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August 22, 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 of Amicus Curiae County Prosecutor's
Association of New Jersey

Dear Judge Rivas:

Please accept this letter brief in lieu of a more formal brief on behalf of amicus curiae the County Prosecutor's Association of New Jersey (CPANJ) in opposition to plaintiff's request for injunctive relief.

INTEREST OF AMICUS CURIAE

CPANJ submits this brief as amicus curiae in support of defendants, City of New Brunswick and Anthony A. Caputo.¹

In response to the tragic death of Daniel Anderl, the New Jersey Legislature enacted “Daniel’s Law,” N.J.S.A. 2C:20-31.1 and N.J.S.A. 56:8-166.1, as a vital mechanism to “shield[] the home addresses and private contact information for those who serve on the bench and enforce our laws” so that they may “answer the call of justice . . . without fear for their personal safety, or that of their loved ones.”² “Daniel’s Law” was enacted after a disgruntled attorney obtained the home address of the Honorable Esther Salas, D.C.N.J., online through legitimate means.³ The attorney armed himself with a gun, dressed as a delivery man and appeared at Judge Salas’s home to assassinate her; however,

¹ This brief has been authored independently of any party’s counsel. CPANJ received no money from a party, a party’s counsel, or any other outside source to fund the preparation or submission of this brief.

² Office of the Governor, *Governor Murphy Signs "Daniel's Law,"* available at <https://www.nj.gov/governor/news/news/562020/20201120b.shtml> (last accessed August 20, 2023).

³ Sloan, Christian, *Judge Esther Salas, whose son was murdered at their home, applauds federal law to protect judges and their families,* available at: <https://www.cbsnews.com/newyork/news/judge-esther-salas-applauds-federal-law-to-help-protect-other-judges-and-their-families/> (last accessed August 21, 2023).

her son answered the door. Ibid. The attorney shot and killed her son and then shot her husband, Mark Anderl, three times. Ibid.

Plaintiff seeks to invalidate Daniel’s Law, a law specifically designed to protect the lives of those who are serving the community. In doing so, plaintiff claims Daniel’s Law prevents him from publicly sharing the home address of defendant and, therefore, violates his First Amendment rights to freedom of the press and free speech. As defendant has demonstrated, Daniel’s Law was passed for a narrow and specific purpose — to prevent the limited disclosure of home addresses of judges, prosecutors, and law enforcement officers to protect them and their families from being targeted by threats and violence. Indeed, “Judges, prosecutors, and law enforcement officers all play vital roles in keeping the public safe, but in doing so, they often jeopardize their own safety, becoming targets of vengeful criminals or litigants.”⁴ As demonstrated by defendant, Daniel’s Law is narrowly tailored to achieve this goal.

CPANJ, which is comprised of the County Prosecutors who lead the 21 county prosecutors’ offices in New Jersey, has a direct interest in the continuing validity of Daniel’s Law. CPANJ’s goal is to promote both the orderly

⁴ Office of the Governor, *Governor Murphy Signs "Daniel's Law,"* available at <https://www.nj.gov/governor/news/news/562020/20201120b.shtml> (last accessed August 20, 2023).

administration of criminal justice within each and every member county and the fair and effective enforcement of the constitution and laws of the United States and this State.

Fighting and prosecuting violent crimes is in the forefront of priorities for not only New Jersey's leaders, but also the members of CPANJ. CPANJ members routinely prosecute defendants who use weapons in the commission of violent crimes throughout the State; crimes that include murders, attempted murders, aggravated assaults, aggravated sexual assaults, and robberies. CPANJ's Prosecutors and their teams are the face of these prosecutions in open court. Its members, along with judges and law enforcement officers, are often seen as the ones who take a violent offender's freedom and liberty away in the pursuit of justice. Thus, too often are judges, prosecutors and law enforcement officers the recipients of threats from violent criminal offenders. It is not just CPANJ's belief, but also plain common sense, that the disclosure of personal identifying information will leave judges, prosecutors, and law enforcement officers vulnerable to threats and violence. Thus, CPANJ submits that Daniel's Law was narrowly tailored to further a compelling state interest. Further, the defendant has demonstrated not only that Daniel's Law was enacted for a narrow and specific purpose, but also that plaintiff cannot, and has not, met the heavy burden of showing that his desire to disclose defendant's home address should

overcome those interests and render Daniel’s Law unconstitutional. CPANJ therefore, joins defendant’s request for relief from this court.

LEGAL ARGUMENT

POINT I

DANIEL’S LAW IS NARROWLY TAILORED TO PROMOTE A COMPELLING GOVERNMENT INTEREST.

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. Furthermore, N.J.S.A. 2C:20-31.1, criminalizes the purposeful or reckless disclosure of this sensitive information.

“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>.]

It is undisputed that “the 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. Much like judges and law enforcement officers, county prosecutors and assistant prosecutors serve as the face of the criminal justice system in open court. They are tasked with seeking justice in the communities in which they serve, which inevitably involves taking the freedom and liberty away from this State’s most violent criminal offenders. Thus, not only placing themselves, but their families, in danger.

Unfortunately, the tragic events that occurred in Middlesex County in July of 2020 are not isolated. Threats against judges, prosecutors and police officers have become common place in 2023. In 2021 alone, the United States Marshals

received 4,511 threats against federal judges.⁵ Specifically, in New Jersey, and just over a year after Daniel Anderl was murdered, the Honorable Peter G. Sheridan, D.C.N.J., was threatened by a litigant who repeatedly contacted chambers and told a law clerk “[b]efore the snow starts falling on my head, I’m gonna put a bullet in the Judge’s brain.”⁶ Just in the last year, numerous people appeared at the private homes of United States Supreme Court Justices to protest a pending decision by the Court.⁷ In one instance, police arrested an armed man near the home of Justice Brett Kavanaugh. Ibid.

Despite the increased security in courthouses, prosecutors’ offices, and police stations, there is always an inherent time and place when judges,

⁵ Office of Public Affairs, United States Marshals Service, *Fact Sheet Judicial Security 2022*, available at <https://www.usmarshals.gov/resources/fact-sheets/2022-judicial-security>, (last accessed August 21, 2023).

⁶ Dienst, Jonathan & Thompson, Brian, *NJ Man Repeatedly Threatened to ‘Blow Judge’s Brains Out’: Prosecutors*, available at <https://www.nbcnewyork.com/investigations/nj-man-repeatedly-threatened-to-kill-federal-judge-blow-judges-brains-out-prosecutors/3376819/> (last accessed August 22, 2023).

⁷ Sullivan, Becky, *The Supreme Court marshal asks state officials to act on protests at justices’ homes*, available at <https://www.npr.org/2022/07/03/1109614708/protests-at-homes-of-supreme-court-justices> (last accessed on August 22, 2023).

prosecutors, and law enforcement officers are vulnerable.⁸ Simply put, that time and place is at their private home. While there is no quantifiable data that exists to show the true amount of threats law enforcement officers receive from citizens on a daily basis, a simple search on the internet reveals that citizens threaten officers with weapons almost daily. Moreover, in 2022, of the dozens of police officers who were fatally shot last year, 11 were killed in an ambush style attack.⁹

Without question, judges, prosecutors, and law enforcement officers are the target of threats of violence and unfortunately these parties need the relief and protections proscribed by Daniel's Law because of the law enforcement function they serve. That need is also of the highest importance. Indeed, "the security of the nation's judiciary is a serious concern." United States v. Holland, 519 F.3d 909, 912 (9th Cir. 2008). Judges, prosecutors, and law enforcement officers are "unfortunately, reminded from time to time that threats against the

⁸ Dallas News, *Threats go with the job for prosecutors, and they're on the rise*, available at <https://www.dallasnews.com/news/crime/2013/02/02/threats-go-with-the-job-for-prosecutors-and-theyre-on-the-rise/> (last accessed August 21, 2023).

⁹ Hauck, Grace, *A disturbing trend': More police are dying from gun violence today than a decade ago*, available at <https://www.usatoday.com/story/news/nation/2023/01/11/police-officer-deaths-2022-report/11017969002/> (last accessed August 20, 2023).

judiciary have been carried out.” Ibid.

In this case, the plaintiff challenges the constitutionality of “Daniel’s Law” as contrary to Article I, Paragraph 6 of the New Jersey Constitution and the First Amendment of the United States Constitution. The First Amendment to the United States Constitution states, “Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.” U.S. Const. amend. I. Similarly, “[t]he New Jersey Constitution guarantees a broad affirmative right to free speech[.]” Dublirer v. 2000 Linwood Ave. Owners, Inc., 220 N.J. 71, 78 (2014) (citing N.J. Const. art. I, ¶ 6). “Because our State Constitution’s free speech clause is generally interpreted as co-extensive with the First Amendment, federal constitutional principles guide the Court’s analysis.” Twp. of Pennsauken v. Schad, 160 N.J. 156, 176 (1999) (citing Hamilton Amusement Ctr. v. Verniero, 156 N.J. 254, 264–65 (1998)). The few exceptions where the State Constitution provides greater protection are not at issue here. See, e.g., Dublirer, 220 N.J. at 71 (state action); W.J.A. v. D.A., 210 N.J. 229, 242 (2012) (defamation).

Different types of speech are afforded different levels of protection, and some forms of expression are beyond the scope of the First Amendment. See Snyder v. Phelps, 562 U.S. 443, 452 (2011); R.A.V. v. St. Paul, 505 U.S. 377,

382–83 (1992). “If a statute regulates speech based on its content, it must be narrowly tailored to promote a compelling Government interest.” United States v. Playboy Entm’t Grp., 529 U.S. 803, 813 (2000) (citing Sable Commc’ns of Cal., Inc. v. FCC, 492 U.S. 115, 126 (1989)).

Daniel’s Law is a content-based regulation that prohibits the disclosure of personal identifying information of covered persons and publishing or republishing that information. To satisfy strict scrutiny, the Government must demonstrate that the restriction of non-disclosure is “narrowly tailored to promote a compelling Government interest and that there are no less restrictive alternatives to achieve the Government’s purpose.” Doe v. Mukasey, 549 F.3d at 878 (quoting Playboy, 529 U.S. at 813 and Reno v. ACLU, 521 U.S. 844, 874 (1997) (quotation marks omitted)). The Government must show that there are no “less restrictive alternatives [that] would be at least as effective in achieving the legitimate purpose that the statute was enacted to serve.” Reno, 521 U.S. at 874.; see also, Green Party of Connecticut v. Garfield, 616 F.3d 189, 208-09 (2d Cir. 2010); Doe v. Mukasey, 549 F.3d at 878. “When a plausible, less restrictive alternative is offered to a content-based speech restriction, it is the Government’s obligation to prove that the alternative will be ineffective to achieve its goals.” Playboy, 529 U.S. at 816.

Here, Daniel’s Law is narrowly tailored to promote a compelling

Government interest and there is no less restrictive alternative to achieve the Government's purpose. As detailed above, the need to protect the justice system in this country is of serious concern and the highest importance. Holland, 519 F.3d at 912. Daniel's Law requires an entity to remove the exact home address of the judge, prosecutor, or law enforcement officer, from being published where the general public can access it. Furthermore, it punishes those who purposely or recklessly publish this information with the "purpose to expose another to harassment or risk of harm to life or property." N.J.S.A. 2C:20-30.1. No other less restrictive alternative exists to achieve the Government's purpose of protecting its criminal justice system and the life and safety of judges, prosecutors, law enforcement officers, and their families.

Plaintiff nonetheless proposes hypotheticals in an attempt to attack the constitutionality of Daniel's Law. Plaintiff asserts that anyone innocently asking directions to a covered persons home or repeating a story about annoying neighbor, who happens to be a covered person subjects them to litigation or criminal charges. Such a reading ignores the plain language of the statute. Stated simply, to invoke the law's proscriptions, an individual must "post, repost, publish, or republish on the Internet, or otherwise make available, the home address or unpublished home telephone number of any covered person" with the purpose to "expose another to harassment or risk of harm to life or property."

N.J.S.A. 2C:20-31.1. Furthermore, liability and criminal charges can only be triggered after the covered person notifies a party to remove the information or prohibits the disclosure of the information. Thus, it is hard to fathom a scenario as proposed by plaintiff where anyone can be charged with a crime for giving directions or retelling a story of an annoying neighbor.

Furthermore, Daniel's Law in no way restricts the publication of the article as defendant and amici point out. The information on which plaintiff seeks to report can, in fact, be published without violating Daniel's Law. Daniel's Law simply restricts publishing the exact location and address of a covered persons. Plaintiff can still report on matters of public concern and publish his article without providing the exact street location of the defendant's home. Plaintiff would still be able to express his views, outline the distance defendant lives from the City of New Brunswick, and address matters of public concern without giving near turn-by-turn directions from the City of New Brunswick to defendant's home. That neither sensors the news media, nor restricts plaintiff's right to free speech and freedom of the press.

Daniel's Law set forth in N.J.S.A. 2C:20-31.1 and N.J.S.A. 56:8-166.1, provides the necessary protections to judges, prosecutors, and law enforcement officers, and those goals are narrowly tailored to further the Governments compelling interest in ensuring the safety of the justice system. Accordingly,

this Court can and should reject the plaintiff's arguments.

CONCLUSION

For the above-mentioned reasons and authorities cited in support thereof, the CPANJ respectfully requests the plaintiff's application for a preliminary injunction be denied.

Respectfully submitted,

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