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THE SUPREME COURT 2020-2021 TERM

FACULTY

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Rodger Citron is the Associate Dean for Research and Scholarship and Professor of Law at Touro University, Jacob D. Fuchsberg Law Center. Previously he served as the Academic Dean of Touro Law from July 2014 through July 2018.

Professor Citron is a graduate of Yale College, Phi Beta Kappa and summa cum laude, and Yale Law School, where he was a senior editor of the Yale Law Journal and a recipient of the C. LaRue Munson Prize. After law school, he clerked for the Hon. Thomas N. O'Neill, Jr., of the U.S. District Court for the Eastern District of Pennsylvania. Before becoming a law professor, he practiced law as an associate at a large law firm in Philadelphia, a trial attorney at the United States Department of Justice, and an attorney-advisor at the Federal Communications Commission.

Professor Citron's law review articles have been published in a number of law reviews, including the Stanford Journal of Complex Litigation, the South Carolina Law Review, and the Administrative Law Review. His articles also have been published on Slate, Justia, and SCOTUS blog and in The National Law Journal, The Legal Times, and The Hartford Courant. From January 2007 through December 2010, he served as a reporter for the New York State Pattern Jury Instructions Committee.

The Supreme Court 2020-21 Term: Civil Procedure

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Standing

- TransUnion LLC v. Ramirez, 141 S.Ct. 2190 (2021).
- “No concrete harm, no standing.”
- Class action involving claims asserted under the Fair Credit Reporting Act (FCRA) in federal court.
- 5-4 decision. Justice Kavanaugh for the Court, Justice Thomas in dissent with three liberal justices.



Sergio Ramirez's Claims

- TransUnion [TU]: one of the “Big Three” credit reporting agencies. 141 S.Ct. at 2201.
- TU’s “OFAC Name Screen Alert.”
- Ramirez’s experience with this alert on February 27, 2011, at a car dealership.
- Subsequently, in 2012, Ramirez sued TU, alleging three violations of the FRCA.



The Class Action

- “Ramirez also sought to certify a class of all people in the United States to whom [TU] sent a mailing during the period from January 1, 2011 to July 26, 2011, that was similar in form to the second mailing that Ramirez received.” 141 S.Ct. at 2202.
- The district court certified the class, trial based on stipulated facts, jury award of compensatory and punitive damages for each class member.



Appeal to the Ninth Circuit

- Like the district court, the Ninth Circuit (1) held that all class members had standing to recover damages for all three claims; (2) affirmed that Ramirez's claims were typical under Rule 23; and (3) reduced the punitive damages award from more than \$6,000 per member to almost \$4,000. Total award: about \$40 million.
- Judge McKeown's dissent.



The Supreme Court Decision

- “The question in this case is whether the 8,185 class members have Article III standing as to their three claims.” 141 S.Ct. at 2203.
- Key stipulation before trial: Of the 8,185 class members, only 1,853 “had their credit reports disseminated by [TU] to potential creditors during” the relevant period. Id. at 2202.



Requirements of Art. III Standing

- The Art. III case or controversy requirement is “built on” the “idea of separation of powers.” 141 S.Ct. at 2203.
- Plaintiff “must have a personal stake in the case.” Id.
- Plaintiff must show “(i) that he suffered an injury in fact that is concrete, particularized, and actual or imminent; (ii) that the injury was likely caused by the defendant; and (iii) that the injury would likely be redressed by judicial relief.” Id.



The “Concrete-Harm” Requirement

- History and tradition offer a meaningful guide re: the Art. III standing requirement.
- Courts “should assess whether the alleged injury . . . has a ‘close relationship’ to a harm ‘traditionally’ recognized as providing a basis for” suit. 141. S.Ct. at 2204 (quoting Spokeo v. Robins, 578 U.S. 330, 341 (2016)).
- Examples: Tangible harms; certain intangible harms (e.g. reputational harm).
- “Congress’s views may be instructive.” *Id.*



Congress & Standing

- “Congress may ‘elevate to the status of legally cognizable injuries concrete, *de facto* injuries that were previously inadequate in law.’” 141 S.Ct. 2204-05.
- However, “it may not simply enact an injury into existence.” *Id.* at 2205. Courts still must “independently decide whether a plaintiff has suffered a concrete harm.”



Application of Standing Principles in Ramirez

- Plaintiff bears the burden of proof on standing. 141 S.Ct. at 2207-08.
- Plaintiffs' claim that TU "failed to 'follow reasonable procedures to assure maximum possible accuracy' of their credit files." Id. at 2208.
 - Standing established as to the 1,853 class members "whose reports were disseminated to third-party businesses." Id.
 - Not established as to the other 6,332 class members.



Application (continued)

- Plaintiffs' other two claims: (1) breach of obligation to provide complete credit files upon request; and (2) failure to provide “another summary of rights in the second mailing.” 141 S.Ct. at 2213.
- As to these claims, plaintiffs only presented evidence of harm with respect to Ramirez. Standing not established for any other class member.



Justice Thomas's Dissent

- Distinguishes between “private rights” and “a duty owed broadly to the community.” 141 S.Ct. 2217.
- “Here, each class member established a violation of his or her private rights.” Id. at 2218.
- Court should not “be in the business of second-guessing private rights,” id. at 2221, especially in this case.
- Justice Kagan’s brief dissent.



Specific Personal Jurisdiction

- Ford Motor Co. v. Montana Eighth Judicial District, 141 S.Ct. 1017 (2021).
- Two car accident cases consolidated together. Ford challenged personal jurisdiction in each case.
- The Supreme Court affirmed the lower courts' decisions rejecting Ford's challenge: "When a company like Ford serves a market for a product in a State and that product causes injury in the State to one of its residents, the State's courts may entertain the resulting suit." *Id.* at 1022.



Personal Jurisdiction: An Overview

- **General (or All-Purpose) Personal Jurisdiction.**
 - E.g. Corporation's principal place of business and place of incorporation.
- **Specific (or Case-Linked) Personal Jurisdiction.**
 - Requirements of purposeful availment and related-ness.
 - Requirements reflect concerns about fair treatment of defendants and federalism.



Facts & Procedural History

- “Ford is a global auto company.” 141 S.Ct. at 1022.
- Montana case, Minnesota case. Accidents occurred in those states, suits were brought in those states.
- Ford argued that the state courts “had jurisdiction only if the company’s conduct in the State had given rise to the plaintiff’s claims.” Id. at 1023. Ford further contended that the cars involved in the accidents were not designed, manufactured, or sold in the states where the accidents occurred – hence no personal jurisdiction.
- No court accepted Ford’s argument.



Sources for Ford's argument

- **Bristol-Myers Squibb Co. v. Superior Court of California, 582 U.S. ____ (2017).**
- **Walden v. Fiore, 571 U.S. 277 (2014).**
- **Court distinguishes these cases, concluding that “the connection between the plaintiffs’ claims and Ford’s activities in those States—or otherwise said, the ‘relationship among the defendant, the forum[s], and the litigation’—is close enough to support specific jurisdiction.” 141 S.Ct. at 1032.**



Removal

- BP P.L.C. v. Mayor and City of Council of Baltimore, 141 S.Ct. 1532 (2021).
- This case involves a technical question under the federal removal statutes, 28 U.S.C. § 1441 et seq.
- Specifically: Does section 1447(d) “permit a court of appeals to review any issue in a district court order remanding a case to state court where the defendant premised removal in part on” sections 1442 or 1443?
- Supreme Court: Yes, by an 8-1 vote.



Removal Overview

- Plaintiff sues in state court.
- Defendant may remove to federal court “by asserting one more bases for federal jurisdiction.” 141 S.Ct. at 1543 (Sotomayor, J.) (dissenting).
- Plaintiff may challenge removal by filing a motion to remand in federal district court.
- Ordinarily this district court order may not be appealed.



Exceptions re: Appellate Review

- 28 U.S.C. 1443, civil rights removal statute.
- 28 U.S.C. 1442, federal officer removal statute.
- Example of this case: “Baltimore’s mayor and city council sued various energy companies for promoting fossil fuels while allegedly concealing their environmental impacts.” 141 S.Ct. at 1535-36.



Procedural History

- Defendants removed on the basis of a number of federal statutes, including section 1442.
- Plaintiffs moved to remand case back to state court.
- Federal district court granted the motion to remand.
- Defendants appealed. What was the scope of this appeal?
- Fourth Circuit: only ruling on section 1442. Highlighted circuit split.



Court's Holding and Reasoning

- Supreme Court did not agree with Fourth Circuit, held that appellate court may consider all of defendants' grounds for removal.
- Court's reasoning emphasizes statutory construction in interpreting section 1447(d) – the “order” is “reviewable by appeal.”
- Justice Sotomayor's dissent.





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