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SUPREME COURT
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December 29, 2025

Honorable Chief Justice and Associate Justices
Supreme Court of New Jersey
25 Market Street
Trenton, New Jersey 08625

Re: Atlas Data Privacy Corp., et al. v. We Inform, LLC, et al.
Docket No. 091145

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SUPREME COURT
OF NEW JERSEY

Dear Chief Justice and Associate Justices:

Pursuant to Rule 2:6-2(b), kindly accept this letter brief in lieu of a more formal submission on behalf of amicus curiae the American Civil Liberties Union of New Jersey ("ACLU-NJ") in the above-captioned matter.

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PRELIMINARY STATEMENT

However laudable its goals, Daniel's Law is undeniably a content-based restriction on speech and one that has the potential of chilling and penalizing protected speech. Indeed, it is designed to protect against third parties' bad conduct based on others' disclosures, a decidedly weak reed upon which to restrict protected speech. Accordingly, as this Court has recently ruled, the Law must use the least restrictive means of satisfying the State's interest.

For this reason, deciding whether and what level of mens rea is required for actual or liquidated damages under Daniel's Law entails more than application of canons of statutory construction. If, as will be demonstrated in the case, the Law cannot be fairly construed as containing any such mens rea requirement, then this Court must decide whether a mens rea requirement is constitutionally required and, if so, to what degree. As will also be demonstrated below, a level of mens rea higher than that of negligence is constitutionally required in order to meet the least restrictive means standard.

The Court must also decide whether it will specify the precise contours of the mens rea protections necessary to construe the statute constitutionally as to mens rea. In analogous situations, the Court has construed statutes the Court has identified as important to the Legislature to contain additional provisions in

order to save the statute from an unconstitutional flaw. At other times, it has struck down offending statutes rather than perform judicial surgery.

Given the posture of this case, however, it does not appear that this Court has the choice of invalidating the statute if it does not meet this Court's constitutional scrutiny. The issue of the Law's facial constitutionality is before the Third Circuit Court of Appeals, not before this Court. The only issue before this Court is how the statute must be construed.

Amicus ACLU of New Jersey respectfully suggests that this Court advise the Third Circuit that Daniel's Law does not include a mens rea element for actual or liquidated damages, but this Court opts to construe the statute with a level of mens rea higher than negligence so as to avoid constitutional concerns. Alternatively, this Court may choose to advise the Third Circuit that, while the statute as it stands without a high mens rea element is not constitutional, it is not providing the Third Circuit a constitutional construction of the Law. Either way, the ramifications of this Court's construction of the Law are left to the Third Circuit, where the issue of the facial constitutionality of the Law is joined, and to the Legislature.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

Amicus relies upon and incorporates herein the facts and procedural history set forth by the Third Circuit in its Petition of September 2, 2025,

certifying questions to this Court, which this Court accepted, advising that it would be addressing the question: “What mental state, if any, is required to establish liability under Daniel’s Law, N.J.S.A. 56:8-166.1?”

ARGUMENT

I. A high degree of mens rea is required for Daniel’s Law to pass constitutional muster.

There are two components to what is “required” to prove liability for actual or liquidated damages under Daniel’s Law. The first is whether there are statutory requirements; the second is whether the existence *vel non* of any statutory requirements meets constitutional standards, and, if not, what does. While Daniel’s Law does contain an express standard of mens rea for the imposition of punitive damages and for criminal liability, there is no clear or implied mens rea standard to support an award of actual damages. Such award is automatic upon disclosure of the information after notice of cessation by a covered person.

Our State and Federal Constitutions demand more. Because Daniel’s Law contains content-based speech restrictions potentially chilling protected speech and does so on the basis that third parties may cause harm based on that protected speech, it is presumptively invalid, and subject to strict scrutiny. In the context of the sole issue before this Court, that mandates a high level of mens rea ensuring that the Law accomplishes its objectives through “the least restrictive

means among available, effective alternatives.” *Kratovil v. City of New Brunswick*, 261 N.J. 1, 216-17 (2025). As shown below, such alternatives exist, including some that have been adopted by the majority of the jurisdictions that have enacted their own versions of Daniel’s Law.

A. Daniel’s Law does not contain a mens rea requirement for the imposition of actual or liquidated damages.

N.J.S.A. 56:8-166.1(c)(1) provides for an award of actual damages, no less than \$1000.00 for each violation of Daniel’s Law. It does not contain language expressly indicating the need for a finding of mens rea to support the award. The Law does provide that liability for actual damages hinges on whether the alleged violator received actual notice from a “covered person” to desist from disclosing the covered person’s home address and unpublished telephone number. N.J.S.A. 56:8-166.1(a)(1), (2). This Court has recently characterized the notice requirement as ensuring “that the statute is not a trap for the unwary” and giving the recipient of the notice the “opportunity to identify the specific information subject to restrictions on disclosure and take steps to maintain the confidentiality of that information.” *Kratovil*, 261 N.J. at 27. But this is not the equivalent of a mens rea requirement. This simply establishes the condition precedent for the covered person to receive protection under the Law. Once notice is received, “liability follows automatically from publication.” *Fla. Star v. B.J.F.*, 491 U.S. 524, 539 (1989). Thus, plain language, the first step of any

venture into statutory construction, fails to find mens rea as an element of an award of actual or liquidated damages, and the analysis could stop there. *State v. Lopez-Carrera*, 245 N.J. 596, 613 (2021).

Venturing further and viewing section (c)(1) “in context with related provisions” of the Law, *DiProspero v. Penn*, 183 N.J. 477, 492 (2005), buttresses the plain language reading. The Legislature expressly provided for a mens rea standard in its delineation of the elements of liability for punitive damages, N.J.S.A. 56:8-166.1(c)(2) (“willful or reckless disregard of the law”); and criminal violations, N.J.S.A. 2C:20-31.1(c) and (d) (“knowingly, with purpose to expose another to harassment or risk of harm to life or property, or in reckless disregard of the probability of such exposure”).

While the maxim “‘*expressio unius est exclusio alterius*’ (express mention of one thing implies exclusion of all others). . . . [is a]t best . . . merely an aid in determining legislative intent,” *Allstate Ins. Co. v. Malec*, 104 N.J. 1, 8 (1986), its applicability here is buttressed by the Legislature’s 2021 amendment of the statute removing language that permitted recovery only under “circumstances in which a reasonable person would believe that providing that information would expose another to harassment or risk of harm to life or property.” L. 2020, c. 125, § 6. In 2023, the Legislature amended the Law again, replacing language that had made a damages award discretionary (“may award”) with language

making it mandatory (“shall award”). *L. 2023, c. 113, §6*. Such changes of language indicate “purposeful alteration.” *In re Civil Commitment of W.W.*, 245 N.J. 438, 449 (2021); *State v. McCray*, 243 N.J. 196, 212 (2020) (rejection of amendment indicates legislative intent not to include provisions in amendment.) No reading of Daniel’s Law, as amended, supports a construction that mens rea of any degree is an element of a claim for actual or liquidated damages.

B. The lack of a mens rea requirement in Daniel’s Law triggers a requirement of narrow tailoring of the statute and the use of least restrictive means to meet the Law’s objectives.

Whether Daniel’s Law is viewed as a content-based restriction or overbroad in that it threatens to suppress speech outside its intended sweep, the absence of a mens rea requirement subjects it to strict scrutiny, which means it must meet the standard of being narrowly tailored by using the least restrictive means to meet the Law’s objectives. This is so whether the issue is viewed under the First Amendment to the United States Constitution or Article 1, Paragraph 6 of the New Jersey Constitution. Indeed, the New Jersey Constitution’s protections for free expression are even stronger and broader than the First Amendment’s. *Green Party of N.J. v. Hartz Mountain Indus., Inc.*, 164 N.J. 127, 145 (2000); *State v. Schmid*, 84 N.J. 535, 557 (1980).

As the Third Circuit noted, there are two primary bases supporting this conclusion. (Pet., at 6.) First, Daniel’s Law is a content-based regulation. A law

is content-based if it “applies to particular speech because of the topic discussed or the idea or message expressed.” *Reed v. Town of Gilbert*, 576 U.S. 155, 163 (2015). Compare with *City of Austin v. Reagan Nat’l Advert. of Austin, LLC*, 596 U.S. 61, 69 (2022) (city’s regulation of signs as to whether they were on- or off-premises without reference to contents of signs was content-neutral). See, e.g., *Jackson v. Whitepages, Inc.*, Nos. 1:24-cv-80, 1:24-cv-81, 1:24-cv-88, 1:24-cv-96, 1:24-cv-102, 2025 WL 2407201, at *8 (N.D. W. Va. Aug. 19, 2025) (finding that West Virginia’s Daniel’s Law is a content-based restriction). Because Daniel’s Law is content based, it is “presumptively invalid,” *State v. Hill*, 256 N.J. 266, 281 (2024), subject to strict scrutiny, and must be narrowly tailored to meet a legitimate state interest. *Reed*, 576 U.S. at 163.

Second, “the lack of a mens rea requirement risks chilling protected speech that is not covered by Daniel’s Law.” (Pet., at 7.) Unlike other facial challenges to statutes, those based on overbreadth, i.e., that a statute will prohibit protected speech as well as non-protected speech, do not require a showing that there are no circumstances when the statute may be validly imposed. As the Supreme Court recently explained, the standard for evaluating facial unconstitutionality in the First Amendment context is “less demanding though still rigorous,” in light of the need to provide “breathing room for free expression.” *Moody v. NetChoice, LLC*, 603 U.S. 707, 723 (2024) (quoting

United States v. Hansen, 599 U.S. 762, 769 (2023)). A showing of prohibition of a substantial amount of protected speech is sufficient. *State v. Higginbotham*, 257 N.J. 260, 277-78 (2024) (quoting *Hansen*, 599 U.S. at 770.)

While there may be instances where enforcing the Law’s disclosure prohibitions will not threaten protected speech, i.e., situations where the person disclosing the information knows that there is a likelihood of risk of harm to person or property, there are many others where there is a substantial risk of a threat to protected speech. These range from issues relating to environmental harm emanating from a specific piece of property, to property tax issues, to income tax issues based upon a claim of a piece of property being one’s primary residence, to other crimes or bad acts occurring on a piece of property, to simply instances where there is little likelihood of injury to person or property flowing from the disclosure, to name just a few. The risk of “self-censorship” by virtue of Daniel’s Law is great, supporting the need for a “showing of a culpable mental state.” *Counterman v. Colorado*, 600 US. 66, 75 (2023).

That Daniel’s Law, as this Court ruled in *Kratovil*, furthers a state interest of the “highest order” does not end the inquiry into its constitutionality. 261 N.J. at 29. The Court must determine whether the Law “is narrowly tailored to promote the state interest it was enacted to serve,” applying the strict test set forth in *Ashcroft v. ACLU*, 542 U.S. 656, 666 (2004). *Kratovil*, 261 N.J. at 26:

In considering this question, a court assumes that certain protected speech may be regulated, and then asks what is the least restrictive alternative that can be used to achieve that goal. The purpose of the test is not to consider whether the challenged restriction has some effect in achieving Congress' goal, regardless of the restriction it imposes. The purpose of the test is to ensure that speech is restricted no further than necessary to achieve the goal, for it is important to ensure that legitimate speech is not chilled or punished. For that reason, the test does not begin with the status quo of existing regulations, then ask whether the challenged restriction has some additional ability to achieve Congress' legitimate interest. Any restriction on speech could be justified under that analysis. Instead, the court should ask whether the challenged regulation is the least restrictive means among available, effective alternatives.

[*Ashcroft v. ACLU*, 542 U.S. at 666.]

The burden is on the proponent of the law to meet this standard. *Edenfield v. Fane*, 507 U.S. 761, 770 (1993).

C. A high level of mens rea is necessary to achieve narrow tailoring in Daniel's Law.

“Mens rea,” Latin for “guilty mind,” is primarily a creature of criminal law. *See, e.g., Mens Rea*, Legal Information Institute: Cornell Law School, https://www.law.cornell.edu/wex/mens_rea (last visited Dec. 22, 2025). The levels of mens rea have been described as “three basic choices:” (1) the most culpable: purpose, i.e., a conscious desire for the result; (2) knowledge, i.e., when a person is aware that the result of their action is very certain to follow;

and (3) recklessness, the lowest level of mens rea, i.e., a conscious disregard for a substantial risk emanating from their action. *Counterman*, 600 U.S. at 77, 78-80 (analyzing mens rea requirements in incitement, defamation, and obscenity lines of cases and concluding that “[t]he same reasoning counsels in favor of requiring a subjective element in a true-threats case,” and settling on a standard of recklessness). Other authorities have added negligence, i.e., acting carelessly despite knowing the risk or being unaware of the risk when they should have known the risk. Legal Information Institute: Cornell Law School, *supra*.

Despite its criminal law origins, mens rea concepts do enter the realm of civil liability, particularly when dealing with liability infringing on constitutional rights. That the issue of intent is raised in the context of a civil case is of no moment. “The test is not the form in which state power has been applied but, whatever the form, whether such power has in fact been exercised.” *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 265 (1964). Of importance to this Court’s consideration of the issue is the Supreme Court’s concerns with the lack of a mens rea element in *Florida Star*, where it observed:

Unlike claims based on the common law tort of invasion of privacy, see Restatement (Second) of Torts § 652D (1977), civil actions based on § 794.03 require no case-by-case findings that the disclosure of a fact about a person's private life was one that a reasonable person would find highly offensive. On the contrary, under the *per se* theory of negligence adopted by the courts below, liability follows automatically from

publication. This is so regardless of whether the identity of the victim is already known throughout the community; whether the victim has voluntarily called public attention to the offense; or whether the identity of the victim has otherwise become a reasonable subject of public concern—because, perhaps, questions have arisen whether the victim fabricated an assault by a particular person. Nor is there a scienter requirement of any kind under § 794.03, engendering the perverse result that truthful publications challenged pursuant to this cause of action are less protected by the First Amendment than even the least protected defamatory falsehoods: those involving purely private figures, where liability is evaluated under a standard, usually applied by a jury, of ordinary negligence. We have previously noted the impermissibility of categorical prohibitions upon media access where important First Amendment interests are at stake. More individualized adjudication is no less indispensable where the State, seeking to safeguard the anonymity of crime victims, sets its face against publication of their names.

[*Fla. Star*, 491 U.S. at 539-40 (citation modified).]

Here, the subjective, individualized adjudication for liability based on the content-based overbroad restrictions in Daniel’s Law can be met only by a high mens rea standard and procedures that give life to that high standard.

There is another basis for mandating a high mens rea standard for actual or liquidated damages under Daniel’s Law. The restrictions on speech under the Law are justified not because the speech itself is harmful, but rather because theoretically the speech could lead third parties to cause harm. “The normal method of deterring unlawful conduct is to impose an appropriate punishment

on the person who engages in it. . . . [I]t would be quite remarkable to hold that speech by a law-abiding possessor of information can be suppressed in order to deter conduct by a non-law-abiding third party.” *Bartnicki v. Vopper*, 532 U.S. 514, 529-30 (2001). In line with this reasoning, this Court recently confirmed that the State must prove that a defendant “intended” that his otherwise “innocuous” letter led a witness to testify falsely in order to support a witness tampering charge. *State v. Hill*, 256 N.J. at 292.

A simple negligence standard comes nowhere near the protections owed the regulated speech under Daniel’s Law. At most, it provides a defense for persons who are unable to stop disclosures within the period after the required notice, without regard to the individual’s intention to disclose, the likelihood of injury to the covered person’s person or property, or other circumstances that justify the disclosure, such as a direct connection to an issue of public concern.

In this connection, amicus recognizes that this Court ruled in *Kratovil* in its analysis of Daniel’s Law as applied that the Legislature could have carved out an exception for communications on matters of public concern and would not read such an exception into the statute. *Kratovil*, 261 N.J. at 29. But the Court did not make this ruling in the context of consideration of the necessity of a showing of mens rea. In fact, in its comprehensive analysis of the *Daily Mail* line of cases (*Smith v. Daily Mail Publishing Co.*, 443 U.S. 97 (1979); *Florida*

Star v. B.J.F., 491 U.S. 524 (1989)), the Court did not directly address the *Florida Star* Court’s criticism of negligence per se and lack of scienter standards quoted above. *Fla. Star*, 491 U.S. at 539-40. Nor did it discuss what level of mens rea would be the least restrictive means of achieving the Legislature’s goal.

D. There are ways to narrowly tailor the Law so as to provide a high degree of mens rea while still meeting the Legislature’s goal.¹

More narrowly tailoring Daniel’s Law so as to include a high standard of mens rea can occur through a combination of an express standard and procedures to ensure the implementation of that standard in a way that both protects speech and satisfies the State’s interest in protecting covered persons from harm.

One example of a less restrictive means of meeting the goals of Daniel’s Law was in the original law: liability for actual or liquidated damages had to be based on a showing of “circumstances in which a reasonable person would believe that providing that information would expose another to harassment or risk of harm to life or property.” *L. 2020, c. 125, § 6*. Other states require a higher mens rea standard in their cognate laws – and therefore apply a law more

¹ Amicus is not addressing here facial constitutional infirmities in Daniel’s Law other than those related to the mens rea issue certified to this Court by the Third Circuit. Additionally, even if a higher mens rea standard were added to the Law and met in a given case, the Law might still be unconstitutional as applied, particularly when chilling or prohibiting speech of public concern.

narrowly tailored on that issue than does New Jersey.²

The higher mens rea standard may not be sufficient in and of itself “to ensure that speech is restricted no further than necessary” to achieve the State’s goal. *Ashcroft*, 542 U.S. at 666. At what stage that standard is applied may have bearing on the efficacy of the standard, just as Atlas Data and the Attorney General argue throughout their briefs that the notice provision in Daniel’s Law bears on the efficacy of a negligence standard.

There are at least 12 jurisdictions other than New Jersey that have enacted Daniel’s Laws similar to New Jersey’s, that provide for some sort of civil relief for their violation, either equitable or damages or both. Four of them do not allow an award of damages for violation of the law at all, and limit relief to declaratory and injunctive relief, although permitting an award of costs and attorney’s fees if the injunction is issued. Hawaii: Haw. Rev. Stat. § 92H-5 (2024); Illinois: 705 Ill. Comp. Stat. 90/2-5 (2012); Missouri: Mo. Rev. Stat. § 476.1308 (2025); Wisconsin: Wis. Stat. § 757.07 (2025). Four of them allow for damages or fines only upon the knowing violation of a court’s order for declaratory injunctive relief prohibiting disclosure of information under the Law. Federal: Daniel Anderl Judiciary Security and Privacy Act, Pub. L. No.

² See, e.g., Wash. Rev. Code § 4.24.680 (2024) (disclosure must “pose[] an imminent and serious threat to the protected person’s safety”).

117-263, § 5931, 136 Stat. 2395, 3458-69 (2022); California: Cal. Gov't Code § 7928.225 (West 2025); New York: N.Y. Judiciary Law § 859(4) (McKinney 2024); Oklahoma: Okla. Stat. Ann. tit. 20, §3017 (West 2023).³ In addition to New Jersey, only Delaware, Maryland, Washington, and West Virginia allow the recovery of damages for a violation of a Daniel's Law without a prior ruling by a court supporting the prohibition against disclosure, and as noted above, Washington imposes a high mens rea standard than does New Jersey. Del. Code. Ann. tit. 10, § 1923 (West 2022); Md. Code Ann. Cts. & Jud. Proc. § 3-2303(a)-(c) (West 2024); Wash. Rev. Code § 4.24.700 (2006); and W.Va. Code § 5A-8-24(e) (2021). West Virginia's law has been declared unconstitutional partially on that basis. *Jackson*, 2025 WL 2407201, at *20. As that court observed,

[t]he least restrictive means analysis in this case is particularly straightforward because, rather than dealing in hypothetical alternatives, the court has the benefit of comparing West Virginia's Daniel's Law to a variety of analogous state and federal statutes that are more narrowly tailored and burden far less speech in pursuit of the same compelling legislative goal.

[*Id.* at *16.]

That 8 of the 12 other jurisdictions with Daniel's Laws do not allow for damages at all or without violation of a prior ruling by a court ordering

³ Of these, California and New York allow for attorney's fees and costs in successfully procuring an injunction.

injunctive relief suggests that such provisions are important to the narrow tailoring of these Laws on the mens rea issue. Coupled with an express higher mens rea standard, such tailoring allows for damages only after it is clear that there is sufficient basis to apply the statute so as to prohibit the disclosures and that the person who is violating the Law is doing so with knowledge of the likelihood of injury to the covered person.

Nor does this structure reduce the effectiveness of the Law more than necessary to protect free speech rights. The burden of going into court in the first instance to seek an injunction is no greater than that in going into court in the first instance to seek damages. Presumably, it will be the rare situation where someone will intentionally violate a court order, particularly when doing so would subject them to punitive damages or criminal liability under the present wording of New Jersey's Daniel's Law.

II. This Court should inform the Third Circuit of its view that the level of mens rea that is "required" in Daniel's Law is higher than negligence, and either offer its suggested constitutional construction of the Law as including that higher standard, or advise the Third Circuit that it is not offering a constitutional construction of the Law.

This Court has approached how to deal with unconstitutional statutes in varied manners. In *State v. Pomianek*, 221 N.J. 66 (2015), the Court confronted an issue similar to that at bar, whether the absence of mens rea in a statute, N.J.S.A. 2C:16-1(a)(3), making it a crime if the victim reasonably believed that

the defendant committed the offense on account of the victim's race or other protected categories, rendered the statute unconstitutional. The Appellate Division had found the statute unconstitutional, and, operating under the principle of "constitutional avoidance," had construed it to include a mens rea requirement. *State v. Pomianek*, 429 N.J. Super. 339, 343-44 (App. Div. 2013). Although this Court agreed with the Appellate Division on the unconstitutionality of the statute, it ruled that the Appellate Division had erred by rewriting the statute, partially because the Legislature had specifically decided not to include the mens rea requirement, and that the "doctrine of constitutional avoidance comes into play when a statute is susceptible to two reasonable interpretations, one constitutional and one not." *Pomianek*, 221 N.J. at 90-91. Therefore, rather than rewrite the statute, the Court struck the constitutionally deficient subsection (a)(3). *Id.* at 91. Compare with *State v. Carter*, 247 N.J. 488, 513 (2021); *State v. Bailey*, 251 N.J. 101, 127 (2022).

On its face, *Pomianek* would seem to bear some similarities to this case, and would bar judicial surgery along the lines suggested by amicus, except for important distinguishing factors. First, the Appellate Division's insertion of the mens rea requirement had reconfigured section (a)(3) of the bias statute "to read as a mirror image of subsection (a)(1)," which rendered the new provision "redundant" and serving "no purpose." *Pomianek*, 221 N.J. at 91. A construction

of Daniel's Law as containing a higher standard of mens rea than negligence and procedures to implement that standard here does not create redundancy in the statute, so long as that standard is lower than the punitive damages or criminal liability mens rea standards. Second, and more important, unlike *Pomianek*, this case does not present the Court with the opportunity to strike the offending statutory provision. Rather, by virtue of the Court's acceptance and reformulation of the Third Circuit's certified questions of law, the Court has jurisdiction of the case only to determine how to construe the statute.

The other line of cases, what might be called the "salvage" cases, may be more appropriate for disposition of this case. This Court has repeatedly held that, notwithstanding the absence of ambiguity in a statute, it has the power to supply a "stop-gap constitutional interpretation" if consistent with its view that the Legislature would rather the statute survive than die. *State v. De Santis*, 65 N.J. 462, 472-73 (1974) (incorporating notice and warning provisions into obscenity statute); *see also State v. Zito*, 54 N.J. 206, 216 (1969) (deleting "failure to give a good account" as element in criminal statute); *State v. Profaci*, 56 N.J. 346, 349-50 (1970) (inserting elements into incitement-crime statute, including element of intent).

Most pertinent in this regard is *State v. Comer*, 249 N.J. 359 (2022). There, this Court was confronted with the issue of the constitutional limits on the

sentencing of juveniles. The Court balanced the Legislature's ultimate responsibility to set sentencing parameters with the Court's "authority to act to protect statutes from being invalidated on constitutional grounds." 249 N.J. at 370. To that end, pending legislative action, this Court incorporated procedures in the juvenile sentencing regimen allowing juvenile offenders convicted under the law to petition for a review of their sentences after having served twenty years in prison. *Id. Comer* has particular relevance here, because one part of the least restrictive means that amicus is presenting to this Court is the construction of Daniel's Law to include a new procedure: violation of an injunction against disclosure as a prerequisite to the assessment of actual or liquidated damages.

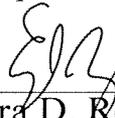
Amicus recognizes that the Court may be reluctant to construe Daniel's Law, even as a "stop-gap" measure, as including a mens rea standard similar to or higher than that which the Legislature has removed from the statute, and/or as including procedural restrictions on a damages award similar to that in other jurisdictions. The point amicus presses upon the Court is that it cannot construe the Law in a way that is unconstitutional. Daniel's Law without any mens rea requirement for the assessment of damages is unconstitutional, as is Daniel's Law with a mens rea requirement not higher than negligence. It would appear to amicus that this Court's choice is to advise the Third Circuit that the mens rea that is "required" is higher than negligence and either advise the Third Circuit

of the mens rea terms that this Court is adding to the Law to salvage the statute on that issue or advise the Third Circuit that it chooses not to do so in the context of this case, leaving the ramifications of that decision to the Third Circuit and the Legislature.

CONCLUSION

For the reasons set forth above, this Court should inform the Third Circuit that as a matter solely of statutory construction, it construes Daniel's Law as not containing any mens rea requirement as a prerequisite to an award of actual or liquidated damages, that a higher mens rea standard than negligence is constitutionally required, that to salvage the statute's constitutionality, it would construe the statute as including such higher mens rea standard and such other narrowly tailored terms as necessary to effectuate such standard, or alternatively that it is not rendering a constitutional construction because of the procedural constraints of this case.

Respectfully submitted,



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