IN THE SUPREME COURT
STATE OF GEORGIA

CASE NO. S22G0045

SONS OF CONFEDERATE VETERANS,

Appellant,

v.

NEWTON COUNTY BOARD OF COMMISSIONERS,

Appellee.

BRIEF OF AMICUS CURIAE GEORGIA WATCH, INC. In Support of Neither Party

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INTEREST OF AMICUS CURIAE

Founded in 2002, Georgia Watch is a leading consumer advocacy organization for the State of Georgia, focused on issues that impact Georgians' wallets and quality of life. Georgia Watch is a non-profit, nonpartisan 501(c)(3) organization that utilizes education and advocacy to help give consumers a strong ally to level the playing field. Georgia Watch works every day to create a Georgia that is a model for consumer protection.

Georgia Watch endeavors to achieve health equity, close opportunity gaps, promote economic mobility, and protect financial wellbeing for all Georgia consumers. It advocates for policies that reduce the energy burden of struggling families, expand access to quality, affordable healthcare, open doors to the financial mainstream, and improve access to the civil justice system. The organization educates consumers so they know and assert their rights, and it equips communities with the tools to advocate for their own best interests. Georgia Watch strives to be a relentless consumer advocate and to ensure equitable outcomes and justice for all Georgians.

Georgia Watch's interest in this case is in preserving the right of Georgia citizens to have access to Georgia courts to remedy the invasion of their private rights pursuant to express statutory authorization, including the right to recover

general, statutory, and nominal damages without proof of *additional* injury beyond the invasion of the private right. Georgia Watch takes no position herein on the ultimate question in this case of whether this petitioner has standing.

ARGUMENT

I. This Court should take this opportunity to clarify that standing in Georgia courts is a matter of Georgia law, not federal law.

On the same date that this Court granted *certiorari* in this case, it reaffirmed the bedrock principle that this Court is "not bound to follow federal standing law. Standing is a question of judicial power to adjudicate a dispute, and the text, history, and precedents relating to judicial power under the Georgia Constitution and the United States Constitution are not identical." *Black Voters Matter Fund, Inc. v. Kemp*, __ Ga. __, 870 S.E.2d 430, 438 (2022); *see also Asarco v. Kadish*, 490 U.S. 605, 617 (1989) (Article III does not apply in state courts). In a detailed concurrence, Justice Petersen recognized that "[i]t is not possible to determine how persuasive we should find federal standing precedents when we have not identified clearly the Georgia authority from which our standing requirements arise." *Black Voters Matter Fund* at 448 (Peterson, J., concurring).

Standing, at the federal level, encompasses multiple doctrines. Most notable among those are "Article III" (or "Constitutional") standing, "prudential" standing, and "statutory" standing. According to the U.S. Supreme Court, Article III

standing is derived from the limited grant to federal courts of the power to decide "cases" or "controversies." *Elk Grove Unified School District v. Newdow*, 542 U.S. 1, 11 (2004). Prudential standing embodies "judicially self-imposed limits on the exercise of federal jurisdiction[.]" *Id.* Statutory standing is a form of statutory interpretation which "presume[s] that a statutory cause of action extends only to plaintiffs whose interests 'fall within the zone of interests protected by the law invoked.'" *Lexmark Intern. v. Static Control*, 572 U.S. 118, 129 (2014) (citation omitted). Because it is derived from the Constitution, only Article III standing is a jurisdictional command that cannot be overridden by Congress. *Warth v. Seldin*, 422 U.S. 490, 501 (1975).

This Court has recognized that "in the absence of our authority," it often looks to federal Article III decisions as persuasive authority. *Feminist Women's Health Center v. Burgess*, 282 Ga. 433, 434(1), 651 S.E.2d 36 (2007). However, this Court has not explained whether Georgia standing doctrine is based on constitutional or prudential considerations, or both. While Article III provides federal courts with an "irreducible constitutional minimum," *Spokeo v. Robins*, 578 U.S. 330, 338 (2016), this Court has not yet gone so far. If the Court were to adopt federal Article III principles wholesale, as an irreducible constitutional minimum of jurisdiction, it would usurp the power of the General Assembly and upend

precedent over a century old with respect to public injunctions, nominal damages, general damages, and statutory standing.

Article VI of the Georgia Constitution expressly grants to the General Assembly the power to confer jurisdiction upon state and magistrate courts "by law." Ga. Const. of 1983, Art. VI, Sect. III. By referring to such courts as those of "limited jurisdiction," the Constitution implies that the superior court is one of "general jurisdiction." *See Mosley v. Lancaster*, 296 Ga. 862, 866(2), 770 S.E.2d 873 (2015). Accordingly, Article VI should not be the basis for the imposition of any standing requirements from the Georgia Constitution. Instead, this Court should hold that our standing doctrine, like our mootness doctrine, is a prudential concern derived from our common law traditions and respect for separation of powers. *See McAlister v. Clifton*, __ Ga. __, 2022 WL 1143442, at *3 (2022) (recognizing Georgia's mootness doctrine is "rooted in the common law and the separation of powers[.]"). "The General Assembly properly can, of course, enact legislation that departs from the common law[.]" *May v. State*, 295 Ga. 388, 761 S.E.2d 38, 45 (2014).

To the extent that the Georgia Constitution places limits on the power of the General Assembly to confer standing by law, it must come from the "separation of powers" clause of the Georgia Constitution. Ga. Const. of 1983, Art. I, Sect. II,

Para. III ("The legislative, judicial, and executive powers shall forever remain separate and distinct; and no person discharging the duties of one shall at the same time exercise the functions of either of the others except as herein provided."); *see also Sierra v. City of Hallandale Beach, Fla.*, 996 F.3d 1110, 1115 (11th Cir. 2021) (Newsom, J., concurring) (arguing that federal standing doctrine should not have been grounded in Article III). Those separation of powers concerns counsel in favor of our courts respecting, consistent with our common law tradition, the General Assembly's decision to "enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute." *Linda RS v. Richard D.*, 410 U.S. 614, 617, n. 3 (1973).

II. Federal standing doctrine has changed drastically since 1983.

a. In 1983, Federal Article III standing doctrine was in its infancy.

When Georgia adopted its Constitution in 1983, federal Article III standing doctrine was still relatively new. "'Injury in fact' isn't a particularly old concept. It made its first appearance in a Supreme Court opinion about 50 years ago—and thus about 180 years after the ratification of Article III[.]" *Sierra v. City of Hallendale Beach, Fla.*, 996 F. 3d 1110, 1117 (11th Cir. 2021) (Newsom, J., concurring) *citing Association of Data Processing Service Organizations, Inc. v. Camp*, 397 U.S. 150 (1970). In that case, the Court was *expanding* the reach of

standing to include not only those whose legal rights were invaded, but also those who had suffered an injury in fact. *Id.*

In 1973, the U.S. Supreme Court used the "injury in fact" concept to limit standing, but it expressly recognized that Congress may "enact statutes creating legal rights, the invasion of which creates standing, even though no injury would exist without the statute." *Linda RS v. Richard D.*, 410 U.S. 614, 617, n. 3 (1973). This principle was reaffirmed in *Warth v. Seldin*, 422 U.S. 490, 500 (1975). Until 2016, it was well understood that a person seeking to vindicate private statutory rights could seek redress in federal court without proof of injury beyond the invasion of *his* private rights. *See, e.g., Hammer v. Sam's East, Inc.*, 754 F. 3d 492, 498-99 (8th Cir. 2014) (violation of Fair and Accurate Transactions Act sufficient to support Article III standing); *Palm Beach Golf Center-Boca v. Sarris*, 781 F.3d 1245, 1251 (11th Cir. 2015) (violation of Telephone Consumer Protection Act sufficient to support Article III standing); *Baker v. GC Svcs. Corp.*, 677 F. 2d 775, 780-81 (9th Cir. 1982) (Proof of Fair Debt Collection Practices Act violation sufficient to recover statutory damages).

b. Federal standing doctrine is undergoing a dramatic transition.

In 2016, the Supreme Court held in *Spokeo v. Robins* that to establish Article III jurisdiction for a statutory violation, the plaintiff must show that the injury is

both concrete and particularized. 578 U.S. 330, 340 (2016). For an injury to be particularized, it "must affect the plaintiff in a personal and individual way." *Id.* at 339. *"*A 'concrete' injury must be '*de facto*'; that is, it must actually exist." *Id.* at 340. That part was nothing new.

The *Spokeo* Court's ultimate holding was that "because the Ninth Circuit failed to fully appreciate the distinction between concreteness and particularization, its standing analysis was incomplete[,]" but it expressly took "no position as to whether the Ninth Circuit's ultimate conclusion — that Robins adequately alleged an injury in fact — was correct." *Id.* at 342-43. However, before deferring to the Ninth Circuit to decide the question, the Court set forth for the first time a two part framework for determining whether an injury was "concrete": 1) we "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[,]" and 2) we look to the judgment of Congress. *Id.* at 340-41. "[A] bare *procedural* violation, divorced from any concrete harm, [cannot] satisfy the injury-in-fact requirement of Article III." *Id.* (*emphasis* added). Justice Thomas concurred, articulating that the invasion of a private right was itself a concrete injury that has long entitled a person to sue under the common law. *Id.* at 344-45.

In 2020, a majority of the U.S. Supreme Court expressed agreement with Thomas' *Spokeo* concurrence. *See Thole v. U.S. Bank*, 140 S. Ct. 1615, 1623, 1630 (2020) (Thomas, J. joined by Gorsuch, J., concurring), (Sotomayor, J., joined by Ginsburg, J., Breyer, J., Kagan, J.) (agreeing on the standing principle, but disagreeing over whether the ERISA right at issue was a private right of the plaintiffs or of the ERISA plan). Last year, in an 8-1 decision authored by Justice Thomas, the Court applied these principles in holding that the availability of nominal damages satisfied the redressability prong of standing in the absence of actual damages. *See Uzuegbunam v. Preczewski*, 141 S. Ct. 792, 800 (2021) ("[T]he prevailing rule, 'well established' at common law, was 'that a party whose rights are invaded can always recover nominal damages without furnishing any evidence of actual damage.'") *quoting* 1 T. Sedgwick, Measure of Damages 71, n. a (7th ed. 1880).

However, later in 2021, the Supreme Court departed from Thomas' view in holding that consumers whose credit files contained false notations labeling them as terrorists in violation the Fair Credit Reporting Act did not suffer an Article III injury until their reports were communicated to a third party (e.g., a creditor). *TransUnion v. Ramirez*, 141 S. Ct. 2190, 2209-2213 (2021). Essentially, under the Supreme Court's holding in *TransUnion*, consumers falsely labeled as terrorists in

violation of their express statutory rights have no redress in federal court to remedy the violation unless and until they knowingly exacerbate their injury by requesting credit and having the report, known to be inaccurate, published to the creditor.

As Justice Thomas recognized succinctly:

> TransUnion generated credit reports that erroneously flagged many law-abiding people as potential terrorists and drug traffickers. In doing so, TransUnion violated several provisions of the Fair Credit Reporting Act (FCRA) that entitle consumers to accuracy in credit-reporting procedures; to receive information in their credit files; and to receive a summary of their rights. Yet despite Congress' judgment that such misdeeds deserve redress, the majority decides that TransUnion's actions are so insignificant that the Constitution prohibits consumers from vindicating their rights in federal court. The Constitution does no such thing.

Id. at 2214 (Thomas, J., dissenting). As outlined below, this dramatic shift in federal Article III standing doctrine since *Spokeo* has led to both inconsistent results and courts replacing the judgment of the legislative branch and of juries with their own notions of whether of a person has been injured. "The question whether a party has been 'injured' is inescapably value-laden." *Sierra*, 996 F. 3d at 1129 (Newsom, J., concurring). In the words of Justice Thomas:

> Ultimately, the majority seems to pose to the reader a single rhetorical question: Who could possibly think that a person is harmed when he requests and is sent an incomplete credit report, or is sent a suspicious notice informing him that he may be a designated drug trafficker or terrorist, or is not sent anything informing him of how to remove this inaccurate red flag? The answer is, of course, legion: Congress, the President, the jury, the District Court, the Ninth Circuit, and four Members of this Court.

TransUnion at 2224-25 (Thomas, J., dissenting).

c. Federal Article III standing doctrine has "jumped the tracks."

Federal "Article III standing jurisprudence has jumped the tracks." *Sierra v. City of Hallendale Beach, Fla.*, 996 F. 3d 1110, 1117 (11th Cir. 2021) (Newsom, J., concurring). Since the U.S. Supreme Court's decision in *Spokeo v. Robins*, 578 U.S. 330 (2016), federal courts have had extreme difficulty in applying Article III precedents in cases alleging the violation of private statutory rights, often reaching inconsistent results.

For instance, in the Eleventh Circuit, a telephone subscriber receiving an illegal telemarketing voicemail or text call does not have standing to sue, but subscribers in the Fifth, Seventh, Ninth, and Second Circuits do. *Compare Grigorian v. FCA US LLC*, 838 F. App'x 390, 392 (11th Cir. 2020) and *Salcedo v. Hanna*, 936 F. 3d 1162 (11th Cir. 2019) *with Gadelkak v. AT&T Svcs., Inc.*, 950 F. 3d 458, 461-63 (7th Cir. 2020)(Barrett, J.)(expressly rejecting *Salcedo*); *Cranor v. 5 Star Nutrician*, 998 F. 3d 686, 690-91 (5th Cir. 2021)(same); *Melito v. Experian Mtkg. Sols., Inc.*, 923 F.3d 85, 92-93 (2d Cir. 2019)(finding unwanted text messages sufficient to confer Article III standing); *Van Patten v. Vertical Fitness Grp., LLC*, 847 F.3d 1037, 1042-43 (9th Cir. 2017) (same).

In the Ninth Circuit, the invasion of a *substantive* right is alone enough to

confer standing, but in the Eleventh Circuit, it does not matter whether the right is substantive or procedural. *Compare Campbell v. Facebook, Inc.*, 951 F. 3d 1106, 1117 (9th Cir. 2020) *with Muransky v. Godiva Chocolatier, Inc.*, 979 F. 3d 917, 930 (11th Cir. 2020) (en banc).

In the Seventh Circuit, "anxiety and embarrassment," "stress," "infuriation," "disgust," being "annoyed," feeling "intimidated," suffering "a sense of indignation," and suffering from a "state of confusion" are all insufficient injuries to confer standing. *See, e.g., Wadsworth v. Kross, Lieberman & Stone, Inc.*, 12 F.4th 665, 668 (7th Cir. 2021). However, in the Eleventh Circuit, "stress, anxiety, and lack of sleep" are sufficient to show a concrete injury. *See Losch v. Nationstar Mortgage, LLC*, 995 F. 3d 937, 943 (11th Cir. 2021).

The Second Circuit has held that since a violation of the Fair Debt Collection Practices Act protects a concrete interest, the violation is itself enough to confer standing. *See Cohen v. Rosicki, Rosicki & Associates, PC*, 897 F. 3d 75, 80-82 (2nd Cir. 2018). However, the Eleventh Circuit and the D.C. Circuit require that the plaintiff be actually fooled by the violation. *See Trichell v. Midland Credit Mgmt., Inc.*, 964 F.3d 990, 1001-02 (11th Cir. 2020); *Frank v. Autovest, LLC*, 961 F.3d 1185, 1188 (D.C. Cir. 2020).

As Judge Newsom explained the problem:

> *Spokeo* has raised more questions than it answered. Just how closely analogous to a common-law tort must an alleged injury be in order to be "concrete"? Just how old must a common-law tort be in order to qualify as having been "traditionally ... regarded as providing a basis for a lawsuit in English or American courts"? And just what does the "judgment of Congress" have to do with the concreteness, realness, or actual existence of an injury? We and other courts have attempted to answer these (and other) questions, but they remain largely unsettled.

Sierra at 1121. (Newsom, J., concurring).

Georgia should not travel down the path of *Spokeo* and *TransUnion*, which is still developing in the federal courts and is inconsistent with the text of the Georgia Constitution, proper respect to the legislature's judgment, and the history and tradition of Georgia common law and standing doctrines.

III. The Georgia Constitution defines the judicial power broadly.

"The judicial power of the state shall be vested exclusively in the following classes of courts: magistrate courts, probate courts, juvenile courts, state courts, superior courts, Court of Appeals, and Supreme Court." Ga. Const. of 1983, Art. VI, Sect. I, Para. I. "Article VI, Section IV, Paragraph I of the Georgia Constitution of 1983 establishes the superior courts as courts of general jurisdiction[.]" *Mosley v. Lancaster*, 296 Ga. 862, 866(2), 770 S.E.2d 873 (2015); *see also Nobles v. The State*, 81 Ga. App. 229, 230, 58 S.E.2d 496 (1950).

It is true that the U.S. Supreme Court has used the word "cases" as the foundation for the development of its Article III jurisprudence, and the Georgia

Constitution does use that word when defining the jurisdiction of the superior courts. *See* Ga. Const. of 1983, Art. VI, Sect. IV, Para. I. However, there is "a far more natural and straightforward reading of the word 'Case[.]'" *Sierra* at 1122 (Newsom, J., concurring). A "'[c]ase' exists so long as—and whenever—a plaintiff has a cause of action, whether arising from the common law, emanating from the Constitution, or conferred by statute. And a plaintiff has a cause of action [ ] whenever he can show (1) that his legal rights have been violated and (2) that the law authorizes him to seek judicial relief." *Id.*

This interpretation of the word "case" more aligns with its plain meaning, and it aligns with our longstanding understanding that the superior court is a court of general jurisdiction with jurisdiction over all cases. The Georgia Constitution does not limit the jurisdiction of state and magistrate courts to "cases." *See* Ga. Const. of 1983, Art. VI, Sect. III, Para. I. Instead, it broadly confers on the General Assembly the power to confer jurisdiction on those courts "by law" so long as the jurisdiction is uniform across the state and does not include jurisdiction that the Constitution exclusively vests elsewhere. *Id.* Accordingly, there is no textual basis in Article VI to limit the General Assembly's power to confer jurisdiction "by law" upon our state courts. *See also* Ga. Const. of 1983, Art. III, Sect. VI, Para. I ("The General Assembly shall have the power to make all laws not inconsistent with this

Constitution, and not repugnant to the Constitution of the United States, which it shall deem necessary and proper for the welfare of the state.").

A limited reading of the word "case" would constrain the superior courts, but not the state courts. Of course, the Georgia Constitution expressly provides that "[i]n the absence of a state court [ ], the superior court shall exercise that jurisdiction." Ga. Const. of 1983, Art. VI, Sect. I, Para. VI. Even if we were to adopt the U.S. Supreme Court's ever-evolving definition of "case," the Georgia Constitution thus provides an express workaround: the legislature confers jurisdiction upon state courts which transfers to superior courts in the absence of a state court.

Instead, this court should recognize that our standing doctrine, like our mootness doctrine, is a prudential concern derived from our common law traditions. *See McAlister v. Clifton*, __ Ga. __, 2022 WL 1143442, at *3 (2022) (recognizing Georgia's mootness doctrine is "rooted in the common law and the separation of powers[.]"). In this context, many of our sister states do not require a showing of constitutional standing when standing is conferred by statute. *See, e.g., Committee to Elect Dan Forest v. Employees Political Action Committee*, 853 S.E.2d 698, 726 (N.C. 2021) ("We have also long held that where the Legislature has created a statutory cause of action, so long as the plaintiff falls in the class of

persons on which the statute confers the right, the courts will hear her claim."); *Freemantle v. Preston*, 728 S.E.2d 40, 398 S.C. 186, 194-95 (S.C. 2012) ("The traditional concepts of constitutional standing are inapplicable when standing is conferred by statute."); *State ex rel. Dodrill Heating & Cooling, LLC v. Akers*, ___ S.E.2d ___, 2022 WL 1197831, *7 (W. Va. Apr. 22, 2022) (violation of West Virginia statute was a concrete injury "because the Legislature has *made* it so.") (*emphasis* in original); *Trustees for Alaska v. State*, 736 P.2d 324, 327 (Alaska 1987) ("Standing in our state courts is not a constitutional doctrine; rather, it is a rule of judicial self-restraint based on the principle that courts should not resolve abstract questions or issue advisory opinions."); *Kline v. SouthGate Prop. Management, L.L.C.*, 895 N.W.2d 429, 437 (Iowa 2017) (Standing is a "self-imposed rule of judicial restraint" and in cases between private parties for a statutory cause of action, the focus is the "scope of the cause of action as enacted by the legislature[.]"); The Paradox of Exclusive State-Court Jurisdiction Over Federal Claims, 105 Minn. L. Rev. 1211, 1233 (2021) (map comparing various states standing doctrines); National Consumer Law Center, Consumer Class Actions Appx. G.4 (10th ed. 2020), updated in 2022 at https://library.nclc.org/class/ag01-0 (State-by-state analysis of state court standing requirements).

We "shouldn't be surveying the constitutional landscape in search of 'vehicle[s]' through which to implement rules that the document's provisions, plainly read, don't establish." *Sierra*, 996 F. 3d at 1122 (Newsom, J., concurring). However, if there were a constitutional basis for our standing doctrine, which is not necessary, the separation of powers clause is a better vehicle than Article VI. Ga. Const. of 1983, Art. I, Sect. II, Para. III ("The legislative, judicial, and executive powers shall forever remain separate and distinct; and no person discharging the duties of one shall at the same time exercise the functions of either of the others except as herein provided."). There is surely a separation of powers concern with the courts declaring statutes or regulations unconstitutional or enjoining executive action without a plaintiff with a particularized, or *individual*, interest invoking the court's power.

But in the case of statutorily enacted private rights, separation of powers concerns command the courts to defer to the legislative branch when it finds that an injury exists and passes a law to protect our citizenry from the injury. Adoption of the *TransUnion* framework would be a judicial usurping of the power of the legislature to legislate against new injuries as they arise in our evolving society. *Lansing Schools Education Ass'n v. Lansing Bd. of Education*, 792 N.W.2d 686, 704 (Mich. 2010) (Weaver, J., concurring) (describing an earlier decision's

standing test, now overruled, as "pretending to limit [the court's] 'judicial power,'" but "actually expand[ing] the power of the judiciary at the expense of the Legislature by undermining the Legislature's constitutional authority to enact laws."); *See also* F. Andrew Hessick, Standing, Injury in Fact, and Private Rights, 93 Cornell L. Rev. 275 (Jan. 2008).

Whether standing in Georgia is a prudential doctrine or derived from the separation of powers clause, both caution against limiting the legislature's power to define private rights and to grant persons access to the courts to seek redress when such rights have been violated.

IV. Georgia standing doctrine must account for the history and tradition of the common law as interpreted by Georgia courts.

a. Justice Thomas' theory of standing most closely relates to Georgia's common law tradition.

Justice Thomas' view of standing for the invasion of private rights comports with our standing cases and the longstanding common law as interpreted by our Courts. *See, e.g., Land v. Boone*, 265 Ga. App. 551, 553-54, 594 S.E.2d 741 (2004) ("Breach of a duty imposed by law without other damages gives a right to recover nominal damages to vindicate such rights which are invaded."). "The law tolerates no further inquiry than whether there has been the violation of a right. If so, the party injured is entitled to maintain his action for nominal damages in vindication

of his right." *Nat'l Exchange Bank v. Sibley*, 71 Ga. 726, 734(5) (1883). *See also* OCGA § 9-2-3 ("For every right there shall be a remedy; every court having jurisdiction of the one may, if necessary, frame the other."); *Tingle v. Harvill*, 125 Ga.App. 312, 187 S.E.2d 536 (1972) (recognizing that OCGA § 9-2-3 [then Code § 3-105] is "derived from the common law '*ubi jus ibi remedium*' (there is no wrong without a remedy.)"); *Pavesich v. New England Life Ins. Co*., 122 Ga. 190, 50 S.E. 68, 69 (1905).

When the federal courts determine if an injury has a "close relationship with the common law," they usually look to the Restatements. *See, e.g., Transunion*, 141 S. Ct. at 2209; *Trichell v. Midland Credit Management, Inc.*, 964 F. 3d at 998. This, of course, is a necessity because "[t]here is no federal general common law." *See Erie R. Co. v. Tompkins*, 304 U.S. 64, 78 (1938). Georgia, on the other hand, does not blindly follow the Restatements in the development of the common law. *See, e.g., Herren v. Pettengill*, 273 Ga. 122, 538 S.E.2d 735, 736 (2000) (rejecting Restatement); *General Tel. Co. v. Trimm*, 252 Ga. 95, 96, 311 S.E.2d 460 (1984) (rejecting Restatement). Georgia adheres to the view that "there is one common law that can be properly discerned by wise judges" and therefore strictly adheres to our own interpretation of the common law rather than to the Restatements or any sister state's interpretation, even when applying the law of another state. *Coon v.*

Medical Center, Inc., 300 Ga. 722, 797 S.E.2d 828, 834 (2017). Accordingly, it would be wrong to disregard our common law tradition of recognizing jurisdiction for the invasion of private rights in favor of reliance on a federal test that looks to the Restatements to determine the common law.

b. Adopting *Spokeo* and *TransUnion* wholesale would upend Georgia precedent and cause chaos in our Courts.

At the time the Georgia Constitution was ratified in 1983, federal standing doctrine recognized that "the actual or threatened injury required by Art. III may exist solely by virtue of 'statutes creating legal rights, the invasion of which creates standing...'" *Warth v. Seldin*, 422 U.S. 490, 500 (1975) *quoting Linda R. S. v. Richard D.*, *supra*, at 617 n. 3; *Sierra Club v. Morton*, 405 U.S. 727, 732 (1972). In addition to overturning our common law precedent permitting the courts to hear cases involving the mere invasion of a private right, adopting *Spokeo* and *TransUnion* would upend years of Georgia precedent and cause turmoil in hosts of cases.

Georgia has long recognized that:

> Wounding a man's feelings is as much actual damage as breaking his limbs. The difference is that one is internal and the other external; one mental, the other physical. In either case the damage is not measurable with exactness. There can be a closer approximation in estimating the damage to a limb than to the feelings; but at last the amount is indefinite. The jury would have a much wider discretion in dealing with feelings than with an external injury.

Head v. Ga. Pac. Ry. Co., 79 Ga. 358, 7 S.E. 217, 218 (1887). *See also* OCGA § 51-12-2 ("General damages are those which the law presumes to flow from any tortious act; they may be recovered without proof of any amount."); OCGA § 51-12-6 ("In a tort action in which the entire injury is to the peace, happiness, or feelings of the plaintiff, no measure of damages can be prescribed except the enlightened consciences of impartial jurors."). The ability to recover for such injuries would be in doubt if this Court adopted the *Spokeo/TransUnion* framework. *See, e.g., Wadsworth v. Kross, Lieberman & Stone, Inc.*, 12 F.4th 665, 668 (7th Cir. 2021) (similar injuries insufficient to confer Article III standing).

Other precedents of this Court are at stake. For instance, in 2018, this Court applied what was then the federally understood rule from *Spokeo* that a substantial risk of harm was a sufficient injury to proceed on a claim for damages. *Collins v. Athens Orthopedic Clinic, PA*, 307 Ga. 555, 837 S.E.2d 310 (2019). However, in *TransUnion*, the U.S. Supreme Court eliminated the "risk of harm" avenue for standing in damages cases. 141 S. Ct. at 2210-11.

This Court has recognized standing in wrongful death cases, not as a matter of an injury to the claimant, but to "impose a monetary penalty upon the wrongdoer in favor of the person who is *authorized to sue* [by statute] for the homicide." *Carringer v Rogers*, 276 Ga. 359, 578 SE 2d 841, 843 (2003). "Thus,

the wrongful death laws serve dual roles: they seek to prevent the loss of human life by making 'homicide expensive,' and they seek to preserve the social and economic order." *Id.* Even assuming that a wrongful death claimant has always suffered some injury (e.g., consortium, which is not necessary or always the case), the recovery does not redress those injuries — it redresses the value of the decedents' life, which is an injury to the decedent and not the claimant.

Georgia courts, consistent with their general jurisdiction, also handle many matters that involve an individual's status. For example, OCGA § 19-12-1 permits "[a]ny individual desirous of changing his or her name" to petition the superior court. If this Court adopts the *Spokeo/TransUnion* framework and holds that a concrete injury is required in order for the superior court to exercise jurisdiction, would "I'd prefer a different name" be a concrete injury? If it is an injury, who is the defendant that the injury is fairly traceable to? Federal "Article III standing requires [ ] the injury must be 'fairly traceable to the challenged action of the defendant.'" *Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1268 (11th Cir. 2019) *quoting Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992).

This Court has allowed recovery under the Telephone Consumer Protection Act for faxes never received. *A Fast Sign Co. v. Am. Home Svcs.*, 291 Ga. 844, 734 S.E.2d 31 (2012). This court has recognized that the superior court has jurisdiction

over special statutory proceedings which are not even civil actions. *Vlass v. Security Pacific Nat. Bank*, 263 Ga. 296, 430 S.E.2d 732 (1993) ("[A]n application for confirmation merely invokes the superior court's supervisory authority" and is not an action "against the debtor."). Can Georgia courts hear cases regarding the refusal to timely mark a judgment or mortgage lien satisfied? *See* OCGA §§ 9-13-80; 44-14-3; *Nicklaw v. Citimortgage, Inc.*, 839 F.3d 998 (11th Cir. 2016) (no Article III standing for similar statutory claim).

This Court should avoid these questions by merely recognizing what the Constitution allows: persons may access our courts to seek the vindication of their private statutory rights, and the General Assembly has the power to confer such rights.

V. Statutory standing remains an independent requirement.

Statutory standing is a form of statutory interpretation which "presume[s] that a statutory cause of action extends only to plaintiffs whose interests 'fall within the zone of interests protected by the law invoked.' *Lexmark Intern. v. Static Control*, 572 U.S. 118, 129 (2014). This concerns whether a particular plaintiff "has a cause of action under the statute" and "does not implicate subject-matter jurisdiction, i.e., the court's statutory or constitutional power to adjudicate the case." *Id.* at note 4. This "applies to all statutorily created causes of action; [ ]

is a 'requirement of general application'; and [the legislature] is presumed to 'legislat[e] against the background of' the zone-of-interests limitation, 'which applies unless it is expressly negated.'" *Id*. Even if the legislature *can* confer jurisdiction under a statute, statutory standing asks if the legislature *did* confer such jurisdiction.

"The General Assembly properly can, of course, enact legislation that departs from the common law, but to the extent that statutory text can be as reasonably understood to conform to the common law as to depart from it, the courts usually presume that the legislature meant to adhere to the common law." *May v. State*, 295 Ga. 388, 761 S.E.2d 38, 45 (2014). "[Statutes] in derogation of the common law ... must be limited strictly to the meaning of the language employed, and not extended beyond the plain and explicit terms of the statute." *Couch v. Red Roof Inns, Inc.*, 291 Ga. 359, 729 S.E.2d 378, 383 (2012) *quoting Delta Airlines, Inc. v. Townsend*, 279 Ga. 511, 512, 614 S.E.2d 745 (2005).

The statute at issue in this case provides that "A public entity owning a monument or any person, group, or legal entity shall have a right to bring a cause of action for any conduct prohibited by this Code section *for damages as permitted by this Code section*." OCGA § 50-3-1(b)(5) (*emphasis* added). The preceding paragraph expressly excludes from the list of liable parties "person[s] or entit[ies]

authorized to take such action by the public entity owning such monument." OCGA § 50-3-1(b)(4). This exclusion could be read in one of two ways: 1) excluding only exemplary damages, or 2) excluding both categories of damages set forth in the statute.

Regardless of whether standing is prudential or constitutional, or, if constitutional, which provisions of the constitution our standing doctrines derive from, the petitioners would still need to establish, against the backdrop of our long-held precedents on standing and sovereign immunity, that this statute abrogated those doctrines and conferred upon them a right to sue counties for the removal of monuments from their own properties.

CONCLUSION

This Court should hold that our standing doctrine is a prudential concern rooted in the common law and separation of powers. *See McAlister v. Clifton*, __ Ga. __, 2022 WL 1143442, at *3 (2022) (recognizing Georgia's mootness doctrine is "rooted in the common law and the separation of powers[.]"). Our precedents demand that we adhere to our common law traditions which include the ability to vindicate private rights without proof of injury beyond the invasion of a private right. "The law tolerates no further inquiry than whether there has been the violation of a right. If so, the party injured is entitled to maintain his action for

nominal damages in vindication of his right." *Nat'l Exchange Bank v. Sibley*, 71 Ga. 726, 734 (1883).

We take no position on whether the petitioners have standing in this case, regardless of whether we are evaluating standing from a statutory, constitutional, or prudential concern. Rather, we request the court not to adopt the *Spokeo/TransUnion* framework and preserve our common law tradition of allowing access to the courts to vindicate private statutory rights.

Respectfully submitted,

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I certify that I have this day served counsel for all parties with a true and correct copy of:

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