United States Supreme Court Update:

Highlights of Recent and Upcoming Decisions

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Acknowledgments and News

In addition to the underlying case materials available from the Court and SCOTUSblog, I was aided in writing this paper by attending the presentations by Erwin Chemerinsky, Kenneth Starr, and Pamela Karlan at this year's ABA Appellate Judges' Education Institute. Their insights broadened my own thoughts about recent and upcoming opinions, and they were entertaining speakers, as well! The 2011 AJEI will be held in Washington, D.C. in November, and I encourage everyone to attend.

And now, a bit of news: Previously, the United States Supreme Court released audio of oral arguments at the end of each term. Beginning this term, the Court is releasing audio of oral arguments on Friday of each argument week. Check out the new releases at http://www.supremecourt.gov/oral_arguments/argument_audio.aspx. To provide context for the arguments, check out the argument previews, case summaries, briefs, and other background materials at SCOTUSblog (http://www.scotusblog.com).

Highlighted Decisions from Last Term

Rent-A-Center, West, Inc. v. Jackson, 130 S.Ct. 2772 (2010)

[Arbitration – Arbitrable Issues]

In a 5-4 decision, the Court decided that, if the party resisting arbitration challenges the validity of the entire arbitration agreement, then the validity question goes to the arbitrator. 130 S.Ct. at 2778. If the challenge is specific to the particular type of arbitration provision at issue in the case, then a court must decide that challenge. *Id.*

All Rent-A-Center employees were required to sign a "Mutual Agreement to Arbitrate Claims." 130 S.Ct. at 2775. The contract provided in two ways for arbitration. First, the agreement required arbitration of all disputes arising out of the employment relationship. *Id.* Second, the agreement required arbitration of all challenges to the enforceability of the arbitration agreement. *Id.* Because an arbitration provision has been considered to be severable from the remainder of the contract containing it, a party's challenge to another provision of the contract, or to the contract as a whole, does not prevent a court from enforcing a specific agreement to arbitrate. *Id.* at 2778. Such challenges instead must be determined by the arbitrator. *Id.*

The question arose whether the severability rule applies when, as here, the entire contract concerns arbitration. The Court held that it does. The Court differentiated between the provision sought to be enforced in the motion to compel arbitration (*i.e.*, the delegation provision giving the arbitrator the authority to resolve enforceability disputes) and the "'remainder of the contract'" (*i.e.*, the rest of the agreement to arbitrate claims arising out of Jackson's employment with Rent-A-Center). *Id.* at 2779. The Court reasoned that

application of the severability rule does not depend on the substance of the remainder of the contract. *Id.* Accordingly, unless the party opposing arbitration challenged the delegation provision specifically, the courts were required to treat the provision as valid under section 2, and allow the arbitrator to determine the challenge to the validity of the agreement as a whole. *Id.*

Jackson attacked the entire arbitration agreement as unconscionable. *Id.* at 2779-80. As a result, the challenge – whether it is unconscionable to require the employee to arbitrate – would be decided by the arbitrator. *Id.* at 2780.

Stolt-Nielsen SA v. AnimalFeeds Int'l Corp., 130 S.Ct. 1758 (2010)

[Arbitration – Class Arbitration]

Is class arbitration permitted under the FAA when the arbitration agreement is "silent" on class arbitration? The Court's (majority) opinion rejected the notion that consent to class arbitration could be inferred from the mere fact that the parties agreed to arbitration. Justice Alito authored the Court's opinion, joined by Chief Justice Roberts and Justices Scalia, Kennedy, and Thomas. Justice Ginsburg dissented, joined by Justices Stevens and Breyer. Justice Sotomayor did not participate.

In proceedings below, the parties submitted to the arbitration panel the question of whether class arbitration was permitted under the arbitration agreement, which did not mention class treatment. The parties stipulated that the agreement's silence on the class treatment issue meant that the parties had reached "no agreement" on that issue. The arbitration panel issued a Clause Construction Award, deciding that the arbitration agreement permitted class arbitration. Stolt-Nielsen filed a motion to vacate the Clause Construction Award, and the district court granted the motion, holding that the award was made in manifest disregard of the law because the arbitrators did not conduct a meaningful choice-of-law analysis. The Second Circuit reversed, holding that, under *Green Tree Financial Corp. v. Bazzle*, 539 U. S. 444 (2003), the arbitrators were empowered to decide the class arbitration question and that the allegations that the arbitrators decided the issue incorrectly did not provide a ground for vacatur under the FAA. *See Stolt-Nielsen SA v. AnimalFeeds Int'l Corp.*, 548 F.3d 85, 101 (2d Cir. 2008). The Supreme Court reversed the court of appeals decision, concluded that the arbitration agreement does not permit class arbitration, and remanded the case for further proceedings consistent with the opinion. 130 S.Ct. at 1777.

The majority opinion contains several noteworthy decisions. First, the Court found that the arbitrators exceeded their powers (*see* FAA section 10(b)(4)) in determining whether the arbitration agreement allowed/compelled class arbitration. *Id.* at 1768-69. The arbitrators did not inquire about or find that the FAA, maritime law, or New York law – the parties variously claimed that either maritime law or New York law governed the agreement

– contained a "default rule" under which an arbitration clause is construed as allowing class arbitration in the absence of express consent. *Id.* at 1768-70. Instead, the panel noted a post-*Bazzle* consensus among arbitrators that class arbitration is beneficial in "a wide variety of settings," and considered only whether there was any good reason not to follow that consensus in this case. *Id.* at 1768. Because the Court went on to conclude that there could be only one possible decision on the class arbitration question, the Court chose, under FAA section 10(b), not to direct a rehearing and instead to decide the question originally referred to the panel. *Id.* at 1770.

In connection with this "exceeded their powers" analysis, the Court expressly declined to decide whether "manifest disregard" survives *Hall Street Associates, L. L. C. v. Mattel, Inc.*, 552 U. S. 576, 585 (2008), as an independent ground for review or as a judicial gloss on the grounds for vacatur enumerated in the FAA. *Id.* at 1768 n.3. The district court had vacated the arbitrators' decision prior to *Hall Street* based on the arbitrators' "manifest disregard" of the law. *Id.* at 1766. Arguments about manifest disregard were also made to the Court, which expressly declined to decide whether "manifest disregard" (or some iteration thereof) survived *Hall Street* to provide a basis for vacatur. *Id.* at 1768 n.3. Thus, this question remains open.

Another open question is whether it is mandatory to submit the class arbitration decision to the arbitrator. The Court stated that the judgment in *Bazzle* does not require that the arbitrator, rather than the court, decide the question of whether the parties' agreement permits class arbitration. *Id.* at 1771-72. However, the Court did not go so far as to say what the Court *would* require, if the question were presented. *Id.* The question was not ripe in *Stolt-Nielsen*, where the parties had assigned the class arbitration decision to the arbitrators and did not contest that assignment on appeal. *Id.* at 1772.

But, the Court did decide the question left open in *Bazzle* regarding what rule or standard applies in deciding whether an agreement allows class arbitration. *Id.* at 1773-75. The Court enumerated the principles of interpreting and enforcing arbitration agreements, focusing on the requirement of consent and on the FAA's overarching purpose of ensuring that arbitration agreements are enforced according to their terms. *Id.* The Court also noted earlier in the opinion that all parties had agreed below that "when a contract is silent on an issue there's been no agreement that has been reached on that issue." *Id.* at 1766.

The Court rejected the notion that silence about class arbitration can be filled based merely on the fact that the parties had agreed to arbitration generally. *Id.* at 1775. Class-action arbitration changes the nature of arbitration to such a degree that it cannot be presumed the parties consented to it by simply agreeing to submit their disputes to an arbitrator. *Id.* The Court detailed several key differences between bilateral and class-action arbitrations. *Id.* at 1775-76. Ultimately, the Court returned its focus to the consensual basis of arbitration, and framed the question as being "whether the parties *agreed to authorize* class arbitration." *Id.* at 1776 (emphasis in original). Because the parties in *Stolt-Nielsen*

had reached no agreement on class arbitration, the agreement did not permit class arbitration. *Id.*

Justice Ginsburg would have dismissed the petition as improvidently granted, under her view that the arbitrators' threshold decision on class arbitration did not fully and finally resolve the class arbitration question. *Id.* at 1778-79. The arbitrators decided that the contract permitted class arbitration, but did not decide whether the particular claims were suitable for class treatment or what the class definition should be. *Id.* at 1778. Putting aside that initial jurisdictional matter, Justice Ginsburg disagreed that there was any basis to vacate the arbitrators' decision on the class arbitration question submitted by the parties. *Id.* at 1780. The question of whether the arbitrators exceeded their powers asks whether the arbitrators had the power, based on the parties' submissions or the arbitration agreement, to reach a certain issue, not whether the arbitrators correctly decided that issue. *Id.* Because the parties agreed to submit the question of class arbitration to the arbitrators, Justice Ginsburg found the issue resolved against the petitioner straightaway. *Id.* at 1780-81.

Putting aside this additional issue, Justice Ginsburg also disagreed with the majority's analysis of the "silence" issue, characterizing the majority's rationale as imposing an "affirmative authorization" requirement that "demands contractual language one can read as affirmatively authorizing class arbitration." *Id.* at 1782-83. However, Justice Ginsburg noted that the Court did not go so far as to require "express consent." *Id.* at 1783. Indeed, as she noted, the Court declined to decide what sort of "contractual basis" may support a finding that the parties agreed to authorize class-action arbitration. *Id.* (citing the slip op. at 23, n. 10).

Shady Grove Orthopedic Assocs., P.A. v. Allstate Ins. Co., 130 S.Ct. 1431 (2010)

[Class Actions – State vs. Federal Rules]

The Court's opinion was a close decision, as illustrated by this heading:

> SCALIA, J., announced the judgment of the Court and delivered the opinion of the Court with respect to Parts I and II-A, in which ROBERTS, C.J., and STEVENS, THOMAS, and SOTOMAYOR, JJ., joined, an opinion with respect to Parts II-B and II-D, in which ROBERTS, C.J., and THOMAS, and SOTOMAYOR, JJ., joined, and an opinion with respect to Part II-C, in which ROBERTS, C.J., and, THOMAS, J., joined. STEVENS, J., filed an opinion concurring in part and concurring in the judgment. GINSBURG, J., filed a dissenting opinion, in which KENNEDY, BREYER, and ALITO, JJ., joined.

Justice Scalia garnered enough votes to voice the majority opinion, but had Justice Ginsburg stated her views more narrowly, she might have tilted the balance toward her

position. In the end, however, it is a concurring opinion by Justice Stevens that may have the most impact on how *Shady Grove* is applied in the future.

Shady Grove Orthopedic Associates pursued a $5 million class-action lawsuit against Allstate Insurance Co., contending that Allstate owed a penalty payment for failure to timely pay no-fault accident insurance policy claims. 130 S.Ct. at 1436. The claim was governed by New York law, but Shady Grove sued in federal court under diversity jurisdiction. *Id.* New York law prohibits class actions in suits seeking penalties or statutory minimum damages. *Id.* The question was whether the New York law precludes a federal district court sitting in diversity from entertaining a class action under Federal Rule of Civil Procedure 23 seeking a penalty. *Id.*

The majority concluded that Rule 23, by its terms, creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action. *Id.* at 1437. Essentially, the rule provides a "one-size-fits-all formula for deciding the class-action question." *Id.* Since the New York law attempts to decide the same question as the rule, the majority found the two conflicted. *Id.*

Justice Ginsburg's dissent concluded that the New York law affected only the remedy the plaintiffs could obtain. *Id.* at 1464-69 (Ginsburg, J, dissenting.). She concluded that Rule 23 prescribes procedures relevant to certification and post-certification proceedings, while the New York law addressed only the size of the monetary award that a class plaintiff can pursue. *Id.* at 1465-66. The majority disagreed. The New York law was framed in terms of precluding a plaintiff from "maintain[ing]" a class action seeking statutory penalties. *Id.* at 1439 (majority op.). The majority distinguished the law from one setting a damages ceiling, concluding that instead, it prevented a certain type of class action from coming into existence at all. *Id.* A court bound by the New York law could not certify a class action seeking both statutory penalties and other remedies "even if it announces in advance that it will refuse to award the penalties in the event the plaintiffs prevail . . . ." Thus, the majority found that the state law conflicted with Rule 23. *Id.*

In applying the *Erie* test to decide whether New York law controlled this issue, the majority highlighted the main focus: If the rule governs only the manner and the means by which the litigants' rights are "enforced," it is valid; if it alters the rules of decision by which the court will adjudicate those rights, it is not. *Id.* at 1442. The Court noted that, "[a]pplying that test, we have rejected every statutory challenge to a Federal Rule that has come before us." *Id.* The challenge to Rule 23 was, likewise, rejected. The majority concluded that "a class action, no less than traditional joinder (of which it is a species), merely enables a federal court to adjudicate claims of multiple parties at once, instead of in separate suits. And like traditional joinder, it leaves the parties' legal rights and duties intact and the rules of decision unchanged." *Id.* at 1443. The majority concluded that, in each and every case in which a plaintiff meets the Rule 23 requirements, a federal court is empowered to certify a class. *Id.* at 1442.

In his concurrence, Justice Stevens agreed that the New York law was procedural rule and must yield to Rule 23. However, he disagreed that a federal procedural rule always will displace state law. Instead, he posited that, if a federal procedural rule "would displace a state law that is procedural in the ordinary use of the term but is so intertwined with a state right or remedy that it functions to define the scope of the state-created right," then the federal procedural rule "cannot govern" such a case. *Id.* at 1452 (Stevens, J., concurring). In the Rules Enabling Act, Congress prohibited federal courts from creating procedural rules that restrict, expand, or modify "*any* substantive right." *Id.* Thus, an inquiry is required to determine whether the state procedural rule is a substantive right or remedy in its operation. *Id.* That said, such an inquiry would be required only when there is "little doubt" that a state procedural law might actually rise to the level of a substantive right or remedy. *Id.* at 1457. In formulating this standard, Justice Stevens noted that he agreed with Justice Ginsburg "that there are some state procedural rules that federal courts must apply in diversity cases because they function as a part of the state's definition of substantive rights and remedies." *Id.* at 1448.

Justice Scalia devoted the penultimate section of his opinion to countering Justice Stevens' approach, warning that it would require federal courts to undertake a complex inquiry into the scope of state procedural rules. *Id.* at 1444-47. However, only Chief Justice Roberts and Justice Thomas joined in that section of Justice Scalia's opinion. Thus, Justice Stevens' narrower view, more protective of state law provisions, may prove to be the controlling interpretation of the issues in *Shady Grove*.

Hertz Corp. v. Friend, 130 S.Ct. 1181 (2010)

[Diversity Jurisdiction – Principal Place of Business]

A company's principal place of business for diversity purposes can be only one state. Prior to *Friend*, various circuits used different tests to determine the identity of that state: (1) the place of operations test; (2) the nerve center test; (3) the center of activity test; and (4) the totality of corporate activities test.

The United States Supreme Court unanimously adopted the nerve center test, defining a corporation's principal place of business as the place where its "high level officers direct, control, and coordinate the corporation's activities." *Id.* at 1192. This "normally [will] be the place where the corporation maintains its headquarters—provided that the headquarters is the actual center of direction, control, and coordination, *i.e.*, the "nerve center," and not simply an office where the corporation holds its board meetings (for example, attended by directors and officers who have traveled there for the occasion)." *Id.* The Court acknowledged that this approach is "imperfect," (*id.*), but adopted it based on the diversity statute's language, the desire for "administrative simplicity" in the jurisdictional test, and the statute's legislative history. *Id.* at 1192-94.

The impact was immediately apparent. Hertz Corporation is incorporated in Delaware, with its corporate headquarters in New Jersey. However, the company has the highest percentage of rental facilties in California. Accordingly, the highest percentage of rentals, revenue generation, and employees are located in California. The "place of operations" test applied by the California district court (to which Hertz had removed the case under diversity jurisdiction) and the Ninth Circuit established Hertz's "principal place of business" as California, which destroyed diversity. The "nerve center" test employed by the Supreme Court would shift the principal place of business to New Jersey, which the evidence established was Hertz's center of direction, control, and coordination, and corporate headquarters. *Id.* at 1195. However, in an effort to allow Friend to present evidence under the "new" standard, the Court declined to make this ultimate finding and remanded the case for further proceedings. *Id.*

*Merck & Co. v. Reynold*s, 130 S.Ct. 1784 (2010)

[Securities Fraud – Statutory Interpretation]

Although this case involved securities fraud claims, the statutory interpretation discussion and the analysis of the statute's "discovery" rule may have broader usefulness. A securities fraud complaint is timely if filed no more than the earlier of "2 years after the discovery of the facts constituting the violation" or 5 years after the violation. 28 U.S.C. § 1658(b). In the securities fraud case at hand, the dispositive question was whether the suit was filed within 2 years after the discovery of the facts constituting the violation. 130 S.Ct. at 1789-90. The Court (majority) interpreted "discovery" in section 1658(b) to include constructive discovery.

The lawsuit was filed on November 6, 2003. *Id.* at 1790. The district court found that the plaintiffs should have been alerted to the possibility of Merck's misrepresentations prior to November 2001 (the date 2 years before the complaint was filed), and they had failed to undertake a reasonably diligent investigation at that time. *Id.* at 1792-93. Accordingly, the district court dismissed the complaint. *Id.* at 1793. The Third Circuit reversed, holding (in a majority opinion) that the pre-November 2001 events did not suggest that Merck acted with scienter, an element of a §10(b) violation, and consequently did not commence the running of the limitations period. *Id.*

The Court first addressed whether "discovery" as used in the statute of limitations included both actual and constructive discovery. *Id.* at 1793. In deciding that the term did include constructive discovery, the Court reviewed the history of the discovery rule, state and federal opinions applying the discovery rule, treatment of the discovery rule by treatises, and other statutes of limitations using the discovery rule concept. *Id.* at 1793-96. The Court concluded that the term "discovery" as used in section 1658(b) includes not only those facts the plaintiff actually knew, but also those facts a reasonably diligent plaintiff

would have known. *Id.* at 1796. Thus, the limitations period in section 1658(b) begins to run at the earlier of the dates the plaintiff actually discovered, or a reasonably diligent plaintiff would have discovered, the facts constituting the violation. *See id.*

This portion of the opinion generated two concurring opinions. Justice Stevens filed an opinion concurring in part and concurring in the judgment. He saw no need to decide any distinctions between actual and constructive discovery because, in his view, the dates would have been the same under the facts of this case. Justice Scalia, joined by Justice Thomas, also filed an opinion concurring in part and concurring in the judgment. Justice Scalia does not believe that "discovery" as used in section 1658(b) can include constructive discovery; he interprets the term to mean actual discovery only. However, since Merck did not point to any evidence of actual discovery before November 2001, Justice Scalia agreed that the suit was timely filed.

The second portion of the majority opinion addressed the second part of the two-year limitations period: "the facts constituting the violation." Merck argued that the discovery prong does not require discovery of scienter-related facts. *Id.* at 1796. However, the Court disagreed, stating that the fact of scienter constitutes an "important and necessary element" of a securities fraud violation. *Id.* The Court also disagreed with Merck's argument that scienter can be shown by facts that simply tend to show a materially false or misleading statement (or material omission). *Id.* Because scienter is "context specific," the two-year statute may require "discovery" of scienter-related facts beyond the facts that show a statement (or omission) to be materially false or misleading. *Id.* at 1796-97.

In addition, discovery does not occur at the point where the facts would lead a reasonably diligent plaintiff to investigate further (*i.e.*, the "inquiry notice" point), unless that point is also the point at which the plaintiff would already have discovered facts showing scienter or other "facts constituting the violation." *Id.* at 1797. Although terms such as terms such as "inquiry notice" and "storm warnings" may be useful to the extent that they identify a time when the facts would have prompted a reasonably diligent plaintiff to begin investigating, the limitations period itself does not begin to run until the plaintiff thereafter discovers, or a reasonably diligent plaintiff would have discovered, "the facts constituting the violation," including scienter, irrespective of whether the actual plaintiff undertook a reasonably diligent investigation. *Id.* at 1797-98.

Highlighted Upcoming Decisions

Snyder v. Phelps, No. 09-751 (argued October 6, 2010)

FACTS:

The case concerns a lawsuit filed by the family of a Marine, Matthew Snyder, after members of the Westboro Baptist Church picketed his funeral with signs that included such

statements as "Thank God for dead soldiers." The family filed claims against the Westboro Baptist Church and its founders for defamation, invasion of privacy and the intentional infliction of emotional distress. The district court judgment awarded the family $5 million in damages, but 4th Circuit reversed, concluding that the judgment violated the First Amendment's protections of religious expression. "[N]otwithstanding the distasteful and repugnant nature of the words," the three-judge panel concluded that the Constitution protected the speech.

QUESTIONS PRESENTED:

(1) Whether the prohibition of awarding damages to public figures to compensate for the intentional infliction of emotional distress, under the Supreme Court's First Amendment precedents, applies to a case involving two private persons regarding a private matter.

(2) Whether the freedom of speech guaranteed by the First Amendment trumps its freedom of religion and peaceful assembly.

(3) Whether an individual attending a family member's funeral constitutes a "captive audience" who is entitled to state protection from unwanted communication.

AT&T Mobility v. Concepcion, No. 09-893 (argued November 9, 2010)

FACTS:

AT&T's wireless service agreement purports to bar its customers from seeking class-wide relief in any forum. The Concepcions filed suit in 2006, alleging that AT&T had violated state consumer-protection laws by advertising wireless phones as "free" without disclosing a $30.22 fee that appeared on their bill. In March 2008, AT&T moved to compel arbitration, and the Concepcions opposed based on unconscionability. California law requires evaluation of contracts for both "procedural" and "substantive" unconscionability. The district court found AT&T's class-action ban in the arbitration agreement both procedurally and substantively unconscionable. The 9th Circuit affirmed, concluding that the FAA does not expressly or impliedly preempt California law governing the unconscionability of class action waivers in consumer contracts of adhesion.

QUESTION PRESENTED:

Does the Federal Arbitration Act preempts States from conditioning the enforcement of an arbitration agreement on the availability of particular procedures, such as class-wide arbitration, when those procedures are not necessary to ensure that the parties to the arbitration agreement are able to vindicate their claims?

Bruesewitz v. Wyeth, No. 09-152 (argued October 12, 2010)

FACTS:

The Bruesewitzes claim their daughter developed a seizure disorder after receiving Wyeth's vaccine for diphtheria, tetanus and pertussis when she was six months old. The 3rd Circuit dismissed their claims as preempted by the National Childhood Vaccine Injury Act. However, the Georgia Supreme Court has held that federal law allows some design defect claims against vaccine manufacturers.

QUESTION PRESENTED:

Whether Section 22(b)(1) of the National Childhood Vaccine Injury Act of 1986, which expressly preempts certain design defect claims against vaccine manufacturers "if the injury or death resulted from side effects that were unavoidable even though the vaccine was properly prepared and was accompanied by proper directions and warning," preempts all vaccine design defect claims, regardless of whether the vaccine's side effects were unavoidable.

Williamson v. Mazda Motor of Am., No. 08-1314 (argued November 3, 2010)

FACTS:

In 2002, Thanh Williamson was wearing a lap-only seat belt in her 1993 Mazda minivan when she was killed in a crash with another vehicle. The California attorney general filed a lawsuit against Mazda Motor Corp. Two California courts ruled that the claims were preempted by a Federal Motor Vehicle Safety Standard under the National Traffic and Motor Vehicle Safety Act that authorized automakers to install lap-only seat belts. The relevant regulations have since changed, and most passenger vehicles built after Sept. 1, 2007 must include shoulder-and-lap seat belts. The Obama Administration asked the justices to take the case, contending that the state courts and lower federal courts have interpreted federal law too broadly to bar lawsuits against car makers that installed lap-only belts.

QUESTION PRESENTED:

When Congress has provided that compliance with a federal motor vehicle safety standard "does not exempt a person from liability at common law" (49 U.S.C. § 30103(e)), does a federal minimum safety standard allowing vehicle manufacturers to install either lap-only or lap/shoulder seatbelts in certain seating positions preempt a state common-law claim

alleging that the manufacturer should have installed a lap/shoulder belt in one of those seating positions?

Federal Commc'ns Comm'n v. AT&T, Inc., No. 09-1279

(set for argument January 19, 2011)

FACTS:

AT&T provided documents to the FCC during an investigation into claims of overcharges by the company in a program to provide equipment and services to schools. The documents later were sought from the FCC under the Freedom of Information Act. The requestor is a trade association representing some of AT&T's competitors. AT&T sought to block the release of the documents based on a FOIA exemption for law enforcement records that could "constitute an unwarranted invasion of personal privacy." The 3rd Circuit ruled in AT&T's favor, relying in part on a definition of "person" in the law that included corporations. The circuit court analogized corporations to humans in terms of the risk of public embarrassment, harassment and stigma from law enforcement investigations. Then-Solicitor General Kagan urged the Supreme Court to reject the argument that the exemption "protects the so-called 'privacy' of inanimate corporate entities."

QUESTION PRESENTED:

Does Exemption 7(C) of the Freedom of Information Act, which exempts from mandatory disclosure records or information compiled for law enforcement purposes when such disclosure could reasonably be expected to constitute an unwarranted invasion of "personal privacy," extend to the "privacy" of corporate entities?