this theory and rejected any reliance on *Church*—all, to be fair, after the district court's decision. *See Lyshe v. Levy*, 854 F.3d 855, 860–61 (6th Cir. 2017). At this point, it is not even clear whether the *Church* theory remains good law in the Eleventh Circuit. *See Nicklaw v. CitiMortgage, Inc.*, 839 F.3d 998, 1002–03 (11th Cir. 2016). We know of no circuit court decision since *Spokeo* that endorses an anything-hurts-so-long-as-Congress-says-it-hurts theory of Article III injury. Although Congress may "elevate" harms that "exist" in the real world before Congress recognized them to actionable legal status, it may not simply enact an injury into existence, using its lawmaking power to transform something that is not remotely harmful into something that is. *Spokeo*, 136 S.Ct. at 1548–49.

Today's case illustrates the necessity of this limit. It's not just that this letter gave the Hagys everything they wanted. They insist that an even better letter—"Attached is a thousand dollars in cash, no strings attached, no response needed"—would cause a concrete injury if it omitted the required disclosure. Oral Arg. at 18:50–19:30. That approach, if accepted, would leave Congress as the sole author of any limits on the Article III judicial power to hear cases and controversies.

[7] We appreciate that Congress has some leeway "to define injuries and articulate chains of causation." *Lujan*, 504 U.S. at 580, 112 S.Ct. 2130 (Kennedy, J., concurring). And we appreciate that, "because Congress is well positioned to identify intangible harms that meet minimum Article III requirements, its judgment is also instructive and important." *Spokeo*, 136 S.Ct. at 1549. But it did not purport to use that judgment or leeway here. All it did was require debt collectors to disclose in their "communications [with consumers] that the communication is from a debt collector" and entitle individuals to sue for "fail[ures] to comply" with that requirement—no matter whether the letter sought to collect a debt or release one. 15 U.S.C. §§ 1692e(11), 1692k(a). Nowhere in the Act (or for that matter the legislative record) does Congress explain why the absence of such a warning *always* creates an Article III injury. As we have said before and repeat here, "standing is not met simply because a statute creates a legal obligation," as in § 1692e(11), "and allows a private right of action for failing ***623** to fulfil this obligation," as in § 1692k(a). *Lyshe*, 854 F.3d at 860; *see also Wall v. Mich. Rental*, 852 F.3d 492, 495 (6th Cir. 2017); *Soehnlen v. Fleet Owners Ins. Fund*, 844 F.3d 576, 582 (6th Cir. 2016).

[8] **[9]** Congressional leeway cannot mean judicial abdication. Broad though Congress's powers may be to define and create injuries, they cannot override constitutional limits. It may be true, for example, that it is difficult to think of "property" without law. In truth, there may be no such thing as "property" without law, and the law that creates property interests often will be legislative. But neither Congress nor a state legislature may define "private property" in a way that eliminates an otherwise cognizable claim under the Takings Clause of the Fifth (and Fourteenth) Amendment. *See Murr v. Wisconsin*, —— U.S. ——, 137 S.Ct. 1933, 1942–45, 198 L.Ed.2d 497 (2017). And Congress may not make a First Amendment limit on its power go away by announcing that flag burning is not "speech." *Compare Texas v. Johnson*, 491 U.S. 397, 402–06, 109 S.Ct. 2533, 105 L.Ed.2d 342 (1989), *with United States v. Eichman*, 496 U.S. 310, 314-18, 110 S.Ct. 2404, 110 L.Ed.2d 287 (1990) (striking the Flag Protection Act of 1989, 18 U.S.C. § 700).

[10] **[11]** These limits are essential when it comes to preserving structural boundaries. To ensure that Congress does not eliminate one of the ultimate safeguards of liberty —that the National Legislature does not have a general

police power—the federal courts do not permit Congress to label anything it wishes as "Commerce ... among the several States." *See United States v. Lopez*, 514 U.S. 549, 563, 115 S.Ct. 1624, 131 L.Ed.2d 626 (1995) (noting the absence of legislative findings "that the [possession of guns near schools] substantially affected interstate commerce"). Congress may not use its enforcement power under the Fourteenth Amendment to redefine the "free exercise" of religion however it wishes and in the process intrude on the States' existing powers in the area. *See City of Boerne v. Flores*, 521 U.S. 507, 519–20, 535–36, 117 S.Ct. 2157, 138 L.Ed.2d 624 (1997). So too with the horizontal separation of powers at the national level. Congress may not enact a law that eliminates Article III safeguards that permit federal courts only to use the "judicial Power" to hear "Cases" and "Controversies." U.S. Const. art. III, § 2. That's just what we take *Spokeo* to mean when it said that "Congress cannot erase Article III's standing requirement." 136 S.Ct. at 1547–48.

It's difficult, we recognize, to identify the line between what Congress may, and may not, do in creating an "injury in fact." Put five smart lawyers in a room, and it won't take long to appreciate the difficulty of the task at hand. But what spares us the task of precisely drawing that line, and what makes this case relatively easy, is that Congress did not even try to show that the absence of this warning would *always* create an injury. All we need say today is that Congress may not say that *anything* is an injury, and by saying so expect the federal courts to agree. Just as there must be *some* limits on Congress's power to regulate commerce, *see NFIB v. Sebelius*, 567 U.S. 519, 548–55, 132 S.Ct. 2566, 183 L.Ed.2d 450 (2012); *United States v. Morrison*, 529 U.S. 598, 608, 613, 120 S.Ct. 1740, 146 L.Ed.2d 658 (2000); *Lopez*, 514 U.S. at 565–66, 115 S.Ct. 1624, there must be some limits on Congress's power to create injuries in fact suitable for judicial resolution. Because Congress made no effort to show how a letter like this would create a cognizable injury in fact and because we cannot see any way in which that could be the case, we must dismiss this claim for lack of standing.

***624** **[12]** **[13]** **[14]** *State-law claims.* The Hagys maintain that, even if we lack jurisdiction over their federal claim, we may still exercise supplemental jurisdiction over their state-law claims. *See* 28 U.S.C. § 1367(c)(3). But the doctrine of supplemental jurisdiction does not alter Article III's standing requirements. *See DaimlerChrysler*, 547 U.S. at 351–53, 126 S.Ct. 1854. And those requirements apply to state-law claims in federal court. *See Coyne v. Am. Tobacco Co.*, 183 F.3d 488, 495 (6th Cir. 1999); 13B Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 3531.14 (3d ed. 2017) ("Of course state rules that recognize standing need not be honored [in federal courts] if Article III requirements are not met."). For the same reason that the Hagys lack standing to bring the federal claim, they lack standing to bring the state-law claims, which rely on incorporating the federal law wholesale. Demers' June 8 letter, just like his June 30 letter, gave the Hagys good news; Green Tree's ill-considered phone calls later on created the headache. Once again, the Hagys' claims against Demers stand on "bare procedural violation[s]" of the federal law. *Spokeo*, 136 S.Ct. at 1550.

For these reasons, we reverse the district court's decision finding subject matter jurisdiction, vacate its orders entering summary judgment for the Hagys and awarding damages, fees, and costs, and dismiss this case for lack of jurisdiction.

All Citations

882 F.3d 616

Amendment to Section 1 of H.482

Sec. 1. 12 V.S.A. §2910 is added to read:

§2910 Post-Judgment Suspension of Interest on a Judgment

(a) A judgment debtor on a judgment on which all judgment debtors are natural persons may request that the court reduce or suspend the future accrual of interest on a judgment which has become final by filing a post-judgment motion which at a minimum, sets forth the following:

(1) That the income of all judgment debtors for the two month period prior to the filing of the motion is less than 150% of the federal poverty line;

(2) Includes a comprehensive financial disclosure of assets, income and living expenses for each judgment debtor on a form provided by the court;

(3) Includes a statement whether or not any judgment debtor anticipates any substantial change in assets, income, or expenses within the subsequent twelve months, and if so, describes such anticipated change in detail;

(4) Includes a statement detailing all amounts of money or property valued over $500 due and owing to each judgment debtor, including at a minimum, the identity and location of the person or entity who owes the judgment debtor the money or property, the amount or value of the property alleged to be due, the basis for the claim that the money or property is due, and the name of the judgment debtor to whom the obligation is due; and,

(5) Includes a statement that no judgment debtor has a colorable claim of right to be indemnified by a person or entity that is not a party to the judgment.

(b) If a judgment debtor has filed a motion under this section which has satisfied the requirements and criteria of subsection (a) of this section, and determined that all judgment creditors in the judgment sought to be affected have been given notice of the motion pursuant to Court Rules, the Court shall set a hearing on the motion not less that 30 days after the notice of hearing is issued.

(c) Notwithstanding the provisions of 9 V.S.A. §2480e, a judgment creditor who has received a motion submitted under this section shall be authorized to obtain the credit report of each judgment debtor on the judgment sought to be affected.

(d) At a hearing held pursuant to this section, the judgment debtor shall have the burden to establish:

(1) That the income of all judgment debtors for the two month period prior to the filing of the motion is less than 150% of the federal poverty line;

(2) That no judgment debtor on the judgment sought to be affected has the income or assets available to satisfy the judgment without incurring substantial hardship; and,

(3) That each judgment debtor has made payment toward the judgment sought to be affected in an amount which reflects the amount of their income and assets, less reasonable living expenses and asset requirements, or that the reasonable expenses and asset requirements exceed the available income and assets of such judgment debtor.

(e) Following the hearing to be held pursuant to this section, if the evidence presented at the hearing so establishes, the Court shall issue findings, referencing the evidence upon which each finding is based, as follows:

(1) That the income of all judgment debtors for the two month period prior to the filing of the motion is less than 150% of the federal poverty line;

(2) That no judgment debtor on the judgment to be affected has the income or assets available to satisfy the judgment without incurring substantial hardship;

(3) That each judgment debtor has made payment toward the judgment sought to be affected in an amount which reflects the amount of their income and assets, less reasonable living expenses and asset requirements, or that the reasonable expenses and asset requirements exceed the available income and assets of such judgment debtor.

(4) That no judgment debtor on the judgment sought to be affected is entitled to be indemnified for any of the amount due under the judgment sought to be affected;

(5) That the accrual of post judgment interest at the rate established by law presents an unfair and undue burden on all judgment debtors; and

(6) That the accrual of post judgment interest at the rate established law constitutes unjust enrichment for the judgment creditor(s).

(f) Upon affirmative findings of all of the requirements of the preceding subsection (e), the Court may suspend the future accrual of some or all post-judgment interest on the judgment sought to be affected for a period not to exceed 12 months following the date of the Court's findings and order. The amount of interest suspended shall be the minimum amount necessary to prevent the accrual of interest to be an unfair and undue burden on the judgment debtor(s).

(g) In the event the court declines to suspend any part of the accrual of post-judgment interest and finds that a request submitted under this section was made in bad faith or that any statement made by a judgment debtor in connection with the proceeding was false or misleading, the Court shall award the judgment creditor(s) the amount of their costs and a reasonable attorney fee for defending the motion.

(h) A judgment creditor may move to set aside the order suspending any or all post-judgment interest accrual upon a showing of a real, significant and unanticipated change in circumstances of any judgment debtor which would result in a judgment debtor having a reduction of expenses or more income or assets available to satisfy the judgment against them.

STATE OF VERMONT
FINDINGS & ORDER
(pursuant to 12 V.S.A. ch. 121. subch.3)

[redacted]
c/o Bauer Gravel Farnham LLP
401 Water Tower Cir., Ste. 101
Colchester, VT 05446

Docket No [redacted] Cacv

[redacted]

A Motion for Trustee Process Against Earnings was filed on	December 21, 2018
A hearing on the motion was held on	February 15, 2018
The Plaintiff was present and appeared ☒ with Counsel ☐ Pro se	Harry C. Parker, Esq./ via telephone
The Judgment Debtor ☐ was present and appeared ☐ with Counsel	
☑ was not present ☐ Pro se	

The Trustee

St. Johnsbury Academy
[redacted]

☐ was present and appeared
☐ with Counsel
☐ Pro se

☐ was not present
☒ filed a Disclosure on January 30, 2018

Based upon the motion and affidavit of the Judgment Creditor, the record in the civil/small claims action, and the oral and written testimony of the parties and the Trustee, the Court finds that:

1. Judgment was entered on December 15, 2010 in the sum of $11,074.22
2. The amount of the unpaid judgment is $20,391.92
3. The Judgment Debtor has neglected or refused to pay or make reasonable arrangements to pay the money judgment.
4. The Judgment Debtor receives earnings[1] from the Trustee named above. 1156.64
5. The Judgment Debtor's average disposable earnings[2] ☐ are ~~$1156.64~~ per Bi-weekly
   ☐ cannot be determined
6. The Judgment Debtor ☐ has been ☒ has not been a recipient of assistance from the Vermont Department for Children and Families within the two months preceding the date of hearing.

[1] The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

[2] The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of amounts required by law to be withheld.

Docket No. [redacted]

7. The weekly expenses reasonably incurred for the maintenance of the judgment debtor and dependants

☐ are $ [ ]

☑ cannot be determined

8. The judgment debt ☒ did ☐ did not arise from a consumer credit transaction as defined by 15 U.S.C. section 1602.

In accordance with the foregoing, it is hereby ORDERED:

1. That Trustee Process shall be entered against the Judgment Debtor and Trustee named above.

2. That the Trustee shall withhold:

☑ $ 50 ..... per ..... Bi-weekly

☐ 25% of the Judgment Debtor's average disposable earnings per .....

from the earnings of the Judgment Debtor beginning 3-1-18 and shall continue to withhold that amount until the amount due and owing is paid in full.

3. That the Trustee shall deliver all amounts withheld to the Judgment Creditor at the name and address previously stated.

4. That as soon as reasonably practicable, the Trustee shall notify the court and the Judgment Creditor of termination of the Judgment Debtor's employment.

5. That upon full satisfaction or payment of the debt upon which the judgment is based, the Judgment Creditor forthwith shall notify the employer of the Judgment Debtor, in writing, and the employer shall thereafter cease withholding from the earnings of the Judgment Debtor.

6. The amount of earnings of the Judgment Debtor that shall be exempt is:
$290 / week or 85% of earnings, whichever is greater

7. Other:
Please make check payable to Bauer, Gravel, Farnham
and reference account no. "12131068" on the payment.

NOTICE TO EMPLOYER/TRUSTEE

NO EMPLOYEE MAY BE DISCHARGED FROM EMPLOYMENT ON ACCOUNT OF TRUSTEE PROCESS ISSUED AGAINST EARNINGS, PER SECTION 3172 OF TITLE 12 V.S.A.

Failure to withhold and deliver non-exempt earnings as directed herein will make you, Employer Trustee, liable to the Judgment Creditor for the amount you fail to withhold and deliver together with any costs, interest and reasonable attorney's fees incurred in their collection.

Judge Date 2/15/18