



School of Law
UNIVERSITY OF GEORGIA

Journal of Intellectual Property Law

Volume 28 | Issue 2

Article 7

July 2021

Private Lives at Home and Public Lives in Court: Protecting the Privacy of Federal Judges' Home Addresses

Hannah Elias Sbaity
University of Georgia School of Law

Follow this and additional works at: <https://digitalcommons.law.uga.edu/jipl>



Part of the [Internet Law Commons](#), [Judges Commons](#), and the [Privacy Law Commons](#)

Recommended Citation

Hannah Elias Sbaity, *Private Lives at Home and Public Lives in Court: Protecting the Privacy of Federal Judges' Home Addresses*, 28 J. INTELL. PROP. L. 475 (2021).

Available at: <https://digitalcommons.law.uga.edu/jipl/vol28/iss2/7>

This Notes is brought to you for free and open access by Digital Commons @ University of Georgia School of Law. It has been accepted for inclusion in Journal of Intellectual Property Law by an authorized editor of Digital Commons @ University of Georgia School of Law. [Please share how you have benefited from this access](#) For more information, please contact tstriepe@uga.edu.

Private Lives at Home and Public Lives in Court: Protecting the Privacy of Federal Judges' Home Addresses

Cover Page Footnote

J.D. Candidate, 2022, University of Georgia School of Law. I dedicate this Note to Judge Esther Salas and her family, other victimized federal judges and their families, and current and former members of the Judiciary. I thank Professor Thomas E. Kadri for his comments on a draft of this Note as well as his continuous support throughout the writing process.

**PRIVATE LIVES AT HOME AND PUBLIC LIVES IN
COURT: PROTECTING THE PRIVACY OF FEDERAL
JUDGES' HOME ADDRESSES**

*Hannah Elias Sbaity**

* J.D. Candidate, 2022, University of Georgia School of Law. I dedicate this Note to Judge Esther Salas and her family, other victimized federal judges and their families, and current and former members of the Judiciary. I thank Professor Thomas E. Kadri for his comments on a draft of this Note as well as his continuous support throughout the writing process.

476

J. INTELL. PROP. L.

[Vol. 28:2]

TABLE OF CONTENTS

I. INTRODUCTION	477
II. BACKGROUND	479
A. THE NOT-SO-NEW DANGER TO FEDERAL JUDGES	479
B. THE RECOGNITION OF THE RIGHT TO PRIVACY	480
1. Academic Recognition of the Right to Privacy	480
2. Judicial Recognition of the Right to Privacy	482
3. Statutory Recognition of the Right to Privacy	482
C. THE PUBLICIZATION OF REAL ESTATE RECORDS	483
D. THE ROLE PRIVATE ENTITIES PLAY	485
E. WHAT HAS BEEN DONE	486
III. ANALYSIS	489
A. THE IMPLICATIONS OF NONACTION	489
1. Impartial Administration of Justice	489
2. Detrimental Delay	491
B. THE IMPLICATIONS OF THE ADOPTION OF SENATOR RAND PAUL'S AMENDMENT	492
1. Deterrent Effect of Damages	492
2. Losing its Meaning	494
3. Complications Amongst the Three Branches of Government	494
IV. CONCLUSION	498

I. INTRODUCTION

[M]y son's death cannot be in vain which is why I am begging those in power to do something to help my brothers and sisters on the bench. Now more than ever we need to identify a solution that keeps the lives of federal judges private Let me be clear and tell you firsthand; this is a matter of life or death.¹

Those were some of the hair-raising words spoken by Judge Esther Salas for the District of New Jersey after the murder of her only son, Daniel, and near-fatal shooting of her husband, Mark, at their family home in July 2020.² The tragedy that occurred to Judge Salas's family was carried out by an anti-feminist lawyer, Dan Hollander, while impersonating a FedEx delivery person.³ Hollander was upset at Judge Salas for her ruling in a court case that challenged the male-only military draft, and authorities believe that is why he attacked.⁴ In addition to the attack on the Salas family, Hollander was also a murder suspect in a different case involving a lawyer, and he had a list of other murder targets, including another federal judge.⁵ To carry out this attack on the Salas family, Hollander was able to access Judge Salas's publicly available home address.⁶

In the U.S., "there is no overarching framework, but rather episodic privacy protections for limited domains and in certain circumstances."⁷ The sources of U.S. privacy laws are evident in various federal statutes,⁸ a few state laws, and

¹ Eyewitness News ABC7NY, *Complete Statement from Judge Esther Salas After Son Killed, Husband Shot*, YOUTUBE (Aug. 3, 2020), <https://www.youtube.com/watch?v=4JPlcbW5ajs>.

² *Id.*

³ *Esther Salas Case: Judge Salas Calls for Protecting Judges' Privacy*, BBC NEWS (Aug. 3, 2020), <https://www.bbc.com/news/world-us-canada-53639299>.

⁴ *Id.*

⁵ *Id.* (citing William K. Rashbaum, *Misogynistic Lawyer Who Killed Judge's Son Had List of Possible Targets*, N.Y. TIMES (July 25, 2020), <https://www.nytimes.com/2020/07/25/nyregion/roy-den-hollander-esther-salas-list.html>).

⁶ *Esther Salas Case*, *supra* note 3.

⁷ SECURING PRIVACY IN THE INTERNET AGE 3 (Anupam Chander et al. eds., 1st ed. 2008).

⁸ See e.g., U.S. Dep't of Just., *Electronic Communications Privacy Act of 1986 (ECPA)*, 18 U.S.C. §§ 2510-2523, JUST. INFO. SHARING, <https://it.ojp.gov/privacyliberty/authorities/statutes/1285> (last visited Mar. 10, 2021) (explaining that the ECPA "protects wire, oral, and electronic communications" while in progress, in transit, and in computer storage); *Children's Online Privacy Protection Rule ("COPPA")*, FED. TRADE COMM'N, <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/childrens-online-privacy-protection-rule> (last visited Mar. 10, 2021) (detailing how COPPA "imposes certain requirements on operators of websites or online services" involving the collection of personal information online and direction of services to children under 13 years of age); *Gramm-Leach-Bliley Act*, FED. TRADE COMM'N, <https://www.ftc.gov/tips-advice/business-center/privacy-and-security/gramm-leach-bliley>

common law.⁹ For example, on the federal level, the Freedom of Information Act (FOIA) and the Privacy Act of 1974 are companion statutes that serve different purposes.¹⁰ These two statutes represent the attempt at a balance between disclosure of information to the public and the safeguarding of personally identifiable information (PII). While the Privacy Act of 1974 outlines fair information practice to guide how federal agencies should maintain individuals' records,¹¹ FOIA mandates federal agencies to disclose information to the public unless it falls under one of the nine exemptions.¹² Because real estate recording systems are within each individual state's autonomy,¹³ every state takes its own approach in formulating its laws related to the privacy of federal judges' home addresses.

Judge Salas asks for help because she knows the danger in making federal judges' lives public. Her family is not the first federal judge's family to be targeted by a shooter due to the easy access of their home address.¹⁴ And with the publicization of federal judges' real estate records, it is unlikely that it will be the last. This fatal danger represents more than a general concern for federal judges' safety; it represents a threat to the rule of law itself. If judges feel insecure in their private spheres, their ability to administer justice impartially will be undermined. Even the mere *appearance* of impropriety can serve as a threat to the rule of law because of the importance of judicial independence. To mitigate this risk, this Note argues that federal judges' home addresses in their real estate records should be recognized as private and protected PII, because action on the federal level will result in blanket protection of federal judges and their families nationwide with a consistent definition of PII as it pertains to federal judges' home addresses.

act (last visited Mar. 10, 2021) (describing the requirements imposed on financial institutions to customers' sensitive data).

⁹ SECURING PRIVACY IN THE INTERNET AGE, *supra* note 7, at 3.

¹⁰ *Freedom of Information Act (FOIA): About the Privacy Act*, U.S. DEP'T. OF EDUC., <https://www2.ed.gov/policy/gen/leg/foia/privacy.html> (last updated Aug. 28, 2020); Todd Walls, *FOIA v. Privacy Act: A Comparison Chart*, INT'L ASS'N. OF PRIVACY PROF. (Mar. 24, 2015), <https://iapp.org/resources/article/foia-v-privacy-act-a-comparison-chart/>.

¹¹ *Frequently-Asked Questions About the Privacy Act*, ENV'T. PROT. AGENCY, <https://www.epa.gov/privacy/frequently-asked-questions-about-privacy-act> (last visited Mar. 10, 2021).

¹² *Frequently Asked Questions*, U.S. DEP'T OF JUST., <https://www.foia.gov/faq.html> (last visited Mar. 10, 2021).

¹³ Staff Author, *What Real Estate Documents Need to be Recorded?*, INVESTOPEDIA (June 23, 2020), <https://www.investopedia.com/ask/answers/100214/what-real-estate-documents-need-be-recorded.asp>.

¹⁴ *Judicial Security Legislation Stalls, Awaits Congressional Action in 2021*, U.S. CTS. (Dec. 17, 2020), <https://www.uscourts.gov/news/2020/12/17/judicial-security-legislation-stalls-awaits-congressional-action-2021>.

This Note first provides a background on the threats and harms that federal judges and their families have historically faced once individuals obtained access to their home addresses. The background section of this Note further discusses privacy law, the constitutionally recognized right to privacy, and the different approaches to privacy taken by scholars. This section also delves into which states provide privacy protections for federal judges' home addresses in their real estate records and how federal judges' home addresses are disseminated in this digital age. This section concludes with a discussion of the steps that have been taken after the tragedy of Judge Salas's family and what steps are yet to be taken, including the passing of the Daniel Aderl Judicial Security and Privacy Act. The analysis section of this Note weighs in on the implications of not providing this privacy to federal judges as well as the implications of passing an amended version of the bill before Congress. The best solution proposed in this section is the privacy recognition of federal judges' home addresses under federal law, preferably as written in the original bill. Finally, this Note will conclude with an emphasis on the importance of solving this problem not only for the safety of federal judges and their families but also for the viability of this nation's rule of law and democracy.

II. BACKGROUND

A. THE NOT-SO-NEW DANGER TO FEDERAL JUDGES

In another chilling incident preceding the tragedy to Judge Salas's family, a gunman targeted U.S. District Judge Joan H. Lefkow's family in 2005 after getting ahold of her home address online.¹⁵ The gunman was a white supremacist who Judge Lefkow held in contempt for continued trademarks infringement.¹⁶ With forced entry, the gunman killed Judge Lefkow's husband and mother in their home.¹⁷ The gunman obtained their home address by posting a message on the "White Aryan Resistance" website¹⁸ – their home address could have easily been accessible through state public real estate records and disseminated without restraints online.

What happened to Judges Lefkow's and Salas's families are not the only targeted murders that have occurred at federal judges' private homes. They just happen to be the most recent. These types of murders date back to May 29, 1979 when U.S. District Judge John Wood was killed outside of his home before

¹⁵ David Heinzmann & Jeff Coen, *Federal Judge's Family Killed*, CHI. TRIB. (Mar. 1, 2005, 2:00 AM), <https://www.chicagotribune.com/nation-world/chi-0503010123mar01-story.html>.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

heading to work.¹⁹ Since the murder of Judge Wood, three other federal judges have been murdered.²⁰ These victims include U.S. District Judge John Wood, U.S. District Judge Richard Daronco, and Federal Appeals Court Judge Robert Vance.²¹ All of these federal judges were murdered at their publicized home addresses by revengeful parties in cases before them. According to the U.S. Marshals Service, security threats and inappropriate communications involving federal judges increased from 926 incidents in 2015 to 4,449 incidents in 2019, totaling almost a 500% uptick in incidents.²² Homes of federal judges and their families are no longer a safe and private environment away from the public courthouse.

B. THE RECOGNITION OF THE RIGHT TO PRIVACY

Because the U.S. does not have a blanket privacy framework, the right to privacy is recognized in various contexts²³ and is present throughout federal statutes, state laws, and common law.²⁴ In addition, various legal scholars have their own unique conceptualizations of the right to privacy.

1. *Academic Recognition of the Right to Privacy*

Before the Supreme Court recognized the right to privacy, former Supreme Court Justice Louis Brandeis and Samuel Warren advocated for the right to privacy and were the first to write about it in a major legal article.²⁵ In *The Right to Privacy* published in the *Harvard Law Review* in 1890, Justice Brandeis and Warren note that “[n]ow the right to life has come to mean the right to enjoy life,—the right to be let alone. . . .”²⁶

Over time, scholars have developed varying conceptualizations of information privacy as well as understanding what the law should protect.²⁷ The study of privacy law is highly contested academically, especially when it comes

¹⁹ Madalyn Mendoza, *Forty Years Ago, U.S. District Judge Wood Assassinated in San Antonio by Woody Harrelson's Father*, MY SAN ANTONIO (May 29, 2019), <https://www.mysanantonio.com/news/local/article/Forty-years-ago-U-S-District-Judge-Wood-13904273.php>.

²⁰ *Judicial Security Legislation Stalls, Awaits Congressional Action in 2021*, *supra* note 14.

²¹ CNN Editorial Research, *Judges Targeted Fast Facts*, CNN (Sept. 1, 2020, 3:59 PM), <https://www.cnn.com/2013/11/04/us/judges-targeted-fast-facts/index.html>.

²² *Judicial Security Legislation Stalls, Awaits Congressional Action in 2021*, *supra* note 14 (citing Off. of Pub. Affs., *Fact Sheet Judicial Security 2020*, U.S. MARSHALS SERV. (Feb. 25, 2020), https://www.usmarshals.gov/duties/factsheets/judicial_sec.pdf).

²³ SECURING PRIVACY IN THE INTERNET AGE, *supra* note 7.

²⁴ *Id.*

²⁵ Leah Burrows, *To Be Let Alone: Brandeis Foresaw Privacy Problems*, BRANDEISNOW (July 24, 2013), <https://www.brandeis.edu/now/2013/july/privacy.html>.

²⁶ Samuel D. Brandeis & Louis D. Warren, *The Right to Privacy*, 4 HARV. L. REV. 2, 2 (1891).

²⁷ MARK BURDON, DIGITAL DATA COLLECTION AND INFORMATION PRIVACY LAW 101 (Cambridge Univ. Press et al. eds., 1st ed. 2020).

to defining privacy from a legal perspective.²⁸ When setting aside the differences in scholars' views, "information privacy, at its core, seeks to protect information intrinsic to human beings and the lives they live."²⁹ A spectrum of perspectives on privacy are contained within four key control conceptual themes that aim to protect various aspects of information exchange or flow.³⁰

The first control concept is individuals' control over their personal information and who may have access to such information.³¹ Stemming from this "right to privacy" in the 1960s, the emergence of control concepts was due to the arrival of computerized systems in the public and private sectors.³² In the midst of these structural changes, Charles Fried, among others, stressed the link between individual control over information and protection of privacy.³³ He argued that "[p]rivacy ... is the control we have over information about ourselves."³⁴ Arthur Miller made a similar argument that privacy is "the individual's ability to control the flow of information concerning or describing him."³⁵ Similar to Fried and Miller, although without the same terms of art, Alan Westin called for "individual rights of control over personal information."³⁶ Westin outlines four states of individual privacy: "*solitude, intimacy, anonymity and reserve*."³⁷ He explains that it is necessary for individuals to have barriers and reserve information from society.³⁸

With the influence from Westin's as well as Warren and Brandeis' work, control concepts have "morph[ed] into considerations of economic transaction."³⁹ A cost-benefit analysis surrounds whether personal information will be disclosed, containing a two-step threshold: (1) whether "the value of the information when disclosed exceeds the value of the pure privacy preference of the individual; and" (2) whether "permitting disclosure will not distort or eliminate the information in future transactions."⁴⁰ Because privacy is analogized to ownership of property, it gives rise to the argument that individuals should

²⁸ *Id.* at 102.

²⁹ *Id.* at 101-02.

³⁰ *Id.*

³¹ *Id.* at 103.

³² *Id.* at 106.

³³ *Id.*

³⁴ *Id.* (quoting Charles Fried, *Privacy*, 77 *Yale L.J.* 475, 482 (1968)).

³⁵ *Id.* (quoting Arthur R. Miller, *Personal Privacy in the Computer Age: The Challenge of a New Technology in an Information-Oriented Society*, 67 *MICH. L. REV.* 1091, 1108 (1968)).

³⁶ *Id.* at 107.

³⁷ *Id.* (citing ALAN F. WESTIN, *PRIVACY AND FREEDOM* 31-32 (Atheneum Press ed., 1967)).

³⁸ *Id.*

³⁹ *Id.* at 111 (citing LISA M. AUSTIN, *Re-Reading Westin*, 20 *THEORETICAL INQUIRES IN LAW* 53, 69 (2019)).

⁴⁰ *Id.* at 112 (quoting Richard Murphy, *Property Rights in Personal Information: An Economic Defense of Privacy*, 84 *GEO. L.J.* 2381, 2385 (1996)).

and will be able to protect themselves once given the tools to protect their information.⁴¹ If individuals have this control over information, then they will be able to “think what they want to think and act without impediment.”⁴²

The second concept views information privacy as “protection of personal autonomy” which is protection catered to individuals.⁴³ Moreover, the third concept “critiques the basis of information privacy as a sole protector of individual control mechanisms” and also “[c]asts doubt about the focus on individual informational spaces that enable personal autonomous growth.”⁴⁴ Lastly, the fourth concept focuses on the problem of power relations in the structural foundation of information exchange.⁴⁵

2. *Judicial Recognition of the Right to Privacy*

Former Justice Louis Brandeis, when serving on the Court, stuck to his position expressed in *The Right to Privacy* by delivering a dissenting opinion in *Olmstead v. United States*.⁴⁶ Justice Brandeis became the first justice to read a constitutional right to privacy out of the Fourth Amendment and to realize the danger of technology.⁴⁷ In Justice Brandeis’s dissenting opinion in *Olmstead*, he stated that “[p]rotection against such invasion of ‘the sanctities of a man’s home and the privacies of life’ was in the Fourth and Fifth Amendments by specific language.”⁴⁸

3. *Statutory Recognition of the Right to Privacy*

Beyond the different categorical and overlapping conceptualizations of information privacy is the actual legal implementation of regulating it. The law recognizes the requirements of data-collecting organizations and the use of personal information in society in addition to the need for individual control.⁴⁹ In stark contrast to the control concepts, information privacy law takes the approach of balancing individual protections against that organizational need for

⁴¹ *Id.* (citing CORIEN PRINS, PROPERTY AND PRIVACY: EUROPEAN PERSPECTIVES AND THE COMMODIFICATION OF OUR IDENTITY, in Lucie M.C.R. Guibault & P.B. Hugenholtz, *The Future of the Public Domain* 223 (Lucie M.C.R. Guibault et al. eds., 2006); ADAM D. MOORE, INTANGIBLE PROPERTY: PRIVACY, POWER, AND CONTROL, in ADAM D. MOORE, INFORMATION ETHICS: PRIVACY PROPERTY, AND POWER (Adam D. Moore ed., 2005)).

⁴² *Id.*

⁴³ *Id.* at 103-04.

⁴⁴ *Id.* at 104.

⁴⁵ *Id.*

⁴⁶ Burrows, *supra* note 25.

⁴⁷ *Id.*

⁴⁸ *Olmstead v. United States*, 277 U.S. 438, 473 (1928) (citing *Boyd v. United States*, 116 U.S. 616, 630 (1882)) (discussing the constitutionality of the government wiretapping private citizens’ telephone conversations).

⁴⁹ BURDON, *supra* note 27, at 140.

the information.⁵⁰ Information privacy regulation is further complicated by jurisdictions conducting the balancing test differently⁵¹ and defining PII incongruously from statute to statute.⁵² The different definitions, in turn, affect the scope of application of privacy laws.⁵³ These varying definitions of PII can be best explained by the disjunctive structure of privacy laws in the United States.

C. THE PUBLICIZATION OF REAL ESTATE RECORDS

The disjunctive structure of American privacy laws is especially evident in whether states will publicize an individual's real estate records and even down to *which* individual is entitled to some form of privacy. While FOIA carves out nine exemptions of when federal agencies are not to disclose information to the public,⁵⁴ every state has its own version of a law modeled after FOIA.⁵⁵ For instance, the New Jersey Open Public Records Act (OPRA) allows for citizens of New Jersey to request public documents of the state.⁵⁶ OPRA even allows for anonymous requests and limited exceptions.⁵⁷ Real estate transactions are a type of record in which individuals may request in various states.⁵⁸ In comparison to other countries, "[n]o real estate recording system in the world is more open than in the United States."⁵⁹ States like Georgia have open records requests processes for real estate records.⁶⁰ Uniquely, other state legislatures like

⁵⁰ *Id.*

⁵¹ *Id.* (outlining the cost-benefit analysis that is conducted in deciding whether personal information will be disclosed).

⁵² *Id.* at 155.

⁵³ *Id.* at 156.

⁵⁴ *Frequently Asked Questions*, *supra* note 12 (providing a description of FOIA Exemption 6 which prohibits federal agencies to disclose information that would invade another individual's personal privacy).

⁵⁵ *Using Open Records and Freedom of Information Laws*, GOOD JOBS FIRST, <https://www.goodjobsfirst.org/accountable-development/using-open-records-and-freedom-information-laws> (last visited Mar. 10, 2021).

⁵⁶ *New Jersey Open Public Records Act*, BALLOTPEdia, https://ballotpedia.org/New_Jersey_Open_Public_Records_Act (last visited Mar. 10, 2021).

⁵⁷ *Id.*

⁵⁸ Benny L. Kass, *Like It or Not, Real Estate Transactions are Public Record*, CHI. TRIB. (Sept. 2, 2015, 12:01 PM), <https://www.chicagotribune.com/real-estate/sc-cons-0903-housing-counsel-20150902-column.html>.

⁵⁹ Emily Roscoe & Charles Szypszak, *Privacy and Public Real Estate Records: Preserving Legacy System Reliability Against Modern Threats*, 49 URB. LAW. 355, 372 (2017) (citing Charles Szypszak, *Public Registries and Private Solutions: An Evolving American Real Estate Conveyance Regime*, 24 WHITTIER L. REV. 663 (2003)).

⁶⁰ *Open Records Request*, GEORGIA.GOV, <https://gov.georgia.gov/contact-us/open-records-request> (last visited Mar. 10, 2021).

North Carolina, Idaho, and Florida have enacted avenues to safeguard judges, among other public officials, from disclosure of their real estate records.⁶¹

In states that have not enacted safeguards, anyone who purchases property or takes out a mortgage is inadvertently and permanently publicizing the information in those transactions' documents.⁶² Because public officials are vulnerable to financial attacks through the use of their real estate records, legislators have enacted laws to either prevent or address harm to public officials.⁶³ These financial harms can take the form of filing false liens or improperly deeding government-owned property.⁶⁴

A balancing test is conducted when considering the financial harms imposed on public officials, such as judges. This test weighs the judges' publicly accessible real estate records against the decision of whether their records should be kept private.⁶⁵ On one side of the balancing test, public officials, like everyone, have "a personal interest in being free from invasion of privacy and harassment," especially when they experience the harmful effects of false liens filed against them because an individual felt wronged by them.⁶⁶ A concern stemming from the publicization of real estate records is that public officials "become less able to undertake their public service duties if their time is consumed responding to and coping with the aftereffects of [financial] harassment."⁶⁷ On the other side of the balancing test, if there is less disclosure of real estate records through "notice filing," then it would go against the real estate system's reliability.⁶⁸ More precisely, it would be contrary to the "settled legal principles that entitle someone to rely on the public recordings as a complete statement of possible competing claims."⁶⁹ It is important to note that this particular balancing test, however, does not take into consideration the sorts of acts that result in physical or deadly harm such as when individuals decide to commit violent acts against public officials.

Aside from making real estate records private, the proffered options for protection from the potential financial harms in a system that publicizes public officials' real estate records include routinely checking the registry or putting their

⁶¹ Roscoe & Szypszak, *supra* note 59, 374-76 (citing H.R. 477, 2015 Leg., Reg. Sess. (N.C. 2015)); IDAHO CODE § 19-5803 (2016); FLA. STAT. § 119.071(5)(i) (2017).

⁶² *Id.* at 370-71.

⁶³ *Id.* at 371 (citing *Sovereign Citizens: A Growing Domestic Threat to Law Enforcement by the FBI's Counterterrorism Analysis Section*, FBI L. ENFORCEMENT BULL. (Sept. 1, 2011), <https://leb.fbi.gov/2011/september/sovereign-citizens-a-growing-domestic-threat-to-law-enforcement>).

⁶⁴ *Id.* at 358.

⁶⁵ *Id.* at 369.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.* at 384.

⁶⁹ *Id.*

titles in the name of an entity or trustee.⁷⁰ The Chicago Bar Association's Privacy Task Force recommends to both state and federal judges to utilize land trusts if their state allows for their existence.⁷¹ Land trusts, if available, permit a judge to transfer the title of their real property to a trustee and most likely still reap the benefits of ownership.⁷² However, this option may not be available to judges across all states in which they may possibly reside or own real property,⁷³ leading to unequal and inconsistent application of protections across the nation.

D. THE ROLE PRIVATE ENTITIES PLAY

In addition to the disclosure of public officials' personal information from real estate transactions, private entities also play a role in facilitating the publicization of their personal information. Private corporations buy and sell individuals' personal information "by buying or licensing data or scraping public records."⁷⁴ There are thousands of data broker companies that are "trafficking" data about individuals, and they make up a multibillion-dollar industry.⁷⁵

Data brokers or people-search websites reveal individuals' personal information after payment with a credit card and "can be a goldmine for doxxers,⁷⁶ abusers, and stalkers."⁷⁷ For instance, in June 2013, Aaron Markus Richardson fired a hunting rifle from less than 50 feet away at District Court Judge Timothy Corrigan while Judge Corrigan was sitting at home.⁷⁸ The shooter missed his head by 1.6 inches and had purchased the address online for

⁷⁰ *Id.* at 387.

⁷¹ The Chi. Bar Ass'n & The John Marshall Law Sch., *Protecting Your Personal Privacy*, SUPREME COURT OF OHIO 6 (Oct. 2006), <https://www.supremecourt.ohio.gov/Boards/OJFN/resources/Privacy.pdf>.

⁷² *Id.*

⁷³ See Dave Roos, *How Land Trusts Work*, HOWSTUFFWORKS, <https://money.howstuffworks.com/personal-finance/financial-planning/land-trusts.htm> (last visited Mar. 10, 2021) (explaining that only 9 U.S. states – Illinois, Florida, Hawaii, Indiana, North Dakota, Virginia, Arizona, California, and Ohio – permit the use of land trusts).

⁷⁴ Steven Melendez & Alex Pasternack, *Here Are the Data Brokers Quietly Buying and Selling Your Personal Information*, FAST CO., (Mar. 2, 2019), <https://www.fastcompany.com/90310803/here-are-the-data-brokers-quietly-buying-and-selling-your-personal-information>.

⁷⁵ Steve Kroft, *The Data Brokers: Selling Your Personal Information*, 60 MINUTES, (Mar. 9, 2014) <https://www.cbsnews.com/news/the-data-brokers-selling-your-personal-information/>.

⁷⁶ See *dox*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/dox> (last visited Mar. 17, 2021) (defining "dox" as a transitive verb meaning "to publicly identify or publish private information about (someone) especially as a form of punishment or revenge.")

⁷⁷ Melendez & Pasternack, *supra* note 74.

⁷⁸ Timothy J. Corrigan, *Florida-based Judge Once Targeted by Gunman Says Congress Needs to Provide Better Security* | *Commentary*, ORLANDO SENTINEL (Dec. 4, 2020, 5:30 AM), <https://www.orlandosentinel.com/opinion/guest-commentary/os-op-federal-judges-need-better-security-column-20201204-mtsfvyh65nbo3mhsbly7s5tlaa-story.html>.

less than \$2.00!⁷⁹ These companies are collecting PII which are then compiled into dossiers that they sell with practically no oversight.⁸⁰ Data brokers participate in the act of doxing, which is “the practice of publicly releasing someone’s personal information without their consent.”⁸¹ While collecting and selling individuals’ data is legal, states like Vermont and California have enacted legislation to put restrictions on data brokers.⁸² However, such restrictions on data brokers remain unregulated for the most part.⁸³

E. WHAT HAS BEEN DONE

Recently, after Judge Salas’s family and officers at two federal courthouses were attacked, the Judiciary sent two letters – a legislative request and a funding request – to Congress. These letters served as a “call to congressional leaders for a series of safety members ‘to protect the safety of the public at our nation’s courthouses.’”⁸⁴ The Judiciary not only wants to prevent violence at federal courthouses, but it also urges Congress to fund measures to protect federal judges at their homes.⁸⁵ Congress previously appropriated money for home security for federal judges in 2005 after the attack on Judge Lefkow’s family, but those alarm systems are now outdated.⁸⁶

The Judiciary requested funding to install modern home intrusion detection systems in federal judges’ homes, hire 1,000 additional deputy U.S. Marshals, and upgrade exterior courthouse security cameras.⁸⁷ In addition, the Judiciary proposed that Congress enact a law to restrict the distribution of federal judges’ PII with their home addresses and initiate the monitoring of the internet for threats and posts of their PII.⁸⁸ The Judiciary’s proposed law also sought to eliminate the sunset provision in 5 U.S.C. app. § 105(b)(3)(E).⁸⁹ The reasoning for this proposal stemmed from the lack of permanent redaction authority of

⁷⁹ *Id.*

⁸⁰ Kroft, *supra* note 75.

⁸¹ Louise Matsakis, *The WIRED Guide to Your Personal Data (and Who Is Using It)*, WIRED (Feb. 15, 2019, 7:00 AM), <https://www.wired.com/story/wired-guide-personal-data-collection/>.

⁸² *Id.*; see generally *Computer & Internet Law – Criminal Offenses: Third Party Disclosure of Personal Data*, LEXIS PLUS (Apr. 2019), <https://plus.lexis.com/api/permalink/5ae8ae74-1372-4161-9db7-39ad7f10a5cb/?context=1530671> (providing an overview of state laws on third-party disclosure of personal data through a 50-state survey).

⁸³ Matsakis, *supra* note 81.

⁸⁴ *Judiciary Steps Up Calls to Enact Security Measures*, U.S. CTS., (Sept. 22, 2020), <https://www.uscourts.gov/news/2020/09/22/judiciary-steps-calls-enact-security-measures>.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

federal judges' financial disclosure reports, allowing for individuals with grudges against the judges to learn about their sensitive information, such as their home addresses.⁹⁰

The movement of increased appropriation of money to the U.S. Marshals Service and enhanced personal protection of threatened judges in 2005 was first championed by Judge Lefkow.⁹¹ In 2010, Governor Pat Quinn of Illinois signed into law a Judicial Privacy Improvement Act in honor of Judge Lefkow's family.⁹² This Act ensures that federal judges' driver's licenses and car registrations are traced to the courthouse and not their family home.⁹³ This Act also recognizes judges' home addresses as PII.⁹⁴

Following Judge Salas's tragedy, Judge Lefkow stood behind Judge Salas and her effort to pave the way for greater judicial security.⁹⁵ On November 20, 2020, Governor Phil Murphy of New Jersey signed legislation (A1649) known as Daniel's Law in honor of Judge Salas's late son, Daniel.⁹⁶ New Jersey's Daniel's Law implemented several informational privacy measures for active and retired federal judges by amending the Open Public Records Act (OPRA).⁹⁷ Daniel's Law excludes the home address of any active or retired judge and prohibits the government, individuals, and businesses from knowingly publishing on the internet or otherwise publicizing the home address or unpublished phone number of any active or retired judge.⁹⁸ In addition, Daniel's Law permits active or retired judges to request for their own or their immediate family's publicized home address or unpublished phone number to be removed.⁹⁹ Daniel's Law also

⁹⁰ Letters from James C. Duff, Secretary, U.S. Courts, to Lindsey Graham, Chairman, U.S. Senate, and Jerold Nadler, Chairman, U.S. Senate (Sept. 4, 2020), https://www.uscourts.gov/sites/default/files/letter_to_congress_re_judicial_security_legislative_request.pdf.

⁹¹ Julie Unruh, *Turning Family Tragedy into Hope for Others: Federal Judges Work to Make the Bench a Safer Place*, WGN9 (Dec. 2, 2020, 8:53 PM), <https://wgntv.com/news/chicago-news/turning-family-tragedy-into-hope-for-others-federal-judges-work-to-make-the-bench-a-safer-place/>.

⁹² *Id.*

⁹³ *Id.*; Joe Harris, *Judges Get Privacy | Law in Illinois*, COURTHOUSE NEWS SERV. (Aug. 1, 2012), <https://www.courthousenews.com/judges-get-privacy-law-in-illinois/>.

⁹⁴ *Id.*

⁹⁵ See generally Joan Lefkow, *Op-ed: Judge Joan Lefkow: My Husband and Mother Were Killed by Someone with a Vendetta. Federal Protection is Essential.*, CHI. TRIB. (Dec. 9, 2020, 12:26 PM), <https://www.chicagotribune.com/opinion/commentary/ct-opinion-federal-judges-threats-lefkow-20201209-4vypwpafvfb35jy7x5tjkhltm-story.html> (urging Congress to enact Daniel's Law and hoping that her and Judge Salas are "the last federal judges who lose members of [their] family to violence as a result of [their] service to our country").

⁹⁶ *Governor Murphy Signs "Daniel's Law,"* NJ.GOV (Nov. 20, 2020), <https://nj.gov/governor/news/news/562020/approved/20201120b.shtml>.

⁹⁷ *Id.*

⁹⁸ *Id.*

⁹⁹ *Id.*

extends informational privacy protection to active and retired prosecutors and law enforcement officers.¹⁰⁰

Following the passage of New Jersey's Daniel's Law, a bipartisan, federal version of Daniel's Law was introduced to the 116th United States Congress for a bicameral vote to enhance judicial security by focusing on defining and protecting federal judges' PII.¹⁰¹ As a follow-up to the Judicial Conference's request to Congress in September 2020 to protect judges at their homes and courthouses, the Judiciary issued another statement, but this time calling for the passage of this bill.¹⁰² Additionally, Attorney General Gurbir S. Grewal and fifty-one attorney generals supported and urged for the passage of the bill in a letter to Congress, which amounted to a formal endorsement of the bill by the National Association of Attorneys General.¹⁰³

However, on December 16, 2020, the bill did not obtain unanimous consent required to pass in the Senate, and U.S. Senator Rand Paul (R-Kentucky) blocked the bill and sought an amendment to include similar protections for members of Congress.¹⁰⁴ Coupled with calling for similar protections for members of Congress in addition to the Judiciary, the amendment also seeks to eliminate the right to private action and punitive damages.¹⁰⁵ Senator Menendez voiced his concern regarding Senator Rand's amendment, calling it "a poison pill."¹⁰⁶

¹⁰⁰ *Id.*

¹⁰¹ *Id.*; see generally Daniel Aderl Judicial Security and Privacy Act of 2020, S.4711, 116th Cong. § 7 (2020) (as referred to the Senate Judiciary, Sept. 24, 2020) (containing text of the federal Daniel's Law); see also Elaine Silvestrini, *Push Is on to Increase Protection for Federal Judges*, LEGAL EXAM'R (Dec. 21, 2020), <https://www.legalexaminer.com/legal/push-is-on-to-increase-protection-for-federal-judges/> (explaining the Daniel Aderl Judicial Security Act was co-authored by U.S. senators, Bob Menendez and Cory Booker (both D-NJ) and was originally co-sponsored by Sen. Lindsay Graham (R-SC), chairman of the Senate Judiciary Committee, and by the committee's ranking member, Diane Feinstein (D-CA)).

¹⁰² *Judiciary Calls for Passage of Security Legislation*, U.S. CTS. (Dec. 4, 2020), <https://www.uscourts.gov/news/2020/12/04/judiciary-calls-passage-security-legislation>; see also *Judiciary Steps Up Calls to Enact Security Measures*, *supra* note 84 (enclosing two letters that were sent to Congress by James C. Duff, secretary of the Judiciary Conference of the United States, and by Judge David W. McKeague, chair of the Judicial Conference's Committee on Judicial Security).

¹⁰³ *AG Grewal Leads 51 AGs in Backing Federal Version of "Daniel's Law" to Protect Judges and their Families*, INSIDER NJ (Dec. 14, 2020, 1:07 PM), <https://www.insidernj.com/press-release/ag-grewal-leads-51-ags-backing-federal-version-daniels-law-protect-judges-families/>.

¹⁰⁴ *Judicial Security Legislation Stalls, Awaits Congressional Action in 2021*, *supra* note 14; see also Nikita Biryukov, *Rand Paul Blocks Federal Daniel's Law: Menendez Said Rand Paul's Amendments Would Render Law Useless*, N.J. GLOBE (Dec. 16, 2020, 5:31 PM), <https://newjerseyglobe.com/congress/kentucky-senator-blocks-federal-daniels-law/> (explaining the proposed amendment is supported with reminders of the attempted assassinations of Representatives Gabby Giffords (D-AZ) in 2011 and Steve Scalise (R-LA) in 2017).

¹⁰⁵ Biryukov, *supra* note 104 (including a video in which the amendments are described).

¹⁰⁶ *Id.*

Subsequent to the bill's failure to pass, James C. Duff, Director of the Administrative Office of the U.S. Courts, stated that the Judiciary will "redouble [their] efforts to get this legislation enacted in the new Congress."¹⁰⁷

III. ANALYSIS

Members of Congress should not seek any amendments and instead pass the Daniel Anderl Judicial Security and Privacy Act of 2020 as originally written.¹⁰⁸ If members of Congress want information privacy protection for themselves, then they have every opportunity to write a bill for that purpose and send it through the bicameralism and presentment processes. This bill was drafted strictly in honor of Judge Salas's son, Daniel, and specifically serves the purpose of safeguarding current and former federal judges and their families. It is imperative to pass this bill without an amendment in the new Congress, because "every day [Congress] fail[s] to act leaves our federal judges and our democracy in danger."¹⁰⁹ Additionally, not only would modifying the bill according to Senator Paul's amendment take away from the purpose of the bill as originally drafted by addressing both the judicial and legislative branches, but it would strip the bill of its deterrent effect since the amendment eliminates the right to private action and punitive damages.¹¹⁰ Furthermore, the inclusion of the legislative branch in this bill would likely be more problematic than the simpler, alternative option of Congress passing a privacy bill specifically for members of Congress. These problems would arise from an appearance of exclusivity in a system of three separate but equal branches of government. Thus, the passage of the original bill would be the first step in the right direction to ensure federal judges' privacy in a digital age.

A. THE IMPLICATIONS OF NONACTION

1. *Impartial Administration of Justice*

It is crucial to protect the privacy of federal judges' home addresses through the passing of a federal law to ensure the impartial administration of justice. If federal judges do not feel protected, then they may rule in a manner that places

¹⁰⁷ *Judicial Security Legislation Stalls, Awaits Congressional Action in 2021*, *supra* note 14.

¹⁰⁸ Its name may need to be modified to include "2021" if it is to be passed in the 117th Congress.

¹⁰⁹ *Id.* (quoting James C. Duff, Director of the Administrative Office of the U.S. Courts).

¹¹⁰ See Andrew Popper, *In Defense of Deterrence*, 75.1 ALB. L. REV. 181, 193 (2011) (asserting that "it seems safe to say that [punitive damages] deterrent effect cannot be seriously questioned," regardless of the controversy surrounding the topic); see also Biryukov, *supra* note 104 (describing the effect of the proposed amendment on punitive damages).

their safety over the impartial administration of justice.¹¹¹ For instance, a judge may feel inclined to rule in favor of a party out of fear of retaliation. When judges are “subject to influence or intimidation by corrupt officials, groups, or individuals,” the public will lack confidence in the Judiciary,¹¹² and that directly threatens the legitimacy of the Judiciary.

During the Senate Judiciary Committee’s hearing following the death of Judge Lefkow’s family, Senator Arlen Specter stated that “[t]he capability of the [J]udiciary to determine the rule of law without fear or favor is an indispensable prerequisite in our democratic society.”¹¹³ “The public must *perceive* that [federal judges] are fair and impartial if the rule of law is to survive.”¹¹⁴ This concern was once again echoed by Senator Menendez and by James C. Duff, Director of the Administrative Office of the U.S. Courts.¹¹⁵ If citizens do not trust the Judiciary, then citizens “will lack confidence that resort to judicial process will achieve a just resolution of their conflicts.”¹¹⁶ An independent and legitimized Judiciary can be realized through the assurance of the safety and security of judges.¹¹⁷

On top of the threat to American democracy and the viability of the rule of law, any self-interested administration of justice directly contradicts the Code of Conduct for United States Judges.¹¹⁸ Specifically, Canon 1 and Canon 2 provide that a judge “[s]hould [u]phold the [i]ntegrity and [i]ndependence of the Judiciary” and “[s]hould [a]void [i]mpropriety and the [a]pppearance of [i]mpropriety in all [a]ctivities.”¹¹⁹ Whether or not a judge consciously intends to do so, the potential threat to their life or their family’s life due to their ruling

¹¹¹ See BURDON, *supra* note 27, at 112 (explaining that if individuals have control over their information, then they can “think what they want to think and act without impediment”).

¹¹² J. Clifford Wallace, *An Essay on Independence of the Judiciary: Independence from What and Why*, 58 N.Y.U. ANN. SURV. AM. L. 241, 246 (2001).

¹¹³ *Protecting Federal Judges*, C-SPAN (May 18, 2005), <https://www.c-span.org/video/?186776-1/protecting-federal-judges#>.

¹¹⁴ See Paul L. Friedman, *Threats to Judicial Independence and the Rule of Law*, AM. BAR ASS’N (Nov. 18, 2019), <https://www.americanbar.org/groups/litigation/initiatives/committee-on-american-judicial-system/in-the-news/threats-to-judicial-independence-and-rule-of-law/> (explaining the importance of judicial independence, or in other words, the insulation of decisions from external pressures and personal interests).

¹¹⁵ Biryukov, *supra* note 104 (stating that “[a]n independent judiciary in which judges can render decisions without fear of retribution and violence is essential to the integrity of our democracy . . . [i]ndeed, the idea that any judge at any level of government could be intimidated undermines the very concept of the rule of law”).

¹¹⁶ Wallace, *supra* note 112.

¹¹⁷ *Id.*

¹¹⁸ See generally *Code of Conduct for United States Judges*, U.S. CTS., <https://www.uscourts.gov/judges-judgeships/code-conduct-united-states-judges> (last visited Mar. 10, 2021) (outlining the Code of Conduct for United States Judges which “includes the ethical canons that apply to federal judges and provides guidance on their performance of official duties and engagement in a variety of outside activities”).

¹¹⁹ *Id.*

in a controversial case may convey the impression that someone influenced the judge's decision depending on a case's outcome. Even the appearance of impropriety that a judge ruled in accordance with outside influence works against the promotion of "public confidence in the integrity and impartiality of the [J]udiciary," which the Canons recognize as being "indispensable to justice" in our nation.¹²⁰ Thus, either the appearance of impropriety or actual impropriety due to threats to federal judges' and their families' lives directly impacts the integrity and independence of the Judiciary as well as the rule of law. That is why it is imperative that a federal law defining and protecting federal judges' home addresses as PII – preferably the unamended bill proposed to the 116th Congress – is passed as soon as possible.

2. Detrimental Delay

Every day, every week, and every month that Congress waits to enact a federal law to identify and protect federal judges' home addresses as PII creates more room for another federal judge or federal judge's family member to be harmed in a digital age of heightened polarization.¹²¹ President Donald Trump has openly criticized federal judges' decisions via social media.¹²² The result of President Trump's criticism of federal judges amplified violent and deadly threats to federal judges and online publicization of their home addresses.¹²³ Although President Trump has been permanently banned from Twitter¹²⁴ and is no longer president, polarization online is ever so present and is likely not going away any

¹²⁰ *Id.*

¹²¹ See generally Darrell West & Fred Dewes, *After the Insurrection, Ideas to Tackle Polarization in America*, BROOKINGS (Jan. 15, 2021), <https://www.brookings.edu/podcast-episode/after-the-insurrection-ideas-to-tackle-polarization-in-america/> (describing the nation as "divided and on edge" following the insurrection of the U.S. Capitol); Tyler Sonnemaker, 11 *Experts Explain How Our Digital World is Fueling Polarization*, BUS. INSIDER (Dec. 28, 2020, 2:49 PM), <https://www.businessinsider.com/how-internet-social-media-fuel-polarization-america-facebook-twitter-youtube-2020-12> (informing how technology has played "a significant role" in this nation's polarization).

¹²² See *In His Own Words: The President's Attacks on the Courts*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/our-work/research-reports/his-own-words-presidents-attacks-courts> (last updated Feb. 14, 2020) (outlining the pattern of attacks that President Trump has made on judges and the courts after rulings he opposed).

¹²³ See *Judges Raise Alarm as Personal Threats Intensify, Amplified by Social Media*, AM. BAR ASS'N (Aug. 10, 2019), <https://www.americanbar.org/news/abanews/aba-news-archives/2019/08/judges-raise-alarm-as-personal-threats-intensify--amplified-by-s/> (revealing that following Judge James Robart's blocking of President Trump's first "travel ban" and before he even left the courtroom, people published his "name, photo, address and phone number on the internet, along with his wife's name, phone number and business address" online and then he experienced even more frightening threats when President Trump criticized Judge Robart over Twitter).

¹²⁴ *Permanent Suspension of @realDonaldTrump*, TWITTER (Jan. 8, 2021), https://blog.twitter.com/en_us/topics/company/2020/suspension.html.

time soon.¹²⁵ The increase in polarization and its conveyance over digital platforms poses a serious danger to federal judges, especially when their homes addresses are easily accessible and their roles have been viewed as becoming “increasingly politicized.”¹²⁶ As long as federal judges’ home addresses remain public information in a polarized and digital age, federal judges will be at greater risk of harm. Thus, it is critical to classify and protect federal judges’ home addresses as PII through federal law, without any more delays.

B. THE IMPLICATIONS OF THE ADOPTION OF SENATOR RAND PAUL’S AMENDMENT

1. *Deterrent Effect of Damages*

Congress should enact the original federal bill without the proposed amendment, because damages are essential to deter data brokers from publicizing federal judges’ PII. Senator Menendez expressed his concern after reading Senator Paul’s amendment to the bill which included a barrier to legal actions that judges would be able to take against data providers who violate the bill.¹²⁷ In Senator Menendez’s rejection of the proposed amendment, he stated that “[w]ithout the threat of some damages, there’s little incentive for a data broker to remove the personally identifying information of a judge and his or her family.”¹²⁸ The original bill provides redress and penalties for federal judges whose PII was made public in violation of the bill, including a private right of action in a court with jurisdiction and possible damages if the judge prevails in their action.¹²⁹ It states that a prevailing judge shall be awarded damages in an amount “[no] greater than 3 times the actual damages incurred” and “not less than \$10,000.”¹³⁰

There is academic research to support Senator Menendez’s fear that there would be a lack of deterrence if these damages are eliminated, although this topic is highly contested amongst legal scholars.¹³¹ Future civil liability has a deterrent

¹²⁵ See Caroline Dade, *Experts Say Trump’s Twitter Ban Could Affect Political Polarization*, WKOW (Jan. 10, 2021, 10:42 PM), <https://wkow.com/2021/01/10/experts-say-trumps-twitter-ban-could-affect-political-polarization/> (stating that there will be even more polarization once politicians and their supporters who encourage violence leave “mainstream social media platforms” for less regulated platforms like Parler).

¹²⁶ Ben Kessler, *The Attack on Judge Salas’ Family Highlights Concerns over Judicial Safety*, NBC NEWS (July 21, 2020, 5:43 PM), <https://www.nbcnews.com/news/us-news/attack-judge-salas-family-highlights-concerns-over-judicial-safety-n1234476>.

¹²⁷ Biryukov, *supra* note 104.

¹²⁸ *Id.*

¹²⁹ Daniel Anderl Judicial Security and Privacy Act of 2020, S.4711, 116th Cong. § 7 (2020) (as referred to the Senate Judiciary, Sept. 24, 2020).

¹³⁰ *Id.*

¹³¹ See *generally* Popper, *supra* note 110 (weighing the arguments for and against the deterrent effects of damages and arguing how damages do indeed deter unwanted behavior).

effect on actors because of how human beings rationally react to the potential of punishment.¹³² By offering statutory damages, the bill puts a floor on damages and sets a range from \$10,000 to discretionary treble damages.¹³³ Following a plain reading of the statutory damages provided in the bill, the damages can be categorized as compensatory and punitive.¹³⁴ A court would be statutorily granted¹³⁵ the discretion to award compensatory damages in the amount of the actual damages incurred by the judge. A court may also award damages in an amount of three times the actual damages which serves a punitive purpose in addition to compensating the judge. It is evident that the bill intends to punish the wrongdoer by setting a floor of a minimum recoverable amount of \$10,000 if the judge prevails in their action.¹³⁶ When implemented, punitive damages aim at “(1) punishing outrageous conduct and (2) deterring its future occurrence.”¹³⁷ Even the *Restatement (Second) of Torts* recognizes that “punitive damages are damages . . . awarded against a person . . . to deter him and other like him from similar conduct in the future.”¹³⁸

Further, an award of multiple damages, as provided in this bill, may be able to fully compensate and better deter a person, business, or association from committing a wrongdoing to a judge, as opposed to no damages at all or ordinary compensatory and punitive damages.¹³⁹ The Supreme Court has also recognized

¹³² *Id.* at 186 (citing C.B. FERSTER & B.F. SKINNER, SCHEDULES OF REINFORCEMENT 7-11 (Julie S. Vargas ed., 1957); B.F. SKINNER, ABOUT BEHAVIORISM 53, 68-71 (1974) (claiming rational beings act to avoid pain or punishment)).

¹³³ See Geoffrey S. Stewart & Miriam S. Weiler, *Emerging Issues in Statutory Damages*, JONES DAY (July 2011), <https://www.jonesday.com/en/insights/2011/07/emerging-issues-in-statutory-damages> (giving background information on statutory damages); see also *Treble Damages*, LEGAL INFO. INST., https://www.law.cornell.edu/wex/treble_damages (last visited Mar. 10, 2021) (defining treble damages as damages awarded by the court that are three times the amount of the plaintiff's actual damages).

¹³⁴ See generally *Damages*, LEGAL INFO. INST., <https://www.law.cornell.edu/wex/damages> (last visited Mar. 10, 2021) (defining compensatory damages as damages “intended to compensate the injured party for loss or injury” and punitive damages as damages “awarded to punish a wrongdoer”).

¹³⁵ See generally Daniel Anderl Judicial Security and Privacy Act of 2020, S.4711, 116th Cong. § 7 (2020) (as referred to the Senate Judiciary, Sept. 24, 2020) (explaining which damages a court may award to compensate a judge).

¹³⁶ Stewart & Weiler, *supra* note 133 (stating that “many statutory damages law have a punitive purpose”).

¹³⁷ Roseanna Sommers, *The Psychology of Punishment and the Puzzle of Why Tortfeasor Death Defeats Liability for Punitive Damages*, 124 YALE L.J. 1295 (2015) (citing RESTATEMENT (SECOND) OF TORTS § 908 (1979)); 1 JOHN J. KIRCHER & CHRISTINE M. WISEMAN, PUNITIVE DAMAGES: LAW AND PRACTICE § 4:12 (2d ed. 2014); Marc Galanter & David Luban, *Poetic Justice: Punitive Damages and Legal Pluralism*, 42 AM. U.L. REV. 1393, 1428-29 (1993); Dorsey D. Ellis, Jr., *Fairness and Efficiency in the Law of Punitive Damages*, 56 S. CAL. L. REV. 1, 76 (1982).

¹³⁸ RESTATEMENT (SECOND) OF TORTS § 908 (AM. L. INST. 1979).

¹³⁹ Stephen J. Shapiro, *Overcoming Under-Compensation and Under-Deterrence in Intentional Tort Cases: Are Statutory Multiple Damages the Best Remedy?*, 62 MERCER L. REV. 449, 450, 498 (2011)

that multiple damages punish, deter, and compensate.¹⁴⁰ Thus, it is pertinent for Congress to pass the bill as originally drafted with the private right of action and multiple damages in order to increase the chances that actors are deterred from intentionally publicizing judges' PII.

2. *Losing its Meaning*

Although Senator Paul calls the amendment a “very minor request” that “would not change anything or lessen anything about the bill,”¹⁴¹ the amendment would do just that. Beyond the effects on deterrence, if the amendment were to be implemented with protections for members of Congress, the bill would lose its symbolic and practical meaning. The Daniel Aderl Judicial Security Act was drafted and presented in the name of Daniel, Judge Salas’s late son who was murdered when a man appeared at her home and shot Daniel and her husband.¹⁴² Including protections for the legislative branch in the bill alongside the protections for the judicial branch would completely contradict the name of the bill, and any renaming of the bill would strip the attention away from honoring Judge Salas’s son, Daniel.

3. *Complications Amongst the Three Branches of Government*

Even though the amendment to the bill calls for the extension of protections to the legislative branch, this inclusivity would in turn create an appearance of exclusivity in a system of three separate but equal branches of government. Since the judicial branch is not of more importance than the legislative or executive branches,¹⁴³ adding protections for the legislative branch in the bill would then leave room for an argument that members of the executive branch should also be entitled to protections. Former members of the executive branch have also received deadly threats to their homes,¹⁴⁴ so it could be argued that they too

(explaining that (i) in actuality, compensatory damages do not always fully compensate the plaintiff or adequately deter the defendant and others from intentional tortious conduct; (ii) punitive damages do not always deter intentional wrongdoings of less malicious nature; and (iii) multiple damages are a better alternative since “[a] party will be less willing to engage in intentionally tortious conduct if he knows he will have to pay for the harm”).

¹⁴⁰ *Id.* at 476 (citing *Am. Soc’y of Mech. Eng’rs v. Hydrolevel Corp.*, 456 U.S. 556, 575-76 (1982)).

¹⁴¹ See Biryukov, *supra* note 104 (recording Senator Paul’s discussion of the amendment’s impact in the legislative session’s video starting at 13 minutes, 51 seconds).

¹⁴² Lefkow, *supra* note 95.

¹⁴³ *Separation of Powers in Action* – U.S. v. Alvarez, U.S. CTS., <https://www.uscourts.gov/educational-resources/educational-activities/separation-powers-action-us-v-alvarez> (last visited Mar. 10, 2021) (stating that “[t]he U.S. Constitution establishes three separate but equal branches of government”).

¹⁴⁴ See, e.g., Jonathan Dienst, Marc Santia, & Jennifer Millman, *Pipe Bombs Sent to Hillary Clinton, Obama, CNN, Holder, Waters and George Soros are Linked, Sources Say*, NBC N.Y. (Oct. 25, 2018, 9:31 AM), <https://www.nbcnewyork.com/news/local/bomb-hillary-clinton-house->

should be included in the bill alongside former federal judges to have their home addresses protected as PII.

The bill identifies current, senior, recalled, or retired federal judges' home addresses as PII and seeking to provide privacy protection measures.¹⁴⁵ It also aims to establish a new threat management capability with the U.S. Marshals Service and other relevant Federal law enforcement and security agencies.¹⁴⁶ Considering the inclusion of the legislative branch alone or both the legislative and executive branches would call for Congress to reevaluate the appropriation and facilitation of the new threat management capability. Congress would have to authorize the appropriation of even more funds to the agencies that protect the legislative and executive branches. While it is feasible to single out which security agencies are responsible for protecting the members of the judicial¹⁴⁷ and legislative branches,¹⁴⁸ it becomes more complex in the executive branch due to the various departments within it.¹⁴⁹

The proposed extension of protection to the executive branch would also open the floor to a debate as to *which* members of the executive branch are deserving of protection.¹⁵⁰ The executive branch contains many high-profile and well-known employees aside from the heads of the fifteen executive

chappaqua-new-york-george-soros/542083/ (reporting that incidents of explosive devices were attempted to be mailed to the homes of former executive branch members, including former President Barack Obama & First Lady Michelle Obama, former Vice President Joe Biden and Second Lady Dr. Jill Biden, former President Bill Clinton and First Lady/Secretary of State).

¹⁴⁵ Judicial Security and Privacy Act of 2020, S.4711, 116th Cong. § 7 (2020) (as referred to Senate Judiciary, Sept. 24, 2020).

¹⁴⁶ *Id.*

¹⁴⁷ *Judicial Security*, U.S. MARSHALS SERV., <https://www.usmarshals.gov/judicial/> (last visited Mar. 10, 2021) (stating that the United States Marshals Service protects members of the federal judiciary).

¹⁴⁸ *The Department*, U.S. CAPITOL POLICE, <https://www.uscp.gov/the-department> (last visited Mar. 10, 2021) (explaining that the United States Capitol Police is a federal law enforcement agency that protects the Congress and Members of Congress).

¹⁴⁹ See Nicholas Fandos, *A Who's Who List of Agencies Guarding the Powerful*, N.Y. TIMES (Apr. 12, 2017), <https://www.nytimes.com/2017/04/12/us/politics/secret-service-protection-washington.html> (informing that the protection of top government officials within the executive branch, ranging from the President to the head of the Environmental Protection Agencies, involves "more than a dozen federal agencies and offices").

¹⁵⁰ *Our Government: The Executive Branch*, THE WHITE HOUSE, <https://www.whitehouse.gov/about-the-white-house/the-executive-branch/> (last visited Mar. 10, 2021); see also Martha Joynt Kumar, *Assistants to the President: White House Top-Tier Staff Turnover During the First 17 Months*, WHITE HOUSE TRANSITION PROJECT 1, 2, http://www.whitehousetransitionproject.org/wp-content/uploads/2018/06/Assistants_to_the_President_Turnover_6-30-2018.pdf (last visited Mar. 10, 2021) (providing that "[t]here are three levels of commissioned officers at the White House: Assistant to the President, Deputy Assistant to the President, Special Assistant to the President").

departments.¹⁵¹ There is also greater turnover for some members in the executive branch,¹⁵² as opposed to the members of Congress who are elected to serve their term and federal judges who are appointed for life.¹⁵³ It may be systematically and financially straining to implement protections for the executive branch's commissioned officers with a higher turnover rate. Given all of likely future complications with the executive branch if the legislative branch is included, the bill should focus solely on the judicial branch.

Even if protections of the legislative branch were implemented in the bill without any complaints of exclusion from the executive branch, it would not be institutionally viable. The security agency of the legislative branch, the Capitol Police, may need to undergo investigation and reform before there is any discussion about expanding their powers.¹⁵⁴ There is a stark difference between categorizing legislative branch members' home addresses as PII and assigning Capitol Police the responsibility to protect members of Congress at their homes and their PII.¹⁵⁵ Following the January 6, 2021 insurrection at the Capitol, questions remain about whether police assisted in the insurrection.¹⁵⁶ While members of Congress have had their homes publicized¹⁵⁷ and their security

¹⁵¹ *Id.*

¹⁵² Kumar, *supra* note 150, at 2-6.

¹⁵³ See generally *Article I*, LEGAL INFO. INST., <https://www.law.cornell.edu/constitution/articlei> (last visited Mar. 10, 2021) (outlining Article I of the U.S. Constitution which designates two-year terms for Representatives and six-year terms for Senators); see also *Article III*, LEGAL INFO. INST., <https://www.law.cornell.edu/constitution/articleiii> (last visited Mar. 10, 2021) (providing Article III of the U.S. Constitution which states that “judges, both of the supreme and inferior courts, shall hold their offices during good behaviour”).

¹⁵⁴ Sarah Ferris, Kyle Cheney, & Melanie Zanona, *‘Hate in Their Heart’ Lawmakers Fear More Violence After Capitol Attacks*, POLITICO (Jan. 11, 2021, 9:26 PM), <https://www.politico.com/news/2021/01/11/lawmakers-fear-violence-capitol-riots-457868> (quoting Representative Tim Ryan who oversees the funding for Capitol Police and said that “[w]e have to begin to re-establish trust with the United States Capitol Police because of what happened” and “[t]he trust may be difficult to regain”).

¹⁵⁵ Daniel Anderl Judicial Security and Privacy Act of 2020, S.4711, 116th Cong. § 7 (2020) (as referred to Senate Judiciary, Sept. 24, 2020).

¹⁵⁶ Marshall Cohen, *Questions swirl around possible ‘insider’ help for Capitol attack*, CNN (Jan. 14, 2021, 10:46 AM), <https://www.cnn.com/2021/01/13/politics/capitol-insurrection-insider-help/index.html> (reporting that at least two U.S. Capitol Police officer have been suspended for playing a role and at least two more are under investigation); see also Peter Nickeas, Annie Grayer, & Ryan Nobles, *2 Capitol Police officers suspended and at least 10 more under investigation for alleged roles in riot*, CNN (Jan. 11, 2021, 10:20 PM), <https://www.cnn.com/2021/01/11/politics/capitol-police-officers-suspended-tim-ryan/index.html> (explaining that one of the suspended police officers took a selfie with one of the mob members while another wore a “Make America Great Again” hat and directed people in the mob building).

¹⁵⁷ See, e.g., William Skipworth, *FACT CHECK: Protesters at Sen. Josh Hanley’s home were disruptive but not threatening or violent*, MISSOURIAN (Jan. 9, 2021),

compromised at the Capitol, none of the attacks on members of Congress that Senator Paul cited in his objection to the bill occurred at their homes.¹⁵⁸ Understandably, members of Congress have a reason to be fearful for their lives and to want their home addresses to be defined as PII. It is, however, troubling to extend the responsibility of protection by the Capitol Police to the homes of members of Congress and their PII if there are insurrectionist ties¹⁵⁹ and security flaws within the agency.¹⁶⁰ This bill intends to appropriate funds to the United States Marshals Services to “develop a monitoring, collection, and analytical capability to share relevant information leveraged from the Administrative Office of the United States Courts and partnered law enforcement and security agencies.”¹⁶¹ Still, the Capitol Police cannot currently be expected to fulfill that obligation for members of Congress as it has apparently failed to share critical security information with other agencies such as the FBI.¹⁶² Thus, including the

https://www.columbiamissourian.com/news/politifact_missouri/fact-check-protesters-at-sen-josh-hawley-s-home-were-disruptive-but-not-threatening-or/article_9630f438-5209-11eb-bfa5-2bcc479_ee6d4.html (detailing a peaceful demonstration in front of Senator Hawley’s Vienna, Virginia home by activist group, ShutDownDC, protesting his objection to certain electoral votes); *but cf.* Jamie Gangel, Marshall Cohen, & Annie Grayer, *Members of Congress Fear for Their Lives and Security After Deadly Riot, Sources Say*, CNN (Jan. 15, 2021, 9:01 AM), <https://www.cnn.com/2021/01/14/politics/capitol-hill-lawmakers-security-concerns/index.html> (quoting Republican Rep. Dusty Johnson of South Dakota saying that “[his] address, a picture of [his] home where [his] family lives was posted on kind of an anti-Dusty Facebook page” and he has received threats against his life and safety).

¹⁵⁸ Stacey Barchenger & Tenton Bureau, *Bill to Protect Judges’ Info Blocked by Senator, Asks for Congressmen to Be Protected, Too*, MY CENTRAL JERSEY (Dec. 17, 2020, 1:21 PM), <https://www.mycentraljersey.com/story/news/politics/2020/12/17/nj-effort-protect-judges-blocked-congress-rand-paul-esther-salas/3939294001/> (distinguishing that Rep. Gabby Giffords and others were shot in a parking lot during a constituent event and Rep. Steven Scalise during a baseball game while Judge Salas’s family was shot in their private home).

¹⁵⁹ Nickeas et al., *supra* note 156 (noting that skills that law enforcement officers are trained to use could be helpful to an extremist mob).

¹⁶⁰ See Carole D. Leonnig, *Capitol Police Intelligence Report Warned Three Days Before Attack That ‘Congress Itself’ Could Be Targeted*, WASH. POST (Jan. 15, 2021, 7:43 PM) https://www.washingtonpost.com/politics/capitol-police-intelligence-warning/2021/01/15/c8b50744-5742-11eb-a08b-f1381ef3d207_story.html (revealing how the Capitol Police intelligence report warning that Congress could be targeted “does not appear to have been shared widely with other law enforcement agencies”); *see also* Dennis Wagner, *‘Failure of Imagination’: National Guard Absence at Capitol Riots Shows Lack of Preparation, Distrust After Heavy-Handed BLM Response*, USA TODAY (Jan. 17, 2021), <https://www.usatoday.com/story/news/nation/2021/01/15/national-guards-no-show-capitol-riots-shows-lack-preparation/4169368001/> (stating that although the Capitol Police force “has been beefed up and professionalized over the years in response to [other acts of violence],” the force on January 6, 2021 “seemed ‘overwhelmed and underprepared’”).

¹⁶¹ Leonnig, *supra* note 160.

¹⁶² *Id.*

legislative branch in the bill and entrusting the Capitol Police in its current state with enforcing PII protections would be a grave mistake.

Polarization in Congress has made passing bills extremely hard, and so members of Congress have had to resort to “cramming things into bills” to have “big, multidimensional deals.”¹⁶³ However, simple legislation has its perks, especially that it is “easier to understand.”¹⁶⁴ As outlined above, extending and enforcing PII protections for the legislative and executive branches would be dealing with difficult policy areas – whether they are the complexities of the executive branch security or the shortcomings of the Capitol Police as an agency.¹⁶⁵ Therefore, a better alternative – if members of Congress are adamant to have legislation that extends the PII protection to themselves – is to have separate bills specifically tailored to each branch of government. That would mean passing the bill in the 117th Congress as originally drafted to protect federal judges and their PII and drafting a separate bill to protect the members of Congress in ways that they deem necessary at this time. This separate bill could possibly include legislative needs following the January 6, 2021 insurrection of the Capitol.

To be clear, this Note does not take the position that members of Congress should not be extended PII protections and security at their homes. Rather, this Note recognizes the need for increased legislative branch security and advocates for a more unique approach that can accommodate the legislative branch’s current position following January 6, 2021 and the Capitol Police’s failure to protect as an agency. In the meantime, however, the fate of the judicial branch’s security should not be placed in limbo.

IV. CONCLUSION

Federal judges have a right to privacy when it comes to their home addresses – more specifically, the right to be left alone when they are in their homes. In a nation that lacks a uniform and overarching framework of privacy laws, the federal government must enact measures to protect the privacy of federal judges’ home addresses. Some federal judges and their families have been murdered

¹⁶³ Danielle Kurtzleben, *Just Because a Bill Is Long Doesn’t Mean It’s Bad*, NPR (Mar. 11, 2017, 6:00 AM), <https://www.npr.org/2017/03/11/519700465/when-it-comes-to-legislation-so-metimes-bigger-is-better>.

¹⁶⁴ *Id.*

¹⁶⁵ This is not to say that there were not brave officers on January 6, 2020. *See, e.g.*, N’dea Yancey-Bragg, *Hero’ Capitol officer who led rioters away from Senate may get a Congressional Gold Medal*, USA TODAY (Jan. 15, 2021, 12:37 PM), <https://www.usatoday.com/story/news/nation/2021/01/15/eugene-goodman-capitol-police-officer-congressional-gold-medal/4172650001/> (detailing how Officer Eugene Goodman led a mob of white men away from the Senate floor). This Note, however, focuses on the Capitol Police’s unpreparedness as an agency and the bad apples within it that directly contributed to the bloodshed that day.

2021] *PROTECTING PRIVACY OF FEDERAL JUDGES'* 499

after revengeful individuals obtained access to their home addresses which are made readily available through real estate records, data brokers, social media, or people-search websites. Without the express permission of federal judges, their home addresses must remain private, both for the sake of the rule of law and the safety of federal judges and their families in an increasingly polarized and digital age. The federal government can achieve this privacy by recognizing and protecting federal judges' home addresses as PII through an unamended version of the Daniel Anderl Judicial Security and Privacy Act in the 117th Congress. The sooner, the better.