CHARLES KRATOVIL, Plaintiff-Petitioner, v. CITY OF NEW BRUNSWICK and ANTHONY A. CAPUTO, in his capacity as Director of Police, Defendants-Respondents.	SUPREME COURT OF NEW JERSEY DOCKET NO.: 089427 Civil Action On Petition for Certification from a Final Judgment of the Appellate Division, Docket No. A-0216-23 Sat Below: Hon. Robert J. Gilson, P.J.A.D. Hon. Patrick DeAlmeida, J.A.D. Hon. Avis Bishop-Thompson, J.A.D.

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PRELIMINARY STATEMENT

Individuals deserve to feel safe in their homes—not least public servants who face increasing harassment, threats, and violence because of the work they do. In 2020, after a deranged attorney murdered Judge Esther Salas's son at the front door of their home, our Legislature enacted Daniel's Law. Like similar laws in other jurisdictions, Daniel's Law protects the safety and security of certain at-risk public servants and household members by allowing them to request that a person or other entity stop disseminating their home address or unlisted home phone number. Someone who negligently fails to comply with the request can face civil damages; one who acts recklessly or willfully can face punitive damages or criminal prosecution. The question this challenge presents is whether, as applied to the unusual facts of this case, that provision comports with the First Amendment and its New Jersey counterpart. It does.

Petitioner Charles Kratovil is a local journalist who uncovered evidence that Respondent Anthony Caputo, then serving as New Brunswick's Police Director, was living two hours away from the city, in Cape May. All have long agreed that Kratovil could permissibly tell readers that Caputo was living in Cape May, and this Court should confirm Daniel's Law does not restrict anyone from naming the city or town in which a covered individual resides. The question instead is whether, after Caputo validly invoked the protections of

Daniel's Law, Kratovil had an overriding free-speech right to publish Caputo's precise street address. The Appellate Division, like the trial court, ruled that he did not as applied to these facts. This Court should affirm.

Because Kratovil suggests that affirming the decision below could risk an interpretation of the statute that would leave it facially invalid, this brief begins by explaining why Daniel's Law is valid on its face regardless. Laws are not facially unconstitutional unless a disproportionate number of their applications violate the Constitution, and the heartland applications of Daniel's Law, which involve a "data broker" or similar business making reams of data available online, are plainly constitutional because they restrict actions with no significant expressive value at all. Thus, even accepting Kratovil's theory, the vast majority of applications satisfy reduced constitutional scrutiny, including because they involve no matter of public concern, follow a content-neutral "opt-in" regime, and continue a long tradition of laws protecting the security of the home. Said another way, the ultimate result in this atypical case cannot dictate the result in those other cases—thus eliminating any risk of creating facial invalidity.

In any event, even as to this uncommon dispute, the Appellate Division committed no error below in resolving the as-applied constitutional challenge. The court properly considered whether Caputo's precise street address qualifies as a matter of public concern, consistent with the in-depth guidance that this

Court and the U.S. Supreme Court have provided regarding that inquiry. Its decision did not exceed the judicial role or chill journalistic freedom. Rather, the court below performed the precise task required by longstanding precedents: balancing the competing interests of speech and privacy, in light of both the content and the context, to draw lines where those important interests clash.

Indeed, on these facts, Caputo's precise street address is not a matter of public concern under First Amendment doctrine, and the compelling interests Daniel's Law serves easily outweigh Kratovil's interest in disseminating that address. At bottom, courts distinguish matters of public and private concern by looking at whether the information helps guide public deliberation and decision-making. While Caputo's town of residence clearly fell on the public side of that line, his street address did not: nothing about the street address itself affects the work of self-government—however broadly construed—in any meaningful way. While the balance could tip in the other direction under different facts—as when the property itself is alleged to have part of some wrongdoing, or where it presents some threat to public safety—it does not support Kratovil here. The Appellate Division sought to protect both journalistic speech and privacy and safety in the home for judges and law enforcement officers, and this Court should affirm its commonsense ruling.

PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

A. Increased Threats Against Judges And Other Public Servants.

In recent years, judges and other public servants have faced a rising number of threats. See Daniel Anderl Judicial Security and Privacy Act of 2022 (Fed. Daniel's Law), Pub. L. No. 117-263, § 5932(a)(2), 136 Stat. 3458-59. A driving factor is "online access to information" that "has considerably lowered the effort required for malicious actors to discover where individuals live," which in turn leaves public servants and their families uniquely vulnerable to those who wish to harm them. Ibid. Even relatively minor examples can give pause: disaffected individuals, for instance, have taken to social media to call for an "angry mob" to gather outside a federal judge's home after that judge's address circulated online, while another post, referencing an appellate judge, emphasized "how easy it would be to 'get them.'" Ibid.

Worse still, in the past decade, members of the judiciary "have experienced acts of violence against themselves or a family member in connection to their … judiciary role." Id. § 5932(a)(4). In 2005, a disaffected litigant murdered the family of Judge Joan Lefkow, a U.S. District Judge for the Northern District of Illinois. Ibid. In June 2013, a federal judge in Florida was "targeted by a gunman who purchased the address of his Florida home on the

[1] These sections are combined for the Court's convenience.

internet for a mere $1.95." 166 Cong. Rec. 213 (2020) (AGa014). "The gunshot missed his ear by less than 2 inches." Ibid.

These horrifying examples are illustrative of a broader trend. Between 2015 and 2019, "threats and other inappropriate communications against Federal judges and other judiciary personnel increased from 926 in 2015 to approximately 4,449 in 2019"—a five-fold increase. Id. § 5932(a)(3), 136 Stat. 3459. In 2021 alone, the Marshal's Service reported 4,511 threats to the federal judiciary. See U.S. Marshals Service, 2022 Judicial Security Fact Sheet (Feb. 17, 2022), https://tinyurl.com/4r3rb6ym (AGa42).

Nor are these threats cabined to the federal judiciary. In the past three years, three targeted shootings of state court judges have occurred. S.B. 575, 2024 Leg., 446th Sess., at 2 (Md. 2024) (AGa038-39). Just last year, hours after a Maryland judge issued a ruling in a divorce-and-custody case, one of the litigants found and shot the judge outside of his home. Ibid.; see also, e.g., State v. Taupier, 193 A.3d 1, 9 (Conn. 2018) (family-court litigant discussing distance between judge's "master bedroom and a cemetery that provides cover and concealment," along with physics of specific-caliber rifle shot over that distance and "dying as I change out to the next [thirty rounds]"). And similar harms threaten other public servants, including law enforcement officers here in New Jersey. For example, in 2020, shooters fired at the Camden home of two police

officers and their ten-day-old newborn.[2] Less than two months ago, a beloved county detective named Monica Mosley was shot to death inside her Bridgeton home.[3] See also, e.g., State v. Fair, 256 N.J. 213, 221-22 (resident telling police officers to "[w]orry about a head shot" and posting "I KNO WHT YU DRIVE & WHERE ALL YU M****** LIVE AT" on Facebook), cert. denied, 144 S. Ct. 2572 (2024); State v. Mrozinski, 971 N.W.2d 233, 237 (Minn. 2022) (threatening letter and morgue "toe tags" left for four child-protective-services officers).

B. Daniel's Law.

As these examples illustrate, New Jersey is not immune from the rising violence against judges and law enforcement officers, including in their homes. Especially salient, in July 2020, an attorney with a case before Judge Esther Salas murdered Judge Salas's son, Daniel Anderl, and critically wounded her husband, Mark Anderl, at the front of door of their home. See Fed. Daniel's Law § 5932(a)(5), 136 Stat. 3459; (Pca11-12).[4] The murderer, who sought to kill Judge Salas, had found her home address online. (Pca11-12).

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[2] Chris Sheldon, Shooters Target Home of Married Camden Cops. What We Know About the Attack, NJ.com (Sept. 19, 2020), https://tinyurl.com/e2dxcpkt (AGa019-23).

[3] Fifth Person Charged in Connection to Murder of Cumberland County Detective, NBC10 Philadelphia (Nov. 6, 2024), https://tinyurl.com/2s3c5v9k (AGa24-27).

[4] "Pca" refers to the appendix to Kratovil's petition for certification. "Pcb" refers to the brief in support of the petition. "T" refers to the transcript of the hearing before the Law Division on September 21, 2023 (Pca25-61).

In the wake of that tragedy, our Legislature enacted Daniel's Law. See L. 2020, c. 125 (now codified as amended at N.J.S.A. 2C:20-31.1; N.J.S.A. 47:1-17; N.J.S.A. 47:1A-1.1, -5; N.J.S.A. 47:1B-1 to -3; N.J.S.A. 56:8-166.1 to -166.3). The law exists "to enhance the safety and security of certain public officials in the justice system" so that they can "carry out their official duties without fear of personal reprisal." N.J.S.A. 56:8-166.3. It achieves those goals, in most relevant part, by providing judges, law enforcement officers, prosecutors, child-protective-services investigators, and immediate family members living in the same household (collectively "covered persons") with a civilly enforceable right to request that a private person or entity not "disclose … on the Internet or otherwise make available" their home address and/or unpublished home telephone number. N.J.S.A. 56:8-166.1(a)(1), (d).

To invoke the law's protection, an "authorized person" must give the recipient of the request "written notice" that the requestor "is an authorized person." N.J.S.A. 56:8-166.1(a)(2); see N.J.S.A. 56:8-166.1(d) (defining "authorized person"). Within ten business days of receipt, the recipient must cease sharing the covered person's home address or unpublished home phone number, N.J.S.A. 56:8-166.1(a)(1), subject to certain exceptions, N.J.S.A. 56:8-166.1(e) to -(f). If the recipient fails to comply, they are civilly liable. N.J.S.A. 56:8-166.1(b). The law provides, most relevantly, for "actual damages, but not

less than liquidated damages" of $1,000 per violation, and "punitive damages upon proof of willful or reckless disregard[.]" N.J.S.A. 56:8-166.1(c).

Daniel's Law has a separate criminal provision with a heightened culpability requirement. Under that criminal provision, within ten business days of receiving adequate written notice (as with the civil provision), a recipient may not "knowingly, with purpose to expose another to harassment or risk of harm to life or property, or in reckless disregard of the probability of such exposure," continue to disclose the relevant information, "except in compliance with any court order, law enforcement investigation, or request by a government agency or person duly acting on behalf of the agency." N.J.S.A. 2C:20-31.1(b). Purposeful violations are third-degree crimes, while reckless violations are fourth-degree crimes. N.J.S.A. 2C:20-31.1(d).[5]

C. Recent Legislation In Other Jurisdictions.

Other States, along with the Federal Government, have also acted to allow judges' and other public servants greater control over their personal information. See Fed. Daniel's Law, Pub. L. No. 117-263, §§ 5931-39, 136 Stat. 3458 (2022); Md. Code Ann., Cts. & Jud. Proc. §§ 3-2301 to 3-2407 (2024) (Md. Daniel's Law); Del. Code Ann. tit. 10, §§ 1921 to -1924 (2022) (Del. Daniel's Law); 705

[5] While Daniel's Law also includes provisions addressing disclosure by government actors, see, e.g., N.J.S.A. 47:1A-1.1, -5; N.J.S.A. 47:1B-1 to -3, this brief focuses on the provisions Kratovil challenges.

Ill. Comp. Stat. Ann. §§ 90/1-1 to – 90/2-10 (2012) (Ill. Jud. Priv. Act). Like New Jersey's law, these statutes typically apply to specific public servants and certain family members/cohabitants, and require a valid written request.[6] While several comparator laws use the same "opt-in" mechanism as Daniel's Law, they have shorter compliance windows,[7] and they also restrict more information than just home addresses and unpublished home telephone numbers.[8] In contrast, New Jersey's version of Daniel's Law covers only the information that would be needed to either show up at the home where a judge and her family members reside, or make harassing or threatening calls to that home.

D. This Case.

Petitioner, Charles Kratovil, is a journalist with New Brunswick Today, an online news outlet. (Pca4.) In early 2023, Kratovil observed that Respondent Anthony Caputo—then Director of the New Brunswick Police Department and Commissioner of the New Brunswick Parking Authority—was not regularly

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[6] See Fed. Daniel's Law §§ 5933(1), 5934(d); Md. Daniel's Law §§ 3-2301(e)(6), 3-2303(d); Del. Daniel's Law §§ 1921, 1923; Ill. Jud. Priv. Act. 90/2-5.

[7] Fed. Daniel's Law § 5934(d)(2)(A)(i); Md. Daniel's Law § 3-2303(d)(1); Del. Daniel's Law § 1923(b)(1); Ill. Jud. Priv. Act 90/2-5(b)(1).

[8] E.g., Fed. Daniel's Law § 5933(2)(A) (e.g., license plate or similar vehicle-identifying numbers, banking information, and personal email address); Md. Daniel's Law § 3-2301(d) (similar); Del. Daniel's Law § 1921(6) (similar); 705 Ill. Jud. Priv. Act 90/1-10 (similar).

attending City Council or Parking Authority meetings and suspected that Caputo was no longer living in New Brunswick. (Ibid.)

That March, Kratovil emailed Caputo to ask him if he still lived in the city. (Ibid.) The Deputy Director of Police responded on Caputo's behalf, stating that a law enforcement officer's place of residence is protected under Daniel's Law. (Ibid.) At March and April meetings of the Parking Authority and City Council, respectively, Kratovil asked if Caputo still lived in New Brunswick but did not receive a definitive answer. (Pca5.)

During that same period, Kratovil filed a request for Caputo's voter profile with the Cape May County Board of Elections pursuant to the Open Public Records Act (OPRA). (Ibid.) Initially, the Board sent Kratovil a redacted copy. Ibid. But after a further exchange with Kratovil, the Board sent him a copy with fewer redactions, which included Caputo's home address. (Ibid.)

At a City Council meeting on May 3, during the public comment period, Kratovil brought up the topic of Caputo's residence, stating that Caputo lived in Cape May, two hours away from New Brunswick, and that he was serving on the Parking Authority as a non-resident. (Ibid.) Kratovil identified the name of Caputo's street and provided copies of Caputo's voter profile with his complete home address to members of the City Council. (Pca5-6.) None of this violated Daniel's Law, as no "authorized person" had yet sent Kratovil "written notice"

asking him not to disclose Caputo's protected information, as required by the law. See N.J.S.A. 56:8-166.1(a)(2), (d).

On May 15, however, Kratovil received a letter notifying him that Caputo was invoking the protections of Daniel's Law. (Pca6.) Referencing N.J.S.A. 2C:20-31.1 and N.J.S.A. 56:8-166.1, the letter "request[ed] that [Kratovil] cease the disclosure of [Caputo's home address] and remove the protected information from the internet or where otherwise made available." (Ibid.)

Two months later, Kratovil filed this lawsuit, seeking a declaration that Daniel's Law was unconstitutional as applied, along with injunctive and other relief. Ibid. In September 2023, the trial court denied all relief. (Pca7-8.)

The Appellate Division affirmed in April 2024. (Pca3.) After discussing the applicable First Amendment framework, (Pca12-15), the court observed that defendants had "conceded … that [Kratovil] always had the right to publish that Caputo lived in Cape May, which was a substantial distance from the City, without being subject to Daniel's Law sanctions." (Pca15.) The court reasoned, however, that "Caputo's exact street address is not a matter of public concern" and that, on the other side of the ledger, "protecting public officials from violent attacks and harassment is a compelling State interest of the highest order." (Pca16.) And it explained that its ruling yielded "a commonsense resolution to this as-applied challenge," since Kratovil "was not prohibited from discussing

or publishing the matter of public concern; that is, that Caputo, then a high-ranking City official, lived in Cape May, a substantial distance from the City." (Pca16.) This Court granted Kratovil's petition.

E. Recent Events In Related Litigation.

On November 26, the U.S. District Court for the District of New Jersey rejected a facial First Amendment challenge to Daniel's Law, raised by a group of corporate defendants in a June 2024 consolidated motion to dismiss. See Atlas Data Priv. Corp. v. We Inform, LLC, No. 24-cv-10600, 2024 WL 4905924, 2024 U.S. Dist. LEXIS 216377 (D.N.J. Nov. 26, 2024) (Atlas) (AGa001-12).

ARGUMENT

POINT I

NOTHING IN THIS AS-APPLIED CASE SHOULD UNDERCUT DANIEL'S LAW'S FACIAL VALIDITY.

Kratovil expressly disclaims a facial challenge, attacking only the application of the law to his intended publication, see (Pcb15-16), and this brief argues that the balance struck by the Appellate Division below should be affirmed, see infra Point II. Nevertheless, because Kratovil suggests affirmance would call into question the law's facial validity, (Pcb16), this brief begins by explaining why that is not so. See infra Point I.A. It also notes aspects of the law raised by this case on which this Court's authoritative construction may be especially helpful to future parties and courts. See infra Point I.B.

A. Daniel's Law And Its Heartland Applications Are Constitutional.

Facial invalidation is "strong medicine," not lightly dispensed. State v. Hill, 256 N.J. 266, 283 (citation omitted), reconsideration denied, 256 N.J. 461 (2024), cert. denied, No. 23-7597, 2024 WL 4426937 (U.S. Oct. 7, 2024). Courts will not declare a law facially unconstitutional for abridging free speech unless a challenger can show that it "'prohibits a substantial amount of protected speech' relative to its 'plainly legitimate sweep.'" Ibid. (quoting United States v. Hansen, 599 U.S. 762, 770 (2023)); see also Moody v. NetChoice, LLC, 144 S. Ct. 2383, 2397 (2024) (explaining that precedent makes "facial challenges hard to win"). Thus, unless a "law's unconstitutional applications substantially outweigh its constitutional ones," the law is facially constitutional, and courts will consider constitutional challenges only "case by case, not en masse." Moody, 144 S. Ct. at 2397; see also Hill, 256 N.J. at 283.

Though this unique dispute is the one being litigated, it is important to emphasize how far afield it is from mine-run applications of Daniel's Law. Daniel's Law responds, primarily, to a problem of big data: the ease with which would-be wrongdoers, like the one who killed Judge Salas's son, can find a covered person's home address online. See supra at 6; see also, e.g., 166 Cong. Rec. 213 (2020) (gunman able to target federal judge at his home by purchasing address online for $1.95). The companies that disseminate this information have

proliferated with the rise of the Internet and the ease with which sophisticated computer programs can pore through reams of data quickly. See Atlas, 2024 WL 4905924, at *1. And these companies are not media outlets seeking to share one specific street address out of a sincere view of newsworthiness; they are, in the main, "data brokers" and the like, who share millions of addresses, without any differentiation as to expressive value. See ibid. These mine-run applications stand miles apart from the free-speech interests Kratovil invokes. So, however this Court rules on this atypical dispute, its ruling will govern just one unusual set of facts—hardly the type of judgment that could undermine a law's facial validity. This Court thus need not worry that rejecting this claim will leave the law constitutionally vulnerable.

Indeed, all but a few applications of Daniel's Law should—regardless of Kratovil's theory here—be subject to limited constitutional scrutiny for at least four reasons. Most relevantly, nearly all applications involve matters of only private concern, which triggers lower First Amendment protection.[9] See ibid. (in rejecting facial challenging, concluding that "the home addresses and unpublished phone numbers [covered by Daniel's Law] are not matters of public

[9] Because Kratovil has not identified a basis for this Court's as-applied analysis to diverge from existing state and federal free-speech precedent, this brief discusses the two in tandem, referring only to the First Amendment for concision. See E & J Equities, Ltd. Liab. Co. v. Bd. of Adjustment of Franklin, 226 N.J. 549, 568 (2016); State v. Stever, 107 N.J. 543, 557 (1987).

significance" for purposes of a First Amendment facial challenge); see also Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., 472 U.S. 749, 758-59 (1985) (plurality opinion); Senna v. Florimont, 196 N.J. 469, 492 (2008). The mine-run applications, after all, are to companies that continue to post a covered person's street addresses and unlisted home phone numbers, in a database with millions of others, with no nexus to any "legitimate news interest" or general "value and concern to the public." See Snyder v. Phelps, 562 U.S. 443, 453 (2011) (citation omitted); see also Atlas, 2024 WL 4905924, at *8. In contrast to these uncommon facts, such garden-variety applications cannot plausibly be said to implicate speech about "matters of public concern." See Snyder, 562 U.S. at 453; contrast, e.g., Bartnicki v. Vopper, 532 U.S. 514, 525, 527-28 (2001) (heated conversation among union leaders involving ongoing negotiations over public-school contracts); Fla. Star v. B.J.F., 491 U.S. 524, 536-37 (1989) (name of rape victim); Smith v. Daily Mail Pub. Co., 443 U.S. 97, 103 (1979) (name of juvenile charged with murder).

Further, and relatedly, Daniel's Law reflects a tradition of protecting the privacy and safety of individuals in their own homes that has long coexisted in harmony with the First Amendment—another basis for reduced facial scrutiny. See Vidal v. Elster, 602 U.S. 286, 299-300 (2024). "Our jurisprudence has long respected the heightened protections of privacy and solitude in one's dwelling."

State v. Ramirez, 252 N.J. 277, 311 (2022) (collecting cases); see also Frisby v. Schultz, 487 U.S. 474, 484-85 (1988); Olmstead v. United States, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting) (describing "the right to be let alone" as among "the most comprehensive of rights and the right most valued by civilized men"). And since the rise of modern tort law, courts have recognized protections for security and privacy in one's home through privacy torts, such as intrusion upon seclusion. See, e.g., Friedman v. Martinez, 242 N.J. 449, 465-66 (2020); William L. Prosser, Privacy, 48 Calif. L. Rev. 383, 386 (1960) (AGa47); Samuel D. Warren & Louis D. Brandeis, The Right to Privacy, 4 Harv. L. Rev. 193, 195 (1890) (AGa40-41); Restatement (Second) of Torts §652A-652E (Am. Law Inst. 1977) (AGa033-38).

Such intrusions need not be "physical." Id. § 652B. Notions of privacy under New Jersey law today encompass protections for data that can facilitate an intrusion. See, e.g., N.J.S.A. 2A:82-46(a) (protecting addresses of child victims of sexual assault); N.J.S.A. 47:4-1 to -6 (allowing victims of domestic violence to protect their addresses from being accessed through public records); N.J.S.A. 39:2-3.3 to -3.7 (Driver Privacy Protection Act); R. 1:38-3(c)(12) (requiring redaction of "addresses of victims or alleged victims of domestic violence or sexual offenses"); R. 1:38-7 (requiring redaction of confidential personal identifiers); Ramirez, 252 N.J. at 302-03 (discussing other protections

for addresses of sexual-assault victims); Dirkes v. Borough of Runnemede, 936 F. Supp. 235, 238-39 (D.N.J. 1996) (collecting examples, including for student records, credit records, tax returns, and financial records); cf. Charles Fried, Privacy, 77 Yale L.J. 475, 493 (1968) (AGa018) (privacy includes right to control disclosure of information). Federal law has likewise evolved to recognize these privacy interests, including to protect privacy in the home.[10]

Courts have accordingly recognized claims where companies fail to adequately secure personal data or collect such data without proper consent. See, e.g., FTC v. Wyndham Worldwide Corp., 799 F.3d 236 (3d Cir. 2015); FTC v. Accusearch Inc., 570 F.3d 1187 (10th Cir. 2009); O'Donnell v. United States, 891 F.2d 1079, 1085-86 (3d Cir. 1989). This Court itself has recognized this interest. See Ramirez, 252 N.J. at 309-12 (in establishing protections to balance defendant's trial rights against privacy of home as "a place of refuge," requiring trial court to "accord heavy weight to sexual assault victim's interests in having solitude and privacy" at home); Doe v. Poritz, 142 N.J. 1, 82-84 (1995) (public disclosure of a sex offender's home address implicated a privacy interest given

[10] See, e.g., Fed. Daniel's Law §§ 5932-39; Video Privacy Protection Act of 1988, Pub. L. No. 100-618, § 2, 102 Stat. 3195-97 (codified at 18 U.S.C. § 2710); Telephone Consumer Protection Act, Pub. L. No. 102-243, § 3(a), 105 Stat. 2395 (codified at 47 U.S.C. § 227); Driver's Privacy Protection Act of 1994, Pub. L. No. 103-322, § 300002, 108 Stat. 2099-2102 (codified at 18 U.S.C. § 2721).

risk of "unsolicited contact" and "uninvited harassment"); see also id. at 82 ("We are reluctant to disparage the privacy of the home, which is accorded special consideration in our Constitution, laws, and traditions." (quoting United States Dep't of Defense v. Fed. Lab. Rels. Auth., 510 U.S. 487, 501 (1994)). Daniel's Law flows directly from this tradition; it allows a covered person to protect their home address or unlisted home phone number, by (as relevant) making an affirmative request to a third-party disseminator, to safeguard their privacy going forward in the place where they are most vulnerable—the home where they and their family members sleep each night. And it is especially key here, where the statute exists to protect those who are often targeted because of their roles investigating, prosecuting, and adjudicating crimes.

There are also other reasons that Daniel's Law should trigger only reduced facial scrutiny, though they are not necessary for this Court to address here. For instance, many applications (though not Kratovil's) would involve only commercial speech, see Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y., 447 U.S. 557, 566 (1980); Senna, 196 N.J. at 492 n.17 (quoting Cent. Hudson, 447 U.S. at 561), as courts have found in other instances in which companies sell or post reams of personal information for profit, unrelated to an

expressive purpose.[11] But see Atlas, 2024 WL 4905924, at *6 (disagreeing that Daniel's Law facially concerns commercial speech).

Further, Daniel's Law is content-neutral. See City of Austin v. Reagan Nat'l Advert. of Austin, LLC, 596 U.S. 61, 76 (2022); but cf. Atlas, 2024 WL 4905924, at *6-8 (finding Daniel's Law content-based but not applying strict scrutiny). A law is "facially content based" if it "targets speech based on its communicative content—that is, if it applies to particular speech because of the topic discussed or the idea or message expressed," City of Austin 596 U.S. at 69 (emphasis added) (cleaned up)—as opposed to "some other neutral characteristic of the speech," Mazo v. N.J. Sec'y of State, 54 F.4th 124, 148 (3d Cir. 2022), cert. denied, 144 S. Ct. 76 (2023). Indeed, even if Daniel's Law naturally applies to some but not other content (e.g., home addresses but not birthdays), that does not mean that it "target[s] speech based on its

[11] See, e.g., Stark v. Patreon, Inc., 656 F. Supp. 3d 1018, 1034, 1038-39 (N.D. Cal. 2023) (treating as commercial speech the sharing of data regarding video viewing history and personal information); Saunders v. Hearst Television, Inc., 711 F. Supp. 3d 24, 33 (D. Mass. 2024) (same); Khimmat v. Weltman, Weinberg & Reis Co., LPA, 585 F. Supp. 3d 707, 714-15 (E.D. Pa. 2022) (debt collectors sharing information about debts with third parties); Boelter v. Hearst Commc'ns, Inc., 192 F. Supp. 3d 427, 445 (S.D.N.Y. 2016) (disclosure of purchasers' identities "related to the economic interests of the speaker and the audience" (citation omitted)); Boelter v. Advance Mag. Publishers Inc., 210 F. Supp. 3d 579, 597 (S.D.N.Y. 2016) (disclosure and sale of subscriber information to "data miners" and to other "organizations that use it for solicitation purposes"); Trans Union Corp. v. FTC, 267 F.3d 1138, 1140-42 (D.C. Cir. 2001) (restrictions on credit-report information imposed by Fair Credit Reporting Act).

communicative content." See City of Austin, 596 U.S. at 69 (emphasis added). A statute that treats two subclasses of speech differently is still content neutral "when the legislature's predominant concern is with adverse secondary effects ... and not with the content of the speech being restricted." Hamilton Amusement Ctr. v. Verniero, 156 N.J. 254, 268 (1998); see R.A.V. v. City of St. Paul, 505 U.S. 377, 389 (1992). Here, Daniel's Law applies based solely on the neutral characteristic of exposing judges and other public servants to violence and intimidation in their own homes, and nothing about that "raises the specter that the Government may effectively drive certain ideas or viewpoints from the marketplace." See id. at 387 (calling this the "rationale of the general prohibition" against content discrimination).

Moreover, as explained above, the law is "opt-in." That is important because it means coverage hinges not on what is said, but on whether a covered person has requested non-disclosure of their own information going forward. So the law does not outlaw speech about home addresses and phone numbers—it simply, as relevant here, gives covered persons a right to prevent dissemination of their information going forward. See Dahlstrom v. Sun-Times Media, LLC, 777 F.3d 937, 949 (7th Cir. 2015) (finding data-privacy law content neutral because it restricted "only the publication of personal information ... obtained from" one source, and thus was "agnostic to the dissemination of the very same

information acquired from a lawful source"); cf. Mainstream Marketing Services v. FTC, 358 F.3d 1228, 1236-37, 1242 (10th Cir. 2004) (upholding national "do-not-call" registry and noting Supreme Court "has repeatedly held that speech restrictions based on private choice … are less restrictive than laws that prohibit speech directly"); Rowan v. U.S. Post Off. Dep't, 397 U.S. 728, 738 (1970) (upholding law allowing individuals to remove themselves from mass-mailing lists).

In short, although Kratovil suggests that a construction of Daniel's Law against him would leave the statute vulnerable to a facial constitutional attack, the statute is plainly facially valid—as a federal district court recently held.

B. Three Points Of Statutory Interpretation, On Which Clarification Is Warranted, Bear On Kratovil's Arguments.

Before adjudicating this as-applied challenge, there are three features of the law that warrant this Court's interpretation—both because they bear on parts the parties' arguments, the record, and the decision below, and because they all would further confirm that the law is not facially vulnerable however this Court decides Kratovil's own as-applied challenge. Indeed, while the District of New Jersey recently upheld Daniel's Law against a facial challenge, that court noted it cannot definitively construe New Jersey law instead "must predict how [this Court] would rule." Atlas, 2024 WL 4905924, at *11. This Court can.

First, and highly relevant to the facts of this case, this Court should confirm that "home address" means a street address, not just a town name. When invoked, Daniel's Law protects against further dissemination of a covered person's "home address." N.J.S.A. 56:8-166.1(a)(1); accord N.J.S.A. 2C:20-31.1(b). This dispute turns on the difference between reporting that Caputo lived in "Cape May" generally, versus at "1-2-3 Main Street," see (Pca35 (T20:3-6)), and while it appears that all parties agree that "Cape May" alone is not covered by Daniel's Law, (Pca15), this Court should nevertheless make that clear for all. Accord Atlas, 2024 WL 4905924, at *5 (Daniel's Law covers "telling the world that Police Officer Jane Jones resides at 123 Main Street, Camden and can be reached at 609-000-0000.").

That interpretation directly follows from the law's plain text. See In re D.J.B., 216 N.J. 433, 440 (2014) (courts start with "plain language"). Here, the plain meaning of "home address" includes a person's house number and street name, not just a town.[12] Just as no one would say that a Supreme Court Justice's "home address" is "Washington, D.C.," no one would say that a police leader's

[12] See, e.g., Address, Merriam-Webster's Dictionary, https://www.merriam-webster.com/dictionary/address (AGa015) ("a place where a person or organization may be communicated with"; "directions for delivery on the outside of an object (such as a letter or package)"); U.S. Postal Serv., Domestic Mail Manual § 602-1.4 (Oct. 2024), https://pe.usps.com/text/DMM300/602.htm (AGa045) (defining complete address to include house number and street name, as well as any secondary unit designation, such as an apartment number).

home address is "Cape May." And of course, if there were any ambiguity—though there is not—well-worn interpretive principles would require reading "home address" narrowly. See, e.g., State v. Carter, 247 N.J. 488, 520 (2021) (where a law has a narrow meaning that would pass constitutional muster "and a broader one that raises serious constitutional issues," courts adopt the narrow one); State v. Burkert, 231 N.J. 257, 277 (2017) (strong presumption "that the legislature intended to act in a constitutional manner" (citation omitted)).

Second, this Court should make clear that Daniel's Law requires "receipt" of valid "written notice" from an "authorized person" before disclosure can be prohibited. See N.J.S.A. 56:8-166.1(a)(1)-(2); accord N.J.S.A. 2C:20-31.1(b)-(c); Atlas, 2024 WL 4905924, at *3, 11. As noted, the law creates an "opt-in" regime, whereby it kicks in only if and when a covered person (or a permissible designee) expressly invokes the law's protections in writing, asking the private third-party disseminator to cease disclosure. N.J.S.A. 56:8-166.1(a)(1)-(2), (d). While there appears to have been some question as to whether Kratovil's disclosure of Caputo's street address at a City Council meeting on May 3 could have violated Daniel's Law, see (Pca35 (T20:14-18)), the facts described by the panel below indicate that the answer is no: an authorized person did not provide Kratovil with written notice invoking the law until May 15, see (Pca5-6); supra at 10-11. This Court should therefore clarify that no violation can occur until

valid "written notice" from an "authorized person" has been "recei[ved]." See N.J.S.A. 56:8-166.1(a)(1)-(2); accord N.J.S.A. 2C:20-31.1(b)-(c). This feature, in turn, underscores the law's facial constitutionality, making clear it does not indiscriminately target address-related speech, or create a trap for the unwary; only someone who receives a request to cease dissemination yet ignores that request can be liable.

Third, and finally, given that Kratovil raises culpability standards and the law's criminal components, (Pcb12), this Court should make clear that all of the provisions of Daniel's Law require some culpable mental state, and that these culpability requirements are amply tailored: no culpability means no liability; negligence can mean only civil liability; and at least recklessness is required for any form of criminal liability under the statute. See N.J.S.A. 2C:20-31.1(b), (d); N.J.S.A. 56:8-166.1(a), (c)(2). Even assuming there is ambiguity, this reading avoids any constitutional issues and thus merits adoption. See Carter, 247 N.J. at 520. Indeed, in reviewing the facial constitutionality of Daniel's Law's civil provision, the federal district court was concerned that "ascrib[ing] a strict liability standard to Daniel's Law … would likely render the law unconstitutional," and "predict[ed]" that this Court would interpret the statute to require "a negligence standard of liability for actual or liquidated damages." Atlas, 2024 WL 4905924, at *11-12. This Court can and should agree.

Start with the only provision of Daniel's Law before this Court, see infra at 26-27: its civil component, N.J.S.A. 56:8-166.1. That section codifies a negligent-disclosure tort. Atlas, 2024 WL 4905924, at *12 (agreeing Daniel's Law is "analogous to the common law tort of invasion of privacy of the intimate details of a person's life" and identifying that as "a negligence test" (citing Romaine v. Kallinger, 109 N.J. 282 (1988))); see also, e.g., Z.D. v. Cmty. Health Network, Inc., 217 N.E.3d 527, 533-34 (Ind. 2023) (discussing negligent disclosure of private facts); Wyndham, 799 F.3d at 240 (allowing claims against hotel chain that allegedly failed to take reasonable steps to safeguard consumer information); O'Donnell, 891 F.2d at 1085-86 (recognizing negligent-disclosure claim under Pennsylvania law involving psychiatric records).

Indeed, that is the point of the statute's "written notice" and "receipt" requirements. See supra at 23-24. By requiring "written notice" to be "recei[ved]," after which the recipient has "10 business days" to comply, N.J.S.A. 56:8-166.1(a)(1), the Legislature meant to ensure civil liability only for unreasonable disclosures—those made despite notice and sufficient time to comply. At the same time, it codified a duty for possessors of this personal data to avoid further dissemination after being put on notice and given time—a

normal approach for negligence-based tort.[13] That hews to First Amendment doctrine, which permits state law to impose negligence liability for torts involving speech on matters of private concern. See, e.g., Dun & Bradstreet, 472 U.S. at 763.

On the other hand, Kratovil errs in suggesting that any constitutional infirmity flows from Daniel's Law's criminal provision, see N.J.S.A. 2C:20-31.1; cf. Fair, 256 N.J. at 232-34; contra (Pcb12-14); (Pca33 (T16:5-10)), which in any event is not before this Court. While this Court's standing doctrine is less stringent than its federal counterpart's, it still requires "[a] substantial likelihood of some harm visited upon the plaintiff." New Jersey State Chamber of Com. v. New Jersey Election L. Enf't Comm'n, 82 N.J. 57, 67 (1980). Here, N.J.S.A. 2C:20-31.1 is a criminal statute, and there is no substantial likelihood of criminal charges against Kratovil in light of the facts presented. Contra (Pcb1).

To see why, recall that, for criminal liability to attach, Daniel's Law requires that the disseminator act at least "in reckless disregard of the probability of" exposing the requestor to "harassment or risk of harm to life or property."

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[13] See Restatement (Second) of Torts § 282 (Am. Law Inst. 1965) (AGa032) (recognizing that "negligence is conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm"); Olivo v. Owens-Illinois, Inc., 186 N.J. 394, 402 (2006) (discussing "foreseeability of harm" as a "crucial element in determining whether imposition of a duty … is appropriate" (cleaned up)).

N.J.S.A. 2C:20-31.1(b). While that provision could apply where a covered person informs a reporter of active threats against them or their family members, it is hard to see how simply being made aware that a covered person is a covered person would constitute reckless disregard. Indeed, if that were so, then the Legislature's clear efforts to distinguish between civil and criminal penalties, and to require heightened scienter for only the latter, compare N.J.S.A. 56:8-166.1(a), with N.J.S.A. 2C:20-31.1(b), would seem to have little real-world meaning. See In re Proposed Constr. of Compressor Station (CS327), 258 N.J. 312, 325 (2024) (emphasizing need to avoid readings that would produce surplusage). Rather, the harmonious way to read the laws together is to recognize that the civil provision allows for liability when a recipient is put on notice of a valid request but fails to act, while the criminal provision kicks in only when the recipient is also aware of facts sufficient to create a "probability" that any further dissemination will expose the requestor to "harassment or risk of harm to life or property," N.J.S.A. 2C:20-31.1(b), yet continues to disclose the information anyway. There is therefore no threat, on the facts recited by the panel below, of criminal sanctions in this case. Instead, Kratovil's challenge seeks to avoid civil liability for his proposed statutory violations.

POINT II

THIS AS-APPLIED CHALLENGE FALLS SHORT.

The Appellate Division struck a constitutionally apt balance: although a journalist doubtless has a right to publish on matters of public concern, on these specific facts, the matter of public concern was fully satisfied by reporting that Caputo lived in Cape May—and there is no residual public interest in reporting he lived at 123 Main Street. The question of what constitutes a matter of public concern under the First Amendment is a judicial question to be answered based on precedent from this Court and the U.S. Supreme Court. Although the balance could tip differently in other cases, the Appellate Division did not err here.

A. The Panel Properly Considered Whether Caputo's Precise Street Address Was A Matter Of Public Concern.

This Court, like the U.S. Supreme Court, has long had to assess when something is or is not a "matter of public concern." See, e.g., Snyder, 562 U.S. at 452-53; W.J.A. v. D.A., 210 N.J. 229, 244-46 (2012). In so doing, both courts have laid out frameworks to apply. As the U.S. Supreme Court has explained, speech "deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." Snyder, 562 U.S. at 453 (cleaned up); see also Dun & Bradstreet, 472 U.S. at 759-60 (noting that speech

on private matters does not carry the same concerns about self-government or risks of self-censorship). "Deciding whether speech is of public or private concern requires [a court] to examine the content, form, and context of that speech, as revealed by … an independent examination of the whole record." Snyder, 562 U.S. at 453 (cleaned up). "In considering content, form, and context, no factor is dispositive, and it is necessary to evaluate all the circumstances of the speech, including what was said, where it was said, and how it was said." Id. at 454.

This Court has also provided guidance. For instance, "[w]hen published by a media or media-related defendant, a news story concerning public health and safety, a highly regulated industry, or allegations of criminal or consumer fraud or a substantial regulatory violation will, by definition, involve a matter of public interest or concern." Senna, 196 N.J. at 496-97. And assessing the content of the speech requires looking "at the nature and importance of the speech"—including whether it "promote[s] self-government or advance[s] the public's vital interests"—while analyzing the context requires "look[ing] at the identity of the speaker, his ability to exercise due care, and the identity of the targeted audience." Id. at 497. Judges are well-suited to weighing such questions, and they honor the First Amendment and its precedents in doing so. See, e.g., Senna, 196 N.J. at 495-97 (analyzing question of proper level of

constitutional protection for disparaging statements about a business competitor in light of "free speech values"); cf., e.g., In re New Jersey Firemen's Assn, 230 N.J. 258, 279-80 (2017) (balancing transparency and privacy under OPRA, as to financial-assistance applications and payments to applicant); Poritz, 142 N.J. at 82-84, 107 (holding that privacy and reputational interests required judicial process prior to disclosure of sex offender's home address).

Kratovil errs in claiming that courts produce an unconstitutional "chilling effect" and impermissibly "take on the role of editors," (Pcb11), when they engage in this precedent-based analysis. The U.S. Supreme Court has already rejected a version of this argument in Time, Inc. v. Firestone, 424 U.S. 448 (1976), a case involving a libel judgment against Time Magazine for an article describing divorce litigation between a wealthy couple. Id. at 450. The magazine, seeking protection from such defamation liability, argued that the "actual malice" standard announced in New York Times v. Sullivan, 376 U.S. 254, 279-80 (1964) (no damages for speech about official's public conduct unless spoken with knowledge of falsity or reckless disregard for falsity), should apply to "all reports of judicial proceedings"—or at least to all reports "of what actually transpires in the courtroom." Firestone, 424 U.S. at 455-57. The magazine argued that "information concerning proceedings in our Nation's courts may have such importance to all citizens as to justify extending special

First Amendment protection to the press when reporting on such events." Id. at 455. But the Court rejected that argument, confirming that something is not automatically a matter of "public interest" in the constitutional sense just because it has some "generalized" nexus to a matter of public interest. See id. at 457; see also id. at 455-56 (observing that while it "may be that all reports of judicial proceedings contain some informational value implicating the First Amendment," determining constitutional protection on such a broad basis "may too often result in an improper balance between the competing interests in this area"). Rather, despite that generalized nexus, "many, if not most, courtroom battles"—like the overwhelming majority of street addresses—"would add almost nothing toward advancing the uninhibited debate on public issues," and thus do not qualify as true matters of public concern, with the special constitutional protections that status merits. See id. at 457.

Kratovil's theory—that once speech "has any reasonable relationship to, or bearing upon" a public issue "the constitutional inquiry must end," (Pcb10)—cannot be squared with Firestone. As just noted above, the Court acknowledged that "all reports of judicial proceedings contain some informational value." Id. at 455 (emphasis added). But that was not enough: judges were still required to balance "the competing interests in this area" and look to whether the speech at issue actually advanced "uninhibited debate on public issues" and other core

free-speech values. Id. at 456-57. That confirms that a court does not engage in impermissible copy editing or unduly chill speech when it declines to defer to a publisher on what counts as newsworthy—and that an asserted link to a general topic of interest cannot be the end of the inquiry. And while no one disputes that speech on a matter of public concern does trigger heightened protection in New Jersey, Senna, 196 N.J. at 484-86, that is wholly consistent with the point that determining whether speech qualifies as such entails showing more than a "generalized" nexus to such a matter, see Firestone, 424 U.S. at 457.

Kratovil's proposed approach would also lead to untenable results. On his theory, publication of any number of sensitive facts would be essentially immune from liability if tangentially connected to a newsworthy topic. For instance, if a court cannot decide whether Caputo's precise street address is improperly included in Kratovil's story, (Pcb9-11), then it is hard to see how it can fairly decide whether any other number of details—which room is Caputo's bedroom (allegedly tied to the fact he sleeps in that home) or what time his children come home from school (tied to the fact they reside there with him)—are related. By a similar token, all agree that Florida Star establishes that the rape victim's name there was a matter of sufficiently public concern (despite the fact that she herself was not a public figure), 491 U.S. at 536-37, but that case did not involve a reporter who wished to share the victim's home address, details

about her injuries, or other sensitive medical information (e.g., whether she was diagnosed with a sexually transmitted infection or became pregnant), all of which are theoretically "related to" reporting on the rape. Kratovil's rule would eliminate a crucial role for courts in weighing the "sensitivity and significance" of competing interests in privacy and speech. See id. at 533 (emphasizing that such "clashes" require case-by-case judging).

Kratovil errs in reading the U.S. Supreme Court's decision in Snyder to reach otherwise, (Pcb9). Snyder involved a tort claim for intentional infliction of emotional distress brought by the father of a deceased Marine against the Westboro Baptist Church after the group picketed his son's funeral. 562 U.S. at 448-51. And in its opinion, the Court outlined an in-depth, context-specific method for distinguishing matters of public and private concern, before proceeding to recount the language of the signs and the context in painstaking detail, see id. at 452-54—an approach that would have made little sense if all that was needed was "any reasonable relationship to" a public issue, (Pcb10).

Kratovil suggests that the Court nevertheless undercut its own approach by looking to the "overall thrust" of the protest in one line of its opinion, id. at 454; see (Pcb9), but he misreads the line. Instead, the Supreme Court followed its own guidance in looking to the overall content and context of the speech to conclude that signs that ambiguously stated "You're Going to Hell" and "God

Hates You" were not themselves sufficient to change the nature of the protest. See ibid. The Court did not suggest that, if the protestors had included signs including purely private facts about the Snyder family—such as images of Snyder's son's dead body, information about his sexuality, or his father's home address—that these too would have automatically qualified as speech on a matter of public concern by virtue of being featured in the protest. And tellingly, the Court went on to reject the argument that any of the signs "mounted a personal attack on Snyder and his family," id. at 455—language that would serve little purpose if a bare nexus to matters of public concern was legally dispositive.

Savage v. Township of Neptune, 257 N.J. 204 (2024), (Pcb8), does not help Kratovil's argument either. There, this Court properly interpreted a statute that used the words "relating to," citing definitions of that phrase in service of defining its ordinary meaning. Id. at 218. But that does not mean that this same definition governs the U.S. Supreme Court's usage of the phase in one sentence within a series of paragraphs discussing how to distinguish public from private issues. See Snyder, 562 U.S. at 453. Rather, Snyder's full explanation of how that analysis works is what controls this First Amendment analysis, id. at 451-54, consistent with the Court's repeated reminders that "the language of an opinion is not always to be parsed as though we were dealing with language of a statute." Nat'l Pork Producers Council v. Ross, 598 U.S. 356, 373 (2023)

(cleaned up). The question remains one for courts—not litigants—to decide, using their independent judgment based on the whole record. See Snyder, 562 U.S. at 453-54; Firestone, 424 U.S. at 457; Senna, 196 N.J. at 496-97.

Kratovil's passing citations to three scattered (and factually distinct) cases from Texas and the Fifth Circuit do not change the analysis either. (Pcb10-11). Kratovil cites Lowe v. Hearst Communications Inc., 487 F.3d 246 (5th Cir. 2007), for the proposition that a court can decline to "get involved in deciding the newsworthiness of specific details" in a story when they are all "substantially related to the story," id. at 251 (citation omitted), but that framing merely defers the central analysis to deciding what qualifies as "substantially related"—still a question for courts. (Here, one could simply argue that Caputo's precise street address was not "substantially related" to Kratovil's story, which turned on the location of the town, not the location within that town). Klentzman v. Brady, 456 S.W.3d 239 (Tex. App. 2014), merely discusses local case law (including Lowe) on the page Kratovil cites, and spends most of its time on a framing less helpful to Kratovil. See id. at 261 (quoting decision acknowledging that "[w]hile the general subject matter of a publication may be a matter of legitimate public concern, it does not necessarily follow that all information given in the account is newsworthy," and requiring a "logical nexus … between the private facts disclosed about [a] victim and the general subject matter of the crime"

(quoting Star-Telegram, Inc. v. Doe, 915 S.W.2d 471, 474 (Tex. 1995))). And Ross v. Midwest Commc'ns, Inc., 870 F.2d 271 (5th Cir. 1989), held that liability could not attach to a TV station that, in "questioning the guilt of a man convicted of rape," disclosed the first name of one of the victims and a picture—but not the location of—her residence. Id. at 271, 275. Certainly under 1989 technology, nothing about that holding is inconsistent with the ruling the Attorney General urges today.[14]

In short, the Appellate Division did not stray beyond its proper role in assessing whether Caputo's street address itself was a matter of public concern, despite Kratovil's sincere belief that it should be included in his reporting that Caputo lived in Cape May while working for New Brunswick.

B. The Panel Properly Held That Caputo's Street Address Was Not A Matter Of Public Concern.

Having properly considered the content and context of the information that Kratovil seeks to publish, the Appellate Division correctly determined that while Caputo's town was a matter of public concern, his precise street address was not. (Pca15-16.) This Court should affirm the "commonsense" balance the

[14] As technology advances, it is possible that tools like "Google Lens" could allow a would-be wrongdoer to find someone's precise address by inputting an image of their house into a search engine. But that was certainly not true in 1989, and this case does not present any question about how such technology would impact a dispute involving a picture of a covered person's home.

Appellate Division struck, (Pca16), in its First Amendment analysis: Daniel's Law advances a compelling interest; Caputo's street address was not the matter of public concern; the government's disclosure of the address via an OPRA request does not change the analysis; and Daniel's Law does not suffer from a lack of tailoring, including as applied.

As a threshold matter, Daniel's Law directly advances a compelling government interest "of the highest order." See Fla. Star, 491 U.S. at 533 (quoting Daily Mail, 443 U.S. at 103). Daniel's Law was undisputedly enacted "to enhance the safety and security of certain public individuals in the justice system" such that they can "carry out their official duties without fear of personal reprisal." N.J.S.A. 56:8-166.3; accord (Pcb1) (agreeing that this was the law's purpose); Atlas, 2024 WL 4905924, at *7-8. The Appellate Division rightly held that this "is a compelling State interest of the highest order." (Pca16); accord Atlas, 2024 WL 4905924, at *8; see also Carey v. Brown, 447 U.S. 455, 471 (1980) ("The State's interest in protecting the well-being, tranquility, and privacy of the home is certainly of the highest order in a free and civilized society."); Pennsylvania v. Mimms, 434 U.S. 106, 110 (1977) (State's interest in the safety of law enforcement officers is "weighty").

Daniel's Law unquestionably advances this safety interest, allowing covered persons to make it harder for wrongdoers to find them in the location

where they are typically most vulnerable, since they lack the security at home that they enjoy in chambers and secured workplaces. See supra at 4-6; see also Atlas, 2024 WL 4905924, at *8 (finding that it is "well-known fact, amply documented by the record here, that in recent years judges, prosecutors, police, correctional officers, and others in law enforcement have been the subject of an ever increasing number of threats and even assassinations," some "facilitated by malefactors obtaining the home address or unlisted phone number of their targets"); id. at *4 n.7 (collecting allegations from law enforcement officers, including surveillance of one officer and that officer's child "by a major criminal organization that she was investigating," death threats against a detective from a major gang (MS-13) that later attempted to burn down his mother's building, and armed individuals "wearing ski masks" seen "circling" two officers' home).

On the other side of the ledger, the test for whether a particular fact "deals with matters of public concern" is whether "it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest." Snyder, 562 U.S. at 453 (cleaned up). In other words, the court looks to whether it concerns "a subject of general interest and of value and concern to the public," based on "the content, form, and context of [the] speech, as revealed by the whole record." Id. (cleaned up); see also Senna, 196 N.J. at 492-93. For example, signs criticizing "the political

and moral conduct of the United States and its citizens" (even in highly offensive terms), Snyder, 562 U.S. at 454, or reports of "widespread consumer fraud" at a business, Senna, 196 N.J. at 488 (citing Turf Lawnmower Repair, Inc. v. Bergen Rec. Corp., 139 N.J. 392, 396-99 (1995)), fall on the public-concern side of the line. See also G.D. v. Kenny, 205 N.J. 275, 302-03 (2011) (expunged criminal records of aide to mayoral candidate in campaign flyer). By contrast, the U.S. Supreme Court found a credit report discussing the solvency of a company to fall on the private side, Dun & Bradstreet, 472 U.S. at 751, 761-62, as it did with details from family court involving litigants "drawn into a public forum largely against their will," Firestone, 424 U.S. at 450-52, 457. Similarly, while a rape victim's name is a matter of public concern, Fla. Star, 491 U.S. at 536-37, her home address, SSN, and medical history are presumably not, see R. 1:38-3(c)(12); Ramirez, 252 N.J. at 309-12; supra at 16-18; cf. United States v. Westinghouse Elec. Corp., 638 F.2d 570, 578 (3d Cir. 1980) (medical records); Burnett v. Cnty. of Bergen, 198 N.J. 408, 437 (2009) (balance between privacy and access under OPRA supports redacting SSNs).

The dividing line these cases reflect is between information that helps people figure out how to make decisions in public and public-adjacent affairs. See Cox Broad. Corp. v. Cohn, 420 U.S. 469, 492 (1975) (rooting the public-concern doctrine in the need for people to be able "to vote intelligently,"

"register opinions on the administration of government generally," and oversee "the administration of justice"); Senna, 196 N.J. at 497 (asking whether "the speech in question promote[s] self-government or advance[s] the public's vital interests," or whether it involves reporting on matters "concerning public health and safety, a highly regulated industry, or allegations of criminal or consumer fraud or a substantial regulatory violation"). Matters of public interest, in other words, impact the work of self-government in some meaningful way—whether in the broader sense by which people oversee their government, see ibid., or in the narrower sense by which they govern their interactions with the public sphere or commerce closely entwined with it, see id. at 485-89, 495-96 (discussing seminal New Jersey cases finding a matter of public concern in more publicly oriented economic scenarios but not extending these cases to disparagement by one business competitor of another).

Here, reporting that Caputo was a police director who lived in Cape May, "more than two hours from" from the city he served, (Pcb1), satisfies that standard, as no one disputes, (Pca15). (Indeed, this Court should definitively hold that Daniel's Law does not restrict reporting a town name in the first place. See supra at 22-23.) The "value and concern to the public," Snyder, 562 U.S. at 453, in knowing that Caputo lives in Cape May—rather than New Brunswick or, for that matter, Scranton, Pennsylvania—is plain: members of the public

might well support changes in policy or leadership based on those details.[15] See Senna, 196 N.J. at 497. The intersection with self-government is clear.

The same cannot be said for Caputo's street address. Rather, on these facts, it is difficult to see how a citizen could seek to order public or even private affairs differently based on knowing that Caputo lives at 123 Main Street versus 456 Broad Street; the distinction simply makes no explicable difference to policy preferences, advocacy, or even private decision-making, much the same way that no resident would feel differently about political or pocketbook matters based on knowing Caputo's SSN, his blood type, or how old his roof is. See also Atlas, 2024 WL 4905924, at *8 ("The narrow limitation under Daniel's Law constitutes but a tiny part of the life story of covered persons and is not information that is necessary or pertinent for public oversight."). And because this information makes no meaningful contribution to the marketplace of ideas in any sense, the State's overwhelming interest in protecting covered persons from being harassed or attacked in their own homes—a particularly vulnerable place, for a targeted population—easily outweighs it. See supra at 4-6, 37-38.

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[15] Cf., e.g., Katie Glueck & Dana Rubinstein, So Where Does Eric Adams Really Live?, N.Y. Times (Nov. 2, 2021), https://tinyurl.com/5du7af7e (AGa28-29) (NYC mayor maintaining residence in Fort Lee); Marc Levy, Republican David McCormick Flips Pivotal Pennsylvania Senate Seat, Ousts Bob Casey, PBS News (Nov. 7, 2024), https://tinyurl.com/mpp63b4b (AGa30-31) (Pennsylvania Senate candidate maintaining residence in Connecticut).

The balance could tip in the other direction under other facts. Consider a case in which the property was part of some alleged wrongdoing. If a reporter wished to report, for example, that a judge purchased a home at a significantly below-market rate from an interested litigant, the reporter might well have a strong as-applied challenge. After all, the public could not reasonably form an opinion about the story without knowing more about the home—what neighborhood it was in, how much it had sold for previously, and whether it looked like a house that was worth the amount the reporter suggested. Those details might well be relevant to the community's views.

Or consider a scenario in which a crime involving the property endangers public safety. For instance, if a reporter learns that a covered person has been running a drug-dealing operation out of their home, the public could have an interest in knowing where the crimes occurred, as it could impact residents' understanding of their safety and the public's ability to investigate how such conduct was able to operate below the radar. Here, by contrast, there is no such nexus between Caputo's precise street address and matters of self-government.

The Supreme Court's fact-specific rulings in the Florida Star line of cases are not to the contrary. See Bartnicki v. Vopper, 200 F.3d 109, 117 (3d Cir. 1999) (noting "the Supreme Court's practice of narrowly circumscribing its holdings in this area" and deciding each case "in light of the unique facts and

circumstances"), aff'd, 532 U.S. 513; see also, e.g., Fla. Star, 491 U.S. at 533 (expressly "relying on limited principles that sweep no more broadly than the appropriate context of the instant case"). As an initial matter, the potentially violent labor negotiations over public-school contracts in Bartnicki, 532 U.S. at 518-19, 525, 527-28, and the name of a person accused of murder in Daily Mail, 443 U.S. at 99-100, 103, are easily distinguishable. "The public interest and newsworthiness of" a conversation in which "the president of a union engaged in spirited negotiations with the School Board suggested 'blow[ing] off [the] front porches' of the School Board members" are "patent." See Bartnicki, 200 F.3d at 127; accord 532 U.S. at 525, 527-28. And a community has an obvious interest in being aware of who among its members has been charged with a serious crime, let alone murder, see Daily Mail, 443 U.S. at 99-100, 103—even as that interest must at times yield to other interests, as Kratovil himself concedes. See (Pcb12-13) (citing disorderly-persons offense for revealing expunged conviction).[16]

Florida Star and Cox Broadcasting, each involving the name of a rape victim (one of whom was murdered), do not support this challenge either. Each

[16] Daily Mail is also distinguishable for another reason: it involved a statute that specifically restricted newspapers but not other media from publishing the names of alleged juvenile offenders, and thus independently ran afoul of the First Amendment. See 443 U.S. at 104-05.

declined to rule broadly, given the "sensitivity and significance of the interests presented in clashes between First Amendment and privacy rights." Fla. Star, 491 U.S. at 533; see Cox Broadcasting, 420 U.S. at 490-91 (same). And on their facts, both held only that the name of a rape victim that had already been made available by the government could not thereafter be lawfully suppressed under the facts presented. See Fla. Star, 491 U.S. at 537 (reserving "the possibility that, in a proper case, imposing civil sanctions for publication of the name of a rape victim might be so overwhelmingly necessary to advance these interests as to satisfy the Daily Mail standard"); see Cox Broadcasting, 420 U.S. at 491 (focusing only on "judicial records which are maintained in connection with a public prosecution and which themselves are open to public inspection"). That says nothing about whether the home address of an official and his family are likewise fair game, especially given the risk to their safety.

The facts of both cases underscore the distinction. In Cox Broadcasting, the Court focused not only on the fact that crimes, prosecutions, and court proceedings "are without question events of legitimate concern to the public," id. at 492, but also that the victim's name appeared in the indictment, and that "[b]y placing the information in the public domain on official court records, the State must be presumed to have concluded that the public interest was thereby being served," id. at 472-73, 495. Its ruling operated, in other words, as a form

of public-interest-by-estoppel: that the government thought it important enough to include in a public filing confirms its value. No such corollary exists here.

In Florida Star, meanwhile, the Court observed not only that the fact of the crime (if not the name) involved "a matter of paramount public import," 491 U.S. at 536-37, but also that the newspaper had obtained the name from "an incident report made available in a pressroom open to the public," id. at 538; that the statute under which the newspaper had been sued had no "scienter requirement of any kind," id. at 539; and that the statute was underinclusive by covering disclosure only through an "instrument of mass communication" as opposed to a "backyard gossip who tells 50 people," id. at 540. Those features do not exist here: the government has not itself suggested that Caputo's street address is newsworthy; Daniel's Law does not set up a strict-liability regime, see supra at 24-27; Daniel's Law does not include a conspicuous loophole allowing broad dissemination by non-media entities, see Atlas, 2024 WL 4905924, at *9; and Caputo's precise street address is not as intrinsically related to his distance from New Brunswick as the name of a crime victim is to the fact of the crime. Indeed, societies often take care to remember the names of those victimized by crime or tragedy; street addresses have no such public meaning.

That Kratovil obtained Caputo's home address through an OPRA request does not require a different result—and is meaningfully different than the cases

cited above. Contra (Pcb12). To be sure, Florida Star cited, as one of its three bases, that when "the government has failed to police itself in disseminating information, … the imposition of damages against the press for its subsequent publication can hardly be said to be a narrowly tailored means of safeguarding anonymity." 491 U.S. at 538. But that is distinguishable for three reasons.

First, this is not a case about anonymity at all, and reading Florida Star to preclude a government from clawing back inadvertently released information would beget perverse results. Indeed, were the rule otherwise, if the sheriff's department in Florida Star had inadvertently released the rape victim's medical information, sexual history, or SSN, this too would have been automatically publishable by virtue of the error. That is not, and should not be, the law. Cf. Ostergren v. Cuccinelli, 615 F.3d 263, 282-83 (4th Cir. 2010) (distinguishing Florida Star and Cox Broadcasting from cases where "privacy hinges upon control" of one's own data).

Second, no post-hoc liability is being imposed on Kratovil, so there is none of the unfairness raised by a reporter receiving information from the government and then publishing it, only to be faced with a subsequent tort suit. Cf. Fla. Star, 491 U.S. at 538-39. Rather, under the structure of Daniel's Law, publication is permitted until a written request for non-disclosure is received and the recipient is given two weeks to comply. See supra at 7-8, 23-24. Here,

moreover, the record raises questions about Kratovil's role in obtaining this information. See (Pca5) (noting that the Cape May Board initially provided "a redacted version of Caputo's voting profile," but after "follow-up communications" from Kratovil, provided a document that "included Caputo's home address"). That is hardly equal to a government that itself affirmatively makes a victim's name available—and moreover does so on an "incident report made available in a pressroom open to the public," cf. Fla. Star, 491 U.S. at 538—rendering the estoppel theory in Florida Star ill-suited to this case.

Third, and relatedly, obtaining information through an OPRA request does not raise the same inference of public importance that comes from a government including a name in its own "incident report made available in a pressroom open to the public," see ibid., much less in its own public court filing, see Cox Broadcasting, 420 U.S. at 495. While the government's inclusion of a name in an indictment or an incident report made available to the press might plausibly trigger a "presum[ption]" that the State "concluded that the public interest was thereby being served," ibid., no such inference follows from a response to a request under OPRA, where the would-be speaker themselves solicits the information, and where the statute covers reams of information, little of which is newsworthy, see N.J.S.A. 47:1A-1.1.

Kratovil also errs in claiming a lack of tailoring. To start, he suggests that, instead of Daniel's Law, the State should better train and audit its OPRA custodians. (Pcb12.) But that argument not only fits poorly with Daniel's Law's "opt-in" mechanism, see supra at 20-21, but also produces deeply troubling results, whereby a single error by a records custodian in response to a specific OPRA request would disempower a covered person from preventing further dissemination of their and their family's home address. In any event, even assuming the State could also advance its interests by investing in enhanced oversight of records custodians, that would not create a tailoring problem, because the First Amendment does not require States to "address all aspects of a problem in one fell swoop." Williams-Yulee v. Fla. Bar, 575 U.S. 433, 449 (2015). Here, the largest risk comes not from OPRA custodians but from data brokers and similar companies who disseminate such information online. See supra at 4-5, 13-14; see also Atlas, 2024 WL 4905924, at *9-10 (observing that the "focus" of Daniel's Law is online dissemination, rejecting underinclusiveness arguments, and citing cases).

Kratovil also suggests that Daniel's Law include an express exception for "speech on a matter of public concern." (Pcb13.) But even assuming such an exception would not itself risk charges of underinclusiveness or content discrimination, see Fla. Star, 491 U.S. at 540 (law that covered mass media but

not the "backyard gossip"); Daily Mail, 443 U.S. at 104-05 (law that covered "newspapers" but not other media outlets), Kratovil's argument is either inconsistent with his claim to seek only as-applied relief (in which case it fails for the reasons above, see supra Point I.A), or simply tautological. The very nature of as-applied relief is that statutes do not always expressly carve out all the unusual scenarios in which they might need to bend to the Constitution's commands, and Kratovil cannot be more or less entitled to such relief based on whether the Legislature explicitly recognized a claim like his. His claim simply turns on free-speech law as applied to these facts—which here do not entitle him to an as-applied constitutional remedy, but could for another plaintiff under other facts. See supra at 42-43.

Finally, Kratovil invokes Schrader v. District Attorney of York County, 74 F.4th 120 (3d Cir. 2023), but the analogy fails. (Pcb12-14.) Schrader involved a grandmother who wished to share child-abuse records to argue that a county office's failures had led to her grandson's death—after her daughter had been prosecuted for posting the same documents on Facebook. Id. at 123. On those facts, the court imposed both strict scrutiny, id. at 126-27, and the test for speech on "a matter of paramount public import," id. at 127-28 (quoting Fla. Star, 491 U.S. at 536-37). But as explained above, on these facts—where the street address is not a matter of public concern—neither form of strict review applies,

see supra at 14-21, 36-45. Further, Schrader plainly faced "a credible threat of prosecution," 74 F.4th at 125, which is not true here, see supra at 26-27. Rather, Kratovil faces "civil penalties," which Schrader distinguished as a narrower risk. (Pcb13) (quoting 74 F.4th at 127); see N.J.S.A. 56:8-166.1(c) (liquidated damages of $1,000, with punitive damages available "upon proof of willful or reckless disregard of the law"). Accordingly, even if there were some infirmity with the criminal provision here (which there is not), severing it—the proper remedy, see N.J.S.A. 1:1-10—would do Kratovil little good. In any event, the difference between the culpability required for civil and criminal liability confirms that Daniel's Law is properly tailored: it protects public servants and their families from attacks or harassment at home, and it does so in a measured way, allowing no civil liability without negligence, and criminal liability only for more culpable conduct. Allowing the law to operate despite Kratovil's desire to share Caputo's street address does not contravene the First Amendment.

CONCLUSION

This Court should affirm the Appellate Division's decision.

Respectfully submitted,

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