SUPREME COURT OF THE UNITED STATES

No. 02–1377

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

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

[February 24, 2004]

JUSTICE SOUTER delivered the opinion of the Court.

The United States is subject to a cause of action for the benefit of at least some individuals adversely affected by a federal agency's violation of the Privacy Act of 1974. The question before us is whether plaintiffs must prove some actual damages to qualify for a minimum statutory award of $1,000. We hold that they must.

I

Petitioner Buck Doe filed for benefits under the Black Lung Benefits Act, 83 Stat. 792, 30 U. S. C. §901 *et seq.*, with the Office of Workers' Compensation Programs, the division of the Department of Labor responsible for adjudicating it. The application form called for a Social Security number, which the agency then used to identify the applicant's claim, as on documents like "multicaptioned" notices of hearing dates, sent to groups of claimants, their employers, and the lawyers involved in their cases. The Government concedes that following this practice led to disclosing Doe's Social Security number beyond the limits set by the Privacy Act. See 5 U. S. C. §552a(b).

Doe joined with six other black lung claimants to sue the Department of Labor, alleging repeated violations of the Act and seeking certification of a class of "'all claimants for Black Lung Benefits since the passage of the Privacy Act.'" Pet. for Cert. 6a. Early on, the United States stipulated to an order prohibiting future publication of applicants' Social Security numbers on multicaptioned hearing notices, and the parties then filed cross-motions for summary judgment. The District Court denied class certification and entered judgment against all individual plaintiffs except Doe, finding that their submissions had raised no issues of cognizable harm. As to Doe, the Court accepted his uncontroverted evidence of distress on learning of the improper disclosure, granted summary judgment, and awarded $1,000 in statutory damages under 5 U. S. C. §552a(g)(4).

A divided panel of the Fourth Circuit affirmed in part but reversed on Doe's claim, holding the United States entitled to summary judgment across the board. 306 F. 3d 170 (2002). The Circuit treated the $1,000 statutory minimum as available only to plaintiffs who suffered actual damages because of the agency's violation, *id.*, at 176–179, and then found that Doe had not raised a triable issue of fact about actual damages, having submitted no corroboration for his claim of emotional distress, such as evidence of physical symptoms, medical treatment, loss of income, or impact on his behavior. In fact, the only indication of emotional affliction was Doe's conclusory allegations that he was "'torn . . . all to pieces'" and "'greatly concerned and worried'" because of the disclosure of his Social Security number and its potentially "'devastating'" consequences. *Id.,* at 181.

Doe petitioned for review of the holding that some actual damages must be proven before a plaintiff may receive the minimum statutory award. See Pet. for Cert. i. Because the Fourth Circuit's decision requiring proof of

actual damages conflicted with the views of other Circuits, see, *e.g., Orekoya* v. *Mooney*, 330 F. 3d 1, 7–8 (CA1 2003); *Wilborn* v. *Department of Health and Human Servs.*, 49 F. 3d 597, 603 (CA9 1995); *Waters* v. *Thornburgh*, 888 F. 2d 870, 872 (CADC 1989); *Johnson* v. *Department of Treasury*, 700 F. 2d 971, 977, and n. 12 (CA5 1983); *Fitzpatrick* v. *IRS*, 665 F. 2d 327, 330–331 (CA11 1982), we granted certiorari. 539 U. S. ___ (2003). We now affirm.

II

"[I]n order to protect the privacy of individuals identified in information systems maintained by Federal agencies, it is necessary . . . to regulate the collection, maintenance, use, and dissemination of information by such agencies." Privacy Act of 1974, §2(a)(5), 88 Stat. 1896. The Act gives agencies detailed instructions for managing their records and provides for various sorts of civil relief to individuals aggrieved by failures on the Government's part to comply with the requirements.

Subsection (g)(1) recognizes a civil action for agency misconduct fitting within any of four categories (the fourth, in issue here, being a catchall), 5 U. S. C. §§552a(g)(1)(A)–(D), and then makes separate provision for the redress of each. The first two categories cover deficient management of records: subsection (g)(1)(A) provides for the correction of any inaccurate or otherwise improper material in a record, and subsection (g)(1)(B) provides a right of access against any agency refusing to allow an individual to inspect a record kept on him. In each instance, further provisions specify such things as the *de novo* nature of the suit (as distinct from any form of deferential review), §§552a(g)(2)(A), (g)(3)(A), and mechanisms for exercising judicial equity jurisdiction (by *in camera* inspection, for example), §552a(g)(3)(A).

The two remaining categories deal with derelictions having consequences beyond the statutory violations *per*

se. Subsection (g)(1)(C) describes an agency's failure to maintain an adequate record on an individual, when the result is a determination "adverse" to that person. Subsection (g)(1)(D) speaks of a violation when someone suffers an "adverse effect" from any other failure to hew to the terms of the Act. Like the inspection and correction infractions, breaches of the statute with adverse consequences are addressed by specific terms governing relief:

> "In any suit brought under the provisions of subsection (g)(1)(C) or (D) of this section in which the court determines that the agency acted in a manner which was intentional or willful, the United States shall be liable to the individual in an amount equal to the sum of—
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> "(A) actual damages sustained by the individual as a result of the refusal or failure, but in no case shall a person entitled to recovery receive less than the sum of $1,000; and
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> "(B) the costs of the action together with reasonable attorney fees as determined by the court." §552a(g)(4).[1]

III

Doe argues that subsection (g)(4)(A) entitles any plaintiff adversely affected by an intentional or willful violation to the $1,000 minimum on proof of nothing more than a

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[1]The Privacy Act says nothing about standards of proof governing equitable relief that may be open to victims of adverse determinations or effects, although it may be that this inattention is explained by the general provisions for equitable relief within the Administrative Procedure Act (APA), 5 U. S. C. §706. Indeed, the District Court relied on the APA in determining that it had jurisdiction to enforce the stipulated order prohibiting the Department of Labor from using Social Security numbers in multiparty captions. *Doe* v. *Herman,* Civ. Action No. 97–0043–B (DC Va., Mar. 18, 1998), pp. 9–11.

statutory violation: anyone suffering an adverse consequence of intentional or willful disclosure is entitled to recovery. The Government claims the minimum guarantee goes only to victims who prove some actual damages. We think the Government has the better side of the argument.

To begin with, the Government's position is supported by a straightforward textual analysis. When the statute gets to the point of guaranteeing the $1,000 minimum, it not only has confined any eligibility to victims of adverse effects caused by intentional or willful actions, but has provided expressly for liability to such victims for "actual damages sustained." It has made specific provision, in other words, for what a victim within the limited class may recover. When the very next clause of the sentence containing the explicit provision guarantees $1,000 to a "person entitled to recovery," the simplest reading of that phrase looks back to the immediately preceding provision for recovering actual damages, which is also the Act's sole provision for recovering anything (as distinct from equitable relief). With such an obvious referent for "person entitled to recovery" in the plaintiff who sustains "actual damages," Doe's theory is immediately questionable in ignoring the "actual damages" language so directly at hand and instead looking for "a person entitled to recovery" in a separate part of the statute devoid of any mention either of recovery or of what might be recovered.

Nor is it too strong to say that Doe does ignore statutory language. When Doe reads the statute to mean that the United States shall be liable to any adversely affected subject of an intentional or willful violation, without more, he treats willful action as the last fact necessary to make the Government "liable," and he is thus able to describe anyone to whom it is liable as entitled to the $1,000 guarantee. But this way of reading the statute simply pays no attention to the fact that the statute does not speak of

liability (and consequent entitlement to recovery) in a freestanding, unqualified way, but in a limited way, by reference to enumerated damages.[2]

Doe's manner of reading "entitle[ment] to recovery" as satisfied by adverse effect caused by intentional or willful violation is in tension with more than the text, however. It is at odds with the traditional understanding that tort recovery requires not only wrongful act plus causation reaching to the plaintiff, but proof of some harm for which damages can reasonably be assessed. See, *e.g.,* W. Keeton, D. Dobbs, R. Keeton, & D. Owen, Prosser and Keeton on Law of Torts §30 (5th ed. 1984). Doe, instead, identifies a person as entitled to recover without any reference to proof of damages, actual or otherwise. Doe might respond that it makes sense to speak of a privacy tort victim as entitled to recover without reference to damages because analogous common law would not require him to show particular items of injury in order to receive a dollar recovery. Traditionally, the common law has provided such victims with a claim for "general" damages, which for privacy and defamation torts are presumed damages: a monetary award calculated without reference to specific harm.[3]

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[2] Indeed, if adverse effect of intentional or willful violation were alone enough to make a person entitled to recovery, then Congress could have conditioned the entire subsection (g)(4)(A) as applying only to "a person entitled to recovery." That, of course, is not what Congress wrote. As we mentioned before, Congress used the entitled-to-recovery phrase only to describe those entitled to the $1,000 guarantee, and it spoke of entitlement and guarantee only after referring to an individual's actual damages, indicating that "actual damages" is a further touchstone of the entitlement.

[3] 3 Restatement of Torts §621, Comment *a* (1938) ("It is not necessary for the plaintiff [who is seeking general damages in an action for defamation] to prove any specific harm to his reputation or any other loss caused thereby"); 4 *id.,* §867, Comment *d* (1939) (noting that

Such a rejoinder would not pass muster under the Privacy Act, however, because a provision of the Act not previously mentioned indicates beyond serious doubt that general damages are not authorized for a statutory violation. An uncodified section of the Act established a Privacy Protection Study Commission, which was charged, among its other jobs, to consider "whether the Federal Government should be liable for general damages incurred by an individual as the result of a willful or intentional violation of the provisions of sections 552a(g)(1)(C) or (D) of title 5."[4] §5(c)(2)(B)(iii), 88 Stat. 1907. Congress left the question of general damages, that is, for another day. Because presumed damages are therefore clearly unavailable, we have no business treating just any adversely affected victim of an intentional or willful violation as entitled to recovery, without something more.

This inference from the terms of the Commission's mandate is underscored by drafting history showing that Congress cut out the very language in the bill that would have authorized any presumed damages.[5] The Senate bill

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damages are available for privacy torts "in the same way in which general damages are given for defamation," without proof of "pecuniary loss [or] physical harm"); see also 3 Restatement (Second) of Torts §621, Comment *a* (1976).

[4] The Commission ultimately recommended that the Act should "permit the recovery of special and general damages . . . but in no case should a person entitled to recovery receive less than the sum of $1,000 or more than the sum of $10,000 for general damages in excess of the dollar amount of any special damages." Personal Privacy in an Information Society: The Report of the Privacy Protection Study Commission 531 (July 1977).

[5] On this point, we do not understand JUSTICE GINSBURG's dissent to take issue with our conclusion that Congress explicitly rejected the proposal to make presumed damages available for Privacy Act violations. Instead, JUSTICE GINSBURG appears to argue only that Congress would have wanted nonpecuniary harm to qualify as actual damages under subsection (g)(4)(A). *Post*, at 8, n. 4 (plaintiff may recover for

would have authorized an award of "actual and general damages sustained by any person," with that language followed by the guarantee that "in no case shall a person entitled to recovery receive less than the sum of $1,000." S. 3418, 93d Cong., 2d Sess., §303(c)(1) (1974). Although the provision for general damages would have covered presumed damages, see n. 3, *supra,* this language was trimmed from the final statute, subject to any later revision that might be recommended by the Commission. The deletion of "general damages" from the bill is fairly seen, then, as a deliberate elimination of any possibility of imputing harm and awarding presumed damages.[6] The deletion thus precludes any hope of a sound interpretation of entitlement to recovery without reference to actual damages.[7]

Finally, Doe's reading is open to the objection that no purpose is served by conditioning the guarantee on a person's being entitled to recovery. As Doe treats the text, Congress could have accomplished its object simply by providing that the Government would be liable to the individual for actual damages "but in no case . . . less than the sum of $1,000" plus fees and costs. Doe's reading leaves the reference to entitlement to recovery with no job to do, and it accordingly accomplishes nothing.[8]

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emotional distress "'that he proves to have been actually suffered by him'" (quoting 3 Restatement (Second) of Torts, *supra,* at 402, Comment *b*)). That issue, however, is not before us today. See n. 12, *infra.*

[6] While theoretically there could also have been a third category, that of "nominal damages," it is implausible that Congress intended tacitly to recognize a nominal damages remedy after eliminating the explicit reference to general damages.

[7] JUSTICE SCALIA does not join this paragraph or footnote 8.

[8] JUSTICE GINSBURG responds that our reading is subject to a similar criticism: "Congress more rationally [c]ould have written: 'actual damages . . . but in no case shall a person who proves such damages [in any amount] receive less than $1,000.'" *Post*, at 3–4. Congress's use of

IV

There are three loose ends. Doe's argument suggests it would have been illogical for Congress to create a cause of action for anyone who suffers an adverse effect from intentional or willful agency action, then deny recovery without actual damages. But this objection assumes that the language in subsection (g)(1)(D) recognizing a federal "civil action" on the part of someone adversely affected was meant, without more, to provide a complete cause of action, and of course this is not so. A subsequent provision requires proof of intent or willfulness in addition to adverse effect, and if the specific state of mind must be proven additionally, it is equally consistent with logic to require some actual damages as well. Nor does our view deprive the language recognizing a civil action by an adversely affected person of any independent effect, for it may readily be understood as having a limited but specific function: the reference in §552a(g)(1)(D) to "adverse effect" acts as a term of art identifying a potential plaintiff who satisfies the injury-in-fact and causation requirements of Article III standing, and who may consequently bring a civil action without suffering dismissal for want of standing to sue. See *Director, Office of Workers' Compensation Programs* v. *Newport News Shipbuilding & Dry Dock Co.*, 514 U. S. 122, 126 (1995) ("The phrase 'person adversely

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the entitlement phrase actually contained in the statute, however, is explained by drafting history. The first bill passed by the Senate authorized recovery of both actual and general damages. See *infra*, at 7–8. At that point, when discussing eligibility for the $1,000 guarantee, it was reasonable to refer to plaintiffs with either sort of damages by the general term "a person entitled to recovery." When subsequent amendment limited recovery to actual damages by eliminating the general, no one apparently thought to delete the inclusive reference to entitlement. But this failure to remove the old language did not affect its reference to "actual damages," the term remaining from the original pair, "actual and general."

affected or aggrieved' is a term of art used in many statutes to designate those who have standing to challenge or appeal an agency decision, within the agency or before the courts"); see also 5 U. S. C. §702 (providing review of agency action under the Administrative Procedure Act to individuals who have been "adversely affected or aggrieved"). That is, an individual subjected to an adverse effect has injury enough to open the courthouse door, but without more has no cause of action for damages under the Privacy Act.[9]

Next, Doe also suggests there is something peculiar in offering some guaranteed damages, as a form of presumed damages not requiring proof of amount, only to those plaintiffs who can demonstrate actual damages. But this approach parallels another remedial scheme that the drafters of the Privacy Act would probably have known about. At common law, certain defamation torts were redressed by general damages but only when a plaintiff first proved some "special harm," *i.e.*, "harm of a material and generally of a pecuniary nature." 3 Restatement of Torts §575, Comments *a* and *b* (1938) (discussing defamation torts that are "not actionable per se"); see also 3 Re-

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[9] Nor are we convinced by the analysis mentioned in the dissenting opinion in the Court of Appeals, that any plaintiff who can demonstrate that he was adversely affected by intentional or willful agency action is entitled to costs and reasonable attorney's fees under §552a(g)(4)(B), and is for that reason "a person entitled to recovery" under subsection (g)(4)(A). See 306 F. 3d 170, 188–189 (CA4 2002). Instead of treating damages as a recovery entitling a plaintiff to costs and fees, see, *e.g.,* 42 U. S. C. §1988(b) (allowing "a reasonable attorney's fee" to a "prevailing party" under many federal civil rights statutes); *Alyeska Pipeline Service Co.* v. *Wilderness Society*, 421 U. S. 240, 247–258 (1975) (discussing history of American courts' power to award fees and costs to prevailing plaintiffs), this analysis would treat costs and fees as the recovery entitling a plaintiff to minimum damages; it would get the cart before the horse.

statement (Second) of Torts §575, Comments *a* and *b* (1976) (same). Plaintiffs claiming such torts could recover presumed damages only if they could demonstrate some actual, quantifiable pecuniary loss. Because the recovery of presumed damages in these cases was supplemental to compensation for specific harm, it was hardly unprecedented for Congress to make a guaranteed minimum contingent upon some showing of actual damages, thereby avoiding giveaways to plaintiffs with nothing more than "abstract injuries," *Los Angeles* v. *Lyons*, 461 U. S. 95, 101–102 (1983).[10]

In a final effort to save his claim, Doe points to a pair of statutes with remedial provisions that are worded similarly to §552a(g)(4). See Tax Reform Act of 1976, §1201(i)(2)(A), 90 Stat. 1665–1666, 26 U. S. C. §6110(j)(2)(A); §1202(e)(1), 90 Stat. 1687, 26 U. S. C. §7217(c) (1976 ed., Supp. V) (repealed 1982); Electronic Communications Privacy Act of 1986, §201, 100 Stat. 1866, 18 U. S. C. §2707(c). He contends that legislative history of these subsequent enactments shows that Congress sometimes used language similar to 5 U. S. C. §552a(g)(4) with the object of authorizing true liquidated damages remedies. See, *e.g.,* S. Rep. No. 94–938, p. 348 (1976) (discussing §1202(e)(1) of the Tax Reform Act); S. Rep. No. 99–541, p. 43 (1986) (discussing §201 of the Electronic Communications Privacy Act). There are two problems with this argument. First, as to §1201(i)(2)(A) of

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[10] We also reject the related suggestion that the category of cases with actual damages not exceeding $1,000 is so small as to render the minimum award meaningless under our reading. It is easy enough to imagine pecuniary expenses that might turn out to be reasonable in particular cases but fall well short of $1,000: fees associated with running a credit report, for example, or the charge for a Valium prescription. Since we do not address the definition of actual damages today, see n. 12, *infra,* this challenge is too speculative to overcome our interpretation of the statute's plain language and history.

the Tax Reform Act, the text is too far different from the language of the Privacy Act to serve as any sound basis for analogy; it does not include the critical limiting phrase "entitled to recovery." But even as to §1202(e)(1) of the Tax Reform Act and §201 of the Electronic Communications Privacy Act, the trouble with Doe's position is its reliance on the legislative histories of completely separate statutes passed well after the Privacy Act. Those of us who look to legislative history have been wary about expecting to find reliable interpretive help outside the record of the statute being construed, and we have said repeatedly that "'subsequent legislative history will rarely override a reasonable interpretation of a statute that can be gleaned from its language and legislative history prior to its enactment,'" *Solid Waste Agency of Northern Cook Cty.* v. *Army Corps of Engineers*, 531 U. S. 159, 170, n. 5 (2001) (quoting *Consumer Product Safety Comm'n* v. *GTE Sylvania, Inc.*, 447 U. S. 102, 118, n. 13 (1980)).[11]

V

The "entitle[ment] to recovery" necessary to qualify for the $1,000 minimum is not shown merely by an intentional or willful violation of the Act producing some adverse effect. The statute guarantees $1,000 only to plaintiffs who have suffered some actual damages.[12] The

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[11] In support of Doe's position, JUSTICE GINSBURG's dissent also cites another item of extratextual material, an interpretation of the Privacy Act that was published by the Office of Management and Budget in 1975 as a guideline for federal agencies seeking to comply with the Act. *Post*, at 6–7. The dissent does not claim that any deference is due this interpretation, however, and we do not find its unelaborated conclusion persuasive.

[12] The Courts of Appeals are divided on the precise definition of actual damages. Compare *Fitzpatrick* v. *IRS*, 665 F. 2d 327, 331 (CA11 1982) (actual damages are restricted to pecuniary loss), with *Johnson* v. *Department of Treasury*, 700 F. 2d 971, 972–974 (CA5 1983) (actual

judgment of the Fourth Circuit is affirmed.

It is so ordered.

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damages can cover adequately demonstrated mental anxiety even without any out-of-pocket loss). That issue is not before us, however, since the petition for certiorari did not raise it for our review. We assume without deciding that the Fourth Circuit was correct to hold that Doe's complaints in this case did not rise to the level of alleging actual damages. We do not suggest that out-of-pocket expenses are necessary for recovery of the $1,000 minimum; only that they suffice to qualify under any view of actual damages.