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West Virginia's Daniel's Law Held Facially Unconstitutional

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On August 20, 2025, the U.S. District Court for the Northern District of West Virginia issued an opinion holding Section E of West Virginia's Daniel's Law — which created a private cause of action for unauthorized disclosure of addresses and phone numbers of judges and law enforcement officers — facially unconstitutional in violation of the First Amendment. Applying strict scrutiny because the law regulates the content of truthful, noncommercial speech, the district court held the law was not narrowly tailored because it authorized damages with no notification requirement or predicate of injunctive relief and failed to contain any knowledge or state of mind requirement to establish a violation. This decision — and the outcome of the appeal that is expected to follow — will have important ramifications for the viability of the Daniel's Laws enacted in numerous states[1] across the U.S. since 2021, in the wake of tragic murder of Daniel Anderl, son of New Jersey District Judge Esther Salas.

Summary of the Decision

Modeled on New Jersey's Daniel's Law, West Virginia's law was enacted in 2021 in order to "enhance the safety and security of certain public officials in the justice system" and "to foster the ability of these public servants . . . to carry out their official duties without fear of personal reprisal from affected individuals related to the performance of their public functions."[2] In 2024, five putative class actions were filed against data industry defendants under Section E of West Virginia's version of Daniel's Law, which provides:

Unless written permission is first obtained from the individual, a person, business or association shall not disclose, redisclose, or otherwise make available the home address or unpublished home or personal telephone number of any active, formerly active, or retired judicial officer, prosecutor, federal or state public defender, federal or state assistant public defender, or law enforcement officer under circumstances in which a reasonable person would believe that providing such information would expose another to harassment or risk of harm to life or property.

W. Va. Code § 5A-8-24(e).

The lawsuits alleged the defendants were violating Daniel's Law by disclosing the home address and unpublished phone numbers of individuals covered by the law, in violation of Section E. The lawsuits further alleged that the disclosure of information protected by Daniel's Law exposed the plaintiff to harassment and risk of harm to life and property, and sought to recover statutory damages of $1,000 per violation, along with attorneys' fees and litigation costs.

After removing the cases to federal court, the defendants filed a consolidated motion to dismiss, arguing "Section

E of West Virginia's Daniel's Law is unconstitutional under the First and Fourteenth Amendments, either as a content-based regulation of speech subject to strict scrutiny or under any level of scrutiny, and [] that Section E of West Virginia's Daniel's Law is unconstitutional under the Due Process Clause of the Fourteenth Amendment due to vagueness."[3]

The plaintiff opposed the motion, arguing Section E of Daniel's Law was not subject to strict scrutiny because it did not have a nexus to viewpoint discrimination, was not intended to suppress substantive communications, only regulates commercial speech, and was a privacy statute subject to the standard articulated by the U.S. Supreme Court in *The Florida Star v. B.J.F.,* 491 U.S. 524 (1989) and *Smith v. Daily Mail Publishing Co.,* 443 U.S. 97 (1979) (*Florida Star* Standard). Under the *Florida Star* Standard, the Supreme Court found that lawfully obtained, truthful information about a matter of public significance remains highly protected speech, absent a showing that the statute is narrowly tailored to advance a state interest of the highest order.[4]

In a 44-page opinion, the district court rejected the plaintiff's arguments. It found Section E of Daniel's Law was unquestionably a content-based restriction on speech subject to strict scrutiny because it regulates the "communicative content," or "topic," or "subject matter" of the speech.[5] In reaching this conclusion, the district court noted that "disclosing an address or phone number states a fact that could be used for any number of noneconomic purposes" and therefore Daniel's Law regulated far more than just commercial speech.[6]

The district court also explained why the *Florida Star* Standard did not apply. It found *Florida Star* and *Daily Mail* were factually distinguishable because both cases involved newspapers publishing sensitive information (*i.e.*, the name of a rape victim and the name of a juvenile offender along with intimate details of ongoing criminal proceedings), which were not analogous to the addresses or phone number information of judges and law enforcement officials.[7] The district court reasoned that the *Florida Star* Standard had been rejected by various courts, including the Ninth Circuit in *MDb.com Inc. v. Becerra*, [8] and the Fourth Circuit in *Am. Ass'n of Pol. Consultants v. FCC*.[9] Both circuits applied strict scrutiny because courts should be reluctant to cordon off new categories of speech for reduced protection unless it is part of a long tradition of proscription.[10]

Moreover, the district court found, even if the *Florida Star* Standard was applicable, it was similar to the strict scrutiny standard and did not help the plaintiff's position because the *Florida Star* Standard was intended to "bolster First Amendment scrutiny, not to reduce it."[11] In this regard, the district court recognized the Supreme Court ***has never*** used the *Florida Star* Standard to justify restricting the freedom to publish truthful information.[12]

Turning to the strict scrutiny analysis, the court agreed Daniel's Law serves a compelling state interest, which was not contested by the parties. However, it concluded Section E failed the narrow tailoring requirement because less restrictive alternatives of achieving the state's interests exist without "burden[ing] more speech than necessary to protect the safety of judicial and law enforcement officers." In particular, the court focused on the absence of any notice requirement of a violation of the law to the speaker, [13] as well as the absence of any knowledge requirement, [14] noting the "Supreme Court has specifically recognized the tendency of statutes restricting speech without a knowledge requirement to exert a chilling effect" on constitutionally protected speech.[15] Ultimately, the court concluded that "because Section E of West Virginia's Daniel's Law lacks any mechanism, such as a notice requirement or knowledge element, that could narrowly tailor the provision to West Virginia's compelling interest in protecting judicial and law enforcement officers, Section E of Daniel's Law fails strict scrutiny and is unconstitutional."[16]

Throughout the opinion, the court discussed the recent District Court of New Jersey decision in *Atlas Data Privacy Corp. v. We Inform LLC*, 758 F. Supp. 3d 322 (2024) and New Jersey Supreme Court's decision in *Kratovil v. City of New Brunswick*, 261 N.J. 1 (2025), which both denied facial First Amendment challenges to New Jersey's version of Daniel's Law. [17][18] While the court expressed agreement with certain conclusions reached in both decisions, including that New Jersey's Daniel's Law was a restriction of speech, the court's analysis diverged on the applicability of strict scrutiny.[19] In particular, the court found strict scrutiny applicable, noting it was "not sway[ed]" by the ruling in *Atlas Data Privacy Corp.* that the three-factor balancing test in *Florida Star* was the applicable standard to evaluate privacy statutes.[20] Likewise, the court found the application of the *Florida Star* Standard in *Kratovil* "did not dissuade the court from applying ordinary strict scrutiny" because the facts in *Kratovil* closely resembled the facts in *Florida Star* and were distinguishable from the facts at hand.[21]

Takeaways

The *Jackson* decision recognizes that regardless of the noble purpose of a law, a content-based restriction on constitutionally protected speech must be narrowly tailored to withstand First Amendment scrutiny. This holding is important in the context of Daniel's Law challenges, which share the same problematic features as West Virginia's law. As the *Jackson* court noted, many other states' versions of Daniel's Law create a private cause of action for damages only after notice is given to the disclosing party[22] and contain a scienter requirement, which were provisions missing from West Virginia's Daniel's Law and undermining the assertion that the statute was narrowly tailored.[23]

There is little doubt that the *Jackson* decision will be appealed to the Fourth Circuit Court of Appeals. The *Jackson* decision also may have implications on the Third Circuit Court of Appeals' pending review of the appeal involving a facial challenge to New Jersey's version of Daniel's Law, in *Atlas Data Privacy Corp. v. We Inform LLC*, No. 24-8047 (3d Cir. 2024). In *Atlas Data Privacy Corp.*, the District of New Jersey applied the *Florida Star* Standard to New Jersey's version of Daniel's Law and denied a First Amendment facial challenge brought by defendant businesses who challenged New Jersey Daniel's Law on grounds similar to those presented in *Jackson*. While West Virginia's and New Jersey's versions of Daniel's Law have important differences, both statutes are content-based restrictions on speech and both lack a scienter requirement, which the Supreme Court notes, and the West Virginia District Court found, has a chilling effect on speech. If the Third Circuit affirms the New Jersey District Court's order upholding the constitutionality of the law, the Supreme Court may choose to review the issue to provide guidance on the appropriate standard to be applied to laws seeking to curtail the freedom to publish truthful information.

While the *Jackson* decision focuses on Section E of West Virginia's Daniel's Law, it could impact other statutes that seek to restrict the publication of truthful information. As challenges to Daniel's Law proceed through the courts and as state legislators seek to adopt similar versions of the law, time will tell what impact the Jackson decision will have on pending cases and future legislation.

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[1] https://www.troutman.com/insights/maryland-enacts-the-judge-andrew-f-wilkinson-judicial-security-act-are-more-daniels-laws-on-the-horizon.html.

[2] W. Va. Code § 5A-8-24(b).

[3] *Jackson v. Whitepages, Inc.,* No. 1:24-cv-80, at 11 (N.D. W. Va. Aug. 19, 2025).

[4] *Florida Star,* 491 U.S. at 530-31.

[5] *Jackson v. Whitepages, Inc., No. 1:24-cv-80, at 18 (N.D. W. Va. Aug. 19, 2025)*

[6] *Id.* at 21.

[7] *Id.*, at 23.

[8] 962 F.3d 1111 (9th Cir. 2020).

[9] 923 F.3d 159 (4th Cir. 2019).

[10] *Jackson* at 24.

[11] *Id.,* at 26.

[12] *Id.* at 26.

[13] *Id.* at 37-38.

[14] *Id.* at 33-35.

[15] *Id.* at 40.

[16] *Id.* at 41-42.

[17] 758 F. Supp. 3d at 341-42.

[18] 261 N.J. 1 (2025)

[19] *Jackson* at 16.

[20] *Id.* at 23.

[21] *Id.* at 28 n. 11.

[22] *Id.* at 35 n.17 (citing Danile Anderl Judicial Security and Privacy Act, James M. National Defense Authorization Act for Fiscal year 2023, Pub. L. No. 117-263 § 5931; Cal. Gov't Code § 7928.215(e); Del. Code Ann. Tit. 10, § 1923(b); Haw. Rev. Stat. § 92H-2; 705 Ill. Comp. Stat. 90/2-5(a); Md. Code Ann., Cts. & Jud. Proc. § 3-2303(e), Mo. Rev. Stat. § 476.1304; N.J. Rev. Stat. § 2C:20-31.1; N.Y. Judiciary Law § 859(2)(c)(i); and Okla. Stat. tit. 20 § 3016(C)).

[23] *Id.* at 34 n.16 (citing Va. Code. Ann. § 18.2-186.4; Colo. Rev. Stat. § 18-9-313; Md. Code. Ann., Cts. & Jud. Proc. § 3-2304; and Ky. Rev. Stat. Ann. § 525.085).

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