ATLAS DATA PRIVACY CORP., et al.,

Plaintiffs-Respondents,

MATTHEW J. PLATKIN, in his official capacity as ATTORNEY GENERAL OF NEW JERSEY,

Intervenor-Respondent,

v.

WE INFORM, LLC, et al.,

Defendants-Appellants.

SUPREME COURT OF NEW JERSEY
DOCKET NO.: 091145

Civil Action

On Petition to Certify Questions of State Law from United States Court of Appeals for the Third Circuit, Docket No. 25-1555

BRIEF OF INTERVENOR-RESPONDENT MATTHEW J. PLATKIN, ATTORNEY GENERAL OF THE STATE OF NEW JERSEY

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PRELIMINARY STATEMENT

Even after this Court held Daniel's Law could be validly applied in Kratovil v. City of New Brunswick, 261 N.J. 1 (2025), Defendants in this case seek a federal-court decision invalidating the law in its entirety. In service of their facial attack, Defendants press an extraordinary construction that would impose liability on them, and anyone else, even when they act without fault—i.e., strict liability. This Court should reject Defendants' effort to so broaden the law's reach as to render it more vulnerable to their facial challenge.

Daniel's Law grants certain public servants a right to request that an entity stop sharing their home addresses or unlisted home telephone numbers. If the entity receives valid written notice but continues to share the covered person's information more than ten business days (two weeks) after "receipt" of written notice, the entity faces civil liability, including statutory damages of $1,000 per violation. Defendants here are primarily data brokers and other companies who make significant volumes of data available online and who, as alleged, failed to comply with requests from covered judges, law enforcement officers, and other covered persons requiring them to cease sharing their home address publicly—for more than two weeks after receiving valid written notice. In pressing a facial theory, Defendants argued for a capacious reading of liability—a strict liability approach. But the federal district court denied their facial motion, holding that

Daniel's Law preserves baseline concepts of negligence—imposing no liability on those who act faultlessly. The Third Circuit then certified this question.

The district court was right to reject Defendants' attempts to construe Daniel's Law more broadly than the State in a misguided effort to make it more vulnerable. Text, structure, statutory history, and tort-law principles point the same way: Section 166.1 requires negligence. Courts read statutes to discern the Legislature's intent, and this "strict notice requirement," which "ensures that the statute is not a trap for the unwary," provides powerful textual and structural evidence that the Legislature did not seek liability without fault. Daniel's Law's requirement of notice plus two weeks to comply distinguishes it from statutes that impose strict liability, and instead reveals a duty to exercise reasonable care: a negligence standard. That the Legislature did not use "negligence" expressly does not make this intent any less evident from its text and structure.

The law's history is in accord. In 2020, Daniel's Law contained two provisions, one expressly requiring negligence but including no notice requirement, and the other imposing a notice requirement but limiting the compliance period to 72 hours. In 2021, the Legislature combined these sections, omitting an express reference to negligence but requiring notice across the board and lengthening the compliance period to ten business days. As legislative history confirms, the purpose was to provide more clarity—reducing

the risk of any "trap for the unwary," indicating an intent to apply a duty that requires reasonable care once the party is on notice.

Background tort principles bolster the same conclusion. As Judge Bartle recognized, Daniel's Law is a modern analog to the tort of public disclosure of private facts, which requires a showing of negligence. Because courts construe statutory ambiguity to minimize divergence from the common law, Daniel's Law is best read to require the same mental state. In addition, in the related context of negligence per se, courts interpret laws to include an implied defense that the defendant's actions were reasonable, or otherwise justified or excused. Here too, recognizing this implied defense—which ensures that only negligent parties can be held liable—honors both the common law and legislative intent.

Finally, if ambiguity remains, the canon of constitutional avoidance makes this a straightforward case. Whenever feasible, this Court reads statutes to save them, rather than to risk leaving the laws facially invalid. Judge Bartle's reading was at least reasonable given the text, structure, history, and tort-law backdrop, and the Legislature would want this important law to survive. This Court should therefore confirm that Daniel's Law requires a mental state of at least negligence for civil liability—and that a defendant whose failure to comply with its terms was nevertheless reasonable would be subject to no liability at all.

PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

A. Daniel's Law.

It is a "well-known fact, amply documented by the record here, that in recent years judges, prosecutors, police, correctional officers, and others in law enforcement have been the subject of an ever increasing number of threats and even assassinations." Atlas Data Priv. Corp. v. We Inform, LLC, 758 F. Supp. 3d 322, 337 (D.N.J. 2024) (AGa1-19); see also Kratovil, 261 N.J. at 26 (noting quantitative and qualitative evidence submitted by Attorney General as amicus). As alleged by individual law enforcement in this litigation, for example, one was "surveilled along with her young child at home by a major criminal organization she was investigating"; another moved after getting death threats at home from MS-13, which then "targeted his mother and attempted to burn down her building"; and two others "received death threats and demands for ransom," after which two armed persons were arrested circling their house, "wearing ski masks." Atlas, 758 F. Supp. 3d at 332 n.7. And, just earlier this year, while this litigation was already underway, federal judges began receiving anonymous pizza deliveries in the name of Daniel Anderl—Judge Salas's son,

[1] These sections are combined for the Court's convenience.

whose murder by a deranged attorney with a case before Judge Salas prompted the passage of New Jersey's Daniel's Law.[2]

Such threats typically target public servants and their families where they are most vulnerable: in their homes. A key factor, as the U.S. Congress observed in passing its version of Daniel's Law, is "online access to information" that allows "malicious actors to discover where individuals live." See Daniel Anderl Judicial Security and Privacy Act of 2022 (U.S. Daniel's Law), P.L. 117-263, § 5932(a)(4), 136 Stat. 3459. Indeed, the deranged man who murdered Judge Salas's son and seriously wounded her husband is believed to have found her address using a "people finder" online. Atlas, 758 F. Supp. at 330; (AGa22).

Like similar statutes across the country,[3] New Jersey's Daniel's Law, L. 2020, c.125 (AGa107-116) (codified as amended at N.J.S.A. 2C:20-31.1; 47:1-

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[2] Jeff Goldman, Pizzas With N.J. Judge's Murdered Son's Name on Them Being Sent To Intimidate Other Judges, NJ.com (Apr. 15, 2025), https://tinyurl.com/bdefpu8j (AGa43-46).

[3] See, e.g., U.S. Daniel's Law §§ 5931 et seq.; Colo. Rev. Stat. § 18-9-313 (2024); Del. Code Ann. tit. 10, §§ 1921 to -1924 (2023); Haw. Rev. Stat. §§ 92H-2 to -8 (2024); 705 Ill. Comp. Stat. §§ 90/1-1 to – 90/2-10 (2012); Md. Code Ann., Cts. & Jud. Proc. §§ 3-2301 to 3-2407 (2024); Okla. Stat. tit. 20, § 3011 et seq. (2025); W. Va. Code § 5A-8-24 (2021). Defendants note that West Virginia's law was struck down by a federal district court earlier this year, see (Db11-12), but overlook that this decision addressed New Jersey's law in depth, holding that while New Jersey's law "is narrowly tailored, West Virginia's Daniel's Law is not." Jackson v. Whitepages, Inc., No. 24-cv-102, 2025 WL 2407201, at *13 n.11 (N.D. W. Va. Aug. 19, 2025) (Da17), appeal docketed,

17; 47:1A-1.1, -5; 47:1B-1 to -3; 56:8-166.1 to -166.3), exists "to enhance the safety and security of certain public individuals in the justice system" so they can "carry out their official duties without fear of personal reprisal." N.J.S.A. 56:8-166.3. It achieves those goals in relevant part by providing judges, law enforcement officers, prosecutors, child-protective-services investigators, and immediate family members living in the same household with a right to ask that a private person or an entity not "disclose" their "home address" or "unpublished home telephone number" going forward. N.J.S.A. 56:8-166.1(a)(1), (d).

This provision (referred to here as "Daniel's Law" or "Section 166.1" for simplicity) is an opt-in statute. To invoke its protection, an "authorized person" (i.e., covered person) must give the recipient "written notice" that the requestor "is an authorized person" and request that the recipient "cease the disclosure of the information and remove the protected information from the Internet or where otherwise made available." Section 166.1(a)(2). The statute provides the recipient with 10 business days—two calendar weeks—to cease the disclosure, subject to certain exceptions. Section 166.1(a)(1), (e)-(f). If the recipient fails

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No. 25-2122 (4th Cir. Sept. 19, 2025). Indeed, that decision discussed this Court's opinion in Kratovil at length, see Jackson, 2025 WL 2407201, at *13, 18 & n.11 (Da13, 17); emphasized that West Virginia's law functioned as an opt-out rather than an opt-in (meaning covered persons' information could not be shared without their written permission), id. at *18 (Da13); and canvassed the various versions of Daniel's Law nationwide, finding West Virginia's "unique among" them, id. at *16 (Da12).

to comply, it can be held civilly liable by the covered person or their assignee, for "actual damages, but not less than liquidated damages" of $1,000 per violation, as well as reasonable attorney's fees and costs, any "preliminary and equitable relief as the court determines to be appropriate," and "punitive damages upon proof of willful or reckless disregard." Section 166.1(b)-(c).

The overall statute contains a number of other provisions that are not at issue here. For instance, the Legislature established criminal penalties for those who disclose a covered person's information "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," again following receipt of valid notice and ten business days to comply. N.J.S.A. 2C:20-31.1 (b). Further, the statute enables a covered person to request redaction of their home address and unpublished phone number from public records, subject only to limited exceptions. N.J.S.A. 47:1B-1 to -3; see also N.J.S.A. 47:1-17.

B. This Litigation.

Atlas, as claim-assignee for a group of covered persons, sued Defendants for failing to cease disclosure of those covered persons' home addresses and/or unpublished home phone numbers within ten business days. (AGa30, 40).[4]

[4] Defendants spill considerable ink attacking Atlas's conduct in this litigation. See (Db12-14). The Attorney General leaves such disputes to the other parties,

Defendants are data brokers and other companies that make large volumes of data available over the Internet. See Atlas, 758 F. Supp. 3d at 329. After removing these lawsuits to federal court, Defendants filed a consolidated motion to dismiss, asserting that Daniel's Law is facially invalid under the First Amendment. Atlas Data Privacy Corp. v. Lightbox Parent, L.P., No. 1:24-cv-4105, ECF Nos. 27-28 (D.N.J.). Because Defendants were seeking to have this statute invalidated in its entirety, the federal district court permitted the Attorney General to intervene to defend the statute. Atlas Data Privacy Corp. v. Digital Safety Prods., LLC, No. 24-cv-4141, ECF No. 17 (D.N.J.).

The federal district court denied Defendants' motion to dismiss, finding that this facial First Amendment attack on Daniel's Law failed, and leaving the door open to as-applied challenges as the case proceeds. Atlas, 758 F. Supp. 3d at 341-42. As relevant, the federal court addressed what mental state Daniel's Law requires in order to impose basic civil damages. Id. at 339-41. Recognizing that Section 166.1 requires at least recklessness for punitive damages, Judge Bartle reasoned that the mental state for basic civil damages must be something less: "either liability without fault" (strict liability) or negligence. Id. at 340. In

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noting only that these factual arguments have no bearing on Defendants' facial First Amendment challenge—which attacks the entire law, no matter how irresponsible a defendant's conduct, or how salutary a plaintiff's—and certainly no bearing on the state-law interpretive question of what mental state the statute requires.

seeking to "predict how [this Court] would rule," Judge Bartle concluded that the best reading of Daniel's Law is that this provision requires negligence. Ibid.

Judge Bartle provided several reasons why. Initially, he recognized that New Jersey courts avoid constructions that yield constitutional infirmities or absurd results, ibid., and observed that construing Daniel's Law to impose strict liability (an effort by Defendants to expose themselves to greater liability, beyond what plaintiffs and the Attorney General believed covered) would invite both, id. at 341. As to the former, Judge Bartle recognized that the U.S. Supreme Court has repeatedly "invalidated strict liability statutes that restrict speech." Id. at 340. As to the latter, he emphasized that adopting a strict-liability standard would render an entity liable for failing to follow the ten-business-day deadline "even if it would be unreasonable or impossible under the circumstances" to do so, as where some natural disaster, fire, or other unforeseeable impediment prevented timely compliance. Id. at 341. So the question was whether Daniel's Law "is reasonably susceptible to a construction with a negligence standard of liability." Ibid. And Judge Bartle found it was, concluding that Daniel's Law codifies a version of the common law tort of "the unreasonable publication of private facts"—a tort that has long required negligence. Ibid. He thus predicted that this Court would construe Daniel's Law to require negligence, reiterating that this view is "reasonable[,]" "avoids absurd results, is consistent with

analogous New Jersey privacy law, and saves the law from constitutional repugnancy." Ibid.

Judge Bartle certified the case for interlocutory appeal, and the U.S. Court of Appeals for the Third Circuit permitted the appeal. Following briefing and argument, the Third Circuit asked this Court to resolve what mental state, if any, is required to establish civil liability under Section 166.1. Pet. & Order to Certify Questions of State Law (AGa47-65). This Court accepted that invitation, and the Attorney General's brief now follows.

ARGUMENT

DANIEL'S LAW REQUIRES AT LEAST NEGLIGENCE.

Text, structure, statutory history, and background principles of tort law all support Judge Bartle's conclusion that Section 166.1 is best read to require negligence for basic civil liability to attach. And even if that were not the best reading (though it is), such a reading is at a minimum a reasonable one, meaning the canon of constitutional avoidance compels its adoption—instead of the reading Defendants offer to render Daniel's Law more vulnerable to the facial invalidation they seek.

A. Text And Structure Support The Federal Court's Conclusion.

1. "The Legislature's intent is the paramount goal when interpreting a statute and, generally, the best indicator of that intent is the statutory language."

DiProspero v. Penn, 183 N.J. 477, 492 (2005). To determine the Legislature's intent, this Court not only looks to the statutory words but also "reads them in context with related provisions so as to give sense to the legislation as a whole." W.S. v. Hildreth, 252 N.J. 506, 518 (2023) (cleaned up). Here, text and structure establish that the Legislature intended for Daniel's Law to impose liability for unreasonable conduct, not to impose liability without fault.

Start with the text of Section 166.1 itself. It allows covered persons to protect only two pieces of information—their "home address" and "unpublished home telephone number"—and allows liability only if:

- an "authorized person" has first sent "written notice to the person from whom the authorized person is seeking nondisclosure";
- that written notice both (1) informs the recipient "that the authorized person is an authorized person" and (2) requests that the recipient "cease the disclosure of the information and remove the protected information from the Internet or where otherwise made available"; and
- the recipient nevertheless continues to "make available" the information more than "10 business days" (two calendar weeks) "following receipt" of the request.

N.J.S.A. 56:8-166.1(a)(1)-(2). In other words, if no written request is ever sent, no liability can attach. If the written request is sent, but not by an authorized requestor, no liability can attach. If there has been no "receipt" of the written request, no liability can attach. If the person whose information is at issue is not a covered person, no liability can attach. If the recipient does not further

"make available" the information, no liability can attach. And if the written request fails to inform the recipient that the requestor "is an authorized person" and to request nondisclosure of "the protected information" at issue, then it is not "written notice" within the statute's text, and no liability can attach.[5]

As this Court found, this "strict notice requirement ensures that the statute is not a trap for the unwary; to the contrary, following receipt of the statutory notice, the recipient has an 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. Tellingly, Defendants have never suggested that it is unreasonable to expect entities to honor such requests within ten business days, and indeed it is hard to imagine that corporations transacting in terabytes of personal information each day lack the tools to do so. But even assuming unusual hypotheticals in which ten business days would be inadequate,

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[5] Defining the precise contours of what might fail to constitute "written notice" under unusual circumstances is difficult to do at this facial, motion-to-dismiss stage, but the Attorney General has maintained throughout this litigation that there are colorable arguments that if a company sought clarification in good faith (e.g., difficulty dismissing two John Smiths) and the requestor refused or failed to timely provide it, there could be valid statutory (or alternatively as-applied) defenses to liability. The Comparative Negligence Act (CNA), N.J.S.A. 2A:15-5.1 to -5.8, could also presumably apply under fact-specific circumstances. Cf. Goldhagen v. Pasmowitz, 247 N.J. 580, 595-97 (2021) (noting that CNA still applies even to suits brought under a strict-liability dog-bite statute). But these fact-specific questions are not before this (or any) Court at this facial motion-to-dismiss stage in federal court.

the question here is what the Legislature intended, Hildreth, 252 N.J. at 518, and the clear upshot is not only that it "intended to act in a constitutional manner" generally, State v. Burkert, 231 N.J. 257, 277 (2017), but that it intended to impose liability only on entities that could have stopped sharing the information had they simply acted with reasonable care, yet did not.

In other words, a negligence standard. To act negligently is, of course, to unreasonably breach the relevant duty of care. G.A.-H. v. K.G.G., 238 N.J. 401, 413 (2019); Restatement (Second) of Torts § 282 (1965). And determining whether a duty of reasonable care does or should exist turns most fundamentally on whether a risk of harm from such a breach is foreseeable (and thus avoidable). G.A.-H., 238 N.J. at 414; see also Olivo v. Owens-Illinois, Inc., 186 N.J. 394, 402 (2006). So a law holding businesses liable for all injuries occurring on their premises, whether foreseeable or not, could never be called a negligence regime, because it would subject any defendants to liability even if they had no way to anticipate (and thus avert) the relevant harm. See, e.g., Olivo, 186 N.J. at 403. It would instead impose liability without fault—strict liability.

Not so of a statute that would hold businesses liable for any injuries sustained by invitees who slipped and fell after the business received written notice of a slipping hazard yet failed to remedy the hazard within ten business days. Cf., e.g., Jeter v. Sam's Club, 250 N.J. 240, 243-44 (2022) (where store

used packaging method that made it not reasonably foreseeable grapes would fall to the ground as customers shopped, plaintiff who slipped on loose grapes had to show store had "actual or constructive notice" of the grapes). To be sure, such a regime would articulate a concrete standard of care, and it would hold entities liable if they breached it. But because such a regime would address only failures to mitigate wholly foreseeable harms—and thus target unreasonable breaches of the statutory duty—no one would think it meant to impose liability without fault. Everyone would know that the Legislature sought to impose liability only for unreasonable acts or omissions—particularly because it would have built actual or constructive notice directly into the liability standard.

The same is true of Daniel's Law. It "imposes no liability for publishing that individual's address or phone number unless and until" valid written notice is transmitted by an authorized person, received by the entity who would face liability, and not acted upon for more than 10 business days. Kratovil, 261 N.J. at 27; see N.J.S.A. 56:8-166.1(a)(1)-(2). At that point, the potentially liable defendant has received actual or constructive notice, been given a reasonable amount of time to comply, and yet failed to stop sharing the covered person's information. In other words, the Legislature sought to codify a reasonable standard of care, and thus to ensure that only entities acting with fault—entities acting without such reasonable care—could be held liable.

As this Court has noted, that distinguishes Daniel's Law from the kinds of strict-liability statutes that raised constitutional problems, such as the Florida law at issue in Florida Star v. B.J.F., 491 U.S. 524 (1989). See Kratovil, 261 N.J. at 27. That Florida law prohibited mass-media companies from publishing the name of any victim of a sexual offense. Fla. Star, 491 U.S. at 526-29 & n.1. As both the U.S. Supreme Court and this Court recognized, that statute (in addition to inexplicably targeting only certain classes of speakers, in contrast to Daniel's Law) did impose liability without fault: it "authorized civil damages against the newspaper with no notice or opportunity to prevent a disclosure or redisclosure of the victim's name," Kratovil, 261 N.J. at 27, with "liability follow[ing] automatically from publication," and with no "scienter requirement of any kind," Fla. Star, 491 U.S. at 539. But "Daniel's Law substantially differs from" such a strict-liability regime, because the law's "strict notice requirement ensures that the statute is not a trap for the unwary"—that only those who fail to act with reasonable care can be held liable. Kratovil, 261 N.J. at 27.

Other textual and structural clues buttress this conclusion. That the law requires the requestor to inform the recipient that the requestor "is an authorized person" and to request "that the person cease the disclosure of the information and remove the protected information from the Internet or where otherwise made available," N.J.S.A. 56:8-166.1(a)(2), suggests the Legislature wanted to ensure

that any potential defendants were on notice that they were dealing specifically with covered persons' information—and thus to highlight the need to exercise greater care than they might with respect to a non-covered person's information, given the foreseeably greater risks to covered persons, who face a rising tide of risks because of the work that they or their family members do. See, e.g., Atlas, 758 F. Supp. 3d at 337; supra at 4-5; infra at 29-30; compare N.J. Data Privacy Law, N.J.S.A. 56:8-166.4 to -166.19 (providing some but not all the same privacy rights to consumers generally).

And the statute's use of the word "violates," see N.J.S.A. 56:8-166.1(b) ("A person, business, or association that violates subsection a. of this section shall be liable ...."), provides yet more evidence that it intended to cover only culpable conduct, since the word indicates "[a]n infraction or breach of the law; a transgression"; "[t]he act of breaking or dishonoring the law; the contravention of a right or duty," Violation, Black's Law Dictionary (12th ed. 2024) (AGa66), or to otherwise "break" or "disregard" a legal obligation, Violate, Merriam-Webster, https://www.merriam-webster.com/dictionary/violate (last visited Dec. 10, 2025) (AGa67); see also Ind. State Highway Comm'n v. Daily Express, Inc., 503 N.E.2d 1237, 1240 (Ind. Ct. App. 1987) ("The word 'violation' connotes some specific duty, act or requirement ...."). In short, the text and structure of

Section 166.1 support Judge Bartle's conclusion that the Legislature intended this statute to cover negligent conduct, not liability without fault.

2. Defendants' counterarguments—that the statute fails to use the term "reasonable"; that it allows liability without actual knowledge; and that it uses the words "shall be liable" and "shall award"—are unconvincing.

To start, while all agree Section 166.1 does not use an express term like "reasonableness," that hardly indicates the Legislature intended liability without fault. Contra (Db20-23). Rather, courts recognize that even facially strict laws contain implied reasonableness defenses, and that legislative bodies draft against the tort-law backdrop. See, e.g., Atlas, 758 F. Supp. 3d at 340-41; infra at 32-33 & n.10 (examples of decisions across the country that identify implied reasonableness defenses where statute would otherwise appear to allow negligence per se). For instance, no one thinks the hypothetical grocery-store law above intends strict liability—and no one imagines it covers a grocery store delayed in cleaning up a banana peel because a terrible hurricane closed the store for two weeks. Here too, the Legislature's notice-and-ten-day-compliance regime indicates the same broader legislative purpose: in taking steps to make sure the law is not "a trap for the unwary," Kratovil, 261 N.J. at 27, the Legislature made clear the unwary were not its intended target. Its intent, that is, was for liability to follow fault, not to attach without fault—which, as Judge

Bartle correctly found, means an implied mental state of negligence, to cover only those entities who were asked to stop sharing covered information, received the request, and were given ten business days from receipt, but continued anyway with no reasonable excuse.[6] Atlas, 758 F. Supp. 3d at 341.

That other sections use different words to address mental states is not to the contrary. Initially, that some statutes reference "knowing[]" action, "purpose," "reckless disregard," or "willful, purposeful, or reckless disregard," (Db20-21) (quoting N.J.S.A. 2C:20-31.1(b), (d); and N.J.S.A. 47:1B-2(b)(2)), is of little moment: those statutes do not distinguish between negligence and strict liability, the sole question here, and thus they are not statutes that shed light on how the Legislature might have communicated that difference here. Moreover, that other portions of Daniel's Law impose punitive damages only for reckless conduct indicates (as Judge Bartle agreed) that basic liability must be available for something less—but it does not say whether that something less is negligence or strict liability, the dispute here. See N.J.S.A. 56:8-166.1(c)(2). If anything,

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[6] Indeed, given that the point of requiring a culpable mental state in free-speech cases is to mitigate "an honest speaker's fear" of "accidentally" incurring liability, Counterman v. Colorado, 600 U.S. 66, 75 (2023) (citation omitted), it would be especially odd, in the context of this facial First Amendment challenge, to hold against the Legislature that it opted for greater specificity in lieu of a more capacious phrase like "unreasonable under the circumstances." See also infra at 21-26 (discussing statutory and legislative history showing that Legislature's purpose in amending Daniel's Law was to provide greater clarity, not to jettison a standard of reasonable care).

it makes more sense that basic liability would attach at the level one step down the chain from the recklessness Daniel's Law requires for punitive damages—not that the mental state required for basic damages would skip over negligence and drop straight down to strict liability.

Nor do Defendants get anywhere by citing State v. Higginbotham, 257 N.J. 260, 279, 285 (2024); State v. Pomianek, 221 N.J. 66, 81, 90 (2015); and Hardy ex rel. Dowdell v. Abdul-Matin, 198 N.J. 95, 104 (2009). Those cases all involved laws with specific serial lists, and the question was whether a mental state from a part of the list could distribute to the adjoining term. Section 166.1 does not use that structure, and regardless, no one argues that the recklessness requirement from the punitive-damages provision applies directly to this one.

That liability can attach without actual knowledge, (Db19-20), also proves nothing. Negligence can exist so long as a defendant has "actual or constructive knowledge" of the condition that created a risk of foreseeable harm. Nisivoccia v. Glass Gardens, Inc., 175 N.J. 559, 563 (2003) (emphasis added); see also, e.g., Jeter, 250 N.J. at 251. And constructive knowledge is what Daniel's Law's "strict notice requirement" ensures. See Kratovil, 261 N.J. at 27. So just as a supermarket cannot escape negligence liability simply because it never read the weeks of emails from customers warning it about a pile of banana peels in aisle five, see Jeter, 250 N.J. at 243-44, 251-52, that Section 166.1 reaches data

brokers who fail to review nondisclosure notices at all (and thereby avoid actual knowledge) in no way implies strict liability. Rather, by providing ten business days to act from "receipt" of valid "written notice," Section 166.1 ensures that the recipient has constructive knowledge—confirming the Legislature intended to target negligence, not to impose liability without fault.

Finally, in reading the phrases "shall be liable" or "shall award" to suggest strict liability, (Db23-24, 28) (quoting N.J.S.A. 56:8-166.1(b)-(c)), Defendants simply conflate liability with remedies. While those statutory words mandate certain relief once the elements of a violation are proven, see N.J.S.A. 56:8-166.1(b)-(c), they have no bearing on the threshold question (presented here) of what mental state is needed to prove a violation. That is why the Legislature has had no trouble including the same or similar words where a mental state is expressly required, e.g., N.J.S.A. 2A:58D-1 (incorporating mens rea from N.J.S.A. 2C:14-9); N.J.S.A. 26:4-14 (knowledge); N.J.S.A. 43:21-16(a)(1) (knowledge), refuting Defendants' point that the two are incompatible. So while it is true that such phrasing has also been included in a strict-liability statute, that offers little interpretive help, because it has been used in statutes with all kinds of mental-state requirements—and in any event, those words were not what made the other law a strict-liability regime. See Goldhagen v. Pasmowitz,

247 N.J. 580, 594 (2021) (dog-bite statute stated liability would attach "regardless of the former viciousness of such dog or the owner's knowledge").[7]

B. Statutory History Supports The Federal Court's Conclusion.

The evolution of Daniel's Law supports the conclusion that the Legislature intended the now-operative version to require negligence for basic civil liability to attach. While Defendants are correct that a prior version of the law used the word "reasonable" in its civil-damages provision, (Db22), they misunderstand the import of its removal. Instead, the Legislature's amendments underscore its intent to create a unified and concrete standard covering unreasonable failures to stop disclosing information after receipt of valid notice.

As enacted in 2015, the precursor statute to Daniel's Law—in addition to requiring recklessness for imposition of criminal liability or punitive damages—prohibited online disclosures of a covered person's home address or unpublished home phone number "under circumstances in which a reasonable person would believe that providing that information would expose another to harassment or

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[7] Defendants have abandoned their argument that Section 166.1 alternatively requires specific intent for basic civil liability, and for good reason: because an adjoining provision allows punitive damages upon a showing of recklessness, it would be "nonsensical" to require a higher mental state for basic liability. Atlas, 758 F. Supp. 3d at 340; see N.J.S.A. 56:8-166.1(c)(2). Defendants have also abandoned any argument that Daniel's Law somehow enacts an impermissible form of negligence per se distinct from strict liability, focusing instead on their (mistaken) claim that the statute simply imposes liability without fault.

risk of harm to life or property." L. 2015, c. 226, § 3(a) (AGa105) (codified at N.J.S.A. 56:8-166.1(a) (2016)). It also allowed a covered person to seek "actual damages, but not less than liquidated damages" of $1,000 per violation. N.J.S.A. 56:8-166.1(c)(1) (2016). But as most relevant here, the provision contained no notice requirement, nor other express language specifying exactly which kinds of disclosures would trigger liability. It simply left the standard of care as general reasonableness under the circumstances.

In 2020, the Legislature added a new section—a forebearer of today's strict notice requirement. That provision allowed covered persons to request that entities cease disclosing their information—and authorized declaratory and injunctive relief, as well as fees and costs, for failures to comply—but gave only 72 hours from receipt of written notice. See L. 2020, c. 125, § 7 (AGa115-116) (codified at N.J.S.A. 56:8-166.2 (2020)); (Db8). Thus, in 2020, Daniel's Law contained two separate provisions, each reflecting different aspects of today's Daniel's Law—one that addressed negligent disclosures of such information without any prior notice (and allowed money damages), see N.J.S.A. 56:8-166.1 (2020)), and another that addressed failures to stop sharing that information within 72 hours of receipt of notice (but allowed only injunctive and declaratory relief plus fees and costs), N.J.S.A. 56:8-166.2 (2020)).

The following year, the Legislature consolidated these two sections into the basic structure that Defendants now mistakenly claim imposes strict liability. Repealing Section 166.2, the Legislature effectively folded it into Section 166.1, amending that section to reflect its current opt-in structure by requiring non-disclosure within "10 business days following receipt" of valid "written notice," while continuing to allow covered persons to seek "actual damages but not less than liquidated damages" of $1,000 per violation. L. 2021, c. 371, §§ 8(a), (c)(1), 13 (AGa124, 132) (codified at N.J.S.A. 56:8-166.1(a), (c)(1) (2021)). That is, while the Legislature removed its previous unreasonable-under-the-circumstances regime, the Legislature did not replace it with strict liability, but rather replaced it with the clearer and more forgiving opt-in, notice-and-10-days-to-comply regime that ensures the law is not a "trap for the unwary." Kratovil, 261 N.J. at 27.

And because the law's updated notice-and-compliance-period mechanism established the "circumstances" under which defendants now would reasonably know to stop disclosing the information, it made sense for the Legislature not to retain the vestigial unreasonable-under-the-circumstances phrase, which otherwise would have suggested there might remain instances in which a data

broker could be liable even if it had not received notice and 10 business days.[8] It thus had no need to expressly add a further mental-state requirement on top of this notice-and-compliance-period it was adopting, because the thrust of its notice-and-compliance approach reflected background considerations of negligence: a reasonable standard of care, ensuring that only those actors put on clear notice and given sufficient time to comply could be held liable. Simply put, the Legislature was operationalizing negligence, which implies that a lack of negligence in an atypical case (in which non-compliance within ten days really was reasonable) was something it did not intend to cover.

Legislative history bolsters that conclusion. As the statement to the 2021 bill indicates, the Legislature was mindful that the law's prior regime "did not specify how [potential defendants] were to know which addresses to redact." A. 6171, at 25 (as introduced) (Dec. 2, 2021) (AGa92). The solution, the next sentence makes clear, was to ensure that "a person, business, or association receiving [a] request will have 10 business days to remove the address or

[8] While Defendants raise the specter of fraudulent nondisclosure notices under the current, notice-based regime, e.g., (Db19-20), they never explain why such phony notices are likely (such claimants could never recover, and their attorneys would risk sanctions). In any event, that bare possibility does not undermine that the Legislature could properly conclude that the best way to protect covered persons from being harmed or threatened in their homes is to enable them to seek nondisclosure prospectively, recognizing that they are best situated to judge the dangers that they face. Nothing about that suggests strict liability.

unpublished telephone number"—the same notice requirement in place now. See ibid. So the bill "combine[d]" these "two sections of law providing for civil relief," ibid., effectively replacing the more open-ended negligence standard that had existed with the new, more concrete negligence-based duty that exists today.[9] In other words, the Legislature's intent was not to scrap a negligence requirement, but to retain it via notice and an opportunity to comply, thereby to make it easier for regulated entities to understand their obligations—which serves everyone, and First Amendment interests generally. See supra at 18 n.6.

Defendants' reading of the history also faces a serious dog-that-did-not-bark problem. In Defendants' telling, the 2023 Legislature decided to abandon its negligence standard and create an outlier statute with no other support across the country—"the only one of its kind to impose severe financial penalties on a strict liability basis." (Db2-3); see also (Db10-12). And Defendants complain that there appears to be "[n]o legislative history [that] exists to explain why the New Jersey Legislature abandoned the Law's guardrails—including its mens rea requirement—and enacted this uniquely punitive regime." (Db3). But a lack of

[9] While Defendants also chide the Legislature's 2023 amendments, e.g., (Db9, 22-23) (no longer requiring pre-approval by government agency, allowing assignment of claims, and making liquidated damages automatic upon proof of a violation), those quarrels at most go to tailoring, not to the mental-state issue before this Court. See also supra at 20-21 (explaining why change from "may award" to "shall award" bears only on remedies available upon proof of violation, not on mental state necessary to establish violation).

legislative history suggests that the Legislature did not intend such a dramatic departure from existing law—let alone a national outlier with First Amendment implications—as Defendants claim. See, e.g., Lambert v. Travelers Indem. Co., 447 N.J. Super. 61, 75 (App. Div. 2016) ("It is fair to assume that had the Legislature intended to effectuate such a major change, it would have used express language in the statute and discussed [it] in [the] legislative history."); In re Maitland, 531 B.R. 516, 521-22 (Bankr. D.N.J. 2015) (finding a reading that creates a "dramatic change" is less plausible when there is no "meaningful discussion of" the change in the law's history); Clarke v. Sec. Indus. Ass'n, 479 U.S. 388, 407 (1987) (same). So Defendants' complaints that Daniel's Law as they read it would become a national outlier with no explanation in legislative history suggests that Defendants do not have the correct reading at all—and that their effort to impose more liability, in service of striking it down, fails.

C. Background Principles Of Tort Law Support The Federal Court's Conclusion.

As Judge Bartle explained in detail—and Defendants in particular struggle to rebut—the background against which the Legislature acted is instructive. Courts recognize that our Legislature is presumptively aware of the common law and drafts against that backdrop. E.g., Maison v. N.J. Transit Corp., 245 N.J. 270, 290 (2021); see also Great Atl. & Pac. Tea Co. v. Borough of Point Pleasant, 137 N.J. 136, 148 (1994) ("When interpreting legislation, we presume

that the Legislature is familiar with existing case law."). Similarly, courts presume the Legislature does not depart from the common law lightly, and thus read potential derogations narrowly. Marshall v. Klebanov, 188 N.J. 23, 37 (2006) (laws "in derogation of the common law should be strictly construed"); Carlo v. Okonite-Callender Cable Co., 3 N.J. 253, 265 (1949) (same). So when a "literal reading" of a statute "does not provide a definitive answer," courts rely on "common law analogues" to determine the correct "interpretation of the statute." Evans-Aristocrat Indus., Inc. v. City of Newark, 75 N.J. 84, 92-95 (1977); see G.D. v. Kenny, 205 N.J. 275, 300 (2011) (interpreting law "[i]n light of common-law and constitutional principles protecting free speech"). These principles confirm that Judge Bartle was right to read Daniel's Law in harmony with the common law, and to confirm that it codifies a negligent-disclosure tort, not some novel strict-liability regime heretofore unknown in this area.

1. As Judge Bartle found, public disclosure of private facts—a negligence tort—is the closest common-law analogue to our Daniel's Law. See Restatement (Second) of Torts § 652D (1977); Atlas, 758 F. Supp. 3d at 341. This tort "occurs when ... the matters revealed were actually private, that dissemination of such facts would be offensive to a reasonable person, and that there is no legitimate interest of the public in being apprised of the facts publicized." Romaine v. Kallinger, 109 N.J. 282, 297 (1988) (cleaned up); see also Restatement (Second)

of Torts § 652D. Because, under New Jersey common law, this tort requires "unreasonable publication of private facts," it is best understood as calling for negligence, see Romaine, 109 N.J. at 297; Atlas, 758 F. Supp. 3d at 341, just as in other courts around the country. E.g., Z.D. v. Cmty. Health Network, Inc., 217 N.E.3d 527, 530, 533-34 (Ind. 2023) (permitting public-disclosure suit on basis of negligent handling of information); Robert C. Ozer, P.C. v. Borquez, 940 P.2d 371, 379 (Colo. 1997) (holding tort requires that "the person knew or should have known that the fact or facts disclosed were private"); Prince v. St. Francis-St. George Hosp., Inc., 484 N.E.2d 265, 269 (Ohio Ct. App. 1985); Hyde v. City of Columbia, 637 S.W.2d 251, 253, 264-67 (Mo. Ct. App. 1982).

Daniel's Law follows from this tradition. Indeed, although the tort itself was a common law tort, legislatures can always adapt such torts through statutes that apply context-specific rules to any areas posing special risks of harm. E.g., O'Donnell v. United States, 891 F.2d 1079, 1085-86 (3d Cir. 1989) (recognizing negligent-disclosure claim under Pennsylvania statute that imposed a more targeted duty not to disclose psychiatric records without consent, rather than relying on general reasonableness-under-the-circumstances standard of care). And Daniel's Law fits that bill perfectly. Like the common law tort, this statute is based on the publication of facts that, under the specific circumstances covered by the law, are justifiably "private," Romaine, 109 N.J. at 297: the home

address and unpublished home phone number of a covered person, who would be uniquely susceptible to violence and threats in their home—a constitutionally significant location—because of their work. See N.J.S.A. 56:8-166.1(a)(1)-(2), -166.3; see also Frisby v. Schultz, 487 U.S. 474, 484-85 (1988) (discussing tradition of protecting the "sanctity" of the home). That this information might not be private for other individuals is the very reason that the Legislature stepped in to clarify that it can be for this uniquely at-risk population. See also State v. Ramirez, 252 N.J. 277, 301-02 (2022) (collecting examples of related domestic-privacy-and-safety protections for victims of sexual assault and domestic violence); Romaine, 109 N.J. at 304 n.3 (citing Ninth Circuit case involving participant in federal-witness-protection program).

Daniel's Law reflects other aspects of this common-law backdrop too. It deals with information that is not only private but for which release "would be offensive to a reasonable person": disclosing any covered person's or their family's address more than ten business days, after being told to stop doing so is highly "offensive to a reasonable" covered person, Romaine, 109 N.J. at 297, given their legitimate "fear of personal reprisal from affected individuals related to the performance of their public functions," N.J.S.A. 56:8-166.3; see also Restatement (Second) of Torts § 652D cmt. c (confirming that publication is "highly offensive" when "a reasonable person would feel justified in feeling

seriously aggrieved by it"). And for the vast majority of applications, as concerns this facial challenge, covered persons' home addresses and numbers are plainly not matters of public significance. See Atlas, 758 F. Supp. 3d at 337; see also Kratovil, 261 N.J. at 24 n.7. So in the context of judges and law enforcement who face heightened risks relating to publication of their home address or unpublished numbers, each aspect of the tort is relevant—the private information, unreasonableness of disclosure, and lack of public interest.

Because Daniel's Law fits with, and follows from, these background tort principles, Judge Bartle was correct to identify Section 166.1 as a modern codification of this longstanding tort—with rules tailored to the specific and growing harms the Legislature recognized in this context. That means Judge Bartle was correct as well to resolve "[d]oubt about the meaning of [Daniel's Law] in favor of the effect which makes the least rather than the most change in the common law." Marshall, 188 N.J. at 37; see also ibid. ("The spirit of the legislative direction prevails over the literal sense of the terms."); Carlo, 3 N.J. at 265 (calling it "well established" that "a statute which is claimed to impose a duty or establish a right which was not recognized by the common law will be strictly interpreted to avoid such asserted change," and that such a change "must be clearly and plainly expressed"). But if his methodology was right, then his conclusion inexorably followed: reading Daniel's Law in harmony with the kind

of tort it flows from means concluding that the Legislature intended to retain that tort's negligence standard, not to jettison it. Atlas, 758 F. Supp. 3d at 341. And given Defendants' emphasis on a lack of legislative history showing why the Legislature would have wanted to jettison it in the first place, compare supra at 25-27, with (Db3), the inference of consistency with the common law backdrop is stronger still.

Were that not enough (though it is), tort principles from the related context of negligence per se further support the conclusion that Section 166.1 is best read to include an implied reasonableness defense. With respect to the doctrine of negligence per se, under which a plaintiff argues that the statutory violation itself has established negligence on the part of the defendant, courts have long recognized that only "unexcused" statutory violations prove actual negligence liability. See Martin v. Herzog, 126 N.E. 814, 815 (N.Y. 1920) (Cardozo, J.); Braitman v. Overlook Terrace Corp., 68 N.J. 368, 385 (1975) (observing that "in this State the violation of a statutory duty of care is not conclusive on the issue of negligence in a civil action"); Carlo, 3 N.J. at 264 ("Thus a defendant, although he cannot be heard to say that it was not his duty to obey the statute, may show what he did in his effort to obey it, leaving it to the jury to say whether such effort was what a reasonably prudent person would have done in view of

the statute." (citation omitted)).[10] Said another way, even where the statute looks to define a specific act as negligent, there is implicit in that law the ability to show the particular action was in fact excused and not negligence. In other words, even when the text itself is silent as to whether a defendant may "avoid the consequences of a particular act or type of conduct by showing justification for acts that otherwise would be considered negligent," Rowling v. Sims, 732 N.W.2d 882, 885 (Iowa 2007), courts repeatedly allow such a defense.

Examples abound. See, e.g., Polakoff v. Turner, 869 A.2d 837, 847 (Md. 2005) (confirming that violation of lead-paint-remediation statute is prima facie negligence, but that the jury must still whether defendant's "actions were reasonable under all of the circumstances"); Kopsachilis v. 130 E. 18 Owners Corp., 901 N.E.2d 734, 735 (N.Y. 2008) (reading implied defense into statute

[10] See also, e.g., Rowling v. Sims, 732 N.W.2d 882, 885 (Iowa 2007) ("A violation of a statutory duty constitutes negligence per se, absent a legal excuse."); Sikora v. Wenzel, 727 N.E.2d 1277, 1281 (Ohio 2000) ("[N]egligence per se and strict liability differ in that a negligence per se statutory violation may be 'excused.'" (citing Restatement (Second) of Torts §§ 288B(1), 288A (1))); Martinez v. Gulf States Util. Co., 864 S.W.2d 802, 804 (Tex. App. 1993) ("A defendant may be excused for a negligence per se tort violation if a legally acceptable excuse exists."), writ denied, (Apr. 28, 1994); Restatement (Third) of Torts: Liab. for Phys. & Emot. Harm § 15(b) (a statutory violation "is excused and not negligence if: ... the actor excises reasonable care in attempting to comply with the statute"); Prosser, Law of Torts § 36, at 200-01 (4th ed. 1971) (recognizing "the great majority of the courts" treat an "unexcused violation" of a statutory duty as negligence per se (emphasis added)).

covering landlord maintenance of lighting in windowless areas); Freund v. DeBuse, 506 P.2d 491, 493 (Or. 1973) (violation of a motor-vehicle-equipment law will be "negligent as a matter of law unless such party introduces evidence ... that the party was acting as a reasonably prudent person under the circumstances"); RSCR Inland, Inc. v. State Dep't of Pub. Health, 255 Cal. Rptr. 3d 81, 90-91 (Ct. App. 2019) (licensee can defeat "presumption of negligence per se arising from a regulatory violation" where it "did what might reasonably be expected of a licensee that desires to comply with the law"); Bumbarger v. Kaminsky, 457 A.2d 552, 554 (Pa. Super. Ct. 1983) (unlawful failure to halt at stop sign "only becomes negligence per se when the failure to halt is unexcused").

The Connecticut Supreme Court's decision in Gore v. People's Sav. Bank, 665 A.2d 1341 (Conn. 1995), is particularly instructive. There, relying in part on "general tort law," the high court confronted a statute that, read literally, held landlords strictly liable for injuries suffered by children through exposure to lead-based paint in their dwellings, even absent actual or constructive notice of lead-paint contamination. Id. at 1342, 1344-46 & n.7. But while the statute did not expressly "provide for any excuses," id. at 1348, the court emphasized that "[i]n cases involving the doctrine of negligence per se, ... the defendant ordinarily may avoid liability upon proof of a valid excuse or justification," id.

at 1349 (citing Restatement (Second) of Torts §288A), so long as the statute does not "prohibit[] excuses," id. at 1352 (citing Restatement (Second) of Torts § 288A cmt. d); see also id. at 1349-50. And since "no statute is to be construed as altering the common law, farther than its words import," the court refused to hold that legislature in fact prohibited excuses for lack of actual or constructive notice (i.e., strict liability). Id. at 1352 (cleaned up). Rather, given the lack of any "indication" the legislature actually wished to hold landlords liable "regardless of a valid excuse or justification," the Connecticut high court did not understand itself to be "add[ing]" such a provision at all, but merely "recogniz[ing] that the legislature has not acted to eliminate the common law requirement of notice." Ibid.

Here too, Daniel's Law is properly read to include an implied defense that a defendant's failure was excused or justified—that is, that the defendant's actions were "reasonable under all circumstances," however rare such a reasonable failure to stop publishing a covered person's address after a request may be. E.g., Polakoff, 869 A.2d at 847; see also supra at 11-12 (offering examples of potential situations in which failing to stop disclosure may be excused). Importantly, just as the Connecticut Supreme Court emphasized in Gore, our Legislature did not disclaim the ability of any defendant to present any such defense, nor did the Legislature expressly embrace strict liability,

compare Goldhagen, 247 N.J. at 585 (dog-bite liability "regardless of the former viciousness of such dog or the owner's knowledge of such viciousness" (quoting N.J.S.A. 4:19-16)); its intent was to cover only those failures that occurred after actual or constructive notice and a reasonable period to comply, see Kratovil, 261 N.J. at 27. Since "no statute is to be construed as altering the common law, farther than its words import," Gore, 665 A.2d at 1352 (cleaned up); accord Marshall, 188 N.J. at 37, and the words do not suggest a desire to break dramatically from the background tort and broader negligence per se principles, that is compelling. So especially combined with textual, structural, and intent evidence, background tort principles support Judge Bartle's conclusion that Section 166.1 was seeking to target negligence, not to impose liability on defendants whose failures are not even reasonably their fault. See Atlas, 758 F. Supp. 3d at 341.

2. Defendants' counterarguments—that covered persons' home addresses and unlisted home phone numbers are insufficiently "private," or that this statute cannot trigger any canons relating to the common law—are unavailing.

To start, Defendants err several times over in arguing the public disclosure of private facts backdrop is an inapplicable common-law cognate because these pieces of information are insufficiently "private." See (Db27-28). Even if one assumes that most people traditionally find it unobtrusive to have their addresses

available publicly, see (Db4-5), Daniel's Law does not address most disclosures of home addresses or unpublished home phone numbers. Instead, it serves to protect only covered persons, who face special, documented risks in their homes from the availability of this information, see N.J.S.A. 56:8-166.3, and even then Daniel's Law "imposes no liability for publishing [someone's] address or phone number unless and until an authorized person expressly invokes the protection" of the statute by following its "strict notice requirement." Kratovil, 261 N.J. at 27. So the statute only restricts disclosure (1) involving a specific and targeted population who face special vulnerabilities at home based on their public roles, and (2) of that subset, who specifically opt-in to resist further disclosure. When defined in that way, it becomes obvious that the affected individuals understand their home addresses to be private—and disclosure offensive and risky.

Although Defendants complain that this information cannot be "private" if other public or private entities are still permitted to disclose it, see (Db27-28) (emphasizing it is possible for a person to sue a data broker even if their private home address information is available via other sources), that runs into a series of legal and logical problems. For one, because Defendants are pressing these claims on a facial motion-to-dismiss posture, their argument that some covered persons would only be seeking to prevent disclosure from some data brokers but not from others is entirely speculative and lacks any record support. For another,

even if that were true (which is far from clear), what matters is that the Legislature was not imagining covered persons wanting their home addresses withheld some of the time by some of the companies, and could reasonably (and the Attorney General believes rightly) assume covered persons will seek nondisclosure in good faith, to the best of their abilities, given their interests in protecting their safety and their families. And with that perception in mind, the Legislature would very much have been acting consistent with the principles animating the common-law tort analog: to help a particularly at-risk population protect itself from public disclosures writ large. In any event, it is unclear why a data broker ignoring a covered person's request for more than ten business days would be reasonable just because that broker could theoretically still find the person's address online somewhere else.

Defendants' various policy complaints about Daniel's Law—and marginal differences in how it treats private and public entities—fare no better. Defendants complain that a covered person is not required to obtain non-disclosure of all relevant information all at once, see (Db27), although they seem to be assuming—again without any record evidence—that there is a feasible way to achieve a global takedown of such online information in one fell swoop. And Defendants' alternative complaint that covered persons should have to obtain nondisclosure from the State's Office of Information Privacy (OIP) before ever

even seeking disclosure from private actors like Defendants, see (Db8-9, 22-23), fails to address that this would delay covered persons in protecting their addresses. Further, whatever the policy merits of these complaints, these quarrels have no bearing on whether on the statutory-interpretation question here: whether the common-law, negligent-disclosure-tort background sheds light on the mental state required by Section 166.1. After all, that Defendants would have chosen different policies to protect this private information in no way undermines that this is a law protecting private information.

Beyond trying to distinguish Daniel's Law from the public-disclosure tort itself, Defendants also err in generally resisting application of the canon that calls for minimizing divergence from state common law. See (Db33-35). Initially, Defendants make much of the fact that the immunity statute in Marshall (in which this Court stressed that laws "in derogation of the common law should be strictly construed," 188 N.J. at 37) involved a statute that specifically created an exemption from liability—and that Daniel's Law does not. (Db35). But that misunderstands Marshall itself. That case identified two different principles in support: a "principle that statutes granting immunity from tort liability 'should be given narrow range,'" 188 N.J. at 37 (quoting Harrison v. Middlesex Water Co., 80 N.J. 391, 401 (1979)), and a principle that statutes "in derogation of the common law should be strictly construed," ibid. Other cases indeed apply that

latter principle outside the immunity context. See, e.g., Oswin v. Shaw, 129 N.J. 290, 310 (1992) (quoted by Marshall, 188 N.J. at 37). And so that principle—separate and apart from doctrines about immunities—governs here.

Defendants further maintain that Daniel's Law does not "codify any pre-existing common-law right into statute," (Db35), but that is question-begging. Defendants do not (and cannot) dispute that there is an established common law right against the public disclosure of private facts, and the relevant question here is whether the Legislature intended to codify an analog of that established tort to address a specific public problem—"the well-known fact, amply documented by the record here, that in recent years judges, prosecutors, police, correctional officers, and others in law enforcement have been the subject of an ever increasing number of threats and even assassinations," Atlas, 758 F. Supp. 3d at 337—much the way Pennsylvania did to protect the privacy of psychiatric records years ago, see O'Donnell, 891 F.2d, at 1085-86. Judge Bartle (correctly) held that it did. Atlas, 758 F. Supp. 3d at 341. And while no one argues the common law focused on protecting covered persons in this precise way, Defendants offer no basis to suggest that legislative bodies may not adapt old solutions to new problems. Cf. State v. Culver, 23 N.J. 495, 505 (1957) (Vanderbilt, C.J.) ("One of the great virtues of the common law is its dynamic nature that makes it adaptable to the requirements of society at the time of its

application in court."). The question is merely whether Daniel's Law draws enough on this "old soil," even adapted to a new problem, that the old soil's mental state fills the silence of Section 166.1. Cf., e.g., George v. McDonough, 596 U.S. 740, 746-47 (2022). It does.

Nor does Daniel's Law resemble any contexts in which one might expect to find strict liability, cf. (Db23-24) (discussing dog-bite statutes), which means that there is no countervailing common-law backdrop that would weigh in Defendants' favor. Strict liability is a rarity in tort law, reserved for particularly unusual situations, or parties with asymmetric abilities to prevent the relevant harm (and thus placing the onus on the "least cost avoider"). See, e.g., Restatement (Second) of Torts § 520 cmt. h (1977); T & E Indus., Inc. v. Safety Light Corp., 123 N.J. 371, 386-87 (1991); Suter v. San Angelo Foundry & Mach. Co., 81 N.J. 150, 173-74 (1979). Those areas include abnormally dangerous activities, e.g., T & E Indus., 123 N.J. at 385-90; wild or abnormally dangerous animals, e.g., Eyrich v. Earl, 203 N.J. Super. 144, 147-48 (App. Div. 1985); and defective products, e.g., Suter, 81 N.J. at 169-74. Daniel's Law is not even a distant cousin of these niche areas of tort: no one argues that sharing addresses generally is an abnormally dangerous activity, and Daniel's Law's strict notice requirement reflects a legislative understanding that it is the covered person who

is best situated to judge the risks they and their families face—at which point they can put a data broker or other company on notice of the problem.

D. At A Minimum, The Federal Court's Conclusion Properly Avoids Constitutional Concerns.

Text, structure, statutory history, and background principles of tort law all establish that Daniel's Law is best read to require a mental state of negligence before imposing civil liability. But even if this Court were to disagree, bedrock interpretive principles still compel construing the statute to avoid constitutional infirmity, let alone facial invalidity, because Judge Bartle's reading is at the very least a "reasonable" one. See, e.g., Pomianek, 221 N.J. at 91. Defendants offer no reason for this Court to adopt a more capacious reading that imposes liability without fault, where Defendants themselves argue that the lack of such "mens rea requirement poses serious First Amendment concerns." (Db3). This Court should thus reject Defendants' efforts to read the statute so broadly, thereby exposing companies to civil liability that no other party or official thinks warranted, just to make it more vulnerable to a facial attack.

1. This Court has long embraced a strong presumption "that the legislature intended to act in a constitutional manner" and would prefer that our courts read its statutes "to conform to the Constitution." Burkert, 231 N.J. at 277 (citation omitted). So when a statute has two potential meanings—"a narrow one" that would pass muster "and a broader one that raises serious constitutional issues"—

this Court will adopt the narrower one. State v. Carter, 247 N.J. 488, 520 (2021); see also, e.g., N.J. Repub. State Comm. v. Murphy, 243 N.J. 574, 591 (2020) (statutes can be held unconstitutional only when "repugnancy to the constitution is clear beyond reasonable doubt"). Similarly, "[w]hen necessary," this Court "ha[s] engaged in 'judicial surgery' to save an enactment that otherwise would be constitutionally doomed." State v. Natale, 184 N.J. 458, 485 (2005). Doing so is appropriate when there is "no doubt the Legislature would want the law to survive"—particularly in a facial dispute. See State v. Comer, 249 N.J. 359, 402-03 (2022) ("add[ing]" a provision to cure a constitutional infirmity).

That doctrine is dispositive here. There is no dispute that reading Section 166.1 to impose strict liability would at least raise serious constitutional issues (though of course the Attorney General does not concede that the proper remedy would be facial invalidation), and there is likewise no serious dispute that negligence is a constitutionally sufficient mental-state requirement for a civil statute like this one. See, e.g., Gertz v. Robert Welch, Inc., 418 U.S. 323, 347 (1974); Atlas, 758 F. Supp. 3d at 340-41; (AGa53-54). So for all the reasons above—including the law's "strict notice requirement," which "ensures that the statute is not a trap for the unwary," Kratovil, 261 N.J. at 27; its evolution revealing a desire to combine two distinct prongs into one unified reasonable standard of care; and the tort-law backdrop—Judge Bartle's interpretation was

more than reasonable. Taken together—that is, the importance of constitutional avoidance, and the plausibility of the State's approach—the result is clear: this Court should approve Judge Bartle's reading and construe Daniel's Law to impose a negligence standard for civil liability. The entity whose failure to stop disclosing a covered person's information within ten business days is reasonable would fall outside the law's scope and could not be held liable, while the law would avoid the constitutional concern that Defendants seek to read into it.

Reading Daniel's Law that way would not be an impermissible "judicial transplant," Pomianek, 221 N.J. at 91, even assuming that the Legislature is best read to have intended strict liability. For one, implying such a reasonableness defense would at a minimum be consistent with the Legislature's intent; as this Court recognized, the Legislature did not want the law to serve as a "trap for the unwary," Kratovil, 261 N.J. at 27, so ensuring that the rare, faultless defendant is free from civil liability fits easily with that legislative design. And it would recognize the very same kind of implied defense courts have regularly found to be preserved impliedly in the context of negligence per se, even absent statutory text specifically codifying it. See supra at 32-35. In other words, even if reading Daniel's Law to imply a reasonableness defense could be said to "add" a defense rather than to "merely recognize that the legislature has not acted to eliminate" one, but see Gore, 665 A.2d at 1352, this kind of targeted surgery would involve

merely a scalpel. No one can truly doubt the Legislature would have preferred all these applications to survive over the invalidation of its law. Cf., e.g., Comer, 249 N.J. at 402-03; N.J.S.A. 1:1-10 (presumption of severability).

For another, properly understanding Section 166.1 to impliedly include a lack-of-negligence defense would channel fact-dependent fights to proceedings where they belong: as-applied challenges or defenses to unique circumstances, not a facial challenge. See supra at 8 n.4 (noting that Defendants' various factual quarrels with Plaintiffs have no place in a facial challenge let alone the statutory mental-state analysis here). As noted, Defendants' facial challenge seeks invalidation of this provision in whole, protecting not just the unusual and faultless case, but offering a blanket holiday from liability for the most brazen, sophisticated violators—ones who (as facts that could be later developed might well show) could have used powerful computerized tools and a wealth of individualized data to comply within hours if not minutes or seconds. Cf. Moody v. NetChoice, LLC, 603 U.S. 707, 723 (2024) ("NetChoice chose to litigate these cases as facial challenges, and that decision comes at a cost."). Judge Bartle's construction, grounded in established tort-law principles and on constitutional avoidance, allows those fights to happen in the proper forum, such that if some defendant could not reasonably comply within the ample time allotted (whether because of a natural disaster, a man-made obstacle, or some

insufficiently clear notice), that defendant would not fall within the law's coverage—both "avoid[ing] absurd results" and saving a critical public-safety statute from constitutional peril. See Atlas, 758 F. Supp. 3d at 341.

2. Defendants' efforts to resist this conclusion are unavailing. Initially, Defendants misunderstand and overly narrow this Court's venerable doctrine on constitutional avoidance and judicial surgery. While all agree there are limits to judicial surgery, Defendants offer two alleged bright-line rules that both fail to help them here and make little sense as a matter of precedent or first principles: they argue that this Court can never use avoidance/surgery principles to read an implied element into a law, and they argue that courts may only add certain "judicial procedures" to save a statute. See (Db31-33). First (leaving aside why Defendants' cramped view of constitutional avoidance/surgery fails), this does not even help them, given all the Attorney General's above-described evidence that the district court's interpretation is consonant with legislative intent and background principles from tort. Particularly given the latter, adoption of Judge Bartle's construction would not "'add" a reasonableness defense at all, but "merely recognize that the legislature has not acted to eliminate the common law" negligence regime that preexisted in the background of Daniel's Law. See Gore, 665 A.2d at 1352. So this is not a case of addition, nor for the same reason is it a case "rewriting the essential substantive elements required." (Db33). It

is merely using the canon of constitutional avoidance to hold the Legislature to the preexisting rules from which it did not so clearly derogate in any event.

Regardless, both precedent and logic foreclose Defendants' proposed bright-line exceptions to constitutional avoidance. Regarding precedent, this Court in Comer specifically added a provision that allowed juveniles to pursue decades-later review of a life-without-parole sentence expressly to save the overall law from invalidation—an added regime that did not exist in the statutory text. Comer, 249 N.J. at 401-02. And in so doing, this Court discussed examples of our courts "imply[ing] additional provisions" for this very reason, without suggesting these "provisions" could only be procedural—and indeed, one of its examples undisputedly involved elements. See ibid. (citing, inter alia, State v. De Santis, 65 N.J. 462, 472-73 (1974)).

Defendants' theory is also illogical. Given that defendants seem to concede that this Court could simply excise the words "absent fault" if the Legislature had written "absent fault or with negligence," it makes little sense that this Court could not read the Legislature's silence as simply implying only the latter mental state to achieve the exact same result. Nor does an element/procedure distinction make sense, because allowing defendants to raise an implied reasonableness defense in an existing action is no more disruptive to a statute than prescribing an entirely new "judicial procedure." See (Db33).

Were that not enough, the administrability problems of the substance/procedure distinction are well-documented, so courts are properly leery of importing it into a new area of the law. See, e.g., Moore v. Harper, 600 U.S. 1, 31 (2023) (noting "[t]he line between procedural and substantive law is hazy" and that "[m]any rules are rationally capable of classification as either" (citation omitted)).

Defendants' citations to cases in which this Court declined to engage in judicial surgery also do not help them. See (Db28-31). To start, most of these cases involved criminal statues, see Higginbotham, 257 N.J. at 287; Pomianek, 221 N.J. at 91, in which concerns about notice to potential defendants are at their height, see Pomianek, 221 N.J. at 85 ("A penal statute should not be 'a trap' for the unwary.'" (quoting State v. Lee, 96 N.J. 156, 166 (1984))). And most also, unlike Section 166.1, involved "serial lists"—so where those serial lists contained a particular element and the final one did not, the implication that the Legislature meant to exclude it was more structurally powerful. See supra at 19.

Nor can Defendants get mileage out of Pomianek more generally. Pomianek was a particularly unusual case, involving a challenge to a bias-intimidation statute in which criminal liability turned on whether the victim of the remarks "reasonably believed" that the defendant was motivated by racial bias—in sharp contrast to the bedrock principle of criminal law that a defendant's liability flows from his own mental state, not the victim's subjective

understanding. 221 N.J. at 69. It thus did not involve the mere absence of an express mens rea. Compare id. at 90-91, with (Db21-22, 29-31). Had that been the issue, this Court would have presumably read in the default state criminal mens rea of knowledge. See N.J.S.A. 2C:2-2(c)(3). Rather, the fatal flaw was that the statute left "no doubt" that a statutory violation depended "on the victim's, not the defendant's, state of mind." Pomianek, 221 N.J. at 69, 91. No such problem exists here.

Usachenok v. Department of the Treasury, 257 N.J. 184 (2024), is even further afield. That case addressed the facial constitutionality of a regulation directing State EEO/AA investigators responding to employment-discrimination complaints to request interviewees "not discuss any aspect of the investigation with others" and stating that "[f]ailure to comply" could "result in administrative and/or disciplinary action." Id. at 191-92. Emphasizing the "inherent power imbalance" between the investigator and the witness who is "dependent on their employer," this Court found that it could not add the "substantial language" that would be needed to save such a "simple" and "wide-ranging" directive, particularly where it included only one unusual exception (for "legitimate business reason[s]"). Id. at 199-200. That idiosyncratic fact-pattern, in the unique employer-employee context, sheds little light on the situation here, and in no way suggests that Judge Bartle's interpretation of Daniel's Law was

unreasonable. Implying negligence as a defense to a statute that already imposes a strict notice requirement; already avoids being a trap for the unwary; and builds on two tort doctrines that had long included negligence concepts is hardly the regulatory rewrite that would have been required in Usachenok.

In addition, Defendants' citations to other (primarily criminal) statutes with express mental-state requirements, see (Db24-26 & n.12), cannot render Judge Bartle's recognition of an implicit negligence requirement untenable. See also supra at 18-19. Principles of avoidance and savings constructions exist for the precise circumstances in which the Legislature has left room for reasonable disagreement, or else the canon of constitutional avoidance would have no legal work to do at all. See supra at 42-45. So the fact that the Legislature did not specifically cite negligence in the text is what leads to the interpretive question on which constitutional avoidance bears; it does not itself answer it.

Finally, to the extent that Defendants cite these statutes and other facts or arguments that go to the question of constitutional tailoring, see (Db2-7, 9-14, 24-26, 39-46); see also supra at 25 n.9, they forget that the question before this Court is what mental-state Section 166.1 requires for civil liability to attach—not whether the law is narrowly tailored to serve its compelling interests (though it is). The Attorney General is glad to join issue on these points and to explain why Defendants' various arguments are misguided, and has already done so

before this Court and in detailed briefing to the Third Circuit. See also Kratovil, 261 N.J. at 26-29. But Defendants removed these cases to federal court, and have presented their facial First Amendment challenge to the Third Circuit. The Third Circuit therefore can and must resolve these well-ventilated arguments, on which it received full briefing and heard oral argument. Certification presents a valuable opportunity for this Court to definitively answer a predicate state-law question: to resolve Section 166.1's mental-state requirement (and to confirm it requires negligence), not to give Defendants a second bite at the apple on distinct federal-law arguments they may fear will be resolved against them in the federal appellate court where they already pressed them.

CONCLUSION

This Court should hold that Section 166.1 requires negligence.

Respectfully submitted,

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