

ZAZZALI, P.C.

570 Broad Street, Suite 1402

Newark, New Jersey 07102

Paul L. Kleinbaum, Esq. (018321982)

Sheila Murugan, Esq. (227662017)

p.(973) 623-1822

f. (973) 623-2209

Attorneys for Amicus Curiae New Jersey State PBA

FILED

JUN 12 2024

Heather J. Baker
CLERK

CHARLES KRATOVIL,

Plaintiff-Petitioner,

v.

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

Defendants-Respondents.

SUPREME COURT OF NEW JERSEY
Docket No.: 089427

On Petition for Certification from a Final
Decision of the Superior Court of New
Jersey, Appellate Division
Docket No.: A-0216-23T1

Sat Below:

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

Hon. Patrick Dalmeida, J.A..D.

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

**AMICUS CURIAE NEW JERSEY STATE POLICEMEN'S
BENEVOLENT ASSOCIATION'S BRIEF IN OPPOSITION TO
PETITION FOR CERTIFICATION**

Of Counsel: Paul L. Kleinbaum, Esq. (018321982)

On the Brief: Paul L. Kleinbaum, Esq. (018321982)
Sheila Murugan, Esq. (227662017)

RECEIVED

JUN 12 2024

**SUPREME COURT
OF NEW JERSEY**

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
STATEMENT OF FACTS & PROECURAL HISTORY	1
LEGAL ARGUMENT	1
I. THE PETITION FOR CERTIFICATION SHOULD BE DENIED BECAUSE THERE ARE NO UNSETTLED QUESTIONS OF PUBLIC IMPORTANCE OR SPECIAL REASONS THAT WARRANT FURTHER REVIEW BY THE SUPREME COURT	1
A. This Case Does Not Present an Issue of General Public Importance	3
B. The Lower Court’s Decision was Legally Correct and Does Not Conflict with any Precedent.....	4
C. No Special Circumstances Exist Warranting Certification	7
CONCLUSION	8

TABLE OF AUTHORITIES

	Page(s)
 Federal Cases	
<u>Connick v. Myers</u> , 461 U.S. 138 (1983).....	6
<u>Fla. Star v. B. J. F.</u> , 491 U.S. 524 (1989).....	6
<u>Smith v. Daily Mail Pub. Co.</u> , 443 U.S. 97 (1979).....	5
<u>Snyder v. Phelps</u> , 562 U.S. 443 (2011).....	6
 State Cases	
<u>Bandel v. Friedrich</u> , 122 N.J. 235 (1991).....	2
<u>Brown v. Lins Pharmacy, Inc.</u> , 67 N.J. 392 (1975).....	2, 7
<u>In re Contract for Route 280, Secton 7U Exit Project</u> , 89 N.J. 1 (1982).....	3
<u>Mahony v. Danis</u> , 95 N.J. 50 (1983).....	3, 7
<u>New Jersey Division of Youth & Family Services. v. E.P.</u> , 196 N.J. 88 (2008).....	2
<u>Terminal Const. Corp. v. Atlantic City Sewerage Auth.</u> , 67 N.J. 403 (1975).....	3
 Federal Statutes	
Daniel’s Law	<i>passim</i>

STATEMENT OF FACTS & PROCEDURAL HISTORY

The New Jersey State Policemen's Benevolent Association ("State PBA") hereby adopts and incorporates the Statement of Facts and Procedural History set forth in Respondent City of New Brunswick and Anthony A. Caputo's ("Respondent") Opposition Brief.

The Superior Court granted the State PBA's motion to intervene as an *amicus curiae* on August 11, 2023.

LEGAL ARGUMENT

I. THE PETITION FOR CERTIFICATION SHOULD BE DENIED BECAUSE THERE ARE NO UNSETTLED QUESTIONS OF PUBLIC IMPORTANCE OR SPECIAL REASONS THAT WARRANT FURTHER REVIEW BY THE SUPREME COURT.

The State PBA hereby adopts and incorporates the arguments set forth in Respondents' Opposition Brief. In addition, the Petition for Certification should be denied because the Petitioner has not and cannot demonstrate any of the prerequisites for certification pursuant to R. 2:12-4. This Rule provides in pertinent part:

Certification 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 Court's supervision and in other matters if the interest of justice requires. Certification will not be allowed on final judgments of the Appellate Division except for special reasons.

R. 2:12-4.

This Court grants certification only under extraordinary circumstances. See New Jersey Division of Youth & Family Services. v. E.P., 196 N.J. 88, 115 (2008) (vacating the lower court's decision terminating a mother's parental rights when such action resulted in significant abuse and neglect to the child); Bandel v. Friedrich, 122 N.J. 235, 237-38 (1991) (petition for certification granted to address issues of proximate cause and damages in medical malpractice case alleging defendants were negligent in diagnosing plaintiff's medical condition). "The rule recognizes that where the parties have had one appeal there must be 'special reasons' for granting certification. Questions of fact should not have to be reviewed here unless intertwined with a determination of vital legal issues." Brown v. Lins Pharmacy, Inc., 67 N.J. 392, 339 (1975).

In this matter, the Appellate Division's published opinion is a well-reasoned application of Daniel's Law to the particular facts of this case. As set forth below, the standards required by R. 2:12-4 and applicable law to warrant certification simply have not been met here.

A. This Case Does Not Present an Issue of General Public Importance

Petitioner's sole claim is that because this case is on the public radar it has become an issue of general public importance. However, merely because this case may have captured the public's attention does not automatically render it an issue of public importance. See In re Contract for Route 280, Serton 7U Exit Project, 89 N.J. 1 (1982) ("the final judgment of the Appellate Division is essentially an application of the principles enunciated by this Court in Terminal Const. Corp. v. Atlantic City Sewerage Auth., 67 N.J. 403 (1975) to the facts of this case and does not therefore present an unsettled question of general public importance"); Mahony v. Danis, 95 N.J. 50 (1983) (the challenge on appeal goes to the validity of the grant of a motion for summary judgment, the standard for which is settled and therefore presents no question of general public importance meriting review).

This case does not present a facial challenge to the constitutionality of Daniel's Law. The parties and all lower courts agreed that under the circumstances this was an as-applied challenge. Petitioner nonetheless attempts to convert it into a facial challenge by claiming that this matter presents a matter of general public importance and therefore would have widespread application. However, this issue based upon the specific facts of this case and the relief sought would only be applicable to Petitioner. Accordingly, the Appellate Division's decision does not present a question of public importance warranting review.

B. The Lower Court's Decision was Legally Correct and Does Not Conflict with any Precedent

The Appellate Division properly determined that Daniel's Law was not unconstitutional as applied in this case.

First, the Appellate Division correctly held that Director Caputo's street address is not a matter of public concern. It determined that while the general location of Director Caputo's full-time residency constitutes a matter of public concern, the exact street address does not. The point of Appellant's news piece is to highlight that Director Caputo lives a certain distance away from New Brunswick. This goal may be accomplished without running afoul of Daniel's Law. The decision below therefore correctly held that "the matter of public concern was that Caputo lived in Cape May while serving as the City's Director of Police and a Commissioner of the City's Parking Authority." (PCa15).

Second, Daniel's Law was narrowly tailored to serve a significant state interest. Its goal is to prevent harm to covered individuals, in this case a retired law enforcement officer. Threats against judges and law enforcement officers, among the other covered individuals afforded protection under Daniel's Law, have increased in recent activity that has resulted in protected individuals' home addresses and telephone numbers being disclosed. The Appellate Division therefore correctly held that "protecting public officials from violent attacks and harassment is a compelling State interest of the highest order." (PCa16)

Third, Daniel's Law is the least restrictive means of accomplishing this goal. It permits a covered person to apply with the Department of Community Affairs' Office of Information Privacy to remove their home address and other protected personal information from the internet to protect themselves and those in their household. No less restrictive alternative exists to accomplish this objective and Petitioner fails to demonstrate how this established procedure is overly restrictive. His proposed "alternatives" would not, in lieu of Daniel's Law, effectively prevent the improper disclosure of covered individuals' private information.

The Appellate Division appropriately rejected the argument that there may be a chilling effect. "[I]n denying plaintiff's request for injunctive relief, the trial court did not direct how plaintiff should act in the future." (PCa18) This is because no restraint or restriction was imposed upon Petitioner regarding what he was or was not permitted to publish. Petitioner was in no way restrained from publishing the information that Defendant Caputo lived a substantial distance from New Brunswick.

Finally, the Appellate Division's decision does not conflict with Supreme Court precedent. The Court in Smith v. Daily Mail Pub. Co., 443 U.S. 97 (1979) noted its holding was narrowly construed and "[a]t issue is simply the power of a state to punish the truthful publication of an alleged juvenile delinquent's name lawfully obtained by a newspaper." Id. at 105-06.

Fla. Star v. B. J. F., 491 U.S. 524 (1989) also does not support Petitioner's position. In that case, the Supreme Court found that publication of a rape victim's full name was permissible. It held that the news article concerned a matter of public significance specifically because it dealt with the commission and investigation of a violent crime, which is a "matter of paramount public import." Id. at 537. In addition, it held that restricting publication did not further a state interest of the highest order.

Snyder v. Phelps, 562 U.S. 443, 453 (2011) is also inapposite. The Supreme Court held: "[s]peech 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."

Conversely, Director Caputo's home address is not of concern to the community. It is the distance he lives from New Brunswick which is. Notably, Petitioner does not dispute that threats to covered individuals constitute a state interest of the highest order. See also Connick v. Myers, 461 U.S. 138, 147-48 (1983) ("to presume that all matters which transpire within a government office are of public concern would mean that virtually every remark -- and certainly every criticism directed at a public official -- would plant the seed of a constitutional

case.”). Therefore, the lower court’s decision is in line with precedential cases and is legally correct.

C. No Special Circumstances Exist Warranting Certification

Ultimately, Petitioner fails to demonstrate any special reasons that warrant the Petition for Certification be granted. See Brown v. Lins Pharmacy, Inc., 67 N.J. 392, 339 (1975), *supra*. The Appellate Division correctly determined that Daniel’s Law withstands constitutional scrutiny and Petitioner fails to demonstrate any grounds upon which this Court should grant certification pursuant to R. 2:12-4. Petitioner has failed to satisfy any of the criteria justifying the grant of certification that would suffice to invoke the discretionary authority of this Court. This Court ought not “. . . to divert judicial attention from worthy cases to those offering only ‘noetic perjkinkities.’” Mahony v. Davis, 95 N.J. 50, 53 (1983), citing Nottelson v. Smith Steel Wkrs. D.A.L.U. 19806, 643 F.2d 445, 457 (7th Cir. 1981), cert. den. 454 U.S. 1046 (1981) (Pell, J., dissenting). As discussed above, this case does not warrant invocation of this Court’s discretionary authority.

CONCLUSION

For the forgoing reasons, *Amicus curiae* New Jersey State PBA respectfully requests that this Court deny the Petition for Certification.

Respectfully submitted,

ZAZZALI, P.C.

Attorneys for Amicus Curiae
New Jersey State PBA

/s/ Paul L. Kleinbaum
Paul L. Kleinbaum, Esq.

/s/ Sheila Murugan
Sheila Murugan, Esq.