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

# SUPPLEMENTAL BRIEF ON BEHALF OF DEFENDANTS-RESPONDENTS, CITY OF NEW BRUNSWICK AND ANTHONY A. CAPUTO, IN OPPOSITION TO PETITIONER'S APPEAL

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## PRELIMINARY STATEMENT

This appeal comes from Plaintiff-Appellant Charles Kratovil's desire to republish Defendant-Respondent former New Brunswick Police Director Anthony A. Caputo's (hereinafter "Director Caputo") private street address and house number in a news article, an action which threatens the security of Director Caputo and his family and has been properly prohibited under Daniel's Law, N.J.S.A. 56:8-166.1 and N.J.S.A. 2C:20-31 as amended. Daniel's Law is designed to protect the lives and well-being of judges, prosecutors, and law enforcement officers and their families following the murder of the son and critical wounding of the husband of United States District Court Judge Esther Salas. Daniel's Law is especially important in light of increased threats, harassment and violence towards such public officials[1]. Despite what has been put forth by Plaintiff-Appellant, privacy and security are not mutually exclusive ends, and the existence of privacy

[1] The United States Marshals Service, which is responsible for protecting approximately 2,700 federal judges and approximately 30,300 federal prosecutors and court officials, "has seen an uptick in the need for protective services, and the response to all of the concerning events, direct threats, and other concerning online communications requires more information and support from personnel than ever before." USMS Annual Report 2024, https://www.usmarshals.gov/sites/default/files/media/document/Pub-2-2024-Annual-Report.pdf (Last accessed January 20, 2025) (DSa2-5); see also USMS 2025 Fact Sheet, https://www.usmarshals.gov/sites/default/files/media/document/2025-Judicial-Security.pdf (Last accessed January 20, 2025) (DSa1).

(including a private home address) is a prerequisite to security in the case of public officials.

Daniel's Law prohibits the publication and republication of the private home address, as it impacts the security of Covered Persons, and is narrowly tailored to achieve a need of the highest order. Director Caputo opted-in to be a Covered Person under Daniel's Law. As a Covered Person, Director Caputo notified Plaintiff-Appellant that to publish Director Caputo's private address would violate Daniel's Law, leading to Plaintiff-Appellant filing for injunctive relief. The lower courts held, and all parties agree, that the distance between Director Caputo's county of residence and his then-workplace, as well as any criticisms of Director Caputo, are matters of public concern and can be published without violating Daniel's Law. Therefore, the Middlesex County Superior Court denied injunctive relief and dismissed Plaintiff's Complaint, a decision that was affirmed by the Appellate Division. The Appellate Division also made it clear that such a decision does not have any chilling effect or unconstitutional editing of the press, as no prior restraint had been imposed on Plaintiff-Appellant.

This case concerns the privacy and protection of public officials and their families in light of increasing violence, threats, and harassment that jeopardizes their security and an attempt to prevent any future tragedies like

the one that befell Judge Salas. Plaintiff-Appellant's desire to publish Director Caputo's private home address, which is irrelevant to the point of his proposed article, does not overcome these crucial concerns or otherwise render Daniel's Law unconstitutional as applied to Plaintiff-Appellant.

For the reasons set forth below, 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, and severely wounded her husband. PCa52 (3T54:11-18)[2]. In response to this tragedy, and in light of increased threats of violence and harassment to public officials and members of the judiciary

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[2] 3T refers to the transcript from proceedings before Hon. Joseph L. Rea, J.S.C. on September 21, 2023 (where appropriate, Defendant-Respondent provides reference to both 3T and PCa);
PBr refers to Plaintiff-Appellant's Appellate Division brief;
Pa refers to Plaintiff-Appellant's Appendix to his Appellate Division brief;
PCa refers to Plaintiff-Appellant's Appendix to his Petition for Certification;
PSBr refers to Plaintiff-Appellant's supplemental brief;
DTBr refers to Defendant-Respondents' trial court brief;
DCBr refers to Defendant-Respondents' brief in opposition to the Petition for Certification;
DSa refers to Defendant-Respondents' Appendix to their brief in opposition to Plaintiff-Appellant's supplemental brief;
AGBr refers to the Attorney General's amicus brief; and
AGa refers to the Appendix to the Attorney General's amicus brief.

nationwide, see, e.g., USMS 2025 Fact Sheet, https://www.usmarshals.gov/sites/default/files/media/document/2025-Judicial-Security.pdf (Last accessed January 20, 2025) (Dsa1), 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 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. See N.J.S.A. 56:8-166.1(a)(1). Disclosure or re-disclosure following notification may result in civil or criminal penalties. See N.J.S.A. 56:8-166.1(b-c); see also N.J.S.A. 2C:20-31.1(d).

Director 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. PCa51 (3T52:24-53:2). Plaintiff-Appellant is the editor of New Brunswick Today, a local online media outlet that has published several articles about Director Caputo and the New Brunswick Police Department since the site's formation in 2011. PCa51 (3T52:23-24). Plaintiff-Appellant identifies himself as a journalist, activist, and politician, who has launched

several unsuccessful political campaigns, including in the New Brunswick mayoral race where he lost to incumbent Mayor James Cahill. PCa31 (3T12:10-11); see Charlie Kratovil, New Brunswick Today, https://newbrunswicktoday.com/writers/charlie-kratovil/ (Last accessed January 16, 2025).

Plaintiff-Appellant wishes to write an article alleging that because he had not seen Director Caputo attend New Brunswick City Council meetings, and Director Caputo attended Board of Commissioners' meetings remotely, the Director must have engaged in a "no show" job. PCa51 (3T53:15-17). Although neither position has a residency requirement, Director Caputo, when serving New Brunswick, rented an additional local residence 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).

As a retired law enforcement officer, all parties agree that Director Caputo qualifies as a Covered Person under Daniel's Law. PBr25; PCa38 (3T26:9-10); PCa51 (3T52:25-53:1). On March 14, 2023, Plaintiff-Appellant emailed Director Caputo asking if he still lived in New Brunswick. Pa26 (Compl. at ¶ 18). Deputy Director of the New Brunswick Police Department, J.T Miller, informed Plaintiff-Appellant that the public release of a law

enforcement officer's place of residence is protected under Daniel's Law. Ibid. Undeterred by Director Caputo's protections under Daniel's Law, Plaintiff-Appellant filed an Open Public Records Act ("OPRA") request with the Cape May County Board of Elections Records Custodian seeking Director Caputo's Voter Profile. Pa26 (Compl. at ¶ 15). On March 20, 2023, Plaintiff-Appellant was sent a redacted version of Director Caputo's Voter Profile and was informed full disclosure would "interfere with [Director Caputo's] reasonable expectation of privacy" under Burnett v. County of Bergen, 198 N.J. 408 (2009). Ibid. Director Caputo's home address was among the information redacted for privacy. Ibid. Thereafter, Plaintiff-Appellant continued emailing the Records Custodian requesting Director Caputo's unredacted Voter Profile. Pa26 (Compl. at ¶ 16). Plaintiff-Appellant claims that in one email, he misleadingly told the Records Custodian that Brennan v. Bergen County Prosecutor's Office, 233 N.J. 330 (2018), overruled Burnett v. County of Bergen and that the Court determined there was "no expectation of privacy for home addresses." Ibid.

While waiting for a response from the Records Custodian, Plaintiff-Appellant asked where Director Caputo lived during a New Brunswick Parking Authority meeting on March 22, 2023, and then again during a New Brunswick City Council meeting on April 5, 2023. Pa27 (Compl. at ¶¶ 19, 21). According

to Plaintiff-Appellant, on April 17, 2023, the Records Custodian emailed him a less redacted Voter Profile, which included Director Caputo's home address. Pa26 (Compl. at ¶ 16).

On May 3, 2023, Plaintiff-Appellant attended a New Brunswick City Council meeting where he disclosed Director Caputo's street name and disseminated Director Caputo's full home address to council members. Pa28 (Compl. at ¶¶ 22, 23). Despite having his own recording of the meeting, Plaintiff-Appellant later requested a recording of this meeting through OPRA, which was redacted to remove the discussion of Director Caputo's address, pursuant to Daniel's Law. Pa30 (Compl. at ¶ 30).

Director Caputo did not act against Plaintiff-Appellant for that disclosure. However, recognizing that his family resides in the house alone for most of the week, he sought protection for his home address in accordance with Daniel's Law. On May 4, 2023, Director Caputo notified Plaintiff-Appellant, as required by Daniel's Law. Pa29 (Compl. at ¶ 25). That notification advised Plaintiff-Appellant that Director 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. Notably, the notification did not use the term "cease-and-desist," as referred to by Plaintiff-Appellant, and did not threaten legal action. See PBr6.

On May 17, 2023, Plaintiff-Appellant posted the Daniel's Law notification to his Twitter and Instagram accounts. Charlie Kratovil (@Charlie4Change), Twitter (May 17, 2023, 9:14 PM), https://tinyurl.com/498zd9mz; Charlie Kratovil (@charlie4change), Instagram (May 17, 2023), https://tinyurl.com/9ru5634d. No action was taken against Plaintiff-Appellant related to his initial disclosures of Director Caputo's address, and Plaintiff-Appellant has never faced any civil or criminal penalties for disclosing same.

## PROCEDURAL HISTORY

On July 12, 2023, almost two months after he received Director Caputo's Daniel's Law notification, Plaintiff-Appellant filed an Order to Show Cause seeking temporary, preliminary, and permanent injunctions enjoining Defendant-Respondents City of New Brunswick and Director Caputo from applying Daniel's Law as to Plaintiff-Appellant. Pa1-19. The matter was ultimately assigned to the Honorable Joseph Rea, J.S.C., who on September 21, 2023, denied Plaintiff-Appellant's application for an injunction and dismissed the Verified Complaint. PCa60 (3T70:14-19); Pa68-69.

On the same day, Plaintiff-Appellant 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. Plaintiff-Appellant, thereafter, appealed the Superior Court's decision to the Appellate Division on October 31, 2023. Pa2-5. On April 26, 2024, the Appellate Division affirmed the Superior Court in an unpublished decision. PCa1-18. On April 30, 2024, Plaintiff-Appellant filed a Notice of Petition for Certification. PCa22-24. Plaintiff-Appellant's subsequent Petition for Certification was filed on May 22, 2023. On September 20, 2024, the Supreme Court granted Plaintiff-Appellant's Petition for Certification. Kratovil v. City of New Brunswick, 258 N.J. 468 (2024).

On October 10, 2024, Plaintiff-Appellant moved for leave to file a supplemental brief. On December 24, 2024, the Attorney General's Office filed an amended *amicus curiae* brief, urging the Supreme Court to affirm the Appellate Division's decision. Shortly thereafter, the Supreme Court granted Plaintiff-Appellant's motion for leave to file a supplemental brief. Plaintiff-Appellant filed his supplemental brief on January 3, 2025.

## STANDARD OF REVIEW

When a matter implicates First Amendment freedoms, courts must "make an independent examination of the whole record" to ensure that "the judgment does not constitute a forbidden intrusion on the field of free expression." Ward v. Zelikovsky, 136 N.J. 516, 536-37 (1994) (internal citations omitted). Thus, First Amendment cases require de novo review.

Rutgers 1000 Alumni Council v. Rutgers, 353 N.J. Super. 554, 567 (App. Div. 2002).

## LEGAL ARGUMENT

### I. THE LOWER COURTS DID NOT ERR.

As articulated by the Supreme Court, the question presented in this case is: "Is Daniel's Law, N.J.S.A. 56:8-166.1 and N.J.S.A. 2C:20-31.1, which prohibits disclosing the home address of certain public officials, including judges, prosecutors, and law enforcement personnel, unconstitutional as applied to Plaintiff-Appellant?" The Middlesex County Superior Court and Appellate Division both correctly answered that question: No, it is not.

The Appellate Division committed no error in resolving the as-applied constitutional challenge in favor of Defendant-Respondents. The Appellate Division's eighteen-page opinion was based on the application of settled law to undisputed facts, whereby it affirmed the Middlesex County Superior Court's order denying Plaintiff-Appellant's requested injunctive relief and dismissed his Complaint.

As an initial matter, the Appellate Division was clear that Plaintiff was not prohibited from discussing or publishing the matter of public concern: that Director Caputo, then the Director of the New Brunswick Police Department, lived in Cape May. PCa16. The Appellate Division agreed with the

Middlesex County Superior Court's conclusion that Director Caputo's exact street address is not a matter of public concern, as supported by the record and relevant law. Ibid. The Appellate Division also agreed that protecting public officials from violent attacks and harassment is a compelling State interest of the highest order. Ibid. As such, Plaintiff-Appellant was not entitled to injunctive relief.

Even more, the decision did not exceed the judicial role or chill journalistic freedom. The Middlesex County Superior Court fulfilled its judicial role of balancing the competing interests of speech and privacy, as set out in Smith v. Daily Mail Publishing Company, 443 U.S. 97 (1979) (hereinafter "Daily Mail"). As explained by the Appellate Division, "in denying Plaintiff's request for injunctive relief, the trial court did not direct how plaintiff should act in the future." PCa17-18.

"In 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. The Middlesex County Superior Court and Appellate Division correctly applied those principles to this matter, where Plaintiff-Appellant did not have an overriding free-speech right under the First Amendment to publish Director Caputo's private, precise street address after

Director Caputo validly invoked the protections of Daniel's Law. Therefore, the lower courts did not err.

## II. DIRECTOR CAPUTO'S ADDRESS IS A MATTER OF PURELY PRIVATE CONCERN.

### A. The Home Address of a Covered Person under Daniel's Law is a Private Matter.

As held by both the Appellate Division and the Middlesex County Superior Court, Director Caputo's home address is solely a matter of personal privacy. The question of whether speech is of a matter of public concern is a question of law, not fact. Fenico v. City of Phila., 70 F.4th 151, 162 (3d Cir. 2023) (citing Hill v. Borough of Kutztown, 455 F.3d 225, 241 (3d Cir. 2006)). The question cannot be answered with a simple "yes" or "no," and it is not meant to be a threshold inquiry. Fenico, 70 F.4th at 162. The public concern inquiry involves a "sliding scale," and courts are instructed to treat public concern as "a matter of degree." Connick v. Myers, 461 U.S. 138, 151 (1983).

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 v. Phelps, 562 U.S. 443, 453 (2011); see also Connick, 461 U.S. at 146. Deciding whether speech is of public or private concern requires courts to

examine the "content, form, and context" of that speech, "as revealed by the whole record." Snyder, 562 U.S. at 453 (quoting Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc., 472 U.S. 749, 761 (1985)). "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." Snyder, 562 U.S. at 454. "Content requires that we look at the nature and importance of the speech. For instance, does the speech in question promote self-government or advance the public's vital interests?" W.J.A. v. D.A., 210 N.J. 229, 244 (2012) (internal citations omitted). This analysis inevitably results in a determination that Director Caputo's home address is not a subject of legitimate news interest, nor is it a subject of general interest of value and concern to the public, for a multitude of reasons.

Daniel's Law's has been analogized "to the long-standing common law tort for invasion of privacy for disclosure of the intimate details of a person's private life." Atlas Data Priv. Corp. v. We Inform, LLC, __ F. Supp. 3d __, Civ. No. 24-10600, 2024 WL 4905924, slip op. at *8 (D.N.J. Nov. 26, 2024) (hereinafter "Atlas") (AGa007). In fact, "the standard for determining whether expression is of public concern is the same standard used to determine whether a common law action for invasion of privacy is present." Connick, at 143, n.5. Privacy has been recognized as the "right to be left alone" since Louis

Brandeis and Samuel Warren published their famous law review article, The Right to Privacy, in 1890. Samuel D. Warren & Louis D. Brandeis, The Right to Privacy, 4 Harv. L. Rev. 193 (1890). Therefore, Daniel's Law is proof that the New Jersey Legislature has determined that Covered Persons should have the right to be left alone insofar as their home addresses and unpublished phone numbers are concerned. Atlas, slip op. at *8 (AGa008).

As an initial matter, this case does not implicate the same First Amendment principles as applied in the cases to which Plaintiff-Appellant cites. The First Amendment reflects "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964), because "speech concerning public affairs is more than self-expression; it is the essence of self-government." Garrison v. Louisiana, 379 U.S. 64, 74-75 (1964). However, not 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. Snyder, 562 U.S. at 452. As explained in Snyder:

> Restricting speech on purely private matters does not implicate the same constitutional concerns as limiting speech on matters of public interest: there is no threat to the free and robust debate of public issues; there is no potential interference with a meaningful dialogue of ideas; and the threat of liability does not pose the risk of a reaction of self-censorship on matters of public important.

[Snyder, 562 U.S. at 452 (emphasis added).]

Here, the prohibition of publishing "Covered Persons'" home addresses does not implicate the same constitutional concerns that result from limiting speech on a matter of public interest. Director Caputo's address will not contribute anything to the debate of public issues or the marketplace of ideas in Plaintiff-Appellant's intended usage. See ibid.; see also State v. Hill, 256 N.J. 266, 283 (2024) (quoting United States v. Hansen, 599 U.S. 762, 769-70 (2023) ("[I]f would-be speakers remain silent, society will lose their contributions to 'the marketplace of ideas.'")). It will not allow citizens to vote intelligently or to register opinions on the administration of government generally. See Neb. Press Ass'n v. Stuart, 427 U.S. 539, 597 (1976) (Brennan, J. concurring). The information protected by 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. Daniel's Law does not inhibit in any meaningful way the public's knowledge of public officials or its ability to hold them accountable for their performance and behavior." Atlas, slip op. at *8 (AGa007).

Next, "[a]n analysis of the context of the speech requires examination of the speaker's status, ability to exercise due care, and targeted audience." W.J.A., 210 N.J. at 245; see also Snyder, 562 U.S. at 454 (noting that context

is better understood for purposes of this case as "how it was said"). Here, the context—a hypothetical article criticizing former Director Caputo's job performance based on the length of his commute—does not transform Director Caputo's address into a matter of public concern.

The facts before us are readily distinguishable from the cases cited. In the Daily Mail line of cases, when the Court analyzed the speech to determine whether it was a matter of public concern, it was a retrospective analysis with the benefit of the speech having already been published. The Court had the benefit of knowing "what was said, where it was said, and how it was said." See Snyder, 562 U.S. at 454. Here, Plaintiff-Appellant is seeking confirmation that he will not be penalized for violating Daniel's law.

Plaintiff-Appellant cites to Publius v. Boyer-Vine, 237 F. Supp. 3d 997, 1014 (E.D. Cal. 2014), for the proposition that the context itself transforms speech that is otherwise private into a matter of public concern. PSBr20. In Publius, the Court specified that "[w]hen viewed in that context of political speech, the legislators' personal information becomes a matter of public concern." 237 F. Supp. 3d at 1014. Here, Plaintiff-Appellant's desire to publish Director Caputo's address has never been claimed to be political speech or political protest.

The Appellate Division's decision was recently bolstered by the District of New Jersey's decision concluding Daniel's Law was facially constitutional in Atlas. In so doing, the Court first noted that "[t]he Supreme Court has recognized the tension that exists between privacy law and the right of freedom of speech and the press under the First Amendment." Atlas, slip op. at *7 (AGa007). Citing cases such as Florida Star v. B.J.F., 491 U.S. 524 (1989), that the Court described as attempting to "resolve this tension," Atlas, slip op. at *7, the Court emphasized that the Supreme Court "has continually stressed that it was not announcing a blanket rule that free speech must always prevail and that publication of truthful and lawfully obtained can never be punished. It has emphasized that each case must be decided on its particular facts." Ibid. (internal citations omitted).

Applying the factors from Florida Star, the Court determined that "home addresses and unpublished phone numbers are not matters of public significance." Id. at *8 (AGa007). The Court correctly recognized that "Daniel's Law does not inhibit in any meaningful way the public's knowledge of public officials or its ability to hold them accountable for their performance and behavior." Ibid. Distinguishing the other Florida Star cases as dealing primarily with "criminal activity and its prosecution," the Court stated that although "[t]he public clearly has a vital interest in such information[,] . . . the

same cannot be said of the speech governed by Daniel's Law." Ibid. The Court next stated that Daniel's Law's "purpose . . . to enhance the safety and security of judges, prosecutors, and other law enforcement officers so that they are able to carry out their official duties without fear of personal reprisal" constituted a need to further a state interest of the highest order, a point no party in that lawsuit contested. Id. at *8 (AGa008). Finally, the Court held that Daniel's Law was not underinclusive, relying on Supreme Court precedent in stating that "[a] State need not address all aspects of a problem in one fell swoop; policymakers may focus on their most pressing concerns." Atlas, at *9 (AGa009) (quoting Williams-Yulee v. Fla. Bar, 575 U.S. 433, 449 (2015)). Rather, Daniel's Law "materially promote[s] the state's interest of the highest order in protecting judges, prosecutors and other law enforcement officers from harm." Atlas, slip op. at *10 (AGa009).

This was precisely the inquiry undertaken by both the Appellate Division and the Superior Court. Specifically, after reviewing the relevant facts of this litigation and the applicable law, the Appellate Division held that "[t]he trial court's conclusion that [Director] Caputo's exact street address is not a matter of public concern is supported by the record and consistent with the law." PCa16. The Superior Court had further held that Director Caputo's exact home address "is logically immaterial" to Petitioner's story regarding the

length of Director Caputo's commute, PCa55 (3T61:12-18), as the story relates to "distance . . . not about a specific location." PCa57 (3T64:3-4). Director Caputo's private home address is simply unrelated to a story regarding the length of his former commute.

Plaintiff-Appellant attempts to distinguish Atlas in his brief but in so doing errs by continuing in his attempts to apply Florida Star as a general rule. See PSBr at 13-14. First, Plaintiff-Appellant proposes that "[t]here is no reason to believe that the public has a greater interest in the name of a rape victim than the details of a high-ranking police official living too far away to properly do his job" based on the District Court's analysis in Atlas. See PSBr at 13. Despite Plaintiff-Appellant's description of the District Court's inquiry as "superficial," ibid., Plaintiff-Appellant ignores that Atlas concerned a facial challenge to Daniel's Law: the Court properly concluded that private home addresses and the other information encompassed by Daniel's Law did not constitute matters of public concern. Indeed, Plaintiff-Appellant at least implicitly agrees with this analysis, as much of his brief is dedicated to arguing that Director Caputo's address "relates to" a matter of public concern, not that it is a matter of public concern in and of itself. See PSBr at 11-25.

This ties into Plaintiff-Appellant's second distinguishing factor of Atlas: that it was a facial, and not an as-applied, challenge. As noted, Plaintiff-

Appellant cannot have both ways; he cannot both fail to understand Atlas's analytical framework while pointing to the very nature of the challenge a paragraph later.

Third, Plaintiff-Appellant argues that Atlas applied "a less exacting standard of review because it rejected the suggestion that Daniel's Law was designed to protect safety rather than privacy. But [Respondents] in this case have argued exactly the opposite—that Daniel's Law is a safety statute—for the entirety of this litigation." PSBr14. Not only has Plaintiff-Appellant deliberately ignored several instances of Defendant-Respondents arguing that very point, see, e.g., DCBr 1 ("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"); DCBr11 ("would represent a dramatic intrusion into the private lives of public officials, whose safety Daniel's Law seeks to protect"); DTBr2 ("The statute focuses on the crucial state interest of protecting the privacy of those families from harm and intimidation so that they may continue to fulfill their civic duties.") (emphasis added), but his overall argument fails because Plaintiff-Appellant fails to understand that privacy is a crucial means of protecting Covered Persons.

Some of the cases in the "Daily Mail line of cases" are instructive here as they also discussed the right to privacy. In Bartnicki v. Vopper, the Court noted that the case presented a conflict between interests of the highest order—"the interest in the full and free dissemination of information concerning public issues" versus "the interest in individual privacy and, more specifically, in fostering private speech." 532 U.S. 514, 517 (2001); see also Florida Star, 491 U.S. at 541 (noting that at issue was the "tension between the right which the First Amendment accords to a free press, on the one hand, and the protections which various statutes and common-law doctrines accord to personal privacy against the publication of truthful information").

The Legislature's goal in enacting Daniel's Law was codified within the statute:

> This act shall be liberally construed in order to accomplish its purpose and the public policy of this State, which is to enhance the safety and security of certain public officials in the justice system, including judicial officers, law enforcement officers, child protective investigators[,] . . . and prosecutors, who serve or have served the people of New Jersey, and the immediate family members of these individuals, to foster the ability of these public servants who perform critical roles in the justice system to carry out their official duties without fear of personal reprisal from affected individuals related
>
> to the performance of their public functions.
>
> [N.J.S.A. 56:8-166.3 (emphasis added).]

To accomplish this goal, the Legislature enables such covered persons the ability to enforce a privacy right:

> Upon notification . . . and not later than 10 business days following receipt thereof, a person, business, or association shall not disclose or re-disclose on the Internet or otherwise make available, the home address or unpublished home telephone number of any covered person.
>
> [N.J.S.A. 56:8-166.1(a)(1).]

In Atlas, the Court flatly rejected the "narrow reading" of Daniel's Law as merely a security statute, noting that the Legislature "has concluded that covered persons should have the right to be let alone insofar as their home addresses and unpublished phone numbers are concerned." Atlas, slip op. at *7 (AGa006-007). "The reason the Legislature has protected this information is not only to enhance the safety and security of covered persons but also safeguard them from the fear of reprisal for doing their jobs." Ibid. (AGa007). As the District Court correctly surmised, protecting privacy is how the Legislature achieves its stated goal of security. See DTBr22 ("The only alternative to protect Covered Persons under Daniel's Law would be to hire security personnel to stand outside their private residences to prevent serious danger, an utterly unrealistic measure."). Thus, as Defendant-Respondents have previously acknowledged and argued, Daniel's Law is a privacy statute.

Finally, Plaintiff-Appellant cites the Court's own acknowledgment that the facial constitutionality was a difficult question ripe for disagreement. As the procedural history of this own matter bears out, the District Court's analysis of the matter was astute: all parties and amici have strenuously and vigorously advocated along different lines by citing case law limited to their facts. Such an acknowledgement in no way undermines the Court's treatment of the issue, nor should it give this Court pause in determining its persuasive weight. Rather, such a statement is an acknowledgment of the gravity of the Court's task as well as a recognition to the arguments made by all counsel involved. If anything, such an acknowledgment should bolster this Court's confidence that Atlas was decided with the requisite care and attention to detail such issues demand.

Thus, it is respectfully submitted that this Court find that Director Caputo's personal home address is not a matter of public concern.

### B. Director Caputo's Home Address Does Not "Relate To" a Matter of Public Concern.

The Appellate Division further correctly determined that Director Caputo's private home address was not logically related to Plaintiff-Appellant's proposed article, and therefore it is respectfully submitted that the Appellate Division's judgment should be affirmed.

Plaintiff-Appellant believes that the mechanical application of Florida Star dictates that Director Caputo's home address must be published. He argues that Florida Star instructs that the publication of any information regarding public officials or their private lives is permissible so long as it, however tenuously, "relates to" a matter of public concern. See PSBr15-16. Plaintiff-Appellant supports this by relying on court cases interpreting statutory language to conclude that "relating to" must be understood in the broadest sense. See, e.g., Pugin v. Garland, 599 U.S. 600, 607-10 (2023) (interpreting 8 U.S.C. § 1101(a)(43)(S)); see also Savage v. Twp. of Neptune, 257 N.J. 204, 218 (2024) (interpreting clause in a settlement agreement).

However, Plaintiff-Appellant's dogmatic application of Florida Star ignores that the Supreme Court has "continually stressed that it was not announcing a blanket rule that free speech must always prevail and that publication of truthful and lawfully obtained information can never be blocked or punished." Atlas, slip op. at *7 (citing Fla. Star, 491 U.S. at 532) (AGa 007). Additionally, his broad interpretation of the Court's "relational requirement," PSBr16, is based on statutory interpretation even though a judicial opinion "is not always to be parsed [such] as . . . with language of a statute." Nat'l Pork Producers Council v. Ross, 598 U.S. 356, 373 (2023)

(quoting Reiter v. Sonotone Corp., 442 U.S. 330, 341 (1979)). Rather, judicial opinions "must be read with a careful eye to context." Id. at 374.

The Appellate Division and Superior Court both analyzed the use of Director Caputo's home address as it related to Plaintiff-Appellant's proposed article, see Snyder, 562 U.S. at 454, and concluded that it did not relate to a matter of public concern. PCa16. Indeed, 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)).

Plaintiff-Appellant's latest submission to this Court relies upon two federal district court cases that were decided prior to Snyder. See PSBr12 ("At least two federal district courts have taken a capacious view of circumstances where police officers' home addresses relate to matters of public concern."). Plaintiff-Appellant's reliance on Brayshaw v. City of Tallahassee, 709 F. Supp. 2d 1244, 1249 (N.D. Fla. 2010), and Sheehan v. Gregoire, 272 F. Supp. 2d 1135 (W.D. Wash. 2003), do not alter this fact because in both of those

cases, the statutes at issue that proscribed publishing personal identifying information required ill intent on behalf of the party publishing the home address. See, e.g., Wash. Rev. Code § 4.24.680 ("A person or organization shall not, with the intent to harm or intimidate . . . release the residential address").

In Brayshaw, the Northern District of Florida held that Fla. Stat. § 843.17, a Florida statute criminalizing the publication of the name and address of a law enforcement officer maliciously, or with the intent to intimidate or hinder law enforcement, was facially unconstitutional. 709 F. Supp. 2d at 1247. In so holding, the Court declared that the private, personal details of an officer's home address or phone number were linked to "the issue of police accountability," and therefore of "legitimate public interest." Id. at 1249. Further, the Court found that the State's interest in protecting police officers from harm or death was compelling, despite ultimately finding that the statute was not narrowly tailored. Ibid. The Court reached that conclusion, in part, by relying on the second case Plaintiff-Appellant cited: Sheehan, a case in which the Western District of Washington declared a law criminalizing the proliferation of the residential addresses, telephone numbers, birthdates and Social Security numbers of law enforcement-related employees. 272 F. Supp. 2d at 1139.

Both of these cases have limited persuasive value to the case at bar. First, both of these cases were decided prior to Snyder, the Supreme Court case which delineated the approach both the Superior Court and Appellate Division undertook to find that Director Caputo's private home address was not a matter of public concern nor was it related to one. See Snyder, 562 U.S. at 453 ("Deciding whether speech is of public or private concern requires us to examine the '"content, form, and context"' of that speech, '"as revealed by the whole record."' (quoting Dun & Bradstreet, 472 U.S. at 761)). Second, both bear the same flaw in applying Florida Star as a general rule of application. Indeed, Sheehan describes Florida Star as articulating an overarching "First Amendment principle," see 272 F. Supp. at 1143-44, ignoring the Supreme Court's holding that it explicitly did "not hold that truthful publication is automatically constitutionally protected, or that there is no zone of personal privacy within which the State may protect the individual from intrusion by the press," Florida Star, 491 U.S. at 541. Further, Sheehan was strictly a facial challenge as the statute had never actually been applied to the plaintiff. 272 F. Supp. 2d at 1140. The Court held that "the First and Fourteenth Amendments preclude[d] the State of Washington from proscribing pure speech based solely on the speaker's subjective intent." Sheehan, 272 F. Supp. 2d at 1149.

A similar approach was eschewed in Time, Inc. v. Firestone, a case in which the Court was called upon to determine whether Time magazine could be sued for libel for its reporting details related to the divorce of the heir of the Firestone tire company and his wife, the plaintiff. 424 U.S. 448, 449-50 (1976). Time argued that the "actual malice" standard should be applied to its reporting because the divorce was a matter of public concern, despite the fact that the plaintiff, alone, was a private citizen. See id. at 452-53. However, the Court disagreed, holding that to extend the "actual malice" standard to someone who was not a public figure merely because her divorce involved a public figure would conclude "that the New York Times privilege should be extended to falsehoods defamatory of private persons whenever the statements concern matters of general or public interest." Id. at 454. The Court further declined to extend the New York Times privilege to all judicial proceedings, holding that "[i]mposing upon the law of private defamation the rather drastic limitations worked by New York Times cannot be justified by generalized references to the public interest in reports of judicial proceedings. The details of many, if not most, courtroom battles would add almost nothing toward advancing the uninhibited debate on public issues thought to provide principal support for the decision in New York Times." Id. at 457.

Plaintiff-Appellant appears to even acknowledge the strength of Director Caputo's privacy interest in his own home in this case, albeit buried in a footnote. In footnote 6, Plaintiff-Appellant concedes that, indeed, there is a difference between a home address, Social Security number, or medical history and one's name, stating that "[p]erhaps" the Supreme Court would have analyzed Florida Star differently on different facts. PSBr18 n.6. But that acknowledgement cuts to the heart of Plaintiff-Appellant's dogmatic and rigid application of Florida Star to this matter: in no way is Director Caputo's exact, private, personal home address related to the distance between Cape May and New Brunswick. Director Caputo's former public employment does not render every minute and private detail of his life a matter of public concern or constitute core political speech. See, e.g., Rowan v. U.S. Post Office, 397 U.S. 728, 737 (1970) (noting that "[t]he ancient concept that 'a man's home is his castle' into which 'not even the king may enter' has lost none of its vitality" relating to the ability of a mail-order business to communicate with potential customers which stops at the mailbox of an unreceptive addressee). That immutable fact has been acknowledged at the trial court level and in the Appellate Division after both courts applied the proper analytical framework to the facts at bar.

Simply put, in the matter before this Court, a person's private home address does not relate to a matter of political, social, or other concern to the community. As described, Plaintiff-Appellant's proposed article concerns the distance between Cape May and New Brunswick. Within that context, Director Caputo's exact home address within Cape May does not relate to that matter of public concern.

The additional justifications asserted for the inclusion of Director Caputo's address in Plaintiff-Appellant's story are similarly unavailing. First, Plaintiff-Appellant states that the Courts below acted as the editors of Plaintiff-Appellant's work as Plaintiff-Appellant does. He cites to Miami Herald Publ'g Co. v. Tornillo, for the proposition that "the choice of material to go into a newspaper" "and treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment." 418 U.S. at 258, Plaintiff-Appellant's citation leaves the reader bereft of the context surrounding these quotes showing its irrelevance to this case. In Tornillo, the Court deemed unconstitutional a Florida statute "granting a political candidate a right to equal space to reply to criticism and attacks on his record by a newspaper." 418 U.S. 241, 243 (1974). The Court held that the statute's compulsory inclusion of what material must go into the newspaper, as well as the size and content of the paper as well as the treatment

of public officials, "fail[ed] to clear the barriers of the First Amendment." Id. at 258. The Courts in this matter have done nothing to editorialize Plaintiff-Appellant's work[3]. They have, instead, properly applied judicial scrutiny to a matter entirely ripe for their consideration: whether publication of Director Caputo's private home address is, or relates to, a matter of public concern. See PCa16 ("The trial court's conclusion that [Director] Caputo's exact street address is not a matter of public concern is supported by the record and consistent with the law."). Plaintiff-Appellant's insistence that any judicial pushback or scrutiny as to the newsworthiness of a subject is incorrect, and ignores established precedent. See, e.g., Snyder, 562 U.S. at 453; Klentzman 456 S.W.3d at 258.

Next, the decisions of the Superior Court and the Appellate Division also do not "allow New Brunswick to whitewash the story" that Plaintiff-Appellant intends to publish. See PSBr23. The decisions held that Daniel's Law was constitutional as applied to Plaintiff-Appellant, and that he could not publish Director Caputo's home address. PCa8; PCa16-18. Those decisions did not

[3] Plaintiff-Appellant quotes Ross v. Midwest Commc'ns, Inc., 870 F.2d 271 (5th Cir. 1989), for the proposition that "[e]xuberant judicial blue-penciling" would stifle journalists' speech. PSBr 21. However, that case was substantially different from the facts here, and the Court emphasized that it reached its "conclusion aware that judges, acting with the benefit of hindsight, must resist the temptation to edit journalists aggressively." Id. at 275. This is inapplicable here, as the Court does not have the benefit of hindsight as discussed *supra*.

tell Plaintiff-Appellant that he could not publish his article, which focused on the distance between Cape May and New Brunswick, nor do they stop Plaintiff-Appellant from making his own ill-conceived conclusions therefrom, such as that Director Caputo is "a high-ranking police official living too far away to properly do his job." PSBr13. That the mayor of New Brunswick disagrees with Plaintiff-Appellant's ultimate conclusion—that the police commissioner lives too far from New Brunswick to perform a job that has no residency requirement—has nothing to do with whether Plaintiff-Appellant may publish Director Caputo's home address. Indeed, Mayor Cahill's press release does nothing to attack the veracity of Plaintiff-Appellant's reporting of fact, but everything to do with the conclusions Plaintiff-Appellant draws therefrom. A competent journalist could potentially rebut this assertion any number of ways short of explicitly listing Director Caputo's address as Daniel's Law expressly forbids. As Defendant-Respondents have argued above and throughout, Plaintiff-Appellant's ability to specifically identify Director Caputo's address in Cape May does nothing to bolster the veracity of his reporting or support his overall conclusion. It is not logically related to Director Caputo's commute, nor is it related to Director Caputo's previous ability to serve as the director of police, and Plaintiff-Appellant's inability to distinguish between a reported fact and his own conclusions about Director

Caputo's ability to do his job should not prevent this Court from affirming the Appellate Division's decision.

For the foregoing reasons, it is respectfully submitted that this Court affirm the judgment of the Appellate Division that Director Caputo's home address is not, and does not relate to, a matter of public concern, in this as applied challenge.

## III. DANIEL'S LAW IS CONTENT NEUTRAL AND FURTHERS AN IMPORTANT GOVERNMENT INTEREST.

As argued by the Attorney General, see AGBr19-20, Daniel's Law is content-neutral, and therefore is subject to intermediate scrutiny in this as-applied challenge. See TikTok, Inc. v. Garland, ___ U.S. ___, 2025 U.S. LEXIS 366, slip op. at *11-16 (January 17, 2025) (DSa 09-10); see also Atlas, slip op. at *20 (Aga010).

"The government may not restrict speech because of its 'message, its ideas, its subject matter, or its content." Mazo v. N.J. Sec'y of State, 54 F.4th 124, 147 (3d Cir. 2022) (quoting United States v. Stevens, 559 U.S. 460, 468 (2010)). "Content neutral laws . . . do not regulate speech based on its content, but rather do so based on some other neutral characteristic of the speech." Id. at 148. "A statute or ordinance is considered to be content-neutral when the legislature's predominant concern is with adverse secondary effects, such as those caused by sexually oriented businesses, and not with the content of the

speech being restricted." Hamilton Amusement Ctr. v. Verniero, 156 N.J. 254, 268 (1998) (citing Ward v. Rock Against Racism, 491 U.S. 781, 791 (1989)). "An incidental effect on some speech does not change the content-neutral characterization." Ibid. "The principal inquiry in determining content neutrality . . . is whether the government has adopted a regulation of speech because of disagreement with the message it conveys. The government's purpose is the controlling consideration." Ward, 491 U.S. at 791.

Here, as noted above and throughout, the purpose of Daniel's Law is predicated on the protection of judges, prosecutors, law enforcement officials and other covered persons from threats, violence, and intimidation at their private addresses. These are the "adverse secondary effects" that the Legislature has chosen to protect against, not the content of messages itself. See Hamilton Amusement Ctr., 156 N.J. at 268; see also TikTok, Inc., slip op. at *12-13 (DSa 09-10) (holding that Protecting Americans from Foreign Adversary Controlled Applications Act was content neutral as applied to TikTok, Inc. and ByteDance, Ltd. due to Congress's concern about a foreign adversary's control over the platform); see also Vidal v. Ester, 602 U.S. 285, 300 (2024) ("Because of the uniquely content-based nature of trademark regulation and the longstanding coexistence of trademark regulation with the First Amendment, we need not evaluate a solely content-based restriction on

trademark registration under heightened scrutiny."); cf. Atlas, slip op. at *6-8 (AGa006-008) (holding Daniel's Law to be content-based but facially constitutional).

As a content neutral law, Daniel's Law must only meet intermediate scrutiny. "To survive intermediate scrutiny, 'a regulation need not be the least speech-restrictive means of advancing the Government's interests.'" TikTok, Inc., slip op. at *21 (quoting Turner Broad. Sys. v. FCC, 512 U.S. 622, 662 (1994)) (DSa 12). Instead, that standard is met "'so long as the regulation promotes a substantial government interest that would be achieved less effectively absent regulation' and does not 'burden substantially more speech than is necessary' to further that interest." Ibid. (quoting Ward, 491 U.S. 799).

In TikTok, Inc., the Court held that the Protect Americans from Foreign Adversary Controlled Applications Act met intermediate scrutiny as applied to TikTok because "absent a qualified divestiture, TikTok's very operation in the United States implicates the Government's data collection concerns, while the requirements that make a divestiture 'qualified' ensure that those concerns are addressed before TikTok resumes U.S. operations." Ibid. The Court thus held that "the means chosen are not substantially broader than necessary to achieve the government's interest," and resisted invalidating the law "simply because a court conclude[d] that the government's interest could be adequately served by

some less-speech-restrictive alternative." Id. at *22 (quoting Ward, 491 U.S. at 800) (DSa 12).

Here, Daniel's Law certainly meets intermediate scrutiny. Discussed in greater detail below, Daniel's Law promotes a substantial government interest: the safety and security of judges, prosecutors, and law enforcement officials that comprise covered persons under the law. That interest was held to be a State interest of the highest order by both the Superior Court, see PCa59 (3T69:21-25), and the Appellate Division, see PCa16. Indeed, Plaintiff-Appellant concedes that such an interest is important. See PBr at 2, 37. Further, and as argued by the Attorney General, Daniel's Law is "opt in" and thus does not proscribe the publication or re-publication of home addresses and phone numbers outright, but simply creates a private right vested in covered persons to request the removal of such information upon the provision of notice. See AGBr at 20.

It is therefore respectfully submitted that Daniel's Law is not "substantially broader than necessary" to address the State's privacy concerns, meets intermediate scrutiny, and is constitutional as applied to Plaintiff-Appellant. TikTok, Inc., slip op. at *22-23 (quoting Ward, 491 U.S. at 800).

## IV. ALTERNATIVELY, DANIEL'S LAW IS CONSTITUTIONAL UNDER THE DAILY MAIL PRINCIPLE AS IT ADDRESSES A STATE INTEREST OF THE HIGHEST ORDER

Assuming, arguendo, that Director Caputo's address is or relates to a matter of public concern, and this Court rejects that Daniel's Law is content neutral as-applied, Plaintiff-Appellant would still not succeed in his claim that Daniel's Law is unconstitutional as applied to him, because Daniel's Law is narrowly tailored to protect a need of the highest order. To narrowly tailor a statute, the state must choose "the least restrictive means among available, effective alternatives." Schrader v. Dist. Att'y of York Cty., 74 F.4th 120, 127 (3d Cir. 2023) (quoting Ashcroft v. ACLU, 542 U.S. 656, 666 (2004) (emphasis added)).

### A. Daniel's Law is Necessary to Protect a Need of the Highest Order.

Protecting Covered Persons' privacy and safety is a need of the highest order. As discussed extensively, Daniel's Law is named after the son of United States District Judge Esther Salas who was killed in an attack undoubtedly directed towards the judge herself. The doorbell rang and Daniel Anderl opened the door for a man in a FedEx uniform, a disgruntled attorney who had killed a lawyer in California eight days earlier. See Esther Salas, My Son Was Killed Because I Am A Federal Judge, N.Y. Times, Dec. 8, 2020 (Dsa16-19). The lawyer fatally shot Daniel in the heart, and when Judge Salas' husband Mark Anderl came to see what was going on, he was shot three times. Ibid. The gunman obtained Judge Salas's address on the internet and used it to stalk

her neighborhood, which enabled him to carry out this attack. Ibid. In the wake of the attack, the Legislature passed Daniel's Law to protect both the privacy and safety of Covered Persons.

The issue remains ongoing, as years later violence and intimidation are threatening the independence of judges on which the rule of law depends. See J. Roberts, 2024 Year End Report on the Federal Judiciary (DSa20-34). "[F]rom the founding of the Republic in 1789 until 1979, only one federal judicial officer, Chief Justice John Slough . . . was killed in office. . . . In more recent decades, however, disgruntled litigants have perpetrated acts of violence against several judges and members of their families." Id. at 5 (DSa24). Further, "violence, intimidation, and defiance directed at judges because of their work undermine our Republic, and are wholly unacceptable." Id. at 8 (DSa27). Chief Justice John Roberts expressed gratitude to the many federal and state legislators "who have stepped forward to sponsor bills shielding judges' personal identifying information from the public domain." Id. at 6 (DSa25).

Daniel's Law empowers Covered Persons to protect their privacy by allowing them to prevent their home addresses and telephone numbers from being published. These actions taken to protect a Covered Persons' privacy are inherently linked to safety protections. Shielding personal information from

public access directly reduces the risk of harm to Covered Persons. Preventing the publication of private information prevents hostile actors from seriously harming or harassing Covered Persons at their homes, a place in which citizens deserve to be the most secure. See Rowan, 397 U.S. at 738 (noting that Congress has enabled citizens to "erect a wall" around their homes which cannot be penetrated by unwanted communications).

Further, protecting public servants' privacy and safety allows them to be able to do their jobs effectively without the fear of retribution or intimidation. Plaintiff-Appellant does not, and could not, dispute that judges, prosecutors, and law enforcement officers are vested with the power to make decisions of enormous consequence, which subjects them and their families to unique risks to their safety. See 86 FR 6803. "Judges, prosecutors, and law enforcement officers should not have to choose between public service and subjecting themselves and their families to danger." Ibid. Plaintiff-Appellant has even conceded that Daniel's Law is an important statute. PBr2, 37.

In United States Department of Defense v. Federal Labor Relations Authority, the Supreme Court recognized public employees have a significant privacy interest in their home addresses. 510 U.S. 487, 500 (1994). Two unions, through the Freedom of Information Act ("FOIA"), requested the names and addresses of agency employees in the bargaining unit represented

by the unions at the respective agencies. The agencies refused to disclose the home addresses. 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.]

The Court even acknowledged that:

> It is true that home addresses often are publicly available through sources such as telephone directories and voter registration lists, but "in an organized society, there are few facts that are not at one time or another divulged to another." . . . An individual's interest in controlling the dissemination of information regarding personal matters does not dissolve simply because that information may be available to the public in some form.
>
> [Id. at 500-01 (internal citations omitted).]

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.

As the above case noted, the disclosure of the address would not appreciably further the citizens' right to be informed about what their government is up to when the mere disclosure of his general town or county would suffice without putting Director Caputo and his family in potential danger. 510 U.S. at 497-98. The safety of Director Caputo and his family should not be ignored merely because Plaintiff-Appellant believes the public must know his private home address.

Daniel's Law protects an interest of the highest order. It protects public servants' privacy and, through the protection of their privacy, allows them security. There can be no real dispute that this is not a governmental interest of the highest order.

### B. Daniel's Law Is Narrowly Tailored to its Intended Purpose.

The First Amendment requires that statutes be narrowly tailored, not that it be "perfectly tailored." Williams-Yulee, 575 U.S. at 454 (quoting Burson v. Freeman, 504 U.S. 191, 211 (1992)). "The impossibility of perfect tailoring is especially apparent when the State's compelling interest is . . . intangible," like the concern for the privacy and safety of Covered Persons. Id. at 454 (where the State's compelling interest "is as intangible as public confidence in the integrity of the judiciary"). When determining if a law is narrowly tailored, it is crucial to understand the purpose of the law. The New Jersey Legislature

enacted Daniel's Law as a means to protect active and retired judicial officers, law enforcement officers, prosecutors, and any immediate family members residing in the same household ("Covered Persons"). N.J.S.A. 56:8-166.1(d)(3). Daniel's Law prohibits the disclosure of home addresses and telephone numbers of Covered Persons. The law further provides that upon notice, a person, business, or association shall not disclose or re-disclose the home address of telephone number of a Covered Person. N.J.S.A. 56:8-166.1(a)(1). The law is specific as to who and what the statute covers. Moreover, the statute requires the 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, civil or criminal, can be taken.

Plaintiff-Appellant argues Daniel's Law is not narrowly tailored because he has identified "three workable alternatives": prioritizing policing and punishing records custodians, recognizing an exception for journalists, and exclusively authorizing civil penalties. PBr34-36; PSBr30-39. However, these are not effective alternatives when viewed in light of the objectives of Daniel's Law. The alternatives also seem to completely ignore the overall thrust of Daniel's Law.

First, Plaintiff-Appellant argues the government could "prioritize policing itself . . . to prevent the initial disclosure of information." PSBr31. However, this suggestion ignores the purpose of the law and the "opt-in" mechanism contained in the law. It is crucial to highlight the fact that Daniel's Law is applied equally to all persons, including records custodians. Plaintiff-Appellant cites to Florida Star for the proposition that the government should train its agents to avoid dissemination of home addresses and telephone numbers. But Daniel's Law does exactly what the Supreme Court required in Florida Star: apply the law equally to all persons. Id. at 540 ("When a State attempts the extraordinary measure of punishing truthful publication in the name of privacy, it must demonstrate its commitment to advancing this interest by applying its prohibition evenhandedly, to the small-time disseminator as well as the media giant."). Daniel's Law does just that.

Plaintiff-Appellant suggests this case does not merit a "need for a more nuanced analytical approach" to the narrowly tailored inquiry because courts are "rigorous in their analysis of narrow tailoring." PSBr32. However, the Supreme Court has made it abundantly clear it has "eschewed" pronouncing broad rules and its previous holdings were narrow and based on the facts of each case. See Daily Mail, 443 U.S. at 105; see also Fla. Star, 491 U.S. at 532-

33. There is no reason this case should be treated any differently and must be decided on the unique facts before the Court.

Plaintiff-Appellant cites to Ostergren v. Cuccinelli for the proposition that if information is merely being republished, the statute cannot be narrowly tailored. 615 F.3d 263, 286 (4th Cir. 2010). However, the facts before us are readily distinguishable from Ostergren. In Ostergren, the Fourth Circuit Court of Appeal addressed Virginia's Personal Information Privacy Act, Va. Code §59.1-443.2, that prohibited "[i]ntentionally communicat[ing] another individual's social security number to the general public." Id. at 266. Betty Ostergren, an advocate for information privacy, aimed to call attention to Virginia's practice of publishing land records on the internet without redacting the social security numbers on the forms, by republishing the documents on a website she created. Ibid. Ostergren sought declaratory judgment and injunctive relief, arguing the enforcement of § 59.1-443.2 violated her First Amendment rights. The Fourth Circuit agreed, holding the statute was not narrowly tailored because the unredacted records were easily available online. Id. at 286.

Here, Plaintiff-Appellant admits he obtained Respondent Caputo's address through an OPRA request. PSBr4. However, the first response the OPRA custodian provided Plaintiff-Appellant redacted Respondent Caputo's

address. Ibid. The OPRA custodian eventually provided Plaintiff-Appellant the unredacted document after Plaintiff-Appellant knowingly misled the custodian, claiming the law the custodian had previously relied on had been overturned. PBr5. Plaintiff-Appellant's exchange highlights that this information was not "readily handed" over. PSBr34. Unlike the Ostergren matter, the OPRA custodian made a meaningful attempt to block the release of Caputo's address. Plaintiff-Appellant also contends that at the time of oral argument before Judge Rea, Caputo's address was "widely available and easily accessible on the Internet," PSBr34, which the Atlas Court rejected as a basis for finding Daniel's Law unconstitutional. Atlas, slip op. at *8 (AGa008). Further, the ready availability of a Covered Person's home address and unlisted phone number is the exact issue Daniel's Law was enacted to remedy. However, Caputo's address has since been "scrubbed" from the internet. Accordingly, Plaintiff-Appellant's argument is not controlling and does not remove the information from the protection of Daniel's Law.

And even if Plaintiff-Appellant's suggestion was an effective way for the State to advance its interests in privacy and safety for Covered Persons, that does not create a tailoring problem. The First Amendment does not require the State to "address all aspects of a problem in one fell swoop." Williams-Yulee, 575 U.S. at 449; see also TikTok, slip op. at *12 (DSa 012); Atlas, slip

op. at *9 (Aga009). Further, the idea that the state could further its interests through training and auditing of OPRA custodians ignores the overall thrust of Daniel's Law. Such a policy ignores the vast majority of offenders, data brokers. See Atlas, slip op. at *9-10 (AGa008-009) (acknowledging that the focus of Daniel's Law is online dissemination, specifically looking at data brokers and rejecting underinclusive arguments).

Second, Plaintiff-Appellant argues Daniel's Law could be more like its federal counterpart, the Daniel Anderl Judicial Security and Privacy Act, and include an exception for "the transfer of the covered information . . . 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 the Legislature had wanted to make such an exception, it would have. "It is not the function of Court to appraise the wisdom of the governmental regulation because the government must be allowed a reasonable opportunity to experiment with solutions to admittedly serious problems." Hamilton Amusement Ctr., 156 N.J. at 278; see also TikTok, slip op. at *12 (DSa 012).

Crucial to Plaintiff-Appellant's suggestion is that the matter is one of public concern. Plaintiff-Appellant has not yet made a convincing argument that Caputo's precise home address is a matter of public concern. Judge Rea

and the Appellate Division both found Caputo's exact address was not the matter of public concern and did not affect Plaintiff-Appellant's message that he had a "no show" job. See Supra II.A. Plaintiff-Appellant's failure to provide any reason Caputo's address is a matter of public concern is critical to his argument.

Third, Plaintiff-Appellant argues Daniel's Law could authorize fines and get rid of the criminal sanctions. Daniel's Law already provides for civil sanctions, including fines, which are supplemented by criminal penalties where there is reckless or purposeful violation of the statute. N.J.S.A. 56:8-166.1(c); N.J.S.A. 2C:20-31(d). Daniel's Law clearly differentiates between culpability required for civil sanctions, negligence, and criminal liability, reckless or purposeful violations. N.J.S.A. 2C:20-31.1(b).

Plaintiff-Appellant cites Schrader, a case entirely distinguishable from the present facts. 74 F.4th 120 (3d Cir. 2023). In Schrader, Victoria Schrader wanted to use documents she obtained from the government to criticize it for how the York County Office of Children and Youth Services handled her two-year old grandson's life and death. Id. at 123. However, Schrader's daughter had previously been charged for publishing the same documents under Pennsylvania's Child Protective Services Law, 23 Pa. Cons. Stat. § 6349(b), which made it a crime to "willfully release[] or permit[] the release of any

information contained in the Statewide [child-abuse] database . . . to persons or agencies not permitted . . . to receive that information." Ibid. Schrader sued seeking to enjoin the state from prosecuting her, and claiming the law violated the First Amendment. Id. at 124. The Third Circuit imposed strict scrutiny and the test for speech on "a matter of paramount public import." Id. at 126-128. The Court also held Schrader faced a credible threat of prosecution because of the past enforcement against the same conduct. Id. at 125.

Here, Plaintiff-Appellant faces civil sanctions if he were to publish Caputo's home address. N.J.S.A. 56:8-166.1(c). Plaintiff-Appellant only needs to be concerned about facing criminal penalties if he does so "knowingly, with purpose to expose [Director Caputo] to harassment or risk of harm to life or property, or in reckless disregard of probability of such exposure." N.J.S.A. 2C:20-31.1(b). Further, if there is an issue with the criminal provisions in Daniel's Law, the proper remedy is to sever it. N.J.S.A. 1:1-10.

Not one of three alternatives Plaintiff-Appellant offered is workable, let alone effective. Daniel's Law is narrowly tailored to its intended purpose.

## CONCLUSION

In light of the foregoing, Plaintiff-Appellant has failed to show that Daniel's Law is unconstitutional as applied to Plaintiff-Appellant. Daniel's Law, which prohibits any person from publishing or republishing the private

home address or unlisted phone number of Covered Persons and their family members, is narrowly tailored to address a need of the highest order: the security of our active and retired judiciary, law enforcement officers, prosecutors, and their families from increased violence, threats, and harassment. Therefore, it is respectfully requested that this Court affirm the Appellate Division's decision.

Respectfully submitted,

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