SUPREME COURT OF THE UNITED STATES

No. 02–1377

BUCK DOE, PETITIONER *v.* ELAINE L. CHAO, SECRETARY OF LABOR

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

[February 24, 2004]

JUSTICE GINSBURG, with whom JUSTICE STEVENS and JUSTICE BREYER join, dissenting.

In this Privacy Act suit brought under 5 U. S. C. §552a(g)(1)(D), the Government concedes the alleged violation and does not challenge the District Court's finding that the agency in question (the Department of Labor) acted in an intentional or willful manner. Tr. of Oral Arg. 35; Brief for Respondent (I). Nor does the Government here contest that Buck Doe, the only petitioner before us, suffered an "adverse effect" from the Privacy Act violation. The case therefore cleanly presents a sole issue for this Court's resolution: Does a claimant who has suffered an "adverse effect"—in this case and typically, emotional anguish—from a federal agency's intentional or willful Privacy Act violation, but has proved no "actual damages" beyond psychological harm, qualify as "a person entitled to recovery" within the meaning of §552a(g)(4)(A)? In accord with Circuit Judge Michael, who disagreed with the Fourth Circuit's majority on the need to show actual damages, I would answer that question yes.

Section 552a(g)(4)(A) affords a remedy for violation of a Privacy Act right safeguarded by §552a(g)(1)(C) or (D). The words "a person entitled to recovery," as used in §552a(g)(4)(A)'s remedial prescription, are most sensibly read to include anyone experiencing an "adverse effect" as

a consequence of an agency's intentional or willful commission of a Privacy Act violation of the kind described in §552a(g)(1)(C) or (D). The Act's text, structure, and purpose warrant this construction, under which Doe need not show a current pecuniary loss, or "actual damages" of some other sort, to recover the minimum award of $1,000, attorney's fees, and costs.

I

Section 552a(g)(4) provides:

> "In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—
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> "(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and
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> "(B) the costs of the action together with reasonable attorney fees as determined by the court."

The opening clause of §552a(g)(4) prescribes two conditions on which liability depends. *First*, the claimant's suit must lie under §552a(g)(1)(C) or (D); both provisions require an agency action "adverse" to the claimant. Section 552a(g)(1)(C) authorizes a civil action when an agency "fails to maintain [a] record concerning [an] individual with [the] accuracy, relevance, timeliness, and completeness" needed to determine fairly "the qualifications, character, rights, or opportunities of, or benefits to the individual," if the agency's lapse yields a "determination . . . *adverse to the individual*." (Emphasis added.) Section 552a(g)(1)(D) allows a civil action when an agency "fails to comply with [a] provision of [§552a], or [a] rule promul-

gated thereunder, in such a way as to have *an adverse effect on an individual*." (Emphasis added.) *Second*, the agency action triggering the suit under §552a(g)(1)(C) or (D) must have been "intentional or willful." §552a(g)(4). If those two liability-determining conditions are satisfied (suit under §552a(g)(1)(C) or (D); intentional or willful conduct), the next clause specifies the consequences: "[T]he United States shall be liable to the individual in an amount equal to the sum of" the recovery allowed under §552a(g)(4)(A) and the costs and fees determined under §552a(g)(4)(B).

The terms "actual damages" and "person entitled to recovery" appear only in the text describing the relief attendant upon the agency's statutory dereliction; they do not appear in the preceding text describing the conditions on which the agency's liability turns. Most reasonably read, §552a(g)(4)(A) does not wend back to add "actual damages" as a third liability-determining element. See *Davis* v. *Michigan Dept. of Treasury,* 489 U. S. 803, 809 (1989) ("It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.").

Nor, when Congress used different words, here "actual damages sustained by the individual" and "a person entitled to recovery," should a court ordinarily equate the two phrases. Had Congress intended the meaning that the Government urged upon this Court, one might have expected the statutory instruction to read, not as it does: "actual damages . . . but in no case shall a person entitled to recovery receive less than . . . $1,000." Instead, Congress more rationally would have written: "actual damages . . . but in no case shall a person who proves such damages [in any amount] receive less than $1,000." Cf. *Barnhart* v. *Sigmon Coal Co.,* 534 U. S. 438, 454 (2002) ("'We refrain from concluding here that the differing language in the two subsections has the same meaning in each.

We would not presume to ascribe this difference to a simple mistake in draftsmanship.'" (quoting *Russello* v. *United States,* 464 U. S. 16, 23 (1983))). Just as the words "person entitled to recovery" suggest greater breadth than "individual [who has sustained] actual damages," so the term "recovery" ordinarily encompasses more than "'get[ting] or win[ning] back,'" Brief for Respondent 26 (quoting Webster's Third New International Dictionary 1898 (1966)). "Recovery" generally embraces "[t]he obtaining of a right to something (esp. damages) by a judgment or decree" and "[a]n amount awarded in or collected from a judgment or decree." Black's Law Dictionary 1280 (7th ed. 1999). So comprehended, "recovery" here would yield a claimant who suffers an "adverse effect" from an agency's intentional or willful §552a(g)(1)(C) or (D) violation a minimum of $1,000 plus costs and attorney's fees, whether or not the claimant proves "actual damages."

"It is 'a cardinal principle of statutory construction' that 'a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant.'" *TRW Inc.* v. *Andrews,* 534 U. S. 19, 31 (2001) (quoting *Duncan* v. *Walker,* 533 U. S. 167, 174 (2001) (internal quotation marks omitted)). The Court's reading of §552a(g)(4) is hardly in full harmony with that principle. Under the Court's construction, the words "a person entitled to recovery" have no office, see *ante*, at 8–9, n. 8, and the liability-determining element "adverse effect" becomes superfluous, swallowed up by the "actual damages" requirement.[1] Further, the

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[1]The Court interprets "the reference in §552a(g)(1)(D) to 'adverse effect' . . . as a term of art identifying a potential plaintiff who satisfies the injury-in-fact and causation requirements of Article III standing, and who may consequently bring a civil action without suffering dismissal for want of standing to sue." *Ante*, at 9. Under the Court's reading, §552a(g)(1)(D) "open[s] the courthouse door" to individuals

Court's interpretation renders the word "recovery" nothing more than a synonym for "actual damages," and it turns the phrase "shall be liable" into "may be liable." In part because it fails to "'give effect . . . to every clause and word'" Congress wrote, *United States* v. *Menasche,* 348 U. S. 528, 538–539 (1955) (quoting *Montclair* v. *Ramsdell,* 107 U. S. 147, 152 (1883)), the Court's reading of §552a(g)(4) is at odds with the interpretation prevailing in the Federal Circuits.

I would adhere to the interpretation of the key statutory terms advanced by most courts of appeals. As interpreted by those courts, §552a(g)(4) authorizes a minimum $1,000 award that need not be hinged to proof of actual damages. See *Orekoya* v. *Mooney*, 330 F. 3d 1, 5 (CA1 2003) (§552a(g)(4) makes available "[b]oth 'actual damages sustained by the individual' and statutory minimum damages of $1,000"); *Wilborn* v. *Department of Health and Human Servs.*, 49 F. 3d 597, 603 (CA9 1995) ("statutory minimum of $1,000" under §552a(g)(4)(A) meant to provide plaintiffs "with 'no provable damages' the incentive to sue" (quoting *Fitzpatrick* v. *IRS,* 665 F. 2d 327, 330 (CA11 1982))); *Waters* v. *Thornburgh*, 888 F. 2d 870, 872 (CADC 1989) (If a plaintiff establishes that she suffered an "adverse effect" from an "intentional or willful" violation of §552a(e)(2), "the plaintiff is entitled to the greater of $1,000 or the actual damages sustained." (internal quotation marks omitted)); *Johnson* v. *Department of Treasury, IRS*, 700 F. 2d 971, 977, and n. 12 (CA5 1983) (Even without proof of actual damages, "[t]he statutory minimum of $1,000 [under §552a(g)(4)(A)], of course, is recoverable.");

"adversely affected" by an intentional or willful agency violation of the Privacy Act, *ante*, at 10, while §552a(g)(4) bars those individuals from recovering anything if they do not additionally show actual damages. See *infra*, at 8–9. In other words, the open door for plaintiffs like Buck Doe is an illusion: what one hand opens, the other shuts.

Fitzpatrick, 665 F. 2d, at 331 ("Because [the plaintiff] proved only that he suffered a general mental injury from the disclosure, he could not recover beyond the statutory $1,000 minimum damages, costs, and reasonable attorneys' fees [under §552a(g)(4)]."); cf. *Quinn* v. *Stone*, 978 F. 2d 126, 131 (CA3 1992) ("adverse effect" but not "actual damages" is a "necessary" element "to maintain a suit for damages under the catch-all provision of 5 U. S. C. §552a(g)(1)(D)" (internal quotation marks omitted)); *Parks* v. *IRS*, 618 F. 2d 677, 680, 683 (CA10 1980) (plaintiffs seeking "the award of a minimum of $1,000 damages together with attorney's fees" under §552a(g)(4) state a claim by alleging the agency acted intentionally or willfully when it illegally disclosed protected information, causing "psychological damage or harm"). But see *Hudson* v. *Reno*, 130 F. 3d 1193, 1207 (CA6 1997) ("A final basis for affirming the District Court's decision with respect to [the plaintiff]'s claims under the Privacy Act is her failure to show 'actual damages,' as required by [§552a(g)(4)]."), overruled in part on other grounds, *Pollard* v. *E. I. du Pont de Nemours & Co.,* 532 U. S. 843 (2001); *Molerio* v. *FBI*, 749 F. 2d 815, 826 (CADC 1984) ("This cause of action under [§§552a(g)(1)(C) and (g)(4)(A)] requires, however, not merely an intentional or willful failure to maintain accurate records, but also 'actual damages sustained' as a result of such failure.").

The view prevailing in the Federal Circuits is in sync with an Office of Management and Budget (OMB) interpretation of the Privacy Act published in 1975, the year following the Act's adoption. Congress instructed OMB to "develop guidelines and regulations for the use of agencies in implementing the provisions of [the Privacy Act]." §6, 88 Stat. 1909. Just over six months after the Act's adoption, OMB promulgated Privacy Act Guidelines. 40 Fed. Reg. 28949 (1975). The Guidelines speak directly to the issue presented in this case. They interpret

§§552a(g)(1)(C), (D), and (g)(4) to convey:

> "When the court finds that an agency has acted willfully or intentionally in violation of the Act in such a manner as to have an adverse effect upon the individual, the United States will be required to pay
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> "Actual damages or $1,000, whichever is greater
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> "Court costs and attorney fees." *Id.,* at 28970.

The Guidelines have been amended several times since 1975, but OMB's published interpretation of §552a(g)(4) has remained unchanged. See *id.,* at 56741; 44 Fed. Reg. 23138 (1979); 47 Fed. Reg. 21656 (1982); 48 Fed. Reg. 15556 (1983); 49 Fed. Reg. 12338 (1984); 50 Fed. Reg. 52738 (1985); 52 Fed. Reg. 12990 (1987); 54 Fed. Reg. 25821 (1989); 58 Fed. Reg. 36075 (1993); 59 Fed. Reg. 37914 (1994); 61 Fed. Reg. 6435 (1996).[2]

II

The purpose and legislative history of the Privacy Act, as well as similarly designed statutes, are in harmony with the reading of §552a(g)(4) most federal judges have found sound. Congress sought to afford recovery for "*any* damages" resulting from the "willful or intentional" viola-

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[2] In briefing this case, the Government noted a communication to the Office of the Solicitor General from an unnamed OMB official conveying that OMB does not now "interpret its Guideline to require the payment of $1000 to plaintiffs who have sustained no actual damages from a violation of the Act." Brief for Respondent 47–48. Such an informal communication cannot override OMB's contemporaneous, long-published construction of §552a(g)(4); cf. *Bowen* v. *Georgetown Univ. Hospital,* 488 U. S. 204, 212 (1988) ("We have never applied [deference] to agency litigating positions that are wholly unsupported by regulations, rulings, or administrative practice."); *INS* v. *Cardoza-Fonseca,* 480 U. S. 421, 446, n. 30 (1987) ("An agency interpretation of a relevant provision which conflicts with the agency's earlier interpretation is 'entitled to considerably less deference,' than a consistently held agency view." (quoting *Watt* v. *Alaska,* 451 U. S. 259, 273 (1981))).

tion of "any individual's rights under th[e] Act." §2(b)(6), 88 Stat. 1896 (emphasis added). Privacy Act violations commonly cause fear, anxiety, or other emotional distress—in the Act's parlance, "adverse effects." Harm of this character must, of course, be proved genuine.[3] In cases like Doe's, emotional distress is generally the only harm the claimant suffers, *e.g.*, the identity theft apprehended never materializes.[4]

It bears emphasis that the Privacy Act does not authorize injunctive relief when suit is maintained under §552a(g)(1)(C) or (D). Injunctive relief, and attendant counsel fees and costs, are available under the Act in two categories of cases: suits to amend a record, §552a(g)(2),

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[3] Circuit Judge Michael, who dissented from the Fourth Circuit's judgment as to petitioner Buck Doe but agreed with his colleagues on this point, noted: "[A]dverse effects must be proven rather than merely presumed . . . ." 306 F. 3d 170, 187 (2002) (opinion concurring in part and dissenting in part). Doe had declared in his affidavit that "no amount of money could compensate [him] for worry and fear of not knowing when someone would use [his] name and Social Security number to establish credit, a new identity, change [his] address, use [his] checking account or even get credit cards." App. 15. Doe's several co-plaintiffs, against whom summary judgment was entered and unanimously affirmed on appeal, made no such declaration.

[4] The Court asserts that Doe's reading of §552a(g)(4)(A) "is at odds with the traditional understanding that tort recovery requires . . . proof of some harm for which damages can reasonably be assessed." *Ante*, at 6. Although that understanding applies to common negligence actions, see W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts 165 (5th ed. 1984) (cited *ante*, at 6), it is not the black letter rule for privacy actions. See 3 Restatement (Second) of Torts §652H, p. 401 (1976) ("One who has established a cause of action for invasion of his privacy is entitled to recover damages for . . . his mental distress proved to have been suffered if it is of a kind that normally results from such an invasion . . . ."); *id.*, at 402, Comment *b* ("The plaintiff may also recover damages for emotional distress or personal humiliation that he proves to have been actually suffered by him, if it is of a kind that normally results from such an invasion [of privacy] and it is normal and reasonable in its extent.").

and suits for access to a record, §552a(g)(3). But for cases like Doe's, brought under §552a(g)(1)(C) or (D), see *supra*, at 2, only monetary relief is available. Hence, in the Government's view, if a plaintiff who sues under §552a(g)(1)(C) or (D) fails to prove actual damages, "he will not be entitled to attorney's fees." Brief for Respondent 39 ("[T]he Privacy Act permits an award only of 'reasonable' attorney's fees. The most critical factor in determining the reasonableness of an attorney fee award is the degree of success obtained. For a plaintiff who enjoys no success in prosecuting his claim, 'the only reasonable fee' is 'no fee at all.'" (quoting *Farrar* v. *Hobby,* 506 U. S. 103, 115 (1992)) (citations omitted)).

The Court's reading of §552a(g)(4) to require proof of "actual damages," however small, in order to gain the $1,000 statutory minimum, ironically, invites claimants to arrange or manufacture such damages. The following colloquy from oral argument is illustrative.

> Court: "Suppose . . . Doe said, 'I'm very concerned about the impact of this on my credit rating, so I'm going to [pay] $10 to a . . . credit reporting company to find out whether there's been any theft of my identity, $10.' Would there then be a claim under this statute for actual damages?"
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> Counsel for respondent Secretary of Labor Chao: "[T]here would be a question . . . whether that was a reasonable response to the threat, but in theory, an expense like that could qualify as pecuniary harm and, thus, is actual damages." Tr. of Oral Arg. 43 (internal quotation marks added).

Indeed, the Court itself suggests that "fees associated with running a credit report" or "the charge for a Valium prescription" might suffice to prove "actual damages." *Ante*, at 11, n. 10. I think it dubious to insist on such readily created costs as essential to recovery under §552a(g)(4).

Nevertheless, the Court's examples of what might qualify as "actual damages" indicate that its disagreement with the construction of the Act prevailing in the Circuits, see *supra*, at 5–6, is ethereal.

The Government, although recognizing that "actual damages" may be slender and easy to generate, fears depletion of the federal fisc were the Court to adopt Doe's reading of §552a(g)(4). Brief for Respondent 22–23, n. 5. Experience does not support those fears. As the Government candidly acknowledged at oral argument: "[W]e have not had a problem with enormous recoveries against the Government up to this point." Tr. of Oral Arg. 35. No doubt mindful that Congress did not endorse massive recoveries, the District Court in this very case denied class-action certification, see App. to Pet. for Cert. 65a, and other courts have similarly refused to certify suits seeking damages under §552a(g)(4) as class actions. See, *e.g.*, *Schmidt* v. *Department of Veterans Affairs*, 218 F. R. D. 619, 637 (ED Wis. 2003) (denying class certification on ground that each individual would have to prove he "suffered an adverse effect as a result of the [agency]'s failure to comply with [the Act]"); *Lyon* v. *United States*, 94 F. R. D. 69, 76 (WD Okla. 1982) ("In Privacy Act damages actions, questions affecting only individual members greatly outweigh questions of law and fact common to the class."). Furthermore, courts have disallowed the runaway liability that might ensue were they to count every single wrongful disclosure as a discrete basis for a $1,000 award. See, *e.g.*, *Tomasello* v. *Rubin*, 167 F. 3d 612, 618 (CADC 1999) (holding that 4,500 "more-or-less contemporaneous transmissions of the same record" by facsimile constituted one "act," entitling the plaintiff to a single recovery of $1,000 in damages (internal quotation marks omitted)).

The text of §552a(g)(4), it is undisputed, accommodates two concerns. Congress sought to give the Privacy Act

teeth by deterring violations and providing remedies when violations occur. At the same time, Congress did not want to saddle the Government with disproportionate liability. The Senate bill advanced the former concern; the House bill was more cost conscious. The House bill, as reported by the Committee on Government Operations and passed by the House, provided:

> "In any suit brought under the provisions of subsection (g)(1)(B) or (C) of this section in which the court determines that the agency acted in a manner which was willful, arbitrary, or capricious, the United States shall be liable to the individual in an amount equal to the sum of—
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> "(A) actual damages sustained by the individual as a result of the refusal or failure; and
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> "(B) the costs of the action together with reasonable attorney fees as determined by the court." H. R. 16373, 93d Cong., 2d Sess., §552a(g)(3) (1974), reprinted in Legislative History of the Privacy Act of 1974: Source Book on Privacy, p. 288 (Joint Comm. Print compiled for the Senate and House Committees on Government Operations) (hereinafter Source Book).

The Senate bill, as amended and passed, provided:

> "The United States shall be liable for the actions or omissions of any officer or employee of the Government who violates the provisions of this Act, or any rule, regulation, or order issued thereunder in the same manner and to the same extent as a private individual under like circumstances to any person aggrieved thereby in an amount equal to the sum of—
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> "(1) any actual and general damages sustained by any person but in no case shall a person entitled to recovery receive less than the sum of $1,000; and
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> "(2) in the case of any successful action to enforce

> any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court." S. 3418, 93d Cong., 2d Sess., §303(c) (1974), reprinted in Source Book 371.

The provision for monetary relief ultimately enacted, §552a(g)(4), represented a compromise between the House and Senate versions. The House bill's culpability standard ("willful, arbitrary, or capricious"), not present in the Senate bill, accounts for §552a(g)(4)'s imposition of liability only when the agency acts in an "intentional or willful" manner. That culpability requirement affords the Government some insulation against excessive liability.[5] On the other hand, the enacted provision adds to the House allowance of "actual damages" only, the Senate specification that "in no case shall a person entitled to recovery receive less than the sum of $1,000 . . . ." §552a(g)(4)(A). The $1,000 minimum, as earlier developed, *supra*, at 7–8, enables individuals to recover for genuine, albeit nonpocketbook harm, and gives persons thus adversely af-

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[5] Petitioner Doe recognizes that "the 'intentional [or] willful' level of culpability a Privacy Act plaintiff must demonstrate is a formidable barrier." Brief for Petitioner 29; Reply Brief 1 ("Congress and commentators agree [the 'intentional or willful' qualification] is a formidable obstacle to recovery under the Act."). In this Court and case, as earlier noted, *supra*, at 1, the Government does not challenge the finding that the Department of Labor's violation of the Act was "intentional or willful." Tr. of Oral Arg. 35; see App. to Pet. for Cert. 96a–97a (Characterizing the Department of Labor's actions as "intentional and willful," the Magistrate Judge observed: "The undisputed evidence shows that the Department took little, if any, action to see that it complied with the Privacy Act. . . . Several of the Administrative Law Judges responsible for sending out the multi-captioned hearing notices testified that they had received no training on the Privacy Act."). Because the "intentional or willful" character of the agency's conduct is undisputed here, the Court is not positioned to give that issue the full consideration it would warrant were the issue the subject of dispute.

fected an incentive to sue to enforce the Act.[6]

Congress has used language similar to §552a(g)(4) in other privacy statutes. See 18 U. S. C. §2707(c);[7] 26 U. S. C. §6110(j)(2);[8] 26 U. S. C. §7217(c) (1976 ed., Supp. V).[9] These other statutes have been understood to permit

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[6]The Court places great weight on Congress' establishment of a Privacy Protection Study Commission, and its charge to the Commission to consider, among many other things, "whether the Federal Government should be liable for general damages incurred by an individual as the result of a willful or intentional violation of [§552a(g)(1)(C) or (D)]." *Ante*, at 7 (internal quotation marks omitted). This less than crystalline reference to the Commission, however, left unaltered §552a(g)(4)(A)'s embracive term "a person entitled to recovery," words the Court must read out of the statute to render its interpretation sensible. See *ante*, at 8–9, n. 8.

[7]Section 2707(c), concerning unauthorized access to electronic communications, provides:

"The court may assess as damages in a civil action under this section the sum of the actual damages suffered by the plaintiff and any profits made by the violator as a result of the violation, *but in no case shall a person entitled to recover receive less than the sum of $1,000*. If the violation is willful or intentional, the court may assess punitive damages. In the case of a successful action to enforce liability under this section, the court may assess the costs of the action, together with reasonable attorney fees determined by the court." (Emphasis added.)

[8]Section 6110(j)(2) provides:

"In any suit brought under the provisions of paragraph (1)(A) in which the Court determines that an employee of the Internal Revenue Service intentionally or willfully failed to delete in accordance with subsection (c), or in any suit brought under subparagraph (1)(B) in which the Court determines that an employee intentionally or willfully failed to act in accordance with subsection (g) or (i)(4)(B), the United States shall be liable to the person in an amount equal to the sum of—

"(A) actual damages sustained by the person *but in no case shall a person be entitled to receive less than the sum of $1,000*, and

"(B) the costs of the action together with reasonable attorney's fees as determined by the Court." (Emphasis added.)

[9]Section 7217(c), which was repealed in 1982, provided:

"In any suit brought under the provisions of subsection (a), upon a finding of liability on the part of the defendant, the defendant shall be

recovery of the $1,000 statutory minimum despite the absence of proven actual damages. See H. R. Rep. No. 99–647, p. 74 (1986) ("Damages [under 18 U. S. C. §2707(c)] include actual damages, any lost profits but in no case less than $1,000."); S. Rep. No. 99–541, p. 43 (1986) ("[D]amages under [18 U. S. C. §2707(c)] includ[e] the sum of actual damages suffered by the plaintiff and any profits made by the violator as the result of the violation . . . with minimum statutory damages of $1,000 . . . and . . . reasonable attorney's fees and other reasonable litigation costs."); H. R. Conf. Rep. No. 94–1515, p. 475 (1976) (Title 26 U. S. C. §6110(j)(2) "creates a civil remedy for intentional or willful failure of the IRS to make required deletions or to follow the procedures of this section, including minimum damages of $1,000 plus costs."); S. Rep. No. 94–938, p. 348 (1976) ("Because of the difficulty in establishing in monetary terms the damages sustained by a taxpayer as the result of the invasion of his privacy caused by an unlawful disclosure of his returns or return information, [26 U. S. C. §7217(c)] provides that these damages would, in no event, be less than liquidated damages of $1,000 for each disclosure."). See also *Johnson* v. *Sawyer*, 120 F. 3d 1307, 1313 (CA5 1997) ("Pursuant to [26 U. S. C.] §7217, a plaintiff is entitled to his actual damages sustained as a result of an unauthorized disclosure (including punitive damages for willful or grossly negligent disclosures) or to liquidated damages of $1,000 per such disclosure, which-

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liable to the plaintiff in an amount equal to the sum of—

"(1) actual damages sustained by the plaintiff as a result of the unauthorized disclosure of the return or return information and, in the case of a willful disclosure or a disclosure which is the result of gross negligence, punitive damages, *but in no case shall a plaintiff entitled to recovery receive less than the sum of $1,000* with respect to each instance of such unauthorized disclosure; and

"(2) the costs of the action." (Emphasis added.)

ever is greater, as well as the costs of the action."); *Rorex* v. *Traynor*, 771 F. 2d 383, 387–388 (CA8 1985) ("We do not think that hurt feelings alone constitute actual damages compensable under [26 U. S. C. §7217(c)]. Accordingly, the jury's award of $30,000 in actual damages must be vacated. The taxpayers are each entitled to the statutory minimum award of $1,000."). As Circuit Judge Michael, dissenting from the Fourth Circuit's disposition of Doe's claim, trenchantly observed: "[T]he remedy of minimum statutory damages is a fairly common feature of federal legislation. . . . In contrast, I am not aware of any statute in which Congress has provide[d] for a statutory minimum to actual damages." 306 F. 3d, 170, 195 (2002) (opinion concurring in part and dissenting in part) (internal quotation marks omitted).

* * *

Doe has standing to sue, the Court agrees, based on "allegations that he was 'torn . . . all to pieces' and 'greatly concerned and worried' because of the disclosure of his Social Security number and its potentially 'devastating' consequences." *Ante*, at 2 (some internal quotation marks omitted). Standing to sue, but not to succeed, the Court holds, unless Doe also incurred an easily arranged out-of-pocket expense. See *ante*, at 11, n. 10.[10] In my view, Congress gave Privacy Act suitors like Doe not only standing to sue, but the right to a recovery if the fact trier credits their claims of emotional distress brought on by an agency's intentional or willful violation of the Act. For the reasons stated in this dissenting opinion, which track the reasons expressed by Circuit Judge Michael dissenting in part in the Fourth Circuit, I would reverse the judgment of the Court of Appeals.

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[10] Cf. *ante*, at 12–13, n. 12 (suggesting that a nonpecuniary, but somehow heightened "adverse effect" ("demonstrated mental anxiety") might do).