Plaintiff-Petitioner, CHARLES KRATOVIL vs. *Defendants-Respondents,* CITY OF NEW BRUNSWICK, AND ANTHONY A. CAPUTO, IN HIS CAPACITY AS DIRECTOR OF POLICE.	Supreme Court Docket No. 089427 CIVIL ACTION On Petition for Certification from a Final Order of the Superior Court Appellate Division Docket No.: A-000216-23T1 *Sat Below*: Hon. Robert J. Gilson, P.J.A.D. Hon. Patrick DeAlmedia, J.A.D. and Hon. Avis Bishop-Thompson, J.A.D.

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BRIEF ON BEHALF OF DEFENDANTS-RESPONDENTS, CITY OF NEW BRUNSWICK AND ANTHONY A. CAPUTO, IN OPPOSITION TO PETITION FOR CERTIFICATION

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PRELIMINARY STATEMENT

This appeal centers on Petitioner Charles Kratovil's desire to republish Respondent former Director Anthony A. Caputo's (hereinafter "Caputo") street and house number of his private home address in a news article. This is prohibited under Daniel's Law, as the precise address is purely private information, impacts the safety of Covered Persons, and is narrowly tailored to achieve a need of the highest order. Caputo sent Petitioner a letter advising him that to publish Caputo's private address would violate Daniel's Law, leading to Petitioner filing for injunctive relief. The lower courts held, and all parties agree, that the distance between Caputo's county of residence and his then-workplace, as well as any criticisms of Caputo, are matters of public concern without being subject to Daniel's Law's restrictions. The trial court denied said relief, and the Appellate Division affirmed, holding that no prior restraint existed and no civil or criminal action has been instituted entitling Petitioner to injunctive relief.

The crux of this dispute is a matter of privacy and the protection of public officials and their families in light of increasing violence, threats, and harassment, that jeopardizes their safety and an attempt to prevent any future tragedies. This Court need not reach the constitutional questions Petitioner poses on these facts, but even if this Court grants certification, Petitioner's as-

applied challenge raises no broader questions of public importance, resolves no lower court conflict, and does not affect anyone but a party to the dispute. Indeed, Petitioner may publish his story without the inclusion of Caputo's address as other publications have done.

The petition for certification should be denied as Petitioner fails to meet the standard of Rule 2:12-4. If the petition is granted, the Court should affirm the Appellate Division's opinion.

STATEMENT OF FACTS

After a disgruntled attorney found United States District Court Judge Esther Salas's home address on the Internet, he went to her home and murdered her son, Daniel Anderl. 3T54:11-18. In response to this tragedy, and in light of increased threats of violence and harassment to public officials and members of the judiciary nationwide, see, e.g., 2022 Judicial Security U.S. Marshals Service, https://www.usmarshals.gov/sites/default/files/media/document/2022-Judicial-Security.pdf (Last accessed November 29, 2023), the Legislature passed N.J.S.A. 56:8-166.1 and amended N.J.S.A. 2C:20-31.1, known collectively as "Daniel's Law." Daniel's Law prohibits any person from disclosing or re-disclosing the private home address or unpublished home telephone number of certain active and retired public officials and their immediate family members, known as "Covered Persons,"

upon written notification from the Covered Person seeking to prohibit the disclosure. Disclosure or re-disclosure following notification may result in civil or criminal penalties.

Caputo was the Director of the New Brunswick Police Department, as well as a Commissioner for the New Brunswick Parking Authority, and as a retired law enforcement officer, is a Covered Person under Daniel's Law. 3T52:24-53:2. Petitioner is the editor of New Brunswick Today, a local online media outlet that has published several articles about Caputo and the New Brunswick Police Department since the site's formation in 2011. 3T52:23-24. Petitioner wishes to write an article alleging that because he had not seen Caputo attend New Brunswick City Council meetings, and Caputo attended Board of Commissioners' meetings remotely, the Director must have engaged in a "no show" job. 3T53:15-17. While neither position has a residency requirement, Caputo, when serving New Brunswick, rented additional local residences and stayed there during the week and some weekends, when his duties so required. See N.J.S.A. 40A:14-118 (Director of Police); see also N.J.S.A. 40:11A-5 (Board of Commissioners).

On several occasions, Petitioner requested information about Caputo's

home residence. Pa26[1] (Compl. at ¶¶ 15, 18); Pa27 (Compl. at ¶¶ 19, 21). Petitioner was repeatedly advised that Caputo's address was not subject to disclosure or was protected from same under Daniel's Law. Pa26 (Compl. at ¶¶ 15, 18); Pa30 (Compl. at ¶ 30). Petitioner eventually obtained a copy of Caputo's home address from the Cape May County Board of Elections Records Custodian. Pa26 (Compl. at ¶ 16).

On May 3, 2023, Petitioner attended a New Brunswick City Council meeting where he disclosed Caputo's street name and disseminated Caputo's full home address to council members. Pa28 (Compl. at ¶¶ 22, 23). Petitioner later requested a recording of this meeting through the Open Public Records Act, which was redacted to remove the discussion of Caputo's address, pursuant to Daniel's Law. Pa30 (Compl. at ¶ 30).

On May 4, 2023, Caputo authored a letter to Petitioner, as required by Daniel's Law. Pa29 (Compl. at ¶ 25). The letter advised Petitioner that Caputo was a Covered Person under Daniel's Law and that his home address was not subject to disclosure and cited to the relevant statutes. Ibid. On May 17, 2023, Petitioner posted the letter to his Twitter and Instagram accounts. Charlie Kratovil (@Charlie4Change), Twitter (May 17, 2023, 9:14 PM),

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1 Respondents adopt Petitioner's usage of "Pa" and "PCa" to refer to Petitioner's Appellate Appendix and Petitioner's Appendix to the Petition for Certification, respectively, for ease of reference.

https://tinyurl.com/498zd9mz; Charlie Kratovil (@charlie4change), Instagram (May 17, 2023), https://tinyurl.com/9ru5634d. No action was taken against Petitioner related to his initial disclosures of Caputo's address, and Petitioner has never faced any civil or criminal penalties for disclosing same.

PROCEDURAL HISTORY

On July 12, 2023, almost two months after he received Caputo's letter, Petitioner filed an Order to Show Cause seeking temporary, preliminary, and permanent injunctions enjoining Respondents City of New Brunswick and Caputo from applying Daniel's Law as to the Petitioner. Pa1-19. The matter was ultimately assigned to the Honorable Joseph Rea, J.S.C., who on September 21, 2023, denied Petitioner's application for an injunction and dismissed the verified complaint. 3T70:14-16-19; Pa68-69.

On the same day, Petitioner filed a Notice of Appeal with the Appellate Division, seeking permission to file an emergent application, Pa70-76, as well as emergent relief from the Supreme Court. Pa79. Both applications were denied. Pa77-78, Pa80-81. Petitioner, thereafter, appealed the trial court's decision to the Appellate Division on October 31, 2023. Pa2-Pa5. On April 26, 2024, the Appellate Division affirmed the trial court in an unpublished decision. PCa1-18. On April 30, 2024, Petitioner filed his notice of petition for certification. Aa010. Petitioner's subsequent petition for certification was filed

on May 22, 2023.

LEGAL ARGUMENT

I. THE PETITION FOR CERTIFICATION SHOULD BE DENIED

Petitioner's petition for certification fails to meet the criteria established under Rule 2:12-4 required for review by this Court, and therefore should be denied. Further, "[c]ertification will not be allowed on final judgments of the Appellate Division except for special reasons." Ibid. "The rule recognizes that where the parties have had one appeal there must be 'special reasons' for granting certification." Brown v. Lins Pharmacy, Inc., 67 N.J. 392, 399 (1975).

Here, there are no questions presented by Petitioner that meet Rule 2:12-4's standard. It is respectfully submitted that these questions are squarely addressed by the governing law applied by the Appellate Division, and therefore the Supreme Court need not certify the issues for review.

A. The Final Judgment of The Appellate Division Was An Application of Settled Legal Precedent To The Facts of This Case and Does Not Therefore Present a Question of General Public Importance.

Petitioner's petition for certification does not present any unsettled question of public importance. The petition challenges the Appellate Division's affirmation of the trial court's order denying Petitioner's requested relief and dismissing his Complaint. The Appellate Division's comprehensive,

eighteen-page opinion was based on well-established law with citations to settled legal authority and the undisputed record.

More specifically, the Appellate Division's decision was based on an application of the settled law articulated in Smith v. Daily Mail Publishing Company, 443 U.S. 97 (1979). The United States Supreme Court held that the publication of truthful information that has been lawfully obtained about a matter of public significance may lawfully be punished only when the punishment is narrowly tailored to further a state interest of the highest order. Id. at 102-03; Fla. Star v. B. J. F., 491 U.S. 524, 526 (1989). The Daily Mail principle is clear and has been affirmed by the line of cases applying such principles to the facts before it, such as Florida Star, as cited by the Appellate Division.

As explained by the Appellate Division, "[i]n establishing and reiterating the Daily Mail principle, the Supreme Court has been careful to base each of its decisions on the facts of the case before it." PCa14. No matter Petitioner's wording of the questions presented, Petitioner plainly takes issue with the Daily Mail principle as applied to his case, where the trial court held that Daniel's Law is narrowly tailored to further a state interest of the highest order, and the Appellate Division affirmed that Petitioner was not entitled to injunctive relief. These final decisions result from the application of the

principles set forth by the United States Supreme Court in Daily Mail to the facts of this case and does not therefore present an unsettled question of general public importance.

Also, the Daily Mail principle applied to Daniel's Law does not transform this case into one of public importance. The Appellate Division, trial court, and Petitioner all agree that the case is an as-applied challenge to Daniel's Law, asking whether Petitioner can post the full home address of Caputo. PCa3; 3T 9:8-10 at PCa29; 3T 10:21-23 at PCa30. In fact, the Attorney General declined to intervene in this case, explaining that, although he had an interest in defending Daniel's Law from a facial constitutional challenge, he deemed Petitioner's actions to be an as-applied challenge limited to the specific facts of the case. PCa7. The as-applied constitutional challenge, as opposed to a facial challenge, indicates that Petitioner is seeking only relief as to him, for his particular factual situation. Further, the Appellate Division's decision was not published and does not constitute a binding authority. It is of no interest to anyone other than the parties.

That there is no broader public question is evidenced by countless articles published without reporting on government officials' homes while omitting exact addresses. A recent article reports, "while we're not revealing the address," Justice Samuel Alito's Long Beach Island house displayed a

number of controversial flags. See Kevin Manahan, *What we know about Supreme Court Justice Samuel Alito's Jersey Shore home: Beds, baths, value, more*, NJ.com (May 23, 2024) https://tinyurl.com/pecuue2e.

Notably, the three articles cited in the petition for certification referencing this matter all successfully reported Petitioner's desired story without revealing Caputo's exact address. (Petitioner's brief in support of his petition for certification at 14-15, hereinafter 'Pb'). Each of these articles effectively communicated a matter of public concern, that is that Caputo was a non-resident of the City that he served, without providing the house number and street number of Caputo's address in Cape May. Moreover, the Appellate Division did not direct how Petitioner should act in the future. Instead, it wrote "[Petitioner] can evaluate Daniel's Law and decide how he will proceed." PCa18. Therefore, the Appellate Division's decision affects only the parties to this particular dispute, such that it can present no question of general public importance.

B. The Appellate Division's Decision Does Not Present a Conflict Among Judicial Decisions That Requires Clarification or Calls for Supervision by The Court.

There is no conflict between the Appellate Division's decision and the Daily Mail line of cases. Petitioner presents a string citation of cases that invokes the First Amendment to support his argument that there is a conflict.

However, the narrow holdings of the cases cited by Petitioner do not apply to this distinct set of facts. Same is especially true considering the fact-sensitive nature of such cases. See Daily Mail, 443 U.S. at 105 (explaining that the Court's holding was "narrow"); Fla. Star, 491 U.S. at 532-33 (explaining that the Court's rulings were based on the facts of the cases, and it has "eschewed" pronouncing broad rules).

By presenting needlessly over-generalized questions in his Petition, Petitioner attempts to cast doubt upon the integrity of the Appellate Division's decision. In truth, this case is about whether Petitioner can post the full home address of Caputo, which was addressed in thorough opinions by the trial court and Appellate Division and does not require Supreme Court review.

C. No Other Certifiable Questions Are Presented.

In determining whether to grant certification in the interest of justice, the Court reviews the result reached below to determine if it was "palpably wrong, unfair or unjust." Bandel v. Friedrich, 122 N.J. 235, 237 (1991). Here, Petitioner cannot demonstrate a palpably wrong, unfair or unjust result because the Appellate Division's opinion was consistent with well-settled precedent. Additionally, as explained above, the opinion only applies to the specific facts of this case.

Petitioner has already been afforded an appeal, in which the trial court

was affirmed. Petitioner presents no reason why he should be afforded an additional appeal, such that denying his current Petition comports with the conventional wisdom inherent in the conservation of finite judicial resources. See Mahony v. Danis, 95 N.J. 50, 53 (1983).

Petitioner failed to show that this case falls under the limited circumstances set forth by Rule 2:12-4. Moreover, Petitioner provided no 'special reasons' warranting a grant of certification in this matter. See ibid.; Brown, 67 N.J. at 399. As such, his Petition should be denied.

II. ALTERNATIVELY, THE APPELLATE DIVISION SHOULD BE AFFIRMED

Alternatively, should this Court grant certification and review this matter on the merits, it is respectfully submitted that the Appellate Division's judgment should be affirmed.

A. The Appellate Division Correctly Held that Caputo's Private, Home Address is Not a Matter of Public Concern.

Petitioner argues that "the Daily Mail test," Pb6, provides for the publication of any information regarding public officials or their private lives so long as it, generally, "relates to" a matter of public concern, Pb8. This argument is far afield of the narrow, as-applied holdings of the cases cited by Petitioner, and would represent a dramatic intrusion into the private lives of public officials, whose safety Daniel's Law seeks to protect.

Petitioner arrives at this proposition from a broad reading of Florida Star, in which the Supreme Court held that imposing damages on a newspaper for publishing a rape victim's name that it had learned from public court records violated the First Amendment. 491 U.S. at 541. In so holding, the Court asked whether "the article generally, as opposed to the specific identity contained within it, involved a matter of paramount public import: the commission, and investigation, of a violent crime which had been reported to authorities." Id. at 536-37. Petitioner extrapolates this analysis to mean that a court is only ever permitted to determine whether the overall point of a proposed news article is of a matter of public concern, never its constituent facts. Pb7-8. This interpretation not only ignores that the Court was "resolving [the] conflict only as it arose in a discrete factual context," id. at 530, and declining to "hold broadly that truthful publication may never be punished consistent with the First Amendment," id. at 532, but also fails to consider subsequent developments in case law.

Decided twenty-two years after Florida Star, Snyder v. Phelps presented a question of whether the Westboro Baptist Church was entitled to First Amendment protection when protesting the private funeral of an American serviceman, which turned on the distinction between speech regarding public concerns and speech regarding private matters. See 562 U.S. 443, 453-454

(2011). The Court held that to distinguish between the two types of speech, courts must examine the "content, form, and context" of that speech in light of the whole record. Id. at 453. When considering these aspects, "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," an explicit instruction to courts to examine all the constituent parts of the speech. Id. at 454. Indeed, this is precisely how the Court held that the Westboro Baptist Church was entitled to First Amendment protection: the Court looked not only at the overall thrust of the protest, but at the specific messages contained on each protest sign. See ibid. (examining whether specific signs' purportedly personal messages transformed the nature of the speech).

Petitioner blithely acknowledges this holding, noting that, "[n]otwithstanding the personal/private nature of the two signs described," the Court still held the Church was protected by the First Amendment. Pb9. But this acknowledgement is the entire inquiry that Petitioner wishes this Court to undertake. Analyzing the constituent parts, and not just the 'overall thrust,' of speech is important because "[n]ot all speech is of equal First Amendment importance, . . . and where matters of purely private significance are at issue, First Amendment protections are often less rigorous." Id. at 452. Examining the "content, form, and context" of speech in light of the entire record is

necessary to strike the appropriate balance between the public's right to be informed of matters that directly affect them with an individual's right to personal privacy. Id. at 453; see, e.g., Lindke v. Freed, 601 U.S. 187, 196 (2024) ("While public officials can act on behalf of the State, they are also private citizens with their own constitutional rights.").

The Supreme Court has long recognized the significant interest public employees have in their home addresses. U.S. Dep't of Def. v. Fed. Labor Relations Auth., 510 U.S. 487, 500 (1994). In that case, two unions requested the names and home addresses of the agency employees in the bargaining unit represented by the unions at the respective agencies through the Freedom of Information Act. Id. at 490. The agencies refused to disclose the home addresses of the employees. The Supreme Court noted, in weighing whether to allow the disclosure of the public employees' addresses, that:

> Because a very slight privacy interest would suffice to outweigh the relevant public interest, we need not be exact in our quantification of the privacy interest. It is enough for present purposes to observe that the employees' interest in nondisclosure is not insubstantial.
>
> [Id. at 500.]

Indeed, the competing interest in that case was the union's ability to contact non-union members, and the Court held that the public employees had "some nontrivial privacy interest" in nondisclosure to avoid an influx of union-

related contact. Ibid. The Court was "reluctant to disparage the privacy of the home, which is accorded special consideration in our Constitution, laws, and traditions." Id. at 501.

Applying these principles to the matter at hand, the Appellate Division and trial court correctly examined Petitioner's proposed use of Caputo's private home address and determined that it was purely private information and did not relate to a matter of public concern. PCa16. Analyzing its relationship within the context of Petitioner's proposed article concerning the length of Caputo's commute, see Snyder, 562 U.S. at 454, Judge Rea aptly held that Caputo's private home address is "logically immaterial" to a story concerning the length of his former commute. 3T61:12-18; see, e.g., Klentzman v. Brady, 456 S.W.3d 239, 258 (Tex. 2014) ("However, when details about the lives of private citizens are reported in a publication on a matter of public concern, the Texas Supreme Court has held that there must be a 'logical nexus' between the private facts disclosed and the general subject matter." (internal citations omitted)). Its inclusion relates only to a matter of private significance, and thus Daniel's Law was constitutional as applied to Petitioner. See Snyder, 562 U.S. at 454.

In brief, Petitioner improperly believes he has a right to publish Caputo's home address, which is both unnecessary to express the point of his

proposed article and supersedes the safety and well-being of Caputo and his family as potential targeted threats and harassment. In light of the foregoing, it is, therefore, respectfully submitted that Caputo's home address is a matter of private concern and that the judgment of the Appellate Division should be affirmed.

B. The Appellate Division Affirmed the Trial Court Without Reaching the Constitutional Question, and Therefore Did Not Err.

Petitioner argues that the Appellate Division neglected to "meaningfully" analyze whether Daniel's Law is narrowly tailored to achieve a State interest of the highest order. Pb11. However, the Appellate Division was not required to rule on the constitutionality of Daniel's Law in order to affirm the trial court.

"No questions can be brought before a judicial tribunal of greater delicacy than those which involve the constitutionality of a legislative act." N.J. Ass'n on Corr. v. Lan, 80 N.J. 199, 218 (1979) (quoting Ex parte Randolph, 20 F. Cas. 242, 254 (C.C.D. Va. 1833)). Thus, "[c]ourts should not reach a constitutional question unless its resolution is imperative to the disposition of litigation." N.J. Div. Of Youth & Family Servs. v. S.S., 187 NJ. 556, 564 (2006) (alteration in original) (quoting Randolph Town Ctr., L.P. v. County of Morris, 186 N.J. 78, 80 (2006)). Petitioner seeks to enjoin Respondents from enforcing Daniel's Law as applied to him. Pa35. Affirming

the denial of his requested relief, the Appellate Division critically noted that Petitioner was not prevented from publishing "the matter of public concern . . . [n]o penalty was imposed, and no prior court-ordered injunction was issued"; he was merely warned that publishing Caputo's private home address "might violate Daniel's Law." PCa at 16-17.

The Appellate Division's holding is all that is necessary to decide this matter. The trial court made the findings of fact and conclusions of law necessary to determine that Petitioner was not entitled to injunctive relief, and the Appellate Division affirmed that judgment. The questions of whether Daniel's Law was content-based or content-neutral, or whether it is narrowly tailored to advance a compelling or important State interest, ultimately, were unnecessary for disposition of this as-applied challenge. All that was necessary in this matter was determining whether Petitioner was entitled to injunctive relief: because Respondents "could not impose civil or criminal penalties" pursuant to Daniel's Law, id. at 16, and as no such penalties are active or pending, the Appellate Division did not need to reach the constitutional question, see S.S., 187 N.J. at 564. Therefore, the Appellate Division did not err in declining to address the question of whether Daniel's Law is narrowly tailored.

C. Daniel's Law Is Narrowly Tailored to Achieve A State Interest of The Highest Order.

Judge Rea concluded that "Daniel's Law is as narrowly tailored as possible to achieve its purpose by way of the least restrictive means," PCa57, T:64-24 to 65-1, after discussion of Daniel's Law's focus on Covered Persons, PCa57.

Daniel's Law is narrowly tailored—it prohibits the publication and re-publication of home addresses and unpublished telephone numbers of certain active and retired public officials, and any immediate family members residing in the same household to prevent further attacks on these persons. N.J.S.A. 56:8-166.1(d)(3); N.J.S.A. 2C:20-31.1(a). The statute's language is specific to who and what the statute covers. Moreover, it requires a Covered Person to know about the disclosure, receive approval from the Office of Information Privacy, and send written notice to the individual who disclosed or redisclosed the private address or phone number before any action, whether civilly or criminally, can be taken.

Daniel's Law is necessary to achieve a need of the highest order—protecting public servants and their families from violent attacks and harassment. Petitioner argues that Daniel's Law is not narrowly tailored because Petitioner was able to come up with "three workable alternatives": prioritizing policing and punishing records custodians, recognizing an exception for journalists, and exclusively authorizing civil penalties. Pb12.

Daniel's Law "represents the considered action of a body composed of popularly elected representatives." State v. Higginbotham, ___ N.J. ___ (2024), A-57-22 (slip op. at 22) (quoting State v. Trump Hotels & Casino Resorts, Inc., 160 N.J. 505, 526 (1999)).

Petitioner argues that Daniel's Law should be more like its federal counterpart, the Daniel Anderl Judicial Security and Privacy Act, which has an exception "if the information is relevant to and displayed as part of a news story, commentary, editorial, or other speech on a matter of public concern." S. 2340, 117th Cong. (2021). If this State wanted to make an exception for reporters, it would have done so. Further, Petitioner has failed to explain how Caputo's precise home address affects his message that Caputo had a 'no show' job. Petitioner has not shown one example of a news article where it was necessary to disclose the private home address of a public official in circumstances similar to the fact pattern in this case.

Lastly, the petition solely addresses the criminal penalties imposed by N.J.S.A. 2C:20-31.1(d). Pb1. The civil sanctions are supplemented by criminal penalties, which only apply when there is a reckless or purposeful violation of the statute. N.J.S.A. 56:8-166.1(c); N.J.S.A. 2C:20-31.1(d). Petitioner need only be concerned with the possibility of criminal penalties if he publishes Caputo's home address "knowingly, with purpose to expose [Caputo] to

harassment or risk of harm to life or property, or in reckless disregard of the probability of such exposure." N.J.S.A. 2C:20-31.1(b).

CONCLUSION

In light of the foregoing reasons, it is respectfully requested that Petitioner Charles Kratovil's petition for certification be denied. Should this Court grant the petition for certification, Caputo has established that Daniel's Law, which prohibits any person to publish or republish the address of Covered Persons and their family members, is narrowly tailored to address a need of the highest order, that of the safety of our active and retired judiciary, law enforcement officers, prosecutors, and their families, from the rising violence, threats, and harassment because of their protection of all of us. As such, it is respectfully requested that if the petition for certification is granted, that the Court affirm the Appellate Court's decision.

Respectfully submitted,

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