No. 24-994

IN THE

Supreme Court of the United States

NATIONAL BASKETBALL ASSOCIATION,

Petitioner,

v.

MICHAEL SALAZAR,

Respondent.

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

SUPPLEMENTAL BRIEF FOR RESPONDENT

JOSHUA IAN HAMMACK
Counsel of Record
BAILEY & GLASSER, LLP
1055 Thomas Jefferson St. N.W.,
Suite 540
Washington, DC 20007
jhammack@baileyglasser.com
(202) 463-2101

Counsel for Respondent

385196

COUNSEL PRESS
(800) 274-3321 • (800) 359-6859

SUPPLEMENTAL BRIEF FOR RESPONDENT

Mr. Salazar writes to respond to the August 27, 2025, letter from Petitioner Detrina Solomon in *Solomon v. Flipps Media*, No. 25-228, arguing the Court should delay consideration of the NBA's petition in this case or perhaps, as she suggests in her petition, even hold the NBA's petition pending the outcome of her appeal. Ms. Solomon has presented no principled basis for delay.

First, as the NBA notes, what constitutes "personally identifiable information" under the VPPA (*Solomon*'s question) and who is a "consumer" under the VPPA (the question here) are "distinct and independent questions, and each can be resolved without deciding the other." NBA's Supp. Br. 2. Perhaps the best evidence of this reality is the fact that Congress separately defined "consumer" and "personally identifiable information" in the VPPA. 18 U.S.C. §§ 2710(a)(1), (a)(3). Thus, contrary to Ms. Solomon's argument, the question in *Solomon* is in no way "related" to or "overlapping" with the question here. No matter how the Court answers either question, the other question will remain.

Second, the efficient course in *Solomon* is to grant, vacate, and remand ("GVR") the case for the Second Circuit to reconsider its decision in light of three intervening opinions from this Court. There is no need for additional "percolation" in the lower courts. *But see* NBA's Supp. Br. 2. Nor does this Court need to resolve the false dichotomy Ms. Solomon's petition presents between the First Circuit's "reasonably foreseeable" test and the Second, Third, and Ninth Circuits' "ordinary person" test. *Solomon v. Flipps Media*, No. 25-228, Pet. i. The VPPA

plainly prohibits "knowing" disclosures of personally identifiable information, not "reasonably foreseeable" ones. 18 U.S.C. § 2710(b)(1). And it just as plainly prohibits such disclosures to "any person," not just to ordinary persons. *Id.*

In short, both sides of the split involve judge-made, atextual tests that distort the underlying statutory requirements. And, just over a month after the Second Circuit decided *Solomon*, this Court expressly rejected judge-made atextual tests in three separate, and unanimous, opinions. *See A.J.T. v. Osseo Area Schs., Ind. Sch. Dist. No. 279*, 605 U.S. 335, 338, 343–45 (2025) (rejecting the atextual "bad faith or gross misjudgment" standard the Eighth Circuit imposed for suits concerning educational services under the ADA and holding the phrase "any person"—as exists in 18 U.S.C. § 2710(b)(1)—is "expansive and unqualified," meaning it applies to every person, "without distinction or limitation"); *Ames v. Ohio Dep't of Youth Servs.*, 605 U.S. 303, 305–06, 308–11 (2025) (rejecting the atextual "background circumstances" test five circuits imposed on "majority-group plaintiffs"); *id.* at 313–19 (Thomas, J., concurring) (noting atextual rules "have a tendency to distort the underlying statutory text, impose unnecessary burdens on litigants, and cause confusion for the courts," all with no principled way to resolve uncertainties caused by the judge-made test itself); *CC/Devas (Mauritius) Ltd. v. Antrix Corp.*, 145 S. Ct. 1572, 1576, 1579–81 (2025) (rejecting a minimum-contacts standard that went "beyond the [statutory] text" and declining "to add in what Congress left out").

When the Second Circuit decided *Solomon*, it did not have the benefit of this trio of decisions. Thus, *Solomon*

is an ideal candidate for this Court's GVR practice. *See, e.g.*, *Lawrence v. Chater*, 516 U.S. 163, 166–70 (1996) (explaining that GVRs are appropriate where "intervening developments"—including this Court's decisions—reveal some potentially dispositive issue the courts below "did not fully consider"); *Stutson v. United States*, 516 U.S. 193, 194 (1996) (using a GVR "in light of potentially pertinent matters which it appears that the lower court may not have considered"); *Stutson v. United States*, 516 U.S. 163, 180–81 (Scalia, J., dissenting) (agreeing "the largest category of 'GVRs' that now exists" involves situations where "an intervening event (ordinarily a postjudgment decision of this Court) has cast doubt on the judgment rendered by a lower federal court or a state court concerning a federal question" (emphasis omitted)).

Regardless of what this Court decides to do in *Solomon*, however, there is no basis to delay resolution here.

Respectfully Submitted,

Joshua Ian Hammack
Counsel of Record
Bailey & Glasser, LLP
1055 Thomas Jefferson St. N.W.,
Suite 540
Washington, DC 20007
jhammack@baileyglasser.com
(202) 463-2101

Counsel for Respondent