

SECURING JUSTICE: PROTECTING PERSONAL INFORMATION OF HAWAI‘I’S JUDGES

A Report of the American Judicature Society’s Committee on Judicial Administration¹

“All the rights secured to the citizens under the Constitution are worth nothing, and a mere bubble, except guaranteed to them by an independent and virtuous Judiciary.” –Andrew Jackson

I. Introduction

As Chief Justice John Roberts stated last year, “[a] judicial system cannot and should not live in fear.”² Notwithstanding this fact, federal and state court judges across the country face an ever-increasing number of inappropriate communications, threats, and attacks. On numerous occasions, personal information gathered from the Internet has been used to target judges.

Although the Hawai‘i State Legislature has acknowledged that it must act to protect judges because of the trove of personal information available on the Internet and elsewhere, past efforts to guard Hawai‘i judges have stalled.

This report details the mounting threat to the judiciary, the growing nationwide movement to protect judges, and Hawai‘i’s recent unsuccessful effort to protect its judges. Included with the report is a draft bill that prohibits state and local government agencies from publicly posting the personal information of judges or their families upon receiving a written request. The draft bill also prohibits other persons or organizations from posting or otherwise making such information publicly available. The draft bill specifically excepts from its restrictions the posting of information on matters of public concern.

This bill should be introduced and enacted during the next legislative session to protect the personal information of Hawai‘i judges and to preserve the proper functioning of the judicial branch. Immediate action is needed.

¹ The Committee’s co-chairs are Ted N. Pettit and the Honorable J. Michael Seabright. Committee members include Troy J.H. Andrade, the Honorable Richard R. Clifton, the Honorable Hilary B. Gangnes (ret.), the Honorable Lisa M. Ginoza, David M. Louie, Rodney A. Maile, the Honorable Kenneth J. Mansfield, George Miller, Tiare Nakata, Randy Perreira, and Steven K. Uejio.

² John G. Roberts, Jr., 2022 Year-End Report on the Federal Judiciary (Dec. 31, 2022), <https://www.supremecourt.gov/publicinfo/year-end/2022year-endreport.pdf> [<https://perma.cc/584E-FVJH>].

II. Growing Threat to the Rule of Law

In fiscal year 2003, the U.S. Marshals Service tallied 592 threats and other inappropriate communications against federal judges and additional protected persons.³ By 2015, that number had risen to 926.⁴ Just three years later, the total more than quadrupled to 4,542.⁵ Ronald Davis, the Director of the U.S. Marshals Service, observed last year that the threat risk to the federal judiciary has been “growing exponentially.”⁶

State and local judges face the same challenges. In 2014, the National Judicial College stated that more than seventy percent of judges responding to a survey, most of whom were state and local judges, reported receiving an inappropriate communication at some point during their careers.⁷ Fifty percent of the judges also reported that they had been threatened because of their judicial position.⁸

Judges in Hawai‘i are not immune to this disturbing trend. Between 2017 and 2022, the number of threats and inappropriate communications reported by state judges more than quadrupled. Since 2012, the number of such communications has increased tenfold.⁹

The increased targeting of judges has coincided with deteriorating trust in public institutions and escalating partisan rhetoric.¹⁰ According to a 2022 report by

³ U.S. Dep’t of Justice, Office of the Inspector General, Review of the Protection of the Judiciary and the United States Attorneys (Dec. 2009), <https://oig.justice.gov/reports/plus/e1002r.pdf> [<https://perma.cc/8T4P-7QEL>]. The threats counted in this report were to federal judges, U.S. Attorneys, and Assistant U.S. Attorneys.

⁴ U.S. Marshals Service, United States Marshals Service FY 2019 Annual Report <https://www.usmarshals.gov/sites/default/files/media/document/PUB-2-2019-Annual-Report.pdf> [<https://perma.cc/MXU8-PY2Z>].

⁵ *Id.*

⁶ Sarah N. Lynch, U.S. judges faced over 4,500 threats in 2021 amid rising extremism – official (Feb. 15, 2022) <https://www.reuters.com/world/us/us-judges-faced-over-4500-threats-2021-amid-rising-extremism-official-2022-02-14/> [<https://perma.cc/42WC-GADM>].

⁷ The National Judicial College, Judicial Security Report, 2014 Survey Report, https://www.judges.org/wp-content/uploads/2019/12/USMS_survey_report.pdf [<https://perma.cc/HQ7P-3DZX>].

⁸ *Id.*

⁹ Act 46 (June 17, 2022), https://www.capitol.hawaii.gov/slh/Years/SLH2022/SLH2022_Act46.pdf [<https://perma.cc/ZF7D-WG42>].

¹⁰ Associated Press, Donald Trump supporters send death threats to judge who approve Mar-a-Lago Search (Aug. 17, 2022) <https://www.pbs.org/newshour/politics/donald-trump-supporters-send-death-threats-to-judge-who-approved-mar-a-lago-search> [<https://perma.cc/9UKE-KBY7>].

the Pew Research Center, only two in ten Americans trust the federal government to do what is right just about always or most of the time.¹¹

The substance and severity of the threats received by judges are often unimaginable. For example, at various times after being sentenced to twenty-seven months' imprisonment in 2003, James Hudson made harassing calls to United States District Judge Susan Oki Mollway.¹² In early 2015, Hudson left a message for Judge Mollway stating that he was returning to Hawai'i from Texas. The following month, Hudson called again. This time, Hudson threatened to rape Judge Mollway and to "blow [her] God [damn] brains out."

While stated or implied threats are enough to interfere with the proper functioning of the judiciary, potential threats to judges may pose an even greater risk. Too often, menacing statements are representative of a mindset that leads to something far worse—targeted acts of violence against judges and their families.

III. More Than Idle Threats

Four recent examples confirm the mortal dangers that current and former judges face because of their judicial service.

On the evening of July 19, 2020, United States District Judge Esther Salas and her twenty-year-old son, Daniel Anderl, were in the basement of their New Jersey home when the doorbell rang.¹³ Daniel promptly ran upstairs to answer the door. After hearing her husband scream and a series of loud bangs, Judge Salas rushed upstairs where she found both her son and husband shot. Judge Salas' husband suffered life-threatening injuries after being shot multiple times. Daniel died.

Authorities identified the assailant as Roy Den Hollander, a seventy-two-year-old lawyer, whose body was later found in upstate New York with a single gunshot wound to the head. Hollander, a self-described anti-feminist, had

¹¹ Pew Research Center, Americans' Views of Government: Decades of Distrust, Enduring Support for its Role (June 6, 2022), <https://www.pewresearch.org/politics/2022/06/06/public-trust-in-government-2/> [<https://perma.cc/ND48-8YBA>].

¹² Associated Press, Man sentenced for threatening to kill U.S. judge in Hawaii (Dec. 1, 2015), <https://www.staradvertiser.com/2015/12/01/breaking-news/man-sentenced-for-threatening-to-kill-u-s-judge-in-hawaii/#:~:text=In%20February%2C%20he%20called%20and,hurt%20her%2C%E2%80%9D%20he%20said> [<https://perma.cc/E7WM-C3MH>].

¹³ Nina Totenberg, An Attacker Killed a Judge's Son. Now She Wants to Protect Other Families, (Nov. 20, 2020), <https://www.npr.org/2020/11/20/936717194/a-judge-watched-her-son-die-now-she-wants-to-protect-other-judicial-families> [<https://perma.cc/A2VW-GRUB>].

appeared in a case before Judge Salas months earlier while challenging the male-only Selective Service System. In a self-published book, Hollander described Judge Salas as “a lazy incompetent Latina judge appointed by Obama.”¹⁴ He had acquired Judge Salas’ address, photos of her home, and her vehicle information from the Internet.¹⁵ In Hollander’s car, authorities also found a list of potential targets that included three additional female judges.

During another incident, John Roemer, a retired Juneau County Circuit Court judge, was zip-tied to a chair, shot, and killed inside his Wisconsin home on June 3, 2022.¹⁶ Authorities identified the shooter as Douglas K. Uhde. More than fifteen years earlier, Judge Roemer had sentenced Uhde to six years in prison followed by nine years of extended supervision.¹⁷ When authorities entered Judge Roemer’s home, they found Uhde in the basement with an apparent self-inflicted gunshot wound. He died days later.

During a third incident, a taxicab stopped outside the Maryland home of Supreme Court Justice Brett Kavanaugh during the early morning hours of June 8, 2022.¹⁸ A young man dressed in black exited the taxi carrying a backpack and a suitcase. According to court documents, when the man saw two deputy marshals standing outside the house, he began walking in the other direction. Minutes later, the man, Nicholas John Roske, called 911 reporting that he was having suicidal thoughts and that he planned to kill Justice Kavanaugh. Fortunately, authorities promptly arrived at the scene and arrested Roske without incident.

Inside Roske’s bags, authorities found a Glock 17 pistol, ammunition, a tactical knife, pepper spray, zip ties, duct tape, and other items.¹⁹ Roske told

¹⁴ Meredith Deliso, Suspected gunman who killed Judge Esther Salas’ son disparaged her as a Latina (July 21, 2020), <https://abcnews.go.com/US/suspect-deadly-shooting-called-federal-judge-esther-salas/story?id=71901734> [<https://perma.cc/9FEP-DAGJ>].

¹⁵ Administrative Office of the U.S. Courts, Annual Report 2022, <https://www.uscourts.gov/statistics-reports/facilities-and-security-annual-report-2022> [<https://perma.cc/Q8DY-93CJ>].

¹⁶ Whitney Wild, A former judge was killed in his Wisconsin home in a targeted attack, officials say (June 4, 2022), <https://www.cnn.com/2022/06/04/us/wisconsin-judge-killed-targeted-attack/index.html> [<https://perma.cc/RHE6-FAPL>].

¹⁷ Amir Vera, The man accused of killing a former Wisconsin judge in a ‘targeted attack’ has died, Wisconsin Justice Department says (June 7, 2022), <https://www.cnn.com/2022/06/06/us/wisconsin-judge-killing-suspect-history/index.html> [<https://perma.cc/QH72-3ZM6>].

¹⁸ Dan Morse, Man accused in plot to kill Kavanaugh eyed other justices, FBI says (July 28, 2022), <https://www.washingtonpost.com/dc-md-va/2022/07/28/roske-supreme-court-justice-threats/> [<https://perma.cc/WV7B-MGEP>].

¹⁹ Maria Cramer and Jesus Jimenez, Armed man traveled to Justice Kavanaugh’s home to kill him, officials say (June 8, 2022) <https://www.nytimes.com/2022/06/08/us/brett-kavanaugh-threat-arrest.html> [<https://perma.cc/9ASQ-EXDL>].

authorities that he had planned to break into the house, kill Justice Kavanaugh, and then kill himself. Roske said that he was upset by a leaked draft Supreme Court opinion that would undo the constitutional right to abortion. Roske additionally worried that the Supreme Court might roll back gun control laws. In thinking about “how to give his life purpose,” Roske decided to kill Justice Kavanaugh after finding the justice’s home address online.

During a fourth incident, Andrew Wilkinson, a Washington County Circuit Court judge, was fatally shot outside his Maryland home on October 19, 2023.²⁰ According to authorities, earlier the same day, Judge Wilkinson had presided over a hearing involving the suspected shooter, Pedro Argote. During the hearing, which Argote did not attend, Judge Wilkinson granted Argote’s wife a divorce and sole custody of the couple’s four children. Judge Wilkinson also barred Argote from contacting his children or visiting the family’s home. Authorities have described the incident as a “targeted attack” based on Judge Wilkinson’s decision in the case.

Regrettably, these four recent, horrific episodes are emblematic of an alarming trend. Significantly, in at least two of these incidents, and possibly a third,²¹ the assailants used personal information collected from the Internet to target judges. In the most-recent incident, it is not yet known how Judge Wilkinson was targeted.

IV. Congress Takes Steps to Protect Federal Judges

On December 23, 2022, President Biden signed the Daniel Anderl Judicial Security and Privacy Act of 2022.²² The Act, named after Judge Salas’ son, generally prohibits commercial data brokers from knowingly selling, trading, licensing, transferring, or purchasing federal judges’ personal information. Upon receipt of a written request, other persons, businesses, and associations are prohibited from publicly posting or displaying on the Internet such information.

²⁰ Marlene Lenthang, Erik Ortiz, and Victoria Ebner, Maryland judge killed in his driveway, authorities search for suspect who “targeted” him over divorce case ruling (Oct. 20, 2023) <https://www.nbcnews.com/news/us-news/maryland-circuit-court-judge-killed-driveway-home-police-say-rcna121366> [<https://perma.cc/PR58-C73U>].

²¹ Cameron Langford, Panel highlights threats to judges amid rising tensions (June 16, 2022), <https://www.courthousenews.com/panel-highlights-threats-to-judges-amid-rising-tensions/> [<https://perma.cc/7SDN-DCHJ>].

²² Daniel Anderl Judicial Security and Privacy Act of 2022, Pub. L. No. 117-263, 136 Stat. 3458 (2022), *available at* <https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title28-part3-front&num=0&edition=prelim>. [<https://perma.cc/76LK-RPVN>].

The Act also prohibits federal government agencies from publicly posting or displaying a judge’s personal information, and it allows federal judges to request the removal of such information if it is already publicly available. Covered information includes, among other things, a judge’s home address, home or mobile telephone number, personal email address, social security number and driver license number, bank account and credit card information, license plate number, date of birth, and identifying information for children under the age of eighteen.

The Act includes several important exceptions. For example, the Act’s restrictions on publicly posting or displaying information on the Internet do not apply “if the information is relevant to and displayed as part of a news story, commentary, editorial, or other speech on a matter of public concern.” Nor do the restrictions apply to information lawfully received from a federal government source.

The Act’s protections are limited to federal judges (active, senior, recalled, and retired), their immediate family members, and any other individual living in a judge’s household. The protections do not cover state or local court judges, nor do they apply to state or local agencies.

The Act provides that judges may seek injunctive or declaratory relief for any violations of its protections. Where an order granting such relief is subsequently violated, the Act further provides for fines against federal government agencies and damages against other persons, businesses, or associations. Finally, the Act authorizes the United States Attorney General to distribute grants to state or local governments to redact or remove federal judges’ personal information from public records in state agencies.

Recognizing the threat to judges, Congress also has funded the Home Intrusion Detection System (HIDS) program. The HIDS program provides for the installation, maintenance, and alarm monitoring of electronic security systems in the homes of federal judges.²³ From its creation in 2005 until 2021, the HIDS program was largely implemented by directly procuring security systems and services through national contracts with large alarm companies.²⁴ Since 2022,

²³ U.S. Dep’t of Justice, Office of the Inspector General, Audit of the U.S. Marshals Service Judiciary Security Activities (June 2021), https://oig.justice.gov/sites/default/files/reports/21-083_0.pdf [<https://perma.cc/PFS4-KAJ3>].

²⁴ U.S. Marshals Service, United States Marshals Service FY2022 Annual Report (Apr. 2023), <https://www.usmarshals.gov/sites/default/files/media/document/PUB-2-2022-Annual-Report.pdf> [<https://perma.cc/WKU9-MXWY>].

however, judges have enjoyed greater flexibility in system design, equipment, monitoring, and vendors. Currently, federal judges are eligible for reimbursements of \$2,500 for the initial installation of security system and \$800 in annual monitoring costs.

V. States Protect Judges' Information

A growing number of states, including Hawai'i, recently proposed laws to protect judges' information. Currently, ten states have laws that specifically protect judges' personal information. Another twenty-one states have protection laws that may cover judges but are not specific to the judiciary. The laws specifically protecting judges' information in Delaware, Illinois, New Jersey, and West Virginia are particularly noteworthy.

Delaware law provides that, upon receipt of a judge's written request, government agencies and other persons, businesses, and associations are prohibited from publicly posting or displaying certain personal information of judges.²⁵ Protected information includes a judge's home address, home and mobile telephone numbers, personal email address, social security number, tax identification number, bank account numbers, credit card numbers, birth or marital records, property tax records, and the identity of any children under the age of eighteen.²⁶

Upon receiving a judge's written request, any government agency, person, business, or association must remove covered information within seventy-two hours.²⁷ For violations of these restrictions by non-government entities, judges or their family members may seek injunctive and declaratory relief, in addition to damages.²⁸ Delaware law further provides that publicly posting or displaying a judge's personal information may result in criminal penalties.²⁹ While Delaware's protections apply to active, formerly active, and retired state court judges, they do not apply to federal judges.

Illinois' statutory scheme resembles Delaware's, but it provides greater protections in some important ways.³⁰ For example, while Delaware does not enumerate any remedies for violations by government agencies, Illinois law

²⁵ Del Code Ann. tit. 10 §§ 1922–1923 (2022).

²⁶ Del Code Ann. tit. 10 § 1921 (2022).

²⁷ Del Code Ann. tit. 10 §§ 1922–1923.

²⁸ Del Code Ann. tit. 10 § 1923(c)(1)–(2).

²⁹ Del Code Ann. tit. 10 § 1923(c)(3).

³⁰ 705 Ill. Comp. Stat. §§ 90/1-1–90/4-99.

explicitly states that a judge may also seek injunctive and declaratory relief against government agencies.³¹ In addition, Illinois law makes it a felony to post publicly on the Internet a judge’s personal information when doing so poses an imminent and serious threat to the health and safety of the judge or the judge’s family, and the conduct causes bodily injury or death.³² Finally, Illinois law extends its protections to both federal and state judges.³³

New Jersey established an Office of Information Privacy (OIP) through which covered persons may request the redaction or nondisclosure of their home address.³⁴ A public agency must redact or cease to disclose the home address of a covered person no later than thirty days after a request is approved.³⁵ Exceptions apply for some disclosures of voter registration files, documents affecting the title to real property, tax information, and other documents.³⁶ In addition to public agencies, covered persons can also notify any person, business, or association not to disclose or otherwise make available that person’s home address or unpublished home telephone number.³⁷ For any violation by a person, business, or association, a court may award actual and punitive damages, fees and costs, and equitable relief.³⁸ New Jersey’s approach protects state and federal judges, law enforcement officers, prosecutors, and immediate family members of each group.³⁹

West Virginia’s approach differs in several important ways from the methods employed in these other states. First, rather than requiring a judge to request in writing removal of the judge’s personal information, West Virginia law prohibits the disclosure of a home address or home or personal telephone number by a state or local government agency “unless written permission is first obtained.”⁴⁰ In other words, West Virginia has adopted an “opt-out” approach, rather than the “opt-in” processes used in Delaware, Illinois, and New Jersey. Thus, the protected information cannot be disclosed unless the judge opts out of the applicable protections in writing. Second, when a West Virginia judge requests the removal of protected information, it must be taken down immediately. Anyone

³¹ 705 Ill. Comp. Stat. § 90/2-1(b).

³² 705 Ill. Comp. Stat. § 90/3-1.

³³ 705 Ill. Comp. Stat. §§ 90/1-10.

³⁴ N.J. Stat. Ann. § 47:1B-1 (2022).

³⁵ N.J. Stat. Ann. § 47:1B-2 (2022).

³⁶ N.J. Stat. Ann. § 47:1B-3 (2022).

³⁷ N.J. Stat. Ann. § 56:8-166.1 (2022).

³⁸ *Id.*

³⁹ N.J. Stat. Ann. § 47:1B-1.

⁴⁰ W. Va. Code § 5A-8-24(d)–(e) (2021).

who refuses to remove such information within twenty-four hours is guilty of a misdemeanor.⁴¹ Finally, the West Virginia scheme covers more categories of people than in Delaware, Illinois, and New Jersey. In addition to covering both federal and state judges, and their immediate family members, West Virginia also protects prosecutors, public defenders, law enforcement officers, and these groups' immediate family members.⁴²

VI. Preserving First Amendment Rights While Protecting the Judicial Branch

Prior to its passage, some commentators questioned whether the Daniel Aderl Judicial Security and Privacy Act of 2022 might violate the First Amendment.⁴³ These commentators suggested that preventing the disclosure of judges' personal information could impede accountability reporting.⁴⁴

Judge Roslynn Mauskopf, the director of the Administrative Office of the United States Courts, said in a statement that the Act was “carefully crafted to respect the First Amendment right of the press to report on matters of public concern, and balances that right with an interest of the highest order—to protect the security of judges.”⁴⁵ The Act, Judge Mauskopf added, “protects the press’s right to report on judicial malfeasance or other newsworthy information regarding federal judges and immediate family members or to investigate and inform on newsworthy matters.” Judge Mauskopf also stated that the Act is “narrowly tailored to further a compelling government interest—the safety of federal judges and the derivative ability of the judiciary to function.” No court has held that the Act is unconstitutional.

At least one constitutional challenge has also been directed at a state law that specifically protects judges' personal information. In July, a plaintiff filed a lawsuit in state court challenging Daniel's Law—that is, New Jersey's framework

⁴¹ W. Va. Code § 5A-8-24(h)(3).

⁴² See W. Va. Code § 5A-8-24(d).

⁴³ See Thomas A. Berry, Censoring Truthful Speech About Judges Violates the First Amendment, (Oct. 17, 2022), <https://www.cato.org/blog/censoring-truthful-speech-about-judges-violates-first-amendment> [<https://perma.cc/5VY4-LUAV>].

⁴⁴ Grayson Clary, Bill to conceal judges' personal information raises First Amendment concerns (Oct. 20, 2022), <https://www.rcfp.org/judicial-security-first-amendment/> [<https://perma.cc/F4V3-G33P>].

⁴⁵ Statement of Judge Roslyn Mauskopf (Dec. 2, 2021), <https://www.uscourts.gov/file/36369/download> [<https://perma.cc/5KUN-ZQNX>].

for protecting the personal information of certain public servants.⁴⁶ The plaintiff, who is a reporter, alleges that he was threatened with criminal and civil sanctions if he disclosed that a local director of police resides, and is registered to vote, in a municipality more than two hours from where he works. Notably, unlike the federal scheme, New Jersey’s law does not exempt from its coverage “information . . . relevant to and displayed as part of a news story, commentary, editorial, or other speech on a matter of public concern.” This lawsuit remains pending.

Despite these arguments, the Supreme Court has made clear that the government may classify certain information, establish and enforce procedures ensuring its redacted release, and extend a damages remedy against the government or its officials where the government’s mishandling of sensitive information leads to its dissemination.⁴⁷ In addition, the Supreme Court has stated, to the extent that sensitive information rests in private hands, the government may under some circumstances forbid its nonconsensual acquisition.⁴⁸

VII. Potential Protections for Some Judges’ Personal Information in Hawai‘i

Current Hawai‘i law affords some potential protection for personal information, but not specifically for judges and only in limited circumstances.

In general, Hawai‘i’s Uniform Information Practices Act (UIPA) provides that all government records are open to public inspection “unless access is restricted or closed by law.”⁴⁹ These records include “[l]and ownership, transfer, and lien records, including real property tax information.”⁵⁰ In certain circumstances, “[i]nformation from the motor vehicle registration files” also must be disclosed.⁵¹

Given UIPA, it is unsurprising that the public websites of Hawai‘i, Honolulu, Kaua‘i, and Maui Counties each include a searchable database of real property records.⁵² Only Hawai‘i County has a process in place that allows

⁴⁶ See Verified Complaint, *Kratovil v. City of New Brunswick*, No. MID-L-003896-23 (N.J. Super. Ct. Law Div. July 12, 2023), available at <https://newjerseymonitor.com/wp-content/uploads/2023/07/Kratovil-v.-NB-complaint.pdf> [<https://perma.cc/3AHY-SK3K>].

⁴⁷ *The Florida Star v. B.J.F.*, 491 U.S. 524, 534 (1989).

⁴⁸ *Id.*

⁴⁹ Haw. Rev. Stat. § 92F-11.

⁵⁰ Haw. Rev. Stat. § 92F-12(a)(5).

⁵¹ Haw. Rev. Stat. § 92F-12(b)(6).

⁵² County of Hawai‘i, Real Property Tax Office, <https://www.hawaiipropertytax.com/search.html> [<https://perma.cc/A9KY-LWXJ>]; City & County of Honolulu, Department of Budget & Fiscal Services, Real Property Assessment Division, <https://www.gpublic.net/hi/honolulu/search.html> [<https://perma.cc/2JSC-DXVQ>]; County of

individuals to remove their names and contact information from these online records.⁵³

The Hawai‘i Supreme Court has explained that “nondisclosure is only mandatory under UIPA where another law—for instance, a state or federal statute, the constitution, or a court order—independently requires an agency to withhold the sought records.”⁵⁴ Currently, there is no other source of state law that requires the non-disclosure of judicial officers’ personal information. Additionally, as already noted, although the Daniel Anderl Judicial Security and Privacy Act prohibits the transfer and posting of federal judges’ personal information, its restrictions do not apply to state or local agencies. It also offers no protections for state judges.

In certain enumerated circumstances, disclosure is “not require[d],”⁵⁵ and UIPA grants agencies discretion to withhold records. These circumstances include where disclosure “would constitute a clearly unwarranted invasion of personal privacy,” and where the government records, by their nature, “must be confidential in order for the government to avoid the frustration of a legitimate government function.”⁵⁶ Even where these exceptions apply, however, UIPA does not forbid disclosure. As explained by the Hawai‘i Supreme Court, UIPA “does ‘not require disclosure’ if an exemption applies, but it does not forbid it, either.”⁵⁷

After an agency has determined that a judicial officer’s personal information is subject to disclosure, there is nothing that a judge can do to protect that information. The Hawai‘i Supreme Court has concluded that there is no express or implied cause of action under UIPA for parties to sue to prevent the disclosure of records that an agency has determined, in its discretion, are subject to disclosure.

For its part, the Hawai‘i State Judiciary has taken at least one step to limit access to state judges’ personal information. The Rules of the Supreme Court of

Kaua‘i, Public Record Search, <https://www.kauai.gov/Government/Departments-Agencies/Finance/Real-Property-Tax/Assessment/Public-Record-Search> [<https://perma.cc/W9DE-W4BS>]; County of Maui, <https://qpublic.schneidercorp.com/Application.aspx?App=MauiCountyHI&PageType=Search> [<https://perma.cc/62HS-SNCZ>].

⁵³ County of Hawai‘i, Internet Withdraw Request Form, <https://hawaiipropertytax.com/docs/Internet%20Withdraw%20Request%20Form.pdf> [<https://perma.cc/93JH-3Y9G>].

⁵⁴ *Org. of Police Officers v. City & County of Honolulu*, 149 Hawai‘i 492, 509, 494 P.3d 1225, 1242 (2021).

⁵⁵ Haw. Rev. Stat. § 92F-13.

⁵⁶ *Id.*

⁵⁷ *Org. of Police Officers*, 149 Hawai‘i at 507, 494 P.3d at 1240.

the State of Hawai‘i require the Clerk of Court to redact from annual disclosure statements certain personal information—including residential addresses, telephone numbers, and account numbers—that could be used to put the judge or the judge’s family in danger.⁵⁸ This rule, however, is limited by the fact that it only applies to state judges and only covers information included in financial disclosure forms. The rule does not provide any broader protection for any other personal information of state judges or any personal information of federal judges. The rule also does not protect any personal information of state judges that may be readily available on the Internet or from other sources.

VIII. Judicial Security Task Force Offers Suggestions

In 2022, Governor David Ige signed into law Act 46, creating, for a limited time, a judicial security task force.⁵⁹ Act 46 acknowledged that additional measures were needed to ensure the safety of judiciary personnel because of the availability of personal information on the Internet. To meet these needs, Act 46 charged the task force with identifying appropriate measures to enhance the security of judges and judiciary personnel while not diminishing civil liberties or unduly hindering governmental operations.

In December 2022, the task force issued a written report.⁶⁰ The report briefly summarized the state and federal efforts to address judicial security, in addition to other states’ efforts to address the disclosure of real property information. The report also described one stakeholder’s suggestion that amending UIPA could more fully address security issues resulting from real property records. In the end, however, the report concluded that a piece of previously proposed legislation appropriately addressed the security concerns of judges and other judiciary personnel. The report ended by stating that the judiciary intended to introduce a similar measure during the 2023 legislative session.

IX. Proposed Legislation Provided Additional Protections for Hawai‘i’s Judges

During the 2023 legislative session, a bill relating to the safety of judiciary personnel was simultaneously introduced in the House of Representatives and the

⁵⁸ Rules of the Supreme Court of the State of Hawai‘i (RSCH) Rule 15 (2017).

⁵⁹ Act 46 (June 17, 2022).

⁶⁰ Report of the Judicial Security Task Force Relating to Securing Online Personal Information of Federal and State Judges and Appropriate Judiciary Personnel (Dec. 2022).

Senate.⁶¹ The bill aimed to prohibit the publication of personal information of state and federal judges and other judicial staff whose duties make them targets for threats and acts of violence. After making minor amendments, the House passed the bill and referred it to the Senate.

In its amended form, the bill prohibited a person or organization from making available on the Internet certain personal information, with the intent to intimidate or to threaten injury, harm, or violence to the individual or the individual's immediate family members, or where a reasonable person would believe that providing the information would expose the individual to harassment or a risk of harm to life or property.⁶² These protections would apply to state and federal judges, judiciary social workers, and United States Probation and Pretrial Services officers. The bill defined personal information to include, among other things, an individual's home address, home and cellular telephone number, social security number, personal email address, directions to the person's home, license plate number, and pictures of the person's home or vehicle.

The bill authorized any person whose information was disseminated unlawfully to bring an action seeking declaratory and injunctive relief. The bill did not make it out of committee in the Senate.

While the proposed legislation's efforts to protect some personal information of judges and judiciary personnel were commendable, it is important to recognize the important issues that the proposed legislation would not have resolved. First, the bill did not address the disclosure of personal information by government agencies. One example of why this omission matters is that Hawai'i law, as noted above, requires public disclosure of land ownership, transfer, and lien records, including property tax information. Under current guidance, tax information includes a home address. As recent events have shown, a home address in the wrong hands is more than enough for someone to act on.

Second, the bill only protected information to the extent that it was made available with the intent to intimidate or threaten, or under circumstances where a reasonable person would believe that providing the information would expose a protected person to harassment or a risk of harm to life or property. In many circumstances, however, personal information is disclosed without any ill intent or negligence. Again, Hawai'i law explicitly requires the disclosure of such

⁶¹ H.B. 386, 32nd Leg., Reg. Sess. (2023); S.B. 486, 32nd Leg. Reg. Sess. (2023).

⁶² H.B. 386, H.D. 1, 32nd Leg., Reg. Sess. (2023).

information associated with land ownership. The bill does not appear to address the primary significance of protecting the information itself, regardless of the circumstances leading to its disclosure.

Third, and finally, the bill seems to place a significant burden on judges and judiciary personnel to protect their personal information. Unlike in Delaware, Illinois, and New Jersey, where judges can request the removal of such information, or in West Virginia, where disclosure of certain information is prohibited by default, the bill would seemingly have required judges and judiciary personnel to initiate a court action any time their personal information was disclosed. In those circumstances, they would then have to prove that the information was disclosed with an intent to intimidate or threaten, or that a reasonable person would believe that disclosing the information could result in harassment or a risk of harm. In such a system, it is unclear what, if anything, absent court intervention, would prompt any individual or entity to protect the personal information of judges and judiciary personnel.

X. Recommendations

United States Circuit Judge Richard Sullivan noted last year that “threats against judges fulfilling their constitutional responsibilities strike at the very core of our democracy.”⁶³ As the Hawai‘i State Legislature has already recognized, additional measures are required to ensure the safety of judges because of the abundance of personal information on the Internet and elsewhere. The significant momentum built during the last legislative session must be regained during the next session to enact legislation protecting the personal information of judges across the state.

Attached as Appendix A is a draft bill that would protect the personal information of Hawai‘i judges and preserve the proper functioning of the judicial branch. The bill is modeled after the Illinois Judicial Privacy Act that was passed in 2012, the Daniel Anderl Judicial Security and Privacy Act of 2022, and model legislation from the Administrative Office of the U.S. Courts.

The bill prohibits government agencies from posting or displaying personal information of judges and their families upon receiving a written request. To enforce these restrictions, the judge or the judge’s family may bring an action

⁶³ Nate Raymond, Threats to Trump search-warrant judge prompt renewed push for security bill (Aug. 12, 2022) <https://www.reuters.com/legal/government/threats-trump-search-warrant-judge-prompt-renewed-push-security-bill-2022-08-12/> [<https://perma.cc/ZUV3-3VLK>].

seeking injunctive or declaratory relief. No costs or fees can be awarded. The bill also prohibits persons and organizations from publicly posting, displaying, or otherwise making available on the Internet the personal information judges and their families. Excepted from this restriction is the display of personal information that is relevant to and displayed as part of a news story, commentary, editorial, or other speech on a matter of public concern. If a person or organization violates the law, the judge or the judge's family may seek injunctive or declaratory relief, in addition to costs and fees. The bill should be introduced and enacted during the next legislative session.

While no public servant's safety should be threatened because of their service, the AJS's mission is to secure and promote an independent and qualified judiciary, and a fair system of justice. Thus, the scope of this report is limited to judges and the proper functioning of the judicial branch. AJS is not speaking to the appropriateness of similar protections for other targeted groups. Immediate action is required to protect Hawai'i judges and to preserve the proper functioning of the judiciary.

Appendix A

A BILL FOR AN ACT

RELATING TO THE UNLAWFUL DISCLOSURE OF CERTAIN PUBLIC SERVANTS' PERSONAL INFORMATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAI'I:

SECTION 1. The legislature finds that threats and inappropriate communications to judicial officers continue to escalate. Across the country, United States federal judges and other protected personnel were the targets of more than four thousand five hundred threats and other inappropriate communications in 2021, according to the United States Marshals Service. This represents an increase of eighty-one percent from the number of threats in fiscal year 2016, and a two hundred thirty three percent increase in threats since fiscal year 2008. At the state level, the number of threats and other inappropriate communications to Hawai'i judges have increased tenfold since 2012.

The legislature also notes that a recent United States Marshals Service audit found that federal judges' safety is at greater risk when they are away from the courthouse. This statement is borne out by incidents involving attacks against both federal and state judges at their residences, which have resulted in the deaths of or serious injuries to judges and their family members. In multiple cases, the attacker or would-be attacker used the Internet to access judges' personal information.

The legislature finds that Act 46, Session Laws of Hawai'i 2022 (Act 46), which established a judicial security task force, was passed in recognition of the need for additional measures to ensure the safety of judges in Hawai'i.

Accordingly, the purpose of this Act is to improve the safety and security of judicial officers in Hawai'i to ensure they can administer justice fairly without fear of personal reprisal from individuals affected by the decisions they make while carrying out their public function.

This Act is not intended to restrain a judicial officer from independently making public their own personal information. Nothing in this Act shall be construed to impair free access to decisions and opinions expressed by judicial officers while carrying out their public functions.

SECTION 2. The Hawai'i Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

“CHAPTER
POSTING OR DISPLAYING OF CERTAIN PUBLIC SERVANTS’
PERSONAL INFORMATION

§ -1 Definitions.

For purposes of this chapter:

“Disclose” means to sell, manufacture, give, provide, lend, trade, mail, deliver, transfer, post, publish, distribute, circulate, disseminate, present, exhibit, advertise, or offer by any means including, but not limited to, electronic transmission and on any medium including, but not limited to, the Internet.

“Family” means a judicial officer’s spouse, child, adoptive child, foster child, parent, or any unmarried companion of the judicial officer, or other minor or adult who lives in the same residence of the judicial officer.

“Government agency” means any department, division, board, commission, public corporation, or other agency or instrumentality of the state or any county.

“Home address” means a judicial officer’s permanent residence and any secondary residences affirmatively identified by the judicial officer but does not include a judicial officer’s work address.

“Judicial officer” means any active, formerly active, or retired:

- (1) Justices of the United States Supreme Court and the Hawai‘i Supreme Court;
- (2) Judges of the United States Court of Appeals;
- (3) Judges and magistrate judges of the United States District Court;
- (4) Judges of the United States Bankruptcy Court;
- (5) Judges of the Hawai‘i Intermediate Court of Appeals;
- (6) Judges of a Hawai‘i Circuit Court or a Circuit Family Court; and
- (7) Judges of a Hawai‘i District Court or a District Family Court.

“Organization” means an association or entity, including a charitable, religious, or nonprofit organization; for profit organization; or business entity, formed for a specific purpose.

“Personal information” means data that can identify a judicial officer or their family. Examples of personal information could include: date of birth; home address; property ownership records, including a secondary residence, and any investment property; home telephone number; cellular phone number; pager number; direct telephone number to a judicial officer’s private chambers; personal email address; directions to the judicial officer’s or family members’ home; photographs of a judicial officer’s home that legibly displays the address and vehicle license plate number; the names and locations of schools and day care facilities attended by the children of judicial officers; active membership records; mortgage portfolio loan documents maintained by the public employee retirement system; social security number; federal tax identification number; checking and savings account numbers; credit card numbers; personal health information; identity of children under the age of 18; the contents of any application for absentee voter’s ballots; voter registration information; motor vehicle ownership or leasing records; property tax records; identity of present or former spouse; birth and marriage records; immediate family member’s employer; and automated or electronic signature.

“Publicly available content” means any written, printed, or electronic document or record that provides information or that serves as a document or record maintained, controlled, or in the possession of a government agency that may be obtained by any person or entity, from the Internet, from the government agency upon request either free of charge or for a fee, or in response to a request pursuant to Chapter 92F (Uniform Information Practices Act) or the federal Freedom of Information Act, 5 U.S.C. Section 552, as amended.

“Publicly post or display” means to communicate to another or to otherwise make available to the general public.

“Written request” means written notice signed by a judicial officer or a representative of the judicial officer’s employer requesting a government agency, person, or organization to refrain from posting or displaying publicly available content that includes the personal information of a judicial officer or their family.

§ -2 Publicly posting or displaying personal information of a judicial officer or their family by a government agency.

1. Government agencies shall mark as private and shall not publicly disclose publicly available content that includes the personal information of a

judicial officer or their family, provided that the government agency has received a written request that the agency refrain from disclosing such personal information.

a. After a government agency has received a written request, the government agency shall remove the personal information from publicly available content no later than 72 hours after receiving the request.

b. After the government agency has removed the personal information from publicly available content, the government agency shall not publicly post or display the personal information and the personal information shall be exempted from the provisions of Chapter 92F (Uniform Information Practices Act) and the Freedom of Information Act, unless the government agency has received the judicial officer's written consent to make the personal information available to the public.

c. If a request is made pursuant to Chapter 92F to inspect and copy a public record that contains personal information of judicial officers or their families that is exempt from disclosure under this section, but also contains information that is not exempt from disclosure, the government agency may elect to redact the personal information that is exempt. The government agency shall make the remaining information available for inspection and copying.

2. If a government agency fails to comply with a written request to refrain from disclosing personal information, the judicial officer or their family may bring an action seeking injunctive or declaratory relief in any court of competent jurisdiction. No costs or fees shall be awarded.

§ -3 Publicly posting or displaying personal information of a judicial officer or their family by persons and organizations.

1. No person or organization shall publicly disclose the personal information of any judicial officer or their family if the judge or their family has made a written request that this personal information not be disclosed.

a. The restrictions in subsection (1) shall not apply to:

i. The display on the Internet of the personal information of a judicial officer or their family if the information is relevant to and displayed as part of a news story, commentary, editorial, or other speech on a matter of public concern; or

ii. Personal information that the judicial officer or their family voluntarily publishes on the Internet after the date of enactment of this Act.

2. After a person or organization has received a written request from a judicial officer to protect the privacy of the officer's or their family's personal information, that person or organization shall have 72 hours to remove the personal information from the Internet.

3. After a person or organization has received a written request from a judicial officer or their family, that person or organization shall ensure that the judicial officer's or their family's personal information is not made available on any website or subsidiary website controlled by that person or organization.

4. After receiving a judicial officer's or their family's written request, no person or organization shall transfer the judicial officer's or their family's personal information to any other person or organization through any medium.

5. If a person or organization violates this section, the judicial officer or family member whose personal information is made public as a result of the violation may bring an action seeking injunctive or declaratory relief in any court of competent jurisdiction. If the court grants injunctive or declaratory relief, the person or organization responsible for the violation shall be required to pay the costs and reasonable attorney's fees of the judicial officer or their family.

§ -4 Procedure for completing a written request.

1. No government agency, person, or organization shall be found to have violated any provision of this Act if the judicial officer or their family fails to submit a written request calling for the protection of their personal information.

2. A written request shall be valid if:

a. The judicial officer sends a written request directly to a government agency, person, or organization; or

b. If the Office of the Administrative Director of the Courts of the Hawai'i State Judiciary has a policy and procedure for a state judicial officer to file the written request with the Office of the Administrative Director of the Courts to notify government agencies, the state judicial officer may send the written request to the Office of the Administrative Director of the Courts of the Hawai'i State Judiciary. In each quarter of a calendar year, the Office of the Administrative Director of the Courts of the Hawai'i State Judiciary shall provide a list of all state

judicial officers who have submitted a written request to it, to the appropriate officer with ultimate supervisory authority for a government agency. The officer shall promptly provide a copy of the list to any and all government agencies under their supervision. Receipt of the written request list compiled by the Office of the Administrative Director of the Courts of the Hawai‘i State Judiciary by a government agency shall constitute a written request to that Agency for the purposes of this Act.

c. A representative from the judicial officer’s employer may submit a written request on the judicial officer’s behalf, provided that the judicial officer gives written consent to the representative and provided that the representative agrees to furnish a copy of that consent when a written request is made. The representative shall submit the written request as provided in paragraph (2)(b) of this section.

d. A judicial officer’s written request shall specify what personal information shall be maintained private. If a judicial officer wishes to identify a secondary residence as a home address, as that term is defined in this Act, the designation shall be made in the written request. A judicial officer shall disclose the identity of the officer’s family, as that term is defined in this Act, and indicate what personal information of these family members shall also be excluded to the extent that it could reasonably be expected to reveal the personal information of the judicial officer.

e. A judicial officer’s written request is valid until the judicial officer provides the government agency, person, business, or association with written permission to release the private information. A judicial officer’s written request expires on death.

§ -5 Severability.

If any provision of this chapter, or the application thereof to any person or circumstance, is held invalid, the invalidity shall not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.”

SECTION 3. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun before its effective date.

SECTION 4. This Act shall take effect upon its approval.