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Via Regular Mail

Ms. Heather Joy Baker, Esq., Clerk
Supreme Court of New Jersey
Richard J. Hughes Justice Complex
25 Market Street, P.O. Box 970
Trenton, New Jersey 08625

Re: Atlas Data Privacy Corp., et al. v. We Inform, LLC, et al.
Third Circuit Court of Appeals Docket No. 25-1555
Supreme Court Docket No. 091145

Comment On The Third Circuit's Request To Answer Certified Questions

The Attorney General, an intervenor in these consolidated Third Circuit cases, urges this Court to accept the Third Circuit's request that this Court decide the mens rea that Daniel's Law, N.J.S.A. 56:8-166.1, requires. This Court should accept the certified questions of state statutory construction for at least three reasons: these state-law questions will (as the Third Circuit indicates) be determinative of a facial constitutional challenge to a statute; these questions implicate an especially important state statute; and the questions are recurring.

First, the certified state-law questions easily meet this Court's standard



for certification. See R. 2:12A-1 (instructing this Court may answer certified question “if the answer may be determinative of an issue in litigation pending in the Third Circuit”). This case arises from a facial First Amendment challenge to the validity of Daniel’s Law, enacted to “enhance the safety and security of certain public officials” to enable them to “carry out their official duties without fear of personal reprisal.” N.J.S.A. 56:8-166.3 (covering judges, prosecutors, police officers, child-protection investigators, and immediate family residing with them). As the Third Circuit explained in its certification order, this Court’s resolution of what mens rea Daniel’s Law requires for the imposition of actual or liquidated damages—the forms of relief Plaintiffs seek here—may impact the outcome of that First Amendment challenge. See Third Circuit Certif. Order 6-8. The Third Circuit’s order explains that it has been unable to find a precise decision from this Court or the Appellate Division that resolves that question. See R. 2:12A-1 (asking if there is a “controlling appellate decision”). And the panel lays out why the mens rea matters: the U.S. Supreme Court has suggested a lack of mens rea can risk chilling protected speech and thus implies inadequate tailoring. See Certif. Order 6-7. So this Court’s answer on the mens rea Daniel’s Law requires for liability “may be determinative” of the entire facial validity of Daniel’s Law itself—that is, the precise “issue in litigation pending in the Third Circuit.” See R. 2:12A-1. This is a classic situation for certification.

Second, this is a tremendously important case—further justifying the need for this Court to weigh in. As the Court explained in Kratovil v. City of New Brunswick, our Legislature enacted Daniel’s Law “to honor, Daniel Anderl, the son of a federal judge, who was shot and killed in July 2020 at the judge’s family home by a person who had compiled a dossier of personal information about the judge, including the judge’s home address.” 261 N.J. 1, 12-13 (2025) (quoting S. Judiciary Comm. Statement to A. 1649 (Oct. 22, 2020)). This Court and the federal court in Atlas Data Privacy Corp. v. We Inform, 758 F. Supp. 322, 337 (D.N.J. 2024), have observed that “‘judges, prosecutors, police, correctional officers, and others in law enforcement have been the subject of an ever increasing number of threats and even assassinations,’ some of which ‘have been facilitated by malefactors obtaining the home address or unlisted phone number of their targets.’” Id. at 25 (quoting Atlas Data Priv. Corp., 758 F. Supp. at 337). Daniel’s Law thus serves the key interest of enhancing “the protection of certain public officials and their immediate families from threats and harm that might impede their ability to serve the public.” Id. at 16. A federal decision invalidating this law would thus be calamitous to the safety and security of our public officials. This Court should take the invitation to avoid such result.

Third, this Court’s resolution of these questions matters because the issue is recurring, impacting not only this facial constitutional challenge in the Third

Circuit (as important as that is), but myriad other challenges too. Data brokers and other companies have raised First Amendment challenges to the validity of Daniel's Law as defenses in nearly every New Jersey county in which Daniel's Law claims have been brought—with nearly all such challenges implicating the question as to what mens rea Daniel's Law requires. The counties with pending cases include Bergen (BER-L-794-24, BER-L-815-24, BER-L-875-24, BER-L-920-24), Essex (ESX-L-3308-25), Mercer (MER-L-270-24, MER-L-271-24, MER-L-272-24, MER-L-273-24, MER-L-283-24, MER-L-285-24, MER-L-290-24, MER-L-309-24), Middlesex (MID-L-859-24, MID-L-903-24, MID-L-915-24, MID-L-988-24, MID-L-991-24, MID-L-992-24), Monmouth (MON-L-482-24, MON-L-483-24, MON-L-484-24, MON-L-515-24, MON-L-516-24, MON-L-533-24, MON-L-577-24), and Morris (MRS-L-245-24).¹ This Court's decision to answer these certified questions will mitigate the resource-intensive burdens placed on both the overall court system and the State and the parties to litigate these questions in each case. The widespread impact on cases pending in trial courts across the State is another reason to accept these questions.

Should this Court accept these questions, the Attorney General intends to provide supplemental briefing—consistent with Rule 2:12A-6—regarding why

¹ This list is non-exhaustive, as the Attorney General has not received notice of every constitutional/validity challenge to Daniel's Law as required under Rule 4:28-4.

Daniel’s Law does indeed require “a negligence standard of liability” for actual and liquidated damages, as the federal district court properly found. Atlas Data Priv. Corp., 758 F. Supp. 3d at 341. Its text and structure, as well as common-law tort principles, confirm that Daniel’s Law includes a negligence standard. Its opt-in structure—which requires valid “written notice,” “recei[ved]” by the entity, with ten business days to comply, N.J.S.A. 56:8-166.1(a)—implies this standard. See Restatement (Second) of Torts §282 (1965). And longstanding background tort principles bolster the conclusion that Daniel’s Law requires such a mens rea. Atlas Data Priv. Corp., 758 F. Supp. 3d at 341 (noting Daniel’s Law was built on invasion of privacy tort, which in New Jersey “requires proof of ‘the unreasonable publication of private facts’” (quoting Romaine v. Kallinger, 109 N.J. 282, 297 (1988))). These principles together confirm that Daniel’s Law imposes a negligence mens rea for civil liability, as the Attorney General would make clear in greater detail in supplemental briefing.

This Court should accept the certified questions from the Third Circuit.

Respectfully submitted,

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