

NEW YORK STATE BAR ASSOCIATION

COMMERCIAL AND FEDERAL LITIGATION SECTION

**COMMENT ON THE PROPOSED DANIEL ANDERL
JUDICIAL SECURITY AND PRIVACY ACT OF 2020
S.4711, H.R. 8591**

SUMMARY

The New York State Bar Association Commercial and Federal Litigation Section (“ComFed”) supports the passage of the Daniel Anderl Judicial Security and Privacy Act of 2020 (“DAJSP”).

DAJSP would protect the federal judiciary and their families, and safeguard personally identifiable information of federal judges (JPII) in public records. This protection would apply to active, senior, recalled, and retired district judges, magistrate judges, bankruptcy judges, and Court of Claims judges.

Among other provisions, DAJSP prohibits government agencies from publicly posting JPII and allows judges to request the removal of such information within the 72 hours following a written request. The law also creates a federal grant program for state and local governments to provide funding for the prevention of the release of JPII from any agency that operates a registry or database containing this information and authorizes funding for state and local governments to create or expand programs to protect JPII, such as programs to redact information from certain records, including tax, property, and motor vehicle records, and programs which involve the use of a third party to remove JPII from the internet. DAJSP also makes it unlawful for commercial data collectors to sell, trade, license, purchase or provide JPII and authorizes the Administrative Office of the U.S. Courts to provide these data collectors with a current list of federal judges and their family members to ensure data collectors comply. The proposed act creates a process through which the judges’ families can provide written notice to a government agency advising that the JPII on that agency’s network is at risk of disclosure and asking that the JPII be marked as confidential. Finally, DAJSP prohibits any person, business, or organization from displaying the JPII of individuals who have made a written request that the person, business, or association refrain from disclosing that information.

For violations of the law, DAJSP provides for injunctive relief, a private right-of-action, treble damages, and \$10,000 in liquidated damages.

The protections afforded by DAJSP will provide judges with the ability to decide the matters before them with a reduced fear of potential harm. For this and the other reasons outline below, ComFed supports the passage of DAJSP.

BACKGROUND

On July 19, 2020, Roy Den Hollander posed as a FedEx driver, rang the doorbell of Judge Esther Salas, and shot her son, Daniel Anderl, and her husband, Mark Anderl. Daniel was tragically killed, and Mark was critically wounded. The gunman had previously argued a case before Judge Salas. Hollander used publicly available information about Judge Salas and her family to locate her family and plan the attack. He knew where she lived, her routes to work, the church she attended, and the school Daniel attended, among other data points. Following the incident, Judge Salas made a public plea for greater privacy protections for federal judges to be implemented.

The attack on Judge Salas' family is not an isolated incident, and federal judges have been targeted more than once. Since 1979, four federal judges have been murdered. Between 2015 and 2019, threats of federal judges, including death threats, have jumped 500%. Social media and internet access have amplified the threats against judges and the access dangerous individuals have to JPII. A security upgrade for federal judges has not occurred for 15 years, the last one following the tragic case of Chicago Judge Joan Lefkow, whose husband and mother were killed by a disgruntled plaintiff. DAJSP will serve as a response to these threats against the Federal judiciary and will help protect judges and their families.

COMMENT

ComFed submits this Comment through its Committees on Privacy, Data Security and Information Technology Litigation; Legislative and Judicial Initiatives; Social Media & New Communication Technologies, and the Federal Judiciary (the “Participating Committees”).*

The decisions judges make are undeniably crucial to the rule of law. Any fear of harm would be an obvious impediment to a judge’s decision-making. Better security will not only protect judges and their families, it will also allow judges to make prudent decisions without the threat of danger. Judges cannot control the individuals who come before them or the popularity of their decisions, but legislation such as DAJSP will help to prevent dangerous outcomes. Therefore, ComFed supports its passage.

DAJSP prohibits government agencies from publicly posting JPII, and even creates funding so these government agencies can maintain compliance. Besides government agencies, DAJSP places similar restrictions on commercial data collectors. Commercial data includes data collected, processed, or sold by a business, including personal information about its customers. Under DAJSP, it is unlawful for commercial data collectors to sell, trade, license, purchase or provide JPII. One concern that arises from this restriction is that commercial data collectors may find it difficult to track which information is JPII against the plethora of other information they receive. DAJSP does, however, authorize the Administrative Office of the U.S. Courts to provide data collectors with a current list of federal judges and their family members to ensure their compliance. Currently, many commercial data collectors are required by data privacy laws such as the California Consumer Privacy Act and the EU’s General Data Protection Regulation to provide the individuals whose data they collect a mechanism to opt-out of data collection. We believe that commercial data collectors can leverage their opt-out compliance programs to comply with the DAJSP’s requirement that they identify JPII and limit its public dissemination. It follows, therefore, that if the Administrative Office of the U.S. Courts provides data collectors with a current list of federal judges and their family members, commercial data collectors could treat these people as if they had opted out of data collection and their data would not be collected or stored. **We are mindful that the provisions of DJASP may implicate, in certain circumstances, the First Amendment rights of members of the press or the public, and ask that Congress consider this issue.**

CONCLUSION

It is essential to the rule of law that federal judges are able to maintain autonomy in deciding matters before them. Ensuring the safety of federal judges, and the safety of their families, through legislation like DAJSP is one important step in ensuring that dangerous outside forces do not impact the decisions of federal judges.

Respectfully Submitted,

**The New York State Bar Association Commercial & Federal Litigation
Section
Daniel K. Wiig, Section Chair**

**Approved by the Executive Committee of the Commercial & Federal
Litigation Section, September 23, 2021**

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