SCOTUS LIMITS PRIVACY ACT JUST AS NCTC EXPANDS ACCESS TO US PERSON DATA

Well, this is rather inauspicious timing.

The conservatives on SCOTUS have sharply limited the teeth of the Privacy Act—limiting damages to out-of-pocket damages.

> The Supreme Court has dealt privacy advocates a huge setback. By a 5-3 majority, the court ruled that people who sue the government for invading their privacy can only recover out-of-pocket damages. And whistle-blower lawyers say that leaves victims who suffer emotional trouble and smeared reputations with few if any options.
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> Justice Samuel Alito and all four of his conservative colleagues turned back a challenge from a pilot named Stan Cooper. (Justice Elena Kagan did not participate in the case.)
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> Cooper said the Social Security Administration, which was sending him disability benefits, had improperly shared his HIV status with transportation officials.
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> In 1974, while the abuses of Watergate were fresh in people's minds, Congress made that kind of unauthorized information-sharing illegal under the Privacy Act. The law said the U.S. had to pay actual damages to victims.
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> But in Wednesday's ruling, Alito said actual damages represent monetary harm, not mental or emotional distress.
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> That's absurd, according to the dissent by Justice Sonia Sotomayor. Sotomayor

> said that means people who suffer severe emotional distress can't get any money — but people with minor out-of-pocket expenses can.

The whole point of the Privacy Act was to impose some kind of real penalty on the government for using the damage it collects on you in a way that ends up hurting you. Without pain or suffering damages, it will make it very difficult for aggrieved people to find legal representation to sue the government for violations. And without pain and suffering damages, the penalties would generally be so small, in any case, as to make violating your privacy the cost of doing business.

And of course, this happens just as the government decided to make its agency databases accessible to the National Counterterrorism Center for data mining to find terrorists. The Privacy Act would have been one of the few limits on what the government can do with this data. For example, the Guidelines on this new access warns that "All disseminations under these Guidelines must be … permissible under the Privacy Act," which would normally limit dissemination (in this context) to law enforcement purposes. But now that Alito has gutted the protections of the Privacy Act, there is less to prevent some gung ho counterterrorism professional to leak information about who looks like a terrorist when you data mine their personal data. Or to use the now-collated information (the Privacy Act protections allowing you to see your own data reside with the originator here, which I suspect will mean you don't get to see what your data gets collated with) for more personal, nefarious purpose.

These two events are unrelated. SCOTUS didn't do this because of the government's new power grab at NCTC. But SCOTUS' decision does make that power grab still more dangerous.

Note: For those of you interested in these

issues, I urge you to stop by FDL's Book Salon on Saturday at 5. Tim Weiner will speak about his generally very good book, Enemies. The salon will be particularly interesting, though, because the ACLU's Mike German will host. Not only does German's FBI background make him an ideal reviewer of this history of the FBI's abuses, but he's probably the best person to address the book's most glaring fault: inaccurate and wildly over-optimistic treatment of the FBI's Domestic Investigations and Operations Guide.