DON'T TAKE IT PERSONALLY: SUPREME COURT FINDS CORPORATIONS LACK PERSONAL PRIVACY UNDER FOIA EXEMPTIONS

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I. INTRODUCTION

Government transparency remains a touchstone of the American democratic system.¹ The Freedom of Information Act of 1966² ("FOIA") stands as the “most prominent expression of a profound national commitment to ensuring an open government.”³ By requiring federal agencies to provide access to requested documents, FOIA provides a vehicle for citizens and citizen groups to gain access to government-held documentation.⁴ At the heart of FOIA lies the

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¹ Dozens of commentators, government officials, and citizens alike have espoused the value of transparency in order to maintain the integrity of the American political process and ensure the accountability of government institutions. For example, President Barack Obama noted, “A democracy requires accountability, and accountability requires transparency. As Justice Louis Brandeis wrote, ‘sunlight is said to be the best of disinfectants.’ ” President Barack Obama, Freedom of Information Act: Memorandum for the Heads of Executive Departments and Agencies, WHITEHOUSE.GOV, http://www.whitehouse.gov/the_press_office/Freedomofinformationact/ (last visited May 14, 2011); see also William D. Cohan, Stonewalled by the S.E.C., N.Y. TIMES (May 13, 2010, 9:28 PM), http://opinionator.blogs.nytimes.com/2010/05/13/stonewalled-by-the-s-e-c/#more-49151.


³ President Barack Obama, supra note 1 (describing FOIA as “encourag[ing] account-ability through transparency”).

assumption that "accountability is in the interest of the government and the citizenry alike."5 Prior to the enactment of FOIA, citizens interested in obtaining government records had the burden of proving a right to access the requested information.6 President Barack Obama's recent comments indicate the Administration's continued interest in the power of FOIA as an effective tool of the people.7

A report from the General Accounting Office8 found that, in 1999 alone, 1.9 million FOIA requests were made to twenty-five federal agencies.9 In fiscal year 2008, government agencies received over 605,000 FOIA requests, resulting in the expenditure of $338 million.10 The sheer number of requests and resources expended has led to criticism of the legislation.11 Nevertheless, many

the disclosure of waste, fraud, abuse, and wrongdoing in the government, as well as the identification of unsafe consumer products, harmful drugs, and serious health hazards").

5 President Barack Obama, supra note 1; see generally, U.S. GOV'T ACCOUNTABILITY OFFICE, supra note 4.

6 U.S. GOV'T ACCOUNTABILITY OFFICE, supra note 4, at 1 ("Before the act . . . an individual seeking access to federal records had faced the burden of establishing a right to examine them. FOIA established a 'right to know' standard for access, instead of a 'need to know,' and shifted the burden of proof from the individual to the government agency seeking to deny access.").

7 Dating back to Gerald Ford's presidency, newly elected presidents will announce their interpretation of FOIA. Editorial, Critics Say New Rule Limits Access to Records, N.Y. TIMES, Feb. 27, 2002, at A18; see President Barack Obama, supra note 1 ("[FOIA] should be administered with a clear presumption: In the face of doubt, openness prevails. The government should not keep information confidential merely because public officials might be embarrassed by disclosure, because errors and failures might be revealed, or because of speculative or abstract fears. . ."). FOIA has proved to be especially important tool for writers, journalists, and social commentators, interested in the release of information gathered by federal agencies in the course of investigations, either via the subpoena power or the threatened use thereof. These documents, ranging from depositions to emails to reports are "often essential to fleshing out the details of historical or current events" in the eyes of these writers. See generally, William D. Cohan, supra note 1; see also generally, Editorial, Critics Say New Rule Limits Access to Records, supra herein (FOIA "is a crucial piece of legislation for journalists, researchers and investigators trying to get to the truth of how our government operates. . . The act is crucial for the protection and general education of the public.").


9 Editorial, Critics Say New Rule Limits Access to Records, supra note 7, at A18 (reporting that approximately 82% of FOIA requests were responded to by federal agencies).


11 Some critics, especially some federal officials, argue "the information act has become a burden to federal agencies, which sometimes receive requests for documents hundreds or thousands of pages long." Editorial, Critics Say New Rule Limits Access to Records, supra note 7, at A18. The GAO continues to report that there are growing backlogs of FOIA re-
still insist FOIA is integral to democratic governance.12

FOIA does not, however, provide for the disclosure of all agency-held documents. The law enumerates nine categories of exemptions to disclosure of requested information.13 Courts have primarily determined the scope and protections of these exemptions.14 Because the vast number of FOIA requests continues to increase yearly, the scope of these exemptions and the parties protected under them takes on great significance.

One such exemption—Exemption 7(C)—protects against certain disclosures of information that would invade personal privacy.15 Exemption 7(C) to FOIA expressly protects against unwarranted invasions of personal privacy by prohibiting the disclosure of documents collected during law enforcement investigations.16 While it is well-settled that Exemption 7(C) applies to individuals,17 courts had yet to address the issue of corporate protection under 7(C) until AT&T Inc. v. FCC,18 the case which is the focus of this Note.

In AT&T Inc. v. FCC,19 AT&T sought to thwart disclosure of certain gov-
ernment-held information by asserting a personal privacy interest under Exemption 7(C). The Federal Communications Commission ("FCC") investigated AT&T, amassing a considerable amount of sensitive documentation regarding AT&T, its employees, and its billing practices. CompTel sought access to those documents through a FOIA request. In a reverse FOIA suit, AT&T attempted to block disclosure by asserting the applicability of several FOIA exemptions, most notably Exemption 7(C). The FCC rejected AT&T's blanket reliance on Exemption 7(C). The United States Court of Appeals for the Third Circuit reversed and remanded the case, holding that AT&T may rely on Exemption 7(C). The United States Supreme Court granted certiorari and reversed the Third Circuit, holding that corporations may not assert the Exemption 7(C) personal privacy protection.

While AT&T focused its position on accepted principles of statutory interpretation, the Court rejected AT&T's position in favor of the FCC's reading of FOIA and Exemption 7(C). However, the opinion noticeably lacked attention to FOIA's primary purpose—public access to information and government transparency—and the judiciary's role in interpreting such a statute. Further, indication of how the Roberts Court will continue to interpret the interplay between corporate rights and privacy notions remains open to speculation.

known as SBC Communications, Inc. To maintain consistency, this Note will refer to this entity as AT&T Inc. only.

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20 See infra Part III.
21 See infra Part III.
22 CompTel is a Washington, D.C. based industry association of long-distance telephone providers, local telephone carriers, and their supply partners. See Who We Are, COMPTEL, http://www.comptel.org/content.asp?contentid=484 (last visited May 14, 2011). AT&T negatively characterizes CompTel as "a trade association representing AT&T's competitors with a history of attempting to tarnish AT&T's goodwill and reputation in regulatory proceedings." Brief for Petitioner at 6, AT&T Inc. v. FCC, 582 F.3d 490 (3d Cir. 2009) (No. 08-4024), rev'd, 562 U.S. -, 131 S. Ct. 1177 (2011) (No. 09-1279).
23 See infra Part III.
25 See infra Part III.
26 Infra Part III.
27 Infra Part III.C.
28 Infra Part III.D.
30 Id. at 1185.
31 While some may argue that CompTel was targeting AT&T for consumer and industry-related information, the documents sought by investigators provide a window into the government's breadth of investigation and are, therefore, relevant to government transparency. See infra Part III-IV; see also Justin Haddock & So Jung Choo, FCC v. AT&T Inc.
cause several lingering questions persist following the Court’s opinion that could impact significant areas of law outside of AT&T Inc. v. FCC’s narrow facts, this Note further studies the policy implications of FOIA and corporate rights.

This Note examines the application of FOIA and the Privacy Amendments based on the recent Supreme Court decision in AT&T Inc. v. FCC. Part II will discuss FOIA generally, with specific attention to its statutory language, purpose, and legislative history. Part II of the Note will also detail the development of the exemptions, concentrating specifically on Exemption 7(C) as it applies to individual privacy rights. Part III will offer a substantive analysis of AT&T Inc. v. FCC, with a review of its procedural posture, the arguments of both parties before both the Third Circuit and Supreme Court, and the respective court decisions. Part IV will set forth an analysis of public policy reasons against expanding Exemption 7(C) to cover corporations that the Supreme Court neglected to address in its opinion. The Note will conclude by recognizing several lingering questions left unanswered by the Court’s silence with regard to the case’s policy implications.

II. THE FREEDOM OF INFORMATION ACT & PRIVACY AMENDMENTS CREATING FOIA EXEMPTIONS

A. The Freedom of Information Act

Federal administrative and regulatory agencies collect and produce a wide variety of information. The Freedom of Information Act is based on the sim-
ple premise that democratic governments must remain accountable to their citizens through the disclosure of information. To further this purpose, FOIA “provide[s] access to only those records that directly shed light on official agency activities and performance.” Prior to FOIA’s passage, public access was available only for documents that agencies voluntarily disclosed.

FOIA allows public access to such information via two avenues: (1) affirmative agency disclosure and (2) public requests for disclosure. In a public request scenario, FOIA prescribes certain time deadlines for agencies to respond and make determinations regarding disclosures. If the disclosure request is denied, a FOIA requester may attempt to compel disclosure.

Additionally, FOIA requires agencies to prepare annual reports detailing requests.
and response times.43 Beginning in 2005, individual agencies were required to appoint Chief FOIA Officers to coordinate FOIA programs, create FOIA Requester Service Centers, and monitor FOIA Public Liaisons to improve FOIA compliance.44

Pursuant to FOIA, "upon any request for records which (i) reasonably describes such records and (ii) is made in accordance with published rules stating the time, place, fees (if any), and procedures to be followed," an agency "shall make the records promptly available to any person."45 FOIA defines "person" as "an individual, partnership, corporation, association, or public or private organization other than an agency."46 However, such disclosure may not occur where a mandatory statutory exemption governs.47

B. The Creation of the FOIA Exemptions

In 1974, Congress created FOIA Exemptions to protect from unwarranted invasions of personal privacy48 through requested government disclosure.49 The Supreme Court has previously noted that FOIA Exemptions protect "important interests"50 and "are intended to have meaningful reach and application."51 Therefore, in situations where a statutory exemption governs, disclosure is not required.52 The requester "must show that the public interest sought to be advanced is a significant one."53 If the requested records fall under one of the FOIA Exemptions, the agency must "weigh the policy considerations favoring non-disclosure against the reasons cited for permitting inspection."54 FOIA

43 These reports are available at www.usdoj.gov/oip/04 6.html and additional information may be found at www.foia.gov. See 5 U.S.C. § 552(e)(1) (requiring agencies to submit a report by February 1 yearly to the Attorney General detailing the number of requests received, number of requests still pending, and other information regarding the preceding year).
49 See generally FOIA Legislative History, The National Security Archive, supra note 38 (summarizing the historical context and actions of various Presidents and Congress while drafting, passing, and amending FOIA).
52 5 U.S.C. § 552(b)(3); see U.S. Dep't of Justice v. Landano, 508 U.S. 181 (1993) (explaining that FOIA exemptions are to be construed "narrowly in favor of disclosure").
53 Nat'l Archives and Records Admin. v. Favish, 541 U.S. at 172.
54 47 C.F.R. § 0.457 (2009).
does not prevent the disclosure of documents falling within its exemptions; rather, individual agency regulations prevent the disclosure of those documents from that agency.\footnote{55}

At issue in \textit{AT&T Inc. v. FCC}, Exemption 7 concerns documents collected for investigative purposes.\footnote{56} Exemption 7(C) prohibits from 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.\footnote{57}

Exemption 7(C) also applies to records “compiled for civil enforcement purposes.” While it is well-settled that FOIA Exemptions apply to individuals,\footnote{58} Exemption 7(C) does not define “personal privacy.”

In drafting 7(C), Congress utilized the language of Exemption 6.\footnote{60} Both the Senate and House Reports reflect an interest in protecting individual privacy interests with the passage of Exemption 7(C).\footnote{61} Originally, courts found that Exemption 7 did not require the government to articulate an “identifiable

\footnote{55} The Third Circuit noted, “FOIA itself does not prohibit disclosure of information falling within its exemptions. When information falls within an exemption, no party can compel disclosure, but the FCC can still make a disclosure on its own accord unless some independent source of law prohibits the agency from doing so. . . . Thus, the disclosure of information falling within an exemption does not violate FOIA itself, but rather an independent source of law. Here, FCC regulations provide this independent source.” AT&T Inc. v. FCC, 582 F.3d at 495 n. 2 (citing \textit{Chrysler Corp. v. Brown}, 441 U.S. at 293; 47 C.F.R. § 0.457(g)(3)).

\footnote{56} 5 U.S.C. § 552(b)(7)(D).

\footnote{57} 5 U.S.C. § 552(b)(7)(C).

\footnote{58} Rugiero v. U. S. Dep’t of Justice, 257 F.3d 534, 550 (6th Cir. 2001); see also \textit{Tax Analysts v. IRS}, 294 F.3d 71, 77 (D.C. Cir. 2002).

\footnote{59} See generally Charlie Savage, \textit{Judges Divided Over Rising GPS Surveillance}, \textit{N.Y. Times}, Aug. 14, 2010, at A12 (briefly discussing Supreme Court interpretation that criminal rap sheets, even when “each offense was separately listed in public documents scattered through decades of courthouse files,” are protected from disclosure under FOIA exemptions). One court has even taken the aggressive stance of extending protection to an animal. David Carr, \textit{supra} note 35, at C1 (briefly describing 2002 denial of FOIA request for medical records of Ryma, the giraffe from the National Zoo, because “the release would violate the animal’s privacy rights”).

\footnote{60} 5 U.S.C. § 552(b)(6)-(7); see U.S. Dep’t of Defense v. Fed. Labor Relations Auth., 510 U.S. 487, 496 (1994) (noting that Exemptions 6 and 7 only differ to the extent that the public interest has to outweigh the privacy interests involved).

\footnote{61} \textit{Clarifying and Protecting the Right of the Public to Information, and for Other Purposes}, S. REP. NO. 89-813, \textit{supra} note 35, at 9 (“‘clearly unwarranted invasion of personal privacy’ enunciates a policy that will involve a balancing of interests between the protection of an individual’s private affairs from unnecessary public scrutiny and the preservation of the public’s right to governmental information”); \textit{Clarifying and Protecting the Right of the Public to Information}, H.R. REP. NO. 89-1497, \textit{supra} note 35, at 11 (noting that using the limiting phrase “clearly unwarranted invasion” strikes “a proper balance between the protection of an individual’s right of privacy” with “the preservation of the public’s right to Government information” through the exclusion of documents, of which disclosure could harm individuals).
harm” when it denied access to law enforcement records.62

Congress amended Exemption 7 in 1974 to clarify its scope: “law enforce-
ment records were only exempt when disclosure would interfere with certain
enumerated interests.”63 Senator Hart articulated the need for such narrowing
of the original Exemption 7:

Our concern is that, under the interpretation by the courts in recent cases, the seventh
exemption will deny public access to information even previously available. For ex-
ample, we fear that such information as meat inspection reports, civil right compliance
information, and Medicare nursing home reports will be considered exempt under the
seventh exemption.64

Case law also reveals that Congress was particularly concerned with per-
sonal privacy rights when it passed the Exemptions. In Washington Post Co. v.
Department of Justice, the United States Court of Appeals for the D.C. Circuit
held that Exemption 7(C) does not prevent the disclosure of documents that
concern “business judgments and relationships.”65 Furthermore, the D.C. Cir-
cuit has rejected corporate protection under Exemption 6.66

More recently, the D.C. Circuit found that only the personal privacy of indi-
viduals invoked the protections of Exemption 6. In Judicial Watch, Inc. v. U.S.
Food and Drug Administration67 (“FDA”), the FDA refused to disclose the
names and contact information of “private individuals and companies” that had
been involved in the approval of a morning-after abortion drug, in the hopes of
preventing “abortion-related violence.”68 The D.C. Circuit affirmed the FDA’s
application of Exemption 6 and found a valid individual privacy interest in

62 Petition for a Writ of Certiorari for Public Citizen et al. as Amici Curiae Supporting
Petitioners at 4, FCC v. AT&T Inc., 562 U.S. — 131 S. Ct. 1177 (2011) (No. 09-1279) (cit-
ing Center for Nat’l Policy Review on Race and Urban Issues v. Weinberger, 502 F.2d 370,
372 (D.C. Cir. 1974) (“Since these files are ‘investigatory files compiled for law enforce-
ment purposes,’ our duty is ‘at an end.’ “)).

63 Id.

64 120 CONG. REC. S17,033 (1974) (statement of Sen. Hart), reprinted in House Com-
mittee on Government Operations, Senate Committee on the Judiciary, 94th Cong.; Petition
for a Writ of Certiorari for Public Citizen et al., supra note 62, at 5 (“Congress determined
that disclosure of investigative records concerning various corporate activities was central to
the functioning of FOIA as a disclosure statute and amended Exemption 7 specifically to
ensure public access to such records”).

65 863 F.2d 96 (D.C. Cir. 1988). The Washington Post requested records from the Food
and Drug Administration regarding an investigation of Eli Lilly Company’s failure to dis-
lose side effects from a drug. Eli Lilly Company asserted Exemption 7(C) to prevent dis-
closure. In rejecting their claim, the D.C. Circuit clarified Exemption 7(C): “the disclosures
with which the statute is concerned are those of ‘an intimate personal nature’ such as marital
status, legitimacy of children, identity of fathers of children, medical condition, welfare
payments, alcoholic consumption, family fights, and reputation.” Id. at 100.

66 Id. at 100 (citing Sims v. CIA, 642 F.2d 562, 573-74 (D.C. Cir. 1980)).

67 449 F.3d 141, 153 (D.C. Cir. 2006).

68 Id. at 153.
preventing "physical danger." The court noted "the private interest involved—'namely, the individual's right to privacy'—and conclud[ed] that the 'private interest in avoiding harassment or violence tilts the scales' ” in favor of nondisclosure. Previous D.C. Circuit opinions have drawn similar distinctions between individual and corporate ability to invoke Exemption 6.

III. A CLOSER LOOK AT AT&T INC. V. FCC

A. Factual Background

AT&T Inc. v. FCC arose out of a dispute over the FCC's “E-Rate” program, which seeks to increase the availability of advanced telecommunications technology in elementary and secondary schools. Under the “E-rate” program, telecommunications companies, including AT&T, receive government reimbursement in exchange for supplying equipment and services. In August 2004, AT&T found that Southern New England Telephone Company improperly billed the federal Universal Service Fund Administrative Company for equipment and services provided to the New London, Con-

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69 Id. (citing Lepelletier v. Fed. Deposit Ins. Corp., 164 F.3d 37, 47 (D.C. Cir. 1999)).
71 See, e.g., Multi AG Media LLC v. Dep’t of Agric., 515 F.3d 1224, 1228 (D.C. Cir. 2008) (noting “businesses themselves do not have protected privacy interests under Exemption 6’’); see also Simms v. CIA, 642 F.2d 562, 572 n. 47 (D.C. Cir. 1980) (observing “Exemption 6 is applicable only to individuals”); Nat’l Parks & Conservation Ass’n v. Kleepe, 547 F.2d 673, 685 n. 44 (stating “the sixth exemption has not been extended to protect the privacy interests of businesses or corporations”).
72 AT&T v. FCC, 582 F.3d at 490. Despite the fact that the Supreme Court has now granted certiorari making the case name, FCC v. AT&T, Inc., this Note refers to the case as “AT&T Inc. v. FCC” throughout for the purpose of clarity and consistency.
73 See 47 C.F.R. §§ 54.500-54.523; Second Report and Order and Further Notice of Proposed Rulemaking, Schools and Libraries Universal Service Support Mechanism, 18 F.C.C.R. 9202, ¶¶ 1-90 (2003) (describing the E-Rate program); see also generally, AT&T Inc. v. FCC, 582 F.3d at 492 (briefly describing the purpose of “E-Rate” program and AT&T’s participation).
74 AT&T Inc. v. FCC, 582 F.3d at 492.
76 An independent corporation, the Universal Service Administrative Company oversees the Universal Service Fund. The FCC created the fund to finance federal telecommunications programs geared towards providing services to rural areas, low-income customers, health care providers, and education providers. See Overview, UNIVERSAL SERVICE ADMINISTRATIVE COMPANY, http://www.universalservice.org/fund-administration/ (last visited May 14, 2011).
nnecticut school district.\textsuperscript{77} AT&T voluntarily and confidentially reported the overbilling of the New London project to the FCC,\textsuperscript{78} refunded all payments from the improper billing, and canceled any outstanding invoices that may have been improperly billed.\textsuperscript{79}

The Enforcement Bureau of the FCC\textsuperscript{80} investigated the matter and required AT&T to provide extensive amount of documentation relevant to the New London project, including: invoices, internal e-mails with sensitive pricing and billing information, responses to FCC Enforcement Bureau interrogatories, names of employees involved in the allegedly improper billing, and AT&T's own assessment of whether and to what extent AT&T employees violated its internal code of conduct.\textsuperscript{81}

Following the investigation, the matter was settled by consent decree, in which AT&T agreed to pay the FCC $500,000 but admitted no wrongdoing.\textsuperscript{82}

\section*{B. Responding to FOIA Request, the FCC Finds Disclosure Appropriate}

In October 2006, CompTel requested\textsuperscript{83} FOIA disclosure of "all pleadings and correspondence contained in" the FCC's investigation of AT&T's alleged overcharges to the "E-rate" program.\textsuperscript{84} In opposition to CompTel's request, AT&T filed a letter with the FCC, asserting a personal privacy interest protected by FOIA Exemptions.\textsuperscript{85} Specifically, AT&T argued against disclosure

\textsuperscript{77} Id. at 4; see also AT&T Inc. v FCC, 582 F.3d at 492 ("In August 2004, AT&T discovered that it might have overcharged the Government for certain work done for the New London, Connecticut school district."); Brief for Petitioner, supra note 22, at 3, n. 3 ("The universal service fund administrator is an independent, not-for-profit corporation that administers the federal universal service fund on behalf the FCC.").

\textsuperscript{78} AT&T Inc. v. FCC, 582 F.3d at 492.

\textsuperscript{79} Brief for Petitioner, supra note 22, at 4.

\textsuperscript{80} The FCC's Enforcement Bureau enforces the Communications Act and FCC rules, terms and conditions of station authorizations. Enforcement Bureau, FED. COMMC'NS COMM'N, http://www.fcc.gov/eb/ (last visited May 14, 2011).

\textsuperscript{81} Brief for Petitioner, supra note 22, at 5.

\textsuperscript{82} See in re SBC Communications Inc., Order, 19 F.C.C.R. 24,014 (Dec. 14, 2004); see also, AT&T Inc. v. FCC, 582 F.3d at 492 ("The two sides ultimately resolved the matter via a consent decree.").

\textsuperscript{83} CompTel subsequently filed a FOIA suit in United States District Court for the District of Columbia. This suit was stayed pending the resolution of AT&T Inc. v. FCC. See generally, Brief for Petitioner, supra note 22 at 2-3.

\textsuperscript{84} AT&T Inc. v. FCC, 582 F.3d at 493 (briefly describing CompTel's Apr 4, 2005 FOIA request); Brief for Petitioner supra note 22, at 6 (AT&T suggests that CompTel has "long sought to use FCC investigations to portray AT&T as lawless or worse." CompTel did not identify why it sought this information.).

\textsuperscript{85} AT&T Inc. v. FCC, 582 F.3d at 493 ("AT&T submitted a letter to the [FCC Enforcement Bureau] opposing CompTel's request, arguing that the FCC collected the documents that AT&T produced for law enforcement purposes and therefore that the FCC regulations implementing FOIA's exemptions prohibited disclosure.").
because the investigation files contained internal documents subject to Exemptions 4 and 7(C). CompTel disputed the applicability of Exemption 7(C).

In an August 5, 2005 letter opinion, the Enforcement Bureau dismissed AT&T's blanket assertion of Exemption 7(C) to FOIA production requirements. However, the Bureau did invoke Exemptions 6 and 7 in redacting certain information in AT&T's documents. Moreover, the Bureau found that some of the documents were protected under "FOIA's deliberative-privilege exemption." CompTel appealed the FCC's application of Exemption 4 and 5.

AT&T appealed to the FCC, primarily challenging the Bureau's decision that Exemption 7(C) was inapplicable to corporations. AT&T emphasized that Exemption 7(C) protected entities "who had been the subject of law enforcement proceedings from embarrassment, reprisal or harassment . . . associated with [such] investigations." AT&T asserted that it had "concrete privacy interests" in the documents, which were originally not intended to be available to the general public. AT&T emphasized that the FCC obtained these documents "only through the happenstance of a law-enforcement investigation," which was initiated by AT&T's voluntary efforts to correct the improper billing. Further, AT&T maintained that the documents were not of public interest

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86 The FCC Enforcement Bureau "found that portions of AT&T's documents—such as documents revealing AT&T's 'pricing information'—were exempt from disclosure under FOIA Exemption 4." Brief for Petitioner supra note 22, at 8 n. 4. FOIA Exemption 4 provides: Matters relating to "trade secrets and commercial or financial information obtained from a person and privileged or confidential." 5 U.S.C. § 552(b)(4).

87 Brief for Petitioner supra note 22, at 2; see also id. at 7 ("AT&T explained that the internal documents that AT&T had produced to the Bureau had been 'compiled for law enforcement purposes' and were protected from disclosure under the FOIA's law enforcement exemption (Exemption 7(C) and FCC rules implementing that exemption.") (internal citations omitted).

88 See AT&T Inc. v. FCC, 582 F.3d at 497.

89 Id. at 493 ("That exemption, the [FCC Enforcement Bureau] held, does not apply to corporations because corporations lack 'personal privacy.' ")

90 Pursuant to Exemption 4 and 7(C), the FCC redacted pricing information and information identifying AT&T employees and customers, while finding disclosure appropriate for the remaining information. See Brief for Petitioner, supra note 22 at 8 n. 4. However, the Bureau did not apply Exemption 7(C) to the corporation as a whole, finding that such entities do not possess the requisite personal privacy interests under Exemption 7(C). Id.

91 Id.

92 Brief for Petitioner supra note 22, at 9 n. 5. FOIA Exemption 5 provides: "Interagency or intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency" are exempt from FOIA disclosure. 5 U.S.C. § 552(b)(5).

93 AT&T Inc. v. FCC, 582 F.3d at 493 ("AT&T filed an application requesting the FCC to review the [FCC Enforcement Bureau]'s ruling"); Brief for Petitioner, supra note 22, at 2.

94 Brief for Petitioner supra note 22, at 2.

95 Id. at 9.

96 Id.
because "they included no information about the Government that would shed any light on governmental activities." In a September 12, 2008 order, the FCC rejected any Exemption 7(C) arguments and mandated disclosure.

In considering the merits of AT&T's appeal, the FCC determined that corporations lack the requisite personal privacy to invoke Exemption 7(C). The FCC relied heavily on Washington Post Co v. United States Department of Justice, which the FCC read as establishing that Exemption 7(C) applies "exclusively [to] interests of an 'intimate personal nature.' " The Commission further rejected AT&T's assertion that Exemption 7(C) protects corporations from "embarrassment" and "the possibility of harassment" in law enforcement investigations, noting that corporations' business interests differ from those of an individual. Specifically, the FCC read Exemption 7(C) as protecting "key players in an investigation—targets, witnesses, and law enforcement officers" from "literal embarrassment and danger," rather than a "more abstract impact" on a corporation. Further, the FCC refused to apply precedent from other contexts to support corporate privacy interests. Specifically, the FCC reasoned that corporate interests in Fourth Amendment search and seizure and civil procedure discovery regime do not control the determination of a corporate privacy interest under Exemption 7(C). Ultimately, the FCC concluded Exemption 7(C) was inapplicable to corporations and, accordingly, denied AT&T's application for review.

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97 Id. (citing Reporters Comm. for Freedom of the Press, 489 U.S. at 749).
98 In re SBC Communications Inc., On Request For Confidential Treatment, 23 F.C.C.R. 13,704 (2008); AT&T Inc. v. FCC, 582 F.3d at 493.
99 The FCC's Order mandated disclosure unless AT&T requested a judicial stay by September 26, 2008. On September 23, AT&T sought a stay from the FCC. Because the FCC failed to act on the stay, AT&T filed a petition for review and a motion for stay with the Third Circuit Court of Appeals. See Brief for Petitioner, supra note 22, at 11.
100 AT&T Inc. v. FCC, 582 F.3d at 493 (stating that "[the FCC] determined that FCC precedent supports [the view that a corporation lacks 'personal privacy' under Exemption 7(C)] . . . as does judicial precedent") (internal citations omitted).
101 863 F.2d at 96.
102 Brief for Petitioner, supra note 22, at 10.
103 Id.
104 AT&T Inc. v. FCC, 582 F.3d at 493 (The FCC found its interpretation of FOIA Exemption 7(C) aligns with the exemption's purpose of protection persons involved in an investigation.).
105 Id. (FCC found that corporate privacy interests in other contexts, including Fourth Amendment and discovery in civil suits, does not apply to Exemption 7(C); see also Brief for Petitioner, supra note 22, at 10-11.
106 Brief for Petitioner, supra note 22 at 11.
C. The Third Circuit Reverses & Remands in Favor of AT&T, Finding Exemption 7(C) Applies to Corporations

AT&T petitioned for review of the FCC order\textsuperscript{107} to the United States Court of Appeals for the Third Circuit on September 26, 2008.\textsuperscript{108} On October 10, 2008, CompTel intervened in the suit.\textsuperscript{109}

\textit{AT&T Inc. v. FCC} presented the Third Circuit with four issues to decide: (1) whether the Third Circuit\textsuperscript{110} has subject matter jurisdiction to review a FOIA order of the FCC;\textsuperscript{111} (2) whether AT&T failed to comply with FCC procedure when filing its application for review of the FCC order;\textsuperscript{112} (3) whether the FCC misinterpreted Exemption 7(C) of FOIA when it found a corporation lacks “personal privacy” protection;\textsuperscript{113} and (4) whether the disclosure of AT&T’s documents pursuant to the FOIA request would be an invasion of personal privacy that rises to the level of “unwarranted” under Exemption 7(C).\textsuperscript{114} Ultimately, the most significant issue presented was whether FOIA Exemption 7(C), which prohibits unwarranted invasions of personal privacy, extends to corporate entities.

The Third Circuit recognized that FOIA mandates the disclosure of particu-

\textsuperscript{107} \textit{In re SBC Communications Inc. On Request for Confidential Treatment, Memorandum Opinion and Order,} 23 F.C.C.R. 13,704 (Sept. 9, 2008).

\textsuperscript{108} Brief for Petitioner, supra note 22, at 11 ("In seeking a stay, AT&T explained that its petition for review was likely to succeed on the merits because, properly construed, Exemption 7(C) protects corporate, as well as individual, privacy interests."); see also id. at 12. Presently, disclosure of the documents requested in the original FOIA request by CompTel is stayed until the outcome of the case is resolved. \textit{AT&T Inc. v. FCC,} 582 F.3d at 494.

\textsuperscript{109} \textit{AT&T Inc. v. FCC,} 582 F.3d at 490, 494.

\textsuperscript{110} The Third Circuit disagreed with CompTel’s assertion that federal district courts, not appellate circuits had subject matter jurisdiction. \textit{AT&T Inc. v. FCC,} 582 at 495 n. 3 (finding that none of the cases cited are determinative of jurisdiction).

\textsuperscript{111} The Third Circuit concluded it had appellate jurisdiction over the review of FCC orders made pursuant to the Communications Act under 28 U.S.C. § 2342(1) and 47 U.S.C. § 402(a). \textit{Id.} at 494. The Third Circuit noted, “courts have consistently held that an order adjudicating an alleged violation of FCC regulations is an order ‘under’ the Communications Act within the meaning of § 402(a).” \textit{Id.} (citing Rocky Mountain Radar, Inc. v. FCC, 158 F.3d 1118, 1119, 1121-23 (10th Cir. 1998) (order finding company violated FCC regulations is an order “under” the Communications Act); Maier v. FCC, 735 F.2d 220, 224 (7th Cir. 1984) (order finding company did not violate FCC regulations is an order “under” the Communications Act)). The Court determined that the FCC order mandating the disclosure of AT&T documents relating to the New London project was an order within the meaning of 47 U.S.C. § 402(a); thereby, under 28 U.S.C. § 2342(1), the Third Circuit has appellate jurisdiction over the FCC order at issue. \textit{Id.} at 494-495.

\textsuperscript{112} The Court rejected the FCC’s argument that AT&T failed to comply with FCC procedural requirements in filing its application for review of the FCC order. \textit{AT&T Inc. v. FCC,} 582 F.3d at 495 (recognizing AT&T’s procedural default was not an independent ground supporting the FCC’s decision” as the FCC, regardless of the default, considered the petition’s merits).

\textsuperscript{113} \textit{Id.} at 496.

\textsuperscript{114} \textit{Id.} at 498-99.
lar documents in an agency's possession,\textsuperscript{115} exempts certain law enforcement investigation documents as a personal privacy right,\textsuperscript{116} and defines the term "person."\textsuperscript{117} While it agreed that individuals may assert this personal privacy right,\textsuperscript{118} the court recognized that it must "determine whether corporations" may also assert this right.\textsuperscript{119} AT&T contended that FCC disclosure of the investigation documents would unlawfully invade AT&T's personal privacy,\textsuperscript{120} while the FCC asserted that corporations are devoid of personal privacy and cannot prevent disclosure on such grounds.\textsuperscript{121}

The Third Circuit agreed with AT&T's reading of Exemption 7(C).\textsuperscript{122} The court noted that the FCC's interpretation of Exemption 7(C) was not entitled to deference,\textsuperscript{123} and that courts must reverse FCC decisions that are "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the law."\textsuperscript{124} The court then described the purpose and goals of FOIA and its exemptions,\textsuperscript{125} explaining that Exemption 7(C) protects solely against disclosures that "could reasonably be expected to constitute an unwarranted invasion of personal privacy."\textsuperscript{126} The court found it persuasive that while FOIA fails to define "personal," the statute does define "person" to "include[] an individual, partnership, corporation, association, or public or private organization other

\textsuperscript{115} Id. at 492 (FOIA "requires a federal agency to disclose certain documents within its possession"); 5 U.S.C. § 552(a)(1)-(3).
\textsuperscript{116} AT&T Inc. v. FCC, 582 F.3d at 492 ("FOIA exempts from mandatory disclosure 'records or information compiled for law enforcement purposes . . . to the extent that the production of such law enforcement records or information . . . could reasonably be expected to constitute an unwarranted invasion of personal privacy'") (ellipsis in original).
\textsuperscript{117} Id. ("[FOIA] defines 'person' to 'include an individual, partnership, corporation, association, or public or private organization other than an agency'"); see also 5 U.S.C. § 551(2).
\textsuperscript{118} AT&T Inc. v. FCC, 582 F.3d at 496 ("Human beings have such 'personal privacy.'").
\textsuperscript{119} Id. at 492.
\textsuperscript{120} Id.
\textsuperscript{121} Id.
\textsuperscript{122} Id. at 496.
\textsuperscript{123} AT&T Inc. v. FCC, 582 F.3d at 496 (finding that, because FOIA is government-wide and no agency in particular enforces it, the FCC order at issue was not entitled deference under Chevron U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837 104 S. Ct. 2778, 81 L.Ed.2d 694 (1984)) (citing ACLU v. Dep't of Def., 543 F.3d 59, 66 (2d Cir. 2008) for "declining to accord deference to Department of Defense interpretation of FOIA").
\textsuperscript{124} Id. (citing 5 U.S.C. § 706(2)(A)).
\textsuperscript{125} Id. (describing briefly the legislative purpose and goals of FOIA and personal privacy exemptions). With its 1966 passage of FOIA, Congress hoped "to improve public access to information controlled by federal agencies." Id. FOIA embraces "a philosophy of full disclosure: an agency may deny a reasonable request for information only if the information falls into a statutorily delineated exemption." Id. (citing OSHA Data/ClH, Inc. v. U.S. Dep't of Labor, 220 F.3d 153, 160 (3d Cir. 2000) for its description of Congress's intent when passing FOIA).
\textsuperscript{126} AT&T Inc. v. FCC, 582 F.3d at 496 (citing 5 U.S.C. § 552(b)(7)(C)).
than an agency."\textsuperscript{127}

The court then turned to the issue of whether a corporation has a personal privacy interest, noting that "[n]either the Supreme Court nor this [c]ourt has ever squarely rejected a proffered personal privacy interest of a corporation."\textsuperscript{128}

The court first examined the plain language of FOIA.\textsuperscript{129} AT&T presented a plain meaning reading of Exemption 7(C), urging that the court apply the exemption to corporations.\textsuperscript{130} The Third Circuit concluded that AT&T correctly read FOIA and Exemption 7(C) as unambiguous as to the meaning of "personal privacy" because the statute explicitly defines "person."\textsuperscript{131}

The court also found it persuasive that some FOIA exemptions expressly indicate that they apply only to individuals.\textsuperscript{132} For example, Exemption 7(F) "protects information gathered pursuant to a law enforcement investigation that, if released, 'could reasonably be expected to endanger the life or physical safety of any individual.'"\textsuperscript{133} In contrast, such limiting language is noticeably absent from Exemption 7(C), which only uses the phrase "personal privacy."\textsuperscript{134} The court rejected the FCC's and CompTel's "text-based arguments" as "unconvincing."\textsuperscript{135} because they "fail[ed] to take into account that 'person'—the root from which the statutory word at issue is derived—is a defined term."\textsuperscript{136}

Similarly, the court rejected the FCC and CompTel's "flawed" argument that the limited scope of Exemption 6 controls the scope of Exemption 7(C).\textsuperscript{137} The court stated that, even if Exemption 6 applies only to individuals, "this does not mean that each and every component phrase in that exemption, taken on its own, limits Exemption 6 to individuals."\textsuperscript{138} Exemption 6 applies only to

\textsuperscript{127} \textit{Id.} (citing 5 U.S.C. § 551(2)).

\textsuperscript{128} \textit{Id.}

\textsuperscript{129} AT&T Inc. v. FCC, 582 F.3d at 496-97 (stating that the plain meaning rule will be utilized to interpret the FOIA exemption at issue) (citing Rubin v. United States, 449 U.S. 424, 429-40 (1981)) (ellipsis in original).

\textsuperscript{130} \textit{Id.} at 497 ("AT&T argues that the plain text of Exemption 7(C) indicates that it applies to corporations. After all, 'personal' is the adjectival form of 'person,' and FOIA defines 'person' to include a corporation.").

\textsuperscript{131} \textit{Id.} (finding that Exemption 7(C) personal privacy protection applies to corporations because FOIA defines "person" to include a corporation and "personal" is merely the adjectival form of that defined term).

\textsuperscript{132} \textit{Id.} (noting Congress was aware that any desire to apply the FOIA statute to human beings must be made clear with express language).

\textsuperscript{133} \textit{Id.} (citing 5 U.S.C. § 552(b)(7)(F)) (emphasis added by the court).

\textsuperscript{134} AT&T Inc. v. FCC, 582 F.3d at 497.

\textsuperscript{135} \textit{Id.} ("The FCC and CompTel's text-based arguments to the contrary are unconvincing.").

\textsuperscript{136} \textit{Id.} (citing Biskupski v. Att'y Gen., 503 F.3d 274, 280 (3d Cir. 2007) ("If, as here, 'a statute includes an explicit definition, we must follow that definition, even if it varies from that term's ordinary meaning.")).

\textsuperscript{137} \textit{Id.}

\textsuperscript{138} \textit{Id.} at 497 (emphasis in original).
individuals because the Exemption protects "personnel and medical files," which can only belong to individuals. Therefore, Exemption 6 does not adequately provide insight into the scope of the larger concept of "personal privacy." Accordingly, the court found that the language of Exemption 7(C) unambiguously includes corporate personal privacy rights. The court concluded its analysis without further considering FOIA's statutory purpose, relevant, non-binding case law, and legislative history.

Following its finding that a corporation could assert Exemption 7(C) personal privacy protection, the court turned to the question of whether "as a matter of law, the invasion of personal privacy caused by the release of the documents [AT&T] submitted to the FCC could reasonably be expected to be 'unwarranted' within the meaning of Exemption 7(C)." The court disagreed with AT&T's argument. In "abiding by the long-established principles of administrative law," the court remanded the case to the FCC for further proceedings.

D. The Supreme Court Grants Cert to Review Scope of Exemption 7(C)

On September 28, 2010, the United States Supreme Court granted certiorari to consider whether FOIA Exemption 7(C) applies to corporations, as the Third Circuit had found.

1. The Government and CompTel Advocate Reversing the Third Circuit

The Government argued that Exemption 7(C) does not include protection for corporate personal privacy. Primarily citing National Archives & Records

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139 AT&T Inc. v. FCC, 582 F.3d at 497.
140 Id. (rejecting the use of Exemption 6 language to help determine the scope of "personal privacy" in Exemption 7(C)).
141 Id. at 498.
142 Id.
143 AT&T Inc. v. FCC, 582 F.3d at 498.
144 Id.
145 Id. at 498-499.
146 Id. at 499.
147 Id. ("Under settled principles of administrative law, when a court reviewing agency action determines that an agency made an error of law, the court's inquiry is at an end: the case must be remanded to the agency for further action consistent with the corrected legal standards.").
148 AT&T Inc. v. FCC, 582 F.3d at 499-500.
149 Id. at 490.
150 See Brief for the Petitioner, supra note 22, at 34 (noting "unanimity among courts and commentators" that Exemption 7(C) applies only to individuals").
Admin. v. Favish, the Government argued three reasons that the Court should not expand the scope of Exemption 7(C) to include corporations.

First, if Exemption 7(C) applies to corporations it will—by extension—apply to state, local, and foreign governments. Federal agencies collecting documentation on state, local, and foreign governments would be allowed to withhold such information from requesters, an act that would contradict the very purpose of FOIA as a means for government transparency. Such new protection will force agencies to “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).”

Second, reading Exemption 7(C) to include corporations lacks support in FOIA’s text or previous judicial precedent. The Third Circuit’s decision “disregards basic tenets of statutory construction,” creating “significant tension with the D.C. Circuit’s long standing interpretation of FOIA’s privacy exemptions.” The Government pointed to a number of sources to support its narrow interpretation of “personal privacy” in Exemption 7(C). The Government maintained that the meaning of the phrase “turns on the language itself, the specific context in which that language is used, and the broader context of the statute as a whole.” The Government argued that “personal” refers “most naturally” to individuals. Because “personal privacy” appears only as a joined term in Exemption 7(C), the phrase applies only to individuals. Furthermore, the Third Circuit failed to articulate how the privacy experiences of a

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151 541 U.S. at 166 (“Congress gave special attention to the language in Exemption 7(C)’); see also Brief for Petitioner, supra note 22, at 34-35.
153 Id.
154 Id. at 13; see also id. at 25 (summarizing concerns regarding “personification” of corporations).
155 Id. at 13 (“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.”).
156 Petition for a Writ of Certiorari for Petitioners, supra note 152 at 13.
157 Id.
158 Id. at 14 (citing Nken v. Holder, 129 S. Ct. 1749, 1756 (2009)).
159 Id. at 14-15 (“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.’”) (citing Webster’s Third New International Dictionary 1686 (1966)).
160 Petition for a Writ of Certiorari for Petitioners, supra note 152, at 15 (“The law ordinarily protects personal privacy to safeguard human dignity and preserve individual autonomy. . . . Such concepts do not comfortably extend to a corporation, which ‘exists only in contemplation of law’ as ‘an artificial being, invisible, and intangible.’”) (internal citations omitted).
corporation and individual are “analogous,” noting an “attempted personification of an entity whose very existence is a legal construct.” Similarly, the Government pointed to the fact that, in the context of tort law or Fourth Amendment jurisprudence, corporations do not enjoy the benefits of personal privacy.

The Government maintained that “Congress specifically modeled Exemption 7(C) on Exemption 6 . . . which itself protects only the privacy interests of individuals.” When Congress reproduced the exact same language from Exemption 6 to 7(C), it intended the same meaning to the phrase. Further, the Government noted the “leading” administrative law treatise at the time of the creation of the exemptions held a corporation could not invoke Exemption 6 protection “because the phrase ‘personal privacy’ always relates to individuals.” The Government pointed to a line of case law supporting this contention and Attorney General Edward Levi’s interpretative memorandum issued immediately after Exemption 7(C)’s enactment. The case law originating from the United States Court of Appeals for the D.C. Circuit further supports the conclusion that Exemption 7(C) only applies to individuals. Moreover, Exemption 7 protection for corporations is not necessary, as significant protections already explicitly exist in Exemption 4.

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161 Id. at 25.
162 Id. at 15-16.
163 Id. at 16 (“identical phrases within the same statute should normally be given the same meaning”) (citing Powerex Corp. v. Reliant Energy Servs., Inc., 551 U.S. 224, 232 (2007)).
164 Id. (noting that Congress utilized the language of Exemption 6 in enacting 7(C) “to protect individuals from the injury and embarrassment that can result from the unnecessary disclosure of personal information”) (citing 120 Cong. Rec. at S 17,033 (daily ed. May 30, 1974) (statement of Sen. Hart) and Dep’t of State v. Washington Post Co., 456 U.S. 595, 599 (1982)).
165 Petition for a Writ of Certiorari for Petitioners, supra note 152, at 17.
166 Id. at 18 (citing Wine Hobby USA Inc. v. IRS, 502 F.2d 133, 136 n.12 (3d Cir. 1974); Rural Housing Alliance v. USDA, 498 F.2d 73, 77 n.13 (D.C. Cir. 1974); Getman v. Nat’l Labor Relations Bd., 450 F.2d 670, 674 & n.10 (D.C. Cir. 1971); Rose v. Dep’t of the Air Force, 495 F.2d 261, 269 (2d Cir. 1974); Nat’l Archives & Records Admin. v. Favish, 541 U.S. 157, 169 (2004) (Courts “can assume that Congress legislated against this background of law, scholarship, and history . . . when it amended Exemption 7(C)”)).
167 U.S. DEP’T OF JUSTICE, ATTORNEY GENERAL’S MEMORANDUM ON THE 1974 AMENDMENTS TO THE FREEDOM OF INFORMATION ACT 9 (1975) (“[T]he phrase ‘personal privacy’ pertains to the privacy interests of individuals” and “does not seem applicable to corporations or other entities.”); Petition for a Writ of Certiorari for Petitioners, supra note 152, at 18.
169 Petition for a Writ of Certiorari for Petitioners, supra note 152, at 22 (“[c]orporations have a legitimate interest in preserving the secrecy of certain information, and Congress
The Government further took issue with the Third Circuit’s line of reasoning in the decision below.\textsuperscript{170} The Government argued that, while “person” is a defined term in FOIA, the linguistic relationship between “person” and “personal” does not support the use of the definition of person for “personal privacy.”\textsuperscript{171} Instead, the statutory context determines the meaning of a statutory term.\textsuperscript{172} The Government criticized the Third Circuit’s distinction between Exemptions 6 and 7(C) as inappropriate, arguing that the distinction should not “turn upon the label of the file.”\textsuperscript{173}

Finally, the Government noted that this interpretation is counter to appropriate FOIA procedure,\textsuperscript{174} which agencies have followed since the legislation’s inception.\textsuperscript{175} The Government criticized the Third Circuit’s opinion as ignoring both the “context of FOIA’s exemptions,” as well as the “lengthy history behind Exemption 6 and 7(C).”\textsuperscript{176} The Government further stated the Third Circuit failed to provide any persuasive “textual rationale for its holding.”\textsuperscript{177} In doing so, the Third Circuit’s decision made an “unprecedented departure from 35 years of uniform FOIA jurisprudence and commentary.”\textsuperscript{178} Claiming that this ruling “threaten[ed] significant adverse consequences,” the Government argued that the Third Circuit opinion disturbed well-settled policy on government response to thousands of FOIA requests.\textsuperscript{179} Recognizing corporate per-

\textsuperscript{170} Id. at 22-27 (“[t]hat analysis, which led the court to conclude that ‘FOIA’s text unambiguously’ shows that corporations possess ‘personal privacy’ does not withstand scrutiny”) (internal citations omitted).

\textsuperscript{171} Id. at 23 (“[t]he linguistic relationship between the words ‘person’ and ‘personal’ — i.e., that the former is the ‘root’ of the latter - cannot itself support the Third Circuit’s holding”) (internal citations omitted).

\textsuperscript{172} Id. at 24 (“[t]he phrase ‘personal privacy’ must be understood as a textual unit”) (citing Textron Lycoming Reciprocating Engine Div. v. United Auto. Workers, 523 U.S. 653, 657 (1998)).

\textsuperscript{173} Id. at 26 (While “the disclosure of personnel and medical files may reveal information about corporations and their internal affairs as well as about individuals . . . both Exemptions 6 and 7(C) protect only individuals because each includes the same term - ‘personal privacy’ - imposing that limitation”) (citing U.S. Dept. of State v. Washington Post Co., 456 U.S. 595, 601-02 (1982) (internal citations omitted).

\textsuperscript{174} Petition for a Writ of Certiorari for Petitioners, supra note 152, at 13-14 (“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 government programs that the public has a right to review.”).

\textsuperscript{175} Id. at 13 (arguing the Third Circuit’s decision “threatens to revolutionize the manner in which the federal government must process hundreds of thousands of FOIA requests each year”).

\textsuperscript{176} Id. at 27.

\textsuperscript{177} Id.

\textsuperscript{178} Id.

\textsuperscript{179} Petition for a Writ of Certiorari for Petitioners, supra note 152, at 27-28 (In finding
sonal privacy would “result in the withholding of agency records to which the public should have access, including records documenting corporate malfeasance” and would increase the burden on agencies to respond to FOIA requests and litigation. Moreover, it created a potential problem by creating a “new and significant tension between Third Circuit and D.C. Circuit precedent.”

Similarly, CompTel maintained that the FCC “correctly argue[d] that the Third Circuit erred” when it ruled that Exemption 7(C) applies to the “interests of large publicly traded corporations like AT&T.” FOIA exemptions must be narrowly interpreted because FOIA “embodies a policy authorizing liberal disclosure.” CompTel noted that the phrase “personal privacy” must be understood within the context of privacy, a concept that applies inherently to individuals. Rather, the Third Circuit’s ruling inappropriately “attribute[d] human emotions to corporations” and such “resort to anthropomorphism [can] not withstand scrutiny.” CompTel reasoned that in expanding the scope of Exemption 7(C) “to include a large, publicly traded corporation’s right to con-

for AT&T, “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 interests.”)

180 Id. at 29 (“[T]he decision will undoubtedly spawn objections [by private interests] that desire the government’s investigation of their possible malfeasance to remain secret . . . [and] will generate a new class of FOIA litigation by requesters seeking to restrict the asset-undefined category of ‘personal privacy’ held by corporations.”). Several public interest groups—Public Citizen, Citizens for Responsibility and Ethics in Washington, The National Security Archive, OpenTheGovernment.org, The Electronic Frontier Foundation, and The Reporters Committee for Freedom of the Press—filed an amici curiae brief in support of granting writ of certiorari, arguing largely the point that corporate malfeasance will be shielded from public view if the Third Circuit’s decision is affirmed. See supra Part IV.

181 “The Third Circuit’s unprecedented decision will therefore impose substantial legal uncertainty on federal agencies attempting to process vast volumes of FOIA requests.” Petition for a Writ of Certiorari for Petitioners, supra note 152, at 29-30 (finding that this creates conflicting issues for agencies when requesters will be likely to file causes in D.C. Circuit Court while reverse FOIA actions will occur outside that jurisdiction in an effort to enjoy the protection of corporate personal privacy protection).


183 Id. at 1-2 (citing Robbins Tire & Rubber Co., 437 U.S. at 220).


185 Respondent CompTel’s Brief in Support of Petition for a Writ of Certiorari, supra note 182, at 8.

186 Id. (“An artificial entity like a corporation cannot feel or show embarrassment or disgrace. While a corporation’s individual officers, directors or employees who are involved in a law enforcement investigation might feel embarrassed, harassed or stigmatized if their involvement was publicly disclosed, Exemption 7(C) would protect from disclosure any records that could reasonably be expected to constitute an unwarranted invasion of their personal privacy.”).
trol information concerning itself improperly equates an individual’s personal privacy interest with a corporation’s privacy interest.”\textsuperscript{187} CompTel argued that the Third Circuit’s interpretation contradicted the plain text of Exemption 7(C),\textsuperscript{188} which should be read in light of its “ordinary and everyday senses”\textsuperscript{189} and Exemption 7(C)’s legislative history.\textsuperscript{190} Further, the Third Circuit’s decision contradicted legal precedent determining FOIA personal privacy exemptions.\textsuperscript{191} Accordingly, CompTel advocated reversal of the Third Circuit chiefly because the holding is counter to the language and legislative goal of FOIA.\textsuperscript{192}

2. \textit{AT&T Argues for Affirmance of the Third Circuit’s Decision}

AT&T maintained that the Third Circuit’s decision correctly interpreted Exemption 7(C) to include corporations within its scope of protection.\textsuperscript{193} AT&T asserted that the plain meaning of the “unambiguous” statutory text ultimately should be the determining factor in this case.\textsuperscript{194} Agreeing with the Third Circuit, AT&T contended, “the ‘plain text’ of Exemption 7(C) ‘unambiguously’ applies to corporations” based on FOIA’s definition of “person.”\textsuperscript{195} Because Congress defined “person” to include corporations, Exemption 7(C)’s use of

\begin{footnotes}
\footnotetext[187]{187} Respondent CompTel’s Brief in Support of Petition for a Writ of Certiorari, supra note 182, at 3-4 (arguing that recognizing a corporate privacy interest in 7(C) is directly counter to the U.S. v. Morton Salt Co., 338 U.S. 632, 652 (1950) (holding the “neither incorporated nor unincorporated associations can plead an unqualified right to conduct their affairs in secret”).
\footnotetext[188]{188} Id. at 2; see also id. at 3 (“The defined term ‘person’ does not appear in Exemption 7(C) and the ordinary meaning of personal privacy does not encompass the privacy interests of corporations.”); Brief of Respondent Comptel, supra note 184, at 15.
\footnotetext[189]{189} Respondent CompTel’s Brief in Support of Petition for a Writ of Certiorari, supra note 182, at 2 (citing Malat v. Riddell, 383 U.S. 569, 571 (1966)).
\footnotetext[190]{190} Id. at 3 (citing Reporters Comm. for Freedom of the Press, 489 U.S. 749, 763 (1988); Dep’t of the Air Force v. Rose, 425 U.S. 352 (1976) for the proposition that Exemption 6 and 7(C) protect only individual interests); id. at 4 (“Even where the plain meaning of a relevant statutory provision is sufficient to resolve a question, this Court nonetheless has consulted the legislative history to confirm Congress’ intent.”) (citing Sims, 471 U.S. at 167-68 (1985); id. at 7 (citing IBP, Inc. v. Alvarez, 546 U.S. 21, 34 (2005) (stating that the same words used in different parts of same statute generally presumed to have same meaning)).
\footnotetext[191]{191} Id. at 2, 4.
\footnotetext[192]{192} Brief of Respondent CompTel in Support of Petitioners, supra note 184, at 31-35.
\footnotetext[194]{194} Respondent AT&T Inc.’s Brief in Opposition of Petition for a Writ of Certiorari, supra note 193, at 22-23.
\footnotetext[195]{195} Id. at 22; see also Brief for Respondent AT&T, Inc. supra note 193, at 14-18 (arguing a corporation’s personal privacy interests are covered by Exemption 7(C) because a corporation is a “person” for the purposes of FOIA, under the Administrative Procedure Act).
\end{footnotes}
the phrase “personal privacy” must also apply to corporations. If Congress wished to exclude corporations, it would have drafted Exemption 7(C) to use the more restrictive term of “individual privacy” instead of “personal privacy.” Similarly, AT&T rejected the notion that interpretation of Exemptions 4 and 6 is determinative of Exemption 7(C)’s application. AT&T argued that Exemption 4 does not adequately protect corporate interests and, accordingly, Exemption 7(C) must apply to ensure the protection of “reputational interests.” Furthermore, protection of corporations subject to law enforcement investigations is consistent with the purpose underlying FOIA Exemptions. Disclosure of corporate protected information would undercut the very goal of Exemption 7(C).

AT&T asserted three reasons to urge the Supreme Court to affirm the Third Circuit’s judgment. First, AT&T contended that Supreme Court review is not even necessary as the Third Circuit’s opinion does not create a conflict of authority with already existing case law interpreting FOIA Exemptions. Moreover, AT&T noted that corporations enjoy privacy rights in certain constitutional contexts. For example, AT&T argued that notion of personal jurisdiction and Fourth Amendment protection apply to corporations. Second, the Third Circuit’s decision was interlocutory. Finally, AT&T argued that the Third Circuit’s decision had few consequences, with only an “insub-
stantial” impact on FOIA request processing for agencies. Instead, AT&T opined that failing to extend Exemption 7(C) protection to corporations would decrease competition by granting competitors access to sensitive information.

3. Court Expresses Concern with Corporate Personhood at Oral Argument

During the January 19, 2011 argument before the Court, several Justices appeared openly critical of affirming the Third Circuit’s extension of Exemption 7(C) protection to corporations. The Government presented similar arguments, as articulated in its brief, advocating that the Court narrowly overturn the Third Circuit. Only Justice Samuel Alito appeared willing to accept AT&T’s chief argument that the term “personal” has been used in other contexts to refer to corporate interests. The Government countered that the distinction between “person” and “personal” is more than grammatical. Justices Antonin Scalia and Sonia Sotomayor noted the Court’s precedent of narrowly construing FOIA exemptions in favor of disclosure. However, the Government did alter its position somewhat, in anticipation of Milner v. Department of the Navy, arguing that FOIA exemptions should not be read as narrowly as possible. The Government cited more than thirty-five years of “uniform agreement” that Exemption 7(C) applies to individuals only, emphasizing that personal privacy interests are commonly understood as applicable to individ-

supra note 193, at 44-55.

209 Respondent AT&T Inc.’s Brief in Opposition of Petition for a Writ of Certiorari, supra note 193, at 18-20.

210 Brief for Respondent AT&T Inc., supra note 193, at 43.


212 Transcript of Oral Argument, at 3, FCC v. AT&T Inc., 562 U.S. —, 131 S. Ct. 1177 (2011) (No. 09-1279) (describing the Third Circuit’s holding as “inconsistent with the text of Exemption 7(C), FOIA’s broader context, and the statute’s drafting history, and would lead to anomalous results”).

213 Transcript of Oral Argument, supra note 212, at 4-5 (Justice Alito reasoned that “personal” can be used as a legal term of art to refer to a corporation, citing the Administrative Procedure Act as an example.).

214 Id. at 5-6 (the government asserts that “although ‘person’ is used in certain legal contexts to refer to artificial persons and corporations and the like, ‘personal’ is not”).

215 Id. at 10-11, 13.

216 562 U.S.— (2011)(09-1163) (holding that maps of explosives do not fall within the scope of FOIA Exemption 2).

217 Transcript of Oral Argument, supra note 212, at 11.
AT&T faced greater scrutiny, relying chiefly on the argument that “privacy protections under FOIA are broader” than the statute’s plain language. AT&T reasserted its central contention that, because “personal” is the adjective form of “person”—a term defined to include a corporation—then “personal privacy” should apply to corporations. Justice Ginsburg queried whether extending Exemption 7(C)’s scope to cover corporations would entitle similar protections to foreign, state, and local governments. Justice Scalia also inquired what corporate activity deserved privacy protection. AT&T argued that internal corporate communications, for example remarks regarding an industry regulator or customer, that were made in confidence warranted protection. Scalia called the application of personal privacy to corporations “a very strange” concept. Chief Justice John Roberts suggested that FOIA Exemptions were already sufficient, as individuals within a corporation are protected under Exemption 7(C). Further, Justice Stephen Breyer questioned whether the protection of corporate privacy is even necessary. Justice Ginsburg cited examples of legislative history, interpreting Exemption 7(C) to exclude corporations. Similarly, Scalia challenged AT&T to meet its burden to demonstrate that FOIA Exemptions indeed apply to corporations and were intended to do so. Focusing his attention to AT&T’s statutory interpretation, Justice Roberts rejected AT&T’s grammatical argument, finding that often “the adjective is very different from its root.” This prompted AT&T to back away from the grammatical imperative terminology of its brief. Finally, Justice Sotomayor expressed concern that expanding Exemption 7(C)’s scope to corporations would jeopardize the current interpretation of other Exemptions, notably Exemption 6.

218 Id. at 16, 19.
219 Id. at 23.
220 Id. at 23, 25.
221 Id. at 23-24 (noting her view that an expansion of the scope of Exemption 7(C) to include different forms of government would be problematic).
223 Id. at 24, 26-27.
224 Id. at 26.
225 Id. at 28-29.
226 Id. at 29-30 (reasoning that there are no examples of invasion of corporate privacy interests in FOIA disclosure because any legitimate corporate privacy interests “are actually taken care of by the other 17 exemptions”).
227 Transcript of Oral Argument, supra note 212, at 32.
228 Id. at 34-35.
229 Id. at 35-36 (Chief Justice Roberts stating, “I don’t think there’s much to the argument that because ‘person’ means one thing, ‘personal’ has to be the same relation.”).
230 Id. at 36.
231 Id. at 38.
4. *The Supreme Court Finds No Corporate Protection Under Exemption 7(C)*

In an opinion delivered by Chief Justice John Roberts, the Supreme Court reversed the Third Circuit, holding that Exemption 7(C)'s personal privacy protection does not extend to corporations.\(^{232}\) The Court rejected AT&T's grammar and usage argument because, while the meaning of adjectives can relate to corresponding nouns, adjectives can "acquire distinct meanings of their own" independent of the corresponding noun.\(^{233}\) Highlighting that "in ordinary usage, a noun and its adjective form may have meanings as disparate as any two unrelated words," the Court found that the word "personal" has "developed along its own etymological path" independent of its corresponding noun, "person."\(^{234}\) Instead, the Court endorsed FCC's reading of Exemption 7(C) that excludes personal privacy protection for corporations.\(^{235}\) The Court noted that FOIA only defines the term "person" and the remainder of the statute must be read by giving undefined terms their "ordinary meaning."\(^{236}\)

The Court supported its Exemption 7(C) interpretation in six ways. First, the ordinary usage of "personal" relates to individuals, not corporations or other artificial entities.\(^{237}\) Second, dictionary definitions of "personal" confirm the ordinary usage relating only to individuals.\(^{238}\) Third, the statutory context strengthens an interpretation of "personal" as referring to individuals.\(^{239}\) Despite the fact that legally the term "person" often can denote an artificial entity, the Court found "little support" for that argument that "personal" legally diverges from its common meaning to refer to corporations.\(^{240}\) Exemption 7(C) uses the word "personal" as part of the larger phrase "personal privacy."\(^{241}\) The use of the two words together "suggests a type of privacy evocative of human

\(^{232}\) FCC v. AT&T Inc., 131 S. Ct. at 1186. All members of the Court, with the exception of Justice Elena Kagan who did not participate, joined in Chief Justice Robert's opinion.

\(^{233}\) Id. at 1181-82 (citing "crab" and "crabbed", "corn" and "corny", and "crank" and "cranky" as examples of adjectives and their respective corresponding nouns that differ significantly in meaning and usage).

\(^{234}\) Id. at 1182.

\(^{235}\) Id.

\(^{236}\) Id. (citing Johnson v. United States, 559 U.S. — , 130 S. Ct. 1265, 1267 (2010) (slip. Op., at 4)).

\(^{237}\) FCC v. AT&T Inc., 131 S. Ct. at 1182. (providing examples where personal only refers to individuals and observing "[i]n fact, we often use the word 'personal' to mean precisely the opposite of business-related") (emphasis in original).

\(^{238}\) Id.

\(^{239}\) Id. at 1182-1183.

\(^{240}\) Id. at 1183 (finding that the concepts of personal jurisdiction and personal privilege for a corporation are insufficient to support an argument for corporate personal privacy).

\(^{241}\) Id. (noting that AT&T's reading of the statute to be the sum of two words is misguided as "two words together may assume a more particular meaning than those words in isolation").
2011 Corporations Lack Personal Privacy Under FOIA Exemptions

concerns—not the sort usually associated with an entity like, say, AT&T."²⁴² Next, secondary sources contemporary to Congress’ drafting of Exemption 7(C) did not understand “personal privacy” as applicable to corporations.²⁴³ However, the Court narrowed its consideration of corporate rights by asserting that this case does not require comment on corporate privacy interests at a constitutional or common law level.²⁴⁴

Finally, the language of the remaining FOIA Exemptions supports an understanding of “personal privacy” applying only to individuals.²⁴⁵ Because Congress drafted Exemption 7(C) within the framework of the already existing FOIA Exemptions 4 and 6, it is clear that Congress intended Exemption 7(C) to apply only to individuals.²⁴⁶ Congress utilized Exemption 6’s language in Exemption 7(C) “in a nearly identical manner,” demonstrating that Congress wanted the Exemption 7(C) personal privacy right to pertain only to individuals.²⁴⁷ Moreover, the Court reasoned that Congress used inherently different language when referring to corporations.²⁴⁸ For example, the corporate-focused Exemption 4 uses only the defined term “person,” not “personal privacy.”²⁴⁹ Consequently, the government has consistently read Exemption 7(C) to exclude corporations.²⁵⁰ The Court closed its opinion in jest, stating “We trust that AT&T will not take it personally.”²⁵¹

²⁴² FCC v. AT&T Inc., 131 S. Ct. at 1183.
²⁴³ Id. at 1183-1184 (citing Restatement (Second) of Torts § 6521, Comment c (1976) and W. Prosser, Law of Torts § 97, pp. 641-642 (2d ed. 1955) for the proposition that corporations can not enjoy personal privacy rights).
²⁴⁴ Id. at 1184 (“The discrete question before us is . . . whether Congress used the term ‘personal privacy’ to refer to the privacy of artificial persons in FOIA Exemption 7(C).”).
²⁴⁵ Id.
²⁴⁶ Id.
²⁴⁷ FCC v. AT&T Inc., 131 S. Ct. at 1184 (Exemption 6 is “regularly referred to . . . as involving an ‘individual’s right of privacy.’”).
²⁴⁸ Id. at 1185.
²⁴⁹ Id. at 1185 (drawing a distinction between Exemption 4 and Exemption 7(C) in terms of scope based upon statutory language).
²⁵¹ Id. at 1185.
IV. POTENTIAL CONSEQUENCES OF EXTENDING EXEMPTION 7(C) PROTECTION TO CORPORATIONS

A. The Future of FOIA & Government Transparency

In deciding the case upon the grounds that it did, the Supreme Court failed to address a number of potential consequences that could result from expanding or curtailing corporate statutory rights under FOIA. Corporations with a privacy interest under Exemption 7(C) could be more willing to participate in government investigations and, without such concrete protection, corporations may be more apt to only participate if the corporation is forced to by court ordered subpoena. Alternately, small businesses, especially those whose individual owners are closely aligned with the corporation itself, may be disproportionately harmed by disclosure.

The Court's opinion also failed to note the potential chilling effect of the Third Circuit decision. First, FOIA is a crucial tool of journalists. Any impact on FOIA will undoubtedly change the way journalists obtain information from the government and monitor the government's investigative and enforcement responses to wrongdoing. The recent government-led investiga-


[253] Rosenfeld v. U.S. Dept. of Justice, 57 F.3d 803, 811 (9th Cir. 1995).

[254] Id. at 813; see also Brief for Respondent AT&T Inc., supra note 193, at 43-44; see Brief of the Chamber of Commerce of the United States of America as Amicus Curiae in support of Respondent AT&T Inc. at 23-24, FCC v. AT&T Inc., 562 U.S.—, 131 S. Ct. 1177 (2011) (No. 09-1279) (asserting that corporations “have been exceptionally proactive in ferreting out misconduct within their ranks, disciplining those responsible and implementing policies and procedures to prevent future wrongdoing”).

[255] See Brief of the Chamber of Commerce, supra note 254, at 24 (arguing that courts will face difficulty in attempting to “disentangle” individual from corporate privacy, in applying Exemption 7(C)).


[258] See Brief Amici Curiae of The Reporters Committee for Freedom of the Press and Twenty Two Media Organizations in Support of Petitioners at 3-5, FCC v. AT&T Inc., 562 U.S.—, 131 S. Ct. 1177 (2011) (No. 09-1279); see also id. at 18 (“creating a new category of privacy for corporations would create a severe impediment to journalists (as well as various public interest stakeholders) that depend on FOIA to enable their ‘watchdog’ function of monitoring government agencies and their regulatory functions and through them the corpo-
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The public has an interest in knowing how the government reacts to crises and whether such responses adequately address such crises. For this reason, corporate exemptions from FOIA disclosures under Exemption 7(C) would disserve the public’s best interests and safety.

Circuit courts must not interpret or view FOIA Exemptions through a different lens than currently provided by precedent for three reasons. First, agencies would be forced to develop new procedures in order to comply with novel judicial interpretations. Second, the potential for extensive litigation presents concerns for requesters with limited resources and increases the burden on already busy and resource strapped agencies. Finally, and more worrisome, agencies could likely become less willing to disclose as a means to avoid costly litigation all together.

Petition for a Writ of Certiorari for Public Citizen et al. as Amici Curiae Supporting Petitioners, supra note 62, at 8. (“FOIA is the public’s strongest tool for holding government agencies accountable in the performance of their oversight and regulatory functions”).


See generally, Petition for a Writ of Certiorari for Public Citizen et al. as Amici Curiae Supporting Petitioners, supra note 62, at 1 (expressing strong concern that “the decision below threatens the public’s access to government records concerning agency oversight of corporate activity and diminishes government transparency”).

Had corporate rights under FOIA been redefined, “massive administrative effort to process and litigate the newly” defined rights would have resulted. Reply Brief for the United States at 11, FCC v. AT&T Inc., 562 U.S. —, 131 S. Ct. 1177 (2011) (No. 09-1279).

Petition for a Writ of Certiorari for Public Citizen et al. as Amici Curiae Supporting Petitioners, supra note 62, at 12-13 (noting that requesters often lack resources to pursue litigation in response to an agency’s denial of a FOIA request and that requested information may be time sensitive and rendered moot should litigation take months or years).

Id. (describing litigation following an agency’s denial of request as taxing on the agency).

Id. at 9-11. For example, the Food and Drug Administration’s Office of Regulatory
As a matter of public policy, courts must preserve and protect FOIA as an effective means to “ensure an informed citizenry.”

Government-held records regarding “safety violations at a coal mine, environmental problems at an offshore oil rig, conditions at a food manufacturing plant, underhanded financial deals at an investment bank” and the like could never reach public or media view had the Court failed to reverse the Third Circuit.

Affairs has been very forthcoming with disclosure of inspection reports and warning letters to companies. See Food and Drug Administration’s Office of Regulatory Affairs, Electronic Reading Room, http://www.fda.gov/aboutFDA/centersoffices/ORA/ORAEElectronicReadingRoom/default.htm (last visited May 14, 2011); see also FDA, Warning Letters, www.fda.gov/ICECL/EnforcementActions/WarningLetters/default.htm (last visited May 14, 2011). Other agencies, such as the United States Department of Agriculture Food Safety and Inspection Services, publish similar documents. See Food Safety and Inspection Services, Quarterly Enforcement Reports, www.fsis.usda.gov/regulations_policies/Quarterly_Enforcement_Reports/index.asp (last visited May 14, 2011).

Robbins Tire & Rubber Co., 437 U.S. at 242 (FOIA is “needed to check against corruption and to hold the governors accountable to the governed”); accord Reporters Comm. For Freedom of the Press, 489 U.S. at 773 (FOIA provides a means for the public to know “what [the] government is up to.”).


Amol Mehra, Judging the Limits of the Rights of Corporations, RIGHTRESPECT (Oct. 4, 2010), http://www.rightrespect.com/2010/10/04/judging-the-limits-of-the-rights-of-corporations/ (“[U]nless the Supreme Court reverses the lower court decision, records about safety violations at a coal mine, environmental problems at an offshore oil rig, conditions at a food manufacturing plant, underhanded financial deals at an investment bank and many other records like these may be the subject of corporate privacy claims that could result in agencies withholding those records from the public under FOIA.”)

See also Courtney Minick, More Rights for Corporations? On the Docket: ATT v. FCC, JUSTIA.COM: LAW, TECHNOLOGY & LEGAL MARKETING (Oct. 7, 2010), http://onward.justia.com/2010/10/07/more-on-the-rights-of-corporations-att-v-fcc/ (“Critics worry that if corporations are able to use privacy concerns to prevent disclosure, they will abuse this exemption to obscure information that the public has a right to know and cover up bad behavior.”); Petition for a Writ of Certiorari for Public Citizen et al. as Amici Curiae Supporting Petitioners, supra note 62, at 6 (arguing “records concerning the government’s oversight of meat processing and its response to a poor inspection result that a company might find ‘embarrassing’ are records of significant importance to the public and fall within the core of FOIA’s purpose.”); see also id. at 7 (arguing that Exemption 7 could “prevent or delay the public from accessing these records despite the public’s undeniably strong interest in information that the companies might find embarrassing, such as how the government is responding to inadequate quality of care, insufficient staffing levels, or a poor health inspection. Indeed, knowing how the government regulates and monitors industries such as meat processing and health care is central to the purpose of FOIA.”).
B. Modern Trends Suggest an Expansion of Corporate Rights & Personhood

Several commentators characterized AT&T Inc. v. FCC as centering on the question of whether a corporation has the "legal status of a person." Much of this commentary analogizes this case to the controversial Citizens United v. Federal Election Commission. Before AT&T Inc. v. FCC was decided, there were several predictions that corporate rights would continue to expand.

1. Comparison of Citizen's United & Other Corporate-Friendly Decisions to AT&T Inc. v. FCC

However, it is important to note that there are significant differences between Citizens United and AT&T Inc. v. FCC. In Citizens United, Justice

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269 Sara Jerome, Supreme Court to decide if AT&T is a person, THE HILL (Sept. 29, 2010, 11:18 AM), http://thehill.com/blogs/hillicon-valley/technology/121585-supreme-court-to-weigh-atat-v-fcc; see generally, Scott Hartman, Privacy, Personhood, and the Courts: FOIA Exemption 7(C) in Context, YALE L.J. 120 (Sept. 13, 2010, 9:55 AM), http://ssrn.com/abstract=1684498 (arguing "a more nuanced understanding of the concept of privacy [that recognizes privacy only applies to individuals] - as it is employed in both FOIA and elsewhere in American law - would have led the Third Circuit to conclude that Exemption 7(C) is inapplicable to AT&T").

270 Citizens United v. Fed. Election Comm'n, 558 U.S. __, 130 S. Ct. 876 (2010); Sara Jerome, supra note 269 ("A controversial decision last year loosened campaign finance restrictions on the grounds that corporations are just groups of people, so they should not face certain election rules that individuals do not face. Lyle Denniston at SCOTUSBLOG says this case is similar but involves 'personal privacy' rather than campaign finance."); see also Lyle Denniston, A review of "state secrets", SCOTUSBLOG (Sept. 28, 2010 10:26 AM), http://www.scotusblog.com/2010/09/a-review-of-state-secrets/ (observing the "heavy political controversy" following the Court's treatment of corporations as "persons" in Citizens United and suggesting AT&T Inc. v. FCC may have similar implications because the Court is again considering corporations as "persons" statutorily). Dissenting in Citizens United, Justice Stevens criticized the majority for failing to recognize "corporations have no consciences, no beliefs, no feelings, no thoughts, no desires. . . . They are not themselves members of 'We the People' by whom and for whom our Constitution was established." Citizens United, 130 S. Ct. at 972 (Stevens, J., dissenting); contra Stephen M. Bainbridge, Citizens United v. FEC: The First Amendment Rights of Corporate "Persons," PROFESSORBAINBRIDGE.COM (Jan. 21, 2010) http://www.Professorbainbridge.com/professorbainbridgecom/2010/01/citizens-united-v-fec-the-first-amendment-rights-of-corporate-persons.html (arguing that corporations must be likened to individual persons in order to provide for legal rights).

271 See, e.g. Dahlia Lithwick, Privacy Rights Inc.: Your right to personal privacy is shrinking even as Corporate America's is growing, SLATE (Oct. 14, 2010 6:42 PM), http://www.slate.com/id/2270956 ("[G]iven the Supreme Court's solicitude for the First Amendment rights of corporations in Citizens United, perhaps it's time to recognize that for purposes of privacy rights, corporations are now people, too.").

272 Citizens United, 130 S. Ct. at 885 (concerning constitutional rights of corporations in relation to campaign finance laws); compare FCC v. AT&T Inc., 582 F.3d 490 (concerning the statutory personhood rights of corporations under the Freedom of Information Act).
Kennedy was joined by Chief Justice Roberts and Justices Alito, Scalia, and Thomas, in holding that corporations are entitled to First Amendment protection for political speech. Justice Stevens, joined by Justices Breyer, Ginsburg, and Sotomayor disagreed with the majority’s opinion in a particularly lengthy and vehement dissent. During oral arguments for *Citizens United*, Justice Sotomayor made strong statements that suggested she disagreed with previous Supreme Court decisions that give corporations the same legal recognitions as persons.

When viewed in light of the Court’s decisions under Chief Justice Roberts and his predecessor Chief Justice Rehnquist, *AT&T Inc. v. FCC* contrasts several opinions that favor corporate interests. While corporations appear to be

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273 While Justice Scalia was a supporter of corporate rights in *Citizens United*, his vote in *AT&T Inc. v. FCC* can be reconciled in that he previously advocated for the narrow construction of FOIA exemptions. Before ascending to the High Court, Scalia testified before the Senate Subcommittee on the Judiciary, arguing that Exemption 7(C) cannot be applied to corporations. 1 Freedom of Information Act: Hearings Before the Subcomm. On the Constitution of the Senate Comm. On the Judiciary, 97th Cong., 1st Sess. 957-958 (1981) (“perhaps the most significant feature” of Exemption 7(C) is that it’s scope is limited to exclude to corporations).

274 See *Citizens United*, 130 S. Ct. at 929.

275 See id.


278 See generally Amol Mehra, supra note 268; accord Daily Editorial Board, *Corps don’t need personal privacy: The Supreme Court could grant corporations more secrecy this term*, *The Minneapolis Daily* (Oct. 5, 2010), http://www.mndaily.com/2010/10/05/corps-don%E2%80%99t-need-personal-privacy (observing that “after the ill-advised Citizens United ruling, the importance of any Supreme Court case cannot be overestimated” because “in that case, the Court, instead of reaching a decision with narrow and specific implications, took a small case and used it to fundamentally alter our democracy”). Also before the Court this term, *Boeing Company v. United States* and *General Dynamics Corp. v. United States* present issues involving the state secrets privilege and its application to contract disputes between the military and defense contractors. Commentators assert these cases have the potential to further expand corporate rights. See generally, Adam Liptak and Duff Wilson, *Justice to Examine Rights of Corporations*, *N.Y. Times*. Sept. 28, 2010, at A20 (“Continuing to explore the limits of corporations’ constitutional rights, the Supreme Court on Tuesday added cases to its docket that will test the scope of companies’ rights to due process and privacy.”). *Thompson v. North American*
enjoying expanding rights, rights for individuals are shrinking. However, the Court’s specific narrowing of AT&T Inc. v. FCC’s holding to affect merely Exemption 7(C) interpretation could still leave corporations an opportunity to assert a personal privacy right in a different, non-Exemption 7(C) context.

2. Extension of Corporate Personhood Rights is Problematic

The Third Circuit’s decision represented a resounding affirmation of the notion of personhood rights for corporations. In protecting certain corporate disclosures, FOIA can be a means to encourage corporate participation in government investigations. However, the Third Circuit’s reading of Exemption

279 See Dahlia Lithwick, supra note 271 (noting as troubling the “growing deference to trembling corporate sensitivity would be merely amusing were it not for the fact that, as the idea of corporate privacy and dignity catches hold in the American judiciary, basic notions of privacy and dignity for actual human beings seem to be on the wane”); Adam Cohen, Why Companies Don’t Deserve Personal Privacy Rights, TIME (Dec. 15, 2010), http://www.time.com/time/nation/article/0,8599,2037195,00.html (noting that rights of individual people have been scaled back in “sex-discrimination claims, challenges to cruel prison conditions and other lawsuits involving wronged human beings”).

280 FCC v. AT&T Inc., 131 S. Ct. at 1184.

281 See generally Amol Mehra, supra note 268 (interpreting Citizens United to “aggrandize[] the power of corporations and interest groups at the expense of candidates, political parties and true democracy”); see also Courtney Minick, supra note 268 (“This term, the Court has the opportunity to extend even more rights to corporations”); Noah Feldman and Martha Minow, supra note 278 (describing Citizens United as expansively holding “when it came to free speech rights, corporations would be treated more or less like individuals”); see generally Lyle Denniston, Commentary: Privacy, in different settings, SCOTUSBLOG (Mar. 2, 2011 7:41 PM EST) http://www.scotusblog.com/2011/03/commentary-privacy-in-different-settings/ (noting that notions of privacy depend on context); see also generally Kevin Goldberg, Swami Reigns Supreme, Reins Supremes, COMMLAWBLOG (Mar. 1, 2011) http://www.commlawblog.com/tags/fcc-v-at&t/.

282 David T. Blonder, Court Properly Protects Businesses’ Privacy Rights in Context of FOIA Request, 18 WASHINGTON LEGAL FOUNDATION 29, 2 (2009) (“This ruling appears to be an important and principled victory for corporate privacy rights.”).

283 Id. (“To encourage corporations to cooperate in government investigations, these statutory protections are necessary to prevent the potentially damaging disclosure of pro-
“warp[ed]” the very notion of personal privacy in applying it to corporations. Corporations already receive adequate protection from other FOIA Exemptions, most notably Exemption 4. Congress drafted Exemption 4 specifically with an eye to preventing the type of competitive disadvantages that AT&T was concerned CompTel would gain through its FOIA request. Moreover, publicly traded corporations are required by law to disclosure certain financial and operational information to the public.

Recognizing personal rights of corporations is problematic because the corporate form exists merely to limit the liability of investors. Further, corporations are typically treated differently because they are not citizens. Privacy as a legal concept is best suited to the application to individual persons. The Supreme Court observed that the notion of privacy “encompass[es] the individual’s control of information concerning his or her person.” Privacy is unique in that it is innately tied to emotions. For this reason, it is more apprietary and sensitive information to third parties with sometimes unclear intentions.”).

Exemption 4 protects against the disclosure of “trade secrets and commercial or financial information.” 5 U.S.C. § 552(b)(4).

“Exemption 4 is designed to ‘protect[] persons who submit financial or commercial data to government agencies from . . . competitive disadvantages.” Brief of Amici Curiae Public Citizen et al. in Support of Petitioners supra note 62, at 6; see also Brief of Amici Curiae Citizens for Responsibility and Ethics in Washington, et al., supra note 260, at 23 (“recognizing corporate privacy interests under Exemption 7(C) would grant corporations greater rights and protections than individuals currently enjoy under the FOIA”).

Exemption 4 is designed to “protect[] persons who submit financial or commercial data to government agencies from . . . competitive disadvantages.” Brief of Amici Curiae Public Citizen et al. in Support of Petitioners supra note 62, at 7 (citing Nat’l Parks & Conservation Ass’n v. Morton, 498 F.2d 765, 768 (D.C. Cir. 1974)).

See generally Noah Feldman and Martha Minow, supra note 278 (characterizing ATT v. FCC as considering the question of “Do you treat a corporation as something special? Or do you treat a corporation as though it were a human being?”); Mehra, supra note 268 (“corporations are bundles of private interests sometimes incompatible with public interests, and have uniquely disproportionate power.”).

Amol Mehra, supra note 268 (describing corporations as not “traditional citizens” because they do not vote); Adam Cohen, supra note 279 (noting for only some purposes, including the ability to own property or enter into contracts, are corporations treated as individuals); see Mark Walsh, Corporate Rights Are Again at Issue as AT&T Wants to Keep Info a Secret, ABA JOURNAL (Jan. 1, 2011 2:40 AM CST), http://www.abajournal.com/magazine/article/corporate_rights_are_again_at_issue_as_att_wants_to_keep_info_a_secret/ (noting a distinction between the treatment of corporations and individuals for personal privacy issues).

A. Breckenridge, The Right to Privacy 1 (1970) (“Privacy, in my view, is the rightful claim of the individual to determine the extent to which he wishes to share himself with others . . . It is also the individual’s right to control dissemination of information about himself.”).

Reporters Comm. For Freedom of the Press, 489 U.S. at 763.

Scott Hartman, supra note 269, at 386 (asserting that harm suffered by an individual because of disclosure is “fundamentally different from the harm that a corporation suffers under similar circumstances”); id. at 108 (noting that a corporation may lose revenue while a person loses “control of the discernment of information concerning their person . . . impli-
propriate to describe the interests of a corporation in terms of property law.\textsuperscript{292} The Court has noted that corporations are legal fictions and, thereby, do not warrant the same levels of protection as individuals.\textsuperscript{293}

V. CONCLUSION

American democracy treasures government transparency as a core value—one crucial to ensuring government accountability. Congress affirmed the importance of transparency with its passage of FOIA.\textsuperscript{294} However, Congress emphasized the significance of individual privacy as an equally important consideration in American life when it amended FOIA to include nine privacy Exemptions to disclosure.\textsuperscript{295}

Recently decided by the United States Supreme Court, \textit{AT&T Inc. v. FCC} considered the scope and extent of FOIA Exemption 7(C).\textsuperscript{296} Specifically, the case addressed whether Exemption 7(C) protects corporate personal privacy interests.\textsuperscript{297} \textit{AT&T Inc. v. FCC} presented a significant watershed moment for the Court to highlight good public policy, namely ensuring that FOIA remains a vehicle of citizen access to government held information\textsuperscript{298} and to veer away from its controversial trend of judicial activism in favor of corporate rights and personhood.\textsuperscript{299} Instead, the Court’s opinion devoted its attention solely to the use of grammar and common usage to dictate statutory interpretation. Although the Court decided correctly by narrowly interpreting “personal privacy” as applicable only to individuals, it should have based its decision on the importance of FOIA to American democracy and the alarming trend of expansion of corporate personhood.

Given the power of corporations as a driving force in the global economy, issues of corporation personhood and autonomy will continue to emerge before courts. However, in \textit{AT&T Inc. v. FCC} the Supreme Court failed to seize an opportunity to reaffirm the important values of government transparency and


\textsuperscript{293} Fifth Amendment protections are not extended to corporate documents and records as corporations are “creature[s] of the State,” with powers limited by the State.” Braswell v. United States, 487 U.S. 99, 102, 104-105 (1988) (quoting Hale v. Henkel, 201 U.S. 43 (1906).

\textsuperscript{294} \textit{Infra} Part I-I.

\textsuperscript{295} \textit{Infra} Part I-I.

\textsuperscript{296} \textit{Infra} Part III.

\textsuperscript{297} \textit{Infra} Part III.

\textsuperscript{298} \textit{Infra} Part IV.

\textsuperscript{299} \textit{Infra} Part IV-V.
accountability in the face of private interests.