

JEFFREY H. SUTHERLAND
CAPE MAY COUNTY PROSECUTOR
PRESIDENT, COUNTY PROSECUTORS ASS'N OF NEW JERSEY
MOVANT – AMICUS CURIAE
BY: JOSEPH PARAVECCHIA, FIRST ASSISTANT PROSECUTOR
HUNTERDON COUNTY PROSECUTOR'S OFFICE
65 PARK AVENUE, PO BOX 756
FLEMINGTON, NJ 08622
NJ ATTORNEY ID NO. 021342012

CHARLES KRATOVIL,	:	
	:	
Plaintiff,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
	:	MIDDLESEX COUNTY
v.	:	
	:	DOCKET NO. MID-L-003896-23
CITY OF NEW BRUNSWICK,	:	
and ANTHONY A. CAPUTO,	:	NOTICE OF MOTION FOR LEAVE
in his individual capacity as	:	TO APPEAR AS AMICUS CURIAE,
Director of Police,	:	PURSUANT TO <u>RULE</u> 1:13-9
	:	
Defendants.	:	
	:	

To: All Counsel of Record via eCourts Filing

PLEASE TAKE NOTICE that as soon as counsel may be heard, the undersigned attorney on behalf of the County Prosecutors Association of New Jersey (CPANJ), shall move before this Court, pursuant to Rule 1:13-9, for an Order granting leave to appear as amicus curiae in the above-captioned matter.

PLEASE TAKE FURTHER NOTICE that the CPANJ will rely upon the attached certification and letter brief in support of this motion.

PLEASE TAKE FURTHER NOTICE that a proposed form of order is attached hereto.

PLEASE TAKE FURTHER NOTICE that the CPANJ respectfully requests to participate in oral argument if this application is opposed.

Respectfully submitted,

JEFFREY H. SUTHERLAND
Cape May County Prosecutor
President, County Prosecutor's Ass'n of New Jersey
NJ Attorney ID No. 029511989



By: JOSEPH PARAVECCHIA
First Assistant Hunterdon County Prosecutor
NJ Attorney ID No. 021342012
(908) 788-1129
jparavecchia@co.hunterdon.nj.us

Dated: August 8, 2023

JEFFREY H. SUTHERLAND
CAPE MAY COUNTY PROSECUTOR
PRESIDENT, COUNTY PROSECUTORS ASS'N OF NEW JERSEY
MOVANT – AMICUS CURIAE
BY: JOSEPH PARAVECCHIA, FIRST ASSISTANT PROSECUTOR
HUNTERDON COUNTY PROSECUTOR'S OFFICE
65 PARK AVENUE, PO BOX 756
FLEMINGTON, NJ 08622
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Plaintiff,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
	:	MIDDLESEX COUNTY
v.	:	
	:	DOCKET NO. MID-L-003896-23
CITY OF NEW BRUNSWICK,	:	
and ANTHONY A. CAPUTO,	:	
in his individual capacity as	:	ORDER GRANTING
Director of Police,	:	MOTION FOR LEAVE TO
	:	APPEAR AS AMICUS CURIAE,
Defendants.	:	PURSUANT TO <u>RULE</u> 1:13-9
	:	
	:	

THIS MATTER having come before the Court on the motion of the County Prosecutors Association of New Jersey (CPANJ) for an order granting CPANJ's motion for leave to appear as amicus curiae, pursuant to Rule 1:13-9; First Assistant Hunterdon County Prosecutor Joseph Paravecchia appearing on behalf of CPANJ; and the Court having considered the application of CPANJ; and the Court having heard argument on _____; and the Court having found that the

requirements of Rule 1:13-9 have been established; and for good cause shown;

IT IS ON THIS _____ day of _____ 20____,

ORDERED that CPANJ's motion for leave to appear as amicus curiae, pursuant to Rule 1:13-9, is GRANTED.

The Court's findings of fact and conclusions of law are set forth in the attached opinion / were placed on the record on _____.

HONORABLE ALBERTO RIVAS, J.S.C.
Judge of the New Jersey Superior Court

JEFFREY H. SUTHERLAND
CAPE MAY COUNTY PROSECUTOR
PRESIDENT, COUNTY PROSECUTORS ASS'N OF NEW JERSEY
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HUNTERDON COUNTY PROSECUTOR'S OFFICE
65 PARK AVENUE, PO BOX 756
FLEMINGTON, NJ 08622
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CHARLES KRATOVIL,	:	
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Plaintiff,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
	:	MIDDLESEX COUNTY
v.	:	
	:	DOCKET NO. MID-L-003896-23
CITY OF NEW BRUNSWICK,	:	
and ANTHONY A. CAPUTO,	:	CERTIFICATION IN SUPPORT OF
in his individual capacity as	:	MOTION FOR LEAVE TO
Director of Police,	:	APPEAR AS AMICUS CURIAE,
	:	PURSUANT TO <u>RULE</u> 1:13-9
Defendants.	:	
	:	
	:	

I, Joseph Paravecchia, First Assistant Hunterdon County Prosecutor, being of full age, and duly sworn according to law, upon my oath certify and say:

1. I am an attorney at law licensed to practice in the State of New Jersey.
2. I am the First Assistant Hunterdon County Prosecutor and am assigned to the above-captioned matter. As such, I am familiar with the facts of this case.
3. The County Prosecutors Association of New Jersey (CPANJ) makes this motion, pursuant to Rule 1:13-9, for leave to appear as amicus curiae in the above-captioned matter.

4. On July 12, 2023, the plaintiff, Charles Kratovil, filed a verified complaint and order to show cause in this Court against the defendants, City of New Brunswick and Anthony A. Caputo, in his capacity as Director of Police, which was amended on July 17, 2023.

5. The amended complaint alleges that defendants unlawfully rely on N.J.S.A. 2C:20-31.1 and N.J.S.A. 56:8-166.1 (“Daniel’s Law”) to prohibit plaintiff from engaging in constitutionally-protected free speech and freedom of the press, for which he seeks declaratory relief, preliminary and permanent injunctive relief, attorneys’ fees and costs, and any other relief as this Court deems just and proper.

6. The action before this Court challenges — as contrary to Article I, Paragraph 6 of the New Jersey Constitution — the enforceability of Daniel’s Law, which, in pertinent part, proscribes the disclosure or re-disclosure of “the home address or unpublished home telephone number of . . . an active, formerly active, or retired judicial officer or law enforcement officer, . . . or prosecutor[,]” “who has received approval . . . for the redaction or nondisclosure of the covered person’s address.” N.J.S.A. 56:8-166.1a(1), d.

7. Daniel’s Law serves as

a renewed commitment to ensure our judiciary, prosecutors, and members law enforcement who answer the call of justice can do so without fear for their personal safety, or that of their loved ones[.] . . . By shielding the home addresses and private contact information for those who serve on the bench and enforce our laws, we are demonstrating that in the face of unspeakable tragedy, New Jersey responds not with thoughts and prayers, but with concrete action.

[Governor Murphy Signs “Daniel’s Law”, NJ.gov (November 20, 2020), <https://www.nj.gov/governor/news/news/562020/20201120b.shtml>.]

8. The constitutionality of Daniel’s Law is an issue of statewide importance. Both the validity and enforceability of Daniel’s Law affects New Jersey’s numerous active and retired judges, sworn law enforcement officers, and prosecutors whom have availed themselves of the law’s relief and protections.

9. Similar to defendants here, county prosecutors and their assistant prosecutors unfortunately need the relief and protections prescribed by Daniel’s Law because of the law enforcement functions they serve, which expose them and their families to ongoing danger. “[T]he county prosecutor is the foremost representative of the executive branch of government in law enforcement in his [or her] county.” Am. Civil Liberties Union of N.J. v. Cnty. Prosecutors Ass’n of N.J., 474 N.J. Super. 243, 262 (App. Div. 2022) (quoting Cherrits v. Ridgewood, 311 N.J. Super. 517, 528-29 (App. Div. 1988)). To be sure, “N.J.S.A. 2A:158-4 provides that ‘[t]he criminal business of the State shall be prosecuted by the Attorney General and the county prosecutors.’” Ibid.

10. CPANJ is comprised of the twenty-one county prosecutors and has as its goal to maintain close cooperation between the Attorney General of the State of New Jersey, the Division of Criminal Justice of the State of New Jersey and the twenty-one county prosecutors of the State of New Jersey relative to the development of educational programs, so as to promote the orderly administration of criminal justice within the State of New Jersey, consistent with the Constitution and the laws of the State of New Jersey.

11. CPANJ has, on many occasions, appeared and filed submissions as amicus curiae in cases of statewide significance following successful Rule 1:13-9 motions for leave to appear as amicus curiae. See, e.g., State v. Bullock, 253 N.J. 512 (2023); State v. Smart, 253 N.J. 156 (2023); State v. Olenowski, 253 N.J. 133 (2023); State v. Mackroy-Davis, 251 N.J. 217 (2022); State v. Sims, 250 N.J. 189 (2022); State v. Dangcil, 248 N.J. 114 (2021); State v. Chavies, 247 N.J. 245 (2021); State v. Szemple, 247 N.J. 82 (2021); State v. Vega-Larregui, 246 N.J. 94 (2021); In the Matter of Request to Release Certain Pretrial Detainees, 245 N.J. 218 (2021); State v. Desir, 245 N.J. 179 (2021); State v. Andrews, 243 N.J. 447 (2020); State v. McCray, 243 N.J. 196 (2020); In the Matter to Modify Prison Sentences, 242 N.J. 357 (2020); State v. Arroyo-Nunez, 470 N.J. Super. 351 (2022).

12. A court “shall grant the motion [for leave to appear as amicus curiae] if it is satisfied under all the circumstances that the motion is timely, the applicant’s participation will assist in the resolution of an issue of public importance, and no party to the litigation will be unduly prejudiced thereby.” R. 1:13-9(a).

13. CPANJ submits that its participation in this case is important, particularly given the issue of statewide significance involved as discussed above. CPANJ further submits that this Court will benefit from its views on the issue implicated in this case.

14. Accordingly, CPANJ respectfully requests permission to appear as amicus curiae and to submit a brief on the merits and participate in oral argument to assist in the resolution of this matter.

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



JOSEPH PARAVECCHIA
First Assistant Hunterdon County Prosecutor
NJ Attorney ID No. 021342012
(908) 788-1129
jparavecchia@co.hunterdon.nj.us

Dated: August 8, 2023

COUNTY PROSECUTORS ASSOCIATION OF NEW JERSEY

Jeffrey H. Sutherland, *President*
Cape May County Prosecutor

Mark Musella, *1st Vice President*
Bergen County Prosecutor

Yolanda Ciccone, *2nd Vice President*
Middlesex County Prosecutor



Bradley D. Billhimer, *Secretary*
Ocean County Prosecutor

James Pfeiffer, *Treasurer*
Warren County Prosecutor

Esther Suarez, *Immediate Past President*
Hudson County Prosecutor

Jennifer Webb-McRae, *State Delegate, NDAA*
Cumberland County Prosecutor

August 8, 2023

Hon. Alberto Rivas, J.S.C.
New Jersey Superior Court, Law Division
Middlesex County Courthouse
56 Paterson Street
New Brunswick, NJ 08903-0964

Re: Charles Kratovil v. City of New Brunswick et al.
Docket No. MID-L-003896-23

Letter Brief in Support of Motion for Leave to Appear as Amicus Curiae, Pursuant to Rule 1:13-9

Dear Judge Rivas:

Please accept this letter brief in lieu of a more formal brief in support of the County Prosecutors Association of New Jersey's (CPANJ) motion for leave to appear as amicus curiae, pursuant to Rule 1:13-9. CPANJ respectfully requests to participate in oral argument if this application is opposed.

STATEMENT OF FACTS AND PROCEDURAL HISTORY¹

On July 12, 2023, the plaintiff, Charles Kratovil, filed a verified complaint and order to show cause against the defendants, City of New Brunswick and Anthony A. Caputo, in his capacity as Director of Police. Plaintiff filed an amended complaint on July 17, 2023, alleging that defendants unlawfully rely on N.J.S.A. 2C:20-31.1 and N.J.S.A. 56:8-166.1 (“Daniel’s Law”) to prohibit plaintiff from engaging in constitutionally-protected free speech and freedom of the press, for which he seeks declaratory relief, preliminary and permanent injunctive relief, attorneys’ fees and costs, and any other relief as this Court deems just and proper.

This Court scheduled a show-cause hearing for August 11, 2023.

Following defendant’s filing of the amended complaint, several organizations filed Rule 1:13-9 motions for leave to appear as amici curiae before this Court, including the New Jersey State Policemen’s Benevolent Association, the New Jersey State Association of Chiefs of Police, the State Troopers Association of New Jersey, and the New Jersey State Lodge of the Fraternal Order of Police.

¹ CPANJ combines its Statement of Facts and Statement of Procedural History for the Court’s convenience.

This Court scheduled decision on the Rule 1:13-9 motions for leave to appear for August 11, 2023, which was later rescheduled for August 15, 2023.

CPANJ's Rule 1:13-9 application for leave to appear as amicus curiae follows.

LEGAL ARGUMENT

POINT I

THIS COURT SHOULD GRANT CPANJ'S RULE 1:13-9 MOTION FOR LEAVE TO APPEAR AS AMICUS CURIAE BECAUSE THE MOTION IS TIMELY, CPANJ'S PARTICIPATION WILL ASSIST IN THE RESOLUTION OF AN ISSUE OF PUBLIC IMPORTANCE, AND NO PARTY TO THE LITIGATION WILL BE UNDULY PREJUDICED THEREBY.

An applicant seeking leave to appear as amicus curiae must state with specificity their identity; the issue they intend to address; and the nature of both the public interest in the matter and the applicant's special interest, involvement, or expertise. R. 1:13-9(a). "The court shall grant the motion if it is satisfied under all the circumstances that the motion is timely, the applicant's participation will assist in the resolution of an issue of public importance, and no party to the litigation will be unduly prejudiced thereby." Ibid.

A party appearing as amicus curiae assists a court "in the resolution of an issue of public importance" through its "special interest, involvement or

expertise[.]” Ibid. The traditional role of amicus curiae was to be advisory rather than adverse. However, courts have generally shifted away from the strict framework in Casey v. Male, 63 N.J. Super. 255, 258-29 (Law Div. 1960) and now allow amici curiae to be more partial. In re State ex rel. Essex County Prosecutor’s Office, 427 N.J. Super. 1, 5 (Law Div. 2012). Indeed, our courts have interpreted Rule 1:13-9 as establishing a liberal standard for permitting amicus appearances:

In determining whether to grant an amicus application, courts consider whether the applicant can assist the court by providing the court with information pertaining to matters of law about which the court may be in doubt. Courts also consider whether the case has broad implications, or is of general public interest.

[Ibid. (internal citations and quotation marks omitted). See also Gannett New Jersey Partners, LP v. County of Middlesex, 379 N.J. Super. 205, 218 (App. Div. 2005) (“An amicus curiae is not considered a party to litigation for some purposes, such as the right to raise issues that have not been raised by a party.”). (Citation omitted).]

CPANJ submits that it has satisfied the requirements of Rule 1:13-9(a), thereby permitting its appearance before this Court as amicus curiae. First, CPANJ’s motion is timely. The subject action commenced at the filing of the amended complaint on July 17, 2023, after which applications for leave to appear by prospective amici were filed on or about August 3 and 4, 2023. To date, those applications are pending decision by this Court, which is scheduled

for August 15, 2023. CPANJ's timely motion is before this Court well in advance of the return date for a decision.

Second, CPANJ's participation will assist in the resolution of an issue of public importance. CPANJ is comprised of the twenty-one county prosecutors and has as its goal to maintain close cooperation between the Attorney General of the State of New Jersey, the Division of Criminal Justice of the State of New Jersey and the twenty-one county prosecutors of the State of New Jersey relative to the development of educational programs, so as to promote the orderly administration of criminal justice within the State of New Jersey, consistent with the Constitution and the laws of the State of New Jersey.

CPANJ has, on many occasions, appeared and filed submissions as amicus curiae in cases of statewide significance following successful Rule 1:13-9 motions for leave to appear as amicus curiae. See, e.g., State v. Bullock, 253 N.J. 512 (2023); State v. Smart, 253 N.J. 156 (2023); State v. Olenowski, 253 N.J. 133 (2023); State v. Mackroy-Davis, 251 N.J. 217 (2022); State v. Sims, 250 N.J. 189 (2022); State v. Dangcil, 248 N.J. 114 (2021); State v. Chavies, 247 N.J. 245 (2021); State v. Szemple, 247 N.J. 82 (2021); State v. Vega-Larregui, 246 N.J. 94 (2021); In the Matter of Request to Release Certain Pretrial Detainees, 245 N.J. 218 (2021); State v. Desir, 245 N.J. 179 (2021); State v. Andrews, 243 N.J. 447 (2020); State v. McCray, 243

N.J. 196 (2020); In the Matter to Modify Prison Sentences, 242 N.J. 357 (2020); State v. Arroyo-Nunez, 470 N.J. Super. 351 (2022).

The action before this Court challenges — as contrary to Article I, Paragraph 6 of the New Jersey Constitution — the enforceability of Daniel’s Law, which, in pertinent part, proscribes the disclosure or re-disclosure of “the home address or unpublished home telephone number of . . . an active, formerly active, or retired judicial officer or law enforcement officer, . . . or prosecutor[,]” “who has received approval . . . for the redaction or nondisclosure of the covered person’s address.” N.J.S.A. 56:8-166.1a(1), d. Daniel’s Law serves as

a renewed commitment to ensure our judiciary, prosecutors, and members law enforcement who answer the call of justice can do so without fear for their personal safety, or that of their loved ones[.] . . . By shielding the home addresses and private contact information for those who serve on the bench and enforce our laws, we are demonstrating that in the face of unspeakable tragedy, New Jersey responds not with thoughts and prayers, but with concrete action.

[Governor Murphy Signs “Daniel’s Law”, NJ.gov (November 20, 2020), <https://www.nj.gov/governor/news/news/562020/20201120b.shtml>.]

The constitutionality of Daniel’s Law is an issue of statewide importance. Both the validity and enforceability of Daniel’s Law affects New Jersey’s numerous active and retired judges, sworn law enforcement officers,

and prosecutors whom have availed themselves of the law's relief and protections. Similar to defendants and the prospective amici here, county prosecutors and their assistant prosecutors unfortunately need the relief and protections prescribed by Daniel's Law because of the law enforcement functions they serve, which expose them and their families to ongoing danger. "[T]he county prosecutor is the foremost representative of the executive branch of government in law enforcement in his [or her] county." Am. Civil Liberties Union of N.J. v. Cnty. Prosecutors Ass'n of N.J., 474 N.J. Super. 243, 262 (App. Div. 2022) (quoting Cherrits v. Ridgewood, 311 N.J. Super. 517, 528-29 (App. Div. 1988)). To be sure, "N.J.S.A. 2A:158-4 provides that '[t]he criminal business of the State shall be prosecuted by the Attorney General and the county prosecutors.'" Ibid.

CPANJ's participation in this case is important as it relates to the constitutional challenge to Daniel's Law. Accordingly, this Court will benefit from CPANJ's views on the issue implicated in this case.

Finally, no party to the litigation will be unduly prejudiced by CPANJ's appearance as amicus curiae. CPANJ seeks to assist this Court by providing it with information pertaining to matters of law about which the Court may be in doubt. CPANJ's primary role is to advise, not to litigate as a party to the

action. Therefore, neither plaintiff nor defendants will be unduly prejudiced by CPANJ's participation in this case.

CONCLUSION

For the foregoing reasons, CPANJ respectfully requests permission to appear as amicus curiae, pursuant to Rule 1:13-9, and to submit a brief on the merits and participate in oral argument to assist in the resolution of this matter.

Respectfully submitted,

JEFFREY H. SUTHERLAND
Cape May County Prosecutor
President, County Prosecutor's Ass'n of New Jersey
NJ Attorney ID No. 029511989

By: /s/ Joseph Paravecchia
JOSEPH PARAVECCHIA
First Assistant Hunterdon County Prosecutor
NJ Attorney ID No. 021342012
(908) 788-1129
jparavecchia@co.hunterdon.nj.us
Of Counsel and On the Letter Brief

/s/ Laura C. Sunyak
LAURA C. SUNYAK
Assistant Mercer County Prosecutor
NJ Attorney ID No. 016762011
lsunyak@mercercounty.org
Of Counsel

/s/ Randolph E. Mershon
RANDOLPH E. MERSHON
Assistant Middlesex County Prosecutor
NJ Attorney ID 123752014
randolph.mershon@co.middlesex.nj.us
Of Counsel

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and ANTHONY A. CAPUTO,	:	
in his individual capacity as	:	CERTIFICATION OF SERVICE
Director of Police,	:	
	:	
Defendants.	:	
	:	

I, Joseph Paravecchia, First Assistant Hunterdon County Prosecutor, being of full age, and duly sworn according to law, upon my oath certify and say:

1. On August 8, 2023, I electronically filed the County Prosecutors Association of New Jersey's (CPANJ) notice of Rule 1:13-9 motion for leave to appear as amicus curiae, certification and letter brief in support of the motion, proposed order, and certification of service in the eCourts jacket for the above-captioned matter, docketed as MID-L-003896-23.

2. On August 8, 2023, I served the following parties via electronic mail with copies of the aforesaid documents:

Alexander Shalom, Esq. (021162004)
Jeanne LoCicero, Esq. (024052000)
American Civil Liberties of New Jersey Foundation
P.O. Box 32159
Newark, NJ 07102
ashalom@aclu-nj.org
jlocicero@aclu-nj.org

Susan K. O'Connor, Esq. (38991988)
Hoagland, Longo, Moran, Dunst & Doukas, LLP
40 Paterson Street, PO Box 480
New Brunswick, NJ 08903
soconnor@hoaglandlongo.com

Paul L. Kleinbaum, Esq. (018321982)
Sheila Murugan, Esq. (227662017)
Zazzali PC
570 Broad Street – Suite 1402
Newark, New Jersey 07102
pkleinbaum@zazzali-Law.com

Vito A. Gagliardi, Jr., Esq. (024821989)
David L. Disler, Esq. (068112013)
Porzio, Bromberg & Newman, PC
100 Southgate Parkway
Morristown, NJ 07960
VAGagliardi@pbnlaw.com
DLDisler@pbnlaw.com

Robert R. Cannan, Esq. (011531993)
Markman & Cannan, LLC
391 Franklin Street
Bloomfield, NJ 07003
rcannan@markmancannanlaw.com

Matthew D. Areman, Esquire
Richard J. De Fortuna, Esq.
Markowitz & Richman
123 South Broad Street, Suite 2020
Philadelphia, PA 19109

mareman@markowitzandrichman.com
rdefortuna@markowitzandrichman.com

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



JOSEPH PARAVECCHIA
First Assistant Hunterdon County Prosecutor
NJ Attorney ID No. 021342012
(908) 788-1129
jparavecchia@co.hunterdon.nj.us

Dated: August 8, 2023

