

MARKMAN & CANNAN, LLC

Robert R. Cannan, Esq. (NJ Bar ID: #011531993)

391 Franklin Street

Bloomfield, NJ 07003

Phone: (973)748-2100

Fax: (973)748-5965

Email: rcannan@markmancannanlaw.com

Attorneys for Amicus Curiae,

State Troopers Fraternal Association of New Jersey

FILED

JUN 14 2024

Heather J. Bales
CLERK

CHARLES KRATOVIL,

Plaintiff-Petitioner,

vs.

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 Order of the Superior Court
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.

CIVIL ACTION

**AMICUS CURIAE BRIEF ON BEHALF OF THE STATE TROOPERS
FRATERNAL ASSOCIATION OF NEW JERSEY IN OPPOSITION TO
PLAINTIFF-PETITIONER'S PETITION FOR CERTIFICATION**

Of Counsel and on the Brief

Robert R. Cannan, Esq. (011531993) rcannan@markmancannanlaw.com

RECEIVED

JUN 14 2024

SUPREME COURT
OF NEW JERSEY

TABLE OF CONTENTS

TABLE OF CONTENTS 1

TABLE OF AUTHORITIES 2

PRELIMINARY STATEMENT 3

PROCEDURAL HISTORY 5

LEGAL ARGUMENTS 8

I. Plaintiff’s “As Applied Challenge” Does Not Meet the “Public Importance”
Threshold as Defined by N.J. Ct. R. 2:12-4..... 8

 A. The full and exact home address of Mr. Caputo, a covered individual
under Daniel’s Law, is only deemed of general public importance by the
Plaintiff due to Plaintiff’s own labelling of information as “newsworthy.” ... 8

 B. Whether the subject-matter at issue is of “general public importance”
has already been determined by the Trial Court and affirmed by the Appellate
Division..... 11

CONCLUSION 12

TABLE OF AUTHORITIES

Case Law

<u>Bandel v. Friedrich</u> , 122 N.J. 235, 237-38 (1991)	11
<u>Brown v. Lins Pharmacy, Inc.</u> , 67 N.J. 392, 339 (1975).....	11
<i>Garden State Equal. V. Dow</i> , 216 N.J. 314, 320 (2013).....	8
<i>New Jersey Division of Youth & Family Services. v. E.P.</i> , 196 N.J. 88, 115 (2008)	11

State Statutes

<i>N.J.S.A.</i> 2C:20-31.1	4, 7
<i>N.J.S.A.</i> 56:166.1	4

Secondary Materials

NJ Appellate Practice Handbook § 6.12	11
---	----

Court Rules

<u>R.</u> 2:12-4	9
------------------------	---

PRELIMINARY STATEMENT

This Brief in Opposition to Plaintiff-Petitioner Charles Kratovil's Petition for Certification is brought on behalf of the State Troopers Fraternal Association of New Jersey ("STFA") and its more than 1,900 active members, consisting of active state troopers in the New Jersey State Police under the rank of Sergeant. These members serve on the frontline of law enforcement, serving their duties in keeping the peace, maintaining the safety and welfare of New Jersey residents, and enforcing the laws of the State of New Jersey. By the very nature of their work, and in fulfillment of their duties to the public, members of the STFA frequently engage with individuals suspected of crimes, including some individuals who are more violent and bear a greater threat to society. The New Jersey legislature has acknowledged that these risks pose a significant threat to the lives of judges, prosecutors, and law enforcement officers, including members of the State Troopers Fraternal Association of New Jersey. In an effort to ensure that our civil servants can continue to serve justice and carry out their civil duties efficiently without being inhibited by fear of said risks, the State of New Jersey has enacted laws which implement several safeguards that mitigate the risks that threaten our civil servants.

In the wake of the tragic murder of Daniel Anderl, the son of federal Judge Esther Salas and Mark Anderl, the New Jersey legislature enacted Daniel's Law,

N.J.S.A. 2C:20-31.1 and *N.J.S.A. 56:166.1*. In hopes of preventing such tragedies from happening again, Daniel's Law serves to, among other things, conceal personal information, such as a covered individual's address of residence, for the purpose of ensuring the safety of federal and state judges, law enforcement agents, as well as their families. Specifically, Daniel's law prohibits the disclosure or re-disclosure of "the home address or unpublished home telephone number of any covered person: who has submitted a request "for redaction of nondisclosure."

N.J.S.A. 56:8-166.1(a), (d). *See also N.J.S.A. 2C:20-31.1* (criminalizing a purposeful or reckless violation of information protected by Daniel's law).

Covered individuals include "active, formerly active, or retired judicial officer, law enforcement officer, or child protective investigator in the Division of Child Protection and Permanency... or prosecutor, and any immediate family member residing in the same household as such judicial officer, law enforcement officer, child protective investigator in the Division of Child Protection and Permanency, or prosecutor" *N.J.S.A. 56:8-166.1(d)(3)*.

The Plaintiff in this matter, Charles Kratovil ("Petitioner" or "Kratovil"), a New Jersey journalist, first raised the issue in this matter at a city council meeting where he criticized the fact that New Brunswick Police Director, Anthony Caputo, does not reside in the same municipality in which he is employed in, noting the more than 100-mile distance between his residence and place of employment. Mr.

Kratovil pushed further and attempted to publish a news article pertaining to his criticisms of Mr. Caputo's residence where he intended to disclose the police director's full and exact primary address of residence, in direct violation of the provisions set forth by Daniel's Law. Mr. Kratovil ultimately filed suit against the City of New Brunswick and pursued appeals of the trial court's ruling that publishing of the director's full address would be unlawful pursuant to Daniel's Law.

PROCEDURAL HISTORY

Plaintiff-Petitioner, Charles Kratovil, works as a journalist for *New Brunswick Today*, an online publication focused on covering local news related to the City of New Brunswick and has been involved in local activism. Pb 1-2¹. Mr. Kratovil raised concerns, which became the subject-matter of this litigation, about retired police officer and former Police Director of the New Brunswick Police Department, Anthony A. Caputo's primary place of residence during his tenure as police director. Specifically, Mr. Kratovil noted in his Brief in Support of his Petition for Certification that he pursued his suspicions that Mr. Caputo resided in Cape May during his tenure, and confirmed same by filing an Open Public Records Act (OPRA) request for Mr. Caputo's voter registration profile which contained

¹ "Pb" refers to Plaintiff-Petitioner's Brief in Support of Petition for Certification and Appendix.

the former police director's full home address, albeit redacted. *Id.* Mr. Kratovil succeeded in obtaining the full home address of Mr. Caputo after further correspondences with the Cape May County Board of Elections. *Id.*

After obtaining the full home address of Mr. Caputo, Mr. Kratovil raised concerns about this information during a New Brunswick City Council meeting. In the discussions held during the council meeting, Mr. Kratovil revealed the name of street in Cape May, New Jersey where Mr. Caputo resided and went even further by providing unredacted copies of Caputo's voter registration profile to attendees including Mr. Caputo's full home address. Mr. Kratovil received a cease and desist letter from Mr. Caputo stating that Mr. Kratovil's actions were subject to violations pursuant to Daniel's Law (N.J.S.A. 56:166.1 and N.J.S.A. 2C:20-31.1), which prohibits the disclosure of the residential addresses of certain persons covered by the law. Pb 3.

Presumably with the intention of publishing Mr. Caputo's full home address in a news article on the *New Brunswick Today* website, Plaintiff, through counsel, submitted an Order to Show Cause with Temporary Restrains and a Verified Complaint in an attempt to effectively enjoin the City of New Brunswick from imposing Daniel's Law, alleging that Daniel's Law, *N.J.S.A. 2C:20-31.1* and *N.J.S.A. 56:166.1*, was unconstitutional as applied to him as an individual. PCa 6.

In the lower court's ruling issued by Honorable Joseph A. Rea, J.S.C

presiding over the matter, Judge Rea acknowledged Plaintiff's concerns pertaining to the distance between Mr. Caputo's place of residence and place of employment, however Judge Rea ruled that disclosure of the director's exact and full residential address is not a matter of public concern. Additionally, Judge Rea stated that Daniel's Law was enacted with the intention of preventing exactly what Mr. Kratovil intended to do, that is, disclosing the full and exact addresses of any individuals or agents covered under the law, which includes police directors. Judge Rea reasoned that disclosure of such goes against the heart of Daniel's Law, which is to protect the security and well-being of judges, prosecutors, law enforcement officers, and other state officials from violent individuals who have the capacity to inflict homicide or severe bodily injury upon civil servants, and to prevent tragedies, such as what occurred to Daniel Anderl, from happening again. Most importantly, Judge Rea determined that the provisions of Daniel's Law did not trespass or infringe upon Plaintiff's constitutional rights to free speech, as there existed a compelling state interest in preserving the safety and well-being of its civil servants, and the means in which it achieves that state interest is narrowly tailored in the least restrictive means possible (preventing disclosure of full and exact addresses of covered individuals).

Plaintiff, upon having his request for injunctive relief denied and dismissed by the trial court, appealed his matter to the Appellate Division. The appellate

court denied Mr. Kratovil’s appeal request, holding that Petitioner failed to show 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. In short, the Appellate Division ultimately affirmed the well-reasoned oral opinion of Judge Rea.

LEGAL ARGUMENTS

I. Plaintiff’s “As Applied Challenge” Does Not Meet the “Public Importance” Threshold as Defined by N.J. Ct. R. 2:12-4.

- A. The full and exact home address of Mr. Caputo, a covered individual under Daniel’s Law, is only deemed of general public importance by the Plaintiff due to Plaintiff’s own labelling of information as “newsworthy.”

The STFA 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.

The plaintiff's Petition for Certification must be denied as he has failed to satisfy the requirements of R. 2:12-4 as his argument falls short of the requisite showing that the legal issue in question involves a matter of "general public importance." The matter in this "as applied" challenge can be summarized as a matter of importance to the plaintiff personally. The plaintiff provided to the public the information that he wanted to share, specifically that the defendant resided a great distance from his employer's police headquarters. The further interest of the plaintiff was to provide additional information, the exact home address of the defendant, as a result of which plaintiff was placed on notice that the defendant's address could not be legally disclosed as per Daniel's Law. There is no question of general public importance simply because the plaintiff deems it so. The plaintiff's choice to be a journalist and to publish an article that he deemed to be of general public importance is not the overriding consideration in this matter. It is instead the statutory protection under Daniel's Law afforded to the defendant as a retired law enforcement officer, who at the time was additionally the Director of Police, from having his full and exact home address published. Plaintiff wishes to believe that his occupational role as journalist and his mission to inform the public is immune from any restrictions imposed by Daniel's Law notwithstanding its constitutional validity and the higher state interest it serves to protect.

R. 2:12-4 also adds that certification is not granted where a final judgment has been issued by an appellate court unless special circumstances warrant it. Thus 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.

In essence, in order “to obtain a grant of certification, counsel must convince the Court that his or her cause is a novel cause of great public importance that requires... that the interests of justice require Supreme Court review.” NJ

Appellate Practice Handbook § 6.12. Additionally, the Supreme Court is unlikely to consider a matter meeting the threshold of “general public importance” when that matter is important only to the parties. *Id.*

B. Whether the subject-matter at issue is of “general public importance” has already been determined by the Trial Court and affirmed by the Appellate Division.


The Law Division and the Appellate Division properly considered whether the matter was of general public importance when they decided to dismiss plaintiff’s complaint and affirm that decision by determining with a well-reasoned opinion that the facts presented herein failed to reach the required standard. The Supreme court should similarly determine the insufficiency of plaintiffs’ claims and deny the instant Petition for Certification. The public’s knowledge of the full and exact address of Mr. Caputo, or any individual covered under Daniel’s law, is not of general public importance as the lower courts have already determined that is not so on the merits.

CONCLUSION

For the foregoing reasons, the amicus curiae State Troopers Fraternal Association of New Jersey respectfully request that the Court deny the Petition for Certification.

Respectfully submitted,

MARKMAN & CANNAN, LLC
Attorneys for State Troopers Fraternal
Association of New Jersey

By: 
Robert R. Cannan, Esq.

Dated: June 13, 2024