No. 15-158

In the Supreme Court of the United States

SUN-TIMES MEDIA, LLC, PETITIONER

v.

SCOTT DAHLSTROM, ET AL.

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

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTIONS PRESENTED

The Driver's Privacy Protection Act of 1994 (DPPA), 18 U.S.C. 2721 *et seq.*, restricts the dissemination of "personal information" contained in motor vehicle records. 18 U.S.C. 2721(a). Under the DPPA, "personal information" means "information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information," but not including "information on vehicular accidents, driving violations, and driver's status." 18 U.S.C. 2725(3). The questions presented are:

1. Whether the court of appeals erred in ruling that height, weight, eye and hair color, and birth month and year constitute "personal information" under the DPPA.

2. Whether the court of appeals erred in ruling that the prohibition in the DPPA on disclosing personal information that was unlawfully obtained from motor vehicle records, as applied to a news organization that unlawfully obtained such information for purposes of a news story, is consistent with the First Amendment.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-37a) is reported at 777 F.3d 937. The opinion of the district court (Pet. App. 51a-55a) is not published in the Federal Supplement but is available at 2013 WL 6069267. An earlier opinion of the district court (Pet. App. 59a-66a) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on February 6, 2015. A petition for rehearing en banc was denied on May 1, 2015. The petition for a writ of certiorari was filed on July 30, 2015. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. State departments of motor vehicles (DMVs) "require drivers and automobile owners to provide personal information, which may include a person's name, address, telephone number, vehicle description,

Social Security number, medical information, and photograph, as a condition of obtaining a driver's license or registering an automobile." *Reno* v. *Condon*, 528 U.S. 141, 143 (2000). Congress has identified "at least two concerns over the personal information contained in state motor vehicle records," *Maracich* v. *Spears*, 133 S. Ct. 2191, 2198 (2013): (1) "a growing threat from stalkers and criminals who could acquire personal information from state DMVs," *ibid.*; see, *e.g.*, *Gordon* v. *Softech Int'l, Inc.*, 726 F.3d 42, 45 (2d Cir. 2013) (noting "the highly publicized murder of an actress, whose stalker-cum-assailant had received her home address through an information request at a local DMV"), cert. denied, 134 S. Ct. 923, and 134 S. Ct. 925 (2014); and (2) a finding that many States generate "significant revenues" by "sell[ing] this personal information to individuals and businesses," who then "contact drivers with customized solicitations," *Condon*, 528 U.S. at 143-144, 148.

Based on those concerns, Congress enacted the Driver's Privacy Protection Act of 1994 (DPPA or Act), 18 U.S.C. 2721 *et seq.*, to provide "federal statutory protection" to those who give their personal information to DMVs. *Maracich*, 133 S. Ct. at 2195. The DPPA provides that "[a] State department of motor vehicles, and any officer, employee, or contractor thereof, shall not knowingly disclose or otherwise make available to any person or entity * * * personal information, as defined in 18 U.S.C. 2725(3), about any individual obtained by the department in connection with a motor vehicle record," unless a statutory exception to that restriction applies.[1] 18 U.S.C.

[1] None of the statutory exceptions is at issue here. See 18 U.S.C. 2721(b).

2721(a)(1). Under Section 2725(3), "'personal information' means information that identifies an individual, including an individual's photograph, social security number, driver identification number, name, address (but not the 5-digit zip code), telephone number, and medical or disability information, but does not include information on vehicular accidents, driving violations, and driver's status." 18 U.S.C. 2725(3).

In addition to prohibiting state agencies from disseminating personal information, the statute contains restrictions on persons who seek to obtain such information from those agencies. A subsection entitled "Procurement for Unlawful Purpose" provides that "[i]t shall be unlawful for any person knowingly to obtain or disclose personal information, from a motor vehicle record, for any use not permitted under" the statutory exceptions. 18 U.S.C. 2722(a).

Violations of the DPPA are punishable by a fine. 18 U.S.C. 2723(a). In addition, "the individual to whom * * * information pertains" may bring an action for damages (or, as appropriate, injunctive relief) against a "person who knowingly obtains, discloses or uses personal information, from a motor vehicle record, for a purpose not permitted under this chapter." 18 U.S.C. 2724(a); see 18 U.S.C. 2724(b)(1)-(4) (stating that a court may award "actual damages, but not less than liquidated damages in the amount of $2,500"; "punitive damages upon proof of willful or reckless disregard of the law"; "reasonable attorneys' fees and other litigation costs reasonably incurred"; and "such other preliminary and equitable relief as the court determines to be appropriate").

2. In 2004, David Koschman was involved in a street fight in Chicago. During the fight, Koschman

was punched, fell, hit his head, and subsequently died. Pet. App. 2a, 82a, 84a. R.J. Vanecko, the nephew of then-Mayor Richard M. Daley, was suspected of having thrown the punch in question. *Id.* at 2a.

In the course of the investigation into Koschman's death, the Chicago Police Department showed witnesses to the fight a lineup that included Vanecko and a group of police officers. Pet. App. 3a. The witnesses did not pick Vanecko out of the lineup, and he was not charged with the crime (until years later, when he pleaded guilty to involuntary manslaughter). *Id.* at 3a & n.1.

Petitioner Sun-Times Media, LLC, ran an article in the *Chicago Sun Times* about the investigation. Pet. App. 78a-86a. The thrust of the article was that the lineup was set up in such a way as to ensure that Vanecko would not be selected. The article alleged that although Vanecko was the largest person at the scene of the crime, the officers who were chosen to line up alongside Vanecko were all taller or heavier than he was. *Id.* at 78a.

The article included a photograph of the lineup, as well as details about each officer in the photograph: name, birth month and year, height, weight, and eye and hair color. Pet. App. 4a, 84a-86a. Petitioner obtained the photograph and the officers' names under the state freedom of information act, and gathered the other information about the officers from the State's motor vehicle records. *Id.* at 4a.

3. a. Respondents Scott Dahlstrom, Hugh Gallagly III, Peter Kelly, Robert Shea, and Emmet Welch are the police officers whose information appeared in the newspaper article. Pet. App. 84a. They filed suit against petitioner, alleging that petitioner unlawfully

obtained and disclosed personal information in violation of the DPPA and that the violation entitled them to actual, statutory, and punitive damages. *Id.* at 6a.

Petitioner moved to dismiss. It argued, as relevant here, that (1) the information obtained from the motor vehicle records in this case is not "personal information" within the meaning of the DPPA; and (2) if the DPPA is applicable, its application would violate the First Amendment. Pet. App. 6a.

The district court denied the motion to dismiss. Pet. App. 58a-66a. As to the proper interpretation of the DPPA, the court concluded that "height, weight, eye color, and birth month and year * * * fall within the statute." *Id.* at 64a-65a.[2] The court relied on an en banc Seventh Circuit decision that described protected information under the DPPA as including an individual's "full name, address, driver's license number, date of birth, sex, height and weight." *Id.* at 65a (quoting *Senne* v. *Village of Palatine, Ill.*, 695 F.3d 597, 608 (7th Cir. 2012) (en banc), cert. denied, 133 S. Ct. 2850 (2013)).

The district court also concluded that the application of the DPPA in this case would not violate the First Amendment. Pet. App. 51a-58a. The court observed that "[i]t is well established that 'generally applicable laws do not offend the First Amendment simply because their enforcement against the press has incidental effects on its ability to gather and report the news.'" *Id.* at 55a (quoting *Cohen* v. *Cowles Media Co.*, 501 U.S. 663, 669 (1991)). The court deemed the DPPA within the scope of that principle because it limits only access to information, leaving

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[2] The court did not mention hair color, but the court's reasoning encompasses that information as well.

petitioner free to publish facts—including the facts at issue here—so long as it derives them from sources other than a state DMV. *Id.* at 54a; see *ibid.* (citing *Travis* v. *Reno*, 163 F.3d 1000, 1007 (7th Cir. 1998), cert. denied, 528 U.S. 1114 (2000), in which the Seventh Circuit upheld the DPPA against a First Amendment facial challenge and expressed skepticism that an as-applied challenge could succeed given that the Act "restricts access to information, not speech"). Because petitioner obtained the information at issue in this case unlawfully, the court distinguished decisions holding that newspapers have a First Amendment right to publish information that has been lawfully obtained. *Id.* at 56a (citing *Smith* v. *Daily Mail Publ'g Co.*, 443 U.S. 97, 104 (1979), and *Florida Star* v. *B.J.F.*, 491 U.S. 524, 541 (1989)).[3]

b. At petitioner's request, the district court certified its orders on the statutory-interpretation question and the constitutional question for interlocutory appeal under 28 U.S.C. 1292(b), concluding that immediate appellate review was warranted as to each. Pet. App. 38a-50a.[4]

4. The court of appeals granted petitioner's request for interlocutory review of both questions and

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[3] The district court also rejected petitioner's contention that "enjoin[ing]" any "continued publication of [respondents'] personal information obtained from their motor vehicle records" would constitute a prior restraint in violation of the First Amendment. Pet. App. 56a. The court stated that "[w]hether [respondents] will obtain [an] injunction is a separate issue not yet before the Court." *Id.* at 57a.

[4] The district court declined to certify any question about whether an injunction would amount to an unconstitutional prior restraint, Pet. App. 48a-50a, and the court of appeals declined to address that issue, see *id.* at 8a n.4.

affirmed the district court's decision. Pet. App. 1a-37a; see *id.* at 8a & n.4.[5]

a. The court of appeals ruled that the information at issue in this case falls within the statutory definition of "personal information" because it is "information that identifies an individual." 18 U.S.C. 2725(3); see Pet. App. 11a-14a; see also *id.* at 14a-15a (citing a number of other decisions reaching the same conclusion). The court reasoned that "[e]ach category of published information at issue here (age, height, weight, hair color, eye color) relates to [respondents'] physical appearance and, therefore, indisputably aids in 'identif[ying]' them." Pet. App. 11a (second set of brackets in original). The court rejected petitioner's argument that the DPPA's definition of "personal information" covers only the items specifically enumerated in the statute, explaining that those items are introduced by the word "including" and therefore are "illustrative and not limitative." *Id.* at 9a-10a (citation and internal quotation marks omitted). The court likewise rejected petitioner's argument that the information at issue here does not qualify as personal information "because it does not *uniquely* single out a particular person," noting that the statute expressly covers information, like medical and disability information, that does not uniquely identify an individual. *Id.* at 11a.

That interpretation of the DPPA, the court of appeals explained, is consistent with the statute's dual purposes of protecting the safety of licensed drivers and preventing the commercial use of information

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[5] The United States intervened in the court of appeals to defend the applicability and constitutionality of the DPPA. See 28 U.S.C. 2403(a).

submitted to DMVs. "Although a potential stalker would likely require information beyond hair and eye color to positively identify his victim," the court acknowledged, "details regarding any pertinent physical feature would make such identification easier." Pet. App. 13a. In addition, the court observed, "[m]uch of the information at issue here, particularly details regarding an individual's age, height, and weight, could conceivably be of great interest to businesses (e.g., Weight Watchers) seeking to market their products or services to targeted audiences." *Id.* at 14a.

Finally, the court of appeals concluded that its interpretation did not render the statute void for vagueness. In the court's view, although the characteristics at issue here are not specifically named in the statutory definition of "personal information," they "fall[] squarely within the universe of information that 'identifies' an individual"—and the statute thus gives adequate notice of what it encompasses. Pet. App. 16a-17a.

b. The court of appeals also rejected petitioner's First Amendment challenge to the restrictions in the DPPA. Pet. App. 17a-37a.

First, the court of appeals concluded that petitioner "has not alleged a cognizable First Amendment injury with respect to the DPPA's prohibition on obtaining information from driving records—a limitation only on *access* to information." Pet. App. 19a. The court explained that "[p]eering into public records is not part of the 'freedom of speech' that the [F]irst [A]mendment protects." *Ibid.* (brackets in original) (quoting *Travis*, 163 F.3d at 1007); see *id.* at 19a-21a (noting that "[n]umerous federal statutes * * * limit

public access to sensitive information" and that the right of access to judicial proceedings is not relevant here). The court also distinguished its decision in *American Civil Liberties Union of Illinois* v. *Alvarez*, 679 F.3d 583 (7th Cir.), cert. denied, 133 S. Ct. 651 (2012), which found that restrictions on the recording of police conduct occurring in public constituted a burden on free speech rights. That case was very different from this one, the court stated, because the DPPA "protects privacy concerns not present in *ACLU*" and does not effectively prohibit any form of truthful communication. Pet. App. 22a.

Second, the court of appeals found no constitutional problem with application in this case of the DPPA's prohibition on disseminating information obtained unlawfully. The court noted that petitioner "cites no authority for the proposition that an entity that acquires information by breaking the law enjoys a First Amendment right to disseminate that information." Pet. App. 27a-28a. To the contrary, the court stated, the decisions cited by petitioner in support of a First Amendment right to disseminate information all emphasized that the party doing the disseminating had obtained the information without violating any law. *Id.* at 28a-29a (citing *Smith*, *supra*, *Florida Star*, *supra*, and *Bartnicki* v. *Vopper*, 532 U.S. 514 (2001)). The court also found that the statute was "content neutral because its public safety goals are 'unrelated to the content of [the regulated] expression.'" *Id.* at 27a (brackets in original) (quoting *Ward* v. *Rock Against Racism*, 491 U.S. 781, 791 (1989)). The statute is therefore constitutional, the court explained, so long as it furthers a substantial governmental interest unrelated to the suppression of free speech and its

restriction on alleged First Amendment freedoms is no greater than essential to furtherance of that interest. *Id.* at 30a-31a (quoting *Turner Broad. Sys., Inc.* v. *Federal Commc'ns Comm'n*, 512 U.S. 622, 662 (1994)).

Applying that test, the court of appeals concluded that the DPPA's prohibition on disseminating information after obtaining it unlawfully furthers substantial governmental interests in "promotion of public safety" by "removing an incentive for parties to unlawfully obtain personal information in the first instance" and by "minimizing the harm to individuals whose personal information has been illegally obtained." Pet. App. 31a, 35a. Although this Court has held that these interests are insufficient when applied to a person who obtained information lawfully, the court of appeals concluded "that the balance in the instant case tips in the opposite direction." *Id.* at 33a; see *id.* at 32a ("Where the acquirer and publisher [of unlawfully obtained information] are one and the same, a prohibition on the publication of sensitive information operates as an effective deterrent against the initial unlawful acquisition of that same information."). And on the particular facts here, the court noted, "the specific details at issue are" in any event "largely cumulative of lawfully obtained information published in th[e] very same article." *Id.* at 33a.

As to the narrow-tailoring question, the court of appeals concluded that the DPPA "does not burden substantially more speech than necessary to further the government's legitimate interests." Pet. App. 37a. The court observed that "[t]he DPPA's disclosure prohibition contains several safeguards characteristic of narrow tailoring: it is content neutral, it permits

publication of the same information gathered from lawful sources, it imposes no special burden upon the media, and it has a scienter requirement ('knowingly') to provide fair warning to potential offenders." *Id.* at 36a. The court also pointed out that the statute's "permissible use" exceptions help to ensure that the disclosure prohibition "does not burden substantially more speech than necessary to further the government's legitimate interests." *Id.* at 36a-37a.

On those bases, the court of appeals ruled that "the DPPA's prohibition on disclosing [respondents'] personal information does not violate [petitioner's] First Amendment rights." Pet. App. 37a. The court cautioned that "[a]s this is an as-applied challenge, our holding is limited to the facts and circumstances of this case." *Ibid.*

ARGUMENT

The court of appeals correctly interpreted the DPPA's definition of "personal information" and correctly held that the statute as applied to the facts of this case does not violate the First Amendment. The court's interlocutory decision does not conflict with any decision of this Court or any court of appeals. Further review is therefore unwarranted.

1. The court of appeals was correct to hold that under the DPPA, "information that identifies an individual" includes such identifying information as height, weight, eye and hair color, and birth month and year. 18 U.S.C. 2725(3). As the court explained, that information meets the common-sense understanding of "personal information." And including such information within the scope of the "personal information" definition—thereby barring stalkers and commercial enterprises from obtaining the infor-

mation from state DMVs—is also consistent with the purposes of the DPPA. In a statute intended to avoid putting people to the choice of publicizing their personal information or forgoing the right to drive, Congress comprehensively protected forms of information that people may well prefer to keep private. See Pet. App. 11a-17a; see also *Maracich* v. *Spears*, 133 S. Ct. 2191, 2200 (2013) (emphasizing Congress's "purpose of protecting an individual's right to privacy in his or her motor vehicle records").[6]

Petitioner's proposed alternative definitions of "personal information" cannot be reconciled with the terms of the statute. For instance, while petitioner suggests (*e.g.*, Pet. 27) that "personal information" excludes any information that is not expressly listed in the statute, that suggestion cannot be reconciled with the DPPA's use of the word "including" to introduce the items on the DPPA's list. As the court of appeals explained, a list introduced by "including" is typically "illustrative and not limitative." Pet. App. 10a (quoting *Campbell* v. *Acuff-Rose Music, Inc.*, 510 U.S. 569, 577 (1994)). And although petitioner contends (Pet. 25) that information does not qualify as "personal information" within the meaning of the DPPA unless it uniquely identifies an individual, petitioner simply ignores the fact that the statute expressly includes

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[6] See also 140 Cong. Rec. 7928-7930 (1994) (statement of Rep. Goss) ("[I]n 34 States, * * * anyone can walk into the DMV office with a license plate number, pay $5 to $10, and get the car owner's name, address, phone number, height, weight, date of birth, and other very personal information—no questions asked."); *Protecting Driver Privacy: Hearing on H.R. 3365 Before the Subcomm. on Civil and Constitutional Rights of the House Comm. on the Judiciary*, 103d Cong., 2d Sess. (1994), 1994 WL 212698 (statement of Rep. Moran).

medical and disability information, which is not uniquely identifying, within the relevant category. See Pet. App. 11a.

Petitioner insists (Pet. 26-31) that the court of appeals' interpretation of the "personal information" definition creates unacceptable uncertainty about the DPPA's scope. But the court applied the statutory definition of "personal information" as "information that identifies an individual," a definition that is not inherently vague. 18 U.S.C. 2725(3). The personal characteristics at issue here "fall[] squarely within the universe of information that 'identifies' an individual," Pet. App. 17a, and the hypothetical existence of close cases does not render the statute indeterminate, see *United States* v. *Williams*, 553 U.S. 285, 305 (2008).

Finally, the doctrine of constitutional avoidance—"a tool for choosing between competing plausible interpretations of a statutory text, resting on the reasonable presumption that Congress did not intend the alternative which raises serious constitutional doubts," *Clark* v. *Martinez*, 543 U.S. 371, 381 (2005)—has no application here. Petitioner's statutory interpretation is not a plausible one. Moreover, as further discussed below, the court of appeals properly concluded that petitioner's First Amendment objections are without merit.

2. The court of appeals also correctly rejected petitioner's as-applied First Amendment challenge to the DPPA.

a. Although petitioner contended in the court of appeals that it had a First Amendment right to obtain the information at issue here, see Pet. App. 18a-24a, it has not pressed that argument in this Court—and with good reason. See Pet. 17 ("[Petitioner's] right to

compel information from state agencies is not at issue."). This Court has "repeatedly made clear that there is no constitutional right to obtain all the information provided by" laws that grant public access to government-held information, and has never suggested any constitutional difficulty with existing privacy-related restrictions on such access. *McBurney* v. *Young*, 133 S. Ct. 1709, 1718 (2013); see *Los Angeles Police Dep't* v. *United Reporting Publ'g Corp.*, 528 U.S. 32, 40 (1999); *Travis* v. *Reno*, 163 F.3d 1000, 1007 (7th Cir. 1998) ("Peering into public records is not part of the 'freedom of speech' that the [F]irst [A]mendment protects."), cert. denied, 528 U.S. 1114 (2000).

b. The only constitutional claim petitioner raises in this Court is an alleged First Amendment right to disseminate information that it unlawfully obtained. As the court of appeals recognized, that claim lacks merit.

The court of appeals noted that petitioner "cites no authority for the proposition that an entity that acquires information by breaking the law enjoys a First Amendment right to disseminate that information." Pet. App. 27a-28a. The petition likewise fails to provide any such authority. Each of the decisions that petitioner cites (Pet. 15-17) is one in which the information was obtained lawfully by the entity that disseminated it (although the disseminating entity's source may have originally obtained the information through unlawful behavior in which the entity was not involved). And the cited decisions indicate that the government has strong and legitimate justifications for preventing the dissemination of information by a person who acted unlawfully in obtaining it—including

an interest in effectively deterring "the initial unlawful acquisition of that same information." Pet. App. 32a; see *id.* at 31a (citing *Bartnicki* v. *Vopper*, 532 U.S. 514, 529 (2001)).[7]

Those justifications are directly implicated in this case. An award of the damages for injury caused by dissemination of respondents' personal information—either based on the dissemination itself or as consequential damages based on the unlawful acquisition—would both make respondents whole for the invasion of their privacy and ensure that the prohibition on unlawful acquisition has the appropriate deterrent effect. Further, as this Court has recognized in the context of unlawful interceptions of telephone conversations, because public disclosure of private information "can be an even greater intrusion on privacy" than the unlawful acquisition of the same information, there is "a valid independent justification for prohibiting such disclosures * * * even if that prohibition does not play a significant role in preventing such interceptions from occurring in the first place." *Bartnicki*, 532 U.S. at 533.

Petitioner mistakenly suggests (Pet. 7, 12) that the court of appeals rested its decision on a conclusion that the value of petitioner's speech was "negligible." The critical factor in the court's decision was the fact

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[7] In *Bartnicki*, a case involving a publisher of information that "obtained the information in question in a manner lawful in itself but from a source who * * * obtained it unlawfully," this Court left open the question "whether, in cases where information has been acquired *unlawfully* by a newspaper, * * * government may ever punish not only the unlawful acquisition, but the ensuing publication as well." 532 U.S. at 528 (citation omitted); see *id.* at 536 (Breyer, J., concurring) (noting that the information in question included a "threat of potential physical harm to others").

that petitioner obtained the information unlawfully. Far from seeking to impose its editorial judgment on the press, the court pointed out that petitioner could publish the exact same information so long as the information was lawfully obtained, explaining that "[t]he origin of the information is * * * crucial to the illegality of its publication" because "the statute is agnostic to the dissemination of the very same information acquired from a lawful source." Pet. App. 25a.

The court of appeals mentioned the limited public interest in the information only to underscore the weakness of petitioner's First Amendment claim. The court explained that "the specific details at issue are largely cumulative of lawfully obtained information published in that very same article, and are therefore of less pressing public concern." Pet. App. 33a. Because "this is an as-applied challenge," the court "d[id] not opine as to whether, given a scenario involving lesser privacy concerns or information of greater public significance, the delicate balance might tip in favor of disclosure." *Id.* at 37a.

Petitioner also asserts that it was entitled to rely on what it characterizes as the State's "implied representations of the lawfulness of dissemination." Pet. 16 (quoting *Florida Star* v. *B.J.F.*, 491 U.S. 524, 536 (1989)). But in the cases on which petitioner relies, a government voluntarily provided information to the press and then the same government sought to punish the receiving entity for publishing that information. Here, the United States did not provide any information to petitioner; to the contrary, the United States prohibited petitioner from obtaining the information (and prohibited the state agency from revealing it to petitioner). Petitioner cites no authority for

the proposition that it has a constitutional right to violate a federal statute so long as it persuades a state agency to violate the statute as well.

Finally, petitioner appears to suggest (Pet. 15) that it may not have acted "knowingly." That argument was not presented below and is therefore not properly before this Court. See, *e.g.*, *United States* v. *Williams*, 504 U.S. 36, 41 (1992). In addition, petitioner's suggestion that it did not "'knowingly' act unlawfully" misunderstands the relevant inquiry. Pet. 15 (citation omitted). The statute creates a civil-enforcement remedy against a "person who knowingly obtains, discloses or uses personal information," 18 U.S.C. 2724(a), and does not require any awareness on the part of the defendant that the proscribed conduct is unlawful.

3. The court of appeals' correct resolution of those statutory and constitutional issues does not warrant review by this Court.

a. The decision below does not conflict with any decision of this Court or another court of appeals. Petitioner does not even attempt to identify any court of appeals decision that has adopted a different interpretation of the "personal information" definition in the DPPA; to the contrary, as the Seventh Circuit observed, the holding here is consistent with "the great weight of the case law." Pet. App. 14a-15a; see *id.* at 15a n.6 (identifying a Connecticut district court decision that lacked any reasoning as only contrary authority). Nor, as noted above, does petitioner identify any decision that has recognized a First Amendment right to disseminate information after obtaining it unlawfully.

Instead, in an attempt to suggest the existence of some discord, petitioner ranges widely over a long list of cases that are wholly dissimilar to the instant case. For instance, petitioner argues (Pet. 32-33) that the decision below conflicts with various decisions construing definitions of personal information in other statutory schemes. But those definitions are written differently than the definition in the DPPA, and decisions discussing them therefore shed no light on the DPPA's proper interpretation. See, *e.g.*, *Nebraska* v. *Covey*, 859 N.W.2d 558, 567 (Neb. 2015) (construing state criminal law defining "[p]ersonal identifying information" as "any name or number that may be used * * * to identify a specific person") (citation omitted), cited in Pet. 32.

Petitioner also claims (Pet. 30-31) that the decision below conflicts with decisions applying canons of statutory construction such as *expressio unius est exclusio alterius* and *ejusdem generis*. But such canons are not inevitably dispositive wherever they may arguably apply. In any event, petitioner's argument in this regard rests on the false premise that the examples of personal information set forth in the DPPA all consist of uniquely identifying information—when, in fact, they include information that is no more uniquely identifying than eye or hair color. See pp. 12-13, *supra*. The allegedly conflicting decisions to which petitioner points, all of which involve the text of statutes other than the DPPA, do not address a circumstance like this one. See, *e.g.*, *Yates* v. *United States*, 135 S. Ct. 1074, 1086-1087 (2015); *United States* v. *Kaluza*, 780 F.3d 647, 661 (5th Cir. 2015).

b. Petitioner vastly overstates the effect of the court of appeals' decision on the operations of the

press. The DPPA insulates from public view personal information submitted to state DMVs, but it does not prevent news organizations from disseminating the same information so long as they obtain it through a different means. To the extent that petitioner seeks to "publish[] physical characteristics readily observable by any citizen on the street," Pet. 19, it is unclear why it has a need—much less a constitutional right—to resort to information obtained unlawfully from state driver's-license records.

Indeed, resort to such records was not necessary to permit petitioner to publish the article at issue in this case. The article depended on a comparison of respondents' appearance to the appearance of the suspect. As the court of appeals explained, such a comparison could have been made based on the lineup photograph alone, which was lawfully obtained by means of a state freedom of information act request. See Pet. App. 33a-34a. Although the driver's-license information did not materially enhance the news story, its presence did intrude on respondents' privacy: many individuals who are comfortable walking around in public view would prefer not to broadcast their weights and ages to the world.

c. Finally, this case is an unsuitable vehicle for resolving the question presented. The court of appeals affirmed the denial of a motion to dismiss, and the case will now proceed to judgment in the district court. Under this Court's usual practice, the case's interlocutory posture "alone furnishe[s] sufficient ground" for denial of the petition. *Hamilton-Brown Shoe Co.* v. *Wolf Bros.*, 240 U.S. 251, 258 (1916); see *Virginia Military Inst.* v. *United States*, 508 U.S. 946, 946 (1993) (Scalia, J., respecting the denial of the

petition for writ of certiorari); Stephen M. Shapiro et al., *Supreme Court Practice* § 4.18, at 282-283 & n.72 (10th ed. 2013).

That usual practice is especially appropriate here. Petitioner's claim that it had a constitutional right to obtain the disputed information from the state DMV—a claim that it does not press in this Court—is an insubstantial one for the reasons stated by the court of appeals. See Pet. App. 18a-24a. And the DPPA authorizes "actual damages, but not less than liquidated damages in the amount of $2,500," for obtaining "personal information" in violation of the statute, regardless of whether that information is subsequently disclosed. See 18 U.S.C. 2724(b)(1). At this interlocutory stage, it is uncertain whether respondents might obtain relief based on the dissemination of the information that is more extensive than the relief that they could obtain solely as a result of the unlawful acquisition of the information.[8] It is therefore possible that the ultimate resolution of this case in the district court will turn only on whether the information was unlawfully obtained, at which point the case will not present the question raised in the petition about whether the DPPA's restrictions on disclosure of unlawfully obtained information run afoul of the First Amendment.

In addition, the court of appeals was careful to characterize its decision on the constitutionality of those disclosure restrictions as a narrow ruling confined to the particular facts at issue here. See Pet.

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[8] In particular, the question of whether respondents can obtain an injunction against further disclosure by petitioner has not yet been resolved and was not part of petitioner's interlocutory appeal. See, *e.g.*, Pet. App. 8a n.4.

App. 37a; see also *ibid.* (reserving the question "whether, given a scenario involving lesser privacy concerns or information of greater public significance, the delicate balance might tip in favor of disclosure"). Accordingly, that ruling does not foreclose all future First Amendment challenges in DPPA cases involving materially different facts and circumstances.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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NOVEMBER 2015