MINNESOTA JUDICIAL BRANCH

MINNESOTA DISTRICT JUDGES ASSOCIATION

MDJA

Judicial and Court Staff Safety

- The Minnesota Judicial Branch (MJB) and the Minnesota District Judges Association (MDJA) jointly support the Judicial and Court Staff Safety and Privacy Act: SF 4200, chief authored by Senator Limmer; and HF 4326, chief authored by Representative Curran.

> *"The **chronic stress** of . . . safety threats . . . negatively impacts [my] sleep, cognition and well-being."*
>
> - Minnesota Judicial Officer, MDJA Judicial Safety Survey (additional results on page 2).

- The safety of Minnesota's Judges, court staff, and members of their households are put at risk by the dissemination and perpetual Internet access of home addresses and personal information. Mirroring the Federal Daniel Anderl Judicial Security and Privacy Act passed by Congress last year, the Judicial and Court Staff Safety and Privacy Act will alleviate these safety concerns.

- The Judicial and Court Staff Safety and Privacy Act will allow judicial officials to have their personal information classified as private; prohibit its dissemination; and prescribe penalties for publishing a judge's personal information with the intent to threaten, intimidate, harass, or physically injure.

> *"[I have] [r]eceived death threats [against] my family and me over social media, email, and phone. . . . They drove around my house a few times. . . . I had to report it to my children's school so someone could monitor my children for a while, since these **threats included to kill my children** and they knew where they went to school.*
>
> - Minnesota Judicial Officer, MDJA Judicial Safety Survey

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MINNESOTA JUDICIAL BRANCH

MINNESOTA DISTRICT JUDGES ASSOCIATION

MDJA

Judicial Safety Survey

In January 2024, the Minnesota District Court Judges Association conducted a survey to better understand the experiences and safety concerns of state judicial officers. 239 judges responded, which included current and retired district court judges and appellate judges. Their answers confirm that Minnesota is not immune from the nationwide outbreak of violence and threats directed against judicial officers. Violence and threats of violence occur not only in our courthouses but at judges' personal residences and in the community. These threats are often directed at judicial officers' families, including children. The following is a summary of their responses.

Fast Stats

- Nearly 90% of responding judges have received inappropriate communications because of their work. 72% have received threats.
- 37% of judges have witnessed an attempted or actual physical attack while performing their job.
- Over 75% of responding judges worry about their safety because of their work "often" or "sometimes." Most of these judges report that their worries negatively affect their judicial wellness and job satisfaction. Similar levels of concern are expressed for the safety of the judges' family members.
- 72% of responding judges have changed their personal behaviors – such as avoiding public events – because of concern for their safety.
- 46% of responding judges' family members have expressed they felt unsafe because of the judge's work.
- Over 80% of judges have taken steps to limit/protect their personal information.
- Nearly 100% of judges who have taken steps to increase their personal safety – such as by limiting personal information – have done so using their own money.[1]

Noteworthy Comments

- Many judges noted an uptick in threatening behavior toward judges in recent years.
- Several judges shared threats against their minor children: pictures of a judge's minor children were posted online; a death threat was made against a judge's children, which noted they knew where the children went to school; and one judge stated, "[t]hreats to harm my children were particularly concerning. My children's school was only 3 blocks from the courthouse and they were prevented from walking to my work after school (to get home) because of the threat. I recall running into chambers and tearing up[.]"
- Many judges noted death threats. One stated that, "[t]he threats have involved very specific forms of torture[.]"
- A judge's chambers was firebombed.
- Someone attempted to break into a judge's home, and then defecated near it. Another judge shared that someone created a fake video of a bomb exploding outside of the judge's home.
- Several judges noted that their home address has been compromised, and they have or are considering moving.

[1] When the personal safety measure had an associated cost.

Minnesota Tax Court
245 Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

E-Mail: info@taxcourt.state.mn.us
Web Site: www.taxcourt.state.mn.us
Phone: (651) 539-3260

March 4, 2024

Representative Jamie Becker-Finn, Chair
Judiciary Finance and Civil Law
Minnesota House of Representatives
559 State Office Building
St. Paul, MN 55155

Via Email Only

Re: HF 4326 – Judicial Protection Bill

Dear Chair Becker-Finn and Committee Members:

The Minnesota Tax Court supports HF 4326, a bill concerning judicial safety in the Minnesota Government Data Practices Act. Additionally, **we recommend inclusion of the judges and staff of the three executive branch courts**: the Minnesota Tax Court, the Office of Administrative Hearings, and the Workers' Compensation Court of Appeals.

The Minnesota Tax Court is a specialized court specifically established by the Minnesota Legislature to hear only tax related cases. The Court's mission is to provide timely and equitable disposition of appeals of orders issued by the Commissioner of Revenue and local property tax valuations, classification, equalization and/or exemptions. Although the Tax Court is in the Minnesota Judicial Center, the judges travel throughout Minnesota to conduct trials.

Safety is a top priority for our court to ensure fair and independent adjudication of tax disputes. Just as the in judicial branch, we have been subject to threats of violence, including a recent bomb threat. We appreciate the Legislature's support of security features at our physical location and hope you will include our administrative courts in the additional protections offered by HF 4326.

Sincerely,

Jane N. Bowman, Chief Judge
MINNESOTA TAX COURT

cc: Representative Curran, co-author
Anna Borgerding, Committee Administrator

MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

PO Box 64620
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March 4, 2024

Representative Becker-Finn
Chair, Judiciary Finance and Civil Law
Minnesota House of Representatives
559 State Office Building
St. Paul, MN 55155

Re: HF 4326 – Judicial Protection Bill

Chair Becker-Finn and Committee Members:

The Office of Administrative Hearings fully supports HF4326 and recommends extending its important protection to the judges and staff of the three independent courts within the executive branch: the Office of Administrative Hearings, Tax Court, and Workers' Compensation Court of Appeals.

Office of Administrative Hearings

The Office of Administrative Hearings is the largest of the three executive-branch courts, with 70 FTEs and a bench of 32 judges located in Saint Paul and Duluth. Our trial-court bench is the size of Ramsey County District Court.

We are the exclusive trial-court adjudicator of over 10,000 newly filed workers' compensation cases each year involving over 7,500 workers and their employers, medical providers, and insurers. Our exclusive jurisdiction also extends to matters of significant importance in administrative law, including revocation of professional licenses, from medical practice to child care and foster care, and adjudicatory review of risk levels assigned to people who are subject to registration as a predatory offender before they are released from confinement in a prison or treatment facility.

Safety is paramount for fair and independent courts

Adjudicating these important matters in a fair and independent manner can only be accomplished if judges and our staff are safe from harm and threats of harm. Like adjudicators through the judicial branch, our judges have been the targets of significant threats to their personal safety, including a matter monitored by the FBI.

We are very grateful for the funding last session that supported our court in adding modern security screening for the eleven courtrooms at our St. Paul location. Prior to this investment, we were the only court in the metropolitan area that did not utilize modern security screening. We appreciated the recognition that safety is paramount for fair and independent adjudicative review. For those same reasons, we ask that you add the three, independent courts within the executive branch to its protections and pass HF4326 into law.

Very truly yours,

Jenny Starr
Chief Administrative Law Judge

cc: Representative Curran (co-author)
Anna Borgerding (Committee Administrator)

STATE OF MINNESOTA
Workers' Compensation Court of Appeals
Minnesota Judicial Center
25 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, Minnesota 55155
(651) 539-1210
Fax: (651) 539-1212

For TTY/TDD users only:
via MN Relay Service
dial 1-800-627-3529

March 1, 2024

Rep. Jamie Becker-Finn, Chair
Judiciary Finance and Civil Law Committee

Re: HF 4326 – Judicial Protection Bill

To the Chair,

The Workers' Compensation Court of Appeals (WCCA) fully supports the amendment of the Minnesota Government Data Practices Act (MGDPA) to protect personal information of judicial officials. The Minnesota Supreme Court has proposed language to accomplish this through amendments to the MGDPA, Chapter 480, and a new provision, section 609.476. The WCCA recognizes the hazards arising from improper disclosure of individuals' personal information and the increasing occurrences of such disclosures. The WCCA recommends extending this important protection to the judges and staff of the three agencies that perform a judicial function as their core mission, the Office of Administrative Hearings, the Tax Court, and the WCCA (the agencies).

The following underlined language is being proposed for addition to the Minnesota Supreme Court's bill to accomplish this end without creating disruption in the existing statutory framework. Thus, the only explicit reference to the agencies is in the MGDPA, while Chapter 480 has only a cross-reference to the new judicial official provision in the MGDPA (section 13.991). In this way, the individuals performing a judicial function, and subject to the risks arising from those duties, are afforded the same protections.

Section 1. **[13.991] JUDICIAL OFFICIAL DATA; PERSONAL INFORMATION.**

(a) Subject to paragraph (b), the personal information of all judicial officials collected, created, or maintained by a government entity is private data on individuals. For purposes of this section, the terms "personal information" and "judicial official" have the meanings given in section 480.40, subdivision 1. <u>"Judicial official" also includes current and retired judges and current employees of the Office of Administrative Hearings, the Workers' Compensation Court of Appeals, and the Tax Court.</u>

Sec. 2. **[480.40] PERSONAL INFORMATION; DISSEMINATION.**

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have

the meanings given.
(b) "Judicial official" means:

* * *

(3) employees of the Minnesota judicial branch; and
(4) persons identified in section 13.991(a).

Sec. 3. **[480.45] REMOVAL OF PERSONAL INFORMATION.**
Subdivision 1. **Internet dissemination.** If personal information about a judicial official is posted to the Internet by a person, business, association, or government entity, the judicial official may submit a sworn affidavit to the person, business, association, or government entity requesting that the personal information be removed. The affidavit shall:

(1) state that the individual whose information was disseminated is a judicial official as defined in section 480.40 or section 13.991(a);

Sec. 4. **[609.476] PUBLISHING PERSONAL INFORMATION OF JUDICIAL OFFICIAL.**
Subdivision 1. **Definitions.** For the purposes of this section, the terms "personal information" and "judicial official" have the meanings given in section 480.40, subdivision 1, and section 13.991(a).

Patricia J. Milun, Chief Judge
Workers' Compensation Court of Appeals

Minnesota Coalition on Government Information (MNCOGI)
Written Testimony of Matt Ehling, MNCOGI board member
House Civil Law Committee
March 7, 2024

Chair Becker-Finn, Representative Curran, and members of the House Civil Law Committee,

Please find below the comments of the Minnesota Coalition on Government Information (MNCOGI) relating to HF 4326, as amended by the 4362-0 amendment.

For background, MNCOGI has met with judicial branch stakeholders several times since October of 2023 (at their invitation), in aid of trying to address the policy concerns raised by the judges, while crafting a statue that will be both workable, and will pass constitutional muster. We appreciate the open door that the judicial branch has extended to all parties to these conversations, and we have included MNCOGI's suggested revision language on the back page of our written comments. Our suggestion is distinct from the language of the 4362-0 amendment, which we believe still contains several problems that need to be fixed.

Below is a summary of issues that we see in the bill as amended, as well as a description of the alternative language that we have recommend:

<u>Section 1:</u>

Background: Section 1 classifies new data within Chapter 13 that pertains to "judicial officials" as defined in lines 1.20-2.5 of the amended bill. It classifies certain data (including "residential address" information; "the name of any child of a judicial official;" and other elements listed in lines 2.7-2.14) as "private data on individuals," meaning that access to the data is restricted to the subject of the data, and to the government entity that holds the data. (The general public is excluded from accessing data classified as "private.")

Some of the covered data, such as "residential address" data will exist both in the judicial branch, and in government entities covered by Chapter 13. (Access to records of the judiciary is not governed by Chapter 13, but by the records access rules of the Minnesota Judicial Branch itself.)

Residential address data
"Residential address" data for judges and other judicial branch employees held within the judicial branch is already not available to the public, per judicial branch rules, since such data is primarily maintained in relation to employment files. In the context of Chapter 13 entities, residential address data pertaining to judges is public in certain contexts, including in property ownership records and candidate affidavit forms.

The "residential address of a spouse, domestic partner, or children of a judicial official" may be the same or different than the "residential address of a judicial official," and will track the same parameters as described above — generally not available to the public if maintained by the

judicial branch, but alternately public or "private" in Chapter 13 entities, depending on context and use. For instance, residential address information of the *adult* children of judicial officials may be "public" through property records (if they are property owners), while the residential address of their juvenile children is "private" if maintained as part of employment records (for instance, in the context of a spouse or domestic partner employed by a Chapter 13 government entity — see § 13.43 subd. 4). Child "address" data (pertaining to children in the K-12 age group) is also effectively "private" by being excluded from school "directory information" per § 13.32 subd. 5(c).

Name of child

The "name of [the] child of a judicial official," to the extent such data is maintained within the judicial branch, is likely juvenile child data maintained in connection with employment (i.e., if the employer maintains records of children of employees who are in daycare/school, along with related emergency contact information). To the extent such data exists in the judicial branch in this context, it is already not available to the public, per judicial branch rules. It is possible that an adult child of a "judicial official" as defined by the bill (which includes judges and judicial branch employees alike) could be an employee of the judicial branch, in which case certain employment data about that "child" would be public (i.e., the employee name) per the rules of the judicial branch (See Rule 5, subd. 1). *(NOTE: Such "name" data, even though it is public under the rules of the judicial branch, would still be subject to the publication ban set out in Section 2 of the bill, as further described in these notes.)*

In the Chapter 13 context, the "name" of a juvenile child of a judicial official could be "public" as "directory information" in the context of educational records, unless the child's parent had opted out of the public availability of such "directory information" (in which case the child could not be identified in school yearbooks, newsletters, etc.).

In the case of the adult children of a judicial official, "name" data could exist in many places within Chapter 13 entities, depending on how that adult child has interacted with government entities — i.e., in the context of owning property; working as a government employee; owning a business, etc.

Child care facility/school

The name of any "child care facility or school" attended by the child of a judicial branch official (as qualified by the language on lines 2.13-2.14) is already not available to the public within the judicial branch (as it would likely be maintained as "emergency contact" information as part of employment records.). The same would be true within Chapter 13 entities in the case of the spouse or domestic partner of a judicial branch official who is employed by a Chapter 13 entity, and who has school-aged children.

Personal contract information

A "nonjudicial branch issued telephone number or email address of a judicial official" would most likely be maintained as emergency contact information in the context of judicial branch employment data, and would not be available to the public per judicial branch rules.

Within Chapter 13 entities, such "contact" data — to the extent it exists — could exist in a number of places, depending on the use it was gathered for, and could be subject to a number of different classifications. For example, if a judicial official owns a side-business, and uses a home telephone number as business contact information, then that number would be "public" within the business records of the Secretary of State's office. Or, if the judicial official is an officer of a small non-profit organization and is a signatory to the group's annual charity review disclosure form, the non-judicial branch telephone number they enter onto that form is public at the Attorney Generals' Office. (If such a number is a home telephone number, that number is still public.) On the other hand, any e-mail data submitted by a judicial official as part of a subscription to a government entity's newsletter is "private" per § 13.356.

Also, it should be noted that for many of the "public" Chapter 13 data classifications described above, the underlying data changes to a "private" classification if the judicial official (or any domestic partner/spouse/child of a judicial official) becomes enrolled in the Safe At Home program (see § 13.045, sudd. 3). Such "private" classifications are in force for four years, and can be renewed if the "eligible person" seeks another period of enrollment in the program.

Problems:
Section 1 of the bill contains certain policy problems, and certain practical problems.

From a policy standpoint, classifying the "name" of the child of a judicial branch official — universally — as "private" creates complications, since the child will eventually become an adult, but yet the "private" data classification would still persist. Although much juvenile data is classified as "private," the "name of any child" of a judicial official would extend well beyond juvenile children, and would continue to apply to the names of those individuals into their adulthood, in perpetuity. Any subsequent data that is created on such individuals would continue to require their name to be "private" data, unless a specific section of Chapter 13 required a "public" status for their name.

The bill language would largely anonymize the names of children of "judicial officials" (which, per the bill language, includes not only judges, but also hundreds of judicial branch employees) in the vast majority government data contexts. As juveniles, such children could not have their accomplishments noted in school newsletters; school websites; in municipal publications; etc, as their names would be "private" by law. Under current law, parents of juveniles are able to "opt out" of public exposure in the educational context through the "directory information" exception in § 13.32 (or by participating in the Safe At Home program.) Under the bill language, however, *all* names of juvenile children of judicial officials would become "private" data and could not be publicly displayed by any government entity, including in the educational directory information context where they might otherwise be public.

In the context of adult children, even more complexities emerge. As described earlier, most of the proposed data classifications on lines 2.7-2.14 are comprehensive, and so the "name of any child of a judicial official" would also cover those individuals into adulthood, making their

names “private” data in Minnesota law in perpetuity, and within all government data, unless other provisions of Minnesota law control (i.e., the individuals became government employees of a Chapter 13 entity, wherein employee “name” data is public.) This raises numerous policy issues — i.e. the adult children of judicial branch employees would become largely anonymous persons in government records within the context of business ownership and licensing, which raises questions of transparency and public oversight. It also raises numerous practical problems, since such individuals would have to be identified by every government entity subject to Chapter 13, and their “name” data tracked and redacted from most government data released to the public, forever.

In the context of “the name of any child care facility or school” (see line 2.12) practical complications arise from the “assertion” required by line 2.13. Where is this “assertion” data documented and located? Is it co-located with the “name” data identifying the child care facility or school? It may be, in the context of emergency contact information maintained as part of employment files; but there, the data is already “private” in a Chapter 13 context. What about business licensing data for the child care facility? What constitutes an “assertion” that a judicial official’s child attends a particular child care facility — the name of which is largely “public” data in the context of business records held by a variety of government entities? If data documenting the “assertion” exists in an entirely different location (or even an entirely different entity) from the public business licensing data, who is responsible for connecting that “assertion” data to the “name” data in such a way that the “name” data becomes classified as “private” for Chapter 13 purposes? And if the “assertion” is raised in the context of business licensing data, does the otherwise “public” name of the child care business need to be redacted from government data? (When classified as “private” data, that would be the outcome.)

Alternative: There are many other permutations to the complexities described above, which are made even more complex by the extension of the proposed data classification to all employees of the judicial branch, in addition to every “active, senior, recalled, or retired” federal judge; all active and retired Minnesota judges, etc.

Rather than enact a broad new classification for the data elements listed in lines 2.7-2.14, which may be difficult to practically implement due to the scattered and varied nature of the data in question, MNCOGI believes that a better way to address security concerns held by judges or judicial brach employees is to refer individuals with those concerns to the Safe At Home program (codified in Minnesota Statute, Chapter 5B).

The Safe At Home program is an already-existing and functioning state program operated by the Minnesota Secretary of State. That program permits individuals with security concerns to apply to the program, and once they are accepted, they can contact the responsible authority of a government entity that holds data that would publicly identify their home address or other sensitive information, and request that such data be converted to “private” data for a four-year, renewable term.

A person who is eligible for enrollment in the Safe At Home program is described in § 5B.02(e):

(e) "Eligible person" means an adult, a minor, or an incapacitated person, as defined in section 524.5-102 for whom there is good reason to believe (1) that the eligible person is a victim of domestic violence, sexual assault, or harassment or stalking, or (2) that the eligible person fears for the person's safety, the safety of another person who resides in the same household, or the safety of persons on whose behalf the application is made. An individual must reside in Minnesota in order to be an eligible person. A person registered or required to register as a predatory offender under section 243.166 or 243.167, or the law of another jurisdiction, is not an eligible person."

This definition not only covers individuals who have already been victims of certain crimes, but also persons who "fear[]" for [their] safety" or "the safety of another person who resides in the same household, or the safety of persons on whose behalf the application is made." This language is broad enough to cover any Minnesota resident who is not otherwise disqualified — including government employees such as judicial officials.

During talks with judicial branch representatives, those representatives initially expressed concerns that the Safe At Home program would not cover their needs. In order to address that concern, MNCOGI proposed adding "comfort" language to the "Safe At Home" program statute, clarifying that government employees and their relations who "fear [for their] safety" are "eligible persons" within the ambit of Minn. Stat. § 53B.02(e). It is important to note that the existing language of § 53B.02(e) *already* covers all adults, minors, or "incapacitated persons" who fear for their safety (and this group of persons can already include government employees). However, the proposed comfort language would make this explicit, so that there would be no subsequent interpretive misunderstanding about the coverage of § 53B.02(e)

As noted, the Safe At Home program is an already operational (and regularly funded) program that can address security issues facing judicial branch employees who fear for their safety. By narrowing the scope of data that would need to be re-classified to only data relevant to Safe At Home applicants — rather than all "judicial official" data across all government entities — complex data issues are made more manageable, and judicial officials with legitimate safety concerns are able to have those concerns addressed today, under an existing program.

Sections 2 and 3:

Background: Section 2 of the bill takes the list of covered data elements on lines 2.7-2.14 (i.e., "residential address" of a judicial official; "nonjudicial branch issued telephone number or email address" etc., and applies them in a different context — to all "person[s], business[es], association[s], or government entit[ies]. It also puts in place a ban on "post[ing], display[ing], sell[ing]" or otherwise making "mak[ing] available" (i.e., publishing) such information on the internet. It further requires persons who hold such information to keep it "in a secure manner to prevent unauthorized access." This **publication ban** and data management regime applies to effectively everyone, from the Department of Human Services, to WestLaw, to the Star Tribune, to a high school parent. The publication ban is subject to certain exceptions that permit

publication if covered information "is relevant to and displayed as part of a news story, commentary, editorial, or other speech on a matter of public concern" (see lines 2.22-2.24), or permitted by consent (Lines 2.25-2.28).

Section 3 of the bill likewise applies to everyone (all "person[s], business[es], association[s], or government entit[ies]") and sets out a **civil take-down process** whereby a judicial official can submit an affidavit requesting the removal of specific data elements that have been published on the internet. If the person who published the information does not remove it, the judicial official can then "seek a court order compelling compliance, including injunctive relief."

Problems: Sections 2 and 3 — both individually, and when read together — pose serious constitutional problems, and should be removed from the bill.

The "personnel information" (defined in Section 2, subd. 1) that is subject to the publication ban is all purely factual information (home addresses; contact information; etc.). That information must be true to fall within the scope of the definition (and to effectuate the overall intent of the bill.). The status of this data as truthful information sets up a conflict with the First Amendment when the government attempts to bar its publication.

In several cases, the U.S. Supreme Court has stated that the publication of truthful information can seldom be barred or punished by law. For instance:

> • ***Smith v. Daily Mail*** (U.S. 1979) struck down a West Virginia statute that criminalized the publication of names of alleged juvenile offenders. The Court wrote: "state action to punish the publication of truthful information seldom can satisfy constitutional standards."
>
> **•** ***Florida Star v. BJF*** (U.S. 1989) struck down a Florida law that prohibited the publication of the names of rape victims.

In addition, the bill's publication prohibition is likely unconstitutional on its face, given its content-based nature:

> "Government regulation of speech is content based if a law applies to particular speech because of the topic discussed or the idea or message expressed … Content-based laws—those that target speech based on its communicative content—are presumptively unconstitutional and may be justified only if the government proves that they are narrowly tailored to serve compelling state interests.
> ***Reed v. Town of Gilbert*** (U.S. 2015)

As the Congressional Research Service has noted: "The government rarely prevails under strict scrutiny. Accordingly, lawmakers may consider at the early stages of policy discussions or bill drafting whether a contemplated regulation of speech may be content based and whether an

exception to strict scrutiny might apply." (*See* **Free Speech: When and Why Content-Based Laws Are Presumptively Unconstitutional.** Congressional Research Service, January 10, 2023)

As noted, Section 2 contains "exception" language that would allow publishers to evade the publication ban if they publish covered information as part of "speech on a matter of public concern." This kind "qualifying" or "saving" language — which seeks to qualify otherwise overboard statutory speech regulations by attempting to avoid head-on conflicts with First Amendment protected activity — has been rejected by the Minnesota Supreme Court in other contexts, including in the following cases:

- In ***State v. Machholz*** (Minn. 1998), the Minnesota Supreme Court held that the state's felony harassment statute was constitutionally overbroad on its face, and noted in dicta that:

  > "The statute at issue in the present case has a savings clause that provides that conduct protected by the state or federal constitutions is not a crime under this section. Minn.Stat. § 609.749, subd. 7. We agree with a recent Texas decision noting that "a general savings provision 'cannot substantively operate to save an otherwise invalid statute, since it is a mere restatement of well-settled constitutional restrictions on the construction of statutory enactments.'" *Long v. State*, 931 S.W.2d 285, 295 (Tex.Crim.App. 1996) (quoting *CISPES v. FBI*, 770 F.2d 468, 474 (5th Cir. 1985))."

- This proposition was once again cited by the Minnesota Supreme Court when it struck down portions of the "mail harassment statute" in ***In the Matter of the Welfare of AJB*** (Minn. 2019*)*:

  > "[W]e conclude that the *Machholz* dicta is correct: the Legislature cannot save a statute that is otherwise unconstitutionally overbroad by including language stating that the statute does not reach speech or expression protected by the First Amendment."

Even with the inclusion of the Section 2 "exception" language, a great deal of speech would be prohibited — including the incidental speech of private persons who have no intention of implicating the security of judicial officials. To site one example among many, a parent whose child attends school with the child of a judicial branch employee would fall under the publication ban — and would be subject to to the civil take-down process — for posting a photo to a social media site that is tagged with the first names of the children after they participated in a high school sporting event. The "name" of the "child of a judicial official" — even the first name alone — would be subject to the publication ban, and would open the "publisher" — here, the

parent — to legal process.

While MNCOGI appreciates the bill advocates' intention behind including "public concern" exception language, we would also note that the U.S. Supreme Court has articulated that the First Amendment's protection extends beyond expressions touching on issues of public concern, and encompasses many other matters:

> "Great secular causes, with small ones, are guarded … And the rights of free speech and a free press are not confined to any field of human interest."
> ***Thomas v. Collins*** (U.S. 1945)

It is also not clear how the contours of "speech on a matter of public concern" described in the bill are to be defined going forward. While the exemption for "news stor[ies]" may inoculate traditional news organizations, it is unclear how this would apply to other publishers, including internet enthusiasts who write about niche activities such as school sports (to use a sports example once again.) Is the coverage of school sports by an individual blogger a "matter of public concern" under Section 2? Is it a "news story?" Or would the publisher have to seek out a judicial official to get the consent required by lines 2.27 and 2.28 in order to create a post about that official's son scoring a game-winning touch-down?

In any of the examples above, a prospective publisher may choose *not to publish*, rather than face the uncertainty of running afoul of the Section 2 publication ban, and of being subject to the civil take-down process set out in Section 3. This kind of uncertainty — and the resulting fear of government intervention — leads to the kind of "chilling effect" on speech described by the U.S. Supreme Court in *Reno v. ACLU* (U.S. 1997) and other cases:

> "The vagueness of the [Communications Decency Act] is a matter of special concern for two reasons. First, the CDA is a content based regulation of speech. The vagueness of such a regulation raises special First Amendment concerns because of its obvious chilling effect on free speech."

Alternative: To avoid this nest of constitutional problems — and to ensure that Minnesota law does not establish a pattern whereby the legislature restricts speech pertaining to truthful information —MNCOGI recommends that the publication prohibition and civil take-down procedure be removed from the bill.

<u>Section 4</u>

Background: As written, the bill would allow the imposition of a criminal penalty if a person "knowingly publish[es] the personal information of any judicial official … with the intent to threaten, intimidate, harass, or physically injure."

Overview: The inclusion of clear criminal intent language — and ties to other courses of criminal conduct — is important to separate the criminal provision in Section 4 from the

overbroad publication ban in Section 2, which is facially unconstitutional. However, the bill advocates may want to further refine Section 4 by more closely tying the dissemination of covered information to specific criminal conduct, in order to avoid constitutional problems. (See MNCOGI's suggested language at the back of the packet.)

These problems — and how to avoid them — were articulated by the Minnesota Supreme Court in the 2019 case, ***In The Matter of the Welfare of ALJB***. (Minn. 2019)

> **"**First Amendment protections do not extend to speech that "is intended to induce or commence criminal activities." *State v. Muccio* , 890 N.W.2d 914, 923 (Minn. 2017) (quoting *United States v. Williams* , 553 U.S. 285, 298, 128 S.Ct. 1830, 170 L.Ed.2d 650 (2008))."
>
> "We have held that statutes criminalizing the use of the Internet or an electronic device to engage in communications with a child that relate to or describe sexual conduct and the intentional solicitation of prostitution fall within the category of "speech integral to criminal conduct." *Muccio* , 890 N.W.2d at 925 ; *Washington-Davis* , 881 N.W.2d at 538. In each case, we concluded that the speech at issue was unprotected because it was "directly linked to and designed to facilitate the commission of a crime." *Washington-Davis* , 881 N.W.2d at 538–39
>
> "On the other hand, we held in *Melchert-Dinkel* that speech advising, encouraging, or assisting another to commit suicide was not speech integral to criminal conduct because the act advocated for—suicide—is not illegal. 844 N.W.2d at 20. In so holding, we rejected as "circular" the State's argument that we should "uphold[ ] the statute on the ground that the speech prohibited by [the statute] is an integral part of a violation of [the statute]." *Id.* In other words, "[i]t is not enough that the speech itself *be labeled* illegal conduct .... Rather, it must help cause or threaten *other* illegal conduct ... which may make restricting the speech a justifiable means of preventing that other conduct." Eugene Volokh, *The "Speech Integral to Criminal Conduct" Exception* , 101 Cornell L. Rev. 981, 1011 (2016).

Alternative: See MNCOGI's alternative language proposal at the back of the packet. The proposal takes the bill advocates' criminal provision language, and re-formats it to clarify that the knowing dissemination of the covered information is a crime when done as part of "a course of conduct" that encompasses other criminal activity — conduct intended to "threaten, intimidate, harass, or physically injure." This is intended to clarify that the speech at issue is "incident to criminal conduct," as recognized by the U.S. Supreme Court.

ALTERNATIVE LANGUAGE PROPOSAL (MNCOGI)

Section 1. Minnesota Statutes 5B.02(e) is amended to read:

(e) "Eligible person" means an adult, a minor, or an incapacitated person, as defined in section 524.5-102 for whom there is good reason to believe (1) that the eligible person is a victim of domestic violence, sexual assault, or harassment or stalking, or (2) that the eligible person fears for the person's safety, the safety of another person who resides in the same household, or the safety of persons on whose behalf the application is made. An eligible person may include, but is not limited to, a government employee, including a retired government employee, or a spouse, domestic partner, or child of a government employee. An individual must reside in Minnesota in order to be an eligible person. A person registered or required to register as a predatory offender under section 243.166 or 243.167, or the law of another jurisdiction, is not an eligible person.

Sec. 2. **[609.476] CRIMINAL DISSEMINATION OF JUDICIAL OFFICIAL INFORMATION.**

Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have the meanings given.

(b) "Judicial official" means:

(1) every Minnesota district court judge, senior judge, retired judge, and every judge of the Minnesota Court of Appeals and every active, senior, recalled, or retired federal judge who resides in Minnesota;

(2) a justice of the Minnesota Supreme Court; and

(3) employees of the Minnesota judicial branch.

(c) "Personal information" means:

(1) the home address of a judicial official;

(2) the home address of the spouse, domestic partner, or children of a judicial official;

(3) a nonjudicial branch issued telephone number or email address of a judicial official;

(4) the name of any child of a judicial official; and

(5) the name of any child care facility or school that is attended by a child of a judicial official.

Subd. 2. **Misdemeanor.** It is unlawful to knowingly disseminate the personal information of any judicial official as part of a course of conduct intended to threaten, intimidate, harass, or physically injure. A person convicted of violating the provisions of this section is guilty of a misdemeanor.

Subd. 3. **Felony.** If a person's violation of subdivision 2 also causes bodily harm as defined in section 609.02, subdivision 7, the person is guilty of a felony.

EFFECTIVE DATE. This section is effective August 1, 2024, and applies to crimes committed on or after that date.

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March 6, 2024

Representative Jamie Becker-Finn
Chair
Judiciary, Finance, and Civil Law Committee
Minnesota House of Representatives
100 Rev. Dr. Martin Luther King Jr. Blvd.
Saint Paul, MN 55155

Chair Becker-Finn and Members of the Committee:

On behalf of the Consumer Data Industry Association, I write to express our agreement with the core concepts behind HF4326, which seeks to provide understandable protections for state and federal judicial officers and their families in Minnesota by attempting to limit the unnecessary disclosure of their personal information. However, CDIA is concerned that without revisions, the exceptionally broad provisions could exclude the protected class from conducting normal, day-to-day financial transactions and accessing other critical services.

CDIA, founded in 1906, is the trade organization representing the consumer reporting industry, including agencies like the three nationwide credit bureaus, regional and specialized credit bureaus, background check companies and others. CDIA exists to promote responsible data practices to benefit consumers and to help businesses, governments and volunteer organizations avoid fraud and manage risk.

As drafted, HF4326 Subd. 2 prohibits any instance in which a member of the protected class's information is displayed, published, sold, or otherwise made available on the Internet. While many of CDIA members may maintain information covered by HF4326, they typically do not have sufficient information in their possession to independently verify an individual's status as a member of the protected class, whether they are a judicial officer or a member of their family.

As a result, Subd. 2 and Subd. 3, as drafted, could disrupt the flow of information and result in broad disruptions to Minnesotan's ability to engage in normal course, day-to-day transactions or access critical services provided by public and private entities alike—regardless of whether or not the law is intended to cover them.

Cognizant of this fact, other states that have acted to protect public servants from the risks created by the unnecessary public disclosure of their personal information typically include three critical pieces.

First, they limit the applicability of these proposals to prohibit knowingly publicly posting or displaying the protected class's personal information. Second, they establish central verification and authentication procedures managed by a state authority to ensure efficient and effective administration of the protections. Third, they establish clear notification provisions for all covered entities to be informed of an individual's status and eligibility for the protections afforded to them.

Without adjustment, HF4326 could make it difficult or impossible for members of the protected class to access new lines of credit, mortgages, auto loans, verify certain retail transactions, purchase automobile and other types of insurance or even secure tenancy. Worse, HF4326 could disrupt efforts to protect consumers from identity theft, fraudulent transactions, and similar financial crimes by prohibiting the sharing of information necessary to verify identities. The same is true for state services and benefits, state unemployment insurance, or state tax refunds that require authentication of applicants or beneficiaries' identities.

Minor amendments to HF4326 can eliminate these unintended consequences without undermining the authors' intent to protect that judicial officers and their family members remain protected public disclosure of information that could put them at risk. These changes would also ensure that HF4326 does not conflict with the provisions of the comprehensive data privacy bills under consideration by the legislature.

On behalf of CDIA and its members, I want to reiterate our recognition of the important intent underpinning HF4326 and our support for the concept of providing special protections to certain public servants and their families who through their work may face higher risks to their safety and well-being. We stand ready to work with the sponsors of HF4326 and this committee toward that goal.

Please contact me via email at ztaylor@cdiaonline.org should you, your staff, or your colleagues wish to discuss our concerns and proposed amendments in greater detail following the hearing. Thank you for your time and consideration.

Sincerely,

Zachary W. Taylor
Director, Government Relations
Consumer Data Industry Association

CC: Rep. Brion Curran, Chief Author of HF4326