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SUPREME COURT OF NEW JERSEY
091145

A-1

ATLAS DATA PRIVACY CORP., : ON CERTIFIED QUESTION OF LAW
 JANE DOE 1; JANE DOE 2; : FROM THE UNITED STATES COURT
 EDWIN MALDONADO; POLICE : OF APPEALS FOR THE THIRD
 OFFICER SCOTT MALONEY; : CIRCUIT
 JUSTYNA MALONEY; PATRICK :
 COLLIGAN; PETER ANDREYEV; : Docket Nos. 25-1555 through -1578,
 and WILLIAM SULLIVAN, : 25-1580 through -1593, 25-1676,
 : 25-1677

25-1-9

Plaintiffs-Respondents,

Third Circuit Panel:

ATTORNEY GENERAL OF
NEW JERSEY,

Hon. Stephanos Bibas
Hon. Arianna J. Freeman
Hon. Cindy K. Chung

Intervenor-Respondent,

v.

WE INFORM, LLC;
 INFOMATICS, LLC; THE
 PEOPLE SEARCHERS, LLC; DM
 GROUP, INC.; DELUXE CORP.;
 QUANTARIUM ALLIANCE, LLC;
 QUANTARIUM GROUP, LLC;
 YARDI SYSTEMS, INC.; DIGITAL
 SAFETY PRODUCTS, LLC; CIVIL
 DATA RESEARCH, LLC;
 SCALABLE COMMERCE, LLC;
 NATIONAL DATA ANALYTICS,
 LLC; LABELS & LISTS, INC.;

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SUPREME COURT
OF NEW JERSEY

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HOLDINGS, INC.; THOMSON :
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APPLICATIONS, INC.; :
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SYNAPTIX TECHNOLOGY, LLC; :
VOTERRECORDS.COM; JOY :
ROCKWELL ENTERPRISES, :
INC.; FORTNOFF FINANCIAL, :
LLC; E-MERGES.COM, :
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ROCKETREACH, LLC; :
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PROPERTYRADAR, INC.; THE :
ALESCO GROUP, LLC; :
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In accordance with the Court's Order filed on October 21, 2025, review is limited to the following question: What mental state, if any, is required to establish liability under Daniel's Law, N.J.S.A. 56:8-166.1?

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PRELIMINARY STATEMENT

Plaintiffs-Respondents (“Atlas”) and the Attorney General (collectively, “Respondents”) concede there is no mens rea requirement in Daniel’s Law’s text. Both argue one should still be found, yet they offer divergent standards. Though Atlas did not allege in its complaints that any mens rea was required for it to collect liquidated damages, Ja502-06, it now advocates a three-part test that has both a knowledge and a “negligent disregard” standard, Pb15-16. The Attorney General counters with three other possible standards, arguing variously that the Law imposes a “duty,” provides a “reasonableness defense,” and suggests a framework of “negligence per se.” AGb13-14, 17, 32.

Statutory interpretation is not a Rorschach test. When the text is clear and unambiguous, as it is here, it must be applied as written. The amended version of the Law’s civil claim for damages includes no mens rea standard. As Respondents recognize, that is a problem under the First Amendment. They thus ask the Court to “adopt” a standard under the guise of constitutional avoidance. The Attorney General, however, largely avoids discussing what is required by the Constitution, while Atlas’s cursory discussion of the First Amendment is wrong. Both essentially advocate for a new category of speech that is unprotected, as long as the speaker has notice that the subject does not want the words spoken. No precedent allows such a regime.

Nor is this case controlled by Kratovil v. City of New Brunswick, 261 N.J. 1 (2025), as Respondents suggest. Kratovil concerned the Law’s application to a declaratory-judgment plaintiff who received a notice from a known authorized person about a known covered person’s known home address. Id. at 6-10. The government had erroneously disclosed the address to the plaintiff in violation of Daniel’s Law, and the plaintiff was informed that subsequent disclosure “would put [the covered person] and his family at risk.” Id. at 6-10, 28. This Court held that, under those “specific circumstances,” the Law was “not a trap for the unwary” and could be applied to block the plaintiff from publishing the address freely online. Id. at 26, 27. Since the covered person had “taken no action of any kind” against the plaintiff, id. at 8, this Court had no need to address the question certified here, which asks whether the Law’s action for damages includes a mens rea requirement. It does not.

The situation demands a legislative fix. The Legislature needs to enact a statute with an explicit mens rea. That is precisely what happened earlier this year when the deepfake law was enacted. Respondents do not explain why the executive and legislative branches required that law to explicitly include a heightened mens rea to comply with the First Amendment, but no similar standard is required here. Nor do they explain why the Legislature would seek to implement a lower standard for imposing money damages in Daniel’s Law

through silence. That silence answers the certified question: As currently written, the Law’s action for money damages does not require any mens rea.

LEGAL ARGUMENT

I. THE TEXT UNAMBIGUOUSLY IMPOSES STRICT LIABILITY.

Respondents lobby the Court for a mens rea standard by pushing various theories of statutory interpretation but disregard its first two steps: What does the text say, and is it ambiguous? See Db18. Here, the text includes no mens rea, and there is no ambiguity. That ends the inquiry. See Pb12 (text is “best indicator of [legislative] intent”); State v. Carter, 247 N.J. 488, 513 (2021) (cited at Pb3, 12) (“If the text of a law is clear, the court’s task is complete.”).

Instead of focusing on the Law’s plain language, Respondents invite the Court to play detective in search of a mens rea through “textual and structural clues.” AGb15. That invitation is foreclosed by this Court’s rule that it will not “presume that the Legislature intended something other than that expressed by way of the plain language.” State v. Higginbotham, 257 N.J. 260, 280 (2024). In any event, none of the clues provides the answer Respondents seek.

First, Respondents point to the word “violates.” AGb15; Pb21-22. But their argument is circular; the definition of “violate” is to “break” or “breach” the law. AGa066-67. That definition says nothing about what mental state a violator must have to impose damages. Their argument also ignores the full

statutory text, which says an entity “shall be liable,” and “the court shall award” damages, when the entity “violates subsection a.” -- i.e., fails to comply with a nondisclosure notice. N.J.S.A. 56:8-166.1(a), (b), (c). The Law does not require an entity to have acted negligently to be liable or as a precondition to assess damages. It categorically imposes liability and damages based solely on a violation of subsection a.’s “shall not disclose” command.

Second, Respondents contend a negligence standard can be found in the Law’s notice requirement and compliance period. See, e.g., Pb22; AGb20. But again, these provisions say nothing about the degree of fault required to impose damages. Db19-20. Nor can their violation equate to negligence, as “proof of a bare violation of a statutory duty ordinarily is not the same as proof of negligence.” Eaton v. Eaton, 119 N.J. 628, 642 (1990). If a recipient “violates” the Law by disclosing information subject to a notice after ten business days, it “shall be liable.” That is strict liability. Db28.¹

Third, Respondents argue that because the Law’s punitive damages provision requires “willful or reckless disregard,” the “natural assumption is”

¹ The Attorney General notes that in declaring West Virginia’s Daniel’s Law unconstitutional, a federal district court addressed this State’s Law “in depth.” AGb5 n.3 (discussing Jackson v. Whitepages, Inc., 798 F. Supp. 3d 583 (N.D. W. Va. 2025), appeal filed, No. 25-2122 (4th Cir. Sept. 19, 2025)). But whether this Law’s “opt-in” provision is more “narrowly tailored” than West Virginia’s “opt-out” regime, ibid., has no bearing on whether this State’s Law has a mens rea requirement.

that, for liquidated damages, the Legislature “wanted to” impose a negligence standard. Pb26; AGb18-19. Statutory interpretation is not built on unstated assumptions. It is built on text. The text here says nothing about negligence.

The Legislature’s inclusion of an explicit mens rea standard in the Law’s provision for punitive damages -- as well as in its provisions for crimes and compliance by government custodians, Db20-21 -- shows “the Legislature knows how to write [a] . . . statute” with a mens rea. In re R.H., 258 N.J. 1, 12 (2024) (citation omitted, alterations in original). The absence of one for an award of damages underscores the Legislature’s intent to impose strict liability. As Defendants noted in their opening brief, the Legislature has enacted numerous speech restrictions that include explicit mens rea requirements. Db24-26. Respondents do not point to a single statute where such a standard has been imposed silently.

Finally, Respondents suggest the Court can use the doctrine of constitutional avoidance to “interpret[] the statute to adopt” a negligence standard, Pb30, saying “this kind of targeted surgery would involve merely a scalpel,” AGb43-44. But a scalpel is used to cut. Here, Respondents are asking the Court to transplant a new element into the Law’s body. That is improper under State v. Pomianek, 221 N.J. 66, 91 (2015).

Respondents seek to limit Pomianek and its line of precedent only to

“preclude[] courts from reading the same state-of-mind requirements found in one provision of a statute into another provision that omits that requirement.” Pb25; AGb19. Under their theory, courts can insert terms into statutes so long as those terms appear nowhere else in the statute. That argument ignores that the text is the “best indicator” of legislative intent, Pb12, and it has no support in precedent. Indeed, it runs counter to this Court’s recent unanimous holdings in Usachenok v. Department of Treasury, 257 N.J. 184, 201 (2024) (refusing to add “substantial language”), and in M.R. v. N.J. Department of Corrections, 261 N.J. 322, 341-43 (2025) (refusing “to write in additional qualifiers”).

The closest Respondents come to offering support is their claim that State v. Comer “confirmed the continuing vitality of State v. De Santis, 65 N.J. 462 (1974).” Pb33. Comer, however, did not add any substantive element to the sentencing statute. 249 N.J. 359 (2022). It expressly allowed courts to continue sentencing people under the statute and “added procedures” permitting prisoners to later petition a court to review their sentences to ensure their continued incarceration is constitutional. Id. at 401-02.

Likewise, the fifty-year-old De Santis case briefly cited in Comer did not “adopt” a new element; it recognized that a then-existing statute’s definition of obscenity was unconstitutional and held that, going forward, the obscenity outlawed by the statute must be defined in accord with recent Supreme Court

precedent. De Santis, 65 N.J. at 472-74. That holding was in line with the legislative history, which showed “the legislative desire was to restrict the distribution of obscene materials to the full extent permitted by the Constitution as expounded by the Supreme Court.” Id. at 464-66, 473 (discussing legislative efforts to comply with uncertain, evolving precedent).

Here, in sharp contrast to De Santis, Atlas seeks to hold Defendants liable for hundreds of millions of dollars in damages by asking the Court to “adopt” a mens rea standard with no legislative grounding whatsoever and in the face of amendments enacting a strict liability regime.

II. THE LEGISLATURE INTENDED STRICT LIABILITY.

Respondents recognize that the original Daniel’s Law allowed a covered person to recover damages for disclosures only when “a reasonable person would believe that providing that information would expose another to harassment or risk of harm to life or property.” Pb36; AGb21-22. They also acknowledge that the Law was amended to remove that “reasonable person” standard. Pb36; AGb23. Atlas argues removal of that fault standard in the 2021 amendments “says nothing about whether the Legislature intended . . . to require proof of negligence,” pointing to those amendments’ “notice based” regime, Pb37-38, which the Attorney General claims “operationaliz[ed] negligence” by creating some sort of “duty,” AGb23-25.

But even if the 2021 amendments created a “duty,” as the Attorney General hypothesizes, the Law still said nothing about any mens rea that must accompany a violation of that duty to support an award for damages, and it certainly did not mention negligence. Braitman v. Overlook Terrace Corp., 68 N.J. 368, 385 (1975) (cited at AGb31) (“violation of a statutory duty of care is not conclusive on the issue of negligence”). Instead, after those amendments, the Law mandated an entity “shall be liable” when it “violates” the restriction that it “shall not disclose” -- i.e., by disclosing or making available -- a covered person’s address after receiving a notice. That is strict liability.

Even if the 2021 changes set up a “clearer and more forgiving” regime, as the Attorney General claims, AGb23, that regime is far from what “exists today,” id. at 25. Then, the Law required a covered person to obtain approval from the State’s Office of Information Privacy (“OIP”) before the person could submit a notice. AGa078, 090. That requirement ensured requests were made only by covered persons and gave recipients an efficient mechanism to confirm requesters’ status. In addition, under the 2021 Law, only a covered person could bring a claim, and monetary damages were awarded at the court’s discretion. AGa078. Neither Respondent mentions these guardrails.

In 2023, the Legislature removed them. Following lobbying by Atlas’s litigation lawyers, the Legislature deleted the requirement of OIP approval,

placed the power of enforcement in the hands of profit-seeking assignees, and mandated that courts “shall award” damages. L. 2023, c. 113, § 6. Those amendments created the trap that allowed Atlas to send thousands of spam-style emails over the winter holidays to unwary entities and then sue them for hundreds of millions of dollars in damages. Respondents have nothing to say about those amendments or the Legislature’s “purposeful alteration in [the] substance of the law” to impose the mandatory liquidated damages awards Atlas seeks to exploit.² In re Commitment of W.W., 245 N.J. 438, 449 (2021).

The result of the various amendments is “an outlier statute,” AGb 25 -- a one-of-a-kind punitive law that is far from “forgiving,” id. at 23. It constitutes the “heightened deterrence” emblematic of strict liability laws. Pb27.

Respondents assert that strict liability is a “rarity in tort law, reserved for . . . parties with asymmetric abilities to prevent the relevant harm” in situations involving “abnormally dangerous activities.” AGb40; see also Pb27. In Respondents’ view, that is exactly the purpose of the Law.³

² Atlas tells the Court that “many Defendants are still not compliant with the law,” but its sole support for that statement is an allegation made in its complaint nearly two years ago. Pb8 (citing Ja491). Atlas does not dispute that, since filing suit, it has not sought to enjoin a single disclosure.

³ For instance, the Attorney General says the Law protects “a particularly at-risk population” against “foreseeably greater risks” in places “where they are most vulnerable,” while “data brokers” have “powerful computerized tools and a wealth of individualized data to comply within hours.” AGb5, 16, 37, 44.

Nevertheless, Respondents argue that the Law’s use of the phrases “shall be liable” and “shall award” do not equate to strict liability. First, the Attorney General notes those phrases also are used in statutes “where a mental state is expressly required.” AGb20. That is the point -- the Legislature knows how to pass a law that includes a mens rea requirement. The current Law’s text includes none, underscoring that the Legislature intended no mens rea requirement. See, e.g., M.R., 261 N.J. at 341 (“If the Legislature intended that diagnoses be rendered solely through ‘physical’ examinations, it would have stated as much, as it has done on numerous other occasions.”).

Next, Respondents argue, with respect to the Dog Bite Statute discussed in Goldhagen v. Pasmowitz, 247 N.J. 580, 594 (2021), that strict liability attaches not through its “shall be liable” language, but through text imposing liability “regardless of the former viciousness of such dog or the owner’s knowledge.” AGb20-21; Pb35-36. Their argument ignores what Goldhagen says. There, this Court reviewed prior case law that “underscores the Legislature’s intent to impose a strict liability standard.” Goldhagen, 247 N.J. at 594. It highlighted Tanga v. Tanga, 94 N.J. Super. 5 (App. Div. 1967), where “the Appellate Division rejected the contention that a plaintiff” “must prove the dog owner’s negligence” under the statute. Goldhagen, 247 N.J. at 594-95. In Tanga, the dog owner’s “sole basis for [contending] that [the

statute] was not intended to relieve the victim of the necessity of showing negligence [wa]s the ‘regardless’ clause of the statute,” 94 N.J. Super. at 12, mirroring what Respondents argue here. The Appellate Division explained, however, that the “‘regardless’ clause” showed “the Legislature was simply taking pains to emphasize its intent to ordain liability in all cases of dog-bite.” Ibid. The court emphasized that what made “the statute sound[] in unqualified liability” was “the absolutism of the language in the act preceding the ‘regardless’ clause.” Ibid. That language says the owner “shall be liable” when a dog “shall bite a person,” ibid., and its unqualified nature is what “imposes strict liability,” Goldhagen, 247 N.J. at 595.

So too here. Like the Dog Bite Statute, Daniel’s Law states that an entity “shall be liable” when it “violates” the restriction that it “shall not disclose” a covered person’s address. That is strict liability.

III. A MENS REA CANNOT BE ADDED THROUGH COMMON LAW.

Failing to find support for a mens rea standard in either the text or legislative history, Respondents claim one can be found in “common law analogues.” AGb27. But because the Law’s text “provide[s] a definitive answer,” the Court need not and should not draw from common law. Ibid. (quoting Evans-Aristocrat Indus., Inc. v. City of Newark, 75 N.J. 84, 92 (1977)); see also 2B Sutherland Statutory Construction § 50:1 (cited at Pb27)

(common law can be used where statute’s text is “capable of more than one construction”). Regardless, there is no “common law analogue” here, and none of Respondents’ three theories demonstrates otherwise.

First, Respondents contend “the Legislature is presumptively aware of the common law and drafts against that backdrop,” AGb26, and in line with “common-law principles,” Pb20. But the cases they cite apply those principles only when a statute incorporates or references the common law.⁴ Daniel’s Law does neither. It makes no mention of common law and was enacted because covered persons had no preexisting remedy. See, e.g., AGb4-6, Pb1. As this Court emphasized earlier this year, “statutes are not ‘subservient to the common law when the two are in conflict.’” States Newsroom Inc. v. City of Jersey City, 261 N.J. 392, 419 (2025) (internal citation omitted).

Second, Respondents contend the publication of private facts tort provides a common-law backdrop because it comes “closest,” AGb27, arguing

⁴ See, e.g., Maison v. N.J. Transit Corp. 245 N.J. 270, 290 (2021) (cited at AGb20) (Legislature aware of heightened duty imposed on common carriers under common law when it enacted Tort Claims Act, making public entities liable “in the same manner and to the same extent as . . . private individual[s] under the same circumstances”); Lehmann v. Toys R Us, Inc., 132 N.J. 587, 617-18 (1993) (cited at Pb20) (interpreting statute providing that “all remedies available in common law tort actions shall be available”); Houman v. Mayor & Council of Borough of Pompton Lakes, 155 N.J. Super. 129, 161-63 (App. Div. 1977) (cited at Pb28) (Open Public Meetings Act’s provision that public body “may take corrective or remedial action” recognized “that common law principles of ratification would apply to any remedial action” because body “had a common law right to ratify its procedurally defective acts”).

Daniel's Law is a "modern codification of this longstanding tort," *id.* at 30; Pb28 (the Law "codif[ied] a preexisting common-law right"). But the tort protecting the "common-law right of privacy" does not extend to disclosure of home "addresses of public employees" -- or anyone else. Tobin v. Mich. Civil Serv. Comm'n, 331 N.W.2d 184, 191 (Mich. 1982); see also Philip E. Hassman, Public Addresses as Well as Name of Person as Invasion of Privacy, 84 A.L.R.3d 1159 § 1 (1978) [hereinafter Hassman] (explaining that, "under the Restatement, the mere publication of a person's address, no matter what the circumstances, could not constitute an invasion of his privacy," and collecting cases).⁵ Indeed, unlike the kinds of information protected by the private facts tort, addresses and phone numbers have historically been available publicly, including in public records. See Db4-5; Restatement (Second) of Torts § 652D cmt. b (1977) ("there is no liability for giving publicity to facts about the plaintiff's life that are matters of public record").

⁵ Respondents cite only two cases from anywhere allowing such claims. Pb28; AGb29. Both involved disclosures of the identity and location of individuals who faced uniquely high dangers in targeted situations. See Capra v. Thoroughbred Racing Ass'n of N Am., Inc., 787 F.2d 463, 464-45 (9th Cir. 1986) (individuals in witness protection, for whom a jury would need to "consider the extent to which the parties voluntarily exposed themselves"); Hyde v. City of Columbia, 637 S.W.2d 251, 258 (Mo. Ct. App. 1982) (abduction victim whose dangerous assailant was at large). Those cases are aberrations. Hassman, § 1 (even publication "with the expectation that it would bring persons to that address to molest and harass the occupants" would "not qualify for recovery").

Respondents elide the Law’s disruption of that centuries-old tradition, focusing instead on cases recognizing people’s “nontrivial privacy interest” in address information possessed by the government. Pb29 (quoting Paul P. v. Verniero, 170 F.3d 396, 404 (3d Cir. 1999)); see also Doe v. Poritz, 142 N.J. 1, 88 (1995) (cited at Pb29) (describing interest as “diminished”). But that interest, which might prevent government disclosures in certain instances, has nothing to do with whether address information is “actually private,” which is the threshold question for the private facts tort. AGb27 (quoting Romaine v. Kallinger, 109 N.J. 282, 297 (1988)) (emphasis added). The differential treatment accorded to information held by the government versus a private actor is highlighted by a case both Respondents cite, G.D. v. Kenny, 205 N.J. 275 (2011) (cited at AGb27; Pb13, 20). There, this Court relied on “common-law and constitutional principles respecting free speech,” as Atlas claims, Pb13, but it did so to recognize that although the expungement statute restricts government disclosures, private actors who disclose expunged information cannot be liable under the private facts tort. G.D., 205 N.J at 310-11.⁶

⁶ Kallstrom v. City of Columbus, 136 F.3d 1055 (6th Cir. 1998) (cited at Pb29), underscores the importance of address information actually being private to be actionable. There, undercover police, for whom “[a]nonymity is essential,” were permitted to pursue a claim against the government for disclosing their addresses to counsel for gang members “with a propensity for violence” who were “likely to seek revenge.” Id. at 1063, 1067. Here, unlike

Respondents try to sweep under the rug that the Law allows a covered person to recover damages even if their address is not actually private. In reality, it is not “speculative,” as the Attorney General contends, that “covered persons would only be seeking to prevent disclosure from some data brokers but not from others.” AGb36; see Ja851-70 (named plaintiffs in these cases publicly disclosing information). To the contrary, that is precisely what the Law allows and why it fundamentally differs from the private facts tort: the Law asks only whether the information is subject to a nondisclosure notice, not whether it is actually private. Money damages “shall” be imposed, even if the covered person has taken no other steps to make their address private, and even when their address is widely available in government records and other online sources, including the covered person’s own public posts. Db10, 27.

The Law also lacks the tort’s other “necessary restraints.” Z.D. v. Cmty. Health Network, Inc., 217 N.E.3d 527, 533, 538 (Ind. 2023) (cited at AGb28). For instance, while the Attorney General argues that it is “obvious” covered persons find “disclosure offensive,” AGb36, the tort applies only where a “reasonable person” -- not just the plaintiff -- would find the disclosure “highly offensive,” id. at 29 (quoting Restatement (Second) of Torts § 652D cmt. c). And unlike the Law’s civil claim, a common law privacy “cause of

in Kallstrom, Daniel’s Law requires no actual privacy for a claim and provides no cause of action to remedy government disclosures. Db27.

action is not assignable.” Restatement (Second) of Torts § 652I cmt. a.

In short, the Legislature did not “adapt” the publication of private facts tort. AGb28. It made no reference to the tort in the Law or its legislative history; instead, it created a new “public-safety statute,” id. at 45, with different requirements and different remedies.

Finally, even if the private facts tort were an appropriate analog, Respondents cite only out-of-state cases for the notion that it requires “negligence.” See Pb14 (citing Georgia and Colorado cases); AGb28 (citing Indiana, Colorado, Ohio, and Missouri cases). Indeed, in the district court, the Attorney General argued the tort could be “committed negligently,” but admitted it was “not aware” of a single “New Jersey case on point.” Suppl. Letter Br. Regarding Culpability Standard at 6, Atlas Data Privacy Corp. v. Lightbox Parent L.P., No. 1:24-cv-04105-HB (D.N.J.) (ECF 65).⁷ It is thus absurd to suggest that the Legislature was “aware” of the tort’s negligence requirement and meant to “draft[] against that backdrop” here. AGb26.

⁷ It is far from clear that negligence is the appropriate standard, as the Model Civil Jury Charges § 3.14 classify the private facts tort as an “intentional tort” that requires private information to be communicated in a manner “substantially certain” to become public. Respondents themselves cite cases requiring “an intentional act of divulging . . . confidential information,” Burton v. MAPCO Express, Inc., 47 F. Supp. 3d 1279, 1288 (N.D. Ala. 2014) (cited at Pb14) (emphasis added), and “reckless disregard of the private nature” of information, Robert C. Ozer, P.C. v. Borquez, 940 P.2d 371, 379 (Colo. 1997) (cited at Pb14, AGb28) (emphasis added).

Third, unable to find support in any specific “common law analogue,” Respondents conjure up a nebulous “background rule of negligence.” Pb21; AGb45 (“negligence regime . . . preexisted in the background of Daniel’s Law”). But they cite no case declaring a general negligence “rule” for statutes, much less one applying such a rule to a statute that restricts speech. See, e.g., AGb 31-34 (citing cases involving statutes regulating conduct).⁸ The cases they do cite involve common law claims for negligence that could have been brought even without the statute at issue. For example, in Carlo v. Okonite-Callender Cable Co., a statute codifying the standard for a “person having control of dangerous materials” took the place of what would have been the defendant’s “common-law duty if such statute had not been enacted, leaving the action of negligence unaffected by such statute.”⁹ 3 N.J. 253, 264 (1949) (cited throughout Pb and AGb) (citation omitted). Other cases cited by

⁸ For further support, Atlas cites State v. Carter for the proposition that “even when a statute ‘does not expressly include language’ requiring an ‘objectively reasonable person’ standard,” the Court can “implicitly adopt that standard.” Pb20. Carter, however, had nothing to do with mens rea. The Court used the reasonable person standard to assess the meaning of a law’s restriction on how much of a license plate could be covered. 247 N.J. at 520-21.

⁹ See also, e.g., Braitman, 68 N.J. at 385 (cited at AGb31) (recognizing statute and regulation could be considered “as evidence of defendant’s negligence”).

Respondents involved no statute at all.¹⁰ Unlike in Respondents' cited cases, Atlas has not asserted a claim for negligence -- and certainly not a negligence claim that could have been brought had Daniel's Law not been enacted.

IV. RESPONDENTS PROPOSE INCONSISTENT STANDARDS.

The text, legislative history, and common law offer no indication that the Legislature intended the Law's civil cause of action to require a mens rea. It is thus no surprise that Respondents do not agree on what standard the Law requires. The Attorney General offers three flavors of "negligence." In contrast, Atlas argues the Law requires "knowing" disclosure of a covered person's protected information and "negligent disregard of the law." Pb16, 19.

Respondents' proposals are also opaque. While arguing that the Court should read in "negligence," the Attorney General offers scant explanation for how its standard would apply. It argues the Legislature "operationaliz[ed] negligence" by "codify[ing] a reasonable standard of care," and where an entity fails to comply with a nondisclosure notice within ten days, it violates that standard. AGb14, 24. That is classic strict liability.

The Attorney General also argues there may be "implied reasonableness defenses," seemingly answering "no" to the certified question -- whether any

¹⁰ See, e.g., Jeter v. Sam's Club, 250 N.J. 240, 243-44 (2022) (cited at AGb13, 19); Crawn v. Campo, 136 N.J. 494, 502 (1994) (cited at Pb27); Maisonave v. Newark Bears Pro. Baseball Club, 185 N.J. 70, 83 (2005) (cited at Pb27) (all considering standard of care in common law negligence claims).

mens rea is required to impose liability. Id. at 17, 31-32. While the Attorney General says the Legislature did not explicitly “disclaim” those defenses, id. at 34, the Law includes only two exceptions, neither of which relate to reasonableness. See N.J.S.A. 56:8-166.1(e), (f); see also Goldhagen, 247 N.J. at 600 (“Legislature’s choice not to incorporate assumption of the risk in the Dog Bite Statute . . . signals its intent not to limit the statute’s strict liability”). In any event, the Attorney General cites no case from New Jersey that accepts “reasonableness” as an unstated affirmative defense to a statutory violation. See id. at 32-34 (citing out-of-state cases). And it overlooks that the First Amendment, to prevent chilling speech, requires mens rea to be an element of the claim and does not allow such burden-shifting. N.Y. Times Co. v. Sullivan, 376 U.S. 254, 283 (1964) (actual malice cannot be presumed).

The Attorney General next suggests a standard of “negligence per se,” AGb31, 35, 43, ignoring what Atlas points out in its brief: “negligence per se standards are highly disfavored under New Jersey law,” Pb27 n.6. The Attorney General does not and cannot explain why that standard is appropriate here. It is not. See Fla. Star v. B.J.F., 491 U.S. 524, 539 (1989) (use of negligence per se standard to punish speech is unconstitutional).

Although packaged differently than the standards proposed by the Attorney General, Atlas’s “negligent disregard” standard suffers from the same

flaws. Where an entity discloses a covered person's information after receiving a notice, Atlas argues that by merely "doing so," the entity "act[s] with at least negligent disregard." Pb16. Again, that is strict liability.

Atlas's proposed standard also has little in common with the private facts tort Atlas deems analogous. In jurisdictions imposing only a negligence standard for an invasion of privacy, a claim does not turn merely on a "negligent disregard of the law." *Id.* at 19. Rather, it requires "negligent disregard for the fact that reasonable men would find the invasion highly offensive." *Id.* at 14 (quoting Cox Broad. Corp. v. Cohn, 200 S.E.2d 127, 131 (Ga. 1973), rev'd, 420 U.S. 469 (1975), vacated, 214 S.E.2d (Ga. 1975)).¹¹ That, of course, is not an element of a Daniel's Law claim. *Supra* at 15.

At bottom, under all of Respondents' proposed standards, liability for damages "follows automatically from publication," which the United States Supreme Court has held is unconstitutional. Fla. Star, 491 U.S. at 539. Indeed, laws imposing strict liability for speech restricted by similar "shall" commands have been struck down under the First Amendment. See Am.-Arab Anti-Discrimination Comm. v. City of Dearborn, 418 F.3d 600, 610 (6th Cir.

¹¹ The United States Supreme Court reversed the imposition of liability under this standard, holding that it was "reluctant to embark on a course that would make public records generally available to the media but forbid their publication if offensive to the sensibilities of the supposed reasonable man." Cox Broad. Corp., 420 U.S. at 496.

2005) (striking as unconstitutional law providing it “shall be unlawful to participate in any special event without a permit”); Video Software Dealers Ass’n v. Webster, 968 F.2d 684, 687 (8th Cir. 1992) (same for law regulating violent videos providing “[a]ny violation . . . shall be punishable”).

V. THE PROPOSED STANDARDS DO NOT AVOID THE CONSTITUTIONAL ISSUES.

Despite imploring this Court to engage in constitutional avoidance, Pb13; AGb41-42, Respondents hardly defend the constitutionality of their proposed mens rea standards. They do not address the many cases requiring heightened mens rea to punish protected speech that might facilitate crimes and torts, including the precedent of this Court and the United States Supreme Court, or this State’s recent confrontation of the same issues in its enactment of a law regulating deepfakes. Db36-46. Respondents’ silence is telling.

Rather than justify the constitutionality of the specific standards they propose, Respondents claim that two cases “constitutionalized” negligence, Pb21, and argue those cases show “negligence” is “sufficient,” AGb42.

First, they cite Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974), which considered the degree of fault a private figure must show to recover damages in a defamation claim. See AGb42; Pb39. But they ignore that Gertz arose in the context of unprotected speech (defamation), while the speech restricted by Daniel’s Law is “protected,” as the Third Circuit emphasized. Db39.

In any event, Gertz did not hold that an abstract “negligence” standard is “constitutionally sufficient.” AGb42. Like other United States Supreme Court precedent, Db38, Gertz recognized that, under the First Amendment, the mens rea must be tailored to the harm a law seeks to prevent -- there, a defamatory falsehood. It thus held that defamatory statements about private figures are not actionable if the speaker “took every reasonable precaution to ensure the[ir] accuracy.” Gertz, 418 U.S. at 346-47; see Kass v. Great Coastal Express, Inc., 152 N.J. 353, 356 n.1 (1998) (cited at Pb39-40) (requiring “showing that the speaker acted negligently in failing to ascertain the falsity of the statement before communicating it”).¹²

Second, Atlas claims Florida Star “arguably constitutionalized” a “reasonableness” standard for invasions of privacy. Pb21. That is wrong. Florida Star cast doubt on the constitutionality of “ordinary negligence” in cases involving “truthful publications,” like the speech restricted here. 491 U.S. at 539 (lack of “scienter requirement of any kind . . . engender[ed] the perverse result that truthful publications . . . are less protected by the First Amendment than even the least protected defamatory falsehoods”).

Florida Star, like Gertz, also demonstrates the need to tether the mens

¹² Despite pointing to defamation law as an analogy, Atlas attempts to argue that the higher “actual malice” standard should not apply to Daniel’s Law, Pb41, ignoring that the only reason the speech covered by the Law is restricted is because covered persons are public officials, AGb4-6; Pb1.

rea to the harms caused by the speech. In Florida Star, a rape victim alleged a newspaper “negligently violated” a nondisclosure statute by publishing her name, and the trial court found the newspaper per se negligent based on its violation of the statute. Id. at 528-29. The Supreme Court reversed, holding that liability improperly “follow[ed] automatically from publication,” with no “individualized adjudication” and no consideration for whether the victim was “already known throughout the community,” whether she “voluntarily called public attention to the offense,” whether her identity was “a reasonable subject of public concern,” or whether the information came from the government. Id. at 538-40 (“imposing civil damages” for reproducing information in government news release would “violate the First Amendment”).

Respondents’ “negligence” standards fall short for these same reasons. The original Daniel’s Law required a mens rea tethered to the harm it sought to prevent by limiting damages to situations where “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. But the Legislature deleted that requirement. In contrast to that standard and the standards discussed in Gertz and Florida Star, Respondents’ proposed standards are not tied to any potential harm. Liability “follows automatically” from disclosure so long as an entity received a nondisclosure notice -- no matter how

information was obtained, whether it was widely known, if the covered person made it publicly available, or whether the disclosure posed any foreseeable risk. Atlas, in fact, embraces the Law’s departure from the precedent laid down in Gertz and Florida Star, claiming that entities should be punished for disclosures regardless of their “‘nexus’ with a discrete safety risk.” Pb43. That is wholly insufficient under the First Amendment. Db38-43.

Recognizing that “negligent disregard” alone is not enough, Atlas pairs that constitutionally dubious standard with a requirement that an entity “‘knowingly” disclose an “address or phone number of a covered person.” Pb16. To the extent that Atlas is arguing that the First Amendment requires “awareness” of a disclosure’s character, id. at 14 (quoting Counterman v. Colorado, 600 U.S. 66, 72 & n.2 (2023)), that requirement standing alone is insufficient, as Atlas recognizes.¹³ Db40 (“foreseeability or knowledge” that information “could be misused” is insufficient). Pairing it with a “negligent disregard” element, as Atlas proposes, does not meet the threshold required by

¹³ Atlas misstates this requirement as an “awareness of a communication’s contents,” Pb14 (emphasis added), but Counterman explains that awareness of the “character of the materials, not simply their contents,” is required to impose liability under the First Amendment. 600 U.S. at 77 n.4 (emphasis in original) (cleaned up). Thus, to the extent Atlas implies that this constitutional requirement is satisfied when a defendant “know[s] they are disclosing or making available a home address or phone number to a third party,” Pb17, that is incorrect. The defendant must know the character of that information, i.e., that it concerns a covered person and involves a valid nondisclosure notice.

the First Amendment either. If it did, a publisher of chemistry textbooks could be punished for “knowingly” disclosing formulas for explosives, so long as it “negligently disregarded” a request to stop publishing them. See *ibid.* In any event, the Legislature pointedly chose not to include a knowledge requirement, which it included in the Law’s criminal provision, N.J.S.A. 2C:20-31.1(b), (d), and in other disclosure statutes, Db25-26 (citing statutes).

* * * * *

At bottom, Respondents’ arguments highlight the conundrum posed by the current Law’s unique civil claim for money damages. They offer no viable solutions to the thorny constitutional questions that claim raises. The only solution here is a legislative fix.¹⁴

CONCLUSION

The answer to the certified question is that no mens rea is required to impose liability under the current version of Daniel’s Law.

¹⁴ The Legislature has begun to consider a bill to amend the Law, see S4884, which the lead sponsor has described as “broken.” Sen. Johnson Introduces ‘Protect Daniel’s Law Act’ to Safeguard Protections for NJ Judges, Law Enforcement, INSIDERNJ (Nov. 13, 2025), <https://www.insidernj.com/press-release/sen-johnson-introduces-protect-daniels-law-act-to-safeguard-protections-for-nj-judges-law-enforcement>.

Respectfully submitted,

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