

# Supreme Court Reverses Google Settlement But Ducks Ruling on Its Fairness

March 20, 2019

In February 2018, I reported on a 20-state objection brief, filed with the U.S. Supreme Court, asking the Court to reverse the approval of the class action settlement in *Gaos v. Google*. That deal would have distributed a few million dollars to nonprofit groups, while the AGs wanted money paid to real people, even if that meant holding a lottery to do it. Today, although the Supreme Court reversed the settlement, it did so on standing grounds and did not address whether a class action can be settled solely through “cy pres” settlements to non-profits.

The Supreme Court cited its recent *Spokeo v. Robins* decision in which it held that plaintiffs must allege concrete harm, and not just a bare statutory violation, in order to have Article III standing to sue in federal court. *Spokeo* was not the Court’s most edifying decision and lower courts have split wildly on what it means in practice. [The Court’s decision](#) today didn’t address that split; it just told the lower courts to analyze the *Gaos* plaintiffs’ standing in light of *Spokeo* without opining on the issue one way or the other.

Justice Thomas dissented alone. He expressed his disagreement with *Spokeo*, believing that if Congress made conduct illegal, violating that statute suffices to confer standing. He then said he would have reversed the settlement. In Justice Thomas’s view, if a settlement provides no benefit to class members, and looks to be solely a means to extinguish a claim, courts should not approve it.

Perhaps the biggest takeaway from today’s decision, therefore, is that eight of the nine Justices think differently from Justice Thomas on this issue. How differently, only time will tell.