
CHARLES KRATOVIL

Plaintiff-Petitioner,

v.

CITY OF NEW BRUNSWICK, and
ANTHONY CAPUTO, in his
capacity as Director of Police,

Defendants-Respondents.

Supreme Court Docket No. 089427

CIVIL ACTION

On Petition for Certification from a
Final Order of the Superior Court
of New Jersey, Appellate Division

Docket No. A-000216-23T1

Sat Below:

Hon. Robert J. Gilson, P.J. A.D.

Hon. Patrick DeAlmeida, J.A.D. and

Hon. Avis Bishop-Thompson, J.A.D.

FILED

JUN -7 2024

Heather J. Salem
CLERK

**BRIEF OF *AMICUS CURIAE* NEW JERSEY
STATE LODGE OF THE FRATERNAL ORDER OF POLICE
IN OPPOSITION TO PLAINTIFF-PETITIONER'S
PETITION FOR CERTIFICATION AND APPENDIX**

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RECEIVED

JUN -7 2024

SUPREME COURT
OF NEW JERSEY

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I. PRELIMINARY STATEMENT

This Brief in Opposition to Plaintiff-Petitioner Charles Kratovil's Petition for Certification is brought on behalf of the New Jersey State Lodge of the Fraternal Order of Police and its more than fourteen thousand (14,000) members, active and retired police officers and law enforcement officials represented by over one hundred, forty-five local lodges throughout the State of New Jersey. These members are the frontline law enforcement officials who not only engage directly with those individuals suspected of crimes, where the engagements are sometimes violent and very oftentimes unpleasant, even in the most mundane of circumstances, but who are also called upon to testify directly against these same individuals in subsequent court proceedings.

That the lives of these indispensable civil servants are at risk every day while on the job is a given. The New Jersey Legislature has further determined that the lives of New Jersey's judges, prosecutors, and other law enforcement officials such as the New Jersey State Lodge of the Fraternal Order of Police members, current and former, and the lives of those family members who reside with them, are increasingly at risk while off duty, at their very homes, as individuals who engaged with them while in their official, on-duty capacity and their accomplices find it increasingly easy to locate their residences for the purposes of causing them harm. Utilizing its Police Powers,

then, the State of New Jersey determined to enact Daniale's Law as a safety measure meant to protect current and former law enforcement officers and other covered individuals from harm. To be sure, Daniel's Law is not designed to simply protect the personal privacy or reputational integrity of any covered person. Rather, Daniel's Law is a very limited, yet specific, health and safety law designed to protect New Jersey's judges, prosecutors, and law enforcement officers by prohibiting the dissemination of the residential addresses of those covered individuals in as narrowly tailored a fashion as possible.

Plaintiff-Petitioner Charles Kratovil ("Petitioner" or "Kratovil") disagrees. His action is based entirely upon his contention that Defendant-Respondent Anthony Caputo's exact residential street address is "a matter of public significance." Both the trial court and the Appellate Division, however, have correctly held otherwise. Director Caputo's home address, both courts held, is not a matter of public concern. Further, both courts held that "protecting public officials from violent attacks and harassment is a compelling State interest of the highest order." PCa 16.¹ As such, both courts correctly held that Appellant was not entitled to injunctive relief.

¹ PCa refers to Plaintiff-Petitioner's Appendix to the Petition for Certification; Pb refers to Plaintiff-Petitioner's Brief in Support of his Petition for Certification; Pa refers to Plaintiff-Appellant's Appellate Division Appendix;

As the judgments below correctly determined the issue and supported their conclusions with sound reasoning and the appropriate application of relevant and longstanding precedent, there are no “special circumstances” present which would warrant Certification of this matter. As Appellant again fails to convincingly argue otherwise, the New Jersey State Lodge of the Fraternal Order of Police respectfully argue that Appellant’s Petition for Certification should be denied.

II. PROCEDURAL HISTORY

Petitioner, a journalist and activist “who writes for and edits *New Brunswick Today*, an online publication[,]” learned that then-Director Caputo resided, and was registered to vote, in a municipality located more than two hours away from his place of employment. Pb 1-2. Petitioner then divulged this information during a May 3, 2023, New Brunswick City Council meeting. PCa 5-6. In response, Director Caputo sent Petitioner a letter “notifying him that [Director] Caputo was invoking Daniel’s Law to prevent re-publication of his home address.” PCa 6.

FoPa refers to *Amicus Curie* New Jersey State Lodge of the Fraternal Order of Police’s Appendix to its Opposition to Plaintiff-Petitioner’s Petition for Certification;

2T refers to the Transcript of the August 30, 2023 proceedings before Hon. Joseph L. Rea, J.S.C.; and

3T refers to the Transcript of the September 21, 2023, proceedings before Hon. Joseph L. Rea, J.S.C.

Presumably intending to actually publish Director Caputo's exact residential street address in an upcoming article, Petitioner through counsel, submitted an Order to Show Cause with Temporary Restraints and a Verified Complaint alleging that Daniel's Law, *N.J.S.A. 56:166.1* and *N.J.S.A. 2C:20-31.1*, was unconstitutional as applied. PCa 6. The Order to Show Cause was thereafter issued by the trial court on July 18, 2023. The New Jersey State Lodge of the Fraternal Order of Police's Petition to participate as *Amicus Curiae* was granted on August 11, 2023.² On September 21, 2023, counsel appeared before Judge Rea. Following argument, Judge Rea found that while the distance between where Director Caputo lived and where he worked was a matter of public concern, his exact residential street address was not. PCa 56.

In addition, finding that "Daniel's Law is designed to pre[v]ent ... well, literally - the homicide or severe physical injury of certain government officials" and their family members and that, as such, "anybody would be ... hard pressed to discern a State interest more compelling than that of preventing homicidal attacks or threats upon Judges, law-enforcement officers[,] or Prosecutors[,] or members of their family[,]” Judge Rea correctly concluded

² The New Jersey State Lodge of the Fraternal Order of Police is an *Amicus Curiae* in this matter. *R. 1:13-9(d)(1)*. It is identified as a "Respondent" only at the direction of the Office of the Clerk of the Appellate Division.

that “protecting the lives of these covered people ... under Daniel’s Law, is a State interest of the highest order.” PCa 57, 59-60.

He then determined that “[a] law barring the publication of or access to the home addresses of Judges, Prosecutors[,] and law-enforcement officers is absolutely necessary to achieve a State interest of the highest order[,]” and so was narrowly tailored to achieve that goal. PCa 57, 60.

Petitioner filed a notice of appeal and sought permission to file an emergent application with the Appellate Division that same day. Pa 70-76, 82-88. The Appellate Division denied the request, holding that Petitioner failed to show a risk of irreparable harm and did not establish a need for emergent relief, as per the standard set forth in *Garden State Equal. V. Dow*, 216 N.J. 314, 320 (2013). Pa 77-78.

Petitioner then sought emergent relief from this Court, but that too was denied following consideration by the full Court. Pa 79. As such, the matter proceeded before the Appellate Division.

On August 2, 2023, Petitioner requested an acceleration of the appeal, which was granted, and a briefing schedule was set. PCa 19-20. Following oral argument, which took place on January 29, 2024, the Appellate Division affirmed the trial court’s dismissal of Petitioner’s Complaint in an unpublished *per curiam* decision dated April 26, 2024. PCa 1-18.

In doing so, the Appellate Division held that while the fact that Director Caputo lived more than two hours away from where he worked was a matter of public concern, 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.” PCa 16. As such, the Appellate Division correctly concluded that “[t]he undisputed facts of this case establish that [Petitioner]’s First Amendment rights have not been violated.” PCa 15. Insofar as Petitioner “was not prohibited from discussing or publishing the matter of public concern; that is, that [Director] Caputo, then a high-ranking City official, lived in Cape May, a substantial distance from the City[,]” there were no First Amendment implications requiring further analysis of Petitioner’s “as applied” challenge. PCa 15-16.

Petitioner’s Petition for Certification followed.

III. COUNTER-STATEMENT OF FACT

Respondent *Amicus Curiae* New Jersey State Lodge of the Fraternal Order of Police relies upon the statement of facts as set forth in the Appellate Division’s written opinion, PCa 4-9.

IV. ARGUMENT

A. Certification is Not Warranted in This “As Applied” Matter.

1. Grounds for Certification

Rule 2:12-4 of the Rules Governing the Courts of the State of New Jersey are clear in stating that

[c]ertification will be granted only if the appeal presents a question of general public importance which has not been but should be settled by the Supreme Court or is similar to a question presented on another appeal to the Supreme Court; if the decision under review is in conflict with any other decision of the same or a higher court or calls for an exercise of the Supreme Cour’s supervision and in other matters if the interest of justice requires. *Certification will not be allowed on final judgment of the Appellate Division except for special reasons.*

R. 2:12-4 (emphasis added).

The rule setting forth the extremely limited grounds for Certification is clear: Certification is *not* to be granted where, as here, there has been a final judgment from the Appellate Division unless special circumstances exist. *Ibid*; *see also Brown v. Lins Pharmacy, Inc.*, 67 N.J. 392, 398-99 (1975)(Justice Schreibert, dissenting)(stating that the Rule “recognizes that where the parties have had one appeal there must be ‘special reasons’ for granting certification.”).

The Supreme Court of the United States identified the same standard some sixty-five years ago, stating

[n]o litigant is entitled to more than two chances, namely, to the original trial and to a review, and the intermediate courts of review are provided for that purpose. When a case goes beyond that, it is not primarily to preserve the rights of the litigants. The Supreme Court's function is for the purpose of expounding and stabilizing principles of law for the benefit of the people of the country, passing upon constitutional questions and other important questions of law for the public benefit.

Dick v. New York Life Ins. Co., 359 U.S. 437, 452 (1959)(Frankfurter, J., dissenting)(quoting Chief Justice William Howard).

2. The Standard of Review of First Amendment Claims Employed by the Appellate Division was Settled by the Supreme Court Some Time Ago and is Neither in Dispute Nor Similar to a Question Presented on Another Appeal to This Court.

Judge Rea correctly determined that Director Caputo's "actual street address, in other words, the street that he lives on and his house number[.]" was a matter of private – not public – concern. PCa 54. Applying the longstanding standard most recently articulated by United States Supreme Court Chief Justice Roberts in *Snyder v. Phelps*, 562 U.S. 443, 452 (2011), Judge Rea held that "after evaluating all the circumstances surrounding this particular case, [Director] Caputo's specific address adds nothing of public significance to this proposed news piece[.]" PCa 56.

Snyder involved a claim of intentional infliction of emotional distress brought by the father of an American servicemember against a number of protestors who attended the servicemember's funeral bearing signs claiming that "the United States is overly tolerant of sin and that God kills American soldiers as punishment." *Snyder, supra*, 562 U.S., at 451. The funeral took place on public ground and did not divulge either the servicemember's or his father's home addresses, and the Supreme Court ultimately determined that the protestors could not be found liable of intentional infliction of emotional harm as the speech was protected by the First Amendment. *Id.*, at 455.

In doing so, however, the Court utilized an initial test to first determine whether the speech was of a public or private concern. *Snyder, supra*, 562 U.S., at 453. Chief Justice Roberts held that

Not all speech is of equal First Amendment importance, [] however, and where matters of purely private significance are at issue, First Amendment protections are often less rigorous. That is because restricting speech on purely private matters *does not implicate the same constitutional concerns as limiting speech on matters of public interest*: "[T]here 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 import.

Snyder, supra, 562 U.S., at 452 (emphasis added)(internal quotations and citations omitted).

In applying the long-standing and uncontroversial *Snyder* holding to the facts presented to him in the instant case, Judge Rea correctly determined that

There is no threat to the free and robust debate of public issues [by virtue of the application of Daniel's Law to the facts of this case]. 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 import. [Rather, u]nder the circumstances of this case it's clear that the matter of public significance is that [Director] Caputo resides, approximately, 130 miles from New Brunswick. His actual mailing address, however, is a private matter and that it adds nothing of public significance [*sic*] to [Petitioner]'s proposed ... news piece. The story ... is about distance. It is not about specific location.

PCa 56-57.

Likewise, the Appellate Division reviewed the matter and uncontroversially found that “[t]he trial court’s conclusion that [Director] Caputo’s exact residential street address is not a matter of public concern is supported by the record and consistent with law.” PCa 16. Finding further that Petitioner “was not prohibited from discussing or publishing the matter of public concern: that is, that [Director] Caputo, then a high-ranking City official, lived in Cape May, a substantial distance from the City[,]” the Appellate Division held that “[t]he undisputed facts of this case establish that [Petitioner]’s First Amendment rights have not been violated.” PCa 15.

In opposition, Petitioner suggests that the question presented is novel in that “[t]his is the first case to test the limits of Daniel’s Law.” Pb 14. This is misleading for at least two reasons. First, Petitioner simply questions the lower courts’ application of long-standing First Amendment jurisprudence to the facts presented. There is nothing novel in that other than Petitioner’s argument that, as a journalist, once he determines to write a story about someone or something, *all* information about that person or thing is fair game for the story, whether relevant to the matter of public interest or not. Pb 10-11. Petitioner claims an unfettered ability to disseminate any and all information relating to the subject of a story, whether the underlying information is public or private, regardless of the subject matter and context of the story. This is antithetical to long-standing First Amendment precedent, however, as noted above, and is undermined by the fact that Petitioner was freely able to report on the actual issue of public concern in this instance without having divulged Director Caputo’s exact residential street address. Petitioner’s goal was accomplished, and the proposed addition of the private detail regarding Director Caputo’s exact residential street address could neither add to the discourse regarding the issue of public concern, nor act to chill the discourse regarding the issue of public concern. The addition of that private detail, however, could certainly have placed Director Caputo and his family in serious

physical danger, as the New Jersey Legislature determined when it enacted Daniel's Law.

Insofar as the lower courts' determination that Director Caputo's exact residential street address is a matter of private concern, and that they both properly employed long-standing Supreme Court precedent in reaching that conclusion, there is no novel issue that needs to be determined by this Court, and Certification should be denied.

Secondly, Petitioner has continuously claimed that the question presented regards the application of long-standing First Amendment jurisprudence to Daniel's Law *as applied* to the facts presented and is *not* a facial challenge to that law. Pb 15. In fact, the New Jersey Attorney General declined to involve himself in this case specifically because Petitioner insisted that this was not a facial challenge. FoPa 1-2.

Despite Petitioner's assurances that this matter was presented as an "as applied" challenge only, his entire argument in favor of Certification appears to attack the facial validity of Daniel's Law as a whole. Pb 14-16. The inclusion of articles neither entered in support below, nor pre-dating the date of the Appellate Division's decision in this matter strongly suggests that Petitioner seeks to elevate this matter from an "as applied" attack to a facial attack solely for the purpose of receiving Certification. *Ibid.*

Insofar as the courts below simply applied longstanding precedent to its analysis of Petitioner's First Amendment claim, it is clear that this matter should not be certified. The question presented was settled by the Supreme Court some time ago, and there is no similarity between this question and any other question currently before this Court on another appeal. As such, the Petition for Certification should be denied.

3. The Decision Under Review is Not in Conflict With Any Other Decision of the Same or a Higher Court, and Does Not Call For An Exercise of This Court's Supervision.

Neither the trial court's nor the Appellate Divisions judgments in this matter conflict with any other decision of the same or a higher court, and does not call for an exercise of this Court's supervision. As discussed at length above, both the trial court and the Appellate Division applied long-standing precedent to the underlying facts of this case and determined that Director Caputo's exact residential street address is not a matter of public concern. Yet Petitioner claims otherwise, confusing his disappointment with the result for a conflict with precedent.

As noted above, both lower courts determined that Director Caputo's exact residential street address is not a matter of public concern. Finding further that Petitioner "was not prohibited from discussing or publishing the matter of public concern: that is, that [Director] Caputo, then a high-ranking

City official, lived in Cape May, a substantial distance from the City[,]” the Appellate Division held that “[t]he undisputed facts of this case establish that [Petitioner]’s First Amendment rights have not been violated.” PCa 15. This analysis is in accord with long-standing Supreme Court precedent whereby the alleged protected speech is first determined to be public or private. *Snyder, supra*, 562 U.S., at 453. As such, there is no conflict present.

Nevertheless, Petitioner disagrees with the conclusion, and finds fault with the fact that the Appellate Division did not employ the standard for determining whether the suppression of matters of *public* significance is Constitutional as applied. Pb 16-19. Simply put, Petitioner ignores the lower court’s determinations that Director Caputo’s exact residential address is not a matter of public concern and presents the very same arguments that he presented below – for the third time. Petitioner’s arguments, therefore, are irrelevant, given that they presume that Director Caputo’s exact residential street address is a matter of public concern because Petitioner has determined so.

Ultimately, therefore, Petitioner claims that the judgments below conflict with this Court’s established precedent, but he really seeks to have the United States Supreme Court’s *Snyder* case overturned. The fact that Petitioner actually relies on a distorted understanding of *Snyder* in his Petition is ironic in

the extreme. Rather, it is Petitioner's argument that should be dismissed under the circumstances as contrary to established precedent, and the lower courts' very reasoned judgments upheld.

4. There are No Special Reasons or Interests of Justice That Require the Grant of Certification in This Matter.

As Petitioner notes, “[t]he interest of justice warrants certification where a decision is ‘palpably wrong, unfair or unjust’ *and involves the interests of more than just the parties to the dispute.*” Pb 19 (quoting *Mahony v. Davis*, 95 N.J. 50, 52 (1983))(emphasis added). This is an odd argument to put forth, given how Petitioner has consistently claimed that his is an “as applied” challenge and *not* a facial challenge, especially where the New Jersey Attorney General withheld his input in this case expressly due to its “as applied” status. Pb 19. FoPa 1-2. As such, Petitioner has clearly failed to support his claim that Certification is warranted in this matter for either special reasons or in the interest of justice, and the Petition should respectfully be denied.

V. CONCLUSION

For the foregoing reasons, New Jersey State Lodge of the Fraternal Order of Police respectfully request that the Court deny Petitioner's Petition for Certification.

Respectfully submitted,

/s/ Matthew D. Areman

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APPENDIX



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September 11, 2023

VIA ECOURTS

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Re: Kratovil v. City of New Brunswick, et al.
Docket No. MID-L-3896-23

Dear Judge Rea:

I write to inform the Court that the Attorney General declines to intervene in the above-captioned matter at this time.

There can be no doubt that A1649, better known as Daniel’s Law, is facially constitutional. Daniel’s Law, like its federal counterpart, addresses a problem of the highest order: the increasing threats judges and law enforcement officers face to their lives and their families for doing their jobs. *See* S. Judiciary Comm. Statement with Comm. Amends. to A.B. 1649, N.J. Pub. L. 2020, Ch. 125 (describing protections for public officials and their families); Daniel Anderl Judicial Security and Privacy Act of 2022, S. 2340, 117th Cong. § 2 (citing increasing number of threats to judges). The State has extraordinary compelling interests in eradicating those dangers—both to protect public officials and to ensure that these officials can carry out their critical government functions without fear. *See* N.J. Pub. L. 2020, Ch. 125 § 8 (emphasizing purpose of enhancing safety of public officials to ensure they may “carry out their official duties without fear of personal reprisal”). And Daniel’s Law achieves those



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goals in a narrowly tailored way. It does not target any person's viewpoint. Rather, the law exclusively prevents impermissible dissemination of judges', prosecutors', and law enforcement officers' personal information—including home addresses—in order to protect their safety and the safety of their families.

This case, however, does not present a facial challenge to Daniel's Law. To the contrary, Plaintiff's brief is clear: he is not seeking to have the statute invalidated generally, and is seeking only as-applied relief as to him, for his particular factual situation. *See* Amend. Compl. 16 (seeking declaration that law is unconstitutional as applied to him); Pltf's Reply Br. 1-4 (agreeing he "has only challenged Daniel's Law constitutionality as applied to him."). That is, Plaintiff's entire theory rests on his factual assertions that he obtained the underlying information lawfully, that the information is otherwise still available, and that he is a journalist who wishes to publish that information in a story relating to a high-level official's residency. *See* Pltf's Reply Br. 2-3, 9-10, 14 n.7, 16-19. Whatever the merits of those claims, these are intensely factual questions. And should Plaintiff prevail, relief would necessarily be narrowly tailored to these parties and to the totality of the as-applied facts in his particular case. The Attorney General has a strong interest in defending Daniel's Law generally, but lacks relevant first-hand knowledge as to the facts in this case and thus declines to participate at this time.

Thank you for the Court's courtesies and consideration.

Respectfully submitted,

MATTHEW J. PLATKIN
ATTORNEY GENERAL OF NEW JERSEY

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FoPa2

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3. In addition, on June 7, 2024, I also caused one copy of *Amicus* New Jersey State Lodge of the Fraternal Order of Police's Opposition to Plaintiff-Petitioner's Petition for Certification and Appendix to be served *via* electronic mail on the following parties:

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I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Richard J. De Fortuna
Richard J. De Fortuna

Dated: June 7, 2024