In the Supreme Court of the United States

FEDERAL COMMUNICATIONS COMMISSION AND UNITED STATES OF AMERICA, PETITIONERS

v.

AT&T INC. AND COMPTEL

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Exemption 7(C) of the Freedom of Information Act, 5 U.S.C. 552(b)(7)(C), exempts from mandatory disclosure records or information compiled for law enforcement purposes when such disclosure could reasonably be expected to constitute an unwarranted invasion of "personal privacy." The question presented is:

Whether Exemption 7(C)'s protection for "personal privacy" protects the "privacy" of corporate entities.

PARTIES TO THE PROCEEDING

The petitioners are the Federal Communications Commission and the United States of America.

Respondent AT&T Inc. was the petitioner in the court of appeals. Respondent CompTel was an intervenor below.

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PETITION FOR A WRIT OF CERTIORARI

The Solicitor General, on behalf of the Federal Communications Commission (FCC or Commission) and the United States of America, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Third Circuit in this case.

OPINIONS BELOW

The opinion of the court of appeals (App., *infra*, 1a-18a) is reported at 582 F.3d 490. The order of the Commission (App., *infra*, 19a-33a) is reported at 23 F.C.C.R. 13,704.

JURISDICTION

The judgment of the court of appeals was entered on September 22, 2009. A petition for rehearing was denied on November 23, 2009 (App., *infra*, 45a-46a). On February 12, 2010, Justice Alito extended the time within which to file a petition for a writ of certiorari to and including March 23, 2010. On March 15, 2010, Justice Alito further extended the time to April 22, 2010. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY AND REGULATORY PROVISIONS INVOLVED

Exemption 7(C) of the Freedom of Information Act exempts from mandatory disclosure "records or information compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information * * * (C) could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. 552(b)(7)(C). Other pertinent provisions are set out in the appendix to the petition (App., *infra*, 47a-60a).

STATEMENT

1. a. In 1966, Congress enacted the Freedom of Information Act (FOIA), 5 U.S.C. 552, as an amendment to the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.*, in order to limit the broad discretion that federal agencies previously had exercised concerning the publication of governmental records. *DOJ* v. *Reporters Comm. for Freedom of Press*, 489 U.S. 749, 754 (1989) (*Reporters Committee*); FOIA, Pub. L. No. 89-487, 80

Stat. 250 (amending APA § 3); see Act of June 5, 1967, Pub. L. No. 90-23, 81 Stat. 54 (codifying FOIA as positive law at 5 U.S.C. 552). Under FOIA, federal agencies generally must make records available to "any person" who has submitted a "request for [such] records," unless a statutory exemption applies. See 5 U.S.C. 552(a)(3)(A); 5 U.S.C. 552(b) (FOIA exemptions); *Reporters Committee*, 489 U.S. at 754-755. If an agency fails to comply with its disclosure obligations within FOIA's statutory time limits, 5 U.S.C. 552(a)(6)(A) and (B), the requester may file an action in district court to compel disclosure. 5 U.S.C. 552(a)(4)(B) and (6)(C).

Three FOIA exemptions are relevant to the Court's consideration of the issues in this case. First, Exemption 6 applies to "personnel and medical files and similar files" the disclosure of which "would constitute a clearly unwarranted invasion of personal privacy." 5 U.S.C. 552(b)(6). "Congress' primary purpose in enacting Exemption 6 was to protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information." *Department of State* v. *Washington Post Co.*, 456 U.S. 595, 599 (1982). Exemption 6 was designed to strike the "proper balance between the protection of an individual's right of privacy and the preservation of the public's right to Government information." *Ibid.* (quoting H.R. Rep. No. 1497, 89th Cong., 2d Sess. 11 (1966) (*1966 House Report*)); see *Department of the Air Force* v. *Rose*, 425 U.S. 352, 372 (1976); *DoD* v. *FLRA*, 510 U.S. 487, 495 (1994) (discussing "basic principles" governing FOIA).

Second, Exemption 7, as enacted in 1966, exempted "investigatory files compiled for law enforcement purposes" unless the files were "available by law to a party other than an agency." 5 U.S.C. 552(b)(7) (1970). After courts construed the exemption to cover "all material found in [such] investigatory file[s]," Congress narrowed Exemption 7 in 1974 by enumerating six specific categories of law-enforcement records that are exempt from mandatory disclosure. *FBI* v. *Abramson*, 456 U.S. 615, 627 & n.11 (1982). As relevant here, one category is encompassed by Exemption 7(C), which exempts from mandatory disclosure records or information compiled for law-enforcement purposes if their production "could reasonably be expected to constitute an unwarranted invasion of personal privacy." 5 U.S.C. 552(b)(7)(C).[1] "Congress gave special attention to the language in Exemption 7(C)," *National Archives & Records Admin.* v. *Favish*, 541 U.S. 157, 166 (2004), and added its "protection for personal privacy" in order to "make clear that the protections in the sixth exemption for personal privacy also apply to disclosure under the seventh exemption." 120 Cong. Rec. 17,033 (1974) (statement of Sen. Hart).

Finally, Exemption 4 applies to "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4). Because the exemption applies to information "obtained from a person," *ibid.*, and the APA (including FOIA) defines the term "person" to include "an individual, partnership, corporation, association, or public or

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[1] Congress amended Exemption 7(C) to take its present form in 1986, but did not alter the type of "personal privacy" necessary to invoke the exemption. See *Reporters Committee*, 489 U.S. at 756 & n.9, 777 n.22.

private organization other than [a federal] agency," 5 U.S.C. 551(2). Exemption 4 protects commercial and financial information that the government obtains from a wide variety of sources, including private corporations and public organizations. Exemption 4 protects privileged and confidential material that "would not customarily be made public by the person from whom it was obtained," including "business sales statistics, inventories, customer lists," and "technical or financial data." *1966 House Report* 10.

b. "FOIA is exclusively a disclosure statute." *Chrysler Corp.* v. *Brown*, 441 U.S. 281, 292 (1979). If one of its exemptions applies, FOIA does not forbid the agency from exercising its "discretion to disclose [the] information." *Id.* at 292-294. But in what is known as a "'reverse-FOIA' suit[]," *id.* at 285, a person seeking to prevent an agency's production of records may, in certain circumstances, seek judicial review under the APA of a final agency decision to disclose agency records. See *id.* at 317-318. In such a suit, a court may set aside an agency's decision to disclose if the agency action is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. 706(2)(A). See *Chrysler Corp.*, 441 U.S. at 317-318 (reverse-FOIA suit alleging that disclosure of records was prohibited by the Trade Secrets Act, 18 U.S.C. 1905).

Regulations promulgated by the Federal Communications Commission provide that a FOIA requester who seeks FCC records that are exempt from mandatory disclosure under FOIA must specify the "reasons for inspection and the facts in support thereof." 47 C.F.R. 0.461(c); see 47 C.F.R. 0.457. Under the Commission's regulations, if the records contain material submitted to the agency by a third person, the Commission will pro-

vide a copy of the FOIA request to that person and afford the person an opportunity to object to disclosure in certain specified circumstances: if the person previously requested that the records be kept confidential (47 C.F.R. 0.459), if the records are exempt under FOIA Exemption 4 (see 47 C.F.R. 0.457(d)), or if the custodian of records has reason to believe that "the information may contain confidential commercial information." 47 C.F.R. 0.461(d)(3); cf. Exec. Order No. 12,600, §§ 1, 3-5, and 8, 3 C.F.R. 235-237 (1988), *reprinted in* 5 U.S.C. 552 note (directing agencies to provide submitters of certain confidential commercial information with notice of, and an opportunity to object to, agency disclosure). If the records fall within one of FOIA's exemptions and their "disclosure * * * is [not] prohibited by law," the Commission "will weigh the policy considerations favoring non-disclosure against the reasons cited for permitting inspection" and decide whether to produce the records. 47 C.F.R. 0.457; see 47 C.F.R. 0.461(f)(4).

2. This case arises from a FOIA request for FCC records concerning an investigation involving respondent AT&T Inc.[2] AT&T participated in a federal program, the E-Rate Program, administered by the FCC and designed to improve access to advanced telecommunications technology by educational institutions. App., *infra*, 2a. Under the E-Rate Program, AT&T provided equipment and services to elementary and secondary schools and billed the government for the cost. *Ibid.*

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[2] At the time of the FCC's investigation, respondent AT&T was known as SBC Communications, Inc. See App., *infra*, 19a n.1. To avoid confusion, this petition consistently refers to that respondent as AT&T.

By letter dated August 6, 2004, AT&T informed the Commission that it had discovered "certain irregularities" that constituted an "apparent violation of the E-[R]ate rules," resulting in AT&T's over-billing the government for its services. C.A. App. A22; see App., *infra*, 2a-3a. On August 24, 2004, the Commission's Enforcement Bureau (Bureau) issued a Letter of Inquiry to AT&T, notifying the company that the Bureau had initiated an investigation and ordering AT&T to produce information relevant to that investigation. *Id.* at 35a, 41a. AT&T disclosed the information as directed. *Id.* at 41a.

In December 2004, the Bureau terminated its investigation pursuant to an administrative consent decree. See *SBC Commc'ns, Inc.*, 19 F.C.C.R. 24,014 (Enf. Bur. 2004) (order and consent decree). Under that decree, AT&T, without admitting liability, agreed to pay $500,000 to the government and to institute a two-year compliance plan to ensure future compliance with pertinent FCC rules by all AT&T subsidiaries. *Id.* at 24,016-24,019; App., *infra*, 35a-36a.

3. On April 4, 2005, respondent CompTel, a trade association representing some of AT&T's competitors, submitted a FOIA request to the Commission, seeking "[a]ll pleadings and correspondence contained in" the AT&T E-Rate investigation file. C.A. App. A27. The Commission notified AT&T of the FOIA request, and AT&T submitted an objection to disclosure. See *id.* at A28.

a. In August 2005, the Bureau granted CompTel's FOIA request in part and denied it in part. App., *infra*, 34a-44a. The Bureau concluded that portions of the information submitted to the FCC by AT&T were protected from mandatory disclosure under FOIA Exemp-

tion 4 because the information "constitute[d] commercial or financial information" that, if disclosed, "could result in substantial competitive harm to [AT&T]." *Id.* at 41a. Under that exemption, the Bureau declined to disclose "commercially sensitive information," including AT&T's "costs and pricing data, its billing and payment dates, and identifying information of [AT&T's] staff, contractors, and the representatives of its contractors and customers." *Id.* at 41a-42a. The Bureau also concluded that FOIA Exemption 7(C) protected from mandatory disclosure information in the agency's investigative file that would invade the privacy of individuals, *id.* at 42a-43a, and explained that it would "withhold the names and identifying information of those individuals." *Id.* at 43a.[3]

The Bureau, however, rejected AT&T's argument that Exemption 7(C) protected from mandatory disclosure all records that the FCC had obtained from AT&T during its investigation. App., *infra*, 42a-43a. The Bureau concluded that records that did not implicate the privacy interests of individuals fell outside Exemption 7(C) because AT&T itself did "not possess 'personal privacy' interests" protected by that exemption. *Ibid.*

b. AT&T filed an administrative appeal from the Bureau's determination, challenging the decision to release the agency's investigative records that the Bureau concluded were subject to mandatory FOIA disclosure. C.A. App. A47; App., *infra*, 22a & n.16. In September 2008, the Commission denied AT&T's administrative appeal. *Id.* at 19a-33a.[4]

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[3] The agency further concluded that internal agency records were exempt from disclosure under Exemption 5. App., *infra*, 43a.

[4] CompTel also filed an administrative appeal from the Bureau's determination. App., *infra*, 22a & n.16. By October 5, 2006, CompTel had constructively exhausted its administrative remedies because the

As relevant here, the Commission rejected AT&T's argument that AT&T is a "corporate citizen" with "personal privacy" rights protected by Exemption 7(C), that AT&T should therefore be "protected from [a] disclosure that would 'embarrass' it," and that the FCC should accordingly withhold "all of the documents that [AT&T] submitted" to the FCC. App., *infra*, 26a (citation omitted). The agency concluded that "established [FCC] and judicial precedent" showed that the "personal privacy" protected under Exemption 7(C) concerns only the privacy interests of individuals, and corporations do not have "'personal privacy' interests within the meaning of [that] [e]xemption." *Id.* at 26a-28a.

FCC had not resolved its administrative appeal within FOIA's 20-day period for rendering a decision. See 5 U.S.C. 552(a)(6)(A)(ii) and (C)(i). On that date, CompTel initiated a FOIA action in the United States District Court for the District of Columbia to compel disclosure. App., *infra*, 23a & n.17. In light of CompTel's pending lawsuit and its conclusion that "FOIA permits such actions," the Commission did not address the merits of CompTel's administrative appeal. *Ibid.*

Meanwhile, AT&T intervened in CompTel's FOIA action, which the district court stayed pending the FCC's resolution of AT&T's administrative appeal. See App., *infra*, 23a & n.19. The district court explained that AT&T had asserted a reverse-FOIA claim against the FCC in district court, but that APA review was unavailable at that time because the FCC had yet to take "final agency action" subject to judicial review. *CompTel* v. *FCC*, Civ. No. 06-1718 (D.D.C. Mar. 5, 2008), slip op. 4 (citing 5 U.S.C. 704). Although the court noted that it had authority to decide CompTel's FOIA claim, it concluded that judicial economy warranted a stay until "there is a final agency action on AT&T's intra-agency appeal," in order to "permit[] the court to simultaneously address the issues raised by [all parties]." *Id.* at 6. The district court subsequently denied CompTel's motion to compel a final agency decision within 30 days. *CompTel* v. *FCC*, Civ. No. 06-1718 (D.D.C. May 5, 2008) (order). No further action has been taken in CompTel's FOIA case, which does not affect the question presented in this petition.

The Commission explained that this Court's decision in *Reporters Committee* indicated that the "personal privacy" interest protected by both Exemption 6 and Exemption 7(C) is "applicable only to individuals," because *Reporters Committee* relied on Exemption 6 to construe Exemption 7(C) and, as AT&T "admit[ted]," "Exemption 6 applies only to individuals." App., *infra*, 30a & n.46 (citing AT&T letter brief at C.A. App. A52). The Commission further reasoned that judicial decisions demonstrate that Exemption 7(C)'s purpose is to avoid damage to "personal reputation, embarrassment, and * * * harassment * * * that an individual might suffer from disclosure." *Id.* at 29a. Such harms, the Commission concluded, are distinct from the potential impact of disclosure on a purely "legal entity like a corporation." *Ibid.*

4. The court of appeals granted AT&T's petition for review under the Hobbs Administrative Orders Review Act, 28 U.S.C. 2341 *et seq.*, and remanded for further agency proceedings. App., *infra*, 1a-18a.[5]

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[5] The Hobbs Act vests the courts of appeals with exclusive jurisdiction over petitions for review of certain agency orders. 28 U.S.C. 2342. The "nature and attributes of judicial review" under the Hobbs Act are governed by the APA's judicial-review provisions. *ICC* v. *Brotherhood of Locomotive Eng'rs*, 482 U.S. 270, 282 (1987); see *id.* at 277 (citing APA standard of review in 5 U.S.C. 706(2)(A)).

Consistent with the government's position, the court of appeals concluded that it possessed Hobbs Act jurisdiction over this reverse-FOIA action because AT&T's suit challenged an "order of the Commission under [the Communications Act of 1934, 47 U.S.C. 151 *et seq.*]," 47 U.S.C. 402(a). See App., *infra*, 6a-7a. The court explained that AT&T's challenge to the Commission's order regarding disclosure based on that order's alleged inconsistency with FCC regulations was a challenge subject to Hobbs Act review, see 28 U.S.C. 2342(1), and that "[c]ourts

The court of appeals held, in pertinent part, that "FOIA's text unambiguously indicates that a corporation may have a 'personal privacy' interest within the meaning of Exemption 7(C)." App., *infra*, 13a; see *id.* at 9a-14a. The court reasoned that "FOIA defines 'person' to include a corporation" and that the term "personal" is "derived" from the word "person" and is simply the "adjectival form" of that defined term. *Id.* at 10a-12a (discussing APA definition at 5 U.S.C. 551(2)). In light of that view, the court rejected the contention that the statutory phrase "personal privacy" should be construed to reflect the "ordinary meaning" of the word "personal." *Id.* at 12a.

The court of appeals assumed *arguendo* that FOIA's protection for "personal privacy" in Exemption 6 "applies only to individuals (and not to corporations)," but decided that this assumption did not undermine its understanding of the scope of "personal privacy" protected by Exemption 7(C). App., *infra*, 13a. The court reasoned that Exemption 6 expressly applies to "personnel and medical files," 5 U.S.C. 552(b)(6), and that particular statutory phrase "limits Exemption 6 to individuals because only individuals (and not corporations) may be the subjects of such files." App., *infra*, 13a.

Having concluded that "FOIA's text unambiguously" resolved the case, the court of appeals declined to "consider the parties' arguments concerning statutory purpose, relevant (but non-binding) case law, and legislative history." App., *infra*, 13a-14a. The court nevertheless expressed the view that its interpretation advanced Exemption 7(C)'s purpose by providing privacy protection

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have consistently held that an [FCC] order" allegedly violating FCC regulations is subject to such review. App., *infra*, 7a & n.2.

to corporations because, as the court saw it, "[c]orporations, like human beings, are routinely involved in law enforcement investigations" and, "like human beings, face public embarrassment, harassment, and stigma because of that involvement." *Id.* at 14a n.5. The court also expressed the view that D.C. Circuit decisions indicating that the protections for privacy in Exemptions 6 and 7(C) apply to "individuals only" were based on atextual considerations that did "not impugn [the Third Circuit's] textual analysis." *Id.* at 14a n.6. The court accordingly "decline[d] to follow" the D.C. Circuit's decisions "to the extent that" they "can be read to conflict with [the] textual analysis" above. *Id.* at 15a n.6.

The court of appeals declined to examine how "AT&T's 'personal privacy'" should be balanced against any public interest in disclosure, explaining that the Commission had not conducted such Exemption 7(C) balancing in the first instance. App., *infra*, 15a-16a. The court accordingly "remand[ed] the matter to the FCC with instructions to determine" whether the requested "disclosure 'could reasonably be expected to constitute an unwarranted invasion of personal privacy'." *Id.* at 17a (quoting 5 U.S.C. 552(b)(7)(C)).

REASONS FOR GRANTING THE PETITION

The court of appeals has held that FOIA's statutory protection for "personal privacy" in Exemption 7(C) extends beyond the personal privacy interests of individuals and protects the so-called "privacy" of inanimate corporate entities. The court based that holding on what it viewed as the meaning of the phrase "personal privacy," reasoning that the word "personal" in that phrase must encompass all the types of entities that Congress included within the APA's definition of "person."

Under that reasoning, the "personal privacy" safeguarded by Exemption 7(C) would belong not only to corporations and other private organizations, but also to state, local, and foreign governments and governmental components. Thus, if the Third Circuit's decision is not overturned, federal agencies must attempt to balance previously non-existent "personal privacy" interests of business and governmental entities against the public interest in disclosure to determine whether releasing agency records would constitute an unwarranted invasion of such "privacy" under Exemption 7(C). The court of appeals' decision finds no support in FOIA's text or any judicial decision construing Exemption 7(C) in the 35 years since its enactment. The court's textual analysis disregards basic tenets of statutory construction, and it is in significant tension with the D.C. Circuit's longstanding interpretation of FOIA's privacy exemptions.

The court of appeals' ruling threatens to revolutionize the manner in which the federal government must process hundreds of thousands of FOIA requests each year.[6] Federal agencies have for decades processed FOIA requests under the previously settled understanding that corporations and other non-human entities have no interest in "personal privacy" protected by FOIA. The court's ruling, if allowed to stand, also threatens to impose barriers to the public disclosure of government records concerning corporate malfeasance in govern-

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[6] In fiscal year 2008, the most recent year for which data has been compiled, the government received more than 605,000 FOIA requests and expended approximately $338 million on FOIA-related activities. See U.S. Dep't of Justice, Office of Information Policy, *FOIA Post: Summary of Annual FOIA Reports for Fiscal Year 2008*, http://www.justice.gov/oip/foiapost/2009foiapost16.htm.

ment programs that the public has a right to review. Certiorari is warranted.

I. THE COURT OF APPEALS ERRED IN CONSTRUING EXEMPTION 7(C) TO PROTECT CORPORATE "PERSONAL PRIVACY"

The court of appeals erred in holding that corporations possess "personal privacy" interests under FOIA Exemption 7(C). The court reasoned that Congress defined the term "person" to include corporations and that the phrase "personal privacy" must reflect that definition. But Congress did not define the relevant statutory phrase in Exemption 7(C)—"personal privacy"—and that phrase has been uniformly understood since the 1974 enactment of Exemption 7(C) to protect only the privacy interests of individuals. Traditional tools of statutory construction confirm that the prevailing understanding of Exemption 7(C) is correct: Corporations do not possess "personal privacy" under FOIA.

A. The meaning of the phrase "personal privacy" in Exemption 7(C) "turns on 'the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.'" *Nken* v. *Holder*, 129 S. Ct. 1749, 1756 (2009) (quoting *Robinson* v. *Shell Oil Co.*, 519 U.S. 337, 341 (1997)). Those interpretive benchmarks—"the bare meaning of the word[s]" and their "placement and purpose in the statutory scheme," *Bailey* v. *United States*, 516 U.S. 137, 145 (1995)—demonstrate that Exemption 7(C)'s protection for "personal privacy" extends only to individuals.

1. The word "personal" by itself is most naturally understood to concern individuals alone. Dictionaries reflect that "personal" normally means "of or relating to a particular person" and "affecting one individual or

each of many individuals," "relating to an individual," or "relating to or characteristic of human beings as distinct from things." *Webster's Third New International Dictionary* 1686 (1966); see *The American Heritage Dictionary of the English Language* 978 (1976) ("personal" means "[o]f or pertaining to a particular person; private; one's own *personal affairs*," and "[c]oncerning a particular individual and his intimate affairs"). Under these definitions, characteristics of a corporation, in contrast to those of an individual, would not commonly be understood to be "personal" traits.

Moreover, when "personal" is joined with the word "privacy" in Exemption 7(C), the resulting statutory phrase invokes background principles that reflect an exclusive focus on individuals. The law ordinarily protects personal privacy to safeguard human dignity and preserve individual autonomy. See generally Samuel D. Warren & Louis D. Brandeis, *The Right to Privacy*, 4 Harv. L. Rev. 193 (1890), cited in *Reporters Committee*, 489 U.S. at 763 n.15 (construing Exemption 7(C)). Such concepts do not comfortably extend to a corporation, which "exist[s] only in contemplation of law" as "an artificial being, invisible, [and] intangible." *Dartmouth College* v. *Woodward*, 17 U.S. (4 Wheat.) 518, 636 (1819) (Marshall, C.J.); cf. *First Nat'l Bank* v. *Bellotti*, 435 U.S. 765, 779 n.14 (1978) (corporations possess no rights that are "purely personal"). Indeed, in other contexts, it is established that a "corporation * * * has no personal right of privacy," Restatement (Second) of Torts § 652I cmt. c (1977) (torts for invasion of privacy), and, for at least half a century it has been "generally agreed that the right to privacy is one pertaining only to individuals." William L. Prosser, *Privacy*, 48 Cal. L. Rev. 383, 408-409 & n.207 (1960) (citing cases). See also *United*

States v. *Morton Salt Co.*, 338 U.S. 632, 652 (1950) (stating that "corporations can claim no equality with individuals in the enjoyment of a right to privacy" in the Fourth Amendment context).

2. FOIA's broader context likewise demonstrates that Exemption 7(C)'s protection for "personal privacy" applies only to individuals. Congress specifically modeled Exemption 7(C) on Exemption 6's "personal privacy" exemption, which itself protects only the privacy interests of individuals.

"[I]dentical * * * phrases within the same statute should normally be given the same meaning." *Powerex Corp.* v. *Reliant Energy Servs., Inc.*, 551 U.S. 224, 232 (2007). That interpretive rule has particular force here, because Congress transferred the phrase "personal privacy" from Exemption 6 to Exemption 7(C) in order to "make clear that the protections in the sixth exemption for personal privacy also apply to disclosure under" Exemption 7. 120 Cong. Rec. at 17,033 (statement of Sen. Hart); see *id.* at 17,040 (memorandum letter of Sen. Hart); cf. *FBI* v. *Abramson*, 456 U.S. 615, 627 n.11 (1982) (discussing Senator Hart's role as "the sponsor of the 1974 amendment").

Exemption 6, in turn, has long been interpreted as applying only to individuals. This Court has emphasized that "Congress' primary purpose in enacting Exemption 6 was to protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information." *Department of State* v. *Washington Post Co.*, 456 U.S. 595, 599 (1982). Accordingly, the process of determining whether a disclosure would result in a "clearly unwarranted" invasion of personal privacy triggering the exemption "require[s] a balancing of the *individual's* right of privacy against"

the public interest in disclosure. *Department of the Air Force* v. *Rose*, 425 U.S. 352, 372 (1976) (emphasis added). That specific focus on the individual derives directly from Congress's declared purpose to avoid "*harm [to] the individual*" from unwarranted disclosure. *Washington Post Co.*, 456 U.S. at 599 (quoting *1966 House Report* 11); see S. Rep. No. 813, 89th Cong., 1st Sess. 9 (1965) (Exemption 6 is designed to "protect[] * * * an individual's private affairs from unnecessary public scrutiny.").

Exemption 6's focus on the interest of real persons was clearly established in 1974, when Congress incorporated Exemption 6's "personal privacy" protection into Exemption 7(C). By 1970, the leading treatise on administrative law and FOIA had concluded that "a corporation cannot claim 'personal privacy'" under Exemption 6 because the phrase "'personal privacy' always relates to individuals." Kenneth Culp Davis, *Administrative Law Treatise* § 3A.22, at 163-164 (1970 Supp.). Professor Davis explained that the APA's "definition of 'person'" was "irrelevant" in this context because Congress "d[id] not use that term" in Exemption 6. *Ibid.* (Congress used "the statutory language of 'personal privacy,'" not "the privacy of any person"); see John A. Hoglund & Jonathan Kahan, Note, *Invasion of Privacy and the Freedom of Information Act: Getman v. NLRB*, 40 Geo. Wash. L. Rev. 527, 540 (1972) (emphasizing that "the interest exemption 6 seeks to safeguard is that of individual privacy"); *id.* at 529-530 & nn.19-20 (examining legislative history).

Courts similarly emphasized that the "personal privacy" protected under Exemption 6 was limited to the privacy of individuals. Based on the "statute and its legislative history," lower courts had determined that

the exemption required a balancing of "the potential invasion of *individual* privacy" against "a public interest purpose for disclosure of [the] personal information." *Wine Hobby USA, Inc.* v. *IRS*, 502 F.2d 133, 136 & n.12 (3d Cir. 1974) (emphasis added) (quoting *Getman* v. *NLRB*, 450 F.2d 670, 677 n.24 (D.C. Cir. 1971)); accord *Rural Housing Alliance* v. *USDA*, 498 F.2d 73, 77 & n.13 (D.C. Cir. 1974) (Exemption 6 is "designed to protect individuals from public disclosure of intimate details of their lives"); *Getman*, 450 F.2d at 674 & n.10 (Exemption 6 protects "the right of privacy of affected individuals"); see also *Rose* v. *Department of the Air Force*, 495 F.2d 261, 269 (2d Cir. 1974) (The "statutory goal of Exemption Six" is "a workable compromise between individual rights 'and the preservation of public rights to Government information'") (citation omitted), aff'd, 425 U.S. 352 (1976).

This Court "can assume that Congress legislated against this background of law, scholarship, and history * * * when it amended Exemption 7(C)" in 1974. *National Archives & Records Admin.* v. *Favish*, 541 U.S. 157, 169 (2004). In fact, the Congressional Record demonstrates that the prevailing interpretation of "personal privacy" was apparent to Congress in 1974. After Senator Hart proposed Exemption 7(C) and emphasized that it would, if enacted, extend Exemption 6's "protection for personal privacy" into the law-enforcement-record context, 120 Cong. Rec. at 17,033, a colleague introduced into the record a decision expressly holding that "the right to privacy envisioned in [Exemption 6] is personal and cannot be claimed by a corporation or association." *Id.* at 17,045 (reprinting *Washington Research Project, Inc.* v. *HEW*, 366 F. Supp. 929, 937-938 (D.D.C. 1973) (holding that the identity of organizations, unlike the

"identity of * * * individuals," cannot be withheld under Exemption 6), aff'd in part on other grounds, 504 F.2d 238 (D.C. Cir. 1974)).

In the wake of the 1974 enactment of Exemption 7(C), Attorney General Edward Levi issued an interpretive memorandum concluding that Congress's use of "[t]he phrase 'personal privacy' [in Exemption 7(C)] pertains to the privacy interests of individuals" and "does not seem applicable to corporations or other entities." U.S. Dep't of Justice, *Attorney General's Memorandum on the 1974 Amendments to the Freedom of Information Act* 9 (1975) (*1975 FOIA Memorandum*). The memorandum, which this Court has repeatedly cited as a reliable interpretation of the 1974 amendments, see *Favish*, 541 U.S. at 169; *Abramson*, 456 U.S. at 622 n.5, further explained that Exemption 7(C) should be interpreted in light of "the body of court decisions" that interpret Exemption 6. See *1975 FOIA Memorandum* 9.[7]

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[7] Attorney General Levi's 1975 memorandum reflected an evolution in the Department of Justice's understanding of Exemption 6. In 1967, one year after Congress enacted FOIA, Attorney General Ramsey Clark described Exemption 6 as protecting "the privacy of any person" and stated that "the applicable definition of 'person,' which is found in section 2(b) of the Administrative Procedure Act, would include corporations and other organizations as well as individuals." U.S. Dep't of Justice, *Attorney General's Memorandum on the Public Information Section of the Administrative Procedure Act* 36-37 (1967) (*1967 FOIA Memorandum*). Attorney General Clark then qualified his statement by observing that Exemption 6 normally would protect "the privacy of individuals rather than of business organizations." *Id.* at 37.

That initial description of Exemption 6 was promptly criticized as premised on an erroneous view that the statute protected "the privacy of any person," even though Congress employed the phrase "personal privacy" and did "not use th[e] term" "person." Kenneth Culp Davis, *The Information Act: A Preliminary Analysis*, 34 U. Chi. L. Rev. 761, 799 (1967). Moreover, the Attorney General's description found no

3. In the more than 35 years since the enactment of Exemption 7(C), until the decision below, there was unanimity among courts and commentators that the "personal privacy" protections in Exemptions 6 and 7(C) apply only to individuals. The D.C. Circuit, which has jurisdiction of appeals from the district court that has universal jurisdiction over FOIA actions, see 5 U.S.C. 552(a)(4)(B), has repeatedly emphasized that "businesses themselves do not have protected privacy interests under Exemption 6." *Multi AG Media LLC* v. *USDA*, 515 F.3d 1224, 1228 (2008); see *Sims* v. *CIA*, 642 F.2d 562, 572 n.47 (D.C. Cir. 1980) ("Exemption 6 is applicable only to individuals."); *National Parks & Conservation Ass'n* v. *Kleppe*, 547 F.2d 673, 685 n.44 (D.C. Cir. 1976) ("The sixth exemption has not been extended to protect the privacy interests of businesses or corporations."). And in *Washington Post Co.* v. *DOJ*, 863 F.2d 96, 100 (D.C. Cir. 1988), the court concluded that Exemption 7(C) provides no privacy protection for "[i]nformation relating to business judgments and relationships." Those decisions reflect judicial recognition that both exemptions protect the same interest in "per-

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support in the legislative history cited in his analysis, which described Exemption 6 as protecting the "individual's right of privacy" and preventing "harm [to] the individual." *1967 FOIA Memorandum* 36 (quoting *1966 House Report* 11). No court subsequently endorsed this aspect of the Attorney General's analysis, and by 1974 courts and commentators had concluded that Exemption 6 protected individuals alone. See pp. 16-18, *supra*. In 1975, General Levi agreed with the uniform body of law and commentary and concluded that "[t]he phrase 'personal privacy' * * * does not seem applicable to corporations." *1975 FOIA Memorandum* 9.

sonal privacy,"[8] which does not encompass a purely corporate interest in confidentiality.[9]

Similarly, in 1981, then-Professor Scalia testified that "[p]erhaps the most significant feature" of the 1974 FOIA amendments to Exemption 7 was that they did not protect "what might be called associational or institutional privacy" from requests under FOIA for disclosure of investigatory records about "corporations, unions," and other "independent institutions." 1 *Freedom of Information Act: Hearings Before the Subcomm. on the Constitution of the Senate Comm. on the Judiciary*,

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[8] See, *e.g.*, *Forest Serv. Employees for Envtl. Ethics* v. *USFS*, 524 F.3d 1021, 1024 n.2 (9th Cir. 2008) ("[T]he only distinction between the balancing tests applied [by Exemptions 6 and 7(C)] is the 'magnitude of the public interest' required to override the respective privacy interests they protect."); *Horowitz* v. *Peace Corps*, 428 F.3d 271, 279 & n.2 (D.C. Cir. 2005) (analyzing Exemption 6 "privacy interest" based on Exemption 7(C) decisional law; explaining that "the difference between the standards for the two exemptions 'is of little import' except when analyzing 'the magnitude of the public interest that is required to override the respective privacy interests protected by the exemptions' ") (quoting *DoD*, 510 U.S. at 496 n.6); *FLRA* v. *Department of Veterans Affairs*, 958 F.2d 503, 510 (2d Cir. 1992) (explaining that the balance between personal privacy and any public interest in disclosure is different under Exemptions 6 and 7(C), but that the "degree of invasion to a privacy interest" necessary to trigger that balance is the same).

[9] Agency records concerning corporations will sometimes implicate "personal privacy" and therefore may be withheld on the ground that disclosure could constitute an unwarranted invasion of the privacy interests of an individual. For instance, Exemptions 6 and 7(C) "appl[y] to financial information in business records when the business is individually owned or closely held and 'the records would necessarily reveal at least a portion of the owner's personal finances.' " *Multi AG Media LLC*, 515 F.3d at 1228-1229 (Exemption 6) (citation omitted); see *Consumer's Checkbook* v. *HHS*, 554 F.3d 1046, 1051 (D.C. Cir. 2009) (Exemption 6), cert. denied, No. 09-538 (Apr. 19, 2010).

97th Cong., 1st Sess. 957-958 (1981). The Exemption 7 amendments, he explained, gave no "protection [to] those institutions' deliberate and consultative processes" and enabled FOIA requesters to "impair[]" the "privacy * * * of [such] institutions." *Id.* at 958. See also 1 Richard J. Pierce, Jr., *Administrative Law Treatise* § 5.12, at 373 (2010) (Exemption 6 "does not extend to information concerning corporations" because it "provides a qualified exemption only for 'personal privacy.'").

4. The structure of FOIA's other exemptions further confirms that Exemption 7(C) protects only the privacy of individuals. Corporations have a legitimate interest in preserving the secrecy of certain information, and Congress addressed the need to do so through a specific, circumscribed exemption. Congress enacted Exemption 4 to protect from mandatory disclosure "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. 552(b)(4). Congress's enactment of an exemption for commercial information (Exemption 4) at the same time as its adoption of a general exemption for "personal privacy" (Exemption 6) demonstrates that its subsequent incorporation of "personal privacy" into Exemption 7's law-enforcement context was not intended to protect organizations with business interests.

B. The court of appeals did not dispute that the "ordinary" meaning of "personal privacy" excludes corporate secrecy. App., *infra*, 12a. It concluded instead that Exemption 7(C) diverges from that normal understanding because the APA defines the term "person" to include corporations and that "defined term" is "the root from which the statutory word at issue [(personal)] is derived." *Ibid.* That analysis, which led the court to

conclude that "FOIA's text unambiguously" shows that corporations possess "personal privacy," *id.* at 13a, does not withstand scrutiny.

1. As Professor Davis explained, the statutory definition of "person" is "irrelevant." See p. 17, *supra*. The term "person" does not appear in Exemption 7(C), which instead uses the undefined phrase "personal privacy." Had Congress intended in Exemption 7(C) to invoke the APA's definition of "person" and protect the "privacy of a person," it would have used words to that effect. Cf. 5 U.S.C. 552(b)(4) (protecting "trade secrets or commercial or financial information obtained from a person"), 552(b)(7)(B) (protecting law-enforcement records that "would deprive a person of a right to a fair trial or an impartial adjudication").

The linguistic relationship between the words "person" and "personal"—*i.e.*, that the former is the "root" of the latter, App., *infra*, 12a—cannot itself support the Third Circuit's holding.[10] When Congress specifically intends to extend a statutory definition to such "variants" of a defined term, it has enacted definitional language that reflects this intent. See, *e.g.*, 15 U.S.C. 3802(f) (extending definition to "any variant" of defined term); 17 U.S.C. 101, 111(f); 33 U.S.C. 1122; 42 U.S.C. 7703(1) and (3); 45 U.S.C. 702(10), 802(5). And in the absence of such a provision, the meaning of such a "variant," as of any other term, "is a creature not of definitional possibilities but of statutory context." *Brown* v. *Gardner*, 513 U.S. 115, 118 (1994). Indeed, "it is a 'fundamental principle of statutory construction * * * that

[10] Congress's use of the word "personnel" in "personnel * * * files," 5 U.S.C. 552(b)(6), for instance, shares the same "root" as "personal," but "personnel," unlike the APA definition of "person," cannot encompass a corporation.

the meaning of a word cannot be determined in isolation, but must be drawn from the context in which it is used." *Textron Lycoming Reciprocating Engine Div.* v. *United Auto. Workers*, 523 U.S. 653, 657 (1998) (*Textron*) (citations omitted).

Viewed in light of that principle, the error of the Third Circuit's decision becomes clear. The phrase "personal privacy" must be understood as a textual unit. See *Textron*, 523 U.S. at 656-657 (explaining that the term "for" cannot be properly understood in isolation from "the meaning of '[s]uits for violation of contracts'"). And the phrase must additionally "be read in [its] context and with a view to [its] place in the overall statutory scheme.'" *FDA* v. *Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 133 (2000) (citation omitted). Given its context and purpose in the overall framework of FOIA, the term "personal privacy" refers only to the interest of individuals, and not of corporations. See pp. 14-19, *supra*.

2. The logical implications of the Third Circuit's analysis also underscore the flaws in its decision. The APA defines "person" to include not only an individual and a corporation but also a "public * * * organization other than [a federal government] agency." 5 U.S.C. 551(2). Foreign, state, and local governments and governmental entities therefore are deemed "persons" under the APA and FOIA.[11] The Third Circuit's rationale

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[11] See *Maryland Dep't of Human Res.* v. *HHS*, 763 F.2d 1441, 1445 n.1 (D.C. Cir. 1985); see also *Kansas* v. *United States*, 249 F.3d 1213, 1221-1222 (10th Cir. 2001); *Stone* v. *Export-Import Bank*, 552 F.2d 132, 136-137 (5th Cir. 1977) (foreign governmental agency); cf. *e.g.*, *Bowen* v. *Massachusetts*, 487 U.S. 879, 892-893 (1988) (concluding that a State was a "person suffering legal wrong because of agency action," 5 U.S.C. 702); 5 U.S.C. 701(b)(2) (adopting definition of "person" in 5 U.S.C.

would entitle all such entities to "personal privacy" under Exemption 7(C). It would be exceedingly difficult to identify the parameters of a government agency's so-called "personal privacy," and still more to determine whether disclosure would "constitute an unwarranted invasion" of that privacy, 5 U.S.C. 552(b)(7)(C), by balancing this wholly non-intuitive privacy interest against the public interest in disclosure. Such an endeavor would place federal agencies and the courts in uncharted waters, and there is no reason to believe that Congress intended that extraordinary result.

The court of appeals asserted that, like an individual, a corporation can suffer "public embarrassment, harassment, and stigma." App., *infra*, 14a n.5. But beyond this attempted personification of an entity whose very existence is a legal construct, the court of appeals provided no insight into how a corporation's experience of "personal privacy" is analogous to that of an individual. FOIA Exemption 7(C) protects the privacy of a corporation's employees, and Exemption 4 protects the corporation's confidential commercial information. The FCC properly withheld such information from disclosure under both provisions. *Id.* at 40a-43a. There is no basis for withholding the balance of the FCC's investigative file in the name of a freestanding concept of corporate dignity or autonomy or other attribute of "personal privacy" as that term is understood with reference to human beings.

551(2)). Congress recognized that foreign governments are "persons" that could invoke FOIA, cf. 5 U.S.C. 552(a)(3)(A), and amended FOIA to ensure that the U.S. intelligence community would not produce agency records in response to FOIA requests from such "persons." See 5 U.S.C. 552(a)(3)(E).

3. Finally, the court of appeals erred in concluding that, even if "Exemption 6 applies only to individuals," the term "personal privacy" in Exemption 7(C) properly extends to corporations. App., *infra*, 13a. The court indicated that its understanding of the phrase "personal privacy" would apply uniformly to both provisions but that the separate "phrase 'personnel and medical files'" in Exemption 6 might limit that exemption "to individuals because only individuals (and not corporations) may be the subjects of such files." *Ibid.* That distinction does not withstand analysis.

The disclosure of personnel and medical files may reveal information about corporations and their internal affairs as well as about individuals. Such files, for example, may disclose whether a company discriminated against its employees or has a pattern of providing substandard medical care. Moreover, Exemption 6 applies to individuals who are not the subject of the specific files. The exemption concerns records on an individual that can be "identified as applying to that individual" and therefore can implicate her privacy interests; it does not "turn upon the label of the file" itself. *Washington Post Co.*, 456 U.S. at 601-602 (citation omitted); cf. *Favish*, 541 U.S. at 166 (explaining that Exemption 7(C) protects individuals whose personal information is in law-enforcement files by "mere happenstance"). The phrase "personnel and medical files" therefore cannot justify limiting Exemption 6 to the privacy of individuals if "personal privacy" encompasses corporate privacy interests. Both Exemptions 6 and 7(C) protect only individuals because each includes the same term—"personal privacy"—imposing that limitation. Cf. *Reporters Committee*, 489 U.S. at 768-770 (applying Exemption 6 precedents to analyze an "invasion of privacy" under Ex-

emption 7(C)).

In sum, the Third Circuit's Exemption 7(C) ruling failed to examine the context of FOIA's exemptions, made no effort to explore the lengthy history behind Exemption 6 and 7(C), and offered no convincing textual rationale for its holding. Moreover, the court of appeals did not dispute that its extension of "personal privacy" protection to a corporation was in tension with the decisions of the D.C. Circuit; it instead stated that it "decline[d] to follow" the D.C. Circuit's cases "to the extent that [they] can be read to conflict with [the Third Circuit's] textual analysis" of "personal privacy." App., *infra*, 15a n.6. Review is warranted to correct the court of appeals' unprecedented departure from 35 years of uniform FOIA jurisprudence and commentary interpreting "personal privacy" as limited to individuals.

II. THE COURT OF APPEALS' RULING THREATENS SIGNIFICANT ADVERSE CONSEQUENCES.

The Third Circuit's decision threatens to disrupt the government's administration of FOIA—under which hundreds of thousands of request are filed annually—by dramatically expanding the scope of "personal privacy" interests for FOIA officers to evaluate in responding to requests.

By declaring that a corporation (presumably like any APA "person") possesses "personal privacy" rights under Exemption 7(C), the court of appeals has altered a tenet of FOIA law under which the government has operated for decades. Federal agencies routinely collect information from companies as a result of law-enforcement or regulatory investigations. But agencies have never considered, in processing FOIA requests, whether this information invades so-called corporate privacy in-

terests. Instead, agencies have processed FOIA requests pursuant to the uniform body of jurisprudence confirming that "personal privacy" belongs only to individuals and not to corporations or other entities. The court of appeals' ruling thus throws longstanding FOIA practices and procedures into doubt on a government-wide basis. The decision may require numerous significant changes in the administration of FOIA in order to accommodate a hitherto unknown set of privacy interests.[12]

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[12] For example, an agency processing FOIA requests under its governing regulations not infrequently must determine whether a FOIA exemption applies to the specific documents requested. See, *e.g.*, 10 C.F.R. 9.17(a), 9.25(f) (Nuclear Regulatory Commission); 10 C.F.R. 1004.7(a) and (b)(1) (Department of Energy); 12 C.F.R. 4.12(a) and (b) (Office of the Comptroller of the Currency); 29 C.F.R. 102.117(a)(1), (c)(2)(iii) and (v) (NLRB); 45 C.F.R. 5.33(a), 5.61 (HHS). Under the Third Circuit's holding, an agency making this determination now must analyze whether disclosure would implicate a corporation's privacy interest. And even when an exemption does apply and FOIA does not compel disclosure, an agency's decision whether to exercise discretion to release agency records may turn on the agency's evaluation of the interests protected by FOIA's exemptions. See, *e.g.*, 10 C.F.R. 9.25(f) (authorizing discretionary release of records that are subject to a FOIA exemption if disclosure "will not be contrary to the public interest and will not affect the rights of any person"); 29 C.F.R. 102.117(a)(1) (authorizing discretionary release of certain records if "disclosure would not foreseeably harm an interest protected by a FOIA exemption"); 45 C.F.R. 5.2 (stating general policy of providing "the fullest responsible disclosure consistent with" the need for confidentiality "recognized in [FOIA]" and "the legitimate interests of organizations or persons * * * affected by [the] release"). But cf. 10 C.F.R. 1004.1 (authorizing discretionary release when agency "determines that such disclosure is in the public interest"); 12 C.F.R. 4.12(c) (authorizing discretionary release on a "case-by-case basis").

In this case, for instance, the FCC's regulations "outline[]" the "underlying policy considerations" justifying withholding under each

The new consideration of "corporate personal privacy" likely will also result in the withholding of agency records to which the public should have access, including records documenting corporate malfeasance. At the least, the creation of this new category of privacy interests will increase the burden on agencies of processing and potentially litigating FOIA requests. The decision will undoubtedly spawn objections to FOIA disclosure from companies (or other "persons") that desire the government's investigation of their possible malfeasance to remain secret. And conversely, the decision will generate a new class of FOIA litigation by requesters seeking to restrict the as-yet-undefined category of "personal privacy" held by corporations.

In addition, the new and significant tension between Third Circuit and D.C. Circuit precedent creates especial problems with respect to FOIA litigation. Suits to compel an agency to disclose documents under FOIA may always be brought in the D.C. District Court. 5 U.S.C. 552(a)(4)(B). A FOIA requester seeking agency records that concern a corporation may therefore bring a FOIA suit that will be governed by D.C. Circuit precedent, which does not recognize corporate

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FOIA exemption (*e.g.*, "personal privacy") and specify that, when an exemption authorizes the Commission to withhold the requested records, the Commission "will weigh [such] policy considerations favoring non-disclosure" against the reasons favoring disclosure. 47 C.F.R. 0.457 and (g)(3), 0.461(f)(4). If an agency decision to disclose documents fails to analyze the interests at stake as specified in such regulations, its disclosure order may be set aside on APA review as "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law," 5 U.S.C. 706(2)(A). In this case, the court of appeals directed the Commission to evaluate AT&T's purported interest in "personal privacy" under the Commission's regulations. See App., *infra*, 7a & n.2, 15a-16a.

"personal privacy" interests. Reverse-FOIA actions under the APA, in turn, may normally be brought where the plaintiff resides or has its principal place of business. See 28 U.S.C. 1391(e) (district court fora); 28 U.S.C. 2343 (court of appeals fora for Hobbs Act cases). Any corporation or entity having a principal place of business in the Third Circuit (which includes Delaware, New Jersey, and Pennsylvania) may therefore elect a forum for a reverse-FOIA action in which the Third Circuit's decision would be binding precedent. As a result, an agency attempting to comply with FOIA will have no way of knowing in advance in which judicial forum—or fora if simultaneous suits are filed—it must defend its decision or which lower court precedents will govern that defense, as this case itself reflects. See p. 8 note 4, *supra* (discussing CompTel's FOIA action in the District of Columbia). The Third Circuit's unprecedented decision will therefore impose substantial legal uncertainty on federal agencies attempting to process vast volumes of FOIA requests.

Certiorari is warranted to restore the interpretation of "personal privacy" that has governed Exemption 7(C) since its enactment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

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